Parameters and Guidelines
Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

Mandate Reimbursement Process

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d) (3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs--both direct and indirect--are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities--Test Claims

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.

C. Reimbursable Activities - Reimbursement Claims

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 claim 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.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

WP 1422A

0016

Assembly Bill No. 903

CHAPTER 303

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 3, 1995. Filed with Secretary of State August 3, 1995]

I object to the following appropriations contained in Assembly Bill 903.

Item 0820-101-001—For local assistance, Department of Justice. I delete Provision 2.

I am deleting Provision 2, which would require the Department of Justice to revert General Funds to the extent federal funds become available to support the Spousal Abuser Prosecution Program, established pursuant to Chapter 140, Statutes of 1994. Because of non-supplantation language contained in federal regulations pertaining to this program, this language could jeopardize eligibility for any federal funds that may become available for this program.

Item 1530-001-775—For support of Structural Pest Control Board. I reduce this item from $1,336,000 to $1,317,000 by reducing:

(a) 84-Structural Pest Control Board from $1,440,000 to $1,421,000.

I am making this revision to correct a technical error in the Budget Bill. I am also revising Provisions 1 and 1(a) which would reference Section 27.00 of this Act. This language was left in the final version of the Budget Bill in error. These technical vetoes will conform with the Legislature's intent.

I am also revising Provision 1(a) to delete the requirement that the Structural Pest Control Board restrain excessive pricing of services by its licensees. The Board has no statutory authority to implement or enforce cost controls. Therefore, the language represents a substantive change of law which can only be included within a single subject bill, not the Budget Act.

"1. It is the intent of the Legislature that any funding beyond December 31, 1995, ~~shall be provided pursuant to Section 27.00 of this act, and~~ shall be contingent upon the following:

(a) ~~Prior to consideration by the Department of Finance of a Section 27.00 request,~~ the Structural Pest Control Board shall act to restrain licensees from ~~excessively pricing services and~~ requiring unneeded work to be done. The board shall establish guidelines for the adoption of regulations that establish standards as to how much material is to be removed when replacing wood weakened by fungus or wood-destroying pests or organisms.

(b) The board shall establish guidelines for the adoption of regulations to allow the consumer the option to independently contract with a company for any pest control work that the licensee would otherwise subcontract out.

(c) The board shall establish guidelines for the adoption of regulations relative to a system of citations and fines pursuant to Sections 125.9 and 148 of the Business and Professions Code, and shall implement those regulations by July 1, 1996.

(d) The board shall provide written status reports on the actions prescribed in this provision by October 1, 1995, and by December 31, 1995, to the Department of Consumer Affairs, the Department of Finance, the Secretary of the State and Consumer Services Agency, and the Joint Legislative Budget Committee."

Item		Amo
0820-495—Reversion, Department of Justice. As of June 30, 1995, the amount specified in the following citation shall revert to the fund balance of the fund from which the appropriation was made:		
460—Dealers' Record of Sale Special Account, General Fund		
(1) Subdivision (b) of Section 7 of Chapter 872, Statutes of 1994—Partial reversion—except that the amount to be reverted shall be $39,000.		
0840-001-001—For support of State Controller		61,888,960
Schedule:		
(a) 100000-Personal Services	69,000,960	
(b) 300000-Operating Expenses and Equipment	34,699,000	
(c) Reimbursements	−32,720,000	
(d) Amount payable from the Motor Vehicle Fuel Account, Transportation Tax Fund (Item 0840-001-061)	−2,822,000	
(e) Amount payable from the Highway Users Tax Fund (Item 0840-001-062)	−803,000	
(f) Amount payable from the Local Revenue Fund (Item 0840-001-330)	−389,000	
(g) Amount payable from the State School Building Lease-Purchase Fund (Item 0840-001-344)	−579,000	
(h) Amount payable from the State School Building Aid Fund (Item 0840-001-739)	−123,000	
(i) Amount payable from the Federal Trust Fund (Item 0840-001-890)	−2,087,000	
(j) Amount payable from the State Penalty Fund (Item 0840-001-903)	−905,000	
(k) Amount payable from nongovernmental cost funds, Retail Sales Tax Fund (Item 0840-001-988)	−178,000	
(l) Amount payable from various special funds (Item 0840-011-494)	−203,000	
(m) Amount payable from various bond funds (Item 0840-011-797)	−804,000	
(n) Amount payable from various nongovernmental cost funds (Item 0840-011-988)	−198,000	

Item Amount

Provisions:

