

ITEM 8
INCORRECT REDUCTION CLAIM
PROPOSED DECISION

Government Code Sections 3301, 3303, 3304, 3305, and 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367;
Statutes 1982, Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675

Peace Officers Procedural Bill of Rights

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

10-4499-I-01

County of Santa Clara, Claimant

TABLE OF CONTENTS

Exhibit A

Incorrect Reduction Claim 10-4499-I-01, filed September 16, 2010 1

Exhibit B

Controller’s Late Comments on IRC, filed December 2, 2014, revised December 18, 2014 361

Exhibit C

Claimant’s Rebuttal Comments, filed March 5, 2015 611

Exhibit D

Draft Proposed Decision, issued January 14, 2016..... 625

Exhibit E

Controller’s Comments on Draft Proposed Decision, filed January 15, 2016..... 665

Exhibit F

Supporting Documentation 672

Adopted Test Claim Statement of Decision, November 30, 1999

Final Staff Analysis on Parameters and Guidelines, July 27, 2000

Parameters and Guidelines, corrected August 17, 2000

Statement of Decision on Reconsideration, April 26, 2006

Adopted Parameters and Guidelines Amendment, December 4, 2006

Amended Statement of Decision on Reconsideration, July 31, 2009

1. INCORRECT REDUCTION CLAIM TITLE

In re State Controller's Office Audit Report on Santa Clara
County Peace Officers Procedural Bill of Rights Program

2. CLAIMANT INFORMATION

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Name of Local Agency or School District
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Claimant Contact
Controller-Treasurer
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3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this incorrect reduction claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

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Claimant Representative Name
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For CSM Use Only

Filing Date: **RECEIVED**
SEP 16 2010
COMMISSION ON STATE MANDATES

IRC #: **10-4499-I-01**

4. IDENTIFICATION OF STATUTES OR EXECUTIVE ORDERS

Please specify the subject statute or executive order that claimant alleges is not being fully reimbursed pursuant to the adopted parameters and guidelines.

Government Code sections 3300-3310; Stats. 1976, ch. 465; Stats. 1978, ch. 775, ch. 1173, ch. 1174, ch. 1178; Stats. 1979, ch. 405; Stats. 1980, ch. 1367; Stats. 1982, ch. 994; Stats. 1983, ch. 964; Stats. 1989, ch.1165; and Stats. 1990, ch. 675

5. AMOUNT OF INCORRECT REDUCTION

Please specify the fiscal year and amount of reduction. More than one fiscal year may be claimed.

Fiscal Year	Amount of Reduction
2003-04	\$118,861.00
2004-05	\$158,546.00
2005-06	\$249,395.00
TOTAL:	\$526,802.00

6. NOTICE OF INTENT TO CONSOLIDATE

Please check the box below if there is intent to consolidate this claim.

Yes, this claim is being filed with the intent to consolidate on behalf of other claimants.

Sections 7 through 11 are attached as follows:

- 7. Written Detailed Narrative:** pages 1 to 21.
- 8. Documentary Evidence and Declarations:** Exhibit KL.
- 9. Claiming Instructions:** Exhibit D.
- 10. Final State Audit Report or Other Written Notice of Adjustment:** Exhibit A.
- 11. Reimbursement Claims:** Exhibit HI.

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

In Re:) No.
)
STATE CONTROLLER'S OFFICE)
AUDIT REPORT ON SANTA)
CLARA COUNTY PEACE)
OFFICERS PROCEDURAL)
BILL OF RIGHTS (POBOR))
PROGRAM)
_____)

**INCORRECT REDUCTION CLAIM
COUNTY OF SANTA CLARA**

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TOPICAL INDEX

	<u>Page</u>
INTRODUCTION	1
FACTS	2
ANALYSIS AND DISCUSSION	10
A. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE ACTIVITIES IS INCORRECT	10
B. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE APPEALS IS INCORRECT	12
C. AUDIT FINDING NUMBER ONE REGARDING POBOR INTERROGATION COSTS IS INCORRECT	13
D. AUDIT FINDING NUMBER ONE REGARDING POBOR ADVERSE COMMENTS IS INCORRECT	15
E. AUDIT FINDING NUMBER TWO REGARDING COUNTY’S PRODUCTIVE HOURLY RATE CALCULATION IS INCORRECT	16
1. The County’s Productive Hourly Rate Computation Complies With the SCO-Issued General Claiming Instructions	16
2. The County’s Computation Results in a More Accurate and Consistent Productive Hourly Rate	18
F. AUDIT FINDING NUMBER FIVE REGARDING COUNTY’S TRAINING COSTS IS INCORRECT	20
CONCLUSION	21
EXHIBIT A	23
EXHIBIT B	85
EXHIBIT C	115
EXHIBIT D	125

EXHIBIT E	144
EXHIBIT F	189
EXHIBIT G	206
EXHIBIT H	229
EXHIBIT I	277
EXHIBIT J	299
EXHIBIT K	324
EXHIBIT L	349
EXHIBIT M	353

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STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

In Re:)	No.
)	
STATE CONTROLLER'S OFFICE)	INCORRECT REDUCTION CLAIM
AUDIT REPORT ON SANTA)	BY THE COUNTY OF SANTA CLARA
CLARA COUNTY PEACE)	
OFFICERS PROCEDURAL)	
BILL OF RIGHTS (POBOR))	
PROGRAM)	
_____)	

On May 14, 2008, the State Controller's Office (hereinafter "SCO") issued its final audit report on the County of Santa Clara's (hereinafter "County") claims for costs incurred based on the legislatively-created Peace Officers Bill of Rights (POBOR) Program (Test Claim No. 4499; Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989, and Chapter 675, Statutes of 1990, and as reconsidered by Case No. 05-RL-4499-01) for July 1, 2003 through June 30, 2006. A

true and correct copy of the SCO's final audit report is attached hereto as Exhibit A and incorporated herein by reference. The SCO incorrectly reduced the County's claim of \$748,888 by \$526,802, thus allowing only \$222,086. The County requests that the Commission on State Mandates reverse the audit findings and award the County the correct claim amount of \$748,888.

FACTS

In 1976, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights Act (POBOR) to ensure stable employer-employee relations and effective law enforcement services. This legislation provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. It applies to all employees classified as peace officers whether they are classified as permanent employees, serve at the pleasure of the agency and are terminable without cause ("at-will" employees), or are on probation and have not reached permanent status.

This program was found to be a state-mandated reimbursable program by this Commission on September 1, 1999. A true and correct copy of the Commission's Statement of Decision is attached hereto as Exhibit B and is incorporated herein by reference. On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers. Subsequently, the parameters and guidelines were amended with a technical correction

and adopted on August 17, 2000, a true and correct copy of which is attached hereto as Exhibit C and is incorporated herein by reference. Claiming Instructions were duly issued by the SCO, a true and correct copy of which is attached hereto as Exhibit D and is incorporated herein by reference.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code directing the Commission to review the Statement of Decision, adopted in 1999, to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates*¹ and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration,² a true and correct copy of which is attached hereto as Exhibit E and is incorporated herein by reference. The Statement of Decision on reconsideration became final on May 1, 2006. On March 28, 2008, the Commission adopted amended Parameters and Guidelines³ which apply to costs incurred and claimed for the 2006-2007 fiscal year. A true and correct copy of which is attached hereto as Exhibit F and is incorporated herein by reference. Claiming Instructions were duly issued by the SCO, a true and correct copy of which is attached hereto as Exhibit G and is incorporated herein by reference.

Based upon the foregoing program, Parameters and Guidelines, and Claiming Instructions, the County timely submitted its claims for fiscal years 2003-2004, 2004-

¹ (2004) 33 Cal.4th 859.

² 05-RL-4499-01.

³ 06-PGA-06.

2005 and 2005-2006, which are the subject of this incorrect reduction claim. True and correct copies of these reimbursement claims are attached hereto as Exhibits H, I, and J, respectively, and are incorporated herein by reference.

The reimbursable components of this program include, for cities and counties, under the first set of Parameters and Guidelines:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative

body.

2. Reimbursement period beginning January 1, 1999 - The administrative appeal activities listed below apply to permanent employees and the Chief of Police. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in

accordance with regular department procedures. (Gov. Code § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;
- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code §§ 3305 and 3306):

Counties

- a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
 - Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- c) If an adverse comment is *not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- b) If an adverse comment is related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Obtaining the signature of the peace officer on the adverse

comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

Based on the foregoing, the County timely filed its reimbursement claims.

On January 23, 2008, the SCO issued its draft audit report. Finding 1 of the audit report states that the County claimed unallowable salaries and benefits. The report also alleges that, under Finding 2, the County claimed unallowable productive hours; under Finding 3, the County understated benefit rates; under Finding 4, the County understated indirect costs; and under Finding 5, the County claimed unallowable travel and training costs.

On March 11, 2008, the County issued its response to the draft audit report in which it rebutted Findings 1, 2 and 5.⁴ A true and correct copy of the County's response is attached hereto as Exhibit K and is incorporated herein by reference. The final audit report was issued on May 14, 2008.

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⁴ The County accepted Findings 3 and 4 regarding understated benefit rates and indirect costs, respectively.

ANALYSIS AND DISCUSSION

A. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE ACTIVITIES IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative activities in the amount of \$73,067. The SCO asserts that such over-claiming was due to claiming for ineligible activities, such as, preparing the file, logging the initial case information, interviewing complainants, training, reviewing reports, and so on. As the County pointed out in its response, the SCO based its finding on the wrong set of Parameters and Guidelines. The original Parameters and Guidelines did not have that level of specificity and the amended Parameters and Guidelines were not effective until the 2006-2007 fiscal year — the fiscal year after the claims represented in the instant audit. The County cannot be held to a standard that was non-existent at the time the costs were incurred and of which the County had no notice. The SCO must audit each claim based on the Parameters and Guidelines applicable to the particular claiming cycle. In the instant case, the amended Parameters and Guidelines were not relevant to the claiming cycle being audited.

The SCO objects to a number of claimed activities stating, in essence, that there was no nexus between the activity claimed and the Parameters and Guidelines. The only guidance the County had at the time of claiming were the following activities as set forth in the Parameters and Guidelines:

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Each of these components is sufficiently flexible so as to allow local government to adapt them to its own method of implementing the mandate. If the Legislature had had in mind a specific manner in which to implement the mandate, it would have said so.⁵

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities

The County properly claimed costs for visiting other Internal Affairs (IA) units during the establishment of its IA unit. Part of developing internal policies can include reviewing other department doing the same or similar work. This information is not only important to the development of internal policies; it is also a reasonable method of compliance as it allows for the mere editing or cutting-and-pasting of other policies. Thus, time spent gathering information can yield time saving in the process of drafting the policies.

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

The County properly claimed training costs. The SCO pared the list of covered topics to those it believes relate to the mandate. For a mandate as complex and pervasive as POBOR, however, such limitations are not proper. Training on

⁵ *People v. Rodriguez* (1963) 222 Cal.App.2d 221, 227. “A legislative enactment should be construed in accordance with the ordinary meaning of the language used and it should be assumed that the Legislature knew what it was saying and meant what it said.”

POBOR properly encompasses issues of labor relations, confidentiality issues, investigation errors, first amendment- related conduct, key mistakes in workplace investigations, and assessing credibility, to name a few. While the County appreciates the SCO's attempt to include some costs rather than give a full disallowance, the SCO did not allow for some legitimate costs.

3. Updating the status of the POBOR cases.

In the instant case, the County properly claimed those activities involved in setting up a POBOR file. The creation of the file is, itself, an update of the status of the case. This is also the case for placing the case information in the file management system which allows for later updating.

B. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE APPEALS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative appeals in the amount of \$3,566. The SCO alleges that such over-claiming was due to claiming for ineligible appeals which are part and parcel of due process and, as such, are outside the scope of POBOR. In 1999 when the Commission considered the POBOR test claim, it carefully evaluated existing due process protections from the protections imposed by POBOR. (See SOD, at pp. 4-8.) The Commission's Statement of Decision resulted in the following Parameters and Guidelines on this matter:

Reimbursement period beginning January 1, 1999 - The administrative appeal activities listed below apply to permanent employees and the Chief of Police. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

As set forth under the final bullet, other actions against a permanent employee that negatively impact his career are reimbursable such as reprimand and suspension. The claiming of these costs by the County was therefore proper.

C. AUDIT FINDING NUMBER ONE REGARDING INTERROGATION COSTS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR interrogations in the amount of \$250,262. This finding was based upon the SCO's interpretation of the Parameters and Guidelines which was made without thoughtful review of the Commission's Statement of Decision. The Statement of Decision is the "law of the case" and is given deference when there is any discrepancy between the finding of a judicial body and the documents that arise from that finding.

This Commission, in 1999, addressed the test claim legislation of POBOR which provides safeguards for the protection of peace officers that are subject of investigation or discipline. Of primary concern was whether and to what extent these safeguards and protections were more expansive than those already in existence through statute, case law and the Constitution. Indeed, as evidenced in the Statement

of Decision, this Commission took particular care to root out those protections that were not duplicative of pre-existing due process rights and to delineate the scope and extent of the state-mandated activities:

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer.

This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the “normal waking hours” of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer “shall” be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

“If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section. Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section.”

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts. (SOD, Exhibit B at pp. 12-13. Emphasis added.)

The use of the conjunctive “and” and the plural “requirements” refers to the fact that this Commission found that both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are

reimbursable activities of the mandate. This conclusion is supported by the evidence before this Commission at the hearing as stated above.

The fact that that is omitted in the conclusion to the Statement of Decision, which is an abbreviated summary of the text, is not definitive. The interpretation of any writing requires that words be given their plain and ordinary meaning,⁶ and the interpretation should give meaning to the circumstances under which it was made and should relate to the whole.⁷ In the instant case, the use of "and" in the text and the quote to the supporting evidence clearly indicates that the Commission intended to allow reimbursement for both on-duty and off-duty time.

Thus, the County properly claimed the costs of conducting the interrogation while the officer was on duty and those costs for compensating the officer when the interrogation was performed during off-duty hours.

D. AUDIT FINDING NUMBER ONE REGARDING POBOR ADVERSE COMMENTS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR adverse comments in the amount of \$104,444. The SCO maintains that these costs resulted from claiming activities that are not reimbursable, such as reviewing and documenting the complaint, summarizing the complaint, and reviewing the procedures for compliance. And yet these activities were expressly allowed by the Parameters and Guidelines:

⁶ *Redevelopment Agency of City of Sacramento v. Malaki* (1963) 216 Cal.App.2d 480, 487-488. See also Civil Code § 1646.

⁷ *Mundy v. Superior Court* (1995) 31 Cal.App.4th 1396, 1405. See also Civil Code § 1647.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

According to the plain language of the Parameters and Guidelines, these activities are reimbursable and were properly claimed by the County.

E. AUDIT FINDING NUMBER TWO REGARDING THE COUNTY'S PRODUCTIVE HOURLY RATE IS INCORRECT.

Audit Finding 2 states that the County over-claimed salaries, benefits and related indirect costs in the amount of \$18,752. This finding was based upon the County's computation of its productive hourly rates for employees. The computation was proper and complied with the SCO's Claiming Instructions. Therefore, the County requests that this Commission reverse Audit Finding 2 to allow for the recovery of costs incurred for this state-mandated program for the reasons discussed below.

1. **The County's Productive Hourly Rate Computation Complies With The SCO-Issued General Claiming Instructions.**

The computation of an annual productive hourly rate used by the County removes non-productive time spent on authorized breaks, training, and staff meetings. The resulting total countywide annual productive hours of 1,571 is the basis for the annual productive hourly rate used in the County's claim.

In the audit report, the SCO relied upon the Mandated Cost Manual for Local

Agencies with regard to the productive hourly rate computation. To support its argument that the County's rate was improper, the SCO cited the following text from the Manual:

A productive hourly rate may be computed for each job title whose labor is directly related to the claimed reimbursable cost.

A local agency has the option of using any of the following:

- Actual annual productive hours for each job title,
- The local agency's average annual productive hours or, for simplicity,
- An annual average of 1,800* hours to compute the productive hourly rate.

* * *

* 1,800 annual productive hours include:

- Paid holidays
- Vacation earned
- Sick leave taken
- Informal time off
- Jury duty
- Military leave taken⁸

Relying on this section, the SCO argued that the County's figure of 1,571 productive hours was incorrect and that a figure of 1,800 hours should have been used. However, the SCO omitted relevant portions of the Manual which indicate that the productive hourly rate can be calculated in three different ways.

A full reading of the Manual indicates that using 1,800 hours is not the only approved approach. As set forth above, the Manual clearly states that use of countywide average annual productive hours is also an approved method. The County

⁸ Section 2, General Claiming Instructions, Subsection 7. Direct Labor Costs, Subdivision A. Direct Labor - Determine a Productive Hourly Rate (revised version 9/01) (Emphasis added).

calculated its average annual productive hours in full compliance with the Manual as issued. The County cannot and should not be penalized for using an approved methodology.

To date, the SCO has not been able to cite one reference as to why the County's productive hourly rate methodology is improper.

2. **The County's Computation Results in a More Accurate and Consistent Productive Hourly Rate.**

The County submits, on average, 25 to 30 S.B. 90 claims annually. As these claims are prepared by numerous County departments and staff members, the process could easily fall victim to inconsistency in approaches, accuracy and documentation with respect to calculating a different productive hourly rate for each claim.

Recognizing this threat and wanting to create a more reliable, county-wide system, the County embarked on the creation of a verifiable and accurate method of establishing a productive hourly rate through the computation of average productive hours. As a result, the County's methodology improves its S.B. 90 program claiming accuracy, consistency, and documentation. It also facilitates the State audit process because the methodology for the County's annual productive hours calculation is fully documented and supported.

In establishing its average annual productive hours, the County carefully ensured that all non-productive time was removed from the total annual hours. In addition to those items suggested by the SCO above, the County removed time spent in training and on breaks. This methodology ensures greater accuracy. The more

accurate the computational factors, the more accurate the result. Indeed, in response to the final audit report, the County made further adjustments solidifying the precision of its productive hours computation.

The SCO's main complaint seems to be that the County used required break times and required training times rather than actual times spent on these activities. This argument lacks merit.

State law requires that workers be given two fifteen minute break periods per day. Presumably, County employees take these breaks. The presumption that these breaks are taken is no different from the presumption that paid holidays, which are specifically set forth as properly included in the calculation by the SCO, are also taken. Instead of making this presumption, the SCO would have the County employ a clock-in, clock-out system for breaks to ensure that the break times do not actually add up to 28 or 32 minutes daily. Such an expenditure of time and costs is unwarranted in light of the statistically invalid difference that may be found between actual break time and the required break time.

The same argument applies with even greater force to the presumption that County employees will undertake the necessary training required for licensure or certification. Such education is more likely to be pursued because of its impact on the employees' license or certification and, ultimately, their ability to perform their jobs.

The use of a countywide productive hourly rate is explicitly authorized by the

State Controller's claiming instructions.⁹ The productive hourly rate used by the County for this claim is fully documented and was accurately calculated by the County Controller's Office. All supporting documents for the calculation of countywide productive hours were provided during the state audit.

Further, as shown in the letter of December 27, 2001 from the County Controller to the State Controller's Office, the State was notified years ago that the County was electing to use the productive hourly rate methodology authorized by the State-mandated claiming procedures. A true and correct copy of this letter is attached hereto as Exhibit L and is incorporated herein by reference. The County reported that the switch to a countywide methodology for the calculation of average productive hours per position would improve state mandate claiming accuracy, consistency, and documentation, and would facilitate the State audit function. Consequently, more than 50 claims were submitted and accepted during 2002 and 2003 using this methodology. Furthermore, the State Controller has accepted the County's use of the countywide productive hours methodology for state mandated claims as evidenced by an e-mail from Jim Spano dated February 6, 2004, a true and correct copy of which is attached hereto as Exhibit M and is incorporated herein by reference.

F. AUDIT FINDING NUMBER FIVE REGARDING COUNTY'S TRAINING COSTS IS INCORRECT.

Audit Finding 5 states that the County over-claimed costs related to POBOR

⁹ Mandated Cost Manual for Local Agencies, Section 2, General Claiming Instructions, Subsection 7. Direct Labor Costs, Subdivision A. Direct Labor - Determine a Productive Hourly Rate (revised version 9/01).

travel and training in the amount of \$1,521. The SCO asserts that these costs were excluded because they related to ineligible training under Finding 1. As noted above, however, the Parameters and Guidelines provided the following regarding allowable training costs:

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

The Commission could have been more specific regarding these costs, but it chose to provide an expansive category for training. The SCO cannot use the audit process to place limitations on the program that the Commission did not see fit to include.

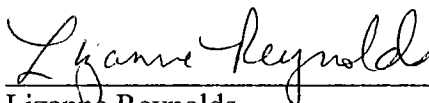
CONCLUSION

In light of the arguments presented above, the County requests that the Commission reverse the SCO's audit findings and award the County the correct claim amount of \$748,888.

Dated: 8-23-10

Respectfully submitted,

MIGUEL MÁRQUEZ
County Counsel


Lizanne Reynolds
Deputy County Counsel

Attorneys for County of Santa Clara

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Exhibit A

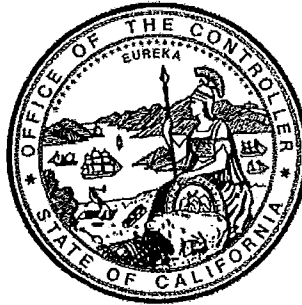
SANTA CLARA COUNTY

Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2003, through June 30, 2006



JOHN CHIANG
California State Controller

May 2008



JOHN CHIANG
California State Controller

May 14, 2008

John V. Guthrie
Director of Finance
Santa Clara County
East Wing, 2nd Floor
70 West Hedding Street
San Jose, CA 95110

Dear Mr. Guthrie:

The State Controller's Office audited the costs claimed by Santa Clara County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The county claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable. The unallowable costs resulted primarily from the county claiming ineligible costs. The State paid the county \$227,693. The amount paid exceeds allowable costs claimed by \$5,607.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/sk

cc: Ram Venkatesan, SB 90 Coordinator
Santa Clara County Controller-Treasurer Department
Alan Minato, Fiscal Officer
Santa Clara County Sheriff's Department
Jessie Fuentes, Fiscal Officer
Santa Clara County Probation Department
George Dooley, Administrative Services Manager
Santa Clara County District Attorney's Office
Todd Jerue, Program Budget Manager
Corrections and General Government
Department of Finance
Carla Castaneda
Principal Program Budget Analyst
Department of Finance
Paula Higashi, Executive Director
Commission on State Mandates

Contents

Audit Report

Summary	1
Background	1
Objective, Scope, and Methodology	2
Conclusion	2
Views of Responsible Officials	2
Restricted Use	3
Schedule 1—Summary of Program Costs.....	4
Findings and Recommendations	6
Attachment—County’s Response to the Draft Audit Report	

Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by Santa Clara County for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2003, through June 30, 2006.

The county claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable. The unallowable costs resulted primarily from the county claiming ineligible costs. The State paid the county \$227,693. The amount paid exceeds allowable costs claimed by \$5,607.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990, added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR), was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal,

Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the county's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the county's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, Santa Clara County claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$222,086 is allowable and \$526,802 is unallowable.

For the fiscal year (FY) 2003-04 claim, the State made no payments to the county. Our audit disclosed that \$47,561 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$47,561, contingent upon available appropriations.

For the FY 2004-05 claim, the State made no payments to the county. Our audit disclosed that \$112,228 is allowable. The State will pay allowable costs claimed that exceed the amount paid, totaling \$112,228, contingent upon available appropriations.

For the FY 2005-06 claim, the State paid the county \$227,693. Our audit disclosed that \$62,297 is allowable. The State will offset \$165,396 from other mandated program payments due to the county. Alternatively, the county may remit this amount to the State.

**Views of
Responsible
Official**

We issued a draft audit report on January 23, 2008. Irene Lui, Divisional Manager, responded by letter dated March 11, 2008 (Attachment), disagreeing with the audit results for Findings 1, 2, and 5 and agreeing with the audit results for Findings 3 and 4. This final audit report includes the county's response.

Restricted Use

This report is solely for the information and use of Santa Clara County, The California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

May 14, 2008

**Schedule 1—
Summary of Program Costs
July 1, 2003, through June 30, 2006**

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2003, through June 30, 2004</u>				
Salaries	\$ 91,196	\$ 26,890	\$ (64,306)	Finding 1, 2
Benefits	27,816	8,441	(19,375)	Finding 1, 2
Total direct costs	119,012	35,331	(83,681)	
Indirect costs	48,410	13,230	(35,180)	Finding 1, 2, 4
Total direct and indirect costs	167,422	48,561	(118,861)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 166,422</u>	47,561	<u>\$ (118,861)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 47,561</u>		
<u>July 1, 2004, through June 30, 2005</u>				
Salaries	\$ 125,091	\$ 49,340	\$ (75,751)	Finding 1, 2
Benefits	37,276	14,759	(22,517)	Finding 1, 2, 3
Services and supplies	1,991	1,991	—	
Travel and training	3,299	1,778	(1,521)	Finding 5
Total direct costs	167,657	67,868	(99,789)	
Indirect costs	103,117	44,360	(58,757)	Finding 1, 2, 3
Total program costs	<u>\$ 270,774</u>	112,228	<u>\$ (158,546)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 112,228</u>		
<u>July 1, 2005, through June 30, 2006</u>				
Salaries	\$ 140,795	\$ 28,671	\$ (112,124)	Finding 1, 2
Benefits	51,201	9,894	(41,307)	Finding 1, 2
Total direct costs	191,996	38,565	(153,431)	
Indirect costs	119,696	23,732	(95,964)	Finding 1, 2
Total program costs	<u>\$ 311,692</u>	62,297	<u>\$ (249,395)</u>	
Less amount paid by the State		(227,693)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (165,396)</u>		

Schedule 1 (continued)

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>Summary: July 1, 2002, through June 30, 2005</u>				
Salaries	\$ 357,082	\$ 104,901	\$ (252,181)	
Benefits	116,293	33,094	(83,199)	
Services and supplies	1,991	1,991	—	
Travel and training	3,299	1,778	(1,521)	
Total direct costs	478,665	141,764	(336,901)	
Indirect costs	271,223	81,322	(189,901)	
Total direct and indirect costs	749,888	223,086	(526,802)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 748,888</u>	222,086	<u>\$ (526,802)</u>	
Less amount paid by the State		(227,693)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ (5,607)</u>		
<u>Summary by Cost Component</u>				
Administrative activities	\$ 215,269	\$ 130,574	\$ (84,695)	
Administrative appeal	3,566	—	(3,566)	
Interrogation	401,220	68,787	(332,433)	
Adverse comment	129,833	23,725	(106,108)	
Subtotal	749,888	223,086	(526,802)	
Less late filing penalty	(1,000)	(1,000)	—	
Total program costs	<u>\$ 748,888</u>	<u>\$ 222,086</u>	<u>\$ (526,802)</u>	

¹ See the Findings and Recommendations section.

Findings and Recommendations

FINDING 1— Unallowable salaries and benefits

The county claimed unallowable salaries and benefits totaling \$324,521 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,518.

The following table summarizes the audit adjustments by cost component:

	Claimed Costs	Allowable Costs	Audit Adjustment
<u>Salaries and Benefits</u>			
Administrative Activities:			
Sheriff's Department	\$ 18,587	\$ 10,124	\$ (8,463)
Probation Department	93,584	58,094	(35,490)
District Attorney's Office	18,318	18,318	—
Total Administrative Activities	<u>130,489</u>	<u>86,536</u>	<u>(43,953)</u>
Administrative Appeals:			
Sheriff's Department	1,388	—	(1,388)
Probation Department	985	—	(985)
District Attorney's Office	—	—	—
Total Administrative Appeals	<u>2,373</u>	<u>—</u>	<u>(2,373)</u>
Interrogation:			
Sheriff's Department	71,506	10,156	(61,350)
Probation Department	162,587	32,351	(130,236)
District Attorney's Office	18,880	2,530	(16,350)
Total Interrogation	<u>252,973</u>	<u>45,037</u>	<u>(207,936)</u>
Adverse Comment:			
Sheriff's Department	54,680	11,389	(43,291)
Probation Department	31,741	5,633	(26,108)
District Attorney's Office	1,119	259	(860)
Total Adverse Comment	<u>87,540</u>	<u>17,281</u>	<u>(70,259)</u>
Total salaries and benefits	473,375	148,854	(324,521)
Related indirect costs	271,223	86,705	(184,518)
Total	<u>\$ 744,598</u>	<u>\$ 235,559</u>	<u>\$ (509,039)</u>
<u>Recap by Department</u>			
Sheriff's Department	\$ 198,910	\$ 42,901	\$ (156,009)
Probation Department	498,045	166,384	(331,661)
District Attorney's Office	47,643	26,274	(21,369)
Total	<u>\$ 744,598</u>	<u>\$ 235,559</u>	<u>\$ (509,039)</u>

For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.

We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.

Administrative Activities

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$43,953 was unallowable (\$8,463 by the Sheriff's Department, and \$35,490 by the Probation Department) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,114.

The parameters and guidelines, section IVA (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- Updating POBOR case records (FY 2005-06).
- Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Preparing the file.
- Logging initial case information into the system and assign the case.
- Interviewing the complainants.

Probation Department

The Probation Department claimed the following reimbursable activities:

- Reviewing and updating internal policies and procedures relating to POBOR.
- Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation

Administrative Activities

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$43,953 was unallowable (\$8,463 by the Sheriff's Department, and \$35,490 by the Probation Department) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,114.

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Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- Updating POBOR case records (FY 2005-06).
- Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Preparing the file.
- Logging initial case information into the system and assign the case.
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Probation Department

The Probation Department claimed the following reimbursable activities:

- Reviewing and updating internal policies and procedures relating to POBOR.
- Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation

Budgeting implications
Juvenile Justice Reforms
Discrimination issues
Electronic research
First Amendment related conduct
Preparing investigations reports
Key mistakes in workplace investigations
Assessing credibility
Types of lawsuits
Representation and indemnification
Supervisory liability of failure to train
Minimizing exposure to liability

The department also claimed the following activities that are not reimbursable (FY 2004-05):

- Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.
- Visiting other IA units during the establishment of the IA unit at the Probation Department.
- Conducting interviews for IA Management Analyst position.
- Reviewing the progress of development of the IA database.
- Reviewing complaints, response letters, Merit System Rules, and assigning cases.
- Reviewing training schedule for the unit.

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- Updating/maintaining POBOR case records.
- Training for Internal Affairs staff (FY 2003-04).
- Develop internal policies and procedures (FY 2003-04).

The District Attorney's Office did not claim any ineligible activities in this category.

Administrative Appeals

For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.

The parameters and guidelines, section IVB(2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.

Sheriff's Department

Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process. Subsequently, claimed activities were unallowable for reimbursement.

Probation Department

All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.

District Attorney's Office

The District Attorney's Office did not claim any costs under this cost component.

Interrogation

For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.

The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:

Tape recording the interrogation when the peace officer employee records the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- Providing Interrogation Notice and/or Statement of Allegations to the officer.
- Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).
- Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).

However, the department claimed the following activities that are not reimbursable:

- Gathering reports and reviewing complaints and evidence as part of investigating the allegations.
- Investigation time.
- Preparing questions for the interviews.
- Interviewing witnesses during normal working hours (investigators' time).
- Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).

Probation Department

The Probation Department claimed the following reimbursable activities:

- Providing administrative notice to the accused officer regarding the nature of allegations
- Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).

However, the department claimed the following activities that are not reimbursable:

- Gathering reports, log sheets, and evidence.
- Reviewing complaints, reports, and evidence as part of investigating the allegations.
- Interviewing witnesses, both civilian and officers (investigators' time).
- Traveling to interview witnesses.
- Transcribing witness tapes (witnesses do not receive copies of their interviews.)
- Reviewing tapes and making corrections.
- Preparing interview questions.
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).

District Attorney's Office

The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.

However, the District Attorney's Office claimed the following activities that are not reimbursable:

- Gathering reports, log sheets, etc.
- Reviewing complaints, reports, and evidence as part of investigating the allegations.
- Preparing interview questions.
- Interviewing witnesses during normal working hours (investigators' time).
- Conducting pre-interrogation meetings.
- Interviewing accused officers during normal working hours (investigators' time).
- Preparing a summary report of the agency complaint as part of the case file preparation.
- Reviewing interview tapes.

Adverse Comment

For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits (\$54,680 by the Sheriff's Department, \$31,741 by the Probation Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's

Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment), allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.

Sheriff's Department

The Sheriff's Department claimed the following activities that are reimbursable:

- Preparing and serving an Administrative Notice of Allegations.
- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the department claimed the following activities that are not reimbursable:

- Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).
- Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.
- Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.
- Preparing interview questions.

Probation Department

The Probation Department claimed the following reimbursable activities:

- Preparing and serving the Final Disciplinary Order (adverse comment notice).
- Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).
- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the department claimed the following activities that are not reimbursable:

- Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.
- Preparing the final case report.

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- Reviewing documentation leading to the adverse comment/findings by Command staff.

However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.

(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (36,003)	\$ (39,709)	\$ (38,780)	\$ (114,492)
Probation Department	(32,644)	(52,500)	(107,675)	(192,819)
District Attorney's Office	(13,877)	(1,396)	(3,690)	(18,963)
Subtotal	(82,524)	(93,605)	(150,145)	(326,274)
Related indirect costs	(35,831)	(55,199)	(93,917)	(184,947)
Audit adjustment	\$ (118,355)	\$ (148,804)	\$ (244,062)	\$ (511,221)

The program's parameters and guidelines, adopted by CSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.

The parameters and guidelines, section IV (Reimbursable Activities), outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

SCO's Comments

The finding and recommendation remains unchanged, except that we have allowed additional costs under the cost component of Administrative Activities for the District's Attorney's Office.

We will address our comments in the same order as they appear in the county's response.

County's Response

Administrative Activities

Sheriff's Department

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states – "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

Probation Department

We do not agree with the narrow interpretation given to “due process” of law and the restrictive definition of the activities over and above the duties beyond the due process of law.

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit’s negative approach to training.

District Attorney’s Office

The above comment [audit finding] is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney’s office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

SCO’s Comments**Administrative Activities***Sheriff’s Department*

The county’s response to this finding is vague. The county implies that unallowable activities described in the audit report relate to language in the revised parameters and guidelines and, as this specific language did not appear in the original parameters and guidelines, these activities must be reimbursable. This contention is not valid. The audit finding is based on the original parameters and guidelines issued on July 27, 2000, and corrected on August 17, 2000. Reimbursable activities include: (1) developing or updating internal policies, procedures, manuals, or other materials pertaining to the conduct of mandated activities; (2) attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and (3) updating the status of POBOR cases. The county did not explain how preparing a case file, logging case information into the county’s system and assigning the case, and interviewing complainants fit into one of the three reimbursable activities described above. These activities have nothing to do with updating internal policies and procedures, training on the requirements of the mandate, or updating the status of POBOR cases.

Probation Department

The parameters and guidelines state that one of the reimbursable activities under the cost component of Administrative Activities includes attendance at specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. The county’s argument suggests that if POBOR requirements were discussed at any time during the course of any training attended by

human resources, law enforcement, or legal counsel, then the entire cost of that training should be reimbursable. We disagree. The language in the parameters and guidelines states that only training that concerns the requirements of the mandate is reimbursable. Accordingly, training that does not concern the requirements of the mandate is not reimbursable.

We reviewed the class outlines and schedules documented by the county for the training hours claimed and allocated allowable training costs based on the percentage of training time devoted to the requirements of the mandate. Accordingly, training hours for topics unrelated to the requirements of the mandated program are unallowable, which is consistent with the language in the adopted parameters and guidelines. We noted all of the specific training topics in the audit report that were deemed unallowable. The county did not provide any additional documentation or information supporting why these topics should be considered allowable training costs under the mandated program.

District Attorney's Office

Based on subsequent discussions with the county, we are satisfied that the county has adequate support for the unallowable training hours mentioned in the draft audit report for training conducted during FY 2003-04. Accordingly, we revised the audit finding to include an additional \$2,182 of allowable costs for FY 2003-04 (\$1,381 for salaries, \$372 for benefits, and \$429 for related indirect costs).

County's Response

Administrative Appeals

Sheriff's Department

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, and administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand.

Then when you go to the finding of the audit on page 10, it states – "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of

written reprimand – such as verbal counseling, documented counseling, supervisor comment card. . . This belief is further supported in the Commissions Ps & Gs where it is stated “The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.” There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

SCO’s Comments

Administrative Appeals

Sheriff’s Department

In its response, the county misinterprets the language of the parameters and guidelines when it claims that section IVB(2) “allow[s] reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons: 1. Dismissal, demotion, suspension, reduction in pay, or written reprimand. . . .”

The county did not include the rest of the sentence, replacing it instead with six dots. The first bullet point of section IVB(2) of the parameters and guidelines actually says “dismissal, demotion, suspension, reduction in pay, or written reprimand *received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee’s reputation or ability to find future employment.)* [emphasis added].” The costs incurred by the county for administrative appeal hearings were not claimed for the Chief of Police, so this sentence of the parameters and guidelines does not apply when analyzing the county’s claim.

The county claimed administrative appeal costs for permanent employees. Section IVB(2) of the parameters and guidelines addresses allowable costs for permanent employees under the next three bullet points when it includes:

- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

The county suggests that the last bullet point covers the costs included in its claim by stating “there is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.” The county’s conclusion is incorrect.

The CSM's original statement of decision for the POBOR program, adopted November 30, 1999, states the following on page 11:

Thus, the Commission found that the administrative appeal hearing would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirement of the United States Constitution.

The CSM language is clear, and the costs claimed for the Sheriff's Department under this cost component are unallowable because they are already required by the due process clause.

County's Response

Interrogation

Sheriff's Department

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states – "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Probation Department

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with the audit finding.

District Attorney's Office

The county disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

SCO's Comments**Interrogations***Sheriff*

If a peace officer or peace officer witness is interviewed during his or her off-duty time, the county is eligible for reimbursement for the overtime costs incurred. What the auditor stated at the exit conference is consistent with the parameters and guidelines. Furthermore, the audit report states the criteria for reimbursement of costs incurred for the cost component of Interrogations when it quotes the parameters and guidelines section IV(C). In addition, the county's suggestion that the audit findings reflect "recent changes in the POBOR status" is without merit. The parameters and guidelines were originally adopted on July 27, 2000, and corrected on August 17, 2000. No changes have been made to the parameters and guidelines until the CSM adopted amended parameters and guidelines on December 4, 2006. The amended parameters and guidelines apply to claims filed beginning in FY 2006-07. The audit period for this audit extends to FY 2005-06.

Probation Department

Based on the county's written response, it appears that the Probation Department believes that all activities under the cost component of Interrogations must be performed at any time other than during normal working hours in order to be reimbursable. However, the only activity in the parameters and guidelines that contains this caveat regards the reimbursable activity of interrogating a peace officer during his or her off-duty time. The list of unallowable activities cited in the audit report that the department performed fall under due process. Consequently, the CSM did not include these activities as reimbursable activities in the parameters and guidelines.

The only activities that are eligible for reimbursement under the mandated program are those that are spelled out in the adopted parameters and guidelines. If the county disagrees with what the CSM adopted as allowable activities, it can file a proposal with CSM to amend the adopted parameters and guidelines. In the meantime, SCO audits of POBOR claims submitted by the county will rely on the adopted parameters and guidelines as the criteria for reimbursement.

District Attorney's Office

The language contained in the audit report stating that "local agencies were performing these investigative activities before POBAR was enacted" comes directly from page 912 of CSM's staff analysis of the proposed parameters and guidelines for the POBOR program (Item #10), which was discussed during CSM's July 27, 2000, hearing. We do not question the amount of work and administrative record-keeping that may be required by claimants to comply with the requirements of the POBOR statutes. However, it is not relevant to the conduct of our audits. Reimbursable costs are based upon activities that the CSM has determined to be allowable within the adopted parameters and guidelines.

County's Response**Adverse Comment***Sheriff's Department*

The first area of denial for reimbursement relates to "Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission's Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair, and thorough investigation. It is not an issue of whether it is a complaint or not.

Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states – "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

District Attorney's Office

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.

SCO's Comments**Adverse Comment***Sheriff's Department*

Most of the county's response relates to the activity of reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. The county infers that the parameters and guidelines state that determining whether the case rises to the level of an investigation is not reimbursable. However, no language like this appears in the adopted parameters and guidelines. Neither is there any language in the parameters and guidelines stating that this activity is reimbursable. In addition, there is no requirement that reimbursable activities must be performed within the Internal Affairs unit.

As noted in the audit report, the county's activity of reviewing documentation leading to the adverse comment/findings by command staff was eligible for reimbursement. However, we determined that the activity of reviewing the circumstances of a complaint to determine the level of investigation is an investigative activity that is not reimbursable under the mandated program. We also determined that the other three activities cited in the audit report were investigative activities that are unallowable because the activities are not included in the parameters and guidelines as reimbursable activities under the mandated program.

Probation Department

The county did not respond to the Adverse Comment findings for the Probation Department.

District Attorney's Office

The county's comments do not relate to the audit findings contained in the audit report. Rather, the county offers its opinion that the CSM did not allow for more areas of reimbursement to claimants under the adopted statement of decision and parameters and guidelines.

**FINDING 2—
Unallowable
productive hours**

The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs totaled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.

Ineligible Training Hours

When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:

1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.
2. POST training for law enforcement personnel.
3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.

The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.

Ineligible Break Time

When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (980)	\$ (554)	\$ (1,009)	\$ (2,543)
Probation Department	(542)	(4,920)	(2,300)	(7,762)
District Attorney's Office	(1,388)	(130)	23	(1,495)
Subtotal	(2,910)	(5,604)	(3,286)	(11,800)
Related indirect costs	(1,000)	(3,905)	(2,047)	(6,952)
Audit adjustment	\$ (3,910)	\$ (9,509)	\$ (5,333)	\$ (18,752)

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record. . .

We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training session that were

conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local government to calculate indirect costs when such costs are "... not readily assignable. . . without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minutes daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has direct all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004, from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004, is reproduced below.

Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide productive hours and have discussed your analysis with my staff and Division of Accounting and reporting staff. The use of countywide productive hours would be acceptable to the State

Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

*If you would like to discuss the above further, please contact me.
Jim Spano*

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy or non SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations, or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

SCO's Comments

The finding and recommendation remain unchanged.

The SCO concurs that the county may use countywide productive hours to calculate productive hourly rates. The SCO notified Santa Clara County by e-mail dated February 6, 2004, stating in part, "The use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandates and nonmandated)."

Training Time

We concur that the county's payroll system was modified in FY 2002-03 to capture actual hours of training. However, we determined that the county's accounting system does not separately identify training time directly charged to program and non-program activities. We have a copy of a county memo dated June 10, 2002, to department payroll, personnel staff, service centers, and timekeepers advising the use of the new training code to report training hours. The memo goes on to state, "the hours that the employee is away from his/her normal productive work is the key for reporting the hours regardless of the type of training or if the training is mandatory or non-mandatory."

However, the county states in its response that "the county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude non-program related training from the pay period data reporting." The county goes on to state that individual county departments maintain records as to whether training reported was program-related or not and that our audit staff should examine this issue. While we noted that the county deducted hours for training codes "ZTT" and "ZXT" during the audit period in its calculation of productive hours (24.35 for FY 2003-04, 26.6 hours for FY 2004-05, and 23.03 hours for FY 2005-06), it has not provided the pertinent details of how these hours were derived. It is not the responsibility of SCO auditors to audit training records of various county departments to determine which training time was used in the county's calculation of its productive hourly rates. Instead, the county should provide the pertinent details of how it calculated the hours deducted from productive hours for each fiscal year of the audit period; it has not yet done so. If the county can subsequently provide adequate documentation that its calculation of deductible productive hours for employee training was related only to non-program-specific training during the audit period, we will revise the audit report as appropriate.

Break Time

The SCO's claiming instructions, which include guidelines for preparing mandated cost claims, do not identify time spent on authorized breaks as deductions (excludable components) from total hours when computing productive hours. The county deducted authorized break time rather than actual break time taken. Limiting daily reporting of hours worked to 7.5 hours does not address instances in which staff works less than eight hours a day, nor does it ensure consistency of application to all programs

(mandates and non-mandates). The county did not adjust for break time directly charged to program activities during the audit period; therefore, the county cannot exclude those hours from productive hours.

The county's response also implies that the county satisfactorily addressed the issues raised in the e-mail from the SCO to Santa Clara County dated February 6, 2004. However, calculating productive hours based on estimated costs is not consistent with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments. If the county chooses to deduct actual break time taken in calculating productive hours, its accounting system must separately identify the actual break time taken. In addition, the county's claim that SCO has accepted "more than 50 claims" using this countywide methodology during the past two years refers to unaudited claims that were processed by SCO for payment. It is erroneous to suggest that this precludes the SCO from taking a finding during the conduct of an actual audit of one or more of these claims.

**FINDING 3—
Understated benefit
rates**

The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's Response

We accept the audit comments and request that the costs be allowed to the extent understated.

SCO's Comments

The county agrees with the finding.

**FINDING 4—
Understated indirect
costs**

The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

Recommendation

We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.

County's Response

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.

SCO's Comments

The county agrees with the finding.

**FINDING 5—
Unallowable travel
and training costs**

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA(5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's Response

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

SCO's Comments*Probation Department*

The parameters and guidelines state that one of the reimbursable activities under the Administrative Activities cost component includes attendance at specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. Accordingly, training that does not concern the requirements of the mandate is not reimbursable. We allocated allowable training costs based on the percentage of training time devoted to the requirements of the mandate, as noted above within Finding 1. Accordingly, travel costs associated with employee training that is not eligible for reimbursement is also unallowable.

**OTHER ISSUE—
Audit Criteria**County's Response

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps and Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB 90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

SCO's Comment

The county's comment that the audit was based on the revised parameters and guidelines for the POBOR program (adopted by CSM on December 4, 2006) appears frequently in its response to the draft report. During the audit exit conference, the county's SB 90 coordinator asked us several times whether the audit was based on the original parameters and guidelines or on the revised parameters and guidelines adopted on

December 4, 2006. On each occasion, We responded that the audit was based on our understanding of the original parameters and guidelines adopted by CSM and that the revised parameters and guidelines apply to claims filed for FY 2006-07 and subsequent years.

Any references to the revised parameters and guidelines adopted on December 4, 2006, made during the exit meeting or in any discussion during the audit process were made solely to point out that reimbursable and non-reimbursable activities of the mandated program are spelled out more clearly in the revised parameters and guidelines. Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code Section 3304) and Adverse Comment (for punitive actions protected by the due process clause), reimbursable activities did not change from the original parameters and guidelines. In addition, our understanding of allowable and unallowable activities per the original parameters and guidelines did not change as a result of the CSM amending them on December 4, 2006.

The draft audit report and this final report state that the audit was based on parameters and guidelines adopted by the CSM on July 27, 2000, and corrected on August 17, 2000. The language in the audit report and in the SCO response to the county's comments emanates either from the original parameters and guidelines, the original statement of decision, or from the CSM staff analysis of the originally proposed parameters and guidelines for this mandate program.

The county's statement that the CSM had to reconsider and reissue amended parameters and guidelines due to different interpretations of claimable costs is not correct. The CSM was *required* to review its original statement of decision for the POBOR program, adopted in 1999, pursuant to AB 138 (Statutes 2005, chapter 72, section 6) to clarify whether the subject legislation for the POBOR program imposed a mandate consistent with the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal. 4th 859 and other applicable court decisions. Accordingly, CSM adopted its statement of decision upon reconsideration on May 1, 2006.

Adopting revised parameters and guidelines based on reconsideration of its original statement of decision is consistent with the CSM's normal procedures. In this instance, the CSM also directed its staff to work with state agencies and interested parties to develop and recommend a reasonable reimbursement methodology, pursuant to Government Code section 17519.5, for inclusion in the revised parameters and guidelines. State agencies and interested parties proposed changes to the reimbursable activities and various reasonable reimbursement methodologies; all proposed changes were considered by CSM staff prior to adoption of the revised parameters and guidelines on December 4, 2006.

**Attachment—
County's Response to
Draft Audit Report**

County of Santa Clara

Finance Agency
Controller-Treasurer Department

County Government Center
70 W. Hedding Street, East Wing, 2nd Floor
San Jose, California 95110-1705
(408) 299-5200 FAX (408) 289-8629



DATE: March 11, 2008

TO: Jim L. Spano
Chief, Compliance Audits Bureau,
State Controller's Office, Division of audits,
Post Office Box 942850,
Sacramento, CA 94250-5874

FROM: Irene Lui
Divisional Manager,
Cost management and claims

RE: Response to POBOR Draft audit report

Dear Mr. Spano,

Thank you for sending us the draft audit report regarding our claim for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976) for the period from July 1, 2003 through June 30, 2006

We attach our responses to your audit findings in the order they were presented on your draft report. Except the matters that we have specifically accepted, we disagree to all other findings; the attached detailed response addresses our concerns from respective claiming departments. Please review our comments and make appropriate adjustments for the draft report accordingly.

Your draft report attempts to disallow \$511,221 out of our claimed amount of \$744,598 which is about 69%. This high percentage of disallowance was mainly contributed by the difference in interpretation of legal provisions and Ps and Gs between the state auditors and the local governments. Your strict and narrow interpretation of Ps and Gs is, in fact, a relatively new phenomenon that has not been adhered to by any local agencies, and will only lead to prolonged litigation that hurts both the State and local agencies.

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kniss
County Executive: Peter Kutas, Jr.

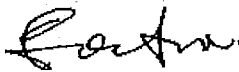
Noting this situation, we along with the CSAC has tried to negotiate a balanced settlement which is still pending in spite of our efforts for the past few years.

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps & Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

We appreciate the opportunity to review and comment upon this audit. We would like to meet with you and your staff to explain our various points, and to seek a reasonable settlement of the claimed costs before we explore other alternatives available to us. Please contact Ram Venkatesan, the County SB 90 Coordinator, at (408) 299-5210 if you have questions.

Regards,



Irene Lui
Divisional manager

Attachment: Detailed response to your draft audit findings

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Ycager, Liz Kniss
County Executive: Peter Kutas, Jr.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

FINDING 1—Unallowable salaries and benefits

The county claimed unallowable salaries and benefits costs totaling \$326,274 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,947.

The following table summarizes the audit adjustments by cost component:

	<u>Claimed</u> <u>Costs</u>	<u>Allowable</u> <u>Costs</u>	<u>Audit</u> <u>Adjustme</u> <u>nt</u>
<u>Salaries and Benefits</u>			
Administrative Activities:			
Sheriff's Department	\$ 18,587	\$ 10,124	\$ (8,463)
Probation Department	93,584	58,094	(35,490)
District Attorney's Office	<u>18,318</u>	<u>16,565</u>	<u>(1,753)</u>
Total Administrative Activities	<u>130,489</u>	<u>84,783</u>	<u>(45,706)</u>
Administrative Appeals:			
Sheriff's Department	1,388	—	(1,388)
Probation Department	985	—	(985)
District Attorney's Office	<u>—</u>	<u>—</u>	<u>—</u>
Total Administrative Appeals	<u>2,373</u>	<u>—</u>	<u>(2,373)</u>
Interrogation:			
Sheriff's Department	71,506	10,156	(61,350)
Probation Department	162,587	32,351	(130,236)
District Attorney's Office	<u>18,880</u>	<u>2,530</u>	<u>(16,350)</u>
Total Interrogation	<u>252,973</u>	<u>45,037</u>	<u>(207,936)</u>
Adverse Comment:			
Sheriff's Department	54,680	11,389	(43,291)
Probation Department	31,741	5,633	(26,108)
District Attorney's Office	<u>1,119</u>	<u>259</u>	<u>(860)</u>
Total Adverse Comment	<u>87,540</u>	<u>17,281</u>	<u>(70,259)</u>
Total salaries and benefits	<u>473,375</u>	<u>147,101</u>	<u>(326,274)</u>
Related indirect costs	<u>271,223</u>	<u>86,276</u>	<u>(184,947)</u>
Total	<u>\$744,598</u>	<u>\$233,377</u>	<u>\$ (511,221)</u>
<u>Recap by Department</u>			
Sheriff's Department			
	\$198,910	\$ 42,901	\$ (156,009)
Probation Department			
	498,045	166,384	(331,661)
District Attorney's Office			
	<u>47,643</u>	<u>24,092</u>	<u>(23,551)</u>
Total	<u>\$744,598</u>	<u>\$233,377</u>	<u>\$ (511,221)</u>

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.

We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.

County's response:

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits costs (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$45,706 was unallowable (\$8,463 by the Sheriff's Department, \$35,490 by the Probation Department, and \$1,753 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,543.

The parameters and guidelines, section IVA (Administrative Activities; Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- *Updating POBOR case records (FY 2005-06).*
- *Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).*

However, the department claimed the following activities that are not reimbursable:

- *Preparing the file.*
- *Logging initial case information into the system and*

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

assign the case.

- *Interviewing the complainants.*

County's response (Sheriff)

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Reviewing and updating internal policies and procedures relating to POBOR.*

County's response (Probation)

We do not agree with the narrow interpretation given to "due process" of law and the restrictive definition of the activities over and above the duties beyond the due process of law

- *Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:*

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation
- Budgeting implications
- Juvenile Justice Reforms
- Discrimination issues

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Electronic research
First Amendment related conduct
Preparing investigations reports
Key mistakes in workplace investigations
Assessing credibility
Types of lawsuits
Representation and indemnification
Supervisory liability of failure to train
Minimizing exposure to liability

The department also claimed the following activities that are not reimbursable (FY 2004-05):

- *Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.*
- *Visiting other IA units during the establishment of the IA unit at the Probation Department.*
- *Conducting interviews for IA Management Analyst position.*
- *Reviewing the progress of development of the IA database.*
- *Reviewing complaints, response letters, Merit System Rules, and assigning cases.*
- *Reviewing training schedule for the unit.*

County's response (Probation)

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit's negative approach to training.

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- *Updating/maintaining POBOR case records.*
- *Training for Internal Affairs staff (FY 2003-04) (hours were adjusted for one employee, whose training records did not reflect attendance at the claimed training class).*
- *Develop internal policies and procedures (FY 2003-04).*

The District Attorney's Office did not claim any ineligible activities in this category.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

County's response (DA)

The above comment is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney's office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all the six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

Administrative Appeals

For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits costs (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.

The parameters and guidelines, section IVB (2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher level of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.

Sheriff's Department

Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Subsequently, claimed activities were unallowable for reimbursement.

County's response (Sheriff)

Administrative Appeal

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand.....

Then when you go to the finding of the audit on page 10, it states - "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of written reprimand - such as verbal counseling, documented counseling, supervisor comment card... This belief is further supported in the Commissions Ps & Gs where it is stated "The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee." There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

Probation Department

All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.

District Attorney's Office

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

The District Attorney's Office did not claim any costs under this cost component.

Interrogation

For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits costs (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.

The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures is absolutely essential.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Tape recording the interrogation when the peace officer employee records the interrogation is an essential part of the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers is required.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- *Providing Interrogation Notice and/or Statement of Allegations to the officer.*
- *Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).*
- *Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).*

However, the department claimed the following activities that are not reimbursable:

- *Gathering reports and reviewing complaints and evidence as part of investigating the allegations.*
- *Investigation time.*
- *Preparing questions for the interviews.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

County of Santa Clara

SB90 mandate-Detailed Response to POBAR Draft audit report-March, 2008

County Response (Sheriff) Interrogation

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Providing administrative notice to the accused officer regarding the nature of allegations*
- *Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).*

However, the department claimed the following activities that are not reimbursable:

- *Gathering reports, log sheets, and evidence.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Interviewing witnesses, both civilian and officers (investigators' time).*
- *Traveling to interview witnesses.*
- *Transcribing witness tapes (witnesses do not receive copies of their interviews.)*
- *Reviewing tapes and making corrections.*
- *Preparing interview questions.*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

County's response (Probation)

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with audit finding.

District Attorney's Office

The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.

However, the District Attorney's Office claimed the following activities that are not reimbursable:

- *Gathering reports, log sheets, etc.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Preparing interview questions.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*
- *Preparing a summary report of the agency complaint as part of the case file preparation.*
- *Reviewing interview tapes.*

County's Response (DA)

The County disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

Adverse Comment

For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits costs (\$54,680 by the Sheriff's Department, \$31,741 by the Probation

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment); allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of the adverse comment;*
- Providing an opportunity to review and sign the adverse comment;*
- Providing an opportunity to respond to the adverse comment within 30 days; and*
- Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.*

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.

Sheriff's Department

The Sheriff's Department claimed the following activities that are reimbursable:

- Preparing and serving an Administrative Notice of Allegations.*
- Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the department claimed the following activities that are not reimbursable:

- Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the*

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).

- *Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.*
- *Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.*
- *Preparing interview questions.*

County's response (Sheriff)

Adverse Comment

The first area of denial for reimbursement relates to "Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission's Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair and thorough investigation. It is not an issue of whether it is a complaint or not.

Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Preparing and serving the Final Disciplinary Order*

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

(adverse comment notice).

- *Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).*
- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the department claimed the following activities that are not reimbursable:

- *Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.*
- *Preparing the final case report.*

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.

(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)

County's response (DA)

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				\$
Sheriff's Department	\$ (36,003)	\$ (39,709)	\$ (38,780)	(114,492)
Probation Department	(32,644)	(52,500)	(107,675)	(192,819)
District Attorney's Office	(13,877)	(1,396)	(3,690)	(18,963)
Subtotal	(82,524)	(93,605)	(150,145)	(326,274)
Related indirect costs	(35,831)	(55,199)	(93,917)	(184,947)
Audit adjustment	\$ (118,355)	\$ (148,804)	\$ (244,062)	\$ (511,221)

The program's parameters and guidelines, adopted by GSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.

The parameters and guidelines section IV (Reimbursable Activities); outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

FINDING 2—Unallowable productive hours

The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs

County of Santa Clara

SB90 mandate-Detailed Response to PQBOR Draft audit report-March, 2008

totaled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.

Ineligible Training Hours

When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:

- 1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.*
- 2. POST training for law enforcement personnel.*
- 3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.*

The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.

Ineligible Break Time

When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (980)	\$ (554)	\$ (1,009)	\$ (2,543)
Probation Department	(542)	(4,920)	(2,300)	(7,762)
District Attorney's Office	(1,388)	(130)	23	(1,495)
Subtotal	(2,910)	(5,604)	(3,286)	(11,800)
Related indirect costs	(1,000)	(3,905)	(2,047)	(6,952)
Audit adjustment				\$
	\$ (3,910)	\$ (9,509)	\$ (5,333)	(18,752)

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee; the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's response (Finance)

FINDING 2— Unallowable productive hours

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record...

County of Santa Clara

SB90 mandate-Detailed Response to PQBOR Draft audit report-March, 2008

We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training sessions that were conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local governments to calculate indirect costs when such costs are "... not readily assignable...without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minute daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has directed all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served.. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004 from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of a countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004 is reproduced below.

Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide Productive hours and have discussed your analysis with my staff and Division Of Accounting and reporting staff. The use of countywide productive hours Would be acceptable to the State Controller's Office provided all employee Classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time Spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

*If you would like to discuss the above further, please contact me.
Jim Spano*

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy for non-SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

FINDING 3—Understated benefit rates

The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's response (probation)

We accept the audit comments and request that the costs be allowed to the extent understated.

FINDING 4 - understated indirect costs

The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

Recommendation

We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.

County's response (Probation)

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

FINDING 5—Unallowable travel and training costs

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA (5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's response (probation)

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

General response

We thank the audit team for their speedy audit work and the discussions they had with us. However we felt highly disappointed with their unwillingness to go through the program implementation constraints and the background of the procedures followed in the county in this program. Please also see our cover letter to which this response is attached.

**State Controller's Office
Division of Audits
Post Office Box 942850
Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>

Exhibit B

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM:

Government Code Sections 3300 through 3310,

As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675; and

Filed on December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM 4499

Peace Officers Procedural Bill of Rights


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

(Adopted November 30, 1999)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on December 1, 1999.


Paula Higashi, Executive Director

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM:

Government Code Sections 3300 through 3310,

As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675; and

Filed on December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM 4499

Peace Officers Procedural Bill of Rights

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

(Adopted November 30, 1999)

STATEMENT OF DECISION

On August 26, 1999 the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Ms. Pamela A. Stone appeared for the City of Sacramento. Mr. Allan Burdick appeared for the League of California Cities/SB 90 Service. Ms. Elizabeth Stein appeared for the California State Personnel Board. Mr. James Apps and Mr. Joseph Shinstock appeared for the Department of Finance. The following persons were witnesses for the City of Sacramento: Ms. Dee Contreras, Director of Labor Relations, and Mr. Edward J. Takach, Labor Relations Officer.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 5 to 1, approved this test claim.

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BACKGROUND

In 1976, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights Act. The test claim legislation provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Legislative intent is expressly provided in Government Code section 3301 as follows:

“The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California. ”

The test claim legislation applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts. ¹ The test claim legislation also applies to peace officers that are classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause (“at-will” employees)² and peace officers on probation who have not reached permanent status .³

COMMISSION FINDINGS

Issue: Does the test claim legislation, which establishes rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514⁴?

For a statute to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental agencies. In addition, the required

¹ Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

² *Gray v. City of Gustine* (1990) 224 Cal.App.3d 621; *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795.

³ *Bell v. Duffy* (1980) 111 Cal.App.3d 643; *Barnes v. Personnel Department of the City of El Cajon* (1978) 87 Cal.App.3d 502.

⁴ Government Code section 17514 defines “costs mandated by the state” as follows: “Costs mandated by the state’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

activity or task must be new, thus constituting a “new program”, or create an increased or “higher level of service” over the former required level of service. The court has defined a “new program” or “higher level of service” as a program that carries out the governmental function of providing services to the public, or a law which, to implement a state policy, imposes unique requirements on local agencies and does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated and impose “costs mandated by the state.”

The test claim legislation requires local agencies and school districts to take specified procedural steps when investigating or disciplining a peace officer employee. The stated purpose of the test claim legislation is to promote stable relations between peace officers and their employers and to ensure the effectiveness of law enforcement services. Based on the legislative intent, the Commission found that the test claim legislation carries out the governmental function of providing a service to the public. Moreover, the test claim legislation imposes unique requirements on local agencies and school districts that do not apply generally to all residents and entities of the state. Thus, the Commission determined that the test claim legislation constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.

The Commission recognized, however, that several California courts have analyzed the test claim legislation and found a connection between its requirements and the requirements imposed by the due process clause of the United States and California Constitutions. For example, the court in *Riveros v. City of Los Angeles* analyzed the right to an administrative appeal under the test claim legislation for a probationary employee and noted that the right to such a hearing arises from the due process clause.

“The right to such a hearing arises from the due process protections of the Fourteenth Amendment to the United States Constitution. . . . The limited purpose of the section 3304 appeal is to give the peace officer a chance to establish a formal record of the circumstances surrounding his termination and try to convince his employer to reverse its decision, either by showing that the charges are false or through proof of mitigating circumstances [citation omitted]. This is very nearly the same purpose for the hearing mandated by due process requirements, which must afford the officer a chance to refute the charges or clear his name.” (Emphasis added .)⁶

Thus, the Commission continued its inquiry and compared the test claim legislation to the prior legal requirements imposed on public employers by the due process clause to determine if the activities defined in the test claim legislation are new or impose a higher level of service.

⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Gov. Code, § 17514.

⁶ *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1359.

The Commission also considered whether there are any "costs mandated by the state." Since the due process clause of the United States Constitution is a form of federal law, the Commission recognized that Government Code section 17556, subdivision (c), is triggered. Pursuant to Government Code section 17556, subdivision (c), there are *no* "costs mandated by the state" and no reimbursement is required if the test claim legislation "implemented a federal law resulting in costs mandated by the federal government, unless the [test claim legislation] mandates costs which exceed the mandate in that federal law or regulation. "7

These issues are discussed below.

The Due Process Clause of the U.S. and California Constitutions

The due process clause of the United States and California Constitutions provide that the state shall not "deprive any person of life, liberty, or property without due process of law. "8 In the public employment arena, an employee's property and liberty interests are commonly at stake.

Property Interest in Employment

Property interests protected by the due process clause extend beyond actual ownership of real estate or money. The U.S. Supreme Court determined that a property interest deserving protection of the due process clause exists when an employee has a "legitimate claim" to continued employment.

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . . ."

"Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. "9

Applying the above principles, both the U.S. Supreme Court and California courts hold that "permanent" employees, who can only be dismissed or subjected to other disciplinary

⁷ Government Code section 17513 defines "costs mandated by the federal government" as follows:

" 'Costs mandated by the federal government' means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. 'Costs mandated by the federal government' includes costs resulting from enactment of state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. 'Costs mandated by the federal government does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district. "

⁸ U.S. Constitution, 14th Amendment; California Constitution, Article 1, §§ 7 and 15.

⁹ *Board of Regents v. Roth* (1972) 408 U.S. 564, 577.

measures for “cause”, have a legitimate claim of entitlement to their job and thus, possess a property interest in continued employment.¹⁰

Moreover, California courts require employers to comply with due process when a permanent employee is dismissed¹², demoted¹³, suspended¹³, receives a reduction in salary¹⁴ or receives a written reprimand.¹⁵

The Department of Finance and the State Personnel Board contended that due process property rights attach when an employee is transferred. They cited *Runyon v. Ellis* and an SPB Decision (*Ramallo* SPB Dec. No. 95-19) for support.

The Commission disagreed with the State’s argument in this regard. First, in *Runyon v. Ellis*, the court found that the employee was entitled to an administrative hearing under the due process clause as a result of a transfer *and an accompanying reduction of pay*. The court did not address the situation where the employee receives a transfer alone.⁶ In addition, in *Howell v. County of San Bernardino*, the court recognized that “[a]lthough a permanent employee’s right to continued employment is generally regarded as fundamental and vested, an employee enjoys no such right to continuation in a particular job assignment.”¹⁷ Thus, the Commission found that local government employers are not required to provide due process protection in the case of a transfer.

Furthermore, although the SPB decision may apply to the State as an employer, the Commission found that that the SPB decision does not apply to actions taken by a local government employer.

Accordingly, the Commission found that an employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

When a property interest is affected and due process applies, the procedural safeguards required by the due process clause generally require notice to the employee and an opportunity to respond, with some variation as to the nature and timing of the procedural safeguards. In cases of dismissal, demotion, long-term suspension and reduction of pay, the California

¹⁰ *Slochower v. Board of Education* (1956) 350 U.S. 55 1, where the U.S. Supreme Court found that a tenured college professor dismissed from employment had a property interest in continued employment that was safeguarded by the due process clause; *Gilbert v. Homar* (1997) 520 U.S. 924, where the U.S. Supreme Court found that a police officer, employed as a permanent employee by a state university, had a property interest in continued employment and was afforded due process protections resulting from a suspension without pay; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, where the California Supreme Court held a permanent civil service employee of the state has a property interest in continued employment and cannot be dismissed without due process of law.

¹¹ *Skelly, supra*, 15 Cal.3d 194.

¹² *Ng v. State Personnel Board* (1977) 68 Cal. App. 3d 600.

¹³ *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal.3d 552, 558-560.

¹⁴ *Ng, supra*, 68 Cal.App.3d 600, 605.

¹⁵ *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438.

¹⁶ *Runyon v. Ellis* (1995) 40 Cal.App.4th 961.

¹⁷ *Howell v. County of San Bernardino* (1983) 149 Cal.App.3d 200, 205.

Supreme Court in *Skelly* prescribed the following due process requirements *before* the discipline becomes effective:

- Notice of the proposed action;
- The reasons for the action;
- A copy of the charges and materials upon which the action is based; and
- The right to respond, either orally or in writing, to the authority initially imposing discipline.¹⁸

In cases of short-term suspensions (ten days or less), the employee's property interest is protected as long as the employee receives notice, reasons for the action, a copy of the charges, and the right to respond *either during the suspension, or within a reasonable time thereafter*.¹⁹

Similarly, the Commission found that in the case of a written reprimand where the employee is not deprived of pay or benefits, the employer is not required to provide the employee with the due process safeguards *before* the effective date of the written reprimand. Instead, the court in *Stanton* found that an appeals process provided to the employee *after* the issuance of the written reprimand satisfies the due process clause.²⁰

The claimant disagreed with the Commission's interpretation of the *Stanton* case and its application to written reprimands.

The claimant contended *Stanton* stands for the proposition that the due process guarantees outlined in *Skelly* do not apply to a written reprimand. Thus, the claimant concluded that an employee is not entitled to any due process protection when the employee receives a written reprimand. The claimant cited the following language from *Stanton* in support of its position:

"... As the City notes, no authority supports plaintiff's underlying assertion that issuance of a written reprimand triggers the due process safeguards outlined in *Skelly*. Courts have required adherence to *Skelly* in cases in which an employee is demoted [citations omitted] ; suspended without pay [citations omitted] ; or dismissed [citations omitted]. We find no authority mandating adherence to *Skelly* when a written reprimand is issued. "

"We see no justification for extending *Skelly* to situations involving written reprimands. Demotions, suspension and dismissal all involve depriving the public employee of pay or benefits; a written reprimand results in no such loss to the employee. "

The facts in *Stanton* are as follows. A police officer received a written reprimand for discharging a weapon in violation of departmental rules. After he received the reprimand, he appealed to the police chief in accordance with the memorandum of understanding and the

¹⁸ *Skelly, supra*, Cal.3d 194, 215.

¹⁹ *Civil Service Assn., 221 Cal.3d 52, 564.*

²⁰ *Stanton, supra* 226 Cal.App.3d 1438, 1442.

police chief upheld the reprimand. The officer then filed a lawsuit contending that he was entitled to an administrative appeal. The court denied the plaintiff's request finding that the meeting with the police chief satisfied the administrative appeals provision in the test claim legislation (Government Code section 3304), and thus, satisfied the employee's due process rights.

The Commission agreed that the court in *Stanton* held the rights outlined in *Skelly* do not apply when an employee receives a written reprimand. Thus, under *Skelly*, the rights to receive notice, the reasons for the reprimand, a copy of the charges and the right to respond are not required to be given to an employee *before* the reprimand takes effect.

However, the court found that the employee *is* guaranteed due process protection upon receipt of a written reprimand. The court found that when the appeals process takes place *after* the reprimand, due process is satisfied. The court in *Stanton* also states the following:

"Moreover, Government Code section 3303 et seq., the Public Safety Officer Procedural Bill of Rights Act, provides police officers who are disciplined by their departments with procedural safeguards. Section 3304, subdivision (b) states no punitive action may be taken by a public agency against a public safety officer without providing the officer with an opportunity for administrative appeal. Punitive action includes written reprimands. [Citation omitted.] Even without the protection afforded by *Skelly*, plaintiff's *procedural due process rights*, following a written reprimand,' *are protected* by the appeals process mandated by Government Code section 3304, subdivision (b). " (Emphasis added.)²¹

Accordingly, the Commission found that the due process clause of the United States and California Constitutions apply when a permanent employee is

- Dismissed;
- Demoted;
- Suspended;
- Receives a reduction in salary; and
- Receives a written reprimand.

Liberty Interest

Although probationary and at-will employees, who can be dismissed without cause, do not have a property interest in their employment, the employee may have a liberty interest affected by a dismissal when the charges supporting the dismissal damage the employee's reputation and impair the employee's ability to find other employment. The courts have defined the liberty interest as follows:

"[A]n employee's liberty is impaired if the government, in connection with an employee's dismissal or failure to be rehired, makes a 'charge

²¹ *Stanton, supra*, 226 Cal.App.3d 1438, 1442.

against him that might seriously damage his standing and associations in the community, ' such as a charge of dishonesty or immorality, or would 'impose on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. ' [Citations omitted.] A person's protected liberty interests are not infringed merely by defamatory statements, for an interest in reputation alone is not a constitutionally protected liberty interest. [Citations omitted.] Rather, the liberty interest is infringed only when the defamation is made in connection with the loss of a government benefit, such as, . . . employment. [Citations omitted.] " ²²

For example, in *Murden v. County of Sacramento*, the court found a protected liberty interest when a *temporary* deputy sheriff was dismissed from employment based on charges that he was engaging two female employees in embarrassing and inappropriate conversation regarding sexual activities. The court noted that the charge impugned the employee's character and morality, and if circulated, would damage his reputation and impair his ability to find other employment.

The court in *Murden* clarified that a dismissal based on charges that the employee was unable to learn the basic duties of the job does *not* constitute a protected interest.²³

When the employer infringes on a person's liberty interest, due process simply requires notice to the employee, and an opportunity to refute the charges and clear his or her name. Moreover, the "name-clearing" hearing can take place *after* the actual dismissal.²⁴

Accordingly, the Commission found that the due process clauses of the United States and California Constitutions apply when the charges supporting the dismissal of a probationary or at-will employee damage the employee's reputation and impair the employee's ability to find other employment.

Test Claim Legislation

As indicated above, employers are required by the due process clause to offer notice and hearing protections to *permanent* employees for dismissals, demotions, suspensions, reductions in salary and written reprimands.

Employers are also required by the due process clause to offer notice and hearing protections to *probationary* and *at-will* employees when the dismissal harms the employee's reputation and ability to obtain future employment.

As more fully discussed below, the Commission found that the test claim legislation imposes some of the *same* notice and hearing requirements imposed under the due process clause.

²² *Murden v. County of Sacramento* (1984) 160 Cal.App.3d 302, 308, quoting from *Board of Regents v. Roth*, *supra*, 408 U.S. at p. 573. See also *Paul v. Davis* (1976) 424 U.S. 693, 711-712; and *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340.

²³ *Murden, supra* 0 Cal.App.3d, 308.

²⁴ *Murden, supra* 160 Cal.App.3d 302, 310; *Arnett v. Kennedy* (1974) 416 U.S. 134, 157; and *Codd v. Velger* (1977) 429 U.S. 624, 627.

Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”²⁵

Punitive action is defined in Government Code section 3303 as follows:

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary²⁶, written reprimand, or transfer for purposes of punishment.”

The California Supreme Court determined that the phrase “for purposes of punishment” in the foregoing section relates only to a transfer and not to other personnel actions.²⁷ Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to “compensate for a deficiency in performance,” however, an appeal is not required.^{28, 29}

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in “disadvantage, harm, loss or hardship” and impact the peace officer’s career.³⁰ In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted “punitive action” under the test claim legislation

²⁵ In the Claimant’s comments to the Draft Staff Analysis, the claimant recited Government Code section 3304, as amended in 1997 (*Stats. 1997, c. 148*) and 1998 (*Stats. 1998, c. 786*). These amendments made substantive changes to Government Code section 3304 by adding subdivisions (c) through (g). These changes include a statute of limitations concerning how long the agency can use acts as a basis for discipline, a provision prohibiting the removal of a chief of police without providing written notice describing the reasons for the removal and an administrative hearing, and a provision limiting the right to an administrative appeal to officers who successfully complete the probationary period. The Commission noted that *neither the 1997 nor 1998 statutes are alleged in this test claim.*

²⁶ The courts have held that “reduction in salary” includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal. 3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

²⁷ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

²⁸ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

²⁹ The claimant testified that what constitutes a transfer for purposes of punishment is in the eyes of the employee. The claimant stated that in the field of labor relations, peace officers will often request a full POBOR hearing and procedure on a transfer which is not acceptable to the officer in question, even though the transfer is not accompanied by a reduction in pay or benefits and no disciplinary action has been taken.

³⁰ *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.

based on the source of the report, its contents, and its potential impact on the career of the officer.³¹

The Commission recognized that the test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local agency and school district.³² The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with standards of fair play and due process.^{33, 34}

The Department of Finance and the State Personnel Board contended that Government Code section 3304 does not require an administrative appeal for probationary and at-will employees. They cited Government Code section 3304, subdivision (b), as it is *currently* drafted, which provides the following: "No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has *successfully completed the probationary period that may be required by his or her employing agency* without providing the public safety officer with an opportunity for administrative appeal."

However, the Commission determined that the italicized language in section 3304, subdivision (b), was added by the Legislature in 1998 and became effective on January 1, 1999. (Stats. 1998, c. 768). When Government Code section 3304, subdivision (b), was originally enacted in 1976, it did not limit the right to an administrative appeal to permanent employees only. Rather, that section stated the following:

"(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

Accordingly, the Commission found that an administrative appeal under Government Code section 3304, subdivision (b), was required to be provided to probationary and at-will employees faced with punitive action or a denial of promotion until December 31, 1998.

The Department of Finance also contended that the cost of conducting an administrative hearing is already required under the due process clause and the *Skelly* case, which predate the test claim legislation.

³¹ *Id* at p. 353-354.

³² *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806; *Runyan, supra*, 40 Cal.App.4th 961, 965.

³³ *Doyle v. City of Chino* (1981) 117 Cal. App. 3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee's due process rights were protected by the administrative appeals process mandated by Government Code section 3304. Furthermore, in cases involving "misconduct", the officer is entitled to a liberty interest name-clearing hearing under Government section 3304. (*Luby v. City and County of San Francisco* (1979) 98 Cal.App.3d 340; *Murden, supra*).

³⁴ The Commission noted that at least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250.) In addition, the California Supreme Court uses the words "administrative appeal" of section 3304 interchangeably with the word "hearing." (*White, supra*, 31 Cal.3d 676.)

The Commission agreed that in some circumstances, the due process clause requires the same administrative hearing as the test claim legislation. However, as reflected by the table below, the Commission found that test claim legislation is broader than the due process clause and applies to additional employer actions that have not previously enjoyed the protections of the due process clause.

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Due Process	Test Claim Legislation
Dismissal of a permanent employee	Dismissal of permanent, <i>probationary</i> or <i>at-will</i> employees
Demotion of a permanent employee	Demotion of permanent, <i>probationary</i> or <i>at-will</i> employees
Suspension of a permanent employee	Suspension of permanent, <i>probationary</i> or <i>at-will</i> employees
Reduction in salary for a permanent employee	Reduction in salary for permanent, <i>probationary</i> or <i>at-will</i> employees
Written reprimand of a permanent employee	Written reprimand of permanent, <i>probationary</i> or <i>at-will</i> employees
Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment	Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment
	Transfer of a permanent, probationary or at-will employee for purposes of punishment
	Denial of promotion for permanent, probationary or at-will employees on grounds other than merit
	Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee

Thus, the Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal

under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

The Commission found, however, that the due process clauses of the United States and California Constitutions do not require an administrative appeal in the following circumstances:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e. ; the charges do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Thus, in these situations, the Commission found that the administrative appeal required by Government Code section 3304 constitutes a new program or higher level of service and imposes "costs mandated by the state" under Government Code section 17514.

Compensation and Timing of an Interrogation

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.³⁵

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer. This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

"If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section.

³⁵ Gov. Code, § 3303, subd. (i).

Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section. ”

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 17514.

Notice Prior to Interrogation

Government Code section 3303, subdivisions (b) and (c), require the employer, prior to interrogation, to inform and provide notice of the nature of the investigation and the identity of all officers participating in the interrogation to the employee.

The Commission recognized that under due process principles, an employee with a property interest is entitled to notice of the disciplinary action proposed by the employer.³⁶ Thus, an employee is required to receive notice when the employee receives a dismissal, suspension, demotion, reduction in salary or receipt of a written reprimand. Due process, however, *does not* require notice prior to an investigation or interrogation since the employee has not yet been charged and the employee’s salary and employment position have not changed.

Accordingly, the Commission found that providing the employee with prior notice regarding the nature of the interrogation and identifying the investigating officers constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 17514.

Tape Recording of Interrogation

Government Code section 3303, subdivision (g), provides, in relevant part the following:

“The complete interrogation of a public safety officer may be recorded. *If* a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. . . . The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation. ” (Emphasis added.)

The claimant contended that the activity of tape recording the interrogation and providing the peace officer with the tape recording of the interrogation as specified in section 3303, subdivision (g), constitute reimbursable state mandated activities. The claimant stated the following:

³⁶ *Skelly, supra*, 15 Cal.3d 194.

"As shown above, Government Code, section 3303 (g) allows the interrogation of a peace officer to be tape recorded. The section is silent as to whom may record the interrogation, and who may request that the session be recorded. In practice, the employee will almost always request to record the interrogation. As the employee desires to record same, the employer is faced with the requirement of also tape recording the interrogation in order to assure that the employee's tape is not edited, redacted, or changed in any manner, and to have a verbatim record of the proceedings. "³⁷

At the hearing, Ms. Dee Contreras, Director of Labor Relations for the City of Sacramento, testified as follows:

"If the employee comes in and tapes, and, trust me, they all come in and tape, if they're sworn peace officers, their attorneys come in with tapes. You wind up with two tape recorders on a desk. If they tape and we do not, then they have a record that we do not have or we must rely on a tape created by the employee we are investigating. That would not be a wise choice, from the employer's perspective. "

"If we take notes and they tape, our notes are never going to be exactly the same as the tape is going to be if it's transcribed, so we wind up with what is arguably an inferior record to the record that they have. "

"So it is essentially - - it says they may tape but the practical application of that is: For everybody who comes in with a tape recorder to tape, which is virtually every peace officer, we then must tape. "³⁸

The Department of Finance disagreed and contended that the test claim statute does not require local agencies to tape the interrogation. The Department further contended that if the local agency decides to tape the interrogation, the cost of providing the tape to the officer is required under the due process clause.

Based on the evidence presented at the hearing, the Commission recognized the reality faced by labor relations' professionals in their implementation of the test claim legislation. Accordingly, the Commission found that tape recording the interrogation when the employee records the interrogation is a mandatory activity to ensure that all parties have an accurate record. The Commission's finding is also consistent with the legislative intent to assure stable employer-employee relations are continued throughout the state and that effective services are provided to the people.³⁹

³⁷ Claimant's comments to Draft Staff Analysis.

³⁸ August 26, 1999 Hearing Transcript, page 18, lines 7-2 1.

³⁹ This finding is consistent with one of the principles of statutory construction that "where statutes provide for performance of acts or the exercise of power or authority by public officers protecting private rights or in public interest, they are mandatory. " (3 Sutherland, Statutory Construction (5th ed. 1992) § 57.14, p. 36.) See also section 1183.1 of the Commission's regulations, which provides that the parameters and guidelines adopted on a mandated program shall provide a description of the most reasonable methods of complying with the mandate.

The Commission also recognized that Government Code section 3303, subdivision (g), requires that the employee shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The Commission found that providing the employee with access to the tape *prior to a further interrogation at a subsequent time* is a new activity and, thus, constitutes a new program or higher level of service.

However, the Commission found that providing the employee with access to the tape *if further proceedings are contemplated* does not constitute a new program or higher level of service when the further proceeding is a disciplinary action protected by the due process clause. Under certain circumstances, due process already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the disciplinary action is based.

Accordingly, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation to the employee when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal⁴⁰; and when
- The disciplinary action is based, in whole or in part, on the interrogation of the employee.

Under these circumstances, the Commission found that the requirement to provide access to the tape recording of the interrogation under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing access to the tape recording merely implements the requirements of the United States Constitution.

However, when the further proceeding does not constitute a disciplinary action protected by due process, the Commission found that providing the employee with access to the tape is a new activity and, thus, constitutes a new program or higher level of service.

In sum, the Commission found that the following activities constitute reimbursable state mandated activities :

- Tape recording the interrogation when the employee records the interrogation.
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
 - (a) The further proceeding is not a disciplinary action;

⁴⁰ *Skelly, supra; Ng, supra; Civil Service Assn., supra; Stanton, supra; Murden, supra.*

- (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Documents Provided to the Employee

Government Code section 3303, subdivision (g), also provides that the peace officer "shall" be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed to be confidential.

The Department of Finance and the SPB contended that the cost of providing copies of transcripts, reports and recordings of interrogations are required under the due process clause and, thus, do not constitute a reimbursable state mandated program.

In *Pasadena Police Officers Association*, the California Supreme Court analyzed Government Code section 3303, noting that it does not specify when an officer is entitled to receive the reports and complaints. The court also recognized that section 3303 does not specifically address an officer's due process entitlement to discovery in the event the officer is *charged* with misconduct.⁴¹ Nevertheless, the court determined that the Legislature intended to require law enforcement agencies to disclose the reports and complaints to an officer under investigation only *after* the officer's interrogation.⁴²

The Commission recognized that the court's decision in *Pasadena Police Officers Association* is consistent with due process principles. Due process requires the employer to provide an employee who holds either a property or liberty interest in the job with a copy of the charges and materials upon which the disciplinary action is based when the officer is charged with misconduct.⁴³

Accordingly, even in the absence of the test claim legislation, the Commission found that the due process clause requires the employer to provide a copy of all investigative materials, including non-confidential complaints, reports and charges when, as a result of the interrogation,

⁴¹ *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 575 (Exhibit A, Bates page 0135).

⁴² *Id.* at 579.

⁴³ *Skelly, supra.*

- ⌘ A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- ⌘ A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the requirement to produce documents under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the investigative materials in the above circumstances would not constitute "costs mandated by the state" since producing such documentation merely implements the requirements of the United States constitution.

However, the Commission found that the due process clause does not require employers to produce the charging documents and reports when requested by the officer in the following circumstances:

- (a) When the investigation *does not* result in disciplinary action; and
- (b) When the investigation results in:
 - ⌘ A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e. ; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment) ;
 - ⌘ A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - ⌘ A denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
 - ⌘ Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

The Department of Finance and the State Personnel Board disagreed with this conclusion. They contended that "*State civil service* probationary or at-will employees are entitled to [the due process rights prescribed by] *Skelly* by the State Personnel Board" to the charging documents and reports and, thus, Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program with respect to these employees. However, they cited no authority for this proposition.

The Department of Finance and the State Personnel Board also contended that Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program when a permanent employee is transferred based on their assertion that a transfer is covered by the due process clause. As noted earlier, the Commission disagreed with this contention and found that a permanent employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

Accordingly, in the circumstances described above, the Commission found that producing the documents required by Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes "costs mandated by the state" under Government Code section 175 14.

Representation at Interrogation

Government Code section 3303, subdivision (i), provides that the peace officer "shall" have the right to be represented during the interrogation when a formal written statement of charges has been filed or whenever the interrogation focuses on matters that are likely to result in punitive action.

The claimant contended that Government Code section 3303, subdivision (i), results in reimbursable state mandated activities since additional professional and clerical time is needed to schedule the interview when the peace officer asserts the right to representation.

The Commission disagreed with the claimant's contention. Before the enactment of the test claim legislation, peace officers had the same right to representation under Government Code sections 3500 to 35 10, also known as the Meyers-Milias-Brown Act (MMBA). The MMBA governs labor management relations in California local governments, including labor relations between peace officers and employers .⁴⁴

Government Code section 3503, which was enacted in 1961, provides that employee organizations have the right to represent their members in their employment relations with public agencies. The California Supreme Court analyzed section 3503 in *Civil Service Association v. City and County of San Francisco*, a case involving the suspension of eight civil service employees. The court recognized an employee's right to representation under the MMBA in disciplinary actions.

"We have long recognized the right of a public employee to have his counsel represent him at disciplinary hearings. (*Steen v. Board of Civil Service Commr.* (1945) 26 Cal.2d 7 16, 727; [Citations omitted.]) While *Steen* may have dealt with representation by a licensed attorney, the right to representation by a labor organization in the informal process here involved seems to follow from the right to representation contained in the Meyers-Milias-Brown Act and the right to representation recognized in *Steen*. "⁴⁵

Peace officers employed by school districts have similar rights under the Educational Employment Relations Act, beginning with Government Code section 3540.⁴⁶

Based on the foregoing, the Commission found that the right to representation at the interrogation under Government Code section 3303, subdivision (i), *does not* constitute a new

⁴⁴ *Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal.App.3d 255.

⁴⁵ *Civil Service Assn., supra*, 22 Cal.3d 552, 568.

⁴⁶ Government Code section 3543.2, which was added in 1975 (Stats. 1975, c. 961) provides that school district employees are entitled to representation relating to wages, hours of employment, and other terms and conditions of employment.

program or higher level of service under article XIII B, section 6 of the California Constitution.

Adverse Comments in Personnel File

Government Code sections 3305 and 3306 provide that no peace officer "shall" have any adverse comment entered in the officer's personnel file without the peace officer having first read and signed the adverse comment.⁴⁷ If the peace officer refuses to sign the adverse comment, that fact "shall" be noted on the document and signed or initialed by the peace officer. In addition, the peace officer "shall" have 30 days to file a written response to any adverse comment entered in the personnel file. The response "shall" be attached to the adverse comment.

Thus, the Commission determined that Government Code sections 3305 and 3306 impose the following requirements on employers:

- To provide notice of the adverse comment;⁴⁸
- To provide an opportunity to review and sign the adverse comment;
- To provide an opportunity to respond to the adverse comment within 30 days; and
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

The claimant contended that county employees have a pre-existing statutory right to inspect and respond to adverse comments contained in the officer's personnel file pursuant to Government Code section 3 1011. The claimant further stated that Labor Code section 1198.5 provides city employees with a pre-existing right to review, but not respond to, adverse comments. Thus, the claimant contended that Government Code sections 3305 and 3306 constitute a new program or higher level of service under article XIII B, section 6 of the California Constitution.

As described below, the Commission found that Government Code sections 3305 and 3306 constitute a *partial* reimbursable state mandated program.

Due Process

Under due process principles, an employee with a property or liberty interest is entitled to notice and an opportunity to respond, either orally or in writing, prior to the disciplinary action proposed by the employer.⁴⁹ If the adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a

⁴⁷ The court in *Aguilar v. Johnson* (1988) 202 Cal. App. 3d 24 1, 249-252, held that an adverse comment under Government Code sections 3305 and 3306 include comments from law enforcement personnel and citizen complaints.

⁴⁸ The Commission found that notice is required since the test claim legislation states that "no peace officer shall have any adverse comment entered in the officer's personnel file *without the peace officer having first read and signed the adverse comment.*" Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

⁴⁹ *Skelly, supra*, 15 Cal.3d 194.

permanent peace officer or harms the officer's reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause.⁵⁰ Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing notice and an opportunity to respond do not impose "costs mandated by the state".

However, the Commission found that under circumstances where the adverse comment affects the officer's property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* required by the due process clause:

- z Obtaining the signature of the peace officer on the adverse comment, or
- z Noting the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances.

The Department of Finance and the State Personnel Board stated the following: "If the adverse comment can be considered a 'written reprimand,' however, the POBOR required 'notice' and the 'opportunity to respond' may already be required by due process. The extent of due process due an employee who suffers an official reprimand is not entirely clear. "

The Commission agreed that if the adverse comment results in, or is considered a written reprimand, then notice and an opportunity to respond is already required by the due process clause and are not reimbursable state mandated activities. However, due process does not require the local agency to obtain the signature of the peace officer on the adverse comment, or note the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances. Accordingly, the Commission found that these two activities required by the test claim legislation when an adverse comment is received constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 17514 even where there is due process protection.

The Legislature has also established protections for local public employees similar to the protections required by Government Code sections 3305 and 3306 in statutes enacted prior to the test claim legislation. These statutes are discussed below.

Existing Statutory Law Relating to Counties

Government Code section 3 101 1, enacted in 1974,⁵¹ established review and response protections for county employees. That section provides the following:

"Every county employee shall have the *right to inspect and review* any official record relating to his or her performance as an employee or to a grievance

⁵⁰ *Hopson, supra*, 139 Cal.App.3d 347.

⁵¹ Stats. 1974, c. 315.

concerning the employee which is kept or maintained by the county; provided, however, that the board of supervisors of any county may exempt letters of reference from the provisions of this section.

The contents of such records shall be made available to the employee for inspection and review at reasonable intervals during the regular business hours of the county.

The county shall provide an opportunity for the employee to *respond* in writing, or personal interview, to any information about which he or she disagrees. Such response shall become a permanent part of the employee's personnel record. The employee shall be responsible for providing the written responses to be included as part of the employee's permanent personnel record.

This section does not apply to the records of an employee relating to the investigation of a possible criminal offense. ” (Emphasis added .)

Therefore, the Commission determined that under existing law, counties are required to provide a peace officer with the opportunity to review and respond to an adverse comment *if* the comment *does not* relate to the investigation of a possible criminal offense.⁵² Under such circumstances, the Commission found that the review and response provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or

⁵² The Commission found that Government Code section 3 1011 does *not* impose a notice requirement on counties since section 3 10 11 does not require the county employee to review the comment *before* the comment is placed in the personnel file.

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Existing Statutory Law Relating to Cities and Special Districts

Labor Code section 1198.5, enacted in 1975,⁵³ established review procedures for public employees, including peace officers employed by a city or special district. At the time the test claim legislation was enacted, Labor Code section 1198.5 provided the following:

“(a) Every employer shall at reasonable times, and at reasonable intervals as determined by the Labor Commissioner, upon the request of an employee, permit that employee to inspect such personnel files which are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer subject to this section shall keep a copy of each employee's personnel file at the place the employee reports to work, or shall make such file available at such place within a reasonable period of time after a request therefor by the employee. *A public employer shall, at the request of a public employee, permit the employee to inspect the original personnel files at the location where they are stored at no loss of compensation to the employee.*

(c) *This section does not apply to the records of an employee relating to the investigation of a possible criminal offense.* It shall not apply to letters of reference.

(d) If a local agency has established an independent employee relations board or commission, any matter or dispute pertaining to this section shall be under the jurisdiction of that board or commission, but an employee shall not be prohibited from pursuing any available judicial remedy, whether or not relief has first been sought from a board or commission.

(e) This section shall apply to public employers, including, but not limited to, every city, county, city and county, district, and every public and quasi-public agency. This section shall not apply to the state or any state agency, and shall not apply to public school districts with respect to employees covered by Section 4403 1 of the Education Code. Nothing in this section shall be construed to limit the rights of employees pursuant to Section 31011 of the Government Code or Section 87031 of the Education Code, or to provide access by a public safety employee to confidential preemployment information.”⁵⁴ (Emphasis added.)

Therefore, the Commission determined that under existing law, cities and special districts are required to provide a peace officer the opportunity to review the adverse comment *if* the

⁵³ Stats. 1975, c. 908, § 1.

⁵⁴ Labor Code section 1198.5 was amended in 1993 to delete all provisions relating to local public employers (Stats. 1993, c. 59.) The Legislature expressed its intent when enacting the 1993 amendment “to relieve local entities of the duty to incur unnecessary expenses. . . .”

comment *does not* relate to the investigation of a possible criminal offense? Under such circumstances, the Commission found that the review provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Existing Statutory Law Relating to School Districts

Education Code section 4403 1 establishes notice, review and response protections to peace officers employed by school districts. Section 4403 1 provides in relevant part the following:

"(a) Materials in personnel files of employees that may serve as a basis for affecting the status of their employment are to be made available for the inspection of the person involved.

"(d) *Information of a derogatory nature, except [ratings, reports, or records that were obtained in connection with a promotional examination], shall not be entered or filed unless and until the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right*

⁵⁵ The Commission found that Labor Code section 1198.5 does *not* impose a notice requirement on counties since section 1198.5 does not require the city or special district employee to review the comment *before* the comment is placed in the personnel file.

to enter, and have attached to any derogatory statement, his own comments thereon...” (Emphasis added.)

Education Code section 87031 provides the same protections to community college district employees.⁵⁶

Therefore, the Commission determined that existing law, codified in Education Code sections 44031 and 87031, requires school districts and community college districts to provide a peace officer with notice and the opportunity to review and respond to an adverse comment *if* the comment *was* not obtained in connection with a promotional examination. Under such circumstances, the Commission found that the notice, review and response provisions of Government Code sections 3305 and 3306 do *not* constitute a new program or higher level of service.

However, even when Education Code sections 44031 and 87031 apply, if the adverse comment *was not* obtained in connection with a promotional examination, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- z Obtaining the signature of the peace officer on the adverse comment; or
- z Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment is obtained in connection with a promotional examination, the following activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 17514:

- z Providing notice of the adverse comment;
- z Providing an opportunity to review and sign the adverse comment;
- z Providing an opportunity to respond to the adverse comment within 30 days; and
- z Obtaining the signature of the peace officer on the adverse comment; or
- z Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

CONCLUSION

⁵⁶ Education Code sections 44031 and 87031 were derived from Education Code section 13001.5, which was originally added by Statutes of 1968, Chapter 433.

Based on the foregoing analysis, the Commission concluded that the test claim legislation constitutes a partial reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution for the following reimbursable activities:

1. Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are *not* affected (i.e. ; the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
 - Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
2. Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
3. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
4. Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
5. Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - (a) The further proceeding is not a disciplinary action;
 - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

6. Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):

(a) When the investigation *does not* result in disciplinary action; and

(b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is *not* affected (i.e. ; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

6. Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for:

- z Obtaining the signature of the peace officer on the adverse comment; or
 - z Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment is related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities :
- z Providing notice of the adverse comment;
 - z Providing an opportunity to review and sign the adverse comment;
 - z Providing an opportunity to respond to the adverse comment within 30 days; and
 - z Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- z Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - z Obtaining the signature of the peace officer on the adverse comment; or
 - z Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Exhibit C

115

120

PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

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C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;

- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and

- b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools~~ cities and special districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. 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, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

Exhibit D

OFFICE OF THE STATE CONTROLLER

STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2000-11

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (LOCAL AGENCIES)

OCTOBER 2, 2000

In accordance with Government Code Section (GC) 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state mandated cost programs. The following are claiming instructions and forms that eligible claimants will use for the filing of claims for Peace Officers Procedural Bill of Rights (PPBR). These claiming instructions are issued subsequent to adoption of the program's parameters and guidelines (P's & G's) by the Commission on State Mandates (COSM).

On November 30, 1999, the COSM determined that the PPBR program establishes costs mandated by the state according to the provisions listed in the attached P's & G's. For your reference, the P's & G's are included as an integral part of the claiming instructions.

Government Code Sections 3300 through 3310, as added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990, provide procedural protection for peace officers employed by local agencies when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. This applies to peace officers classified as permanent employees, peace officers who serve at the pleasure of the local agency, and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

Eligible Claimants

Any city, county, city and county, or special district employing peace officers pursuant to Penal Code Section 830 and incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

Filing Deadlines

Reimbursement claims for the 1994-95 through 1999-00 fiscal years must be filed with the SCO. Claims must be delivered or postmarked on or before January 30, 2001. Annually thereafter, having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15th of the following fiscal year. Claims filed after the deadline will be reduced by a late penalty of 10%, not to exceed \$1,000. In order for a claim to be considered properly filed, it must include any specific supporting documentation requested in the instructions. *Claims filed more than one year after the deadline, or without the requested supporting documentation, will not be accepted.*

Estimated claims filed with the SCO must be postmarked by January 15th of the fiscal year in which costs will be incurred. However, 2000-01 estimated claims must be filed with the SCO and postmarked by January 30, 2001. Timely filed claims will be paid before late claims.

Minimum Claim Cost

GC § 17564(a) provides that no claim shall be filed pursuant to § 17561 unless such a claim exceeds \$200 per program per fiscal year. However, any county as the fiscal agent for special districts, may submit a combined claim in excess of \$200 on behalf of districts within the county even if an individual claim does not exceed \$200. A combined claim must show the individual claim costs for each eligible district. Once a combined claim is filed, all subsequent fiscal years relating to the same mandate must be filed in a combined form. The county receives the reimbursement payment and is responsible for disbursing funds to each participating district. A district may withdraw from the combined claim form by providing the county and the SCO with a written notice of its intent to file a separate claim at least 180 days prior to the deadline for filing the claim. Claims should be rounded to the nearest dollar.

Estimated Claims

Unless otherwise specified in the claiming instructions, local agencies are not required to provide cost schedules and supporting documents with an estimated claim if the estimated amount does not exceed the previous fiscal year's actual costs by more than 10%. The claimant can simply enter the estimated amount on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, the claimant must complete supplemental claim forms to support their estimated costs as specified for the program to explain the reason for the increased costs. If no explanation supporting the higher estimate is provided with the claim, it will automatically be adjusted to 110% of the previous fiscal year's actual costs.

Reimbursement Claims

Initial reimbursement claims will only be reimbursed to the extent that expenditures can be supported and if such information is unavailable, claims will be reduced. In addition, ongoing reimbursement claims must be supported by documentation as evidence of the expenditures. Examples of documentation may include, but are not limited to, employee time records that identify mandate activities, payroll records, invoices, receipts, contracts, travel expense vouchers, purchase orders, and caseload statistics.

Audit of Costs

All claims submitted to the SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with the P's & G's adopted by the COSM. If any adjustments are made to a claim, a "Notice of Claim Adjustment," specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

On-site audits will be conducted by the SCO as deemed necessary. Accordingly, all documentation to support actual costs claimed must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or amended regardless of the year of costs incurred. When no funds are appropriated for initial claims at the time the claim is filed, supporting documents must be retained for two years from the date of initial payment of the claim. Claim documentation shall be made available to the SCO on request.

Retention of Claiming Instructions

The claiming instructions and forms in this package should be retained permanently in your *Mandated Cost Manual* for future reference and use in filing claims. These forms should be duplicated to meet your filing requirements. You will be notified of updated forms or changes to claiming instructions as necessary.

For your reference, these and future mandated costs claiming instructions and forms can be found on the Internet at www.sco.ca.gov/ard/local/locreim/index.htm.

Address for Filing Claims

Submit a signed original and a copy of form FAM-27, Claim for Payment, and a copy of all other forms and supporting documents to:

If delivery is by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivery is by
other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

And filed December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM - 4499

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

(Adopted on July 27, 2000)

ADOPTED PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.


PAULA HIGASHI, Executive Director

PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial

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years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;
- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment: and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction.

Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. 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, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

CLAIM FOR PAYMENT
 Pursuant to Government Code Section 17561
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS

For State Controller Use Only

(19) Program Number 00187
 (20) Date File _____ / _____ / _____
 (21) LRS Input _____ / _____ / _____

**L
A
B
E
L**

(01) Claimant Identification Number

(02) Mailing Address

Claimant Name

County of Location

Street Address or P.O. Box

City State Zip Code

Reimbursement Claim Data

(22) PPBR-1, (03)(a)

(23) PPBR-1, (03)(b)

(24) PPBR-1, (03)(c)

(25) PPBR-1, (03)(d)

(26) PPBR-1, (04)(1)(e)

(27) PPBR-1, (04)(2)(e)

(28) PPBR-1, (04)(3)(e)

(29) PPBR-1, (04)(4)(e)

(30) PPBR-1, (06)

(31)

(32)

(33)

(34)

(35)

(36)

(37)

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>
Fiscal Year of Cost	(06) 20__/20__	(12) 19__/20__
Total Claimed Amount	(07)	(13)
Less: 10% Late Penalty, not to exceed \$1,000		(14)
Less: Estimated Claim Payment Received		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

(38) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code § 17561, I certify that I am the person authorized by the local agency to file claims with the State of California for costs mandated by Chapter 465, Statutes of 1976, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1096, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program mandated by Chapter 465, Statutes of 1976.

The amounts for Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs for the mandated program of Chapter 465, Statutes of 1976, set forth on the attached statements.

Signature of Authorized Representative _____

Date _____

Type or Print Name _____

Title _____

(39) Name of Contact Person for Claim _____

Telephone Number (____) _____ Ext. _____
 E-mail Address _____

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
Certification Claim Form
Instructions

FORM
FAM-27

- (01) Leave blank.
- (02) A set of mailing labels with the claimant's I.D. number and address has been enclosed with the claiming instructions. The mailing labels are designed to speed processing and prevent common errors that delay payment. Affix a label in the space shown on form FAM-27. Cross out any errors and print the correct information on the label. Add any missing address items, except county of location and a person's name. If you did not receive labels, print or type your agency's mailing address.
- (03) If filing an original estimated claim, enter an "X" in the box on line (03) Estimated.
- (04) If filing an original estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.
- (05) If filing an amended or combined claim, enter an "X" in the box on line (05) Amended. Leave boxes (03) and (04) blank.
- (06) Enter the fiscal year in which costs are to be incurred.
- (07) Enter the amount of estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form PPBR-1 and enter the amount from line (11).
- (08) Enter the same amount as shown on line (07).
- (09) If filing an original reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing an original reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended or a combined claim on behalf of districts within the county, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of reimbursement claim from form PPBR-1, line (11).
- (14) Filing Deadline. Initial Claims of Ch. 465/76. If the reimbursement claim for the fiscal years 1994-95, through 1999-00, is filed after January 30, 2001, the claim must be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- In subsequent years, reimbursement claims must be filed by January 15 of the fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter either the product of multiplying line (13) by the factor 0.10 (10% penalty) or \$1,000, whichever is less.
- (15) If filing a reimbursement claim and have previously filed an estimated claim for the same fiscal year, enter the amount received for the estimated claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16) Net Claimed Amount is positive, enter that amount on line (17) Due from State.
- (18) If line (16) Net Claimed Amount is negative, enter that amount in line (18) Due to State.
- (19) to (21) Leave blank.
- (22) to (37) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (30) for the reimbursement claim e.g. PPBR-1, (03)(a), means the information is located on form PPBR-1, line (03)(a). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, (i.e., no cents). Indirect costs percentage should be shown as a whole number and without the percent symbol (i.e., 35% should be shown as 35). Completion of this data block will expedite the payment process.
- (38) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized representative and must include the person's name and title, typed or printed. Claims cannot be paid unless accompanied by a signed certification.
- (39) Enter the name, telephone number, and e-mail addresss of the person whom this office should contact if additional information is required.

SUBMIT A SIGNED ORIGINAL AND A COPY OF FORM FAM-27, AND A COPY OF ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 P.O. Box 942850
 Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
 ATTN: Local Reimbursements Section
 Division of Accounting and Reporting
 3301 C Street, Suite 500
 Sacramento, CA 95816

MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY					FORM PPBR-1
(01) Claimant		(02) Type of Claim		Fiscal Year	
		Reimbursement <input type="checkbox"/>			
		Estimated <input type="checkbox"/>		19 /20	
Claim Statistics					
(03) (a) Number of cases in process at the beginning of the fiscal year					
(b) Number of new cases added during the fiscal year					
(c) Number of cases completed or closed during the fiscal year					
(d) Number of cases in process at the end of the fiscal year					
Direct Costs		Object Accounts			
(04) Reimbursable Components		(a)	(b)	(c)	(d)
		Salaries	Benefits	Services and Supplies	Travel and Training
		(e)	Total		
1. Administrative Activities					
2. Administrative Appeal					
3. Interrogations					
4. Adverse Comment					
(05) Total Direct Costs					
Indirect Costs					
(06) Indirect Cost Rate				[From ICRP]	%
(07) Total Indirect Costs				[Line (06) x line (05)(a)] or [line (06) x{line (05)(a) + line (05)(b)}]	
(08) Total Direct and Indirect Costs				[Line (05)(e) + line (07)]	
Cost Reduction					
(09) Less: Offsetting Savings, if applicable					
(10) Less: Other Reimbursements, if applicable					
(11) Total Claimed Amount					[Line (08) - {(line (09) + line (10))}]

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
Certification Claim Form
Instructions

FORM
PPBR-1

- (01) Enter the name of the claimant.
- (02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year of costs
- From PPBR-1 must be filed for a reimbursement claim. Do not complete form PPBR-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form PPBR-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.
- (03) (a) Enter the number of cases that were processed at the beginning of the fiscal year.
 (b) Enter the number of new cases that were added during the fiscal year.
 (c) Enter the number of cases that were completed or closed during the fiscal year.
 (d) Enter the number of cases that were in process at the end of the fiscal year.
- (04) Reimbursable Components. For each reimbursable component, enter the total from form PPBR-2, line (05), columns (d), (e), (f), and (g) to form PPBR-1, block (04) columns (a), (b), (c), and (d) in the appropriate row. Total each row.
- (05) Total Direct Costs. Total columns (a) through (e).
- (06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have its own ICRP for the program.
- (07) Total Indirect Costs. Multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06).
- (08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(e), and Total Indirect Costs, line (07).
- (09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (10) Less: Other Reimbursements, if applicable. Enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT/ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant	(02) Fiscal Year Costs Were Incurred
---------------	--------------------------------------

(03) Reimbursable Component: Check only **one** box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expenses: Complete columns (a) through (g). **Object Accounts**

(a) Employee Names, Job Classifications, Functions Performed, and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Travel and Training

(05) Total <input type="checkbox"/>	Subtotal <input type="checkbox"/>	Page: ___ of ___
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PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY Instructions	FORM PPBR-2
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- (01) Enter the name of the claimant.
- (02) No entry required.
- (03) Reimbursable Components. Check the box that indicates the cost component being claimed. Check only one box per form. A separate form PPBR-2 shall be prepared for each applicable component.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, and travel and training expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. Such documents shall be made available to the State Controller's Office on request.

Object/ Sub object Accounts	Columns							Submit thes supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	
Salaries	Employee Name Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours Worked				
Benefits	Activities Performed	Benefit Rate	Hours Worked		Benefits = Benefit Rate x Salaries			
Services and Supplies	Name of Contractor	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed		Invoice
Contract Services	Specific Tasks Performed							
Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost= Unit Cost X Quantity Used		
Travel and Training	Purpose of Trip Name and Title	Per Diem Rate	Days				Rate x Days or Miles	
Travel	Departure and Return Date	Mileage Rate	Miles				Total Travel Cost	
Training	Employee Name Title		Dates Attended				Registration Fee	

- (05) Total line (04), columns (d), (e), (f), and (g) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the component costs, number each page. Enter totals from line (05), columns (d), (e), (f), and (g) to form PPBR-1, block (04), columns (a), (b), (c), and (d) in the appropriate row.

Exhibit E

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,
Chapter 465; Statutes 1978, Chapters 775, 1173,
1174, and 1178; Statutes 1979, Chapter 405;
Statutes 1980, Chapter 1367; Statutes 1982,
Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313,
Statutes 2005, chapter 72, section 6
(Assem. Bill (AB) No. 138),
Effective July 19, 2005.

Case No.: 05-RL-4499-01

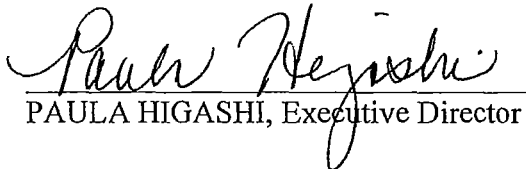
Peace Officer Procedural Bill of Rights

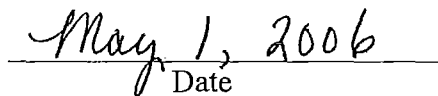
STATEMENT OF DECISION PURSUANT
TO GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on April 26, 2006)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby
adopted in the above-entitled matter.


PAULA HIGASHI, Executive Director


Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,
Chapter 465; Statutes 1978, Chapters 775, 1173,
1174, and 1178; Statutes 1979, Chapter 405;
Statutes 1980, Chapter 1367; Statutes 1982,
Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313,
Statutes 2005, chapter 72, section 6
(Assem. Bill (AB) No. 138),
Effective July 19, 2005.

Case No.: 05-RL-4499-01

Peace Officer Procedural Bill of Rights

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

(Adopted on April 26, 2006)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on April 26, 2006. Pam Stone, Dee Contreras, and Ed Takach appeared for the City of Sacramento. Lt. Dave McGill appeared for the Los Angeles Police Department. Susan Geanacou appeared for the Department of Finance.

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., and related case law.

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 5 to 1.

Summary of Findings

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the

United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

On review of this claim pursuant to Government Code section 3313, the Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B,

section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause¹ does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

BACKGROUND

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim. Government Code section 3313 states the following:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

Commission’s Decision on *Peace Officer Procedural Bill of Rights* (CSM 4499)

The Legislature enacted the Peace Officers Procedural Bill of Rights Act (commonly abbreviated as “POBOR”), by adding Government Code sections 3300 through 3310, in 1976. POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or

¹ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

discipline. Generally, POBOR prescribes certain protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit.²

Legislative intent for POBOR is expressly provided in Government Code section 3301 as follows:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California.

POBOR applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts.³

In 1995, the City of Sacramento filed a test claim alleging that POBOR, as it existed from 1976 until 1990, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.⁴ In 1999, the Commission approved the test claim and adopted a Statement of Decision.⁵ The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or

² See California Supreme Court’s summary of the legislation in *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

³ Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

⁴ The POBOR Act has been subsequently amended by the Legislature. (See Stats. 1994, ch. 1259; Stats. 1997, ch. 148; Stats. 1998, ch. 263; Stats. 1998, ch. 786; Stats. 1999, ch. 338; Stats. 2000, ch. 209; Stats. 2002, ch. 1156; Stats. 2003, ch. 876; Stats. 2004, ch. 405; and Stats. 2005, ch. 22.) These subsequent amendments are outside the scope of the Commission’s decision in POBOR (CSM 4499), and therefore are *not* analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6.

⁵ Administrative Record, page 859.

higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.⁶

On March 29, 2001, the Commission adopted a statewide cost estimate covering fiscal years 1994-1995 through 2001-2002 in the amount of \$152,506,000.⁷

Audit by the Bureau of State Audits

The Legislative Analyst's Office (LAO), in its Analysis of the 2002-2003 Budget Bill, reviewed a sample of POBOR reimbursement claims and found that the annual state costs associated with the program was likely to be two to three times higher than the amount projected in the statewide cost estimate and significantly higher than what the Legislature initially expected. LAO projected costs in the range of \$50 to \$75 million annually.

⁶ Administrative Record, page 1273.

⁷ Administrative Record, page 1309.

LAO also found a wide variation in the costs claimed by local governments. Thus, LAO recommended that the Legislature refer the POBOR program to the Joint Legislative Audit Committee for review, possible state audit, and possible revisions to the parameters and guidelines.

In March 2003, the Joint Legislative Audit Committee authorized the Bureau of State Audits to conduct an audit of the process used by the Commission to develop statewide cost estimates and to establish parameters and guidelines for the claims related to POBOR.

On October 15, 2003, the Bureau of State Audits issued its audit report, finding that reimbursement claims were significantly higher than anticipated and that some agencies claimed reimbursement for questionable activities.⁸ While the Bureau of State Audits recommended the Commission make changes to the overall mandates process, it did not recommend the Commission make any changes to the parameters and guidelines for the POBOR program. The Commission implemented all of the Bureau's recommendations.

On July 19, 2005, the Legislature enacted Government Code section 3313 (Stats. 2005, ch. 72, § 6 (AB 138)) and directed the Commission to "review" the Statement of Decision in POBOR.

Comments Filed Before the Issuance of the Draft Staff Analysis by the City and County of Los Angeles

On October 19, 2005, Commission staff requested comments from interested parties, affected state agencies, and interested persons on the Legislature's directive to "review" the POBOR program. Comments were received from the City of Los Angeles and the County of Los Angeles. The City and County both contend that the Commission properly found that POBOR constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County further argues that, under the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, reimbursement must be expanded to include all activities required under the test claim statutes including those procedures required by the federal due process clause. The County of Los Angeles also proposes that the Commission adopt a reasonable reimbursement methodology in the parameters and guidelines to reimburse these claims.

Comments Filed on the Draft Staff Analysis

On February 24, 2006, Commission staff issued the draft staff analysis and requested comments on the draft. The Commission received responses from the following parties:

City of Sacramento

The City of Sacramento argues the following:

- Prior law does not require due process protections for employees receiving short-term suspensions, reclassifications, or reprimands. Therefore, the administrative appeal required by the test claim legislation constitutes a new program or higher

⁸ Administrative Record, page 1407 et seq.

level of service when an officer receives a short-term suspension, reclassification, or reprimand.

- Not every termination of a police chief warrants a liberty interest hearing required under prior law. The decision of the Commission should distinguish between those situations where there is a valid right to a liberty interest hearing under principles of due process, from the remaining situations where a police chief is terminated.
- The decision of the Commission should reflect “the onerous requirements imposed when interrogations are handled under POBOR.”
- All activities required when an officer receives an adverse comment are reimbursable.

County of Alameda

The County of Alameda states that interrogation of a sworn officer under POBOR is difficult and requires preparation. The County alleges that ten hours of investigation must be conducted before an interview that might take thirty minutes.

County of Los Angeles

The County of Los Angeles contends that investigation is a reimbursable state-mandated activity. The County also argues that, pursuant to the *San Diego Unified School Dist.* case, all due process activities are reimbursable.

County of Orange

The County of Orange believes the staff analysis “does not fully comprehend or account for the [investigation] requirements of interrogation governed by Government Code section 3303.” The County contends that the requirements of law enforcement agencies to investigate complaints have correspondingly increased under POBOR. When a complaint is received, the County argues that “every department is called upon to conduct very detailed investigations when allegations of serious misconduct occur. These investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force where injuries may be significant, serious property damage, and criminal behavior.” The County also contends that the investigation involves the subject officer and other officer witnesses.

Department of Finance

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court’s findings are not applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

... there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire

police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁰ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹¹ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹² In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹³

⁹ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “(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.”

¹⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

¹¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁴ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁵ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁶

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁷

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁸ 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.”¹⁹

I. Commission Jurisdiction and Period of Reimbursement for Decision on Reconsideration

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. The Commission’s jurisdiction in this case is based solely on Government Code section 3313. Absent Government Code section 3313, the Commission would have no jurisdiction to review and reconsider its decision on POBOR since the decision was adopted and issued well over 30 days ago.²⁰

¹⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

¹⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁹ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁰ Government Code section 17559.

Thus, the Commission must act within the jurisdiction granted by Government Code section 3313, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.²¹ Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of Government Code section 3313.

Government Code section 3313 provides:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision *to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions.* If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted. (Emphasis added.)

The Commission's jurisdiction on review is limited by Government Code section 3313, to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. ... and other applicable court decisions.*"

In addition, Government Code section 3313 states that "the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities *occurring after the date the revised decision is adopted.*" Thus, the Commission finds that the decision adopted by the Commission on this reconsideration or "review" of POBOR applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In 1999, the Commission found that the test claim legislation mandates law enforcement agencies to take specified procedural steps when investigating or disciplining a peace officer employee.²² The Commission found that Government Code section 3304 mandates, under specified circumstances, that "no punitive action [any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment], nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

The Commission also found that the following activities are mandated by Government Code section 3303 when the employer wants to interrogate an officer:

²¹ *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

²² Original Statement of Decision (AR, p. 862).

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Providing the peace officer employee with access to a tape recording of his or her interrogation prior to any further interrogation at a subsequent time, as specified. (Gov. Code, § 3303, subd. (g).)
- Under specified circumstances, producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons when requested by the officer. (Gov. Code, § 3303, subd. (g).)

Finally, Government Code sections 3305 and 3306 provide that no peace officer shall have any adverse comment entered into the officer's personnel file without having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact shall be noted on the document and signed or initialed by the peace officer. In addition, the peace officer shall have 30 days to file a written response to any adverse comment entered into the personnel file. The Commission found that Government Code sections 3305 and 3306 impose the following requirements on employers before an adverse comment is placed in an officer's personnel file:

- To provide notice of the adverse comment to the officer.
- To provide an opportunity to review and sign the adverse comment.
- To provide an opportunity to respond to the adverse comment within 30 days.
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

POBOR, by the terms set forth in Government Code section 3301, expressly applies to counties, cities, school districts, and special districts and the Commission approved the test claim for these local entities. Government Code section 3301 states the following: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code." The legislation, however, does not apply to reserve or recruit officers,²³ coroners, or railroad police officers commissioned by the Governor.

Government Code section 3313 requires the Commission to review these findings to clarify whether the subject legislation imposes a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.

²³ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569.

