

COMMISSION ON STATE MANDATES

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March 28, 2014

Ms. Wendy Watanabe
County of Los Angeles, Auditor-Controller
500 West Temple Street, Room 525
Los Angeles, CA 90012

Mr. Ed Jewik
County of Los Angeles, Auditor-Controller's Office
500 West Temple Street, Room 603
Los Angeles, CA 90012

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

Re: **Draft Staff Analysis and Proposed Parameters and Guidelines Amendments, Schedule for Comments, and Notice of Hearing**
Peace Officers Procedural Bill of Rights, 11-PGA-09
Government Code Sections 3301 et al.
County of Los Angeles, Claimant

Dear Ms. Watanabe and Mr. Jewik:

The draft staff analysis and proposed parameters and guidelines amendments for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **April 17, 2014**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your 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, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, May 30, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about May 16, 2014. 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 1183.01(c)(2) of the Commission's regulations.

Please contact Matthew Jones at (916) 323-3562 if you have any questions.

Sincerely,

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

Heather Halsey
Executive Director

ITEM ____
DRAFT STAFF ANALYSIS
AND
PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Government Code Sections 3301, 3303, 3304, 3305, 3306

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1187; 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

Peace Officers Procedural Bill of Rights

11-PGA-09 (CSM-4499, 05-RL-4499-01, 06-PGA-06)

County of Los Angeles, Requestor

EXECUTIVE SUMMARY

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission's regulations. As of January 1, 2011, Commission hearings on the adoption of proposed amendments to parameters and guidelines are conducted under article 7 of the Commission's regulations.¹ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.² Oral or written testimony is offered under oath or affirmation in article 7 hearings.³

I. Background

This request to amend parameters and guidelines for the *Peace Officers Procedural Bill of Rights* program (POBOR) proposes to increase the current unit cost reasonable reimbursement methodology (RRM) adopted March 28, 2008 from \$37.25 per sworn officer to \$169.21 per sworn officer, to reimburse local agencies for all direct and indirect costs of the program. The proposed amended parameters and guidelines also provide for actual cost claiming instead of claiming under the RRM, at the option of each individual claimant in any claim year. The Department of Finance (Finance) opposes the request and challenges the methodology used by the claimant to support the proposed increase in the unit cost RRM.

The POBOR mandate was first adopted November 30, 1999, and parameters and guidelines for the POBOR mandate most recently amended March 28, 2008. The most recent parameters and guidelines provide for reimbursement to counties and cities, and some special districts, as specified, for providing an administrative appeal to an officer subject to certain disciplinary actions, providing notice and transcripts of an interrogation to an officer under investigation or to

¹ California Code of Regulations, title 2, section 1187.

² Government Code section 17559(b); California Code of Regulations, title 2, 1187.5.

³ *Ibid.*

an officer who is a witness to an investigation, and providing an officer the opportunity to review and respond to adverse comments placed in the officer's personnel file.

II. Procedural History

On March 27, 2012, the County of Los Angeles filed a request to amend the parameters and guidelines to update the RRM and increase reimbursement under the RRM from \$37.25 per sworn officer to \$111.99 per sworn probation officer, and \$152.77 per all other sworn officers.⁴ The County's proposed amendment also preserves the ability of claimants to file actual cost claims.⁵ On May 18, 2012, Finance submitted written comments on the County's request to amend the parameters and guidelines.⁶ On June 19, 2012, the County submitted a response to state agency comments in which it revised its request to amend parameters and guidelines, consolidating the RRM proposal to \$169.21 for all sworn officers.⁷

III. Staff Analysis

Commission staff analyzed the evidence and arguments submitted by the County and concludes that the statutory requirements of an RRM have not been satisfied, and substantial evidence does not support a finding that the County's proposal would reasonably reimburse local government for their actual costs to comply with the mandate.

An RRM is meant to be based on an *approximation* of local costs, and need not precisely reimburse every actual dollar expended on the program. However, an RRM must be reasonable; satisfying the statutory requirements of an RRM is not the end of the inquiry. Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under 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."⁸

Here, the County has proposed an amendment to the parameters and guidelines that preserves the option for actual cost claiming, but also "updates" the RRM for all eligible claimants from \$37.25 to \$169.21 per sworn peace officer employed for all direct and indirect costs of the program.