1. The appropriation made by this item shall be in lieu of any Cigarette Tax Fund allocation made pursuant to subdivision (b) of Section 30462 of the Revenue and Taxation Code during the 1995–96 fiscal year, and no funds shall be allocated to the State Controller pursuant to Section 30462 of the Revenue and Taxation Code during the 1995–96 fiscal year.
2. The appropriation made by this item shall be in lieu of the appropriation in Section 1564 of the Code of Civil Procedure for all costs, expenses, or obligations connected with the administration of the Unclaimed Property Law, with the exception of payment of owners' or holders' claims pursuant to Section 1540, 1542, 1560, or 1561 of the Code of Civil Procedure, or of payment of the costs of compensating contractors for locating and recovering unclaimed property due the state.
3. Of the claims received for reimbursement of court-ordered or voluntary desegregation programs pursuant to Sections 42243.6, 42247, and 42249 of the Education Code, the State Controller shall pay only those claims that have been subjected to audit by school districts in accordance with the State Controller's procedures manual for conducting audits of education desegregation claims. Furthermore, the State Controller shall pay only those past-year actual claims for desegregation program costs that are accompanied by all reports issued by the auditing entity, unless the auditing entity was the State Controller.
4. No less than 0.9 personnel-year in the Audits Division shall be used to audit education desegregation claims.
5. The State Controller may, with the concurrence of the Director of Finance and the Chairperson of the Joint Legislative Budget Committee, bill affected state departments for activities required by Section 20050 of the State Administrative Manual, relating to the administration of federal pass-through funds.

   No billing may be sent to affected departments sooner than 30 days after the Chairperson of the Joint Legislative Budget Committee has

Item Amount

been notified by the Director of Finance that he or she concurs with the amounts specified in the billings.

6. No moneys appropriated by this act may be expended by the State Controller for any of the following:
   (a) An amount in excess of $35,000 for the purpose of providing mailed notice to the apparent owners of escheated property as required by subdivision (e) of Section 1531 of the Code of Civil Procedure.
   (b) An amount in excess of $150,000 for the purpose of publication of notice pursuant to subdivision (a) of Section 1531 of the Code of Civil Procedure. Notwithstanding subdivision (b) of Section 1531 of the Code of Civil Procedure, the State Controller may publish notice in any manner that the State Controller determines reasonable, provided that: (1) none of the moneys used for these purposes may be redirected from funding for the State Controller's audit activities, (2) no photo is used in the publication of notice, and (3) no elected official's name is used in the publication of notice.
   (c) For providing information to the public, other than holders of unclaimed property (as defined in subdivision (e) of Section 1501 of the Code of Civil Procedure), concerning the unclaimed property program or possible existence of unclaimed property held by the State Controller's office, except for informational announcements to the news media.
7. The State Controller shall increase its audits of the provider billings in the Medi-Cal program in such a manner as to enhance General Fund resources by at least $12,000,000 (in addition to any corresponding enhancement in federal funds).
8. Of the moneys appropriated to the State Controller by this act, the State Controller shall not expend more than $500,000 to conduct post eligibility fraud audits of the Supplemental Security Income/State Supplementary Payment Program (SSI/SSP) for a General Fund savings of $1,400,000 to the Department of Social Services (Item 5180-111-001).

Item Amount

10. The State Controller shall redirect from her administrative activities, resources sufficient enough to ensure the collection of at least $165,000,000 of General Fund Abandoned Property revenues for the 1995–96 fiscal year.
11. Funds appropriated by Item 8885-001-001 may be allocated for the payment of mandated costs for the preparation and submission of successful test and reimbursement claims by an amount that does not exceed the actual costs necessarily incurred for that purpose.
    In addition, the Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:
    (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
    (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.
12. No funds from any source that are appropriated to the Controller for the operation of his or her office may be expended to support either a toll-free telephone "hotline" operated by the Controller's office for the reporting of complaints alleging waste, fraud or duplication in government, or a computer-based system that allows that reporting. The Legislature finds and declares, in this regard, that the State Auditor currently is maintaining a statewide

Item	Amount
reporting system for this purpose that affords to callers protection that is not available under the Controller's system.	
0840-001-061—For support of State Controller, for payment to Item 0840-001-001, payable from the Motor Vehicle Fuel Account, Transportation Tax Fund	2,822,000
0840-001-062—For support of State Controller, for payment to Item 0840-001-001, payable from the Highway Users Tax Fund	803,000
0840-001-330—For support of State Controller, for payment to Item 0840-001-001, payable from the Local Revenue Fund	389,000
0840-001-344—For support of State Controller, for payment to Item 0840-001-001, payable from the State School Building Lease-Purchase Fund	579,000
0840-001-739—For support of State Controller, for payment to Item 0840-001-001, payable from the State School Building Aid Fund	123,000
0840-001-890—For support of State Controller, for payment to Item 0840-001-001, payable from the Federal Trust Fund	2,087,000
0840-001-903—For support of State Controller, for payment to Item 0840-001-001, payable from the State Penalty Fund	905,000
0840-001-988—For support of State Controller, for payment to Item 0840-001-001, payable from nongovernmental cost funds (Retail Sales Tax Fund)	178,000
0840-011-494—For support of State Controller, for payment to Item 0840-001-001, payable from the various special funds	203,000
Provisions:	
1. Notwithstanding any other provision of law, the Director of Finance may authorize expenditures in excess of the amount appropriated by this item not sooner than 30 days after notification in writing of the necessity therefor is provided to the chairpersons of the fiscal committees and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the committee, or his or her designee, may in each instance determine.	
0840-011-797—For support of State Controller, for payment to Item 0840-001-001, payable from the various bond funds	804,000