Generally, in order for test claim legislation to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local governmental entities. If the statutory language does not impose a mandate, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In the present case, although the procedural rights and protections afforded a peace officer under POBOR are expressly required by statute, the required activities are not triggered until the employing agency makes certain local decisions. For example, in the case of a city or county, agencies that are required by the Constitution to employ peace officers,²⁴ the POBOR activities are not triggered until the city or county decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file. These initial decisions are not expressly mandated by state law, but are governed by local policy, ordinance, city charter, or memorandum of understanding.²⁵

In the case of a school district or special district, the POBOR requirements are not triggered until the school district or special district (1) decides to exercise the statutory authority to employ peace officers, and (2) decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

After the Commission issued its decision in this case, two California Supreme Court decisions were decided that address the "mandate" issue; *Kern High School Dist.* and *San Diego Unified School Dist.*²⁶ Thus, based on the court's ruling in these cases, the issue is whether the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 in light of the local decisions that trigger the POBOR requirements.

As described below, the Legislature expressly declared its intent that the POBOR legislation is a matter of statewide concern and was designed to assure that effective police protection services are provided to all people of the state. The California Supreme Court found that POBOR protects the health, safety, and welfare of the citizens. Thus,

²⁴ Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that city charters are to provide for the "government of the city police force."

²⁵ See *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-140, where the California Supreme Court determined that POBOR *does not* (1) interfere with the setting of peace officers' compensation, (2) regulate qualifications for employment, (3) regulate the manner, method, times, or terms for which a peace officer shall be elected or appointed, nor does it (4) affect the tenure of office or purpose to regulate or specify the causes for which a peace officer can be removed. These are local decisions. But the court found that POBOR impinges on the city's implied power to determine the *manner* in which an employee can be disciplined.

²⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727; *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

based on the facts of this case, the Commission finds that the Supreme Court's decision in *San Diego Unified School Dist.* supports the Commission's original finding that the test claim legislation constitutes a state-mandated program for cities, counties, school districts, and special districts as described below.

A. POBOR constitutes a state-mandated program even though a local decision is first made to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

The procedural rights and protections afforded a peace officer under POBOR are required by statute. The rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

Nevertheless, based on findings made by the California Supreme Court regarding the POBOR legislation and in *San Diego Unified School Dist.*, the Commission finds that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

After the Commission issued its Statement of Decision in this case, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.²⁷ In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."²⁸ The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."²⁹

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.³⁰ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a

²⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

²⁸ *Id.* at page 737.

²⁹ *Ibid.*

³⁰ *Id.* at page 743.

reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)³¹

Thus, the Supreme Court held as follows:

[W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled*. [Emphasis added.]³²

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.³³

The school districts in *Kern High School Dist.*, however, urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a broad construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the state's failure to comply with federal legislation that extended mandatory coverage under the state's unemployment insurance law would result in California businesses facing "a new and serious penalty – full, double unemployment taxation by both state and federal governments."³⁴ Although the court in *Kern High School Dist.* declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion on the facts before it in *Kern*, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue– the court stated:

In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.³⁵

³¹ *Ibid.*

³² *Id.* at page 731.

³³ *Id.* at pages 744-745.

³⁴ *City of Sacramento, supra*, 50 Cal.3d 51, 74.

³⁵ *Kern High School Dist., supra*, 30 Cal.4th 727, 752.

Thus, the court in *Kern* recognized that there could be a case, based on its facts, where reimbursement would be required under article XIII B, section 6 in circumstances where the local entity was not legally compelled to participate in a program.

One year later, the Supreme Court revisited the “mandate” issue in *San Diego Unified School Dist.*, a case that addressed a challenge to a Commission decision involving a school district’s expulsion of a student. The school district acknowledged that under specified circumstances, the statutory scheme at issue in the case gave school districts discretion to expel a student. The district nevertheless argued that it was mandated to incur the costs associated with the due process hearing required by the test claim legislation when a student is expelled. The district argued that “although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program” and, thus, the ruling in *City of Merced* should not apply.³⁶

In *San Diego Unified School Dist.*, the Supreme Court did not overrule the *Kern* or *City of Merced* cases, but stated that “[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.”³⁷ The court explained as follows:

Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] the court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency’s decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence

³⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887.

³⁷ *Id.* at page 887.

we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.³⁸

Ultimately, however, the court did not resolve the issue regarding the application of the *City of Merced* case to the discretionary expulsions, and resolved the case on alternative grounds.³⁹

In the present case, the purpose of POBOR, as stated in Government Code section 3301, is to assure that stable employment relations are continued throughout the state and to further assure that effective law enforcement services are provided to all people of the state. The Legislature declared POBOR a matter of statewide concern.

In 1982, the California Supreme Court addressed the POBOR legislation in *Baggett v. Gates*.⁴⁰ In *Baggett*, the City of Los Angeles received information that certain peace officer employees were engaging in misconduct during work hours. The city interrogated the officers and reassigned them to lower paying positions (a punitive action under POBOR). The employees requested an administrative appeal pursuant to the POBOR legislation and the city denied the request, arguing that charter cities cannot be constitutionally bound by POBOR. The court acknowledged that the home rule provision of the Constitution gives charter cities the power to make and enforce all ordinances and regulations, subject only to the restrictions and limitations provided in the city charter. Nevertheless, the court found that the City of Los Angeles was required by the POBOR legislation to provide the opportunity for an administrative appeal to the officers.⁴¹ In reaching its conclusion, the court relied, in part, on the express language of legislative intent in Government Code section 3301 that the POBOR legislation is a "matter of statewide concern."⁴²

The court in *Baggett* also concluded that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the city, which would extend far beyond local boundaries.

Finally, it can hardly be disputed that the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. The consequences of a breakdown in such relations are not confined to a city's borders. These employees provide an essential service. Its absence would create a clear and present threat not only to the health, safety, and welfare of the citizens of the city, but also to the hundreds, if not thousands, of nonresidents who daily visit there. Its effect would also be felt by the many nonresident owners of property and businesses located within the city's borders. Our society is no longer a

³⁸ *Id.* at pages 887-888.

³⁹ *Id.* at page 888.

⁴⁰ *Baggett v. Gates* (1982) 32 Cal.3d 128.

⁴¹ *Id.* at page 141.

⁴² *Id.* at page 136.

collection of insular local communities. Communities today are highly interdependent. The inevitable result is that labor unrest and strikes produce consequences which extend far beyond local boundaries.⁴³

Thus, the court found that “the total effect of the POBOR legislation is not to deprive local governments of the right to manage and control their police departments but to secure basic rights and protections to a segment of public employees who were thought unable to secure them for themselves.”⁴⁴

In 1990, the Supreme Court revisited the POBOR legislation in *Pasadena Police Officers Assn. v. City of Pasadena (Pasadena)*.⁴⁵ The *Pasadena* case addressed the POBOR requirement in Government Code section 3303 to require the employer to provide an officer subject to an interrogation with any reports or complaints made by investigators. In the language quoted below, the court described the POBOR legislation and recognized that the public has a high expectation that peace officers are to be held above suspicion of violation of the laws they are sworn to enforce. Thus, in order to maintain the public’s confidence, “a law enforcement agency *must* promptly, thoroughly, and fairly investigate allegations of officer misconduct ... [and] institute disciplinary proceedings.” (Emphasis added.)

Courts have long recognized that, while the off-duty conduct of employees is generally of no legal consequence to their employers, the public expects peace officers to be “above suspicion of violation of the very laws they are sworn ... to enforce.” [Citations omitted.] Historically, peace officers have been held to a higher standard than other public employees, in part because they alone are the “guardians of peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.” [Citation omitted.] To maintain the public’s confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct; if warranted, it must institute disciplinary proceedings.⁴⁶

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 “for the simple reason” that the local entity’s ability to decide who to discipline and when “could control or perhaps even avoid the extra costs” of the POBOR legislation.⁴⁷ But a local entity does not decide who to investigate or discipline based on the costs incurred to the entity. The decision is made, as indicated by the Supreme Court, to maintain the public’s confidence in its police force and to protect the health, safety,

⁴³ *Id.* at page 139-140.

⁴⁴ *Id.* at page 140.

⁴⁵ *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564.

⁴⁶ *Id.* at page 571-572.

⁴⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 887-888.

and welfare of its citizens. Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a mandated program would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.”⁴⁸ Moreover, the POBOR legislation implements a state policy to maintain stable employment relations between police officers and their employers to “assure that effective services are provided to all people of the state.” POBOR, therefore, carries out the governmental function of providing a service to the public, and imposes unique requirements on local agencies to implement the state policy.⁴⁹ Thus, a finding that the test claim legislation does not impose a state-mandated program contravenes the purpose of article XIII B, section 6 “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill-equipped’ to assume increased financial responsibilities” due to the tax and spend provisions of articles XIII A and XIII B.⁵⁰

Accordingly, even though local decisions are first made to interrogate an officer, take punitive action against the officer, or to place an adverse comment in an officer’s personnel file, the Commission finds, based on *San Diego Unified School Dist.* and the facts presented in this case, that POBOR constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

B. POBOR constitutes a state-mandated program for school districts and for special districts identified in Government Code section 3301 that employ peace officers.

Government Code section 3301, the statute that identifies the peace officers afforded the rights and protections granted in the POBOR legislation, expressly includes peace officers employed by school districts and community college districts pursuant to Penal Code section 830.32. Penal Code section 830.32 provides that members of a school district and community college district police department appointed pursuant to Education Code sections 39670 and 72330 are peace officers if the primary duty of the officer is the enforcement of law as prescribed by Education Code sections 39670 (renumbered section 38000) and 72330, and the officers have completed an approved course of training prescribed by the Commission on Peace Officer Standards and Training (POST) before exercising the powers of a peace officer.

POBOR also applies to special districts authorized by statute to maintain a police department, including police protection districts, harbor or port police, transit police, peace officers employed by the San Francisco Bay Area Rapid Transit District (BART),

⁴⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

⁴⁹ *San Diego Unified School*, *supra*, 33 Cal.4th at page 874.

⁵⁰ *Id.* at page 888, fn. 23.

peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.⁵¹

While counties and cities are mandated by the California Constitution to employ peace officers,⁵² school districts and special districts are not expressly required by the state to employ peace officers. School districts and special districts have statutory authority to employ peace officers.

Following the Supreme Court's decision in *Kern High School Dist.*, the Commission denied school district test claims addressing peace officer employees on the ground that school districts are not mandated by state law to have a police department and employ peace officers. In these decisions, the Commission acknowledged the provision in the Constitution (Cal. Const., art. 1, § 28, subd. (c)) that requires K-12 school districts to maintain safe schools. The Commission found, however, that there is no constitutional or statutory requirement to maintain safe schools through school security or a school district police department. Moreover, school districts have governmental immunity under Government Code section 845 and cannot be liable for civil damages for "failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service."⁵³ Comments on Government Code section 845 by the Law Revision Commission state that the immunity was enacted by the Legislature to prevent judges and juries from removing the ultimate decision-making authority regarding police protection from those (local governments) that are politically responsible for making the decision.⁵⁴

⁵¹ Government Code section 3301; Penal Code section 830.1, subdivision (a) ["police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department"]; Penal Code section 830.31, subdivision (d) ["A housing authority patrol officer employed by the housing authority of a ... district ..."]; Penal Code section 830.33 [(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code ... (b) Harbor or port police regularly employed and paid ... by a ... district ... (c) Transit police officers or peace officers of a ... district ... (d) Any person regularly employed as an airport law enforcement officer by a ... district ...]; and Penal Code section 830.37 [(a) Members of an arson-investigating unit ... of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud ... (b) Members ... regularly paid and employed in that capacity, of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers ... is the enforcement of law relating to fire prevention or fire suppression.]

⁵² See ante, footnote 21.

⁵³ See *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448.

⁵⁴ 4 California Law Revision Commission Reports 801 (1963).

Immunity under Government Code section 845 also applies to community college districts and special districts.⁵⁵

Thus, based on the Supreme Court's holding in *Kern High School Dist.*, past decisions of the Commission have determined that local entities, such as school districts, are not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ peace officers.

This case presents different facts, however. Here, unlike the other cases, the Legislature expressly stated in Government Code section 3301 that POBOR is a matter of statewide concern and found that it was necessary to apply the legislation to all public safety officers, as defined. Government Code section 3301 states the following:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

Legislative declarations of policy are entitled to great weight by the courts "and it is not the duty or prerogative of the courts to interfere with such legislative finding unless it clearly appears to be erroneous and without reasonable foundation."⁵⁶

Furthermore, in *San Diego Unified School Dist.*, the Supreme Court acknowledged the school district's argument that the due process hearing procedures were mandated when the district exercised its discretion and expelled a student, despite the *City of Merced* and *Kern* cases. The court stated the following:

Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victim's Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring [due process] hearing costs ... cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to seek to expel a student under

⁵⁵ *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799; *Hernandez v. Southern California Rapid Transit Dist.* (1983) 142 Cal.App.3d 1063.

⁵⁶ *Paul v. Eggman* (1966) 244 Cal.App.2d 461, 471-472.

Education Code section 48915's discretionary provision for damaging or stealing school or private property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."⁵⁷

In response, the Supreme Court stated that "[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs."⁵⁸ The court explained as follows:

Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.⁵⁹

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court's findings are not

⁵⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 887, footnote 22.

⁵⁸ *Id.* at page 887.

⁵⁹ *Id.* at pages 887-888.

applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

In the *Carmel Valley Fire Protection District* case ((1987) 190 Cal.App.3d 521), unlike the situation here, the fire districts did not have the option to form a fire department and hire firefighters. In fact, the *San Diego Unified School Dist.* case cited *Carmel Valley* to make it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.” (*San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888, *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 521, 537). Such is not the case for school districts and community college districts.

As stated above, there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Finance, in response to the draft staff analysis, makes no comments with respect to special districts that also have the authority, but are not required, to employ peace officers.⁶⁰ At the hearing, however, Finance argued that its comments apply equally to special districts.

The Commission disagrees with the Department of Finance. The fire protection districts in *Carmel Valley* were not mandated by the state to be formed, as asserted by Finance. Fire protection districts are established either by petition of the voters or by a resolution adopted by the legislative body of a county or city within the territory of the proposed district. Once a petition has been certified or a resolution adopted, the local agency

⁶⁰ See, for example, Public Utilities Code section 28767.5, which authorizes BART to employ peace officers:

The district may employ a suitable security force. The employees of the district that are designated by the general manager as security officers shall have the authority and powers conferred by Section 830.9 of the Penal Code upon peace officers. The district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training ...

formation commission must approve the formation of the district “with or without amendment, wholly, partially, or conditionally.” A local election is then held and the district is created if a majority of the votes are cast in favor of forming the district.⁶¹ Furthermore, the implication that the phrase “local government” in the *Carmel Valley* case excludes school districts is wrong. “Local government” is specifically defined in article XIII B, section 8 of the Constitution to include school districts and special districts. The definitions in article XIII B, section 8 apply to the mandate reimbursement provisions of section 6. Article XIII B, section 8 states in relevant part the following:

As used in this article and except as otherwise expressly provided herein:

(d) “Local government” means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state.

Therefore, the arguments raised by the Department of Finance do not resolve the issue. The Supreme Court in *San Diego Unified School Dist.* did not resolve the issue either. Rather, the court stated the following:

In any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis.⁶²

Thus, the Commission has the difficult task of resolving the issue for purposes of this claim. For the reasons below, the Commission finds that the POBOR legislation constitutes a state-mandated program for school districts and the special districts identified in Government Code section 3301 that employ peace officers.

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 for school districts and the special districts that employ peace officers “for the simple reason” that the ability of the school district or special district to decide whether to employ peace officers “could control or perhaps even avoid the extra costs” of the POBOR legislation.⁶³ But here, the Legislature has declared that, as a matter of statewide concern, it is necessary for POBOR to apply to all public safety officers, as defined in the legislation. As previously indicated, the California Supreme Court concluded that the peace officers identified in Government Code section 3301 of the POBOR legislation provide an “essential service” to the public and that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the state.⁶⁴

⁶¹ Health and Safety Code sections 13815 et seq.

⁶² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 888.

⁶³ *Ibid.*

⁶⁴ *Baggett*, *supra*, 32 Cal.3d 128, 139-140.

In addition, in 2001, the Supreme Court determined that school districts, apart from education, have an “obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern.” The court further held that California fulfills its obligations under the safe schools provision of the Constitution (Cal. Const., art. I, § 28, subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.⁶⁵ The arguments by the school districts regarding the safe schools provision of the Constitution caused the Supreme Court in *San Diego Unified School Dist.* to question the application of the *City of Merced* case.⁶⁶

The Legislature has also recognized the essential services provided by special district peace officers in Government Code section 53060.7. The special districts identified in that statute (Bear Valley Community Services District, Broadmoor Police Protection District, Kensington Police Protection and Community Services District, Lake Shastina Community Services District, and Stallion Springs Community Services District) “wholly supplant the law enforcement functions of the county within the jurisdiction of that district.”

Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a state-mandated program for school districts and special districts identified in Government Code section 3301 would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.”⁶⁷ The constitutional definition of “local government” for purposes of article XIII B, section 6 includes school districts and special districts. (Cal. Const., art. XIII B, § 8.)

Accordingly, the Commission finds that POBOR constitutes a state-mandated program for school districts that employ peace officers. The Commission further finds that POBOR constitutes a state-mandated program for the special districts identified in Government Code section 3301. These districts include police protection districts, harbor or port police, transit police, peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.

III. Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Government Code section 3313 requires the Commission to review its previous findings to clarify whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme

⁶⁵ *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

⁶⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887, fn. 22.

⁶⁷ *Id.* at pages 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

Court Decision in *San Diego Unified School Dist.* and other applicable court decisions. The test claim legislation will impose a new program or higher level of service, and costs mandated by the state when it compels a local entity to perform activities not previously required, and results in actual increased costs mandated by the state.⁶⁸ In addition, none of the exceptions to reimbursement found in Government Code section 17556 can apply. The activities found by the Commission to be mandated are analyzed below.

Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

Punitive action is defined in Government Code section 3303 as follows:

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,⁶⁹ written reprimand, or transfer for purposes of punishment.”

The California Supreme Court determined that the phrase “for purposes of punishment” in the foregoing section relates only to a transfer and not to other personnel actions.⁷⁰ Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to “compensate for a deficiency in performance,” however, an appeal is not required.⁷¹

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in “disadvantage, harm, loss or hardship” and impact the peace officer’s career.⁷² In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted “punitive action” under the

⁶⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835.

⁶⁹ The courts have held that “reduction in salary” includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

⁷⁰ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

⁷¹ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

⁷² *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.

test claim legislation based on the source of the report, its contents, and its potential impact on the career of the officer.⁷³

Thus, under Government Code section 3304, as it existed when the Statement of Decision was adopted, the employer is required to provide the opportunity for an administrative appeal to permanent, at-will or probationary peace officers for any action leading to the following actions:

- Dismissal.
- Demotion.
- Suspension.
- Reduction in salary.
- Written reprimand.
- Transfer for purposes of punishment.
- Denial of promotion on grounds other than merit.
- Other actions against the employee that results in disadvantage, harm, loss or hardship and impacts the career opportunities of the employee.

The test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local entity.⁷⁴ The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with due process standards.^{75, 76}

⁷³ *Id* at p. 353-354.

⁷⁴ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.

⁷⁵ *Doyle v. City of Chino* (1981) 117 Cal.App.3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee's due process rights were protected by the administrative appeals process mandated by Government Code section 3304.

⁷⁶ At least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250. In addition, the California Supreme Court uses the words "administrative appeal" of section 3304 interchangeably with the word "hearing." (*White, supra*, 31 Cal.3d 676.) A hearing before the Chief of Police was found to be appropriate within the meaning of Government Code section 3304 in a case involving a written reprimand since the Chief of Police was not in any way involved in the investigation and the employee and his attorney had an opportunity to present evidence and set forth arguments on the employee's behalf. (*Stanton, supra*, 226 Cal.App,3d 1438, 1443.)

Finally, the courts have been clear that the administrative hearing required by Government Code section 3304 does *not* mandate an investigatory process. “It is an adjudicative process by which the [peace officers] hope to restore their reputations” and where “the reexamination [of the employer’s decision] must be conducted by someone who has not been involved in the initial determination.”⁷⁷

In 1999, the Commission concluded that under certain circumstances, the administrative appeal required by the POBOR legislation was already required to be provided by the due process clause of the United States and California Constitutions when an action by the employer affects an employee’s property interest or liberty interest. A permanent employee with civil service protection, for example, has a property interest in the employment position if the employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Under these circumstances, the permanent employee is entitled to a due process hearing.⁷⁸

In addition, the due process clause applies when the charges supporting a dismissal of a probationary or at-will employee harms the employee’s reputation and ability to find future employment.⁷⁹ For example, an at-will employee, such as the chief of police, is entitled to a liberty interest hearing (or name-clearing hearing) under the state and federal constitutions when the dismissal is supported by charges of misconduct, mismanagement, and misjudgment – all of which “stigmatize [the employee’s] reputation and impair his ability to take advantage of other employment opportunities in law enforcement administration.”⁸⁰ In *Williams v. Department of Water and Power*, a case cited by the City of Sacramento, the court explained that the right to a liberty interest hearing arises in cases involving moral turpitude. There is no constitutional right to a liberty interest hearing when an at-will employee is removed for incompetence, inability to get along with others, or for political reasons due to a change of administration.

The mere fact of discharge from public employment does not deprive one of a liberty interest hearing. [Citations omitted.] Appellant must show her dismissal was based on charges of misconduct which “stigmatize” her reputation or “seriously impair” her opportunity to earn a living. [Citations omitted.] ... “Nearly any reason assigned for dismissal is likely to be to some extent a negative reflection on an individual’s ability, temperament, or character. [Citation omitted.] But not every dismissal assumes a constitutional magnitude.” [Citation omitted.]

The leading case of *Board of Regents v. Roth* (1972) 408 U.S. 564, 574 [unofficial cite omitted] distinguishes between a stigma of moral turpitude, which infringes the liberty interest, and other charges such as incompetence or inability to get along with coworkers which does not. The Supreme Court recognized that where “a person’s good name,

⁷⁷ *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, 443-444 and 447-448.

⁷⁸ See original Statement of Decision (AR, p. 864).

⁷⁹ See original Statement of Decision (AR, pp. 863-866, 870).

⁸⁰ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1807.

reputation, honor or integrity is at stake” his right to liberty under the Fourteenth Amendment is implicated and deserves constitutional protection. [Citation omitted.] “In the context of *Roth*-type cases, a charge which infringes one’s liberty can be characterized as an accusation or label given the individual by his employer which belittles his worth and dignity as an individual and, as a consequence is likely to have severe repercussions of which primarily affect professional life, and which may well force the individual down one or more notches in the professional hierarchy.” [Citation omitted.]⁸¹

Thus, the Commission found that, when a hearing was required by the due process clause of the state and federal constitutions, the activity of providing the administrative appeal did not constitute new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Commission found that the administrative appeal constitutes a new program or higher level of service, and imposes costs mandated by the state, in those situations where the due process clause of the United States and California Constitutions did not apply. These include the following:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by *probationary and at-will employees* whose liberty interest *are not* affected (i.e.; the charges do not harm the employee’s reputation or ability to find future employment).
- Transfer of permanent, probationary and at-will employees for purposes of punishment.
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit.
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

As noted by the Commission in the Statement of Decision and parameters and guidelines, the Legislature amended Government Code section 3304 in 1998 by limiting the right to an administrative appeal to only those peace officers “who [have] successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.) Thus, as of January 1, 1999, providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) is no longer a reimbursable state-mandated activity.

Thus, the issue is whether the activity of providing the opportunity for an administrative appeal is reimbursable under current law when (1) permanent peace officer employees are subject to punitive actions, as defined in Government Code section 3303, or denials of promotion on grounds other than merit; and when (2) a chief of police is subject to removal.

⁸¹ *Williams v. Department of Water and Power* (1982) 130 Cal.App.3d 677, 684-685.

As indicated above, under prior law, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process liberty interest hearing under prior law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment. The County of Los Angeles argues, however, that under the California Supreme Court decision in *San Diego Unified School District*, reimbursement must be expanded to include all activities required under the test claim statute, including those procedures previously required by the due process clause. A close reading of the *San Diego Unified School District* case, however, shows that it does not support the County's position.

The County relies on the Supreme Court's analysis on pages 879 (beginning under the header "2. Are the hearing costs state-mandated?") through page 882 of the *San Diego Unified School District* case. There, the court addressed two test claim statutes: Education Code section 48915, which *mandated* the school principal to immediately suspend and recommend the expulsion of a student carrying a firearm or committing another specified offense; and Education Code section 48918, which lays out the due process hearing requirements once the mandated recommendation is made to expel the student. The court recognized that the expulsion recommendation required by Education Code section 48915 was mandated "in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing."⁸² The Commission and the state, relying on Government Code section 17556, subdivision (c), argued, however, that the district's costs are reimbursable only if, and to the extent that, hearing procedures set forth in Education Code section 48918 exceed the requirements of federal due process.⁸³ The court disagreed. The court based its conclusion on the fact that the expulsion decision mandated by Education Code 48915, which triggers the district's costs incurred to comply with due process hearing procedures, did not implement a federal law. Thus, the court concluded that all costs incurred that are triggered by the state-mandated expulsion, including those that satisfy the due process clause, are fully reimbursable. The court's holding is as follows:

[W]e cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), all such hearing costs – those designed to satisfy the minimum requirements of federal due process, and those that may exceed those requirements – are, with respect

⁸² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 880.

⁸³ *Ibid.*

to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.⁸⁴

The POBOR legislation is different. The costs incurred to comply with the administrative appeal are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to take punitive action, or deny a promotion on grounds other than merit against a peace officer employee. Therefore, the Commission finds that the court's holding, authorizing reimbursement for *all* due process hearing costs triggered by a state-mandated event, does not apply to this case.

Rather, what applies from the *San Diego Unified School Dist.* decision to the administrative appeal activity mandated by Government Code section 3304 is the court's holding regarding discretionary expulsions. In the *San Diego* case, the court analyzed the portion of Education Code section 48915 that provided the school principal with the discretion to recommend that a student be expelled for specified conduct. If the recommendation was made and the district accepted the recommendation, then the district was required to comply with the mandatory due process hearing procedures of Education Code section 48918.⁸⁵ In this situation, the court held that reimbursement for the procedural hearing costs triggered by a local discretionary decision to seek an expulsion was not reimbursable because the hearing procedures were adopted to implement a federal due process mandate.⁸⁶ The court found that the analysis by the Second District Court of Appeal in *County of Los Angeles v. Commission on State Mandates (County of Los Angeles II)* was instructive.⁸⁷ In the *County of Los Angeles II* case, the court determined that even in the absence of the test claim statute, counties would be still be responsible for providing services under the constitutional guarantees of federal due process.⁸⁸

This analysis applies here. As indicated above, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process hearing under prior state and federal law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment.

⁸⁴ *Id.* at pages 881-882.

⁸⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th at pages 884-890.

⁸⁶ *Id.* at page 888.

⁸⁷ *Id.* at page 888-889; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805. The test claim statute in *County of Los Angeles* required counties to provide indigent criminal defendants with defense funds for ancillary investigation services for capital murder cases. The court determined that even in the absence of the test claim statute, indigent defendants in capital cases were entitled to such funds under the Sixth Amendment of the federal Constitution. (*Id.* at p. 815.)

⁸⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th at page 888-889; *County of Los Angeles, supra*, 32 Cal.App.4th at page 815.

Thus, even in the absence of Government Code section 3304, local government would still be required to provide a due process hearing under these situations.

The City of Sacramento, however, contends in comments to the draft staff analysis that prior law does not require due process protections outlined by the Supreme Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, for employees receiving short-term suspensions, reclassifications, or reprimands. The City states that five-day suspensions, written reprimands and other lesser forms of punishment are covered by POBOR, but not *Skelly* and, thus, the administrative appeal required by POBOR is reimbursable for the lesser forms of punishment.

The City raised the same argument when the Commission originally considered the test claim, and the Commission disagreed with the arguments.⁸⁹ The Commission finds that the Commission's original conclusion on this issue is correct.

As discussed below, the City is correct that the *pre-disciplinary* protections outlined in *Skelly* do not apply to a short-term suspension or written reprimand. But prior law still requires due process protection, including an administrative hearing, when a permanent employee receives a short-term suspension, reprimand, or other lesser form of punishment. Thus, the administrative hearing required by the test claim legislation under these circumstances does not constitute a new program or higher level of service or impose costs mandated by the state.

Skelly involved the discharge of a permanent civil service employee. The court held that such employees have a property interest in the permanent position and the employee may not be dismissed or subjected to other forms of punitive action without due process of law. Based on the facts of the case (that a discharged employee faced the bleak prospect of being without a job and the need to seek other employment hindered by the charges against him), the court held that the employee was entitled to receive notice of the discharge, the reasons for the action, a copy of the charges and materials upon which the action is based, and the right to a hearing to respond to the authority imposing the discipline *before* the discharge became effective.⁹⁰ The Supreme Court in *Skelly* recognized, however, that due process requirements are not so inflexible as to require an evidentiary trial at the *preliminary* stage in every situation involving the taking of property. Although some form of notice and hearing must preclude a final deprivation of property, the timing and content of the notice, as well as the nature of the hearing will depend on the competing interests involved.⁹¹

Three years after *Skelly*, the Supreme Court decided *Civil Service Association v. the City and County of San Francisco*, a case involving the short-term suspensions of eight civil service employees.⁹² The court held that the punitive action involved with a short-term suspension is minor and does not require pre-disciplinary action procedures of the kind

⁸⁹ See original Statement of Decision (AR, pp. 865-866).

⁹⁰ *Skelly, supra*, 15 Cal.3d 194, 213-215.

⁹¹ *Id.* at page 209.

⁹² *Civil Service Association v. City and County of San Francisco* (1978) 22 Cal.3d 552.

required by *Skelly*.⁹³ But the employees were still entitled to due process protection, including the right to a hearing, since the temporary right of enjoyment to the position amounted to a taking for due process purposes.⁹⁴ The court held as follows:

However, while the principles underlying *Skelly* do not here compel the granting of predisciplinary procedures there mentioned, it does not follow that the employees are totally without right to hearing. *While due process does not guarantee to these appellants any Skelly-type predisciplinary hearing procedure, minimal concepts of fair play and justice embodied in the concept of due process require that there be a 'hearing,' of the type hereinafter explained.* The interest to be protected, i.e., the right to continuous employment, is accorded due process protection. While appellants may not in fact have been deprived of a salary earned but only of the opportunity to earn it, they had the expectancy of earning it free from arbitrary administrative action. [Citation omitted.] This expectancy is entitled to some modicum of due process protection. [Citation and footnote omitted.]

For the reasons state above, however, we believe that such protection will be adequately provided in circumstances such as these by procedures of the character outlined in *Skelly*, (i.e., one that will apprise the employee of the proposed action, the reasons therefore, provide for a copy of the charges including materials upon which the action is based, and the right to respond either orally or in writing, to the authority imposing the discipline) *if provided either during the suspension or within reasonable time thereafter.*⁹⁵ (Emphasis added.)

Thus, the court held that the employees that did not receive a hearing at all were entitled to one under principles of due process.⁹⁶ As indicated in the Commission's original Statement of Decision, the Third District Court of Appeal in the *Stanton* case also found that due process principles apply when an employee receives a written reprimand without a corresponding loss of pay.⁹⁷

Therefore, in the following situations, the Commission finds that the Commission's original decision in this case was correct in that Government Code section 3304 does not constitute a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c), since the administrative appeal merely implements the due process requirements of the state and federal Constitutions:

⁹³ *Id.* at page 560.

⁹⁴ *Ibid.*

⁹⁵ *Id.* at page 564.

⁹⁶ *Id.* at page 565.

⁹⁷ *Stanton, supra*, 226 Cal.App.3d 1438, 1442.

- When a permanent employee is subject to a dismissal, demotion, suspension, reduction in salary, or a written reprimand.
- When the charges supporting the dismissal of a chief of police constitute moral turpitude, which harms the employee's reputation and ability to find future employment, thus imposing the requirement for a liberty interest hearing.

The due process clause, however, does not apply when a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee. In addition, the due process clause does not apply when local officials want to remove the chief of police under circumstances that do not create a liberty interest since the chief of police is an at-will employee and does not have a property interest in the position. Providing the opportunity for an administrative appeal under these circumstances is new and not required under prior law. In addition, none of the exceptions in Government Code section 17556 to the finding of costs mandated by the state apply to these situations.

Accordingly, the Commission finds that Government Code section 3304 constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for providing the opportunity for an administrative appeal in the following circumstances only:

- When a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee.
- When local officials want to remove the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment).

Interrogations

Government Code section 3303 prescribes protections that apply when "any" peace officer is interrogated in the course of an administrative investigation that might subject the officer to the punitive actions listed in the section (dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment). The procedures and rights given to peace officers under section 3303 do not apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by, or other routine or unplanned contact with, a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.⁹⁸

The Commission found that the following activities constitute a new program or higher level of service and impose costs mandated by the state:

⁹⁸ Government Code section 3303, subdivision (i).

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Government Code section 3313 directs the Commission to review these findings in order “to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.” The Commission finds that neither the *San Diego Unified School Dist.* case, nor any other court decision published since 1999, changes the Commission’s conclusion that these activities constitute a new program or higher level of service and impose costs mandated by the state. Thus, these activities remain eligible for reimbursement when interrogating “any” peace officer, including probationary, at-will, and permanent officers that might subject the officer to punitive action.

The Commission also found that Government Code section 3303, subdivision (g), requires that:

- The peace officer employee shall have access to the tape recording of the interrogation if (1) any further proceedings are contemplated or, (2) prior to any further interrogation at a subsequent time.
- The peace officer shall be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential.

The Commission found that providing the employee with access to the tape prior to a further interrogation at a subsequent time constitutes a new program or higher level of service and imposes costs mandated by the state. However, the due process clause of the United States and California Constitutions already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the punitive, disciplinary action is based. Thus, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation, and produce the transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential, to the peace officer employee when:

- a permanent employee is dismissed, demoted, suspended, receives a reduction in pay, or written reprimand; or
- a probationary or at-will employee is dismissed and the employee’s reputation and ability to obtain future employment is harmed by charges of moral turpitude, which support the dismissal.

Under these circumstances, the Commission concluded that the requirement to provide these materials under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing these materials merely implements the requirements of the United States Constitution.

The Commission finds that the conclusion denying reimbursement to provide these materials following the interrogation when the activity is already required by the due process clause of the United States and California Constitutions is consistent with the Supreme Court's ruling in *San Diego Unified School Dist.* The costs incurred to comply with these interrogation activities are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to interrogate an officer. Under these circumstances, the court determined that even in the absence of the test claim statute, counties would still be responsible for providing services under the constitutional guarantees of due process under the federal Constitution.⁹⁹

Thus, the Commission finds that the Commission's decision, that Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes costs mandated by the state for the following activities, is legally correct:

- Provide the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
 - (a) the further proceeding is not a disciplinary punitive action;
 - (b) the further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) the further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) the further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) the further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Produce transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer following the interrogation, in the following circumstances:
 - (a) when the investigation *does not* result in disciplinary punitive action; and

⁹⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 888-889; *County of Los Angeles*, *supra*, 32 Cal.App.4th at page 815.

(b) when the investigation results in:

- a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is *not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- a denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
- other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that “[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior.” These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that “[t]he interrogation shall be conducted ...” to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance

with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation.¹⁰⁰

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations.¹⁰¹ It does not interfere with the employer's right to manage and control its own police department.¹⁰²

Finally, the County of Orange contends that "[s]erious cases also tend to involve lengthy appeals processes that require delicate handling due to the increased rights under POBOR." For purposes of clarification, at the parameters and guidelines phase of this claim, the Commission denied reimbursement for the cost of defending lawsuits appealing the employer action under POBOR, determining that the test claim did not allege that the defense of lawsuits constitutes a reimbursable state-mandated program.¹⁰³ Government Code section 3313 does not give the Commission jurisdiction to change this finding.

Nevertheless, when adopting parameters and guidelines for this program, the Commission recognized the complexity of the procedures required to interrogate an officer, and approved several activities that the Commission found to be reasonable methods to comply with the mandated activities pursuant to the authority in section 1183.1, subdivision (a)(4), of the Commission's regulations. For example, the Commission authorized reimbursement, when preparing the notice regarding the nature of the interrogation, for reviewing the complaints and other documents in order to properly prepare the notice. The Commission also approved reimbursement for the mandated interrogation procedures when a peace officer witness was interrogated since the interrogation could lead to punitive action for that officer. Unlike other reconsideration statutes that directed the Commission to revise the parameters and guidelines, the Commission does not have jurisdiction here to change any discretionary findings or add any new activities to the parameters and guidelines that may be

¹⁰⁰ Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 (AR, p. 912).

¹⁰¹ *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26.

¹⁰² *Baggett, supra*, 32 Cal.3d 128, 135.

¹⁰³ Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 Commission hearing (AR, pp. 904-906).

considered reasonable methods to comply with the program. The jurisdiction in this case is very narrow and limited to reviewing the Statement of Decision to clarify, as a matter of law, whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.¹⁰⁴

Adverse Comments

Government Code sections 3305 and 3306 provide that no peace officer “shall” have any adverse comment entered in the officer’s personnel file without the peace officer having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact “shall” be noted on the document and signed or initialed by the peace officer. In addition, the peace officer “shall” have 30 days to file a written response to any adverse comment entered in the personnel file. The response “shall” be attached to the adverse comment.

Thus, Government Code sections 3305 and 3306 impose the following requirements on employers:

- to provide notice of the adverse comment;¹⁰⁵
- to provide an opportunity to review and sign the adverse comment;
- to provide an opportunity to respond to the adverse comment within 30 days; and
- to note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer’s signature or initials under such circumstances.

As noted in the 1999 Statement of Decision, the Commission recognized that the adverse comment could be considered a written reprimand or could lead to other punitive actions taken by the employer. If the adverse comment results in a dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer or the comment harms an officer’s reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause of the state and federal constitutions.¹⁰⁶ Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in

¹⁰⁴ However, any party may file a request to amend the parameters and guidelines pursuant to the authority in Government Code section 17557.

¹⁰⁵ The Commission found that notice is required since the test claim legislation states that “no peace officer shall have any adverse comment entered in the officer’s personnel file *without the peace officer having first read and signed the adverse comment.*” Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

¹⁰⁶ *Hopson, supra*, 139 Cal.App.3d 347.

providing notice and an opportunity to respond do not impose “costs mandated by the state”. The Commission finds that this finding is consistent with *San Diego Unified School Dist.* since the local entity would be required, in the absence of the test claim legislation, to perform these activities to comply with federal due process procedures.¹⁰⁷

However, the Commission found that under circumstances where the adverse comment affects the officer’s property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* specifically required by the case law interpreting the due process clause:

- obtaining the signature of the peace officer on the adverse comment, or
- noting the peace officer’s refusal to sign the adverse comment and obtain the peace officer’s signature or initials under such circumstances.

The Commission approved these two procedural activities since they were not expressly articulated in case law interpreting the due process clause and, thus, exceed federal law. The City of Sacramento contends that these activities remain reimbursable.

The Commission finds, however, that the decision in *San Diego Unified School Dist.* requires that these notice activities be denied pursuant to Government Code section 17556, subdivision (c), since they are “part and parcel” to the federal due process mandate, and result in “de minimis” costs to local government.

In *San Diego Unified School Dist.*, the Supreme Court held that in situations when a local discretionary decision triggers a federal constitutional mandate such as the procedural due process clause, “the challenged state rules or procedures that are intended to implement an applicable federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate.”¹⁰⁸ Adopting the reasoning of *County of Los Angeles II*, the court reasoned as follows:

In *County of Los Angeles II*, supra 32 Cal.App.4th 805 [unofficial cite omitted], the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they do not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal

¹⁰⁷ *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 888-889.

¹⁰⁸ *Id.* at page 890.

mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c). We reach the same conclusion here.¹⁰⁹

The Commission finds that obtaining the officer's signature on the adverse comment or indicating the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause, are designed to prove that the officer was on notice about the adverse comment. Since providing notice is already guaranteed by the due process clause of the state and federal constitutions under these circumstances, the Commission finds that the obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment is part and parcel of the federal notice mandate and results in "de minimis" costs to local government.

Therefore, the Commission finds that, under current law, the Commission's conclusion that obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause is not a new program or higher level of service and does not impose costs mandated by the state. Thus, the Commission denies reimbursement for these activities.

Finally, the courts have been clear that an officer's rights under Government Code sections 3305 and 3306 are not limited to situations where the adverse comment results in a punitive action where the due process clause may apply. Rather, an officer's rights are triggered by the entry of "any" adverse comment in a personnel file, "or any other file used for personnel purposes," that may serve as a basis for affecting the status of the employee's employment.¹¹⁰ In explaining the point, the Third District Court of Appeal stated: "[E]ven though an adverse comment does not directly result in punitive action, it has the potential for creating an adverse impression that could influence future personnel decisions concerning an officer, including decisions that do not constitute discipline or punitive action."¹¹¹ Thus, the rights under sections 3305 and 3306 also apply to uninvestigated complaints. Under these circumstances (where the due process clause does not apply), the Commission determined that the Legislature, in statutes enacted before the test claim legislation, established procedures for different local public employees similar to the protections required by Government Code sections 3305 and 3306. Thus, the Commission found no new program or higher level of service to the extent the requirements existed in prior statutory law. The Commission approved the test claim for the activities required by the test claim legislation that were not previously required under statutory law.¹¹² Neither *San Diego Unified School Dist.*, nor any other

¹⁰⁹ *Id.* at page 889.

¹¹⁰ *Sacramento Police Officers Assn. v. Venegas* (2002) 101 Cal.App.4th 916, 925.

¹¹¹ *Id.* at page 926.

¹¹² For example, for counties, the Commission approved the following activities that were not required under prior statutory law:

If an adverse comment is related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

case, conflicts with the Commission's findings in this regard. Therefore, the Commission finds that the denial of activities following the receipt of an adverse comment that were required under prior statutory law, and the approval of activities following the receipt of an adverse comment that were *not* required under prior statutory law, was legally correct.

CONCLUSION

The Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

-
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

If an adverse comment is not related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause¹¹³ does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

¹¹³ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

Exhibit F

189

194

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PROPOSED AMENDMENT TO
THE PARAMETERS AND GUIDELINES
FOR THE TEST CLAIM ON:

Government Code Sections 3301, 3303,
3304, 3305, 3306

As Added and Amended by Statutes of 1976,
Chapter 465; Statutes of 1978, Chapters 775,
1173, 1174, and 1178; Statutes of 1979,
Chapter 405; Statutes of 1980, Chapter 1367;
Statutes of 1982, Chapter 994; Statutes of
1983, Chapter 964; Statutes of 1989, Chapter
1165; and Statutes of 1990, Chapter 675

Filed on June 25, 2007 by the County of Los
Angeles, Claimant.

No. 06-PGA-06 [05-RL-4499-01 (4499)]

Peace Officers Procedural Bill of Rights

ADOPTION OF PARAMETERS AND
GUIDELINES AMENDMENT PURSUANT TO
GOVERNMENT CODE SECTION 17557 AND
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.2

(Adopted on March 28, 2008)

PARAMETERS AND GUIDELINES

On March 28, 2008, the Commission on State Mandates adopted the attached Parameters
and Guidelines Amendment.

Dated: April 4, 2008

PAULA HIGASHI, Executive Director

Adopted: July 27, 2000
Corrected: August 17, 2000
Amended: December 4, 2006
Amended: March 28, 2008

AMENDED PARAMETERS AND GUIDELINES

Government Code Sections 3301, 3303, 3304, 3305, 3306

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982,
Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

05-RL-4499-01(4499)

06-PGA-06

BEGINNING IN FISCAL YEAR 2006-2007

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision, which found that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause² does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities and reasonable reimbursement methodology in this parameters and guidelines amendment begin on July 1, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim for that fiscal year.
2. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 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.

Reimbursable costs for one fiscal year shall be included in each claim. If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

² Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, an eligible claimant may file a reimbursement claim based on the reasonable reimbursement methodology described in Section V A. or for actual costs, as described in Section V. B.

For each eligible claimant, the following activities are reimbursable:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status report of mandate-reimbursable POBOR activities. "Updating the status report of mandate-reimbursable POBOR-activities" means tracking the procedural status of the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

B. Administrative Appeal

1. The administrative appeal activities listed below apply to permanent peace officer employees as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers.³

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - Transfer of permanent-employees for purposes of punishment;
 - Denial of promotion for permanent-employees for reasons other than merit; and
 - Other actions against permanent employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative body.

³ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.

- f. The cost of witness fees.
- g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are **not** reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the peace officer.
- d. Litigating the final administrative decision.

2. Providing the opportunity for, and the conduct of an administrative appeal hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). (Gov. Code, § 3304, subd. (b).)

The following activities and costs are reimbursable:

- a. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- b. Legal review and assistance with the conduct of the administrative appeal hearing.
- c. Preparation and service of subpoenas.
- d. Preparation and service of any rulings or orders of the administrative body.
- e. The cost of witness fees.
- f. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are **not** reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the chief of police.
- d. Litigating the final administrative decision.

C. Interrogations

The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)⁴

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Preparation and review of overtime compensation requests are reimbursable.

2. Providing notice to the peace officer before the interrogation. The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. The notice shall inform the peace officer of the nature of the investigation. (Gov. Code, § 3303, subs. (b) and (c).)

The following activities relating to the notice of interrogation are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.
 - b. Identification of the interrogating officers to include in the notice of interrogation.
 - c. Preparation of the notice.
 - d. Review of notice by counsel.
 - e. Providing notice to the peace officer prior to interrogation.
3. Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

⁴ Interrogations of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers are not reimbursable. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

The cost of media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn peace officers are **not** reimbursable.

4. Providing the peace officer employee with access to the recording prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - a. The further proceeding is not a disciplinary action;
 - b. The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
 - c. The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - d. The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - e. The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

The cost of media copying is reimbursable.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):
 - a) When the investigation does not result in disciplinary action; and
 - b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Review of the complaints, notes or recordings for issues of confidentiality by law enforcement, human relations or counsel; and the cost of processing, service and retention of copies are reimbursable.

The following activities are **not** reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. (Gov. Code, §§ 3305 and 3306.):⁵

School Districts

- (a) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
 1. Obtaining the signature of the peace officer on the adverse comment; or
 2. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

⁵ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

Counties

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
1. Providing notice of the adverse comment: and
 2. Obtaining the signature of the peace officer on the adverse comment; or
 3. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to respond to the adverse comment within 30 days; and
 3. Obtaining the signature of the peace officer on the adverse comment; or
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are **not** reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

V. CLAIM PREPARATION AND SUBMISSION

Claimants may be reimbursed for the Reimbursable Activities described in Section IV above by claiming costs mandated by the state pursuant to the reasonable reimbursement methodology or by filing an actual cost claim, as described below:

A. Reasonable Reimbursement Methodology

The Commission is adopting a *reasonable reimbursement methodology* to reimburse local agencies and school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV above.

1. Definition

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a *reasonable reimbursement methodology* shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year,

the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

- (e) A reasonable reimbursement methodology may be developed by any of the following:
 - (1) The Department of Finance.
 - (2) The Controller.
 - (3) An affected state agency.
 - (4) A claimant.
 - (5) An interested party.

2. Formula

The reasonable reimbursement methodology shall allow each eligible claimant to be reimbursed at the rate of \$ 37.25 per full-time sworn peace officer employed by the agency for all direct and indirect costs of performing the activities, as described in Section IV, Reimbursable Activities.

The rate per full-time sworn peace officer shall be adjusted each year by the Implicit Price Deflator referenced in Government Code section 17523.

Reimbursement is determined by multiplying the rate per full time sworn peace officer for the appropriate fiscal year by the number of full time sworn peace officers employed by the agency and reported to the Department of Justice.

B. ACTUAL COST CLAIMS

Although the Commission adopted a reasonable reimbursement methodology for this mandated program, any eligible claimant may instead choose to file a reimbursement claim based on actual costs.

Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 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 and benefit costs when an activity is task-repetitive. 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 above. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

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 above. Additionally, each reimbursement claim must be filed in a timely manner.

1. Direct Cost Reporting

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

a. 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.

b. 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.

c. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. 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. 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.

d. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

e. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time

according to the rules of cost element B. 1. a. Salaries and Benefits, for each applicable reimbursable activity.

f. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1.a, Salaries and Benefits, and B.1.b, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.1.c, Contracted Services.

2. Indirect Cost Rates

a. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- i. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be

expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or

ii The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

b. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results 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 include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

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

c. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

d. Community College Districts

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁶ 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

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 application of a reasonable reimbursement methodology must also 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 OTHER REIMBURSEMENTS

Any offsets 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 received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4499-01) 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 for the test claim. The administrative record, including the Statement of Decision and the Statement of Decision on Reconsideration, is on file with the Commission.

Exhibit G

206

211

OFFICE OF THE STATE CONTROLLER
STATE MANDATED COSTS CLAIMING INSTRUCTIONS NO. 2008-08
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR)
LOCAL AGENCIES
BEGINNING IN FISCAL YEAR 2006-2007

JUNE 3, 2008

In accordance with Government Code (GC) section 17561, eligible claimants may submit claims to the State Controller's Office (SCO) for reimbursement of costs incurred for state mandated cost programs. The following are claiming instructions and forms that eligible claimants will use for filing claims for the POBOR program. These claiming instructions are issued subsequent to adoption of the program's Parameters and Guidelines (P's & G's) by the Commission on State Mandates (CSM).

On April 26, 2006, CSM reviewed its original findings and adopted a Statement of Decision on reconsideration which determined that the test claim legislation established costs mandated by the State according to the provisions listed in the P's & G's. For your reference, the P's & G's are included as an integral part of the claiming instructions.

Limitations and Exceptions

The following activities are not reimbursable:

IV. REIMBURSABLE ACTIVITIES

A. Administrative Activities (Ongoing)

Maintaining or updating cases, setting up, reviewing, evaluating, and closing cases. (See page 5 of the P's and G's).

B. Administrative Appeal

The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers. (See page 5 of the P's and G's).

The following activities related to administrative appeals are not reimbursable:

- a. Investigating charges;
- b. Writing and reviewing charges;
- c. Imposing disciplinary or punitive action against the peace officer or chief of police;
- d. Litigating the final administrative decision.

C. Interrogation

The following activities related to interrogations are not reimbursable:

1. Interrogation of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers. (See footnote on page 7 of the P's and G's).
2. When an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (See page 7 of the P's and G's).
3. The investigator's time to record the session and transcription costs of non-sworn peace officers.
4. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint file, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
5. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
6. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
7. Closing the file, including the preparation of a case summary disposition report and attending executive review or committee hearings related to the investigation.

D. Adverse Comment

The following activities related to adverse comments are not reimbursable:

1. Adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers. (See footnote on page 9 of the P's and G's).
2. Investigating a complaint;
3. Interviewing a complainant;
4. Preparing a complaint investigation report.

Claim Preparation and Submission

Claimants may be reimbursed for the activities described in Section IV of the P's and G's by using the reasonable reimbursement methodology or by filing an actual cost claim.

A. Reasonable Reimbursement Methodology

This method allows each eligible claimant to be reimbursed at the rate of \$37.25 per full-time sworn peace officer employed by the agency and includes all direct and indirect costs of performing the activities described in Section IV, Reimbursable Activities, in the P's and G's. This rate will be adjusted annually by the Implicit Price Deflator (IPD).

B. Actual Cost Method

Actual costs are those costs incurred to implement the mandated activities. These costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at, or near, the same time the actual cost was incurred for the event or activity in question.

Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts. Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. It may also 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 and benefit costs when an activity is repetitive. Time study usage is subject to the review and audit conducted by SCO.

Eligible Claimants

Any city, county, or special district that employs peace officers and incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of these costs.

Filing Deadlines

A. Reimbursement Claims

Initial reimbursement claims must be filed within 120 days from the issuance date of the claiming instructions. Costs incurred for compliance with this mandate are reimbursable for fiscal year 2006-2007 and beyond. Claims for the 06-07 fiscal year must be filed with SCO and be delivered or postmarked on or before **October 1, 2008**. Claims for fiscal year 2007-08 must be filed with SCO and be delivered or postmarked on or before **February 17, 2009**, before a late fee is assessed. **Claims filed more than one year after the deadline will not be accepted.**

B. Late Penalty

GC Section 17568 as amended by Chapter 6, Statutes of 2008, states that if a local agency submits a reimbursement claim to SCO after the deadline as specified in GC Section 17560, the Controller shall reduce the reimbursement claim in an amount equal to 10 percent of the amount that would have been allowed had the reimbursement claim been timely filed, provided that the amount of this reduction shall not exceed ten thousand dollars (\$10,000).

C. Estimated Claims

Pursuant to AB 8, Chapter 6, Statutes of 2008, the option to file estimated reimbursement claims has been eliminated. Therefore, estimated claims filed on or after February 16, 2008, will not be accepted by SCO.

Minimum Claim Cost

GC section 17564(a) provides that no claim shall be filed pursuant to Sections 17551 and 17561, unless such claim exceeds one thousand dollars (\$1,000).

Certification of Claim

In accordance with the provisions of GC section 17561, an authorized officer of the claimant shall be required to provide a certification of claim 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 the Code of Civil Procedure section 2015.5, for those costs mandated by the State and contained herein.

Audit of Costs

All claims submitted to SCO are reviewed to determine if costs are related to the mandate, are reasonable and not excessive, and the claim was prepared in accordance with SCO's claiming instructions and the P's & G's adopted by CSM. If any adjustments are made to a claim, a "Notice of Claim Adjustment" specifying the claim component adjusted, the amount adjusted, and the reason for the adjustment, will be mailed within 30 days after payment of the claim.

Pursuant to GC section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency for this mandate is subject to the initiation of an audit by SCO no later than three years after the date that the actual reimbursement claim was filed or last amended, whichever is later. However, if no funds are appropriated or no payment was made to a claimant for the program for the fiscal year for which the claim was filed, the time for SCO 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 no later than two years after the date that the audit was initiated. All documents used to support the reimbursable activities must be retained during the period subject to audit. If an audit has been initiated by SCO during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings. On-site audits will be conducted by SCO as deemed necessary.

Retention of Claiming Instructions

The claiming instructions and forms in this package should be retained permanently in your Mandated Cost Manual for future reference and use in filing claims. These forms should be

duplicated to meet your filing requirements. You will be notified of updated forms or changes to claiming instructions as necessary.

Questions, or requests for hard copies of these instructions, should be faxed to Angie Lowi-Teng at (916) 323-6527 or e-mailed to ateng@sco.ca.gov. Or, if you wish, you may call Angie of the Local Reimbursements Section at (916) 323-0706.

For your reference, these and future mandated costs claiming instructions and forms can be found on the Internet at www.sco.ca.gov/ard/local/mancost/index.shtml.

Address for Filing Claims

Claims should be rounded to the nearest dollar. Submit a signed original and a copy of form FAM-27, Claim for Payment, and all other forms and supporting documents.

To expedite the payment process, please sign the form in blue ink, and attach a copy of the form FAM-27 to the top of the claim package.

Use the following mailing addresses:

If delivered by
U.S. Postal Service:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

If delivered by
other delivery services:

Office of the State Controller
Attn: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

And filed December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM – 4499

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

(Adopted on July 27, 2000)

ADOPTED PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.

PAULA HIGASHI, Executive Director

PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;

- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and

- b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days;
and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment: and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days;
and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days;
and
 - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. 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, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) LOCAL AGENCIES			For State Controller Use Only (19) Program Number 00187 (20) Date Filed (21) LRS Input	PROGRAM 187
(01) Claimant Identification Number			Reimbursement Claim Data	
(02) Claimant Name			(22) FORM-1, (03)	
Address			(23) FORM-1, (05)(A)(g)	
			(24) FORM-1, (05)(B)(g)	
			(25) FORM-1, (05)(C)(g)	
Type of Claim	Estimated Claim	Reimbursement Claim	(26) FORM-1, (05)(D)(g)	
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(27) FORM-1, (07)	
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) FORM-1, (09)	
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) FORM-1, (10)	
Fiscal Year of Cost	(06)	(12)	(30) FORM-1, (11)	
Total Claimed Amount	(07)	(13)	(31)	
Less: 10% Late Penalty (refer to claiming instructions)			(14)	(32)
Less: Prior Claim Payment Received			(15)	(33)
Net Claimed Amount			(16)	(34)
Due from State	(08)	(17)	(35)	
Due to State		(18)	(36)	
(37) CERTIFICATION OF CLAIM				
In accordance with the provisions of Government Code § 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.				
I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein; and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.				
The amounts for the Reimbursement Claim are hereby claimed from the State for payment of actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.				
Signature of Authorized Officer			Date	
_____			_____	
Type or Print Name			Title	
(38) Name of Contact Person for Claim			Telephone Number	
_____			_____	
			E-mail Address	
_____			_____	

Program 187	PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) LOCAL AGENCIES Certification Claim Form Instructions	FORM FAM-27
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- (01) Enter the payee number assigned by the State Controller's Office.
- (02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.
- (03) Leave blank.
- (04) Leave blank.
- (05) Leave blank.
- (06) Leave blank.
- (07) Leave blank.
- (08) Leave blank.
- (09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.
- (10) If filing a combined reimbursement claim on behalf of districts within the county, enter an "X" in the box on line (10) Combined.
- (11) If filing an amended reimbursement claim, enter an "X" in the box on line (11) Amended.
- (12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.
- (13) Enter the amount of the reimbursement claim from Form-1, line (12). The total claimed amount must exceed \$1,000.
- (14) Actual claims for 06-07 must be filed by **October 1, 2008**, otherwise the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), not to exceed \$1,000.
- (15) If filing a reimbursement claim or a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.
- (16) Enter the result of subtracting line (14) and line (15) from line (13).
- (17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.
- (18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.
- (19) to (21) Leave blank.
- (22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (36) for the reimbursement claim, e.g., Form-1, (05)(A)(g), means the information is located on Form-1, block (05)(A), column (g). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**
- (37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**
- (38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) LOCAL AGENCIES CLAIM SUMMARY	FORM 1					
(01) Claimant		(02) Fiscal Year ____ / ____					
Claim Statistics							
(03) Number of full-time sworn peace officers employed by the agency during this fiscal year							
Flat Rate Method							
(04) Total Cost		[Line (03) X \$39.31 for 07-08 fiscal year] [Enter total on line (09)]					
Actual Cost Method							
Direct Costs	Object Accounts						
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
(05) Reimbursable Activities	Salaries	Benefits	Materials And Supplies	Contract Services	Fixed Assets	Travel And Training	Total
A. Administrative Activities							
B. Administrative Appeal							
C. Interrogations							
D. Adverse Comment							
(06) Total Direct Costs							
Indirect Costs							
(07) Indirect Cost Rate		[From ICRP or 10%]					%
(08) Total Indirect Costs		[Refer to claiming instructions]					
(09) Total Direct and Indirect Costs		[Refer to claiming instructions]					
Cost Reduction							
(10) Less: Offsetting Savings							
(11) Less: Other Reimbursements							
(12) Total Claimed Amount		[Line (09) - {(line (10) + line (11))}]					

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) LOCAL AGENCIES CLAIM SUMMARY	FORM 1
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- (01) Enter the name of the claimant.
- (02) Enter the fiscal year of claim.
- (03) Enter the number of full-time sworn peace officers who were employed by the agency during the fiscal year of claim.
- (04) Total Cost. Multiply the number of peace officers from line (03) by the flat rate for the total cost, and enter the result on line (09).
- (05) Reimbursable Activities. For each reimbursable activity, enter the total from form 2, line (05), columns (d) through (i) to form 1, block (04), columns (a) through (f) in the appropriate row. Total each row.
- (06) Total Direct Costs. Total columns (a) through (g).
- (07) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits, without preparing an ICRP. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim.
- (08) Total Indirect Costs. If the 10% flat rate is used for indirect costs, multiply Total Salaries, line (06)(a), by the Indirect Cost Rate, line (07). If an ICRP is submitted and both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (06)(a), and Total Benefits, line (06)(b), by the Indirect Cost Rate, line (07). If more than one department is reporting costs, each must have its own ICRP for the program.
- (09) Total Direct and Indirect Costs. **Flat Rate Method:** Enter the total from line (04).

Actual Cost Method: Enter the sum of Total Direct Costs, line (06)(g), and Total Indirect Costs, line (08).
- (10) Less: Offsetting Savings. If applicable, enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.
- (11) Less: Other Reimbursements. If applicable, enter the amount of other reimbursements received from any source including, but not limited to, service fees collected, federal funds, and other state funds, that reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.
- (12) Total Claimed Amount. Line (09) less the sum of line (10) plus line (11). Enter the total on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) LOCAL AGENCIES ACTIVITY COST DETAIL	FORM 2
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(01) Claimant	(02) Fiscal Year
---------------	------------------

(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Interrogations
<input type="checkbox"/> Administrative Appeal	<input type="checkbox"/> Adverse Comment

(04) Description of Expenses			Object Accounts					
(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	(f) Materials And Supplies	(g) Contract Services	(h) Fixed Assets	(i) Travel And Training

(05) Total	Subtotal	Page: ___ of ___						
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Program 187	PEACE OFFICERS PROCEDURAL BILL OF RIGHTS (POBOR) LOCAL AGENCIES ACTIVITY COST DETAIL Instructions	FORM 2
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For Actual Cost Method Use Only.

- (01) Claimant. Enter the name of the claimant.
- (02) Fiscal Year. Enter the fiscal year for which costs were incurred.
- (03) Reimbursable Activities. Check the box that indicates the activity being claimed. Check only one box per form. A separate Form 2 shall be prepared for each activity.
- (04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the activity box "checked" in block (03), enter the employee names, position titles, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, and travel and training expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than three years after the date the claim was filed or last amended, whichever is later. If no funds were appropriated and no payment was made at the time the claim was filed, the time for the Controller to initiate an audit shall be from the date of initial payment of the claim. Such documents shall be made available to SCO on request.

Object/ Sub object Accounts	Columns									Submit supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	
Salaries	Employee Name & Title	Hourly Rate	Hours Worked	Salaries= Hourly Rate x Hours Worked						
Benefits	Activities Performed	Benefit Rate			Benefits+ Benefit Rate X Salaries					
Materials and Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost= Unit Cost X Quantity Used				
Contract Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service				Cost=Hourly Rate x Hours Worked or Total Contract Cost			Copy of Contract and Invoices
Fixed Assets	Description of Equipment Purchased	Unit Cost	Usage					Cost=Unit Cost x Usage		
Travel and Training	Purpose of Trip Name and Title Departure and Return Date	Per Diem Rate Mileage Rate Travel Cost	Days Miles Travel Mode						Total Travel=Rate x Days or Miles	
Training	Employee Name and Title Name of Class		Dates Attended						Registration Fee	

- (05) Total line (04), columns (d) through (i) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed to detail the activity costs, number each page. Enter totals from line (05), columns (d) through (i) to form 1, block (04), columns (a) through (f) in the appropriate row.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,
Chapter 465; Statutes 1978, Chapters 775, 1173,
1174, and 1178; Statutes 1979, Chapter 405;
Statutes 1980, Chapter 1367; Statutes 1982,
Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313,
Statutes 2005, chapter 72, section 6
(Assem. Bill (AB) No. 138),
Effective July 19, 2005.

Case No.: 05-RL-4499-01

Peace Officer Procedural Bill of Rights

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

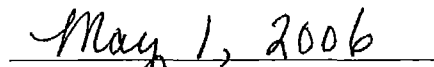
(Adopted on April 26, 2006)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby
adopted in the above-entitled matter.



PAULA HIGASHI, Executive Director



Date

Exhibit H

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS

For State Controller Use Only

(19) Program Number 00187

(20) Date Filed ___/___/___

(21) LRS Input ___/___/___

Program
187

(01) Claimant Identification Number 9943		Reimbursement Claim Data		
(02) Claimant Name 70 West Hedding Street, East Wing		(22) PPBR-1,(03)(a)		23
County of Location Santa Clara		(23) PPBR-1,(03)(b)		6
Street Address or P.O. Box 2nd Floor		(24) PPBR-1,(03)(c)		28
City San Jose	State CA	Zip Code 95110	(25) PPBR-1,(03)(d)	1
Type of Claim	Estimated Claim	Reimbursement Claim	(26) PPBR-1,(04)(1)(e)	23,522
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27) PPBR-1,(04)(2)(e)	1,204
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) PPBR-1,(04)(3)(e)	58,917
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) PPBR-1,(04)(4)(e)	25,256
Fiscal Year of Cost of Cost	(06) 2004-5005	(12) 2003-2004	(30) PPBR-1,(06)	SEE ICRP SUMMARY
Total Claimed Amount	(07) \$153,980	(13) \$153,980	(31) PPBR-1,(07)	45,082
LESS: 10% Late Penalty		(14)	(32) PPBR-1,(09)	
LESS: Estimated Claim Payment Received		(15)	(33) PPBR-1,(10)	
Net Claimed Amount		(16) \$153,980	(34)	
Due from State	(08) \$153,980	(17) \$153,980	(35)	
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer _____ Date _____

Ram Venkatesan _____ **SB 90 Coordinator**
 Print or type name Title

(38) Name of Contact Person for Claim
 Telephone Number **(916) 485-8102**
Ferlyn Junio (MAXIMUS, Inc.) _____
 E-mail Address _____

MULTIPLE DEPARTMENT CLAIM (Sheriff, DA, Probation & Other)

SB90 CLAIMING BASIC DATA

**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
Chapter 465, Statutes of 1976**

Claimant ID Number: 9943
Claimant Name: County of Santa Clara
County: Santa Clara
Address: 70 West Hedding Street, East Wing
Street: 2nd Floor
City: San Jose
Zip Code: 95110

TYPE OF CLAIM

Reimbursement Claim:	(tag with an "X")	Estimated Claim:	(tag with an "X")
Reimbursement	<input checked="" type="checkbox"/>	Estimated	<input checked="" type="checkbox"/>
Combined	<input type="checkbox"/>	Combined	<input type="checkbox"/>
Amended	<input type="checkbox"/>	Amended	<input type="checkbox"/>

Actual Fiscal Year: 2003-2004
Estimated Fiscal Year: 2004-5005

Contact Name: Ferlyn Junio (MAXIMUS, Inc.)
Phone Number: (916) 485-8102

Auth. Representative: Ram Venkatesan
Title: SB 90 Coordinator
E-Mail Address:
Date:

INDIRECT COST RATE PROPOSAL (ICRP)

ICRP Rate **Salaries Only** **Salaries & Ben.**
(enter rate) (tag with an "X") (tag with an "X")

* See ICRP SUMMARY WORKSHEET at end of workbook

PRODUCTIVE HOURS	1560.65
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CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 PEACE OFFICERS PROCEDURAL BILL OF RIGHTS			For State Controller Use Only		Program 187
			(19) Program Number 00187	(20) Date Filed ___/___/___	
(01) Claimant Identification Number 9943			Reimbursement Claim Data		
(02) Claimant Name 70 West Hedding Street, East Wing			(22)	PPBR-1,(03)(a)	23
County of Location Santa Clara			(23)	PPBR-1,(03)(b)	6
Street Address or P.O. Box 2nd Floor			(24)	PPBR-1,(03)(c)	28
City San Jose			(25)	PPBR-1,(03)(d)	1
State CA					
Zip Code 95110					
Type of Claim	Estimated Claim	Reimbursement Claim	(26)	PPBR-1,(04)(1)(e)	23,522
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)	PPBR-1,(04)(2)(e)	1,204
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)	PPBR-1,(04)(3)(e)	58,917
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Fiscal Year of Cost of Cost	(06) 2004-5005	(12) 2003-2004	(30)	PPBR-1,(06)	SEE ICRP SUMMARY
Total Claimed Amount	(07) \$153,980	(13) \$153,980	(31)	PPBR-1,(07)	45,082
LESS: 10% Late Penalty		(14)	(32)	PPBR-1,(09)	
LESS: Estimated Claim Payment Received		(15)	(33)	PPBR-1,(10)	
Net Claimed Amount		(16) \$153,980	(34)		
Due from State	(08) \$153,980	(17) \$153,980	(35)		
Due to State		(18)	(36)		
(37) CERTIFICATION OF CLAIM					
In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.					
I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.					
The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.					
Signature of Authorized Officer			Date		
Ram Venkatesan			SB 90 Coordinator		
Print or type name			Title		
(38) Name of Contact Person for Claim			Telephone Number (916) 485-8102		
Ferlyn Junio (MAXIMUS, Inc.)			E-mail Address		

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY				FORM PPBR-1
(01) Claimant: County of Santa Clara		(02) Fiscal year costs were incurred: 2003-2004			
Claim Statistics					
(03) (a) Number of cases in process at the beginning of the fiscal year				23	
(b) Number of new cases added during the fiscal year				6	
(c) Number of cases completed or closed during the fiscal year				28	
(d) Number of cases in process at the end of the year				1	
Direct Costs					
(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Travel and Training	(e) Total
1. Administrative Activities	\$17,793	\$5,728			\$23,522
2. Administrative Appeal	\$935	\$269			\$1,204
3. Interrogations	\$45,176	\$13,741			\$58,917
4. Adverse Comment	\$19,739	\$5,517			\$25,256
(05) Total Direct Costs	\$83,643	\$25,255			\$108,898
Indirect Costs					
(06) Indirect Cost Rate (From ICRP) Salary and Benefits				SEE ICRP SUMMARY	
(07) Indirect Costs [(Line(06))*(line(05)(a)+line(05)(b))				\$45,082	
(08) Total Direct and Indirect Costs [Line (05)(e) + Line (07)]				\$153,980	
Cost Reductions					
(09) Less Offsetting Savings, if applicable					
(10) Less Other Reimbursements, if applicable					
(11) Total Claimed Amount: {Line(08)- [Line (09) + Line(10)]}				\$153,980	

Revised 09/03

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
Lawrence St. Denis, Sergeant	\$51.15	23.09%	7.25			\$371	\$86	\$456
Robert Schiller, Sergeant	\$64.91	34.02%	5.00			\$325	\$110	\$435
Dorothy Matuzek, Sergeant	\$54.98	33.32%	18.40			\$1,012	\$337	\$1,349
Cathy Watson, Sergeant	\$54.98	30.72%	8.50			\$467	\$144	\$611
Karen Burgess, Sergeant	\$54.98	28.76%	3.60			\$198	\$57	\$255
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()						\$2,372	\$734	\$3,106

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	15.00			\$1,019	\$260	\$1,279
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	15.00			\$974	\$332	\$1,305
M. Avila, Criminal Investigator	\$57.54	35.79%	15.00			\$863	\$309	\$1,172
G. Cunningham, Criminal Investigator	\$64.91	34.95%	15.00			\$974	\$340	\$1,314
B. Headrick, Criminal Investigator	\$64.91	27.74%	15.00			\$974	\$270	\$1,244
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
J. Perez, Criminal Investigator	\$54.98	38.02%	24.00			\$1,320	\$502	\$1,821
S. Reinhardt, Criminal Investigator	\$57.54	35.83%	24.00			\$1,381	\$495	\$1,876
W. Vidmar, Criminal Investigator	\$67.93	25.52%	24.00			\$1,630	\$416	\$2,046
M. Avila, Criminal Investigator	\$57.54	35.79%	24.00			\$1,381	\$494	\$1,875
L. Evans, Criminal Investigator	\$57.54	26.97%	24.00			\$1,381	\$372	\$1,753
J. McMullen, Criminal Investigator	\$56.26	36.14%	24.00			\$1,350	\$488	\$1,838
Attended training related to POBAR.								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	6.00			\$408	\$104	\$512
Maintained and updated the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total () Subtotal ()	Page: ____ of ____			\$13,654	\$4,382	\$18,036
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
Supervising Probation Officer (9) Attended a four-hour training related to POBAR on 12/10/03 provided by the Probation department. See the attached roster and course description.	\$49.08	34.66%	36.00			\$1,767	\$612	\$2,379
(05) Total () Subtotal ()						\$1,767	\$612	\$2,379

The agency named above has made every effort not to include costs relating to the "Skelly Process".

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()		Page: ____ of ____						

Revised 09/03

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts					
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
SHERIFF COSTS									
Karen Burgess, Sergeant Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.	\$54.98	28.76%	17.00			\$935	\$269	\$1,204	
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total () Subtotal ()				Page: _____ of _____		\$935	\$269	\$1,204	

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()								

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total () Subtotal ()

Page: ____ of ____

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
Lawrence St. Denis, Sergeant	\$51.15	23.09%	96.25			\$4,923	\$1,137	\$6,060
Robert Schiller, Sergeant	\$64.91	34.02%	18.00			\$1,168	\$398	\$1,566
Dorothy Matuzek, Sergeant	\$54.98	33.32%	89.46			\$4,919	\$1,639	\$6,558
Cathy Watson, Sergeant	\$54.98	30.72%	87.50			\$4,811	\$1,478	\$6,289
Karen Burgess, Sergeant	\$54.98	28.76%	26.40			\$1,452	\$417	\$1,869
Deputy Sheriff	\$40.05	38.68%	9.50			\$380	\$147	\$528
Interrogations-(Sworn-officer's only) Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers. (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()				Page: ____ of ____		\$17,653	\$5,216	\$22,869

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS								
G. Cunningham, Criminal Investigator	\$64.91	34.95%	5.50			\$357	\$125	\$482
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.50			\$227	\$77	\$305
M. Lane, Criminal Investigator	\$64.91	32.71%	8.00			\$519	\$170	\$689
K. Smith, Criminal Investigator	\$64.91	29.74%	10.50			\$682	\$203	\$884
P. Campbell, Criminal Investigator Interrogating a peace officer.	\$64.91	29.18%	1.00			\$65	\$19	\$84
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	30.50			\$1,980	\$674	\$2,654
K. Smith, Criminal Investigator	\$64.91	29.74%	19.50			\$1,266	\$376	\$1,642
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.50			\$227	\$66	\$293
G. Cunningham, Criminal Investigator	\$64.91	34.95%	38.00			\$2,467	\$862	\$3,329
M. Lane, Criminal Investigator Notify officer prior to the interrogation the nature of the interrogation and identifying the investigating officers. (This includes the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)	\$64.91	32.71%	20.00			\$1,298	\$425	\$1,723
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ()	Subtotal ()	Page: _____ of _____			\$9,088	\$2,997	\$12,085
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION DEPARTMENT								
Jim Tarshis, Group Counselor	\$49.84	31.11%	115.00			\$5,732	\$1,783	\$7,515
Cathy Shields, Probation Manager	\$63.03	28.28%	7.00			\$441	\$125	\$566
Alicia Garcia, Supv., Group Counselor	\$49.84	31.11%	25.50			\$1,271	\$395	\$1,666
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	66.00			\$3,289	\$879	\$4,168
Rita Loncarich, Probation Manager	\$64.88	27.98%	15.00			\$973	\$272	\$1,246
Review of the complaints and documents; prepare the notice of interrogation; determine the investigating officers; and redaction of agency complaint for names of the complainant and witness.								
Jim Tarshis, Group Counselor	\$49.84	31.11%	126.00			\$6,280	\$1,954	\$8,233
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	9.00			\$449	\$120	\$568
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()				Page: _____ of _____		\$18,435	\$5,528	\$23,963

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<i>Interrogations-(Sworn-officer's only)</i> <u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()								

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
Lawrence St. Denis, Sergeant	\$51.15	23.09%	62.00			\$3,171	\$732	\$3,903
Robert Schiller, Sergeant	\$64.91	34.02%	7.00			\$454	\$155	\$609
Dorothy Matuzek, Sergeant	\$54.98	33.32%	23.25			\$1,278	\$426	\$1,704
Cathy Watson, Sergeant	\$54.98	30.72%	51.50			\$2,832	\$870	\$3,702
Karen Burgess, Sergeant	\$54.98	28.76%	14.00			\$770	\$221	\$991
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()				Page: ____ of ____		\$8,505	\$2,404	\$10,909

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	3.00			\$204	\$52	\$256
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.00			\$195	\$66	\$261
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.00			\$195	\$57	\$252
G. Cunningham, Criminal Investigator	\$64.91	34.95%	4.00			\$260	\$91	\$350
Time to review circumstances or documentation of adverse comments, notification and presentations of comments.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()						\$853	\$266	\$1,119

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION DEPARTMENT								
Cathy Shields, Probation Manager	\$63.03	28.28%	20.00			\$1,261	\$356	\$1,617
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	100.00			\$4,984	\$1,332	\$6,316
Rita Loncarich, Probation Manager	\$64.88	27.98%	55.00			\$3,568	\$998	\$4,567
Cathy Shields, Probation Manager	\$63.03	28.28%	9.00			\$567	\$160	\$728
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()						\$10,380	\$2,847	\$13,227

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ()		Subtotal ()		Page: ____ of ____				

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
ICRP Summary**

(01) Claim: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

Indirect Cost Summary Sheet
- By Department -

Department	ICRP		Total Direct		Total Indirect Costs			DEPT. TOTALS
	Base	Percent	Salaries	Benefits	S&W	S&W&B	Total	
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"								
Salaries only		Salaries & Benefits						
Sheriff	S&W&B	32.90%	\$29,466	\$8,622		\$12,531		\$ 50,619
		x						
District Attorney	S&W&B	24.50%	\$23,595	\$7,645		\$7,654		\$ 38,894
		x						
Probation	S&W	81.41%	\$30,582	\$8,987	\$24,897			\$ 64,466
x								
Other	S&W	10.00%						\$ -
x								
							\$45,082	
Check totals on claim summary page:								
Total Service & Supply								
Total Travel & Training								
Salaries			83,643					
Benefits			25,255					
							\$45,082	
Claim total			\$153,980					
			\$ 83,643	\$ 25,255	\$ 24,897	\$20,185		

MULTIPLE DEPARTMENT CLAIM (Sheriff, DA, Probation & Other)

SB90 CLAIMING BASIC DATA

**PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
Chapter 465, Statutes of 1976**

Claimant ID Number: 9943
Claimant Name: County of Santa Clara
County: Santa Clara
Address: 70 West Hedding Street, East Wing
Street: 2nd Floor
City: San Jose
Zip Code: 95110

TYPE OF CLAIM

Reimbursement Claim:	(tag with an "X")	Estimated Claim:	(tag with an "X")
Reimbursement	<input type="checkbox"/>	Estimated	<input type="checkbox"/>
Combined	<input type="checkbox"/>	Combined	<input type="checkbox"/>
Amended	<input checked="" type="checkbox"/>	Amended	<input type="checkbox"/>

Actual Fiscal Year: 2003-2004
Estimated Fiscal Year:

Contact Name: Ferlyn Junio (MAXIMUS, Inc.)
Phone Number: (916) 485-8102

Auth. Representative: Ram Venkatesan
Title: SB 90 Coordinator
E-Mail Address:
Date:

INDIRECT COST RATE PROPOSAL (ICRP)

ICRP Rate (enter rate)	Salaries Only (tag with an "X")	Salaries & Ben. (tag with an "X")
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* See ICRP SUMMARY WORKSHEET at end of workbook

PRODUCTIVE HOURS	1560.65
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CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS

For State Controller Use Only

(19) Program Number 00187

(20) Date Filed ___/___/___

(21) LRS Input ___/___/___

Program

187

(01) Claimant Identification Number 9943		Reimbursement Claim Data		
(02) Claimant Name 70 West Hedding Street, East Wing		(22)	PPBR-1,(03)(a)	23
County of Location Santa Clara		(23)	PPBR-1,(03)(b)	6
Street Address or P.O. Box 2nd Floor		(24)	PPBR-1,(03)(c)	28
City San Jose	State CA	Zip Code 95110	(25)	PPBR-1,(03)(d)
Type of Claim	Estimated Claim	Reimbursement Claim	(26)	PPBR-1,(04)(1)(e)
	(03) Estimated <input type="checkbox"/>	(09) Reimbursement <input type="checkbox"/>	(27)	PPBR-1,(04)(2)(e)
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)	PPBR-1,(04)(3)(e)
	(05) Amended <input type="checkbox"/>	(11) Amended <input checked="" type="checkbox"/>	(29)	PPBR-1,(04)(4)(e)
Fiscal Year of Cost of Cost	(06)	(12)	(30)	SEE ICRP SUMMARY
		2003-2004	PPBR-1,(06)	
Total Claimed Amount	(07)	(13)	(31)	48,409
		\$167,422	PPBR-1,(07)	
LESS: 10% Late Penalty		(14)	(32)	
		\$1,000	PPBR-1,(09)	
LESS: Estimated Claim Payment Received		(15)	(33)	
			PPBR-1,(10)	
Net Claimed Amount		(16)	(34)	
		\$166,422		
Due from State	(08)	(17)	(35)	
		\$166,422		
Due to State		(18)	(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer

Date

Ram Venkatesan

SB 90 Coordinator

Print or type name

Title

(38) Name of Contact Person for Claim

Telephone Number

(916) 485-8102

Ferlyn Junio (MAXIMUS, Inc.)

E-mail Address

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY				FORM PPBR-1
(01) Claimant: County of Santa Clara		(02) Fiscal year costs were incurred: 2003-2004			
Claim Statistics					
(03) (a) Number of cases in process at the beginning of the fiscal year				23	
(b) Number of new cases added during the fiscal year				6	
(c) Number of cases completed or closed during the fiscal year				28	
(d) Number of cases in process at the end of the year				1	
Direct Costs					
(04) Reimbursable Components 1. Administrative Activities 2. Administrative Appeal 3. Interrogations 4. Adverse Comment	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Travel and Training	(e) Total
	\$23,402	\$7,597			\$30,999
	\$935	\$269			\$1,204
	\$46,524	\$14,228			\$60,752
	\$20,335	\$5,723			\$26,059
(05) Total Direct Costs	\$91,196	\$27,817			\$119,013
Indirect Costs					
(06) Indirect Cost Rate (From ICRP) Salary and Benefits				SEE ICRP SUMMARY	
(07) Indirect Costs				[[Line(06)*(line(05)(a)+line(05)(b))	
(08) Total Direct and Indirect Costs				[Line (05)(e) + Line (07)]	
Cost Reductions					
(09) Less Offsetting Savings, if applicable					
(10) Less Other Reimbursements, if applicable					
(11) Total Claimed Amount:				{Line(08)- [Line (09) + Line(10)]}	
				\$167,422	

Revised 09/03

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
Sgt Staats	\$54.98	42.44%	24.00			\$1,320	\$560	\$1,880
Lawrence St. Denis, Sergeant	\$51.15	23.09%	7.25			\$371	\$86	\$456
Robert Schiller, Sergeant	\$64.91	34.02%	5.00			\$325	\$110	\$435
Dorothy Matuzek, Sergeant	\$54.98	33.32%	48.40			\$2,661	\$887	\$3,548
Cathy Watson, Sergeant	\$54.98	30.72%	8.50			\$467	\$144	\$611
Karen Burgess, Sergeant	\$54.98	28.76%	51.60			\$2,837	\$816	\$3,653
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ()	Subtotal ()					\$7,981	\$2,602	\$10,583

Revised 09/03

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	15.00			\$1,019	\$260	\$1,279
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	15.00			\$974	\$332	\$1,305
M. Avila, Criminal Investigator	\$57.54	35.79%	15.00			\$863	\$309	\$1,172
G. Cunningham, Criminal Investigator	\$64.91	34.95%	15.00			\$974	\$340	\$1,314
B. Headrick, Criminal Investigator	\$64.91	27.74%	15.00			\$974	\$270	\$1,244
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
J. Perez, Criminal Investigator	\$54.98	38.02%	24.00			\$1,320	\$502	\$1,821
S. Reinhardt, Criminal Investigator	\$57.54	35.83%	24.00			\$1,381	\$495	\$1,876
W. Vidmar, Criminal Investigator	\$67.93	25.52%	24.00			\$1,630	\$416	\$2,046
M. Avila, Criminal Investigator	\$57.54	35.79%	24.00			\$1,381	\$494	\$1,875
L. Evans, Criminal Investigator	\$57.54	26.97%	24.00			\$1,381	\$372	\$1,753
J. McMullen, Criminal Investigator	\$56.26	36.14%	24.00			\$1,350	\$488	\$1,838
Attended training related to POBAR.								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	6.00			\$408	\$104	\$512
Maintained and updated the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ()	Subtotal ()	Page: _____ of _____				\$13,654	\$4,382	\$18,036
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
Supervising Probation Officer (9) Attended a four-hour training related to POBAR on 12/10/03 provided by the Probation department. See the attached roster and course description.	\$49.08	34.66%	36.00			\$1,767	\$612	\$2,379
(05) Total () Subtotal ()				Page: _____ of _____		\$1,767	\$612	\$2,379

The agency named above has made every effort not to include costs relating to the "Skelly Process".

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()								

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
Karen Burgess, Sergeant Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.	\$54.98	28.76%	17.00			\$935	\$269	\$1,204
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()				Page: _____ of _____		\$935	\$269	\$1,204

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total () Subtotal ()

Page: _____ of _____

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: **County of Santa Clara**

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total () Subtotal ()

Page: ____ of ____

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
Sgt. Tait	\$54.98	41.77%	0.50			\$27	\$11	\$39
Sgt. Stevens	\$54.98	36.60%	0.42			\$23	\$8	\$32
Sgt. Staats	\$54.98	42.44%	3.00			\$165	\$70	\$235
Sgt. Lewis	\$52.35	37.41%	0.33			\$17	\$6	\$24
Deputy Dona	\$49.66	38.31%	0.50			\$25	\$10	\$34
Sgt. Broaumeland	\$46.36	38.68%	0.92			\$43	\$16	\$59
Sgt. Atlas	\$54.98	40.85%	0.33			\$18	\$7	\$26
Lawrence St. Denis, Sergeant	\$51.15	23.09%	96.25			\$4,923	\$1,137	\$6,060
Robert Schiller, Sergeant	\$64.91	34.02%	18.00			\$1,168	\$398	\$1,566
Dorothy Matuzek, Sergeant	\$54.98	33.32%	95.71			\$5,263	\$1,753	\$7,016
Cathy Watson, Sergeant	\$54.98	30.72%	92.50			\$5,086	\$1,562	\$6,648
Karen Burgess, Sergeant	\$54.98	28.76%	26.65			\$1,465	\$421	\$1,887
Deputy Sheriff	\$40.05	38.68%	19.42			\$778	\$301	\$1,079
Interrogations-(Sworn-officer's only) Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers. (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()				Page: _____ of _____		\$19,002	\$5,702	\$24,704

Revised 09/03

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS								
G. Cunningham, Criminal Investigator	\$64.91	34.95%	5.50			\$357	\$125	\$482
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.50			\$227	\$77	\$305
M. Lane, Criminal Investigator	\$64.91	32.71%	8.00			\$519	\$170	\$689
K. Smith, Criminal Investigator	\$64.91	29.74%	10.50			\$682	\$203	\$884
P. Campbell, Criminal Investigator Interrogating a peace officer.	\$64.91	29.18%	1.00			\$65	\$19	\$84
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	30.50			\$1,980	\$674	\$2,654
K. Smith, Criminal Investigator	\$64.91	29.74%	19.50			\$1,266	\$376	\$1,642
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.50			\$227	\$66	\$293
G. Cunningham, Criminal Investigator	\$64.91	34.95%	38.00			\$2,467	\$862	\$3,329
M. Lane, Criminal Investigator Notify officer prior to the interrogation the nature of the interrogation and identifying the investigating officers. This includes the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)	\$64.91	32.71%	20.00			\$1,298	\$425	\$1,723
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ()	Subtotal ()		Page: _____ of _____			\$9,088	\$2,997	\$12,085

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION DEPARTMENT								
Jim Tarshis, Group Counselor	\$49.84	31.11%	115.00			\$5,732	\$1,783	\$7,515
Cathy Shields, Probation Manager	\$63.03	28.28%	7.00			\$441	\$125	\$566
Alicia Garcia, Supv., Group Counselor	\$49.84	31.11%	25.50			\$1,271	\$395	\$1,666
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	66.00			\$3,289	\$879	\$4,168
Rita Loncarich, Probation Manager	\$64.88	27.98%	15.00			\$973	\$272	\$1,246
Review of the complaints and documents; prepare the notice of interrogation; determine the investigating officers; and redaction of agency complaint for names of the complainant and witness.								
Jim Tarshis, Group Counselor	\$49.84	31.11%	126.00			\$6,280	\$1,954	\$8,233
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	9.00			\$449	\$120	\$568
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()						\$18,435	\$5,528	\$23,963

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Interrogations-(Sworn-officer's only)</u>								
<u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total () Subtotal ()

Page: _____ of _____

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
Sgt. Tait	\$54.98	41.77%	0.50			\$27	\$11	\$39
Sgt. Stevens	\$54.98	36.60%	0.17			\$9	\$3	\$13
Sgt. Staats	\$54.98	42.44%	1.08			\$59	\$25	\$85
Sgt. Dona	\$49.66	38.31%	0.25			\$12	\$5	\$17
Sgt. Broaumeland	\$46.36	38.68%	0.75			\$35	\$13	\$48
Sgt. Atlas	\$54.98	40.85%	0.17			\$9	\$4	\$13
Sgt. Babcock	\$53.71	48.66%	0.17			\$9	\$4	\$14
Sgt. Dutra	\$54.98	38.12%	0.25			\$14	\$5	\$19
Sgt. Langley	\$54.98	36.47%	0.25			\$14	\$5	\$19
Sgt. Peterson	\$54.98	42.43%	0.25			\$14	\$6	\$20
Lawrence St. Denis, Sergeant	\$51.15	23.09%	62.00			\$3,171	\$732	\$3,903
Robert Schiller, Sergeant	\$64.91	34.02%	7.00			\$454	\$155	\$609
Dorothy Matuzek, Sergeant	\$54.98	33.32%	25.58			\$1,406	\$469	\$1,875
Cathy Watson, Sergeant	\$54.98	30.72%	55.83			\$3,070	\$943	\$4,013
Karen Burgess, Sergeant	\$54.98	28.76%	14.50			\$797	\$229	\$1,027
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ()	Subtotal ()	Page: ____ of ____	\$9,102	\$2,610	\$11,713
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts							
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS								
W. Vidmar, Criminal Investigator	\$67.93	25.52%	3.00			\$204	\$52	\$256
B. Fraccoli, Criminal Investigator	\$64.91	34.05%	3.00			\$195	\$66	\$261
P. Campbell, Criminal Investigator	\$64.91	29.18%	3.00			\$195	\$57	\$252
G. Cunningham, Criminal Investigator	\$64.91	34.95%	4.00			\$260	\$91	\$350
Time to review circumstances or documentation of adverse comments, notification and presentations of comments.								

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total ()	Subtotal ()	Page: ____ of ____			\$853	\$266	\$1,119
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Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION DEPARTMENT								
Cathy Shields, Probation Manager	\$63.03	28.28%	20.00			\$1,261	\$356	\$1,617
Diana Bishop, Supv. Group Conselor	\$49.84	26.72%	100.00			\$4,984	\$1,332	\$6,316
Rita Loncarich, Probation Manager	\$64.88	27.98%	55.00			\$3,568	\$998	\$4,567
Cathy Shields, Probation Manager	\$63.03	28.28%	9.00			\$567	\$160	\$728
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								
(05) Total ()	Subtotal ()		Page: _____ of _____			\$10,380	\$2,847	\$13,227

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2003-2004
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS: <u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ()	Subtotal ()	Page: ____ of ____
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**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
ICRP Summary**

(01) Claim: County of Santa Clara

(02) Fiscal year costs were incurred:

2003-2004

Indirect Cost Summary Sheet

- By Department -

Department	ICRP		Total Direct		Total Indirect Costs			DEPT. TOTALS
	Base	Percent	Salaries	Benefits	S&W	S&W&B	Total	
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"								
Salaries only								
Salaries & Benefits								
Sheriff	S&W&B	32.90%	\$37,019	\$11,184		\$15,859		\$ 64,062
District Attorney	S&W&B	24.50%	\$23,595	\$7,645		\$7,654		\$ 38,894
Probation	S&W	81.41%	\$30,582	\$8,987	\$24,897			\$ 64,466
Other	S&W	10.00%						\$ -
							\$48,409	
Check totals on claim summary page:								
Total Service & Supply								
Total Travel & Training								
Salaries			91,196					
Benefits			27,817					
							\$48,409	
Claim total			\$167,422					
			\$ 91,196	\$ 27,817	\$ 24,897	\$23,513		

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 PERMANENT ABSENT VOTERS	For State Controller Use Only (19) Program Number 00083 (20) Date Filed ___/___/___ (21) LRS Input ___/___/___	PROGRAM 083
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(01) Claimant Identification Number 9901			Reimbursement Claim Data		
(02) Claimant Name County of Alameda			(22) FORM-1, (04)(A)(1)(d)	0	
County of Location Alameda			(23) FORM-1, (04)(A)(2)(d)	0	
Street Address or P.O. Box 1221 Oak Street		Suite Suite 249	(24) FORM-1, (04)(A)(3)(d)	0	
City Oakland	State CA	Zip Code 94612	(25) FORM-1, (04)(B)(1)(d)	14,430	
			Type of Claim		
			(03)	(09) Reimbursement <input checked="" type="checkbox"/>	(26) FORM-1, (04)(B)(2)(d) 0
			(04)	(10) Combined <input type="checkbox"/>	(27) FORM-1, (04)(B)(3)(d) 0
			(05)	(11) Amended <input type="checkbox"/>	(28) FORM-1, (04)(B)(4)(d) 0
(06)			(29) FORM-1, (06)	2	
Fiscal Year of Cost			(12) 2008-2009	(30) 8,598	
Total Claimed Amount			(13) \$23,028	(31) FORM-1, (09) 0	
Less: 10% Late penalty (refer to attached instructions)			(14)	(32) FORM-1, (10) 0	
Less: Prior Claim Payment Received			(15)	(33) 	
Net Claimed Amount			(16) \$23,028	(34) 	
Due from State			(17) \$23,028	(35) 	
Due to State			(18)	(36) 	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code Section 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Article 4, Chapter 1 of Division 4 of the Title 1 Government Code.

I further certify that there was no application other than from the claimant, nor any grants or payments received for reimbursement of costs claimed herein and claimed costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the parameters and guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amount for this reimbursement is hereby claimed from the State for payment of actual costs set forth on the attached statements.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer

Date Signed _____

Telephone Number

510-272-6565

E-Mail Address

pat.oconnell@acgov.org

Patrick J. O'Connell, Auditor-Controller

Type or Print Name and Title of Authorized Signatory

(38) Name of Agency Contact person for Claim

Telephone Number

510-645-9316

Sherie Peterson

E-Mail Address

sherie.peterson@acgov.org

Name of Consulting Firm / Claim Preparer

Telephone Number

916-669-3583 Ext. 5515

Maximus Allan Burdick

E-Mail Address

allanburdick@maximus.com

CLAIM FOR PAYMENT Pursuant to Governmen		MANDATE COSTS PERMANENT ABSENT VOTERS CLAIM SUMMARY			FORM 1
(01) Claimant County of Alameda		(02) Fiscal Year 2008-2009			
(03) Department					
Direct Costs		Object Accounts			
(04) Reimbursable Activities		(a) Salaries	(b) Benefits	(c) Materials and Supplies	(d) Total
A. Initial - One-Time Activities					
1. Computer Costs					
2. Sample Ballots (Change Format)					
3. Creating Initial Absentee File					
B. Ongoing Activities					
1. Maintenance of Permanent File		\$4,132	\$1,237	\$9,061	\$14,430
2. Increased Postage					
3. Cancellation of Non-Voters/Reinstatement upon Request					
4. Marking PAV Affidavit for Identification					
(05) Total Direct Costs		\$4,132	\$1,237	\$9,061	\$14,430
Indirect Costs					
(06) Indirect Cost Rate		[From ICRP or 10%]			208.10%
(07) Total Indirect Costs		[Refer to Claiming Instructions]			\$8,598
(08) Total Direct and Indirect Costs		[Line (05)(d) + line (07)]			\$23,028
Cost Reduction					
(09) Less: Offsetting Savings					
(10) Less: Other Reimbursements					
(11) Total Claimed Amount		[Line (08) - {line (09) + line (10)}]			\$23,028

CLAIM FOR PAYMENT Pursuant to Government	MANDATED COSTS PERMANENT ABSENT VOTERS ACTIVITY COST DETAIL	FORM 2
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(01) Claimant County of Alameda	(02) Fiscal Year 2008-2009
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(03) Reimbursable Activities: Check only one box per form to identify the activity being claimed.

<p>A. Initial - One-Time Activities</p> <p><input type="checkbox"/> Computer Costs</p> <p><input type="checkbox"/> Sample Ballots (Change Format)</p> <p><input type="checkbox"/> Creating Initial Absentee File</p>	<p>B. Ongoing Activities</p> <p><input checked="" type="checkbox"/> Maintenance of Permanent File</p> <p><input type="checkbox"/> Increased Postage</p> <p><input type="checkbox"/> Cancellation of Non-Voters/Reinstatement upon Request</p> <p><input type="checkbox"/> Marking PAV Affidavit for Identification</p>
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(04) Description of Expenses				Object Accounts			
(a) Employee Names, Job Classifications, Functions Performed, and Description of Expenses	(b) Hourly Rate or Unit Cost	Benefit Rate	(c) Hours Worked or Quantity	(d) Salaries	(e) Benefits	Total Salary and Benefits	(f) Materials and Supplies
			0.37				
<u>Maintaining and Updating PAV File</u>							
Increased costs associated with maintaining and updating the list of Permanent Absent Voters for the November 2008 General Election.							
<u>Regular Hours:</u>							
Lauren Perez, Elections Tech	\$28.45	40.81%	67.50	\$1,920	\$784	\$2,704	
He-Xing Sun, Elections Tech	\$29.92	51.51%	21.00	\$628	\$324	\$952	
<u>San Employees VBM: (Alameda Co Temps)</u>							
Shella Cabradilla, Clerk Intermittent (255 hrs)							\$4,682
Rachel Reyes, Clerk Intermittent (22.50 hrs)							\$413
The above Temps \$18.36/hr							
<u>Agency Temps</u>							
Rachel Escoto (78.75 hrs.)							\$1,798
Jennifer Lee (7.50 hrs.)							\$171
Carmela Lianko (21 hrs.)							\$479
The above Temps \$22.83/hr							
<u>Overtime Hours:</u>							
Lauren Perez, Elections Tech	\$42.67	8.19%	37.10	\$1,583	\$130	\$1,713	
<u>San Employees VBM: (Alameda Co Temps)</u>							
Shella Cabradilla, Clerk Intermittent (9 hrs.)							\$248
Rachel Reyes, Clerk Intermittent (4.75 hrs.)							\$131
The above temps OT rate is \$27.54/hr							
<u>Agency Temps</u>							
Rachel Escoto (28 hrs.)							\$959
Jennifer Lee (2.5 hrs.)							\$86
Carmela Lianko (2.75 hrs.)							\$94
The above temps OT rate is \$34.25/hr							

(05) Total (_____) Subtotal (_____) Page: ____ of ____	\$4,132	\$1,237	\$5,369	\$9,061
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INDIRECT COST RATE PROPOSAL

Claimant Name: Alameda County
Department: Registrar of Voters
Fiscal Year: 2008-2009

Description of Costs	Total Costs	Unallowable Costs	Allowable Indirect Costs	Allowable Direct Costs
Personnel Services:				
1 Salaries & Wages	\$1,709,055		\$654,553	\$1,054,502
2 Part-time Wages & Overtime	\$981,709			\$981,709
3 Benefits 60.5%	\$1,034,219		\$396,097	\$638,122
SUBTOTAL:	\$3,724,983		\$1,050,649	\$2,674,334
Line Item Costs (Services, Supplies & Other):				
4 Rents and Leases	\$18,514		\$18,514	
5 Repair and Maintenance	\$227,027		\$227,027	
6 Transportation	\$227		\$227	
7 Travel	\$3,076		\$3,076	
8 Training	\$6,468		\$6,468	
9 Prof & Specialized Services	\$493,531		\$493,531	\$0
10 Temporary Services	\$2,167,978			\$2,167,978
11 Memberships and Dues	\$525	\$525		
12 Spcl Departmental Exp	\$318,294		\$20,553	\$297,741
13 Office Expense	\$6,004,569		\$560,287	\$5,444,282
14 Communications	\$112,876		\$112,876	
15 Electronic Eq. Maint	\$2,870		\$2,870	
16 Motor Vehicle Transportation	\$59,798		\$59,798	
17 BMD Space Rental	\$660,805		\$660,805	
18 Info Technology Svcs	\$428,887		\$329,687	\$99,200
19 Reprographic Svcs	\$107,926			\$107,926
20 Risk Mgmt Ins Svcs	\$78,228		\$78,228	
21				
22				
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45				
46				
47				
48				
PAGE 1 - SUBTOTAL:	\$10,691,509	\$525	\$2,573,947	\$8,117,128

279

274

INDIRECT COST RATE PROPOSAL

Claimant Name: Alameda County
Department: Registrar of Voters
Fiscal Year: 2008-2009

Description of Costs	Total Costs	Unallowable Costs	Allowable Indirect Costs	Allowable Direct Costs
49				
50				
51				
52				
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PAGE 2 - SUBTOTAL:														
Total Line Item Costs - Page 1 and 2	\$10,691,600	\$525	\$2,573,947	\$8,117,128										
TOTAL ALL EXPENDITURES:	\$14,416,583													
Cost Adjustments and/or Cost Plan Costs:														
89 A-87 Cost Allocation	\$612,208		\$612,208											
90														
COST ALLOCATION SUBTOTAL:	\$612,208		\$612,208											
TOTAL ALL COSTS:	\$15,028,791		\$4,236,804	\$10,791,462										
<table style="width: 100%; border: none;"> <tr> <td style="width: 35%;">CALCULATED INDIRECT COST RATE =</td> <td style="width: 15%; text-align: center; border: 1px solid black;">208.1%</td> <td style="width: 15%; text-align: right;">\$4,236,804</td> <td style="width: 15%; text-align: center;">=</td> <td style="width: 20%;">Total allowable indirect costs</td> </tr> <tr> <td>Rate is based on: Salaries</td> <td></td> <td style="text-align: right;">\$2,036,212</td> <td style="text-align: center;">=</td> <td>Total direct salaries + P.T. wages & OT</td> </tr> </table>					CALCULATED INDIRECT COST RATE =	208.1%	\$4,236,804	=	Total allowable indirect costs	Rate is based on: Salaries		\$2,036,212	=	Total direct salaries + P.T. wages & OT
CALCULATED INDIRECT COST RATE =	208.1%	\$4,236,804	=	Total allowable indirect costs										
Rate is based on: Salaries		\$2,036,212	=	Total direct salaries + P.T. wages & OT										

DEPARTMENTAL INDIRECT SALARIES

Claimant Name: Alameda County
Department: Registrar of Voters
Fiscal Year: 2008-2009

INDIRECT SALARIES

Position or Name of Employee	Annual Wages	Departmental Administration		Departmental Support	
		(%)	(\$)	(%)	(\$)
1 Tom York, Info Systems Coordinator	\$100,360			100%	\$100,360
2 Benita Cox, Administrative Specialist II	\$75,608			100%	\$75,608
3 Kathy Pelayo, Secretary II	\$65,354			100%	\$65,354
4 Cynthia Cornejo, Deputy Registrar	\$103,979	100%	\$103,979		
5 Janet Peters, Supervising Clerk I	\$57,330			100%	\$57,330
6 Ramon Herce, Accounting Specialist I	\$43,368			100%	\$43,368
7 John Serrano, Supervising Clerk	\$65,869	100%		100%	\$65,869
8 Esther Robinson, Supervision Regist/Elections Tech	\$77,060	100%	\$77,060		
9 Dusting Zafren, Geographical Info Tech	\$65,624			100%	\$65,624
10					
11					
12					
13					
14					
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TOTALS	\$654,553	\$181,039	\$473,514
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TOTAL INDIRECT SALARIES \$654,553

Exhibit I

CLAIM FOR PAYMENT Pursuant to Government Code Section 17561 PEACE OFFICERS PROCEDURAL BILL OF RIGHTS			For State Controller Use Only		Program 187
			(19) Program Number 00187	(20) Date Filed ___/___/___	
(01) Claimant Identification Number 9943			Reimbursement Claim Data		
(02) Claimant Name County of Santa Clara			(22)	PPBR-1,(03)(a)	0
County of Location Santa Clara			(23)	PPBR-1,(03)(b)	62
Street Address or P.O. Box 70 West Hedding Street, East Wing, 2nd Floor			(24)	PPBR-1,(03)(c)	60
City San Jose			State CA	Zip Code 95110	(25) PPBR-1,(03)(d) 2
Type of Claim	Estimated Claim	Reimbursement Claim	(26)	PPBR-1,(04)(1)(e)	93,401
	(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27)	PPBR-1,(04)(2)(e)	984
	(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28)	PPBR-1,(04)(3)(e)	39,473
	(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29)	PPBR-1,(04)(4)(e)	33,799
Fiscal Year of Cost of Cost	(06) 2005-2006	(12) 2004-2005	(30)	PPBR-1,(06)	40,24,6,74
Total Claimed Amount	(07) \$216,619	(13) \$270,774	(31)	PPBR-1,(07)	103,117
LESS: 10% Late Penalty		(14)	(32)	PPBR-1,(09)	
LESS: Estimated Claim Payment Received		(15)	(33)	PPBR-1,(10)	
Net Claimed Amount		(16) \$270,774	(34)		
Due from State	(08) \$216,619	(17) \$270,774	(35)		
Due to State		(18)	(36)		
(37) CERTIFICATION OF CLAIM					
In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.					
I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.					
The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.					
Signature of Authorized Officer			Date		
Ram Venkatesan			SB 90 Coordinator		
Print or type name			Title		
(38) Name of Contact Person for Claim			Telephone Number	916.485.8102 x 110	
Ferlyn B. Junio (MAXIMUS, Inc.)			E-mail Address	ferlynjunio@maximus.com	

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY				FORM PPBR-1
(01) Claimant: County of Santa Clara		(02) Fiscal year costs were incurred: 2004-2005			
Claim Statistics					
(03) (a) Number of cases in process at the beginning of the fiscal year					0
(b) Number of new cases added during the fiscal year					62
(c) Number of cases completed or closed during the fiscal year					60
(d) Number of cases in process at the end of the year					2
Direct Costs					
(04) Reimbursable Components 1. Administrative Activities 2. Administrative Appeal 3. Interrogations 4. Adverse Comment	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Travel and Training	(e) Total
	\$69,649	\$19,135	\$1,318	\$3,299	\$93,401
	\$776	\$208			\$984
	\$28,901	\$9,898	\$673		\$39,473
	\$25,766	\$8,032			\$33,799
(05) Total Direct Costs	\$125,092	\$37,274	\$1,991	\$3,299	\$167,657
Indirect Costs					
(06) Indirect Cost Rate (From ICRP)	Salary and Benefits				See Summary
(07) Indirect Costs	[(Line(06)*(line(05)(a)+line(05)(b))]				\$103,117
(08) Total Direct and Indirect Costs	[Line (05)(e) + Line (07)]				\$270,774
Cost Reductions					
(09) Less Offsetting Savings, if applicable					
(10) Less Other Reimbursements, if applicable					
(11) Total Claimed Amount:	{Line(08)- [Line (09) + Line(10)]}				\$270,774

Revised 09/03

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS:								
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
Lt Burgess	\$66.15	30.6%	24.00			\$1,588	\$486	\$2,074
Sgt. Matuzek	\$57.39	33.0%	30.00			\$1,722	\$567	\$2,289
<i>Training</i>								
Lt. Burgess	\$66.15	30.6%	8.00			\$529	\$162	\$691
Sgt. Matuzek	\$57.39	33.0%	6.50			\$373	\$123	\$496
Sgt. Staats	\$57.40	38.7%	10.00			\$574	\$222	\$796
Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()						\$4,786	\$1,561	\$6,346

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS:								
M. Vidmar, Assistant Chief Maintained and updated the status of the POBAR case records.	\$74.06	29.07%	1.00			\$74	\$22	\$96
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()				Page: _____ of _____		\$74	\$22	\$96

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
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(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts			
						Salaries	Benefits	Total Sal. & Bens	
PROBATION COSTS:									
Shirley Cantu, Acting Chief Prob Officer	\$73.34	26.20%	2.00			\$147	\$38	\$185	
Nicholas Cademartori, Interim Chief Prob Officer	\$100.97	19.03%	2.00			\$202	\$38	\$240	
Ann Meta Clarke, Acting Chief Prob Officer	\$95.50	23.91%	2.00			\$191	\$46	\$237	
Kathy Duque, Deputy Chief Probation Officer	\$72.63	26.29%	52.00			\$3,777	\$993	\$4,770	
Phuong Le, HR Manager	\$52.52	30.10%	5.00			\$263	\$79	\$342	
Delores Nnam, Administrative Services Manager	\$70.47	26.60%	29.00			\$2,044	\$544	\$2,587	
Karen Fletcher, Deputy Chief Probation Officer	\$66.84	26.03%	457.00			\$30,546	\$7,951	\$38,497	
Kathy Viana, Administrative Assistant	\$30.57	39.97%	93.00			\$2,843	\$1,136	\$3,979	
In FY 05, the department established an IA unit. The time spent by staff involved was to create and develop the department's internal policies and procedures related to POBAR.									
Karen Fletcher, Deputy Chief Probation Officer	\$66.84	26.03%	72.00		\$1,506	\$4,812	\$1,253	\$6,065	
John Dahl, Probation Manager	\$65.79	26.20%	24.00		\$447	\$1,579	\$414	\$1,993	
Bret Fidler, Supv Group Counselor	\$51.16	29.33%	24.00		\$662	\$1,228	\$360	\$1,588	
Ned Putt, Supv Probation Officer	\$56.96	27.90%	24.00		\$684	\$1,367	\$381	\$1,748	
Attended specific training related to POBAR. See attached for date and location.									
Karen Fletcher, Deputy Chief Probation Officer	\$66.84	26.03%	153.00			\$10,227	\$2,662	\$12,888	
Update the status of POBAR cases.									
Prob-Consult.Svcs - Contractor					\$1,318				
Assisted in the development of the IA unit of the Probation department.									
Probation Officer (12)	\$45.37	32.56%	48.00			\$2,178	\$709	\$2,887	
Supervising Prbation Officer (13)	\$65.14	28.00%	52.00			\$3,387	\$948	\$4,336	
Attended specific training related to POBAR. See attached for dates.									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total () Subtotal ()				Page: ____ of ____	\$1,318	\$3,299	\$64,789	\$17,553	\$82,342

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts					
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
OTHER DEPARTMENT COSTS:									
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total () Subtotal ()				Page: _____ of _____					

Revised 09/03

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total () Subtotal ()

Page: ____ of ____

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total () Subtotal ()

Page: ____ of ____

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
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(04) Description of Expense: Complete columns (a) through (g)				Object Accounts					
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						Salaries	Benefits	Total Sal. & Bens	
PROBATION COSTS:									
Robert DeJesus, Probation Manager Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.	\$62.08	26.9%	12.50			\$776	\$208	\$984	
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total () Subtotal () Page: _____ of _____						\$776	\$208	\$984	

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

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Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
OTHER DEPARTMENT COSTS:									
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>									
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>									

(05) Total () Subtotal ()

Page: _____ of _____

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS:								
<u>Interrogations-(Sworn-officer's only)</u>								
<u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
Lt. Burgess	\$66.15	30.6%	86.17			\$5,700	\$1,747	\$7,447
Sgt. Dona	\$57.01	41.9%	0.50			\$29	\$12	\$40
Deputy Holloway	\$48.93	36.7%	0.99			\$48	\$18	\$66
Sgt. Matuzek	\$57.39	33.0%	47.07			\$2,701	\$890	\$3,592
Sgt. Mitre	\$56.85	39.6%	0.50			\$28	\$11	\$40
Sgt. Staats	\$57.40	38.7%	124.15			\$7,126	\$2,754	\$9,880
Deputy Sheriff	\$42.09	52.0%	47.24			\$1,988	\$1,033	\$3,022
Sergeant	\$48.71	52.0%	0.33			\$16	\$8	\$24
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()						\$17,637	\$6,474	\$24,111

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
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(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
DISTRICT ATTORNEY COSTS:									
M. Lane, Lieutenant	\$70.19	32.28%	11.25			\$790	\$255	\$1,045	
R. Pifferini, Deputy Chief	\$58.30	34.49%	23.75			\$1,385	\$478	\$1,862	
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.									
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									

(05) Total ()	Subtotal ()	Page: ____ of ____				\$2,174	\$732	\$2,907
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS:								
<u>Interrogations-(Sworn-officer's only)</u> Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers. (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.) See attached summary for detail of personnel involved from the IA Unit. Transcriptions Plus Advantage Reporting Servies San Jose Blue Print Sandra Puentes - Witness Fees See attached schedule for detail. Robert DeJesus, Probation Manager Involmtent in the interrogation process. This individual is from the ESA division. See attached for detail.						\$8,531	\$2,542	\$ 11,073
				\$238 \$200 \$185 \$50				
	\$62.08	26.9%	9.00			\$559	\$150	\$709
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()	Page: _____ of _____			\$673		\$9,089	\$2,692	\$11,782

PROBATION - IA UNIT FY 04/05

* INTERVIEWED = I, WITNESS = W, SUBJECT = S, INVESTIGATING = V, REVIEW BOARD = R
 * PROBATION MANAGER = PM, SUPERVISING PROBATION OFFICER= SPO,
 * HUMAN RESOURCE MANAGER = HRM, ASSO. MGMT. ANALYST = AMA, DEPUTY PROBATION OFFICER= DPO

CASE#	#	OFFICER NAME	TITLE	FUNCTIO N	PRE INTER- ROGATION	INTER- ROGATIONS	TOTAL HOURS WORKED	PROD HR RATE	BENEFIT RATE	TOTAL SAL	TOTAL BEN
1A2005-03-0002	A	ANNETTE VAN UNEN	AA	I	6.75	0	6.75				
1A2005-03-0003	A	ANNETTE VAN UNEN	AA	I	0	6.25	6.25				
1A2005-04-0007	A	ANNETTE VAN UNEN	AA	I	7	0	7.00				
1A2005-04-0009	A	ANNETTE VAN UNEN	AA	I	0.5		0.50				
		ANNETTE VAN UNEN Total					20.50	30.32	40.17%	\$ 621.56	\$ 249.68
1A2005-03-0002	1	BRET FIDLER	SGC	V	30	2	32.00				
1A2005-03-0003	1	BRET FIDLER	SGC	V	23	2	25.00				
1A2005-04-0007	1	BRET FIDLER	SGC	V	26	2	28.00				
		BRET FIDLER Total					85.00	51.16	29.33%	\$ 4,348.60	\$ 1,275.44
1A2005-03-0002	7	BRUCE HANDRY	SPO	W	1.5	0	1.50				
1A2005-03-0003	3	BRUCE HANDRY	SPO	W	1	0	1.00				
		BRUCE HANDRY Total					2.50	56.96	27.90%	\$ 142.40	\$ 39.73
1A2005-03-0002	12	CLEVELAND PRINCE	PM	R	0	0	-				
1A2005-03-0003	5	CLEVELAND PRINCE	PM	R	0	0	-				
		CLEVELAND PRINCE Total					-	63.45	26.60%	\$ -	
1A2005-03-0001	1	DAVE PEREZ	SPO	W	3	1	4.00				
		DAVE PEREZ Total					4.00	56.96	27.90%	\$ 227.84	\$ 63.57
1A2005-03-0002	B	DELORES NHAM	ASM	R	0	0	-				
1A2005-03-0003	B	DELORES NHAM	ASM	R	0	0	-				
1A2005-04-0007	B	DELORES NHAM	ASM	R	0	0	-				
		DELORES NHAM Total					-	70.47	26.60%	\$ -	
1A2005-03-0002	8	GENE GINN	DPO	W	1.5	0	1.50				
		GENE GINN Total					1.50	50.18	29.61%	\$ 75.27	\$ 22.29
1A2005-03-0002	3	JILL ORNELLAS	SPO	W	1.5	0	1.50				
		JILL ORNELLAS Total					1.50	57.11	27.87%	\$ 85.67	\$ 23.87
1A2005-03-0002	14	JOHN DAHL	PM	W	1.5	0	1.50				
		JOHN DAHL Total					1.50	65.79	26.20%	\$ 98.69	\$ 25.86
1A2005-03-0001	5	KAREN FLETCHER	PM	I	3	0	3.00				
1A2005-03-0002	11	KAREN FLETCHER	PM	R	0	0	-				
1A2005-03-0003	4	KAREN FLETCHER	PM	R	0	0	-				
1A2005-04-0007	3	KAREN FLETCHER	PM	R	0	0	-				
		KAREN FLETCHER Total					3.00	66.84	26.03%	\$ 200.52	\$ 52.20
1A2005-03-0002	13	KATHY DUQUE	DCPO	R	0	0	-				
1A2005-03-0003	6	KATHY DUQUE	DCPO	R	0	0	-				
1A2005-04-0007	5	KATHY DUQUE	DCPO	R	0	0	-				
		KATHY DUQUE Total					-	72.63	26.29%	\$ -	
1A2005-03-0001	2	LINDA NGUYEN	SPO	W	1	0.5	1.50				
		LINDA NGUYEN Total					1.50	56.96	27.90%	\$ 85.44	\$ 23.84
1A2005-03-0002	6	LUCY TREVINO	DPO	W	1.5	0	1.50				
		LUCY TREVINO Total					1.50	36.55	34.98%	\$ 54.83	\$ 19.18
1A2005-03-0002	4	MARY RYAN	DPO	W	1.5	0	1.50				
		MARY RYAN Total					1.50	50.32	29.57%	\$ 75.48	\$ 22.32
1A2005-04-0007	4	MICHAEL SIMMS	PM	R	0	0	-				
		MICHAEL SIMMS Total					-	61.93	26.88%	\$ -	
1A2005-03-0001	4	NED PUTT	SPO	V	17	4.5	21.50				
1A2005-04-0009	1	NED PUTT	SPO	V	13	1	14.00				
		NED PUTT Total					35.50	56.96	27.90%	\$ 2,022.08	\$ 564.16
1A2005-03-0001	B	PHUONG LE	HRM	I	0	0	-				
1A2005-03-0002	B'	PHUONG LE	HRM	I	0	0	-				
1A2005-03-0003	B'	PHUONG LE	HRM	I	0	0	-				
1A2005-05-0010	B'	PHUONG LE	HRM	I	0	0	-				
		PHUONG LE Total					-	52.52	30.10%	\$ -	
1A2005-03-0002	10	RICHARD DE JESUS	DPO	W	1.5	0	1.50				
		RICHARD DE JESUS Total					1.50	44.62	29.01%	\$ 66.93	\$ 19.42
1A2005-03-0001	A	STARR COATNEY	AMA	I	0	0	-				
1A2005-03-0002	A'	STARR COATNEY	AMA	I	0	0	-				
1A2005-03-0003	A'	STARR COATNEY	AMA	I	0	0	-				
1A2005-05-0010	A'	STARR COATNEY	AMA	I	0	0	-				
		STARR COATNEY Total					-	35.01	36.98%	\$ -	
1A2005-03-0001	3	SUBJECT	DPO	S	0	2	2.00	30.88	38.60%	\$ 61.76	\$ 23.84
1A2005-03-0002	2	SUBJECT	SPO	S	1	1	2.00	46.98	30.59%	\$ 93.96	\$ 28.74
1A2005-03-0003	2	SUBJECT	DPO	S	0.5	1	1.50	30.88	38.60%	\$ 46.32	\$ 17.88
1A2005-04-0007	2	SUBJECT	PCII	S	0.5	1	1.50	40.57	33.02%	\$ 60.86	\$ 20.09
1A2005-04-0009	2	SUBJECT	PC II	S		0.5	0.50	40.57	33.02%	\$ 20.29	\$ 6.70
		SUBJECT Total					7.50				
1A2005-03-0002	5	BOLIAVONE KEGARICE	DPO	W	1.5	0	1.50				
		BOLIAVONE KEGARICE Total					1.50	50.18	29.61%	\$ 75.27	\$ 22.29
1A2005-03-0002	9	ZULEMA VASQUEZ	DPO	W	1.5	0	1.50				
		ZULEMA VASQUEZ Total					1.50	44.62	31.40%	\$ 66.93	\$ 21.02
		Grand Total					171.50			\$ 8,530.68	\$ 2,542.10

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<i>Interrogations-(Sworn-officer's only)</i>								
<u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total () Subtotal ()

Page: _____ of _____

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS:								
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.								
Sgt. Atlas	\$61.80	35.0%	0.50			\$31	\$11	\$42
Lt. Burgess	\$66.15	30.6%	75.33			\$4,983	\$1,527	\$6,510
Lt. Calderone	\$70.19	31.3%	1.50			\$105	\$33	\$138
Sgt. Carrasco	\$58.67	52.8%	0.33			\$19	\$10	\$30
Sgt. Dona	\$57.01	41.9%	0.25			\$14	\$6	\$20
Deputy Holloway	\$48.93	36.7%	0.33			\$16	\$6	\$22
Sgt. Hooper	\$60.48	40.4%	0.50			\$30	\$12	\$42
Sgt. Imas	\$57.39	35.1%	2.00			\$115	\$40	\$155
Lt Keith	\$67.75	33.8%	1.00			\$68	\$23	\$91
Lt. Lemmon	\$57.37	25.9%	0.50			\$29	\$7	\$36
Sgt. Mathison	\$57.45	38.3%	0.66			\$38	\$15	\$52
Sgt. Matuzek	\$57.39	33.0%	80.81			\$4,638	\$1,529	\$6,166
Sgt. McIntosh	\$57.11	36.3%	0.66			\$38	\$14	\$51
Sgt. Mitre	\$56.85	39.6%	0.50			\$28	\$11	\$40
Sgt. Peterson	\$59.60	38.9%	0.25			\$15	\$6	\$21
Lt. Pugh	\$67.75	34.4%	1.83			\$124	\$43	\$167
Sgt. Rodriguez	\$47.22	33.3%	0.50			\$24	\$8	\$31
Sgt. Scott	\$57.66	31.5%	0.50			\$29	\$9	\$38
Sgt. Staats	\$57.40	38.7%	28.91			\$1,659	\$641	\$2,301
Sgt. Waldher	\$61.27	36.9%	0.66			\$40	\$15	\$55

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total () Subtotal ()	Page: _____ of _____				\$12,043	\$3,965	\$16,009
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Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
PPBR-2**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS:								
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u>								
<u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								
(05) Total ()		Subtotal ()		Page: ____ of ____				

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2004-2005
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS:								
Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings. See attached summary for further detail.						\$9,812	\$3,017	\$12,829
Robert DeJesus, Probation Manager Involvement in the interrogation process. This individual is from the ESA division. See attached for detail.	\$62.08	26.9%	63.00			\$3,911	\$1,050	\$4,961
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal () Page: _____ of _____						\$13,723	\$4,067	\$17,790

PROBATION
 POBAR FY 2004-2005
 ADVERSE COMMENT COSTS

CASE#	#	OFFICER NAME	TITLE	FUNC	ADVERSE COMMENT	TOTAL	PROD HR RATE	BENEFIT RATE	TOTAL SAL	TOTAL BEN
1A2005-03-0002	1	BRET FIDLER	SGC	V	15	15.00				
1A2005-03-0003	1	BRET FIDLER	SGC	V	15	15.00				
1A2005-04-0007	1	BRET FIDLER	SGC	V	15	15.00				
BRET FIDLER Total						45.00	51.16	29.33%	\$ 2,302.20	\$ 675.24
1A2005-03-0002	12	CLEVELAND PRINCE	PM	R	2	2.00				
1A2005-03-0003	5	CLEVELAND PRINCE	PM	R	3	3.00				
CLEVELAND PRINCE Total						5.00	63.45	26.60%	\$ 317.25	\$ 84.39
1A2005-03-0002	B	DELORES NHAM	ASM	R	1	1.00				
1A2005-03-0003	B	DELORES NHAM	ASM	R	1	1.00				
1A2005-04-0007	B	DELORES NHAM	ASM	R	2	2.00				
DELORES NHAM Total						4.00	70.47	26.60%	\$ 281.88	\$ 74.98
1A2005-03-0001	5	KAREN FLETCHER	PM	I	1	1.00				
1A2005-03-0002	11	KAREN FLETCHER	PM	R	7	7.00				
1A2005-03-0003	4	KAREN FLETCHER	PM	R	8	8.00				
1A2005-04-0007	3	KAREN FLETCHER	PM	R	7	7.00				
KAREN FLETCHER Total						23.00	66.84	26.03%	\$ 1,537.32	\$ 400.16
1A2005-03-0002	13	KATHY DUQUE	DCPO	R	2	2.00				
1A2005-03-0003	6	KATHY DUQUE	DCPO	R	3	3.00				
1A2005-04-0007	5	KATHY DUQUE	DCPO	R	2	2.00				
KATHY DUQUE Total						7.00	72.63	26.29%	\$ 508.41	\$ 133.66
1A2005-04-0007	4	MICHAEL SIMMS	PM	R	2	2.00				
MICHAEL SIMMS Total						2.00	61.93	26.88%	\$ 123.86	\$ 33.29
1A2005-03-0001	4	NED PUTT	SPO	V	16	16.00				
1A2005-04-0009	1	NED PUTT	SPO	V	3	3.00				
NED PUTT Total						19.00	56.96	27.90%	\$ 1,082.24	\$ 301.94
1A2005-03-0001	B	PHUONG LE	HRM	I	3	3.00				
1A2005-03-0002	B'	PHUONG LE	HRM	I	2	2.00				
1A2005-03-0003	B'	PHUONG LE	HRM	I	2	2.00				
1A2005-05-0010	B'	PHUONG LE	HRM	I	4	4.00				
PHUONG LE Total						11.00	52.52	30.10%	\$ 577.72	\$ 173.89
1A2005-03-0001	A	STARR COATNEY	AMA	I	20	20.00				
1A2005-03-0002	A'	STARR COATNEY	AMA	I	13	13.00				
1A2005-03-0003	A'	STARR COATNEY	AMA	I	13	13.00				
1A2005-05-0010	A'	STARR COATNEY	AMA	I	42	42.00				
STARR COATNEY Total						88.00	35.01	36.98%	\$ 3,080.88	\$ 1,139.31
Grand Total						204.00			\$ 9,811.76	\$ 3,016.87

Program
187

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

FORM
PPBR-2

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

Administrative Activities

Administrative Appeal

Interrogations

Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ()		Subtotal ()		Page: _____ of _____				

**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
ICRP Summary**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2004-2005

**Indirect Cost Summary Sheet
- By Department -**

Department	ICRP		Total Direct			Total Indirect Costs		
	Base	Percent	Salaries	Benefits	Services & Supplies	S&W	S&W&B	Total
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"								
Salaries only								
Salaries & Benefits								
Sheriff	S&W&B	40.1%	\$34,466	\$12,000			\$18,610	
District Attorney	S&W&B	24.6%	\$2,248	\$754			\$737	
Probation	S&W&B	74.2%	\$88,378	\$24,520	\$5,290		\$83,770	
Other	S&W	10.0%						
								\$103,117
Check totals on claim summary page:								
Total Service & Supply					\$1,991			
Total Travel & Training					\$3,299			
Salaries			125,092					
Benefits			37,274					
					\$103,117			
Claim total					\$270,774			
			\$ 125,092	\$ 37,274	\$ 5,290	\$ -	\$103,117	

Exhibit J

299

304

CLAIM FOR PAYMENT			Program	
Pursuant to Government Code Section 17561			187	
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS				
			For State Controller Use Only	
			(19) Program Number 00187	
			(20) Date Filed ___/___/___	
			(21) LRS Input ___/___/___	
(01) Claimant Identification Number 9943			Reimbursement Claim Data	
(02) Claimant Name County of Santa Clara			(22) PPBR-1,(03)(a)	1
County of Location Santa Clara			(23) PPBR-1,(03)(b)	70
Street Address or P.O. Box 70 W. Hedding Street, 2nd Floor, West Wing			(24) PPBR-1,(03)(c)	69
City San Jose			(25) PPBR-1,(03)(d)	2
State CA				
Zip Code 95110				
Type of Claim	Estimated Claim	Reimbursement Claim	(26) PPBR-1,(04)(1)(e)	10,707
(03) Estimated <input checked="" type="checkbox"/>	(09) Reimbursement <input checked="" type="checkbox"/>	(27) PPBR-1,(04)(2)(e)	153,424	
(04) Combined <input type="checkbox"/>	(10) Combined <input type="checkbox"/>	(28) PPBR-1,(04)(3)(e)	153,424	
(05) Amended <input type="checkbox"/>	(11) Amended <input type="checkbox"/>	(29) PPBR-1,(04)(4)(e)	27,682	
Fiscal Year of Cost	(06) 2006-2007	(12) 2005-2006	(30) PPBR-1,(06)	35.5, 22.92, 73.65
Total Claimed Amount	(07) \$237,508	(13) \$311,692	(31) PPBR-1,(07)	119,694
LESS: 10% Late Penalty, not to exceed \$1,000		(14)	(32) PPBR-1,(09)	0
LESS: Estimated Claim Payment Received		(15)	(33) PPBR-1,(10)	0
Net Claimed Amount		(16) \$311,692	(34)	
Due from State	(08) \$237,508	(17) \$311,692	(35)	
Due to State		(18)	(36)	
(37) CERTIFICATION OF CLAIM				
<p>In accordance with the provisions of Government Code 17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under the penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 through 1098, inclusive.</p> <p>I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.</p> <p>The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.</p>				
Signature of Authorized Officer			Date	
Ram Venkatesan			SB 90 Coordinator	
Print or type name			Title	
(38) Name of Contact Person for Claim				
Ferlyn B. Junio (MAXIMUS, Inc.)			Telephone Number	(916) 485-8102 X 110
			E-mail Address	ferlynjunio@maximus.com

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS CLAIM SUMMARY	FORM PPBR-1
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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Claim Statistics	
(03) (a) Number of cases in process at the beginning of the fiscal year	1
(b) Number of new cases added during the fiscal year	70
(c) Number of cases completed or closed during the fiscal year	69
(d) Number of cases in process at the end of the year	2

Direct Costs					
(04) Reimbursable Components	(a)	(b)	(c)	(d)	(e)
	Salaries	Benefits	Services and Supplies	Travel and Training	Total
1. Administrative Activities	\$7,963	\$2,744			\$10,707
2. Administrative Appeal	\$120	\$64			\$184
3. Interrogations	\$114,751	\$38,673			\$153,424
4. Adverse Comment	\$17,962	\$9,720			\$27,682
(05) Total Direct Costs	\$140,795	\$51,202			\$191,997

Indirect Costs		
(06) Indirect Cost Rate (From ICRP)	Salary and Benefits	SEE INDIRECT SUMMARY SHEET
(07) Indirect Costs	[(Line(06)*(line(05)(a)+line(05)(b))]	\$119,694
(08) Total Direct and Indirect Costs	[Line (05)(e) + Line (07)]	\$311,692

Cost Reductions		
(09) Less Offsetting Savings, if applicable		
(10) Less Other Reimbursements, if applicable		
(11) Total Claimed Amount:	{Line(08)- [Line (09) + Line(10)]}	\$311,692

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS:								
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>								
Lt. Burgess	\$70.75	48.5%	4.50			\$318	\$154	
Sgt. Matuzek	\$59.93	53.7%	12.33			\$739	\$397	
Sgt. Peterson	\$62.18	57.7%	0.50			\$31	\$18	
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ()	Subtotal (x)	Page 1 of 3				\$1,088	\$569	\$1,658
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)	Object Accounts								
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
DISTRICT ATTORNEY COSTS									
Mike Vidmar, Criminal Investigator III Maintaining and/or updating the status of the POBAR case files.	\$64.13	45.0%	2.00			\$128	\$58	\$186	
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									

(05) Total () Subtotal (x)	Page 2 of 3			\$128	\$58	\$186
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara (02) Fiscal year costs were incurred: 2005-2006

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
John Dahl, Probation Manager Update POBAR procedure manual.	\$67.58	24.03%	2.00			\$135	\$32	\$168
John Dahl, Probation Manager Provide POBAR training to EOD staff.	\$67.58	24.03%	1.00			\$68	\$16	\$84
John Dahl, Probation Manager Maintain and update POBAR case files.	\$67.58	24.03%	8.50			\$574	\$138	\$712
Deputy Probation Officer X5X Supervising Probation Officer X48, X44 Received training on POBAR. Course title "Labor Relations Overview" on 5/25/06, Peace Office Discipline on 1/26/06, How To Conduct Investigations into Allegations of Employees on 3/29/06, and Civil Liabilities for Managers and Supervisors on 5/10/06.	\$46.91	34.51%	53.00			\$2,486	\$858	\$3,344
	\$60.05	30.78%	58.00			\$3,483	\$1,072	\$4,555
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total (x) Subtotal () Page 3 of 3 \$6,746 \$2,117 \$8,863

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input checked="" type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Revise and update internal policies, procedures, manuals and or other materials relating to POBARS, attendance to specific training and maintaining and/or updating the status of the POBAR case records.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total ()	Subtotal ()	Page: ____ of ____
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
Sgt. Matuzek	\$59.93	53.7%	2.00			\$120	\$64	\$184
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total () Subtotal ()	Page: _____ of _____	\$120	\$64	\$184
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)			
						Salaries	Benefits	Total Sal. & Bens	
DISTRICT ATTORNEY COSTS:									
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>									

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total ()	Subtotal ()	Page: ____ of ____	
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal ()				Page: ____ of ____				

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input checked="" type="checkbox"/> Administrative Appeal
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(04) Description of Expense: Complete columns (a) through (g)

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Preparation and review of documents to proceed with administrative hearing, including legal review and providing assistance with the hearing.</u>								
The agency named above has made every effort not to include costs relating to the "Skelly Process".								