The County's RRM proposal is based 115 sample values of allowable costs from 31 jurisdictions over a period of years, and excludes those claims that were reduced to zero pursuant to audit. However, the sample data, because it consists of audited actual cost claims, also excludes agencies that experienced sufficiently low costs to make reimbursement under the \$37.25 RRM appropriate, or agencies for which it was not cost-effective to file a claim at all.⁹ The use of audited claim data from only those jurisdictions that filed actual cost claims very likely excludes

⁴ Exhibit A, Request to Amend Parameters and Guidelines, March 27, 2012. Based on the filing date of the request, if the Commission adopts the proposal and amends the parameters and guidelines, it will affect costs incurred beginning July 1, 2011. (Gov. Code, § 17557.)

⁵ Exhibit A, Request to Amend Parameters and Guidelines.

⁶ Exhibit B, Finance Comments on Request to Amend, May 18, 2012.

⁷ Exhibit C, Revised Request to Amend Parameters and Guidelines, June 19, 2012.

⁸ Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

⁹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

smaller, less-expensive jurisdictions, and necessarily excludes jurisdictions that filed for reimbursement under the RRM.

Furthermore, the County asserts that it utilized the same methodology as the current RRM.¹⁰ But the procedures used in developing the current RRM were applied to a subset of cost claims from *all claimants* and, here, the sample comes from only those that chose to file higher actual cost claims rather than utilize the \$37.25 per officer RRM. At the time the current RRM was proposed and adopted, all claimants filing for reimbursement under the POBOR mandate were required to file actual cost claims; no RRM option was previously available. Now, the County proposes to develop an updated RRM rate on the basis of audited cost claims, as was done before, but those claims are necessarily skewed toward agencies for which it is more advantageous to file actual cost claims instead of utilizing the RRM.

Therefore, because the data include only those jurisdictions that filed actual cost claims, which can be expected to be the jurisdictions experiencing the highest costs, the RRM proposal does not “consider the variation in costs among local agencies,” as required by section 17518.5.

Based on the evidence in the record, staff finds that there is not substantial evidence that the County’s RRM proposal considers the variation in costs among local government claimants to implement the mandate in a cost efficient manner, and therefore the RRM must be denied.

Moreover, perpetuating the actual cost claiming option only serves to show that the County believes that the “updated” RRM will still be inadequate to fully reimburse eligible claimants. The County states that under its proposed RRM rate, “*fewer claimants* would be inclined to go to the expense of filing small actual cost claims.” The County acknowledges, however, that some claimants would still choose to file actual cost claims:

According to claiming scenarios developed by the County, under the current 2010-11 POBOR RRM rate structure, 16 claimants would need to file actual cost claims to recover their allowable costs. This compares with half as many or 8 claimants that would need to file actual cost claims to recover their allowable audited costs if the proposed 2010-11 general RRM rate was adopted.¹¹

Based on the County’s evidence and conclusions, then, the RRM alone cannot reasonably reimburse all claimants, and must be coupled with an actual cost claiming option. Therefore, staff finds that the RRM does not balance accuracy with simplicity, as required by section 17557, and does not reimburse all costs mandated by the state, as require by Government Code sections 17514 and 17561 and article XIII B, section 6.

Staff Recommendation

Staff recommends that the Commission adopt the statement of decision denying the request to amend parameters and guidelines, and direct staff to make any technical, non-substantive changes following the hearing.

¹⁰ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3 [emphasis added].

¹¹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Government Code sections 3301, 3303, 3304,
3305, 3306;

Statutes 1976, Chapter 465; Statutes 1978,
Chapters 775, 1173, 1174, 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

County of Los Angeles, Requestor

Case No.: 11-PGA-09 (CSM-4499,
05-RL-4499-01, 06-PGA-06)

Peace Officers 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 May 30, 2014)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision during a regularly scheduled hearing on May 30, 2014. [Witness list will be included in the final statement of 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 the statement of decision to deny the request to amend the parameters and guidelines by a vote of [Vote count will be included in the final statement of decision].

I. BACKGROUND

This request to amend parameters and guidelines for the *Peace Officers Procedural Bill of Rights* program (POBOR) proposes to increase the current unit cost reasonable reimbursement methodology (RRM) adopted March 28, 2008 from \$37.25 per sworn officer to \$169.21 per sworn officer, to reimburse local agencies for all direct and indirect costs of the program. The proposed amended parameters and guidelines also provide for actual cost claiming instead of claiming under the RRM, at the option of each individual claimant in any claim year. The Department of Finance (Finance) opposes the request and challenges the methodology used by the claimant to support the proposed increase in the unit cost RRM.