Item		Amount
8855-001-001—For support of Bureau of State Audits, for transfer to the State Audit Fund		7,938,000
Schedule:		
(a) 10-State Auditor	8,312,000	
(b) Reimbursements	−374,000	
8860-001-001—For support of Department of Finance.		21,516,000
Schedule:		
(a) 10-Annual Financial Plan	12,300,000	
(b) 20-Program and Information System Assessments	6,752,000	
(c) 30-Supportive Data	8,669,000	
(d) 40.01-Administration	4,205,000	
(e) 40.02-Distributed Administration	−3,700,000	
(f) Reimbursements	−6,710,000	

Provisions:

1. The funds appropriated by this item for CALSTARS shall be transferred by the Controller, upon order of the Department of Finance, or made available by the Department of Finance as a reimbursement, to other items and departments for CALSTARS-related activities by the Department of Finance.
2. The funds appropriated in this act for purposes of CALSTARS-related data processing costs may be transferred between any items in this act by the Controller upon order of the Director of Finance. Any funds so transferred shall be used only for support of CALSTARS-related data processing costs incurred.
3. No electronic data processing projects may be given sole source approval any sooner than 30 days after written notification of the intention to grant sole source approval is provided to the fiscal committees and the Joint Legislative Budget Committee (JLBC) or any sooner than whatever lesser time the Chairperson of the JLBC, or his or her designee, shall determine.

8882-001-001—For support of Constitution Revision Commission		474,000
Schedule:		
(a) Support	474,000	
8885-001-001—For support of Commission on State Mandates, Program 10		1,832,000

Provisions:

1. Funds appropriated by this item may be allocated for the payment of mandated costs for the preparation and submission of successful test

Item		Amount
and reimbursement claims by an amount that does not exceed the actual costs necessarily incurred for that purpose. In addition, the Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows: (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district. (b) The maximum amount of reimbursement authorized by subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.		
8910-001-001–For support of Office of Administrative Law		1,934,000
Schedule:		
(a) 10-Regulatory Oversight	2,074,000	
(b) Reimbursements	−140,000	
8940-001-001—For support of Military Department		18,530,000
Schedule:		
(a) 10-Army National Guard	31,047,000	
(b) 20-Air National Guard	11,646,000	
(c) 30.01-Office of the Adjutant General	5,051,000	
(d) 30.02-Distributed Office of the Adjutant General	−5,051,000	
(e) 35-Military Support to Civil Authority	3,948,000	
(f) 40-Military Retirement	2,616,000	
(i) 60-Farm and Home Loan	18,000	
(j) 65-California National Guard youth programs	10,990,000	
(k) Reimbursements	−830,000	

State of California — *Kathleen Connell*, Controller of California

TO: Kirt Stewart
Executive Director
Commission On State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

DATE: October 6, 1995

PLACE: Sacramento, CA

FROM: Division of Accounting and Reporting
Assistant Division Chief
Carla B. Lenerd

SUBJECT: Proposed Amendment to Parameters and Guidelines
CSM-4485, Chapter 486, Statutes of 1975; Chapter 1459, Statutes of 1984; Chapter 303, Statutes of 1995 (Budget Act of 1995); Mandate Reimbursement Process

We have reviewed the Commission On State Mandates proposed parameters and guidelines of September 21, 1995, for the subject mandated costs program and offer the following comment.

The proposed language under VI.D. Contract Services should be amended as follows:

"Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or preparation of claims are recoverable within the limitations imposed under III. above. Provide copies of the invoices and/or claim that were paid as well as. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district. The estimate must name the employees and/or positions (job titles) that would have been assigned to perform the tasks required by the mandate, productive hourly rates, estimated time spent, salaries and benefits, and a description of tasks each named employee/job title would have performed as they relate to this mandate. Also, estimate any materials and supplies that would have been utilized and/or consumed to perform the mandate. Add any overhead costs as applicable, reported and documented in the same fashion as required under VI.F. In the absence of a statement showing an estimate of actual costs, the cost of contracted services shall be denied.

If reimbursement is sought for independent contractor costs that are ~~is~~ in excess of (1) ten percent of the claims prepared and submitted by the independent contractor or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the presentation and submission of these claims could not have been accomplished without incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding (1) and/or (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of (1) and/or (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district." (additions/~~deletion~~)

The purpose of the amendment is to clarify the phrases "estimate of actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district" and "appropriate documentation."

With the above amendment, the proposed parameters and guidelines are acceptable to our office and adoption by the Commission on State Mandates is recommended. If there are any questions, please contact Jeff Yee at (916) 324-0256.

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STATE OF CALIFORNIA

PETE WILSON, Governor

DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

October 5, 1995

Kirk G. Stewart
Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Dear Mr. Stewart:

We have reviewed the proposed amendments to the parameters and guidelines for the reimbursement of costs of the "Mandate Reimbursement Process" established by Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. These amendments are necessary in order to implement language contained in the 1995 Budget Act in Items 0840-001-001, Provision 11, and 8885-001-001, Provision 1. As the result of that review, we have concluded that the proposal is a fair reflection of that language contained in the 1995 Budget Act and recommend that the Commission adopt it at its scheduled October 26, 1995, hearing on the matter.

