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GOVERNOR



STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: APPROVED MANDATE CLAIMS

January 1, 2012 – July 31, 2012

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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.¹ 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 claim reimbursement for costs mandated by the state as required by article XIII B, section 6 of the California Constitution. 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.²

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 subvented 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 of the mandated program (Gov. Code, § 17553).

Alternative Processes

In 2007, AB 1222 (Statutes 2007, chapter 329) was enacted to provide an alternate process for determining the costs of mandated programs. Under AB 1222, local governments and the Department of Finance may jointly develop reasonable reimbursement methodologies and statewide estimates of costs for mandated programs for approval by the Commission in lieu of parameters and guidelines and statewide cost estimates. Jointly developed reimbursement methodologies and statewide estimates of costs that are approved by the Commission are included in the Commission's Annual Reports to the Legislature.

AB 1222 also provided a 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, thus providing the Commission with more time to complete the caseload backlog.

¹ Statutes 1984, chapter 1459, Government Code section 17500, et seq.

² 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.³ 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 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.⁴

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.⁵

Mandate Funding Provisions

The Government Code provides that 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.⁶ Under Proposition 1A, which amended article XIII B, section 6 of the California Constitution, city, county, city and county, or special district

³ Government Code section 17600.

⁴ Government Code section 17612(a).

⁵ Government Code section 17612(b).

⁶ Government Code section 17612(c).

mandate claims for costs incurred 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 (SCO) shall include accrued interest at the Pooled Money Investment Account rate.⁷

If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the SCO will prorate the claims.⁸ If the funds to cover the remaining deficiency are not appropriated in the Budget Act, the SCO shall report this information to the legislative budget committees and the Commission.

II. NEW MANDATES

The following table shows the statewide cost estimate that was adopted during the period of January 1, 2012 through July 31, 2012.

**Statewide Cost Estimate (SCE) Adopted
During the Period of January 1, 2012 through July 31, 2012**

			<i>Estimated Costs</i>		
Date SCE Adopted	Test Claim and Claim No.	Period of Reimbursement (Fiscal Years)	Education	Non-Education	Totals
5/25/12	<i>Mandate Reimbursement Process II, 05-TC-05</i>	7/1/05 – 6/30/11	\$0	\$0	\$0 ⁹
TOTAL			\$0	\$0	\$0

III. PENDING PARAMETERS AND GUIDELINES, AMENDMENTS, AND STATEWIDE COST ESTIMATE CASELOAD

Following are tables showing parameters and guidelines, parameters and guidelines with proposed reasonable reimbursement methodologies (RRMs), requests to amend parameters and guidelines, requests to amend parameters and guidelines with proposed RRM, 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. These requests are often disputed by one or more of the parties and interested parties.

⁷ Government Code section 17561.5(a).

⁸ Government Code section 17567.

⁹ All costs claimed for this program were excluded from the statewide cost estimate because they were incorrectly claimed. In addition, there will be no costs claimed for fiscal years 2010-2011 through 2012-2013 because the Legislature suspended this program for those fiscal years.

A. Pending Parameters and Guidelines

	Program	Status
1.	<i>Public Contracts (K-14)</i> , 02-TC-35†	Set for hearing on September 28, 2012
2.	<i>Discrimination Complaint Procedures</i> , 02-TC-46*	Set for hearing on September 28, 2012
3.	<i>Charter Schools IV</i> , 03-TC-03†	Set for hearing on September 28, 2012
4.	<i>Local Agency Ethics</i> , 07-TC-04*	Set for hearing on September 28, 2012
5.	<i>Tuberculosis Control</i> , 03-TC-14*	Tentatively set for hearing on December 7, 2012
6.	<i>Peace Officer Procedural Bill of Rights II</i> , 03-TC-18*	Tentatively set for hearing on May24, 2013
7.	<i>Minimum Conditions for State Aid</i> , 02-TC-25 & 02-TC-31†	Tentatively set for hearing on December 7, 2012
8.	<i>California Public Records Act</i> , 02-TC-10 & 02-TC-51,*†	Tentatively set for hearing on January 25, 2013
9.	<i>Discharge of Stormwater Runoff</i> , 07-TC-09*	No hearing date pending court action