The POBOR mandate was first adopted November 30, 1999, and approved reimbursement for procedural rights and protections provided by statute to peace officers under interrogation, facing punitive action, or facing an adverse comment in the officer's personnel file. The activities eligible for reimbursement include providing an administrative appeal to an officer subject to certain disciplinary actions, providing notice and transcripts of an interrogation to an officer under investigation or to an officer who is a witness to an investigation, and providing an officer the opportunity to review and respond to adverse comments placed in the personnel file.

On April 26, 2006, the Commission reviewed its original findings pursuant to Legislative direction enacted in Statutes 2005, chapter 72 (AB 138) and adopted a statement of decision on reconsideration (05-RL-4499-01), which revised the activities approved in the prior decision in light of the California Supreme Courts intervening decision in *San Diego Unified School District v. State of California* (2003) 33 Cal.4th 859.¹² On December 4, 2006, the Commission adopted amended parameters and guidelines¹³ pursuant to its April 26, 2006 reconsideration decision and a number of parameters and guidelines amendment requests.¹⁴

On March 28, 2008, the Commission adopted amended parameters and guidelines providing for an RRM in the amount of \$37.25 per sworn officer, to reimburse eligible claimants for all direct and indirect costs of the program. The amended parameters and guidelines also provided an option for each individual claimant to file a reimbursement claim based on actual costs.¹⁵

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, held that the POBOR mandate is not reimbursable to school districts and special districts that are permitted, but not required, to employ peace officers. On May 8, 2009, the Superior Court for the County of Sacramento issued a judgment and writ pursuant to the Third District Court of Appeal's decision, directing the Commission to set aside and issue a new decision and parameters and guidelines consistent with the Court of Appeal's decision.¹⁶ The Commission complied with the writ and amended the parameters and guidelines on July 31, 2009 to omit as eligible claimants school districts, community college districts, and special districts, except for special police protection districts that wholly supplant the law enforcement functions of the county within their jurisdiction.

On March 29, 2012, the County of Los Angeles filed a request to amend the parameters and guidelines to update the RRM and increase reimbursement under the RRM from \$37.25 per sworn officer to \$111.99 per sworn probation officer, and \$152.77 per all other sworn officers.¹⁷ On June 19, 2012, the County, in its response to state agency comments, revised its request to amend parameters and guidelines, consolidating the RRM proposal to \$169.21 for all sworn officers.¹⁸

II. REQUEST TO AMEND

On June 19, 2012, the County submitted a revised request to amend parameters and guidelines, consolidating the RRM proposal to \$169.21 for all sworn officers.¹⁹ The RRM "is still based on measurements of allowed costs per sworn peace officer," and "still incorporates allowable

¹² Exhibit X, Adopted Statement of Decision on Reconsideration, April 26, 2006.

¹³ Exhibit X, Amended Parameters and Guidelines, December 4, 2006.

¹⁴ 05-PGA-18, filed by the County of Los Angeles; 05-PGA-19, filed by the California State Association of Counties; 05-PGA-20, filed by the County of San Bernardino; 05-PGA-21, filed by the State Controller's Office; and 05-PGA-22, filed by the Department of Finance.

¹⁵ Exhibit X, Amended Parameters and Guidelines, March 28, 2008.

¹⁶ Exhibit X, Amended Parameters and Guidelines, July 31, 2009, at pp. 3-4.

¹⁷ Exhibit A, Parameters and Guidelines Amendment Request, at p. 2.

¹⁸ Exhibit C, Revised Request to Amend Parameters and Guidelines, June 19, 2012.

¹⁹ Exhibit C, Revised Request to Amend Parameters and Guidelines, June 19, 2012.

POBOR costs reported in SCO's POBOR audits."²⁰ The County's proposed amendment also preserves the ability of claimants to file actual cost claims.²¹

III. POSITIONS OF THE PARTIES

A. Requestors' Position

The County of Los Angeles proposes to revise the RRM adopted March 28, 2008, from \$37.25 to \$169.21 per sworn peace officer.²²

The County asserts that "[t]his revision was prompted by the recent availability of a large sample of audited allowable POBOR costs and an analysis that found that the average of the sampled values resulted in substantially greater RRM reimbursement rates than those currently available to eligible claimants."²³

The County asserts that "[t]he development of the updated RRM closely follows the procedures and assumptions the County used in developing the prior POBOR RRM."²⁴ Under the proposed amended parameters and guidelines, "claimants would be able to file reimbursement [claims] using either an RRM option or an actual cost option, as is the case now."²⁵ The County characterizes its proposal as an "update" of the current RRM because the proposal "is still based on measurements of allowed costs per sworn peace officer," and "still incorporates allowable POBOR costs reported in SCO's POBOR audits."²⁶