If you have any questions regarding this letter, please contact James M. Apps, state mandates claims coordinator for the Department of Finance, at the address indicated in the letterhead, or at (916) 445-8913.

Sincerely,

Calvin Smith

S. CALVIN SMITH
Program Budget Manager

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MANDATED COST SYSTEMS
4629 Whitney Ave., Ste. #3
Sacramento, CA 95821
Phone (916) 487-4435
Fax (916) 487-9662

September 27, 1995

Kirk Stewart
Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, Ca. 95814

Re: Proposed Amendment to Parameters & Guidelines for CSM-4485, Chapter 486, Statutes of 1975; Chapter 1459, Statutes of 1984; Chapter 303, Statues of 1995 (Budget Act); Mandate Reimbursement Process

Dear Mr. Stewart,

Mandated Cost Systems is a firm that contracts with local educational agencies to prepare and submit mandated cost claims. Consequently the proposed amendment to the Parameters and Guidelines for the Mandate Reimbursement Process claim may directly affect how our firm does business.

Enclosed is a copy of a letter that I sent to the State Controller's Office regarding this issue. I look forward to discussing this further during the October 6 pre-hearing meeting.

Sincerely,

Steve Smith,
President

enclosures

MANDATED COST SYSTEMS
4629 Whitney Ave., Ste. #3
Sacramento, CA 95821
Phone (916) 487-4435
Fax (916) 487-9662

August 22, 1995

Jeff Yee
Bureau Chief, Local Reimbursements
State Controller's Office, Division of Accounting
3301 C Street, Suite 501
Sacramento, Ca. 95816

Dear Jeff,

I would like to be kept posted regarding the State Controller's Office position on the budget control language re: Contractors preparing Mandated Cost Claims. If there are any discussions planned on this issue, I would like to be involved to present my point of view on this subject.

My position is that the language would be difficult to enforce because of the subjective nature of the language. Certain terms within the control language need to be defined in order for the language to be enforceable and even then, there would probably be loopholes.

The major problems that I see follow:

What is meant by section (a)(2), "the actual costs that would necessarily have been incurred for such purpose if performed by employees of the local agency" ? Does this mean the cost the district would have incurred preparing the three or four claims that they normally prepare or would it mean the cost to prepare all the claims that a contractor like myself would file for them ?

Also, how would you account for the fact that my company can prepare claims faster than most district employees who would attempt to handle this function and that we do more work than the district would do? How do you factor in our experience, our discussions and meetings with your office on various issues, our preparing training handbooks, claim preparation programs, attendance at Commission meetings and other activities that we do for all of our clients that districts do not do on their own?

What is meant by section (b)(a) reference to "appropriate documentation"? Would this be a certification statement of some kind by the Governing Board where the district states "due to staffing, time or knowledge limitations" we can not do this properly or would the contractor have to demonstrate that we filed x amount more claims than the district would have done and we have generated x amount more revenue ?

In addition to these clarifications, section (a)(1) creates an issue of independence where a contractor would have an incentive to inflate claims should it turn out that "ten percent of claims prepared and submitted" is less that the" actual costs that would necessarily have been incurred"

In conclusion, I feel that the prior "loose" hourly rate restriction was adequate to discourage inflated amounts charged by contractors. Every district that I work with performs a cost benefit analysis to determine whether our services are worth using. I can understand the needs for some restrictions, especially with contractors who base their fees on a percentage of claims filed basis.

If you have any questions, please give me a call. Again, I would appreciate being kept posted on any discussions on this subject and I would like to participate if possible.

Sincerely,

Steve Smith,
President

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SAN DIEGO CITY SCHOOLS

EDUCATION CENTER • 4100 Normal St., San Diego, CA 92103-2682 • (619) 293-8200 FAX (619) 296-6832

FINANCIAL ACCOUNTING DEPARTMENT

OCT 0 4
COMMISSION ON
STATE MANDATES

FAX TO 916-445-0278

October 2, 1995

SDUSD 95-57

Kirk Stewart, Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Re: CSM-4485
Proposed Amendment to the Parameters and Guidelines
Chapter 303, Statutes of 1995
Chapter 1459, Statutes of 1984
Chapter 486, Statutes of 1975
Mandate Reimbursement Process

Dear Mr. Stewart:

Thank you for the opportunity to respond to the proposed revision to the parameters and guidelines as a result of the direction provided in Chapter 303, Statues of 1995.

The language added as V. D. "Limitation on Reimbursement for Independent Contractor Costs" appears to accurately reflect budget item 8885-001-001. I would suggest that you add additional clarification in three aspects: The budget language is applicable to fiscal year 1995-6 only; its does not apply to test claims since they are not "reimbursement claims" as the phrase is used in the parameters and guidelines; and that the 10% rule applies to 10% of the sum of all the claims prepared in a given contract period or fiscal year, whichever is shorter, since reimbursement claims are prepared at different times throughout the year.

