

ITEM 8
FINAL STAFF ANALYSIS
PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Government Code Section, 56425(i)(1) (formerly Subdivision (h)(1))

Chapter 761, Statutes of 2000

Local Agency Formation Commissions

11-PGA-07 (02-TC-23)

Department of Finance, Requestor

EXECUTIVE SUMMARY

Department of Finance filed a request to amend the parameters and guidelines for the *Local Agency Formation Commissions* program. Specifically, Department of Finance requests that the Commission end reimbursement for the program because of the enactment of Statutes 2011, chapter 31 (AB 119), which made the reimbursable activities permissive.

Background

Under existing law, a local agency formation commission (LAFCO) is required to develop and determine the sphere of influence of each local governmental agency within the county. It is also required to enact policies designed to promote the logical and orderly development of areas within the sphere to carry out its responsibilities “for planning and shaping the logical and orderly development and coordination of local governmental agencies to advantageously provide for the present and future needs of the county and its communities.” Every five years, the LAFCO is required to review and update, as necessary, each sphere of influence, and shall require the special districts within its jurisdiction to file the written statements described below.

On September 27, 2007, the Commission on State Mandates (Commission) adopted the statement of decision for the *Local Agency Formation Commissions* program finding that Government Code section 56425(i)(1), constitutes a reimbursable state-mandated program for independent special districts that are subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution. The Commission found that these special districts are mandated by the state to file written statements specifying the functions or classes of service provided by those districts with LAFCOs when the LAFCO adopts or updates the spheres of influence during the following periods of time and circumstances:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

The Commission adopted the parameters and guidelines for this program on September 25, 2009, and issued corrected parameters and guidelines on January 19, 2010.¹

Statutes 2011, chapter 31 (AB 119), which was enacted and effective June 29, 2011, revised this program to make these written statements permissive. Thus, beginning June 29, 2011, special districts are no longer mandated by the state to comply with these activities.

On December 21, 2011, the Department of Finance requested that these parameters and guidelines be amended to reflect that effective June 29, 2011, this mandate is no longer reimbursable.²

Commission staff issued a draft staff analysis and the proposed amendments to parameters and guidelines, as modified by staff on April 12, 2012.³ No comments were filed.

Discussion

Staff reviewed the statute and the Department of Finance's request. Staff added language to the title, Section I Summary, and Section III Period of Reimbursement to clarify that effective June 29, 2011, this mandated program is no longer reimbursable.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendments to the parameters and guidelines, beginning on page 3.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

¹ Exhibit A.

² Exhibit B.

³ Exhibit C.

Proposed for Amendment: May 25, 2012

Corrected: January 19, 2010

Adopted: September 25, 2009

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Government Code Section, 56425, Subdivision (i)(1) (formerly Subdivision (h)(1))

Chapter 761, Statutes of 2000

Local Agency Formation Commissions

11-PGA-07 (02-TC-23)

Reimbursement for this program ends on June 29, 2011

Sacramento Metropolitan Fire District, Claimant

I. SUMMARY OF THE MANDATE

On September 27, 2007, the Commission on State Mandates (Commission) adopted a Statement of Decision finding that the test claim legislation imposes a partially reimbursable state-mandated program upon certain independent special districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Specifically, the Commission found that only one statutory provision, Government Code section 56425, subdivision (h) (subsequently renumbered to subdivision (i)(1)), constitutes a state-mandated “new program or higher level of service” in an existing program. The findings for this test claim apply to independent special districts that are subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution. Local agency formation commissions (LAFCOs) are not eligible claimants. All other activities claimed for sphere of influence reviews or municipal service reviews are either required of the LAFCO and not special districts, or the activities are not mandated since the Municipal Service Review Guidelines and Appendices do not constitute executive orders.

The Commission approved this test claim for the following reimbursable activities:

Filing written statements with the LAFCO specifying the functions or classes of service provided by independent special districts, for the following time periods and types of spheres of influence:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.
- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district.

Statutes 2011, chapter 31 (AB 119) revised this program to make the reimbursable activities permissive, and thus no longer reimbursable.

II. ELIGIBLE CLAIMANTS

Any independent special district participating in the LAFCO which is subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution and that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. LAFCOs are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Reimbursement for this program ends on June 29, 2011.

Government Code section 17557, subdivision (e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The Sacramento Metropolitan Fire District filed the test claim on May 29, 2003, establishing eligibility for reimbursement for fiscal year 2001-2002. Therefore, costs incurred pursuant to Government Code section 56425, subdivision (h) are reimbursable on or after July 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564.

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, 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.

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. On-going Activities:

Filing written statements to the LAFCO pursuant to Government Code section 56425, subdivision (i)(1) (formerly numbered subdivision (h)(1).), specifying the functions or classes of service provided by the district, for the following time periods and types of spheres of influence:

- July 1, 2001 through December 31, 2001 – when a LAFCO adopts or updates any sphere of influence or sphere of influence that includes a special district.

- On and after January 1, 2002 – when a LAFCO adopts or updates a sphere of influence for a special district:
 1. Gather information on the functions or classes of services provided by the special district, as needed to prepare the written statements required by Government Code section 56425, subdivision (i)(1).
 2. Draft written statements, including but not limited to, the initial draft, reviews and revisions as needed.
 3. File written statements with the LAFCO.
 4. Prepare for, attend, and present written statements as required by Government Code section 56425, subdivision (i)(1), at LAFCO hearing.

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.

B. Indirect Cost Rates

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.

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 chapter¹ 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 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 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 CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than ~~90~~60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon 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.

¹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 is legally binding on all parties and provides 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, is on file with the Commission.