* Local agency programs † School district or community college district programs

B. Pending Parameters and Guidelines with Proposed RRM

	Program	Status
1.	<i>Behavioral Intervention Plans</i> , CSM-4464†	Tentatively set for hearing on December 7, 2012
2.	<i>Interagency Child Abuse and Neglect (ICAN) Investigation Reports</i> , 00-TC-22*	Tentatively set for hearing on December 7, 2012

* Local agency programs † School district or community college district programs

C. Pending Requests to Amend Parameters and Guidelines

	Program	Status
1.	<i>Handicapped and Disabled Students, Handicapped and Disabled Students II, Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services</i> , 11-PGA-06 (04-RL-4282-10, 02-TC-40, 02-TC-49, 97-TC-05)*	Set for hearing on September 28, 2012
2.	<i>Interdistrict Attendance</i> , 10-PGA-01 (CSM-4442)†	Set for hearing on September 28, 2012
3.	<i>Notification of Truancy</i> , 11-PGA-01 (CSM-4133)†	Tentatively set for hearing on July 26, 2013
4.	<i>Graduation Requirements</i> , 11-PGA-03 (CSM-4435)†	Inactive status pending court action

* Local agency programs † School district or community college district programs

D. Pending Requests to Amend Parameters and Guidelines with Proposed RRM's

	Program	Status
1.	<i>Habitual Truants</i> , 01-PGA-06, (CSM-4487)†	Tentatively set for hearing on December 7, 2012
2.	<i>Habitual Truants</i> , 09-PGA-01, 01-PGA-06 (CSM-4487)†	Tentatively set for hearing on December 7, 2012
3.	<i>Enrollment Fee Collection and Waivers</i> , 08-PGA-02 (99-TC-13 & 00-TC-15)†	Tentatively set for hearing on January 25, 2013
4.	<i>Crime Statistics Reports for Department of Justice</i> , 10-PGA-05 (02-TC-04, 02-TC-11, 07-TC-10)*	Tentatively set for hearing on March 22, 2013
5.	<i>Peace Officer Procedural Bill of Rights (POBOR)</i> 10-PGA-06 (CSM-4499)*	Tentatively set for hearing on May 24, 2013
6.	<i>Peace Officer Procedural Bill of Rights (POBOR)</i> , 11-PGA-09 (CSM-4499, 05-RL-4499-01, 06-PGA-06) *	Tentatively set for hearing on May 24, 2013
7.	<i>Domestic Violence Background Check</i> , 11-PGA-10 (01-TC-29)*	Tentatively set for hearing on September 27, 2013
8.	<i>Identity Theft</i> , 11-PGA-11 (03-TC-08)*	Tentatively set for hearing on December 6, 2013

* Local agency programs † School district or community college district programs

E. Pending Statewide Cost Estimates

	Program	Status
1.	<i>Identity Theft</i> , 03-TC-08*	Set for hearing on September 28, 2012
2.	<i>Permanent Absent Voter II</i> , 03-TC-11*	Set for hearing on September 28, 2012
3.	<i>Modified Primary Elections</i> , 01-TC-13*	Set for hearing on September 28, 2012
4.	<i>Domestic Violence Background Checks</i> , 01-TC-29*	Set for hearing on September 28, 2012
5.	<i>Community College Construction</i> , 02-TC-47†	Tentatively set for hearing on December 7, 2012
6.	<i>Voter Identification Procedures</i> , 03-TC-23*	Tentatively set for hearing on January 25, 2013
7.	<i>Pupil Expulsions II, Educational Services Plan for Expelled Pupils, and Pupil Suspensions II and Amendments</i> , 96-358-03, 03A, 03B, 96-358-04, 04A, 04B, 97-TC-09, 98-TC-22, 98-TC-23, 01-TC-17, 01-TC-18†	Tentatively set for hearing on January 25, 2013
8.	<i>Developer Fees</i> , 02-TC-42†	Tentatively set for hearing on March 22, 2013
9.	<i>Municipal Storm Water and Urban Runoff Discharges</i> , 03-TC-04, 03-TC-19, 03-TC-20, 03-TC-21*	No hearing date pending court action

* Local agency programs † School district or community college district programs

**IV. PENDING JOINT REASONABLE REIMBURSEMENT
METHODOLOGIES AND LEGISLATIVELY-
DETERMINED MANDATES**

A. Pending Joint Reasonable Reimbursement Methodologies

Following is a table showing programs where Department of Finance and test claimants are negotiating RRM's.