I understand from your letter that you intend not to make any substantive changes in the parameters and guidelines other than those required by Chapter 303/95. However, I believe you should use this opportunity to "modernize" the parameters and guidelines to avoid several anachronistic provisions from continuing contrary to current law or to what is represented in the claiming instructions. Had we had a "Corrections Day" procedure in force, these updates could have been made along the way, but now would seem a good time. For example, Part VI "Claim Preparation" is treated significantly different now. Here are some of the problems

I identified:

-A. Supporting Data: does not reference Part V. The supporting documentation is now covered by Part VII. In addition, you have misstated the four-year rule; it is four years from the end of the calendar year the claim is submitted, it is no longer based on the date of SCO payments. Historically, it was three years from the date of final payment, not the date the claim was submitted.

-B. Salaries and Benefits: current language is more specific and allows for documented time studies.

-C. Service and Supplies: historic language is misleading since a "service" is usually contractual and not provided by employees. Further, indirect costs are the subject of a separate and more specific section in the modern language, called "Allowable Overheard Cost."

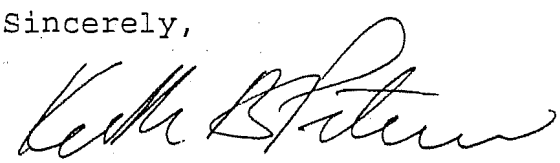
-D. "Contract Services": The reference to "III.D." probably should be "V.D." What is "appropriate documentation ... to show that the preparation and submission of these claims could not have been accomplished without the incurring of additional costs claimed by the local agency or school district."

-E. "Training": This activity, as well as any other, is usually not identified as a specific component of claims preparation, unless its was specifically the subject of the test claim findings; its just another employee activity or contracted service

-G."Legal Costs": Although it is contrary to administrative procedures, the Commission historically limited the reimbursement of some contractors in this manner. However, this usually has been accompanied by deflators, which should be done now, since the quoted rate is now more than 10 years old.

If you need more information, please contact me at (619) 293-8205.

Sincerely,



Keith B. Petersen
Legislative Financial Specialist

c: William Doyle, Chair, Education Mandated Cost Network
Dr. Carol Berg, School Services of California

Education Mandated Cost Network

EXECUTIVE COMMITTEE

William Doyle, Chair
Mandated Cost Administrator
San Jose USD

Keith Petersen, Esq., Vice Chair
Legislative Financial Specialist
San Diego City USD

Loureatha Davis
Principal Accountant
Los Angeles USD

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Director, Special Projects
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Diana Halpenny, Esq.
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Billie Kinsinger, Ed.D.
(CASBO Liaison)
Admin. & Finance Consultant
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District Financial Services
San Diego COE

Peter Yasilis
Associate Superintendent (CBO)
Alameda COE

CONSULTANT

Carol A. Berg, Ph.D.
Director
School Services of California, Inc.

MEMBERSHIP

...rnia school districts,
...y offices of education,
...statewide education
organizations

FAX to: (916) 445-0278

October 4, 1995

Kirk Stewart, Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

RE: CSM-4485
Proposed Amendment to the Parameters and Guidelines
Chapter 303, Statutes of 1995
Chapter 1459, Statutes of 1984
Chapter 486, Statutes of 1975
Mandate Reimbursement Process

Dear Mr. Stewart:

Thank you for the opportunity to respond to the proposed changes in the Parameters and Guidelines to make them comply with the 1995 Budget Act.

As a result of my review I wish to bring to your attention items in Section VI. that are out-of-date and/or incorrect. You indicate that "Other than following the Legislature's directive on this matter and making the aforementioned technical changes, no intended alterations have been made." It appears that the act of revising will itself make items in Section VI incorrect and "altered". While they were true in 1987 and 1986, they are no longer true and in some cases are in direct conflict with both current law and revised claiming instructions.

A. Supporting Data: No reference is made either back to Section V or forward to Section VII. The date in the requirement to keep documents for four years is not accurate.

B. Salaries and Benefits: See the statement on the revised claiming instructions. They are much more specific than this unedited/unrevised paragraph.

C. Service and Supplies: These topics as stated do not address the current way of doing business according to the SCO revised forms.

D. Contract Services: Reference to Section III.D must be a typo and should probably read Section V.D. The words "appropriate documentation" are vague and ambiguous and give no clue to the reader as to what is acceptable or expected.

E. Training: This has been subsumed under "Contracted Services" in the claiming instructions in current practice.

G. Legal Costs: These can no longer be dealt with generically since allowable costs vary from mandate to mandate and, in every case, now exceed the $90 per hour limitation.

I look forward to the opportunity to discuss this information with you.