The County asserts that "[a]ccording to a recent POBOR RRM rate study performed by the California State Association of Counties (CSAC)...current RRM reimbursement rates were found to be inaccurate." The CSAC study concluded that "the updated POBOR RRM rate for 2010-2011 should be \$193.91 per officer," and that "claimants electing to use the RRM claiming option were underpaid[,]...receiving only 21% of the reimbursement due them."²⁷ CSAC arrived at the 21 percent figure by dividing current RRM by its proposed updated rate of \$193.91.²⁸

The County asserts that its RRM rate update study "was prompted by the promising results from the CSAC study." However, while the CSAC study excluded from its updated rate those audited claims in which less than 10 percent of claimed costs were allowable, the County did not exclude those claims. The County, "upon SCO's recommendation," only excluded from its rate study "8 findings of no allowable costs."²⁹ The County argues that this approach is consistent with the

²⁰ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²¹ Exhibit A, Request to Amend Parameters and Guidelines.

²² Exhibit C, Revised Request to Amend Parameters and Guidelines, at pp. 2; 28.

²³ Exhibit A, Request to Amend Parameters and Guidelines, at p. 2.

²⁴ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²⁵ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²⁶ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²⁷ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²⁸ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²⁹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

methodology of the current RRM, and submits evidence that the current RRM was based on an average of allowable costs, and therefore excluded from the per-officer rate calculation those claims in which costs were reduced to zero pursuant to audit.³⁰ Accordingly, the County states that its RRM rate update study relied on a sample of 31 jurisdictions, while the CSAC studies relied on only 19 sample values, and found that “claimants electing to use the RRM claiming option...were receiving only 27% of the reimbursement due them.”³¹ This conclusion also was based on comparing the current RRM rate to the proposed updated rate.³²

The County asserts that an “update of the current POBOR RRM is now necessary as it has been four years since it was last studied and adopted.”³³ The County asserts that it has collaborated with the State Controller’s Office (SCO) to develop the current RRM proposal: “SCO provided the County with schedules of allowable cost audit findings which were then incorporated in the County’s computation of updated RRM rates.”³⁴ The County further asserts that it included “each year in a jurisdiction’s audit period as a sample value,” resulting in 115 sample values.³⁵

The County asserts that “[i]n addition to providing POBOR claimants electing to use the POBOR RRM claiming option with the full amount due them, there are other benefits to adopting the proposed rates.” Specifically, the County asserts that under the current RRM, “121 cities and counties which have less than 25 sworn peace officers, cannot meet the \$1,000 minimum requirement to file a RRM reimbursement claim.” The County further asserts that “[i]t is also unlikely that these small agencies will be able or willing to file small actual cost claims requiring extensive documentation.”³⁶

Under the County’s proposed updated RRM, “only 13 of the (above) 121 cities and counties, which have less than 7 officers, would not be able to meet the \$1,000 minimum requirement to file a RRM reimbursement claim.” The County further maintains that “under the proposed RRM rate structure, fewer claimants would be inclined to go to the expense of filing small actual cost claims, resulting in savings to local government.” And, the County asserts, “the State would have fewer actual cost claims to audit and review, resulting in savings to the State.” The County finds that “under the current 2010-11 POBOR RRM rate structure, 16 claimants would need to file actual cost claims to recover their allowable costs,” while “half as many or 8 claimants...would need to file actual cost claims to recover their allowable audited costs if the proposed [updated] RRM rate was adopted.”³⁷

³⁰ Exhibit C, Revised Request to Amend Parameters and Guidelines, at pp. 3; 13.

³¹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

³² Exhibit A, Request to Amend Parameters and Guidelines, at p. 4, fn. 6.

³³ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

³⁴ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

³⁵ Exhibit C, Revised Request to Amend Parameters and Guidelines, at p. 4.