(05) Total ()	Subtotal ()	Page: ____ of ____
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

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(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
SHERIFF COSTS								
<u>Interrogations-(Sworn-officer's only)</u>								
<u>Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.</u> (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
Lt. Burgess	\$70.75	48.5%	9.50			\$672	\$326	\$998
Sgt. Imas	\$59.93	59.4%	1.00			\$60	\$36	\$96
Sgt. Langley	\$59.93	59.9%	16.50			\$989	\$592	\$1,581
Sgt. Matuzek	\$59.93	53.7%	101.42			\$6,078	\$3,266	\$9,344
Sgt. Peterson	\$62.18	57.7%	0.50			\$31	\$18	\$49
Lt. Pugh	\$72.90	57.8%	1.00			\$73	\$42	\$115
Deputy Sheriff/Witness & Subject	\$44.24	58.9%	142.72			\$6,314	\$3,718	\$10,032
Sergeant/ Witness & Subject	\$51.21	58.9%	5.08			\$260	\$153	\$413
Lieutenant/ Witness & Subject	\$60.52	58.9%	0.67			\$41	\$24	\$64
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal (x)						\$14,518	\$8,175	\$22,693

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS								
Maurice Lane, Lieutenant	\$73.32	52.4%	24.75			\$1,815	\$951	\$2,766
Pat Alvarez, Criminal Investigator III	\$64.13	50.2%	9.25			\$593	\$298	\$891
Mike Vidmar, Criminal Investigator III	\$64.13	45.0%	2.50			\$160	\$72	\$232
Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers.								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total () Subtotal (x)						\$2,568	\$1,321	\$3,889

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
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(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
Andrew Flores, DPO	\$44.44	34.34%	1.00			\$44	\$15	\$60
Annette Vanunen, DPO	\$33.57	45.45%	158.05			\$5,306	\$2,411	\$7,717
Anthony Enweluzor, DPO	\$42.32	36.06%	1.00			\$42	\$15	\$58
Brad Kinne, DPO	\$58.40	23.13%	1.00			\$58	\$14	\$72
Bret Fidler, DPO	\$52.45	29.09%	682.50			\$35,797	\$10,413	\$46,211
Bruce Hendry, DPO	\$58.40	30.03%	1.00			\$58	\$18	\$76
Burga Santiago, DPO	\$58.86	29.80%	6.00			\$353	\$105	\$458
Delores Nnam, DPO	\$73.04	24.01%	27.00			\$1,972	\$473	\$2,446
Diano Teves, DPO	\$28.48	61.58%	4.00			\$114	\$70	\$184
Emi Chu, DPO	\$40.15	43.68%	266.00			\$10,680	\$4,665	\$15,345
George Burnette, DPO	\$50.45	32.19%	1.00			\$50	\$16	\$67
Jabari Lomak, DPO	\$44.44	36.54%	1.00			\$44	\$16	\$61
Joel Humble, DPO	\$39.45	41.17%	1.00			\$39	\$16	\$56
John Dahl, DPO	\$67.58	24.03%	91.00			\$6,150	\$1,478	\$7,628
Kathy Duque, DPO	\$78.32	20.74%	39.00			\$3,054	\$633	\$3,688
Marvin Kusumoto, DPO	\$36.23	38.41%	1.00			\$36	\$14	\$50
Mauricio Rodriguez, DPO	\$29.24	47.59%	1.00			\$29	\$14	\$43
Michelle Fernandez, DPO	\$51.45	24.22%	2.00			\$103	\$25	\$128
Mike Green, DPO	\$67.81	20.52%	3.00			\$203	\$42	\$245
Mike Simms, DPO	\$67.34	18.51%	6.50			\$438	\$81	\$519
Ned Putt, DPO	\$58.40	23.83%	412.00			\$24,061	\$5,734	\$29,794
Nick Birchard, DPO	\$60.13	23.14%	26.00			\$1,563	\$362	\$1,925
Phuong Le, DPO	\$58.61	30.0%	22.50			\$1,319	\$395	\$1,714
Rita Loncarich, DPO	\$67.58	26.0%	3.00			\$203	\$53	\$255
Sal Heredia, DPO	\$57.24	30.7%	3.00			\$172	\$53	\$224
Steve Lived, DPO	\$58.40	30.1%	1.00			\$58	\$18	\$76
Steven Majores, DPO	\$37.31	47.1%	0.50			\$19	\$9	\$27
Vanessa Fajardo, DPO	\$27.34	45.6%	1.00			\$27	\$12	\$40
Jon Vickroy, DPO III	\$73.04	24.0%	8.00			\$584	\$140	\$725
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								
(05) Total ()	Subtotal (x)	Page 3 of 7				\$92,580	\$27,311	\$119,891

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO	46.91	34.51%	1.00			\$47	\$16	\$63
DPO I	46.91	34.51%	2.00			\$94	\$32	\$126
DPO II	46.91	34.51%	1.50			\$70	\$24	\$95
DPO II	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	2.50			\$117	\$40	\$158
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	2.00			\$94	\$32	\$126
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.00			\$47	\$16	\$63
DPO III	46.91	34.51%	1.50			\$70	\$24	\$95
GCI	36.23	38.41%	2.00			\$72	\$28	\$100
GCI	36.23	38.41%	2.00			\$72	\$28	\$100
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total ()	Subtotal (x)	Page 4 of 7	318	\$1,645	\$580	\$2,225
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.00			\$36	\$14	\$50
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	1.50			\$54	\$21	\$75
GCI	36.23	38.41%	0.50			\$18	\$7	\$25
GCI	36.23	38.41%	2.00			\$72	\$28	\$100
GCI	36.23	38.41%	3.00			\$109	\$42	\$150
GCII	39.45	41.17%	2.00			\$79	\$32	\$111
GCII	39.45	41.17%	1.00			\$39	\$16	\$56
GCII	39.45	41.17%	1.50			\$59	\$24	\$84
GCII	39.45	41.17%	4.00			\$158	\$65	\$223
PC	37.31	47.10%	1.00			\$37	\$18	\$55
PCI	37.31	47.10%	1.00			\$37	\$18	\$55
PCII	37.31	47.10%	2.00			\$75	\$35	\$110
SGC	44.44	36.54%	2.00			\$89	\$32	\$121
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total ()	Subtotal (x)	Page 319				\$1,762	\$691	\$2,453
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)						Object Accounts		
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	2.00			\$89	\$32	\$121
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	2.50			\$111	\$41	\$152
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.50			\$67	\$24	\$91
SGC	44.44	36.54%	1.00			\$44	\$16	\$61
SGC	44.44	36.54%	4.00			\$178	\$65	\$243
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79
SPO	60.05	30.78%	1.00			\$60	\$18	\$79

The agency named above has made every effort not to include costs relating to the "Skelly Process".

(05) Total ()	Subtotal (x)	Page 6 of 7	320		\$1,678	\$596	\$2,274
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input checked="" type="checkbox"/> Interrogations	<input type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS								
<p>DPO = Deputy Probation Officer GCI = Group Counselor PC = Probation Counselor SGC = Senior Group Counselor SPO = Supervising Probation Officer</p> <p><i>All staff claimed are sworn personnel.</i></p> <p><i>Time spent includes interrogating the subject officer and witnesses. Notifying the officer prior to the interrogation of the nature of the interrogation, and identifying the investigation officers.</i></p>								
<p><i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i></p>								

(05) Total (x)	Subtotal ()	Page 321
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
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(04) Description of Expense: Complete columns (a) through (g)

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g) Object Accounts		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS:								
<u>Interrogations-(Sworn-officer's only)</u> Time spent interrogating an officer. Notify officer prior to interrogation the nature of interrogation and identify the investigating officers. (Including the review of complaints, documents to prepare the notice of interrogation; determination of the investigating officers; redaction of agency complaint for names of the complainant, witnesses; and the preparation of notices.)								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total () Subtotal ()	Page: _____ of _____
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
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(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

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						Salaries	Benefits	Total Sal. & Bens	
SHERIFF COSTS									
<u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u>									
<u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>									
Lt Burgess	\$70.75	48.5%	39.75			\$2,812	\$1,363	\$4,175	
Sgt. Langley	\$59.93	59.9%	120.25			\$7,207	\$4,317	\$11,523	
Sgt. Matuzek	\$59.93	53.7%	72.42			\$4,340	\$2,332	\$6,673	
Sgt. Peterson	\$62.18	57.7%	5.00			\$311	\$179	\$490	
<i>Time spent on Findings</i>									
Captain Angus	\$86.23	51.9%	1.00			\$86	\$45	\$131	
Lt Burgess	\$70.75	48.5%	19.25			\$1,362	\$660	\$2,022	
Commander Bacon	\$105.58	48.7%	2.75			\$290	\$142	\$432	
Sgt. Dutra	\$60.08	63.1%	1.00			\$60	\$38	\$98	
Lt. Geary	\$63.57	59.3%	0.50			\$32	\$19	\$51	
Captain Hirokawa	\$91.40	49.7%	1.00			\$91	\$45	\$137	
Sgt. Langley	\$59.93	59.9%	4.08			\$245	\$146	\$391	
Captain Laverone	\$78.36	57.9%	0.50			\$39	\$23	\$62	
Sgt. Matuzek	\$59.93	53.7%	4.33			\$259	\$139	\$399	
Captain Perusina	\$104.60	43.6%	0.58			\$61	\$26	\$87	
Captain Rode	\$80.86	55.9%	1.00			\$81	\$45	\$126	
Lt. Schiller	\$73.35	55.2%	0.58			\$43	\$23	\$66	
Sgt. Spagnola	\$58.83	62.4%	1.00			\$59	\$37	\$96	
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>									
(05) Total () Subtotal (x)						\$17,378	\$9,580	\$26,958	

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) Object Accounts

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
DISTRICT ATTORNEY COSTS: <u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total () Subtotal ()	Page: _____ of _____
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Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
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(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
--------------------------------------	---

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g)				Object Accounts				
(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
PROBATION COSTS:								
Jon Vickroy, DPO III Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing. Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.	\$73.04	24.0%	8.00			\$584	\$140	\$725
The agency named above has made every effort not to include costs relating to the "Skelly Process".								
(05) Total (x) Subtotal ()						\$584	\$140	\$725

Program 187	MANDATED COSTS PEACE OFFICERS PROCEDURAL BILL OF RIGHTS COMPONENT / ACTIVITY COST DETAIL	FORM PPBR-2
--	---	------------------------------

(01) Claimant: County of Santa Clara	(02) Fiscal year costs were incurred: 2005-2006
---	--

(03) Reimbursable Components: Check ONLY one box per form to identify the component being claimed.

<input type="checkbox"/> Administrative Activities	<input type="checkbox"/> Administrative Appeal
<input type="checkbox"/> Interrogations	<input checked="" type="checkbox"/> Adverse Comment

(04) Description of Expense: Complete columns (a) through (g) **Object Accounts**

(a) Employee Name, Job Classification, Functions Performed and Description of Services and Supplies	(b) Hourly Rate or Unit Cost	(c) Benefit Rate	(d) Hours Worked / Quantity	(e) Services and Supplies	(f) Travel and Training	(g)		
						Salaries	Benefits	Total Sal. & Bens
OTHER DEPARTMENT COSTS: <u>Time to review circumstances or documentation of adverse comments, notification and presentations of comments; review of response to comments and filing.</u> <u>Time to gather reports and log sheets, review questions and preparation, case summary and IA review, command staff review of adverse comments and findings.</u>								
<i>The agency named above has made every effort not to include costs relating to the "Skelly Process".</i>								

(05) Total () Subtotal ()	Page: _____ of _____
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**MANDATED COSTS
PEACE OFFICERS PROCEDURAL BILL OF RIGHTS
COMPONENT / ACTIVITY COST DETAIL**

**FORM
ICRP Summary**

(01) Claimant: County of Santa Clara

(02) Fiscal year costs were incurred:

2005-2006

Indirect Cost Summary Sheet

- By Department -

<i>Department</i>	<i>ICRP</i>		<i>Total Direct</i>		<i>Total Indirect Costs</i>		
	Base	Percent	Salaries	Benefits	S&W	S&W&B	Total
Enter ICRP Rate in column F. Below each department "x" option rate is based on - "Salaries & Benefits" or "Salaries only"							
Salaries only							
Salaries & Benefits							
Sheriff	S&W&B	35.50%	\$33,104	\$18,389		\$18,280	
District Attorney	S&W&B	22.92%	\$2,696	\$1,378		\$934	
Probation	S&W&B	73.65%	\$104,995	\$31,435		\$100,481	
Other	S&W	10.00%					
							\$119,694
Check totals on claim summary page: Total Service & Supply Total Travel & Training Salaries 140,795 Benefits 51,202 \$119,694 Claim total \$311,692							
			\$ 140,795	\$ 51,202	\$ -	\$119,694	

County of Santa Clara
FY 06-07 Estimate Breakdown
POBAR

<u>Claiming Department</u>	<u>FY 05/06 Actual</u>	<u>FY 06/07 Estimate</u>
Probation	\$236,910	\$177,683
District Attorney	\$5,009	\$4,007
Sheriff	\$69,772	\$55,818
Total	\$311,692	\$237,508

**Probation Estimate is based on 75% of Actual
DA and Sheriff Estimate is based on 80% of Actual*

Exhibit K

County of Santa Clara

Finance Agency
Controller-Treasurer Department

County Government Center
70 W. Hedding Street, East Wing, 2nd Floor
San Jose, California 95110-1705
(408) 299-5200 FAX (408) 289-8629



DATE: March 11, 2008

TO: Jim L. Spano
Chief, Compliance Audits Bureau,
State Controller's Office, Division of audits,
Post Office Box 942850,
Sacramento, CA 94250-5874

FROM: Irene Lui
Divisional Manager,
Cost management and claims

RE: Response to POBOR Draft audit report

Dear Mr. Spano,

Thank you for sending us the draft audit report regarding our claim for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976) for the period from July 1, 2003 through June 30, 2006

We attach our responses to your audit findings in the order they were presented on your draft report. Except the matters that we have specifically accepted, we disagree to all other findings; the attached detailed response addresses our concerns from respective claiming departments. Please review our comments and make appropriate adjustments for the draft report accordingly.

Your draft report attempts to disallow \$511,221 out of our claimed amount of \$744,598 which is about 69%. This high percentage of disallowance was mainly contributed by the difference in interpretation of legal provisions and Ps and Gs between the state auditors and the local governments. Your strict and narrow interpretation of Ps and Gs is, in fact, a relatively new phenomenon that has not been adhered to by any local agencies, and will only lead to prolonged litigation that hurts both the State and local agencies.

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kniss
County Executive: Peter Kutas, Jr.

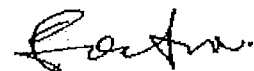
Noting this situation, we along with the CSAC has tried to negotiate a balanced settlement which is still pending in spite of our efforts for the past few years.

The POBOR law and the Ps and Gs for state mandates are highly complicated. The initial Ps and Gs adopted by the Commission in July 2000 did not specifically disallow the various activities such as interrogation during regular work hours, training etc. AB138 enacted in 2005 directed the Commission to review the Statement of Decision adopted in 1999. The Ps and Gs were then amended by the Commission; and the SCO issued the amended claiming instructions on March 19, 2007. The very fact that the Commission had to reconsider and reissue amended Ps and Gs in 2007 (after 7 years the Ps & Gs was initially adopted) shows that the original Ps and Gs were subject to different interpretations in various claimable costs. The State auditors, however, have used the amended Ps and Gs (recently issued in 2007) to justify their disallowances for the previous years' claims that were compiled based on the original Ps & Gs.

We, and many other local agencies, cannot agree to those disallowances of the non-overtime hours and findings based on the subsequently revised Ps and Gs in March 2007. The County has made every attempt to efficiently and effectively complete the SB90 claims in a fair and reasonable basis. The action of disallowing the majority of the claims based on the auditors' interpretations is not an appropriate approach, and will defeat the objectives of mandating this claim.

We appreciate the opportunity to review and comment upon this audit. We would like to meet with you and your staff to explain our various points, and to seek a reasonable settlement of the claimed costs before we explore other alternatives available to us. Please contact Ram Venkatesan, the County SB 90 Coordinator, at (408) 299-5210 if you have questions.

Regards,



Irene Lui
Divisional manager

Attachment: Detailed response to your draft audit findings

Board of Supervisors: Donald F. Gage, Blanca Alvarado, Pete McHugh, Ken Yeager, Liz Kniss
County Executive: Peter Kutas, Jr.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

FINDING 1—Unallowable salaries and benefits

The county claimed unallowable salaries and benefits costs totaling \$326,274 for the audit period because the activities it claimed were not identified as reimbursable costs in the parameters and guidelines for the program. Related unallowable indirect costs totaled \$184,947.

The following table summarizes the audit adjustments by cost component:

	<u>Claimed Costs</u>	<u>Allowable Costs</u>	<u>Audit Adjustme nt</u>
<u>Salaries and Benefits</u>			
Administrative Activities:			
Sheriff's Department	\$ 18,587	\$ 10,124	\$ (8,463)
Probation Department	93,584	58,094	(35,490)
District Attorney's Office	<u>18,318</u>	<u>16,565</u>	<u>(1,753)</u>
Total Administrative Activities	<u>130,489</u>	<u>84,783</u>	<u>(45,706)</u>
Administrative Appeals:			
Sheriff's Department	1,388	—	(1,388)
Probation Department	985	—	(985)
District Attorney's Office	—	—	—
Total Administrative Appeals	<u>2,373</u>	<u>—</u>	<u>(2,373)</u>
Interrogation:			
Sheriff's Department	71,506	10,156	(61,350)
Probation Department	162,587	32,351	(130,236)
District Attorney's Office	<u>18,880</u>	<u>2,530</u>	<u>(16,350)</u>
Total Interrogation	<u>252,973</u>	<u>45,037</u>	<u>(207,936)</u>
Adverse Comment:			
Sheriff's Department	54,680	11,389	(43,291)
Probation Department	31,741	5,633	(26,108)
District Attorney's Office	<u>1,119</u>	<u>259</u>	<u>(860)</u>
Total Adverse Comment	<u>87,540</u>	<u>17,281</u>	<u>(70,259)</u>
Total salaries and benefits	<u>473,375</u>	<u>147,101</u>	<u>(326,274)</u>
Related indirect costs	<u>271,223</u>	<u>86,276</u>	<u>(184,947)</u>
Total	<u>\$744,598</u>	<u>\$233,377</u>	<u>\$ (511,221)</u>
<u>Recap by Department</u>			
Sheriff's Department			\$
	\$198,910	\$ 42,901	(156,009)
Probation Department	498,045	166,384	(331,661)
District Attorney's Office	<u>47,643</u>	<u>24,092</u>	<u>(23,551)</u>
Total	<u>\$744,598</u>	<u>\$233,377</u>	<u>\$ (511,221)</u>

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

For each fiscal year, the county claimed costs for activities that did not exceed the duties of due process of law and therefore did not impose increased costs as a result of compliance with the mandate and were ineligible for reimbursement.

We broke down the audit findings for overstated salaries and benefits by individual cost component for each of the three county departments included in the county's claims. The ineligible activities claimed are indicated for each county department.

County's response

The County does not agree with this finding at all and our response is given under individual cost component and under each department.

For the Administrative Activities cost component, the county claimed \$130,489 in salaries and benefits costs (\$18,587 by the Sheriff's Department, \$93,584 by the Probation Department, and \$18,318 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$80,163. We determined that \$45,706 was unallowable (\$8,463 by the Sheriff's Department, \$35,490 by the Probation Department, and \$1,753 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$29,543.

The parameters and guidelines, section IVA (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- *Updating POBOR case records (FY 2005-06).*
- *Training for Internal Affairs staff (FY 2003-04 and FY 2004-05).*

However, the department claimed the following activities that are not reimbursable:

- *Preparing the file.*
- *Logging initial case information into the system and*

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

assign the case.

- *Interviewing the complainants.*

County's response (Sheriff)

The audit disallowed the reimbursement for three categories: preparing the file, logging the initial case information and interviewing the complainant. While these changes to the reimbursement section are now clearly spelled out in the Ps & Gs, they would be viewed as new cost the department must now carry. As such, we believe they would fall under Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

That being said, it is our opinion that since no notification was made prior to this change and the fact that the impact would directly cause an effect to the funding recovery process, these costs should be allowed at this time.

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Reviewing and updating internal policies and procedures relating to POBOR.*

County's response (Probation)

We do not agree with the narrow interpretation given to "due process" of law and the restrictive definition of the activities over and above the duties beyond the due process of law

- *Training for Internal Affairs staff (training hours were partially adjusted to account for hours that were not related to POBOR training). Unallowable training hours included the following topics:*

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation
- Budgeting implications
- Juvenile Justice Reforms
- Discrimination issues

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Electronic research
First Amendment related conduct
Preparing investigations reports
Key mistakes in workplace investigations
Assessing credibility
Types of lawsuits
Representation and indemnification
Supervisory liability of failure to train
Minimizing exposure to liability

The department also claimed the following activities that are not reimbursable (FY 2004-05):

- *Reviewing Internal Affairs (IA) investigations reports to approve or to make corrections.*
- *Visiting other IA units during the establishment of the IA unit at the Probation Department.*
- *Conducting interviews for IA Management Analyst position.*
- *Reviewing the progress of development of the IA database.*
- *Reviewing complaints, response letters, Merit System Rules, and assigning cases.*
- *Reviewing training schedule for the unit.*

County's response (Probation)

We do not agree with the audit interpretation of training that the training course, if they include other topics only proportionate costs will be allowed. In our view the training has to be a composite one and it cannot be a restrictive one. We cannot go through the training with a microscope on this issue and we disagree with the audit's negative approach to training.

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- *Updating/maintaining POBOR case records.*
- *Training for Internal Affairs staff (FY 2003-04) (hours were adjusted for one employee, whose training records did not reflect attendance at the claimed training class).*
- *Develop internal policies and procedures (FY 2003-04).*

The District Attorney's Office did not claim any ineligible activities in this category.

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

County's response (DA)

The above comment is incorrect as investigator training records were not checked by the audit and the identity of the officer who was disallowed was not disclosed by the audit. The District Attorney's office claimed in FY 2003-04 that six investigators attended a peace officer standards and training (POST) internal affairs school. A review of the POST records confirmed that all the six investigators attended and were given credit for the IA class. We request that this finding may be withdrawn and the costs allowed.

Administrative Appeals

For the Administrative Appeals cost component, the county claimed \$2,373 in salaries and benefits costs (\$1,388 by the Sheriff's Department and \$985 by the Probation Department) during the audit period. Related indirect costs totaled \$1,193. We determined that both amounts were unallowable because costs claimed were for ineligible activities.

The parameters and guidelines, section IVB (2) (Administrative Appeals), allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

services; and the preparation and service of any rulings or orders of the administrative body.

In reference to reimbursable circumstances surrounding administrative appeal hearings pursuant to Government Code section 3304, subdivision (b), the CSM statement of decision regarding the adopted parameters and guidelines states:

The Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher lever of service because prior law requires such an appeal under the due process. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

In other words, if officers appeal actions such as transfer for purposes of punishment or denial of promotion, then administrative appeal costs can be claimed for reimbursement. However, if officers appeal actions such as dismissal, demotion, suspension, reduction in pay, or written reprimand, then those appeal hearings would fall under due process and could not be claimed for reimbursement.

Sheriff's Department

Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Subsequently, claimed activities were unallowable for reimbursement.

County's response (Sheriff)

Administrative Appeal

The language in the audit contradicts itself in as far as what is allowed and what is not. For an example, on the top of page 9 it states, "The parameter and guidelines, section IVB (2) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following reasons:

1. Dismissal, demotion, suspension, reduction in pay, or written reprimand.....

Then when you go to the finding of the audit on page 10, it states - "Our review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims. Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process.

Clearly the two cases that the audit looked at would have fallen under the reimbursable category. Section IVB (2) allows for reimbursement for those two issues should an administrative appeal take place.

It is our belief that the auditor misstated the factual basis for when reimbursement can be claimed when she said it was only allowed for anything other than dismissal, demotion, suspension, reduction in pay, or written reprimand. It is clear that POBAR does not even allow an administrative hearing for those things that do not rise to the level of written reprimand - such as verbal counseling, documented counseling, supervisor comment card... This belief is further supported in the Commissions Ps & Gs where it is stated "The following activities and costs are reimbursable:

4. Other actions against permanent employees that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee." There is no doubt that a dismissal, demotion, suspension, reduction in pay, or written reprimand falls within this area and as such would be covered for reimbursement.

Probation Department

All costs claimed under this cost component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand). Subsequently, claimed activities were unallowable for reimbursement.

District Attorney's Office

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

The District Attorney's Office did not claim any costs under this cost component.

Interrogation

For the Interrogation cost component, the county claimed \$252,973 in salaries and benefits costs (\$71,506 by the Sheriff's Department, \$162,587 by the Probation Department, and \$18,880 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$147,574. We determined that \$207,936 was unallowable (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$120,026.

The parameters and guidelines, section IV(C) (Interrogations), identify the specific interrogation activities that are reimbursable when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C) also identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, section IV(C), also state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures is absolutely essential.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

The parameters and guidelines, section IV(C), also state that the following activities are reimbursable:

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Tape recording the interrogation when the peace officer employee records the interrogation is an essential part of the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers is required.

Sheriff's Department

The Sheriff's Department claimed the following reimbursable activities:

- *Providing Interrogation Notice and/or Statement of Allegations to the officer.*
- *Reviewing the tape/summarize/transcribe accused officers' statements (accused officers generally receive the copy of their interviews).*
- *Providing copies of tapes and file documentation in case of further proceedings/hearings/action (FY 2003-04 and FY 2004-05).*

However, the department claimed the following activities that are not reimbursable:

- *Gathering reports and reviewing complaints and evidence as part of investigating the allegations.*
- *Investigation time.*
- *Preparing questions for the interviews.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Reviewing tape and summarizing/transcribing witness officer's statements (witness officers generally do not receive a copy of their interview).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

County Response (Sheriff)

Interrogation

The big issue in this area, which was raised during the exit conference, was based on reimbursement for the officer's time. While the auditor stated reimbursement would be made if the officer was off-duty and overtime was caused, the Commissions Ps & Gs do not state that. Rather, what they do state is that overtime will be reimbursed when required by the seriousness of the investigation and the officer is interviewed off-duty. This is clearly different from what was stated during the conference. While many of these other exclusions are recent changes to the POBAR status, we believe they would therefore fall under the guides of Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Providing administrative notice to the accused officer regarding the nature of allegations*
- *Transcribing/summarizing accused officer's statement (accused officers generally receive the copy of their interviews).*

However, the department claimed the following activities that are not reimbursable:

- *Gathering reports, log sheets, and evidence.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Interviewing witnesses, both civilian and officers (investigators' time).*
- *Traveling to interview witnesses.*
- *Transcribing witness tapes (witnesses do not receive copies of their interviews.)*
- *Reviewing tapes and making corrections.*
- *Preparing interview questions.*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*

County of Santa Clara
SB90 mandate-Detailed Response to POBAR Draft audit report-March, 2008

County's response (Probation)

We do not agree with the audit's standing view that a majority of our costs incurred under this activity come under "due process of law" and therefore not reimbursable if the activity is performed during normal hours. If this interpretation is taken as correct, cost of doing business in an efficient way will be jeopardized. It is the efficiency of conducting business and the authority of the local agency in deciding how to perform a mandate which is under question in this case. We totally disagree with audit finding.

District Attorney's Office

The District Attorney's Office claimed providing prior notice to the subject officers regarding the investigation/allegations as a reimbursable activity.

However, the District Attorney's Office claimed the following activities that are not reimbursable:

- *Gathering reports, log sheets, etc.*
- *Reviewing complaints, reports, and evidence as part of investigating the allegations.*
- *Preparing interview questions.*
- *Interviewing witnesses during normal working hours (investigators' time).*
- *Conducting pre-interrogation meetings.*
- *Interviewing accused officers during normal working hours (investigators' time).*
- *Preparing a summary report of the agency complaint as part of the case file preparation.*
- *Reviewing interview tapes.*

County's Response (DA)

The County disagrees with the above comments that indicate "local agencies were performing these investigative activities before POBAR was enacted" etc. POBAR was enacted on January 1, 1977. The requirement of POBAR has far exceeded investigative activities required prior to its enactment. Opponents to the ACT were the California Peace Officers Association, Cities and Counties and Sheriff's Association and League of Cities. This Act requires a great deal of work and administrative record keeping.

Adverse Comment

For the Adverse Comment cost component, the county claimed \$87,540 in salaries and benefits costs (\$54,680 by the Sheriff's Department, \$31,741 by the Probation

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

Department, and \$1,119 by the District Attorney's Office) during the audit period. Related indirect costs totaled \$42,293. We determined that \$70,259 was unallowable (\$43,291 by the Sheriff's Department, \$26,108 by the Probation Department, and \$860 by the District Attorney's Office) because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$34,185.

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IVD (Adverse Comment); allow some or all of the following four activities upon receipt of an Adverse Comment:

- *Providing notice of the adverse comment;*
- *Providing an opportunity to review and sign the adverse comment;*
- *Providing an opportunity to respond to the adverse comment within 30 days; and*
- *Noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.*

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to the adverse comment by the supervisor, command staff, human resources staff, or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of the adverse comment to officer and notification concerning rights regarding same; review of response to the adverse comment; attaching same to adverse comment, and filing.

Sheriff's Department

The Sheriff's Department claimed the following activities that are reimbursable:

- *Preparing and serving an Administrative Notice of Allegations.*
- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the department claimed the following activities that are not reimbursable:

- *Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the*

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).

- *Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation.*
- *Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.*
- *Preparing interview questions.*

County's response (Sheriff)

Adverse Comment

The first area of denial for reimbursement relates to "Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation. This refers to the internal issue of whether the case will be handled by IA investigators or by division level investigators. However what it does not do is determine if the case will be handled at all. The Commission's Ps & Gs state what is not reimbursable is determining whether the case rises to the level of an investigation. The issue here is whether all citizen complaints that are investigated need to be handled within Internal Affairs to fall within that SB90 reimbursement section. It is our contention that whether or not the case is handled in IA or by the administration within the division it is still a full investigation and treated, statistically monitored and handled as a citizen complaint. If this is not the case, then those agencies which do not have a formal IA unit would not be allowed any reimbursement.

The issue of determining where the case is handled, Internal Affairs or with the Division, is merely based on which arena is better suited to handle the allegations, what is best for a speedy, fair and thorough investigation. It is not an issue of whether it is a complaint or not.

Several of the other denied areas in this section we believe would again fall under Government Code 17514 which states - "Costs mandated by the state" means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution

Probation Department

The Probation Department claimed the following reimbursable activities:

- *Preparing and serving the Final Disciplinary Order*

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

(adverse comment notice).

- *Interacting with labor relations to ensure proper disciplinary action (reviewing documentation leading to adverse comment/findings by Labor Relations staff).*
- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the department claimed the following activities that are not reimbursable:

- *Preparing the investigation summary and reviewing it with the supervisor prior to closing the case.*
- *Preparing the final case report.*

District Attorney's Office

The District Attorney's Office claimed the following reimbursable activities:

- *Reviewing documentation leading to the adverse comment/findings by Command staff.*

However, the District Attorney's Office claimed preparing the case summary report, which is not a reimbursable activity.

(NOTE: For FY 2004-05 and FY 2005-06, the District Attorney's Office combined interrogation activities and adverse comment activities, and claimed them under the Interrogations cost component.)

County's response (DA)

The County strongly believes that the claiming methodology is complex as is the view of all the various departments in the State. The Government agencies throughout the State of California are not consistent with POBAR requirements due to various historic reasons including differences in state and local perspectives of implementation of this act and the costs thereof. The Commission on state mandates has to reexamine the reimbursable activities with a wider definition thereby allowing the agencies to claim all the relevant costs without restricting the local agencies bound to narrow definition of words and meanings. The Act has to be seen in its overall perspective and the narrow reading of the Act has to be done away with.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (36,003)	\$ (39,709)	\$ (38,780)	\$ (114,492)
Probation Department	(32,644)	(52,500)	(107,675)	(192,819)
District Attorney's Office	(13,877)	(1,396)	(3,690)	(18,963)
Subtotal	(82,524)	(93,605)	(150,145)	(326,274)
Related indirect costs	(35,831)	(55,199)	(93,917)	(184,947)
Audit adjustment	\$ (118,355)	\$ (148,804)	\$ (244,062)	\$ (511,221)

The program's parameters and guidelines, adopted by GSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers.

The parameters and guidelines section IV (Reimbursable Activities); outline specific tasks that are deemed to be above the due process clause. The statement of decision, on which the parameters and guidelines were based, noted that due process activities were not reimbursable.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

FINDING 2—Unallowable productive hours

The county overstated allowable salaries and related benefits costs by a total of \$11,800 for the audit period (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office). Related unallowable indirect costs

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

totalled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year.

Ineligible Training Hours

When calculating annual productive hours, the county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than deducting actual non-program specific training. Starting with FY 2002-03, the county introduced a training code under its automated payroll system to track employees' training hours. The training code keeps track of the following types of training:

- 1. Mandatory training for licensure/certification requirements and continuing education for specific job classifications such as attorneys, probation officers, real estate property appraisers, physicians, nurses, and others.*
- 2. POST training for law enforcement personnel.*
- 3. County-required training such as new employee orientation, supervisory training, safety seminars, and software classes.*

The county claimed that the training hours charged to this code were actual time spent by employees attending non-program-related training. However, the county was unable to substantiate the excluded training hours with any supporting documentation. Further, some of the training types described above relate to specific programs/classifications and therefore cannot be excluded from annual productive hours for the entire county. Training types described under items 1 and 2 above benefit specific job classifications and functions and therefore cannot be considered non-program-related training. Deduction from annual productive hours of the training types described under item 3 above is potentially allowable because the hours are non-program specific. However, the county did not keep track of this type of training separately in its payroll system.

Ineligible Break Time

When calculating annual productive hours, the county also deducted authorized break time rather than actual break time taken. The county did not adjust for break time directly charged to program activities and deducted break time per

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

bargaining unit contract agreements. Because the county did not keep track of actual break time taken by employees, it cannot deduct break time from its calculations of annual productive hours.

The following table summarizes the overstated costs by fiscal year:

Cost Category	Fiscal Year			Total
	2003-04	2004-05	2005-06	
Salaries and benefits:				
Sheriff's Department	\$ (980)	\$ (554)	\$ (1,009)	\$ (2,543)
Probation Department	(542)	(4,920)	(2,300)	(7,762)
District Attorney's Office	(1,388)	(130)	23	(1,495)
Subtotal	(2,910)	(5,604)	(3,286)	(11,800)
Related indirect costs	(1,000)	(3,905)	(2,047)	(6,952)
Audit adjustment				\$
	\$ (3,910)	\$ (9,509)	\$ (5,333)	(18,752)

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, section VI (Supporting Data), require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's response (Finance)

FINDING 2— Unallowable productive hours

This audit finding relates to unsupported salaries, benefits and related indirect costs arising out of the usage of Countywide Productive hour rate. This issue of Countywide Productive hours was replied to in all responses to State audit reports on other programs. We repeat our earlier responses on the issue of countywide productive hourly rate for record...

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

We notice that in this audit report only two issues have been taken up namely the deduction of training hours and usage of authorized break time rather than the actual break time.

We note that compared to the previous audit reports, there is a welcome change now that the audit finding is not the rejection of the policy of countywide productive hours in its entirety but is extremely limited to the treatment and documentation for training and break time only. Thank you for accepting the countywide productive hour policy. Consequently, we will only discuss the two specific issues of documentation for training time and break.

The County implemented the countywide calculation of productive hours in FY 2000-01. Claims filed for that fiscal year were based on calculations that included training time received by employees and reported by County departments, based on collective bargaining agreements or rosters related to actual training sessions that were conducted. Break-time was similarly calculated, based on requirements of collective bargaining agreements and State law. For all subsequent fiscal years, the County modified the automated payroll system to capture actual hours of training by individual employee for all County departments.

The county's policy for reporting training time is only related to non-program training. Departments have been advised to exclude program-related training from the pay period data reporting. We explained this to the state audit staff. We also explained that the payroll section can only maintain the total time spent and reported by each department. The analysis as to whether they were program-related or not are done in the departments. We informed the state audit staff to check this issue in the departments by a visit there if they wished. All data and records required for the audit were produced.

On the issue of reporting actual break-time taken by employees, our automated payroll system could accommodate such a change; but the additional time and cost of recording such information would exceed the value of the information obtained. This information can readily be determined by simple calculation. This conclusion is consistent with OMB A-87 cost allocation principles, which limit the effort expected of state and local governments to calculate indirect costs when such costs are "... not readily assignable...without effort disproportionate to the results achieved." In the case of daily break-time required by both State law and collective bargaining agreements, the recording of actual break-time taken twice daily by more than 15,000 employees during 250 workdays per year would not result in the determination of a materially different amount of actual time taken than could be readily calculated pursuant to the 30 minute daily standard specified by the collective bargaining agreements. The cost of doing this would be prohibitive. Because the County has directed all employees (Attachment A) to limit the daily reporting of hours worked to 7.5 hours when preparing SB 90 claims, the

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

effect of not allowing the County to exclude one-half hour per day break-time from the productive hour calculation would be to increase the hours charged to SB 90 claims by the same one-half hour per day for all claims involving full-day charges and therefore except for increasing the workload no useful purpose will be served.. As stated in the case of training time earlier, the break time on days when the staff works exclusively on specific programs is not included in the break time for this purpose.

We previously clarified all these issues in response to an email dated February 6, 2004 from the Audit Division of the State Controller's Office. The email stated that the State would accept the usage of a countywide productive hourly rate with certain conditions (Attachment B). That email raised the same issues raised in this audit report. For your reference the email from the Audit Division of the State Controller's Office dated February 6, 2004 is reproduced below.

Copy of email dated February 6, 2004 from Jim Spano to the County of Santa Clara

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide Productive hours and have discussed your analysis with my staff and Division Of Accounting and reporting staff. The use of countywide productive hours Would be acceptable to the State Controller's Office provided all employee Classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes Guidelines for preparing mandated cost claims, does not identify the time Spent on training and authorized breaks as deductions (excludable Components) from total hours when computing productive hours. However, if a County chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

County of Santa Clara
SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

If you would like to discuss the above further, please contact me.
Jim Spano

We responded to all the issues raised in the above email. We continue to use the countywide productive hours policy for non-SB90 programs, as accepted in the above email. Further, before the introduction of the countywide productive hour policy in the County of Santa Clara in our letter of December 27, 2001, we noticed (Attachment C) the State Controller that the County was electing to change its SB 90 claiming procedures for the calculation of productive hourly rates. The County reported that the switch to a countywide methodology for the calculation of average countywide productive hours per position would improve SB 90 claiming accuracy, consistency, and documentation and facilitate the State audit function. Consequently, more than 50 claims have been submitted and accepted during the past two years using this countywide methodology.

We advised state audit staff and provided a copy of the County's letter dated December 27, 2001 and explained our understanding of the SB 90 instructions pertaining to the calculation of productive hours. The State auditors did not provide any written State procedures, regulations or other legal authority to refute our interpretation of Section 7 of the State Controller's SB 90 Claiming Instructions for Cities, Counties and Special Districts.

We invite your kind attention to the amount involved in this finding which is very less compared to the claimed cost and therefore request you to drop this finding and allow the costs as claimed by us.

FINDING 3—Understated benefit rates

The county understated employee benefit costs by \$941 for FY 2004-05 (\$748 by the Sheriff's Department and \$193 by the District Attorney's Office). Related unallowable indirect costs totaled \$347. This understatement occurred because the county calculated benefit rates for employees by dividing their annual benefits by their respective total compensation (benefits plus salaries), instead of only salaries. Therefore, the county understated benefit rates for this fiscal year for these two departments. We recalculated benefit rates by dividing employees' total annual benefits by their total annual salaries to arrive at the correct benefit rates.

The parameters and guidelines, section VA(1) (Salaries and Benefits), require that claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

County of Santa Clara

SB90 mandate-Detailed Response to POBOR Draft audit report-March, 2008

The parameters and guidelines section VI (Supporting Data); require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

County's response (probation)

We accept the audit comments and request that the costs be allowed to the extent understated.

FINDING 4 - understated indirect costs

The county understated indirect costs by \$1,222 for FY 2003-04. This understatement occurred because the Probation Department mistakenly applied its indirect cost rate to the incorrect base. For FY 2003-04, the Probation Department computed its indirect cost rate on the basis of salaries and benefits. However, on the mandate claim, the rate was mistakenly applied to claimed salaries only. We recomputed allowable indirect costs by applying the claimed indirect cost rate to both salaries and benefits allowable.

The program's parameters and guidelines, section VB (Indirect Costs), state that indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Compensation for indirect costs is eligible for reimbursement using the procedures provided in the OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."

Recommendation

We recommend that the county calculate its indirect costs in a manner that is consistent with the methodology outlined in OMB Circular A-87.

County's response (Probation)

We accept the finding as it was an oversight and we request that the costs be recalculated and allowed.

FINDING 5—Unallowable travel and training costs

The county claimed unallowable travel and training costs of \$1,521 for FY 2004-05. This overstatement occurred because the Probation Department claimed ineligible training-related expenses. As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of training classes accordingly.

The parameters and guidelines, Section VA (5) (Supporting Documentation-Training), allow for reimbursement of travel and training costs incurred for the performance of mandated activities. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

Recommendation

We recommend that the county ensure that claimed costs include only eligible costs and are based on expenditures that occurred as a result of performing mandated activities.

County's response (probation)

As stated earlier, we do not agree with the narrow interpretation on training costs as explained by the audit. We therefore are of the strong view that all the training costs and costs associated with the training are reimbursable and as such should be reimbursed to us without any cuts.

General response

We thank the audit team for their speedy audit work and the discussions they had with us. However we felt highly disappointed with their unwillingness to go through the program implementation constraints and the background of the procedures followed in the county in this program. Please also see our cover letter to which this response is attached.

Exhibit L

349

354

County of Santa Clara

Finance Agency
Controller-Treasurer Department
County Government Center, East Wing
70 West Hedding Street
San Jose, California 95110-1705
PHONE 202-3541 FAX 282-8152D



December 27, 2001

The State Controller's Office
Attn: Local Reimbursements Section
Division of Accounting and Reporting
P. O. Box 942850
Sacramento, CA 94250

Subject: Countywide Productive Hourly Rate for SB90 Claims

The Santa Clara County has decided to use the countywide effectively hourly rate in calculating the direct labor costs for its future SB90 claims. The methodology used by the County in determining the countywide effective hourly rate is consistent with the guidelines issued by the State Controller's Office in the 'SB90-Mandated Cost Manual for the Counties'. Developing a countywide effective hourly rate will standardize the County's approach, minimize duplication of effort presently expended making these calculations, and improve the accuracy and documentation related to the calculation of the productive hour rates.

The State Manual suggests the following three methods for determining the productive hours and gives the counties an option to use any of these methods:

- a. Actual annual productive hours for each job title;
- b. Countywide average annual productive hours; or
- c. The standard annual 1800 hours. The State Controller included the following items in determining the standard 1800 hours:
 - Paid holidays
 - Vacation earned
 - Sick leave taken
 - Informal time off
 - Jury Duty
 - Military leave taken

Prior to developing the productive hourly rate calculations, our Management Auditor (Roger Mialocq) contacted the State Controller's Bureau Chief for Compliance Audits (Jim Spano) to see if there were any objections to the countywide productive hourly rate usage. Mr. Spano concurred that the countywide hourly rate will result in a more efficient, less costly and more accurate approach.

Board of Supervisors: Donald F. Gage, Eduardo Avaredo, Pete McHugh, James T. Baird Jr., Liz Kriss
County Executive: Richard Wittenberg

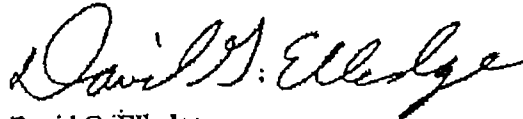
SB90-Productive Hours
December 27, 2001
Page 2 of 2

We have decided to use the countywide effective hours, and have enclosed for your review, analysis of actual hours for all county employees and the calculation of the countywide productive hours for the fiscal years 2000 and 2001. For this, we have used the information on actual hours expended during the fiscal year with data extracted from the county's computerized payroll (People Soft) system. We will amend the SB90 claims for fiscal year 2000, and will prepare all future SB90 claims using this methodology.

Please review the enclosed schedules and provide us with your immediate response. Complete supporting working papers are available at our office and will be made available upon your request. We will submit the details with each claim submitted.

If you need more information, please contact the County's SB90 Coordinator, Mr. Ram Venkatesan, at (408) 299-5214 or by email ramaiah.venkatesan@fin.co.scl.ca.us

Sincerely,



David G. Elledge
Controller-Treasurer

Encl:

H:\Work\SB-90\SB 90-Productive Hours-Letter to State Controller.doc

ANALYSIS OF FY 2000-01 ACTUAL HOURS FOR ALL COUNTY EMPLOYEES

Hours Code	Description	Balance at 6/25/00 (1)	Balance at 12/24/00 (2)	6/25/00-12/24/00 (3)	Balance at 7/8/01 (4)	FY 1999-00 Total (3+4)	Avg Hrs Per FTE*4
51	Vacation Accumulated and Earned *1	1,096,825	2,277,954	1,181,129	1,216,792	2,267,652	159.10
52	Personal Leave Earned	6,964	283,279	276,315	8,199	284,514	19.96
100	Regular Hours	12,245,376	24,433,925	12,188,550	13,609,296	25,797,846	1,809.94
600	Release Time	3,038	6,166	3,128	2,494	5,623	0.39
605	Administrative Leave	4,620	10,074	5,454	9,253	14,707	1.03
606	Paid Leave Pending Investigation	8,409	15,576	7,467	2,549	10,015	0.70
620	First Day Sick	50,392	99,702	49,310	54,673	103,983	7.30
625	Sarny 4851 - Long Disability Lv	32,532	75,077	43,445	53,603	97,048	6.81
630	Military Leave - Pay	328	1,284	956	506	1,462	0.10
635	FLSA Comp. Time Used*5	21,440	45,862	24,422	29,060	17,827	1.30
640	Regular Comp. Time Used*5	42,447	15,794	43,307	52,363	31,890	2.32
653	Annual Leave Used	14,552	31,108	16,545	19,225	35,770	2.51
655	Sick Leave Used	452,502	38,243	435,741	507,728	943,469	66.19
660	Other Paid Time	16,403	34,635	18,232	10,374	29,106	2.04
665	Jury Duty	629	1,401	772	1,301	2,073	0.15
675	Rejuvenation Leave	364	1,604	741	2,211	2,952	0.21
676	Rejuvenation Leave-PTD/STD	24	70	46	113	159	0.01
677	Rejuvenation Leave-Chg Sick Lv	270	557	286	782	1,068	0.07
Total Actual Hours Earned		13,997,762	28,293,610	14,295,847	15,561,023	29,847,195	2,080
Full-time Equivalent Positions						13,726	
Weekdays in Period			130		140	270	
Paid Hours in Period						2,160	

352

ANALYSIS	
Average Productive Hours per Employee	1,809.94
Less Holidays	-88.00
Less Daily Break Time	-113.12
Less Training Time *3	-37.17
Net Average Productive Hours Per Employee	1,571.65

- Notes:
- *1 Excludes 1000 hours for 1,480 CEMA employees, since holiday hours are included for all employees below.
 - *2 Two 15-minute breaks are provided daily per bargaining unit contracts.
 - *3 Training time is calculated based on an analysis of each bargaining unit MCA and the required continuing education hours for licensure/certification in the applicable classifications.
 - *4 Adjusted by a factor of .963 to account for the additional 10 days covered by the payroll documents.
 - *5 Includes one-third of comp time hours used since one hour is worked for every 1.5 hours taken.

Exhibit M

353

358



Jspano@sco.ca.gov
02/08/2004 03:09 PM

To: Ram.Venkatesan@fin.sco.gov.org
cc: cprasad@sco.ca.gov, svanzee@sco.ca.gov, mhavey@sco.ca.gov,
gibrummels@sco.ca.gov, mquerin@sco.ca.gov, aluna@sco.ca.gov,
jvennemans@sco.ca.gov
Subject: Countywide Productive Hours

Ram,

I reviewed the county's proposal dated December 19, 2001, to use countywide productive hours and have discussed your analysis with my staff and Division of Accounting and Reporting staff. The use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandates and nonmandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes guidelines for preparing mandated cost claims, does not identify the time spent on training and authorized breaks as deductions (excludable components) from total hours when computing productive hours. However, county chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit periods include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours.

If you would like to discuss the above further, please contact me.

> Jim L. Spano, CPA
> Chief, Compliance Audits Bureau
> Division of Audits
> State Controller's Office
> Work - (916) 323-5849
> Fax - (916) 327-0832
>
>

12. CLAIM CERTIFICATION

Read, sign, and date this section and insert at the end of the incorrect reduction claim submission. *

This claim alleges an incorrect reduction of a reimbursement claim filed with the State Controller's Office pursuant to Government Code section 17561. This incorrect reduction claim is filed pursuant to Government Code section 17551, subdivision (d). I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this incorrect reduction claim submission is true and complete to the best of my own knowledge or information or belief.

RAM VENKATESAN

Print or Type Name of Authorized Local Agency or School District Official

SB90 COORDINATOR

Print or Type Title

Ram Venkatesan

Signature of Authorized Local Agency or School District Official

9/10/2010

Date

* If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the incorrect reduction claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.

CONTROLLER DEPARTMENT
SANTA CLARA COUNTY
70 W. HEDDING - E. WING
SAN JOSE, CA 95110

PH 408-299-5210

Email ram.venkatesan@FIN.SCCgov.org

FAX 408-287-7629



Exhibit B

RECEIVED

December 02, 2014

Commission on
State Mandates

LATE FILING

JOHN CHIANG
California State Controller

December 2, 2014

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

Re: Incorrect Reduction Claim (IRC)
Peace Officers Procedural Bill of Rights (POBOR), 10-4499-I-01
Statutes 1976, Chapter 465, Statutes 1978, Chapters 775, 1173, 1174, and 1178
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
Santa Clara County, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-named IRC.

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/sk

14824

**RESPONSE BY THE STATE CONTROLLER'S OFFICE
TO THE INCORRECT REDUCTION CLAIM (IRC) BY
SANTA CLARA COUNTY**

Peace Officers Procedural Bill of Rights Program

Table of Contents

<u>Description</u>	<u>Page</u>
SCO Response to County's Comments	
Declaration.....	Tab 1
State Controller's Office Analysis and Response.....	Tab 2
Excerpts of State Controller's Office Mandated Cost Manual for Local Agencies, Section 2-Filing a Claim, subdivisions 7(a) through 7(c), Updated September 2004	Tab 3
Analysis of Salary and Benefit Costs, by Reimbursable Activity and Department – FY 2003-04, FY 2004-05, FY 2005-06	Tab 4
State Controller's Office Start Letter, March 27, 2007	Tab 5
Commission on State Mandates' Proposed Parameters and Guidelines, Item 10 Peace Officers Procedural Bill of Rights Program, Commission Hearing Dated July 27, 2000	Tab 6
Commission on State Mandates' Final Staff Analysis, Request to Amend Parameters and Guidelines, Item 13, Peace Officers Procedural Bill of Rights Program, Commission Hearing Date December 4, 2006	Tab 7
Santa Clara County's Analysis of Productive Hours for All County Employees – FY 2003-04, FY 2004-05, and FY 2005-06	Tab 8
Analysis of Travel and Training Costs, FY 2004-05.....	Tab 9

Note: References to Exhibits relate to the county's IRC filed on September 16, 2010, as follows:

- Exhibit A – PDF page 33
- Exhibit B – PDF page 97
- Exhibit C – PDF page 129
- Exhibit D – PDF page 141
- Exhibit E – PDF page 161
- Exhibit F – PDF page 207
- Exhibit G– PDF page 225
- Exhibit H – PDF page 249
- Exhibit I– PDF page 299
- Exhibit J– PDF page 323
- Exhibit K – PDF page 349
- Exhibit L – PDF page 375
- Exhibit M – PDF page 381

Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

2 Division of Audits
3 3301 C Street, Suite 725
4 Sacramento, CA 95816
5 Telephone No.: (916) 323-5849

6 **BEFORE THE**
7 **COMMISSION ON STATE MANDATES**
8 **STATE OF CALIFORNIA**

9
10 **INCORRECT REDUCTION CLAIM ON:**

No.: Commission 10-4499-I-01

11 *Peace Officers Procedural Bill of Rights*
12 *Program*

AFFIDAVIT OF BUREAU CHIEF

13 Government Code Sections 3300-3310
14 Statutes 1976, Chapter 465; Statutes 1978,
15 Chapter 775, 1173, 1174, and 1178; Statutes
16 1979, Chapter 405; Statutes 1980, Chapter
17 1367; Statutes 1982, Chapter 994; Statutes
18 1983, Chapter 964; Statutes 1989, Chapter
19 1165; and Statutes 1990, Chapter 675

20 **SANTA CLARA COUNTY,**
21 **Claimant**

22 I, Jim L. Spano, make the following declarations:

- 23 1) I am an employee of the State Controller's Office (SCO) and am over the age of 18 years.
- 24 2) I am currently employed as a bureau chief, and have been so since April 21, 2000. Before that, I was employed as an audit manager for two years and three months.
- 25 3) I am a California Certified Public Accountant.
- 4) I reviewed the work performed by the SCO auditor.
- 5) Any attached copies of records are true copies of records, as provided by Santa Clara County or retained at our place of business.

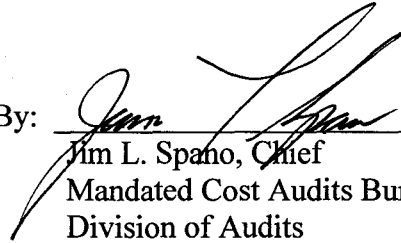
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- 6) The records include claims for reimbursement, and attached supporting documentation, explanatory letters, or other documents relating to the above-entitled Incorrect Reduction Claim.
- 7) A field audit of the claims for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06 commenced March 19, 2007, and ended on May 14, 2008.

I do declare that the above declarations are made under penalty of perjury and are true and correct to the best of my knowledge, and that such knowledge is based on personal observation, information, or belief.

Date: December 2, 2014

OFFICE OF THE STATE CONTROLLER

By: 
Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 2

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIM BY
SANTA CLARA COUNTY**

For Fiscal Year (FY) 2003-04, FY 2004-05, and FY 2005-06

Peace Officers Procedural Bill of Rights Program

Government Code Sections 3300-3310

**Statutes 1976, Chapter 465; Statutes 1978, Chapter 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675**

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that Santa Clara County submitted on September 16, 2010. The SCO audited the county's claims for costs of the legislatively mandated Peace Officers Procedural Bill of Rights Program for the period of July 1, 2003, through June 30, 2006. The SCO issued its final report on May 14, 2008 (**Exhibit A**).

The county submitted reimbursement claims totaling \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim)—\$166,422 for fiscal year (FY) 2003-04 (**Exhibit H**), \$270,774 for FY 2004-05 (**Exhibit I**), and \$311,692 for FY 2005-06 (**Exhibit J**). Subsequently, the SCO audited these claims and determined that \$222,086 is allowable and \$526,802 is unallowable. The county claimed ineligible costs and overstated productive hourly wage rates.

The following table summarizes the audit results:

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2003, through June 30, 2004</u>			
Direct costs:			
Salaries	\$ 91,196	\$ 26,890	\$ (64,306)
Benefits	27,816	8,441	(19,375)
Total direct costs	119,012	35,331	(83,681)
Indirect costs	48,410	13,230	(35,180)
Total direct and indirect costs	167,422	48,561	(118,861)
Less late filing penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 166,422</u>	47,561	<u>\$ (118,861)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 47,561</u>	

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2004, through June 30, 2005</u>			
Direct costs:			
Salaries	\$ 125,091	\$ 49,340	\$ (75,751)
Benefits	37,276	14,759	(22,517)
Services and supplies	1,991	1,991	—
Travel and training	3,299	1,778	(1,521)
Total direct costs	167,657	67,868	(99,789)
Indirect costs	103,117	44,360	(58,757)
Total program costs	<u>\$ 270,774</u>	112,228	<u>\$ (158,546)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 112,228</u>	
<u>July 1, 2005, through June 30, 2006</u>			
Direct costs:			
Salaries	\$ 140,795	\$ 28,671	\$ (112,124)
Benefits	51,201	9,894	(41,307)
Total direct costs	191,996	38,565	(153,431)
Indirect costs	119,696	23,732	(95,964)
Total program costs	<u>\$ 311,692</u>	62,297	<u>\$ (249,395)</u>
Less amount paid by the State ¹		(62,297)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>Summary: July 1, 2002, through June 30, 2006</u>			
Direct costs:			
Salaries	\$ 357,082	\$ 104,901	\$ (252,181)
Benefits	116,293	33,094	(83,199)
Services and supplies	1,991	1,991	—
Travel and training	3,299	1,778	(1,521)
Total direct costs	478,665	141,764	(336,901)
Indirect costs	271,223	81,322	(189,901)
Total direct and indirect costs	749,888	223,086	(526,802)
Less late filing penalty	(1,000)	(1,000)	—
Total program costs	<u>\$ 748,888</u>	222,086	<u>\$ (526,802)</u>
Less amount paid by the State ¹		(62,297)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 129,789</u>	

¹ Payment information current as of November 24, 2014.

I. PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM CRITERIA

Parameters and Guidelines – August 26, 1999

On July 27, 2000, the Commission on State Mandates (Commission) adopted parameters and guidelines and corrected them on August 17, 2000, for Government Code Sections 3300-3310 Statutes 1976, Chapter 465; Statutes 1978, Chapter 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675 (**Exhibit C**). These parameters and guidelines are applicable to the county's FY 2003-04, FY 2004-05, and FY 2005-06 claims.

SCO Claiming Instructions

The SCO annually issues mandated cost claiming instructions, which contain filing instructions for mandated cost programs. The September 2003 general claiming instructions, State Controller's Office Mandated Cost Manual for Local Agencies, Section 2-Filing A Claim, subdivision 7(a) through 7(c) (**Tab 3**), provide instructions for calculating productive hourly rates. The September 2003 claiming instructions are believed to be, for the purposes and scope of the audit period, substantially similar to the version extant at the time the county filed its FY 2003-04, FY 2004-05, and FY 2005-06, mandated cost claims. The SCO issued Peace Officers Procedural Bill of Rights Program claiming instructions on October 2, 2000.

II. THE COUNTY OVERSTATED COSTS RELATED TO ADMINISTRATIVE ACTIVITIES

Issue

The county's IRC contests Finding 1 in the SCO's final audit report issued May 14, 2008, related to the Administrative Activities cost component. The SCO concluded that the county claimed ineligible salaries and benefits totaling \$43,953 (\$8,463 by the Sheriff's Department, and \$35,490 by the Probation Department) because costs claimed were for ineligible activities (**Tab 4**). Related unallowable indirect costs totaled \$29,114. The county believes that the SCO based its finding on the wrong set of parameters and guidelines that became effective starting fiscal year 2006-2007. The county also believes that the original parameters and guidelines in effect during the audit period lacked the necessary level of specificity.

SCO's Analysis

The county claimed costs for ineligible activities. The parameters and guidelines (section IV(A), Administrative Activities, Ongoing Activities) allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manual(s) and other materials pertaining to the conduct of the mandated activities;
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate; and
3. Updating the status of the POBOR cases.

Sheriff Department

The Sheriff's Department claimed the following ineligible activities:

- Preparing the file

- Logging initial case information into the system and assigning the case
- Interviewing the complainants

Probation Department

We adjusted the Probation Department's training hours that were not related to POBOR training. The ineligible training hours included the following topics:

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation
- Budgeting implications
- Juvenile Justice Reforms
- Discrimination issues
- Electronic research
- First Amendment-related conduct
- Preparing investigation reports
- Key mistakes in workplace investigations
- Assessing credibility
- Types of lawsuits
- Representation and indemnification
- Supervisory liability of failure to train
- Minimizing exposure to liability

The department also claimed the following ineligible activities for FY 2004-05:

- Reviewing Internal Affairs (IA) investigation reports to approve or to make corrections
- Visiting other IA units during the establishment of the IA unit at the Probation Department
- Conducting interviews for the IA Management Analyst position
- Reviewing the progress of development of the IA database
- Reviewing complaints, response letters, Merit System Rules, and assigning cases
- Reviewing the unit's training schedule

County's Response

A. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE ACTIVITIES IS INCORRECT

Audit Finding 1 states that the County over-claimed salaries, benefits, and related indirect costs related to POBOR administrative activities in the amount of \$73,067. The SCO asserts that such over-claiming was due to claiming for ineligible activities, such as, preparing the file, logging the initial case information, interviewing complainants, training, reviewing reports, and so on. As the County pointed out in its response, the SCO based its finding on the wrong set of Parameters and Guidelines. The original Parameters and Guidelines did not have that level of specificity and the

amended Parameters and Guidelines were not effective until the 2006-2007 fiscal year – the fiscal year after the claims represented in the instant audit. The County cannot be held to a standard that was non-existent at the time the costs were incurred and of which the County had no notice. The SCO must audit each claim based on the Parameters and Guidelines applicable to the particular claiming cycle. In the instant case, the amended Parameters and Guidelines were not relevant to the claiming cycle being audited.

The SCO objects to a number of claimed activities stating, in essence, that there was no nexus between the activity claimed and the Parameters and Guidelines. The only guidance the County had at the time of claiming were the following activities as set forth in the Parameters and Guidelines:

1. Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

Each of these components is sufficiently flexible so as to allow local government to adapt them to its own method of implementing the mandate. If the Legislature had had in mind a specific manner in which to implement the mandate, it would have said so.

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities

The County properly claimed costs for visiting other Internal Affairs (IA) units during the establishment of its IA unit. Part of developing internal policies can include reviewing other department doing the same or similar work. This information is not only important to the development of internal policies; it is also a reasonable method of compliance as it allows for the mere editing or cutting-and-pasting of other policies. Thus, time spent gathering information can yield time savings in the process of drafting the policies.

2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.

The County properly claimed training costs. The SCO pared the list of covered topics to those it believes relate to the mandate. For a mandate as complex and pervasive s POBOR, however, such limitations are not proper. Training on POBOR properly encompasses issues of labor relations, confidentiality issues, investigation errors, first amendment-related conduct, key mistakes in workplace, investigations, and assessing credibility, to name a few. While the County appreciates the SCO's attempt to include some costs rather than give a full disallowance, the SCO did not allow for some legitimate costs.

3. Updating the status of the POBOR cases.

In the instant case, the County properly claimed those activities involved in setting up a POBOR file. The creation of the file is, itself, an update of the status of the case. This is also the case for placing the case information in the file management system which allows for later updating.

SCO's Comment

The county believes that the SCO based its finding on the revised parameters and guidelines for the POBOR program adopted by the Commission on December 4, 2006. The county also raised the same issue during its response to the draft report. The county's contention is not accurate. We previously responded to this issue in our final report. The county has not provided any additional arguments or evidence to support its contention.

Our audit of the county's claims was initiated on March 19, 2007, when we contacted the county to inform them of the audit and arrange for an entrance conference to begin fieldwork. Fieldwork began on April 9, 2007 (**Tab 5**). Therefore, the revised parameters and guidelines was the version extant at the time that fieldwork was conducted. Any references to the revised parameters and guidelines adopted on December 4, 2006, that we made during the exit conference or in any discussion during the audit process were made solely to point out to county staff that reimbursable and non-reimbursable activities of the mandated program are spelled out more clearly in the revised parameters and guidelines. Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code Section 3304) and Adverse Comment (for punitive actions protected by the due process clause), reimbursable activities did not change from the original parameters and guidelines. In addition, our understanding of allowable Administrative Activities per the original parameters and guidelines did not change as a result of the Commission amending them on December 4, 2006.

The audit report, dated May 14, 2008, [**Exhibit A**] states that the audit was based on the parameters and guidelines adopted by the Commission on July 27, 2000, and corrected on August 17, 2000. The language in the audit report and in the SCO response to the county's comments to the audit report originates either from the August 17, 2000, parameters and guidelines, the original statement of decision, or from the Commission staff analysis of the originally proposed parameters and guidelines for this mandate program.

1. **Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.**

The county believes that it properly claimed costs for visiting other Internal Affairs (IA) units during the establishment of the IA unit at its Probation Department. The county believes that these costs are an integral part of developing internal policies.

The county is interpreting the reimbursable activity very broadly. The reimbursable activity is for developing internal policies and procedures that pertain to the conduct of the mandated activities. Establishing a new IA unit involves many other aspects that are outside the scope of the mandated activities. We concur that visiting other IA units may have provided time savings during the county's establishment of an IA unit in its Probation Department. However, the county has not provided any documentation to explain how the hours in question relate to the portion of the policies and procedures developed for the conduct of the mandated activities.

In addition, the county did not include in its response that the hours in question involved not only the activity of visiting other IA units, but also the activities of reviewing the training schedules of the IA units, reviewing Merit System Rules, reviewing the IA database, and interviewing for the IA Management Analyst position. The county has not provided any additional information or explanation as to how these activities pertained to its development or update of internal policies, procedures, or manuals for the mandated program. Therefore, it is still our contention that these activities are not reimbursable under the mandated program.

2. **Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.**

The county believes that it properly claimed training costs for the Probation Department. The county believes that our methodology to partially adjust the training hours was improper. In the county's view, reimbursable POBOR training should also encompass issues such as labor relations, confidentiality issues, investigation errors, first amendment-related conduct, key mistakes in workplace investigations, assessing credibility, budgeting implications, and others. We disagree.

The county raised this issue in its response to the draft audit report and we provided our comments in the final audit report. The parameters and guidelines state that one of the reimbursable activities under the cost component of Administrative Activities includes attendance at specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. The county's argument suggests that training on other comprehensive topics not related to requirements of the mandated program should be allowable. We disagree.

In the staff analysis for the proposed POBOR Program's parameters and guidelines (Item #10 in the Commission hearing of July 27, 2000) (Tab 6), the Commission discussed its analysis of the test claimant's proposed parameters and guidelines for administrative activities. On page 901, this analysis addresses the following training issues:

Finally, staff has designated the administrative activities as on-going activities. Due to a lack of specificity in the test claim legislation, hundreds of court cases have been, and continue to be issued. The case law has provided new interpretations of the legislation and clarified the responsibilities of local agencies. Thus, staff finds that it is reasonably necessary for local agencies to update their internal policies and procedures, and train their employees on an on-going basis.

The language in the parameters and guidelines states that training "regarding the requirements of the mandate" is reimbursable. Accordingly, training hours for topics unrelated to the requirements of the mandated program are unallowable, consistent with the language in the adopted parameters and guidelines. For additional clarification, we referred to the Commission staff analysis cited above for the proposed parameters and guidelines, which mentions ongoing changes in case law related to the mandated activities that would require staff training. We noted all of the specific training topics in the final audit report that were deemed unallowable. The county did not and has not provided any additional documentation or information supporting why these topics should be considered allowable training hours related to the mandated program.

3. Updating the status of the POBOR cases.

The county believes that it properly claimed costs of updating the status of the POBOR cases for the Sheriff's Department. The county believes that the activities of setting up POBOR files and logging the initial case information are part of the reimbursable activity of updating the status of the POBOR cases. We disagree.

The county raised this issue in its response to the draft audit report and we provided our comments in the final audit report. The county has not provided any additional documentation or information explaining how setting up POBOR files and logging the initial case information fit into the activity of updating the status of the POBOR cases.

The county is taking the reimbursable activity of "updating" out of context. In the staff analysis for the proposed POBOR Program's parameters and guidelines (Item #10 in the Commission hearing of July 27, 2000) (Tab 6), the Commission discussed its analysis of the test claimant's proposed parameters and guidelines for administrative activities. On page 901, this analysis addresses the following related to "updating the status of the POBOR cases:

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases." "Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBAR cases."

Therefore, we contend that the activities deemed unallowable are part of file maintenance activities that go beyond what the reimbursable activity intended.

III. THE COUNTY OVERSTATED COSTS RELATED TO ADMINISTRATIVE APPEALS.

Issue

The county's IRC contests Finding 1 in the SCO's final audit report issued May 14, 2008, related to the Administrative Appeals cost component. The SCO concluded that the county claimed ineligible salaries and benefits totaling \$2,373 (\$1,388 by the Sheriff's Department, and \$985 by the Probation Department) because costs claimed were for ineligible activities (**Tab 4**). Related unallowable indirect costs totaled \$1,193. The county believes that the claiming of these costs was proper.

SCO's Analysis

The parameters and guidelines (section IVB (2), Administrative Appeals) allow reimbursement for providing the opportunity for, and the conduct of, an administrative appeal for the following disciplinary actions:

1. Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
2. Transfer of permanent employees for purposes of punishment;
3. Denial of promotion for permanent employees for reasons other than merit; and
4. Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

Sheriff's Department

Our review of the claimed costs under this component revealed that no administrative hearings were held for the two cases included in the claims.

Probation Department

All costs claimed under this component included hours incurred during appeal hearings that resulted from unallowable disciplinary actions (suspension and letter of reprimand for permanent employees). Subsequently claimed activities were ineligible for reimbursement.

County's Response

B. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE APPEALS IS INCORRECT

Audit Finding 1 states that the County over-claimed salaries, benefits, and related indirect costs related to POBOR administrative appeals in the amount of \$3,566. The SCO alleges that such over-claiming was due to claiming for ineligible appeals which are part and parcel of due process and, as such, are outside the scope of POBOR. In 1999 when the Commission considered the POBOR test claim, it carefully evaluated existing due process protections from the protections imposed by POBOR. (See SOD, at pp. 4-8.) The Commission's Statement of Decision resulted in the following Parameters and Guidelines on this matter:

Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction, or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee.

As set forth under the final bullet, other actions against a permanent employee that negatively impact his career are reimbursable such as reprimand and suspension. The claiming of these costs by the County was therefore proper.

SCO's Comment

The county claimed Administrative Appeal costs for permanent employees. Two cases were claimed by the Sheriff's Department and two by the Probation Department. No administrative hearings were ever held for the two cases claimed by the Sheriff's Department. Administrative hearings were held for the two cases claimed by the Probation Department that resulted in a suspension and a letter of reprimand.

Section IVB (2) of the parameters and guidelines addresses allowable costs for permanent employees under the next three bullet points when it includes:

- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

The county suggests that the last bullet point covers the costs included in its claim by stating "other actions against a permanent employee that negatively impact his career are reimbursable such as reprimand and suspension." We disagree.

The Commission's original statement of decision for the POBOR program, adopted November 30, 1999, [Exhibit E] states the following on page 11:

Thus, the Commission found that the administrative appeal hearings would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal does not constitute a new program or higher level of service because prior law requires such an appeal under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17566, subdivision (c), the costs incurred in providing the administrative appeal in the above

circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

The Commission language is clear, and the costs in question are unallowable because they are already required under the due process clause.

IV. THE COUNTY OVERSTATED COSTS RELATED TO INTERROGATIONS

Issue

The county's IRC contests Finding 1 in the SCO's final audit report issued May 14, 2008, related to the Interrogations cost component. The SCO concluded that the county claimed ineligible salaries and benefits totaling \$207,936 (\$61,350 by the Sheriff's Department, \$130,236 by the Probation Department, and \$16,350 by the District Attorney's Office) because costs claimed were for ineligible activities (**Tab 4**). Related unallowable indirect costs totaled \$120,026.

The county believes that its claiming of interrogation costs was proper. The County cites "over-claimed salaries, benefits, and related indirect costs related to POBOR interrogations in the amount of \$250,262." That amount is incorrect. The unallowable amount cited on page 10 of the audit report for the Interrogation cost component was \$327,962 (\$207,936 for salaries and benefits and \$120,026 for related indirect costs).

SCO's Analysis

The parameters and guidelines (section IV(C), Interrogations) state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by a seriousness of investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

The parameters and guidelines (section IV(C)) also state that the following activities are reimbursable:

Tape recording the interrogation when the peace officer employee records the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

The county claimed the following ineligible activities:

Sheriff's Department

- Gathering reports and reviewing complaints and evidence as part of investigating the allegations
- Investigation time
- Preparing questions for the interviews
- Interviewing witnesses during normal working hours (investigators' time)
- Reviewing tapes and summarizing/transcribing witness officers' statements
- Conducting pre-interrogation meetings
- Interviewing accused officers during normal working hours (investigators' time)

Probation Department

- Gathering reports, log sheets, and evidence
- Reviewing complaints, reports, and evidence as part of investigating the allegations
- Interviewing witnesses, both civilian and officers (investigators' time)
- Traveling to interview witnesses
- Transcribing witness tapes
- Reviewing tapes and making corrections
- Preparing interview questions
- Conducting pre-interrogation meetings
- Interviewing accused officers during normal working hours (investigators' time)

District Attorney's Office

- Gathering reports, logs sheets, etc
- Reviewing complaints, reports, and evidence as part of investigating the allegations
- Preparing interview questions
- Interviewing witnesses during normal working hours (investigators' time)
- Conducting pre-interrogation meetings
- Interviewing accused offices during normal working hours (investigators' time)
- Preparing a summary report of the agency complaint as part of the case file preparation
- Reviewing interview tapes

County's Response

C. AUDIT FINDING NUMBER ONE REGARDING INTERROGATION COSTS IS INCORRECT

Audit Finding 1 states that the County over-claimed salaries, benefits, and related indirect costs related to POBOR interrogations in the amount of \$250,262. This finding was based upon the SCO's interpretation of the Parameters and Guidelines which was made without thoughtful review of the Commission's Statement of Decision. The Statement of Decision is the "law of the case" and is given deference when there is any discrepancy between the finding of a judicial body and the documents that arise from that finding.

This Commission, in 1999, addressed the test claim legislation of POBOR which provides safeguards for the protection of peace officers that are subject of investigation or discipline. Of primary concern was whether and to what extent these safeguards and protections were more expansive than those already in existence through statute, case law and the Constitution. Indeed, as evidenced in the Statement of Decision, this Commission took particular care to root out those protections that were not duplicative of pre-existing due process rights and to delineate the scope and extent of the state-mandated activities:

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer.

This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless seriousness of investigation requires otherwise. If the interrogation takes place

during off-duty time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

"If a typical police department works in three shifts, such as the Police Department for the City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section. Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section."

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular departmental procedures are new requirements not previously imposed on local agencies and school districts. (SOD, Exhibit B at pp. 12-13. Emphasis added.)

The use of conjunctive "and" and the plural "requirements" refers to the fact that Commission found that both the costs of conducting the interrogation during on-duty hours and the costs for paying overtime for off-duty time are reimbursable activities of the mandate. This conclusion is supported by the evidence before this Commission at the hearing as stated above.

The fact that that is omitted in the conclusion to the Statement of Decision, which is an abbreviated summary of the text, is not definitive. The interpretation of any writing requires that words be given their plain and ordinary meaning, and the interpretation should give meaning to the circumstances under which it was made and should relate to the whole. In the instant case, the use of "and" in the text and the quote to the supporting evidence clearly indicates that the Commission intended to allow reimbursement for both on-duty and off-duty time.

Thus, the County properly claimed the costs of conducting the interrogation while the officer was on duty and those costs for compensating the officer when the interrogation was performed during off-duty hours.

SCO's Comment

The county believes that the language used by the Commission in the statement of decision paragraphs quoted above support that costs incurred for interrogating officers during their regular on-duty time are reimbursable. We disagree. We believe this position to be an expanded interpretation, given that the issue under analysis in that section of the statement of decision was whether or not the test claim statute imposed the payment of overtime to the investigated employee. It imposes overtime if the officer is on-duty and the timing of the interrogation results in the officer working overtime, or if the officer is interrogated during off-duty time. In addition, the costs incurred for interrogating officers to conduct interrogations were never included in the Interrogations cost component as a reimbursable activity.

The county is relying solely on language in the statement of decision. However, the statement of decision does not define the reimbursable activities. The purpose of the statement of decision [Exhibit E] is stated on page 2 of that document as follows:

Issue: Does the test claim legislation, which established rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

On November 30, 1999, the Commission adopted its statement of decision that the test claim legislation constitutes a partial reimbursable mandated program within the meaning of Article XIII B, section 6 of the California Constitution, and Government Code section 17514. On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by Commission staff were issued to interested parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the test claim legislation, and the Commission's statement of decision. Subsequently, the reimbursable activities were written into regulation when the Commission adopted the parameters and guidelines for POBOR on July 27, 2000, and corrected them on August 17, 2000 [Exhibit C].

We re-examined the statement of decision and noted that the county is taking the language cited in its response out of context. The language cited by the county is found in the section of the statement of decision titled "Compensation and Timing of an Interrogation." The purpose of this section was to address the test claimant's assertion that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state-mandated activities. The county is basing its entire position on one sentence in the original statement of decision that reads "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." Based on this one sentence, the county concludes that costs incurred to conduct interrogations during a peace officer's regular on-duty time are reimbursable. This is an enhanced conclusion given the circumstances surrounding the issue addressed by the Commission in that portion of the statement of decision.

When quoting the statement of decision in its response, the county omitted the Commission's language in the beginning of that section where it is noted that the procedures under Government Code section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. The Commission even italicized the word "not" to make its point clear. The section begins on page 12 of the statement of decision by stating that:

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer. This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee, and thus, imposes reimbursable state mandated activities.

Therefore, the Commission had already made a determination that costs incurred for interrogations conducted during a peace officer's normal duty hours were not reimbursable before the evaluation of the test claimant's assertion about overtime costs even began. The county seems to suggest that the Commission somehow contradicted itself and reached a totally different conclusion from the one it had already emphasized in the beginning of its analysis. We believe that the county's conclusion is unsupported and unreasonable.

The county states that “the interpretation of any writing requires that words be given their plain and ordinary meaning, and the interpretation should give meaning to the circumstances under which it was made and should relate to the whole.” We agree. However, we believe that the county is taking some the Commission language out of context without examining the full documentary evidence available for this cost component.

To fully examine the Commission’s intent in relation to the Interrogation activity, we also re-examined Commission’s staff analysis for the proposed parameters and guidelines (Item #10 for its hearing of July 27, 2000) (Tab 6) regarding the Interrogations costs component. This document contains the following language:

Section IV, (C) (1) and (2), Compensating and Timing of an Interrogation, Interrogation Notice

The Commission’s Statement of Decision includes the following reimbursable activity:

“Conducting an interrogation of a peace officer while the office is on duty, or compensating the peace officer for off-duty time in accordance with regular departmental procedures. (Gov. Code, § 3303, subd. (a).)”

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a) requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking [sic] hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, *the claimant contended that this section resulted in the payment of overtime to the peace officer employee* [emphasis added]. (See page 12 of the Commission’s statement of decision.)

The staff analysis goes on to state:

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate the allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant’s proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

Based on the foregoing, staff has modified Section IV (C) as follows:

~~“1. Conducting an interrogation of a peace officer while the officer is on duty or compensating~~ When required by the seriousness of investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)

The Commission re-examined this issue in the final staff analysis for Item #13 – Request to Amend Parameters and Guidelines for its hearing held on December 4, 2006 (Tab 7). In that analysis, page 22, it states:

The County of San Bernardino, the City of Sacramento, and the City of Los Angeles contend that investigation costs and the cost to conduct the interrogation are reimbursable.

However,...the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct interrogations.

The county is attempting to expand the Commission’s staff analysis of the Interrogations cost component to include activities that were not included in the adopted parameters and guidelines. The adopted parameters and guidelines (section IV(C), Interrogation) state that “claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or any other

routine or unplanned contact with, a supervisor or any other public safety officer.” The document goes on to specify five activities that are reimbursable.

Section IV(C)(1) describes only one reimbursable activity that relates to interrogations. It states “when required by seriousness of investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.”

To state that interrogations conducted during an officer’s regular on-duty time are reimbursable is contrary to the wording that appears in the statement of decision, the staff analysis for the proposed parameters and guidelines, and in the adopted parameters and guidelines. Therefore, the preponderance of evidence on this issue does not support the County’s contention.

V. THE COUNTY OVERSTATED COSTS RELATED TO ADVERSE COMMENTS

Issue

The county’s IRC contests Finding 1 in the SCO’s final audit report issued May 14, 2008, related to the Adverse Comment cost component. The SCO concluded that the county claimed ineligible salaries and benefits totaling \$70,259 (\$43,291 by the Sheriff’s Department, \$26,108 by the Probation Department, and \$860 by the District Attorney’s Office) because costs claimed were for ineligible activities (**Tab 4**). Related unallowable indirect costs totaled \$34,185. The county believes that the claiming of these costs was proper.

SCO’s Analysis

Depending on the circumstances surrounding an adverse comment, the parameters and guidelines (section IV(D), Adverse Comment) allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer’s refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The county claimed the following ineligible activities:

Sheriff’s Department

- Reviewing the circumstances of the complaint to determine the level of investigation prior to starting the case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level)
- Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake prior to starting the investigation

- Summarizing the investigation in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed
- Preparing interview questions

Probation Department

- Preparing the investigation summary and reviewing it with the supervisor prior to closing the case
- Preparing the final case report

District Attorney's Office

- Preparing the case summary report

County's Response

D AUDIT FINDING NUMBER ONE REGARDING POBOR ADVERSE COMMENTS IS INCORRECT

Audit Finding 1 states that the County over-claimed salaries, benefits, and related indirect costs related to POBOR adverse comments in the amount of \$104,444. The SCO maintains that these costs resulted from claiming activities that are not reimbursable, such as reviewing and documenting the complaint, summarizing the complaint, and reviewing the procedures for compliance. And yet these activities were expressly allowed by the Parameters and Guidelines.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

According to the plain language of the Parameters and Guidelines, these activities are reimbursable and were properly claimed by the County.

SCO's Comment

The county believes that activities such as "reviewing and documenting the complaint, summarizing the complaint, and reviewing the procedures for compliance" are expressly allowed by parameters and guidelines. In its response, the county ignores that the unallowable activities relate to investigation activities by omitting that part of the activity description. The county believes that the language used by the Commission in the paragraphs quoted above support that these costs in question are reimbursable. We disagree.

The county's position is an expanded interpretation of the language in the parameters and guidelines that is taken out of context. The costs for reviewing and documenting a complaint to determine its accuracy and the level of investigation required, summarizing the results of an investigation to ensure that proper procedures were followed, or preparing the final case report were never included in the Adverse Comment cost component as reimbursable activities.

The parameters and guidelines state that "review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel" is an allowable activity for this component. As noted in the audit report, the county's activity of reviewing documentation leading to the adverse comment/findings by command staff was eligible for reimbursement. However, other activities relating to reviewing and documenting the complaint for

accuracy and to start an investigation, summarizing investigation results, preparing the final case report, and others noted in the audit report are not reimbursable under the mandated program.

VI. THE COUNTY UNDERSTATED COUNTYWIDE AVERAGE ANNUAL PRODUCTIVE HOURS USED TO CALCULATE PRODUCTIVE HOURLY WAGE RATES

Issue

The county's IRC contests Finding 2 in the SCO's final audit report issued May 14, 2008, related to overstated productive hours. The SCO concluded that the county overstated allowable salaries and benefits by a total of \$11,800 (\$2,543 by the Sheriff's Department, \$7,762 by the Probation Department, and \$1,495 by the District Attorney's Office (**Tab 4**)). Related unallowable indirect costs totaled \$6,952. This overstatement occurred because the county understated annual productive hours in its calculation of productive hourly rates in each fiscal year. The county believes that the computation of productive hourly rates was proper.

SCO's Analysis

The county incorrectly calculated countywide average annual productive hours because it deducted hours applicable to authorized employee break time, required training, and classification-specific training.

The county deducted hours applicable to break time based on authorized break time rather than actual break time taken. Furthermore, the county's accounting system did not accurately account for break time taken, did not adjust for employees who worked less than 8-hour days or who worked alternate work schedules, and did not adjust for break time directly charged to program activities.

The county deducted training time based on hours required by employees' bargaining unit agreements and/or continuing education requirements for licensure/certification rather than actual training hours attended. In addition, the deducted training hours benefited specific departments' employee classifications rather than benefiting all departments. Furthermore, the county did not adjust for training time directly charged to program activities.

County's Response

E. AUDIT FINDING NUMBER TWO REGARDING THE COUNTY'S PRODUCTIVE HOURLY RATE IS INCORRECT

Audit Finding 2 states that the County over-claimed salaries, benefits, and related indirect costs in the amount of \$18,752. This finding was based upon the County's computation of its productive hourly rates for employees. The computation was proper and complied with SCO's Claiming Instructions. Therefore, the County requests that this Commission reverse Audit Finding 2 to allow for the recovery of costs incurred for this state-mandated program for the reasons discussed below.

1. The County's Productive Hourly Rate Computation Complies with the SCO-Issued General Claiming Instructions.

The computation of an annual productive hourly rate used by the County removes non-productive time spent on authorized breaks, training, and staff meetings. The resulting total countywide annual productive hours of 1571 is the basis for the annual productive hourly rate used in the County's claim.

In the audit report, the SCO relied upon the Mandated Cost Manual for Local Agencies with regard to the productive hourly rate computation. To support its argument that the County's rate was improper, the SCO cited the following test from the Manual:

A productive hourly rate may be computed for each job title whose labor is directly related to the claimed reimbursable cost. A local agency has the option of using any of the following:

- Actual annual productive hours for each job title,
- The local agency's average annual productive hours, or for simplicity
- An annual average rate of 1,800* hours to compute the productive hourly rate

* 1,800 annual productive hours include:

- Paid Holidays
- Vacation earned
- Informal time off
- Jury duty
- Military leave taken

Relying on this section, the SCO argued that the County's figure of 1571 productive hours was incorrect and that a figure of 1800 hours should have been used. However, the SCO omitted relevant portions of the Manual which indicate that the productive hourly rate can be calculated in three different ways.

A full reading of the Manual indicates that using 1800 hours is not the only approved approach. The manual clearly states that the use of countywide average annual productive hours is also an approved method. The County calculated its average annual productive hours in full compliance with the Manual as issued. The County cannot and should not be penalized for availing itself of an approved, though not often used, option.

To date, the SCO has not been able to cite one reference as to why the County's approach is improper.

2. **The County's Computation Results in a More Accurate and Consistent Productive Hourly Rate.**

The County submits, on average, 25 to 30 S.B. 90 claims annually. As these claims are prepared by numerous County departments and staff members, the process could easily fall victim to inconsistency in approaches, accuracy and documentation with respect to calculating a productive hourly rate for each claim. Recognizing this threat and wanting to create a more reliable county-wide system, the County embarked on the creation of a verifiable and accurate method of establishing a productive hourly rate through the computation of average productive hours. As a result, the County's methodology improves its S.B. 90 program claiming accuracy, consistency, and documentation. It also facilitates the State audit process because the methodology for the County's annual productive hours calculation is fully documented and supported.

In creating its average annual productive hours, the County carefully ensured that all non-productive time was removed from the total annual hours. In addition to those items suggested by the SCO above, the County removed time spent in training and on breaks. Such revision from the manner suggested by the SCO ensures greater accuracy. The more accurate the computational factors, the more accurate the result. Indeed, in response to the final audit report, the County made further adjustments solidifying the precision of its productive hours computation.

The SCO's main complaint seems to be that the County used authorized break times and required training times rather than actual times spent on these activities. This argument lacks merit.

State law requires that workers be given two fifteen minute break periods per day. Presumably, County employees take these breaks. The presumption that these breaks are taken is no different from the presumption that paid holidays, which are specifically set forth as properly included in the calculation by the SCO, are also taken. Instead of making this presumption, the SCO would have the County employ clock-in, clock-out system for breaks to ensure that the break times do not actually add up to 23 or 32 minutes daily. Such an expenditure of time and costs is unwarranted in light of the statistically invalid difference that may be found between actual break time and the time required break time.

The same argument applies with even greater force to presumption that County employees will undertake the necessary training required for licensure or certification. Such education is more likely to be pursued because of its impact on the employees' licensure or certification and, ultimately, their ability to perform their jobs.

The use of a countywide productive hourly rate is explicitly authorized by the State Controller's claiming instructions. The productive hourly rate used by the County for this claim is fully documented and was accurately calculated by the County Controller's Office. All supporting documents for the calculation for countywide productive hours were provided during the state audit.

Further, as shown in the letter of December 27, 2001 from the County Controller to the State Controller's Office, the State was notified years ago that the County was electing to change its state mandated claiming procedures relating to the calculation productive hourly rate. A true and correct copy of this letter is attached as Exhibit L and is incorporated herein by reference. The County reported that the switch to a countywide methodology for the calculation of average productive hours per position would improve state mandate claiming accuracy, consistency, documentation and facilitate the State audit function. Consequently, more than 50 claims were submitted and accepted during 2002 and 2003 using this methodology. Furthermore, the State Controller has accepted the County's use of countywide productive hours for state mandated claims as evidenced by an e-mail from Jim Spano dated February 6, 2004, a true and correct copy of which is attached hereto as Exhibit M and is incorporated herein by reference.

SCO's Comment

1. The County's Productive Hourly Rate Computation Complies with the SCO-Issued General Claiming Instructions.

The county states that our final audit report failed to acknowledge the alternative methodologies available to calculate productive hourly wage rates. In the conclusion to its IRC, the county also states that it is being "forced to utilize the standard 1,800 hours." The SCO's mandated cost manual does allow the county to calculate productive hourly wage rates using countywide average annual productive hours. We did not adjust the county's annual productive hours to 1,800 hours; therefore, the county's comments about being "forced to utilize" that methodology are incorrect.

The county states that, "The County cannot and should not be penalized for availing itself of an approved, though not often used, option." The county also states, "The County calculated its average annual productive hourly rates in full compliance with the Manual as issued." The county has not been penalized for using an approved methodology. We disagree that the county's calculations fully comply with the claiming instructions and the program's parameters and guidelines. Our audit report explains why the county's calculation is improper.

In addition, the county states that it calculated the productive hourly wage rate using 1,571 productive hours during the audit period. The county's statement is inaccurate. The county calculated productive hourly wage rates using 1,560.65 productive hours for FY 2003-04, 1,545 productive hours for FY 2004-05, and 1,544 productive hours for FY 2005-06. Contrary to the

county's statement, we did not adjust the county's productive hours to 1,800 hours. We determined that 1,696.35 hours for FY 2003-04, 1,682 hours for FY 2004-05, and 1,677 hours for FY 2005-06 were allowable based on county-provided documentation (**Tab 8**).

2. The County's Computation Results in a More Accurate and Consistent Productive Hourly Rate.

The county's response fails to address the primary audit issues. The county presents an argument that "the SCO would have the County employ a clock-in, clock-out system for breaks." Our audit report includes no such suggestion.

The county deducted authorized break time rather than actual break time taken. The county states that employees presumably took authorized breaks and notes that "The presumption that these breaks were taken is no different from the presumption that paid holidays. . . . were also taken." We disagree. Employees do not report any hours worked during paid holidays. Conversely, the fact that employees are *authorized* to take break time is not evidence that employees actually took break time. It is irrelevant whether the county has correctly presumed that all employees take all authorized break time. The county's accounting system did not consistently limit daily hours reported to 7.5 hours worked or otherwise reflect actual break time taken. This does not constitute consistent break time accounting for all county programs (mandated and non-mandated). Furthermore, when calculating the break time deduction for average annual productive hours, the county did not address instances in which employees work less than 8 hours per day and did not address employees who work alternate work schedules. Duplicate reimbursed hours result when employees charge 8 hours daily to program activities, yet the county identifies 0.5 hours daily as nonproductive time in its calculation of countywide average annual productive hours.

Regarding training hours deducted, the county should not deduct training time that benefits specific departments or training common to all departments when calculating the countywide productive hours. The county is indirectly claiming reimbursement for ineligible training time by excluding training hours from the county's annual productive hours calculation. Training specifically related to the mandated program is eligible for reimbursement only if it is specifically identified in the parameters and guidelines as a reimbursable activity. In that case, the mandate-related training should be claimed as a direct cost to the mandated program.

The SCO's claiming instructions do not identify training and authorized break time as deductions from total hours for calculating productive hours. The county cannot infer that the SCO accepted its methodology simply because the county notified the SCO of its methodology on December 27, 2001. In addition, the county states that the SCO accepted claims that the county submitted using this methodology in 2002 and 2003. This statement is inaccurate. We audited other county mandated programs and reported this issue in those audit reports. The additional programs audited are: Open Meetings Act, July 1, 1998 through June 30, 2001, report issued February 26, 2004; Sexually Violent Predators, July 1, 1998 through June 30, 2001, report issued July 30, 2004; Domestic Violence Treatment Services, July 1, 1998, through June 30 2001, report issued February 26, 2004 and revised October 30, 2009; Absentee Ballots, July 1, 2000 through June 30, 2003, report issued June 30, 2005; and Child Abduction and Recovery, July 1, 1999 through June 30, 2002, report issued March 17, 2006.

Furthermore, the county indicated that the SCO accepted the county's methodology in an email from the SCO dated February 6, 2004 (**Exhibit M**). We disagree. While the SCO agreed with the concept of countywide average annual productive hours, the SCO did not concur with the specific methodology presented. The SCO's email states:

The use of countywide productive hours would be acceptable to the State Controller's Office provided all employee classifications are included and productive hours are consistently used for all county programs (mandated and non-mandated).

The SCO's Mandated Cost Manual (claiming instructions), which includes guidelines for preparing mandated cost claims, does not identify the time spent on training and authorized breaks as deductions (excludable components) from total hours when computing productive hours. However, if a county chooses to deduct time for training and authorized breaks in calculating countywide productive hours, its accounting system must separately identify the actual time associated with these two components. The accounting system must also separately identify training time directly charged to program activities. Training time directly charged to program activities may not be deducted when calculating productive hours.

The countywide productive hours used by Santa Clara County were not consistently applied to all mandates for FY 2000-01. Furthermore, countywide productive hours used during the audit period include unallowable deductions for time spent on training and authorized breaks. The county deducted training time based on hours required by employees' bargaining unit agreement and continuing education requirements for licensure/certification rather than actual training hours taken. In addition, the county deducted authorized break time rather than actual break time taken. The county did not adjust for training time and break time directly charged to program activities during the audit period, and therefore, cannot exclude those hours from productive hours

V. THE COUNTY OVERSTATED TRAVEL AND TRAINING COSTS

Issue

The county's IRC contests Finding 5 in the SCO's final audit report issued May 14, 2008, related to travel and training costs. The SCO concluded that the county claimed ineligible travel and training costs of \$1,521 for FY 2004-05 (**Tab 9**). The overstatement occurred because the Probation Department claimed ineligible training-related costs. The county believes that the costs are allowable.

SCO's Analysis

As discussed in Finding 1 under the Administrative Activities cost component, the Probation Department's training hours were adjusted to account only for eligible POBOR-related training. We also adjusted travel expenses associated with attendance at the ineligible portion of the training classes accordingly.

County's Response

F. AUDIT FINDING NUMBER FIVE REGARDING COUNTY'S TRAINING COSTS IS INCORRECT

Audit Finding 5 states that the County over-claimed costs related to POBOR travel and training in the amount of \$1,521. The SCO asserts that these costs were excluded because they related to ineligible training under Finding 1. As noted above, however, the Parameters and Guidelines provided the following regarding allowable training costs:

2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

The Commission could have been more specific regarding these costs, but it chose to provide an expansive category for training. The SCO cannot use the audit process to place limitations on the program that the Commission did not see fit to include.

SCO's Comment

The county believes that it properly claimed training costs for the Probation Department. The county believes that our methodology to partially adjust the training hours was not proper. As discussed in the SCO comment section for Finding 1, the county already raised this issue and we provided our comments in the final audit report. The parameters and guidelines state that one of the reimbursable activities under the Administrative Activities cost component includes attendance in specific training for human resources, law enforcement, and legal counsel *regarding the requirements of the mandate* [emphasis added]. The county suggests that training in other comprehensive topics not related to requirements of the mandated program should be allowable. We disagree.

The language in the parameters and guidelines states that only training that concerns the requirements of the mandate is reimbursable. Accordingly, training hours for topics unrelated to the requirements of the mandated program are unallowable, consistent with the language in the adopted parameters and guidelines. We noted all of the specific training topics in the final audit report that were deemed unallowable. The county did not provide any additional documentation or information supporting why these topics should be considered allowable training hours under the mandated program.

If the Commission determines that the unallowable salary and benefit training costs cited in Finding 1 are allowable, then the associated travel costs cited in Finding 5 are also allowable. However, if the Commission agrees with our determination that the training costs cited in Finding 1 are unallowable, then the associated costs in Finding 5 should also be unallowable.

VIII. CONCLUSION

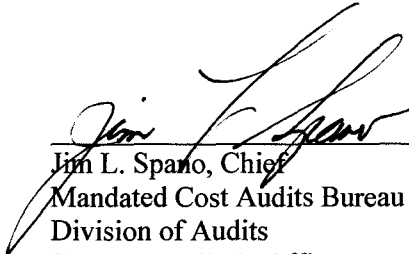
The SCO audited Santa Clara County's claims for costs of the legislatively mandated Peace Officers Procedural Bill of Rights Program (Government Code Sections 3300-3310 Statutes 1976, Chapter 465; Statutes 1978, Chapter 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675) for the period of July 1, 2003, through June 30, 2006. The county claimed \$748,888 (\$749,888 less a \$1,000 penalty for filing a late claim) for the mandated program. Our audit found that \$222,086 is allowable and \$526,802 is unallowable. The costs are unallowable because the county claimed ineligible costs and overstated productive hourly wage rates.

The Commission should find that: (1) the SCO correctly reduced the county's FY 2003-04 claim by \$118,861; (2) the SCO correctly reduced the county's FY 2004-05 claim by \$158,546; and (3) the SCO correctly reduced the county's FY 2005-06 claim by \$249,395.

IX. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on December 2, 2014, at Sacramento, California, by:



Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 3

7. Direct Costs

A direct cost is a cost that can be identified specifically with a particular program or activity. Each claimed reimbursable cost must be supported by documentation as described in Section 12. Costs that are typically classified as direct costs are:

(1) Employee Wages, Salaries, and Fringe Benefits

For each of the mandated activities performed, the claimant must list the names of the employees who worked on the mandate, their job classification, hours worked on the mandate, and rate of pay. The claimant may, in-lieu of reporting actual compensation and fringe benefits, use a productive hourly rate:

(a) Productive Hourly Rate Options

A local agency may use one of the following methods to compute productive hourly rates:

- Actual annual productive hours for each employee
- The weighted-average annual productive hours for each job title, or
- 1,800* annual productive hours for all employees

If actual annual productive hours or weighted-average annual productive hours for each job title is chosen, the claim must include a computation of how these hours were computed.

* 1,800 annual productive hours excludes the following employee time:

- o Paid holidays
- o Vacation earned
- o Sick leave taken
- o Informal time off
- o Jury duty
- o Military leave taken.

(b) Compute a Productive Hourly Rate

1. Compute a productive hourly rate for salaried employees to include actual fringe benefit costs. The methodology for converting a salary to a productive hourly rate is to compute the employee's annual salary and fringe benefits and divide by the annual productive hours.

Table 1 Productive Hourly Rate, Annual Salary + Benefits Method

Formula:	Description:
$[(EAS + Benefits) \div APH] = PHR$	EAS = Employee's Annual Salary
	APH = Annual Productive Hours
$[(\$26,000 + \$8,099) \div 1,800 \text{ hrs}] = 18.94$	PHR = Productive Hourly Rate

- As illustrated in Table 1, if you assume an employee's compensation was \$26,000 and \$8,099 for annual salary and fringe benefits, respectively, using the "Salary + Benefits Method," the productive hourly rate would be \$18.94. To convert a biweekly salary to EAS, multiply the biweekly salary by 26. To convert a monthly salary to EAS, multiply the monthly salary by 12. Use the same methodology to convert other salary periods.

- 2. A claimant may also compute the productive hourly rate by using the "Percent of Salary Method."

Table 2 Productive Hourly Rate, Percent of Salary Method

Example:		
Step 1: Fringe Benefits as a Percent of Salary		Step 2: Productive Hourly Rate
Retirement	15.00 %	Formula:
Social Security & Medicare	7.65	$[(EAS \times (1 + FBR)) + APH] = PHR$
Health & Dental Insurance	5.25	
Workers Compensation	3.25	$[(\$26,000 \times (1.3115)) + 1,800] = \18.94
Total	31.15 %	
Description:		
EAS = Employee's Annual Salary		APH = Annual Productive Hours
FBR = Fringe Benefit Rate		PHR = Productive Hourly Rate

- As illustrated in Table 3, both methods produce the same productive hourly rate.

Reimbursement for personnel services includes, but is not limited to, compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include employer's contributions for social security, pension plans, insurance, workmen's compensation insurance and similar payments. These benefits are eligible for reimbursement as long as they are distributed equitably to all activities. Whether these costs are allowable is based on the following presumptions:

- The amount of compensation is reasonable for the service rendered.
- The compensation paid and benefits received are appropriately authorized by the governing board.
- Amounts charged for personnel services are based on payroll documents that are supported by time and attendance or equivalent records for individual employees.
- The methods used to distribute personnel services should produce an equitable distribution of direct and indirect allowable costs.

For each of the employees included in the claim, the claimant must use reasonable rates and hours in computing the wage cost. If a person of a higher-level job position performs an activity which normally would be performed by a lower-level position, reimbursement for time spent is allowable at the average salary range for the lower-level position. The salary rate of the person at the higher level position may be claimed if it can be shown that it was more cost effective in comparison to the performance by a person at the lower-level position under normal circumstances and conditions. The number of hours charged to an activity should reflect the time expected to complete the activity under normal circumstances and conditions. The numbers of hours in excess of normal expected hours are not reimbursable.

(c) Calculating an Average Productive Hourly Rate

In those instances where the claiming instructions allow a unit as a basis of claiming costs, the direct labor component of the unit cost should be expressed as an average productive hourly rate and can be determined as follows:

	<u>Time Spent</u>	<u>Productive Hourly Rate</u>	<u>Total Cost by Employee</u>
Employee A	1.25 hrs	\$6.00	\$7.50
Employee B	0.75 hrs	4.50	3.38
Employee C	3.50 hrs	10.00	35.00
Total	5.50 hrs		\$45.88
Average Productive Hourly Rate is \$45.88/5.50 hrs. = \$8.34			

(d) Employer's Fringe Benefits Contribution

A local agency has the option of claiming actual employer's fringe benefit contributions or may compute an average fringe benefit cost for the employee's job classification and claim it as a percentage of direct labor. The same time base should be used for both salary and fringe benefits when computing a percentage. For example, if health and dental insurance payments are made annually, use an annual salary. After the percentage of salary for each fringe benefit is computed, total them.

For example:

<u>Employer's Contribution</u>	<u>% of Salary</u>
Retirement	15.00%
Social Security	7.65%
Health and Dental Insurance	5.25%
Worker's Compensation	0.75%
Total	<u>28.65%</u>

(e) Materials and Supplies

Only actual expenses can be claimed for materials and supplies, which were acquired and consumed specifically for the purpose of a mandated program. The claimant must list the materials and supplies that were used to perform the mandated activity, the number of units consumed, the cost per unit, and the total dollar amount claimed. Materials and supplies purchased to perform a particular mandated activity are expected to be reasonable in quality, quantity and cost. Purchases in excess of reasonable quality, quantity and cost are not reimbursable. Materials and supplies withdrawn from inventory and charged to the mandated activity must be based on a recognized method of pricing, consistently applied. Purchases shall be claimed at the actual price after deducting discounts, rebates and allowances received by local agencies.

