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GOVERNOR



# STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

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## REPORT TO THE LEGISLATURE: APPROVED MANDATE CLAIMS

July 1, 2018 – December 31, 2018

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## I. INTRODUCTION

### Commission on State Mandates

#### Test Claim Process

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. To implement article XIII B, section 6, the Legislature created the Commission on State Mandates (Commission) to succeed the State Board of Control in making determinations whether new statutes or executive orders are state-mandated programs.<sup>1</sup> The Commission was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. The Commission provides the sole and exclusive procedure for local agencies and school districts (claimants) to resolve disputes over the existence of state-mandated local programs and costs mandated by the state. The Commission is required to hear and decide claims (test claims) filed by local agencies and school districts that they are entitled to be reimbursed by the state for costs mandated by the state.<sup>2</sup>

#### Parameters and Guidelines

Government Code section 17557 provides that if the Commission determines that a statute or executive order imposes a mandate upon local agencies and school districts, the Commission is required to determine the amount to be subvended to local agencies and school districts for reimbursement by adopting parameters and guidelines. In adopting parameters and guidelines, the Commission may adopt a reasonable reimbursement methodology (RRM). Once parameters and guidelines are adopted, the Commission is required to adopt a statewide cost estimate for the mandated program (Gov. Code, § 17553).

#### Alternative Processes

Government Code section 17557.1 and 17557.2 provide an alternate process for determining the amount to be subvended for mandated programs. Under 17557.1, local governments and the Department of Finance may jointly develop reasonable reimbursement methodologies (RRMs) and statewide estimates of costs for mandated programs for approval by the Commission in lieu of parameters and guidelines and statewide cost estimates. Government Code section 17557.2 requires that joint RRMs have broad support and, if approved, they remain in effect for five years unless otherwise specified. Jointly developed RRMs and statewide estimates of costs that are approved by the Commission are included in the Commission's Annual Reports to the Legislature. To date, only one jointly developed RRM has ever been approved and it expired and was not extended by the parties so the Commission adopted parameters and guidelines for that program.

Government Code sections 17572 and 17573 provide another alternative process where the Department of Finance and local agencies, school districts, or statewide associations may jointly request that the Legislature determine that a statute or executive order imposes a state-mandated program, establish a reimbursement methodology, and appropriate funds for reimbursement of costs. This process is intended to bypass the Commission's test claim process, thus providing the Commission with more time to complete the caseload backlog. To date, this process has not been successfully utilized.

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<sup>1</sup> Statutes 1984, chapter 1459, Government Code section 17500, et seq.

<sup>2</sup> Government Code section 17551.

## **Report to the Legislature**

The Commission is required to report to the Legislature at least twice each calendar year on the number of mandates it has found, the estimated statewide costs of each mandate, and the reasons for recommending reimbursement.<sup>3</sup> In 2010, SB 894 (Stats. 2010, ch. 699) was enacted to require the Commission to expand its Report to the Legislature to include:

- The status of pending parameters and guidelines that include proposed reimbursement methodologies.
- The status of pending joint proposals between the Department of Finance and local governments to develop reasonable reimbursement methodologies in lieu of parameters and guidelines.
- The status of joint proposals between the Department of Finance and local governments to develop legislatively-determined mandates.
- Any delays in the completion of the above-named caseload.

This report fulfills these requirements.

## **Legislative Analyst**

After the Commission submits its report to the Legislature, the Legislative Analyst is required to submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the Commission's reports. The Legislative Analyst's report shall make recommendations as to whether each mandate should be repealed, funded, suspended, or modified.

## **The Legislature**

Upon receipt of the report submitted by the Commission pursuant to Government Code Section 17600, funding shall be provided in the subsequent Budget Act for costs incurred in prior years. No funding shall be provided for years in which a mandate is suspended.<sup>4</sup>

The Legislature may amend, modify, or supplement the parameters and guidelines, reasonable reimbursement methodologies, and adopted statewide estimates of costs for the initial claiming period and budget year for mandates contained in the annual Budget Act. If the Legislature amends, modifies, or supplements the parameters and guidelines, reasonable reimbursement methodologies, or adopted statewide estimates of costs for the initial claiming period and budget year, it shall make a declaration in separate legislation specifying the basis for the amendment, modification, or supplement.<sup>5</sup>

## **Mandate Funding Provisions**

If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.<sup>6</sup> Under Proposition 1A, which amended article XIII B, section 6 of the California Constitution, city, county, city and county, or special district mandate claims for costs incurred

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<sup>3</sup> Government Code section 17600.

<sup>4</sup> Government Code section 17612(a).

<sup>5</sup> Government Code section 17612(b).

<sup>6</sup> Government Code section 17612(c).

prior to the 2004-2005 fiscal year that have not been paid prior to the 2005-2006 fiscal year may be paid over a term of years, as prescribed by law. However, for the 2005-2006 fiscal year and every subsequent fiscal year, the Constitution now requires the Legislature to either appropriate in the annual Budget Act the full payable amount that has not been previously paid or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable.