³⁶ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

³⁷ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

The County therefore concludes that “based on new samples of allowable cost audit findings, adoption of the proposed 2010-11 POBOR RRM reimbursement rate of \$169.21 per sworn peace officer is required.”³⁸

B. Department of Finance Position

On May 18, 2012, Finance submitted written comments on the County’s request to amend the parameters and guidelines.³⁹ Finance argues in its comments that the County’s methodology is flawed, in that the County excluded “eight eligible local agencies that did not have any allowable costs due to audit exceptions from the formula used to calculate the proposed RRM rate.” Finance argues that the prior RRM rates included eligible local agencies that were found to have zero allowable costs due to audit exceptions, and asserts that the prior method appropriately captured the variation of costs among eligible local agencies.⁴⁰

IV. DISCUSSION

The County proposes to amend Section V. of the parameters and guidelines to increase the RRM rate based on new evidence of the average costs of complying with the mandate. The following analysis will examine the statutory and constitutional requirements of an RRM, and then apply those requirements in considering whether the County has presented substantial evidence which would support a legally sufficient Commission decision to amend the parameters and guidelines as requested.

A. Reasonable Reimbursement Methodology (Section V. of Parameters and Guidelines)

1. The purpose of an RRM is to reimburse local government efficiently and simply, with minimal auditing and documentation required.

Article XIII B, section 6 provides: “[w]henver 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 [with exceptions not applicable here]...” This reimbursement obligation was “enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources.”⁴¹ Section 17561(a) states: “[t]he state *shall* reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514.” (Emphasis added.) The courts have interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.⁴²

³⁸ Exhibit C, Revised Request to Amend Parameters and Guidelines, at p. 4.

³⁹ Exhibit B, Finance Comments on Request to Amend, May 18, 2012.

⁴⁰ Exhibit B, Finance Comments on Request to Amend Parameters and Guidelines, at p. 1.

⁴¹ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

⁴² *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a

The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.⁴³ Prior section 17557 provided authority for the Commission, extending back to 1984, to “adopt an allocation formula or uniform allowance.”⁴⁴ The current version of section 17557 provides, and has, since 2004, that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider [an RRM] that balances accuracy with simplicity.”⁴⁵

Express statutory authority for the adoption of an RRM was originally enacted in 2004, and was amended in 2007 to promote greater flexibility in adoption of an RRM.⁴⁶ The former section 17518.5 provided that an RRM must “meet 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.⁴⁷

In a 2007 report, the Legislative Analyst’s Office (LAO) stated that an RRM is intended to reduce local and state costs to file, process, and audit claims; and reduce disputes regarding mandate reimbursement claims and the SCO’s audit reductions. The report identifies, under the heading “Concerns With the Mandate Process,” the difficulties under the statutes then-in-effect:

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or “parameters and guidelines”) typically require local governments to document their actual costs to carry out each element of the mandate.

manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

⁴³ Government Code section 17500 et seq.

⁴⁴ Government Code section 17557 (Stats. 1984, ch. 1459).

⁴⁵ Government Code section 17557 (Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)).

⁴⁶ Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

⁴⁷ Government Code section 17518.5 (Stats. 2004, ch. 890 § 6 (AB 2856)).

- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller’s Office.

The LAO’s recommendation to address these issues was to:

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute...⁴⁸

The LAO’s recommendations were implemented in Statutes 2007, chapter 329 (AB 1222) which currently defines an RRM as follows:

(a) “Reasonable reimbursement methodology” means a formula for reimbursing local agencies 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 costs

(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.⁴⁹

Thus, Government Code section 17518.5, as amended in 2007, eliminates both the prior rule that 50 percent of eligible claimants have their costs fully offset, and the rule that the total amount to

⁴⁸ Exhibit X, “State-Local Working Group Proposal to Improve the Mandate Process,” Legislative Analyst’s Office, June 21, 2007, page 3. See also, Assembly Bill Analysis of AB 1222 (2007), concurrence in Senate Amendments of September 4, 2007 [purpose of RRM process is to “streamline the documentation and reporting process for mandates”]; *Kaufman & Broad Communities, Inc. v. Performance Plastering* (Cal. Ct. App. 3d Dist. 2005) 133 Cal.App.4th 26, at pp. 31-32 [Reports of the Legislative Analyst’s Office may properly be considered, as legislative history, to determine the legislative intent of a statute].