Tab 4

Tab 4

Santa Clara County
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Summary of Claimed Costs and Adjustments by Reimbursable Activity and Department
 Salaries and Benefits

Administrative Activities

Fiscal Year	Department	W/P Reference	Claimed Salaries	Allowable Salaries	Audit Adjustments	W/P Reference	Claimed Benefits	Allowable Benefits	Audit Adjustment	Total Claimed	Total Allowable	Audit Adjustment
Sheriff Dept												
FY 2003-04		3D-1 2/7	\$ 7,981	\$ 3,959	\$ (4,022)	3E-1 2/7	\$ 2,602	\$ 1,319	\$ (1,283)	\$ 10,583	\$ 5,278	\$ (5,305)
FY 2004-05		3D-1 4/7	4,786	2,965	(1,821)	3E-1 4/7	1,561	940	(621)	6,347	3,905	(2,442)
FY 2005-06		3D-1 6/7	1,088	617	(471)	3E-1 6/7	569	324	(245)	1,657	941	(716)
	Subtotal		\$ 13,855	\$ 7,541	\$ (6,314)		\$ 4,732	\$ 2,583	\$ (2,149)	\$ 18,587	\$ 10,124	\$ (8,463)
Probation												
FY 2003-04		3D-2 2/8	\$ 1,767	\$ 884	\$ (883)	3E-2 2/8	\$ 612	\$ 306	\$ (306)	\$ 2,379	\$ 1,190	\$ (1,189)
FY 2004-05		3D-2 3/8	64,789	42,675	(22,114)	3E-2 3/8	17,553	11,658	(5,895)	82,342	54,333	(28,009)
FY 2005-06		3D-2 6/8	6,746	1,982	(4,764)	3E-2 6/8	2,117	589	(1,528)	8,863	2,571	(6,292)
	Subtotal		\$ 73,302	\$ 45,541	\$ (27,761)		\$ 20,282	\$ 12,553	\$ (7,729)	\$ 93,584	\$ 58,094	\$ (35,490)
District Attorney												
FY 2003-04		3D-3 2/5	\$ 13,654	\$ 13,654	\$ -	3E-3 2/5	\$ 4,382	\$ 4,382	\$ -	\$ 18,036	\$ 18,036	\$ -
FY 2004-05		3D-3 4/5	74	74	-	3E-3 4/5	22	22	-	96	96	-
FY 2005-06		3D-3 5/5	128	128	-	3E-3 5/5	58	58	-	186	186	-
	Subtotal		\$ 13,856	\$ 13,856	\$ -		\$ 4,462	\$ 4,462	\$ -	\$ 18,318	\$ 18,318	\$ -
	Total		\$ 101,013	\$ 66,938	\$ (34,075)		\$ 29,476	\$ 19,598	\$ (9,878)	\$ 130,489	\$ 86,536	\$ (43,953)

Santa Clara County
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Summary of Claimed Costs and Adjustments by Reimbursable Activity and Department
 Salaries and Benefits

Administrative Appeals

Fiscal Year Department	W/P Reference	Claimed Salaries	Allowable Salaries	Audit Adjustments	W/P Reference	Claimed Benefits	Allowable Benefits	Audit Adjustment	Total Claimed	Total Allowable	Audit Adjustment
Sheriff Dept											
FY 2003-04	3D-1 2/7	\$ 935	\$ -	\$ (935)	3E-1 2/7	\$ 269	\$ -	\$ (269)	\$ 1,204	\$ -	\$ (1,204)
FY 2004-05		-	-	-		-	-	-	-	-	-
FY 2005-06	3D-1 6/7	120	-	(120)	3E-1 6/7	64	-	(64)	184	-	(184)
Subtotal		\$ 1,055	-	\$ (1,055)		\$ 333	\$ -	\$ (333)	\$ 1,388	\$ -	\$ (1,388)
Probation											
FY 2003-04		\$ -	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
FY 2004-05	3D-2 3/8	776	-	(776)	3E-2 3/8	209	-	(209)	985	-	(985)
FY 2005-06		-	-	-		-	-	-	-	-	-
Subtotal		\$ 776	-	\$ (776)		\$ 209	\$ -	\$ (209)	\$ 985	-	\$ (985)
Total		\$ 1,831	\$ -	\$ (1,831)		\$ 542	\$ -	\$ (542)	\$ 2,373	\$ -	\$ (2,373)

Santa Clara County
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Summary of Claimed Costs and Adjustments by Reimbursable Activity and Department
 Salaries and Benefits

Interrogations

Fiscal Year	Department	W/P Reference	Claimed Salaries	Allowable Salaries	Audit Adjustments	W/P Reference	Claimed Benefits	Allowable Benefits	Audit Adjustment	Total Claimed	Total Allowable	Audit Adjustment
Sheriff Dept												
FY 2003-04		3D-1 2/7	\$ 19,001	\$ 3,212	\$ (15,789)	3E-1 2/7	\$ 5,702	\$ 938	\$ (4,764)	\$ 24,703	\$ 4,150	\$ (20,553)
FY 2004-05		3D-1 4/7	17,637	1,412	(16,225)	3E-1 4/7	6,474	482	(5,992)	24,111	1,894	(22,217)
FY 2005-06		3D-1 6/7	14,518	2,670	(11,848)	3E-1 6/7	8,174	1,442	(6,732)	22,692	4,112	(18,580)
Subtotal			\$ 51,156	\$ 7,294	\$ (43,862)		\$ 20,350	\$ 2,862	\$ (17,488)	\$ 71,506	\$ 10,156	\$ (61,350)
Probation												
FY 2003-04		3D-2 2/8	\$ 18,435	\$ 3,320	\$ (15,115)	3E-2 2/8	\$ 5,528	\$ 1,016	\$ (4,512)	\$ 23,963	\$ 4,336	\$ (19,627)
FY 2004-05		3D-2 4/8	9,089	1,417	(7,672)	3E-2 4/8	2,692	414	(2,278)	11,781	1,831	(9,950)
FY 2005-06		3D-2 7/8	97,665	20,596	(77,069)	3E-2 7/8	29,178	5,588	(23,590)	126,843	26,184	(100,659)
Subtotal			\$ 125,189	\$ 25,333	\$ (99,856)		\$ 37,398	\$ 7,018	\$ (30,380)	\$ 162,587	\$ 32,351	\$ (130,236)
District Attorney												
FY 2003-04		3D-3 2/5	\$ 9,088	\$ 617	\$ (8,471)	3E-3 2/5	\$ 2,997	\$ 204	\$ (2,793)	\$ 12,085	\$ 821	\$ (11,264)
FY 2004-05		3D-3 4/5	2,174	1,125	(1,049)	3E-3 4/5	732	385	(347)	2,906	1,510	(1,396)
FY 2005-06		3D-3 5/5	2,568	133	(2,435)	3E-3 5/5	1,321	66	(1,255)	3,889	199	(3,690)
Subtotal			\$ 13,830	\$ 1,875	\$ (11,955)		\$ 5,050	\$ 655	\$ (4,395)	\$ 18,880	\$ 2,530	\$ (16,350)
Total			\$ 190,175	\$ 34,502	\$ (155,673)		\$ 62,798	\$ 10,535	\$ (52,263)	\$ 252,973	\$ 45,037	\$ (207,936)

Santa Clara County
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Summary of Claimed Costs and Adjustments by Reimbursable Activity and Department
 Salaries and Benefits

Adverse Comments

Fiscal Year	Department	W/P Reference	Claimed Salaries	Allowable Salaries	Audit Adjustments	W/P Reference	Claimed Benefits	Allowable Benefits	Audit Adjustment	Total Claimed	Total Allowable	Audit Adjustment
Sheriff Dept												
FY 2003-04		3D-1 3/7	\$ 9,102	\$ 2,160	\$ (6,942)	3E-1 3/7	\$ 2,611	\$ 612	\$ (1,999)	\$ 11,713	\$ 2,772	\$ (8,941)
FY 2004-05		3D-1 5/7	12,043	719	(11,324)	3E-1 5/7	3,966	240	(3,726)	16,009	959	(15,050)
FY 2005-06		3D-1 7/7	17,378	4,992	(12,386)	3E-1 7/7	9,580	2,666	(6,914)	26,958	7,658	(19,300)
	Subtotal		\$ 38,523	\$ 7,871	\$ (30,652)		\$ 16,157	\$ 3,518	\$ (12,639)	\$ 54,680	\$ 11,389	\$ (43,291)
Probation												
FY 2003-04		3D-2 2/8	\$ 10,380	\$ 1,092	\$ (9,288)	3E-2 2/8	\$ 2,847	\$ 307	\$ (2,540)	\$ 13,227	\$ 1,399	\$ (11,828)
FY 2004-05		3D-2 5/8	13,723	3,328	(10,395)	3E-2 5/8	4,067	906	(3,161)	17,790	4,234	(13,556)
FY 2005-06		3D-2 8/8	584	-	(584)	3E-2 8/8	140	-	(140)	724	-	(724)
	Subtotal		\$ 24,687	\$ 4,420	\$ (20,267)		\$ 7,054	\$ 1,213	\$ (5,841)	\$ 31,741	\$ 5,633	\$ (26,108)
District Attorney												
FY 2003-04		3D-3 3/5	\$ 853	\$ 195	\$ (658)	3E-3 3/5	\$ 266	\$ 64	\$ (202)	\$ 1,119	\$ 259	\$ (860)
FY 2004-05			-	-	-		-	-	-	-	-	-
FY 2005-06			-	-	-		-	-	-	-	-	-
	Subtotal		\$ 853	\$ 195	\$ (658)		\$ 266	\$ 64	\$ (202)	\$ 1,119	\$ 259	\$ (860)
	Total		\$ 64,063	\$ 12,486	\$ (51,577)		\$ 23,477	\$ 4,795	\$ (18,682)	\$ 87,540	\$ 17,281	\$ (70,259)

Santa Clara County
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Summary of Claimed Costs and Adjustments, Productive Hourly Rate Issue
 Salaries and Benefits

Productive Hourly Rates

Fiscal Year	W/P Reference	PHR Salaries Adjustments	N/P Reference	PHR Benefits Adjustments	PHR Total Adjustments
Sheriff Dept					
FY 2003-04	3D-1 3/7	\$ (742)	3E-1 3/7	\$ (238)	\$ (980)
FY 2004-05	3D-1 5/7	(418)	3E-1 5/7	(136)	(554)
FY 2005-06	3D-1 7/7	(658)	3E-1 7/7	(351)	(1,009)
Subtotal		\$ (1,818)		\$ (725)	\$ (2,543)
Probation					
FY 2003-04	3D-2 2/8	\$ (415)	3E-2 2/8	\$ (127)	\$ (542)
FY 2004-05	3D-2 5/8	(3,860)	3E-2 5/8	(1,060)	(4,920)
FY 2005-06	3D-2 8/8	(1,805)	3E-2 8/8	(495)	(2,300)
Subtotal		\$ (6,080)		\$ (1,682)	\$ (7,762)
District Attorney					
FY 2003-04	3D-3 3/5	\$ (1,046)	3E-3 3/5	\$ (342)	\$ (1,388)
FY 2004-05	3D-3 4/5	(97)	3E-3 4/5	(33)	(130)
FY 2005-06	3D-3 5/5	16	3E-3 5/5	7	23
Subtotal		\$ (1,127)		\$ (368)	\$ (1,495)
Total		\$ (9,025)		\$ (2,775)	\$ (11,800)

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights
 Summary of Salary Adjustments
 Fiscal Years 2003-04 Through 2005-06
Audit ID # S07-MCC-0033

Purpose: To calculate allowable salaries based on adjustments noted to claimed hours and Productive Hourly Rates.

Source: 2A-2; 3D-1a; 3D-1b; 3D-1c

Cost Components	Salaries Claimed	Allowed Salaries	Audit Adjustments	
			Adjustment 1 Overstated Hours	Adjustment 2 Overstated PHR
FY 2003-04				
Admin. Activities	3D-1 ^{2/7} 7,981	\$ 3,642	\$ (4,022)	(317)
Admin. Appeal	935	-	(935)	-
Interrogation	19,001	2,957	(15,789)	(255)
Adverse Comment	3D-1 ^{3/7} 9,102	1,990	(6,942)	(170)
Subtotal	\$ 37,019	\$ 8,589	\$ (27,688)	\$ (742)
FY 2004-05				
Admin. Activities	3D-1 ^{4/7} 4,786	\$ 2,723	\$ (1,821)	(242)
Admin. Appeal	-	-	-	-
Interrogation	17,637	1,297	(16,225)	(115)
Adverse Comment	3D-1 ^{5/7} 12,043	658	(11,324)	(61)
Subtotal	\$ 34,466	\$ 4,678	\$ (29,370)	\$ (418)
FY 2005-06				
Admin. Activities	3D-1 ^{6/7} 1,088	568	\$ (471)	(49)
Admin. Appeal	120	-	(120)	-
Interrogation	14,518	2,458	(11,848)	(212)
Adverse Comment	3D-1 ^{7/7} 17,378	4,595	(12,386)	(397)
Subtotal	\$ 33,104	\$ 7,621	\$ (24,825)	\$ (658)
Total	\$ 104,589	\$ 20,888	\$ (81,883)	Adjustment 1
Adjustment 2			(1,818)	Adjustment 2
			\$ (83,701)	

n feet

3D-1^{2/2}

3D^{12/12}; 3D^{5/12}; 1D-1^{1/4}

IG/16

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

Sheriff Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2003-04

Admin. Activities					<u>2A-2A^{3/13}</u>					
	Sgt. Staats	\$ 54.98	24	\$ 1,319.62	50.59	24.00	1,319.62	1,214.16	-	(105.56)
	Sgt. L. St.Denis	51.15	7.25	370.84	-	-	-	-	(370.84)	-
	Sgt. R. Schiller	64.91	5	324.55	-	-	-	-	(324.55)	-
	Sgt. D. Matuzek	54.98	48.4	2,661.13	-	-	-	-	(2,661.13)	-
	Sgt. C. Watson	54.98	8.5	467.43	-	-	-	-	(467.43)	-
	Sgt. K. Burgess	54.98	51.6	2,836.97	50.59	48.00	2,639.04	2,428.32	(198)	(211)
	Subtotal		144.75	\$ 7,981		72.00	\$ 3,959	\$ 3,642	\$ (4,022)	\$ (317)
Admin. Appeal					<u>2A-2A^{6/13}</u>					
	Sgt. K Burgess	\$ 54.98	17	\$ 934.66	-	-	-	-	(934.66)	-
	Subtotal		17	\$ 935			\$ -	\$ -	\$ (935)	\$ -
Interrogation					<u>2A-2A^{7/13}</u>					
	Sgt. Tait	\$ 54.98	0.5	\$ 27.49	-	-	-	-	(27.49)	-
	Sgt. Stevens	54.98	0.42	23.09	-	-	-	-	(23.09)	-
	Sgt. Staats	54.98	3	164.94	50.59	1.00	54.98	51	(109.96)	(3.98)
	Sgt. Lewis	52.35	0.33	17.28	-	-	-	-	(17.28)	-
	Deputy Dona	49.66	0.5	24.83	-	-	-	-	(24.83)	-
	Sgt. Broaumeland	46.36	0.92	42.65	49.41	0.17	7.88	8.40	(34.77)	0.52
	Sgt. Atlas	54.98	0.33	18.14	-	-	-	-	(18.14)	-
	Sgt. L. St. Denis	51.15	96.25	4,923.19	47.06	20.00	1,023.00	941.20	(3,900.19)	(81.80)
	Sgt. R. Schiller	64.91	18	1,168.38	59.72	3.75	243.41	223.95	(924.97)	(19.46)
	Sgt. D. Matuzek	54.98	95.71	5,262.14	50.59	15.75	865.94	797	(4,396.20)	(68.93)
	Sgt. C. Watson	54.98	92.5	5,085.65	50.59	11.00	604.78	556	(4,481)	(48.29)
	Sgt. K Burgess	54.98	26.65	1,465.22	50.59	7.50	412.35	379.43	(1,052.87)	(32.93)
	Deputy Sheriff	40.05	19.42	777.77	-	-	-	-	(777.77)	-
	Subtotal		354.53	\$ 19,001		59.17	\$ 3,212	\$ 2,957	\$ (15,789)	\$ (255)

3E-12/7
3D-11/7

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

Sheriff Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2003-04

Adverse Comment

Adverse Comment	PHR Claimed	Hours Claimed	Amount Claimed	Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
Sgt. Tait	54.98	0.5	27.49					(27.49)	-
Sgt. Stevens	54.98	0.17	9.35	50.59	0.17	9.35	8.60	-	(0.75)
Sgt. Staats	54.98	1.08	59.38	50.59	0.25	13.75	12.65	(45.63)	(1.10)
Sgt. Dona	49.66	0.25	12.42	45.69	0.25	12.42	11.42	-	(0.99)
Sgt. Broaumeland	46.36	0.75	34.77	49.41	0.42	19.47	20.75	(15.30)	1.28
Sgt. Atlas	54.98	0.17	9.35	50.59	0.17	9.35	8.60	-	(0.75)
Sgt. Babcock	53.71	0.17	9.13					(9.13)	-
Sgt. Dutra	54.98	0.25	13.75	50.59	0.25	13.75	12.65	-	(1.10)
Sgt. Langley	54.98	0.25	13.75	50.59	0.25	13.75	12.65	-	(1.10)
Sgt. Peterson	54.98	0.25	13.75	50.59	0.17	9.35	8.60	(4.40)	(0.75)
Sgt. Denis	51.15	62	3,171.30	47.06	18.00	920.70	847.08	(2,250.60)	(73.62)
Sgt. R. Schiller	64.91	7	454.37	59.72	2.00	129.82	119.44	(324.55)	(10.38)
Sgt. D Matuzek	54.98	25.58	1,406.39	50.59	5.84	321.08	295.45	(1,085.31)	(25.64)
Sgt. C Watson	54.98	55.83	3,069.53	50.59	10.00	549.80	505.90	(2,519.73)	(43.90)
Sgt. K Burgess	54.98	14.5	797.21	50.59	2.50	137.45	126.48	(659.76)	(10.98)
Subtotal		168.75	\$ 9,102		40.27	\$ 2,160	\$ 1,990	\$ (6,942)	\$ (170)
Total		685.03	\$ 37,019		171.44	\$ 9,331	\$ 8,589	\$ (27,688)	\$ (742)

Handwritten notes: 2A-2a 10/13, 3D-16/13, 3D-1a 7/18, 3E-13/7, 3D-1/7

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Sheriff Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2004-05

Admin. Activities

Training	Lt. Burgess	\$ 66.15	24.00	\$ 1,587.60
	Sgt. Matuzek	57.39	30.00	1,721.70
Other	Lt. Burgess	66.15	8.00	529.20
	Sgt. Matuzek	57.39	6.50	373.04
	Sgt. Staats	57.40	10.00	574.00
Subtotal			<u>78.50</u>	<u>\$ 4,786</u>

FY 2004-05

60.76	24.00	1,587.60	1,458.24	-	(129.36)
52.71	24.00	1,377.36	1,265.04	(344.34)	(112.32)
-	-	-	-	(529.20)	-
-	-	-	-	(373.04)	-
-	-	-	-	(574.00)	-
<u>48.00</u>	<u>\$ 2,965</u>	<u>\$ 2,723</u>	<u>\$ (1,821)</u>	<u>\$ (242)</u>	

Interrogation

Lt. Burgess	\$ 66.15	86.17	\$ 5,700.15
Sgt. Dona	57.01	0.50	28.51
Deputy Holloway	48.93	0.99	48.44
Sgt. Matuzek	57.39	47.07	2,701.35
Sgt. Mitre	56.85	0.50	28.43
Sgt. Staats	57.40	124.15	7,126.21
Deputy Sheriff	42.09	47.24	1,988.33
Sergeant	48.71	0.33	16.07
Subtotal		<u>306.95</u>	<u>\$ 17,637</u>

60.76	8.50	562.28	516.46	(5,137.87)	(46.00)
-	-	-	-	(28.51)	-
44.94	0.17	8.32	7.64	(40.12)	(0.68)
52.71	5.875	334,583.75	307,301.35	(2,366.76)	(27.28)
-	-	-	-	(28.43)	-
52.74	8.874	506,845.94	465,694.22	(6,619.37)	(41.38)
-	-	-	-	(1,988.33)	-
-	-	-	-	(16.07)	-
<u>23.33</u>	<u>\$ 1,417</u>	<u>\$ 1,297</u>	<u>\$ (16,228)</u>	<u>\$ (115)</u>	

3D-11/7
 3E-1 4/7

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Sheriff Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)*(c)	(i)=(g)-(f)

FY 2004-05

Adverse Comment

		<u>2A-26 11/14</u>				<u>3D-16 2/3</u>		<u>3D-1a 12/18</u>							
Sgt. Atlas	\$	61.80	0.50	\$	30.90	56.77	0.25	15.45	14.19	(15.45)	(1.26)				
Lt. Burgess		66.15	75.33		4,983.08	60.76	4.17	275.85	253.37	(4,707.23)	(22.48)				
Lt. Calderone		70.19	1.50		105.29	64.48	0.75	52.64	48.36	(52.64)	(4.28)				
Sgt. Carrasco		58.67	0.33		19.36		-	-	-	(19.36)	-				
Sgt. Dona		57.01	0.25		14.25	52.37	0.25	14.25	13.09	-	(1.16)				
Deputy Holloway		48.93	0.33		16.15		-	-	-	(16.15)	-				
Sgt. Hooper		60.48	0.50		30.24	55.55	0.25	15.12	13.89	(15.12)	(1.23)				
Sgt. Imas		57.39	2.00		114.78	52.71	0.33	18.94	17.39	(95.84)	(1.54)				
Lt. Keith		67.75	1.00		67.75	62.23	0.50	33.88	31.12	(33.88)	(2.76)				
Lt. Lemmon		57.37	0.50		28.69	52.70	0.25	14.34	13.18	(14.34)	(1.17)				
Sgt. Mathison		57.45	0.66		37.92	52.77	0.33	18.96	17.41	(18.96)	(1.54)				
Sgt. Matuzek		57.39	80.81		4,637.69	52.71	1.42	81.49	74.85	(4,556.19)	(6.65)				
Sgt. McIntosh		57.11	0.66		37.69	52.46	0.33	18.85	17.31	(18.85)	(1.53)				
Sgt. Mitre		56.85	0.50		28.43	52.22	0.25	14.21	13.06	(14.21)	(1.16)				
Sgt. Peterson		59.60	0.25		14.90		-	-	-	(14.90)	-				
Lt. Pugh		67.75	1.83		123.98	62.23	0.33	22.36	20.54	(101.63)	(1.82)				
Sgt. Rodriguez		47.22	0.50		23.61	43.38	0.25	11.81	10.85	(11.81)	(0.96)				
Sgt. Scott		57.66	0.50		28.83	41.94	0.25	14.42	10.49	(14.42)	(3.93)				
Sgt. Staats		57.40	28.91		1,659.43	52.74	1.33	76.34	70.14	(1,583.09)	(6.20)				
Sgt. Waldher		61.27	0.66		40.44	56.28	0.33	20.22	18.57	(20.22)	(1.65)				
Subtotal			197.52	\$	12,043		11.57	\$	719	\$	658	\$	(11,324)	\$	(61)

Total

582.97 \$ 34,466 82.90 \$ 5,096 \$ 4,678 \$ (29,370) \$ (418)

Document # 30-1 Page 6/7
 Auditor MV/JR Date 4/25/07
 Reviewer [Signature] Date 6/1/07

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Sheriff Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2005-06

Admin. Activities

Lt. Burgess	\$	70.75	4.5	\$ 318.38
Sgt. Matuzek		59.93	12.33	738.94
Sgt. Peterson		62.18	0.5	31.09
Subtotal			17.33	\$ 1,088

65.14	2.50	176.88	162.85	(141.50)	(14.03)
55.17	6.83	409.32	376.81	(329.62)	(32.51)
57.25	0.50	31.09	28.63	-	(2.47)
9.83	\$ 617	\$ 568	\$ (471)	\$ (49)	

Interrogation

Lt. Burgess	\$	70.75	9.5	\$ 672.13
Sgt. Imas		59.93	1	59.93
Sgt. Langley		59.93	16.5	988.85
Sgt. Matuzek		59.93	101.42	6,078.10
Sgt. Peterson		62.18	0.5	31.09
Lt. Pugh		72.90	1	72.90
Depty Sheriff/Witne:		44.24	142.72	6,313.93
Sergeant/Witness &		51.21	5.08	260.15
Lieutenant/Witness &		60.52	0.67	40.55
Subtotal			278.39	\$ 14,518

65.14	2.00	141.50	130.28	(530.63)	(11.22)
55.17	3.75	224.74	206.89	(764.11)	(17.85)
55.17	37.92	2,272.55	2,092.05	(3,805.56)	(180.50)
57.25	0.50	31.09	28.63	-	(2.47)
-	-	-	-	(72.90)	-
-	-	-	-	(6,313.93)	-
-	-	-	-	(260.15)	-
-	-	-	-	(40.55)	-
44.17	\$ 2,670	\$ 2,458	\$ (11,848)	\$ (212)	

Admin. Appeal

Sgt. Matuzek	\$	59.93	2	\$ 119.86
Subtotal			2	\$ 120

-	-	-	-	(119.86)	-
-	-	-	-	(120)	-

3E-1 6/7 3D-1 1/7

Document # 3D-1 Page 7/7
 Auditor MV/R Date 4/25/07
 Reviewer A Date 6/21/07

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Sheriff Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2005-06

Adverse Comment										
		<u>2A-2c 14/16</u>				<u>3D-163/3</u>		<u>3D-1a 12/18</u>		
Lt. Burgess	\$ 70.75	39.75	\$ 2,812.31	65.14	4.50	318.38	293.13	(2,493.94)	(25.25)	
Sgt. Langley	59.93	120.25	7,206.58	55.17	9.17	549.56	505.91	(6,657.02)	(43.65)	
Sgt. Matuzek	59.93	72.42	4,340.13	55.17	16.50	988.85	910.31	(3,351.29)	(78.54)	
Sgt. Peterson	62.18	5	310.90	57.25	1.50	93.27	85.88	(217.63)	(7.40)	
Findings										
Captain Angus	86.23	1	86.23	79.39	2.50	215.58	198.48	129.35	(17.10)	
Lt. Burgess	70.75	19.25	1,361.94	65.14	15.25	1,078.94	993.39	(283.00)	(85.55)	
Commander Bacon	105.58	2.75	290.35	97.21	3.58	377.98	348.01	87.63	(29.96)	
Sgt. Dutra	60.08	1	60.08	55.31	2.50	150.20	138.28	90.12	(11.93)	
Lt. Geary	63.57	0.5	31.79	58.53	0.50	31.79	29.27	-	(2.52)	
Captain Hirokawa	91.40	1	91.40	84.15	1.00	91.40	84.15	-	(7.25)	
Sgt. Langley	59.93	4.08	244.51	55.17	4.75	284.67	262.06	40.15	(22.61)	
Captain Laverone	78.36	0.5	39.18	72.14	0.50	39.18	36.07	-	(3.11)	
Sgt. Matuzek	59.93	4.33	259.50	55.17	5.33	319.43	294.06	59.93	(25.37)	
Captain Perusina	104.60	0.58	60.67	96.31	0.58	60.67	55.86	-	(4.81)	
Captain Rode	80.86	1	80.86	74.45	2.50	202.15	186.13	121.29	(16.03)	
Lt. Schiller	73.35	0.58	42.54	67.53	0.58	42.54	39.17	-	(3.38)	
Sgt. Spagnola	58.83	1	58.83	53.89	2.50	147.08	134.73	88.25	(12.35)	
Subtotal		37.57	\$ 17,378		73.74	\$ 4,992	\$ 4,595	\$ (12,386)	\$ (397)	
Total		335.29	\$ 33,104		127.74	\$ 8,279	\$ 7,621	\$ (24,825)	\$ (658)	

3E-17/7 3D-11/7

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Summary of Claimed / Allowable Hours
 FY's 2003-04 through 2005-06
Audit ID # S07-MCC-0033

Purpose: To review Case Time Logs for all the years under the audit period in order to identify POBAR-related hours eligible for reimbursement as per criteria outlined in the *Parameters and Guidelines* for the POBAR program. To document allowed hours and audit adjustments as per auditors' review of case logs and sample cases.

Source: Case Time Logs, Sheriff Department's Internal Affairs Division, FY's 2003-04 through 2005-06
 Discussions with Commander Zink at the Sheriff Department's investigations unit

Analysis: The auditors reviewed all case logs for three fiscal years under the audit period and identified eligible hours.

Fiscal Year	Claim Component	Claimed Hours	Allowed Hours	Audit Adjustments
2003-04	Admin. Activities <u>3D-1a 2/18</u>	144.75	72.00	(72.75)
	Admin. Appeals <u>3D-1a 3/18</u>	17.00	-	(17.00)
	Interrogations <u>3D-1a 5/18</u>	354.53	59.17	(295.36)
	Adverse Comments <u>3D-1a 7/18</u>	168.75	40.27	(128.48)
	Total	<u>685.03</u>	<u>171.44</u>	<u>(513.59)</u>
2004-05	Admin. Activities <u>3D-1a 8/18</u>	78.50	48.00	(30.50)
	Interrogations <u>3D-1a 10/18</u>	306.95	23.33	(283.62)
	Adverse Comments <u>3D-1a 12/18</u>	197.52	11.57	(185.95)
	Total	<u>582.97</u>	<u>82.90</u>	<u>(500.07)</u>
2005-06	Admin. Activities <u>3D-1a 13/18</u>	17.33	9.83	(7.50)
	Admin. Appeals <u>3D-1a 14/18</u>	2.00	-	(2.00)
	Interrogations <u>3D-1a 16/18</u>	278.39	44.17	(234.22)
	Adverse Comments <u>3D-1a 18/18</u>	274.99	73.74	(201.25)
Total	<u>572.71</u>	<u>127.74</u>	<u>(444.97)</u>	
Grand Total		<u>1,840.71</u>	<u>382.08</u>	<u>(1,458.63)</u>

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
 Administrative Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
		<u>2A-2a</u>	<u>✓</u>	
IA 04-04	Sgt. Burgess	3.00	-	(3.00)
IA 04-001	Sgt. Matuzek	0.50	-	(0.50)
IA 04-002	Sgt. Watson	1.00	-	(1.00)
IA 04-03	Sgt. Matuzek	4.00	-	(4.00)
IA 04-05	Sgt. Matuzek	3.80	-	(3.80)
IA 04-06	Sgt. Matuzek	2.60	-	(2.60)
IA 04-08	Sgt. Burgess	0.60	-	(0.60)
IA 04-10	Sgt. Matuzek	5.00	-	(5.00)
IA 03-14	Sgt. Watson	3.50	-	(3.50)
IA 04-15	Sgt. Matuzek	2.50	-	(2.50)
IA 03-15	Sgt. Watson	1.50	-	(1.50)
IA 03-16	Sgt. Watson	2.50	-	(2.50)
IA 03-17	Sgt. Schiller	5.00	-	(5.00)
IA 03-12	Sgt. Denis	2.50	-	(2.50)
IA 03-19	Sgt. Denis	4.75	-	(4.75)
IA 04-28	Sgt. Matuzek	-	-	-
Training	Sgt. Burgess	48.00	48.00	-
Training	Sgt. Staats	24.00	24.00	-
Training	Sgt. Matuzek	30.00	-	(30.00)
Duplicate Hours, also claimed in FY 04-05				
Total		<u>144.75</u>	<u>72.00</u>	<u>(72.75)</u>

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2a</u>	<u>✓</u>	
Sgt. Staats	24.00	24.00	-
Sgt. Denis	7.25	-	(7.25)
Sgt. Schiller	5.00	-	(5.00)
Sgt. Watson	8.50	-	(8.50)
Sgt. Burgess	51.60	48.00	(3.60)
Sgt. Matuzek	48.40	-	(48.40)
Total	<u>144.75</u>	<u>72.00</u>	<u>(72.75)</u>

✓ Source:
 see w/P 30-1a/18
N Ineligible activity
E Eligible activity

Claimed Hours included the following activities:

- 30-1c {
- N * File Preparation
 - N * Logging case info into the system and assignment of the case
 - N * Interview Complainant
 - E * Training for IA staff regarding investigations and POBAR related materials
 (the auditors discussed the nature of training with Commander Zink at the Sheriff's department)

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Administrative Appeal
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
		<u>2A-2G</u>	<u>✓</u>	
IA 04-04	Sgt. Burgess	17.00	-	(17.00)
Total		<u>17.00</u>	<u>-</u>	<u>(17.00)</u>

3D-1a 1/18 ; 3D-12/7

The review of the case 04-04 showed that no appeal was held for the disciplinary outcome of letter of reprimand.

✓ Source: See W/P 3D-1a 1/18

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Interrogation Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed			Total Allowed
		Prov. Interog. Notice / Statement of Allegations	Tape review / transcription for accused officers	Provide copies / tapes in case of further action	
DL 04-001	Sgt. Watson	-	-	-	-
DL 04-010	Sgt. Watson	-	-	-	-
DL 04-011	Sgt. Watson	-	-	-	-
DL 04-005	Sgt. Tait	-	-	-	-
DL 04-007	Sgt. Watson	-	-	-	-
DL 04-009	Sgt. Watson	-	-	-	-
DL-04-014	Sgt. Watson	-	-	-	-
DL 04-016	Sgt. Watson	-	-	-	-
DL 04-017	Sgt. Watson	-	-	-	-
DL 04-018	Sgt. Watson	-	-	-	-
DL 04-019	Lt. Burgess	-	-	-	-
DL 04-020	Sgt. Matuzek	0.33	0.33	-	0.67
DL 04-021	Sgt. Stevens	-	-	-	-
DL 04-022	Sgt. Matuzek	-	-	-	-
DL 04-023	Sgt. Matuzek	-	-	-	-
DL 04-024	Sgt. Atlas	-	-	-	-
DL 04-025	Sgt. Broaumelan	0.17	-	-	0.17
DL 04-026	Sgt. Matuzek	-	-	-	-
DL 04-027	Sgt. Matuzek	-	-	-	-
DL 04-028	Sgt. Matuzek	-	-	-	-
DL 04-029	Sgt. Dona	-	-	-	-
DL 04-031	Sgt. Staats	1.00	-	-	1.00
DL 04-032	Sgt. Matuzek	-	-	-	-
DL 04-033	Sgt. Matuzek	-	-	-	-
DL 04-034	Sgt. Matuzek	-	-	-	-
IA 04-04	Sgt. Burgess	-	4.00	-	4.00
IA 04-01	Sgt. Matuzek	0.83	1.00	1.50	3.33
IA 04-02	Sgt. Watson	1.00	2.00	-	3.00
IA 04-03	Sgt. Matuzek	0.67	1.50	-	2.17
IA 04-05	Sgt. Matuzek	0.75	1.00	-	1.75
IA 04-06	Sgt. Matuzek	0.67	1.50	1.33	3.50
IA 04-08	Sgt. Burgess	0.50	3.00	-	3.50
IA 04-10	Sgt. Matuzek	0.67	2.00	-	2.67
IA 03-14	Sgt. Watson	2.00	1.00	-	3.00
IA 04-15	Sgt. Matuzek	1.00	0.67	-	1.67
IA 03-15	Sgt. Watson	2.00	-	-	2.00
IA 03-16	Sgt. Watson	2.00	1.00	-	3.00
IA 03-17	Sgt. Schiller	1.00	2.00	0.75	3.75
IA 03-12	St. Denis	3.00	4.00	-	7.00
IA 03-19	St. Denis	3.00	5.00	5.00	13.00

Total

59.17

next page →

3D-19-5/18

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Interrogation Activities
 Audit ID # S07-MCC-0033

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2a</u>	✓	
Sgt. Tait	0.50	-	(0.50)
Sgt. Stevens	0.42	-	(0.42)
Sgt. Staats	3.00	1.00	(2.00)
Sgt. Lewis	0.33	-	(0.33)
Deputy Donna	0.50	-	(0.50)
Sgt. Broumeland	0.92	0.17	(0.75)
Sgt. Atlas	0.33	-	(0.33)
Sgt. Denis	96.25	20.00	(76.25)
Sgt. Schiller	18.00	3.75	(14.25)
Sgt. Matuzek	95.71	15.75	(79.96)
Sgt. Watson	92.50	11.00	(81.50)
Sgt. Burgess	26.65	7.50	(19.15)
Deputies	19.42	-	(19.42)
Total	354.53	59.17	(295.36)

3D-1a 4/18

3D-1a 1/18 ; 3D-1 2/7

- 3D-1c {
- N * Gather Reports, Review Complaint, Reports & Evidence
 - E * Prepare and Serve Statement of Allegations and / or Provide notice of interrogation
 - N * Investigation
 - N * Prepare Questions for the interrogations
 - N * Interview Witnesses during normal working hours and review tape / transcribe / summarize
 - N * Conduct Pre-Interrogation Meeting
 - N * Interrogate Accused officers during normal working hours
 - E * Review tape of accused officer's interrogation to summarize the interview (transcription)
 - E * Transcribe tapes and copy file information for further proceedings or appeals
 - N * Travel time to interview witnesses

✓ source: See w/p 3D-1a 1/18

N Ineligible activity

E Eligible activity

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Adverse Comment Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed		
		Admin Notice of Allegations Prep & Serve	Command Staff Review	Total Allowed
DL 04-001	Sgt. Watson	-	-	-
DL 04-005	Sgt. Tait	-	-	-
DL 04-010	Sgt. Watson	-	-	-
DL 04-007	Sgt. Watson	-	-	-
DL 04-009	Sgt. Watson	0.25	-	0.25
DL 04-011	Sgt. Watson	-	-	-
DL 04-014	Sgt. Watson	0.25	-	0.25
DL 04-016	Sgt. Watson	-	-	-
DL 04-017	Sgt. Watson	-	-	-
DL 04-018	Sgt. Watson	-	-	-
DL 04-019	Lt. Burgess	0.25	-	0.25
DL 04-020	Sgt. Matuzek	0.50	-	0.50
DL 04-021	Sgt. Stevens	0.17	-	0.17
	Lt. Burgess	0.25	-	0.25
DL 04-022	Sgt. Matuzek	0.25	-	0.25
DL 04-023	Sgt. Langley	0.25	-	0.25
	Sgt. Matuzek	0.17	-	0.17
DL 04-024	Sgt. Atlas	0.17	-	0.17
DL 04-025	Sgt. Boumeland	0.42	-	0.42
DL 04-026	Sgt. Matuzek	-	-	-
DL 04-027	Sgt. Babcock	-	-	-
DL 04-028	Sgt. Matuzek	-	-	-
DL 04-029	Sgt. Dona	0.25	-	0.25
DL 04-031	Sgt. Staats	0.25	-	0.25
DL 04-032	Sgt. Matuzek	0.25	-	0.25
DL 04-033	Sgt. Peterson	0.17	-	0.17
DL 04-034	Sgt. Dutra	0.25	-	0.25
IA 04-04	Lt. Burgess	-	1.00	1.00
IA 04-01	Sgt. Matuzek	-	0.50	0.50
IA 04-02	Sgt. Watson	-	1.50	1.50
IA 04-03	Sgt. Matuzek	-	1.50	1.50
IA 04-05	Sgt. Matuzek	-	0.67	0.67
IA 04-06	Sgt. Matuzek	-	0.50	0.50
IA 04-08	Lt. Sgt. Burgess	-	1.00	1.00
IA 04-10	Sgt. Matuzek	-	1.00	1.00
IA 03-14	Sgt. Watson	-	3.00	3.00
IA 04-15	Sgt. Matuzek	-	0.50	0.50
IA 03-15	Sgt. Watson	-	3.00	3.00
IA 03-16	Sgt. Watson	-	2.00	2.00
IA 03-17	Sgt. Schiller	-	2.00	2.00
IA 03-12	St. Denis	-	6.00	6.00
IA 03-19	St. Denis	-	12.00	12.00
Total				40.27

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Adverse Comment Activities
 Audit ID # S07-MCC-0033

	Total Hours Claimed <i>2A-20</i>	Total Hours Allowed ✓	Audit Adjustments
Sgt. Tait	0.50	-	(0.50)
Sgt. Stevens	0.17	0.17	-
Sgt. Staats	1.08	0.25	(0.83)
Sgt. Dona	0.25	0.25	-
Sgt. Broaumelar	0.75	0.42	(0.33)
Sgt. Atlas	0.17	0.17	-
Sgt. Babcock	0.17	-	(0.17)
Sgt. Dutra	0.25	0.25	-
Sgt. Langley	0.25	0.25	-
Sgt. Peterson	0.25	0.17	(0.08)
Sgt. Denis	62.00	18.00	(44.00)
Sgt. Schiller	7.00	2.00	(5.00)
Sgt. Matuzek	25.58	5.84	(19.74)
Sgt. Watson	55.83	10.00	(45.83)
Sgt. Burgess	14.50	2.50	(12.00)
	<u>168.75</u>	<u>40.27</u>	<u>(128.48)</u>

3D-1A 6/18
3D-1A 1/18 ; 3D-1 3/7

3D-1C/k {
 N
 N
 E
 N
 E

- Claimed hours included the following activities:
- * Review circumstances of complaint / adverse comment to determine level of investig. (divisional or IA)
 - * Document the complaint / allegations / adverse comment and review for accuracy
 - * Prepare and Serve Admin. Notice regarding nature of allegations
 - * Summarize the case investigation in a report and IA review of the file
 - * Command staff review and findings

V Source: See W/P 3D-1A 1/18

N Ineligible activity

E Eligible activity

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2004-05
 Administrative Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
		<u>2A-2b</u>	<u>✓</u>	
various IA cases	Lt. Burgess	8.00	-	(8.00)
	Sgt. Matuzek	6.50	-	(6.50)
	Sgt. Staats	10.00	-	(10.00)
Training	Lt. Burgess	24.00	24.00	-
Training	Sgt. Matuzek	30.00	24.00	(6.00)
Total		<u>78.50</u>	<u>48.00</u>	<u>(30.50)</u>

3D-1a 1/18 ; 3D-1 4/7

Claimed hours included the following activities:

- 3D-1c {
- N * File preparation
 - N * Logging the case info into the system and assignment of the case.
 - N * Interview the complainant
 - E * Training for IA staff regarding investigations and POBAR related materials (the auditors discussed the nature of the training with Commander Zink)

✓ Source: See w/P 3D-1a 1/18

N Ineligible activity

E Eligible activity

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Interrogation Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed			Total Allowed
		Prov. Interrog. Notice / Statement of Allegations	Tape review / transcription for accused officers	Provide copies / tapes in case of further action	
IA 04-31	Sgt. Staats	-	2.50	-	2.50
IA 04-29	Sgt. Staats	1.00	2.50	-	3.50
IA 04-36	Sgt. Staats	-	-	-	-
IA 04-39	Lt. Burgess	3.50	-	-	3.50
IA 04-28	Sgt. Matuzek	0.50	1.17	0.33	2.00
IA 04-32	Lt. Burgess	2.00	1.00	-	3.00
IA 04-30	Sgt. Matuzek	0.50	-	-	0.50
IA 04-41	Lt. Burgess	-	-	-	-
IA 04-34	Lt. Burgess	2.00	-	-	2.00
DL 04-028	Sgt. Matuzek	0.17	-	-	0.17
DL 04-029	Sgt. Dona	-	-	-	-
DL 04-031	Sgt. Staats	1.00	-	-	1.00
DL 04-035	Sgt. Matuzek	-	-	-	-
DL 04-036	Sgt. Staats	-	-	-	-
DL 04-037	Sgt. Matuzek	-	-	-	-
DL 04-038	Sgt. Matuzek	0.42	-	-	0.42
DL 04-039	Sgt. Matuzek	-	-	-	-
DL 04-040	Sgt. Matuzek	0.42	-	-	0.42
DL 04-043	Sgt. Staats	0.33	-	-	0.33
DL 04-044	Sgt. Matuzek	-	-	-	-
DL 04-045	Sgt. Staats	-	-	-	-
DL 04-046	Sgt. Staats	0.17	-	-	0.17
DL 04-047	Sgt. Staats	0.25	-	-	0.25
DL 04-048	Sgt. Staats	0.17	-	-	0.17
DL 04-049	Sgt. Matuzek	0.25	0.17	-	0.42
DL 04-050	Sgt. Matuzek	0.75	1.00	-	1.75
DL 04-051	Sgt. Matuzek	0.17	-	-	0.17
DL 04-052	Sgt. Staats	0.67	-	-	0.67
DL 04-053	Sgt. Staats	0.25	-	-	0.25
DL 04-055	Dep. Holloway	0.17	-	-	0.17
DL 04-033	Sgt. Matuzek	-	-	-	-
DL 04-041	Sgt. Matuzek	-	-	-	-
DL 04-042	Sgt. Matuzek	-	-	-	-

Total

23.376
 next page = 8
 3D-19 10/18

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Interrogation Activities
 Audit ID # S07-MCC-0033

	Total Hours Claimed <i>2A-2b</i>	Total Hours Allowed <i>✓</i>	Audit Adjustments
Lt. Burgess	86.17	8.50	(77.67)
Sgt. Dona	0.50	-	(0.50)
Dep. Holloway	0.99	0.17	(0.82)
Sgt. Matuzek	47.07	5.875	(41.24) ^r
Sgt. Mitre	0.50	-	(0.50)
Sgt. Staats	124.15	8.874	(115.32) ^l
Deputies (sub)	47.24	-	(47.24)
Sergeant (sub)	0.33	-	(0.33)
Total	306.95	23.376 <i>3D-1a 9/18</i>	(283.62) <i>59</i>

3D-1a 11/18 ; 3D-1 4/7

Claimed Hours included the following activities:

- 3D-1c* {
- N* * Gather Reports, Review Complaint, Reports & Evidence
 - E* * Prepare and Serve Statement of Allegations and / or Provide notice of interrogation
 - N* * Investigation
 - N* * Prepare Questions for the interrogations
 - N* * Interview Witnesses during normal working hours and review tape / transcribe / summarize
 - N* * Conduct Pre-Interrogation Meeting
 - N* * Interrogate Accused officers during normal working hours
 - E* * Review tape of accused officer's interrogation to summarize the interview (transcription)
 - E* * Transcribe tapes and copy file info for further proceedings or appeals
 - N* * Travel time to interview witnesses

✓ Source: See WIP 3D-1a 11/18

N Ineligible activity

E Eligible activity

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2004-05
 Adverse Comment Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed		
		Admin Notice of Allegations Prep & Serve	Command Staff Review	Total Allowed
IA 04-31	Sgt. Staats	-	-	-
IA 04-29	Sgt. Staats	-	-	-
IA 04-36	Sgt. Staats	-	0.75	0.75
IA 04-41	Lt. Burgess	-	0.67	0.67
IA 04-39	Lt. Burgess	-	-	-
IA 04-28	Sgt. Matuzek	-	1.00	1.00
IA 04-32	Lt. Burgess	-	1.00	1.00
IA 04-30	Sgt. Matuzek	-	-	-
IA 04-41	Lt. Burgess	-	1.00	1.00
IA 04-34	Lt. Burgess	0.50	1.00	1.50
DL 04-028	Sgt. Matuzek	-	-	-
DL 04-029	Sgt. Dona	0.25	-	0.25
DL 04-031	Sgt. Staats	0.25	-	0.25
DL 04-035	Sgt. Matuzek	-	-	-
DL 04-036	Sgt. Staats	-	-	-
DL 04-037	Sgt. Matuzek	-	-	-
DL 04-038	Lt. Keith	0.25	-	0.25
DL 04-039	Sgt. Hooper	0.25	-	0.25
DL 04-040	Lt. Pugh	0.33	-	0.33
DL 04-043	Sgt. Rodriguez	0.25	-	0.25
DL 04-044	Sgt. Mathison	0.33	-	0.33
DL 04-045	Lt. Keith	0.25	-	0.25
DL 04-046	Sgt. Waldher	0.33	-	0.33
DL 04-047	Sgt. McIntosh	0.33	-	0.33
DL 04-048	Sgt. Scott	0.25	-	0.25
DL 04-049	Sgt. Matuzek	-	-	-
DL 04-050	Sgt. Matuzek	0.25	-	0.25
	Sgt. Imas	0.33	-	0.33
DL 04-051	Sgt. Mitre	0.25	-	0.25
DL 04-052	Lt. Calderone	0.50	-	0.50
DL 04-053	Sgt. Staats	0.33	-	0.33
DL 04-055	Sgt. Atlas	0.25	-	0.25
DL 04-033	Sgt. Matuzek	0.17	-	0.17
DL 04-041	Lt. Calderone	0.25	-	0.25
DL 04-042	Lt. Lemmon	0.25	-	0.25

Total

11.57

30-19¹²/18

next page =>

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2004-05
 Adverse Comment Activities
 Audit ID # S07-MCC-0033

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A 2b</u>	<u>✓</u>	
Sgt. Atlas	0.50	0.25	(0.25)
Lt. Burgess	75.33	4.17	(71.16)
Lt. Calderone	1.50	0.75	(0.75)
Sgt. Carrasco	0.33	-	(0.33)
Sgt. Dona	0.25	0.25	-
Dep. Holloway	0.33	-	(0.33)
Sgt. Hooper	0.50	0.25	(0.25)
Sgt. Imas	2.00	0.33	(1.67)
Lt. Keith	1.00	0.50	(0.50)
Lt. Lemmon	0.50	0.25	(0.25)
Sgt. Mathison	0.66	0.33	(0.33)
Sgt. Matuzek	80.81	1.42	(79.39)
Sgt. McIntosh	0.66	0.33	(0.33)
Sgt. Mitre	0.50	0.25	(0.25)
Sgt. Peterson	0.25	-	(0.25)
Lt. Pugh	1.83	0.33	(1.50)
Sgt. Rodriguez	0.50	0.25	(0.25)
Sgt. Scott	0.50	0.25	(0.25)
Sgt. Staats	28.91	1.33	(27.58)
Sgt. Waldher	0.66	0.33	(0.33)
Total	197.52	11.57	(185.95)

3D-19 11/18

3D-19 11/18
3D-1 5/7

Claimed hours included the following activities:

- N * Review circumstances of complaint / adverse comment to determine level of investig. (divisional or IA) -?
- N * Document the complaint / allegations / adverse comment and review for accuracy ?
- E * Prepare and Serve Admin. Notice regarding nature of allegations
- N * Summarize the case investigation in a report and IA review of the file
- E * Command staff review and findings

✓ Source: See W/P 3D-19 11/18

N Ineligible activity

E Eligible activity

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2005-06
 Administrative Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Allowed Hours (Update POBAR case records)
IA 05-11	Lt. Burgess	1.00
IA 05-12	Sgt. Matuzek	0.25
IA 05-13	Sgt. Langley	-
IA 05-16	Sgt. Matuzek	0.42
IA 05-17	Sgt. Matuzek	0.50
IA 05-18	Sgt. Langley	-
IA 05-19	Lt. Burgess	1.00
IA 05-20	Sgt. Matuzek	0.42
IA 05-21	Sgt. Langley	-
IA 05-22	Sgt. Langley	-
IA 05-23	Sgt. Matuzek	3.00
IA 05-24	Lt. Burgess	-
IA 05-25	Lt. Burgess	-
IA 05-26	Sgt. Langley	-
IA 05-29	Sgt. Langley	-
IA 06-01	Sgt. Matuzek	-
IA 06-04	Sgt. Matuzek	0.67
IA 06-05	Sgt. Matuzek	1.00
IA 06-07	Sgt. Matuzek	0.58
IA 06-08	Sgt. Langley	-
IA 06-09	Sgt. Matuzek	-
IA 06-10	Lt. Burgess	-
IA 06-11	Sgt. Langley	-
IA 06-13	Lt. Burgess	0.50
IA 06-17	Sgt. Matuzek	-
IA 06-18	Sgt. Peterson	0.50
Total		<u>9.83</u>

3D-1c

- Claimed hours included the following activities:
- N * File preparation
 - N * Logging the case info into the system and assignment
 - N * Interview the complainant
 - E * Updating POBAR case records

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2c</u>	<u>✓</u>	
Lt. Burgess	4.50	2.50	(2.00)
Sgt. Matuzek	12.33	6.83	(5.50)
Sgt. Peterson	0.50	0.50	-
Total	<u>17.33</u>	<u>9.83</u>	<u>(7.50)</u>

✓ Source: see w/P 3D-1a 1/18
 N Ineligible activity
 E Eligible activity

3D-1a 1/18
 3D-1 6/7/419

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2005-06
 Administrative Appeal
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
IA 06-05	Sgt. Matuzek	2.00	-	(2.00)

2A-2C ✓

3D-1a 1/18
 3D-1 6/7

The review of the case 06-05 revealed that no appeal was held for the disciplinary outcome of 1 week suspension.

✓ source: See w/p 3D-1a 1/18

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed		Total Allowed
		Prov. Interrog. Notice / Statement of Allegations	Tape review / transcription for accused officers	
IA 05-10	Lt. Burgess	-	-	-
IA 05-11	Lt. Burgess	-	-	-
IA 05-12	Sgt. Matuzek	-	-	-
IA 05-13	Sgt. Langley	1.00	-	1.00
IA 05-15	Sgt. Langley	-	-	-
IA 05-16	Sgt. Matuzek	-	0.58	0.58
IA 05-17	Sgt. Matuzek	1.50	4.00	5.50
IA 05-18	Sgt. Langley	-	-	-
IA 05-19	Lt. Burgess	-	-	-
IA 05-20	Sgt. Matuzek	1.50	-	1.50
IA 05-21	Sgt. Langley	-	-	-
IA 05-23	Sgt. Matuzek	-	9.32 ⁴	9.32 ⁴
IA 05-24	Lt. Burgess	-	-	-
IA 05-25	Lt. Burgess	-	-	-
IA 05-26	Sgt. Langley	0.75	-	0.75
IA 05-27	Lt. Burgess	-	-	-
IA 05-28	Sgt. Langley	-	-	-
IA 06-01	Sgt. Matuzek	-	-	-
IA 06-02	Sgt. Langley	1.00	-	1.00
IA 06-04	Sgt. Matuzek	1.00	-	1.00
IA 06-05	Sgt. Matuzek	-	-	-
IA 06-07	Sgt. Matuzek	1.00	-	1.00
IA 06-08	Sgt. Langley	1.00	-	1.00
IA 06-09	Sgt. Matuzek	2.00	5.00	7.00
IA 06-10	Lt. Burgess	1.00	1.00	2.00
IA 06-11	Sgt. Langley	-	-	-
IA 06-13	Lt. Burgess	-	-	-
IA 06-17	Sgt. Matuzek	2.00	7.00	9.00
IA 06-18	Sgt. Peterson	0.50	-	0.50
IA 06-20	Sgt. Matuzek	-	3.00	3.00

Total

44.17
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next page =>

3D-19 16/18

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2C</u>	<u>✓</u>	
Lt. Burgess	9.50	2.00	(7.50)
Sgt. Imas	1.00	-	(1.00)
Sgt. Langley	16.50	3.75	(12.75)
Sgt. Matuzek	101.42	37.92	(63.50)
Sgt. Peterson	0.50	0.50	-
Lt. Pugh	1.00	-	(1.00)
Deputies (s/w)	142.72	-	(142.72)
Sergeants (s/w)	5.08	-	(5.08)
Lt. (s/w)	0.67	-	(0.67)
Total	<u>278.39</u>	<u>44.17</u>	<u>(234.22)</u>

3D-19 15/18
3D-10 1/18
3D-1 6/7

- 3D-1C {
- E * Provide prior notice regarding the nature of interrogation / allegations
 - N * Interrogation time (wit interviews), regular working hours
 - N * Interrogation time (accused interviews), regular working hours
 - N * Travel time for witness interviews
 - N * Transcription time for witness interviews
 - E * Transcription time for accused interviews (accused officers receive a copy of the interview)

✓ Source: See W/P 3D-10 1/18

N Ineligible activity

E Eligible activity

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Adverse Comment Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed		
		Admin Notice of Allegations Prep & Serve	Command Staff Review	Total Allowed
IA 05-10	Lt. Burgess	-	4.00	4.00
IA 05-11	Lt. Burgess	1.00	1.50	2.50
IA 05-12	Sgt. Matuzek	1.50	1.25	2.75
IA 05-13	Sgt. Langley	3.00	1.50	4.50
IA 05-16	Sgt. Matuzek	2.00	-	2.00
IA 05-17	Sgt. Matuzek	1.00	-	1.00
IA 05-18	Sgt. Langley	1.67	1.50	3.17
IA 05-19	Lt. Burgess	1.00	1.25	2.25
IA 05-20	Sgt. Matuzek	1.00	-	1.00
IA 05-21	Comm. Bacon	-	1.00	1.00
	Capt. Hirokawa	-	1.00	1.00
	Capt. Angus	-	1.00	1.00
	Capt. Rode	-	1.00	1.00
	Sgt. Spagnola	-	1.00	1.00
	Sgt. Dutra	-	1.00	1.00
IA 05-23	Sgt. Matuzek	3.00	1.00	4.00
IA 05-24	Lt. Burgess	-	2.00	2.00
IA 05-25	Lt. Burgess	0.50	4.00	4.50
IA 05-26	Sgt. Langley	-	0.50	0.50
	Sgt. Matuzek	-	0.50	0.50
	Comm. Bacon	-	0.50	0.50
	Capt. Laverone	-	0.50	0.50
	Lt. Geary	-	0.50	0.50
IA 05-27	Lt. Burgess	2.00	2.00	4.00
IA 05-28	Sgt. Langley	0.50	0.67	1.17
IA 05-29	Sgt. Langley	1.00	-	1.00
IA 06-01	Sgt. Matuzek	1.50	-	1.50
IA 06-02	Sgt. Langley	0.50	-	0.50
IA 06-04	Sgt. Matuzek	1.25	1.00	2.25
IA 06-05	Sgt. Matuzek	1.50	1.00	2.50
IA 06-07	Sgt. Matuzek	0.75	-	0.75
IA 06-08	Sgt. Langley	1.50	0.58	2.08
	Sgt. Matuzek	-	0.58	0.58
	Comm. Bacon	-	0.58	0.58
	Capt. Perusina	-	0.58	0.58
	Lt. Schiller	-	0.58	0.58
IA 06-09	Sgt. Matuzek	1.00	-	1.00
IA 06-10	Lt. Burgess	-	0.50	0.50
IA 06-11	Sgt. Langley	1.00	-	1.00
IA 06-13	Lt. Burgess	-	-	-
IA 06-17	Sgt. Matuzek	1.00	-	1.00
IA 06-18	Sgt. Peterson	1.50	-	1.50
IA 06-20	Sgt. Matuzek	1.00	-	1.00

next page =>

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Adverse Comment Activities
Audit ID # S07-MCC-0033

IA 05-15	Sgt. Langley	-	-	-
	Comm. Bacon	-	1.50	1.50
	Capt. Angus	-	1.50	1.50
	Sgt. Dutra	-	1.50	1.50
	Capt. Rode	-	1.50	1.50
	Sgt. Spagnola	-	1.50	1.50

Total 73.74 ⁽¹⁾

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2C</u>	<u>✓</u>	
Lt. Burgess	39.75	4.50	(35.25)
Sgt. Langley	120.25	9.17	(111.08)
Sgt. Matuzek	72.42	16.50	(55.92)
Sgt. Peterson	5.00	1.50	(3.50)
Findings:			
Capt. Angus	1.00	2.50	1.50
Lt. Burgess	19.25	15.25	(4.00)
Comm. Bacon	2.75	3.58	0.83
Sgt. Dutra	1.00	2.50	1.50
Lt. Geary	0.50	0.50	-
Capt. Hirokawa	1.00	1.00	-
Sgt. Langley	4.08	4.75	0.67
Capt. Laverone	0.50	0.50	-
Sgt. Matuzek	4.33	5.33	1.00
Capt. Perusina	0.58	0.58	0.00
Capt. Rode	1.00	2.50	1.50
Lt. Schiller	0.58	0.58	-
Sgt. Spagnola	1.00	2.50	1.50
Total	274.99	73.74	(201.25)

✓ source:
 see w/p
 3D-1a 1/18
N ineligible activity
E eligible activity

3D-1a 1/18
 3D-1 7/7

- 3D-1c
- Claimed hours included the following activities:
- N * Review circumstances of complaint / allegations / adverse comment prior to the start of investigation ^(?)
 - N * Document the complaint / allegations / adverse comment and review for accuracy ^(-?)
 - E * Prepare and Serve Admin. Notice regarding nature of allegations and schedule interviews
 - N * Prepare Questions for the interview
 - N * Summarize the case investigation in a report and IA review of the file
 - E * Command staff review and findings

Purpose To review Productive Hourly Rates claimed by the Sheriff department in FY 2003-04 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Alan Minato, Fiscal Officer, Sheriff Department
 ✓ Santa Clara County's Actual Salaries Recap Report per individual employee, FY 2003-04 (Report ID # Pay rpt 04 SAP 23004)

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1560.65 productive hours in the PHR calculation. (See <Document # 3D-43/7 > for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours.

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 3D-4 > for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c)=(b) / 1696.35 ^{3D-4 2/7}	(d)=(c)-(a)
	<u>2A-2a</u>			
Sgt. Burgess	54.98	85,810.92 ✓	50.59	(4.39)
Sgt. Staats	54.98	85,810.92	50.59	(4.39)
Sgt. Broaumeland	46.36	83,815.42	49.41	3.05
Sgt. Denis	51.15	79,824.16	47.06	(4.09)
Sgt. Schiller	64.91	101,306.40	59.72	(5.19)
Sgt. Matuzek	54.98	85,810.92	50.59	(4.39)
Sgt. Watson	54.98	85,810.92	50.59	(4.39)
Sgt. Stevens	54.98	85,810.92	50.59	(4.39)
Sgt. Atlas	54.98	85,810.92	50.59	(4.39)
Sgt. Peterson	54.98	85,810.92	50.59	(4.39)
Sgt. Dutra	54.98	85,810.92	50.59	(4.39)
Sgt. Langley	54.98	85,810.92	50.59	(4.39)
Sgt. Dona	49.66	77,500.80 ✓	45.69	(3.97)

3D-12/7-3/7

Purpose To review Productive Hourly Rates claimed by the Sheriff department in FY 2004-05 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Alan Minato, Fiscal Officer, Sheriff Department
 ✓ Sheriff Department's Actual Salaries Recap Report per individual employee, FY 2004-05

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1545 productive hours in the PHR calculation. (See <Document # 30-44/7> for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 30-4> for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c)=(b) / 1682	(d)=(c)-(a)
Lt. Burgess	66.15	102,203.97	60.76	(5.39)
Dep. Holloway	48.93	75,590.87	44.94	(3.99)
Sgt. Matuzek	57.39	88,665.96	52.71	(4.68)
Sgt. Staats	57.40	88,710.87	52.74	(4.66)
Sgt. Atlas	61.80	95,487.65	56.77	(5.03)
Lt. Calderone	70.19	108,449.72	64.48	(5.71)
Sgt. Dona	57.01	88,084.40	52.37	(4.64)
Sgt. Hooper	60.48	93,442.29	55.55	(4.93)
Sgt. Imas	57.39	88,665.96	52.71	(4.68)
Lt. Keith	67.75	104,679.17	62.23	(5.52)
Lt. Lemmon	57.37	88,640.65	52.70	(4.67)
Sgt. McIntosh	57.45	88,236.80	52.46	(4.99)
Sgt. Mitre	56.85	87,840.73	52.22	(4.63)
Lt. Pugh	67.75	104,679.16	62.23	(5.52)
Sgt. Rodriguez	47.22	72,962.47	43.38	(3.84)
Sgt. Scott	57.66	70,544.49	41.94	(15.72)
Sgt. Waldher	61.27	94,663.40	56.28	(4.99)
Sgt. Peterson	59.60	92,086.42	54.75	(4.85)
Sgt. Mathison	57.45	88,755.78	52.77	(4.68)

30-44/7-5/7

Purpose To review Productive Hourly Rates claimed by the Sheriff department in FY 2005-06 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Alan Minato, Fiscal Officer, Sheriff Department
 ✓ Sheriff Department's Actual Salaries Recap Report per individual employee, FY 2005-06

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1544 productive hours in the PHR calculation. (See <Document # 30-457 for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 30-4 > for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c)=(b) / 1677	(d)=(c)-(a)
Sgt. Matuzek	<i>2A-JC</i> 59.93	92,528.00 ✓	55.17	(4.76)
Lt. Burgess	70.75	109,240.00	65.14	(5.61)
Sgt. Peterson	62.18	96,001.00	57.25	(4.93)
Sgt. Langley	59.93	92,528.00	55.17	(4.76)
Capt. Angus	86.23	133,135.00	79.39	(6.84)
Comm. Bacon	105.58	163,015.00	97.21	(8.37)
Sgt. Dutra	60.08	92,760.00	55.31	(4.77)
Capt. Hirokawa	91.40	141,120.00	84.15	(7.25)
Capt. Laverone	78.36	120,981.00	72.14	(6.22)
Capt. Perusina	104.60	161,505.00	96.31	(8.29)
Capt. Rode	80.86	124,847.00	74.45	(6.41)
Lt. Schiller	73.35	113,245.00	67.53	(5.82)
Sgt. Spagnola	58.83	90,376.00	53.89	(4.94)
Lt. Geary	63.57	98,153.00	58.53	(5.04)
Sgt. Imas	59.93	92,528.00	55.17	(4.76)
Lt. Pugh	72.90	112,559.00	67.12	(5.78)

30-167-7/7

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Summary of Salary Adjustments
 Fiscal Years 2003-04 Through 2005-06
Audit ID # S07-MCC-0033

Purpose: To calculate allowable salaries based on adjustments to claimed hours and Productive Hourly rates.

Source: 2A-2 ; 3D-2a ; 3D-2b ; 3D-2c

Cost Components	Salaries Claimed	Allowed Salaries	Audit Adjustments
-----------------	------------------	------------------	-------------------

2003-04		Adjustment 1 Overstated Hours	Adjustment 2 Overstated PHR
Admin. Activities	3D-2 4/8 1,767	\$ 822	\$ (883)
Admin. Appeal	-	-	-
Interrogation	18,435	3,054	(15,115)
Adverse Comments	10,380	1,005	(9,288)
Subtotal	\$ 30,582	\$ 4,881	\$ (25,286)

2004-05		Adjustment 1 Overstated Hours	Adjustment 2 Overstated PHR
Admin. Activities	3D-2 3/8 64,789	\$ 39,201	\$ (22,114)
Admin. Appeal	776	-	(776)
Interrogation	3D-2 4/8 9,089	1,302	(7,672)
Adverse Comments	3D-2 5/8 13,723	3,057	(10,395)
Subtotal	\$ 88,377	\$ 43,560	\$ (40,957)

2005-06		Adjustment 1 Overstated Hours	Adjustment 2 Overstated PHR
Admin. Activities	3D-2 4/8 6,746	\$ 1,825	\$ (4,764)
Admin. Appeal	-	-	-
Interrogation	3D-2 7/8 97,665	18,948	(77,069)
Adverse Comments	3D-2 8/8 584	-	(584)
Subtotal	\$ 104,995	\$ 20,773	\$ (82,417)

Grandtotal	\$ 223,954	\$ 69,214	\$ (148,660)	Adjustment 1
			(6,080)	Adjustment 2
			(154,740)	

Handwritten notes and corrections:
 16/16
 3D-2 4/2
 428 3D 12/12 ; 3D 8/12 ; 1D 1/14

Santa Clara County
 Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

Probation Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2003-04

Admin. Activities		<u>1-2A-2a 9/13</u>		<u>3D-2a 1/3</u>		<u>3D-2a 2/13</u>					
Training	Supervising Proba	\$ 49.08	36.00	\$ 1,766.88	\$ 45.66	18.00	\$ 883.50	\$ 821.88	\$ (883.38)	\$ (61.62)	
Subtotal			<u>36.00</u>	<u>\$ 1,767</u>		<u>18.00</u>	<u>\$ 884</u>	<u>\$ 822</u>	<u>\$ (883)</u>	<u>\$ (62)</u>	
Interrogation		<u>1-2A-2a 9/13</u>		<u>3D-2a 3/12</u>							
	Jim Tarshis, Grou	\$ 49.84	115.00	\$ 5,731.60	\$ 45.86	16.00	\$ 797.44	\$ 733.76	\$ (4,934.16)	\$ (64.00)	
	Cathy Shields, Prc	63.03	7.00	441.21		-	-	-	(441.21)	-	
	Alicia Garcia, Sup	49.84	25.50	1,270.92	45.86	2.00	99.68	91.72	(1,171.24)	(8.00)	
	Diana Bishop, Suj	49.84	66.00	3,289.44	45.86	3.00	149.52	137.58	(3,139.92)	(12.00)	
	Rita Loncarich, Pr	64.88	15.00	973.20	59.69	2.00	129.76	119.38	(843.44)	(10.38)	
Interrogating	Jim Tarshis, Grou	49.84	126.00	6,279.84	45.86	40.00	1,993.60	1,834.40	(4,286.24)	(159.20)	
	Diana Bishop, Suj	49.84	9.00	448.56	45.86	3.00	149.52	137.58	(299.04)	(11.94)	
Subtotal			<u>363.50</u>	<u>\$ 18,435</u>		<u>66.00</u>	<u>\$ 3,320</u>	<u>\$ 3,054</u>	<u>\$ (15,115)</u>	<u>\$ (266)</u>	
Adverse Comment		<u>1-2A-2a 10/13</u>		<u>3D-2a 4/12</u>							
	Cathy Shields, Prc	\$ 63.03	20.00	\$ 1,260.60	\$ 57.99	6.00	\$ 378.18	\$ 347.94	\$ (882.42)	\$ (30.24)	
	Diana Bishop, Suj	49.84	100.00	4,984.00		-	-	-	(4,984.00)	-	
	Rita Loncarich, Pr	64.88	55.00	3,568.40	59.69	11.00	713.68	656.59	(2,854.72)	(57.09)	
	Cathy Shields, Prc	63.03	9.00	567.27		-	-	-	(567.27)	-	
Subtotal			<u>184.00</u>	<u>\$ 10,380</u>		<u>17.00</u>	<u>\$ 1,092</u>	<u>\$ 1,005</u>	<u>\$ (9,288)</u>	<u>\$ (87)</u>	
Total			<u>583.50</u>	<u>\$ 30,582</u>		<u>101.00</u>	<u>\$ 5,296</u>	<u>\$ 4,881</u>	<u>\$ (25,286)</u>	<u>\$ (415)</u>	

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Probation Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2004-05

Admin. Activities				
	Shirley Cantu, Acti	\$ 73.34	2.00	\$ 146.68
	Nicholas Cademart	100.97	2.00	201.94
	Ann Meta Clarke, i	95.50	2.00	191.00
	Kathy Dupue, Depi	72.63	52.00	3,776.76
	Phuong Le, HR Mf	52.52	5.00	262.60
	Delores Nnam, Adi	70.47	29.00	2,043.63
	Karen Fletcher, De	66.84	457.00	30,545.88
	Kathy Viana, Adm	30.57	93.00	2,843.01
Training	Karen Fletcher, De	66.84	72.00	4,812.48
	John Dahl, Probati	65.79	24.00	1,578.96
	Bret Fidler, Supv. (51.16	24.00	1,227.84
	Ned Putt, Supv. Pr	56.96	24.00	1,367.04
Update POBAR	Karen Fletcher, Dep	66.84	153.00	10,226.52
Training	Probation Officer (45.37	48.00	2,177.76
	Supervising Probat	65.14	52.00	3,387.28
Subtotal			1,039.00	\$ 64,789

		\$ 67.36	2.00	\$ 146.68	\$ 134.72	\$ -	\$ (11.96)
		92.75	2.00	201.94	185.50	-	(16.44)
		87.73	2.00	191.00	175.46	-	(15.54)
		66.72	52.00	3,776.76	3,469.44	-	(307.32)
		48.24	5.00	262.60	241.20	-	(21.40)
		64.73	29.00	2,043.63	1,877.17	-	(166.46)
		61.40	376.00	25,131.84	23,086.40	(5,414.04)	(2,045.44)
		28.08	93.00	2,843.01	2,611.44	-	(231.57)
		61.40	48.00	3,208.32	2,947.20	(1,604.16)	(261.12)
		60.43	12.00	789.48	725.16	(789.48)	(64.32)
		47.00	12.00	613.92	564.00	(613.92)	(49.92)
		52.32	12.00	683.52	627.84	(683.52)	(55.68)
				-	-	(10,226.52)	-
		41.67	24.00	1,088.88	1,000.08	(1,088.88)	(88.80)
		59.84	26.00	1,693.64	1,555.84	(1,693.64)	(137.80)
			695.00	\$ 42,675	\$ 39,201	\$ (22,114)	\$ (3,474)

Admin. Appeal				
	Robert DeJesus, Pr	\$ 62.08	12.50	\$ 776.00
Subtotal			12.50	\$ 776

		-	-	-	-	(776.00)	-
		-	-	-	-	\$ (776)	\$ -

Document # 30-2 Page 5/8
 Auditor MV/JR Date 5/10/07
 Reviewer J Date 6/21/07

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Probation Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2004-05

Adverse Comment

2A-26 12/14-13/14

Robert DeJesus, Pr	\$ 62.08	63.00	\$ 3,911.04
Bret Fidler, SGC	51.16	45.00	2,302.20
Cleveland Price, PI	63.45	5.00	317.25
Delores Nham, AS	70.47	4.00	281.88
Karen Fletcher, PV	66.84	23.00	1,537.32
Kathy Duque, DCF	72.63	7.00	508.41
Michael Simms, PI	61.93	2.00	123.86
Ned Putt, SPO	56.96	19.00	1,082.24
Phuong Le, HRM	52.52	11.00	577.72
Starr Coatney, AM	35.01	88.00	3,080.88
Subtotal		<u>267.00</u>	<u>\$ 13,723</u>
Total		<u>1,499.00</u>	<u>\$ 88,377</u>

30-26 2/3 30-26 10/18

\$ 57.03	14.00	\$ 869.12	\$ 798.42	\$ (3,041.92)	\$ (70.70)
47.00	6.00	306.96	282.00	(1,995.24)	(24.96)
58.29	5.00	317.25	291.45	-	(25.80)
64.73	2.00	140.94	129.46	(140.94)	(11.48)
61.40	13.00	868.92	798.20	(668.40)	(70.72)
66.72	7.00	508.41	467.04	-	(41.37)
56.89	2.00	123.86	113.78	-	(10.08)
-	-	-	-	(1,082.24)	-
48.24	1.00	52.52	48.24	(525.20)	(4.28)
32.16	4.00	140.04	128.64	(2,940.84)	(11.40)
	<u>54.00</u>	<u>\$ 3,328</u>	<u>\$ 3,057</u>	<u>\$ (10,395)</u>	<u>\$ (271)</u>
	<u>\$ 776.50</u>	<u>\$ 47,420</u>	<u>\$ 43,560</u>	<u>\$ (40,957)</u>	<u>\$ (3,860)</u>

3E-2 5/8 30-2 1/8

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Probation Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2005-06

Admin. Activities

Update POBAR	John Dahl, Probator	\$ 67.58	2.00	\$ 135.16
Provide Training	John Dahl, Probator	67.58	1.00	67.58
Maintain cases	John Dahl, Probator	67.58	8.50	574.43
	Deputy Probation Officer	46.91	53.00	2,486.23
	Supervising Probator	60.05	58.00	3,482.90
Subtotal			122.50	\$ 6,746

FY 2005-06

\$ 62.22	2.00	\$ 135.16	\$ 124.44	\$ -	\$ (10.72)
62.22	1.00	67.58	62.22	-	(5.36)
62.22	8.50	574.43	528.87	-	(45.56)
43.19	18.00	844.38	777.42	(1,641.85)	(66.96)
55.29	6.00	360.30	331.74	(3,122.60)	(28.56)
	35.50	\$ 1,982	\$ 1,825	\$ (4,764)	\$ (157)

Interrogation

Andrew Flores, DPC	\$ 44.44	1.00	\$ 44.44
Annette Vanunen, D	33.57	158.05	5,305.74
Anthony Enweluzor,	42.32	1.00	42.32
Brad Kinne, DPO	58.40	1.00	58.40
Bret Fidler, DPO	52.45	682.50	35,797.13
Bruce Hendry, DPO	58.40	1.00	58.40
Burga Santiago, DPC	58.86	6.00	353.16
Delores Nnam, DPO	73.04	27.00	1,972.08
Diano Teves, DPO	28.48	4.00	113.92
Emi Chu, DPO	40.15	266.00	10,679.90
George Burnette, DF	50.45	1.00	50.45
Jabari Lomak, DPO	44.44	1.00	44.44
Joel Humble, DPO	39.45	1.00	39.45
John Dahl, DPO	67.58	91.00	6,149.78
Kathy Duque, DPO	78.32	39.00	3,054.48
Marvin Kusumoto, I	36.23	1.00	36.23

-	-	\$ -	\$ -	\$ (44.44)	\$ -
-	-	-	-	(5,305.74)	-
-	-	-	-	(42.32)	-
-	-	-	-	(58.40)	-
48.29	87.00	4,563.15	4,201.23	(31,233.98)	(361.92)
-	-	-	-	(58.40)	-
-	-	-	-	(353.16)	-
67.25	27.00	1,972.08	1,815.75	-	(156.33)
26.23	4.00	113.92	104.92	-	(9.00)
36.97	41.00	1,646.15	1,515.77	(9,033.75)	(130.38)
-	-	-	-	(50.45)	-
-	-	-	-	(44.44)	-
-	-	-	-	(39.45)	-
62.22	57.00	3,852.06	3,546.54	(2,297.72)	(305.52)
72.10	38.00	2,976.16	2,739.80	(78.32)	(236.36)
-	-	-	-	(36.23)	-

Document # 30-2 Page 7/8
 Auditor MVJR Date 5/10/07
 Reviewer W Date 6/1/07

Santa Clara County
 Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Probation Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2005-06				
		<i>2A-2C 9/16-13/16</i>		
Maurico Rodriguez,	29.24	1.00		29.24
Michelle Fernandez,	51.45	2.00		102.90
Mike Green, DPO	67.81	3.00		203.43
Mike Simms, DPO	67.34	6.50		437.71
Ned Putt, DPO	58.40	412.00		24,060.80
Nick Birchard, DPO	60.13	26.00		1,563.38
Phuong Le, DPO	58.61	22.50		1,318.73
Rita Loncarich, DPC	67.58	3.00		202.74
Sal Heredia, DPO	57.24	3.00		171.72
Steve Lived, DPO	58.40	1.00		58.40
Steve Majores, DPO	37.31	0.50		18.66
Vanessa Fajardo, DF	27.34	1.00		27.34
Jon Vickroy, DPO II	73.04	8.00		584.32
DPO	46.91	11.00		516.01
DPO I	46.91	2.00		93.82
DPO II	46.91	2.50		117.28
DPO III	46.91	13.00		609.83
GCI	36.23	31.50		1,141.25
GCII	39.45	8.50		335.33
PC	37.31	1.00		37.31
PC I	37.31	1.00		37.31
PC II	37.31	2.00		74.62
SGC	44.44	41.00		1,822.04
SPO	60.05	5.00		300.25
Subtotal		<u>1,889.55</u>		<u>\$ 97,665</u>

		<i>30-26 3/3</i>				
		<i>30-29 16/18</i>				
		\$		\$		
				\$ (29.24)	\$ -	
				(102.90)	-	
		62.43	3.00	203.43	187.29	
		62.00	2.00	134.68	124.00	
		53.77	33.00	1,927.20	1,774.41	
		55.37	28.00	1,683.64	1,550.36	
		53.96	1.50	87.92	80.94	
		62.22	3.00	202.74	186.66	
		-	-	-	(171.72)	
		-	-	-	(58.40)	
		-	-	-	(18.66)	
		-	-	-	(27.34)	
		-	-	-	(584.32)	
		-	-	-	(516.01)	
		43.19	0.50	23.46	21.60	
		43.19	0.50	23.46	21.60	
		43.19	2.50	117.28	107.98	
		31.53	9.50	344.19	299.54	
		36.67	3.50	138.08	128.35	
		-	-	-	(37.31)	
		34.95	1.00	37.31	34.95	
		-	-	-	(74.62)	
		41.04	11.00	488.84	451.44	
		55.29	1.00	60.05	55.29	
				(240.20)	(4.76)	
		<u>354.00</u>		<u>\$ 20,596</u>	<u>\$ 18,948</u>	
				<u>\$ (77,069)</u>	<u>\$ (1,648)</u>	

Document # 30-2 Page 8/8
 Auditor MV/SR Date 5/10/07
 Reviewer [Signature] Date 5/11/07

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Probation Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

FY 2005-06

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

Adverse Comment				
Jon Vickroy, DPO II	\$ 73.04	8.00	\$ 584.32	
Subtotal		<u>8.00</u>	<u>\$ 584</u>	
Total		<u>2,020.05</u>	<u>\$ 104,995</u>	

2A-2c 15/16 -1

				\$ (584.32)	
	\$ -	\$ -	\$ -	\$ (584)	\$ -
	<u>389.50</u>	<u>\$ 22,578</u>	<u>\$ 20,773</u>	<u>\$ (82,417)</u>	<u>\$ (1,805)</u>

30-2a 18/12

30-21/8
3E-28/8

Santa Clara County

Probation Department

Legislatively Mandated Peace Officers Procedural Bill of Rights Program

Summary of Claimed / Allowable Hours

FY's 2003-04 through 2005-06

Audit ID # S07-MCC-0033

Purpose: To review Case Time Logs for all the years under the audit period in order to identify POBAR-related hours eligible for reimbursement as per criteria outlined in the *Parameters and Guidelines* for the POBAR program. To document allowed hours and audit adjustments as per auditors' review of case logs and sample cases.

Source: Case Time Logs, Probation Department's Internal Affairs Division, FY's 2003-04 through 2005-06
 Discussions with John Dahl, Probation Manager, Internal Affairs Unit
 Discussions with Ned Putt, Supervising Probation Officer, Internal Affairs

Analysis: The auditors reviewed all case logs for three fiscal years under the audit period and identified eligible hours.

Fiscal Year	Claim Component	Claimed Hours	Allowed Hours	Audit Adjustments
2003-04	Admin. Activities <u>3D-20 2/18</u>	36.00	18.00	(18.00)
	Interrogations <u>3D-20 3/18</u>	363.50	66.00	(297.50)
	Adverse Comments <u>3D-20 4/18</u>	184.00	17.00	(167.00)
	Total	<u>583.50</u>	<u>101.00</u>	<u>(482.50)</u>
2004-05	Admin. Activities <u>3D-20 5/18</u>	1,039.00	695.00	(344.00)
	Admin. Appeals <u>3D-20 7/18</u>	12.50	-	(12.50)
	Interrogations <u>3D-20 8/18</u>	180.50	27.50	(153.00)
	Adverse Comments <u>3D-20 10/18</u>	267.00	54.00	(213.00)
Total	<u>1,499.00</u>	<u>776.50</u>	<u>(722.50)</u>	
2005-06	Admin. Activities <u>3D-20 12/18</u>	122.50	35.50	(87.00)
	Interrogations <u>3D-20 16/18</u>	889.55	354.00	(1,535.55)
	Adverse Comments <u>3D-20 18/18</u>	8.00	-	(8.00)
Total	<u>2,020.05</u>	<u>389.50</u>	<u>(1,630.55)</u>	
Grand Total		<u>4,102.55</u>	<u>1,267.00</u>	<u>(2,835.55)</u>

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
 Administrative Activities
 Audit ID # S07-MCC-0033

Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
	2A-2G	✓	

Sup. Prob. Officer (9) 36.00 18.00 (18.00) *

3D-2A 1/18 ; 3D-2 2/8

* Claimed hours include a four-hour training class on Labor Relations that took place on 12/10/03. The auditors reviewed the list of 9 attendees and the class outline / schedule. The auditors concluded that 2 out of 4 hours were related to POBAR. Related topics included discussions on progressive discipline process and case law (such as Skelly). The auditors decided to exclude two hours of training that were not related to POBAR. Unrelated topics included discussions about labor relations, unionized vs. non unionized employees, and distinction of private and public employees.

✓ Source: See w/P # 3D-2A 1/18

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Interrogation Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed	
		Prepare Admin. Notice & Schedule Interviews	Transcription of accused officers' interviews
		Pre-Interrogation	Interrogation
Case 1	Jim Tarshis	16.00	40.00
	Cathy Shields	-	-
Case 2	Cathy Shields	-	-
	Alicia Garcia	2.00	
Case 3	Diana Bishop	3.00	3.00
Case 4	Rita Loncarich	-	-
Case 5	Rita Loncarich	2.00	-
	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2a</u>	<u>✓</u>	

Pre-Interrogation

Jim Trashis	115.00	16.00	(99.00)
Cathy Shields	7.00	-	(7.00)
Alicia Garcia	25.50	2.00	(23.50)
Diana Bishop	66.00	3.00	(63.00)
Rita Loncarich	15.00	2.00	(13.00)

Interrogation

Jim Trashis	126.00	40.00	(86.00)
Diana Bishop	9.00	3.00	(6.00)
	<u>363.50</u>	<u>66.00</u>	<u>(297.50)</u>

✓ source:
see w/p 3D-2a 1/18

N: Ineligible activity

E: Eligible activity

3D-2a 1/18
3D-2 2/3

Claimed hours included the following activities:

3D-2c {

- Pre-Interrogation:
- N * Review complaint and other documents
 - N * Gather reports, log sheets, etc.
 - N * Interview witnesses (tape record) - both civilian and officers (the department did not keep track of specifics of each witness interview)
 - N * Travel time to interview witnesses
 - N * Transcribe witness tapes (witnesses are both civilian and officers) (witness officers do not receive a copy of the interview)
 - N * Tape review and corrections
 - E * Prepare Admin. Notices regarding nature of allegations and the interview and Schedule POBAR interviews (for accused officers)

Interrogation:

- 3D-2c
- N * Prepare Reports for Interviews
 - N * Pre-Interrogation Meeting
 - N * Accused Interview (investigators' time)
 - E * Transcribe accused tapes (accused officers receive a copy of their interview automatically)

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Adverse Comment Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed	
		Interaction w/ Labor Relations regarding the disciplinary action	Final Disciplinary Order and Service of Notice
Case 1	Cathy Shields	4.00	-
Case 2	Cathy Shields	2.00	-
	Alicia Garcia	-	-
Case 3	Diana Bishop	-	-
Case 4	Rita Loncarich	4.00	1.00
Case 5	Rita Loncarich	4.00	2.00

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2a</u>	<u>✓</u>	
Cathy Shields	20.00	6.00	(14.00)
Cathy Shields	9.00	-	(9.00)
Diana Bishop	100.00	-	(100.00)
Rita Loncarich	55.00	11.00	(44.00)
	<u>184.00</u>	<u>17.00</u>	<u>(167.00)</u>

3D-2a 1/18
3D-2 2/8

- 3D-2c {
- N Claimed hours included the following activities:
 - * Case Summary and Management Review of findings (investigator discusses finalization of case with management and prepares final report of the investigation summary)
 - N * Preparation of report of recommended disciplinary action (investigator prepares final case report)
 - E * Interaction with the Labor Relations (supervising staff reviews the proposed outcome with Labor Relations department to ensure proper discipline)
 - E * Final disciplinary order and service (notice of adverse comment)

✓ Source: see W/P 3D-2a 1/18
N: Ineligible activity
E: Eligible activity

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Administrative Activities
 Audit ID # S07-MCC-0033

✓ source: see W/P 3D-2A 1/12

Claimed Activities	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
		<u>2A-2b</u>	<u>✓</u>	
Establishment of IA unit and	Shirley Cantu	2.00	2.00	-
Create / develop internal policies / procedur	Nicholas Cademartori	2.00	2.00	-
	Ann Meta Clarke	2.00	2.00	-
	Kathy Duque	52.00	52.00	-
	Phuong Le	5.00	5.00	-
	Delores Nnam	29.00	29.00	-
	Kathy Viana	93.00	93.00	-
	Karen Fletcher	457.00	376.00	(81.00) A
POBAR-related training	Karen Fletcher	72.00	48.00	(24.00)
	John Dahl	24.00	12.00	(12.00)
	Bret Fidler	24.00	12.00	(12.00)
	Ned Putt	24.00	12.00	(12.00)
Update status of cases / Review Investig	Karen Fletcher	153.00	-	(153.00) B
POBAR-related training	Prob. Officer (12)	48.00	24.00	(24.00)
	Sup. Prob. Officer (13)	52.00	26.00	(26.00)
		1,039.00	695.00	(344.00)

3D-2A 1/18 ; 3D-2 3/8

Claimed hours included the following: (According to Jesse Fuentes, the department only claimed partial costs associated with the development of the Internal Affairs unit. The department included costs they thought were associated with development of procedures necessary to proceed with POBAR investigations).

- Kathy Viana (93 hours) Type forms and documents (creation of IA templates), relating to establishment of new policies and procedures for the department
- Karen Fletcher (457 hours) Review and update Internal Affairs Policies and Procedures
 - A Site visits to other IA units
 - A Conduct interviews for IA Management Analyst position
 - Meet and confer with Labor Relations / County Counsel about development of IA policie.
 - A Meet with ISU regarding IA database and review IA database
 - A Review complaints, response letters, Merit System Rules, and assign cases
 - A Review training schedule for the unit
 - Conduct meetings with IA staff to inform and discuss new policies / procedures
- Karen Fletcher (153 hours) B) Review IA investigations reports to approve or make corrections (the review ensured that investigation was performed up to standards)
- Kathy Duque (52 hours) Meet with various personnel to discuss IA policy development
 Review and make corrections / revisions to draft policies / procedures for the IA unit
 Meet / confer with CEMA (County Employee Management Association)
- Nick Catamatori (2 hours) IA meeting - re: new policies
- Phuong Le (5 hours) Prepare documentation relating to creation of the Internal Affairs Unit
- Ann Clarke (2 hours) IA meeting - re: new policies

⇒ next page

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Administrative Activities
 Audit ID # S07-MCC-0033

<p>Shirley Cantu (2 hours)</p> <p>Delores Nham (29 hours)</p>	<p>Meeting regarding development of IA policies</p> <p>IA meeting - re: new policies</p> <p>Transmittal preparation</p> <p>Meet / confer with CEMA (County Employee Management Association)</p> <p>Meet / confer 1587 (Santa Clara County Peace Officers Union)</p>
<p>Probation Officer (12) - 48 hours</p> <p>Sup. Probation Officer (13) - 52 hours</p>	<p>Training</p> <p>Training</p> <p>The department claimed costs associated with the following training courses:</p> <p>* Labor Relations Overview (01/18/05) - 4 hour class</p> <p>The auditors reviewed the class outline / schedule and confirmed attendance for affected employees. The auditors concluded that <u>2 out of 4 hours</u> were related to POBAR. Related topics included discussions on progressive discipline process and case law (such as Skelly). The auditors decided to exclude two hours of training that were not related to POBAR. Unrelated topics included discussions about labor relations, unionized vs. non unionized employees, and distinction of private and public employees.</p> <p>* Peace Officers Discipline (01/13/05) - 4 hour class</p> <p>The auditors reviewed the list of attendees and the class outline / schedule. The auditors concluded that <u>2 out of 4 hours</u> were related to POBAR. Related topics included discussions on due process and Peace Officers Bill of Rights. The auditors decided to exclude two hours of training that were not related to POBAR. Unrelated topics included discussions about handling sexual harassment issues, confidentiality issues, investigation errors, and other personnel topics.</p>
<p>Karen Fletcher (72 hours)</p> <p>John Dahl (24 hours)</p> <p>Bret Fidler (24 hours)</p> <p>Ned Putt (24 hours)</p>	<p>Training (<i>all 3 classes</i>)</p> <p>Training (<i>1 class</i>)</p> <p>Training (<i>1 class</i>)</p> <p>Training (<i>1 class</i>)</p> <p>The department claimed costs associated with the following training courses:</p> <p>* Internal Affairs Investigation course (03/16/05-03/18/05) - 24 hour course</p> <p>The auditors reviewed the course materials and concluded that claimed costs associated with training classes are eligible for reimbursement. The review of training materials disclosed that course contents were related to performance of POBAR activities.</p> <p>* CA Association of Probation Services Admin course re: POBAR and Labor Relations (02/01/05-02/04/05) - 24 hour course</p> <p>The auditors reviewed the class outline / schedule and confirmed attendance for affected employees. The auditors concluded that <u>12 out of 24 hours</u> were related to POBAR. Related topics included discussions on <u>Peace Officers Bill of Rights</u> and Legislative updates. The auditors decided to exclude twelve hours of training that were not related to POBAR. Unrelated topics included discussions about budgeting implications, ethical issues in Probation, Juvenile Justice Reforms, and Labor relations</p> <p>* Law Enforcement Legal Center course re: Discipline process and Internal Investigation (04/04/05-04/06/05) - 24 hour course</p> <p>The auditors reviewed the class outline / schedule and confirmed attendance for affected employees. The auditors concluded that <u>12 out of 24 hours</u> were related to POBAR. Related topics included discussions on <u>Disciplinary Procedures</u>, Disciplinary Investigations, Interrogations of employees, Procedural Bill of Rights. The auditors decided to exclude twelve hours of training that were not related to POBAR. Unrelated topics included discussions about rules of efficiency, electronic research, discrimination issues, first amendment related conduct.</p>

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Administrative Appeal
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
		<u>2A-2b</u>	<u>V</u>	
2005-03-01	Robert de Jesus	7.00	-	(7.00)*
2005-03-02	Robert de Jesus	5.50	-	(5.50)*
		<u>12.50</u>	<u>-</u>	<u>(12.50)</u>

3D-20 1/18 ; 3D-2 3/8

Claimed hours included the following activities:

- * Review of documents necessary to proceed with the hearing
- * Legal review and assistance with the conduct of the hearing

Claimed hours resulted from the following appeal hearings:

- * Case 05-01 - 5 days suspension (falls under due process) *
- * Case 05-02 - letter of reprimand (falls under due process) *

V: Source: See w/P 3D-20 1/18

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Interrogation Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed		Total
		Prepare Admin. Notice & Schedule Interviews	Transcription of accused officers' interviews	
2005-03-01	Ned Putt	2.00	1.00	3.00
2005-03-02	Brett Fidler	5.00	1.00	6.00
	Subject SPO	1.00	-	1.00
	Jill Ornellas	0.50	-	0.50
	Mary Ryan	0.50	-	0.50
	Lucy Trevino	0.50	-	0.50
	Bruce Handry	0.50	-	0.50
	Gene Ginn	0.50	-	0.50
	Zulema Vasquez	0.50	-	0.50
	Richard de Jesus	0.50	-	0.50
	John Dahl	0.50	-	0.50
2005-03-03	Brett Fidler	2.00	1.00	3.00
	Subject DPO	0.50	-	0.50
2005-04-07	Brett Fidler	6.00	1.00	7.00
	Subject PCII	0.50	-	0.50
2005-04-09	Ned Putt	2.00	0.50	2.50
2005-05-10		-	-	-

27.50 *[Handwritten mark]*

Total Hours Claimed	Total Hours Allowed	Audit Adjustments
<u>2A-26</u>	<u>✓</u>	
Robert DeJesus, Pro	9.00	- (9.00)
Annette Van Unen, S	20.50	- (20.50)
Bret Fidler, SGC	85.00	16.00 (69.00)
Bruce Handry, SPO	2.50	0.50 (2.00)
Dave Perez	4.00	- (4.00)
Gene Ginn, DPO	1.50	0.50 (1.00)
Jill Ornellas, SPO	1.50	0.50 (1.00)
John Dahl, PM	1.50	0.50 (1.00)
Karen Fletcher, PM	3.00	- (3.00)
Linda Nguyen, SPO	1.50	- (1.50)
Lucy Trevino, DPO	1.50	0.50 (1.00)
Mary Ryan, DPO	1.50	0.50 (1.00)
Ned Putt, SPO	35.50	5.50 (30.00)
Richard De Jesus, D	1.50	0.50 (1.00)
Subject, DPO	2.00	- (2.00)
Subject, SPO	2.00	1.00 (1.00)
Subject, DPO	1.50	0.50 (1.00)
Subject, PCII	1.50	0.50 (1.00)
Subject, PCII	0.50	- (0.50)
Boliavone Kegarice,	1.50	- (1.50)
Zulema Vasquez, DP	1.50	0.50 (1.00)
<u>180.50</u>	<u>27.50</u>	<u>(153.00)</u>

✓ Lower:
 See w/A 3D-2A 1/18

Santa Clara County
Probation Department
Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
FY 2004-05
Interrogation Activities
Audit ID # S07-MCC-0033

3D-29

Claimed hours included the following activities:

Pre-Interrogation:

- N * Review complaint, Report and Evidence
- N * Gather reports, log sheets, etc.
- N * Interview witnesses (tape record) - both civilian and officers
(the department did not keep track of specifics of each witness interview)
- N * Travel time to interview witnesses
- N * Transcribe witness tapes (witnesses are both civilian and officers)
(witness officers do not receive a copy of the interview)
- N * Tape review and corrections
- E * Prepare Admin. Notices regarding nature of allegations and the interview
and Schedule POBAR interviews (for accused officers)
- N * Prepare Questions for the interviews

Interrogation:

- N * Pre-Interrogation Meeting
- N * Accused Interview
(investigators' time)
(sub / wit time - unknown if overtime or on-duty)
- E * Transcribe accused tapes
(accused officers receive a copy of
their interview automatically)

N : Ineligible activity

E : Eligible activity

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Adverse Comment Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed			Total
		Command Staff Review and Findings	Interaction w/ Labor Relations regarding the disciplinary action	Final Disciplinary Order and Service of Notice	
2005-03-01	Robert de Jesus	-	8.00	-	8.00
2005-03-02	Bret Fidler	1.00	-	1.00	2.00
	Karen Fletcher	1.00	2.00	1.00	4.00
	Cleveland Prince	1.00	-	1.00	2.00
	Kathy Duque	1.00	-	1.00	2.00
	Star Coatney	-	1.00	-	1.00
	Robert de Jesus	-	4.00	-	4.00
2005-03-03	Bret Fidler	1.00	-	1.00	2.00
	Karen Fletcher	2.00	2.00	1.00	5.00
	Cleveland Prince	2.00	-	1.00	3.00
	Kathy Duque	2.00	-	1.00	3.00
	Delores Nham	1.00	-	-	1.00
	Star Coatney	-	1.00	-	1.00
2005-04-07	Robert de Jesus	-	2.00	-	2.00
	Bret Fidler	1.00	-	1.00	2.00
	Karen Fletcher	1.00	2.00	1.00	4.00
	Michael Simms	1.00	-	1.00	2.00
	Kathy Duque	1.00	-	1.00	2.00
2005-04-09	Delores Nham	-	-	1.00	1.00
	Phuong Le	-	-	-	-
2005-05-10	Phuong Le	-	1.00	-	1.00
	Star Coatney	-	2.00	-	2.00

54.00 [Ⓟ]

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
Robert DeJesus, Prob M	63.00	14.00	(49.00)
Bret Fidler, SGC	45.00	6.00	(39.00)
Cleveland Price, PM	5.00	5.00	-
Delores Nham, ASM	4.00	2.00	(2.00)
Karen Fletcher, PM	23.00	13.00	(10.00)
Kathy Duque, DCPO	7.00	7.00	-
Michael Simms, PM	2.00	2.00	-
Ned Putt, SPO	19.00	-	(19.00)
Phuong Le, HRM	11.00	1.00	(10.00)
Starr Coatney, AMA	88.00	4.00	(84.00)
	267.00	54.00 [Ⓟ]	(213.00)

✓ Source:
 see WIP 3D-20/18

next page:
 3D-20/18 ; 3D-29/8 ⇒

Santa Clara County

Probation Department

Legislatively Mandated Peace Officers Procedural Bill of Rights Program

Review of Allowable Hours

FY 2004-05

Adverse Comment Activities

Audit ID # S07-MCC-0033

3D-20

Claimed hours included the following activities:

- N * Case Summary and Management Review of findings
(investigator discusses finalization of case with management and prepares final report of the investigation summary)
- N * Preparation of report of recommended disciplinary action
(investigator prepares final case report)
- E * Interaction with the Labor Relations
(supervising staff reviews the proposed outcome with Labor Relations department to ensure proper discipline)
- E * Final disciplinary order and service
(notice of adverse comment)
- E * Commanding staff review of findings

N : Ineligible activity
E : Eligible activity

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
 Administrative Activities
 Audit ID # S07-MCC-0033

Claimed Activities	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
		<u>2A-2c</u>	<u>✓</u>	
Update Procedure Manuals	John Dahl	2.00	2.00	-
Conduct training regarding POBAR	John Dahl	1.00	1.00	-
Maintain and update case records	John Dahl	8.50	8.50	-
Training	Dep. Prob. Officer	53.00	18.00	(35.00) *
	Sup. Prob. Officer	58.00	6.00	(52.00) *
		<u>122.50</u>	<u>35.50</u>	<u>(87.00)</u>

3D-2a 1/18 ; 3D-2 6/8

- The department claimed costs associated with the following training courses:
- * Labor Relations Overview (05/25/06) - 4 hour class
 The auditors reviewed the class outline / schedule and confirmed attendance for affected employees. The auditors concluded that 2 out of 4 hours were related to POBAR. Related topics included discussions on progressive discipline process and case law (such as Skelly). The auditors decided to exclude two hours of training that were not related to POBAR. Unrelated topics included discussions about labor relations, unionized vs. non unionized employees, and distinction of private and public employees.
 - * Peace Officer Discipline (01/26/06) - 4 hour course
 The auditors reviewed the class outline / schedule and confirmed attendance for affected employees. The auditors concluded that 2 out of 4 hours were related to POBAR. Related topics included discussions on Procedural Bill of Rights and due process. The auditors decided to exclude two hours of training that were not related to POBAR. Unrelated topics included discussions about conducting investigations, sexual harrasment issues, confidentiality issues, investigation errors, and other personnel related topics.
 - * How to conduct investigations into allegations of employee misconduct class (03/29/06) - 4 hour training
 The auditors reviewed the class outline / schedule and confirmed attendance for affected employees. The auditors concluded that 1 out of 4 hours were related to POBAR. Related topics included discussions on legal mandates to investigate. The auditors decided to exclude three hours of training that were not related to POBAR. Unrelated topics included discussions about types of investigations, preparing investigation report, key mistakes in workplace investigations, and assessing credibility.
 - * Civil Liabilities for Managers and Supervisors (05/10/06) - 4 hours course
 The auditors reviewed the class outline and concluded that this class was not related to POBAR. The auditors decided to exclude all four hours of training Class topics included discussions about types of lawsuits, representation and indemnification, liability for supervising clients, supervisory liability of failure to train, minimizing exposure to liability, and individual development training.

✓ source: see WIP 3D-2a 1/18

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

Note: In this fiscal period, the department combined / grouped interrogation and adverse comment activities and claimed them under interrogations component of the claim

Case Number	Employee Claimed	Activities / Time Allowed				Total
		Prepare Admin. Notice & Schedule Interviews	Command Staff Review and Findings	Interaction w/ Labor Relations regarding the disciplinary action	Final Disciplinary Order and Service of Notice	
2005-04-08	Brett Fidler	5.50	1.00		2.00	8.50
	Subject GCI	1.00				1.00
	Subject GCI	1.00				1.00
	Subject GCII	1.00				1.00
	Subject SGC	1.00				1.00
	Subject SGC	0.50				0.50
	Subject GCI	0.50				0.50
	Subject GCI	0.50				0.50
	Nick Birchard				2.00	2.00
	John Dahl			1.00	2.00	3.00
2005-05-11	Delores Nham				2.00	2.00
	Emi Chu			1.00	4.00	5.00
	Brett Fidler	5.00	2.00		2.00	9.00
	Subject SGC	0.50				0.50
	Subject SGC	0.50				0.50
	Subject SGC	0.50				0.50
	Subject GCI	0.50				0.50
2005-05-12	Subject GCI	0.50				0.50
	Kathy Duque		2.00		2.00	4.00
	Nick Birchard		2.00		2.00	4.00
	John Dahl		2.00	2.00	2.00	6.00
	Delores Nham				2.00	2.00
	Ned Putt	3.00				3.00
2005-05-13	Emi Chu			1.00	4.00	5.00
	Brett Fidler	1.00	1.00		2.00	4.00
	Subject SGC	1.00				1.00
	Subject SGC	1.00				1.00
	Subject SGC	1.00				1.00
	Subject SGC	1.00				1.00
	Subject SGC	1.00				1.00
	Subject SGC	1.00				1.00
	Subject GCII	1.00				1.00
	John Dahl		1.00	1.00	2.00	4.00
2005-05-14	Kathy Duque				2.00	2.00
	Nick Birchard				2.00	2.00
2005-06-16	Ned Putt	2.00				2.00
2005-06-19	Brett Fidler	8.00	3.00		2.00	13.00
	Kathy Duque		2.00		2.00	4.00
	Nick Birchard		2.00		2.00	4.00
	John Dahl		2.00	2.00	2.00	6.00
	Delores Nham		1.00		2.00	3.00
	Phuong Le			0.50	1.00	1.50
	Ned Putt	1.00				1.00

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

Note: In this fiscal period, the department combined / grouped interrogation and adverse comment activities and claimed them under interrogations component of the claim

Case Number	Employee Claimed	Activities / Time Allowed				Total
		Prepare Admin. Notice & Schedule Interviews	Command Staff Review and Findings	Interaction w/ Labor Relations regarding the disciplinary action	Final Disciplinary Order and Service of Notice	
2005-06-21	Emi Chu			1.00	4.00	5.00
	Ned Putt	3.00				3.00
2005-07-25	Emi Chu			1.00	4.00	5.00
	Ned Putt	1.00				1.00
2005-07-26	Ned Putt	2.00				2.00
2005-08-29	Brett Fidler	3.50	1.00		2.00	6.50
	Subject DPOIII	0.50				0.50
	Subject SPO	0.50				0.50
	Subject SPO	0.50				0.50
	Subject DPOI	0.50				0.50
	Subject DPOIII	0.50				0.50
	Subject DPOII	0.50				0.50
	Kathy Duque		1.00		2.00	3.00
	Mike Green		1.00		2.00	3.00
	John Dahl		1.00	1.00	2.00	4.00
2005-09-31	Delores Nham		1.00		2.00	3.00
	Emi Chu			1.00	4.00	5.00
	Brett Fidler	2.00	2.00		2.00	6.00
	Subject GCI	0.50				0.50
	Kathy Duque		1.00		2.00	3.00
	Nick Birchard		1.00		2.00	3.00
	John Dahl		1.00	1.00	2.00	4.00
	Delores Nham		1.00		2.00	3.00
2005-09-32	Ned Putt	2.00				2.00
2005-10-33	Ned Putt	2.00				2.00
2005-10-34	Ned Putt	10.00				10.00
2005-10-35	Brett Fidler	1.00	2.00		2.00	5.00
	Subject DPOIII	0.50				0.50
	Kathy Duque		2.00		2.00	4.00
	Diano Teves		2.00		2.00	4.00
	John Dahl		2.00	2.00	2.00	6.00
	Delores Nham				2.00	2.00
	2005-11-37	Brett Fidler	1.00	2.00		2.00
2005-11-37	Subject SGC	0.50				0.50
	Kathy Duque		2.00		2.00	4.00
	Nick Birchard		2.00		2.00	4.00
	John Dahl		2.00	2.00	2.00	6.00
	Delores Nham				2.00	2.00
	2005-11-38	Ned Putt	2.00			
2005-11-40	Brett Fidler	10.00	2.00		2.00	14.00
	Subject SGC	0.50				0.50
	Subject SGC	0.50				0.50
	Subject SGC	0.50				0.50
	Subject GCI	0.50				0.50

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

Note: In this fiscal period, the department combined / grouped interrogation and adverse comment activities and claimed them under interrogations component of the claim

Case Number	Employee Claimed	Activities / Time Allowed				Total
		Prepare Admin. Notice & Schedule Interviews	Command Staff Review and Findings	Interaction w/ Labor Relations regarding the disciplinary action	Final Disciplinary Order and Service of Notice	
	Subject GCI	0.50				0.50
	Subject GCI	0.50				0.50
	Subject GCI	0.50				0.50
	Subject GCI	0.50				0.50
	Subject GCI	0.50				0.50
	Subject GCII	0.50				0.50
	Kathy Duque		2.00		2.00	4.00
	Nick Birchard		2.00		2.00	4.00
	John Dahl		2.00	2.00	2.00	6.00
	Delores Nham				2.00	2.00
2005-12-43	Ned Putt	2.00				2.00
2006-01-04	Brett Fidler	1.00	1.00		2.00	4.00
	Subject DPOIII	1.00				1.00
	Kathy Duque		1.00		2.00	3.00
	Rita Loncarich		1.00		2.00	3.00
	John Dahl		1.00	1.00	2.00	4.00
	Delores Nham		1.00		2.00	3.00
	Emi Chu			1.00	4.00	5.00
2006-01-05	Brett Fidler	1.00			2.00	3.00
	Subject GCI	1.00				1.00
	Kathy Duque				2.00	2.00
	Nick Birchard				2.00	2.00
	John Dahl				2.00	2.00
2006-01-07	Ned Putt	1.00				1.00
2006-02-14	Brett Fidler	1.00			2.00	3.00
	Subject PCI	1.00				1.00
	Kathy Duque				2.00	2.00
	Mike Simms				2.00	2.00
	John Dahl				2.00	2.00
	Delores Nham				2.00	2.00
2006-03-20	Brett Fidler	2.00	2.00		2.00	6.00
	Subject GCII	1.00				1.00
	Subject GCI	1.00				1.00
	Kathy Duque		1.00		2.00	3.00
	Nick Birchard		1.00		2.00	3.00
	John Dahl		1.00	1.00	2.00	4.00
	Delores Nham		1.00		2.00	3.00
2005-03-04	Emi Chu			1.00	4.00	5.00
2005-04-07	Emi Chu			1.00		1.00
2005-03-01	Emi Chu			1.00	4.00	5.00

354.00 3D-2a 16/18
 n

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

Note: In this fiscal period, the department combined / grouped interrogation and adverse comment activities and claimed them under interrogations component of the claim

Case Number	Employee Claimed	Activities / Time Allowed				Total
		Prepare Admin. Notice & Schedule Interviews	Command Staff Review and Findings	Interaction w/ Labor Relations regarding the disciplinary action	Final Disciplinary Order and Service of Notice	
		Total Hours Claimed	Total Hours Allowed	Audit Adjustments		
		<u>2A-2C</u>				
	Andrew Flores, DPO	1.00	-	(1.00)		
	Annette Vanunen, DPO	158.05	-	(158.05)		
	Anthony Enweluzor, DPO	1.00	-	(1.00)		
	Brad Kinne, DPO	1.00	-	(1.00)		
	Bret Fidler, DPO	682.50	87.00	(595.50)		
	Bruce Hendry, DPO	1.00	-	(1.00)		
	Burga Santiago, DPO	6.00	-	(6.00)		
	Delores Nnam, DPO	27.00	27.00	-		
	Diano Teves, DPO	4.00	4.00	-		
	Emi Chu, DPO	266.00	41.00	(225.00)		
	George Burnette, DPO	1.00	-	(1.00)		
	Jabari Lomak, DPO	1.00	-	(1.00)		
	Joel Humble, DPO	1.00	-	(1.00)		
	John Dahl, DPO	91.00	57.00	(34.00)		
	Kathy Duque, DPO	39.00	38.00	(1.00)		
	Marvin Kusumoto, DPO	1.00	-	(1.00)		
	Maurico Rodriguez, DPO	1.00	-	(1.00)		
	Michelle Fernandez, DPO	2.00	-	(2.00)		
	Mike Green, DPO	3.00	3.00	-		
	Mike Simms, DPO	6.50	2.00	(4.50)		
	Ned Putt, DPO	412.00	33.00	(379.00)		
	Nick Birchard, DPO	26.00	28.00	2.00		
	Phuong Le, DPO	22.50	1.50	(21.00)		
	Rita Loncarich, DPO	3.00	3.00	-		
	Sal Heredia, DPO	3.00	-	(3.00)		
	Steve Lived, DPO	1.00	-	(1.00)		
	Steve Majores, DPO	0.50	-	(0.50)		
	Vanessa Fajardo, DPO	1.00	-	(1.00)		
	Jon Vickroy, DPO III	8.00	-	(8.00)		
	DPO	11.00	-	(11.00)		
	DPO I	2.00	0.50	(1.50)		
	DPO II	2.50	0.50	(2.00)		
	DPO III	13.00	2.50	(10.50)		
	GCI	31.50	9.50	(22.00)		
	GCII	8.50	3.50	(5.00)		
	PC	1.00	-	(1.00)		
	PC I	1.00	1.00	-		
	PC II	2.00	-	(2.00)		
	SGC	41.00	11.00	(30.00)		
	SPO	5.00	1.00	(4.00)		
		1,889.55	354.00	(1,535.55)		

✓ Sources
 see w/p
 3D-29 1/18

451 3D-29 1/18 3D-29 1/18

Next page
 2D

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

Note: In this fiscal period, the department combined / grouped interrogation and adverse comment activities and claimed them under interrogations component of the claim

Case Number	Employee Claimed	Activities / Time Allowed				Total
		Prepare Admin. Notice & Schedule Interviews	Command Staff Review and Findings	Interaction w/ Labor Relations regarding the disciplinary action	Final Disciplinary Order and Service of Notice	

3D-2c

Claimed hours included the following activities:

Pre-Interrogation:

- N * Review complaint, Report and Evidence
- N * Gather reports, log sheets, etc.
- N * Interview witnesses (tape record) - both civilian and officers
(the department did not keep track of specifics of each witness interview)
- N * Travel time to interview witnesses
- N * Transcribe witness tapes (witnesses are both civilian and officers)
(witness officers do not receive a copy of the interview)
- N * Tape review and corrections
- E * Prepare Admin. Notices regarding nature of allegations and the interview and Schedule POBAR interviews (for accused officers)
- N * Prepare Questions for the interviews

Interrogation:

- N * Pre-Interrogation Meeting
- N * Accused Interview
(investigators' time)
(sub / wit time - unknown if overtime or on-duty)
- E * Transcribe accused tapes
(accused officers receive a copy of their interview automatically)

N: Ineligible activity
 E: Eligible activity

Adverse Comments:

- N * Case Summary and Management Review of findings
(investigator discusses finalization of case with management and prepares final report of the investigation summary)
- N * Preparation of report of recommended disciplinary action
(investigator prepares final case report)
- E * Interaction with the Labor Relations
(supervising staff reviews the proposed outcome with Labor Relations department to ensure proper discipline)
- E * Final disciplinary order and service
(notice of adverse comment)
- E * Commanding staff review of findings

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Adverse Comment Activities
 Audit ID # S07-MCC-0033

Case Number	Employee	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
		<u>2A-2C</u>	<u>✓</u>	
06-01	Jon Vickroy	8.00	-	(8.00) *
		8.00	-	(8.00)

3D-2A 1/18 ; 3D-2 8/8

Claimed hours included the following activities:
 * * Review case summary

✓ Source: See W/P 3D-2A 1/18

Purpose To review Productive Hourly Rates claimed by Probation department in FY 2003-04 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jesse Fuentes, Departmental Fiscal Officer, Probation Department
 ✓ Probation Department's People Soft individual payroll reports per fiscal period
 Department's calculations on employees productive hourly and benefit rates

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1560.65 productive hours in the PHR calculation. (See <Document # 30-437> for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours.

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 30-4> for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c)=(b)/1696.35	(d)=(c)-(a)
Sup. Prob. Officers	<u>2A-2a</u> 49.08	77,454.00 ✓	45.66	(3.42)
Jim Tarshis	49.84	77,789.00	45.86	(3.98)
Cathy Shields	63.03	98,364.00	57.99	(5.04)
Alicia Garcia	49.84	77,789.00	45.86	(3.98)
Diana Bishop	49.84	77,789.00	45.86	(3.99)
Rita Loncarich	64.88	101,255.00	59.69	(5.19)

30-2 2/8

Santa Clara County - Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Analysis of Productive Hourly Rates - Probation Department
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Purpose To review Productive Hourly Rates claimed by Probation department in FY 2004-05 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jesse Fuentes, Departmental Fiscal Officer, Probation Department
 ✓ Probation Department's People Soft individual payroll reports per fiscal period
 Department's calculations on employees productive hourly and benefit rates

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1545 productive hours in the PHR calculation. (See <Document # 30-447 for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 30-4 > for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c) = (b) / 1682	(d) = (c) - (a)
Bret Fidler, SGC	51.16	79,050.00	47.00	(4.16)
Bruce Handry, SPO	56.96	88,003.00	52.32	(4.64)
Gene Ginn, DPO	50.18	77,533.00	46.10	(4.08)
Jill Ornellas, SPO	57.11	88,234.00	52.46	(4.65)
John Dahl, PM	65.79	101,650.00	60.43	(5.36)
Lucy Trevino, DPO	36.55	56,473.00	33.57	(2.98)
Mary Ryan, DPO	50.32	77,742.00	46.22	(4.10)
Ned Putt, SPO	56.96	88,003.00	52.32	(4.64)
Richard De Jesus, DPO	44.62	68,940.00	40.99	(3.63)
Zulema Vasquez, DPO	44.62	68,940.00	40.99	(3.63)
Robert DeJesus, Prob M	62.08	95,921.00	57.03	(5.05)
Cleveland Price, PM	63.45	98,038.00	58.29	(5.16)
Delores Nham, ASM	70.47	108,880.00	64.73	(5.74)
Karen Fletcher, PM	66.84	103,270.00	61.40	(5.44)
Kathy Duque, DCPO	72.63	112,216.00	66.72	(5.91)
Michael Simms, PM	61.93	95,682.00	56.89	(5.04)
Phuong Le, HRM	52.52	81,141.00	48.24	(4.28)
Starr Coatney, AMA	35.01	54,090.00	32.16	(2.85)
Kathy Viana	30.57	47,235.00	28.08	(2.49)
Shirley Cantu	73.34	113,304.00	67.36	(5.98)
Probation Officer (12)	45.37	70,089.00	41.67	(3.70)
Sup. Prob. Officer (13)	65.14	100,647.00	59.84	(5.30)
Subject, SPO	46.98	72,588.00	43.16	(3.82)
Subject, DPO	30.88	47,713.00	28.37	(2.51)
Subject, PCII	40.57	62,679.00	37.26	(3.31)

Santa Clara County - *Probation Department*
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Analysis of Productive Hourly Rates - Probation Department
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Purpose To review Productive Hourly Rates claimed by Probation department in FY 2005-06 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jesse Fuentes, Departmental Fiscal Officer, Probation Department
 ✓ Probation Department's People Soft individual payroll reports per fiscal period
 Department's calculations on employees productive hourly and benefit rates

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the department applied 1544 productive hours in the PHR calculation. (See <Document # 30-4577> for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 30-4> for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c) = (b) / 1677 ^{30-4 2/7}	(d) = (c) - (a)
Dep. Prob. Officer	2A-2c 46.91	72,437.00	43.19	(3.72)
Sup. Prob. Officer	60.05	92,721.00	55.29	(4.76)
Bret Fidler, DPO	52.45	80,987.00	48.29	(4.16)
Delores Nnam, DPO	73.04	112,776.00	67.25	(5.79)
Diano Teves, DPO	28.48	43,980.00	26.23	(2.25)
Emi Chu, DPO	40.15	61,994.00	36.97	(3.18)
John Dahl, DPO	67.58	104,349.00	62.22	(5.36)
Kathy Duque, DPO	78.32	120,919.00	72.10	(6.22)
Mike Green, DPO	67.81	104,701.00	62.43	(5.38)
Mike Simms, DPO	67.34	103,976.00	62.00	(5.34)
Ned Putt, DPO	58.40	90,167.00	53.77	(4.63)
Nick Birchard, DPO	60.13	92,848.00	55.37	(4.76)
Phuong Le, DPO	58.61	90,498.00	53.96	(4.65)
Rita Loncarich, DPO	67.58	104,349.00	62.22	(5.36)
DPO I	46.91	72,437.00	43.19	(3.72)
DPO II	46.91	72,437.00	43.19	(3.72)
DPO III	46.91	72,437.00	43.19	(3.72)
GCI	36.23	52,873.60	31.53	(4.70)
GCI	39.45	61,493.12	36.67	(2.78)
PC I	37.31	58,604.00	34.95	(2.36)
SGC	44.44	68,818.00	41.04	(3.40)
SPO	60.05	92,721.00	55.29	(4.76)

30-2 6/8-8/8

Santa Clara County
District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Summary of Salary Adjustments
 Fiscal Years 2003-04 Through 2005-06
Audit ID # S07-MCC-0033

Purpose: To calculate allowable salary costs based on adjustments noted to claimed hours and productive hourly rates.