Cordially,

Carol A. Berg

CAROL A. BERG, Ph.D.
EMCN Consultant

cc: William Doyle Chair, EMCN
Keith Petersen, Vice Chair, EMCN

MEETING

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

State Capitol

Room 444

Sacramento, California

Thursday, October 26, 1995

10:00 a.m.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9754

1 APPEARANCES

2 COMMISSION MEMBERS PRESENT

3 Theresa Parker, Chairman
Representative of the Department of Finance

4

Diane Richardson
5 Representative of the Office of Planning and Research

6

William Sherwood
7 Representative of the State Treasurer

8 Stan Di Orio
Representative of the State Controller

9

10 STAFF PRESENT

11 Kirk Stewart, Executive Director

12 Gary D. Hori, Counsel

13 Mary Ann Aguayo, Assistant Executive Director

14 Piper Rodrian

15 Sharlene Steed

16 Steve Zimmerman

17

ALSO PRESENT
18

James Apps, Department of Finance
19

Allan P. Burdick, California Cities SB 90 Service
20

Kent C. Cahill, LA County District Attorney's Office
21

William Doyle, San Jose Unified School District
22

Leonard Kaye, LA County Office of Auditor-Controller
23

Keith Petersen, San Diego City Schools
24

Robert J. Sullivan, Nossaman, Guthner, Knox & Elliott
25

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(continued)

1 All those in favor signify by saying aye.

2 (Ayes.)

3 CHAIRPERSON PARKER: The issue has been adopted

4 unanimously.

5 Thank you.

6 That takes us to Item 13.

7 EXECUTIVE DIRECTOR STEWART: That's correct, Madam

8 Chair.

9 CHAIRPERSON PARKER: Another P and G amendment.

10 EXECUTIVE DIRECTOR STEWART: Yes, Madam Chair.

11 Parameters and guidelines for the mandate

12 reimbursement process under Chapter 486, Statutes of '75 and

13 Chapter 1459, Statutes of '84, were last amended in 1987.

14 The Budget Act of 1995, however, contains a

15 provision under both the State Controller's main support

16 appropriation and the Commission's support appropriations,

17 requiring the Commission to amend those parameters and

18 guidelines to cap independent contractor costs for the

19 preparation and submission of reimbursement claims at the

20 lesser of ten percent of the amount of the claims submitted

21 or the actual costs that would necessarily have been

22 incurred by the local agency personnel if they had been

23 doing that work.

24 A means to permit exceeding those two cost limit

25 tests is also included in the Budget Act provisions.

1 The proposed amendments to the 1987 parameters and
2 guidelines simply include the Budget Act's requirements as
3 an appendix for the 1995-96 fiscal year because Budget Act
4 language only applies to the budget year and sets forth the
5 documentation that would be required by the State
6 Controller.
7 Staff recommend approval.
8 CHAIRPERSON PARKER: Is there anyone who wants to
9 testify on this item?
10 Kirk, why did we not include this in the consent
11 calendar? Is there --
12 EXECUTIVE DIRECTOR STEWART: Madam Chair, we did
13 not include it on the consent calendar because I had been
14 under the impression that some of the consultants in this
15 field might have wanted to address the Commission on it.
16 I think that the technical handling of the
17 amendment as an appendix as we have done is satisfactory to
18 the interested parties, but I did not feel --
19 CHAIRPERSON PARKER: So --
20 EXECUTIVE DIRECTOR STEWART: -- that they wanted
21 it to be consent.
22 CHAIRPERSON PARKER: Because it appeared to be
23 pretty straightforward to me. There doesn't seem to be
24 anyone here to testify.
25 With that, I would entertain a motion.

1 MEMBER RICHARDSON: Move to adopt.

2 MEMBER SHERWOOD: Second.

3 CHAIRPERSON PARKER: Motion by Ms. Richardson and
4 a second by Mr. Sherwood to adopt the staff recommendation
5 on the proposed amendments to Ps and Gs for mandated
6 reimbursement process.

7 All those in favor signify by saying aye.

8 (Ayes.)

9 CHAIRPERSON PARKER: This item is adopted
10 unanimously.

11 Takes us to No. 14, proposed statewide cost
12 estimate for the allocation of property tax revenues.

13 EXECUTIVE DIRECTOR STEWART: Yes. It will be
14 presented by Mr. Zimmerman.

15 And I would like to note that while the item is
16 presented in the agenda includes costs for '92-3 through
17 '95-6, the claims bill would also need to include '96-7
18 costs and that would be reflected.

19 MR. ZIMMERMAN: This is a proposed statewide cost
20 estimate for costs incurred through Revenue and Taxation
21 Code Section 97 and included sections listed as added and
22 amended by the various chapters cited in the header to the
23 statewide cost estimate. I won't list them all. They're
24 all on your documents.

25 The Commission concluded in the statement of

CERTIFICATE OF SHORTHAND REPORTER

I, JANET H. NICOL, a Certified Shorthand Reporter of the State of California, do hereby certify that I am a disinterested person herein; that I reported the foregoing hearing in shorthand writing; that I thereafter caused my shorthand writing to be transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of December 1995.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764

MINUTES

COMMISSION ON STATE MANDATES

October 26, 1995

10:00 a.m.

State Capitol, Room 444

Sacramento, California

Present: Chairperson Theresa Parker
Representative of the Department of Finance
Member Diane Richardson
Representative of the Office of Planning and Research
Member William Sherwood
Representative of the State Treasurer
Member Stan Di Orio
Representative of the State Controller

Absent: Member Warren Dorn
Public Member

There being a quorum present, Chairperson Parker called the meeting to order at 10:02 a.m.