If payment for an initial reimbursement claim is being made more than 365 days after adoption of the statewide cost estimate, the State Controller’s Office (Controller) shall include accrued interest at the Pooled Money Investment Account rate.<sup>7</sup>

If the amount the Legislature appropriates is insufficient to pay all of the reimbursement claims filed and approved for reimbursement, the Controller will prorate the claims.<sup>8</sup> If the funds to cover the remaining deficiency are not appropriated in the Budget Act, the Controller shall report this information to the legislative budget committees and the Commission.

**II. NO STATEWIDE COST ESTIMATES HAVE BEEN ADOPTED IN THE REPORTING PERIOD**

No Statewide Cost Estimates (SCEs) were adopted during the period of July 1, 2018 through December 31, 2018, and therefore there are no new mandates that are required to be funded at this time.

**III. PENDING PARAMETERS AND GUIDELINES, REQUESTS TO AMEND PARAMETERS AND GUIDELINES, AND STATEWIDE COST ESTIMATE CASELOAD**

Following are tables showing parameters and guidelines, requests to amend parameters and guidelines, and statewide cost estimates that are pending Commission determination. A request to include an RRM in parameters and guidelines or amendments thereto is a request made by a local entity claimant, an interested party, Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5 – which is distinct from the jointly proposed RRM, discussed above under “Alternative Processes.” There are no pending RRMs.

**A. Pending Parameters and Guidelines**

	<b>Program</b>	<b>Status</b>
1.	<i>Discharge of Stormwater Runoff, 07-TC-09*</i>	Inactive pending court action.
2.	<i>U Visa 918 Form, Victims of Crime: Nonimmigrant Status, 17-TC-01*</i>	Set for hearing on January 25, 2019

\* Local agency programs

† School district or community college district programs

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<sup>7</sup> Government Code section 17561.5(a).

<sup>8</sup> Government Code section 17567.

**B. Pending Requests to Amend Parameters and Guidelines**

	<b>Program</b>	<b>Status</b>
1.	<i>Graduation Requirements, 11-PGA-03 (CSM-4435)†</i>	Inactive pending court action.

\* Local agency programs

† School district or community college district programs

**C. Pending Statewide Cost Estimates**

	<b>Program</b>	<b>Status</b>
1.	<i>Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21*</i>	Inactive pending court action.
2.	<i>Cal Grant: Opt-Out Notice and Grade Point Average Submission, 16-TC-02†</i>	Tentatively scheduled for hearing on March 22, 2019
3.	<i>Local Agency Employee Organizations: Impasse Procedures II, 16-TC-04*</i>	Tentatively scheduled for hearing on July 26, 2019

\* Local agency programs

† School district or community college district programs

**IV. THERE ARE NO PENDING JOINT REASONABLE REIMBURSEMENT METHODOLOGIES OR LEGISLATIVELY-DETERMINED MANDATES AND HENCE, NO DELAYS IN THE PROCESS**

There are no currently pending joint reasonable reimbursement methodologies or legislatively determined mandates.

Government Code section 17600 requires the Commission to report any delays in the process for joint RRM or LDMs being developed by Department of Finance and local entities and for RRM proposed by any party pursuant to Government Code section 17518.5. There are currently no pending joint RRM, LDM, or RRM proposed by any party. Therefore, there are no delays in these processes.

With regard to RRM included in parameters and guidelines amendments pursuant to Government Code sections 17557 and 17518.5, there are currently no pending parameters and guidelines or amendments thereto containing RRM.

There are currently 44 pending test claims, 39 of which are regarding National Pollutant Discharge Elimination System (NPDES) permits for municipal stormwater systems. In 2010, the then pending 14 NPDES claims were placed on inactive status pending court action. However, all pending test claims are active now that the California Supreme Court issued its decision on August 29, 2016 in *Department of Finance v. Commission on State Mandates* (County of Los Angeles) on the issue of whether the NPDES permits issued in those cases by the regional water quality control boards imposed state or federal mandates. However, there is significant litigation still pending on several issues relevant to the determination of the pending NPDES claims which are now tentatively set for hearing through March 2024. As a result, there is once again a test claim backlog. The stormwater permit claims will take substantially longer to prepare for hearing than test claims generally do, because of the large, complex, and detailed records and mixed issues of fact and law that must be analyzed and due to the potential impact of currently pending litigation on several of the legal issues to be determined. These claims have records of up to 200,000 pages and growing.

Because statewide cost estimates (which must be preceded by test claim and parameters and guidelines decisions) have a statutory deadline of 12-18 months from the filing of the test claim for completion, they, along with test claims and parameters and guidelines, will generally be prepared for hearing prior to other matters, including RRM in parameters and guidelines amendments. Thus, to promptly hear and decide matters without a statutory deadline, such as parameters and guidelines amendment proposals, mandate redetermination requests, and incorrect reduction claims, it is necessary that the Commission operate without a backlog of test claims, parameters and guidelines, or statewide cost estimates.