Source: 2A-2; 3D-3a; 3D-3b; 3D-3c

Cost Components	Salaries Claimed	Allowed Salaries	Audit Adjustments	
			Adjustment 1	Adjustment 2
			Overstated Hours	Overstated PHR
2003-04				
Admin. Activities	3D-3 ^{2/5} 13,654	12,673 11,292	(1,381)	(981)
Admin. Appeal	-	-	-	-
Interrogation	9,088	568	(8,471)	(49)
Adverse Comments	3D-3 ^{3/5} 853	179	(658)	(16)
Subtotal	\$ 23,595	\$ 13,430 12,039	\$ (10,510) 9,129	\$ (1,046)
2004-05				
			Adjustment 1	Adjustment 2
			Overstated Hours	Overstated PHR
Admin. Activities	3D-3 ^{4/5} 74	68	-	(6)
Admin. Appeal	-	-	-	-
Interrogation	2,174	1,034	(1,049)	(91)
Adverse Comments	-	-	-	-
Subtotal	\$ 2,248	\$ 1,102	\$ (1,049)	\$ (97)
2005-06				
			Adjustment 1	Adjustment 2
			Overstated Hours	Overstated PHR
Admin. Activities	3D-3 ^{5/5} 128	142	-	14
Admin. Appeal	-	-	-	-
Interrogation	2,568	135	(2,435)	2
Adverse Comments	-	-	-	-
Subtotal	\$ 2,696	\$ 277	\$ (2,435)	\$ 16
Total	\$ 28,539	\$ 14,799 13,418	\$ (13,994) (1,127) (15,121)	Adjustment 1 Adjustment 2 (13,740)

7 foot

3D 12/12 ; 3D 10/12 - 11/12 ; 1D-1/4

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

District Attorney Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2003-04

Admin. Activities

W. Vidmar, Criminal Inve	\$ 67.93	15.00	\$ 1,018.95
B. Fraccoli, Criminal Inve	64.91	15.00	973.65
M Avila, Criminal Invest.	57.54	15.00	863.10
G Cunningham, Criminal	64.91	15.00	973.65
B Headrick, Criminla Inve	64.91	15.00	973.65
J Perez, Criminal Invest.	54.98	24.00	1,319.52
S Reinhardt, Criminal Inv	57.54	24.00	1,380.96
W Vidmar, Criminal Inves	67.93	24.00	1,630.32
M Avila, Criminal Invest.	57.54	24.00	1,380.96
L Evans, Criminal Invest.	57.54	24.00	1,380.96
J McMullen, Criminal Inv	56.26	24.00	1,350.24
W Vidmar, Criminal Inves	\$ 67.93	6.00	407.58
Subtotal		225.00	\$ 13,654

\$ 62.50	15.00	\$ 1,018.95	\$ 937.50	\$ -	\$ (81.45)
59.72	15.00	973.65	895.80	-	(77.85)
52.94	15.00	863.10	794.10	-	(69.00)
59.72	15.00	973.65	895.80	-	(77.85)
59.72	15.00	973.65	895.80	-	(77.85)
50.59	24.00	1,319.52	1,214.16	-	(105.36)
52.94	24.00	1,380.96	1,270.56	-	(110.40)
62.50	24.00	1,630.32	1,500.00	-	(130.32)
52.94	24.00	1,380.96	1,270.56	-	(110.40)
* 57.54	124	1,380.96	1,380.96	(1,380.96)	-
51.76	24.00	1,350.24	1,242.24	-	(108.00)
62.50	6.00	407.58	375.00	-	(32.58)
225	204.00	\$ 13,654	\$ 12,273	\$ (1,381)	\$ (981)

Interrogation

G Cunningham, Criminal I	\$ 64.91	5.50	\$ 357.01
B Fraccoli, Criminal Inves	64.91	3.50	227.19
M Lane, Criminal Invest.	64.91	8.00	519.28
K Smith, Criminal Invest.	64.91	10.50	681.56
P Campbell, Criminal Inve	64.91	1.00	64.91
B Fraccoli, Criminal Inves	64.91	30.50	1,979.86
K Smith, Criminal Invest.	64.91	19.50	1,265.75
P Campbell, Criminal Inve	64.91	3.50	227.19
G Cunningham, Criminal	64.91	38.00	2,466.58
M Lane, Criminal Invest.	64.91	20.00	1,298.20
Subtotal		140.00	\$ 9,088

\$ -	-	\$ -	\$ -	\$ (357.01)	\$ -
-	-	-	-	(227.19)	-
-	-	-	-	(519.28)	-
-	-	-	-	(681.56)	-
-	-	-	-	(64.91)	-
59.72	6.00	389.46	358.32	(1,590.40)	(31.14)
59.72	1.00	64.91	60	(1,200.84)	(4.91)
59.72	0.50	32.46	29.86	(194.73)	(2.60)
-	-	-	-	(2,466.58)	-
59.72	2.00	129.82	119.44	(1,168.38)	(10.38)
9.50		\$ 617	\$ 568	\$ (8,471)	\$ (49)

* per w/p 10/17

3E-32/5 30-31/5

Santa Clara County
District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

District Attorney Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2003-04

Adverse Comment		<u>2A-29 11/13</u>		<u>30-36 1/3</u>		<u>30-30 4/2</u>					
W. Vidmar, Criminal Inve	\$ 67.93	3.00	\$ 203.79			\$ -	\$ -	\$ (203.79)	\$ -		
B. Fraccoli, Criminal Inve	64.91	3.00	194.73			-	-	(194.73)	-		
P. Campbell, Criminal Inv	64.91	3.00	194.73	59.72	1.00	64.91	59.72	(129.82)	(5.19)		
G. Cunningham, Criminal	64.91	4.00	259.64	59.72	2.00	129.82	119.44	(129.82)	(10.38)		
Subtotal		<u>13.00</u>	<u>\$ 853</u>		<u>3.00</u>	<u>\$ 195</u>	<u>\$ 179</u>	<u>\$ (658)</u>	<u>\$ (16)</u>		
		n	n		n	n	n	n	n		
Total		<u>378.00</u>	<u>\$ 23,595</u>		<u>213.50</u>	<u>\$ 13,085</u>	<u>\$ 12,039</u>	<u>\$ (10,510)</u>	<u>\$ (1,046)</u>		
		n	n		n	n	n	n	n		

30-3 1/5
3E-3 3/5

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Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

District Attorney Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2004-05

Admin. Activities				
	M. Vidmar Assist. Chic	\$ 74.06	1.00	\$ 74.06
Subtotal			1.00	\$ 74
Interrogation				
	M. Lane Lieutenant	\$ 70.19	11.25	\$ 789.64
	R. Pifferini, Deputy Chi	58.30	23.75	1,384.63
Subtotal			35.00	\$ 2,174
Total			36.00	\$ 2,248

68.02	1.00	74.06	68.02	-	(6.04)
	1.00	\$ 74	\$ 68	\$ -	\$ (6)
64.48	1.50	105	96.72	(684.64)	(8.28)
53.55	17.50	1,020.25	937.13	(364.38)	(83.13)
	19.00	\$ 1,125	\$ 1,034	\$ (1,049)	\$ (91)
	20.00	\$ 1,199	\$ 1,102	\$ (1,049)	\$ (97)

30-36 2/3 30-39 5/8
 30-30 6/2
 30-31 1/5
 3E-3 4/5

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Document # 3D-3 Page 5/5
 Auditor myl JR Date 5/21/07
 Reviewer [initials] Date 11/16/07

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Salaries
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

District Attorney Department Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Hours times Claimed PHR	Hours times Allowed PHR	Audit Adjustment 1 Hours-related	Audit Adjustment 2 PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2005-06

Admin. Activities				
Mike Vidmar, Crimina	\$ 64.13	2.00	\$ 128.26	
Subtotal		2.00	\$ 128	
Interrogation				
Maurice Lane, Lieuten	\$ 73.32	24.75	\$ 1,814.67	
Pat Alvarez, Criminal	64.13	9.25	593.20	
Mike Vidmar, Crimina	64.13	2.50	160.33	
Subtotal		36.50	\$ 2,568	
Total		38.50	\$ 2,696	

71.20	2.00	128.26	142.40	-	14.14
	2.00	\$ 128	\$ 142	\$ -	\$ 14
67.50	0.50	36.66	34	(1,778.01)	(2.66)
65.14	1.00	64.13	65.14	(529.07)	1.01
71.20	0.50	32.07	35.60	(128.26)	3.54
	2.00	\$ 133	\$ 135	\$ (2,435)	\$ 2
	4.00	\$ 261	\$ 277	\$ (2,435)	\$ 16

3D-36 3/3 3D-39 7/2
 3D-32 3/8
 3D-3 1/5
 3E-3 5/5

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Santa Clara County
District Attorney
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Summary of Claimed / Allowable Hours
 FY's 2003-04 through 2005-06
Audit ID # S07-MCC-0033

Purpose: To review Case Time Logs for all the years under the audit period in order to identify POBAR-related hours eligible for reimbursement as per criteria outlined in the *Parameters and Guidelines* for the POBAR program. To document allowed hours and audit adjustments as per auditors' review of case logs and sample cases.

Source: Case Time Logs, District Attorney Department's Investigations unit, FY's 2003-04 through 2005-06
 Discussions with Michael Vidmar, Assistant Chief, Investigations unit

Analysis: The auditors reviewed all case logs for the three fiscal years under the audit period and identified eligible hours.

Fiscal Year	Claim Component	Claimed Hours	Allowed Hours	Audit Adjustments
2003-04	Admin. Activities <u>3D-3a 2/8</u>	225.00	²²⁵ 201.00	(24.00)
	Interrogations <u>3D-3a 3/8</u>	140.00	9.50	(130.50)
	Adverse Comments <u>3D-3a 4/8</u>	13.00	3.00	(10.00)
	Total	378.00	<u>213.50</u> ^{237.50}	<u>(164.50)</u> ^{140.50}
2004-05	Admin. Activities <u>3D-3a 5/8</u>	1.00	1.00	-
	Interrogations <u>3D-3a 6/8</u>	35.00	19.00	(16.00)
	Total	36.00	<u>20.00</u>	<u>(16.00)</u>
2005-06	Admin. Activities <u>3D-3a 7/8</u>	2.00	2.00	-
	Interrogations <u>3D-3a 8/8</u>	36.50	2.00	(34.50)
	Total	38.50	<u>4.00</u>	<u>(34.50)</u>
Grand Total		452.50	<u>237.50</u> ^{261.5}	<u>(215.00)</u> ^{191.0}

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2003-04
 Administrative Activities
 Audit ID # S07-MCC-0033

Claimed Activities	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
		<u>2A-29</u>	✓	
A Revise and update policies / procedures	W. Vidmar	15.00	15.00	-
	B. Fraccoli	15.00	15.00	-
	M. Avila	15.00	15.00	-
	G. Cunningham	15.00	15.00	-
	B. Headrick	15.00	15.00	-
B Training	J. Perez	24.00	24.00	-
	S. Reinhardt	24.00	24.00	-
	W. Vidmar	24.00	24.00	-
	M. Avila	24.00	24.00	-
	L. Evans	24.00	-24	(24.00) *
	J. McMullen	24.00	24.00	-
Update / maintain status of cases	W. Vidmar	6.00	6.00	-
		225.00	<u>225</u> 201.00	(24.00)

3D-39 1/8 | 3D-32/5

Claimed hours included the following: (According to Michael Vidmar, the Assistant Chief of the Investigations unit, the department claimed the following hours relating to POBAR activities:

- A Revise / update policies / procedures The department claimed meeting hours to review current policies and procedures and create new manual within the department to provide a guide for Internal Affairs investigators and create a uniform procedures pertaining to forms, format, and outline of investigations. The auditors reviewed the department's manual and confirmed that this activity in fact took place.
- B Training The department claimed costs associated with the following training course:
 * Internal Affairs Investigation course - 24 hour course (various dates for each employee)
 The auditors reviewed the course materials and concluded that claimed costs associated with training classes are eligible for reimbursement. The review of training materials disclosed that course contents were related to performance of POBAR activities. The auditors also reviewed training history for each claimed employee to confirm attendance of this training class. With the exception of one employee, whose records did not show attendance of this course, all other employees attended the training class in question. *

✓ source: see w/p 3D-39 1/8
 * see w/p 16/17

Santa Clara County
District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2003-04
Interrogation Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed
		Prepare Admin. Notice & Schedule Interviews
03-IA-04	Fraccoli, R.	6.00
03-IA-05	Cunningham, G.	-
03-IA-06	Lane, M.	2.00
04-IA-01	Campbell, P.	0.50
04-IA-02	Smith, K.	1.00
		9.50

Total Hours Claimed	Total Hours Allowed	Audit Adjustments
<u>24.29</u>	✓	

Interviews:

G Cunningham, Crimir	5.50	-	(5.50)
B Fraccoli, Criminal I	3.50	-	(3.50)
M Lane, Criminal Inve	8.00	-	(8.00)
K Smith, Criminal Inv	10.50	-	(10.50)
P Campbell, Criminal	1.00	-	(1.00)
Other interrog activities:			
B Fraccoli, Criminal I	30.50	6.00	(24.50)
K Smith, Criminal Inv	19.50	1.00	(18.50)
P Campbell, Criminal	3.50	0.50	(3.00)
G Cunningham, Crimi	38.00	-	(38.00)
M Lane, Criminal Inve	20.00	2.00	(18.00)
140.00		9.50	(130.50)

3D-3a 1/8
 3D-3 2/5
 Claimed hours included the following activities:

- 3D-3c {
- N * Review complaint, Report and Evidence
 - N * Gather reports, log sheets, etc.
 - N * Interview witnesses on regular hours (investigators' time)
 - N * Review tapes for witness interviews
 - N * Travel time to interview witnesses
 - N * Conduct pre-interrogation meeting
 - N * Interview subject officers on regular hours (investigators' time)
 - N * Review tapes for subject officer interviews (no transcriptions)
 - E * Prepare Admin. Notices regarding nature of allegations and the interview and Schedule POBAR interviews (for accused officers)
 - N * Prepare Questions for the interviews

N: Ineligible activity
 E: Eligible activity

✓ Source: See W/P 3D-3a 1/8

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2003-04
 Adverse Comment Activities
 Audit ID # S07-MCC-0033

Case Number	Employee Claimed	Activities / Time Allowed
		Command Staff Review and Findings
03-IA-04	Fracolli, R.	-
03-IA-05	Cunningham, G.	2.00
03-IA-06	Lane, M.	-
04-IA-01	Campbell, P.	1.00
04-IA-02	Smith, K.	-
		<u>3.00</u>

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A-2a</u>	✓	
W. Vidmar, Criminal	3.00	-	(3.00)
B. Fraccoli, Criminal	3.00	-	(3.00)
P. Campbell, Criminal	3.00	1.00	(2.00)
G. Cunningham, Criminal	4.00	2.00	(2.00)
	<u>13.00</u>	<u>3.00</u>	<u>(10.00)</u>

3D-3a 1/8
3D-3 3/5

Claimed hours included the following activities:

- 3D-3c {
- N * Case Summary and Review of findings (prepare final investigation report and summarize findings)
 - E * Commanding staff review of findings

✓ Source: See WIP 3D-3a 1/8
N: Ineligible activity
E: Eligible activity

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Allowable Hours
 FY 2004-05
 Administrative Activities
 Audit ID # S07-MCC-0033

Claimed Activities	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
		<u>2A-26</u>	<u>✓</u>	
Update / maintain status of cases	W. Vidmar	1.00	1.00	-

3D-30 1/8 ; 3D-3 4/5

✓ source: See w/p 3D-30 1/8

Santa Clara County
District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2004-05
Interrogation Activities
 Audit ID # S07-MCC-0033

Note: In this fiscal period, interrogation and adverse comment activities were claimed together

Case Number	Employee Claimed	Activities / Time Allowed	
		Prepare Admin. Notice & Schedule Interviews	Command Staff Review and Findings
05-IA-01	Lane, M.	1.50	-
04-IA-04	Pifferini, R.	0.50	17.00
		2.00	17.00

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>2A 26</u>	<u>✓</u>	
M. Lane, Lieutenant	11.25	1.50	(9.75)
R. Pifferini, Deputy CI	23.75	17.50	(6.25)
	35.00	19.00	(16.00)

3D-3a 1/8 ; 3D-3 4/5

Claimed hours included the following activities:

- 3D-3c {
- N * Review complaint, Report and Evidence
 - N * Gather reports, log sheets, etc.
 - N * Interview witnesses on regular hours (investigators' time)
 - N * Review tapes for witness interviews
 - N * Travel time to interview witnesses
 - N * Conduct pre-interrogation meeting
 - N * Interview subject officers on regular hours (investigators' time)
 - N * Review tapes for subject officer interviews (no transcriptions)
 - E * Prepare Admin. Notices regarding nature of allegations and the interview and Schedule POBAR interviews (for accused officers)
 - N * Prepare Questions for the interviews
 - E * Supervisor / Commanding staff review of documents leading to the finding
 - N * Preparation of final report

✓ Source: see w/P 3D-3a 1/8

N: Ineligible activity

E: Eligible activity

Santa Clara County
District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Administrative Activities
 Audit ID # S07-MCC-0033

Claimed Activities	Employee Claimed	Hours Claimed	Allowed Hours	Audit Adjustments
Update / maintain status of cases	W. Vidmar	2.00	2.00	-

2A-2C ✓
 3D-3a 1/8 ; 3D-3 5/5

✓ source: see w/P 3D-3a 1/8

Santa Clara County
District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Allowable Hours
 FY 2005-06
Interrogation Activities
 Audit ID # S07-MCC-0033

Note: In this fiscal period, interrogation and adverse comment activities were claimed together

Case Number	Employee Claimed	Activities / Time Allowed	
		Prepare Admin. Notice & Schedule Interviews	Command Staff Review and Findings
06-IA-02	Lane, M.	0.50	-
06-IA-01	Vidmar, M.	0.50	-
05-IA-02	Alvarez, P.	0.50	0.50
		1.50	0.50

	Total Hours Claimed	Total Hours Allowed	Audit Adjustments
	<u>24.25</u>	<u>✓</u>	
Maurice Lane, Lieuten	24.75	0.50	(24.25)
Pat Alvarez, Criminal	9.25	1.00	(8.25)
Mike Vidmar, Criminal	2.50	0.50	(2.00)
	36.50	2.00	(34.50)

3D-39 1/8 ; 3D-35/5

Claimed hours included the following activities:

- 3D-39 {
- N * Interview subject officer (regular hours, investigators' time)
 - E * Provide prior notice to the subject
 - N * Review agency complaint / evidence / reports
 - N * Prepare agency complaint report / form
 - N * Interview witnesses (regular hours, investigators' time)
 - N * Prepare final finding report
 - E * Commanding staff review of findings

✓ Source: see w/p 3D-39 1/8
N: Ineligible activity
E: Eligible activity

Purpose To review Productive Hourly Rates claimed by the District Attorney department in FY 2003-04 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jean Dobroff, Accountant, District Attorney department
 Discussion with Jennifer Yu, Senior Accountant, District Attorney department
 ✓ District Attorney Department's People Soft individual payroll reports per fiscal period

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1560.65 productive hours in the PHR calculation. (See <Document # 30-4-3/7> for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours.

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 30-4> for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c)=(b) / ^{30-4 217} 1696.35	(d)=(c)-(a)
W. Vidmar, Crim. Invest	67.93	106,018.00	62.50	(5.43)
B. Fraccoli, Crim. Invest	64.91	101,306.00	59.72	(5.19)
M. Avila, Crim. Investig	57.54	89,802.00	52.94	(4.60)
G. Cunningham, Crim. I	64.91	101,306.00	59.72	(5.19)
B. Headrick, Crim. Inves	64.91	101,306.00	59.72	(5.19)
J. Perez, Crim. Investig	54.98	85,811.00	50.59	(4.39)
S. Reinhardt, Crim. Inve	57.54	89,802.00	52.94	(4.60)
L. Evans, Crim. Investig	57.54	89,802.00	52.94	(4.60)
J. McMullen, Crim. Inves	56.26	87,807.00	51.76	(4.50)
M. Lane, Crim. Investig	64.91	101,306.00	59.72	(5.19)
K. Smith, Crim. Investig	64.91	101,306.00	59.72	(5.19)
P. Campbell, Crim. Inve	64.91	101,306.00	59.72	(5.19)

30-32/5-3/5

Purpose To review Productive Hourly Rates claimed by the District Attorney department in FY 2004-05 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jean Dobroff, Accountant, District Attorney department
 Discussion with Jennifer Yu, Senior Accountant, District Attorney department
 ✓ District Attorney Department's People Soft individual payroll reports per fiscal period

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1545 productive hours in the PHR calculation. (See <Document # 3D-4 4/7> for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 3D-4> for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c)=(b) / 1682	(d)=(c)-(a)
M. Vidmar, Assist. Chief	^{2A-25} 74.06	114,417.00	68.02	(6.04)
M. Lane, Lieutenant	70.19	108,450.00	64.48	(5.71)
R. Pifferini, Deputy Chie	58.30	90,074.00	53.55	(4.75)

3D-3 4/5

Santa Clara County - District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Analysis of Productive Hourly Rates - District Attorney Department
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Purpose To review Productive Hourly Rates claimed by the District Attorney department in FY 2005-06 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jean Dobroff, Accountant, District Attorney department
 Discussion with Jennifer Yu, Senior Accountant, District Attorney department
 ✓ District Attorney Department's People Soft individual payroll reports per fiscal period

Analysis The county used actual salary info for each employee to calculate PHR.

The auditors noted that the county applied 1544 productive hours in the PHR calculation. (See <Document # 30-457 for more details). The auditors concluded that the county's productive hours are understated due to inclusion of ineligible break time and training time in the calculation of productive hours

The auditors adjusted county's calculation of annual productive hours by excluding ineligible break time and training time from the calculation. (See <Document # 30-4 > for more details).

Employee Classification	PHR Claimed	Allowed Annual Salary	Allowed Productive Hourly Rate	Audit Adjustments
	(a)	(b)	(c)=(b)/1677	(d)=(c)-(a)
M. Vidmar, Crim. Invest	<u>2A-2c</u> 64.13	119,401.00 ✓	71.20	7.07 *
M. Lane, Lieutenant	73.32	113,201.00	67.50	(5.82)
P. Alvarez, Crim. Investi	64.13	109,240.00	65.14	1.01 *

30-35/5

* For this fiscal period, the department mistakenly used lower annual salary for M. Vidmar and P. Alvarez. Therefore, claimed productive hourly rates for these two individuals were understated even considering the adjustments made to productive hours.

Santa Clara County
Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights
 Summary of Benefit Adjustments
 Fiscal Years 2003-04 Through 2005-06
 Audit ID # S07-MCC-0033

Purpose: To calculate allowable benefit costs based on adjustments noted to claimed salaries and benefit rates.

Source: 2A-2 ; 3D-1 ; 3E-1a

Cost Components	Benefits Claimed	Allowed Benefits	Audit Adjustments		
			Adjustment 1 Hours-related	Adjustment 2 PHR - related	
FY 2003-04					
Admin. Activities	3E-12/7 2,602	1,214	(1,283)	(105)	
Admin. Appeal	269	-	(269)	-	
Interrogation	5,702	861	(4,764)	(77)	
Adverse Comment	3E-13/7 2,611	556	(1,999)	(56)	
Subtotal	\$ 11,184	\$ 2,631	\$ (8,315)	\$ (238)	
FY 2004-05					
			Adjustment 1 Hours-related	Adjustment 2 PHR - related	Adjustment 3 Ben. Rate
Admin. Activities	3E-14/7 1,561	1,266	(621)	(77)	403
Admin. Appeal	-	-	-	-	-
Interrogation	6,474	677	(5,992)	(39)	234
Adverse Comment	3E-15/7 3,966	331	(3,726)	(20)	111
Subtotal	\$ 12,001	\$ 2,274	\$ (10,339)	\$ (136)	\$ 748
FY 2005-06					
			Adjustment 1 Hours-related	Adjustment 2 PHR - related	
Admin. Activities	3E-16/7 569	299	(245)	(25)	
Admin. Appeal	64	-	(64)	-	
Interrogation	8,174	1,328	(6,732)	(114)	
Adverse Comment	3E-17/7 9,580	2,454	(6,914)	(212)	
Subtotal	\$ 18,387	\$ 4,081	\$ (13,955)	\$ (351)	
Total	\$ 41,572	\$ 8,986	\$ (32,609)	Adjustment 1 (725) Adjustment 2 748 Adjustment 3	
		3E-14/2	\$ (32,586)		

10/16
 3E 8/8 ; 3E 3/8 - 4/8 ; 1D-2
 473
 "For PSSC, see 3E"

Document # 3E-1 Page 2/7
 Auditor AN/SE Date 4/26/07
 Reviewer JD Date 4/26/07

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2003-04
 Audit ID # S07 - MCC - 0033

Sheriff Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben. Rate	Salaries w/ Adjusted PHR and Hours times Ben. Rate	Audit Adjustment Finding 1	Audit Adjustment Finding 2 PHR Related
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2003-04

Admin. Activities					
Sgt. Staats	\$ 54.98	24.00	42.44%	\$ 560.00	
Sgt. L. St. Denis	51.15	7.25	23.09%	85.63	
Sgt. R. Schiller	64.91	5.00	34.02%	110.41	
Sgt. D. Matuzek	54.98	48.40	33.32%	886.66	
Sgt. C. Watson	54.98	8.50	30.72%	143.56	
Sgt. K. Burgess	54.98	51.60	28.76%	815.91	
Subtotal		144.75		\$ 2,602	
Admin. Appeal					
Sgt. K. Burgess	\$ 54.98	17.00	28.76%	\$ 268.81	
Subtotal		17.00		\$ 269	
Interrogation					
Sgt. Tait	\$ 54.98	0.50	41.77%	\$ 11.48	
Sgt. Stevens	54.98	0.42	36.60%	8.45	
Sgt. Staats	54.98	3.00	42.44%	70.00	
Sgt. Lewis	52.35	0.33	37.41%	6.46	
Deputy Dona	49.66	0.50	38.31%	9.51	
Sgt. Broaumeland	46.36	0.92	38.68%	16.50	
Sgt. Atlas	54.98	0.33	40.85%	7.41	
Sgt. L. St. Denis	51.15	96.25	23.09%	1,136.76	
Sgt. R. Schiller	64.91	18.00	34.02%	397.48	
Sgt. D. Matuzek	54.98	95.71	33.32%	1,753.34	
Sgt. C. Watson	54.98	92.50	30.72%	1,562.31	
Sgt. K. Burgess	54.98	26.65	28.76%	421.40	
Deputy Sheriff	40.05	19.42	38.68%	300.84	
Subtotal		354.53		\$ 5,702	

\$ 1,319.62	\$ 1,214.16	42.44%	\$ 560.00	\$ 515.29	(0.00)	\$ (44.71)					
-	-	-	-	-	(85.63)	-					
-	-	-	-	-	(110.41)	-					
-	-	-	-	-	(886.66)	-					
-	-	-	-	-	(143.56)	-					
2,639.04	2,428.32	28.76%	758.99	698.38	(56.92)	(60.60)					
\$ 3,959	\$ 3,642		\$ 1,319	\$ 1,214	\$ (1,283)	\$ (105)					
-	-	-	-	-	(268.81)	-					
\$ -	\$ -		\$ -	\$ -	\$ (269)	\$ -					
-	-	-	-	-	(11.48)	-					
-	-	-	-	-	(8.45)	-					
54.98	51.00	42.44%	23.33	21.64	(46.67)	(1.69)					
-	-	-	-	-	(6.46)	-					
-	-	-	-	-	(9.51)	-					
7.88	8.40	-	3.05	-	(13.45)	(3.05)					
-	-	-	-	-	(7.41)	-					
1,023.00	941.20	23.09%	236.21	217.32	(900.55)	(18.89)					
243.41	223.95	34.02%	82.81	76.19	(314.67)	(6.62)					
865.94	797.00	33.32%	288.53	265.56	(1,464.81)	(22.97)					
604.78	556.00	30.72%	185.79	170.80	(1,376.52)	(14.99)					
412.35	379.43	28.76%	118.59	109.12	(302.80)	(9)					
-	-	-	-	-	(300.84)	-					
\$ 3,212	\$ 2,957		\$ 938	\$ 861	\$ (4,764)	\$ (77)					

3E-1/7

For Pss c, see 3E

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2003-04
 Audit ID # S07 - MCC - 0033

Sheriff Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2003-04

Adverse Comments

2A-29 10/13

Sgt. Tait	\$ 54.98	0.50	41.77%	\$ 11.48
Sgt. Stevens	54.98	0.17	36.60%	3.42
Sgt. Staats	54.98	1.08	42.44%	25.20
Sgt. Dona	49.66	0.25	38.31%	4.76
Sgt. Broaumeland	46.36	0.75	38.68%	13.45
Sgt. Atlas	54.98	0.17	40.85%	3.82
Sgt. Babcock	53.71	0.17	48.66%	4.44
Sgt. Dutra	54.98	0.25	38.12%	5.24
Sgt. Langley	54.98	0.25	36.47%	5.01
Sgt. Peterson	54.98	0.25	42.43%	5.83
Sgt. L.St. Denis	51.15	62.00	23.09%	732.25
Sgt. R. Schiller	64.91	7.00	34.02%	154.68
Sgt. D. Matuzek	54.98	25.58	33.32%	468.71
Sgt. C. Watson	54.98	55.83	30.72%	942.96
Sgt. K. Burgess	54.98	14.50	28.76%	229.28
Subtotal		168.75		\$ 2,611
Total		685.03		\$ 11,184

3D-1 3/7 3E-1a 1/3

-	-	-	-	-	(11.48)	-
9.35	8.60	36.60%	3.42	3.15	-	(0.27)
13.75	12.65	42.44%	5.83	5.37	(19.37)	(0.46)
12.42	11.42	38.31%	4.76	4.38	-	(0.38)
19.47	20.75	-	7.53	-	(5.92)	(7.53)
9.35	8.60	40.85%	3.82	3.51	-	(0.30)
-	-	-	-	-	(4.44)	-
13.75	12.65	38.12%	5.24	4.82	-	(0.42)
13.75	12.65	36.47%	5.01	4.61	-	(0.40)
9.35	8.60	42.43%	3.97	3.65	(1.87)	(0.32)
920.70	847.08	23.09%	212.59	195.59	(519.66)	(17.00)
129.82	119.44	34.02%	44.16	40.63	(110.51)	(3.53)
321.08	295.45	33.32%	106.98	98.44	(361.72)	(8.54)
549.80	505.90	30.72%	168.90	155.41	(774.06)	(13.49)
137.45	126.48	28.76%	39.53	36.38	(189.75)	(3.15)
\$ 2,160	\$ 1,990		\$ 612	\$ 556	\$ (1,999)	\$ (56)
\$ 9,331	\$ 8,589		\$ 2,869	\$ 2,631	\$ (8,315)	\$ (238)

3E-1 1/7

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Sheriff Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis										
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times claimed Ben. Rate	Salaries w/ Adjusted PHR and Hours times claimed Ben. Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related	Benefit Rate Difference	Audit Adjustment Finding 3 Ben. Rate Related	Final Allowable Benefits after all adjustments	Total Audit Adjustments 1-3
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(c)	(j)=(h)-(d)	(k)=(i)-(b)	(l)=(g)-(c)	(m)=(j)*(f)	(n)=(l)+(m)	(o)=j+k+m

FY 2004-05

Admin. Activities					
Training	Lt. Burgess	\$ 66.15	24.00	30.60%	\$ 485.81
	Sgt. Matuzek	57.39	30.00	33.00%	568.16
Update Pobar	Lt. Burgess	66.15	8.00	30.60%	161.94
	Sgt. Matuzek	57.39	6.50	33.00%	123.10
	Sgt. Staats	57.40	10.00	38.70%	222.14
Subtotal			78.50		\$ 1,561

1,587.60	1,458.24	44.18%	485.81	446	-	(39.81)	13.58%	198.03	644.03	158.22
1,377.36	1,265.04	49.16%	454.53	417	(113.63)	(37.07)	16.16%	204.53	621.99	53.83
-	-	-	-	-	(161.94)	-	-	-	-	(161.94)
-	-	-	-	-	(123.00)	-	-	-	-	(123.00)
-	-	-	-	-	(222.00)	-	-	-	-	(222.00)
\$ 2,965	\$ 2,723		\$ 940	\$ 863	\$ (621)	\$ (77)		\$ 403	\$ 1,266	\$ (295)

Interrogation					
	Lt. Burgess	\$ 66.15	86.17	30.60%	\$ 1,744.24
	Rounding				2.76
	Sgt. Dona	57.01	0.50	41.90%	11.94
	Deputy Hollawa	48.93	0.99	36.70%	17.78
	Sgt. Matuzek	57.39	47.07	33.00%	891.44
	Rounding				(1.44)
	Sgt. Mitre	56.85	0.50	39.60%	11.26
	Sgt. Staats	57.40	124.15	38.70%	2,757.84
	Rounding				(3.84)
	Deputy Sheriff	42.09	47.24	52.00%	1,033.93
	Sergeant	48.71	0.33	52.00%	8.36
Subtotal			306.95		\$ 6,474

562.28	516.46	44.18%	172.06	158.04	(1,572.19)	(14.02)	13.58%	70.14	228.17	(1,516.07)
-	-	-	-	-	(2.76)	-	-	-	-	(2.76)
-	-	-	-	-	(11.94)	-	-	-	-	(11.94)
8.32	7.64	57.90%	3.05	3	(14.72)	(0.05)	21.20%	1.62	4.62	(13.16)
334.58	307.30	49.16%	110.41	101.41	(781)	(9.00)	16.16%	49.66	151.07	(740.34)
-	-	-	-	-	1.44	-	-	-	-	1.44
-	-	-	-	-	(11)	-	-	-	-	(11.00)
506.84	465.69	62.89%	196.15	180.22	(2,561.70)	(15.93)	24.19%	112.65	292.87	(2,464.97)
-	-	-	-	-	3.84	-	-	-	-	3.84
-	-	-	-	-	(1,033.93)	-	-	-	-	(1,033.93)
-	-	-	-	-	(8.36)	-	-	-	-	(8.36)
\$ 1,412	\$ 1,297		\$ 482	\$ 443	\$ (5,992)	\$ (39)		\$ 234	\$ 677	\$ (5,797)

3E-1/7

Document # 3E-1 Page 5/7
 Auditor MV/SR Date 4/26/07
 Reviewer pn Date 11/1/07

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Sheriff Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis										
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times claimed Ben.Rate	Salaries w/ Adjusted PHR and Hours times claimed Ben.Rate	Audit Adjustment Finding 1	Audit Adjustment Finding 2	Benefit Rate Difference	Audit Adjustment Finding 3 Ben. Rate Related	Final Allowable Benefits after all adjustments	Total Audit Adjustments 1-3
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(c)	(j)=(h)-(d)	(k)=(i)-(h)	(l)=(g)-(c)	(m)=(l)*(f)	(n)=(i)+(m)	(o)=j+k+m

FY 2004-05															
Adverse Comment															
2A-26 11/14															
3D-1 5/7 3E-1 Q2/3															
Sgt. Atlas	\$ 61.80	0.50	35.00%	\$ 10.82	15.45	14.19	53.80%	5.41	4.97	(5.41)	(0.44)	18.80%	2.67	7.63	(3.18)
Lt. Burgess	66.15	75.33	30.60%	1,524.82	275.85	253.37	44.18%	84.41	77.53	(1,440.41)	(6.88)	13.58%	34.41	111.94	(1,412.88)
Lt. Calderone	70.19	1.50	31.30%	32.95	52.64	48.36	45.59%	16.48	15.14	(16.48)	(1.34)	14.29%	6.91	22.05	(10.91)
Sgt. Carrasco	58.67	0.33	52.80%	10.22	-	-	-	-	-	(10.22)	-	-	-	-	(10.22)
Sgt. Dorna	57.01	0.25	41.90%	5.97	14.25	13.09	58.18%	5.97	5.48	(0.00)	(0.49)	16.28%	2.13	7.62	1.64
Deputy Holloway	48.93	0.33	36.70%	5.93	-	-	-	-	-	(5.93)	-	-	-	-	(5.93)
Sgt. Hooper	60.48	0.50	40.40%	12.22	15.12	13.89	67.81%	6.11	5.61	(6.11)	(0.50)	27.41%	3.81	9.42	(2.80)
Sgt. Inas	57.39	2.00	35.10%	40.29	18.94	17.39	54.16%	6.65	6.10	(33.64)	(0.54)	19.06%	3.31	9.42	(30.87)
Lt. Keith	67.75	1.00	33.80%	22.90	33.88	31.12	50.93%	11.45	10.52	(11.45)	(0.93)	17.13%	5.33	15.85	(7.05)
Lt. Lemmon	57.37	0.50	25.90%	7.43	14.34	13.18	34.97%	3.71	3.41	(3.72)	(0.30)	9.07%	1.20	4.61	(2.82)
Sgt. Mathison	57.45	0.66	38.30%	14.52	18.96	17.41	63.40%	7.26	6.67	(7.26)	(0.59)	25.10%	4.37	11.04	(3.48)
Sgt. Matuzek	57.39	80.81	33.00%	1,530.44	81.49	74.85	49.16%	26.89	24.70	(1,503.54)	(2.19)	16.16%	12.10	36.80	(1,493.64)
Sgt. McIntosh	57.11	0.66	36.30%	13.68	18.85	17.31	57.02%	6.84	6.28	(6.84)	(0.56)	20.72%	3.39	9.87	(3.81)
Sgt. Mitre	56.85	0.50	39.60%	11.26	14.21	13.06	65.66%	5.63	5.17	(5.63)	(0.46)	26.06%	3.40	8.58	(2.68)
Sgt. Peterson	59.60	0.25	38.90%	5.80	-	-	-	-	-	(5.80)	-	-	-	-	(5.80)
Lt. Pugh	67.75	1.83	34.40%	42.65	22.36	20.54	52.51%	7.69	7.07	(34.96)	(0.63)	18.11%	3.72	10.79	(31.86)
Sgt. Rodriguez	47.22	0.50	33.30%	7.86	11.81	10.85	49.98%	3.93	3.61	(3.93)	(0.32)	16.68%	1.81	5.42	(2.44)
Sgt. Scott	57.66	0.50	31.50%	9.08	14.42	10.49	45.88%	4.54	3.30	(4.54)	(1.24)	14.38%	1.51	4.81	(4.27)
Sgt. Staats	57.40	28.91	38.70%	642.20	76.34	70.14	62.89%	29.54	27.14	(612.66)	(2.40)	24.19%	16.97	44.11	(598.09)
Sgt. Waldher	61.27	0.66	36.90%	14.92	20.22	18.57	58.38%	7.46	6.85	(7.46)	(0.61)	21.48%	3.99	10.84	(4.08)
Subtotal		<u>197.52</u>		<u>\$ 3,966</u>	<u>\$ 719</u>	<u>\$ 658</u>		<u>\$ 240</u>	<u>\$ 220</u>	<u>\$ (3,726)</u>	<u>\$ (20)</u>		<u>\$ 111</u>	<u>\$ 331</u>	<u>\$ (3,635)</u>
Total		<u>582.97</u>		<u>\$ 12,001</u>	<u>\$ 5,096</u>	<u>\$ 4,678</u>		<u>\$ 1,662</u>	<u>\$ 1,526</u>	<u>\$ (10,339)</u>	<u>\$ (136)</u>		<u>\$ 748</u>	<u>\$ 2,274</u>	<u>\$ (9,727)</u>

3E-1/7

For PSSC, see 3E

Document # 3E-1 Page 6/7
 Auditor MVJR Date 4/26/07
 Reviewer vd Date 11/21/07

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Sheriff Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2005-06

2A-2c 3/16

Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
Admin. Activities					
Lt. Burgess		\$ 70.75	4.50	48.50%	\$ 154.41
Sgt. Matuzek		59.93	12.33	53.70%	396.81
Sgt. Peterson		62.18	0.50	57.70%	17.94
Subtotal			17.33		\$ 569

3D-1 6/7 3E-1a 3/3

176.88	162.85	48.50%	85.78	78.98	(68.43)	(6.80)
409.32	376.81	53.70%	219.81	202.55	(177.00)	(17.26)
31.09	28.63	57.70%	17.94	17.00	-	(0.94)
\$ 617	\$ 568		\$ 324	\$ 299	\$ (245)	\$ (25)

2A-2c 7/16

Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
Interrogation					
Lt. Burgess		\$ 70.75	9.50	48.50%	\$ 325.98
Sgt. Imas		59.93	1.00	59.40%	35.60
Sgt. Langley		59.93	16.50	59.90%	592.32
Sgt. Matuzek		59.93	101.42	53.70%	3,263.94
Sgt. Peterson		62.18	0.50	57.70%	17.94
Lt. Pugh		72.90	1.00	57.80%	42.14
Deputy Sheriff/Wit		44.24	142.72	58.90%	3,718.91
Sergeant/Witness &		51.21	5.08	58.90%	153.23
Lieutenant/Witness		60.52	0.67	58.90%	23.88
Subtotal			278.39		\$ 8,174

141.50	130.28	48.50%	68.63	63.19	(257.35)	(5.44)
-	-	-	-	-	(35.60)	-
224.74	206.89	59.90%	134.62	123.93	(457.70)	(10.69)
2,272.55	2,092.05	53.70%	1,220.36	1,124	(2,043.58)	(96.36)
31.09	28.63	57.70%	17.94	16.52	-	(1.42)
-	-	-	-	-	(42.14)	-
-	-	-	-	-	(3,718.91)	-
-	-	-	-	-	(153.23)	-
-	-	-	-	-	(23.88)	-
\$ 2,670	\$ 2,458		\$ 1,442	\$ 1,328	\$ (6,732)	\$ (114)

2A-2c 6/16

Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
Admin. Appeal					
Sgt. Matuzek		\$ 59.93	2.00	53.70%	\$ 64.36
Subtotal			2.00		\$ 64

-	-	-	-	-	(64.36)	-
\$ -	\$ -		\$ -	\$ -	\$ (64)	\$ -

3E-1 1/7

Document # 3E-1 Page 7/7
 Auditor mv/jr Date 4/26/07
 Reviewer w Date 4/26/07

Santa Clara County
 Sheriff Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Sheriff Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis							
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1	Audit Adjustment Finding 2	
(e)	(f)	(g)	(h)=(e)*(g)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)	

FY 2005-06

Adverse Comment

	Lt. Burgess	\$ 70.75	39.75	48.50%	\$ 1,363.97
	Sgt. Langley	59.93	120.25	59.90%	4,316.74
	Sgt. Matuzek	59.93	72.42	53.70%	2,330.65
	Sgt. Peterson	62.18	5.00	57.70%	179.39
Findings	Captain Angus	86.23	1.00	51.90%	44.75
	Lt. Burgess	70.75	19.25	48.50%	660.54
	Commander Bacon	105.58	2.75	48.70%	141.40
	Sgt. Dutra	60.08	1.00	63.10%	37.91
	Lt. Geary	63.57	0.50	59.30%	18.85
	Captain Hirokawa	91.40	1.00	49.70%	45.43
	Sgt. Langley	59.93	4.08	59.90%	146.46
	Captain Laverone	78.36	0.50	57.90%	22.69
	Sgt. Matuzek	59.93	4.33	53.70%	139.35
	Captain Perusina	104.60	0.58	43.60%	26.45
	Captain Rode	80.86	1.00	55.90%	45.20
Lt. Schiller	73.35	0.58	55.20%	23.48	
Sgt. Spagnola	58.83	1.00	62.40%	36.71	
Subtotal			37.57		\$ 9,580

	318.38	293.13	48.50%	154.41	142.17	(1,209.56)	(12.24)
	549.56	505.91	59.90%	329.19	303.04	(3,987.56)	(26.15)
	988.85	910.31	53.70%	531.01	488.84	(1,799.64)	(42.17)
	93.27	85.88	57.70%	53.82	49.55	(125.57)	(4.26)
	215.58	198.48	51.90%	111.88	103.01	67.13	(8.87)
	1,078.94	993.39	48.50%	523.28	481.79	(137.26)	(41.49)
	377.98	348.01	48.70%	184.07	169.48	42.68	(14.59)
	150.20	138.28	63.10%	94.78	87.25	56.87	(7.52)
	31.79	29.27	59.30%	18.85	17.36	-	(1.49)
	91.40	84.15	49.70%	45.43	41.82	-	(3.60)
	284.67	262.06	59.90%	170.52	156.97	24.05	(13.54)
	39.18	36.07	57.90%	22.69	20.88	-	(1.80)
	319.43	294.06	53.70%	171.53	157.91	32.18	(13.62)
	60.67	55.86	43.60%	26.45	24.35	-	(2.10)
	202.15	186.13	55.90%	113.00	104.05	67.80	(8.96)
	42.54	39.17	55.20%	23.48	21.62	-	(1.86)
	147.08	134.73	62.40%	91.77	84.07	55.06	(7.70)
Subtotal	\$ 4,992	\$ 4,595		\$ 2,666	\$ 2,454	\$ (6,914)	\$ (212)

Total 335.29 \$ 18,387 \$ 8,279 \$ 7,621 \$ 4,432 \$ 4,081 \$ (13,955) \$ (351)

3E-1/7

Purpose To review Benefit Rates claimed by the Sheriff department in FY 2003-04 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Alan Minato, Fiscal Officer, Sheriff Department
 ✓ Santa Clara County's Actual Salaries Recap Report per individual employee, FY 2003-04

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective annual salaries.

Conclusion: For conclusion see Document # 3E 3/8

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c)/(b)	(e)=(d)-(a)
Sgt. Staats	<u>2A-2A</u> 42.44%	85,811	36,417	42.44%	0.00%
Sgt. Broaumeland	38.68%	83,815.42	32,212.18	38.43%	-0.25%
Sgt. St. Denis	23.09%	79,824.16	18,431.40	23.09%	0.00%
Sgt. Schiller	34.02%	101,306.40	34,467.68	34.02%	0.00%
Sgt. Matuzek	33.32%	85,810.92	28,595.06	33.32%	0.00%
Sgt. Watson	30.72%	85,810.92	26,364.78	30.72%	0.00%
Sgt. Burgess	28.76%	85,810.92	24,675.30	28.76%	0.00%
Sgt. Stevens	36.60%	85,810.92	31,404.88	36.60%	0.00%
Sgt. Dona	38.31%	77,500.80	29,691.74	38.31%	0.00%
Sgt. Atlas	40.85%	85,810.92	35,055.02	40.85%	0.00%
Sgt. Dutra	38.12%	85,810.92	32,711.64	38.12%	0.00%
Sgt. Langley	36.47%	85,810.92	31,296.20	36.47%	0.00%
Sgt. Peterson	42.43%	85,810.92	36,405.46	42.43%	0.00%

3E-12/7-3/7

Purpose To review Benefit Rates claimed by the Sheriff department in FY 2004-05 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Alan Minato, Fiscal Officer, Sheriff Department
 ✓ Santa Clara County's Actual Salaries Recap Report per individual employee, FY 2004-05

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective total compensations (salaries plus benefits). Therefore, the county understated benefit rates in this fiscal period. The auditors recalculated benefit rates by dividing total annual benefits by total annual salaries of each individual employee.

Conclusion: For conclusion see document # 3E 3/5

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c) / (b)	(e)=(d)-(a)
Lt. Burgess	30.60%	102,203.97	45,155.65	44.18%	13.58%
Sgt. Matuzek	33.00%	88,665.96	43,585.21	49.16%	16.16%
Agt. Atlas	35.00%	95,487.65	51,368.54	53.80%	18.80%
Lt. Calderone	31.30%	108,449.72	49,447.08	45.59%	14.29%
Sgt. Dona	41.90%	88,084.40	51,245.60	58.18%	16.28%
Sgt. Hooper	40.40%	93,442.29	63,359.08	67.81%	27.41%
Lt. Keith	33.80%	104,679.17	53,317.98	50.93%	17.13%
Sgt. Imas	35.10%	88,665.96	48,025.30	54.16%	19.06%
Lt. Lemmon	25.90%	88,640.65	30,999.82	34.97%	9.07%
Sgt. Mathison	38.30%	88,755.78	56,273.22	63.40%	25.10%
Sgt. McIntosh	36.30%	88,236.80	50,314.97	57.02%	20.72%
Sgt. Mitre	39.60%	87,840.73	57,678.03	65.66%	26.06%
Lt. Pugh	34.40%	104,679.16	54,967.66	52.51%	18.11%
Sgt. Rodriguez	33.30%	72,962.47	36,467.32	49.98%	16.68%
Sgt. Scott	31.50%	70,544.49	32,364.38	45.88%	14.38%
Sgt. Staats	38.70%	88,710.87	55,792.68	62.89%	24.19%
Sgt. Waldher	36.90%	94,663.40	55,262.12	58.38%	21.48%
Dep. Holloway	36.70%	75,590.87	43,764.08	57.90%	21.20%

3E-1 4/7-5/7

Purpose To review Benefit Rates claimed by the Sheriff department in FY 2005-06 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Alan Minato, Fiscal Officer, Sheriff Department
 ✓ Santa Clara County's Actual Salaries Recap Report per individual employee, FY 2005-06

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective annual salaries.

Conclusion: For conclusion see document # 3E 3/8

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c) / (b)	(e)=(d)-(a)
Lt. Burgess	2A-2c 48.50%	109,240.00	52,931.00	48.45%	-0.05%
Sgt. Matuzek	53.70%	92,528.00	49,723.00	53.74%	0.04%
Sgt. Peterson	57.70%	96,001.00	55,432.00	57.74%	0.04%
Sgt. Langley	59.90%	92,528.00	55,421.00	59.90%	0.00%
Capt. Angus	51.90%	133,135.00	69,110.00	51.91%	0.01%
Comm. Bacon	48.70%	163,015.00	79,451.00	48.74%	0.04%
Sgt. Dutra	63.10%	92,760.00	58,638.00	63.21%	0.11%
Capt. Hirokawa	49.70%	141,120.00	70,129.00	49.69%	-0.01%
Capt. Laverone	57.90%	120,981.00	70,013.00	57.87%	-0.03%
Capt. Perusina	43.60%	161,505.00	70,427.00	43.61%	0.01%
Capt. Rode	55.90%	124,847.00	69,840.00	55.94%	0.04%
Lt. Schiller	55.20%	113,245.00	62,548.00	55.23%	0.03%
Sgt. Spagnola	62.40%	90,376.00	56,392.00	62.40%	0.00%
Lt. Geary	59.30%	98,153.00	58,176.00	59.27%	-0.03%
Sgt. Imas	59.40%	92,528.00	54,953.00	59.39%	-0.01%
Lt. Pugh	57.80%	112,559.00	65,068.00	57.81%	0.01%

3E-14/7-7/7

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Summary of Benefits Adjustments
 Fiscal Years 2003-04 Through 2005-06
Audit ID # S07-MCC-0033

Purpose: To calculate allowable benefit costs based on adjustments noted to claimed salaries and benefit rates if any.

Source: ANALYSIS OF BENEFITS (BE-V), CLAIM FORMS, ANALYSIS OF SALARIES, ANALYSIS OF benefit Rates 2A-2C

Cost Components	Benefits Claimed	Allowed Benefits	Audit Adjustments	Adjustment 1 Hours-related	Adjustment 2 PHR - related
2003-04					
Admin. Activities	3E-2 2/8 612	\$ 285	\$ (306)	\$ (21)	
Admin. Appeal	-	-	-	-	
Interrogation	5,528	935	(4,512)	(81)	
Adverse Comments	2,847	282	(2,540)	(25)	
Subtotal	\$ 8,987	\$ 1,502	\$ (7,358)	\$ (127)	
2004-05					
Admin. Activities	3E-2 3/8 17,553	\$ 10,706	\$ (5,895)	\$ (952)	
Admin. Appeal	209	-	(209)	-	
Interrogation	3E-2 4/8 2,692	380	(2,278)	(34)	
Adverse Comments	3E-2 5/8 4,067	832	(3,161)	(74)	
Subtotal	\$ 24,521	\$ 11,918	\$ (11,543)	\$ (1,060)	
2005-06					
Admin. Activities	3E-2 6/8 2,117	\$ 542	\$ (1,528)	\$ (47)	
Admin. Appeal	-	-	-	-	
Interrogation	3E-2 6/8-7/8 29,178	5,140	(23,590)	(448)	
Adverse Comments	3E-2 8/8 140	-	(140)	-	
Subtotal	\$ 31,435	\$ 5,682	\$ (25,258)	\$ (495)	
Grandtotal	\$ 64,943	\$ 19,102	(44,159)	Adjustment 1 (1,682)	Adjustment 2
			\$ (45,841)		

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3E-2 2 1/2

3E 8/8 ; 3E 5/8 ; 1A-2

Document # 3E-2 Page 2/8
 Auditor my/jr Date 5/23/07
 Reviewer jd Date 11/26/07

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

Probation Department Data					
Activities	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2003-04

Admin. Activities					
Supervising Probation Officer (9)	\$	49.08	36.00	34.66%	\$ 612.40
Subtotal			<u>36.00</u>		<u>\$ 612</u>
Interrogation					
Jim Tarshis, Group Conselor	\$	49.84	115.00	31.11%	\$ 1,783.10
Cathy Shields, Probation Mgr.		63.03	7.00	28.28%	124.77
Alicia Garcia, Supv. Group Con.		49.84	25.50	31.11%	395.38
Diana Bishop, Supv. Group Con.		49.84	66.00	26.72%	878.94
Rita Loncarich, Probation Mgr.		64.88	15.00	27.98%	272.30
Jim Tarshis, Group Conselor		49.84	126.00	31.11%	1,953.66
Diana Bishop, Supv. Group Con.		49.84	9.00	26.72%	119.86
Subtotal			<u>363.50</u>		<u>\$ 5,528</u>
Adverse Comments					
Cathy Shields, Probation Mgr.	\$	63.03	20.00	28.28%	\$ 356.50
Diana Bishop, Supv. Group Con		49.84	100.00	26.72%	1,331.72
Rita Loncarich, Probation Mgr.		64.88	55.00	27.98%	998.44
Cathy Shields, Probation Mgr.		63.03	9.00	28.28%	160.42
Subtotal			<u>184.00</u>		<u>\$ 2,847</u>
Total			<u>583.50</u>		<u>\$ 8,987</u>

\$ 883.50	\$ 821.88		34.66%	306.22	284.86	(306.18)	(21.36)
<u>\$ 884</u>	<u>\$ 822</u>			<u>\$ 306</u>	<u>\$ 285</u>	<u>\$ (306)</u>	<u>\$ (21)</u>
\$ 797.44	733.76	31.11%	248.08	228.27	(1,535.02)	(19.81)	
-	-	-	-	-	(124.77)	-	
99.68	91.72	31.11%	31.01	28.53	(364.37)	(2.48)	
149.52	137.58	26.72%	39.95	36.76	(838.99)	(3.19)	
129.76	119.38	27.98%	36.31	33.40	(235.99)	(2.90)	
1,993.60	1,834.40	31.11%	620.21	570.68	(1,333.45)	(49.53)	
149.52	137.58	26.72%	39.95	37.00	(79.90)	(2.95)	
<u>\$ 3,320</u>	<u>\$ 3,054</u>		<u>\$ 1,016</u>	<u>\$ 935</u>	<u>\$ (4,512)</u>	<u>\$ (81)</u>	
\$ 378.18	\$ 347.94	28.28%	\$ 106.95	\$ 98.40	\$ (249.55)	\$ (8.55)	
-	-	-	-	-	(1,331.72)	-	
713.68	656.59	27.98%	199.69	183.71	(798.75)	(15.97)	
-	-	28.28%	-	-	(160.42)	-	
<u>\$ 1,092</u>	<u>\$ 1,005</u>		<u>\$ 307</u>	<u>\$ 282</u>	<u>\$ (2,540)</u>	<u>\$ (25)</u>	
<u>\$ 5,296</u>	<u>\$ 4,881</u>		<u>\$ 1,629</u>	<u>\$ 1,502</u>	<u>\$ (7,358)</u>	<u>\$ (127)</u>	

3E-2 1/8

For PSSC, fee 3E

Santa Clara County
 Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Probation Department Data					
Activities	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

FY2004-05

Admin. Activity					
		<u>2A-2b 5/14</u>			
	Shirley Cantu, Acting Chief Prob. Officer	\$ 73.34	2.00	26.20%	\$ 38.43
	Nicholas Cademartori, Interim Chief Prob.	100.97	2.00	19.03%	38.43
	Ann Meta, Acting Chief Prob. Officer	95.50	2.00	23.91%	45.67
	Kathy Duque, Deputy Chief Prob. Officer	72.63	52.00	26.29%	992.91
	Phuong Le, Human Resource Manager	52.52	5.00	30.10%	79.04
	Delores Nnam, Admin. Service Manager	70.47	29.00	26.60%	543.61
	Karen Fletcher, Deputy Chief Prob. Office	66.84	457.00	26.03%	7,951.09
	Kathy Viana, Administrative Assistant	30.57	93.00	39.97%	1,136.35
Training	Karen Fletcher, Deputy Chief Prob. Office	66.84	72.00	26.03%	1,252.69
	John Dahl, Probation Manager	65.79	24.00	26.20%	413.69
	Bret Fidler, Supv. Group Counselor	51.16	24.00	29.33%	360.13
	Ned Putt, Supv. Probation Officer	56.96	24.00	27.90%	381.40
Update Pobar	Karen Fletcher, Deputy Chief Prob. Office	66.84	153.00	26.03%	2,661.96
Training	Probation Officer (12)	45.37	48.00	32.56%	709.08
	Supervising Probation Officer (13)	65.14	52.00	28.00%	948.44
Subtotal			<u>1,039.00</u>		<u>\$ 17,553</u>
Admin. Appeal					
		<u>2A-2b 6/14</u>			
	Robert DeJesus, Probation Manager	\$ 62.08	12.50	26.90%	\$ 208.74
Subtotal			<u>12.50</u>		<u>\$ 209</u>

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only Ben. Rate	Salaries w/ Adjusted PHR and Hours times Ben. Rate	Audit Adjustment Finding 1	Audit Adjustment Finding 2
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY2004-05

Admin. Activity						
		<u>3E-2 3/8</u>		<u>3E-2 9/3</u>		
\$ 146.68	\$ 134.72	26.20%	\$ 38.43	\$ 35.30	\$ -	\$ (3.13)
201.94	185.50	19.03%	38.43	35.30	-	(3.13)
191.00	175.44	23.91%	45.67	41.95	-	(3.72)
3,776.76	3,469.44	26.29%	992.91	912.12	-	(80.79)
262.60	241.20	30.10%	79.04	72.60	-	(6.44)
2,043.63	1,877.17	26.60%	543.61	499.33	-	(44.28)
25,131.84	23,086.40	26.02%	6,541.82	6,007.08	(1,409.27)	(534.74)
2,843.01	2,611.44	39.97%	1,136.35	1,043.79	-	(92.56)
3,208.32	2,947.20	26.03%	835.13	767.16	(417.56)	(68)
789.48	725.16	26.20%	206.84	189.99	(206.84)	(17)
613.92	564.00	29.33%	180.06	165.42	(180.06)	(15)
683.52	627.84	27.90%	190.70	175.17	(190.70)	(15.53)
-	-	-	-	-	(2,661.96)	-
1,088.88	1,000.08	32.56%	354.54	325.63	(354.54)	(28.91)
1,693.64	1,555.84	28.00%	474.22	435.64	(474.22)	(38.58)
\$ 42,675	\$ 39,201		\$ 11,658	\$ 10,706	\$ (5,895)	\$ (952)
Admin. Appeal						
\$ -	-	-	-	-	(208.74)	-
\$ -	\$ -		\$ -	\$ -	\$ (209)	\$ -

3E-2 1/8

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

Probation Department Data					
Activities	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

FY2004-05

Interrogation					
			<u>2A-2B 9/14-10/14</u>		
Robert DeJesus, Probation Manager	\$ 62.08	9.00	26.90%	\$ 150.30	
Annette Van Unen AA	30.32	20.50	40.17%	249.68	
Bret Fidler SGC	51.16	85.00	29.33%	1,275.44	
Bruce Handry SPO	56.96	2.50	27.90%	39.73	
Dave Perez SPO	56.96	4.00	27.90%	63.57	
Gene Ginn DPO	50.18	1.50	29.61%	22.29	
Jill Ornellas SPO	57.11	1.50	27.87%	23.87	
John Dahl PM	65.79	1.50	26.20%	25.86	
Karen Fletcher PM	66.84	3.00	26.03%	52.20	
Linda Nguyen SPO	56.96	1.50	27.90%	23.84	
Lucy Trevino DPO	36.55	1.50	34.98%	19.18	
Mary Ryan DPO	50.32	1.50	29.57%	22.32	
Ned Patt SPO	56.96	35.50	27.90%	564.16	
Richard DeJesus DPO	44.62	1.50	29.01%	19.42	
Subject DPO	30.88	2.00	38.60%	23.84	
Subject SPO	46.98	2.00	30.59%	28.74	
Subject DPO	30.88	1.50	38.60%	17.88	
Subject PCII	40.57	1.50	33.02%	20.09	
Subject PCII	40.57	0.50	33.02%	6.70	
Boliavone Kegarice DPO	50.18	1.50	29.61%	22.29	
Zulema Vasquez DPO	44.62	1.50	31.40%	21.02	
Subtotal		180.50		\$ 2,692	

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate (g)	Salaries w/ Adjusted Hours only times Ben.Rate (h)=(e)*(c)	Salaries w/ Adjusted PHR and Hours times Ben.Rate (i)=(f)*(g)	Audit Adjustment Finding 1 Hours-Related (j)=(h)-(d)	Audit Adjustment Finding 2 PHR Related (k)=(i)-(h)
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

			<u>3E-2 4/8</u>			
			<u>3E-2G 2/13</u>			
\$ -	\$ -	26.90%	\$ -	\$ -	\$ (150.30)	\$ -
818.56	752.00	29.33%	240.08	220.56	(1,035.36)	(19.52)
28.48	26.16	27.90%	7.95	7.30	(31.78)	(0.65)
-	-	-	-	-	(63.57)	-
25.09	23.05	29.61%	7.43	6.83	(14.86)	(0.60)
28.56	26.23	27.87%	7.96	7.31	(15.92)	(0.65)
32.90	30.22	26.20%	8.62	7.92	(17)	(0.70)
-	-	-	-	-	(52.20)	-
-	-	-	-	-	(23.84)	-
18.28	16.79	34.98%	6.39	5.87	(12.79)	(0.52)
25.00	23.11	29.57%	7.39	6.83	(14.93)	(0.56)
313.28	287.76	27.90%	87.41	80.29	(476.76)	(7.12)
22.31	20.50	29.01%	6.47	5.95	(12.94)	(0.53)
-	-	-	-	-	(23.84)	-
46.98	43.16	30.59%	14.37	13.20	(14.37)	(1.17)
15.44	14.19	38.60%	5.96	5.48	(11.92)	(0.48)
20.29	18.63	33.02%	6.70	6.15	(13.40)	(0.55)
-	-	-	-	-	(6.70)	-
-	-	-	-	-	(22.29)	-
22.31	20.50	31.40%	7.01	6.44	(14.01)	(0.57)
\$ 1,417	\$ 1,302		\$ 414	\$ 380	\$ (2,278)	\$ (34)

3E-2 1/8

For PSSS, see 3E

Document # 3E-2 Page 6/8
 Auditor MV/SR Date 5/23/07
 Reviewer W Date 11/2/07

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Probation Department Data					
Activities	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

FY 2005-06

Admin. Activities					
Update Procedures	John Dahl, Probation Manager	\$ 67.58	2.00	24.03%	\$ 32.48
Provide Train.	John Dahl, Probation Manager	67.58	1.00	24.03%	16.24
Maintain cases	John Dahl, Probation Manager	67.58	8.50	24.03%	138.04
	Deputy Probation Officer X5X	46.91	53.00	34.51%	858.00
	Supervising Probation Officer X44	60.05	58.00	30.78%	1,072.04
Subtotal			122.50		\$ 2,117

Interrogation					
	Andrew Flores, DPO	\$ 44.44	1.00	34.34%	\$ 15.26
	Annette Vanunen, DPO	33.57	158.05	45.45%	2,411.46
	Anthony Enweluzor, DPO	42.32	1.00	36.06%	15.26
	Brad Kinne, DPO	58.40	1.00	23.13%	13.51
	Bret Fidler, DPO	52.45	682.50	29.09%	10,413.38
	Bruce Hendry, DPO	58.40	1.00	30.03%	17.54
	Burga Santiago, DPO	58.86	6.00	29.80%	105.24
	Delores Nnam, DPO	73.04	27.00	24.01%	473.50
	Diano Teves, DPO	28.48	4.00	61.58%	70.15
	Emi Chu, DPO	40.15	266.00	43.68%	4,664.98
	George Burnette, DPO	50.45	1.00	32.19%	16.24
	Jahari Lomak, DPO	44.44	1.00	36.54%	16.24
	Joel Humble, DPO	39.45	1.00	41.17%	16.24
	John Dahl, DPO	67.58	91.00	24.03%	1,477.79
	Kathy Duque, DPO	78.32	39.00	20.74%	633.50
	Marvin Kusumoto, DPO	36.23	1.00	38.41%	13.92

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben. Rate	Salaries w/ Adjusted PHR and Hours times Ben. Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2005-06

\$ 135.16	124.44	24.03%	\$ 32.48	\$ 29.90	\$ -	\$ (2.58)
67.58	62.22	24.03%	16.24	14.95	-	(1.29)
574.43	528.87	24.03%	138.04	127.09	-	(10.95)
844.38	777.42	34.51%	291.40	268.29	(566.60)	(23.11)
360.30	331.74	30.78%	110.90	102.11	(961.14)	(8.79)
\$ 1,982	\$ 1,825		\$ 589	\$ 542	\$ (1,528)	\$ (47)

\$ -	\$ -		\$ -	\$ -	\$ (15.26)	\$ -
-	-		-	-	(2,411.46)	-
-	-		-	-	(15.26)	-
-	-		-	-	(13.51)	-
4,563.15	4,201.23	29.09%	1,327.42	1,222.14	(9,085.96)	(105.28)
-	-		-	-	(17.54)	-
-	-		-	-	(105.24)	-
1,972.08	1,815.75	24.01%	473.50	435.96	-	(37.53)
113.92	104.92	61.58%	70.15	64.61	-	(5.54)
1,646.15	1,515.77	43.68%	719.04	662.09	(3,945.94)	(56.95)
-	-		-	-	(16.24)	-
-	-		-	-	(16.24)	-
-	-		-	-	(16.24)	-
3,852.06	3,546.54	24.03%	925.65	852.23	(552.14)	(73.42)
2,976.16	2,739.80	20.74%	617.26	568.23	(16.24)	(49.02)
-	-		-	-	(13.92)	-

3E-2 1/8

For PSSC, see 3E

Document # 3E-2 Page 7/8
 Auditor RNV/3A Date 5/23/07
 Reviewer yd Date 11/16/07

Santa Clara County
 Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Probation Department Data					
Activities	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate (g)	Salaries w/ Adjusted Hours only times Ben.Rate (h)=(e)*(c)	Salaries w/ Adjusted PHR and Hours times Ben.Rate (i)=(f)*(g)	Audit Adjustment Finding 1 Hours-Related (j)=(h)-(d)	Audit Adjustment Finding 2 PHR Related (k)=(i)-(h)
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2005-06	(a)	(b)	(c)	(d)=(a*b*c)
	2A 2c. 9/10 - 13/16			
Mauricio Rodriguez, DPO	29.24	1.00	47.59%	13.92
Michelle Fernandez, DPO	51.45	2.00	24.22%	24.92
Mike Green, DPO	67.81	3.00	20.52%	41.74
Mike Simms, DPO	67.34	6.50	18.51%	81.02
Ned Putt, DPO	58.40	412.00	23.83%	5,733.69
Nick Birchard, DPO	60.13	26.00	23.14%	361.77
Phuong Le, DPO	58.61	22.50	30.00%	395.62
Rita Loncarich, DPO	67.58	3.00	26.00%	52.71
Sal Heredia, DPO	57.24	3.00	30.70%	52.72
Steve Lived, DPO	58.40	1.00	30.10%	17.58
Steven Majores, DPO	37.31	0.50	47.10%	8.79
Vanessa Fajardo, DPO	27.34	1.00	45.60%	12.47
Jon Vickroy, DPO III	73.04	8.00	24.00%	140.24
DPO	46.91	11.00	34.51%	178.08
DPO I	46.91	2.00	34.51%	32.38
DPO II	46.91	2.50	34.51%	40.50
DPO III	46.91	13.00	34.51%	210.45
GCI	36.23	31.50	38.41%	438.40
GCII	39.45	8.50	41.17%	138.10
PC	37.31	1.00	47.10%	18.00
PCI	37.31	1.00	47.10%	17.57
PCII	37.31	2.00	47.10%	35.10
SGC	44.44	41.00	36.54%	666.00
SPO	60.05	5.00	30.78%	92.00
Subtotal	1,889.55			\$ 29,178

	3A-2 7/8		3E-2 9 3/3			
					(13.92)	-
					(24.92)	-
203.43	187.29	20.52%	41.74	38.43	-	(3.31)
134.68	124.00	18.51%	24.93	22.95	(56.09)	(1.98)
1,927.20	1,774.41	23.83%	459.25	422.84	(5,274.44)	(36.41)
1,683.64	1,550.36	23.14%	389.59	358.75	27.83	(30.84)
87.92	80.94	30.00%	26.37	24.28	(369.24)	(2.09)
202.74	186.66	26.00%	52.71	48.53	-	(4.18)
-	-	-	-	-	(52.72)	-
-	-	-	-	-	(17.58)	-
-	-	-	-	-	(8.79)	-
-	-	-	-	-	(12.47)	-
-	-	-	-	-	(140.24)	-
-	-	-	-	-	(178.08)	-
23.46	21.60	34.51%	8.09	7.45	(24.29)	(0.64)
23.46	21.60	34.51%	8.09	7.45	(32.41)	(0.64)
117.28	107.98	34.51%	40.47	37.26	(169.98)	(3.21)
344.19	299.54	38.41%	132.20	115.05	(306.20)	(17.15)
138.08	128.35	41.17%	56.85	52.84	(81.25)	(4.01)
-	-	-	-	-	(18.00)	-
37.31	34.95	47.10%	17.57	16.46	-	(1.11)
-	-	-	-	-	(35.10)	-
488.84	451.44	36.54%	178.62	164.96	(487.38)	(13.67)
60.05	55.29	30.78%	18.48	17.02	(73.52)	(1.47)
\$ 20,596	\$ 18,948		\$ 5,588	\$ 5,140	\$ (23,590)	\$ (448)

3E-2 1/8

For PSSC, see 3E

Document # 3E-2 Page 8/8
 Auditor mv/jr Date 5/23/07
 Reviewer jd Date 11/26/07

Santa Clara County
 Probation Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

Probation Department Data					
Activities	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2005-06

Adverse Comment	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
Jon Vickroy, DPO III	\$ 73.04	8.00	24.00%	\$ 140.24
Subtotal		<u>8.00</u>		<u>\$ 140</u>
Total		<u>2,020.05</u>		<u>\$ 31,435</u>

Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)
\$ -	\$ -		\$ -	\$ -	\$ (140.24)	\$ -
\$ -	\$ -		\$ -	\$ -	\$ (140)	\$ -
<u>\$ 22,578</u>	<u>\$ 20,773</u>		<u>\$ 6,177</u>	<u>\$ 5,682</u>	<u>\$ (25,258)</u>	<u>\$ (495)</u>

2A-2c. 15/16

3D-2 8/8

3E-2 1/8

Purpose To review Benefit Rates claimed by Probation department in FY 2003-04 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jesse Fuentes, Departmental Fiscal Officer, Probation Department
 ✓ Probation Department's People Soft individual payroll reports per fiscal period
 ✓ Department's calculations on employees productive hourly and benefit rates

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective annual salaries.

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c)/(b)	(e)=(d)-(a)
Sup. Prob. Officers	34.66%	77,454.00	26,846	34.66%	0.00%
Jim Tarshis	31.11%	77,789.00	24,203.00	31.11%	0.00%
Cathy Shields	28.28%	98,364.00	27,821.00	28.28%	0.00%
Alicia Garcia	31.11%	77,789.00	24,203.00	31.11%	0.00%
Diana Bishop	26.72%	77,789.00	20,789.00	26.72%	0.00%
Rita Loncarich	27.98%	101,255.00	28,330.00	27.98%	0.00%

2A-29

3E-2 2/8

Purpose To review Benefit Rates claimed by Probation department in FY 2004-05 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jesse Fuentes, Departmental Fiscal Officer, Probation Department
 Probation Department's People Soft individual payroll reports per fiscal period
 Department's calculations on employees productive hourly and benefit rates

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective annual salaries.

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c) / (b)	(e)=(d)-(a)
Bret Fidler, SGC	29.33%	79,050.00	23,189.00	29.33%	0.00%
Bruce Handry, SPO	27.90%	88,003.00	24,552.00	27.90%	0.00%
Gene Ginn, DPO	29.61%	77,533.00	22,958.00	29.61%	0.00%
Jill Ornellas, SPO	27.87%	88,234.00	24,587.00	27.87%	0.00%
John Dahl, PM	26.20%	101,650.00	26,629.00	26.20%	0.00%
Lucy Trevino, DPO	34.98%	56,473.00	19,753.00	34.98%	0.00%
Mary Ryan, DPO	29.57%	77,742.00	22,990.00	29.57%	0.00%
Ned Putt, SPO	27.90%	88,003.00	24,552.00	27.90%	0.00%
Richard De Jesus, DPO	29.01%	68,940.00	20,001.00	29.01%	0.00%
Zulema Vasquez, DPO	31.40%	68,940.00	21,650.00	31.40%	0.00%
Robert DeJesus, Prob M	26.90%	95,921.00	25,757.00	26.85%	-0.05%
Cleveland Price, PM	26.60%	98,038.00	26,080.00	26.60%	0.00%
Delores Nham, ASM	26.60%	108,880.00	28,961.00	26.60%	0.00%
Karen Fletcher, PM	26.03%	103,270.00	26,876.00	26.02%	-0.01%
Kathy Duque, DCPO	26.29%	112,216.00	29,507.00	26.29%	0.00%
Michael Simms, PM	26.88%	95,682.00	25,721.00	26.88%	0.00%
Phuong Le, HRM	30.10%	81,141.00	24,425.00	30.10%	0.00%
Starr Coatney, AMA	36.98%	54,090.00	20,001.00	36.98%	0.00%
Kathy Viana	39.97%	47,235.00	18,880.00	39.97%	0.00%
Shirley Cantu	26.20%	113,304.00	29,685.00	26.20%	0.00%
Probation Officer (12)	32.56%	70,089.00	22,821.00	32.56%	0.00%
Sup. Prob. Officer (13)	28.00%	100,647.00	28,183.00	28.00%	0.00%
Subject, SPO	30.59%	72,588.00	22,206.00	30.59%	0.00%
Subject, DPO	38.60%	47,713.00	18,419.00	38.60%	0.00%
Subject, PCII	33.02%	62,679.00	20,697.00	33.02%	0.00%

2A-2b

3E-2-3/3-5/8

Purpose To review Benefit Rates claimed by Probation department in FY 2005-06 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jesse Fuentes, Departmental Fiscal Officer, Probation Department
 ✓ Probation Department's People Soft individual payroll reports per fiscal period
 ✓ Department's calculations on employees productive hourly and benefit rates

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective annual salaries.

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c) / (b)	(e)=(d)-(a)
Dep. Prob. Officer	34.51%	72,437.00	24,995.00	34.51%	0.00%
Sup. Prob. Officer	30.78%	92,721.00	28,536.00	30.78%	0.00%
Bret Fidler, DPO	29.09%	80,987.00	23,559.00	29.09%	0.00%
Delores Nnam, DPO	24.01%	112,776.00	27,081.00	24.01%	0.00%
Diano Teves, DPO	61.58%	43,980.00	27,081.00	61.58%	0.00%
Emi Chu, DPO	43.68%	61,994.00	27,081.00	43.68%	0.00%
John Dahl, DPO	24.03%	104,349.00	25,074.00	24.03%	0.00%
Kathy Duque, DPO	20.74%	120,919.00	25,074.00	20.74%	0.00%
Mike Green, DPO	20.52%	104,701.00	21,488.00	20.52%	0.00%
Mike Simms, DPO	18.51%	103,976.00	19,246.00	18.51%	0.00%
Ned Putt, DPO	23.83%	90,167.00	21,488.00	23.83%	0.00%
Nick Birchard, DPO	23.14%	92,848.00	21,488.00	23.14%	0.00%
Phuong Le, DPO	30.00%	90,498.00	27,135.00	29.98%	-0.02%
Rita Loncarich, DPO	26.00%	104,349.00	27,135.00	26.00%	0.00%
DPO I	34.51%	72,437.00	24,995.00	34.51%	0.00%
DPO II	34.51%	72,437.00	24,995.00	34.51%	0.00%
DPO III	34.51%	72,437.00	24,995.00	34.51%	0.00%
GCI	38.41%	52,873.60	20,309.00	38.41%	0.00%
GCI	41.17%	61,493.12	25,317.00	41.17%	0.00%
PC I	47.10%	58,604.00	27,602.00	47.10%	0.00%
SGC	36.54%	68,818.00	25,146.00	36.54%	0.00%
SPO	30.78%	92,721.00	28,539.00	30.78%	0.00%

2A-2C

3E-2 4/8 - 3/3

Santa Clara County
District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Summary of Benefits Adjustments
 Fiscal Years 2003-04 Through 2005-06
 Audit ID # S07-MCC-0033

Purpose: To calculate allowable benefit costs based on adjustments noted to claimed salaries and benefit rates.

Source: CLAIM FORMS (2A-2C), ANALYSIS OF BENEFITS, ANALYSIS OF SALARIES, (3D) ANALYSIS OF BENEFIT RATES 3E-1G

Cost Components	Benefits Claimed	Allowed Benefits	Audit Adjustments
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2003-04			Adjustment 1		Adjustment 2	
			Hours-related	PHR - related	Hours-related	PHR - related
Admin. Activities	3E-32/5 4,382	\$ 4,061 3,689	\$ (372)	\$ (321)		
Admin. Appeal	-	-	-	-		
Interrogation	1 2,997	188	(2,793)	(16)		
Adverse Comments	3E-33/5 266	59	(202)	(5)		
Subtotal	\$ 7,645	\$ 4,208 3,936	\$ 2,143 (3,367)	\$ (342)		

2004-05			Adjustment 1		Adjustment 2		Adjustment 3	
			Hours-related	PHR - related	PHR - related	Ben. Rate		
Admin. Activities	3E-34/5 22	\$ 28	\$ -	\$ (2)	\$ 8			
Admin. Appeal	-	-	-	-				
Interrogation	1 732	539	(347)	(31)	185			
Adverse Comments	-	-	-	-				
Subtotal	\$ 754	\$ 567	\$ (347)	\$ (33)	\$ 193			

2005-06			Adjustment 1		Adjustment 2	
			Hours-related	PHR - related	Hours-related	PHR - related
Admin. Activities	3E-35/5 58	\$ 64	\$ -	\$ 6		
Admin. Appeal	-	-	-	-		
Interrogation	1 1,321	67	(1,255)	1		
Adverse Comments	-	-	-	-		
Subtotal	\$ 1,379	\$ 131	\$ (1,255)	\$ 7		

Total	\$ 9,778	\$ 5,006 4,634	\$ 597 (4,969)	(368)	193	Adjustment 1
						Adjustment 2
						Adjustment 3
			\$ (5,144)	(4,777)		

3E-32/2

3E 8/8 ; 3E 4/8-7/8 ; 10-2

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

District Attorney Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1	Audit Adjustment Finding 2
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2003-04

Admin. Activities					
W. Vidmar, Cr	\$ 67.93	15.00	25.52%	\$ 260.04	
B. Fraccoli, Cr	64.91	15.00	34.05%	331.53	
M. Avila, Crir	57.54	15.00	35.79%	308.90	
G. Cunningham	64.91	15.00	34.95%	340.29	
B. Headrick, C	64.91	15.00	27.74%	270.09	
Training					
J. Perez, Crimi	54.98	24.00	38.02%	501.68	
S. Reinhardt, C	57.54	24.00	35.83%	494.80	
W. Vidmar, Cr	67.93	24.00	25.52%	416.06	
M. Avila, Crir	57.54	24.00	35.79%	494.25	
L. Evans, Crir	57.54	24.00	26.97%	372.44	
J. McMullen, C	56.26	24.00	36.14%	487.98	
Update cases					
W. Vidmar, Cr	67.93	6.00	25.53%	104.03	
Subtotal		225.00		\$ 4,382	
Interrogation					
G. Cunningham	\$ 64.91	5.50	34.95%	\$ 124.77	
B. Fraccoli, Cr	64.91	3.50	34.05%	77.36	
M. Lane, Crim	64.91	8.00	32.71%	169.86	
K. Smith, Crir	64.91	10.50	29.74%	202.69	
P. Campbell, C	64.91	1.00	29.18%	18.94	
B. Fraccoli, Cr	64.91	30.50	34.05%	674.11	
K. Smith, Crir	64.91	19.50	29.74%	376.43	
P. Campbell, C	64.91	3.50	29.18%	66.29	
G. Cunningham	64.91	38.00	34.95%	862.07	
M. Lane, Crim	64.91	20.00	32.71%	424.64	
Subtotal		140.00		\$ 2,997	

3E-3 2/5						
\$ 1,018.95	\$ 937.50	25.52%	\$ 260.04	\$ 239.25	\$ -	\$ (20.79)
973.65	895.80	34.05%	331.53	305.02	-	(26.51)
863.10	794.10	35.79%	308.90	284.21	-	(24.70)
973.65	895.80	34.95%	340.29	313.08	-	(27.21)
973.65	895.80	27.74%	270.09	248.49	-	(21.60)
1,319.52	1,214.16	38.02%	501.68	461.62	-	(40.06)
1,380.96	1,270.56	35.83%	494.80	455.24	-	(39.56)
1,630.32	1,500.00	25.52%	416.06	382.80	-	(33.26)
1,380.96	1,270.56	35.79%	494.25	454.73	-	(39.51)
\$ 1,386.96	1,250.96	26.97%	372.44	372.44	(372.44)	-
1,350.24	1,242.24	36.14%	487.98	448.95	-	(39.03)
407.58	375.00	25.53%	104.03	95.72	-	(8.32)
\$ 13,637	\$ 12,673		\$ 4,382	\$ 4,061	\$ (321)	\$ (321)
\$ 12,273	\$ 11,292		\$ 4,040	\$ 3,689	\$ (351)	\$ (321)
2A-2A 4/13						
\$ -	\$ -		\$ -	\$ -	\$ (124.77)	\$ -
-	-		-	-	(77.36)	-
-	-		-	-	(169.86)	-
-	-		-	-	(202.69)	-
-	-		-	-	(18.94)	-
389.46	358.32	34.05%	132.61	122.01	(541.50)	(10.60)
64.91	60.00	29.74%	19.30	17.84	(357.13)	(1.46)
32.46	29.86	29.18%	9.47	8.71	(56.82)	(0.76)
-	-		-	-	(862.07)	-
129.82	119.44	32.71%	42.46	39.07	(382.18)	(3.40)
\$ 617	\$ 568		\$ 204	\$ 188	\$ (2,793)	\$ (16)

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2003-04
 Audit ID # S07-MCC-0033

District Attorney Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis						
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1	Audit Adjustment Finding 2
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)

FY 2003-04

Adverse Comments

W. Vidmar, Cr	\$ 67.93	3.00	25.52%	\$ 52.01		
B. Fraccoli, Cr	64.91	3.00	34.05%	66.31		
P. Campbell, C	64.91	3.00	29.18%	56.82		
G. Cunninghar	64.91	4.00	34.95%	90.74		
Subtotal		13.00		\$ 266		
Total		378.00		\$ 7,645		

\$ -	\$ -		\$ -	\$ -	\$ (52.01)	\$ -
-	-		-	-	(66.31)	-
64.91	59.72	29.18%	18.94	17.43	(37.88)	(1.51)
129.82	119.44	34.95%	45.37	41.74	(45.37)	(3.63)
\$ 195	\$ 179		\$ 64	\$ 59	\$ (202)	\$ (5)
\$ 13,085	\$ 12,039		\$ 4,278	\$ 3,936	\$ (3,367)	\$ (342)

3E-3/5

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2004-05
 Audit ID # S07-MCC-0033

District Attorney Department Data				
Activity Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
	(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis										
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only Ben. Rate	Salaries w/ Adjusted PHR and Hours Ben. Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related	Benefit Rate Difference	Audit Adjustment Finding 3 Ben. Rate Related	Final Allowable Benefits after all adjustments	Total Audit Adjustments 1-3
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(c)	(j)=(h)-(d)	(k)=(i)-(h)	(l)=(g)-(c)	(m)=(l)*(f)	(n)=(i)+(m)	(o)=j+k+m

FY 2004-05

Admin. Activities				
M. Vidmar	\$ 74.06	1.00	29.07%	\$ 21.53
Subtotal		<u>1.00</u>		<u>\$ 22</u>
Interrogation				
M. Lane	\$ 70.19	11.25	32.28%	\$ 254.89
R. Pifferini	58.30	23.75	34.49%	477.56
Subtotal		<u>35.00</u>		<u>\$ 732</u>
Total		<u>36.00</u>		<u>\$ 754</u>

74.06	68.02	40.99%	21.53	19.77	-	(1.76)	11.92%	8.11	27.88	6.35
<u>\$ 74</u>	<u>\$ 68</u>		<u>\$ 22</u>	<u>\$ 20</u>	<u>\$ -</u>	<u>\$ (2)</u>		<u>\$ 8</u>	<u>\$ 28</u>	<u>\$ 6</u>
\$ 105	\$ 96.72	47.67%	\$ 33.89	\$ 31.22	\$ (221.00)	\$ (2.67)	15.39%	\$ 14.89	\$ 46.11	\$ (208.79)
1020.25	937.13	52.66%	351.48	323.22	(126.07)	(28.27)	18.17%	170.28	493	15.94
<u>\$ 1,125</u>	<u>\$ 1,034</u>		<u>\$ 385</u>	<u>\$ 354</u>	<u>\$ (347)</u>	<u>\$ (31)</u>		<u>\$ 185</u>	<u>\$ 539</u>	<u>\$ (193)</u>
<u>\$ 1,199</u>	<u>\$ 1,102</u>		<u>\$ 407</u>	<u>\$ 374</u>	<u>\$ (347)</u>	<u>\$ (33)</u>		<u>\$ 193</u>	<u>\$ 567</u>	<u>\$ (187)</u>

3E-3/5

Santa Clara County
 District Attorney Department
 Legislatively Mandated Peace Officers Procedural Bill Of Rights Program
 Analysis Of Benefits
 Fiscal Year 2005-06
 Audit ID # S07-MCC-0033

District Attorney Department Data					
Activity	Classification	PHR Claimed	Hours Claimed	Benefit Rate Claimed	Amount Claimed
		(a)	(b)	(c)	(d)=(a*b*c)

Auditors' Analysis							
Allowed Salaries W/ Claimed PHR (after Adj 1)	Allowed Salaries W/ Allowed PHR (after Adj 2)	Allowed Benefit Rate	Salaries w/ Adjusted Hours only times Ben.Rate	Salaries w/ Adjusted PHR and Hours times Ben.Rate	Audit Adjustment Finding 1 Hours-Related	Audit Adjustment Finding 2 PHR Related	
(e)	(f)	(g)	(h)=(e)*(c)	(i)=(f)*(g)	(j)=(h)-(d)	(k)=(i)-(h)	

FY 2005-06

Admin. Activities					
Mike Vidmar, Cr	\$	64.13	2.00	45.00%	\$ 57.72
Subtotal			2.00		\$ 58
Interrogation					
Maurice Lane, Li	\$	73.32	24.75	52.40%	\$ 950.89
Pat Alvarez, Crin		64.13	9.25	50.20%	297.79
Mike Vidmar, Cr		64.13	2.50	45.00%	72.15
Subtotal			36.50		\$ 1,321
Total			38.50		\$ 1,379

128.26	142.40	45.00%	57.72	64.08	-	6.36	
\$ 128	\$ 142		\$ 58	\$ 64	\$ -	\$ 6	
36.66	34.00	52.40%	19.21	17.82	(931.68)	(1.39)	
64.13	65.14	50.20%	32.19	32.70	(265.59)	0.51	
32.07	35.60	45.00%	14.43	16.02	(57.71)	1.59	
\$ 133	\$ 135		\$ 66	\$ 67	\$ (1,255)	\$ 1	
\$ 261	\$ 277		\$ 124	\$ 131	\$ (1,255)	\$ 7	

3E-3/5

Purpose To review Benefit Rates claimed by the District Attorney department in FY 2003-04 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jean Dobroff, Accountant, District Attorney department
 ✓ Discussion with Jennifer Yu, Senior Accountant, District Attorney department
 ✓ District Attorney Department's People Soft individual payroll reports per fiscal period

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective annual salaries.

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c)/(b)	(e)=(d)-(a)
W. Vidmar, Crim. Inves	^{2A-29} 25.52%	106,018.00	27,040.00	25.51%	-0.01%
B. Fraccoli, Crim. Invest	34.05%	101,306.00	34,502.00	34.06%	0.01%
M. Avila, Crim. Investig	35.79%	89,802.00	32,136.00	35.79%	0.00%
G. Cunningham, Crim. I	34.95%	101,306.00	35,412.00	34.96%	0.01%
B. Headrick, Crim. Inves	27.74%	101,306.00	28,106.00	27.74%	0.00%
J. Perez, Crim. Investig	38.02%	85,811.00	32,630.00	38.03%	0.01%
S. Reinhardt, Crim. Inve	35.83%	89,802.00	32,162.00	35.81%	-0.02%
L. Evans, Crim. Investig	26.97%	89,802.00	24,206.00	26.95%	-0.02%
J. McMullen, Crim. Inves	36.14%	87,807.00	31,746.00	36.15%	0.01%
M. Lane, Crim. Investig	32.71%	101,306.00	33,150.00	32.72%	0.01%
K. Smith, Crim. Investig	29.74%	101,306.00	30,134.00	29.75%	0.01%
P. Campbell, Crim. Inve	29.18%	101,306.00	29,562.00	29.18%	0.00%

Purpose To review Benefit Rates claimed by the District Attorney department in FY 2004-05 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jean Dobroff, Accountant, District Attorney department
 Discussion with Jennifer Yu, Senior Accountant, District Attorney department
 ✓ District Attorney Department's People Soft individual payroll reports per fiscal period

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective total compensations (salaries plus benefits). Therefore, the county understated benefit rates in this fiscal period. The auditors recalculated benefit rates by dividing total annual benefits by total annual salaries of each individual employee.

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c) / (b)	(e)=(d)-(a)
M. Vidmar, Assist. Chie	29.07% ²⁴⁻²⁶	114,417.00 ✓	46,900.00 ✓	40.99%	11.92%
M. Lane, Lieutenant	32.28%	108,450.00	51,701.00	47.67%	15.39%
R. Pifferini, Deputy Chi	34.49%	90,074.00	47,431.00	52.66%	18.17%

Purpose To review Benefit Rates claimed by the District Attorney department in FY 2005-06 to ensure that they are accurately computed.

Source Discussion with Ram Venkatesan, SB-90 Coordinator, Santa Clara County
 Discussion with Jean Dobroff, Accountant, District Attorney department
 Discussion with Jennifer Yu, Senior Accountant, District Attorney department
 ✓ District Attorney Department's People Soft individual payroll reports per fiscal period

Analysis: For this fiscal period, the county calculated benefit rates for individual employees by dividing their annual benefits amounts by their respective annual salaries.

Employee Classification	Ben Rate Claimed	Total Annual Salary	Total Annual Benefits	Allowed Benefit Rate	Audit Adjustments
	(a)	(b)	(c)	(d)=(c) / (b)	(e)=(d)-(a)
M. Vidmar, Crim. Invest	<u>2A-2c</u> 45.00%	119,401.00 ✓	53,710.00 ✓	44.98%	-0.02%
M. Lane, Lieutenant	52.40%	113,201.00	59,313.00	52.40%	0.00%
P. Alvarez, Crim. Investi	50.20%	109,240.00	54,808.00	50.17%	-0.03%

Tab 5

Document # 213-2 Page 1/3
Auditor MV Date 3/27/07
Reviewer J Date 1/15/07



JOHN CHIANG
California State Controller

March 27, 2007

John V. Guthrie, Director of Finance
Santa Clara County
70 West Hedding Street
East Wing, 2nd Floor
San Jose, CA 95110

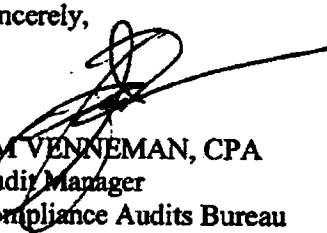
Dear Mr. Guthrie:

This letter confirms that the State Controller's Office has scheduled an audit of Santa Clara County's legislatively mandated Peace Officers Procedural Bill of Rights Program cost claims filed for fiscal year (FY) 2003-04, FY 2004-05, and FY 2005-06. *Government Code* Sections 12410, 17558.5, and 17561 provide the authority for this audit. The entrance conference is scheduled for Monday, April 9, 2007, at 10:30 a.m. Audit fieldwork will begin after the entrance conference.

Please furnish working accommodations for and provide the necessary records (see the Attachment) to the audit staff.

If you have any questions, please call me at (916) 322-9887.

Sincerely,


JIM VENNEMAN, CPA
Audit Manager
Compliance Audits Bureau
Division of Audits

JV/vb

Attachment

6048

For PSSC, See Document # N/A

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 300 Capitol Mall, Suite 518, Sacramento, CA 95814 (916) 324-8907
LOS ANGELES 600 Corporate Pointe, Suite 1000, Culver City, CA 90230 (310) 342-5656

John V. Guthrie

-2-

Document # 26-2 Page 2/3
Auditor MV Date 3/27/07
Reviewer March 27, 2007
↓ 11/16/07

cc: Ram Venkatesan
SB 90 Coordinator
Santa Clara County
Jim L. Spanò, Chief
Compliance Audits Bureau
Division of Audits, State Controller's Office
Ginny Brummels, Manager
Division of Accounting and Reporting
State Controller's Office
Masha Vorobyova, Auditor-in-Charge
Division of Audits, State Controller's Office
Jack Rahmey, Auditor
Division of Audits, State Controller's Office

For PSSC, See Document # N/A

Document # 26-2 Page 3/3
Auditor √MV Date 3/27/07
Reviewer W Date 4/10/07

ATTACHMENT

**Santa Clara County
Records Request for Mandated Cost Program
Peace Officers Procedural Bill of Rights Program
FY 2003-04, FY 2004-05, and FY 2005-06**

1. Copies of claims filed for the mandated cost program.
2. Organization charts for the Sheriff, District Attorney, and Probation departments effective during the audit period, showing employee names and position titles.
3. Worksheets that support the productive hourly rates used, including support for benefit rates.
4. Access to payroll records showing employee salaries and benefits paid during the audit period.
5. Documentation supporting time studies conducted (if applicable) or documentation to support hours claimed for this mandated program.
6. Case logs or time tracking case summaries.
7. Access to review cases.
8. Documentation supporting number of cases completed per each department for the fiscal years in this audit period.
9. Documentation that supports the indirect cost rate proposal (ICRP) including but not limited to Expenditure reports.
10. Documentation that supports amounts received from other funding sources.
11. Chart of accounts.
12. Documentation supporting claimed services and supplies costs.
13. Copies of invoices and other documents necessary to support costs claimed.

For PSSC, See Document # 11A

Tab 6

ITEM 10

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;

Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter

994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and

Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

Executive Summary

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

Staff Analysis

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines, as modified by staff were issued to the parties. (Exhibit H.) Staff made several substantive and technical modifications to the claimant's proposed parameters and guidelines to conform the parameters and guidelines to the Commission's Statement of Decision.

All of the modifications to the claimant's proposed parameters and guidelines are discussed in the staff analysis and outlined in the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

On July 5, 2000, the claimant filed comments on the draft staff analysis disputing one issue; namely, reimbursement of legal defense costs. (Exhibit I.)

The Commission found that Government Code section 3304, subdivision (b), constitutes a reimbursable state mandate by requiring local agencies to provide the opportunity for an administrative appeal for specified disciplinary actions. The claimant is requesting, as part of this activity, the defense of any lawsuit resulting from the agency's disciplinary action.

In this regard, the claimant is requesting reimbursement for attorneys' fees, witness fees, and all associated court costs in defense of its case.

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

The claimant also cites Government Code section 3309.5, a statute included in the POBAR legislation, to assert that the superior court has original jurisdiction over any proceeding brought by a peace officer for alleged POBAR violations. Section 3309.5 was designed to allow a peace officer to pursue a remedy immediately in court during the investigation and not require that the officer wait until after an administrative appeal. Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

The Department of Finance contends that legal defense costs are not reimbursable since there is no reference in the Commission's Statement of Decision that defending the agency's administrative action constitutes a reimbursable state mandated activity. The Department further states that it is not clear that the Commission's approval of the costs associated with an administrative appeal extends to or encompasses judicial review.

For the reasons stated below, staff disagrees with the claimant's request.

Legal Defense Costs Relating to an Agency's Final Disciplinary Action

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

Before the test claim legislation was enacted, local agencies were issuing disciplinary actions. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even before POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision. A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action even in the absence of POBAR. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an interrogation and following the receipt of an adverse comment.

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission's Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 constitutes a reimbursable state mandate.

Section 1183, subdivision (e)(3), of the Commission's regulations requires that the test claim filing include a detailed description of the following: activities required under prior law or executive order; what new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service *and* whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying "the activities found to be required under prior statutes or executive orders, and the activities found to be required under the statutes or executive orders that contain the mandate or increased level of service." The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the claimant's test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission's regulations.

Moreover, the claimant never alleged during the test claim phase, and the Commission did not find, that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant's proposed parameters and guidelines by striking out the words "together with the defense of same in any court proceeding."

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission's regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

Staff Recommendation

Staff recommends that the Commission adopt the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

Claimant

City of Sacramento

Chronology

11/30/99 Commission adopts Statement of Decision
12/29/99 Claimant files proposed parameters and guidelines
01/19/00 Department of Finance files comments
02/23/00 Claimant replies to the Department of Finance comments
05/24/00 Pre-hearing Conference held
05/26/00 Staff requests further comments
06/07/00 Claimant files further comments in response to staff request
06/14/00 The State Controller's Office files comments
06/20/00 Draft Staff Analysis and Claimant's Proposed Parameters and Guidelines as Modified by Staff issued
07/05/00 Claimant files comments

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

STAFF ANALYSIS

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by staff were issued to the parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the comments submitted by the parties, the test claim legislation, and the Commission's Statement of Decision. (Exhibit H.)

On July 5, 2000, the claimant filed comments on the draft staff analysis addressing one issue; namely the reimbursement of legal defense costs on claims filed by peace officer employees alleging a POBAR violation under Government Code section 3309.5. (Exhibit I.) The staff analysis on this issue is provided below under Section IV. (B), Administrative Appeal.

Staff has also modified the claimant's proposed parameters and guidelines, as reflected by markings and strikethroughs, to conform the parameters and guidelines to the test claim legislation and the Commission's Statement of Decision (See page 21). These modifications are discussed below.

Section IV, "Reimbursable Activities," Subdivision (A), "Administrative Activities"¹ The claimant's proposed parameters and guidelines include the following administrative activities:

1. Developing or updating policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Maintenance of the systems to conduct the mandated activities.
4. Providing direct supervision over the agency staff performing the mandated activities.

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases. Thus, the component "maintenance of the systems to conduct the mandated activities" is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBAR cases."

Staff has also modified the claimant's proposed parameters and guidelines by striking the proposed activity of "providing direct supervised over the agency staff performing the mandated activities." If a claimant is requesting reimbursement for an employee providing direct supervision regarding the mandated activities, the claimant simply has to comply with Section V, Claim Preparation and Submitter, and submit supporting documentation to the Controller's Office identifying the employee, describing the reimbursable activities performed, and the actual time devoted to the mandated activity. Thus, adding a separate component in Section IV, for employee supervision is duplicative and unnecessary.

Finally, staff has designated the administrative activities as on-going activities. Due to a lack of specificity in the test claim legislation, hundreds of court cases have been, and continue to be issued. The case law has provided new interpretations of the legislation and clarified the responsibilities of local agencies. Thus, staff finds that it is reasonably necessary for local agencies to update their internal policies and procedures, and train their employees on an on-going basis.

Thus, staff's modifications to Section IV, (A), are as follows:

"A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

¹ See page 22, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

3. Maintenance of the systems to conduct the mandated activities. Updating the status report of the POBAR cases.

4. Providing direct supervision over the agency staff performing the mandated activities."

Section IV. "Reimbursable Activities, Subdivision (B), "Administrative Appeal"²

The Commission's Statement of Decision includes a list of activities the Commission found to be reimbursable under article XIII B, section 6 of the California Constitution. The first activity listed in the Statement of Decision states the following:

"Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interests are not affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee."

The claimant's proposed parameters and guidelines includes the language provided above, but also adds the following italicized phrase: "Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, together with the defense of same in any court proceeding." Thus, the claimant is requesting attorneys' fees, witness fees, and all associated court costs in defense of its case.

The Department of Finance contends that legal defense costs are not reimbursable. They state the following:

"While providing the opportunity for and the conduct of an administrative appeal was included in the Commission's Statement of Decision, there is no reference to the defense of same in any court proceeding. It is not clear to us that the Commission's approval of the costs of an administrative appeal in its decision necessarily extends to or encompasses judicial review. Unless the claimant can establish a nexus between the two processes, we believe that it is not appropriate to include the costs of the latter in these parameters and guidelines."

In response, the claimant cites Government Code section 3309.5, a statute included in the test claim legislation, to assert that the test claim legislation gives the superior court original jurisdiction over any proceeding brought by a peace officer for alleged POBAR violations.

The claimant also states that "although at first blush it would seem that only those actions involving a violation by the public entity of the officer's rights under POBAR would be subject to judicial review, that is not what has occurred in practice." The claimant, citing

² See pages 22-23, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

the case of *Fukuda v. City of Angels*³, contends that the courts have expanded the judicial review of POBAR cases to an independent review of the validity of the final administrative decision issuing the disciplinary action. The claimant therefore asserts that reimbursement should be required for all costs related to defending the agency's final administrative decision in court.

The analysis regarding legal defense costs is provided below.

Legal Defense Costs Relating to the Agency's Final Administrative Decision

The claimant first contends that defending a lawsuit attacking the validity of the final administrative decision issuing a disciplinary action is a reimbursable state mandated activity.

The claimant cites the *Fukuda* case. The *Fukuda* case involves an administrative mandamus proceeding under Code of Civil Procedure section 1094.5 brought by a police officer against his employer following the employer's final decision to discharge the plaintiff. A writ of mandamus proceeding under Code of Civil Procedure section 1094.5 is available to review "any final administrative order or decision made as the result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." Thus, the plaintiff in *Fukuda* was attacking the validity of the employer's final decision of discharge.

The plaintiff in *Fukuda*, however, did not allege any POBAR violations. In fact, the test claim legislation is not even mentioned in the case. The plaintiff was simply contesting the final disciplinary action taken by the employer. Thus, staff finds that the *Fukuda* case is not relevant here.

Moreover, local agencies were issuing disciplinary actions before the test claim legislation was enacted. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even before POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision.⁴ A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action even in the absence of POBAR. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an

³ *Fukuda v. City of Angels* (1999) 20 Cal.4th 805. (Exhibit J.)

⁴ Code of Civil Procedure section 1094.5 was originally added by the Legislature in 1945 (Stats. 1945, ch. 358). (Exhibit K.)

interrogation and following the receipt of an adverse comment. Section 3309.5 was specifically designed to allow a peace officer to pursue a remedy immediately in the courts during the investigation and not require that the officer wait until after an administrative appeal.⁵ Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

Government Code section 3309.5 states the following:

"(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer." (Emphasis added.)

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission's Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 imposes reimbursable state mandated activities.⁶

On June 20, 2000, staff issued a draft analysis on the claimant's proposed parameters and guidelines concluding that legal defense costs resulting directly from section 3309.5 cannot be included in the parameters and guidelines because the Commission has not made a finding that section 3309.5 constitutes a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17514.

On July 5, 2000, the claimant filed a response to the draft staff analysis contending that the staff analysis regarding legal defense costs under Government Code section 3309.5 is wrong. The claimant contends that the issue of litigation of POBAR rights has been a "thread" through the entire test claim process. The claimant also states that defense costs under section 3309.5 should be included in the parameters and guidelines since the Statement of Decision defines the scope of the mandate and the parameters and guidelines define the activities. The claimant states the following:

"Attached to the original test claim as filed are all of the statutes upon which the test claim was based. On [page 372 of the test claim], is contained Chapter 405, Statutes of 1979, which added Government Code section 3309.5 to POBAR. Reference to this statute is had on the face sheet of the test claim [page number omitted] as well as on the face page of the narrative of the test claim [page number omitted].

⁵ See, *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1256. (Exhibit L)

⁶ Exhibit M, Test claim filings submitted by the claimant; Exhibit N, August 26, 1999 Hearing Transcript (test claim hearing); and Exhibit O, November 30, 1999 Hearing Transcript (SOD hearing).

Secondly, the issue of litigation of POBAR rights has been a thread going through the entire test claim process. Your staff has analyzed at depth numerous cases involving POBAR, particularly in connection with the scope of the mandate, and to what extent POBAR exceeds the requirements of *Skally v. State Personnel Board* [citation omitted]. In fact, the first 312 pages of the test claim is devoted to litigation concerning *Skally* and POBAR.

The issue of litigation concerning POBAR was raised by Ms. Dee Contreras at the hearing on the test claim in this matter. Furthermore, the record on the test claim is replete with references concerning litigation over POBAR rights. (See Comments to Draft Staff Analysis received by the Commission on August 6, 1999, commencing at page 9.)

Thus, even prior to Claimant's submission of Draft Parameters and Guidelines, the issue of litigation over POBAR rights was clearly submitted and in issue."

Staff disagrees with the claimant.

Section 1183, subdivision (e)(3), of the Commission's regulations requires that the test claim filing include a detailed description of the following:

- What activities were required under prior law or executive order, and
- What new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and
- Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service and whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying "the activities found to be required under prior statutes or executive orders, and the activities found to be required under the statutes or executive orders that contain the mandate or increased level of service." (Emphasis added.) The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the Commission has not made a finding that Government Code section 3309.5 imposes a reimbursable state mandate.

The claimant's test claim filing includes section 3309.5 on the face sheet as a statute alleged to contain a mandate. The first page of the test claim narrative includes a sentence stating the following: "Chapter 405/79 added section 3309.5, making it unlawful to violate this act, thereby relieving the officer of any requirement to exhaust administrative remedies before seeking 'appropriate injunctive or other extraordinary relief' before superior court if violations are alleged."⁷

However, the test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission's regulations. Instead, the claimant's test claim filing limits the discussion of these issues to Government Code sections 3303 and 3304. These sections address the administrative appeal and interrogation rights under POBAR.

On September 5, 1997, the claimant filed supplemental comments clarifying the test claim. Again, the claimant's comments addressed Government Code sections 3303 and 3304. The claimant also addressed sections 3305, and 3306, which relate to the rights following the receipt of an adverse comment. Section 3309.5 was not mentioned in the claimant's supplemental comments.⁸

The claimant contends that its comments on the test claim draft staff analysis, beginning on page 9, is replete with references concerning litigation over POBAR rights. However, the cases cited in these comments do not address Government Code section 3309.5. Rather, the case law cited by the claimant defines the phrase "transfer for purposes of punishment", a punitive action entitling the employee to an administrative appeal under POBAR.⁹

The claimant also contends that the issue of litigation was raised during the test claim hearing. Staff agrees there was testimony relating to case law involving an employee's pre-existing due process rights. There was also testimony on case law relating to the POBAR rights regarding the administrative appeal, interrogation of an officer, and the receipt of adverse comments. However, there was no testimony addressing Government Code section 3309.5.¹⁰

In short, the claimant never alleged during the test claim phase, and the Commission did not find that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant's proposed parameters and guidelines by striking out the words "together with the defense of same in any court proceeding."

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission's regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

⁷ Exhibit M, Bates page 192.

⁸ Exhibit M, Bates page 232.

⁹ Exhibit M, Bates page 244.

¹⁰ Exhibit N.

1998 Amendment to Government Code Section 3304

Staff has also included the Commission's recognition that Government Code section 3304 was amended in 1998 (Stats. 1998, ch. 748) to limit the right to an administrative appeal to the chief of police and those employees who have successfully completed probation. (See Exhibit A, Statement of Decision, page 10.) The amendments became effective on January 1, 1999. Thus, claimants are eligible for reimbursement for providing the opportunity for an administrative appeal to probationary and at-will employees, except the chief of police, only until December 31, 1998.

Thus, staff has modified Section IV. (B) as follows:

"B. On-Going Activities Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, together with the defense of same in any court proceeding (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing, but not limited thereto, are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and

- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body."

Section IV. "Reimbursable Activities, Subdivision (C), "Interrogations" ¹¹

The Commission found that several activities required by the test claim legislation involving the interrogation of a peace officer constituted reimbursable state mandated activities. (See the Commission's Statement of Decision, pages 25 and 26.)

The claimant contends that all of the interrogation activities found by the Commission to be reimbursable apply not only to the peace officer employee under investigation, but also to civilian and peace officer witnesses. For example, the claimant states the following:

"Government Code Section 3303(g) does not distinguish between taping an officer who is a witness versus taping an officer who is the target of an investigation. The public safety officer, whether or not the target of the investigation, can bring his or her own recording device, and their right to record is independent of our right to record. Where it says *may* be recorded, it in essence requires recording, and doesn't differentiate between interrogation of witnesses and interrogation as the targeted employee. However, because of the fact that 'witness' peace officers may subsequently become targets as a result of their heightened standard of conduct, peace officer witnesses must be taped as well. Finally, if you tape all of the peace officers involved in an investigation and do not tape civilian witnesses as well, you do not have a complete record."¹²

Government Code section 3303, which addresses investigations and interrogations, expressly states in the first paragraph that the rights granted with regard to interrogations apply only when a peace officer is under investigation that could lead to punitive action. The first paragraph of section 3303 states in pertinent part the following:

"When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action [defined in the test claim legislation as dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment], the interrogation shall be conducted under the following conditions." (Emphasis added.)

Thus, based on the language of section 3303, staff finds that the rights granted by POBAR, including the right to tape an interrogation, do *not* extend to civilian witnesses.

However, staff agrees with the claimant that POBAR rights under Government Code section 3303 do attach when a peace officer is interrogated as a witness to an incident since

¹¹ See pages 23-25, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

¹² Exhibit L.

the officer's own actions regarding the incident can result in punitive action. The claimant provides the following example:

For example, an actual case situation occurred wherein there was an allegation that an officer failed to handle a particular call properly, that there was the possibility of excessive force was used and the individual was in the hospital. Given the seriousness of the allegations, we commenced speaking with the witnesses immediately. Everyone involved except the complainant, from the officer who was alleged to have used excessive force, as well as his sergeant, was a peace officer covered by POBR. When the sergeant, who was thought to be a witness, came in for questioning, he was informed that the subject of the questioning was one of his subordinate officers. However, in the course of discussions with the sergeant, it became apparent that he failed to file a required form when a person is hospitalized or injured. In Sacramento City, when someone is injured, the sergeant is required to file a form which is an alert to indicate that the arrestee has been hospitalized. In this situation, as you walk through the incident, we became apprized that the sergeant failed to file the required form."

"....."

"In the normal due process case, the employee would have uttered statements which indicated that he did not file the appropriate form, you could ask him whether or not he had filed the form, and the issue would be over. However, with POBR, you have to give the sergeant, who was previously called as a witness, a copy of the transcript of his prior testimony as he is entitled to it since he was interrogated on the matter previously in the officer's case. Since you never know when a witness may end up being the subject of discipline, not only do you have to more carefully prepare each case, but you may also have to tape record each peace officer's testimony should the eventuality occur that the witness becomes the target of an investigation. This is just an example of why there needs to be more and thorough preparation."

"As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation."¹³

Thus, staff has added the following paragraph to Section IV. (C) of the proposed parameters and guidelines:

¹³ Exhibit 1, pages 2 and 3.

"Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)"

Staff has also added the following paragraph, which was included on page 12 of the Commission's Statement of Decision and expressed in Government Code section 3303, subdivision (i):

"Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)"

Section IV. (C) (1) and (2). Compensation and Timing of an Interrogation, Interrogation Notice

The Commission's Statement of Decision includes the following reimbursable activity:

"Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)"

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission's Statement of Decision.)

The claimant's proposed parameters and guidelines restates the activity as expressed in the Statement of Decision, but also adds "the review of the necessity for the questioning and responses given" as a reimbursable component. The claimant's proposed parameters and guidelines state the following:

"Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)"

"Included in the foregoing, but not limited thereto, is the *review of the necessity for the questioning and responses given*; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel." (Emphasis added.)

Following the pre-hearing conference in this case, staff requested further comments on the proposed activity "to review the necessity for the questioning and responses given" to determine if the activity was consistent with, and/or reasonably related to, the

Commission's Statement of Decision and the activities mandated by the test claim legislation.

In response to staff's request, the claimant asserts that it is more difficult to prepare for an investigation under POBAR because Government Code section 3303, subdivision (c), requires that the employee receive prior notice identifying the nature and subject of the questioning. The claimant states the following:

"It is more difficult to prepare for an investigation involving a peace officer than it is for those who are not entitled to POBR rights. In the normal due process case involving an employee who is not entitled to POBR rights, you do not have to inform the employee about the nature and subject of the questioning, and you do not have to prepare questions focused upon a particular area, seeking to get the information you can from the employee. In non-POBR matters, you can explore other areas in the questioning as they arise, which allows for a much more free-form questioning process."

"In contrast, however, with employees covered by POBR, you must tell the employee prior to the initial questioning what the purpose of the meeting is, what it is you will be discussing with him or her, and you have to be prepared to be clearly on point as to where you are going and your expectations about the questioning process. You cannot engage in broader questioning for information, because the employee has the right to know the subject about which he or she is being interrogated."¹⁴

The claimant further states the following:

"As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation. . . ."

"Obviously, if you are going to re-interview a peace officer, you have to be prepared to give them a copy of their prior transcript. You also have to go back and review it, to make sure where conflicts with what transpired previously in order to ask intelligent questions. In a non-POBR matter, you can follow up by asking additional questions without regard to the reasons you have the employee in for questioning in the first place. However, with POBR, the whole questioning is focused on what you have identified as the allegation. Thus, the definition of what the allegations are must come early in the process. If someone calls to complain about something, the subsequent investigation may bring to light little about the complaint of the citizen, but may demonstrate an internal operating problem or conflict which you have to address. The additional rights granted by POBR make that more difficult as indicated above."¹⁵

Staff finds that the activity to review the necessity for the questioning and responses given is too broad and goes beyond the scope of Government Code section 3303, subdivision (a), and the Commission's Statement of Decision.

¹⁴ Exhibit F, pages 1 and 2.

¹⁵ *Id.* at page 3.

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

Nevertheless, Government Code section 3303, subdivision (c), does impose a new requirement on local agencies to provide the peace officer with notice identifying the nature of the investigation prior to the interrogation. The Commission found that the notice requirement constituted a reimbursable state mandated activity under article XIII B, section 6 of the California Constitution. Accordingly, staff finds that the activity of reviewing agency complaints or other documents to prepare the notice of interrogation is a reasonable method of complying with Government Code section 3303, subdivision (c).

Based on the foregoing, staff has modified Section IV. (C) as follows:

"1. Conducting an interrogation of a peace officer while the officer is on duty, or compensating. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing, but not limited thereto, is the review of the necessity for the questioning and responses given; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing, but not limited thereto, is the review of agency complaints or other documents to prepare the notice of interrogation; the nature of the interrogation; review by counsel; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; and preparation and presentation to officer of notice of agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer."

Section IV. (C) (3), (4), and (5). Tape Recording and Transcription of the Interrogation

Government Code section 3303, subdivision (g), states the following:

"The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation."

The Commission found that Government Code section 3303, subdivision (g), imposed the following reimbursable state mandated activities (see pages 25 and 26 of the Statement of Decision):

- Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - (a) The further proceeding is not a disciplinary action;
 - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):
 - (a) When the investigation does not result in disciplinary action; and
 - (b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

The claimant's proposed parameters and guidelines combine these activities into one paragraph:

"Producing transcribed of any notes made by a stenographer or tape recording at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, *whether or not the investigation results in any disciplinary action.* (Gov. Code, § 3303, subd. (g)).

Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies." (Emphasis added.)

Staff finds that the claimant's proposed paragraph, which authorizes reimbursement for the cost of transcription and tape recording *whether or not the investigation results in any disciplinary action*, is inconsistent with the Commission's Statement of Decision.

First, the proposed paragraph implies, and the claimant requests, reimbursement for taping *all* interrogations. However, the Commission found that reimbursement is required for tape recording the interrogation *only when* the employee tapes the interrogation.

The Commission also limited the right to reimbursement for the costs of providing the employee with access to the tape or transcription of the notes when: (1) the investigation did not result in disciplinary action; and 2) when the disciplinary action did not involve a pre-existing due process right to such materials.

Thus, staff has modified the claimant's proposed parameters and guidelines to accurately reflect the Commission's Statement of Decision.

The claimant also contends that the cost of transcribing the tape recordings of an interrogation is reasonably necessary to comply with the mandate. The claimant contends that "the tape is meaningless without a transcription."¹⁶ Staff agrees and has included this component in Section IV. (C) (3) of the parameters and guidelines.

Thus, staff has modified Section IV. (C) as follows:

"3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g)).

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employees with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):

a) The further proceeding is not a disciplinary action;

b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

¹⁶ Exhibit F.

d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

4.5. Producing transcribed copies of any notes made by a stenographer or tape recording at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, whether or not the investigation results in any disciplinary action in the following circumstances (Gov. Code, § 3303, subd. (g)):

a) When the investigation does not result in disciplinary action; and

b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies."

Section IV. "Reimbursable Activities, Subdivision (D), "Adverse Comment"¹⁷

Government Code sections 3305 and 3306 provide peace officers with procedural rights to receive notice, and review and respond to an adverse comment entered in the officer's personnel file.

The Commission found that Government Code sections 3305 and 3306 constitute a partial reimbursable state mandated program for those activities not previously required by the due process clause and/or statutory law. (See pages 26 through 28 of the Statement of Decision.)

The claimant's proposed parameters and guidelines contains the same activities listed in the Commission's Statement of Decision regarding adverse comments, and also includes the following paragraph:

¹⁷ See pages 25-27, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

"Included in the foregoing, but not limited thereby, are review of circumstances or documentation leading to adverse comment by supervisor, command staff/junior resources staff or control, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; *officer's time in response to adverse comment*; review of responses to adverse comment, attaching same to adverse comment and filing." (Emphasis added.)

As indicated in the above paragraph, the claimant is requesting reimbursement for the officer's time in response to the adverse comment. Staff disagrees with this request. Government Code section 3306, which addresses the officer's response to an adverse comment, states the following:

"A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment."

The Commission found that section 3306 requires the local agency to provide an opportunity to respond to the adverse comment within 30 days. (See page 19 of the Statement of Decision.) However, the Commission never found, and the statute does not require, that the officer file a response. Rather, the decision to file a response to the adverse comment is left up to the individual officer.

Therefore, staff finds that compensating local agencies for the officer's time in responding to an adverse comment is not mandated by the state and is, thus, not eligible for reimbursement. Accordingly, staff modified Section IV. (D) of the proposed parameters and guidelines by striking out the words "officer's time in response to adverse comment."