Item 1 Minutes

The minutes of the August 24, 1995, Commission meeting were approved without objection.

Before moving to the agenda items, Executive Director Stewart introduced new Commission staff, Jolene Mado-Eveland and Julie Gordon.

Mr. Stewart announced that Agenda **Item 3**, Test Claim CSM-4471, *Judicial Council Reports*, had been withdrawn by the claimant and that **Item 10**, a statement of decision acknowledging that test claim's withdrawal would be taken up instead. Agenda materials for Item 3 are to be included in the administrative record for CSM-4471. He also announced that **Item 4**, Test Claim CSM-4474, *Pupil Suspension: Parent Classroom Visits*, and **Item 7**, the *Goss v. Lopez* procedural issue had been deferred and that **Item 19**, *Clarification of the Alameda County SB 1033 Statement of Decision*, would not be taken up. He stated that litigation concerning the Alameda County SB 1033 application would be discussed in closed executive session.

Consent Calendar

The Commission first adopted the consent calendar as follows:

Statement of Decision

Item 9 CSM-4470
Governor's Executive Order; March 4, 1994
43rd Assembly District Vacancy Election [Affirming the withdrawal of the test claim by claimant]

Item 10 CSM-4471
Government Code Section 683113
Chapter 189, Statutes of 1991
Judicial Council Reports [Affirming the withdrawal of the test claim by claimant]

Parameters and Guidelines

Item 12 CSM-4442
Education Code Sections 46601, 46601.5, and 48204, subdivision (f)
Chapter 172, Statutes of 1986
Chapter 742, Statutes of 1986
Chapter 853, Statutes of 1989
Chapter 10, Statutes of 1990
Chapter 120, Statutes of 1992
Interdistrict Attendance Permits

Member Di Orio moved to adopt the consent calendar; Member Sherwood seconded, and the motion passed unanimously.

Discussion Items

Action on Mandate Claims

Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

Item 2 CSM-4449
Labor Code Section 4707, Subdivisions (a) & (b)
Chapter 478, Statutes of 1989
Workers' Compensation Benefits

Mr. Stewart noted that this test claim had been heard by the Commission on April 26, 1994, and was denied by a 3 - 2 vote at that hearing. At the following meeting, May 26, 1994, the statement of decision was put over to the July 21, 1994, meeting. At that July 21 meeting the statement of decision failed passage on a 2 - 2 vote, and the Commission decided to rehear the test claim. He reported that a supplemental brief had filed by the claimant on April 18, 1995, but the staff recommendation of April 26, 1994, that the test claim be denied, remains the staff recommendation now.

Assistant Executive Director Mary Ann Aguayo then presented the test claim issue to be determined: Does Labor Code section 4707, subdivisions (a) and (b) result in a reimbursable state mandated program by requiring local governments to pay the surviving spouse and dependent children of a local safety member of PERS both Workers' Compensation and the PERS special death benefit in the event of the industrial death of that local safety member?

Mr. Robert J. Sullivan appeared on behalf of the claimant, City of Richmond, joined by Mr. Allan Burdick of California Cities SB 90 Service and CSAC SB 90 Service. Mr. James Apps appeared for the Department of Finance.

There ensued an extensive discussion of the various issues involved with this test claim (pages 4 through 49 of the hearing transcript). Central to the discussion were opposing views on the effect of an amendment to a statute of general application, e.g., Workers' Compensation, when the effect of that particular amendment bears exclusively upon local government. Mr. Gary Hori, Counsel to the Commission, argued to deny the test claim citing prominently the Supreme Court's ruling in the *City of Sacramento* case and stating that Chapter 478/89 simply cancelled an exemption which local government had enjoyed. Mr. Sullivan and Mr. Burdick expressed the opposing view that Chapter 478/89 was uniquely local in character and, among other arguments, pointed to the several legislative bill analyses of that time which supported their position. Mr. Apps stated that the Department of Finance's own bill analysis of the subject legislation six years ago had indicated the presence of a state mandate, but that Finance now agreed with the Commission staff's position based on the implications of court cases. Member Richardson stated that she did not believe that any of the bill analyses of the time had included consideration of the *Los Angeles* case. Mr. Hori pointed out that the *City of Sacramento* decision occurred in 1990 whereas as the subject legislation was chaptered in 1989.

Following discussion of the item, Member Richardson moved to adopt the original (April 26, 1994) staff recommendation to deny the test claim. The motion was seconded by Member Di Orio. On a roll call vote, the test claim was denied. Voting AYE were Members Richardson, Di Orio and Parker; voting NO was Member Sherwood.