⁴⁹ Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

be reimbursed under an RRM must be equivalent to the total statewide cost estimate. These objective requirements have been replaced with a more flexible definition, which focuses on the sources of the information used to develop an RRM,⁵⁰ and only requires that the end result “balances accuracy with simplicity.” Given the LAO’s “Concerns with the Mandates Process” to which the amendments were addressed, the new statute should also be interpreted as imposing less stringent requirements for documentation of costs, and less burdensome measuring of the marginal costs of higher levels of service.⁵¹

As noted above, an RRM “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 other local costs*.”⁵² Section 1183.131 of the Commission’s regulations provides that a proposed RRM “shall include any documentation or *assumption relied upon* to develop the proposed methodology.”⁵³ The statute does not provide for a minimum number of claimants to constitute a representative sample; accordingly, the regulations provide that a “‘representative sample of eligible claimants’ does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.”⁵⁴ The statute provides that an RRM “[w]henver possible... 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 costs.”⁵⁵ There is no requirement that the data upon which an RRM is based include actual cost claims, or audited data, or otherwise be verified; an “approximation” is sufficient. The section expressly provides for an RRM as an alternative to the requirement for detailed documentation of actual costs.⁵⁶

Additionally, section 17518.5(c) provides that an RRM “shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” There is no requirement that an RRM *mitigate or eliminate* cost variation among local government claimants. And finally, section 17557 provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity*.”

Based on the foregoing, the Commission finds that the primary requirements for the development of an RRM are to consider variation in costs among local government claimants, and to ensure that the RRM balances accuracy with simplicity and reasonably reimburses eligible claimants for costs mandated by the state.

⁵⁰ Government Code section 17518.5 (as amended, Stats. 2007, ch. 329 (AB 1222)).

⁵¹ *Kaufman & Broad Communities, supra*, 133 Cal.App.4th 26, at pp. 31-32 [LAO reports may be relied upon as evidence of legislative history].

⁵² Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

⁵³ Register 2008, number 17.

⁵⁴ Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

⁵⁵ Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

⁵⁶ See Exhibit X, Assembly Floor Analysis, AB 1222 [“Establishes a streamlined alternative state mandate reimbursement process...”].

2. Substantial evidence in the record does not support a finding that the proposed RRM is consistent with the Constitutional and statutory requirements, and reasonably represents the costs of the mandate.

An RRM is meant to be based on an *approximation* of local costs, and need not precisely reimburse every actual dollar expended on the program. However, an RRM must be reasonable; satisfying the statutory requirements of an RRM is not the end of the inquiry. Ever present is the constitutional requirement that the end result must *reasonably represent* the costs mandated by the state for the program, as required by article XIII B, section 6; and substantial evidence, as discussed below, must support the Commission's decision to adopt an RRM.

Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under 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."⁵⁷ Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;⁵⁸ and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁵⁹

The California Supreme Court has stated that "[o]bviously the word [substantial] cannot be deemed synonymous with 'any' evidence."⁶⁰ Moreover, substantial evidence is not submitted by a party; it is a standard of review, which requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if those findings are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is "obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor."⁶¹

The evidence required to adopt an RRM is necessarily more relaxed than that required to approve reimbursement for actual costs because the statute employs terms like "projections" and "approximations".⁶² When the Legislature added section 17518.5 to the Government Code, however, it did not change the existing requirement in section 17559 that all of the Commission's findings be based on substantial evidence in the record. Neither did the enactment of a new statutory definition for an RRM alter the underlying constitutional requirement that the state must reimburse all costs mandated by the state.⁶³ Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole.⁶⁴ Thus, the plain language of the statutory and regulatory

⁵⁷ Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

⁵⁸ *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5th Dist. 1998) 202 Cal.App.3d 791, at p. 805.

⁵⁹ *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

⁶⁰ *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

⁶¹ *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

⁶² See Government Code 17518.5].

⁶³ *CSBA II, supra* 192 Cal.App.4th 770, 786.

⁶⁴ *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

mandates scheme, undergirded by the reimbursement requirement of the California Constitution, permits an RRM to be adopted on the basis of a number of different types of evidence or approximations, but requires substantial evidence in the record to support the adoption of an RRM, and requires the adopted RRM to reasonably reimburse local government for all costs mandated by the state.

Here, the County has proposed an amendment to the parameters and guidelines that preserves the option for actual cost claiming, but also “updates” the RRM for all eligible claimants from \$37.25 to \$169.21 per sworn peace officer employed for all direct and indirect costs of the program. The County states that this proposed rate is based on 115 audited cost claims from 31 jurisdictions over multiple claim years, and excludes claims that were reduced to zero pursuant to an audit. The data also excludes, by definition, any jurisdictions that did not file actual cost claims, but instead relied on the level of reimbursement provided under the existing \$37.25 RRM. The County states that the SCO assisted the County by providing “accurate schedules of allowable costs,”⁶⁵ and that both Finance and the SCO agree “that a single POBOR RRM rate for all eligible peace officers, including probation officers, is preferable.”⁶⁶