Section VI. "Supporting Data"

The State Controller's Office requests that language be included to validate the quantity of work performed for the costs claimed. The Controller's Office requests eligible claimants to identify the following:

- "Number of cases in process at the beginning of the fiscal year _____
- Number of new cases added during the fiscal year _____
- Number of cases completed or closed during the fiscal year _____
- Number of cases in process at the end of the fiscal year _____

Staff has included this language in Section VI. Supporting Data.

Other Non-substantive, Clarifying Modifications

Staff made other non-substantive, clarifying modifications to the remainder of the claimant's proposed parameters and guidelines. Changes were also made to Sections V. and IX. to conform the language to other parameters and guidelines adopted by the Commission.

Staff Recommendation

Staff recommends that the Commission adopt the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

² See page 28, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

Tab 7

ITEM 13
FINAL STAFF ANALYSIS
REQUESTS TO AMEND PARAMETERS AND GUIDELINES

Government Code Sections 3301, 3303, 3304, 3305, 3306

As Added and Amended by Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173,
1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367;
Statutes 1982, Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

Directed by Government Code Section 3313, as added by
Statutes 2005, Chapter 72 (Assem. Bill No. 138, § 6, eff. July 19 2005)

Peace Officers Procedural Bill of Rights (POBOR)¹

California State Association of Counties, City of Sacramento, County of Los Angeles
County of San Bernardino, Department of Finance, and State Controller's Office, Requestors

05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22
(CSM-4499 and 05-RL-4499-01)

EXECUTIVE SUMMARY

Background

The Legislature enacted the Peace Officers Procedural Bill of Rights Act (commonly abbreviated as "POBOR"), by adding Government Code sections 3300 through 3310, in 1976. POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Generally, POBOR prescribes certain procedural protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit.

On November 30, 1999, the Commission approved the POBOR test claim and adopted the original Statement of Decision (CSM 4499). The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the

¹ Staff substituted the acronym "POBOR" throughout this document for all variations used in requests, comments, and other filings from interested parties and affected state agencies.

state pursuant to Government Code section 17556, subdivision (c). The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on POBOR to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission *except* the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

Requests to Amend Parameters and Guidelines

In May 2005, before the Commission reconsidered its original POBOR decision, the State Controller’s Office filed a request to amend the parameters and guidelines. The request remained pending when the Commission adopted its Statement of Decision on reconsideration in May 2006.

At the time the Commission adopted the Statement of Decision on reconsideration, the Commission directed staff to work with state agencies and interested parties to develop and recommend a reasonable reimbursement methodology pursuant to Government Code section 17519.5 for inclusion in the revised parameters and guidelines. Subsequently, proposed amendments were filed by the State Controller’s Office to supersede the proposed amendments previously filed in May, 2005; the Counties of San Bernardino and Los Angeles; the California State Association of Counties (CSAC); and the Department of Finance. The parties have proposed changes to the reimbursable activities and have proposed different reasonable reimbursement methodologies, as described in the analysis.

Proposed Changes to Reimbursable Activities

Staff has reviewed the proposed amendments and recommends that the following changes be made to the parameters and guidelines for costs incurred beginning July 1, 2006:

- The addition of time study language to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller’s Office.
- Deletion of specific activities relating to the administrative appeal hearing and the receipt of an adverse comment that the Commission expressly denied in the Statement of Decision on reconsideration.
- Clarification of administrative activities, and activities related to the administrative appeal, interrogations, and adverse comments that are consistent with the Commission’s Statement of Decision adopted in 1999, the Statement of Decision on reconsideration,

and the Commission's prior findings when adopting the original parameters and guidelines. Language is included to clarify that certain activities are *not* reimbursable, including investigation and conducting the interrogation. The Commission expressly denied reimbursement for these activities when it adopted the original parameters and guidelines in 2000 and, again, when it adopted the Statement of Decision on reconsideration in April 2006.

Reasonable Reimbursement Methodology

Upon adoption of the POBOR Statement of Decision on reconsideration, the Commission directed staff to form a working group to develop a reasonable reimbursement methodology to reimburse local governments for state-mandated costs. The California State Association of Counties (CSAC), the County of Los Angeles, and the DOF filed proposals. The following three proposals were reviewed by claimants, affected state agencies and Commission staff and discussed in three pre-hearing conferences.

- The **California State Association of Counties** requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would reimburse local agencies \$528 per peace officer employed by the agency on January 1 of the claim year, with annual adjustments based on the Implicit Price Deflator.
- The **County of Los Angeles** requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would allow local agencies to be reimbursed based on *approximations of local costs mandated by the state*. This proposal is based on studies of claims data submitted to the Controller's Office for the 2001-2002 through 2004-05 fiscal years. The County describes its proposal as a reimbursement formula which reflects differences in POBOR case loads among local law enforcement agencies and differences in the numbers of peace officers employed by those agencies. The reasonable reimbursement methodology is comprised of three components: (1) *Unit Case Costs* are determined by multiplying the number of unit level cases X 12 standard hours X productive hourly rate; (2) *Extended Case Costs* are determined by multiplying number of extended cases X 162 standard hours X productive hourly rate; 3) *Uniform Costs* are determined by multiplying the number of peace officers X standard rate of \$100. The costs from these three components are then totaled for the annual claim amount.
- The **Department of Finance (DOF)** requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology. Under this methodology, a distinct "base rate" would be calculated for each claimant based on SCO audited amounts for four years of claims. The annual reimbursement would be the result of multiplying the "base rate" by the number of covered officers. The base rates would be adjusted annually by an appropriate factor to capture the normal cost increases. A process for determining *mean* reimbursement rates while final reimbursement rates are determined.

Based on the plain meaning of Government Code section 17518.5, the statute defining *reasonable reimbursement methodology*, staff finds that:

- The Department of Finance, the State Controller, affected state agencies, a claimant, or an interested party is authorized to develop a reasonable reimbursement methodology.

- There is no statutory requirement or authority for the Commission to audit reimbursement claims and to develop a reasonable reimbursement methodology proposal that complies with section 17518.5.
- The conditions or criteria for defining a reasonable reimbursement methodology are defined in section 17518.5 and may not be changed by the Commission.

For the reasons stated in the analysis, staff concludes that the proposed reasonable reimbursement methodologies submitted by the California State Association of Counties, the County of Los Angeles, and the Department of Finance do not meet the following conditions in section 17518.5, and, therefore, must be denied:

- (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

Staff Recommendation

Staff recommends the Commission:

- adopt the proposed amendments to the parameters and guidelines for the Peace Officer Bill of Rights program, as modified by staff, beginning on page 49; and,
 - authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.
-

STAFF ANALYSIS

Requestors

California State Association of Counties
County of Los Angeles
County of San Bernardino
Department of Finance
State Controller's Office

Chronology

11/30/1999 Commission on State Mandates (Commission) adopts original Statement of Decision

07/27/2000 Commission adopts parameters and guidelines

03/29/2001 Commission adopts statewide cost estimate

10/15/2003 Bureau of State Audits issues report on Peace Officers' Procedural Bill of Rights (commonly referred to as POBOR) and Animal Adoption Programs, Report No. 2003-106

05/05/2005 State Controller's Office files proposed amendments to the parameters and guidelines

07/19/2005 AB 138 (Statutes 2005, chapter 72) becomes effective, directing the Commission to reconsider the original POBOR Statement of Decision by July 1, 2006

04/26/2006 Commission reconsiders POBOR test claim, adopts Statement of Decision, and directs staff to work with state agencies and interested parties to develop and recommend a reasonable reimbursement methodology pursuant to Government Code section 17518.5 for inclusion in the revised parameters and guidelines²

05/23/2006 County of Los Angeles files proposed amendments to the parameters and guidelines

05/25/2006 Commission staff holds first prehearing conference

05/25/2006 California State Association of Counties files proposed amendments to the parameters and guidelines³

06/15/2006 County of Los Angeles files proposed amendments to the parameters and guidelines to replace and supersede proposed amendments filed on May 23, 2006⁴

² See Exhibit A.

³ See Exhibit B.

⁴ See Exhibit C.

06/15/2006 County of San Bernardino files proposed amendments to parameters and guidelines⁵

06/29/2006 State Controller's Office files proposed amendment to parameters and guidelines to supersede amendment previously filed on May 5, 2005.⁶

06/29/2006 Department of Finance files proposed amendments to parameters and guidelines⁷

7/27/2006 Commission staff holds second prehearing conference.

08/04/2006 County of Los Angeles files comments.
City of Sacramento files comments.
Department of Finance files comments.
State Controller's Office files comments.⁸

08/17/2006 County of Los Angeles files rebuttal comments.
Department of Finance files rebuttal comments.⁹

08/31/2006 Commission issues draft staff analysis and proposed amendments to parameters and guidelines, as modified by staff.¹⁰

09/08/06 County of Los Angeles requests a pre-hearing conference, an extension of time to file comments, and a postponement of the hearing¹¹

09/11/06 County of Los Angeles' requests are granted.¹²

09/22/06 City of Los Angeles and City of Sacramento file comments on the draft staff analysis.

09/28/06 County of Los Angeles files comments on the draft staff analysis.

10/25/06 Pre-hearing conference held.

10/30/06 County of San Bernardino and Department of Finance file comments on the draft staff analysis.¹³

⁵ See Exhibit D.

⁶ See Exhibit E.

⁷ See Exhibit F.

⁸ See Exhibit G for all comments.

⁹ See Exhibit G.

¹⁰ See Exhibit H.

¹¹ Exhibit I.

¹² Exhibit I.

¹³ See Exhibit J for all comments to the draft staff analysis.

Summary of the Mandate

On November 30, 1999, the Commission approved the test claim and adopted the original Statement of Decision on the POBOR program. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on POBOR to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration

became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause¹⁴ does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

Proposed Amendments to the Parameters and Guidelines

The Commission received five proposed amendments to the parameters and guidelines, filed by the California State Association of Counties, the County of Los Angeles, the County of San Bernardino, the Department of Finance, and the State Controller's Office, as follows:

The *California State Association of Counties* (05-PGA-19) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would reimburse local agencies \$528 per peace officer employed by the agency on January 1 of the claim year, with annual adjustments based on the Implicit Price Deflator.

The *County of Los Angeles* (05-PGA-18) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would allow local agencies to

¹⁴ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

be reimbursed based on *approximations of local costs mandated by the state*. This proposal is based on studies of claims data submitted to the Controller's Office for the 2001-2002 through 2004-2005 fiscal years. The County of Los Angeles describes its proposal as a reimbursement formula which reflects differences in POBOR case loads among local law enforcement agencies and differences in the numbers of peace officers employed by those agencies. The reasonable reimbursement methodology is comprised of three components: (1) *Unit Case Costs* are determined by multiplying (the number of unit level cases) X (12 standard hours) X (productive hourly rate); (2) *Extended Case Costs* are determined by multiplying (the number of extended cases) X (162 standard hours) X (productive hourly rate); and (3) *Uniform Costs* are determined by multiplying (the number of peace officers) X (standard rate of \$100). The costs from these three components are then totaled for the annual claim amount.

In response to the draft staff analysis, the County of Los Angeles contends that the Commission should approve its time survey forms and instructions with respect to the activities performed by the agency's Unit Level, Internal Affairs, and Administrative Appeals unit, and make them applicable to the time studies used by all claimants.

The *County of San Bernardino* (05-PGA-20) requests that the parameters and guidelines be amended to allow claimants to file reimbursement claims based on actual costs or the CSAC-SB 90 Group reasonable reimbursement methodology proposal of \$528 per peace officer. The County of San Bernardino also proposes amendments to: (1) update the parameters and guidelines based on the reconsideration; (2) clarify the descriptions of "Interrogations" and "Adverse Comment" under Section IV. Reimbursable Activities; and (3) update and clarify Sections V. through X. to conform with recently adopted language.

The *Department of Finance (DOF)* (05-PGA-22) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology. Under this methodology, a distinct "base rate" would be calculated for each claimant based on the State Controller's audited amounts for four years of claims. The annual reimbursement would be the result of multiplying the "base rate" by the number of covered officers. The base rates would be adjusted annually by an appropriate factor to capture the normal cost increases. A process for determining *mean* reimbursement rates while final reimbursement rates are determined.

The *State Controller's Office (SCO)* (05-PGA-21) requests that the parameters and guidelines amendment previously filed on May 5, 2005, be superseded by their June 29, 2006 filing. The SCO proposes changes to clarify reimbursable activities consistent with the Statement of Decision adopted November 30, 1999, and to add the "time study" language and the Commission's previously adopted standardized language. The proposed amendments do not include changes reflected in the Commission's Statement of Decision adopted April 26, 2006.

Discussion

Staff reviewed the proposed amendments to the parameters and guidelines and the comments received. Non-substantive technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision on reconsideration and statutory language. Substantive changes were considered, and if appropriate, were made as described below.

Section IV. REIMBURSABLE ACTIVITIES

Government Code section 17557, subdivision (d), allows local agencies, school districts, and the state to file a written request with the Commission to amend the parameters and guidelines. Any amendment to the parameters and guidelines must be consistent with, and not contradict, the Statement of Decision. The Statement of Decision is the legal determination on the question of whether a state mandate exists and, if so, what the mandate is.¹⁵ The findings and conclusion in the Statement of Decision are binding on the parties once it is mailed or served unless a writ of mandate pursuant to Government Code section 17559 and Code of Civil Procedure section 1094.5 is issued by a court to set aside the Commission's decision.¹⁶ In addition, the Commission does not have jurisdiction to retry an issue that has become final. It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void.¹⁷

Thus, for purposes of this item, the proposed amendments must be consistent with the Commission's Statement of Decision adopted in 1999 and the Statement of Decision on reconsideration adopted on April 26, 2006. The Statement of Decision on reconsideration amends the 1999 decision and applies to costs incurred and claimed for the 2006-2007 fiscal year.

Furthermore, the Commission, when adopting parameters and guidelines, or a proposed amendment to the parameters and guidelines, has the discretion to determine the most reasonable methods of complying with the mandate. The most reasonable methods of complying with the mandate are those methods not specified in statute or executive order that are necessary to carry out the mandated activity. (Cal. Code Regs., tit. 2, § 1183.1, subd. (a)(4).) Any proposed method of complying with a mandated activity must be consistent with an activity approved by the Commission in the Statement of Decision as a reimbursable state-mandated activity.

Thus, for an activity to be reimbursable, it must either be required by the statutes or executive order found by the Commission in the Statement of Decision to impose a reimbursable state mandated activity; or be a reasonable method of complying with the statutes or executive order

¹⁵ Government Code sections 17500 and 17552; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332-333; and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1201.)

¹⁶ California Code of Regulations, title 2, section 1188.2, subdivision (b).

¹⁷ See, *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is res judicata, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.

found by the Commission in the Statement of Decision to impose a reimbursable state-mandated activity.¹⁸

Time Studies

The SCO requests that the parameters and guidelines be amended to include language authorizing the use of time studies to support salary and benefit costs for task-repetitive activities. The SCO's proposed language states the following:

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the time study guidelines included in the State Controller's annual claiming instructions. If the claimant performs a time study, the claimant should separately study Unit Level cases and Internal Affairs cases, as their caseloads are significantly different in size, type, complexity, duration, and volume.¹⁹

The DOF generally agrees with the use of time studies.²⁰ The City of Los Angeles agrees with the use of time studies, but argues that the Commission should include specific language for an entity's use of time studies.²¹

When BSA audited this program, BSA recognized that there may be instances when it is impractical to maintain source documents with the level of detail needed to identify actual costs. In such cases, BSA acknowledged that a properly prepared and documented time study may be a reasonable substitute for actual time sheets. BSA concluded, however, that none of the claims of the four local entities reviewed by BSA used an adequate time study.²² Claimants based the amount of time they claimed on interviews and informal estimates developed after the related activities were performed.²³

¹⁸ The County of San Bernardino, in comments to the draft staff analysis, argues that the analysis of this item goes beyond the scope of the Legislature's directive in AB 138 to reconsider the POBOR decision. The Commission's jurisdiction for this item is partly based on AB 138, in that the parameters and guidelines for the POBOR program must conform to the changes adopted by the Commission in the Statement of Decision on reconsideration. The Commission's jurisdiction, however, is also based on several requests to amend the parameters and guidelines, pursuant to Government Code section 17557, with respect to activities previously found to constitute reasonable methods of complying with the mandate. Thus, the Commission has jurisdiction to address all the amendments proposed by the State Controller's Office with respect to the reimbursable activities.

¹⁹ SCO proposal of June 29, 2006, page 2.

²⁰ Exhibit F.

²¹ Exhibit J.

²² Administrative Record for CSM 4499, pp. 1455-1456.

²³ Administrative Record for CSM 4499, p. 1453.

BSA describes the key elements to an adequate time study as follows:

Key elements of an adequate time study include having employees who are conducting the reimbursable activities track the actual time they spend when they are conducting each activity, recording the activities over a reasonable period of time, maintaining documentation that reflects the results, and periodically considering whether the results continue to be representative of current processes.²⁴

Based on the BSA recommendation, staff has included the following language under Section IV. Reimbursable Activities:

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller's Office.

In response to the draft staff analysis, the County of Los Angeles contends that the Commission should approve its time survey forms and instructions with respect to the activities performed by the agency's Unit Level, Internal Affairs, and Administrative Appeals unit, and make them applicable to the time studies used by all claimants.²⁵ The County of Los Angeles proposes the following language:

Claimants may use Unit Level, Internal Affairs, and Administrative Appeals time studies to support salary and benefit costs for reimbursable activities of a repetitive nature. Time study usage is subject to the time study guidelines included in the State Controller's claiming instructions. The addendum contains acceptable formats and instructions for recording Unit Level, Internal Affairs, and Administrative Appeals time in performing reimbursable activities.

Staff has not included the language proposed by the State Controller's Office or the County of Los Angeles because the Controller has independent authority to issue time study guidelines and approve time studies when issuing claiming instructions and auditing reimbursement claims. (Gov. Code, §§ 17560 and 17561.) The Commission has no authority to approve the State Controller's time study guidelines at the parameters and guidelines stage.

Section IV. A, Administrative Activities

Section IV. A (2)

Section IV. A (2) currently authorizes reimbursement for the following activity: "Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate."

SCO requests the addition of the following sentence to Section IV. A (2): "The training must relate to mandate-reimbursable activities."

Staff finds that the proposed language is consistent with the Commission's findings when adopting the parameters and guidelines by limiting reimbursement for training "regarding the

²⁴ *Ibid.*

²⁵ Exhibit J.

requirements of the mandate.” Thus, staff recommends that the Commission add the proposed language to Section IV. A (2).

Section IV. A (3)

Section IV. A (3) currently states the following: “Updating the status of the POBOR cases.” SCO requests that Section IV. A (3) be amended as follows (proposed language is underlined):

Updating the status report of mandate-reimbursable POBOR cases. The updating relates to tracking the procedural status of cases. It does not relate to maintaining or updating the cases (e.g. setting up, reviewing, evaluating, or closing the cases).

In response to the SCO proposal, the City of Sacramento and the City of Los Angeles filed comments contending that the proposal is too narrow because of the time constraints imposed by the POBOR legislation.²⁶ The City of Sacramento states the following:

The proposal concerning administrative activities and updating the cases is much too narrowly drawn. There are strict time constraints imposed by POBOR: if the time limits are not met, the case must be dismissed and no discipline can be imposed. Therefore, not only must the case filed be updated, but they must be reviewed in order to make sure that all deadlines have been met. To restrict the language as desired by the Controller would make it next to impossible to assure that the time limits set forth in POBOR are met. In order to make sure that the time lines are met, the case must be reviewed at various points in order to make sure that all investigations are completed, as well as to make sure all interrogations are completed timely. This is reasonably necessary in order to make sure that the time lines are met.

Staff finds that the City’s comments go beyond the scope of the test claim statutes and are not consistent with the Commission’s findings in the Statement of Decision on reconsideration. As indicated in footnote 5, page 6 of the Commission’s Statement of Decision on reconsideration (05-RL-4499-01), the POBOR Act has been subsequently amended by the Legislature. One of those amendments imposed the time limitations described by the City.²⁷ The subsequent amendments were not pled in this test claim and, thus, they were not analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6. The City’s arguments relating to the time limitations imposed by subsequent legislation are outside the scope of the Commission’s decision in POBOR (CSM 4499). Thus, the City’s rationale is not consistent with the Commission’s findings.

Staff further finds that the SCO proposal is consistent with the Commission’s findings when it adopted the parameters and guidelines. The Commission adopted the following finding:

²⁶ Exhibits G and J.

²⁷ Statutes 1997, chapter 148.

The claimant's proposed parameters and guidelines include the following administrative activities:

[¶]

3. Maintenance of the systems to conduct mandated activities.

[¶]

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and maintaining files for those cases. Thus, the component "maintenance of the systems to conduct the mandated activities" is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBOR cases."²⁸

Staff has clarified the activity and added the following proposed language to Section IV. C (3):

Updating the status report of the mandate-reimbursable POBOR eases activities.
"Updating the status report of mandate-reimbursable POBOR eases activities" means tracking the procedural status of eases the mandate-reimbursable activities only.
Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

Section IV. B. Administrative Appeal

Government Code section 3304 gives specified officers the right to request an administrative appeal hearing when any punitive action is taken against the officer, or the officer is denied promotion on grounds other than merit. Government Code section 3304 states that "no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

Punitive action is defined in Government Code section 3303 as follows:

"For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,²⁹ written reprimand, or transfer for purposes of punishment."

The California Supreme Court determined that the phrase "for purposes of punishment" in the foregoing section relates only to a transfer and not to other personnel actions.³⁰ Thus, in transfer

²⁸ Item 10, July 27, 2000 Commission Hearing (Administrative Record ("AR") for CSM 4499, p. 901.)

²⁹ The courts have held that "reduction in salary" includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

³⁰ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to "compensate for a deficiency in performance," however, an appeal is not required.³¹

As indicated on page 30 of the Commission's Statement of Decision on reconsideration (05-RL-4499-01), the Legislature amended Government Code section 3304 in 1998 by limiting the right to an administrative appeal to only those peace officers "who [have] successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.) Thus, as of January 1, 1999, providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) is no longer a reimbursable state-mandated activity. Therefore, staff proposes that Section IV. B be amended to clarify that the right to an administrative appeal applies only to permanent peace officers, as specifically defined in Government Code section 3301,³² and to chiefs of police that are removed from office under the circumstances specified in the Statement of Decision.

In response to the draft staff analysis, the City of Sacramento argues that under POBOR, all chiefs of police are entitled to a written notice, the reason for removal, and the opportunity for an administrative appeal, regardless of whether the reason for removal involves a liberty interest.³³ Under the POBOR statutes, the City is correct. However, the Commission found in the Statement of Decision on reconsideration that reimbursement was not required when the charges supporting the dismissal of a chief of police constitute moral turpitude, which harms the employee's reputation and ability to find future employment, since a due process hearing was already required under prior state and federal law. Thus, with respect to the removal of the chief of police, Government Code section 3304 constitutes a reimbursable state-mandated activity only when local officials want to remove the chief of police under circumstances that *do not* create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). This finding is binding on the parties.³⁴

The SCO further requests that the last paragraph in Section IV. B (1) and (2) be amended to clarify that reimbursement for the administrative appeal begins only after the peace officer requests an administrative appeal, and does not include the costs for the investigation or preparation of charges that were incurred before the officer requested the appeal. SCO further

³¹ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

³² Pursuant to Government Code section 3301, POBOR applies to peace officers as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. POBOR does not apply to reserve or recruit officers, coroners, railroad police officers commissioned by the Governor, or non-sworn officers including custodial officers and sheriff security officers or police security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

³³ Exhibit J.

³⁴ *Heap, supra*, 6 Cal.2d 405, 407.

proposes to clarify that litigation costs incurred in any court challenge to the administrative decision are not reimbursable. The SCO proposal is as follows:

Included in the The foregoing includes only are the preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing, exclusive of prior preparation, review, and investigation costs. This includes legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body. The foregoing does not include activities such as writing and reviewing charges that occurred before the officer requested an administrative appeal or defending a lawsuit attacking the validity of the final administrative decision.

In response to the SCO request, the City of Sacramento argues that:

This proposal is much too narrowly drawn. Administrative appeal applies only to those situations where a hearing is not required by *Skelly*. Accordingly, prior preparation, review and investigative costs are necessary. Absent POBOR, these hearings would not take place at all. Thus, investigation and case preparation is imperative. So, too, defense of litigation is also reasonably necessary. If the employer wins at the administrative level and the employee wishes to contest, the only alternative is litigation.³⁵

For the reasons below, staff finds that the SCO proposal is consistent with the test claim legislation and the Commission's decisions. Staff has modified the proposal, however, to clarify the activities that are not reimbursable.

Government Code section 3304 gives the officer the right to request an administrative appeal when any punitive action, as defined by Government Code section 3303, is taken against the officer, or the officer is denied promotion on grounds other than merit.³⁶ The courts have concluded that the "limited purpose" of the administrative appeal is to provide the officer with a chance to establish a formal record of circumstances surrounding the punitive action and to attempt to convince the employing agency to reverse its decision.³⁷ Government Code section 3304 does not require an agency to investigate or impose disciplinary action against peace officer employees. When adopting the parameters and guidelines, the Commission concluded that:

Local agencies were issuing disciplinary actions before the test claim legislation was enacted. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.³⁸

³⁵ Exhibit G.

³⁶ See summary in *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

³⁷ *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4 th1342, 1359.

³⁸ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, p. 903).

As determined by the Commission in the Statement of Decision on reconsideration: "POBOR deals with labor relations. It does not interfere with the employer's right to manage and control its own police department."³⁹ The Second District Court of Appeal also determined that POBOR is not intended to interfere with a local agency's right to regulate peace officers' qualifications for employment or the causes for which such peace officers may be removed.⁴⁰

Thus, the SCO is correct in concluding that investigation costs to prepare disciplinary charges, or costs to take punitive action against an officer are not reimbursable.

Moreover, the SCO's request to clarify that litigation costs are not reimbursable is consistent with the Commission's findings when it adopted the parameters and guidelines, expressly denying reimbursement for litigation costs.⁴¹

Thus, proposed Section IV. B, Administrative Activities, states the following:

B. Administrative Appeal

1. ~~Reimbursement period of July 1, 1994 through December 31, 1998—~~ The administrative appeal activities listed below apply to permanent peace officer employees, at-will employees, and probationary employees, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers.

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
- ~~dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interests are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);~~
 - transfer of permanent, ~~probationary and at-will~~ employees for purposes of punishment;
 - denial of promotion for permanent, ~~probationary and at-will~~ employees for reasons other than merit; and
 - other actions against permanent, ~~probationary and at-will~~ employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

³⁹ Statement of Decision on reconsideration adopted April 26, 2006, page 39, citing to *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26, and *Baggett, supra*, 32 Cal.3d 128, 125.

⁴⁰ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.

⁴¹ Item 10, July 27, 2000 Commission hearing (AR for CSM 4499, pp. 901-905).

- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative appeal hearing body.
- f. The cost of witness fees.
- g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.⁴²

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees; and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities are not reimbursable:

- a. Investigating charges.
 - b. Writing and reviewing charges.
 - c. Imposing disciplinary or punitive action against the peace officer.
 - d. Litigating the final administrative decision.
2. ~~Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.~~

~~Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). (Gov. Code, § 3304, subd. (b)):~~

- ~~• Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);~~
- ~~• Transfer of permanent employees for purposes of punishment;~~
- ~~• Denial of promotion for permanent employees for reasons other than merit; and~~

⁴² The City of Sacramento, in comments to the draft staff analysis, argues that “no costs of the administrative appeal panel are included.” The time and labor of the administrative appeal hearing body and its attendant clerical services has always been eligible for reimbursement, and remains eligible for reimbursement under this staff recommendation.

- ~~Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.~~

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities and costs are reimbursable:

- Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- Legal review and assistance with the conduct of the administrative appeal hearing.
- Preparation and service of subpoenas.
- Preparation and service of any rulings or orders of the administrative appeal hearing body.
- The cost of witness fees.
- The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- Investigating charges.
- Writing and reviewing charges.
- Imposing disciplinary or punitive action against the chief of police.
- Litigating the final administrative decision.

The City of Sacramento, in comments to the draft staff analysis, also requests reimbursement for witness preparation and locating and finding witnesses. The City of Sacramento has not filed a request to amend the parameters and guidelines pursuant to Government Code section 17557 and the City's comments have not gone out for comment as required by the Commission's regulations. Thus, the Commission does not have jurisdiction to consider these requests.

Section IV. C, Interrogations

Introductory Paragraphs in Section IV. C

Government Code section 3303 prescribes procedural protections that apply when a peace officer is interrogated in the course of an administrative investigation that might subject the officer to the punitive actions listed in the section (dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment). The introductory paragraphs to Section IV. C of the parameters and guidelines state the following:

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes

a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The SCO proposes the addition of the following three paragraphs to the introduction to clarify that the costs to investigate and review the allegations, costs to conduct the interrogation, and case finalization costs are not reimbursable:

Claimants are not eligible for reimbursement for activities occurring prior to the assignment of the case to an administrative investigator, e.g., taking the initial complaint; setting up the complaint file; interviewing parties; or reviewing the file and determining whether it warrants an administrative investigation.

Claimants are not eligible for investigative activities, e.g., assigning an investigator, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses, preparing of the interrogation, reviewing and preparing interview questions, conducting the interrogation, or reviewing the responses given by the officers and/or witnesses.

Claimants are also not eligible for case finalization costs, e.g., preparing case summary disposition reports, closing the case file, or attending executive review or committee hearings related to the investigation.

The County of San Bernardino, the City of Sacramento, and the City of Los Angeles contend that investigation costs and the cost to conduct the interrogation are reimbursable.

However, as identified below, the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct the interrogation. Thus, staff finds that the SCO proposal is consistent with the Commission findings when adopting the parameters and guidelines and the Statement of Decision on reconsideration.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate and review complaints or to conduct interrogations. The Commission adopted the following findings when adopting the parameters and guidelines:

The Commission's Statement of Decision includes the following reimbursable activity:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission's Statement of Decision.)

The claimant's proposed parameters and guidelines restate the activity as expressed in the Statement of Decision, but also add "the review of the necessity for the questioning and responses given" as a reimbursable component. The claimant's proposed parameters and guidelines state the following:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing, but not limited thereto, is the *review of the necessity for the questioning and responses given*; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel. (Emphasis added.)

Following the pre-hearing conference in this case, staff requested further comments on the proposed activity "to review the necessity for the questioning and responses given" to determine if the activity was consistent with, and/or reasonably related to, the Commission's Statement of Decision and the activities mandated by the test claim legislation.

In response to staff's request, the claimant asserts that it is more difficult to prepare for an investigation under POBOR because Government Code section 3303, subdivision (c), requires that the employee receive prior notice identifying the nature and subject of the questioning. The claimant states the following:

It is more difficult to prepare for an investigation involving a peace officer than it is for those who are not entitled to POBOR rights. In the normal due process case involving an employee who is not entitled to POBOR rights, you do not have to inform the employee about the nature and subject of the questioning, and you do not have to prepare questions focused upon a particular area, seeking to get the information you can from the employee. In non-POBOR matters, you can explore other areas

[quote continued] in the questioning as they arise, which allows for a much more free-form questioning process.

In contrast, however, with employees covered by POBOR, you must tell the employee prior to the initial questioning what the purpose of the meeting is, what it is you will be discussing with him or her, and you have to be prepared to be clearly on point as to where you are going and your expectations about the questioning process. You cannot engage in broader questioning for information, because the employee has the right to know the subject about which he or she is being interrogated. [Footnote omitted.]

The claimant further states the following:

As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation. . . .

Obviously, if you are going to re-interview a peace officer, you have to be prepared to give them a copy of their prior transcript. You also have to go back and review it, to make sure where conflicts with what transpired previously in order to ask intelligent questions. In a non-POBOR matter, you can follow up by asking additional questions without regard to the reasons you have the employee in for questioning in the first place. However, with POBOR, the whole questioning is focused on what you have identified as the allegation. Thus, the definition of what the allegations are must come early in the process. If someone calls to complain about something, the subsequent investigation may bring to light little about the complaint of the citizen, but may demonstrate an internal operating problem or conflict which you have to address. The additional rights granted by POBOR make that more difficult as indicated above. [Footnote omitted.]

Staff finds that the activity to review the necessity for the questioning and responses given is too broad and goes beyond the scope of Government Code section 3303, subdivision (a), and the Commission's Statement of Decision.

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBOR was enacted.⁴³

⁴³ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, p. 911-912).

In the Statement of Decision on reconsideration, the Commission concluded that the POBOR activities are not triggered until the local agency or school district decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file. These initial decisions are not expressly mandated by state law, but are governed by local policy, ordinance, city charter, or memorandum of understanding.⁴⁴ In *Baggett v. Gates*, the Supreme Court clarified that POBOR *does not*: (1) interfere with the setting of peace officers' compensation; (2) regulate qualifications for employment; (3) regulate the manner, method, times, or terms for which a peace officer shall be elected or appointed; or (4) affect the tenure of office or purpose to regulate or specify the causes for which a peace officer can be removed. These are local decisions. The court found that POBOR only impinges on the local entity's implied power to determine the *manner* in which an employee can be disciplined.⁴⁵

On pages 38 and 39 of the Statement of Decision on reconsideration, the Commission expressly concluded that conducting the interrogation and investigative time are *not* reimbursable:

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that "[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior." These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that "[t]he interrogation shall be conducted ..." to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour,
preferably at a time when the public safety officer is on duty, or

⁴⁴ Statement of Decision on reconsideration, page 14.

⁴⁵ *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-140.

[Quote continued.] during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation. [Footnote omitted.]

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations. [Footnote omitted.] It does not interfere with the employer's right to manage and control its own police department. [Footnote omitted.]

The findings made by the Commission in the Statement of Decision on reconsideration are final and are binding on the parties. It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void.⁴⁶

Thus, staff finds that SCO's proposed language is consistent with the Commission's findings. Staff recommends, however, that the language proposed by the SCO be made more specific. Staff recommends that the first introductory paragraph be modified to incorporate that language of Government Code section 3301, which specifically identifies the officers entitled to the procedural protections under POBOR when the employing agency wants to interrogate the officer. The proposed paragraph states the following:

⁴⁶ See, *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is res judicata, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final. The Commission's Statement of Decision on reconsideration became final when it was mailed or served on May 1, 2006. (Cal. Code Regs., tit. 2, § 1188.2, subd. (b).)

~~Claimants are eligible for reimbursement for~~ The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

In addition, staff has included the activities that are not reimbursable at the end of Section IV. C as follows:

The following activities are not reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

Section IV. C (1)

Section IV. C (1) currently states the following:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

The SCO proposes the following amendments to clarify that the interrogators' time to conduct the interrogation is not reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).) Interrogators' time is not reimbursable.

Included in the foregoing is the preparation and review of overtime compensation requests.

Claimants are not eligible for reimbursement under interrogation when a peace officer being investigated under POBOR is not subjected to an interview or interrogation, but is subject to possible sanctions.

The County of San Bernardino requests, on the other hand, that the parameters and guidelines be amended to authorize reimbursement for conducting the interrogation and the investigating officer's preparation time for the interrogation. The County of San Bernardino proposes the addition of the following italicized language:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)

Included in the foregoing is the investigating officer's preparation time for the interrogation. Preparation costs are reimbursable to a maximum of 20 hours with appropriate supporting documentation. Also included is the preparation and review of overtime compensation requests.

Staff finds that SCO's proposed sentence that states, "Interrogators' time is not reimbursable" is consistent with the Commission's findings when adopting the parameters and guidelines. When the claimant submitted its proposed parameters and guidelines, it requested reimbursement for "conducting an interrogation of a peace officer while the officer is on duty."⁴⁷ The Commission disagreed that conducting the interrogation was reimbursable. The Commission found that the test claim legislation does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given. Local agencies were conducting interrogations before the enactment of the test claim legislation.⁴⁸

These findings were also included in the Statement of Decision on reconsideration. On pages 38 and 39 of the Statement of Decision on reconsideration, the Commission expressly concluded that conducting the interrogation and investigative time are *not* reimbursable:

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that "[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior." These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal

⁴⁷ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, p. 965.)

⁴⁸ Administrative Record for CSM 4499, page 912.

activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that “[t]he interrogation shall be conducted ...” to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation. [Footnote omitted.]

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations. [Footnote omitted.] It does not interfere with the employer’s right to manage and control its own police department. [Footnote omitted.]

These findings are binding on the parties.⁴⁹ Thus, staff has added the following proposed language at the end of Section IV. to identify the activities that are not reimbursable.

Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.

⁴⁹ *Heap, supra*, 6 Cal.2d 405, 407.

However, staff finds that the SCO's second proposed sentence is vague and ambiguous, and may already be covered by the parameters and guidelines. The second proposed sentence states that: "Claimants are not eligible for reimbursement under interrogation when a peace officer being investigated under POBOR is not subjected to an interview or interrogation, but is subject to possible sanctions." The City of Sacramento argues that this sentence:

...makes no sense whatsoever. It may be possible during the investigation and interrogation of other officers to ascertain that the officer, who is the subject of the investigation, did not commit the misconduct at issue, but was done by another officer. If the interrogation involves a witness officer, to whom the POBOR rights attach, the interrogation should be compensable."

When adopting the parameters and guidelines, the Commission concluded that the rights under Government Code section 3303 attach when a peace officer is interrogated as a witness to an incident, even if the officer is not under investigation since the officer's own actions regarding the incident can result in punitive action following the interrogation.⁵⁰ Thus, the Commission included the following language in the parameters and guidelines:

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, *or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.* (Gov. Code, § 3303.) (Emphasis added.)

Although the SCO's proposed language appears to clarify that reimbursement for the activities identified in the parameters and guidelines is not required when the peace officer witness is not subject to an interrogation, the italicized language above already addresses that issue. Thus, staff has not included the second proposed language in the parameters and guidelines.

Accordingly, staff proposes the following amendments to Section IV. (C)(1):

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

~~Included in the foregoing is the p~~Preparation and review of overtime compensation requests are reimbursable.

Section IV. C (2)

Section IV. C (2) currently states the following:

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subs. (b) and (c).)

⁵⁰ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, pp. 908-910.)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

The SCO requests the following amendments to the second paragraph:

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; identification ~~determination~~ of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or of other confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

The City of Sacramento contends that the SCO proposal is too limited. The City argues that:

... it is imperative that it not be just the identification of the investigating officers, but determining who will, in fact, do the questioning. Often determining the investigating officer will have an impact on the outcome of the questioning. Accordingly, limiting the notice to just identifying the questioning officers is far too limited.

Staff agrees that the word "determination" is too broad and goes beyond the procedural protection required by Government Code section 3303, subdivisions (b) and (c). Subdivisions (b) and (c) require the employer, prior to interrogation, to inform and provide notice of the nature of the investigation and the "identity" of all officers participating in the interrogation. Government Code section 3303, subdivisions (b) and (c), state the following:

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

The verb "determine" means "to establish or ascertain definitely, as after consideration, investigation, or calculation."⁵¹ To "identify" means "to establish the identity of."⁵² Government Code section 3303, subdivision (c), simply requires the agency to provide the officer with notice identifying the interrogating officers. It does not require the agency to investigate or determine who the officer will be. As determined by the Commission,

⁵¹ Webster's II New College Dictionary, page 308.

⁵² *Id.* at page 548.

Government Code section 3303 does not require the local agency to investigate an allegation, prepare for the interrogation, conduct the interrogation, or review the responses given.⁵³

Thus, staff recommends that the Commission change the word "determination" to "identification" in the parameters and guidelines.

Staff also recommends the Commission delete the activities redacting the agency complaint for names of the complainant, parties, or witnesses, and preparing the agency complaint. These activities go beyond the scope of Government Code section 3303, subdivisions (c) and (d), and the Commission's Statement of Decision finding that the activity of providing notice before the interrogation was reimbursable.

Accordingly, staff proposes the following amendments:

2. Providing prior notice to the peace officer before the interrogation, regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subs. (b) and (c).) The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. The notice shall inform the peace officer of the nature of the investigation.

~~Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.~~

The following activities are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.
- b. Identification of the interrogating officers to include in the notice of interrogation.
- c. Preparation of the notice.
- d. Review of the notice by counsel.
- e. Providing notice to the peace officer prior to interrogation.

Section IV. C (3), (4), and (5)

Section IV. C (3) states the following:

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

⁵³ Statement of Decision on reconsideration, page 39.

The SCO proposes that Section IV. C (3) be amended as follows:

3. ~~Tape r~~Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of ~~tape media~~ and storage, and the cost of transcription. Excluded is the investigator's time to record the session and transcription costs of non-sworn and peace officer complainant(s).

The SCO also proposes to delete the word "tape" before "recording" in Section IV. C (4) and (5).

The County of San Bernardino and the City of Sacramento agree with the deletion of the word "tape" in Section IV. C (3), (4), and (5), since they recognize that agencies use other media for recording. Staff agrees and recommends that the Commission adopt the SCO proposal to delete the word "tape."

However, the City of Sacramento contends that the costs to record the interrogation and the transcription costs of peace officer complainants are reimbursable. The City argues as follows:

We have no problem with eliminating the word "tape" concerning recording, as we understand that other agencies use various media for the recordation.

However, we want to make clear that the recordation of the interrogation, regardless of the media, is found to be reimbursable.

We do, however, have a problem with excluding the transcription cost of any peace officer complainant(s). When a peace officer complains, that officer is nonetheless afforded POBOR rights, in the event that something he or she says may result in discipline for misfeasance, or more probably, nonfeasance.

Staff finds that the SCO proposed language clarifies that the investigator's time to record the interrogation is not reimbursable. The proposed language is consistent with the record and the Commission's findings in the Statement of Decision (CSM 4499). Page 859 of the record for CSM 4499 is the Commission's Statement of Decision, dated November 30, 1999, on the issue of tape recording the interrogation. Based on testimony of the claimant, the Commission approved reimbursement for tape recording the interrogation when the employee records the interrogation. According to the claimant, a tape recorder is simply placed on a desk by the interrogator during the interrogation.⁵⁴ When the claimant submitted its proposed parameters and guidelines, it requested reimbursement for "conducting an interrogation of a peace officer while the officer is on duty."⁵⁵ The Commission disagreed that conducting the interrogation was reimbursable. The Commission adopted the staff finding and recommendation that the test claim legislation does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given.⁵⁶ Thus, reimbursement for the salary of the individual or individuals conducting the interrogation is not reimbursable. The Commission included this finding in the Statement of Decision on reconsideration.⁵⁷

⁵⁴ Administrative Record for CSM 4499, page 873.

⁵⁵ Administrative Record for CSM 4499, page 965.

⁵⁶ Administrative Record for CSM 4499, page 912.

⁵⁷ Statement of Decision on reconsideration, pages 38 and 39.

Staff further agrees with the SCO that any costs incurred for non-sworn officers are not reimbursable. By the terms set forth in Government Code section 3301, POBOR expressly applies to "peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code." The legislation, however, does not apply to reserve or recruit officers,⁵⁸ coroners, or railroad police officers commissioned by the Governor. Non-sworn officers, such as custodial officers and sheriff's or police security officers, are not "peace officers."⁵⁹ The Legislature has made clear, in Penal Code section 831.4, subdivision (b), that "[a] sheriff's or police security officer is not a peace officer nor a public safety officer as defined in Section 3301 of the Government Code [POBOR]."

Thus, staff recommends that the word "tape" be deleted from Sections IV. (C)(3), (4), and (5), and that Section IV. (C)(3) be further amended as follows:

3. ~~Tape~~ Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

~~Included in the foregoing is the~~ The cost of tape media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn and peace officers are not reimbursable.

Section IV. D. Adverse Comment

Government Code sections 3305 and 3306 provide that no peace officer shall have any adverse comment entered in the officer's personnel file without the peace officer having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact "shall" be noted on the document and signed or initialed by the peace officer. In addition, the peace officer "shall" have 30 days to file a written response to any adverse comment entered in the personnel file. The response "shall" be attached to the adverse comment.

As indicated on page 42 of the Commission's Statement of Decision on reconsideration, the Commission, based on the Supreme Court's decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888-889, denied the activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause as follows:

The Commission finds that obtaining the officer's signature on the adverse comment or indicating the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause, are designed to prove that the officer was on notice about the adverse comment. Since providing notice is already guaranteed by the due process clause of the state and federal constitutions under these circumstances, the Commission finds that the obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment is part and parcel of the federal notice mandate and results in "de minimis" costs to local government.

⁵⁸ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569.

⁵⁹ Penal Code sections 831, 831.4.

Therefore, the Commission finds that, under current law, the Commission's conclusion that obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause is not a new program or higher level of service and does not impose costs mandated by the state. Thus, the Commission denies reimbursement for these activities.

Staff recommends that the Commission amend the parameters and guidelines to delete these activities.

The SCO also proposes to amend the introductory paragraph to Section IV. D, as follows:

Perform the following limited activities upon receipt of an adverse comment. The following limited reimbursable activities pertain to peace officers recommended for an adverse comment. (Gov. Code, §§ 3305 and 3306).

The SCO further requests that the following language be added to the end of Section IV. D:

The foregoing relates only to peace officers investigated under POBOR who were subjected to an adverse comment by investigation staff. Reimbursement is limited to activities that occurred subsequent to the completion of a case that resulted in an adverse comment recommendation. Reimbursable activities are limited to providing notice of the adverse comment to the peace officer and providing the officer an opportunity to review, sign, and respond to the adverse comment. Such activities include a limited review of the circumstances or documentation leading to an adverse comment recommendation by supervisor, command staff, human resources staff, or counsel to determine whether the recommendation constitutes an adverse comment or a written reprimand; preparation and review for accuracy of adverse comment notice; notification and presentation of adverse comment to officer and notification concerning rights regarding the notice; review of officer's response to the adverse comment, and attachment of response to the adverse comment and its filing.

A complaint is not an adverse comment. The foregoing does not include any activities related to investigating a complaint, which is part of the investigative process. Activities such as, but not limited to, determining whether a complaint is valid and may lead to an adverse comment and/or possible criminal offense, interviewing the complainant, and preparing the complaint investigation report are not reimbursable.

Staff finds that the SCO's proposal to limit reimbursement to those activities occurring after an officer is investigated that results in a "recommended" adverse comment is not consistent with the test claim legislation and the Commission's decision on reconsideration. Pursuant to Government Code section 3305, an officer has the right to notice and to provide a response when "any" adverse comment is placed in the officer's personnel file. When interpreting this statute, the Third District Court of Appeal, in *Sacramento Police Officers Association v. Venegas*, concluded that an adverse comment includes any document that creates an adverse impression that could influence future personnel decisions, including decisions that do not constitute

discipline or punitive action. The court further found that citizen complaints that are not investigated can be an adverse comment. The court stated the following:

The events that will trigger an officer's rights under those statutes [sections 3305 and 3306] are not limited to formal disciplinary actions, such as the issuance of letters of reproof or admonishment or specific findings of misconduct. Rather, an officer's rights are triggered by the entry of any adverse comment in a personnel file or any other file used for a personnel purpose. [Citation omitted.]

Aguilar [v. Johnson (1988)] 202 Cal.App.3d 241, addressed the meaning of an adverse comment for the purposes of sections 3305 and 3306 of the Bill of Rights Act. It noted: "Webster defines comment as 'an observation or remark expressing an opinion or attitude ...' (Webster's Third New Intern. Dict. (1981) p. 456.) 'Adverse' is defined as 'in opposition to one's interest: Detrimental, Unfavorable.' (Id. at p. 31.)" (*Aguilar, supra*, 202 Cal.App.3d at p. 249.) Thus, for example, under the ordinary meaning of the statutory language, a citizen's complaint of brutality is an adverse comment even though it was "uninvestigated" and the chief of police asserted that it would not be considered when personnel decisions are made. (*Id.* at pp. 249-250.)

We find the reasoning in *Aguilar* persuasive, as did the Supreme Court in *County of Riverside, supra*, 27 Cal.4th 793. In its usual and ordinary import, the broad language employed by the Legislature in sections 3305 and 3306 does not limit their reach to comments that have resulted in, or will result in, punitive action against an officer. The Legislature appears to have been concerned with the potential unfairness that may result from an adverse comment that is not accompanied by punitive action and, thus, will escape the procedural protections available during administrative review of a punitive action. As we will explain, even though an adverse comment does not directly result in punitive action, it has the potential of creating an adverse impression that could influence future personnel decisions concerning an officer, including decisions that do not constitute discipline or punitive action. [Citation omitted.]⁶⁰

The Commission noted the *Venegas* case on pages 42 and 43 of the Statement of Decision on reconsideration as follows:

Finally, the courts have been clear that an officer's rights under Government Code sections 3305 and 3306 are not limited to situations where the adverse comment results in a punitive action where the due process clause may apply. Rather, an officer's rights are triggered by the entry of "any" adverse comment in a personnel file, "or any other file used for personnel purposes," that may serve as a basis for affecting the status of the employee's employment.⁶¹ In explaining the point, the Third District Court of Appeal stated: "[E]ven though an adverse comment does not directly result in punitive action, it has the potential for creating an adverse impression that could influence future personnel decisions

⁶⁰ *Sacramento Police Officers Association v. Venegas* (2002) 101 Cal.App.4th 916, 925-926.

⁶¹ *Sacramento Police Officers Assn. v. Venegas* (2002) 101 Cal.App.4th 916, 925.

[quote continued] concerning an officer, including decisions that do not constitute discipline or punitive action.”⁶² Thus, the rights under sections 3305 and 3306 also apply to uninvestigated complaints. Under these circumstances (where the due process clause does not apply), the Commission determined that the Legislature, in statutes enacted before the test claim legislation, established procedures for different local public employees similar to the protections required by Government Code sections 3305 and 3306. Thus, the Commission found no new program or higher level of service to the extent the requirements existed in prior statutory law. The Commission approved the test claim for the activities required by the test claim legislation that were not previously required under statutory law. [Footnote omitted.] Neither *San Diego Unified School Dist.*, nor any other case, conflicts with the Commission’s findings in this regard. Therefore, the Commission finds that the denial of activities following the receipt of an adverse comment that were required under prior statutory law, and the approval of activities following the receipt of an adverse comment that were *not* required under prior statutory law, was legally correct.

Thus, staff recommends that the introductory paragraph identify and clarify the officers that receive the right to notice and to respond to an adverse comment under POBOR as follows:

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 (Gov. Code, §§ 3305 and 3306):⁶³

Staff further recommends that the end of the adverse comment section clearly identify what is reimbursable and what is not reimbursable as follows:

~~Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.~~

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.

⁶² *Id.* at page 926.

⁶³ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

Sections IV. and V. Reasonable Reimbursement Methodology

Upon adoption of the POBOR Statement of Decision on reconsideration, the Commission directed staff to form a working group to develop a reasonable reimbursement methodology to reimburse local governments for state-mandated costs. The California State Association of Counties (CSAC), the County of Los Angeles, and the DOF filed proposals. If the Commission adopts a reasonable reimbursement methodology, additional language would be added to Sections IV. and V.

In adopting parameters and guidelines, the Commission may adopt a reasonable reimbursement methodology as defined in Government Code section 17518.5.⁶⁴

A reasonable reimbursement methodology is defined in Government Code section 17518.5, as follows:

- (b) "Reasonable reimbursement methodology" means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
 - (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
- (c) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

⁶⁴ Government Code section 17557, subdivision (b).

(d) A reasonable reimbursement methodology may be developed by any of the following:

- (1) The Department of Finance.
- (2) The State Controller.
- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party.

Issue 1: Is the Commission authorized to develop and propose a reasonable reimbursement methodology, as defined in Government Code section 17518.5?

In comments filed on the draft staff analysis, claimants are critical of the Commission staff's reliance on the statutory definition of reasonable reimbursement methodology. Claimants argue that Commission staff should develop and propose alternatives to the pending proposals.

Government Code section 17518.5 provides that "[a] reasonable reimbursement methodology may be developed by any of the following:

- a. The Department of Finance.
- b. The State Controller.
- c. An affected state agency.
- d. A claimant.
- e. An interested party."

Based on the plain meaning of the statute, the Department of Finance, the State Controller, an affected state agency, a claimant, or an interested party are authorized to develop a reasonable reimbursement methodology. There is no statutory requirement or authority for the Commission to develop and submit alternatives to reasonable reimbursement methodology proposals.

Issue 2: Is the Commission required to develop "reasonable criteria" that it would accept in order to establish a reasonable reimbursement methodology?

In view of staff's findings that the CSAC and County of Los Angeles proposals for a reasonable reimbursement methodology do not comply with the statutory definition, claimants request that Commission staff develop "reasonable criteria that it would accept in order to establish a reasonable reimbursement methodology."⁶⁵

Government Code section 17518.5 defines reasonable reimbursement methodology as a proposed formula for reimbursing local government costs that meets the following two conditions:

- The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

⁶⁵ See Exhibit J, City of Sacramento's Comments on the Draft Staff Analysis, dated September 22, 2006, page 434.

- For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

These conditions or "criteria" are defined in statute and may not be changed by the Commission. However, the Commission may determine what types of evidence it may rely upon to establish these two conditions.

Issue 3: Is the CSAC proposal a "reasonable reimbursement methodology," as defined in Government Code section 17518.5?

Background

CSAC requests that the parameters and guidelines be amended to allow claimants to "calculate the annual claim amount by multiplying the number of peace officers employed by a local agency on January 1 of the claim year by \$528 beginning with the 2006-2007 fiscal year. Subsequent year claims shall be adjusted by the implicit price deflator."

The estimate of \$528 per officer is derived from a report from the SCO and statistics supplied by Peace Officers Standards and Training (POST). According to CSAC, the SCO report includes the name of the claimants who filed POBOR reimbursement claims for fiscal year 2001-2002, the amount each claimant filed, the number of POBOR cases in progress at the beginning of the fiscal year and the number of POBOR cases added during the fiscal year. CSAC's analysis considers both cases in progress and cases added during the fiscal year. The total number of sworn officers from POST's year 2000 online statistical report was matched with each claimant. Claimants who were missing either the number of cases or number of sworn officers were eliminated from the analysis. The resulting sample consists of 184 claimants.

For each claimant, CSAC divided the actual amount claimed by the total number of sworn officers to determine the cost per officer. The cost per officer for the 184 claimants was totaled, then divided by 184 to establish the \$528 average cost per officer.

Comments

The CSAC proposal is supported by the County of Los Angeles, County of San Bernardino, and City of Los Angeles, and is opposed by the DOF and SCO. The City of Sacramento has "no problem" with this proposal.

The City of Los Angeles is critical of the draft staff analysis and its dismissal of "all RRM proposals as submitted for failure to comply with law in that they do not prove that the rate reflects the performance of activities in a cost-efficient manner." The City of Los Angeles believes that "a cost-per-officer approach is the best methodology and should be adopted by the Commission at its hearing with direction to Staff and an invitation to interested parties to work together to achieve a dollar amount to satisfy the Commission."⁶⁶

The City of Sacramento filed the following comments on the draft staff analysis:

- There is no requirement that all claims be audited before an RRM can be adopted.

⁶⁶ See Exhibit J, page 419.

- Rather than examining the request of \$528/officer, and proposing an alternative that allowed 55% of the total costs or \$290.40 per officer, the Commission [staff] denied the [CSAC] request in its entirety.
- The transaction costs to both State and local government in tracking and documenting costs of POBOR are substantial ... the costs to the SCO for its audits is substantial.

In its comments on the draft staff analysis, County of San Bernardino agrees with the comments by the City of Sacramento.⁶⁷

DOF believes that the CSAC proposal would result in payments to local governments for activities that were not deemed reimbursable by the Commission. DOF also notes that the proposed reimbursement rate was developed using data contained in unaudited claims. DOF cites reviews conducted by the Bureau of State Audits (BSA) and the SCO, finding that a large portion of the costs claimed as reimbursable by local agencies may be invalid and/or unsupported.

In its comments on the draft staff analysis, DOF states that it would "prefer a reimbursement methodology that utilizes unit costs or other data to eliminate the need for actual cost reporting. If an alternative reimbursement methodology is adopted by the Commission, Finance recommends that it be the only mechanism for reimbursement of POBOR related activities. Providing an actual cost option could increase state costs by allowing local governments to choose the method yielding the highest reimbursement rate and would hinder efforts to streamline the claims process."⁶⁸

SCO's comments are based on the definition of reimbursable activities in the Statements of Decision, final staff analysis to the parameters and guidelines, and parameters and guidelines, and consistent with the position of the BSA in its published 2003 audit report on POBOR. The SCO is concerned that the CSAC proposal is based on "filed claims rather than on reimbursable activities" adopted by the Commission and that as much as 75% of the \$528 rate may be for activities not reimbursable under POBOR.

Analysis

Staff reviewed the CSAC proposal and its underlying documentation and concludes that it is not a reasonable reimbursement methodology because it does not satisfy the conditions specified in Government Code section 17518.5. The statutory definition of reasonable reimbursement methodology requires that the proposed formula for reimbursing local agency and school district costs mandated by the state meets these conditions:

- (1) The total amount to be reimbursed statewide is equivalent to total estimated ... costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible ... claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

⁶⁷ See Exhibit J, page 460.

⁶⁸ See Exhibit J, page 453.

If CSAC's proposed \$528 is applied to 184 eligible claimants and multiplied by 52,914 peace officers employed by these claimants, the total amount to be reimbursed would be approximately \$28 million instead of \$36 million. Adoption of the CSAC proposal would result in the total amount reimbursed being less than the total amount claimed. However, there is no evidence that the total amount that would be reimbursed is equivalent to total estimated claimant costs to implement the mandate in a *cost-efficient manner*. CSAC's proposal is based on actual costs claimed for the 2001-2002 fiscal year. This is the same fiscal year that is the subject of the 2003 BSA report cited by the SCO and DOF.

The BSA report reviewed the costs claimed for the *Peace Officers Procedural Bill of Rights* mandate. In summary, BSA stated that the local entities reviewed:

Claimed costs under the peace officer rights mandate for activities that far exceed the Commission on State Mandates (Commission) intent.

Lacked adequate supporting documentation for most of the costs claimed under the peace officer rights mandate....

The BSA results in brief stated,

... Based on our review of selected claims under each mandate, we question a high proportion of the costs claimed under the peace officer rights mandate ... In particular, we question \$16.2 million of the \$19.1 million in direct costs that four local entities claimed under the peace officer rights mandate for fiscal year 2001-02 because they included activities that far exceed the Commission's intent. Although we noted limited circumstances in which the commission's guidance could have been enhanced, the primary factor contributing to this condition was that local entities and their consultants broadly interpreted the Commission's guidance to claim reimbursement for large portions of their disciplinary processes, which the Commission clearly did not intend. . . .⁶⁹

The 184 eligible claimants in the CSAC sample claimed a total of \$36,168,183 in fiscal year 2001-2002. The BSA questioned \$16.2 million in direct costs claimed by four audited claimants that are included in the CSAC sample. The BSA questioned amount is 45% of the total amount claimed by the CSAC sample that was used to calculate the \$528 rate. The BSA audit finding provides evidence that the total amount that would be reimbursed under the CSAC formula is not equivalent to total estimated claimant costs to implement the mandate in a *cost-efficient manner*. Thus, staff finds that the CSAC proposal does not satisfy the first condition.

As to the second condition, if 184 eligible claimants are reimbursed \$528 per peace officer, more than 75% of the claimants would be reimbursed *more than* the actual amount claimed and receive an over payment of more than \$8 million. Accordingly, staff finds that the amount that would be reimbursed under the CSAC proposal does not fully offset their projected costs to implement the mandate in a *cost-efficient manner* because it would result in overpayment of 75% of the claimants. Thus, staff finds that the CSAC proposal does not satisfy the second condition.

Therefore, staff concludes that the CSAC proposal of \$528 per officer is not a reasonable reimbursement methodology because it does not satisfy the conditions required under Government Code section 17518.5.

⁶⁹ Bureau of State Audits Report, see Administrative Record for CSM-4499, page 1412.

Issue 4: Is the County of Los Angeles proposal a reasonable reimbursement methodology, as defined in Government Code section 17518.5?

Background

The County of Los Angeles (LA County) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would allow local agencies to be reimbursed based on approximations of local costs mandated by the state. This proposal is based on studies of claims data submitted to the SCO for the 2001-2002 through 2004-2005 fiscal years. LA County describes its proposal as a reimbursement formula which reflects differences in POBOR case loads among local law enforcement agencies and differences in the numbers of peace officers employed by those agencies. The reasonable reimbursement methodology is comprised of three components: (1) *Unit Case Costs* are determined by multiplying (the number of unit level cases) X (12 standard hours) X (productive hourly rate); (2) *Extended Case Costs* are determined by multiplying (the number of extended cases) X (162 standard hours) X (productive hourly rate); and (3) *Uniform Costs* are determined by multiplying (the number of peace officers) X (standard rate of \$100). The costs from these three components are then totaled for the annual claim amount. Each formula is reviewed below.

1. Unit Case Costs

Number of Unit Cases	X	Standard Hours 12	X	Productive Hourly Rate	=	Total

LA County defines a "unit case" as a POBOR case that requires less than 60 hours of reimbursable activities.

LA County conducted a time study from May-October 2004 to measure the amount of time spent on reimbursable POBOR activities⁷⁰ for "unit" level cases initiated during May 2004. According to the narrative, the sample size of 44 cases represented approximately 5% of the average unit level cases filed each year for the past five years. Sheriff's case staff was instructed to record time spent on performing "reimbursable activities," as noted in the POBOR parameters and guidelines. LA County checked the time logs to ensure that activity descriptions were appropriately categorized and evaluated them to ensure that the proper activities were time studied.

From this study, LA County reports that time logs on 18 unit-level POBOR cases resulted in the performance of 12 hours of reimbursable activities. The times reported for a unit level case ranged from a low of two hours (120 minutes) to a high of 57.3 hours (3440 minutes).

Based on this time study, LA County proposes that a standard time of 12 hours be used for reimbursement of "unit level cases."

⁷⁰ Review of the circumstances or documentation which led to initiating the POBOR case; conduct of a POBOR investigation including interrogating the officer and witnesses; preparation and review of the complaint or adverse comment for the officer's review and signature.

2 Extended Case Costs

Number of Extended Cases	X	Standard Hours	X	Productive Hourly Rate	=	Total
		162		\$		

An "extended case" is defined as a POBOR case that requires more than 60 hours of reimbursable activities. For fiscal year 2003-2004, LA County employees performed 26,405 hours of reimbursable activities on 163 cases. These hours were claimed under the Reimbursable Component of "Interrogations." LA County divided the total number of hours by the number of cases worked to calculate the proposed standard time of 162 hours for each extended case. The lowest average number of hours for an extended case was reported to be 64 hours of reimbursable activities.

3 Uniform Costs

Number of Peace Officers	X	Standard Rate	=	Total
		\$100		

LA County also proposes that each claimant be reimbursed \$100 for each peace officer employed by the jurisdiction on January 1st of the claim year.

LA County's Analysis of Summary and Claimant Data

LA County compared summary data based on its proposal with summary SCO data. The SCO data for four years (2001-2002 through 2004-2005) was reformatted to reflect data in ascending order by claimed costs and cases. (See Schedule 9 on page 8 of LA County's filing, dated June 15, 2006.)

A sample of nineteen additional claimants was developed and costs were calculated based on the application of the reimbursement methodology. The costs were computed by multiplying the number of cases reported to the SCO by the standard times proposed. A productive hourly rate of \$70 was used for unit cases and \$60 for extended cases. It was assumed that 90% of the cases reported to the SCO were unit-level cases and 10% were extended-level cases. (See Schedules 6-7 on pages 10-11 of their filing dated June 15, 2006 for detail.) LA County concludes that of the 19 claimants sampled, reimbursement methodology (RRM) costs for nine claimants were less than those claimed and RRM calculated costs for another nine claimants were more than those claimed. For one claimant, the RRM calculated cost was equivalent to claimed cost.

Comments

The City of Sacramento has "no problems" with the LA County proposal.⁷¹ In comments filed on the draft staff analysis, the City of Sacramento notes that the "Commission Staff adopts the criticisms of the State Controller, which did not provide any data to support its criticism...."⁷²

The SCO is critical of the entire proposal. In its letter dated August 4, 2006, the SCO comments that the County proposes to apply a methodology to all cities and counties, based on the results

⁷¹ See Exhibit G, page 333 for City of Sacramento's Comments filed on August 4, 2006.

⁷² See Exhibit J, pages 433-434, for City of Sacramento's Comments filed on September 22, 2006.

of an invalid time study it conducted for unit-level cases and its estimate of time spent for extended (Internal Affairs Bureau) cases.⁷³

The SCO does not believe that LA County's proposed standard time of 12 hours for unit level cases is representative of costs incurred by all cities and counties in California. Furthermore, the time study was not consistent with SCO guidelines or the BSA's standards, as is indicated in the proposal. The time study results were based on only 18 unit-level cases, not the 44 cases selected in the time study plan. Of the 18 cases, only 14 involved POBOR-related activities. Furthermore, SCO believes that only 2.29 hours relate to reimbursable POBOR activities; the remaining hours relate to ineligible activities occurring prior to cases being assigned to a unit-level investigation and ineligible administrative investigative activities.

The SCO comments that in developing the standard time of 162 hours for extended cases and the \$100/peace officer standard rate, LA County did not perform a time study; instead it estimated the investigators' time by applying a ratio of sworn-to-total cases (inclusive on non-sworn employees). The SCO believes that LA County's estimates are not supportable and include ineligible activities.

The DOF concurs with the SCO and also states that the uniform cost of \$100 per peace officer is not based on specific activities or empirical data. DOF asserts that the standard hours and the uniform cost would likely result in payments for non-reimbursable activities.

In rebuttal comments, LA County disagrees with the SCO's belief that for unit cases, only 2.29 hours relate to reimbursable activities. LA County and the SCO disagree as to what activities are reimbursable under the existing parameters and guidelines. In LA County's time study of unit cases, the Sheriff's Department staff logged time spent on "investigations." The SCO maintains that this activity is not reimbursable and this time should not be included in any calculation of reimbursable costs and LA County maintains that it is reimbursable.

Analysis

Staff reviewed LA County's proposal and its underlying documentation and concludes that it is not a reasonable reimbursement methodology because it does not satisfy the conditions specified in Government Code section 17518.5. The statutory definition of reasonable reimbursement methodology requires that the proposed formula for reimbursing local agency and school district costs mandated by the state meets these conditions:

- (1) The total amount to be reimbursed statewide is equivalent to total estimated ... costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible ... claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

LA County's proposal is based on three formulas. The first formula consists of a standard time of 12 hours for unit level cases. The 12 hours/unit-level case is derived from LA County's time study which logged time spent on investigation. The SCO reviewed these time logs and concluded that the 12 hours included time spent on ineligible investigative activities. Moreover, in the analysis above of the SCO's proposed amendments to clarify reimbursable activities, staff

⁷³ See letter from the State Controller's Office, dated August 4, 2006.

concur with the SCO, finding that costs for investigation are not reimbursable. Thus, staff finds that the total amount to be reimbursed statewide under this formula is *not* equivalent to total estimated costs to implement the mandate in a *cost-efficient* manner. Also, staff finds that there is no evidence in the record to determine if the proposed formula would meet the second condition. Therefore, staff concludes that the standard time for unit level cases does not meet the conditions for a reasonable reimbursement methodology.

As to the second formula of a standard time of 162 hours for extended cases, staff also finds that this formula does not satisfy the statutory conditions. First, the standard time of 162 hours per POBOR case is based on LA County's reimbursement claim. LA County claimed costs for review of the circumstances or documentation which led to initiating the POBOR case; conduct of a POBOR investigation including interrogating the officer and witnesses; preparation and review of the complaint or adverse comment for the officer's review and signature. Thus, staff finds that the second formula is also based on non-reimbursable costs. Therefore, staff finds that the total amount to be reimbursed statewide under this formula is not equivalent to total estimated costs to implement the mandate in a *cost-efficient* manner. As to the second condition, there is no evidence in the record to determine if the proposed formula would meet the second condition. Therefore, staff concludes that the standard time for extended level cases does not meet the conditions for a reasonable reimbursement methodology.

As to the third and final formula of a uniform cost allowance of \$100 for each peace officer employed by the jurisdiction on January 1 of the claim year, staff finds that the formula does not satisfy the statutory conditions. Since this uniform rate is not based on any reimbursable activities, there is no way to show that it is equivalent to total estimated costs to implement the mandate in a *cost-efficient* manner, or to fully offset "projected costs to implement the mandate" in a *cost-efficient* manner. Therefore, staff concludes that the third formula does not meet the conditions for a reasonable reimbursement methodology.

Based on this review, staff concludes that LA County's proposal consisting of three formulas is not a reasonable reimbursement methodology because it does not satisfy conditions required under Government Code section 17518.5.

Issue 5: Is the Department of Finance proposal a reasonable reimbursement methodology, as defined in Government Code section 17518.5?

Background

The DOF requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology. Under DOF's proposal, a distinct "base rate" would be calculated for each claimant based on SCO audited amounts for four years of claims. The annual reimbursement would be the result of multiplying the "base rate" by the number of covered officers. The base rates would be adjusted annually by an appropriate factor to capture the normal cost increases. A process for determining *mean* reimbursement rates would exist while final reimbursement rates are determined.

Comments

Comments were filed on this proposal by the City of Sacramento and the County of Los Angeles. The City of Sacramento commented on the impracticability of having the SCO audit all claimants, especially before the substantial differences in interpretation of the parameters and

guidelines are rectified. The County of Los Angeles believes that auditing all POBOR claims could take considerable time and would be a formidable and expensive task.

In rebuttal comments, DOF recognizes that its proposal would place increased workload on the SCO to audit POBOR claims, and believes the amount of time required is overstated by the City of Sacramento. DOF points out that the County of Sacramento noted that there are 58 counties and 478 cities in California; however, the Controller has only received claims from approximately 250 of these entities. Finance's proposal would require future claimants to be reimbursed at the average of the existing entity specific rates until sufficient claims are available to be audited by the Controller." DOF also states that if there is a new workload requirement for the Controller, the need for additional staff would be reviewed as part of the budget process and DOF would take into account the potential costs and savings.

Analysis

Staff reviewed the DOF proposal and concludes that it is not a reasonable reimbursement methodology because it does not satisfy the conditions specified in Government Code section 17518.5. The statutory definition of reasonable reimbursement methodology requires that the *proposed formula* for reimbursing local agency and school district costs mandated by the state meets these conditions:

- (1) The total amount to be reimbursed statewide is equivalent to total estimated ... costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible ... claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

The DOF proposes auditing all eligible claimants in order to propose individual base rates or mean reimbursement rates for a reasonable reimbursement methodology. Without a proposed formula (mean reimbursement rate), staff cannot determine if the statutory conditions for a reasonable reimbursement methodology, as defined in Government Code section 17518.5, can be met.

Therefore, staff concludes that DOF's proposal is not a reasonable reimbursement methodology as defined in Government Code section 17518.5.

Conclusion on Reasonable Reimbursement Methodology Proposals

Based on the evidence in the record, staff recommends denial of the proposed reasonable reimbursement methodologies.

CONCLUSION AND STAFF RECOMMENDATION

Staff recommends the Commission:

- adopt the proposed amendments to the parameters and guidelines for the Peace Officer Bill of Rights program, as modified by staff, beginning on page 49; and,
- authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES AS MODIFIED BY STAFF

Government Code Sections ~~3300 through 3310~~ 3301, 3303, 3304, 3305, 3306

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982,
Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

05-RL-4499-01(4499)

05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22

BEGINNING IN FISCAL YEAR 2006-2007

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. ~~The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.~~

~~On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.~~

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as "POBOR") to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B,

section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause² does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begin on July 1, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 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.

² Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

~~At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.~~

Reimbursable ~~a~~Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$1,000 ~~200~~, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

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 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 and benefit costs when an activity is task-repetitive. 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, the following activities are reimbursable:

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status report of the mandate-reimbursable POBOR cases-activities. "Updating the status report of mandate-reimbursable POBOR cases-activities" means tracking the procedural status of cases the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998— The administrative appeal activities listed below apply to permanent peace officer employees, at-will employees, and probationary employees, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers.³

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
 - Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative body.

³ Burden v. Snowden (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.

f. The cost of witness fees.

g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas; witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities are not reimbursable:

a. Investigating charges.

b. Writing and reviewing charges.

c. Imposing disciplinary or punitive action against the peace officer.

d. Litigating the final administrative decision.

2. Reimbursement period beginning January 1, 1999 — The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment.) (Gov. Code, § 3304, subd. (b).):

- ~~• Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);~~
- ~~• Transfer of permanent employees for purposes of punishment;~~
- ~~• Denial of promotion for permanent employees for reasons other than merit; and~~
- ~~• Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.~~

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas; witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities and costs are reimbursable:

a. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.

b. Legal review and assistance with the conduct of the administrative appeal hearing.

- c. Preparation and service of subpoenas.
- d. Preparation and service of any rulings or orders of the administrative body.
- e. The cost of witness fees.
- f. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the chief of police.
- d. Litigating the final administrative decision.

C. Interrogations

~~Claimants are eligible for reimbursement for t~~ The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)⁴

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

~~Included in the foregoing is the p~~ Preparation and review of overtime compensation requests are reimbursable.

2. ~~Providing prior notice to the peace officer before the interrogation regarding the nature of the interrogation and identification of the investigating officers. The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be~~

⁴ Interrogations of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers are not reimbursable. (Burden v. Snowden (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

present during the interrogation. The notice shall inform the peace officer of the nature of the investigation. (Gov. Code, § 3303, subs. (b) and (c).)

~~Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.~~

The following activities relating to the notice of interrogation are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.
 - b. Identification of the interrogating officers to include in the notice of interrogation.
 - d. Preparation of the notice.
 - e. Review of notice by counsel.
 - f. Providing notice to the peace officer prior to interrogation.
3. ~~Tape r~~Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
- ~~Included in the foregoing is the~~ The cost of tape media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn and peace officers are not reimbursable.
4. Providing the peace officer employee with access to the ~~tape recording~~ prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
- a. The further proceeding is not a disciplinary action;
 - b. The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
 - c. The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - d. The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - e. The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- ~~Included in the foregoing is the~~ The cost of tape media copying is reimbursable.
5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and
- b) When the investigation results in:
- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the r Review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; and the cost of processing, service and retention of copies are reimbursable.

The following activities are not reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. (Gov. Code, §§ 3305 and 3306.):⁵

⁵ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (Burden v. Snowden (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

School Districts

- (a) ~~If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:~~
- ~~• Obtaining the signature of the peace officer on the adverse comment; or~~
 - ~~• Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.~~
- (a) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
1. Obtaining the signature of the peace officer on the adverse comment; or
 2. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) ~~If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:~~
- ~~• Obtaining the signature of the peace officer on the adverse comment; or~~
 - ~~• Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.~~
- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
1. Providing notice of the adverse comment; and
 2. Obtaining the signature of the peace officer on the adverse comment; or
 3. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) ~~If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for:~~

- ~~Obtaining the signature of the peace officer on the adverse comment; or~~
- ~~Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.~~

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

1. Providing notice of the adverse comment;
2. Providing an opportunity to review and sign the adverse comment;
3. Providing an opportunity to respond to the adverse comment within 30 days; and
4. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

1. Providing notice of the adverse comment;
2. Providing an opportunity to respond to the adverse comment within 30 days; and
3. Obtaining the signature of the peace officer on the adverse comment; or
4. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

~~Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.~~

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

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. 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. 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 and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results 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 include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

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

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁶ is subject to the initiation of an audit by the Controller not 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 SAVINGS REVENUES AND OTHER REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4499-01) 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 for the test claim. The administrative record, including the Statement of Decision and the Statement of Decision on Reconsideration, is on file with the Commission.

~~Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.~~

SUPPORTING DOCUMENTATION

~~Claimed costs shall be supported by the following cost element information:~~

~~A. Direct Costs~~

~~Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.~~

~~Claimed costs shall be supported by the following cost element information:~~

~~1. Salaries and Benefits~~

~~Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.~~

~~2. Materials and Supplies~~

~~Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.~~

~~3. Contract Services~~

~~Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.~~

~~4. Travel~~

~~Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.~~

~~5. Training~~

~~The cost of training an employee to perform the mandated activities is eligible for reimbursement. 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, lodging, and per diem.~~

~~B. Indirect Costs~~

~~Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.~~

~~Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.~~

~~VI. SUPPORTING DATA~~

~~For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).~~

~~All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.~~

~~VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT~~

~~Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.~~

~~VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION~~

~~An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.~~

Tab 8

ANALYSIS OF ACTUAL HOURS FOR ALL COUNTY EMPLOYEES

COUNTYWIDE PRODUCTIVE HOURS- FISCAL YEAR 2003-2004

Hours Code	Description	Period 01-14 Balance at 6-22-2003	Period 01-26 Balance at 12-21-2003	6-22-2003 through 12-21-2003	Period 02-14 Balance at 6-20-2004	2003-2004 Fiscal Year Total	Avg Hrs Per FTE			
		A	B	C	D	E				
				B - A			C + D			
51	Vacation Accrued and Earned *1	1,250,502	2,580,304	1,329,802	1,265,762	2,595,564	173.43			
52	Personal Leave Earned	2,806	299,387	296,581	4,985	301,565	20.15			
100	Regular Hours	13,741,732	27,114,028	13,372,296	13,291,478	26,663,775	1,781.62			
600	Release Time	3,924	9,423	5,499	5,819	11,318	0.76			
605	Administrative Leave	10,310	20,487	10,177	9,783	19,960	1.33			
606	Paid Leave Pending Investigation	4,897	9,400	4,503	2,213	6,715	0.45			
620	First Day Sick	57,101	114,061	56,960	60,721	117,681	7.86			
625	Safety 4850 Paid Disability Lv	62,501	127,387	64,886	56,256	121,142	8.09			
630	Military Leave With Pay	2,360	4,552	2,192	1,882	4,074	0.27			
635	FLSA Comp Time Used *4	29,625	64,606	34,981	35,549	70,530	4.71			
640	Regular Comp Time Used *4	59,964	108,977	49,013	59,042	108,055	7.22			
653	Annual Leave Used	25,724	49,029	23,305	25,627	48,933	3.27			
655	Sick Leave Used	512,147	1,022,531	510,384	517,502	1,027,886	68.68			
660	Other Paid Time	8,484	16,535	8,051	8,168	16,219	1.08			
665	Jury Duty	2,496	4,579	2,083	1,451	3,534	0.24			
675	Bereavement Leave	4,066	8,085	4,019	5,598	9,618	0.64			
676	Bereavement Leave-PTO/STO	120	385	265	501	767	0.05			
677	Bereavement Leave-Chg Sick Lv	1,243	2,483	1,240	1,650	2,890	0.19			
Total Actual Paid/Earned Hours		15,780,002	31,556,241	15,776,239	15,353,986	31,130,225	2,080			
Full-time Equivalent Positions							14,966			
Paid Hours In Period							2,080			
ANALYSIS										
Average Productive Hours Per Employee							1,781.62			
Less Holidays							-96.00			
Less Daily Break Time *2							-111.35			
Less Training Time *3 ZTT PLUS ZXT							-24.35			
Notes Cema adjustment for 1673 positions at 96 hours included in the STO earned							160,608	10.73		
Net Average Productive Hours Per Employee							1,560.65			
*1	Excludes holiday hours for 1,673 CEMA employees, since holiday hours are included for all employees below.									
*2	Two 15-minute breaks are provided daily per bargaining unit contracts. This has been taken only for the regular hours									
*3	Training time was taken from payroll records for ZTT and ZXT codes									
*4	Includes one-third of comp time hours used since one hour is worked for every 1.5 hours taken.									

(2) →
 (3) →
 (1) → 1,560.65 +
 (2) → 111.35 +
 (3) → 24.35 +
1,696.35 *

Test Sheet Final ANALYSIS OF ACTUAL HOURS FOR ALL COUNTY EMPLOYEES

For Fiscal Year 2004-2005

Hours Code	Description	Period 02-14 Balance at 6-20-2004		Period 01-26 Balance at 12-21-2004		6-20-2004 through 12-21-2004		Period 02-14 Balance at 6-22-2005		2004-2005 Fiscal Year Total		Avg Hrs Per FTE
		A	B	C	D	E	F	G	H	I	J	K
51	Vacation Accrued and Earned *1	1,265,762	2,562,847	1,297,086	1,226,218	1,297,086	1,226,218	1,297,086	1,226,218	2,525,304	174.65	
52	Personal Leave Earned	4,985	284,440	289,455	8,341	289,455	8,341	289,455	8,341	287,796	20.60	
5V	Vacation accrued and earned Ex.Mgt *5	1,686	139,087	137,401	2,556	137,401	2,556	139,957	139,957	139,957	9.68	
100	Regular Hours	13,291,478	25,970,620	12,678,142	12,871,863	12,678,142	12,871,863	25,550,995	1,767.13	25,550,995	1,767.13	
600	Release Time	5,819	11,700	5,881	4,825	5,881	4,825	10,706	0.74	10,706	0.74	
605	Administrative Leave	9,783	17,632	7,849	6,118	7,849	6,118	13,967	0.97	13,967	0.97	
606	Paid Leave Pending Investigation	2,213	8,865	6,652	6,039	6,652	6,039	12,891	0.88	12,891	0.88	
620	First Day Sick	60,721	116,615	55,894	59,732	55,894	59,732	115,628	8.00	115,628	8.00	
625	Safety 4850 Paid Disability Lv	56,256	125,628	69,370	54,059	69,370	54,059	123,429	8.54	123,429	8.54	
630	Military Leave With Pay	1,882	5,346	3,464	1,899	3,464	1,899	5,363	0.37	5,363	0.37	
635	FLSA Comp Time Used *3	35,549	72,145	36,596	38,192	36,596	38,192	74,788	5.17	74,788	5.17	
640	Regular Comp Time Used *4	59,042	108,977	49,935	61,274	49,935	61,274	111,209	7.89	111,209	7.89	
653	Annual Leave Used	25,627	50,761	25,134	25,964	25,134	25,964	51,088	3.53	51,088	3.53	
655	Sick Leave Used	517,502	992,462	474,960	499,645	474,960	499,645	974,605	67.40	974,605	67.40	
660	Other Paid Time	8,168	15,490	7,322	37,760	7,322	37,760	45,082	3.12	45,082	3.12	
665	Jury Duty	1,451	3,603	2,152	2,703	2,152	2,703	4,855	0.34	4,855	0.34	
675	Bereavement Leave	5,598	10,845	4,947	7,201	4,947	7,201	12,148	0.84	12,148	0.84	
676	Bereavement Leave-PTO/STO	501	1,080	579	643	579	643	1,222	0.08	1,222	0.08	
677	Bereavement Leave-Chg Sick Lv	1,650	2,988	1,338	1,893	1,338	1,893	3,231	0.22	3,231	0.22	
Total Actual Paid/Earned Hours		15,355,672	30,510,629	15,155,157	14,918,915	15,155,157	14,918,915	30,074,072	2,079.96	30,074,072	2,079.96	
Full-time Equivalent Positions								14,459		14,459		
Paid Hours In Period								2,080		2,080		

ANALYSIS

Average Productive Hours Per Employee	1,767.13
Less Holidays	-96.00
Less Daily Break Time *2	-110.45
Less Training Time *3 ZTT PLUS ZXT	-26.60
Notes: CEMA adjustment for 1604 positions at 86 hours per FTE included in the STO earned	10.65
Net Average Productive Hours Per Employee	1,544.74
*1 Excludes holiday hours for 1,673 CEMA employees, since holiday hours are included for all employees below.	
*2 Two 15-minute daily breaks per bargaining unit contracts has been taken for the regular hours @0.5 hour per 8 hour work	
*3 Training time was taken from payroll records for ztt and zxt codes	
*4 Includes one-third of comp time hours used since one hour is worked for every 1.5 hours taken.	
*5 Accrued vacation for Ex. Management included after discussion with management audit	

1,545.00
 1,545.00 +
 110.45 +
 26.60 +
 10.65 ROUNDED TO
 1,544.74

Test Sheet Final-ANALYSIS OF ACTUAL HOURS FOR ALL COUNTY EMPLOYEES

For Fiscal Year 2005-2006

Hours Code	Description	Period 02-14 Balance at 6-22-2005	Period 01-26 Balance at 12/18/2005 & YE	6-22-2005 through 12-30-2005	Period 02-14 Balance at 6-18-2006	2005-2006 Fiscal Year Total	Avg Hrs Per FTE
		A	B	C	D	E	
51	Vacation Accrued and Earned *1	1,228,218	2,556,872	1,328,654	1,281,549	2,610,204	175.87
52	Personal Leave Earned	8,341	265,541	257,200	3,928	261,128	17.59
5V	Vacation accrued and earned Ex.Mgt *5	2,556	144,618	142,062	1,386	143,448	9.67
100	Regular Hours	12,871,853	25,870,492	12,988,639	13,167,400	26,166,040	1,762.97
600	Release Time	4,825	9,525	4,700	6,059	10,759	0.72
605	Administrative Leave	6,118	13,752	7,634	7,819	15,254	1.03
606	Paid Leave Pending Investigation	6,039	13,028	6,989	9,323	16,312	1.10
620	First Day Sick	59,732	117,484	57,752	59,742	117,494	7.92
625	Safety 4850 Paid Disability Lv	54,059	126,637	72,578	56,240	128,818	8.68
630	Military Leave With Pay	1,899	6,091	4,192	4,376	8,568	0.58
631	This is Military Leave Non productive hours	6,778	11,960	5,182	10,344	15,526	1.05
635	FLSA Comp Time Used *3	38,192	80,478	42,286	40,998	83,284	5.61
640	Regular Comp Time Used *4	61,274	113,322	52,048	67,883	119,931	8.08
653	Annual Leave Used	25,964	50,804	24,640	25,367	50,007	3.37
655	Sick Leave Used	498,845	985,418	485,773	521,729	1,007,501	67.88
660	Other Paid Time	37,760	83,787	46,027	40,759	86,786	5.85
665	Jury Duty	2,703	5,726	3,023	3,210	6,233	0.42
675	Bereavement Leave	7,201	15,191	7,990	10,493	18,483	1.25
676	Bereavement Leave-PTO/STO	643	1,069	426	486	912	0.06
677	Bereavement Leave-Chg Sick Lv	1,893	3,703	1,810	2,149	3,959	0.27
	Total Actual Paid/Earned Hours		30,475,299	15,549,606	15,321,039	30,870,846	2,079.95
	Full-time Equivalent Positions					14,842	
	Paid Hours in Period					2,080	

ANALYSIS

Average Productive Hours Per Employee

Less Holidays

Less Daily Break Time *2

Less Training Time *3 ZTT

Net Average Productive Hours Per Employee

*1 Excludes holiday hours for 1,473 CEMA employees, since holiday hours are included for all employees below.

*2 Two 15-minute daily breaks per bargaining unit contracts has been taken for the regular hours @0.5 hour per 8 hour work

*3 Training time was taken from payroll records for ztt and zxt codes

*4 Includes one-third of comp time hours used since one hour is worked for every 1.5 hours taken.

*5 Accrued vacation for Ex. Management included after discussion with management audit

1,762.97
-96.00
-110.19
-23.03
9.53 Rounded to
1,543.29
1,544.00

1,544.00 +
110.19 +
23.03 +
1,677.22 *

Tab 9

Santa Clara County
Probation Department
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
Review of Travel and Training Costs
 FY 2004-05
 Audit ID # S07-MCC-0033

Purpose: To review travel and training costs claimed by Probation Department to ensure that they are eligible for reimbursement under POBAR mandate.

Source: Discussions with Jessie Fuentes, Fiscal Officer, Probation's Department
 Training Materials, Class Schedules, and list of attendees, provided by the department
 ✓ Travel Expense Vouchers, filled out by attendees and approved by the department

Analysis: The department claimed costs associated with the following training courses:
 * Internal Affairs Investigation course (03/16/05-03/18/05)
 * CA Association of Probation Services Administrators course re: POBAR and Labor Relations (02/01/05-02/04-05)
 * Law Enforcement Legal Center course re: Discipline and Internal Investigations (04/04/05-04/06/05)

The auditors reviewed the course materials and concluded that claimed costs associated with training classes are partially eligible for reimbursement. The review of training materials disclosed that course contents were only partially related to the performance of POBAR activities.

The department claimed costs associated with training hours under the Administrative Activities component of the claim. The auditors reviewed related salary and benefit costs and noted adjustments to claimed hours for training classes. Claimed hours were adjusted to reflect only eligible portion of the classes that were directly related to the performance of POBAR activities. Ineligible portion of the training (50%) did not relate to this mandate and therefore unrelated hours were excluded from the claim. For more details, please review the Document # <3D-2a 5/18-6/18>

This document is concerned with the review of travel expenses associated with the attendance of training classes described above. The travel / training expenses were also adjusted in direct proportion to adjusted training hours noted in <Document # <3D-2a 5/18-6/18>.

Employee Name	Training Class	Travel Costs Incurred	Travel Costs Allowed	Audit Adjustments
Karen Fletcher	IA Investigation	255 ✓	255	-
	CAPSA course	447 ✓	224	(224)
	Discipline course	804 ✓	402	(402)
		<u>2A-26S/11,506</u>	<u>881</u>	<u>(626)</u>
John Dahl	CAPSA course	2A-26S/14 447 ✓	224	(224)
Bret Fidler	Discipline course	662 ✓	331	(331)
Ned Putt	Discipline course	684 ✓	342	(342)
Total		<u>3,299</u>	<u>1,778</u>	<u>(1,522)</u>

599

3F2/2 i 11-4 For PSSC, see 3F

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 December 3, 2014, I served the:

State Controller's Office Comments on IRC

Peace Officers Procedural Bill of Rights (POBOR), 10-4499-I-01

Government Code Sections 3300-3310

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;

Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;

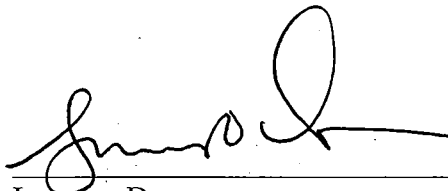
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

Fiscal Years: 2003-2004, 2004-2005, and 2005-2006

Santa Clara County, Claimant

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 December 3, 2014 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 11/19/14

Claim Number: 10-4499-I-01

Matter: Peace Officers Procedural Bill of Rights (POBOR)

Claimant: County of Santa Clara

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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Dennis Speciale, *State Controller's Office*
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Phone: (916) 324-0254
DSpeciale@sco.ca.gov



JOHN CHIANG
California State Controller

December 18, 2014

RECEIVED
December 18, 2014
*Commission on
State Mandates*

LATE FILING

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

Re: Incorrect Reduction Claim (IRC)

Peace Officers Procedural Bill of Rights, 10-4499-I-01

Government Code Sections 3300-3310

Statutes 1976, Chapter 465; Statutes 1978, Chapter 775, 1173, 1174, and 1178;

Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;

Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

Fiscal Years: 2003-2004, 2004-2005, and 2005-2006

Santa Clara County, Claimant

Dear Ms. Halsey:

This letter updates information previously included in the State Controller's Office response dated December 2, 2014, to the above-named IRC.

In our response, we referenced PDF pages of the county's filed response. The correct references are as follows:

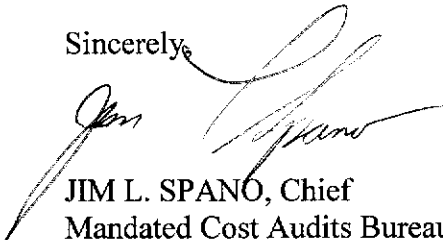
- Exhibit A – PDF page 27
- Exhibit B – PDF page 90
- Exhibit C – PDF page 120
- Exhibit D – PDF page 130
- Exhibit E – PDF page 149
- Exhibit F – PDF page 194
- Exhibit G – PDF page 211
- Exhibit H – PDF page 234
- Exhibit I – PDF page 282
- Exhibit J – PDF page 304
- Exhibit K – PDF page 329
- Exhibit L – PDF page 354
- Exhibit M – PDF page 358

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250-5874
SACRAMENTO 3301 C Street, Suite 700, Sacramento, CA 95816 (916) 324-8907
LOS ANGELES 901 Corporate Center Drive, Suite 200, Monterey Park, CA 91754 (323) 981-6802

Heather Halsey, Executive Director
December 18, 2014
Page 2

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Spano", written over a horizontal line.

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/sk

14893

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 December 19, 2014, I served the:

SCO Comments

Incorrect Reduction Claim, 10-4499-I-01

Peace Officers Procedural Bill of Rights (POBOR)

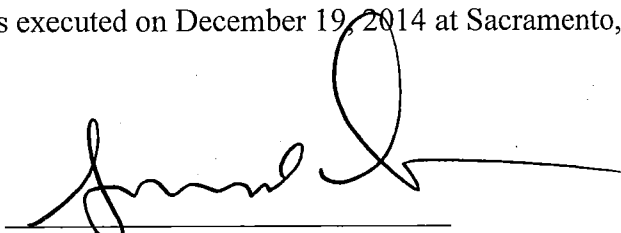
Government Code Sections 3300-3310 et al.

Fiscal Years: 2003-2004, 2004-2005, and 2005-2006

Santa Clara County, Claimant

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 December 19, 2014 at Sacramento, California.



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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/8/14

Claim Number: 10-4499-I-01

Matter: Peace Officers Procedural Bill of Rights (POBOR)

Claimant: County of Santa Clara

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
March 05, 2015
*Commission on
State Mandates*

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

In Re:

STATE CONTROLLER'S OFFICE
AUDIT REPORT ON SANTA CLARA
COUNTY PEACE OFFICERS
PROCEDURAL BILLS OF RIGHTS
(POBOR) PROGRAM

INCORRECT REDUCTION CLAIM
No.10-4499-I-01

**REBUTTAL TO THE RESPONSE SUBMITTED BY THE STATE
CONTROLLER**

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ELIZABETH G. PIANCA, Deputy County Counsel (S.B. #241244)
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Attorneys for
COUNTY OF SANTA CLARA

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Attorneys for
COUNTY OF SANTA CLARA

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

In Re:

No. 10-4499-I-01

STATE CONTROLLER'S OFFICE
AUDIT REPORT ON SANTA CLARA
COUNTY PEACE OFFICERS
PROCEDURAL BILLS OF RIGHTS
(POBOR) PROGRAM

INCORRECT REDUCTION CLAIM

**REBUTTAL TO THE RESPONSE SUBMITTED BY THE STATE
CONTROLLER**

BACKGROUND

On May 14, 2008, the State Controller's Office (hereinafter "SCO") issued its final audit report on the County of Santa Clara's (hereinafter "County") claims for costs incurred based on the legislatively-created Peace Officers Bill of Rights (POBOR) Program (Test Claim No. 4499; Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989, and Chapter 675, Statutes of 1990, and as reconsidered by Case No. 05-

RL-4499-01) for July 1, 2003 through June 30, 2006. The SCO incorrectly reduced the County's claim of \$748,888 by \$526,802, thus allowing only \$222,086.

The County submitted the instant Incorrect Reduction Claim ("IRC") on September 16, 2010. Over four years later, on December 2, 2014, the SCO filed its formal response. Correspondence dated September 28, 2010 from Nancy Patton, Assistant Executive Director of the Commission, to both parties, states (in pertinent part):

SCO Review and Response. Please file the SCO response and supporting documentation regarding this claim within 90 days of the date of this letter.

The SCO response was submitted approximately 1,436 days late.¹ Despite the delay in the SCO's response, the County will address the specifics in the SCO's response.

DISCUSSION

A. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE ACTIVITIES IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative activities in the amount of \$73,067. The County has asserted that the wrong set of Parameters and Guidelines, those adopted December 4, 2006 and effective for the 2006-2007 fiscal year and not those in effect for the fiscal years audited. The SCO's response acknowledges that the audit was based on the Parameters and Guidelines adopted by the Commission in 2000, but then implies that the revised Parameters and Guidelines adopted in 2006 could be used and application of the 2006 Parameters and Guidelines would be indistinguishable from the 2000. In particular, the SCO response states:

¹ On December 5, 2014, the County requested an extension to submit the County's rebuttal to March 6, 2015. This request was granted by the Commission on December 9, 2014.

Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code Section 3304) and Adverse Comment (for punitive action protected by the due process clause), reimbursable activities did not change from the original parameters and guidelines. In addition, our understanding of allowable Administrative Activities per the original parameters and guidelines did not change as a result of the Commission amending them on December 4, 2006.

The County disagrees with this characterization of the Parameters and Guidelines adopted in 2006 because the 2006 version calls for a far greater level of specificity than the Parameters and Guidelines adopted in 2000. The guidance the County had at the time of claiming were the following activities as set forth in the Parameters and Guidelines:

1. Developing and updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBOR cases.

The Parameters and Guidelines adopted in 2000 are the correct guidelines to use since they provide sufficient flexibility to the County to adapt them to its own method of implementing the mandate and were the Parameters and Guidelines in effect for the fiscal year audited. The SCO's suggestion that the 2006 Parameters and Guidelines could be used and the result would be indistinguishable is unpersuasive.

B. AUDIT FINDING NUMBER ONE REGARDING POBOR ADMINISTRATIVE APPEALS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR administrative appeals in the amount of \$3,566. The

County's claiming of these costs was proper based on the Parameters and Guidelines allowing for reimbursement of "other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss, or hardship, and that impact the career opportunities of the employee."²

The SCO's response, however, pulls from the Commission's original statement of decision for the POBOR program, adopted November 30, 1999, as the only basis for supporting its position that the administrative appeal costs are unallowable. However, the Parameters and Guidelines are the proper means to evaluate the County's allowable costs.

C. AUDIT FINDING NUMBER ONE REGARDING INTERROGATION COSTS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR interrogations in the amount of \$250,262. The Commission's Statement of Decision supports the County's claiming of these costs because the use of the conjunctive "and" and the plural "requirements" in the Decision refers to the fact that the Commission found both the costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimbursable activities of the mandate.

In its response, the SCO further examines the Commission's intent in relation to the interrogation activity by examining the Commission's staff analysis for the proposed parameters and guidelines regarding the interrogations costs component. But it is the Statement of the Decision, and not the staff analysis, which is the "law of the case" and given deference when there is any discrepancy between the finding of a judicial body and the documents that arise from that finding.

² Parameters and Guidelines, Section IVB(2), Administrative Appeals.

D. AUDIT FINDING NUMBER ONE REGARDING POBOR ADVERSE COMMENTS IS INCORRECT.

Audit Finding 1 states that the County over-claimed salaries, benefits and related indirect costs related to POBOR adverse comments in the amount of \$104,444. These activities are expressly allowed in accordance with the plain language of the Parameters and Guidelines, which provide:

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The SCO's response suggests that the County's position that the costs are allowable is based on the County's "expanded interpretation of the language in the parameters and guidelines that is taken out of context."³ The County's position is based on the plain language of the Parameters and Guidelines that allows for the reimbursement of the costs claimed, which can include activities such as reviewing and documenting the complaint for accuracy to start and investigation, summarizing investigation results, and preparing the final case report.

E. AUDIT FINDING NUMBER TWO REGARDING THE COUNTY'S PRODUCTIVE HOURLY RATE IS INCORRECT.

Audit Finding 2 states that the County over-claimed salaries, benefits, and related indirect costs in the amount of \$18,752. The finding was based upon the County's

³ SCO's Response at p. 16.

computation of its productive hourly rate for employees, which includes a methodology of calculating the average annual productive hours with a deduction based on authorized (or required) employee break time, required training, and classification-training; rather than actual break time, required training, and classification-training. The County's IRC exhaustively explains the County's basis for using the developed countywide average annual productive hours and why this is an approved method based on the Mandated Cost Manual for Local Agencies ("Manual").

The SCO's response acknowledges that the Manual does "allow the county to calculate productive hourly rates using countywide average annual productive hours."⁴ The point of difference between the SCO and the County is the accepted methodology for calculating break time and training time.

With respect to break time, the County claimed authorized break time to calculate the productive hourly rate. The SCO is taking the position that only actual break time can be used to calculate the productive hourly rate. Since the IRC was submitted, the County has re-evaluated how it calculates break time for the countywide average annual productive hours and break time is not included in the calculation because it is not cost effective to track actual break time. Therefore, the County no longer challenges the SCO's audit findings with respect to how break time was calculated for purposes of the countywide productive hourly rate for FY 2003-2004, FY 2004-2005, and FY 2005-2006.

Concerning training hours deducted, the SCO's response acknowledges that training time specifically related to a mandated program is eligible for reimbursement and, presumably, can be deducted when calculating the countywide productive hourly rate. The issue for the SCO is that the County deducted training time based on time

⁴ SCO Response at p. 19.

required for non-state mandated programs, such as training time benefiting specific departments or training common to all departments when calculating the countywide productive hours for FY 2003-2004, FY 2004-2005, and FY 2005-2006. The County no longer challenges the SCO's audit findings with respect to how training was calculated for purposes of the countywide productive hourly rate for FY 2003-2004, FY 2004-2005, and FY 2005-2006.

F. AUDIT FINDING NUMBER FIVE REGARDING COUNTY'S TRAINING COSTS IS INCORRECT.

Audit Finding 5 states that the County over-claimed costs related to POBOR travel and training in the amount of \$1,521. The Parameters and Guidelines provided that attendance at specific training, including trainings for human resources, law enforcement and legal counsel, are allowable costs. The SCO's response claims that the County's IRC "suggests that training in other comprehensive topics not related to requirements of the mandated program should be allowable."⁵ The County made no suggestion in its IRC. The language of the Parameters and Guidelines is broad and the costs claimed by the County allowable.

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⁵ SCO response at p. 22.

CONCLUSION

The County continues to request that the Commission reverse the SCO's audit findings. However, the County is available to meet with Commission and SCO staff to address Audit Finding 2.

Dated: 3/5/2015

Respectfully submitted,

ORRY P. KORB
County Counsel



Elizabeth G. Pianca
Deputy County Counsel
Attorneys for County of Santa Clara

1073846

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 March 6, 2015, I served the:

Claimant Rebuttal Comments

Incorrect Reduction Claim, 10-4499-I-01

Peace Officers Procedural Bill of Rights (POBOR)

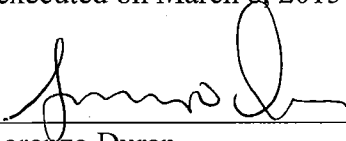
Government Code Sections 3300-3310 et al.

Fiscal Years: 2003-2004, 2004-2005, and 2005-2006

Santa Clara County, Claimant

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 March 6, 2015 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 2/19/15

Claim Number: 10-4499-I-01

Matter: Peace Officers Procedural Bill of Rights (POBOR)

Claimant: County of Santa Clara

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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SACRAMENTO, CA 95814
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FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

**Exhibit D**

January 14, 2016

Ms. Elizabeth Pianca
County of Santa Clara
70 West Hedding Street, 9th Floor, East Wing
San Jose, CA 95110-1770

Ms. Jill Kanemasu
State Controller's Office
Accounting and Reporting
3301 C Street, Suite 700
Sacramento, CA 95816

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
Peace Officers Procedural Bill of Rights (POBOR), 10-4499-I-01
Government Code Sections 3301, 3303, 3304, 3305, and 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Santa Clara, Claimant

Dear Ms. Pianca and Ms. Kanemasu:

The draft proposed decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **February 4, 2016**. 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.)

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

This matter is set for hearing on **Friday, March 25, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about March 11, 2016. 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,

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

Heather Halsey
Executive Director

ITEM __
INCORRECT REDUCTION CLAIM
DRAFT PROPOSED DECISION

Government Code Sections 3301, 3303, 3304, 3305, and 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367;
Statutes 1982, Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675

Peace Officers Procedural Bill of Rights

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

10-4499-I-01

County of Santa Clara, Claimant

EXECUTIVE SUMMARY

Overview

This analysis addresses an incorrect reduction claim (IRC) filed by the County of Santa Clara (claimant) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2003-2004 through 2005-2006 under the *Peace Officers Procedural Bill of Rights (POBOR)* program.

The reductions in dispute pertain to the Controller's finding that claimed costs were beyond the scope of reimbursement outlined in the parameters and guidelines.¹

POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Generally, POBOR prescribes certain procedural protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit.

On November 30, 1999, the Commission adopted the *POBOR* Statement of Decision, CSM 4499. The Commission found that certain procedural requirements under POBOR were not new and were already required under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law because they did not impose a new program or higher level of service, or did not impose costs mandated by the state pursuant to Government Code section 17556(c), since

¹ Exhibit A, IRC 10-4499-I-01, pages 39-62.

they were mandated by federal law. The Commission approved the activities required by POBOR that exceeded the requirements of pre-existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the *POBOR* Statement of Decision to clarify whether the test claim statutes imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration, 05-RL-4499-01. The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission *except* the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The statement of decision adopted by the Commission on reconsideration applies to costs incurred and claimed beginning July 1, 2006 and does not apply to this IRC.

Procedural History

On September 16, 2010, the claimant filed this IRC.² On December 2, 2014, the Controller filed late comments on the IRC.³ On December 5, 2014, the claimant requested an extension of time to rebut, which was approved. On December 18, 2014, the Controller filed additional late comments on the IRC.⁴ On March 5, 2015, the claimant filed rebuttal comments.⁵ On January 14, 2016, Commission staff issued the draft proposed decision.⁶

Commission Responsibilities

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the

² Exhibit A, IRC 10-4499-I-01.

³ Exhibit B, Controller’s Late Comments on IRC.

⁴ Exhibit B, Controller’s Additional Late Comments on IRC. Note that the Additional Late Comments relate to the initial comments, correcting page references in that document. Therefore they are included in one exhibit.

⁵ Exhibit C, Claimant’s Rebuttal Comments.

⁶ Exhibit D, Draft Proposed Decision.

context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁷ The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. 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.”⁸

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁹

The Commission must also review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.¹⁰ In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.¹¹

Claims

The following chart provides a brief summary of the claims and issues raised and staff’s recommendation.

Issue	Description	Staff Recommendation
Salaries and benefits for the Sheriff’s Department, claimed under the category of administrative activities, totaling \$8,463, plus related indirect costs. ¹²	Claimant sought reimbursement for preparing the file, logging the initial case information, and interviewing the complainant. The Controller determined that these activities were beyond the scope of the mandate. Parameters and guidelines provide for reimbursement <i>only</i> for	<i>Correct</i> –the activities described are beyond the scope of the mandate.

⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁸ *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁹ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

¹⁰ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

¹¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

¹² Exhibit A, IRC 10-4499-I-01, page 39.

	developing or updating policies, specific mandate-related training, and updating the status of <i>POBOR</i> cases.	
Salaries and benefits for the Probation Department, claimed under the category of administrative activities, totaling \$35,490, plus related indirect costs. ¹³	Claimant sought reimbursement for certain training of internal affairs staff; and for reviewing investigation reports for approval or correction; visiting other IA offices during establishment of IA office at the department; conducting interviews for an open position; reviewing progress on the development of an IA database; reviewing complaints, response letters, Merit System Rules, and assigning cases; and reviewing training schedule for the unit. Parameters and guidelines provide for reimbursement <i>only</i> for developing or updating policies, specific mandate-related training, and updating the status of <i>POBOR</i> cases.	<i>Correct</i> – the activities described are beyond the scope of the mandate.
Salaries and benefits of \$1,388 for the Sheriff’s Department, and \$985 for the Probation Department, claimed under the category of administrative appeals, plus related indirect costs. ¹⁴	Claimant sought reimbursement for activities related to due process in administrative appeals. The Controller determined that no hearings were held for the cases included in the claims for the Sheriff’s Department; and for the Probation Department the resulting disciplinary actions (suspension and letter of reprimand) fell under existing due process requirements. Parameters and guidelines provide for reimbursement of certain protections in administrative appeals only in limited	<i>Correct</i> –there was no administrative appeal for the Sheriff’s Department, and the circumstances of the appeals at issue for the Probation Department fell under pre-existing state and federal due process requirements that are beyond the scope of the mandate.

¹³ Exhibit A, IRC 10-4499-I-01, pages 39-40.

¹⁴ Exhibit A, IRC 10-4499-I-01, pages 40-42.

	circumstances, and only for certain employees.	
Salaries and benefits of \$61,350 for the Sheriff's Department, \$130,236 for the Probation Department, and \$16,350 for the District Attorney's Office, plus related indirect costs, claimed under the category of interrogations. ¹⁵	Claimant sought reimbursement for gathering reports and reviewing complaints; investigation time; preparing questions for interviews; interviewing witnesses during work hours; reviewing tape and transcribing statements; conducting pre-interrogation meetings; traveling to interview witnesses; transcribing witness tapes; interviewing accused officers during normal work hours; preparing a summary report of the agency complaint as part of the case file preparation; and reviewing interview tapes. Parameters and guidelines provide for reimbursement only for providing notice of the nature of the interrogation, tape recording the interrogation, providing access to the tape or transcription, as specified; and compensating an officer for an investigation that occurs during off-duty time, where necessitated by the seriousness of the investigation.	<i>Correct</i> – the activities claimed pertain to investigating complaints (e.g., gathering reports and preparing interview questions); providing transcriptions of witness tapes (not required unless the witness is also the subject of the investigation); and overtime hours for investigators to conduct interrogations during officers' normal work hours; these activities are beyond the scope of the mandate.
Salaries and benefits totaling \$43,291 for the Sheriff's Department, \$26,108 for the Probation Department, and \$860 for the District Attorney's Office, plus related indirect costs, claimed under the category of adverse comment. ¹⁶	Claimant sought reimbursement for reviewing the circumstances of the complaint to determine the level of investigation; documenting the complaint or allegation and reviewing it for accuracy; summarizing the investigation in a case summary report; preparing interview questions; preparing the	<i>Correct</i> – the activities described pertain to the investigation of a complaint that may lead to an adverse comment; these activities are beyond the scope of the mandate.

¹⁵ Exhibit A, IRC 10-4499-I-01, pages 42-44.

¹⁶ Exhibit A, IRC 10-4499-I-01, pages 44-46.

	<p>investigation summary and reviewing it with the supervisor; and preparing the final case report. The Controller determined that these activities were beyond the scope of the mandate. The parameters and guidelines provide for reimbursement only to provide notice and an opportunity to respond to an adverse comment (if not already required by existing due process requirements), to obtain the signature of the officer on an adverse comment, and review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.</p>	
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Staff Analysis

Reductions of Salaries and Benefits Under Finding 1 and Travel and Training Costs Under Finding 5 Are Correct as a Matter of Law.

The May 14, 2008 final audit report for fiscal years 2003-2004 through 2005-2006 allowed \$222,086, out of \$748,888 claimed over the audit period, resulting in a net reduction of \$526,802. These reductions are based on five findings made by the Controller. The claimant accepts Findings 3 and 4 in the audit report, regarding understatements in the claims.¹⁷ And in rebuttal comments, the claimant withdraws its challenge on Finding 2 regarding the inclusion of training hours and break time within the productive hourly rate calculation.¹⁸ The claimant

¹⁷ Exhibit A, IRC 10-4499-I-01, pages 60-61.

¹⁸ Exhibit C, Claimant’s Rebuttal Comments, pages 6-8.

continues to dispute Findings 1 and 5, pertaining to activities disallowed on the basis of the Controller's interpretation of the scope of the mandate.

The parties do not dispute that the July 27, 2000 parameters and guidelines control for this IRC which includes claim years 2003-2004 through 2005-2006.¹⁹ However, the parties dispute the interpretation of the reimbursable activities identified in the parameters and guidelines. The claimant continues to argue that the July 27, 2000 parameters and guidelines are subject to a more flexible interpretation of reimbursable activities, and that the Controller's reductions are really based on the later-amended parameters and guidelines, which are somewhat more specific in their description of approved reimbursable activities.²⁰ The Controller asserts that its audit is based on the parameters and guidelines adopted July 27, 2000 and the staff analysis of those parameters and guidelines, and that "[a]ny references to the revised parameters and guidelines...were made solely to point out to county staff that reimbursable and non-reimbursable activities of the mandated program are spelled out more clearly in the revised parameters and guidelines."²¹

Pursuant to Government Code section 17557 and the Commission's regulations, parameters and guidelines are required to identify the activities the Commission finds to be mandated by the state, and those additional activities proposed by the claimant that the Commission finds and approves, based on substantial evidence in the record, to be reasonably necessary to comply with the state-mandated program.²² Under the rules of interpretation, when the language of an administrative agency's rule, such as the parameters and guidelines, is plain, the provisions are required to be enforced according to the terms of the document.²³ Plain provisions of the administrative rule may not be disregarded or enlarged, nor may the interpretation go beyond the meaning of the words used when the words are clear and unambiguous. The parties are prohibited from writing into an administrative rule, by implication, express requirements that are not there.²⁴ The Commission's decisions on test claims and parameters and guidelines are quasi-judicial decisions that are binding on the parties.²⁵

Moreover, later clarification of existing law, including the Commission's decision on reconsideration of this program, which clarified its original decision regarding the scope of the mandated activities, is not considered a retroactive application of a new rule, but is merely a

¹⁹ These parameters and guidelines were in effect when the costs were incurred. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.)

²⁰ Exhibit C, Claimant Rebuttal Comments, pages 3-4.

²¹ Exhibit B, Controller's Late Comments on IRC, page 12.

²² Government Code sections 17557 and 17559; California Code of Regulations, title 2, section 1183.7; Former California Code of Regulations, title 2, section 1183.1 (Register 96, No. 30).

²³ *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

²⁴ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

²⁵ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated the following: "[U]nless a party to a quasi-judicial proceeding challenges the agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions." [Citation omitted.]

statement of what the law has always been from the time it was enacted.²⁶ Accordingly, the later decision adopted by the Commission on reconsideration may be used to aid in understanding the original parameters and guidelines.

Finding 1 of the audit report includes reductions in salaries and benefits for activities that the Controller determined were beyond the scope of the mandate. The reductions include unallowable activities, and related indirect costs, in the categories (as articulated in the parameters and guidelines) of Administrative Activities; Administrative Appeals; Interrogation; and Adverse Comment. The specific activities disallowed differ for each category and for each unit claiming costs within the county. However, the denied activities are primarily in the nature of investigating officer misconduct, or procedural requirements that fall under pre-existing state and federal due process protections that were not approved for reimbursement in the test claim and parameters and guidelines. In addition, Finding 5 disallows travel and training costs that the Controller held were unrelated to the mandated activities.

The *POBOR* mandate is very narrow, and only includes those due process procedural protections extended to public safety employees under sections 3301, 3303, 3304, 3305, and 3306 of the Government Code which exceed the due process protections of the state and federal constitutions. Reimbursement is not required for activities undertaken by investigators to determine whether to pursue disciplinary action; interrogating officers during normal work hours; establishing an Internal Affairs investigative unit; training Internal Affairs staff (except the training specifically related to *POBOR* activities); or for procedural due process requirements that fall under existing law. Travel and training costs, to be reimbursable, must be related to the due process requirements of the mandate, not the investigation of alleged misconduct or the general operations of an internal affairs unit within the agency.

Staff finds that the activities in dispute in this IRC are beyond the scope of the mandate, and the Controller's reductions are correct as a matter of law.

Conclusion

Staff finds the Controller's reductions of costs claimed are correct as a matter of law.

Staff Recommendation

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

²⁶ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

**IN RE INCORRECT REDUCTION CLAIM
ON:**

Government Code Sections 3301, 3303, 3304, 3305, and 3306

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675

Fiscal Years 2003-2004, 2004-2005, and 2005-2006

County of Santa Clara, Claimant

Case No.: 10-4499-I-01

Peace Officers Procedural Bill of Rights

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

(Adopted March 25, 2016)

DRAFT PROPOSED DECISION

The Commission on State Mandates (Commission) heard and decided this incorrect reduction claim (IRC) during a regularly scheduled hearing on March 25, 2016. [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., and related case law.

The Commission [adopted/modified] the proposed decision to [approve/partially approve/deny] the IRC at the hearing by a vote of [vote count will be included in the adopted decision]. The Commission voted as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

This analysis addresses the IRC filed by the County of Santa Clara (claimant) regarding reductions made by the State Controller's Office (Controller) to reimbursement claims for costs incurred during fiscal years 2003-2004 through 2005-2006 under the *Peace Officers Procedural Bill of Rights* program. Over the three fiscal years in question, reductions totaling \$526,802 were made based on alleged unallowable services claimed.

The Commission finds that the Controller properly reduced costs claimed for activities that go beyond the scope of the mandate. The Commission, therefore denies this IRC, finding that the Controller's reductions are correct as a matter of law.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 09/16/2010 | Claimant filed the IRC. ²⁷ |
| 12/02/2014 | Controller filed late comments on the IRC. ²⁸ |
| 12/05/2014 | Claimant filed a request for an extension of time to rebut which was granted for good cause. |
| 12/18/2014 | Controller filed additional late comments on the IRC. ²⁹ |
| 03/05/2015 | Claimant filed rebuttal comments. ³⁰ |
| 01/14/2016 | Commission staff issued the draft proposed decision. ³¹ |

II. Background

The Peace Officers' Procedural Bill of Rights Program

The Peace Officers' Procedural Bill of Rights (POBOR)³² provides a series of rights and procedural safeguards to peace officers when the officer is subject to investigation or discipline

²⁷ Exhibit A, IRC 10-4499-I-01, page 1.

²⁸ Exhibit B, Controller's Late Comments on IRC.

²⁹ Exhibit B, Controller's Additional Late Comments on IRC. Note that the Additional Late Comments relate to the initial comments, correcting page references in that document. Therefore they are included in one exhibit.

³⁰ Exhibit C, Claimant Rebuttal Comments.

³¹ Exhibit D, Draft Proposed Decision.

³² The Peace Officers' Procedural Bill of Rights has been abbreviated "POBRA," by the courts (See *Department of Finance v. Commission* (2009) 170 Cal.App.4th 1355); and as "POBAR," by the Commission in parameters and guidelines (Exhibit X, Parameters and Guidelines, corrected August 17, 2000) and on many other occasions the Commission and others have employed the acronym "POBOR," and this decision will follow suit. The correct acronym is of course POPBOR (for Peace Officers' Procedural Bill of Rights) or PSOBOR (for Public Safety Officers Procedural Bill of Rights Act- which is in fact the title of the act), but no one likes the sound of those.

by their employer. On November 30, 1999, the Commission adopted the *Peace Officers Procedural Bill of Rights (POBOR)* Statement of Decision, CSM 4499, approving the claim for those activities that exceeded the requirements of the due process clauses of the United States and California Constitutions.³³ On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of POBOR cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee. These activities include providing notice to the officer, an opportunity for the officer to review and respond to the adverse comment, and obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment.³⁴

The parameters and guidelines analysis adopted by the Commission on July 27, 2000, also clarified the scope of the mandate and the activities that are *not* eligible for reimbursement. For example, the Commission determined that “[b]efore the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and maintaining files for those cases” and, thus, those activities were not reimbursable.³⁵ The Commission also found that defending a lawsuit attacking the validity of the final administrative

³³ Exhibit X, Adopted Test Claim Decision, November 30, 1999, page 10 [For example, the Commission found: “in some circumstances, the due process clause requires the same administrative hearing as the test claim legislation. However, as reflected by the table below, the Commission found that the test claim legislation is broader than the due process clause and applies to additional employer actions that have not previously enjoyed the protections of the due process clause.”].

³⁴ Exhibit X, Statement of Decision on Reconsideration, April 26, 2006, page 7.