	Program	Date of Notice by Local Agencies or Department of Finance	Status
	None		

B. Pending Joint Legislatively-Determined Mandates

Following is a table showing programs for which Department of Finance and local agencies are negotiating legislatively-determined mandates (LDMs) they may jointly propose to the Legislature for adoption.

	Program	Date of Notice	Status
	<i>None</i>		

C. Delays in the Process

Government Code section 17600 requires the Commission to report any delays in the process for joint RRM's or LDM's being developed by Department of Finance and local entities and for RRM's proposed by any party pursuant to Government Code section 17518.5. There are currently no pending joint RRM's or LDM's. However, there are eight RRM's in parameters and guidelines or amendments thereto proposed by local entities pursuant to Government Code sections 17557 and 17518.5 pending for the Commission's consideration.

While the adoption of an RRM pursuant to Government Code sections 17557 and 17518.5 may reduce the auditing issues on reimbursement claims filed with the Controller, the process increases the responsibility of the Commission. For these disputed RRM's, the Commission is required to make additional factual determinations, based on substantial evidence in the record, that the proposed formula or unit cost reasonably represents the costs mandated by the state for all eligible claimants in the state. Meeting this evidentiary standard also increases the responsibilities of the local entity claimants to compile evidence of costs and put it into the record, which is very time-consuming.

The proposed RRM must 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; and shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner. If these findings are made and an RRM is adopted by the Commission in the parameters and guidelines or amendments thereto, then the claiming is based on the adopted formula or unit cost, in lieu of requiring detailed documentation of actual costs incurred.

Due to the on-going fiscal crisis beginning in 2002, the Commission's position authority has decreased. In addition, for most of 2008 to the present, Commission staff, like staff from other state offices, have been subject to furloughs and other paid leave programs. This naturally has made it more difficult to complete the Commission's backlog, including the RRM's proposed by local entities. To date, the Commission has adopted two proposed RRM's in parameters and guidelines and has denied one proposal based on a lack of evidence.

STATEWIDE COST ESTIMATE

\$0

Government Code Section 17553(b)(1)(C) through (G) and (b)(2)
California Code of Regulations, Title 2, Sections 1183, Subdivision (d)
(Register 2005, No. 36, Effective September 6, 2005)

Statutes 2004, Chapter 890 (AB 2856)

Mandate Reimbursement Process II
05-TC-05

STAFF ANALYSIS

All costs claimed thus far for the *Mandate Reimbursement Process II* program should be disallowed because they were filed for activities that are not reimbursable under this program. Therefore, staff finds that, based on claims filed for the initial filing period, the proposed statewide cost estimate for this program is **\$0**.

Summary of the Mandate

The Commission on State Mandates (Commission) adopted the *Mandate Reimbursement Process I* program on March 27, 1986, and determined that under this program, local governments were eligible for reimbursement for participating in the entire mandate reimbursement process, including but not limited to, filing successful test claims, attending Commission hearings, submitting proposed parameters and guidelines, hiring consultants to manage mandated claims, and filing reimbursement claims with the State Controller.

Specifically, the following activities were approved for reimbursement under the *Mandate Reimbursement Process I* program:

- All costs incurred by local agencies and school districts in preparing and presenting successful test claims are reimbursable, including those same costs of an unsuccessful test claim if an adverse Commission ruling is later reversed as a result of a court order. These activities include, but are not limited to, the following: preparing and presenting test claims, developing parameters and guidelines, collecting cost data, and helping with the drafting of required claiming instructions. The costs of all successful test claims are reimbursable. Costs that may be reimbursed include the following: salaries and benefits, materials and supplies, consultant and legal costs, transportation, and allowable overhead.
- All costs incurred during the period of this claim for the preparation and submission of successful reimbursement claims to the State Controller are recoverable by the local agencies and school districts. Allowable costs include, but are not limited to, the following: salaries and benefits, service and supplies, contracted services, training, and overhead.
- Incorrect Reduction Claims are considered to be an element of the reimbursement process. Reimbursable activities for successful incorrect reduction claims include the appearance of necessary representatives before the Commission on State Mandates to present the claim, in addition to the reimbursable activities set forth above for successful reimbursement claims.