- i. *The proposed RRM rate does not consider the variation in local costs to implement the mandate in a cost-efficient manner.*

As discussed above, one of only two *express statutory requirements* for adoption of an RRM is that the RRM must “consider the variation in costs among local agencies...to implement the mandate in a cost-efficient manner.” The meaning of “cost-efficient” has generated continuing discussion among the claimant community and state agencies; as has the question of whether variation in the local costs to implement a mandate could ever be wide enough to render an RRM proposal inappropriate to the mandated program. As discussed above, the initial enactment and subsequent amendment of section 17518.5 evidence the Legislature’s intent that reimbursement under an RRM may be based on a wide range of costs and still satisfy the Constitution, as long as the RRM reasonably represents the costs mandated by the state. Moreover, the plain language of section 17518.5 does not require an RRM proposal to “mitigate” or “address” variation in costs among local government; nor does it suggest that “cost-efficient” implementation means the least expensive implementation possible. However, an RRM proposal that does not “consider” the variation in costs among local government, and provides for excessive or unreasonable reimbursement, does not satisfy the statute and cannot be supported.

For the reasons below, the Commission finds that the County’s proposal does not consider the variation in costs among local agencies, because the data excludes agencies that filed reimbursement claims using the \$37.25 per officer RRM, and therefore, the proposed RRM is skewed toward those local agencies that experienced higher costs to comply with the mandate, thus making the filing for reimbursement for actual costs in their financial interest.

The County’s RRM proposal is based 115 sample values of allowable costs from 31 jurisdictions over a period of years. In developing its RRM proposal, the County states that “[a]llowable cost findings from 39 SCO POBOR audits were examined...[and] upon SCO’s recommendation, 8 findings of no allowable costs were excluded from samples used to compute allowable cost

⁶⁵ Exhibit A, Parameters and Guidelines Amendment Request, at p. 2.

⁶⁶ Exhibit C, Revised Parameters and Guidelines Amendment Request, at p. 2.

averages.”⁶⁷ In response to comments from Finance, the County’s revised proposal incorporated data from each jurisdiction’s entire audit period, and incorporated data pertaining to probation department costs under the mandate.⁶⁸ The County’s RRM proposal still excludes cost claims that were reduced to zero pursuant to the SCO’s audits. In this respect, excluding zero claims is consistent with the methodology used for the prior RRM adopted by the Commission.⁶⁹

However, the sample data available from the SCO (a data set consisting of audited actual cost claims over a period of years) also excludes agencies that experienced sufficiently low costs to make reimbursement under the \$37.25 RRM appropriate, or agencies for which it was not cost-effective to file a claim at all.⁷⁰ Due to the expense and effort required to file actual cost claims under the POBOR mandate,⁷¹ some claimants that experienced costs roughly in line with the level of reimbursement that they would receive under the RRM would likely opt to file an RRM claim. Others (the County alleges approximately 120 jurisdictions) may not have been able to file under the RRM due to a small number of sworn officers employed, and may not have attempted to file an actual cost claim, whether or not they experienced mandated costs in a given year.⁷² The use of audited claim data from only those jurisdictions that filed actual cost claims very likely excludes smaller, less-expensive jurisdictions, and necessarily excludes jurisdictions that filed for reimbursement under the RRM.

Furthermore, the County asserts that it utilized the same methodology as the current RRM.⁷³ But the procedures used in developing the current RRM were applied to a subset of cost claims from *all claimants* and, here, the sample comes from only those that chose to file higher actual cost claims rather than utilize the \$37.25 per officer RRM. At the time the current RRM was proposed and adopted, all claimants filing for reimbursement under the POBOR mandate were required to file actual cost claims; no RRM option was previously available. Those claims were often found, pursuant to SCO audits, to include ineligible costs, or to provide inadequate supporting documentation, and so the current POBOR RRM was developed on the basis of audited claims from the pool of all jurisdictions that filed actual cost claims over a period of years.⁷⁴ Now, eligible claimants have an option to file under the RRM, and presumably some claimants have chosen that option during the audit period.⁷⁵ Now, the County proposes to develop an updated RRM rate on the basis of audited cost claims, as was done before, but those claims will necessarily be skewed toward agencies that see fit to file actual cost claims instead of utilizing the RRM.

⁶⁷ Exhibit A, Request to Amend Parameters and Guidelines Amendment, at pp. 4; 14.

⁶⁸ Exhibit C, Revised Parameters and Guidelines Amendment Request, at p. 2.