³⁵ Exhibit X, Staff Analysis adopted by the Commission on July 27, 2000, page 5.

decision went beyond the scope of the mandate and was not eligible for reimbursement.³⁶ The Commission further recognized that Government Code section 3303(a) addresses only the compensation and timing of an interrogation, and does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, or review the responses given by the officers and/or witnesses.³⁷ And the Commission found that compensating local agencies for the officer’s time in responding to an adverse comment is not mandated by the state and not eligible for reimbursement.³⁸

Statutes 2005, chapter 72, section 6 added section 3313 to the Government Code to direct the Commission to “review” the *POBOR* test claim Statement of Decision to clarify whether the test claim statutes imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration, 05-RL-4499-01. On review of the claim, the Commission found that the *San Diego Unified* case did not alter the decision, which found that the test claim statutes imposed a partially reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The reconsideration decision did, however, clarify the scope of the mandate, making clear that the test claim statute does not require an employer to investigate an officer’s conduct, interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file; the *POBOR* mandate is about new procedures governing peace officer labor relations, and investigations of misconduct or malfeasance are beyond the scope of the mandate.³⁹ The Commission thereafter adopted amended parameters and guidelines for costs incurred beginning July 1, 2006, for all activities previously approved by the Commission *except* the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the

³⁶ *Id.*, page 7.

³⁷ *Id.*, page 16.

³⁸ *Id.*, page 20.

³⁹ Exhibit X, Statement of Decision on Reconsideration, April 26, 2006, pages 38-39; see also page 15, where the Commission found that:

The [POBOR] rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).⁴⁰

The parameters and guidelines on reconsideration also restate and further clarify the activities that are eligible for reimbursement and those activities that are not eligible for reimbursement.⁴¹

The Controller's Audit and Summary of the Issues

The May 14, 2008 final audit report for the County of Santa Clara's annual reimbursement claims for fiscal years 2003-2004 through 2005-2006 allowed \$222,086, out of \$748,888 claimed over the audit period, resulting in a net reduction of \$526,802. These reductions are based on five findings made by the Controller. The claimant accepts Findings 3 and 4 in the audit report, regarding understatements in the claims.⁴² And in rebuttal comments, the claimant withdraws its challenge on Finding 2 regarding the inclusion of training hours and break time within the productive hourly rate calculation.⁴³ The claimant continues to dispute Findings 1 and 5, pertaining to activities disallowed on the basis of the Controller's interpretation of the scope of the mandate.

In Finding 1, the Controller disallowed \$324,521 in salaries and benefits based on activities that were beyond the scope of the mandate, including activities categorized by the claimant under the components of Administrative Activities, Administrative Appeals, Interrogation, and Adverse Comment. The majority of the denied activities, which are more specifically explained below, were related to the investigation of POBOR cases, or maintaining of files and records of POBOR cases, or procedural requirements that were required by existing due process protections. The Controller held these activities were not related to the procedural due process requirements approved in the parameters and guidelines and disallowed these costs. Related indirect costs for these disallowed activities totaled \$184,518.⁴⁴

In Finding 5, the Controller disallowed travel and training costs not related to the mandate. Only POBOR-related training is reimbursable, and the Controller found that \$1,521 in travel and

⁴⁰ Exhibit X, Amended Statement of Decision on Reconsideration, Pursuant to *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, amended July 31, 2009, page 5.

⁴¹ See Exhibit X, Corrected Parameters and Guidelines, August 17, 2000, pages 3-8; Adopted Parameters and Guidelines Amendment, December 6, 2006, pages 5-11 [describing reimbursable activities in greater detail].

⁴² Exhibit A, IRC 10-4499-I-01, pages 60-61.

⁴³ Exhibit C, Claimant's Rebuttal Comments, pages 6-8.

⁴⁴ Exhibit A, IRC 10-4488-I-01, pages 37-54.

training costs claimed for fiscal year 2004-2005 was not related to the *POBOR* mandate activities.⁴⁵

III. Positions of the Parties

County of Santa Clara

The claimant continues to dispute the following reductions, alleging that they are incorrect:

Finding 1

- Unallowable salaries and benefits for the Sheriff's Department, under the category of administrative activities, totaling \$8,463, plus related indirect costs, for preparing the file, logging the initial case information, and interviewing the complainant.⁴⁶
- Unallowable salaries and benefits for the Probation Department, under the category of administrative activities, totaling \$35,490, plus related indirect costs, for certain training of internal affairs staff that the Controller found was not mandate-related; and for reviewing investigation reports for approval or correction; visiting other IA offices during establishment of IA office at the department; conducting interviews for an open position; reviewing progress on the development of an IA database; reviewing complaints, response letters, Merit System Rules, and assigning cases; and reviewing training schedule for the unit.⁴⁷
- Unallowable salaries and benefits for the Sheriff's Department, under the category of administrative appeals, totaling \$1,388, plus related indirect costs, for ineligible activities related to due process.⁴⁸
- Unallowable salaries and benefits for the Probation Department, under the category of administrative appeals, totaling \$985, plus related indirect costs, for ineligible activities related to due process.⁴⁹
- Unallowable salaries and benefits for the Sheriff's Department, under the category of interrogations, totaling \$61,350 plus related indirect costs, for gathering reports and reviewing complaints; investigation time; preparing questions for interviews; interviewing witnesses during work hours; reviewing tape and transcribing statements; conducting pre-interrogation meetings; and interviewing accused officers during normal work hours.⁵⁰
- Unallowable salaries and benefits for the Probation Department, under the category of interrogations, totaling \$130,236 plus related indirect costs, for gathering reports, logs, and evidence; reviewing complaints, reports, and evidence; interviewing witnesses;

⁴⁵ Exhibit A, IRC 10-4499-I-01, page 61.

⁴⁶ Exhibit A, IRC 10-4499-I-01, page 39.

⁴⁷ Exhibit A, IRC 10-4499-I-01, pages 39-40.

⁴⁸ Exhibit A, IRC 10-4499-I-01, pages 40-42.

⁴⁹ Exhibit A, IRC 10-4499-I-01, pages 40-42.

⁵⁰ Exhibit A, IRC 10-4499-I-01, pages 42-43.

traveling to interview witnesses; transcribing witness tapes; reviewing tapes and making corrections; preparing interview questions; conducting pre-interrogation meetings; and interviewing accused officers during normal working hours.⁵¹

- Unallowable salaries and benefits for the District Attorney’s Office, under the category of interrogations, totaling \$16,350 plus related indirect costs, for gathering reports, log sheets; reviewing complaints, reports, and evidence; preparing interview questions; interviewing witnesses during normal working hours; conducting pre-interrogation meetings; interviewing accused officers during normal working hours; preparing a summary report of the agency complaint as part of the case file preparation; and reviewing interview tapes.⁵²
- Unallowable salaries and benefits for the Sheriff’s Department, under the category of adverse comment, totaling \$43,291 plus related indirect costs, for reviewing the circumstances of the complaint to determine the level of investigation; documenting the complaint or allegation and reviewing it for accuracy; summarizing the investigation in a case summary report; and preparing interview questions.⁵³
- Unallowable salaries and benefits for the Probation Department, under the category of adverse comment, totaling \$26,108 plus related indirect costs, for preparing the investigation summary and reviewing it with the supervisor; and preparing the final case report.⁵⁴
- Unallowable salaries and benefits for the District Attorney’s Office, under the category of adverse comment, totaling \$860 plus related indirect costs, for preparing the case summary report.⁵⁵

With respect to these reductions, the claimant argues that the Controller is relying on the greater specificity of reimbursable activities provided by the amended parameters and guidelines, which were not effective until the 2006-2007 fiscal year.⁵⁶ The claimant argues that it cannot be held to the later parameters and guidelines of which it had no notice.⁵⁷ In addition, the claimant argues that the earlier parameters and guidelines are “sufficiently flexible as to allow local government to adapt them to its own method of implementing the mandate.”⁵⁸ Specifically, the claimant argues that costs claimed for visiting other internal affairs units while establishing its own was a reasonable method of compliance with the approved activity of developing or updating internal policies, procedures, manuals and other materials. With respect to training costs that were disallowed, the claimant argues that “[f]or a mandate as complex and pervasive as POBOR,

⁵¹ Exhibit A, IRC 10-4499-I-01, pages 42-44.

⁵² Exhibit A, IRC 10-4499-I-01, pages 42-44.

⁵³ Exhibit A, IRC 10-4499-I-01, pages 44-45.

⁵⁴ Exhibit A, IRC 10-4499-I-01, pages 44-46.

⁵⁵ Exhibit A, IRC 10-4499-I-01, pages 44-46.

⁵⁶ Exhibit A, IRC 10-4499-I-01, page 14.

⁵⁷ Exhibit A, IRC 10-4499-I-01, page 14.

⁵⁸ Exhibit A, IRC 10-4499-I-01, page 15.

however, such limitations are not proper.” The claimant argues that *POBOR* “properly encompasses issues of labor relations, confidentiality issues, investigation errors, first amendment-related conduct, key mistakes in workplace investigations, and assessing credibility, to name a few.”⁵⁹ In addition, the claimant argues that costs claimed for conducting interrogations while the officer was on duty *and* those costs for compensating the officer when the interrogation was performed during off-duty hours are reimbursable based on the original test claim statement of decision.⁶⁰ And, with respect to activities pertaining to adverse comment, the claimant simply disagrees with the Controller’s interpretation of the parameters and guidelines.⁶¹

Finding 5

- Travel and training costs totaling \$1,521 related to ineligible training activities that were not mandate-related.⁶²

With respect to travel and training costs disallowed under Finding 5, the claimant reiterates that the parameters and guidelines are worded broadly, and that the Controller “cannot use the audit process to place limitations on the program that the Commission did not see fit to include.”⁶³

State Controller’s Office

The Controller’s reductions are broadly based on activities that the Controller finds are beyond the scope of the mandate. For example, under the category of Administrative Activities, which includes developing or updating policies and procedures, attending “specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate,” and updating the status of *POBOR* cases, the Controller allowed costs for updating *POBOR* case records and training for Internal Affairs staff. However, the Controller found that costs claimed for “[p]reparing the file,” “[l]ogging initial case information into the system and assign the case,” and interviewing the complainants, were beyond the scope of the mandate, as approved by the Commission and described in the parameters and guidelines.⁶⁴ Similarly, while the parameters and guidelines provide for “specific training...regarding the requirements of the mandate,” the claimant’s Probation Department claimed costs for training hours that the Controller found were not related to the *POBOR* mandate, including, for example “Budgeting implications” and “Juvenile Justice Reforms.”⁶⁵ And finally, under Finding 5, the Controller disallowed travel and training costs attributed to training hours that the Controller found to be beyond the scope of the mandate, in accordance with Finding 1.⁶⁶

⁵⁹ Exhibit A, IRC 10-4499-I-01, page 16.

⁶⁰ Exhibit A, IRC 10-4499-I-01, pages 17-19 [quoting at length from the test claim statement of decision CSM-4499].

⁶¹ Exhibit A, IRC 10-4499-I-01, pages 19-20; 25.

⁶² Exhibit A, IRC 10-4499-I-01, pages 61-62.

⁶³ Exhibit A, IRC 10-4499-I-01, page 25.

⁶⁴ Exhibit A, IRC 10-4499-I-01, page 39.

⁶⁵ Exhibit A, IRC 10-4499-I-01, pages 39-40.

⁶⁶ Exhibit A, IRC 10-4499-I-01, pages 61-62.

With respect to costs disallowed under the category of Administrative Appeals, the Controller determined that the POBOR cases for which costs were claimed were unallowable because the disciplinary actions resulting therefrom implicated existing due process protections and therefore fell outside the scope of state-mandated reimbursement.⁶⁷

Addressing costs claimed under Interrogation, the Controller notes that the officer's salary is reimbursable only when the interrogation is conducted during the officer's off-duty time and results in overtime pay to the officer. In addition, the costs incurred to conduct interrogations were never included in the Interrogations cost component as a reimbursable activity.⁶⁸

Reimbursement is also authorized for providing notice of an interrogation, tape recording the interrogation, and providing certain documents to the employee. Consequently, the Controller disallowed costs claimed for the claimant's Sheriff's Department and Probation Department to gather reports and evidence, interview witnesses during normal working hours, transcribe witness tapes, and interrogate accused officers during normal working hours.⁶⁹

With respect to costs claimed under the category of Adverse Comment, the Controller notes that the parameters and guidelines provide only for notice of the adverse comment; opportunity to review and sign the adverse comment; opportunity to respond; and noting an officer's refusal to sign. The Controller disallowed costs related to investigating a complaint, preparing interview questions, and preparing a case summary report.⁷⁰

Answering the claimant's argument that the disputed reductions were based on the more specific amended parameters and guidelines, the Controller states:

The county's comment that the audit was based on the revised parameters and guidelines for the POBOR program (adopted by CSM on December 4, 2006) appears frequently in its response to the draft report. During the audit exit conference, the county's SB 90 coordinator asked us several times whether the audit was based on the original parameters and guidelines or on the revised parameters and guidelines adopted on December 4, 2006. On each occasion, We responded that the audit was based on our understanding of the original parameters and guidelines adopted by CSM and that the revised parameters and guidelines apply to claims filed for FY 2006-07 and subsequent years.

Any references to the revised parameters and guidelines adopted on December 4, 2006, made during the exit meeting or in any discussion during the audit process were made solely to point out that reimbursable and non-reimbursable activities of the mandated program are spelled out more clearly in the revised parameters and guidelines. Except for changes to allowable activities for the cost components of Administrative Appeal for probationary and at-will peace officers (pursuant to amended Government Code Section 3304) and Adverse Comment (for punitive actions protected by the due process clause), reimbursable activities

⁶⁷ Exhibit A, IRC 10-4499-I-01, pages 40-42.

⁶⁸ Exhibit B, Controller's Late Comments on IRC, page 18.

⁶⁹ Exhibit A, IRC 10-4499-I-01, pages 42-44.

⁷⁰ Exhibit A, IRC 10-4499-I-01, pages 44-46.

did not change from the original parameters and guidelines. In addition, our understanding of allowable and unallowable activities per the original parameters and guidelines did not change as a result of the CSM amending them on December 4, 2006.

The draft audit report and this final report state that the audit was based on parameters and guidelines adopted by the CSM on July 27, 2000, and corrected on August 17, 2000. The language in the audit report and in the SCO response to the county's comments emanates either from the original parameters and guidelines, the original statement of decision, or from the CSM staff analysis of the originally proposed parameters and guidelines for this mandate program.⁷¹

IV. Discussion

Government Code section 17561(b) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state mandated costs that the Controller determines is excessive or unreasonable.

Government Code Section 17551(d) requires the Commission to hear and decide a claim that the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines that a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the statement of decision to the Controller and request that the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the parameters and guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.⁷² The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. 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."⁷³

With regard to the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.⁷⁴ Under this standard, the courts have found that:

⁷¹ Exhibit A, IRC 10-4499-I-01, pages 62-63.

⁷² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

⁷³ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

⁷⁴ *Johnston v. Sonoma County Agricultural* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgment for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support. . . .” [Citations.] When making that inquiry, the “ ‘court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.’ ”⁷⁵

The Commission must review the Controller’s audit in light of the fact that the initial burden of providing evidence for a claim of reimbursement lies with the claimant.⁷⁶ In addition, section 1185.1(f)(3) and 1185.2(c) of the Commission’s regulations requires that any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.⁷⁷

Reductions of Salary and Benefit Costs Under Finding 1 and Travel and Training Costs Under Finding 5, Are Correct as a Matter of Law.

The Commission first adopted parameters and guidelines for the *POBOR* mandate on July 27, 2000.⁷⁸ Those parameters and guidelines were amended pursuant to legislative direction following the Commission’s reconsideration of the program on December 4, 2006, with a period of reimbursement beginning July 1, 2006.⁷⁹ The audit at issue here governs earlier claim years 2003-2004 through 2005-2006, and therefore the prior parameters and guidelines, adopted July 27, 2000, are applicable.⁸⁰ The parties do not dispute this conclusion.

Pursuant to Government Code section 17557 and the Commission’s regulations, parameters and guidelines are required to identify the activities the Commission finds to be mandated by the state, and those additional activities proposed by the claimant that the Commission finds and approves, based on substantial evidence in the record, to be reasonably necessary to comply with the state-mandated program.⁸¹ Parameters and guidelines are regulatory in nature and are

⁷⁵ *American Bd. of Cosmetic Surgery, Inc. v. Medical Board of California* (2008) 162 Cal.App.4th 534, 547-548.

⁷⁶ *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

⁷⁷ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

⁷⁸ Exhibit X, Final Staff Analysis, Proposed Parameters and Guidelines, adopted July 27, 2000.

⁷⁹ Exhibit X, Adopted Parameters and Guidelines Amendment, December 6, 2006.

⁸⁰ These parameters and guidelines were in effect when the costs were incurred. (*Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 809, fn. 5.)

⁸¹ Government Code sections 17557 and 17559; California Code of Regulations, title 2, section 1183.7; Former California Code of Regulations, title 2, section 1183.1 (Register 96, No. 30).

interpreted the same as regulations and statutes.⁸² Interpretation of an administrative agency's rule, including those found in the Commission's parameters and guidelines, is a question of law.⁸³

Under the rules of interpretation, when the language of an administrative agency's rule, such as the parameters and guidelines, is plain, the provisions are required to be enforced according to the terms of the document. The California Supreme Court determined that:

In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.]⁸⁴

The language of the parameters and guidelines must be construed in the context of the Commission's decisions and adopted analyses on the test claim and parameters and guidelines, so that every provision may be harmonized and have effect.⁸⁵ Under these rules, plain provisions of the administrative rule may not be disregarded or enlarged, nor may the interpretation go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the parties are prohibited from writing into an administrative rule, by implication, express requirements that are not there.⁸⁶ The Commission's decisions on test claims and parameters and guidelines are quasi-judicial decisions that are binding on the parties.⁸⁷

⁸² *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

⁸³ *Culligan Water Conditioning v. State Board of Equalization* (1976) 17 Cal.3d 86, 93; see also, *County of San Diego v. State* (1997) 15 Cal.4th 68, 81; 109, where the court held that the determination whether reimbursement is required pursuant to article XIII B, section 6 is a question of law.

⁸⁴ *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

⁸⁵ *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 781-782; see also, Government Code sections 17514 (defining "costs mandated by the state"), 17550 (providing that "reimbursement ... for costs mandated by the state shall be provided pursuant to this chapter"), 17551 (requiring the Commission to hear and decide a claim that a local agency is entitled to be reimbursed by the state for costs mandated by the state as required by article XIII B, section 6 of the California Constitution), 17552 (providing that this chapter shall be the sole and exclusive procedure by which a local agency may claim reimbursement for costs mandated by the state), 17557 (governing the adoption of parameters and guidelines after the Commission determines there are costs mandated by the state), and 17558 (providing that the Controller's claiming instructions must be derived from the Commission's test claim decision and adopted parameters and guidelines).

⁸⁶ *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

⁸⁷ *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200, which stated the following: "[U]nless a party to a quasi-judicial proceeding challenges the

Moreover, later clarification of existing law, including the Commission's decision on reconsideration of this program, which clarified its original decision regarding the scope of the mandated activities, may be applied to reimbursement claims for costs that predate the 2006 parameters and guidelines amendment. Under these circumstances, the Commission's clarification is not considered a retroactive application of a new rule, but is merely a statement of what the law has always been from the time it was enacted.⁸⁸ Accordingly, the later decision adopted by the Commission on reconsideration may be used to aid in understanding the original parameters and guidelines.

Finding 1 of the audit report includes reductions in salaries and benefits for activities that the Controller determined were beyond the scope of the mandate. The reductions include unallowable activities, and related indirect costs, in the categories (as articulated in the parameters and guidelines) of Administrative Activities; Administrative Appeals; Interrogation; and Adverse Comment. Finding 5 of the audit report reduces travel and training costs on the basis that the purpose for the travel and training went beyond the scope of the mandate. The specific activities disallowed differ for each category and for each unit claiming costs within the county, and therefore reductions are analyzed as they were claimed, separated by the categories provided in the parameters and guidelines, and attributed to either the Sheriff's Department, Probation Department, or District Attorney's Office.

A. Salaries and Benefits Claimed for Administrative Activities Performed by Claimant's Sheriff's Department Are Beyond the Scope of the Mandate.

The Controller disallowed costs claimed under the category of Administrative Activities for the claimant's Sheriff's Department to prepare files; log initial case information into "the system;" assign the case; and interview complainants.⁸⁹ The claimant argues that the disallowance is based on the amended parameters and guidelines, which do not apply to the audit years.⁹⁰ The Controller asserts that its audit finding is based on the original parameters and guidelines.⁹¹ The Controller argues that preparing files, logging initial case information, and interviewing complainants are beyond the scope of the mandate.

The Commission finds that the reductions are correct as a matter of law. The parameters and guidelines in effect during the audit period provide for reimbursement only for "[u]pdating the status of the [POBOR] cases." The activities claimed to prepare files, log initial case information, and interview complainants were not approved by the Commission for reimbursement. Only the activities approved by the Commission are eligible for reimbursement.⁹²

agency's adverse findings made in that proceeding, by means of a mandate action in superior court, those findings are binding in later civil actions." [Citation omitted.]

⁸⁸ *McClung v. Employment Development Dept.* (2004) 34 Cal.4th 467, 471.

⁸⁹ Exhibit A, IRC 10-4499-I-01, page 39.

⁹⁰ Exhibit A, IRC 10-4499-I-01, pages 14; 69.

⁹¹ Exhibit A, IRC 10-4499-I-01, page 48.

⁹² Government Code section 17557; Code of Regulations, title 2, section 1183.7 [Parameters and guidelines shall contain "[a] description of the specific costs and types of costs that are

Moreover, the analysis for the parameters and guidelines adopted by the Commission on July 27, 2000, analyzed the proposed activity and determined that it was too broad, as follows:

The Department of Finance states that the component “maintenance of the systems to conduct the mandated activities” is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and maintaining files for those cases...Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for “updating the status report of the POBAR cases.”

Therefore, the Commission’s adopted decision on parameters and guidelines reflects its consideration that prior to the *POBOR* mandate, local agencies were already investigating complaints and maintaining case files.⁹³ The mandated program is limited to the new procedural requirements imposed by the state; investigation and discipline activities conducted by the internal affairs unit of a police department are not eligible for reimbursement. As the Commission clarified on reconsideration:

The [POBOR] rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.⁹⁴

Thus, the activity of “updating the status of POBOR cases” was intended to be interpreted narrowly. The Controller’s disallowance of preparing files and logging files into “the system,” and interviewing complainants, is consistent with a narrow interpretation of the parameters and guidelines.

Based on the foregoing, the Commission finds that the Controller’s reduction of costs claimed under Administrative Activities for claimant’s Sheriff’s Department to prepare files, log initial case files, and interview complainants, are correct as a matter of law.

B. Salaries and Benefits and Travel and Training Expenses Claimed for Training and Other Administrative Activities Performed by Claimant’s Probation Department Are Beyond the Scope of the Mandate.

reimbursable, including one-time costs and ongoing costs, and reasonably necessary activities required to comply [with the mandated program.]:” Former Code of Regulations, title 2, section 1183.1 (Register 96, No. 30).

⁹³ See Exhibit X, Final Staff Analysis on Proposed Parameters and Guidelines, adopted July 27, 2000, page 16 [“Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant’s proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.”].

⁹⁴ Exhibit X, Statement of Decision on Reconsideration (April 26, 2006), page 15.

The Controller disallowed costs claimed under the category of Administrative Activities for claimant's Probation Department to review investigation reports to approve or make corrections; visit other Internal Affairs units during establishment of the unit; conduct interviews for an Internal Affairs Management Analyst position; review the progress of development of an Internal Affairs database; review complaints, response letters, Merit System Rules, and assign cases; and to review the training schedule for the unit. The Controller also partially adjusted the costs claimed for training activities not related to the mandate, and the associated costs relating to the unallowable training.⁹⁵ Specifically, the Controller disallowed training and travel costs for training on the following topics:

- Labor relations
- Unionized vs. non-unionized employees
- Private and public employees
- Handling sexual harassment issues
- Confidentiality issues
- Investigation errors
- Ethical issues in probation
- Budgeting implications
- Juvenile Justice Reforms
- Discrimination issues
- Electronic research
- First Amendment related conduct
- Preparing investigation reports
- Key mistakes in workplace investigations
- Assessing credibility
- Types of lawsuits
- Representation and indemnification
- Supervisory liability of failure to train
- Minimizing exposure to liability⁹⁶

The applicable parameters and guidelines, under the heading "Administrative Activities," provide for reimbursement as follows:

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.⁹⁷

The Commission finds that the activities of reviewing investigation reports to approve or make corrections; visiting other Internal Affairs units during establishment of the unit; conducting interviews for an Internal Affairs Management Analyst position; reviewing the progress of development of an Internal Affairs database; reviewing complaints, response letters, Merit

⁹⁵ Exhibit A, IRC 10-4499-I-01, pages 39-40.

⁹⁶ Exhibit A, IRC 10-4499-I-01, pages 39-40.

⁹⁷ Exhibit X, Parameters and Guidelines, CSM-4499, Corrected August 17, 2000.

System Rules, and assigning cases; and reviewing the training schedule for the unit, are not included as reimbursable activities in the parameters and guidelines.⁹⁸

The claimant asserts, however, that salaries and benefits claimed for visiting other internal affairs units while establishing its own constitutes “developing or updating internal policies, procedures, manuals and other materials...” as provided for in the parameters and guidelines. The claimant asserts that visiting other departments’ internal affairs units could save time and money by borrowing from other counties, rather than spending time developing new policies and procedures, and thus this activity constitutes “a reasonable method of compliance...” with the mandate.⁹⁹ However, the reimbursable activity of developing policies and procedures applies only to those policies and procedures that are necessary to implement the *POBOR* mandate. Developing policies and procedures for a new internal affairs unit or database might be appropriate or necessary to *establish and operate* an internal affairs office and to effectively perform investigations, but these activities go beyond the scope of the mandate and are not reimbursable. Only the activities specifically approved by the Commission are eligible for reimbursement.¹⁰⁰

The claimant also argues that training costs should not be adjusted proportionally, but rather allowed entirely if related to the mandate. The claimant argued in response to the draft audit report: “We cannot go through the training with a microscope on this issue and we disagree with the audit’s negative approach to training.”¹⁰¹ In its IRC narrative, the claimant more clearly states:

The SCO pared the list of covered topics to those it believes relate to the mandate. For a mandate as complex and pervasive as POBOR, however, such limitations are not proper. Training on POBOR properly encompasses issues of labor relations, confidentiality issues, investigation errors, first amendment- related conduct, key mistakes in workplace investigations, and assessing credibility, to name a few. While the County appreciates the SCO’s attempt to include some costs rather than give a full disallowance, the SCO did not allow for some legitimate costs.¹⁰²

As indicated above, the parameters and guidelines in effect during the audit period state that reimbursement is required for “[a]ttendance at specific training for human resources, law enforcement and legal counsel *regarding the requirements of the mandate.*”¹⁰³ The later-

⁹⁸ Exhibit A, IRC 10-4499-I-01, pages 39-40.

⁹⁹ Exhibit A, IRC 10-4499-I-01, page 15.

¹⁰⁰ Government Code section 17557; Code of Regulations, title 2, section 1183.7 [Parameters and guidelines shall contain “[a] description of the specific costs and types of costs that are reimbursable, including one-time costs and ongoing costs, and reasonably necessary activities required to comply [with the mandated program.]”; Former Code of Regulations, title 2, section 1183.1 (Register 96, No. 30).

¹⁰¹ Exhibit A, IRC 10-4499-I-01, page 70.

¹⁰² Exhibit A, IRC 10-4499-I-01, pages 15-16.

¹⁰³ Exhibit X, Corrected Parameters and Guidelines, August 17, 2000, page 3 [Emphasis added].

amended parameters and guidelines further emphasized that “training *must relate* to mandate-reimbursable activities.”¹⁰⁴ The parameters and guidelines do not authorize reimbursement for issues of labor relations, confidentiality issues, investigation errors, first amendment-related conduct, key mistakes in workplace investigations, and assessing credibility. Such topics go beyond the scope of the mandate to comply with the new procedural requirements imposed by the test claim statutes. Thus, the reduction is correct as matter of law.

In addition, the Controller proportionally reduced training costs to the extent training time was spent on activities beyond the scope of the mandate. The claimant has not provided any evidence to rebut the Controller’s pro rata findings; instead, the claimant argues that training costs should be allowed even if a training course includes other topics. The claimant states: “We cannot go through the training with a microscope on this issue and we disagree with the audit’s negative approach to training.” The burden is on the claimant to establish whether costs are mandate-related in the context of the IRC, and the titles of the training modules that the Controller cites are facially unrelated to the mandate.¹⁰⁵ Thus, there is no evidence that the Controller’s pro rata reduction of training costs is incorrect as a matter of law, or that the calculation of the proportion of allowable costs is arbitrary, capricious, or entirely lacking in evidentiary support.

Based on the foregoing, the Commission finds that the Controller’s reductions for salaries and benefits, travel, training, and administrative expenses claimed by the Probation Department are correct as a matter of law.

C. Salaries and Benefits Claimed for Administrative Appeals for the Sheriff’s Department and Probation Department Are Beyond the Scope of the Mandate.

The Controller reduced \$1,388 in salaries and benefits for the claimant’s Sheriff’s Department and \$985 in salaries and benefits for the claimant’s Probation Department, plus related indirect costs, under the category of Administrative Appeals, finding that the costs claimed were for ineligible appeals which were part and parcel of pre-existing due process requirements and therefore outside the scope of *POBOR*.¹⁰⁶ The claimant argues that the costs claimed represent *POBOR* administrative appeal hearings authorized for reimbursement in the parameters and guidelines under the “catch-all” category of “[o]ther actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.”¹⁰⁷ Therefore, the dispute between the claimant and Controller turns on whether the administrative appeals for which costs were claimed fall within the catch-all category.

¹⁰⁴ Exhibit X, Amended Parameters and Guidelines, December 4, 2006, page 5 [Emphasis added].

¹⁰⁵ Government Code sections 17560, 17561(d); *Advanced Choices, Inc. v. Department of Health Services* (2010) 182 Cal.App.4th 1661, 1669.

¹⁰⁶ Exhibit A, IRC 10-4499-I-01, pages 16; 40-41.

¹⁰⁷ Exhibit A, IRC 10-4499-I-01, pages 16-17 [citing Statement of Decision on Parameters and Guidelines, adopted July 27, 2000, pages 11-12 (located here within Exhibit X)].

The Commission, in its test claim decision, analyzed the scope of the administrative appeal mandate in depth, and with respect to all levels of peace officer employees entitled to POBOR protections. The Commission found that a public service employee's rights are protected by pre-existing procedural due process safeguards defined by case law, some of which were also provided in Government Code section 3304. To the extent an administrative appeal or hearing is required by pre-existing law, then providing such an appeal under POBOR does not constitute a reimbursable new program or higher level of service, since it is not new. Accordingly, the Commission recognized that "permanent" employees, who can only be dismissed or subjected to other disciplinary measures for "cause," have a legitimate claim of entitlement to their job and thus, possess a property interest in continued employment, which is protected by the pre-existing due process clauses of the United States Constitution and the California Constitution.¹⁰⁸ The Commission further found that California courts require employers to comply with due process when a permanent employee is dismissed,¹⁰⁹ demoted,¹¹⁰ suspended,¹¹¹ receives a reduction in salary,¹¹² or receives a written reprimand.¹¹³ However, the Commission found that an employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.¹¹⁴ In addition, the Commission analyzed the rights of probationary and at-will employees, finding that although such employees can be dismissed without cause, and do not have a property interest in their employment, the employee may have a liberty interest affected by a dismissal and protected by existing due process laws, when the charges supporting the dismissal damage the employee's reputation and impair the employee's ability to find other employment. Accordingly, the Commission found that the due process clauses of the United States and California Constitutions, apply when the charges supporting the dismissal of a

¹⁰⁸ *Slochower v. Board of Education* (1956) 350 U.S. 551 [U.S. Supreme Court found that tenured college professor dismissed from employment had property interest in continued employment safeguarded by due process clause.]; *Gilbert v. Homar* (1997) 520 U.S. 924 [U.S. Supreme Court found that police officer employed as a permanent employee by a state university had property interest in continued employment and suspension without pay implicated due process protections.]; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194 [California Supreme Court held a permanent civil service employee of the state has a property interest in continued employment and cannot be dismissed without due process of law.].

¹⁰⁹ *Skelly, supra*, 15 Cal.3d 194.

¹¹⁰ *Ng v. State Personnel Board* (1977) 68 Cal.App.3d 600.

¹¹¹ *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal.3d 552, 558-560.

¹¹² *Ng, supra*, 68 Cal.App.3d 600, 605.

¹¹³ *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438.

¹¹⁴ *Runyon v. Ellis* (1995) 40 Cal.App.4th 961 [The court found that the employee was entitled to an administrative hearing under the due process clause as a result of a transfer *and an accompanying reduction of pay*. The court did not address the situation where the employee receives a transfer alone.]; *Howell v. County of San Bernardino* (1983) 149 Cal.App.3d 200, 205 ["Although a permanent employee's right to continued employment is generally regarded as fundamental and vested, an employee enjoys no such right to continuation in a particular job assignment."].

probationary or at-will employee damage the employee's reputation and impair the employee's ability to find other employment.¹¹⁵

The Commission concluded that the administrative appeal requirements of POBOR constitute a mandated new program or higher level of service, above and beyond that required by the United States and California Constitutions due process clauses, only in the following circumstances:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e.; the charges do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.¹¹⁶

The Controller states that for the Sheriff's Department, "[o]ur review of claimed costs under this cost component revealed that no administrative hearings were held for the cases included in the claims." And, the Controller states "Even if the hearings had taken place for the two cases in question, they would have resulted from unallowable disciplinary actions (letter of reprimand and suspension) that fall under due process."¹¹⁷ For the Probation Department, the Controller found that the appeals in issue resulted from letters of reprimand and suspension actions, for permanent employees.¹¹⁸

As indicated above, the Commission determined that due process requirements triggered by a written reprimand of a permanent employee are not new state-mandated activities and are not eligible for reimbursement.¹¹⁹ The claimant does not dispute the type of disciplinary action taken, and does not directly answer whether appeals were taken in the case of the Sheriff's Department costs claimed. Instead claimant argues that the claimed costs fall within the catch-all category of "other actions against permanent employees..."¹²⁰ But a catch-all category does not undermine the other specific provisions and limitations of the parameters and guidelines and Commission decisions on this mandate; where a statute (or, as here, parameters and guidelines, which are regulatory)¹²¹ contains both general and specific provisions, the more specific

¹¹⁵ Exhibit X, Statement of Decision, CSM-4499, adopted November 30, 1999, pages 7-8.

¹¹⁶ Exhibit X, Statement of Decision, CSM-4499, adopted November 30, 1999, pages 10-12.

¹¹⁷ Exhibit A, IRC 10-4499-I-01, pages 41-42; Exhibit B, Controller's Late Comments on IRC, page 14.

¹¹⁸ Exhibit A, IRC 10-4499-I-01, pages 41-42; Exhibit B, Controller's Late Comments on IRC, page 14.

¹¹⁹ Exhibit X, Statement of Decision, CSM-4499, adopted November 30, 1999, pages 4-7.

¹²⁰ Exhibit A, IRC 10-4499-I-01, page 17.

¹²¹ *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 799.

provisions control.¹²² In addition, an interpretation of law that would render some parts of a statute or regulation surplusage should be avoided.¹²³ Here, the type of disciplinary actions at issue in the appeals claimed were found by the Commission to fall under pre-existing due process requirements, and thus were not reimbursable, since they were not new or were mandated by the federal government and not the state. Therefore, to interpret “other actions...” as broadly as the claimant suggests would be inconsistent with the limited nature of this mandated program, and would go beyond the scope of the mandate.

Therefore, the Commission finds that the Controller’s reduction of salary and benefit costs for administrative appeals claimed for the Sheriff’s Department and Probation Department is correct as a matter of law.

D. Salaries and Benefits Claimed for Activities Related to Interrogations Performed by Claimant’s Sheriff’s Department, Probation Department, and District Attorney’s Office Are Beyond the Scope of the Mandate.

The Controller reduced \$61,350 in salaries and benefits for the claimant’s Sheriff’s Department, \$130,236 in salaries and benefits for the claimant’s Probation Department, and \$16,350 in salaries and benefits for the claimant’s District Attorney’s Office, plus \$120,026 in related indirect costs, under the category of Interrogation, finding that the costs claimed were for ineligible investigation activities outside the scope of the mandate.¹²⁴ The claimant argues that the Controller interprets the reimbursement provisions of the parameters and guidelines incorrectly, and that the activities claimed do not fall under existing due process requirements, and exceed the requirements of an investigation prior to POBOR.¹²⁵

With regard to interrogations, the parameters and guidelines provide reimbursement for certain activities “only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation...that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.” In addition, the parameters and guidelines expressly state that reimbursement is not required “when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer.” In addition, POBOR rights do not extend to civilian witnesses;¹²⁶ POBOR does not require local agencies to investigate an allegation or prepare for or conduct an interrogation;¹²⁷ and providing the employee access to a tape or transcription of an interrogation is reimbursable only when not otherwise required by due process.¹²⁸ And,

¹²² *People v. Ahmed* (2011) 53 Cal.4th 156, 163.

¹²³ *Lopez v. Superior Court* (2010) 50 Cal.4th 1055, 1066.

¹²⁴ Exhibit A, IRC 10-4499-I-01, page 42.

¹²⁵ Exhibit A, IRC 10-4499-I-01, pages 51-52.

¹²⁶ Exhibit X, Staff Analysis on Parameters and Guidelines, adopted July 27, 2000, page 12.

¹²⁷ Exhibit X, Staff Analysis on Parameters and Guidelines, adopted July 27, 2000, pages 15-16.

¹²⁸ Exhibit X, Staff Analysis on Parameters and Guidelines, adopted July 27, 2000, page 18.

reimbursement is not required when the investigation is “concerned solely and directly with alleged criminal activities.”¹²⁹

The parameters and guidelines authorize reimbursement for only the following activities:

- Compensating a peace officer for interrogations occurring during off-duty time in accordance with regular department procedure, when required by the seriousness of the investigation. Preparation and review of the officer’s overtime compensation request made as a result of the off-duty interrogation is also reimbursable;
- Providing prior notice to the officer regarding the nature of the interrogation and identification of investigating officers (this includes reviewing a complaint to prepare the notice, and possibly redacting confidential information);
- Tape recording the interrogation when the employee records the interrogation, including transcribing the tape;
- Providing the employee access to the tape prior to any further interrogation, as specified;
- Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential.

The staff analysis on the parameters and guidelines that was adopted by the Commission clarifies that the costs of transcription and tape recording are only reimbursable where disciplinary action results, and when that disciplinary action does not involve “a pre-existing due process right” to the tape or transcription.¹³⁰

Here, the disallowed activities and costs include gathering reports and reviewing complaints as part of investigating the allegations, investigation time, preparing questions for interviews, interviewing witnesses during normal working hours (claimed for investigators’ time), reviewing tape and summarizing/transcribing witnesses’ statements, conducting pre-interrogation meetings, interviewing accused officers during normal working hours (also claimed for investigators’ time), traveling to interview witnesses, preparing a summary report of the agency complaint, and reviewing interview tapes.¹³¹

As noted throughout this analysis, the *POBOR* mandate does not provide reimbursement for investigative activities, or for due process protections arising from peace officer misconduct except those above and beyond the due process protections required by the state and federal constitutions. The activities described under the Interrogations component of the parameters and guidelines, like all other activities, must be read and interpreted narrowly and in context with the Commission’s decision.

The parameters and guidelines do provide, under the activity of providing prior notice of the nature of the interrogation: “Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation, determination of the investigating

¹²⁹ Exhibit X, Corrected Parameters and Guidelines, August 17, 2000.

¹³⁰ Exhibit X, Staff Analysis on Parameters and Guidelines, adopted July 27, 2000, page 18.

¹³¹ Exhibit A, IRC 10-4499-I-01, pages 42-44.

officers, redaction of the agency complaint for names of the complainant or other accused parties or witnesses...” And, the parameters and guidelines provide for a similar review for redaction under the activity of “[p]roducing transcribed copies of any notes made...at an interrogation, and copies of reports or other complaints made by investigators or other persons, except those that are deemed confidential...” However, in both of these cases, the “gathering” of complaints is for review and redaction of confidential information, and not, as described by the claimant, for “gathering” or “reviewing” reports and complaints “as part of investigating the allegations.”

Similarly, the claimed activities of “[c]onducting pre-interrogation meetings” and “[p]reparing interview questions” are investigative activities that are not reimbursable under the *POBOR* mandate. And, interviewing witnesses and “traveling to interview witnesses” are clearly activities that benefit the investigation and are not eligible for reimbursement. These activities are beyond the scope of the *POBOR* mandate.

In addition, the claimant sought reimbursement for reviewing tape and transcribing or summarizing a witness or a witness officer’s statement, while the parameters and guidelines only provide reimbursement for the cost of tape recording an interrogation with an officer, and only because the officer has the right to record. Testimony at the hearing on the test claim indicated that the officer almost always will record the interrogation, and thus the Commission approved the cost incurred by the employer to tape record as a reasonably necessary cost.¹³² There is no provision in the parameters and guidelines for reviewing tape and transcribing or summarizing a witness or a witness officer’s statement. Moreover, tape recording an interrogation or interview with a witness, including an officer-witness, is not eligible for reimbursement unless that officer “becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.”¹³³

And finally, the claimant reported costs for interviewing witnesses and accused officers during normal working hours, for which the audit report indicates “investigators’ time” was claimed. The parameters and guidelines provide only for reimbursement as follows: “When required by the seriousness of the investigation, compensating *the peace officer* for interrogations occurring during off-duty time in accordance with regular department procedures.” The parameters and guidelines do not authorize reimbursement to interrogate and, thus, an investigator’s time is not reimbursable. The staff analysis adopted by the Commission for the parameters and guidelines expressly held that Government Code section 3303(a) addresses only the compensation and timing of an interrogation, and does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, or review the responses given by the

¹³² Exhibit X, Test Claim Statement of Decision, CSM-4499, November 30, 1999, pages 13-14.

¹³³ Exhibit X, Corrected Parameters and Guidelines, August 17, 2000, page 4.

officers and/or witnesses.^{134,135} These decisions of the Commission are binding on the parties.¹³⁶ Thus, the costs claimed for investigators' time go beyond the scope of the mandate.

Based on the foregoing, the Controller's reductions under the Interrogation component are correct as a matter of law.

E. Salaries and Benefits Claimed for Activities Related to an Adverse Comment Performed by Claimant's Sheriff's Department, Probation Department, and District Attorney's Office Are Beyond the Scope of the Mandate.

The Controller reduced \$43,291 in salaries and benefits for the claimant's Sheriff's Department, \$26,108 in salaries and benefits for the claimant's Probation Department, and \$860 for the claimant's District Attorney's Office, plus related indirect costs, under the category of Adverse Comment, finding that the costs claimed were for ineligible investigation activities outside the scope of the mandate.¹³⁷

The parameters and guidelines, under the component Adverse Comment, state separately the reimbursable activities for school districts, counties, and cities and special districts, respectively. For purposes of this IRC, only the reimbursable activities provided for counties are relevant. The parameters and guidelines provide three conditional statements, pertaining to the potential consequences of the adverse comment, and provide for different reimbursable activities in each case, depending on the existing requirements of due process or other law that are not reimbursable under the test claim decision:

- If an adverse comment results in dismissal, suspension, demotion, reduction in pay, or written reprimand for a permanent employee peace officer, or harms the officer's reputation and opportunity to find future employment, then a county is entitled to reimbursement for obtaining the officer's signature on the adverse comment, or noting the officer's refusal to sign the adverse comment and obtaining the signature or initials of the officer.
- If an adverse comment is related to a possible criminal offense, a county is entitled to reimbursement for providing notice of the adverse comment; providing an opportunity to review and sign the adverse comment; providing an opportunity to respond within 30 days; and noting an officer's refusal to sign and obtaining a signature or initials under such circumstances.
- If an adverse comment is not related to a possible criminal offense, a county is entitled to reimbursement for providing notice of the adverse comment; obtaining the signature of the officer; or noting the officer's refusal to sign and obtaining a signature or initials.

The parameters and guidelines also authorize reimbursement for the following activities found to be reasonably necessary to comply with the mandates associated with adverse comments:

¹³⁴ Exhibit X, Parameters and Guidelines Decision adopted July 27, 2000, page 16.

¹³⁵ Exhibit X, Corrected Parameters and Guidelines, page 4.

¹³⁶ *California School Boards Assoc.*, *supra*, 171 Cal.App.4th 1183, 1200.

¹³⁷ Exhibit A, IRC 10-4499-I-01, pages 45-46.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.¹³⁸

However, as discussed throughout this analysis, the reimbursable activities pertaining to an adverse comment do not include investigative activities, including reviewing a complaint to determine whether and to what extent to investigate.¹³⁹

Accordingly, the Controller denied the following activities:

For the Sheriff's Department:

- Reviewing the circumstances of the complaint *to determine the level of investigation* prior to starting the case investigation process (to determine whether the case will be investigated at the Internal Affairs or division level).
- Documenting the complaint/allegation and reviewing it for accuracy during the initial complaint intake *prior to starting the investigation*.
- *Summarizing the investigation* in a case summary report and having Internal Affairs review the summary report to ensure proper procedures were followed.
- Preparing interview questions.

For the Probation Department:

- *Preparing the investigation summary and reviewing it* with the supervisor prior to closing the case.
- Preparing the final case report.

And for the District Attorney's Office:

- Preparing the case summary report.¹⁴⁰

These activities are not reimbursable and go beyond the scope of the mandate. The plain language of the parameters and guidelines pertaining to adverse comment is focused almost entirely on obtaining the officer's signature for an adverse comment, or an acknowledgement of the officer's refusal to sign. Likewise, in the test claim statement of decision, the Commission found that if an adverse comment would result in dismissal, suspension, demotion, or other deprivation of employment, notice to the officer and the opportunity to review and respond to the adverse comment would already be required by existing due process law.¹⁴¹ Government Code

¹³⁸ See Exhibit X, Corrected Parameters and Guidelines, August 17, 2000, pages 6-8.

¹³⁹ Exhibit X, Final Staff Analysis, Parameters and Guidelines, adopted July 27, 2000, page 5.

¹⁴⁰ Exhibit A, IRC 10-4499-I-01, pages 45-46.

¹⁴¹ Exhibit X, Adopted Test Claim Decision, CSM-4499, November 30, 1999, page 19 [citing *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354].

sections 3305 and 3306 only constitute a new program or higher level of service only with respect to the requirements to obtain an officer's signature or note the officer's refusal to sign the adverse comment.¹⁴² The activity to review the circumstances or documentation was included in the parameters and guidelines because the Commission recognized that the adverse comment could be considered a written reprimand or could lead to other punitive actions taken by the employer, both of which are already protected by the due process clause.

The Controller has disallowed costs for activities that, by their own terms, pertain to the investigation surrounding an adverse comment, and not to obtaining a signature, or acknowledging a refusal to sign. As noted above, the parameters and guidelines do state that "review of circumstances or documentation...including determination of whether same constitutes an adverse comment,"¹⁴³ is included within the activities stated. Under such circumstances, the Commission found that the notice requirements of Government Code sections 3305 and 3306 do not constitute a new program or higher level of service pursuant to article XII1 B, section 6 of the California Constitution.¹⁴⁴ Thus, the activity to review the circumstances or documentation cannot be read to include, as was claimed "reviewing the circumstances of the complaint to determine the level of investigation..." or "summarizing the investigation in a case summary report..."¹⁴⁵ These activities clearly pertain to investigative activities, which, as has been stated throughout this analysis, are not a reimbursable activity under the *POBOR* mandate. And, the parameters and guidelines do provide for "preparation of comment and review for accuracy," but that activity is related to the notice and opportunity to respond, and to obtaining an officer's signature, not to "the initial complaint intake prior to starting the investigation," as was claimed.

The *POBOR* mandate is very narrow, and as determined by the Commission, local law enforcement agencies were conducting investigations and issuing disciplinary actions before the *POBOR* statutes were enacted and, thus, those activities were not reimbursable.¹⁴⁶ The Commission's decision on reconsideration further clarifies the intended scope of the mandate, including and especially making clear that the test claim statute does not require an employer to investigate an officer's conduct or place an adverse comment in an officer's personnel file; the *POBOR* mandate is about new procedures governing peace officer labor relations, and

¹⁴² Exhibit X, Adopted Test Claim Decision, CSM-4499, November 30, 1999, page 19.

¹⁴³ Exhibit X, Corrected Parameters and Guidelines, page 8.

¹⁴⁴ Exhibit X, Adopted Test Claim Decision, CSM-4499, November 30, 1999, page 19.

¹⁴⁵ Exhibit A, IRC 10-4499-I-01, page 45.

¹⁴⁶ Exhibit X, Staff Analysis adopted by the Commission on July 27, 2000, page 5.

investigations of misconduct or malfeasance are beyond the scope of the mandate.¹⁴⁷ These decisions are binding on the parties.¹⁴⁸

Based on the foregoing, the Commission finds that the Controller's reduction of costs claimed under the Adverse Comment component are correct as a matter of law.

V. Conclusion

Based on the foregoing analysis, the Commission finds that the Controller's reductions of costs claimed are correct as a matter of law. Therefore, the Commission denies this IRC.

¹⁴⁷ Exhibit X, Statement of Decision on Reconsideration, April 26, 2006, pages 38-39; see also page 15, where the Commission found that:

The [POBOR] rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

¹⁴⁸ *California School Boards Assoc.*, *supra*, 171 Cal.App.4th 1183, 1200.

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 January 14, 2016, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Peace Officers Procedural Bill of Rights (POBOR), 10-4499-I-01
Government Code Sections 3301, 3303, 3304, 3305, and 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675
Fiscal Years: 2003-2004, 2004-2005, and 2005-2006
County of Santa Clara, Claimant

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 January 14, 2016 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/11/16

Claim Number: 10-4499-I-01

Matter: Peace Officers Procedural Bill of Rights (POBOR)

Claimant: County of Santa Clara

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
January 15, 2016
*Commission on
State Mandates*

BETTY T. YEE
California State Controller

Exhibit E

January 15, 2016

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

Re: Draft Proposed Decision
Incorrect Reduction Claim
Peace Officers Procedural Bill of Rights, 10-4499-I-01
Government Code Sections 3301, 3303, 3304, 3305, and 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367, Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675
Fiscal Years 2003-2004, 2004-05, and 2005-2006
County of Santa Clara, Claimant

Dear Ms. Halsey:

The State Controller's Office (SCO) has reviewed the Commission on State Mandates' (Commission) draft staff analysis dated January 14, 2015, for the above incorrect reduction claim filed by Santa Clara County. We support the Commission's conclusion and recommendation.

The Commission supported the SCO adjustments related to the following:

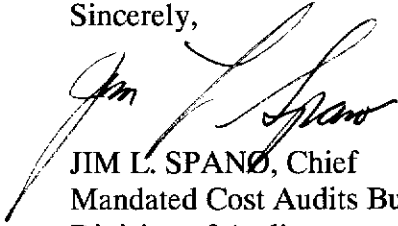
- Reduction of salaries and benefits claimed under the category of Administrative Activities, totaling \$8,463 for the Sheriff's Department and \$35,490 for the Probation Department, plus related indirect costs, is correct as a matter of law.
- Reduction of salaries and benefits claimed under the category of Administrative Appeals, totaling \$1,388 for the Sheriff's Department and \$985 for the Probation Department, plus related indirect costs, is correct as a matter of law.
- Reduction of salaries and benefits claimed under the category of Interrogations, totaling \$61,350 for the Sheriff's Department, \$130,236 for the Probation Department, and \$16,350 for the District Attorney's Office, plus related indirect costs, is correct as a matter of law.
- Reduction of salaries and benefits claimed under the category of Adverse Comment, totaling \$43,291 for the Sheriff's Department, \$26,108 for the Probation Department, and \$860 for the District Attorney's Office, plus related indirect costs, is correct as a matter of law.

P.O. Box 942850, Sacramento, CA 94250 ♦ (916) 445-2636
3301 C Street, Suite 700, Sacramento, CA 95816 ♦ (916) 324-8907
901 Corporate Center Drive, Suite 200, Monterey Park, CA 91754 ♦ (323) 981-6802

Heather Halsey
January 15, 2016
Page 2

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim L. Spano". The signature is written in a cursive style with a large, sweeping initial "J".

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/lis

16780

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 January 15, 2016, I served the:

SCO Comments on Draft Proposed Decision

Peace Officers Procedural Bill of Rights (POBOR), 10-4499-I-01

Government Code Sections 3301, 3303, 3304, 3305, and 3306

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;

Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;

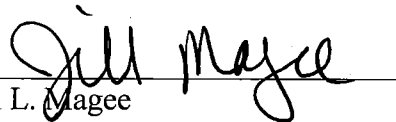
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; Statutes 1990, Chapter 675

Fiscal Years: 2003-2004, 2004-2005, and 2005-2006

County of Santa Clara, Claimant

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 January 15, 2016 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/14/16

Claim Number: 10-4499-I-01

Matter: Peace Officers Procedural Bill of Rights (POBOR)

Claimant: County of Santa Clara

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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**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM:

Government Code Sections 3300 through 3310,

As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675; and

Filed on December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM 4499

Peace Officers Procedural Bill of Rights

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

(Adopted November 30, 1999)

STATEMENT OF DECISION

On August 26, 1999 the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Ms. Pamela A. Stone appeared for the City of Sacramento. Mr. Allan Burdick appeared for the League of California Cities/SB 90 Service. Ms. Elizabeth Stein appeared for the California State Personnel Board. Mr. James Apps and Mr. Joseph Shinstock appeared for the Department of Finance. The following persons were witnesses for the City of Sacramento: Ms. Dee Contreras, Director of Labor Relations, and Mr. Edward J. Takach, Labor Relations Officer.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 5 to 1, approved this test claim.

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BACKGROUND

In 1976, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights Act. The test claim legislation provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Legislative intent is expressly provided in Government Code section 3301 as follows:

“The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California.”

The test claim legislation applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts.¹ The test claim legislation also applies to peace officers that are classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause (“at-will” employees)² and peace officers on probation who have not reached permanent status.³

COMMISSION FINDINGS

Issue: Does the test claim legislation, which establishes rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514⁴?

For a statute to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental agencies. In addition, the required activity or task must be new, thus constituting a “new program”, or create an increased or “higher level of service” over the former required level of service. The court has defined a “new

¹ Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

² *Gray v. City of Gustine* (1990) 224 Cal.App.3d 621; *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795.

³ *Bell v. Duffy* (1980) 111 Cal.App.3d 643; *Barnes v. Personnel Department of the City of El Cajon* (1978) 87 Cal.App.3d 502.

⁴ Government Code section 17514 defines “costs mandated by the state” as follows: “Costs mandated by the state” means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

program” or “higher level of service” as a program that carries out the governmental function of providing services to the public, or a law which, to implement a state policy, imposes unique requirements on local agencies and does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated and impose “costs mandated by the state.”⁵

The test claim legislation requires local agencies and school districts to take specified procedural steps when investigating or disciplining a peace officer employee. The stated purpose of the test claim legislation is to promote stable relations between peace officers and their employers and to ensure the effectiveness of law enforcement services. Based on the legislative intent, the Commission found that the test claim legislation carries out the governmental function of providing a service to the public. Moreover, the test claim legislation imposes unique requirements on local agencies and school districts that do not apply generally to all residents and entities of the state. Thus, the Commission determined that the test claim legislation constitutes a “program” within the meaning of article XIII B, section 6 of the California Constitution.

The Commission recognized, however, that several California courts have analyzed the test claim legislation and found a connection between its requirements and the requirements imposed by the due process clause of the United States and California Constitutions. For example, the court in *Riveros v. City of Los Angeles* analyzed the right to an administrative appeal under the test claim legislation for a probationary employee and noted that the right to such a hearing arises from the due process clause.

“The right to such a hearing arises from the due process protections of the Fourteenth Amendment to the United States Constitution. . . . The limited purpose of the section 3304 appeal is to give the peace officer a chance to establish a formal record of the circumstances surrounding his termination and try to convince his employer to reverse its decision, either by showing that the charges are false or through proof of mitigating circumstances [citation omitted]. This is very nearly the same purpose for the hearing mandated by due process requirements, which must afford the officer a chance to refute the charges or clear his name.” (Emphasis added.)⁶

Thus, the Commission continued its inquiry and compared the test claim legislation to the prior legal requirements imposed on public employers by the due process clause to determine if the activities defined in the test claim legislation are new or impose a higher level of service.

The Commission also considered whether there are any “costs mandated by the state.” Since the due process clause of the United States Constitution is a form of federal law, the Commission recognized that Government Code section 17556, subdivision (c), is triggered. Pursuant to

⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Gov. Code, § 17514.

⁶ *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1359.

Government Code section 17556, subdivision (c), there are *no* “costs mandated by the state” and no reimbursement is required if the test claim legislation “implemented a federal law resulting in costs mandated by the federal government, unless the [test claim legislation] mandates costs which exceed the mandate in that federal law or regulation.”⁷

These issues are discussed below.

The Due Process Clause of the U.S. and California Constitutions

The due process clause of the United States and California Constitutions provide that the state shall not “deprive any person of life, liberty, or property without due process of law.”⁸ In the public employment arena, an employee’s property and liberty interests are commonly at stake.

Property Interest in Employment

Property interests protected by the due process clause extend beyond actual ownership of real estate or money. The U.S. Supreme Court determined that a property interest deserving protection of the due process clause exists when an employee has a “legitimate claim” to continued employment.

“To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . . .”

“Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - -rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.”⁹

Applying the above principles, both the U.S. Supreme Court and California courts hold that “permanent” employees, who can only be dismissed or subjected to other disciplinary measures for “cause”, have a legitimate claim of entitlement to their job and thus, possess a property interest in continued employment.¹⁰

⁷ Government Code section 17513 defines “costs mandated by the federal government” as follows:

“ ‘Costs mandated by the federal government’ means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. ‘Costs mandated by the federal government’ includes costs resulting from enactment of state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. ‘Costs mandated by the federal government’ does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.”

⁸ U.S. Constitution, 14th Amendment; California Constitution, Article 1, §§ 7 and 15.

⁹ *Board of Regents v. Roth* (1972) 408 U.S. 564, 577.

¹⁰ *Slochower v. Board of Education* (1956) 350 U.S. 551, where the U.S. Supreme Court found that a tenured college professor dismissed from employment had a property interest in continued employment that was safeguarded by the due process clause; *Gilbert v. Homar* (1997) 520 U.S. 924, where the U.S. Supreme Court found that a police officer, employed as a permanent employee by a state university, had a property interest in continued employment and was afforded due process protections resulting from a suspension without pay; *Skelly v. State*

Moreover, California courts require employers to comply with due process when a permanent employee is dismissed¹¹, demoted¹², suspended¹³, receives a reduction in salary¹⁴ or receives a written reprimand.¹⁵

The Department of Finance and the State Personnel Board contended that due process property rights attach when an employee is transferred. They cited *Runyon v. Ellis* and an SPB Decision (*Ramallo* SPB Dec. No. 95-19) for support.

The Commission disagreed with the State's argument in this regard. First, in *Runyon v. Ellis*, the court found that the employee was entitled to an administrative hearing under the due process clause as a result of a transfer *and an accompanying reduction of pay*. The court did not address the situation where the employee receives a transfer alone.¹⁶ In addition, in *Howell v. County of San Bernardino*, the court recognized that “[a]lthough a permanent employee’s right to continued employment is generally regarded as fundamental and vested, an employee enjoys no such right to continuation in a particular job assignment.”¹⁷ Thus, the Commission found that local government employers are not required to provide due process protection in the case of a transfer.

Furthermore, although the SPB decision may apply to the State as an employer, the Commission found that that the SPB decision does not apply to actions taken by a local government employer. Accordingly, the Commission found that an employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

When a property interest is affected and due process applies, the procedural safeguards required by the due process clause generally require notice to the employee and an opportunity to respond, with some variation as to the nature and timing of the procedural safeguards. In cases of dismissal, demotion, long-term suspension and reduction of pay, the California Supreme Court in *Skelly* prescribed the following due process requirements *before* the discipline becomes effective:

- Notice of the proposed action;
- The reasons for the action;
- A copy of the charges and materials upon which the action is based; and

Personnel Board (1975) 15 Cal.3d 194, where the California Supreme Court held a permanent civil service employee of the state has a property interest in continued employment and cannot be dismissed without due process of law.

¹¹ *Skelly, supra*, 15 Cal.3d 194.

¹² *Ng v. State Personnel Board* (1977) 68 Cal.App.3d 600.

¹³ *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal.3d 552, 558-560.

¹⁴ *Ng, supra*, 68 Cal.App.3d 600, 605.

¹⁵ *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438.

¹⁶ *Runyon v. Ellis* (1995) 40 Cal.App.4th 961.

¹⁷ *Howell v. County of San Bernardino* (1983) 149 Cal.App.3d 200, 205.

- The right to respond, either orally or in writing, to the authority initially imposing discipline.¹⁸

In cases of short-term suspensions (ten days or less), the employee's property interest is protected as long as the employee receives notice, reasons for the action, a copy of the charges, and the right to respond *either during the suspension, or within a reasonable time thereafter*.¹⁹

Similarly, the Commission found that in the case of a written reprimand where the employee is not deprived of pay or benefits, the employer is not required to provide the employee with the due process safeguards *before* the effective date of the written reprimand. Instead, the court in *Stanton* found that an appeals process provided to the employee *after* the issuance of the written reprimand satisfies the due process clause.²⁰

The claimant disagreed with the Commission's interpretation of the *Stanton* case and its application to written reprimands.

The claimant contended *Stanton* stands for the proposition that the due process guarantees outlined in *Skelly* do not apply to a written reprimand. Thus, the claimant concluded that an employee is not entitled to any due process protection when the employee receives a written reprimand. The claimant cited the following language from *Stanton* in support of its position:

“. . . As the City notes, no authority supports plaintiff's underlying assertion that issuance of a written reprimand triggers the due process safeguards outlined in *Skelly*. Courts have required adherence to *Skelly* in cases in which an employee is demoted [citations omitted]; suspended without pay [citations omitted]; or dismissed [citations omitted]. We find no authority mandating adherence to *Skelly* when a written reprimand is issued.”

“We see no justification for extending *Skelly* to situations involving written reprimands. Demotions, suspension and dismissal all involve depriving the public employee of pay or benefits; a written reprimand results in no such loss to the employee.”

The facts in *Stanton* are as follows. A police officer received a written reprimand for discharging a weapon in violation of departmental rules. After he received the reprimand, he appealed to the police chief in accordance with the memorandum of understanding and the police chief upheld the reprimand. The officer then filed a lawsuit contending that he was entitled to an administrative appeal. The court denied the plaintiff's request finding that that the meeting with the police chief satisfied the administrative appeals provision in the test claim legislation (Government Code section 3304), and thus, satisfied the employee's due process rights.

The Commission agreed that the court in *Stanton* held the rights outlined in *Skelly* do not apply when an employee receives a written reprimand. Thus, under *Skelly*, the rights to receive notice, the reasons for the reprimand, a copy of the charges and the right to respond are not required to be given to an employee *before* the reprimand takes effect.

¹⁸ *Skelly*, *supra*, 15 Cal.3d 194, 215.

¹⁹ *Civil Service Assn.*, *supra*, 22 Cal.3d 552, 564.

²⁰ *Stanton*, *supra*, 226 Cal.App.3d 1438, 1442.

However, the court found that the employee *is* guaranteed due process protection upon receipt of a written reprimand. The court found that when the appeals process takes places *after* the reprimand, due process is satisfied. The court in *Stanton* also states the following:

“Moreover, Government Code section 3303 et seq., the Public Safety Officer Procedural Bill of Rights Act, provides police officers who are disciplined by their departments with procedural safeguards. Section 3304, subdivision (b) states no punitive action may be taken by a public agency against a public safety officer without providing the officer with an opportunity for administrative appeal. Punitive action includes written reprimands. [Citation omitted.] Even without the protection afforded by *Skelly*, plaintiff’s *procedural due process rights*, following a written reprimand, ***are protected*** by the appeals process mandated by Government Code section 3304, subdivision (b).” (Emphasis added.)²¹

Accordingly, the Commission found that the due process clause of the United States and California Constitutions apply when a permanent employee is

- Dismissed;
- Demoted;
- Suspended;
- Receives a reduction in salary; and
- Receives a written reprimand.

Liberty Interest

Although probationary and at-will employees, who can be dismissed without cause, do not have a property interest in their employment, the employee may have a liberty interest affected by a dismissal when the charges supporting the dismissal damage the employee’s reputation and impair the employee’s ability to find other employment. The courts have defined the liberty interest as follows:

“[A]n employee’s liberty is impaired if the government, in connection with an employee’s dismissal or failure to be rehired, makes a ‘charge against him that might seriously damage his standing and associations in the community,’ such as a charge of dishonesty or immorality, or would ‘impose on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities.’ [Citations omitted.] A person’s protected liberty interests are not infringed merely by defamatory statements, for an interest in reputation alone is not a constitutionally protected liberty interest. [Citations omitted.] Rather, the liberty interest is infringed only when the defamation is made in

²¹ *Stanton, supra* ,226 Cal.App.3d 1438, 1442.

connection with the loss of a government benefit, such as, . . . employment.
[Citations omitted.]”²²

For example, in *Murden v. County of Sacramento*, the court found a protected liberty interest when a *temporary* deputy sheriff was dismissed from employment based on charges that he was engaging two female employees in embarrassing and inappropriate conversation regarding sexual activities. The court noted that the charge impugned the employee’s character and morality, and if circulated, would damage his reputation and impair his ability to find other employment.

The court in *Murden* clarified that a dismissal based on charges that the employee was unable to learn the basic duties of the job does *not* constitute a protected interest.²³

When the employer infringes on a person’s liberty interest, due process simply requires notice to the employee, and an opportunity to refute the charges and clear his or her name. Moreover, the “name-clearing” hearing can take place *after* the actual dismissal.²⁴

Accordingly, the Commission found that the due process clauses of the United States and California Constitutions apply when the charges supporting the dismissal of a probationary or at-will employee damage the employee’s reputation and impair the employee’s ability to find other employment.

Test Claim Legislation

As indicated above, employers are required by the due process clause to offer notice and hearing protections to *permanent* employees for dismissals, demotions, suspensions, reductions in salary and written reprimands.

Employers are also required by the due process clause to offer notice and hearing protections to *probationary* and *at-will* employees when the dismissal harms the employee’s reputation and ability to obtain future employment.

As more fully discussed below, the Commission found that the test claim legislation imposes some of the *same* notice and hearing requirements imposed under the due process clause.

Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”²⁵

²² *Murden v. County of Sacramento* (1984) 160 Cal.App.3d 302, 308, quoting from *Board of Regents v. Roth, supra*, 408 U.S. at p. 573. See also *Paul v. Davis* (1976) 424 U.S. 693, 711-712; and *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340.

²³ *Murden, supra*. 160 Cal.App.3d 302, 308.

²⁴ *Murden, supra*, 160 Cal.App.3d 302, 310; *Arnett v. Kennedy* (1974) 416 U.S. 134, 157; and *Codd v. Velger* (1977) 429 U.S. 624, 627.

²⁵ In the Claimant’s comments to the Draft Staff Analysis, the claimant recited Government Code section 3304, *as amended in 1997 (Stats. 1997, c. 148) and 1998 (Stats. 1998, c. 786)*. These amendments made substantive changes to Government Code section 3304 by adding subdivisions (c) through (g). These changes include a statute of limitations concerning how long the agency can use acts as a basis for discipline, a provision prohibiting the removal

Punitive action is defined in Government Code section 3303 as follows:

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary²⁶, written reprimand, or transfer for purposes of punishment.”

The California Supreme Court determined that the phrase “for purposes of punishment” in the foregoing section relates only to a transfer and not to other personnel actions.²⁷ Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to “compensate for a deficiency in performance,” however, an appeal is not required.^{28, 29}

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in “disadvantage, harm, loss or hardship” and impact the peace officer’s career.³⁰ In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted “punitive action” under the test claim legislation based on the source of the report, its contents, and its potential impact on the career of the officer.³¹

The Commission recognized that the test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local agency and school district.³² The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with standards of fair play and due process.^{33, 34}

of a chief of police without providing written notice describing the reasons for the removal and an administrative hearing, and a provision limiting the right to an administrative appeal to officers who successfully complete the probationary period. The Commission noted that ***neither the 1997 nor 1998 statutes are alleged in this test claim.***

²⁶ The courts have held that “reduction in salary” includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

²⁷ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

²⁸ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

²⁹ The claimant testified that what constitutes a transfer for purposes of punishment is in the eyes of the employee. The claimant stated that in the field of labor relations, peace officers will often request a full POBOR hearing and procedure on a transfer which is not acceptable to the officer in question, even though the transfer is not accompanied by a reduction in pay or benefits and no disciplinary action has been taken.

³⁰ *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.

³¹ *Id* at p. 353-354.

³² *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806; *Runyan, supra*, 40 Cal.App.4th 961, 965.

³³ *Doyle v. City of Chino* (1981) 117 Cal.App.3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee’s due process rights were protected by the administrative appeals process mandated by Government Code section 3304. Furthermore, in cases involving “misconduct”, the officer is entitled to a liberty interest name-clearing hearing under Government section 3304. (*Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340; *Murden, supra*).

The Department of Finance and the State Personnel Board contended that Government Code section 3304 does not require an administrative appeal for probationary and at-will employees. They cited Government Code section 3304, subdivision (b), as it is *currently* drafted, which provides the following: “No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer *who has successfully completed the probationary period that may be required by his or her employing agency* without providing the public safety officer with an opportunity for administrative appeal.”

However, the Commission determined that the italicized language in section 3304, subdivision (b), was added by the Legislature in 1998 and became effective on January 1, 1999. (Stats. 1998, c. 768). When Government Code section 3304, subdivision (b), was originally enacted in 1976, it did not limit the right to an administrative appeal to permanent employees only. Rather, that section stated the following:

“(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

Accordingly, the Commission found that an administrative appeal under Government Code section 3304, subdivision (b), was required to be provided to probationary and at-will employees faced with punitive action or a denial of promotion until December 31, 1998.

The Department of Finance also contended that the cost of conducting an administrative hearing is already required under the due process clause and the *Skelly* case, which predate the test claim legislation.

The Commission agreed that in some circumstances, the due process clause requires the same administrative hearing as the test claim legislation. However, as reflected by the table below, the Commission found that test claim legislation is broader than the due process clause and applies to additional employer actions that have not previously enjoyed the protections of the due process clause.

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³⁴ The Commission noted that at least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250.) In addition, the California Supreme Court uses the words “administrative appeal” of section 3304 interchangeably with the word “hearing.” (*White, supra*, 31 Cal.3d 676.)

Due Process	Test Claim Legislation
Dismissal of a permanent employee	Dismissal of permanent, <i>probationary</i> or <i>at-will</i> employees
Demotion of a permanent employee	Demotion of permanent, <i>probationary</i> or <i>at-will</i> employees
Suspension of a permanent employee	Suspension of permanent, <i>probationary</i> or <i>at-will</i> employees
Reduction in salary for a permanent employee	Reduction in salary for permanent, <i>probationary</i> or <i>at-will</i> employees
Written reprimand of a permanent employee	Written reprimand of permanent, <i>probationary</i> or <i>at-will</i> employees
Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment	Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment
	Transfer of a permanent, probationary or at-will employee for purposes of punishment
	Denial of promotion for permanent, probationary or at-will employees on grounds other than merit
	Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee

Thus, the Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

The Commission found, however, that the due process clauses of the United States and California Constitutions do not require an administrative appeal in the following circumstances:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e.; the charges do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Thus, in these situations, the Commission found that the administrative appeal required by Government Code section 3304 constitutes a new program or higher level of service and imposes “costs mandated by the state” under Government Code section 17514.

Compensation and Timing of an Interrogation

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.³⁵

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer. This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the “normal waking hours” of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer “shall” be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

“If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section. Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section.”

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 17514.

Notice Prior to Interrogation

Government Code section 3303, subdivisions (b) and (c), require the employer, prior to interrogation, to inform and provide notice of the nature of the investigation and the identity of all officers participating in the interrogation to the employee.

³⁵ Gov. Code, § 3303, subd. (i).

The Commission recognized that under due process principles, an employee with a property interest is entitled to notice of the disciplinary action proposed by the employer.³⁶ Thus, an employee is required to receive notice when the employee receives a dismissal, suspension, demotion, reduction in salary or receipt of a written reprimand. Due process, however, *does not* require notice prior to an investigation or interrogation since the employee has not yet been charged and the employee's salary and employment position have not changed.

Accordingly, the Commission found that providing the employee with prior notice regarding the nature of the interrogation and identifying the investigating officers constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes "costs mandated by the state" under Government Code section 17514.

Tape Recording of Interrogation

Government Code section 3303, subdivision (g), provides, in relevant part the following:

"The complete interrogation of a public safety officer *may* be recorded. *If* a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. . . . The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation." (Emphasis added.)

The claimant contended that the activity of tape recording the interrogation and providing the peace officer with the tape recording of the interrogation as specified in section 3303, subdivision (g), constitute reimbursable state mandated activities. The claimant stated the following:

"As shown above, Government Code, section 3303 (g) allows the interrogation of a peace officer to be tape recorded. The section is silent as to whom may record the interrogation, and who may request that the session be recorded. In practice, the employee will almost always request to record the interrogation. As the employee desires to record same, the employer is faced with the requirement of also tape recording the interrogation in order to assure that the employee's tape is not edited, redacted, or changed in any manner, and to have a verbatim record of the proceedings."³⁷

At the hearing, Ms. Dee Contreras, Director of Labor Relations for the City of Sacramento, testified as follows:

"If the employee comes in and tapes, and, trust me, they all come in and tape, if they're sworn peace officers, their attorneys come in with tapes. You wind up with two tape recorders on a desk. If they tape and we do not, then they have a record that we do not have or we must rely on a tape created by the employee we are investigating. That would not be a wise choice, from the employer's perspective."

³⁶ *Skelly, supra*, 15 Cal.3d 194.

³⁷ Claimant's comments to Draft Staff Analysis.

“If we take notes and they tape, our notes are never going to be exactly the same as the tape is going to be if it’s transcribed, so we wind up with what is arguably an inferior record to the record that they have.”

“So it is essentially - - it says they may tape but the practical application of that is: For everybody who comes in with a tape recorder to tape, which is virtually every peace officer, we then must tape.”³⁸

The Department of Finance disagreed and contended that the test claim statute does not require local agencies to tape the interrogation. The Department further contended that if the local agency decides to tape the interrogation, the cost of providing the tape to the officer is required under the due process clause.

Based on the evidence presented at the hearing, the Commission recognized the reality faced by labor relations’ professionals in their implementation of the test claim legislation. Accordingly, the Commission found that tape recording the interrogation when the employee records the interrogation is a mandatory activity to ensure that all parties have an accurate record. The Commission’s finding is also consistent with the legislative intent to assure stable employer-employee relations are continued throughout the state and that effective services are provided to the people.³⁹

The Commission also recognized that Government Code section 3303, subdivision (g), requires that the employee shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The Commission found that providing the employee with access to the tape *prior to a further interrogation at a subsequent time* is a new activity and, thus, constitutes a new program or higher level of service.

However, the Commission found that providing the employee with access to the tape *if further proceedings are contemplated* does not constitute a new program or higher level of service when the further proceeding is a disciplinary action protected by the due process clause. Under certain circumstances, due process already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the disciplinary action is based.

Accordingly, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation to the employee when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee’s reputation and ability to obtain future employment is harmed by the dismissal⁴⁰; and when

³⁸ August 26, 1999 Hearing Transcript, page 18, lines 7-21.

³⁹ This finding is consistent with one of the principles of statutory construction that “where statutes provide for performance of acts or the exercise of power or authority by public officers protecting private rights or in public interest, they are mandatory.” (3 Sutherland, *Statutory Construction* (5th ed. 1992) § 57.14, p. 36.) See also section 1183.1 of the Commission’s regulations, which provides that the parameters and guidelines adopted on a mandated program shall provide a description of the most reasonable methods of complying with the mandate.

⁴⁰ *Skelly, supra*; *Ng, supra*; *Civil Service Assn., supra*; *Stanton, supra*; *Murden, supra*.

- The disciplinary action is based, in whole or in part, on the interrogation of the employee.

Under these circumstances, the Commission found that the requirement to provide access to the tape recording of the interrogation under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing access to the tape recording merely implements the requirements of the United States Constitution.

However, when the further proceeding does not constitute a disciplinary action protected by due process, the Commission found that providing the employee with access to the tape is a new activity and, thus, constitutes a new program or higher level of service.

In sum, the Commission found that the following activities constitute reimbursable state mandated activities:

- Tape recording the interrogation when the employee records the interrogation.
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
 - (a) The further proceeding is not a disciplinary action;
 - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Documents Provided to the Employee

Government Code section 3303, subdivision (g), also provides that the peace officer "shall" be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed to be confidential.

The Department of Finance and the SPB contended that the cost of providing copies of transcripts, reports and recordings of interrogations are required under the due process clause and, thus, do not constitute a reimbursable state mandated program.

In *Pasadena Police Officers Association*, the California Supreme Court analyzed Government Code section 3303, noting that it does not specify when an officer is entitled to receive the reports and complaints. The court also recognized that section 3303 does not specifically address an officer's due process entitlement to discovery in the event the officer is *charged* with

misconduct.⁴¹ Nevertheless, the court determined that the Legislature intended to require law enforcement agencies to disclose the reports and complaints to an officer under investigation only *after* the officer's interrogation.⁴²

The Commission recognized that the court's decision in *Pasadena Police Officers Association* is consistent with due process principles. Due process requires the employer to provide an employee who holds either a property or liberty interest in the job with a copy of the charges and materials upon which the disciplinary action is based when the officer is charged with misconduct.⁴³

Accordingly, even in the absence of the test claim legislation, the Commission found that the due process clause requires the employer to provide a copy of all investigative materials, including non-confidential complaints, reports and charges when, as a result of the interrogation,

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the requirement to produce documents under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the investigative materials in the above circumstances would not constitute "costs mandated by the state" since producing such documentation merely implements the requirements of the United States constitution.

However, the Commission found that the due process clause does not require employers to produce the charging documents and reports when requested by the officer in the following circumstances:

- (a) When the investigation *does not* result in disciplinary action; and
- (b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or

⁴¹ *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 575 (Exhibit A, Bates page 0135).

⁴² *Id.* at 579.

⁴³ *Skelly, supra.*

- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

The Department of Finance and the State Personnel Board disagreed with this conclusion. They contended that “*State civil service* probationary or at-will employees are entitled to [the due process rights prescribed by] *Skelly* . . . by the State Personnel Board” to the charging documents and reports and, thus, Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program with respect to these employees. However, they cited no authority for this proposition.

The Department of Finance and the State Personnel Board also contended that Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program when a permanent employee is transferred based on their assertion that a transfer is covered by the due process clause. As noted earlier, the Commission disagreed with this contention and found that a permanent employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

Accordingly, in the circumstances described above, the Commission found that producing the documents required by Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes “costs mandated by the state” under Government Code section 17514.

Representation at Interrogation

Government Code section 3303, subdivision (i), provides that the peace officer “shall” have the right to be represented during the interrogation when a formal written statement of charges has been filed or whenever the interrogation focuses on matters that are likely to result in punitive action.

The claimant contended that Government Code section 3303, subdivision (i), results in reimbursable state mandated activities since additional professional and clerical time is needed to schedule the interview when the peace officer asserts the right to representation.

The Commission disagreed with the claimant’s contention. Before the enactment of the test claim legislation, peace officers had the same right to representation under Government Code sections 3500 to 3510, also known as the Meyers-Milias-Brown Act (MMBA). The MMBA governs labor management relations in California local governments, including labor relations between peace officers and employers.⁴⁴

Government Code section 3503, which was enacted in 1961, provides that employee organizations have the right to represent their members in their employment relations with public agencies. The California Supreme Court analyzed section 3503 in *Civil Service Association v. City and County of San Francisco*, a case involving the suspension of eight civil service employees. The court recognized an employee’s right to representation under the MMBA in disciplinary actions.

“We have long recognized the right of a public employee to have his counsel represent him at disciplinary hearings. (*Steen v. Board of Civil Service Commr.*)

⁴⁴ *Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal.App.3d 255.

(1945) 26 Cal.2d 716, 727; [Citations omitted.] While *Steen* may have dealt with representation by a licensed attorney, the right to representation by a labor organization in the informal process here involved seems to follow from the right to representation contained in the Meyers-Milias-Brown Act and the right to representation recognized in *Steen*.”⁴⁵

Peace officers employed by school districts have similar rights under the Educational Employment Relations Act, beginning with Government Code section 3540.⁴⁶

Based on the foregoing, the Commission found that the right to representation at the interrogation under Government Code section 3303, subdivision (i), *does not* constitute a new program or higher level of service under article XIII B, section 6 of the California Constitution.

Adverse Comments in Personnel File

Government Code sections 3305 and 3306 provide that no peace officer “shall” have any adverse comment entered in the officer’s personnel file without the peace officer having first read and signed the adverse comment.⁴⁷ If the peace officer refuses to sign the adverse comment, that fact “shall” be noted on the document and signed or initialed by the peace officer. In addition, the peace officer “shall” have 30 days to file a written response to any adverse comment entered in the personnel file. The response “shall” be attached to the adverse comment.

Thus, the Commission determined that Government Code sections 3305 and 3306 impose the following requirements on employers:

- To provide notice of the adverse comment;⁴⁸
- To provide an opportunity to review and sign the adverse comment;
- To provide an opportunity to respond to the adverse comment within 30 days; and
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer’s signature or initials under such circumstances.

The claimant contended that county employees have a pre-existing statutory right to inspect and respond to adverse comments contained in the officer’s personnel file pursuant to Government Code section 31011. The claimant further stated that Labor Code section 1198.5 provides city employees with a pre-existing right to review, but not respond to, adverse comments. Thus, the claimant contended that Government Code sections 3305 and 3306 constitute a new program or higher level of service under article XIII B, section 6 of the California Constitution.

⁴⁵ *Civil Service Assn.*, *supra*, 22 Cal.3d 552, 568.

⁴⁶ Government Code section 3543.2, which was added in 1975 (Stats. 1975, c. 961) provides that school district employees are entitled to representation relating to wages, hours of employment, and other terms and conditions of employment.

⁴⁷ The court in *Aguilar v. Johnson* (1988) 202 Cal.App.3d 241, 249-252, held that an adverse comment under Government Code sections 3305 and 3306 include comments from law enforcement personnel and citizen complaints.

⁴⁸ The Commission found that notice is required since the test claim legislation states that “no peace officer shall have any adverse comment entered in the officer’s personnel file *without the peace officer having first read and signed the adverse comment.*” Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

As described below, the Commission found that Government Code sections 3305 and 3306 constitute a *partial* reimbursable state mandated program.

Due Process

Under due process principles, an employee with a property or liberty interest is entitled to notice and an opportunity to respond, either orally or in writing, prior to the disciplinary action proposed by the employer.⁴⁹ If the adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer or harms the officer's reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause.⁵⁰ Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing notice and an opportunity to respond do not impose "costs mandated by the state".

However, the Commission found that under circumstances where the adverse comment affects the officer's property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* required by the due process clause:

- Obtaining the signature of the peace officer on the adverse comment, or
- Noting the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances.

The Department of Finance and the State Personnel Board stated the following: "If the adverse comment can be considered a 'written reprimand,' however, the POBOR required 'notice' and the 'opportunity to respond' may already be required by due process. The extent of due process due an employee who suffers an official reprimand is not entirely clear."

The Commission agreed that if the adverse comment results in, or is considered a written reprimand, then notice and an opportunity to respond is already required by the due process clause and are not reimbursable state mandated activities. However, due process does not require the local agency to obtain the signature of the peace officer on the adverse comment, or note the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances. Accordingly, the Commission found that these two activities required by the test claim legislation when an adverse comment is received constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 17514 even where there is due process protection.

The Legislature has also established protections for local public employees similar to the protections required by Government Code sections 3305 and 3306 in statutes enacted prior to the test claim legislation. These statutes are discussed below.

⁴⁹ *Skelly, supra*, 15 Cal.3d 194.

⁵⁰ *Hopson, supra*, 139 Cal.App.3d 347.

Existing Statutory Law Relating to Counties

Government Code section 31011, enacted in 1974,⁵¹ established review and response protections for county employees. That section provides the following:

“Every county employee shall have the *right to inspect and review* any official record relating to his or her performance as an employee or to a grievance concerning the employee which is kept or maintained by the county; provided, however, that the board of supervisors of any county may exempt letters of reference from the provisions of this section.

The contents of such records shall be made available to the employee for inspection and review at reasonable intervals during the regular business hours of the county.

The county shall provide an opportunity for the employee to *respond* in writing, or personal interview, to any information about which he or she disagrees. Such response shall become a permanent part of the employee’s personnel record. The employee shall be responsible for providing the written responses to be included as part of the employee’s permanent personnel record.

This section does not apply to the records of an employee relating to the investigation of a possible criminal offense.” (Emphasis added.)

Therefore, the Commission determined that under existing law, counties are required to provide a peace officer with the opportunity to review and respond to an adverse comment *if* the comment *does not* relate to the investigation of a possible criminal offense.⁵² Under such circumstances, the Commission found that the review and response provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 17514.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or

⁵¹ Stats. 1974, c. 315.

⁵² The Commission found that Government Code section 31011 does *not* impose a notice requirement on counties since section 31011 does not require the county employee to review the comment *before* the comment is placed in the personnel file.

higher level of service and impose “costs mandated by the state” under Government Code section 17514:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Existing Statutory Law Relating to Cities and Special Districts

Labor Code section 1198.5, enacted in 1975,⁵³ established review procedures for public employees, including peace officers employed by a city or special district. At the time the test claim legislation was enacted, Labor Code section 1198.5 provided the following:

“(a) Every employer shall at reasonable times, and at reasonable intervals as determined by the Labor Commissioner, upon the request of an employee, permit that employee to inspect such personnel files which are used or have been used to determine that employee’s qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer subject to this section shall keep a copy of each employee’s personnel file at the place the employee reports to work, or shall make such file available at such place within a reasonable period of time after a request therefor by the employee. *A public employer shall, at the request of a public employee, permit the employee to inspect the original personnel files at the location where they are stored at no loss of compensation to the employee.*

(c) *This section does not apply to the records of an employee relating to the investigation of a possible criminal offense.* It shall not apply to letters of reference.

(d) If a local agency has established an independent employee relations board or commission, any matter or dispute pertaining to this section shall be under the jurisdiction of that board or commission, but an employee shall not be prohibited from pursuing any available judicial remedy, whether or not relief has first been sought from a board or commission.

(e) This section shall apply to public employers, including, but not limited to, every city, county, city and county, district, and every public and quasi-public agency. This section shall not apply to the state or any state agency, and shall not apply to public school districts with respect to employees covered by Section 44031 of the Education Code. Nothing in this section shall be construed to limit the rights of employees pursuant to Section 31011 of the Government Code or

⁵³ Stats. 1975, c. 908, § 1.

Section 87031 of the Education Code, or to provide access by a public safety employee to confidential preemployment information.”⁵⁴ (Emphasis added.)

Therefore, the Commission determined that under existing law, cities and special districts are required to provide a peace officer the opportunity to review the adverse comment *if* the comment *does not* relate to the investigation of a possible criminal offense.⁵⁵ Under such circumstances, the Commission found that the review provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 17514.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 17514:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Existing Statutory Law Relating to School Districts

Education Code section 44031 establishes notice, review and response protections to peace officers employed by school districts. Section 44031 provides in relevant part the following:

⁵⁴ Labor Code section 1198.5 was amended in 1993 to delete all provisions relating to local public employers (Stats. 1993, c. 59.) The Legislature expressed its intent when enacting the 1993 amendment “to relieve local entities of the duty to incur unnecessary expenses...”

⁵⁵ The Commission found that Labor Code section 1198.5 does *not* impose a notice requirement on counties since section 1198.5 does not require the city or special district employee to review the comment *before* the comment is placed in the personnel file.

“(a) Materials in personnel files of employees that may serve as a basis for affecting the status of their employment are to be made available for the inspection of the person involved.

“(d) *Information of a derogatory nature, except [ratings, reports, or records that were obtained in connection with a promotional examination], shall not be entered or filed unless and until the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right to enter, and have attached to any derogatory statement, his own comments thereon....*”
(Emphasis added.)

Education Code section 87031 provides the same protections to community college district employees.⁵⁶

Therefore, the Commission determined that existing law, codified in Education Code sections 44031 and 87031, requires school districts and community college districts to provide a peace officer with notice and the opportunity to review and respond to an adverse comment *if* the comment *was not* obtained in connection with a promotional examination. Under such circumstances, the Commission found that the notice, review and response provisions of Government Code sections 3305 and 3306 do *not* constitute a new program or higher level of service.

However, even when Education Code sections 44031 and 87031 apply, if the adverse comment *was not* obtained in connection with a promotional examination, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 17514.

Furthermore, the Commission found that when the adverse comment is obtained in connection with a promotional examination, the following activities constitute a new program or higher level of service and impose “costs mandated by the state” under Government Code section 17514:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

⁵⁶ Education Code sections 44031 and 87031 were derived from Education Code section 13001.5, which was originally added by Statutes of 1968, Chapter 433.

CONCLUSION

Based on the foregoing analysis, the Commission concluded that the test claim legislation constitutes a partial reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution for the following reimbursable activities:

1. Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e.; the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
 - Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
2. Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
3. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
4. Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
5. Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - (a) The further proceeding is not a disciplinary action;
 - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
6. Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed

confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):

- (a) When the investigation *does not* result in disciplinary action; and
 - (b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.
6. Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
 - Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
 - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

ITEM 10

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

Executive Summary

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

Staff Analysis

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines, as modified by staff were issued to the parties. (Exhibit H.) Staff made several substantive and technical modifications to the claimant's proposed parameters and guidelines to conform the parameters and guidelines to the Commission's Statement of Decision.

All of the modifications to the claimant's proposed parameters and guidelines are discussed in the staff analysis and outlined in the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

On July 5, 2000, the claimant filed comments on the draft staff analysis disputing *one* issue; namely, reimbursement of legal defense costs. (Exhibit I.)

The Commission found that Government Code section 3304, subdivision (b), constitutes a reimbursable state mandate by requiring local agencies to provide the opportunity for an administrative appeal for specified disciplinary actions. The claimant is requesting, as part of this activity, the defense of any lawsuit resulting from the agency's disciplinary action.

In this regard, the claimant is requesting reimbursement for attorneys' fees, witness fees, and all associated court costs in defense of its case.

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

The claimant also cites Government Code section 3309.5, a statute included in the POBAR legislation, to assert that the superior court has original jurisdiction over *any* proceeding brought by a peace officer for alleged POBAR violations. Section 3309.5 was designed to allow a peace officer to pursue a remedy immediately in court during the investigation and not require that the officer wait until after an administrative appeal. Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

The Department of Finance contends that legal defense costs are not reimbursable since there is no reference in the Commission's Statement of Decision that defending the agency's administrative action constitutes a reimbursable state mandated activity. The Department further states that it is not clear that the Commission's approval of the costs associated with an administrative appeal extends to or encompasses judicial review.

For the reasons stated below, staff disagrees with the claimant's request.

Legal Defense Costs Relating to an Agency's Final Disciplinary Action

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

Before the test claim legislation was enacted, local agencies were issuing disciplinary actions. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even *before* POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision. A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action *even in the absence of POBAR*. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an interrogation and following the receipt of an adverse comment.

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission's Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 constitutes a reimbursable state mandate.

Section 1183, subdivision (e)(3), of the Commission’s regulations requires that the test claim filing include a detailed description of the following: activities required under prior law or executive order; what new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service *and* whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission’s regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying “the activities found to be required under prior statutes or executive orders, and the activities found to be required under the statutes or executive orders that contain the mandate or increased level of service.” The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the claimant’s test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission’s regulations.

Moreover, the claimant never alleged during the test claim phase, and the Commission did not find, that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant’s proposed parameters and guidelines by striking out the words “together with the defense of same in any court proceeding.”

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission’s regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

Staff Recommendation

Staff recommends that the Commission adopt the Claimant’s Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

Claimant

City of Sacramento

Chronology

11/30/99	Commission adopts Statement of Decision
12/29/99	Claimant files proposed parameters and guidelines
01/19/00	Department of Finance files comments
02/23/00	Claimant replies to the Department of Finance comments
05/24/00	Pre-hearing Conference held
05/26/00	Staff requests further comments
06/07/00	Claimant files further comments in response to staff request
06/14/00	The State Controller's Office files comments
06/20/00	Draft Staff Analysis and Claimant's Proposed Parameters and Guidelines as Modified by Staff issued
07/05/00	Claimant files comments

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

STAFF ANALYSIS

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by staff were issued to the parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the comments submitted by the parties, the test claim legislation, and the Commission's Statement of Decision. (Exhibit H.)

On July 5, 2000, the claimant filed comments on the draft staff analysis addressing one issue; namely the reimbursement of legal defense costs on claims filed by peace officer employees alleging a POBAR violation under Government Code section 3309.5. (Exhibit I.) The staff analysis on this issue is provided below under Section IV. (B), Administrative Appeal.

Staff has also modified the claimant’s proposed parameters and guidelines, as reflected by underline and strikeout, to conform the parameters and guidelines to the test claim legislation and the Commission’s Statement of Decision (See page 21). These modifications are discussed below.

Section IV. “Reimbursable Activities,” Subdivision (A), “Administrative Activities”¹

The claimant’s proposed parameters and guidelines include the following administrative activities:

- “1. Developing or updating policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Maintenance of the systems to conduct the mandated activities.
4. Providing direct supervision over the agency staff performing the mandated activities.”

The Department of Finance states that the component “maintenance of the systems to conduct the mandated activities” is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases. Thus, the component “maintenance of the systems to conduct the mandated activities” is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for “updating the status report of the POBAR cases.”

Staff has also modified the claimant’s proposed parameters and guidelines by striking the proposed activity of “providing direct supervision over the agency staff performing the mandated activities.” If a claimant is requesting reimbursement for an employee providing direct supervision regarding the mandated activities, the claimant simply has to comply with Section V., Claim Preparation and Submission, and submit supporting documentation to the Controller’s Office identifying the employee, describing the reimbursable activities performed, and the actual time devoted to the mandated activity. Thus, adding a separate component in Section IV. for employee supervision is duplicative and unnecessary.

Finally, staff has designated the administrative activities as on-going activities. Due to a lack of specificity in the test claim legislation, hundreds of court cases have been, and continue to be issued. The case law has provided new interpretations of the legislation and clarified the responsibilities of local agencies. Thus, staff finds that it is reasonably necessary for local agencies to update their internal policies and procedures, and train their employees on an on-going basis.

Thus, staff’s modifications to Section IV. (A), are as follows:

“A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

¹ See page 22, Claimant’s Proposed Parameters and Guidelines, As Modified by Staff.

3. ~~Maintenance of the systems to conduct the mandated activities.~~ Updating the status report of the POBAR cases.

4. ~~Providing direct supervision over the agency staff performing the mandated activities.”~~

Section IV. “Reimbursable Activities, Subdivision (B), “Administrative Appeal”²

The Commission’s Statement of Decision includes a list of activities the Commission found to be reimbursable under article XIII B, section 6 of the California Constitution. The first activity listed in the Statement of Decision states the following:

“Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interests *are not* affected (i.e.; the charges supporting a dismissal do not harm the employee’s reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.”

The claimant’s proposed parameters and guidelines includes the language provided above, but also adds the following italicized phrase: “Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, *together with the defense of same in any court proceeding.*” Thus, the claimant is requesting attorneys’ fees, witness fees, and all associated court costs in defense of its case.

The Department of Finance contends that legal defense costs are not reimbursable. They state the following:

“While providing the opportunity for and the conduct of an administrative appeal was included in the Commission’s Statement of Decision, there is no reference to the defense of same in any court proceeding. It is not clear to us that the Commission’s approval of the costs of an administrative appeal in its decision necessarily extends to or encompasses judicial review. Unless the claimant can establish a nexus between the two processes, we believe that it is not appropriate to include the costs of the latter in these parameters and guidelines.”

In response, the claimant cites Government Code section 3309.5, a statute included in the test claim legislation, to assert that the test claim legislation gives the superior court original jurisdiction over any proceeding brought by a peace officer for alleged POBAR violations.

The claimant also states that “although at first blush it would seem that only those actions involving a violation by the public entity of the officer’s rights under POBAR would be subject to judicial review, that is not what has occurred in practice.” The claimant, citing

² See pages 22-23, Claimant’s Proposed Parameters and Guidelines, As Modified by Staff.

the case of *Fukuda v. City of Angels*³, contends that the courts have expanded the judicial review of POBAR cases to an independent review of the validity of the final administrative decision issuing the disciplinary action. The claimant therefore asserts that reimbursement should be required for all costs related to defending the agency's final administrative decision in court.

The analysis regarding legal defense costs is provided below.

Legal Defense Costs Relating to the Agency's Final Administrative Decision

The claimant first contends that defending a lawsuit attacking the validity of the final administrative decision issuing a disciplinary action is a reimbursable state mandated activity.

The claimant cites the *Fukuda* case. The *Fukuda* case involves an administrative mandamus proceeding under Code of Civil Procedure section 1094.5 brought by a police officer against his employer following the employer's final decision to discharge the plaintiff. A writ of mandamus proceeding under Code of Civil Procedure section 1094.5 is available to review "any final administrative order or decision made as the result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." Thus, the plaintiff in *Fukuda* was attacking the validity of the employer's final decision of discharge.

The plaintiff in *Fukuda*, however, did *not* allege any POBAR violations. In fact, the test claim legislation is not even mentioned in the case. The plaintiff was simply contesting the final disciplinary action taken by the employer. Thus, staff finds that the *Fukuda* case is not relevant here.

Moreover, local agencies were issuing disciplinary actions before the test claim legislation was enacted. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even *before* POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision.⁴ A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action *even in the absence of POBAR*. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable a state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an

³ *Fukuda v. City of Angels* (1999) 20 Cal.4th 805. (Exhibit J.)

⁴ Code of Civil Procedure section 1094.5 was originally added by the Legislature in 1945 (Stats. 1945, ch. 358). (Exhibit K)

interrogation and following the receipt of an adverse comment. Section 3309.5 was specifically designed to allow a peace officer to pursue a remedy immediately in the courts *during* the investigation and not require that the officer wait until after an administrative appeal.⁵ Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

Government Code section 3309.5 states the following:

“(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over *any* proceeding brought by any public safety officer against any public safety department *for alleged violations of this chapter*.

(c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.” (Emphasis added.)

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission’s Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 imposes reimbursable state mandated activities.⁶

On June 20, 2000, staff issued a draft analysis on the claimant’s proposed parameters and guidelines concluding that legal defense costs resulting directly from section 3309.5 cannot be included in the parameters and guidelines because the Commission has not made a finding that section 3309.5 constitutes a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17514.

On July 5, 2000, the claimant filed a response to the draft staff analysis contending that the staff analysis regarding legal defense costs under Government Code section 3309.5 is wrong. The claimant contends that the issue of litigation of POBAR rights has been a “thread” through the entire test claim process. The claimant also states that defense costs under section 3309.5 should be included in the parameters and guidelines since the Statement of Decision defines the scope of the mandate and the parameters and guidelines define the activities. The claimant states the following:

“Attached to the original test claim as filed are all of the statutes upon which the test claim was based. On [page 372 of the test claim], is contained Chapter 405, Statutes of 1979, which added Government Code section 3309.5 to POBAR. Reference to this statute is had on the face sheet of the test claim [page number omitted] as well as on the face page of the narrative of the test claim [page number omitted].

⁵ See, *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1256. (Exhibit L)

⁶ Exhibit M, Test claim filings submitted by the claimant; Exhibit N, August 26, 1999 Hearing Transcript (test claim hearing); and Exhibit O, November 30, 1999 Hearing Transcript (SOD hearing).

Secondly, the issue of litigation of POBAR rights has been a thread going through the entire test claim process. Your staff has analyzed at depth numerous cases involving POBAR, particularly in connection with the scope of the mandate, and to what extent POBAR exceeds the requirements of *Skelly v. State Personnel Board* [citation omitted]. In fact, the first 312 pages of the test claim is devoted to litigation concerning *Skelly* and POBAR.

The issue of litigation concerning POBAR was raised by Ms. Dee Contreras at the hearing on the test claim in this matter. Furthermore, the record on the test claim is replete with references concerning litigation over POBAR rights. (See Comments to Draft Staff Analysis received by the Commission on August 6, 1999, commencing at page 9.)

Thus, even prior to Claimant's submission of Draft Parameters and Guidelines, the issue of litigation over POBAR rights was clearly submitted and in issue."

Staff disagrees with the claimant.

Section 1183, subdivision (e)(3), of the Commission's regulations requires that the test claim filing include a detailed description of the following:

- What *activities* were required under prior law or executive order, and
- *What new program or higher level of service is required under the statute or executive order* alleged to contain or impact a mandate, and
- Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service *and* whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying "the activities found to be required under prior statutes or executive orders, and the activities found to be *required under the statutes or executive orders that contain the mandate or increased level of service.*" (Emphasis added.) The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the Commission has not made a finding that Government Code section 3309.5 imposes a reimbursable state mandate.

The claimant's test claim filing includes section 3309.5 on the face sheet as a statute alleged to contain a mandate. The first page of the test claim narrative includes a sentence stating the following: "Chapter 405/79 added section 3309.5, making it unlawful to violate this act, thereby relieving the officer of any requirement to exhaust administrative remedies before seeking 'appropriate injunctive or other extraordinary relief' before superior court if violations are alleged."⁷

However, the test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission's regulations. Instead, the claimant's test claim filing limits the discussion of these issues to Government Code sections 3303 and 3304. These sections address the administrative appeal and interrogation rights under POBAR.

On September 5, 1997, the claimant filed supplemental comments clarifying the test claim. Again, the claimant's comments addressed Government Code sections 3303 and 3304. The claimant also addressed sections 3305, and 3306, which relate to the rights following the receipt of an adverse comment. Section 3309.5 was not mentioned in the claimant's supplemental comments.⁸

The claimant contends that its comments on the test claim draft staff analysis, beginning on page 9, is replete with references concerning litigation over POBAR rights. However, the cases cited in these comments do not address Government Code section 3309.5. Rather, the case law cited by the claimant defines the phrase "transfer for purposes of punishment", a punitive action entitling the employee to an administrative appeal under POBAR.⁹

The claimant also contends that the issue of litigation was raised during the test claim hearing. Staff agrees there was testimony relating to case law involving an employee's pre-existing due process rights. There was also testimony on case law relating to the POBAR rights regarding the administrative appeal, interrogation of an officer, and the receipt of adverse comments. However, there was no testimony addressing Government Code section 3309.5.¹⁰

In short, the claimant never alleged during the test claim phase, and the Commission did not find that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant's proposed parameters and guidelines by striking out the words "together with the defense of same in any court proceeding."

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission's regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

⁷ Exhibit M, Bates page 192.

⁸ Exhibit M, Bates page 232.

⁹ Exhibit M, Bates page 244.

¹⁰ Exhibit N.

1998 Amendment to Government Code Section 3304

Staff has also included the Commission's recognition that Government Code section 3304 was amended in 1998 (Stats. 1998, ch. 748) to limit the right to an administrative appeal to the chief of police and those employees who have successfully completed probation. (See Exhibit A, Statement of Decision, page 10.) The amendments became effective on January 1, 1999. Thus, claimants are eligible for reimbursement for providing the opportunity for an administrative appeal to probationary and at-will employees, except the chief of police, only until December 31, 1998.

Thus, staff has modified Section IV. (B) as follows:

"B. ~~On-Going Activities~~ Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

~~±~~ Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, ~~together with the defense of same in any court proceeding~~ (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing, ~~but not limited thereto~~, are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and

- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.”

Section IV. “Reimbursable Activities, Subdivision (C), “Interrogations”¹¹

The Commission found that several activities required by the test claim legislation involving the interrogation of a peace officer constituted reimbursable state mandated activities. (See the Commission’s Statement of Decision, pages 25 and 26.)

The claimant contends that all of the interrogation activities found by the Commission to be reimbursable apply not only to the peace officer employee under investigation, but also to civilian and peace officer witnesses. For example, the claimant states the following:

“Government Code Section 3303(g) does not distinguish between taping an officer who is a witness versus taping an officer who is the target of an investigation. The public safety officer, whether or not the target of the investigation, can bring his or her own recording device, and their right to record is independent of our right to record. Where it says *may* be recorded, it in essence requires recording, and doesn’t differentiate between interrogation of witnesses and interrogation as the targeted employee. However, because of the fact that ‘witness’ peace officers may subsequently become targets as a result of their heightened standard of conduct, peace officer witnesses must be taped as well. Finally, if you tape all of the peace officers involved in an investigation and do not tape civilian witnesses as well, you do not have a complete record.”¹²

Government Code section 3303, which addresses investigations and interrogations, expressly states in the first paragraph that the rights granted with regard to interrogations apply only when a peace officer is under investigation that could lead to punitive action. The first paragraph of section 3303 states in pertinent part the following:

“When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action [defined in the test claim legislation as dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment], the interrogation shall be conducted under the following conditions.” (Emphasis added.)

Thus, based on the language of section 3303, staff finds that the rights granted by POBAR, including the right to tape an interrogation, do *not* extend to civilian witnesses.

However, staff agrees with the claimant that POBAR rights under Government Code section 3303 do attach when a peace officer is interrogated as a witness to an incident since

¹¹ See pages 23-25, Claimant’s Proposed Parameters and Guidelines, As Modified by Staff.

¹² Exhibit I.

the officer's own actions regarding the incident can result in punitive action. The claimant provides the following example:

For example, an actual case situation occurred wherein there was an allegation that an officer failed to handle a particular call properly, that there was the possibility of excessive force was used and the individual was in the hospital. Given the seriousness of the allegations, we commenced speaking with the witnesses immediately. Everyone involved except the complainant, from the officer who was alleged to have used excessive force, as well as his sergeant, was a peace officer covered by POBR. When the sergeant, who was thought to be a witness, came in for questioning, he was informed that the subject of the questioning was one of his subordinate officers. However, in the course of discussions with the sergeant, it became apparent that he failed to file a required form when a person is hospitalized or injured. In Sacramento City, when someone is injured, the sergeant is required to file a form which is an alert to indicate that the arrestee has been hospitalized. In this situation, as you walk through the incident, we became apprized that the sergeant failed to file the required form.”

“.....”

“In the normal due process case, the employee would have uttered statements which indicated that he did not file the appropriate form, you could ask him whether or not he had filed the form, and the issue would be over. However, with POBR, you have to give the sergeant, who was previously called as a witness, a copy of the transcript of his prior testimony as he is entitled to it since he was interrogated on the matter previously in the officer's case. Since you never know when a witness may end up being the subject of discipline, not only do you have to more carefully prepare each case, but you may also have to tape record each peace officer's testimony should the eventuality occur that the witness becomes the target of an investigation. This is just an example of why there needs to be more and thorough preparation.”

“As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation.”¹³

Thus, staff has added the following paragraph to Section IV. (C) of the proposed parameters and guidelines:

¹³ Exhibit I, pages 2 and 3.

“Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)”

Staff has also added the following paragraph, which was included on page 12 of the Commission’s Statement of Decision and expressed in Government Code section 3303, subdivision (i):

“Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)”

Section IV. (C) (1) and (2), Compensation and Timing of an Interrogation, Interrogation Notice

The Commission’s Statement of Decision includes the following reimbursable activity:

“Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)”

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission’s Statement of Decision.)

The claimant’s proposed parameters and guidelines restates the activity as expressed in the Statement of Decision, but also adds “the review of the necessity for the questioning and responses given” as a reimbursable component. The claimant’s proposed parameters and guidelines state the following:

“Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)”

“Included in the foregoing, but not limited thereto, is the *review of the necessity for the questioning and responses given*; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel.” (Emphasis added.)

Following the pre-hearing conference in this case, staff requested further comments on the proposed activity “to review the necessity for the questioning and responses given” to determine if the activity was consistent with, and/or reasonably related to, the

Commission's Statement of Decision and the activities mandated by the test claim legislation.

In response to staff's request, the claimant asserts that it is more difficult to prepare for an investigation under POBAR because Government Code section 3303, subdivision (c), requires that the employee receive prior notice identifying the nature and subject of the questioning. The claimant states the following:

"It is more difficult to prepare for an investigation involving a peace officer than it is for those who are not entitled to POBR rights. In the normal due process case involving an employee who is not entitled to POBR rights, you do not have to inform the employee about the nature and subject of the questioning, and you do not have to prepare questions focused upon a particular area, seeking to get the information you can from the employee. In non-POBR matters, you can explore other areas in the questioning as they arise, which allows for a much more free-form questioning process."

"In contrast, however, with employees covered by POBR, you must tell the employee prior to the initial questioning what the purpose of the meeting is, what it is you will be discussing with him or her, and you have to be prepared to be clearly on point as to where you are going and your expectations about the questioning process. You cannot engage in broader questioning for information, because the employee has the right to know the subject about which he or she is being interrogated."¹⁴

The claimant further states the following:

"As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation. . . ."

"Obviously, if you are going to re-interview a peace officer, you have to be prepared to give them a copy of their prior transcript. You also have to go back and review it, to make sure where conflicts with what transpired previously in order to ask intelligent questions. In a non-POBR matter, you can follow up by asking additional questions without regard to the reasons you have the employee in for questioning in the first place. However, with POBR, the whole questioning is focused on what you have identified as the allegation. Thus, the definition of what the allegations are must come early in the process. If someone calls to complain about something, the subsequent investigation may bring to light little about the complaint of the citizen, but may demonstrate an internal operating problem or conflict which you have to address. The additional rights granted by POBR make that more difficult as indicated above."¹⁵

Staff finds that the activity to review the necessity for the questioning and responses given is too broad and goes beyond the scope of Government Code section 3303, subdivision (a), and the Commission's Statement of Decision.

¹⁴ Exhibit F, pages 1 and 2.

¹⁵ *Id.* at page 3.

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

Nevertheless, Government Code section 3303, subdivision (c), does impose a new requirement on local agencies to provide the peace officer with notice identifying the nature of the investigation prior to the interrogation. The Commission found that the notice requirement constituted a reimbursable state mandated activity under article XIII B, section 6 of the California Constitution. Accordingly, staff finds that the activity of reviewing agency complaints or other documents to prepare the notice of interrogation is a reasonable method of complying with Government Code section 3303, subdivision (c).

Based on the foregoing, staff has modified Section IV. (C) as follows:

~~“1. Conducting an interrogation of a peace officer while the officer is on duty, or compensating~~ When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

~~Included in the foregoing, but not limited thereto, is the review of the necessity for the questioning and responses given; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel.~~

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

~~Included in the foregoing, but not limited thereto, is the review of~~ agency complaints or other documents to prepare the notice of interrogation; the nature of the interrogation; review by counsel; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; ~~and preparation and presentation to officer~~ of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.”

Section IV. (C) (3), (4), and (5), Tape Recording and Transcription of the Interrogation

Government Code section 3303, subdivision (g), states the following:

“The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.”

The Commission found that Government Code section 3303, subdivision (g), imposed the following reimbursable state mandated activities (see pages 25 and 26 of the Statement of Decision):

- Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - (a) The further proceeding is not a disciplinary action;
 - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):
 - (a) When the investigation *does not* result in disciplinary action; and
 - (b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

The claimant's proposed parameters and guidelines combine these activities into one paragraph:

“Producing transcribed of any notes made by a stenographer or tape recording at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, *whether or not the investigation results in any disciplinary action.* (Gov. Code, § 3303, subd. (g)).

Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies.” (Emphasis added.)

Staff finds that the claimant’s proposed paragraph, which authorizes reimbursement for the cost of transcription and tape recording *whether or not the investigation results in any disciplinary action*, is inconsistent with the Commission’s Statement of Decision.

First, the proposed paragraph implies, and the claimant requests, reimbursement for taping *all* interrogations. However, the Commission found that reimbursement is required for tape recording the interrogation *only when* the employee tapes the interrogation.

The Commission also limited the right to reimbursement for the costs of providing the employee with access to the tape or transcription of the notes when: (1) the investigation did not result in disciplinary action; and 2) when the disciplinary action did not involve a pre-existing due process right to such materials.

Thus, staff has modified the claimant’s proposed parameters and guidelines to accurately reflect the Commission’s Statement of Decision.

The claimant also contends that the cost of transcribing the tape recordings of an interrogation is reasonably necessary to comply with the mandate. The claimant contends that “the tape is meaningless without a transcription.”¹⁶ Staff agrees and has included this component in Section IV. (C) (3) of the parameters and guidelines.

Thus, staff has modified Section IV. (C) as follows:

“3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

a) The further proceeding is not a disciplinary action;

b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee’s reputation or ability to find future employment);

c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

¹⁶ Exhibit F.

d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

4.5. Producing transcribed copies of any notes made by a stenographer or tape recording at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, whether or not the investigation results in any disciplinary action in the following circumstances (Gov. Code, § 3303, subd. (g)):

a) When the investigation does not result in disciplinary action; and

b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e.: the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

~~Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies."~~

Section IV. "Reimbursable Activities, Subdivision (D), "Adverse Comment"¹⁷

Government Code sections 3305 and 3306 provide peace officers with procedural rights to receive notice, and review and respond to an adverse comment entered in the officer's personnel file.

The Commission found that Government Code sections 3305 and 3306 constitute a partial reimbursable state mandated program for those activities not previously required by the due process clause and/or statutory law. (See pages 26 through 28 of the Statement of Decision.)

The claimant's proposed parameters and guidelines contains the same activities listed in the Commission's Statement of Decision regarding adverse comments, and also includes the following paragraph:

¹⁷ See pages 25-27, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

“Included in the foregoing, but not limited thereto, are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; *officer’s time in response to adverse comment*; review of response to adverse comment, attaching same to adverse comment and filing.” (Emphasis added.)

As indicated in the above paragraph, the claimant is requesting reimbursement for the officer’s time in response to the adverse comment. Staff disagrees with this request.

Government Code section 3306, which addresses the officer’s response to an adverse comment, states the following:

“A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.”

The Commission found that section 3306 requires the local agency to provide an opportunity to respond to the adverse comment within 30 days. (See page 19 of the Statement of Decision.) However, the Commission never found, and the statute does not require, that the officer file a response. Rather, the decision to file a response to the adverse comment is left up to the individual officer.

Therefore, staff finds that compensating local agencies for the officer’s time in responding to an adverse comment is not mandated by the state and is, thus, not eligible for reimbursement. Accordingly, staff modified Section IV. (D) of the proposed parameters and guidelines by striking out the words “officer’s time in response to adverse comment.”

Section VI. “Supporting Data”¹⁸

The State Controller’s Office requests that language be included to validate the quantity of work performed for the costs claimed. The Controller’s Office requests eligible claimants to identify the following:

“Number of cases in process at the beginning of the fiscal year ____
Number of new cases added during the fiscal year ____
Number of cases completed or closed during the fiscal year ____
Number of cases in process at the end of the fiscal year ____”

Staff has included this language in Section VI. Supporting Data.

Other Non-substantive, Clarifying Modifications

Staff made other non-substantive, clarifying modifications to the remainder of the claimant’s proposed parameters and guidelines. Changes were also made to Sections V. and IX. to conform the language to other parameters and guidelines adopted by the Commission.

Staff Recommendation

Staff recommends that the Commission adopt the Claimant’s Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

¹⁸ See page 28, Claimant’s Proposed Parameters and Guidelines, As Modified by Staff.

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES

AS MODIFIED BY STAFF

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR), Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174 and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675.

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹⁹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On ~~August 26, 1999~~, November 30, 1999, the Commission adopted its Statement of Decision ~~found~~ that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts ~~which~~ that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter

¹⁹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor ~~including overtime,~~ supplies and services, training and travel ~~for law enforcement, human resources, legal counsel and other departments or contract services~~ for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. ~~Maintenance of the systems to conduct the mandated activities.~~ Updating the status of the POBAR cases.
4. ~~Providing direct supervision over the agency staff performing the mandated activities.~~

B. ~~On-Going Activities~~ Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

- ~~1.~~ Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, ~~together with the defense of same in any court proceeding~~ (Gov. Code, § 3304, subd. (b)):
 - Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
 - Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
 - Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing, ~~but not limited thereto,~~ are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal

review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

- ~~2. 1. Conducting an interrogation of a peace officer while the officer is on duty, or compensating~~ When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

~~Included in the foregoing, but not limited thereto, is the review of the necessity for the questioning and responses given; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel.~~

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subs. (b) and (c).)

Included in the foregoing, but not limited thereto, is the review of agency complaints or other documents to prepare the notice of interrogation; the nature of the interrogation; review by counsel; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; and preparation and presentation to officer of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):

a) The further proceeding is not a disciplinary action;

b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

- 4.5. Producing transcribed copies of any notes made by a stenographer or tape recording at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, whether or not the investigation results in any disciplinary action in the following circumstances (Gov. Code, § 3303, subd. (g)):

a) When the investigation does not result in disciplinary action; and

b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;

- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing, ~~but not limited thereto~~, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; ~~cost of tape copying, tape and storage; cost of transcription,~~ processing, service and retention of copies.

D. Adverse Comment

5. Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
 - Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
 - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment: and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing, ~~but not limited thereto~~, are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; ~~officer's time in response to adverse comment~~; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

~~Identify the expenditures that are a direct cost of this mandate.~~ Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. 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, lodging, ~~expenses~~ and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

~~IX. — DATA FOR DEVELOPMENT OF THE STATEWIDE COST ESTIMATE~~

~~The State Controller's Office is directed to include in the claiming instructions a request that Claimants send an additional copy of the test claim forms for the initial years' reimbursement claims by mail to the Commission on State Mandates, at 1300 I Street, Suite 950, Sacramento, CA 95814. Although providing this information to the Commission on State Mandates is not a condition of reimbursement, Claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate that will be the basis for the appropriation to be made by the Legislature for this program.~~

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

And filed December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM – 4499

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

(Adopted on July 27, 2000
Corrected on August 17, 2000)

ADOPTED PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.

PAULA HIGASHI, Executive Director

PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;
Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter
994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause (“at-will” employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

¹ Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities; are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;

- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and

- b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools~~ counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment: and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools~~ cities and special districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction.

Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. 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, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,
Chapter 465; Statutes 1978, Chapters 775, 1173,
1174, and 1178; Statutes 1979, Chapter 405;
Statutes 1980, Chapter 1367; Statutes 1982,
Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313,
Statutes 2005, chapter 72, section 6
(Assem. Bill (AB) No. 138),
Effective July 19, 2005.

Case No.: 05-RL-4499-01

Peace Officer Procedural Bill of Rights

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

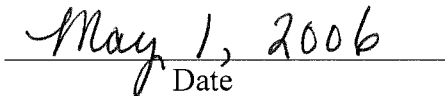
(Adopted on April 26, 2006)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby
adopted in the above-entitled matter.