In 2004, Statutes 2004, chapter 890 (AB 2856) was implemented as part of overall mandate reform. AB 2856 imposed additional requirements upon local agencies and school districts for filing test claims.

The City of Newport Beach filed a test claim on AB 2856 and the Commission's 2005 regulations (*Mandate Reimbursement Process II* program) on September 27, 2005. The Commission adopted a statement of decision for the *Mandate Reimbursement Process II* program on January 29, 2010, and parameters and guidelines on May 26, 2011. The Commission found that Government Code section 17553(b)(1)(C) through (G) and (b)(2) as amended by Statutes 2004, chapter 890, and section 1183, subdivision (d), of the Commission's regulations, as adopted in 2005, constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities beginning on July 1, 2005:

All test claims and test claim amendments shall include a written narrative, as described below.

- A. Draft the written narrative that identifies the specific statutes or executive orders alleged to contain a mandate. Complete the following reimbursable activities to include in the written narrative:
1. Gather and review information to complete the test claim narrative.
 2. Calculate the actual increased costs incurred by the claimant during the fiscal year for which the claim is filed.
 3. Calculate the actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
 4. Calculate a statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim is filed.
 5. Investigate other funding sources to identify dedicated state funds appropriated for the program; dedicated federal funds appropriated for the program; other nonlocal agency funds dedicated to the program; the local agency's general purpose funds for the program; and fee authority to offset the costs of the program.
 6. Review and identify prior mandate determinations made by the Board of Control or the Commission that may be related to the alleged mandate.
- B. The written narrative in the test claim or test claim amendment shall be supported with declarations under penalty of perjury, based on the declarant's personal knowledge, information, or belief, and signed by persons who are authorized and competent to do so. The following activities to complete the declarations are reimbursable:
1. Draft and file the following declarations:
 - a. Declarations of actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate.
 - b. Declarations identifying all local, state, or federal funds, or fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs.

- c. Declarations describing new activities performed to implement specified provisions of the new statute or executive order.

The only test claims that are affected by AB 2856 and 1183(d) of the Commission's regulations, as adopted in 2005, are new test claims filed by local governments after January 1, 2005.

Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by November 29, 2011. Since the filing deadline, only the Counties of Orange and San Bernardino have filed reimbursement claims.

Statewide Cost Estimate

Staff reviewed the claims data submitted by the two counties, and determined that the activities for which the counties are seeking reimbursement are not reimbursable under the *Mandates Reimbursement Process II* program, but could be claimed under the *Mandate Reimbursement Process I* program. Under *Mandate Reimbursement Process II*, claimants may only file for reimbursement for increased test claim filing requirements for test claims filed on or after January 1, 2005. Here, claimants filed for costs for test claims filed prior to January 1, 2005. Therefore, during the initial claiming period, no reimbursement claims were properly filed under the *Mandate Reimbursement Process II* program.

Staff made the following assumptions when calculating the statewide cost estimate:

Assumptions

- *No claims were properly filed for the initial claiming period.*
Staff reviewed all test claims filed with the Commission during the initial reimbursement period of July 1, 2005 through June 30, 2011, and determined that no claimants that filed test claims during this period filed claims for reimbursement.
- *There will be no reimbursement for test claims submitted between the 2005-2006 and 2009-2010 fiscal years (July 1, 2005 through June 30, 2010).*
Claimants that filed test claims between July 1, 2005 and June 30, 2010 are beyond the deadline for seeking reimbursement for any test claims filed for those fiscal years.
- *There will be no reimbursement for test claims during the 2010-2011 and 2011-2012 fiscal years (July 1, 2010 through June 30, 2012).*
The *Mandate Reimbursement Process II* program was suspended by the Legislature for these fiscal years. Therefore, claimants are not authorized to file for reimbursement, and there will be no costs to the state.

Based on the above assumptions, staff finds that the statewide cost estimate for this program for the initial claiming period is **\$0**.

Staff issued a draft staff analysis on April 25, 2012. No comments were filed on the draft staff analysis.

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$0** for costs incurred in complying with the *Mandate Reimbursement Process II* program.