⁶⁹ Exhibit C, Revised Request to Amend Parameters and Guidelines, at p. 13.

⁷⁰ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

⁷¹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

⁷² Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

⁷³ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3 [emphasis added].

⁷⁴ See Exhibit X, Statement of Decision on POBOR PGA, March 28, 2008, at p. 13.

⁷⁵ See Exhibit X, Statement of Decision on POBOR PGA, March 28, 2008, at pp. 14-15.

Therefore, because the data include only those jurisdictions that filed actual cost claims, which can be expected to be the jurisdictions experiencing the highest costs, the RRM proposal does not “consider the variation in costs among local agencies,” as required by section 17518.5.

Based on the evidence in the record, the Commission finds that there is not substantial evidence that the County’s RRM proposal considers the variation in costs among local government claimants to implement the mandate in a cost efficient manner, and therefore the RRM must be denied.

ii. The proposed RRM rate does not balance accuracy with simplicity, and does not reasonably reimburse all costs mandated by the state.

As discussed above, one of the requirements for an RRM is that it “balances accuracy with simplicity.”⁷⁶ Underlying this requirement, however, is that an RRM must reasonably represent the costs mandated by the state by all eligible claimants. Section 17561(a) states: “[t]he state shall reimburse each local agency and school district for all ‘costs mandated by the state,’ as defined in Section 17514.” Government Code section 17514, in turn, defines “costs mandated by the state” as any increased cost incurred as a result of any state statute or executive order that mandates a new program or higher level of service. The courts have interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.⁷⁷

The Commission finds, based on the following analysis, that the proposed amendment to the parameters and guidelines does not reasonably represent the costs mandated by the state by all local agencies and does not balance accuracy with simplicity.

The proposed RRM rate, as explained above, is based on sample data from those eligible claimants that chose to file actual cost claims, rather than file under the existing RRM. Therefore the data, as a practical matter, are skewed toward those agencies that had higher actual costs than the reimbursement provided under the RRM, and made the calculated decision to file actual cost claims. While it may be that claimants filing under the RRM are underpaid, as suggested by the County, the County’s study of actual cost claims does not provide reliable evidence in itself to substantiate the extent to which the RRM is inadequate, because the actual costs of those claimants that accepted reimbursement under the RRM are not known and were not considered.

Moreover, even if the current RRM does not adequately compensate claimants, and even if a number of cities and counties cannot meet the statutory minimum \$1000 threshold for filing a

⁷⁶ Government Code section 17557 (Stats. 2010, ch. 719 (SB 856)).

⁷⁷ *CSBA v. State of California (CSBA II)* (2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.” See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

claim for reimbursement, those deficiencies do not support continuing the dual claiming structure proposed by the County. In fact, perpetuating the actual cost claiming option only serves to show that the County believes that the “updated” RRM will still be inadequate to fully reimburse eligible claimants. The County states that under its proposed RRM rate, “*fewer claimants* would be inclined to go to the expense of filing small actual cost claims.” The County acknowledges, however, that some claimants would still choose to file actual cost claims:

According to claiming scenarios developed by the County, under the current 2010-11 POBOR RRM rate structure, 16 claimants would need to file actual cost claims to recover their allowable costs. This compares with half as many or 8 claimants that would need to file actual cost claims to recover their allowable audited costs if the proposed 2010-11 general RRM rate was adopted.⁷⁸

Based on the County’s evidence and conclusions, then, the RRM alone cannot reasonably reimburse all claimants, and must be coupled with an actual cost claiming option. Therefore, the Commission finds that the RRM does not balance accuracy with simplicity, as required by section 17557, and does not reimburse all costs mandated by the state, as require by Government Code sections 17514 and 17561 and article XIII B, section 6.

V. CONCLUSION

The proposed amendments to the parameters and guidelines are denied.

⁷⁸ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On March 28, 2014, I served the:

**Draft Staff Analysis and Proposed Parameters and Guidelines Amendments,
Schedule for Comments, and Notice of Hearing**

Peace Officers Procedural Bill of Rights, 11-PGA-09
Government Code Sections 3301 et al.
County of Los Angeles, 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 28, 2014 at Sacramento, California.



Heidi J. Palchik
Commission on State Mandates
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(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/23/14

Claim Number: 11-PGA-09

Matter: Peace Officers Procedural Bill of Rights (POBOR) (CSM-4499, 05-RL-4499-01, 06-PGA-06)

Requester: County of Los Angeles

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, § 1181.2.)

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