PAULA HIGASHI, Executive Director



Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,
Chapter 465; Statutes 1978, Chapters 775, 1173,
1174, and 1178; Statutes 1979, Chapter 405;
Statutes 1980, Chapter 1367; Statutes 1982,
Chapter 994; Statutes 1983, Chapter 964;
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ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted on April 26, 2006)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on April 26, 2006. Pam Stone, Dee Contreras, and Ed Takach appeared for the City of Sacramento. Lt. Dave McGill appeared for the Los Angeles Police Department. Susan Geanacou appeared for the Department of Finance.

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., and related case law.

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 5 to 1.

Summary of Findings

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the

United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

On review of this claim pursuant to Government Code section 3313, the Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B,

section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause¹ does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

BACKGROUND

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim. Government Code section 3313 states the following:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

Commission’s Decision on *Peace Officer Procedural Bill of Rights* (CSM 4499)

The Legislature enacted the Peace Officers Procedural Bill of Rights Act (commonly abbreviated as “POBOR”), by adding Government Code sections 3300 through 3310, in 1976. POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or

¹ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

discipline. Generally, POBOR prescribes certain protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit.²

Legislative intent for POBOR is expressly provided in Government Code section 3301 as follows:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California.

POBOR applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts.³

In 1995, the City of Sacramento filed a test claim alleging that POBOR, as it existed from 1976 until 1990, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.⁴ In 1999, the Commission approved the test claim and adopted a Statement of Decision.⁵ The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or

² See California Supreme Court’s summary of the legislation in *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

³ Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

⁴ The POBOR Act has been subsequently amended by the Legislature. (See Stats. 1994, ch. 1259; Stats. 1997, ch. 148; Stats. 1998, ch. 263; Stats. 1998, ch. 786; Stats. 1999, ch. 338; Stats. 2000, ch. 209; Stats. 2002, ch. 1156; Stats. 2003, ch. 876; Stats. 2004, ch. 405; and Stats. 2005, ch. 22.) These subsequent amendments are outside the scope of the Commission’s decision in POBOR (CSM 4499), and therefore are *not* analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6.

⁵ Administrative Record, page 859.

higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.⁶

On March 29, 2001, the Commission adopted a statewide cost estimate covering fiscal years 1994-1995 through 2001-2002 in the amount of \$152,506,000.⁷

Audit by the Bureau of State Audits

The Legislative Analyst's Office (LAO), in its Analysis of the 2002-2003 Budget Bill, reviewed a sample of POBOR reimbursement claims and found that the annual state costs associated with the program was likely to be two to three times higher than the amount projected in the statewide cost estimate and significantly higher than what the Legislature initially expected. LAO projected costs in the range of \$50 to \$75 million annually.

⁶ Administrative Record, page 1273.

⁷ Administrative Record, page 1309.

LAO also found a wide variation in the costs claimed by local governments. Thus, LAO recommended that the Legislature refer the POBOR program to the Joint Legislative Audit Committee for review, possible state audit, and possible revisions to the parameters and guidelines.

In March 2003, the Joint Legislative Audit Committee authorized the Bureau of State Audits to conduct an audit of the process used by the Commission to develop statewide cost estimates and to establish parameters and guidelines for the claims related to POBOR.

On October 15, 2003, the Bureau of State Audits issued its audit report, finding that reimbursement claims were significantly higher than anticipated and that some agencies claimed reimbursement for questionable activities.⁸ While the Bureau of State Audits recommended the Commission make changes to the overall mandates process, it did not recommend the Commission make any changes to the parameters and guidelines for the POBOR program. The Commission implemented all of the Bureau's recommendations.

On July 19, 2005, the Legislature enacted Government Code section 3313 (Stats. 2005, ch. 72, § 6 (AB 138)) and directed the Commission to "review" the Statement of Decision in POBOR.

Comments Filed Before the Issuance of the Draft Staff Analysis by the City and County of Los Angeles

On October 19, 2005, Commission staff requested comments from interested parties, affected state agencies, and interested persons on the Legislature's directive to "review" the POBOR program. Comments were received from the City of Los Angeles and the County of Los Angeles. The City and County both contend that the Commission properly found that POBOR constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County further argues that, under the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, reimbursement must be expanded to include all activities required under the test claim statutes including those procedures required by the federal due process clause. The County of Los Angeles also proposes that the Commission adopt a reasonable reimbursement methodology in the parameters and guidelines to reimburse these claims.

Comments Filed on the Draft Staff Analysis

On February 24, 2006, Commission staff issued the draft staff analysis and requested comments on the draft. The Commission received responses from the following parties:

City of Sacramento

The City of Sacramento argues the following:

- Prior law does not require due process protections for employees receiving short-term suspensions, reclassifications, or reprimands. Therefore, the administrative appeal required by the test claim legislation constitutes a new program or higher

⁸ Administrative Record, page 1407 et seq.

level of service when an officer receives a short-term suspension, reclassification, or reprimand.

- Not every termination of a police chief warrants a liberty interest hearing required under prior law. The decision of the Commission should distinguish between those situations where there is a valid right to a liberty interest hearing under principles of due process, from the remaining situations where a police chief is terminated.
- The decision of the Commission should reflect “the onerous requirements imposed when interrogations are handled under POBOR.”
- All activities required when an officer receives an adverse comment are reimbursable.

County of Alameda

The County of Alameda states that interrogation of a sworn officer under POBOR is difficult and requires preparation. The County alleges that ten hours of investigation must be conducted before an interview that might take thirty minutes.

County of Los Angeles

The County of Los Angeles contends that investigation is a reimbursable state-mandated activity. The County also argues that, pursuant to the *San Diego Unified School Dist.* case, all due process activities are reimbursable.

County of Orange

The County of Orange believes the staff analysis “does not fully comprehend or account for the [investigation] requirements of interrogation governed by Government Code section 3303.” The County contends that the requirements of law enforcement agencies to investigate complaints have correspondingly increased under POBOR. When a complaint is received, the County argues that “every department is called upon to conduct very detailed investigations when allegations of serious misconduct occur. These investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force where injuries may be significant, serious property damage, and criminal behavior.” The County also contends that the investigation involves the subject officer and other officer witnesses.

Department of Finance

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court’s findings are not applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

. . . there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire

police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁰ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹¹ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹² In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹³

⁹ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “(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.”

¹⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

¹¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁴ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁵ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁶

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁷

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁸ 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.”¹⁹

I. Commission Jurisdiction and Period of Reimbursement for Decision on Reconsideration

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. The Commission’s jurisdiction in this case is based solely on Government Code section 3313. Absent Government Code section 3313, the Commission would have no jurisdiction to review and reconsider its decision on POBOR since the decision was adopted and issued well over 30 days ago.²⁰

¹⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.)

¹⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

¹⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878.

¹⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

¹⁹ *County of Sonoma*, *supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁰ Government Code section 17559.

Thus, the Commission must act within the jurisdiction granted by Government Code section 3313, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.²¹ Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of Government Code section 3313.

Government Code section 3313 provides:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision *to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions.* If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted. (Emphasis added.)

The Commission’s jurisdiction on review is limited by Government Code section 3313, to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. ...* and other applicable court decisions.”

In addition, Government Code section 3313 states that “the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities *occurring after the date the revised decision is adopted.*” Thus, the Commission finds that the decision adopted by the Commission on this reconsideration or “review” of POBOR applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In 1999, the Commission found that the test claim legislation mandates law enforcement agencies to take specified procedural steps when investigating or disciplining a peace officer employee.²² The Commission found that Government Code section 3304 mandates, under specified circumstances, that “no punitive action [‘any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment’], nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

The Commission also found that the following activities are mandated by Government Code section 3303 when the employer wants to interrogate an officer:

²¹ *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

²² Original Statement of Decision (AR, p. 862).

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Providing the peace officer employee with access to a tape recording of his or her interrogation prior to any further interrogation at a subsequent time, as specified. (Gov. Code, § 3303, subd. (g).)
- Under specified circumstances, producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons when requested by the officer. (Gov. Code, § 3303, subd. (g).)

Finally, Government Code sections 3305 and 3306 provide that no peace officer shall have any adverse comment entered into the officer's personnel file without having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact shall be noted on the document and signed or initialed by the peace officer. In addition, the peace officer shall have 30 days to file a written response to any adverse comment entered into the personnel file. The Commission found that Government Code sections 3305 and 3306 impose the following requirements on employers before an adverse comment is placed in an officer's personnel file:

- To provide notice of the adverse comment to the officer.
- To provide an opportunity to review and sign the adverse comment.
- To provide an opportunity to respond to the adverse comment within 30 days.
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

POBOR, by the terms set forth in Government Code section 3301, expressly applies to counties, cities, school districts, and special districts and the Commission approved the test claim for these local entities. Government Code section 3301 states the following: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code." The legislation, however, does not apply to reserve or recruit officers,²³ coroners, or railroad police officers commissioned by the Governor.

Government Code section 3313 requires the Commission to review these findings to clarify whether the subject legislation imposes a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.

²³ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569.

Generally, in order for test claim legislation to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local governmental entities. If the statutory language does not impose a mandate, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In the present case, although the procedural rights and protections afforded a peace officer under POBOR are expressly required by statute, the required activities are not triggered until the employing agency makes certain local decisions. For example, in the case of a city or county, agencies that are required by the Constitution to employ peace officers,²⁴ the POBOR activities are not triggered until the city or county decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file. These initial decisions are not expressly mandated by state law, but are governed by local policy, ordinance, city charter, or memorandum of understanding.²⁵

In the case of a school district or special district, the POBOR requirements are not triggered until the school district or special district (1) decides to exercise the statutory authority to employ peace officers, and (2) decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

After the Commission issued its decision in this case, two California Supreme Court decisions were decided that address the "mandate" issue; *Kern High School Dist.* and *San Diego Unified School Dist.*²⁶ Thus, based on the court's ruling in these cases, the issue is whether the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 in light of the local decisions that trigger the POBOR requirements.

As described below, the Legislature expressly declared its intent that the POBOR legislation is a matter of statewide concern and was designed to assure that effective police protection services are provided to all people of the state. The California Supreme Court found that POBOR protects the health, safety, and welfare of the citizens. Thus,

²⁴ Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that city charters are to provide for the "government of the city police force."

²⁵ See *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-140, where the California Supreme Court determined that POBOR *does not* (1) interfere with the setting of peace officers' compensation, (2) regulate qualifications for employment, (3) regulate the manner, method, times, or terms for which a peace officer shall be elected or appointed, nor does it (4) affect the tenure of office or purpose to regulate or specify the causes for which a peace officer can be removed. These are local decisions. But the court found that POBOR impinges on the city's implied power to determine the *manner* in which an employee can be disciplined.

²⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727; *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

based on the facts of this case, the Commission finds that the Supreme Court's decision in *San Diego Unified School Dist.* supports the Commission's original finding that the test claim legislation constitutes a state-mandated program for cities, counties, school districts, and special districts as described below.

A. POBOR constitutes a state-mandated program even though a local decision is first made to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

The procedural rights and protections afforded a peace officer under POBOR are required by statute. The rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

Nevertheless, based on findings made by the California Supreme Court regarding the POBOR legislation and in *San Diego Unified School Dist.*, the Commission finds that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

After the Commission issued its Statement of Decision in this case, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.²⁷ In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."²⁸ The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."²⁹

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.³⁰ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a

²⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

²⁸ *Id.* at page 737.

²⁹ *Ibid.*

³⁰ *Id.* at page 743.

reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)³¹

Thus, the Supreme Court held as follows:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant’s participation in the underlying program is voluntary or compelled.* [Emphasis added.]³²

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.³³

The school districts in *Kern High School Dist.*, however, urged the court to define “state mandate” broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a broad construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the state’s failure to comply with federal legislation that extended mandatory coverage under the state’s unemployment insurance law would result in California businesses facing “a new and serious penalty – full, double unemployment taxation by both state and federal governments.”³⁴ Although the court in *Kern High School Dist.* declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion on the facts before it in *Kern*, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue– the court stated:

In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.³⁵

³¹ *Ibid.*

³² *Id.* at page 731.

³³ *Id.* at pages 744-745.

³⁴ *City of Sacramento, supra*, 50 Cal.3d 51, 74.

³⁵ *Kern High School Dist., supra*, 30 Cal.4th 727, 752.

Thus, the court in *Kern* recognized that there could be a case, based on its facts, where reimbursement would be required under article XIII B, section 6 in circumstances where the local entity was not legally compelled to participate in a program.

One year later, the Supreme Court revisited the “mandate” issue in *San Diego Unified School Dist.*, a case that addressed a challenge to a Commission decision involving a school district’s expulsion of a student. The school district acknowledged that under specified circumstances, the statutory scheme at issue in the case gave school districts discretion to expel a student. The district nevertheless argued that it was mandated to incur the costs associated with the due process hearing required by the test claim legislation when a student is expelled. The district argued that “although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program” and, thus, the ruling in *City of Merced* should not apply.³⁶

In *San Diego Unified School Dist.*, the Supreme Court did not overrule the *Kern* or *City of Merced* cases, but stated that “[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.”³⁷ The court explained as follows:

Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] the court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency’s decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence

³⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887.

³⁷ *Id.* at page 887.

we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.³⁸

Ultimately, however, the court did not resolve the issue regarding the application of the *City of Merced* case to the discretionary expulsions, and resolved the case on alternative grounds.³⁹

In the present case, the purpose of POBOR, as stated in Government Code section 3301, is to assure that stable employment relations are continued throughout the state and to further assure that effective law enforcement services are provided to all people of the state. The Legislature declared POBOR a matter of statewide concern.

In 1982, the California Supreme Court addressed the POBOR legislation in *Baggett v. Gates*.⁴⁰ In *Baggett*, the City of Los Angeles received information that certain peace officer employees were engaging in misconduct during work hours. The city interrogated the officers and reassigned them to lower paying positions (a punitive action under POBOR). The employees requested an administrative appeal pursuant to the POBOR legislation and the city denied the request, arguing that charter cities cannot be constitutionally bound by POBOR. The court acknowledged that the home rule provision of the Constitution gives charter cities the power to make and enforce all ordinances and regulations, subject only to the restrictions and limitations provided in the city charter. Nevertheless, the court found that the City of Los Angeles was required by the POBOR legislation to provide the opportunity for an administrative appeal to the officers.⁴¹ In reaching its conclusion, the court relied, in part, on the express language of legislative intent in Government Code section 3301 that the POBOR legislation is a “matter of statewide concern.”⁴²

The court in *Baggett* also concluded that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the city, which would extend far beyond local boundaries.

Finally, it can hardly be disputed that the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. The consequences of a breakdown in such relations are not confined to a city’s borders. These employees provide an essential service. Its absence would create a clear and present threat not only to the health, safety, and welfare of the citizens of the city, but also to the hundreds, if not thousands, of nonresidents who daily visit there. Its effect would also be felt by the many nonresident owners of property and businesses located within the city’s borders. Our society is no longer a

³⁸ *Id.* at pages 887-888.

³⁹ *Id.* at page 888.

⁴⁰ *Baggett v. Gates* (1982) 32 Cal.3d 128.

⁴¹ *Id.* at page 141.

⁴² *Id.* at page 136.

collection of insular local communities. Communities today are highly interdependent. The inevitable result is that labor unrest and strikes produce consequences which extend far beyond local boundaries.⁴³

Thus, the court found that “the total effect of the POBOR legislation is not to deprive local governments of the right to manage and control their police departments but to secure basic rights and protections to a segment of public employees who were thought unable to secure them for themselves.”⁴⁴

In 1990, the Supreme Court revisited the POBOR legislation in *Pasadena Police Officers Assn. v. City of Pasadena (Pasadena)*.⁴⁵ The *Pasadena* case addressed the POBOR requirement in Government Code section 3303 to require the employer to provide an officer subject to an interrogation with any reports or complaints made by investigators. In the language quoted below, the court described the POBOR legislation and recognized that the public has a high expectation that peace officers are to be held above suspicion of violation of the laws they are sworn to enforce. Thus, in order to maintain the public’s confidence, “a law enforcement agency *must* promptly, thoroughly, and fairly investigate allegations of officer misconduct ... [and] institute disciplinary proceedings.” (Emphasis added.)

Courts have long recognized that, while the off-duty conduct of employees is generally of no legal consequence to their employers, the public expects peace officers to be “above suspicion of violation of the very laws they are sworn ... to enforce.” [Citations omitted.] Historically, peace officers have been held to a higher standard than other public employees, in part because they alone are the “guardians of peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.” [Citation omitted.] To maintain the public’s confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct; if warranted, it must institute disciplinary proceedings.⁴⁶

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 “for the simple reason” that the local entity’s ability to decide who to discipline and when “could control or perhaps even avoid the extra costs” of the POBOR legislation.⁴⁷ But a local entity does not decide who to investigate or discipline based on the costs incurred to the entity. The decision is made, as indicated by the Supreme Court, to maintain the public’s confidence in its police force and to protect the health, safety,

⁴³ *Id.* at page 139-140.

⁴⁴ *Id.* at page 140.

⁴⁵ *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564.

⁴⁶ *Id.* at page 571-572.

⁴⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 887-888.

and welfare of its citizens. Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a mandated program would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.”⁴⁸ Moreover, the POBOR legislation implements a state policy to maintain stable employment relations between police officers and their employers to “assure that effective services are provided to all people of the state.” POBOR, therefore, carries out the governmental function of providing a service to the public, and imposes unique requirements on local agencies to implement the state policy.⁴⁹ Thus, a finding that the test claim legislation does not impose a state-mandated program contravenes the purpose of article XIII B, section 6 “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill-equipped’ to assume increased financial responsibilities” due to the tax and spend provisions of articles XIII A and XIII B.⁵⁰

Accordingly, even though local decisions are first made to interrogate an officer, take punitive action against the officer, or to place an adverse comment in an officer’s personnel file, the Commission finds, based on *San Diego Unified School Dist.* and the facts presented in this case, that POBOR constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

B. POBOR constitutes a state-mandated program for school districts and for special districts identified in Government Code section 3301 that employ peace officers.

Government Code section 3301, the statute that identifies the peace officers afforded the rights and protections granted in the POBOR legislation, expressly includes peace officers employed by school districts and community college districts pursuant to Penal Code section 830.32. Penal Code section 830.32 provides that members of a school district and community college district police department appointed pursuant to Education Code sections 39670 and 72330 are peace officers if the primary duty of the officer is the enforcement of law as prescribed by Education Code sections 39670 (renumbered section 38000) and 72330, and the officers have completed an approved course of training prescribed by the Commission on Peace Officer Standards and Training (POST) before exercising the powers of a peace officer.

POBOR also applies to special districts authorized by statute to maintain a police department, including police protection districts, harbor or port police, transit police, peace officers employed by the San Francisco Bay Area Rapid Transit District (BART),

⁴⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

⁴⁹ *San Diego Unified School*, *supra*, 33 Cal.4th at page 874.

⁵⁰ *Id.* at page 888, fn. 23.

peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.⁵¹

While counties and cities are mandated by the California Constitution to employ peace officers,⁵² school districts and special districts are not expressly required by the state to employ peace officers. School districts and special districts have statutory authority to employ peace officers.

Following the Supreme Court's decision in *Kern High School Dist.*, the Commission denied school district test claims addressing peace officer employees on the ground that school districts are not mandated by state law to have a police department and employ peace officers. In these decisions, the Commission acknowledged the provision in the Constitution (Cal. Const., art. 1, § 28, subd. (c)) that requires K-12 school districts to maintain safe schools. The Commission found, however, that there is no constitutional or statutory requirement to maintain safe schools through school security or a school district police department. Moreover, school districts have governmental immunity under Government Code section 845 and cannot be liable for civil damages for "failure to establish a police department or otherwise to provide police protection service or, if police protection service is provided, for failure to provide sufficient police protection service."⁵³ Comments on Government Code section 845 by the Law Revision Commission state that the immunity was enacted by the Legislature to prevent judges and juries from removing the ultimate decision-making authority regarding police protection from those (local governments) that are politically responsible for making the decision.⁵⁴

⁵¹ Government Code section 3301; Penal Code section 830.1, subdivision (a) ["police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department"]; Penal Code section 830.31, subdivision (d) ["A housing authority patrol officer employed by the housing authority of a ... district ..."]; Penal Code section 830.33 ["(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code ... (b) Harbor or port police regularly employed and paid ... by a ... district ... (c) Transit police officers or peace officers of a ... district ... (d) Any person regularly employed as an airport law enforcement officer by a ... district ..."]; and Penal Code section 830.37 ["(a) Members of an arson-investigating unit ... of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud ... (b) Members ... regularly paid and employed in that capacity, of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers ... is the enforcement of law relating to fire prevention or fire suppression."]

⁵² See ante, footnote 21.

⁵³ See *Leger v. Stockton Unified School Dist.* (1988) 202 Cal.App.3d 1448.

⁵⁴ 4 California Law Revision Commission Reports 801 (1963).

Immunity under Government Code section 845 also applies to community college districts and special districts.⁵⁵

Thus, based on the Supreme Court's holding in *Kern High School Dist.*, past decisions of the Commission have determined that local entities, such as school districts, are not entitled to reimbursement for activities required by the state when the activities are triggered by the discretionary local decision to employ peace officers.

This case presents different facts, however. Here, unlike the other cases, the Legislature expressly stated in Government Code section 3301 that POBOR is a matter of statewide concern and found that it was necessary to apply the legislation to all public safety officers, as defined. Government Code section 3301 states the following:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

Legislative declarations of policy are entitled to great weight by the courts "and it is not the duty or prerogative of the courts to interfere with such legislative finding unless it clearly appears to be erroneous and without reasonable foundation."⁵⁶

Furthermore, in *San Diego Unified School Dist.*, the Supreme Court acknowledged the school district's argument that the due process hearing procedures were mandated when the district exercised its discretion and expelled a student, despite the *City of Merced* and *Kern* cases. The court stated the following:

Indeed, the Court of Appeal below suggested that the present case is distinguishable from *City of Merced* [citation omitted], in light of article I, section 28, subdivision (c), of the state Constitution. That constitutional subdivision, part of Proposition 8 (known as the Victim's Bill of Rights initiative, adopted by the voters at the Primary Election in June 1982), states: "All students and staff of public primary, elementary, junior high and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful." The Court of Appeal below concluded: "In light of a school district's constitutional obligation to provide a safe educational environment ..., the incurring [due process] hearing costs ... cannot properly be viewed as a nonreimbursable 'downstream' consequence of a decision to seek to expel a student under

⁵⁵ *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799; *Hernandez v. Southern California Rapid Transit Dist.* (1983) 142 Cal.App.3d 1063.

⁵⁶ *Paul v. Eggman* (1966) 244 Cal.App.2d 461, 471-472.

Education Code section 48915's discretionary provision for damaging or stealing school or private property, receiving stolen property, engaging in sexual harassment or hate violence, or committing other specified acts of misconduct ... that warrant such expulsion."⁵⁷

In response, the Supreme Court stated that “[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.”⁵⁸ The court explained as follows:

Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] The court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency's decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.⁵⁹

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court's findings are not

⁵⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 887, footnote 22.

⁵⁸ *Id.* at page 887.

⁵⁹ *Id.* at pages 887-888.

applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

In the *Carmel Valley Fire Protection District* case ((1987) 190 Cal.App.3d 521), unlike the situation here, the fire districts did not have the option to form a fire department and hire firefighters. In fact, the *San Diego Unified School Dist.* case cited *Carmel Valley* to make it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.” (*San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888, *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 521, 537). Such is not the case for school districts and community college districts.

As stated above, there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Finance, in response to the draft staff analysis, makes no comments with respect to special districts that also have the authority, but are not required, to employ peace officers.⁶⁰ At the hearing, however, Finance argued that its comments apply equally to special districts.

The Commission disagrees with the Department of Finance. The fire protection districts in *Carmel Valley* were not mandated by the state to be formed, as asserted by Finance. Fire protection districts are established either by petition of the voters or by a resolution adopted by the legislative body of a county or city within the territory of the proposed district. Once a petition has been certified or a resolution adopted, the local agency

⁶⁰ See, for example, Public Utilities Code section 28767.5, which authorizes BART to employ peace officers:

The district may employ a suitable security force. The employees of the district that are designated by the general manager as security officers shall have the authority and powers conferred by Section 830.9 of the Penal Code upon peace officers. The district shall adhere to the standards for recruitment and training of peace officers established by the Commission on Peace Officer Standards and Training ...

formation commission must approve the formation of the district “with or without amendment, wholly, partially, or conditionally.” A local election is then held and the district is created if a majority of the votes are cast in favor of forming the district.⁶¹ Furthermore, the implication that the phrase “local government” in the *Carmel Valley* case excludes school districts is wrong. “Local government” is specifically defined in article XIII B, section 8 of the Constitution to include school districts and special districts. The definitions in article XIII B, section 8 apply to the mandate reimbursement provisions of section 6. Article XIII B, section 8 states in relevant part the following:

As used in this article and except as otherwise expressly provided herein:

(d) “Local government” means any city, county, city and county, school district, special district, authority, or other political subdivision of or within the state.

Therefore, the arguments raised by the Department of Finance do not resolve the issue. The Supreme Court in *San Diego Unified School Dist.* did not resolve the issue either. Rather, the court stated the following:

In any event, we have determined that we need not address in this case the problems posed by such an application of the rule articulated in *City of Merced*, because this aspect of the present case can be resolved on an alternative basis.⁶²

Thus, the Commission has the difficult task of resolving the issue for purposes of this claim. For the reasons below, the Commission finds that the POBOR legislation constitutes a state-mandated program for school districts and the special districts identified in Government Code section 3301 that employ peace officers.

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 for school districts and the special districts that employ peace officers “for the simple reason” that the ability of the school district or special district to decide whether to employ peace officers “could control or perhaps even avoid the extra costs” of the POBOR legislation.⁶³ But here, the Legislature has declared that, as a matter of statewide concern, it is necessary for POBOR to apply to all public safety officers, as defined in the legislation. As previously indicated, the California Supreme Court concluded that the peace officers identified in Government Code section 3301 of the POBOR legislation provide an “essential service” to the public and that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the state.⁶⁴

⁶¹ Health and Safety Code sections 13815 et seq.

⁶² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 888.

⁶³ *Ibid.*

⁶⁴ *Baggett*, *supra*, 32 Cal.3d 128, 139-140.

In addition, in 2001, the Supreme Court determined that school districts, apart from education, have an “obligation to protect pupils from other children, and also to protect teachers themselves from violence by the few students whose conduct in recent years has prompted national concern.” The court further held that California fulfills its obligations under the safe schools provision of the Constitution (Cal. Const., art. I, § 28, subd. (c)) by permitting local school districts to establish a police or security department to enforce rules governing student conduct and discipline.⁶⁵ The arguments by the school districts regarding the safe schools provision of the Constitution caused the Supreme Court in *San Diego Unified School Dist.* to question the application of the *City of Merced* case.⁶⁶

The Legislature has also recognized the essential services provided by special district peace officers in Government Code section 53060.7. The special districts identified in that statute (Bear Valley Community Services District, Broadmoor Police Protection District, Kensington Police Protection and Community Services District, Lake Shastina Community Services District, and Stallion Springs Community Services District) “wholly supplant the law enforcement functions of the county within the jurisdiction of that district.”

Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a state-mandated program for school districts and special districts identified in Government Code section 3301 would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.”⁶⁷ The constitutional definition of “local government” for purposes of article XIII B, section 6 includes school districts and special districts. (Cal. Const., art. XIII B, § 8.)

Accordingly, the Commission finds that POBOR constitutes a state-mandated program for school districts that employ peace officers. The Commission further finds that POBOR constitutes a state-mandated program for the special districts identified in Government Code section 3301. These districts include police protection districts, harbor or port police, transit police, peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.

III. Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Government Code section 3313 requires the Commission to review its previous findings to clarify whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme

⁶⁵ *In re Randy G.* (2001) 26 Cal.4th 556, 562-563.

⁶⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887, fn. 22.

⁶⁷ *Id.* at pages 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

Court Decision in *San Diego Unified School Dist.* and other applicable court decisions. The test claim legislation will impose a new program or higher level of service, and costs mandated by the state when it compels a local entity to perform activities not previously required, and results in actual increased costs mandated by the state.⁶⁸ In addition, none of the exceptions to reimbursement found in Government Code section 17556 can apply. The activities found by the Commission to be mandated are analyzed below.

Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

Punitive action is defined in Government Code section 3303 as follows:

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,⁶⁹ written reprimand, or transfer for purposes of punishment.”

The California Supreme Court determined that the phrase “for purposes of punishment” in the foregoing section relates only to a transfer and not to other personnel actions.⁷⁰ Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to “compensate for a deficiency in performance,” however, an appeal is not required.⁷¹

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in “disadvantage, harm, loss or hardship” and impact the peace officer’s career.⁷² In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted “punitive action” under the

⁶⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835.

⁶⁹ The courts have held that “reduction in salary” includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

⁷⁰ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

⁷¹ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

⁷² *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.

test claim legislation based on the source of the report, its contents, and its potential impact on the career of the officer.⁷³

Thus, under Government Code section 3304, as it existed when the Statement of Decision was adopted, the employer is required to provide the opportunity for an administrative appeal to permanent, at-will or probationary peace officers for any action leading to the following actions:

- Dismissal.
- Demotion.
- Suspension.
- Reduction in salary.
- Written reprimand.
- Transfer for purposes of punishment.
- Denial of promotion on grounds other than merit.
- Other actions against the employee that results in disadvantage, harm, loss or hardship and impacts the career opportunities of the employee.

The test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local entity.⁷⁴ The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with due process standards.^{75, 76}

⁷³ *Id* at p. 353-354.

⁷⁴ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.

⁷⁵ *Doyle v. City of Chino* (1981) 117 Cal.App.3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee's due process rights were protected by the administrative appeals process mandated by Government Code section 3304.

⁷⁶ At least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250. In addition, the California Supreme Court uses the words "administrative appeal" of section 3304 interchangeably with the word "hearing." (*White, supra*, 31 Cal.3d 676.) A hearing before the Chief of Police was found to be appropriate within the meaning of Government Code section 3304 in a case involving a written reprimand since the Chief of Police was not in any way involved in the investigation and the employee and his attorney had an opportunity to present evidence and set forth arguments on the employee's behalf. (*Stanton, supra*, 226 Cal.App,3d 1438, 1443.)

Finally, the courts have been clear that the administrative hearing required by Government Code section 3304 does *not* mandate an investigatory process. “It is an adjudicative process by which the [peace officers] hope to restore their reputations” and where “the reexamination [of the employer’s decision] must be conducted by someone who has not been involved in the initial determination.”⁷⁷

In 1999, the Commission concluded that under certain circumstances, the administrative appeal required by the POBOR legislation was already required to be provided by the due process clause of the United States and California Constitutions when an action by the employer affects an employee’s property interest or liberty interest. A permanent employee with civil service protection, for example, has a property interest in the employment position if the employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Under these circumstances, the permanent employee is entitled to a due process hearing.⁷⁸

In addition, the due process clause applies when the charges supporting a dismissal of a probationary or at-will employee harms the employee’s reputation and ability to find future employment.⁷⁹ For example, an at-will employee, such as the chief of police, is entitled to a liberty interest hearing (or name-clearing hearing) under the state and federal constitutions when the dismissal is supported by charges of misconduct, mismanagement, and misjudgment – all of which “stigmatize [the employee’s] reputation and impair his ability to take advantage of other employment opportunities in law enforcement administration.”⁸⁰ In *Williams v. Department of Water and Power*, a case cited by the City of Sacramento, the court explained that the right to a liberty interest hearing arises in cases involving moral turpitude. There is no constitutional right to a liberty interest hearing when an at-will employee is removed for incompetence, inability to get along with others, or for political reasons due to a change of administration.

The mere fact of discharge from public employment does not deprive one of a liberty interest hearing. [Citations omitted.] Appellant must show her dismissal was based on charges of misconduct which “stigmatize” her reputation or “seriously impair” her opportunity to earn a living. [Citations omitted.] ... “Nearly any reason assigned for dismissal is likely to be to some extent a negative reflection on an individual’s ability, temperament, or character. [Citation omitted.] But not every dismissal assumes a constitutional magnitude.” [Citation omitted.]

The leading case of *Board of Regents v. Roth* (1972) 408 U.S. 564, 574 [unofficial cite omitted] distinguishes between a stigma of moral turpitude, which infringes the liberty interest, and other charges such as incompetence or inability to get along with coworkers which does not. The Supreme Court recognized that where “a person’s good name,

⁷⁷ *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, 443-444 and 447-448.

⁷⁸ See original Statement of Decision (AR, p. 864).

⁷⁹ See original Statement of Decision (AR, pp. 863-866, 870).

⁸⁰ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1807.

reputation, honor or integrity is at stake” his right to liberty under the Fourteenth Amendment is implicated and deserves constitutional protection. [Citation omitted.] “In the context of *Roth*-type cases, a charge which infringes one’s liberty can be characterized as an accusation or label given the individual by his employer which belittles his worth and dignity as an individual and, as a consequence is likely to have severe repercussions of which primarily affect professional life, and which may well force the individual down one or more notches in the professional hierarchy.” [Citation omitted.]⁸¹

Thus, the Commission found that, when a hearing was required by the due process clause of the state and federal constitutions, the activity of providing the administrative appeal did not constitute new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Commission found that the administrative appeal constitutes a new program or higher level of service, and imposes costs mandated by the state, in those situations where the due process clause of the United States and California Constitutions did not apply. These include the following:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by *probationary and at-will employees* whose liberty interest *are not* affected (i.e.; the charges do not harm the employee’s reputation or ability to find future employment).
- Transfer of permanent, probationary and at-will employees for purposes of punishment.
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit.
- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

As noted by the Commission in the Statement of Decision and parameters and guidelines, the Legislature amended Government Code section 3304 in 1998 by limiting the right to an administrative appeal to only those peace officers “who [have] successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.) Thus, as of January 1, 1999, providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) is no longer a reimbursable state-mandated activity.

Thus, the issue is whether the activity of providing the opportunity for an administrative appeal is reimbursable under current law when (1) permanent peace officer employees are subject to punitive actions, as defined in Government Code section 3303, or denials of promotion on grounds other than merit; and when (2) a chief of police is subject to removal.

⁸¹ *Williams v. Department of Water and Power* (1982) 130 Cal.App.3d 677, 684-685.

As indicated above, under prior law, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process liberty interest hearing under prior law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment. The County of Los Angeles argues, however, that under the California Supreme Court decision in *San Diego Unified School District*, reimbursement must be expanded to include all activities required under the test claim statute, including those procedures previously required by the due process clause. A close reading of the *San Diego Unified School District* case, however, shows that it does not support the County's position.

The County relies on the Supreme Court's analysis on pages 879 (beginning under the header "2. Are the hearing costs state-mandated?") through page 882 of the *San Diego Unified School District* case. There, the court addressed two test claim statutes: Education Code section 48915, which *mandated* the school principal to immediately suspend and recommend the expulsion of a student carrying a firearm or committing another specified offense; and Education Code section 48918, which lays out the due process hearing requirements once the mandated recommendation is made to expel the student. The court recognized that the expulsion recommendation required by Education Code section 48915 was mandated "in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing."⁸² The Commission and the state, relying on Government Code section 17556, subdivision (c), argued, however, that the district's costs are reimbursable only if, and to the extent that, hearing procedures set forth in Education Code section 48918 exceed the requirements of federal due process.⁸³ The court disagreed. The court based its conclusion on the fact that the expulsion decision mandated by Education Code 48915, which triggers the district's costs incurred to comply with due process hearing procedures, did not implement a federal law. Thus, the court concluded that all costs incurred that are triggered by the state-mandated expulsion, including those that satisfy the due process clause, are fully reimbursable. The court's holding is as follows:

[W]e cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), all such hearing costs – those designed to satisfy the minimum requirements of federal due process, and those that may exceed those requirements – are, with respect

⁸² *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 880.

⁸³ *Ibid.*

to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.⁸⁴

The POBOR legislation is different. The costs incurred to comply with the administrative appeal are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to take punitive action, or deny a promotion on grounds other than merit against a peace officer employee. Therefore, the Commission finds that the court's holding, authorizing reimbursement for *all* due process hearing costs triggered by a state-mandated event, does not apply to this case.

Rather, what applies from the *San Diego Unified School Dist.* decision to the administrative appeal activity mandated by Government Code section 3304 is the court's holding regarding discretionary expulsions. In the *San Diego* case, the court analyzed the portion of Education Code section 48915 that provided the school principal with the discretion to recommend that a student be expelled for specified conduct. If the recommendation was made and the district accepted the recommendation, then the district was required to comply with the mandatory due process hearing procedures of Education Code section 48918.⁸⁵ In this situation, the court held that reimbursement for the procedural hearing costs triggered by a local discretionary decision to seek an expulsion was not reimbursable because the hearing procedures were adopted to implement a federal due process mandate.⁸⁶ The court found that the analysis by the Second District Court of Appeal in *County of Los Angeles v. Commission on State Mandates (County of Los Angeles II)* was instructive.⁸⁷ In the *County of Los Angeles II* case, the court determined that even in the absence of the test claim statute, counties would be still be responsible for providing services under the constitutional guarantees of federal due process.⁸⁸

This analysis applies here. As indicated above, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process hearing under prior state and federal law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment.

⁸⁴ *Id.* at pages 881-882.

⁸⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at pages 884-890.

⁸⁶ *Id.* at page 888.

⁸⁷ *Id.* at page 888-889; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805. The test claim statute in *County of Los Angeles* required counties to provide indigent criminal defendants with defense funds for ancillary investigation services for capital murder cases. The court determined that even in the absence of the test claim statute, indigent defendants in capital cases were entitled to such funds under the Sixth Amendment of the federal Constitution. (*Id.* at p. 815.)

⁸⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 888-889; *County of Los Angeles*, *supra*, 32 Cal.App.4th at page 815.

Thus, even in the absence of Government Code section 3304, local government would still be required to provide a due process hearing under these situations.

The City of Sacramento, however, contends in comments to the draft staff analysis that prior law does not require due process protections outlined by the Supreme Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, for employees receiving short-term suspensions, reclassifications, or reprimands. The City states that five-day suspensions, written reprimands and other lesser forms of punishment are covered by POBOR, but not *Skelly* and, thus, the administrative appeal required by POBOR is reimbursable for the lesser forms of punishment.

The City raised the same argument when the Commission originally considered the test claim, and the Commission disagreed with the arguments.⁸⁹ The Commission finds that the Commission's original conclusion on this issue is correct.

As discussed below, the City is correct that the *pre-disciplinary* protections outlined in *Skelly* do not apply to a short-term suspension or written reprimand. But prior law still requires due process protection, including an administrative hearing, when a permanent employee receives a short-term suspension, reprimand, or other lesser form of punishment. Thus, the administrative hearing required by the test claim legislation under these circumstances does not constitute a new program or higher level of service or impose costs mandated by the state.

Skelly involved the discharge of a permanent civil service employee. The court held that such employees have a property interest in the permanent position and the employee may not be dismissed or subjected to other forms of punitive action without due process of law. Based on the facts of the case (that a discharged employee faced the bleak prospect of being without a job and the need to seek other employment hindered by the charges against him), the court held that the employee was entitled to receive notice of the discharge, the reasons for the action, a copy of the charges and materials upon which the action is based, and the right to a hearing to respond to the authority imposing the discipline *before* the discharge became effective.⁹⁰ The Supreme Court in *Skelly* recognized, however, that due process requirements are not so inflexible as to require an evidentiary trial at the *preliminary* stage in every situation involving the taking of property. Although some form of notice and hearing must preclude a final deprivation of property, the timing and content of the notice, as well as the nature of the hearing will depend on the competing interests involved.⁹¹

Three years after *Skelly*, the Supreme Court decided *Civil Service Association v. the City and County of San Francisco*, a case involving the short-term suspensions of eight civil service employees.⁹² The court held that the punitive action involved with a short-term suspension is minor and does not require pre-disciplinary action procedures of the kind

⁸⁹ See original Statement of Decision (AR, pp. 865-866).

⁹⁰ *Skelly, supra*, 15 Cal.3d 194, 213-215.

⁹¹ *Id.* at page 209.

⁹² *Civil Service Association v. City and County of San Francisco* (1978) 22 Cal.3d 552.

required by *Skelly*.⁹³ But the employees were still entitled to due process protection, including the right to a hearing, since the temporary right of enjoyment to the position amounted to a taking for due process purposes.⁹⁴ The court held as follows:

However, while the principles underlying *Skelly* do not here compel the granting of predisciplinary procedures there mentioned, it does not follow that the employees are totally without right to hearing. *While due process does not guarantee to these appellants any Skelly-type predisciplinary hearing procedure, minimal concepts of fair play and justice embodied in the concept of due process require that there be a 'hearing,' of the type hereinafter explained.* The interest to be protected, i.e., the right to continuous employment, is accorded due process protection. While appellants may not in fact have been deprived of a salary earned but only of the opportunity to earn it, they had the expectancy of earning it free from arbitrary administrative action. [Citation omitted.] This expectancy is entitled to some modicum of due process protection. [Citation and footnote omitted.]

For the reasons state above, however, we believe that such protection will be adequately provided in circumstances such as these by procedures of the character outlined in *Skelly*, (i.e., one that will apprise the employee of the proposed action, the reasons therefore, provide for a copy of the charges including materials upon which the action is based, and the right to respond either orally or in writing, to the authority imposing the discipline) *if provided either during the suspension or within reasonable time thereafter*.⁹⁵ (Emphasis added.)

Thus, the court held that the employees that did not receive a hearing at all were entitled to one under principles of due process.⁹⁶ As indicated in the Commission's original Statement of Decision, the Third District Court of Appeal in the *Stanton* case also found that due process principles apply when an employee receives a written reprimand without a corresponding loss of pay.⁹⁷

Therefore, in the following situations, the Commission finds that the Commission's original decision in this case was correct in that Government Code section 3304 does not constitute a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c), since the administrative appeal merely implements the due process requirements of the state and federal Constitutions:

⁹³ *Id.* at page 560.

⁹⁴ *Ibid.*

⁹⁵ *Id.* at page 564.

⁹⁶ *Id.* at page 565.

⁹⁷ *Stanton, supra*, 226 Cal.App.3d 1438, 1442.

- When a permanent employee is subject to a dismissal, demotion, suspension, reduction in salary, or a written reprimand.
- When the charges supporting the dismissal of a chief of police constitute moral turpitude, which harms the employee's reputation and ability to find future employment, thus imposing the requirement for a liberty interest hearing.

The due process clause, however, does not apply when a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee. In addition, the due process clause does not apply when local officials want to remove the chief of police under circumstances that do not create a liberty interest since the chief of police is an at-will employee and does not have a property interest in the position. Providing the opportunity for an administrative appeal under these circumstances is new and not required under prior law. In addition, none of the exceptions in Government Code section 17556 to the finding of costs mandated by the state apply to these situations.

Accordingly, the Commission finds that Government Code section 3304 constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for providing the opportunity for an administrative appeal in the following circumstances only:

- When a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee.
- When local officials want to remove the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment).

Interrogations

Government Code section 3303 prescribes protections that apply when "any" peace officer is interrogated in the course of an administrative investigation that might subject the officer to the punitive actions listed in the section (dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment). The procedures and rights given to peace officers under section 3303 do not apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by, or other routine or unplanned contact with, a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.⁹⁸

The Commission found that the following activities constitute a new program or higher level of service and impose costs mandated by the state:

⁹⁸ Government Code section 3303, subdivision (i).

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Government Code section 3313 directs the Commission to review these findings in order “to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.” The Commission finds that neither the *San Diego Unified School Dist.* case, nor any other court decision published since 1999, changes the Commission’s conclusion that these activities constitute a new program or higher level of service and impose costs mandated by the state. Thus, these activities remain eligible for reimbursement when interrogating “any” peace officer, including probationary, at-will, and permanent officers that might subject the officer to punitive action.

The Commission also found that Government Code section 3303, subdivision (g), requires that:

- The peace officer employee shall have access to the tape recording of the interrogation if (1) any further proceedings are contemplated or, (2) prior to any further interrogation at a subsequent time.
- The peace officer shall be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential.

The Commission found that providing the employee with access to the tape prior to a further interrogation at a subsequent time constitutes a new program or higher level of service and imposes costs mandated by the state. However, the due process clause of the United States and California Constitutions already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the punitive, disciplinary action is based. Thus, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation, and produce the transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential, to the peace officer employee when:

- a permanent employee is dismissed, demoted, suspended, receives a reduction in pay, or written reprimand; or
- a probationary or at-will employee is dismissed and the employee’s reputation and ability to obtain future employment is harmed by charges of moral turpitude, which support the dismissal.

Under these circumstances, the Commission concluded that the requirement to provide these materials under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing these materials merely implements the requirements of the United States Constitution.

The Commission finds that the conclusion denying reimbursement to provide these materials following the interrogation when the activity is already required by the due process clause of the United States and California Constitutions is consistent with the Supreme Court's ruling in *San Diego Unified School Dist.* The costs incurred to comply with these interrogation activities are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to interrogate an officer. Under these circumstances, the court determined that even in the absence of the test claim statute, counties would still be responsible for providing services under the constitutional guarantees of due process under the federal Constitution.⁹⁹

Thus, the Commission finds that the Commission's decision, that Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes costs mandated by the state for the following activities, is legally correct:

- Provide the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
 - (a) the further proceeding is not a disciplinary punitive action;
 - (b) the further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) the further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) the further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) the further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Produce transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer following the interrogation, in the following circumstances:
 - (a) when the investigation *does not* result in disciplinary punitive action; and

⁹⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 888-889; *County of Los Angeles*, *supra*, 32 Cal.App.4th at page 815.

(b) when the investigation results in:

- a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- a denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
- other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that “[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior.” These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that “[t]he interrogation shall be conducted ...” to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance

with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation.¹⁰⁰

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations.¹⁰¹ It does not interfere with the employer's right to manage and control its own police department.¹⁰²

Finally, the County of Orange contends that "[s]erious cases also tend to involve lengthy appeals processes that require delicate handling due to the increased rights under POBOR." For purposes of clarification, at the parameters and guidelines phase of this claim, the Commission denied reimbursement for the cost of defending lawsuits appealing the employer action under POBOR, determining that the test claim did not allege that the defense of lawsuits constitutes a reimbursable state-mandated program.¹⁰³ Government Code section 3313 does not give the Commission jurisdiction to change this finding.

Nevertheless, when adopting parameters and guidelines for this program, the Commission recognized the complexity of the procedures required to interrogate an officer, and approved several activities that the Commission found to be reasonable methods to comply with the mandated activities pursuant to the authority in section 1183.1, subdivision (a)(4), of the Commission's regulations. For example, the Commission authorized reimbursement, when preparing the notice regarding the nature of the interrogation, for reviewing the complaints and other documents in order to properly prepare the notice. The Commission also approved reimbursement for the mandated interrogation procedures when a peace officer witness was interrogated since the interrogation could lead to punitive action for that officer. Unlike other reconsideration statutes that directed the Commission to revise the parameters and guidelines, the Commission does not have jurisdiction here to change any discretionary findings or add any new activities to the parameters and guidelines that may be

¹⁰⁰ Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 (AR, p. 912).

¹⁰¹ *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26.

¹⁰² *Baggett, supra*, 32 Cal.3d 128, 135.

¹⁰³ Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 Commission hearing (AR, pp. 904-906).

considered reasonable methods to comply with the program. The jurisdiction in this case is very narrow and limited to reviewing the Statement of Decision to clarify, as a matter of law, whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.¹⁰⁴

Adverse Comments

Government Code sections 3305 and 3306 provide that no peace officer “shall” have any adverse comment entered in the officer’s personnel file without the peace officer having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact “shall” be noted on the document and signed or initialed by the peace officer. In addition, the peace officer “shall” have 30 days to file a written response to any adverse comment entered in the personnel file. The response “shall” be attached to the adverse comment.

Thus, Government Code sections 3305 and 3306 impose the following requirements on employers:

- to provide notice of the adverse comment;¹⁰⁵
- to provide an opportunity to review and sign the adverse comment;
- to provide an opportunity to respond to the adverse comment within 30 days; and
- to note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer’s signature or initials under such circumstances.

As noted in the 1999 Statement of Decision, the Commission recognized that the adverse comment could be considered a written reprimand or could lead to other punitive actions taken by the employer. If the adverse comment results in a dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer or the comment harms an officer’s reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause of the state and federal constitutions.¹⁰⁶ Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in

¹⁰⁴ However, any party may file a request to amend the parameters and guidelines pursuant to the authority in Government Code section 17557.

¹⁰⁵ The Commission found that notice is required since the test claim legislation states that “no peace officer shall have any adverse comment entered in the officer’s personnel file *without the peace officer having first read and signed the adverse comment.*” Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

¹⁰⁶ *Hopson, supra*, 139 Cal.App.3d 347.

providing notice and an opportunity to respond do not impose “costs mandated by the state”. The Commission finds that this finding is consistent with *San Diego Unified School Dist.* since the local entity would be required, in the absence of the test claim legislation, to perform these activities to comply with federal due process procedures.¹⁰⁷

However, the Commission found that under circumstances where the adverse comment affects the officer’s property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* specifically required by the case law interpreting the due process clause:

- obtaining the signature of the peace officer on the adverse comment, or
- noting the peace officer’s refusal to sign the adverse comment and obtain the peace officer’s signature or initials under such circumstances.

The Commission approved these two procedural activities since they were not expressly articulated in case law interpreting the due process clause and, thus, exceed federal law. The City of Sacramento contends that these activities remain reimbursable.

The Commission finds, however, that the decision in *San Diego Unified School Dist.* requires that these notice activities be denied pursuant to Government Code section 17556, subdivision (c), since they are “part and parcel” to the federal due process mandate, and result in “de minimis” costs to local government.

In *San Diego Unified School Dist.*, the Supreme Court held that in situations when a local discretionary decision triggers a federal constitutional mandate such as the procedural due process clause, “the challenged state rules or procedures that are intended to implement an applicable federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate.”¹⁰⁸ Adopting the reasoning of *County of Los Angeles II*, the court reasoned as follows:

In *County of Los Angeles II*, supra 32 Cal.App.4th 805 [unofficial cite omitted], the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they do not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal

¹⁰⁷ *San Diego Unified School Dist.*, supra, 33 Cal.4th 859, 888-889.

¹⁰⁸ *Id.* at page 890.

mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c). We reach the same conclusion here.¹⁰⁹

The Commission finds that obtaining the officer's signature on the adverse comment or indicating the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause, are designed to prove that the officer was on notice about the adverse comment. Since providing notice is already guaranteed by the due process clause of the state and federal constitutions under these circumstances, the Commission finds that the obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment is part and parcel of the federal notice mandate and results in "de minimis" costs to local government.

Therefore, the Commission finds that, under current law, the Commission's conclusion that obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause is not a new program or higher level of service and does not impose costs mandated by the state. Thus, the Commission denies reimbursement for these activities.

Finally, the courts have been clear that an officer's rights under Government Code sections 3305 and 3306 are not limited to situations where the adverse comment results in a punitive action where the due process clause may apply. Rather, an officer's rights are triggered by the entry of "any" adverse comment in a personnel file, "or any other file used for personnel purposes," that may serve as a basis for affecting the status of the employee's employment.¹¹⁰ In explaining the point, the Third District Court of Appeal stated: "[E]ven though an adverse comment does not directly result in punitive action, it has the potential for creating an adverse impression that could influence future personnel decisions concerning an officer, including decisions that do not constitute discipline or punitive action."¹¹¹ Thus, the rights under sections 3305 and 3306 also apply to uninvestigated complaints. Under these circumstances (where the due process clause does not apply), the Commission determined that the Legislature, in statutes enacted before the test claim legislation, established procedures for different local public employees similar to the protections required by Government Code sections 3305 and 3306. Thus, the Commission found no new program or higher level of service to the extent the requirements existed in prior statutory law. The Commission approved the test claim for the activities required by the test claim legislation that were not previously required under statutory law.¹¹² Neither *San Diego Unified School Dist.*, nor any other

¹⁰⁹ *Id.* at page 889.

¹¹⁰ *Sacramento Police Officers Assn. v. Venegas* (2002) 101 Cal.App.4th 916, 925.

¹¹¹ *Id.* at page 926.

¹¹² For example, for counties, the Commission approved the following activities that were not required under prior statutory law:

If an adverse comment is related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

case, conflicts with the Commission's findings in this regard. Therefore, the Commission finds that the denial of activities following the receipt of an adverse comment that were required under prior statutory law, and the approval of activities following the receipt of an adverse comment that were *not* required under prior statutory law, was legally correct.

CONCLUSION

The Commission finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further finds that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

-
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

If an adverse comment is not related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause¹¹³ does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

¹¹³ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

PROPOSED AMENDMENTS TO THE
PARAMETERS AND GUIDELINES:

Government Code Sections 3301, 3303, 3304, 3305, and 3306, as added and amended by Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675; and,

Filed on May 25, 2006 by California State Association of Counties, and,

Filed on June 15, 2006 by County of Los Angeles, to replace and supersede May 22, 2006 filing, and,

Filed on June 15, 2006 by County of San Bernardino; and,

Filed on June 29, 2006 by the Department of Finance, and,

Filed on June 29, 2006 by State Controller's Office to replace and supersede May 5, 2005 filing.

**Case Nos.:05-PGA-18, 05-PGA-19, 05-PGA-20 05-PGA-21; and 05-PGA-22
(CSM-4499 and 05-RL-4499-01)**

Peace Officers Procedural Bill of Rights (POBOR)

ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1183.14

(Adopted on December 4, 2006)

AMENDED PARAMETERS AND GUIDELINES

On December 4, 2006, the Commission on State Mandates adopted the attached amendments to the parameters and guidelines.

Date: December 7, 2006

PAULA HIGASHI, Executive Director

Adopted: July 27, 2000
Corrected: August 17, 2000
Amended: December 4, 2006

PARAMETERS AND GUIDELINES

Government Code Sections 3301, 3303, 3304, 3305, 3306

As Added and Amended by Statutes of 1976, Chapter 465;

Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

05-RL-4499-01(4499)

05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22

BEGINNING IN FISCAL YEAR 2006-2007

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints or reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision, which found that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be

required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause² does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begin on July 1, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 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.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years’ costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

² Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, training packets, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 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 and benefit costs when an activity is task-repetitive. 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, the following activities are reimbursable:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status report of mandate-reimbursable POBOR activities. "Updating the status report of mandate-reimbursable POBOR-activities" means tracking the procedural status of the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

B. Administrative Appeal

1. The administrative appeal activities listed below apply to permanent peace officer employees as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the

Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers.³

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - Transfer of permanent-employees for purposes of punishment;
 - Denial of promotion for permanent-employees for reasons other than merit; and
 - Other actions against permanent employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative body.
- f. The cost of witness fees.
- g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are **not** reimbursable:

- a. Investigating charges.
 - b. Writing and reviewing charges.
 - c. Imposing disciplinary or punitive action against the peace officer.
 - d. Litigating the final administrative decision.
2. Providing the opportunity for, and the conduct of an administrative appeal hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). (Gov. Code, § 3304, subd. (b).)

The following activities and costs are reimbursable:

- a. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- b. Legal review and assistance with the conduct of the administrative appeal hearing.
- c. Preparation and service of subpoenas.
- d. Preparation and service of any rulings or orders of the administrative body.

³ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.

- e. The cost of witness fees.
- f. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are **not** reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the chief of police.
- d. Litigating the final administrative decision.

C. Interrogations

The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)⁴

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Preparation and review of overtime compensation requests are reimbursable.

2. Providing notice to the peace officer before the interrogation. The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. The notice shall inform the peace officer of the nature of the investigation. (Gov. Code, § 3303, subds. (b) and (c).)

The following activities relating to the notice of interrogation are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.

⁴ Interrogations of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers are not reimbursable. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

- b. Identification of the interrogating officers to include in the notice of interrogation.
 - c. Preparation of the notice.
 - d. Review of notice by counsel.
 - e. Providing notice to the peace officer prior to interrogation.
3. Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

The cost of media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn peace officers are **not** reimbursable.

4. Providing the peace officer employee with access to the recording prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - a. The further proceeding is not a disciplinary action;
 - b. The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
 - c. The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - d. The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - e. The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

The cost of media copying is reimbursable.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):
 - a) When the investigation does not result in disciplinary action; and
 - b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or

- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Review of the complaints, notes or recordings for issues of confidentiality by law enforcement, human relations or counsel; and the cost of processing, service and retention of copies are reimbursable.

The following activities are **not** reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. (Gov. Code, §§ 3305 and 3306.):⁵

School Districts

- (a) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
 1. Obtaining the signature of the peace officer on the adverse comment; or

⁵ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

2. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
 1. Providing notice of the adverse comment: and
 2. Obtaining the signature of the peace officer on the adverse comment; or
 3. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to respond to the adverse comment within 30 days; and
 3. Obtaining the signature of the peace officer on the adverse comment; or
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.

2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are **not** reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

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. 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. 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 and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

1. Local Agencies

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the Office of Management and Budget (OMB) Circular A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in OMB Circular A-87 Attachments A and B). However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

- a. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
- b. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results 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 include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

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

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

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

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁶ 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 OTHER REIMBURSEMENTS

Any offsets savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected, federal funds and other state funds shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S REVISED CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue revised claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the revised parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The revised claiming instructions shall be derived from the test claim decision and the revised parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4499-01) 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 for the test claim. The administrative record, including the Statement of Decision and the Statement of Decision on Reconsideration, is on file with the Commission.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976,
Chapter 465; Statutes 1978, Chapters 775, 1173,
1174, and 1178; Statutes 1979, Chapter 405;
Statutes 1980, Chapter 1367; Statutes 1982,
Chapter 994; Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313,
Statutes 2005, Chapter 72, Section 6
(Assem. Bill (AB) No. 138),
Effective July 19, 2005.

Case No.: 05-RL-4499-01

Peace Officer Procedural Bill of Rights

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

(Adopted on April 26, 2006)

SET ASIDE AND AMENDED IN PART
PURSUANT TO *DEPARTMENT OF
FINANCE V. COMMISSION ON STATE
MANDATES* (2009) 170 CAL.APP.4TH 1355;
JUDGMENT AND WRIT ISSUED MAY 8,
2009, BY THE SACRAMENTO COUNTY
SUPERIOR COURT, CASE
NO. 07CS00079

(Amended on July 31, 2009)

STATEMENT OF DECISION

The attached Amended Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

PAULA HIGASHI, Executive Director

Dated: August 4, 2009

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR
STATEMENT OF DECISION ON:

Government Code Sections 3300 through 3310

As Added and Amended by Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675 (CSM 4499)

Directed by Government Code Section 3313, Statutes 2005, Chapter 72, Section 6 (Assem. Bill (AB) No. 138), Effective July 19, 2005.

Case No.: 05-RL-4499-01

Peace Officer Procedural Bill of Rights

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

(Adopted on April 26, 2006)

SET ASIDE AND AMENDED IN PART PURSUANT TO *DEPARTMENT OF FINANCE V. COMMISSION ON STATE MANDATES* (2009) 170 CAL.APP.4TH 1355; JUDGMENT AND WRIT ISSUED MAY 8, 2009, BY THE SACRAMENTO COUNTY SUPERIOR COURT, CASE NO. 07CS00079

(Amended on July 31, 2009)

STATEMENT OF DECISION

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on April 26, 2006. Pam Stone, Dee Contreras, and Ed Takach appeared for the City of Sacramento. Lt. Dave McGill appeared for the Los Angeles Police Department. Susan Geanacou appeared for the Department of Finance.

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., and related case law.

On April 26, 2006, the Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 5 to 1.

On July 31, 2009, the Commission set aside and amended the Statement of Decision on reconsideration in part as directed by the court in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355; Judgment and Writ issued May 8, 2009, by the Sacramento County Superior Court, Case No. 07CS00079, on consent by a vote of 6 to 0.

Summary of Findings

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to “review” the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as “POBOR”) to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.

- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

On April 26, 2006, the Commission found on reconsideration that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers, except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause¹ does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

In January 2007, the Department of Finance filed a petition for writ of mandate challenging the Commission’s Statement of Decision on Reconsideration, arguing that POBOR does not constitute a state-mandated program for school districts and special districts and, thus, school districts and special districts are not eligible claimants (Sacramento County Superior Court, Case No. 07CS00079). The Department of Finance agreed, however, that the test claim statutes are state-mandated with respect to the police protection districts named in Government Code section 53060.7 that wholly supplant the law enforcement functions of the county within their jurisdiction.

On February 6, 2009, the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1357, determined that POBOR is not a reimbursable mandate as to school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties.

¹ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

On May 8, 2009, the Sacramento County Superior Court issued a judgment and writ in Case No. 07CS00079, pursuant to the Third District Court of Appeal's decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, requiring the Commission to:

- a. Set aside the portion of its reconsideration decision in "Case No. 05-RL-4499-01 Peace Officer Procedural Bill of Rights" (reconsideration decision) that found that the Peace Officer Procedural Bill of Rights program constitutes a reimbursable state-mandated program for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties;
- b. Issue a new decision denying the portion of the reconsideration decision approving reimbursement for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties; and
- c. Amend the parameters and guidelines consistent with this judgment.

This judgment does not affect cities, counties, or special police protection districts named in Government Code section 53060.7, which wholly supplant the law enforcement functions of the County within their jurisdiction.

Accordingly, on July 31, 2009, the Commission amended the decision to deny reimbursement to school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties.

BACKGROUND

Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim. Government Code section 3313 states the following:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions. If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted.

Commission's Decision on *Peace Officer Procedural Bill of Rights* (CSM 4499)

The Legislature enacted the Peace Officers Procedural Bill of Rights Act (commonly abbreviated as “POBOR”), by adding Government Code sections 3300 through 3310, in 1976. POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Generally, POBOR prescribes certain protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action is taken against them, or they are denied promotion on grounds other than merit.²

Legislative intent for POBOR is expressly provided in Government Code section 3301 as follows:

The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California.

POBOR applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts.³

In 1995, the City of Sacramento filed a test claim alleging that POBOR, as it existed from 1976 until 1990, constituted a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.⁴ In 1999, the Commission

² See California Supreme Court's summary of the legislation in *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

³ Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

⁴ The POBOR Act has been subsequently amended by the Legislature. (See Stats. 1994, ch. 1259; Stats. 1997, ch. 148; Stats. 1998, ch. 263; Stats. 1998, ch. 786; Stats. 1999, ch. 338; Stats. 2000, ch. 209; Stats. 2002, ch. 1156; Stats. 2003, ch. 876; Stats. 2004, ch. 405; and Stats. 2005, ch. 22.) These subsequent amendments are outside the scope of the Commission's decision in POBOR (CSM 4499), and therefore are *not* analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6.

approved the test claim and adopted a Statement of Decision.⁵ The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.⁶

On March 29, 2001, the Commission adopted a statewide cost estimate covering fiscal years 1994-1995 through 2001-2002 in the amount of \$152,506,000.⁷

⁵ Administrative Record, page 859.

⁶ Administrative Record, page 1273.

Audit by the Bureau of State Audits

The Legislative Analyst's Office (LAO), in its Analysis of the 2002-2003 Budget Bill, reviewed a sample of POBOR reimbursement claims and found that the annual state costs associated with the program was likely to be two to three times higher than the amount projected in the statewide cost estimate and significantly higher than what the Legislature initially expected. LAO projected costs in the range of \$50 to \$75 million annually. LAO also found a wide variation in the costs claimed by local governments. Thus, LAO recommended that the Legislature refer the POBOR program to the Joint Legislative Audit Committee for review, possible state audit, and possible revisions to the parameters and guidelines.

In March 2003, the Joint Legislative Audit Committee authorized the Bureau of State Audits to conduct an audit of the process used by the Commission to develop statewide cost estimates and to establish parameters and guidelines for the claims related to POBOR.

On October 15, 2003, the Bureau of State Audits issued its audit report, finding that reimbursement claims were significantly higher than anticipated and that some agencies claimed reimbursement for questionable activities.⁸ While the Bureau of State Audits recommended the Commission make changes to the overall mandates process, it did not recommend the Commission make any changes to the parameters and guidelines for the POBOR program. The Commission implemented all of the Bureau's recommendations.

On July 19, 2005, the Legislature enacted Government Code section 3313 (Stats. 2005, ch. 72, § 6 (AB 138)) and directed the Commission to "review" the Statement of Decision in POBOR.

Comments Filed Before the Issuance of the Draft Staff Analysis by the City and County of Los Angeles

On October 19, 2005, Commission staff requested comments from interested parties, affected state agencies, and interested persons on the Legislature's directive to "review" the POBOR program. Comments were received from the City of Los Angeles and the County of Los Angeles. The City and County both contend that the Commission properly found that POBOR constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. The County further argues that, under the California Supreme Court decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, reimbursement must be expanded to include all activities required under the test claim statutes including those procedures required by the federal due process clause. The County of Los Angeles also proposes that the Commission adopt a reasonable reimbursement methodology in the parameters and guidelines to reimburse these claims.

⁷ Administrative Record, page 1309.

⁸ Administrative Record, page 1407 et seq.

Comments Filed on the Draft Staff Analysis

On February 24, 2006, Commission staff issued the draft staff analysis and requested comments on the draft. The Commission received responses from the following parties:

City of Sacramento

The City of Sacramento argues the following:

- Prior law does not require due process protections for employees receiving short-term suspensions, reclassifications, or reprimands. Therefore, the administrative appeal required by the test claim legislation constitutes a new program or higher level of service when an officer receives a short-term suspension, reclassification, or reprimand.
- Not every termination of a police chief warrants a liberty interest hearing required under prior law. The decision of the Commission should distinguish between those situations where there is a valid right to a liberty interest hearing under principles of due process, from the remaining situations where a police chief is terminated.
- The decision of the Commission should reflect “the onerous requirements imposed when interrogations are handled under POBOR.”
- All activities required when an officer receives an adverse comment are reimbursable.

County of Alameda

The County of Alameda states that interrogation of a sworn officer under POBOR is difficult and requires preparation. The County alleges that ten hours of investigation must be conducted before an interview that might take thirty minutes.

County of Los Angeles

The County of Los Angeles contends that investigation is a reimbursable state-mandated activity. The County also argues that, pursuant to the *San Diego Unified School Dist.* case, all due process activities are reimbursable.

County of Orange

The County of Orange believes the staff analysis “does not fully comprehend or account for the [investigation] requirements of interrogation governed by Government Code section 3303.” The County contends that the requirements of law enforcement agencies to investigate complaints have correspondingly increased under POBOR. When a complaint is received, the County argues that “every department is called upon to conduct very detailed investigations when allegations of serious misconduct occur. These investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force where injuries may be significant, serious property damage, and criminal behavior.” The County also contends that the investigation involves the subject officer and other officer witnesses.

Department of Finance

The Department of Finance contends that the *San Diego Unified School Dist.* case does not support the finding that the test claim legislation constitutes a reimbursable state-mandated program for school districts. Finance acknowledges the language in *San Diego Unified School Dist.* declining to extend the *City of Merced* decision to preclude reimbursement whenever any entity makes a discretionary decision that triggers mandated costs. Finance argues, however, that the Supreme Court's findings are not applicable to school districts since there is no requirement in law for school districts to form a police department. Finance states the following:

. . . there is no requirement in law for these districts to form a police department and safe schools can be maintained without the need to hire police officers as is evidenced by the many school districts that do not have police departments. The fact that the Legislature has declared it necessary for POBOR to apply to all public safety officers is not the same as requiring their hiring in the first place. School districts could, indeed, control or even avoid the extra cost of the POBOR legislation by not forming a police department at all, which is materially different from fire protection services that must be provided by fire protection districts. POBOR activities that might be claimed by school districts are, instead, analogous to non-reimbursable activities in the *Department of Finance v. Commission on State Mandates [Kern High School Dist.]* case that flowed from an underlying exercise of discretion and those in past Commission decisions that denied reimbursement to school districts for other peace officer activities.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁰ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume

⁹ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “(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.”

¹⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”¹¹ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.¹² In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.¹³

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.¹⁴ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁵ A “higher level of service” occurs when the new “requirements were intended to provide an enhanced service to the public.”¹⁶

Finally, the newly required activity or increased level of service must impose costs mandated by the state.¹⁷

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.¹⁸ In making its decisions, the Commission must strictly construe article XIII B, section 6

¹¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

¹³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

¹⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

¹⁵ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

¹⁶ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878.

¹⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

¹⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁹

I. Commission Jurisdiction and Period of Reimbursement for Decision on Reconsideration

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. The Commission’s jurisdiction in this case is based solely on Government Code section 3313. Absent Government Code section 3313, the Commission would have no jurisdiction to review and reconsider its decision on POBOR since the decision was adopted and issued well over 30 days ago.²⁰

Thus, the Commission must act within the jurisdiction granted by Government Code section 3313, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the Legislature.²¹ Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of Government Code section 3313.

Government Code section 3313 provides:

In the 2005-06 fiscal year, the Commission on State Mandates shall review its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim and make any modifications necessary to this decision *to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in San Diego Unified School Dist. v. Commission on State Mandates (2004) 33 Cal.4th 859 and other applicable court decisions.* If the Commission on State Mandates revises its statement of decision regarding the Peace Officer Procedural Bill of Rights test claim, the revised decision shall apply to local government Peace Office Procedural Bill of Rights activities occurring after the date the revised decision is adopted. (Emphasis added.)

The Commission’s jurisdiction on review is limited by Government Code section 3313, to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist.* ... and other applicable court decisions.”

In addition, Government Code section 3313 states that “the revised decision shall apply to local government Peace Officer Procedural Bill of Rights activities *occurring after the date the revised decision is adopted.*” Thus, the Commission finds that the decision

¹⁹ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

²⁰ Government Code section 17559.

²¹ *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

adopted by the Commission on this reconsideration or “review” of POBOR applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

In 1999, the Commission found that the test claim legislation mandates law enforcement agencies to take specified procedural steps when investigating or disciplining a peace officer employee.²² The Commission found that Government Code section 3304 mandates, under specified circumstances, that “no punitive action [‘any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment’], nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

The Commission also found that the following activities are mandated by Government Code section 3303 when the employer wants to interrogate an officer:

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Providing the peace officer employee with access to a tape recording of his or her interrogation prior to any further interrogation at a subsequent time, as specified. (Gov. Code, § 3303, subd. (g).)
- Under specified circumstances, producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons when requested by the officer. (Gov. Code, § 3303, subd. (g).)

Finally, Government Code sections 3305 and 3306 provide that no peace officer shall have any adverse comment entered into the officer’s personnel file without having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact shall be noted on the document and signed or initialed by the peace officer. In addition, the peace officer shall have 30 days to file a written response to any adverse comment entered into the personnel file. The Commission found that Government Code sections 3305 and 3306 impose the following requirements on employers before an adverse comment is placed in an officer’s personnel file:

- To provide notice of the adverse comment to the officer.
- To provide an opportunity to review and sign the adverse comment.

²² Original Statement of Decision (AR, p. 862).

- To provide an opportunity to respond to the adverse comment within 30 days.
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer’s signature or initials under such circumstances.

POBOR, by the terms set forth in Government Code section 3301, expressly applies to counties, cities, school districts, and special districts and the Commission approved the test claim for these local entities. Government Code section 3301 states the following: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code.” The legislation, however, does not apply to reserve or recruit officers,²³ coroners, or railroad police officers commissioned by the Governor.

Government Code section 3313 requires the Commission to review these findings to clarify whether the subject legislation imposes a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.

Generally, in order for test claim legislation to impose a reimbursable state-mandated program, the statutory language must mandate an activity or task on local governmental entities. If the statutory language does not impose a mandate, then article XIII B, section 6 of the California Constitution is not triggered and reimbursement is not required.

In the present case, although the procedural rights and protections afforded a peace officer under POBOR are expressly required by statute, the required activities are not triggered until the employing agency makes certain local decisions. For example, in the case of a city or county, agencies that are required by the Constitution to employ peace officers,²⁴ the POBOR activities are not triggered until the city or county decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer’s personnel file. These initial decisions are not expressly mandated by state law, but are governed by local policy, ordinance, city charter, or memorandum of understanding.²⁵

²³ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569.

²⁴ Article XI of the California Constitution provides for the formation of cities and counties. Section 1, Counties, states that the Legislature shall provide for an elected county sheriff. Section 5, City charter provision, specifies that city charters are to provide for the “government of the city police force.”

²⁵ See *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-140, where the California Supreme Court determined that POBOR *does not* (1) interfere with the setting of peace officers’ compensation, (2) regulate qualifications for employment, (3) regulate the manner, method, times, or terms for which a peace officer shall be elected or appointed, nor does it (4) affect the tenure of office or purpose to regulate or specify the causes for which a

In the case of a school district or special district, the POBOR requirements are not triggered until the school district or special district (1) decides to exercise the statutory authority to employ peace officers, and (2) decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

After the Commission issued its decision in this case, two California Supreme Court decisions were decided that address the "mandate" issue; *Kern High School Dist.* and *San Diego Unified School Dist.*²⁶ Thus, based on the court's ruling in these cases, the issue is whether the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 in light of the local decisions that trigger the POBOR requirements.

A. POBOR constitutes a state-mandated program even though a local decision is first made to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file.

The procedural rights and protections afforded a peace officer under POBOR are required by statute. The rights are not triggered, however, until the employing agency decides to interrogate an officer, take punitive action against the officer, or place an adverse comment in an officer's personnel file. These initial decisions are not mandated by the state, but are governed by local policy, ordinance, city charter, or a memorandum of understanding.

Nevertheless, based on findings made by the California Supreme Court regarding the POBOR legislation and in *San Diego Unified School Dist.*, the Commission finds that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

After the Commission issued its Statement of Decision in this case, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.²⁷ In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local

peace officer can be removed. These are local decisions. But the court found that POBOR impinges on the city's implied power to determine the *manner* in which an employee can be disciplined.

²⁶ *Kern High School Dist.*, *supra*, 30 Cal.4th 727; *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859.

²⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727.

government entity is required or forced to do.”²⁸ The ballot summary by the Legislative Analyst further defined “state mandates” as “requirements imposed on local governments by legislation or executive orders.”²⁹

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant’s participation in the underlying program is voluntary or legally compelled.³⁰ The court stated the following:

In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district’s obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)³¹

Thus, the Supreme Court held as follows:

[W]e reject claimants’ assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant’s participation in the underlying program is voluntary or compelled.* [Emphasis added.]³²

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.³³

The school districts in *Kern High School Dist.*, however, urged the court to define “state mandate” broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a broad construction to the definition of a federal mandate in the case of *City of Sacramento v. State* (1990) 50 Cal.3d 51, 74, where the state’s failure to

²⁸ *Id.* at page 737.

²⁹ *Ibid.*

³⁰ *Id.* at page 743.

³¹ *Ibid.*

³² *Id.* at page 731.

³³ *Id.* at pages 744-745.

comply with federal legislation that extended mandatory coverage under the state’s unemployment insurance law would result in California businesses facing “a new and serious penalty – full, double unemployment taxation by both state and federal governments.”³⁴ Although the court in *Kern High School Dist.* declined to apply the reasoning in *City of Sacramento* that a state mandate may be found in the absence of strict legal compulsion on the facts before it in *Kern*, after reflecting on the purpose of article XIII B, section 6 – to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue– the court stated:

In light of that purpose, we do not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds.³⁵

Thus, the court in *Kern* recognized that there could be a case, based on its facts, where reimbursement would be required under article XIII B, section 6 in circumstances where the local entity was not legally compelled to participate in a program.

One year later, the Supreme Court revisited the “mandate” issue in *San Diego Unified School Dist.*, a case that addressed a challenge to a Commission decision involving a school district’s expulsion of a student. The school district acknowledged that under specified circumstances, the statutory scheme at issue in the case gave school districts discretion to expel a student. The district nevertheless argued that it was mandated to incur the costs associated with the due process hearing required by the test claim legislation when a student is expelled. The district argued that “although any particular expulsion recommendation may be discretionary, as a practical matter it is inevitable that some school expulsions will occur in the administration of any public school program” and, thus, the ruling in *City of Merced* should not apply.³⁶

In *San Diego Unified School Dist.*, the Supreme Court did not overrule the *Kern* or *City of Merced* cases, but stated that “[u]pon reflection, we agree with the District and amici curiae that there is reason to question an extension of the holding of *City of Merced* so as to preclude reimbursement under article XIII B, section 6 of the state Constitution and Government Code section 17514, whenever an entity makes an initial discretionary decision that in turn triggers mandated costs.”³⁷ The court explained as follows:

Indeed, it would appear that under a strict application of the language of *City of Merced*, public entities would be denied reimbursement for state-mandated costs in apparent contravention of the intent underlying article XIII B, section 6 of the state Constitution and Government Code

³⁴ *City of Sacramento*, *supra*, 50 Cal.3d 51, 74.

³⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 752.

³⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887.

³⁷ *Id.* at page 887.

section 17514 and contrary to past decisions in which it has been established that reimbursement was in fact proper. For example, in *Carmel Valley* [citation omitted] an executive order requiring that county firefighters be provided with protective clothing and safety equipment was found to create a reimbursable state mandate for the added costs of such clothing and equipment. [Citation omitted.] the court in *Carmel Valley* apparently did not contemplate that reimbursement would be foreclosed in that setting merely because a local agency possessed discretion concerning how many firefighters it would employ – and hence, in that sense, could control or perhaps even avoid the extra costs to which it would be subjected. Yet, under a strict application of the rule gleaned from *City of Merced* [citation omitted], such costs would not be reimbursable for the simple reason that the local agency’s decision to employ firefighters involves an exercise of discretion concerning, for example, how many firefighters are needed to be employed, etc. We find it doubtful that the voters who enacted article XIII B, section 6, or the Legislature that adopted Government Code section 17514, intended that result, and hence we are reluctant to endorse, in this case, an application of the rule of *City of Merced* that might lead to such result.³⁸

Ultimately, however, the court did not resolve the issue regarding the application of the *City of Merced* case to the discretionary expulsions, and resolved the case on alternative grounds.³⁹

In the present case, the purpose of POBOR, as stated in Government Code section 3301, is to assure that stable employment relations are continued throughout the state and to further assure that effective law enforcement services are provided to all people of the state. The Legislature declared POBOR a matter of statewide concern.

In 1982, the California Supreme Court addressed the POBOR legislation in *Baggett v. Gates*.⁴⁰ In *Baggett*, the City of Los Angeles received information that certain peace officer employees were engaging in misconduct during work hours. The city interrogated the officers and reassigned them to lower paying positions (a punitive action under POBOR). The employees requested an administrative appeal pursuant to the POBOR legislation and the city denied the request, arguing that charter cities cannot be constitutionally bound by POBOR. The court acknowledged that the home rule provision of the Constitution gives charter cities the power to make and enforce all ordinances and regulations, subject only to the restrictions and limitations provided in the city charter. Nevertheless, the court found that the City of Los Angeles was required by the POBOR legislation to provide the opportunity for an administrative appeal to the officers.⁴¹ In

³⁸ *Id.* at pages 887-888.

³⁹ *Id.* at page 888.

⁴⁰ *Baggett v. Gates* (1982) 32 Cal.3d 128.

⁴¹ *Id.* at page 141.

reaching its conclusion, the court relied, in part, on the express language of legislative intent in Government Code section 3301 that the POBOR legislation is a “matter of statewide concern.”⁴²

The court in *Baggett* also concluded that the consequences of a breakdown in employment relations between peace officers and their employers would create a clear and present threat to the health, safety, and welfare of the citizens of the city, which would extend far beyond local boundaries.

Finally, it can hardly be disputed that the maintenance of stable employment relations between police officers and their employers is a matter of statewide concern. The consequences of a breakdown in such relations are not confined to a city’s borders. These employees provide an essential service. Its absence would create a clear and present threat not only to the health, safety, and welfare of the citizens of the city, but also to the hundreds, if not thousands, of nonresidents who daily visit there. Its effect would also be felt by the many nonresident owners of property and businesses located within the city’s borders. Our society is no longer a collection of insular local communities. Communities today are highly interdependent. The inevitable result is that labor unrest and strikes produce consequences which extend far beyond local boundaries.⁴³

Thus, the court found that “the total effect of the POBOR legislation is not to deprive local governments of the right to manage and control their police departments but to secure basic rights and protections to a segment of public employees who were thought unable to secure them for themselves.”⁴⁴

In 1990, the Supreme Court revisited the POBOR legislation in *Pasadena Police Officers Assn. v. City of Pasadena (Pasadena)*.⁴⁵ The *Pasadena* case addressed the POBOR requirement in Government Code section 3303 to require the employer to provide an officer subject to an interrogation with any reports or complaints made by investigators. In the language quoted below, the court described the POBOR legislation and recognized that the public has a high expectation that peace officers are to be held above suspicion of violation of the laws they are sworn to enforce. Thus, in order to maintain the public’s confidence, “a law enforcement agency *must* promptly, thoroughly, and fairly investigate allegations of officer misconduct ... [and] institute disciplinary proceedings.” (Emphasis added.)

Courts have long recognized that, while the off-duty conduct of employees is generally of no legal consequence to their employers, the public expects peace officers to be “above suspicion of violation of the very laws they are

⁴² *Id.* at page 136.

⁴³ *Id.* at page 139-140.

⁴⁴ *Id.* at page 140.

⁴⁵ *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564.

sworn ... to enforce.” [Citations omitted.] Historically, peace officers have been held to a higher standard than other public employees, in part because they alone are the “guardians of peace and security of the community, and the efficiency of our whole system, designed for the purpose of maintaining law and order, depends upon the extent to which such officers perform their duties and are faithful to the trust reposed in them.” [Citation omitted.] To maintain the public’s confidence in its police force, a law enforcement agency must promptly, thoroughly, and fairly investigate allegations of officer misconduct; if warranted, it must institute disciplinary proceedings.⁴⁶

Under a strict application of the *City of Merced* case, the requirements of the POBOR legislation would not constitute a state-mandated program within the meaning of article XIII B, section 6 “for the simple reason” that the local entity’s ability to decide who to discipline and when “could control or perhaps even avoid the extra costs” of the POBOR legislation.⁴⁷ But a local entity does not decide who to investigate or discipline based on the costs incurred to the entity. The decision is made, as indicated by the Supreme Court, to maintain the public’s confidence in its police force and to protect the health, safety, and welfare of its citizens. Thus, as indicated by the Supreme Court in *San Diego Unified School Dist.*, a finding that the POBOR legislation does not constitute a mandated program would conflict with past decisions like *Carmel Valley*, where the court found a mandated program for providing protective clothing and safety equipment to firefighters and made it clear that “[p]olice and fire protection are two of the most essential and basic functions of local government.”⁴⁸ Moreover, the POBOR legislation implements a state policy to maintain stable employment relations between police officers and their employers to “assure that effective services are provided to all people of the state.” POBOR, therefore, carries out the governmental function of providing a service to the public, and imposes unique requirements on local agencies to implement the state policy.⁴⁹ Thus, a finding that the test claim legislation does not impose a state-mandated program contravenes the purpose of article XIII B, section 6 “to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill-equipped’ to assume increased financial responsibilities” due to the tax and spend provisions of articles XIII A and XIII B.⁵⁰

Accordingly, even though local decisions are first made to interrogate an officer, take punitive action against the officer, or to place an adverse comment in an officer’s personnel file, the Commission finds, based on *San Diego Unified School Dist.* and the

⁴⁶ *Id.* at page 571-572.

⁴⁷ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888.

⁴⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 887-888; *Carmel Valley Fire Protection Dist. v. State* (1987) 190 Cal.App.3d 521, 537.

⁴⁹ *San Diego Unified School*, *supra*, 33 Cal.4th at page 874.

⁵⁰ *Id.* at page 888, fn. 23.

facts presented in this case, that POBOR constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

B. POBOR does not constitute a state-mandated program for school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties.

Government Code section 3301, the statute that identifies the peace officers afforded the rights and protections granted in the POBOR legislation, expressly includes peace officers employed by school districts and community college districts pursuant to Penal Code section 830.32. Penal Code section 830.32 provides that members of a school district and community college district police department appointed pursuant to Education Code sections 39670 and 72330 are peace officers if the primary duty of the officer is the enforcement of law as prescribed by Education Code sections 39670 (renumbered section 38000) and 72330, and the officers have completed an approved course of training prescribed by the Commission on Peace Officer Standards and Training (POST) before exercising the powers of a peace officer.

POBOR also applies to special districts authorized by statute to maintain a police department, including police protection districts, harbor or port police, transit police, peace officers employed by the San Francisco Bay Area Rapid Transit District (BART), peace officers employed by airport districts, peace officers employed by a housing authority, and peace officers employed by fire protection districts.⁵¹

While counties and cities are mandated by the California Constitution to employ peace officers,⁵² school districts and special districts are not expressly required by the state to

⁵¹ Government Code section 3301; Penal Code section 830.1, subdivision (a) [“police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department”]; Penal Code section 830.31, subdivision (d) [“A housing authority patrol officer employed by the housing authority of a ... district ...”]; Penal Code section 830.33 [“(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code ... (b) Harbor or port police regularly employed and paid ... by a ... district ... (c) Transit police officers or peace officers of a ... district ... (d) Any person regularly employed as an airport law enforcement officer by a ... district ...”]; and Penal Code section 830.37 [“(a) Members of an arson-investigating unit ... of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers is the detection and apprehension of persons who have violated any fire law or committed insurance fraud ... (b) Members ... regularly paid and employed in that capacity, of a fire department or fire protection agency of a ... district ... if the primary duty of these peace officers ... is the enforcement of law relating to fire prevention or fire suppression.”]

⁵² See ante, footnote 21.

employ peace officers. School districts and special districts have statutory authority to employ peace officers.

On February 6, 2009, the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1357, determined that POBOR is not a reimbursable mandate as to school districts and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties. The court held, on pages 1365 through 1368, as follows:

The result of the cases discussed above is that, if a local government participates “voluntarily,” i.e., without legal compulsion or compulsion as a practical matter, in a program with a rule requiring increased costs, there is no requirement of state reimbursement. The Commission concedes there is no legal compulsion for the school and special districts in issue to hire peace officers. As related, *Kern High School Dist.* suggests “involuntarily” can extend beyond “legal compulsion” to “compelled as a practical matter to participate.” (*Kern High School Dist., supra*, 30 Cal.4th at p. 748, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) However, the latter term means facing “ ‘certain and severe ... penalties’ such as ‘double ... taxation’ or other ‘draconian’ consequences” and not merely having to “adjust to the withdrawal of grant money along with the lifting of program obligations.” (*Id.* at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203.) There is nothing in this record to show that the school and special districts in issue are practically compelled to hire peace officers.

The Commission points to two considerations to overcome the rule that participation in a voluntary program means additional costs are not mandates. The first is that the Legislature has declared that application of POBRA procedures to all public safety officers is a matter of statewide concern. The second consideration is that the Legislature has promulgated various rights to public safety^{FN5} and rights and duties of peace officers,^{FN6} which it is claimed, recognize “the need for local government entities to employ peace officers when necessary to carry out their basic functions.” Neither consideration persuasively supports the claim of practical compulsion.

FN5. E.g., [article I, section 28](#), subdivision (c) (announcing a right to attend grade school campuses which are safe); [Education Code section 38000](#), subdivision (a) (authorizing school boards to hire peace officers to ensure safety of pupils and personnel); and [Education Code section 72330](#), subdivision (a) (authorizing a community college district to employ peace officers as necessary to enforce the law on or near campus).

FN6. E.g., [Penal Code sections 830.31-830.35](#), [830.37](#) (powers of arrest extend statewide), and [12025](#) (permitting peace officers to carry concealed weapons).

The consideration that the Legislature has determined that all public safety officers should be entitled to POBRA protections is immaterial. It is almost always the case that a rule prescribed by the Legislature that applies to a voluntary program will, nonetheless, be a matter of statewide concern and application. For example, the rule in *Kern High School Dist.* was that any district in the state that participated in the underlying funded educational programs was required to abide by the notice of meetings and agenda posting requirements. When the Legislature makes such a rule, it only says that if you participate you must follow the rule. This is not a rule that bears on compulsion to participate. (Cf. *Kern High School Dist., supra*, 30 Cal.4th at p. 743, 134 Cal.Rptr.2d 237, 68 P.3d 1203 [the proper focus of a legal compulsion inquiry is upon the nature of claimants' participation in the underlying programs, not that costs incurred in complying with program conditions have been legally compelled].)

Similarly, we do not see the bearing on a necessity or practical compulsion of the districts to hire peace officers, of any or all the various rights to public safety and duties of peace officers to which the Commission points. If affording those rights or complying with those duties as a practical matter could be accomplished only by exercising the authority given to hire peace officers, the Commission's argument would be forceful. However, it is not manifest on the face of the statutes cited nor is there any showing in the record that hiring its own peace officers, rather than relying upon the county or city in which it is embedded, is the only way as a practical matter to comply.

The Commission submits that this case should be distinguished from *City of Merced* and *Kern High School Dist.* because the districts “employ peace officers when necessary to carry out the essential obligations and functions established by law.” However, the “necessity” that is required is facing “ ‘certain and severe ... penalties’ such as ‘double ... taxation’ or other ‘draconian’ consequences.” (*Kern High School Dist., supra*, 30 Cal.4th at p. 754, 134 Cal.Rptr.2d 237, 68 P.3d 1203, quoting *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74, 266 Cal.Rptr. 139, 785 P.2d 522.) That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences.

The Commission notes that *Carmel Valley Fire Protection Dist. v. State* characterizes police protection as one of “ ‘the most essential and basic functions of local government.’ ” (*Carmel Valley Fire Protection Dist. v. State, supra*, 190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795, quoting *Verreos v. City and County of San Francisco* (1976) 63 Cal.App.3d 86, 107, 133 Cal.Rptr. 649.) However, that characterization is in the context of cities, counties, and districts that have as an ordinary, principal, and mandatory duty the provision of policing services within their territorial jurisdiction. A fire protection district perform must hire firefighters to supply that protection.

Thus, as to cities, counties, and such districts, new statutory duties that increase the costs of such services are prima facie reimbursable. This is true,

notwithstanding a potential argument that such a local government's decision is voluntary in part, as to the number of personnel it hires. (See *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at p. 888, 16 Cal.Rptr.3d 466, 94 P.3d 589.) A school district, for example, has an analogous basic and mandatory duty to educate students. In the course of carrying out that duty, some “discretionary” expulsions will necessarily occur. (*Id.* at p. 887, fn. 22, 16 Cal.Rptr.3d 466, 94 P.3d 589.) Accordingly, *San Diego Unified School Dist.* suggests additional costs of “discretionary” expulsions should not be considered voluntary. Where, as a practical matter, it is inevitable that certain actions will occur in the administration of a mandatory program, costs attendant to those actions cannot fairly and reasonably be characterized as voluntary under the rationale of *City of Merced*. (See *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at pp. 887-888, 16 Cal.Rptr.3d 466, 94 P.3d 589.)

However, the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions. As there is no such showing in the record, the Commission erred in finding that POBRA constitutes a state-mandated program for school districts and the special districts identified in [Government Code section 3301](#). Similarly, the superior court erred in concluding as a matter of law that, “[a]s a practical matter,” the employment of peace officers by the local agencies is “not an optional program” and “they do not have a genuine choice of alternative measures that meet their agency-specific needs for security and law enforcement.”

Therefore, POBOR does not constitute a reimbursable state-mandated program as to school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties. These entities are not eligible to claim reimbursement for this program.

The test claim statutes do impose a state-mandated program on counties, cities, and special police protection districts named in Government Code section 53060.7 that wholly supplant the law enforcement functions of the county within their jurisdiction.⁵³ These entities are eligible to claim reimbursement for this program.

⁵³ The special districts identified in Government Code section 53060.7 (Bear Valley Community Services District, Broadmoor Police Protection District, Kensington Police Protection and Community Services District, Lake Shastina Community Services District, and Stallion Springs Community Services District) “wholly supplant the law enforcement functions of the county within the jurisdiction of that district.”

III. Does the test claim legislation constitute a new program or higher level of service and impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

Government Code section 3313 requires the Commission to review its previous findings to clarify whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions. The test claim legislation will impose a new program or higher level of service, and costs mandated by the state when it compels a local entity to perform activities not previously required, and results in actual increased costs mandated by the state.⁵⁴ In addition, none of the exceptions to reimbursement found in Government Code section 17556 can apply. The activities found by the Commission to be mandated are analyzed below.

Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that “no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.”

Punitive action is defined in Government Code section 3303 as follows:

“For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,⁵⁵ written reprimand, or transfer for purposes of punishment.”

The California Supreme Court determined that the phrase “for purposes of punishment” in the foregoing section relates only to a transfer and not to other personnel actions.⁵⁶ Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to “compensate for a deficiency in performance,” however, an appeal is not required.⁵⁷

⁵⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835.

⁵⁵ The courts have held that “reduction in salary” includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

⁵⁶ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

⁵⁷ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in “disadvantage, harm, loss or hardship” and impact the peace officer’s career.⁵⁸ In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted “punitive action” under the test claim legislation based on the source of the report, its contents, and its potential impact on the career of the officer.⁵⁹

Thus, under Government Code section 3304, as it existed when the Statement of Decision was adopted, the employer is required to provide the opportunity for an administrative appeal to permanent, at-will or probationary peace officers for any action leading to the following actions:

- Dismissal.
- Demotion.
- Suspension.
- Reduction in salary.
- Written reprimand.
- Transfer for purposes of punishment.
- Denial of promotion on grounds other than merit.
- Other actions against the employee that results in disadvantage, harm, loss or hardship and impacts the career opportunities of the employee.

The test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local entity.⁶⁰ The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with due process standards.^{61, 62}

⁵⁸ *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.

⁵⁹ *Id* at p. 353-354.

⁶⁰ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.

⁶¹ *Doyle v. City of Chino* (1981) 117 Cal.App.3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee’s due process rights were protected by the administrative appeals process mandated by Government Code section 3304.

⁶² At least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure

Finally, the courts have been clear that the administrative hearing required by Government Code section 3304 does *not* mandate an investigatory process. “It is an adjudicative process by which the [peace officers] hope to restore their reputations” and where “the reexamination [of the employer’s decision] must be conducted by someone who has not been involved in the initial determination.”⁶³

In 1999, the Commission concluded that under certain circumstances, the administrative appeal required by the POBOR legislation was already required to be provided by the due process clause of the United States and California Constitutions when an action by the employer affects an employee’s property interest or liberty interest. A permanent employee with civil service protection, for example, has a property interest in the employment position if the employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Under these circumstances, the permanent employee is entitled to a due process hearing.⁶⁴

In addition, the due process clause applies when the charges supporting a dismissal of a probationary or at-will employee harms the employee’s reputation and ability to find future employment.⁶⁵ For example, an at-will employee, such as the chief of police, is entitled to a liberty interest hearing (or name-clearing hearing) under the state and federal constitutions when the dismissal is supported by charges of misconduct, mismanagement, and misjudgment – all of which “stigmatize [the employee’s] reputation and impair his ability to take advantage of other employment opportunities in law enforcement administration.”⁶⁶ In *Williams v. Department of Water and Power*, a case cited by the City of Sacramento, the court explained that the right to a liberty interest hearing arises in cases involving moral turpitude. There is no constitutional right to a liberty interest hearing when an at-will employee is removed for incompetence, inability to get along with others, or for political reasons due to a change of administration.

section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250. In addition, the California Supreme Court uses the words “administrative appeal” of section 3304 interchangeably with the word “hearing.” (*White, supra*, 31 Cal.3d 676.) A hearing before the Chief of Police was found to be appropriate within the meaning of Government Code section 3304 in a case involving a written reprimand since the Chief of Police was not in any way involved in the investigation and the employee and his attorney had an opportunity to present evidence and set forth arguments on the employee’s behalf. (*Stanton, supra*, 226 Cal.App.3d 1438, 1443.)

⁶³ *Caloca v. County of San Diego* (2002) 102 Cal.App.4th 433, 443-444 and 447-448.

⁶⁴ See original Statement of Decision (AR, p. 864).

⁶⁵ See original Statement of Decision (AR, pp. 863-866, 870).

⁶⁶ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1807.

The mere fact of discharge from public employment does not deprive one of a liberty interest hearing. [Citations omitted.] Appellant must show her dismissal was based on charges of misconduct which “stigmatize” her reputation or “seriously impair” her opportunity to earn a living. [Citations omitted.] ... “Nearly any reason assigned for dismissal is likely to be to some extent a negative reflection on an individual’s ability, temperament, or character. [Citation omitted.] But not every dismissal assumes a constitutional magnitude.” [Citation omitted.]

The leading case of *Board of Regents v. Roth* (1972) 408 U.S. 564, 574 [unofficial cite omitted] distinguishes between a stigma of moral turpitude, which infringes the liberty interest, and other charges such as incompetence or inability to get along with coworkers which does not. The Supreme Court recognized that where “a person’s good name, reputation, honor or integrity is at stake” his right to liberty under the Fourteenth Amendment is implicated and deserves constitutional protection. [Citation omitted.] “In the context of *Roth*-type cases, a charge which infringes one’s liberty can be characterized as an accusation or label given the individual by his employer which belittles his worth and dignity as an individual and, as a consequence is likely to have severe repercussions of which primarily affect professional life, and which may well force the individual down one or more notches in the professional hierarchy.” [Citation omitted.]⁶⁷

Thus, the Commission found that, when a hearing was required by the due process clause of the state and federal constitutions, the activity of providing the administrative appeal did not constitute new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Commission found that the administrative appeal constitutes a new program or higher level of service, and imposes costs mandated by the state, in those situations where the due process clause of the United States and California Constitutions did not apply. These include the following:

- Dismissal, demotion, suspension, salary reduction or written reprimand received by *probationary and at-will employees* whose liberty interest *are not* affected (i.e.; the charges do not harm the employee’s reputation or ability to find future employment).
- Transfer of permanent, probationary and at-will employees for purposes of punishment.
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit.

⁶⁷ *Williams v. Department of Water and Power* (1982) 130 Cal.App.3d 677, 684-685.

- Other actions against permanent, probationary and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

As noted by the Commission in the Statement of Decision and parameters and guidelines, the Legislature amended Government Code section 3304 in 1998 by limiting the right to an administrative appeal to only those peace officers “who [have] successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.) Thus, as of January 1, 1999, providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) is no longer a reimbursable state-mandated activity.

Thus, the issue is whether the activity of providing the opportunity for an administrative appeal is reimbursable under current law when (1) permanent peace officer employees are subject to punitive actions, as defined in Government Code section 3303, or denials of promotion on grounds other than merit; and when (2) a chief of police is subject to removal.

As indicated above, under prior law, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process liberty interest hearing under prior law if the charges supporting the dismissal constitute moral turpitude that harms the employee’s reputation and ability to find future employment. The County of Los Angeles argues, however, that under the California Supreme Court decision in *San Diego Unified School District*, reimbursement must be expanded to include all activities required under the test claim statute, including those procedures previously required by the due process clause. A close reading of the *San Diego Unified School District* case, however, shows that it does not support the County’s position.

The County relies on the Supreme Court’s analysis on pages 879 (beginning under the header “2. Are the hearing costs state-mandated?”) through page 882 of the *San Diego Unified School District* case. There, the court addressed two test claim statutes: Education Code section 48915, which *mandated* the school principal to immediately suspend and recommend the expulsion of a student carrying a firearm or committing another specified offense; and Education Code section 48918, which lays out the due process hearing requirements once the mandated recommendation is made to expel the student. The court recognized that the expulsion recommendation required by Education Code section 48915 was mandated “in that it establishes conditions under which the state, rather than local officials, has made the decision requiring a school district to incur the costs of an expulsion hearing.”⁶⁸ The Commission and the state, relying on Government Code section 17556, subdivision (c), argued, however, that the district’s costs are reimbursable only if, and to the extent that, hearing procedures set forth in Education

⁶⁸ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 880.

Code section 48918 exceed the requirements of federal due process.⁶⁹ The court disagreed. The court based its conclusion on the fact that the expulsion decision mandated by Education Code 48915, which triggers the district's costs incurred to comply with due process hearing procedures, did not implement a federal law. Thus, the court concluded that all costs incurred that are triggered by the state-mandated expulsion, including those that satisfy the due process clause, are fully reimbursable. The court's holding is as follows:

[W]e cannot characterize any of the hearing costs incurred by the District, triggered by the mandatory provision of Education Code section 48915, as constituting a federal mandate (and hence being nonreimbursable). We conclude that under the statutes existing at the time of the test claim in this case (state legislation in effect through mid-1994), all such hearing costs – those designed to satisfy the minimum requirements of federal due process, and those that may exceed those requirements – are, with respect to the mandatory expulsion provision of section 48915, state mandated costs, fully reimbursable by the state.⁷⁰

The POBOR legislation is different. The costs incurred to comply with the administrative appeal are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to take punitive action, or deny a promotion on grounds other than merit against a peace officer employee. Therefore, the Commission finds that the court's holding, authorizing reimbursement for *all* due process hearing costs triggered by a state-mandated event, does not apply to this case.

Rather, what applies from the *San Diego Unified School Dist.* decision to the administrative appeal activity mandated by Government Code section 3304 is the court's holding regarding discretionary expulsions. In the *San Diego* case, the court analyzed the portion of Education Code section 48915 that provided the school principal with the discretion to recommend that a student be expelled for specified conduct. If the recommendation was made and the district accepted the recommendation, then the district was required to comply with the mandatory due process hearing procedures of Education Code section 48918.⁷¹ In this situation, the court held that reimbursement for the procedural hearing costs triggered by a local discretionary decision to seek an expulsion was not reimbursable because the hearing procedures were adopted to implement a federal due process mandate.⁷² The court found that the analysis by the Second District Court of Appeal in *County of Los Angeles v. Commission on State Mandates (County of Los Angeles II)* was instructive.⁷³ In the *County of Los Angeles II*

⁶⁹ *Ibid.*

⁷⁰ *Id.* at pages 881-882.

⁷¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at pages 884-890.

⁷² *Id.* at page 888.

⁷³ *Id.* at page 888-889; *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805. The test claim statute in *County of Los Angeles* required counties to

case, the court determined that even in the absence of the test claim statute, counties would be still be responsible for providing services under the constitutional guarantees of federal due process.⁷⁴

This analysis applies here. As indicated above, permanent employees were already entitled to an administrative hearing pursuant to the due process clause of the United States and California Constitutions if they were subject to the following punitive actions: dismissal, demotion, suspension, reduction in salary, or a written reprimand. In addition, an at-will employee, such as the chief of police, was entitled to a due process hearing under prior state and federal law if the charges supporting the dismissal constitute moral turpitude that harms the employee's reputation and ability to find future employment. Thus, even in the absence of Government Code section 3304, local government would still be required to provide a due process hearing under these situations.

The City of Sacramento, however, contends in comments to the draft staff analysis that prior law does not require due process protections outlined by the Supreme Court in *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, for employees receiving short-term suspensions, reclassifications, or reprimands. The City states that five-day suspensions, written reprimands and other lesser forms of punishment are covered by POBOR, but not *Skelly* and, thus, the administrative appeal required by POBOR is reimbursable for the lesser forms of punishment.

The City raised the same argument when the Commission originally considered the test claim, and the Commission disagreed with the arguments.⁷⁵ The Commission finds that the Commission's original conclusion on this issue is correct.

As discussed below, the City is correct that the *pre-disciplinary* protections outlined in *Skelly* do not apply to a short-term suspension or written reprimand. But prior law still requires due process protection, including an administrative hearing, when a permanent employee receives a short-term suspension, reprimand, or other lesser form of punishment. Thus, the administrative hearing required by the test claim legislation under these circumstances does not constitute a new program or higher level of service or impose costs mandated by the state.

Skelly involved the discharge of a permanent civil service employee. The court held that such employees have a property interest in the permanent position and the employee may not be dismissed or subjected to other forms of punitive action without due process of law. Based on the facts of the case (that a discharged employee faced the bleak prospect

provide indigent criminal defendants with defense funds for ancillary investigation services for capital murder cases. The court determined that even in the absence of the test claim statute, indigent defendants in capital cases were entitled to such funds under the Sixth Amendment of the federal Constitution. (*Id.* at p. 815.)

⁷⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 888-889; *County of Los Angeles*, *supra*, 32 Cal.App.4th at page 815.

⁷⁵ See original Statement of Decision (AR, pp. 865-866).

of being without a job and the need to seek other employment hindered by the charges against him), the court held that the employee was entitled to receive notice of the discharge, the reasons for the action, a copy of the charges and materials upon which the action is based, and the right to a hearing to respond to the authority imposing the discipline *before* the discharge became effective.⁷⁶ The Supreme Court in *Skelly* recognized, however, that due process requirements are not so inflexible as to require an evidentiary trial at the *preliminary* stage in every situation involving the taking or property. Although some form of notice and hearing must preclude a final deprivation of property, the timing and content of the notice, as well as the nature of the hearing will depend on the competing interests involved.⁷⁷

Three years after *Skelly*, the Supreme Court decided *Civil Service Association v. the City and County of San Francisco*, a case involving the short-term suspensions of eight civil service employees.⁷⁸ The court held that the punitive action involved with a short-term suspension is minor and does not require pre-disciplinary action procedures of the kind required by *Skelly*.⁷⁹ But the employees were still entitled to due process protection, including the right to a hearing, since the temporary right of enjoyment to the position amounted to a taking for due process purposes.⁸⁰ The court held as follows:

However, while the principles underlying *Skelly* do not here compel the granting of predisciplinary procedures there mentioned, it does not follow that the employees are totally without right to hearing. *While due process does not guarantee to these appellants any Skelly-type predisciplinary hearing procedure, minimal concepts of fair play and justice embodied in the concept of due process require that there be a 'hearing,' of the type hereinafter explained.* The interest to be protected, i.e., the right to continuous employment, is accorded due process protection. While appellants may not in fact have been deprived of a salary earned but only of the opportunity to earn it, they had the expectancy of earning it free from arbitrary administrative action. [Citation omitted.] This expectancy is entitled to some modicum of due process protection. [Citation and footnote omitted.]

For the reasons state above, however, we believe that such protection will be adequately provided in circumstances such as these by procedures of the character outlined in *Skelly*, (i.e., one that will apprise the employee of the proposed action, the reasons therefore, provide for a copy of the charges including materials upon which the action is based, and the right

⁷⁶ *Skelly, supra*, 15 Cal.3d 194, 213-215.

⁷⁷ *Id.* at page 209.

⁷⁸ *Civil Service Association v. City and County of San Francisco* (1978) 22 Cal.3d 552.

⁷⁹ *Id.* at page 560.

⁸⁰ *Ibid.*

to respond either orally or in writing, to the authority imposing the discipline) *if provided either during the suspension or within reasonable time thereafter.*⁸¹ (Emphasis added.)

Thus, the court held that the employees that did not receive a hearing at all were entitled to one under principles of due process.⁸² As indicated in the Commission's original Statement of Decision, the Third District Court of Appeal in the *Stanton* case also found that due process principles apply when an employee receives a written reprimand without a corresponding loss of pay.⁸³

Therefore, in the following situations, the Commission finds that the Commission's original decision in this case was correct in that Government Code section 3304 does not constitute a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c), since the administrative appeal merely implements the due process requirements of the state and federal Constitutions:

- When a permanent employee is subject to a dismissal, demotion, suspension, reduction in salary, or a written reprimand.
- When the charges supporting the dismissal of a chief of police constitute moral turpitude, which harms the employee's reputation and ability to find future employment, thus imposing the requirement for a liberty interest hearing.

The due process clause, however, does not apply when a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee. In addition, the due process clause does not apply when local officials want to remove the chief of police under circumstances that do not create a liberty interest since the chief of police is an at-will employee and does not have a property interest in the position. Providing the opportunity for an administrative appeal under these circumstances is new and not required under prior law. In addition, none of the exceptions in Government Code section 17556 to the finding of costs mandated by the state apply to these situations.

Accordingly, the Commission finds that Government Code section 3304 constitutes a new program or higher level of service and imposes costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for providing the opportunity for an administrative appeal in the following circumstances only:

- When a permanent employee is transferred for purposes of punishment, denied a promotion on grounds other than merit, or suffers other actions that result in

⁸¹ *Id.* at page 564.

⁸² *Id.* at page 565.

⁸³ *Stanton, supra*, 226 Cal.App.3d 1438, 1442.

disadvantage, harm, loss or hardship that impacts the career opportunities of the permanent employee.

- When local officials want to remove the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment).

Interrogations

Government Code section 3303 prescribes protections that apply when “any” peace officer is interrogated in the course of an administrative investigation that might subject the officer to the punitive actions listed in the section (dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment). The procedures and rights given to peace officers under section 3303 do not apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by, or other routine or unplanned contact with, a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.⁸⁴

The Commission found that the following activities constitute a new program or higher level of service and impose costs mandated by the state:

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
- Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Government Code section 3313 directs the Commission to review these findings in order “to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.” The Commission finds that neither the *San Diego Unified School Dist.* case, nor any other court decision published since 1999, changes the Commission's conclusion that these activities constitute a new program or higher level of service and impose costs mandated by the state. Thus, these activities remain eligible for reimbursement when interrogating “any” peace officer, including probationary, at-will, and permanent officers that might subject the officer to punitive action.

The Commission also found that Government Code section 3303, subdivision (g), requires that:

⁸⁴ Government Code section 3303, subdivision (i).

- The peace officer employee shall have access to the tape recording of the interrogation if (1) any further proceedings are contemplated or, (2) prior to any further interrogation at a subsequent time.
- The peace officer shall be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential.

The Commission found that providing the employee with access to the tape prior to a further interrogation at a subsequent time constitutes a new program or higher level of service and imposes costs mandated by the state. However, the due process clause of the United States and California Constitutions already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the punitive, disciplinary action is based. Thus, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation, and produce the transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed confidential, to the peace officer employee when:

- a permanent employee is dismissed, demoted, suspended, receives a reduction in pay, or written reprimand; or
- a probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by charges of moral turpitude, which support the dismissal.

Under these circumstances, the Commission concluded that the requirement to provide these materials under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing these materials merely implements the requirements of the United States Constitution.

The Commission finds that the conclusion denying reimbursement to provide these materials following the interrogation when the activity is already required by the due process clause of the United States and California Constitutions is consistent with the Supreme Court's ruling in *San Diego Unified School Dist.* The costs incurred to comply with these interrogation activities are *not* triggered by a state-mandated event, but are triggered by discretionary decisions made by local officials to interrogate an officer. Under these circumstances, the court determined that even in the absence of the test claim statute, counties would still be responsible for providing services under the constitutional guarantees of due process under the federal Constitution.⁸⁵

⁸⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th at page 888-889; *County of Los Angeles*, *supra*, 32 Cal.App.4th at page 815.

Thus, the Commission finds that the Commission's decision, that Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes costs mandated by the state for the following activities, is legally correct:

- Provide the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
 - (a) the further proceeding is not a disciplinary punitive action;
 - (b) the further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) the further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) the further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) the further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Produce transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer following the interrogation, in the following circumstances:
 - (a) when the investigation *does not* result in disciplinary punitive action; and
 - (b) when the investigation results in:
 - a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - a denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
 - other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate

in order to prepare for the interrogation. The County of Orange further states that “[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior.” These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that “[t]he interrogation shall be conducted ...” to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation.⁸⁶

⁸⁶ Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 (AR, p. 912).

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations.⁸⁷ It does not interfere with the employer's right to manage and control its own police department.⁸⁸

Finally, the County of Orange contends that “[s]erious cases also tend to involve lengthy appeals processes that require delicate handling due to the increased rights under POBOR.” For purposes of clarification, at the parameters and guidelines phase of this claim, the Commission denied reimbursement for the cost of defending lawsuits appealing the employer action under POBOR, determining that the test claim did not allege that the defense of lawsuits constitutes a reimbursable state-mandated program.⁸⁹ Government Code section 3313 does not give the Commission jurisdiction to change this finding.

Nevertheless, when adopting parameters and guidelines for this program, the Commission recognized the complexity of the procedures required to interrogate an officer, and approved several activities that the Commission found to be reasonable methods to comply with the mandated activities pursuant to the authority in section 1183.1, subdivision (a)(4), of the Commission's regulations. For example, the Commission authorized reimbursement, when preparing the notice regarding the nature of the interrogation, for reviewing the complaints and other documents in order to properly prepare the notice. The Commission also approved reimbursement for the mandated interrogation procedures when a peace officer witness was interrogated since the interrogation could lead to punitive action for that officer. Unlike other reconsideration statutes that directed the Commission to revise the parameters and guidelines, the Commission does not have jurisdiction here to change any discretionary findings or add any new activities to the parameters and guidelines that may be considered reasonable methods to comply with the program. The jurisdiction in this case is very narrow and limited to reviewing the Statement of Decision to clarify, as a matter of law, whether the test claim legislation constitutes a new program or higher level of service and imposes costs mandated by the state consistent with the California Supreme Court Decision in *San Diego Unified School Dist.* and other applicable court decisions.⁹⁰

Adverse Comments

Government Code sections 3305 and 3306 provide that no peace officer “shall” have any adverse comment entered in the officer's personnel file without the peace officer having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact “shall” be noted on the document and signed or initialed by

⁸⁷ *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26.

⁸⁸ *Baggett, supra*, 32 Cal.3d 128, 135.

⁸⁹ Analysis adopted by the Commission on the Parameters and Guidelines, July 22, 2000 Commission hearing (AR, pp. 904-906).

⁹⁰ However, any party may file a request to amend the parameters and guidelines pursuant to the authority in Government Code section 17557.

the peace officer. In addition, the peace officer “shall” have 30 days to file a written response to any adverse comment entered in the personnel file. The response “shall” be attached to the adverse comment.

Thus, Government Code sections 3305 and 3306 impose the following requirements on employers:

- to provide notice of the adverse comment;⁹¹
- to provide an opportunity to review and sign the adverse comment;
- to provide an opportunity to respond to the adverse comment within 30 days; and
- to note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer’s signature or initials under such circumstances.

As noted in the 1999 Statement of Decision, the Commission recognized that the adverse comment could be considered a written reprimand or could lead to other punitive actions taken by the employer. If the adverse comment results in a dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer or the comment harms an officer’s reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause of the state and federal constitutions.⁹² Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing notice and an opportunity to respond do not impose “costs mandated by the state”. The Commission finds that this finding is consistent with *San Diego Unified School Dist.* since the local entity would be required, in the absence of the test claim legislation, to perform these activities to comply with federal due process procedures.⁹³

However, the Commission found that under circumstances where the adverse comment affects the officer’s property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* specifically required by the case law interpreting the due process clause:

⁹¹ The Commission found that notice is required since the test claim legislation states that “no peace officer shall have any adverse comment entered in the officer’s personnel file *without the peace officer having first read and signed the adverse comment.*” Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

⁹² *Hopson, supra*, 139 Cal.App.3d 347.

⁹³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 888-889.

- obtaining the signature of the peace officer on the adverse comment, or
- noting the peace officer’s refusal to sign the adverse comment and obtain the peace officer’s signature or initials under such circumstances.

The Commission approved these two procedural activities since they were not expressly articulated in case law interpreting the due process clause and, thus, exceed federal law. The City of Sacramento contends that these activities remain reimbursable.

The Commission finds, however, that the decision in *San Diego Unified School Dist.* requires that these notice activities be denied pursuant to Government Code section 17556, subdivision (c), since they are “part and parcel” to the federal due process mandate, and result in “de minimis” costs to local government.

In *San Diego Unified School Dist.*, the Supreme Court held that in situations when a local discretionary decision triggers a federal constitutional mandate such as the procedural due process clause, “the challenged state rules or procedures that are intended to implement an applicable federal law -- and whose costs are, in context, de minimis -- should be treated as part and parcel of the underlying federal mandate.”⁹⁴ Adopting the reasoning of *County of Los Angeles II*, the court reasoned as follows:

In *County of Los Angeles II*, supra 32 Cal.App.4th 805 [unofficial cite omitted], the initial discretionary decision (in the former case, to file charges and prosecute a crime; in the present case, to seek expulsion) in turn triggers a federal constitutional mandate (in the former case, to provide ancillary defense services; in the present case, to provide an expulsion hearing). In both circumstances, the Legislature, in adopting specific statutory procedures to comply with the general federal mandate, reasonably articulated various incidental procedural protections. These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; viewed singly or cumulatively, they do not significantly increase the cost of compliance with the federal mandate. The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code section 17556, subdivision (c). We reach the same conclusion here.⁹⁵

The Commission finds that obtaining the officer’s signature on the adverse comment or indicating the officer’s refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause, are designed to prove that the officer was on notice about the adverse comment. Since providing notice is already

⁹⁴ *Id.* at page 890.

⁹⁵ *Id.* at page 889.

guaranteed by the due process clause of the state and federal constitutions under these circumstances, the Commission finds that the obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment is part and parcel of the federal notice mandate and results in "de minimis" costs to local government.

Therefore, the Commission finds that, under current law, the Commission's conclusion that obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause is not a new program or higher level of service and does not impose costs mandated by the state. Thus, the Commission denies reimbursement for these activities.

Finally, the courts have been clear that an officer's rights under Government Code sections 3305 and 3306 are not limited to situations where the adverse comment results in a punitive action where the due process clause may apply. Rather, an officer's rights are triggered by the entry of "any" adverse comment in a personnel file, "or any other file used for personnel purposes," that may serve as a basis for affecting the status of the employee's employment.⁹⁶ In explaining the point, the Third District Court of Appeal stated: "[E]ven though an adverse comment does not directly result in punitive action, it has the potential for creating an adverse impression that could influence future personnel decisions concerning an officer, including decisions that do not constitute discipline or punitive action."⁹⁷ Thus, the rights under sections 3305 and 3306 also apply to uninvestigated complaints. Under these circumstances (where the due process clause does not apply), the Commission determined that the Legislature, in statutes enacted before the test claim legislation, established procedures for different local public employees similar to the protections required by Government Code sections 3305 and 3306. Thus, the Commission found no new program or higher level of service to the extent the requirements existed in prior statutory law. The Commission approved the test claim for the activities required by the test claim legislation that were not previously required under statutory law.⁹⁸ Neither *San Diego Unified School Dist.*, nor any other

⁹⁶ *Sacramento Police Officers Assn. v. Venegas* (2002) 101 Cal.App.4th 916, 925.

⁹⁷ *Id.* at page 926.

⁹⁸ For example, for counties, the Commission approved the following activities that were not required under prior statutory law:

If an adverse comment is related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and

case, conflicts with the Commission’s findings in this regard. Therefore, the Commission finds that the denial of activities following the receipt of an adverse comment that were required under prior statutory law, and the approval of activities following the receipt of an adverse comment that were *not* required under prior statutory law, was legally correct.

CONCLUSION

The Commission ~~further~~ finds that the *San Diego Unified School Dist.* case supports the Commission’s 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause⁹⁹ does not constitute a new

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- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

If an adverse comment is not related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer’s refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

⁹⁹ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

These activities impose a state-mandated program on counties, cities, and special police protection districts named in Government Code section 53060.7 that wholly supplant the law enforcement functions of the county within their jurisdiction.¹⁰⁰ These entities are eligible to claim reimbursement for this program.

However, these activities do not constitute a reimbursable state-mandated program as to school districts, community college districts, and special districts that are permitted by statute, but not required, to employ peace officers who supplement the general law enforcement units of cities and counties.

¹⁰⁰ The special districts identified in Government Code section 53060.7 (Bear Valley Community Services District, Broadmoor Police Protection District, Kensington Police Protection and Community Services District, Lake Shastina Community Services District, and Stallion Springs Community Services District) “wholly supplant the law enforcement functions of the county within the jurisdiction of that district.”