Item 5 CSM-4475
Welfare and Institutions Code Section 827
Chapter 1423, Statutes of 1984
Chapter 1019, Statutes of 1994
Juvenile Court Notices II

Mr. Steve Zimmerman of the Commission staff presented this item, stating that it was essentially technical in nature, and recommending approval of the test claim. He reported that the local costs associated with Welfare and Institutions Code section 827 have been appropriated by the Legislature since 1984. However, the appropriation has been associated with Chapter 1011/84, not Chapter 1423/84, and that funding discrepancy came about through the co-joining of legislation during that legislative session, according to Mr. Zimmerman. He reported that the State Controller's claiming instructions for Chapter 1011/84 already cover most aspects of this test claim and any areas not adequately addressed by those instructions can be covered at the parameters and guidelines stage. Mr. Keith Petersen, representing claimant San Diego Unified School District; Mr. William Doyle, Education Mandated Cost Network; and Mr. Jim Apps, Department of Finance, concurred with the staff recommendation.

Member Richardson moved to adopt the staff recommendation to approve the test claim, with Member Sherwood seconding. The motion passed unanimously.

Item 6 CSM-4476
Education Code Sections 48209.1, 48209.7, 48209.9
Chapter 1262, Statutes of 1994
Choice Transfer Appeals

Ms. Piper Rodrian-Downey of the Commission staff presented Item 6, pointing out that it was associated with CSM-4451, *School District of Choice*, decided previously by the Commission. The test claim concerns the process of a pupil's appeal of the decision of a school district not to allow an interdistrict transfer which had been requested under the subject statutes. She presented the staff recommendation, which was to deny all but specified portions of the test claim.

Mr. Petersen and Mr. Doyle appeared in opposition to the staff recommendation. Mr. Apps appeared for Finance and stated support for the staff recommendation. Extensive discussion followed about the several aspects of the staff recommendation, and that discussion generally revolved around the issue of whether activities required of a local entity, when those activities result from a discretionary activity, are reimbursable state mandates. There was more fundamental disagreement on the part of Mr. Petersen as to whether the initial activities which could trigger a choice transfer appeal, seen by staff as permissive, were, in fact, permissive.

At the direction of the Members, test claim CSM-4476 was put over to a later meeting to permit staff and the claimant to further clarify the issues for the members.

A brief recess was taken. Upon reconvening, Chairperson Parker left the room during discussion of Agenda Item 8, and Member Sherwood chaired in her absence.

Statement of Decision

Item 8 CSM-4465
Health & Safety Code Sections 33020, 33680, 33681, 33681.13, 33681.5, 33682.5, and 33683
Revenue & Taxation Code Sections 97, 97.01, 97.02, 97.03, 98 and 98.6
Chapter 699, Statutes of 1992
Chapter 700, Statutes of 1992
Chapter 68, Statutes of 1993
Chapter 566, Statutes of 1993
F/Y 1993-94 ERAF Contributions

Mr. Zimmerman presented the proposed statement of decision to reflect the Commission's action to deny this test claim at its August meeting and direct that the administrative record for CSM-4465 be combined with that of CSM-4439, which also had been denied. He reported that test claim CSM-4439 pertained to Education Revenue Augmentation Fund (ERAF) contributions for 1992-93, and this test claim simply addressed the statutes which applied those contributions to 1993-94. Member Sherwood invited testimony, but none was offered.

With three Members present, Member Di Orio moved adoption of the proposed statement of decision, seconded by Member Richardson, and the motion passed unanimously.

Chairperson Parker returned to chair the remainder of the meeting.

Item 11 CSM-2753
Penal Code Sections 1026 and 1026.5
Chapter 1114, Statutes of 1979
Chapter 650, Statutes of 1982
Not Guilty by Reason of Insanity - Amendment

Mr. Stewart presented this item, relating the history of this issue involving: a State Supreme Court ruling in 1978 which led to the subject 1979 legislation; denial of the County of Los Angeles' test claim by the Board of Control in 1980; subsequent overturn of that denial based on a appellate court ruling sought by the claimant in 1982; deletion of 1984 claims bill funding by the Legislature with direction to assure that the parameters and guidelines would fund only increased activities required under Chapter 1114/79; and the eventual 1992 submittal of the subject request before the Commission. He then recommended adoption of the staff's proposed parameters and guidelines. Mr. Stewart stated that the staff had conscientiously followed the Legislature's 1984 directive to be sure that only new activities would be funded and kept coming back to the published case law in this very case -- case law stating that Chapter 1114/79 was a new program in its entirety. He noted that the proposed parameters and guidelines included offsets for both Trial Court Funding moneys and for allocations from the Department of Mental Health pursuant to section 4117 of the Welfare and Institutions Code.

Appearing for the County of Los Angeles, which requested the amendment, were Mr. Leonard Kaye and Mr. Kent Cahill, both supporting the staff recommendation. Mr. Apps appeared for the Department of Finance in opposition to the staff recommendation. Mr. Cahill reviewed in more depth some of the points mentioned by Mr. Stewart. He also pointed out that Chapter 1114 had placed on county district attorney's an activity that would otherwise have been carried out by the Attorney General, referencing a Department of Justice letter found in the administrative record in support of his position. Member Richardson asked if Chapter 650, Statutes of 1982, had been heard as a test claim, the Department of Finance having raised the issue that it had not been heard. Mr. Stewart responded that he would not dispute Finance's contention but that Chapter 650/84 had been considered and included by the Board of Control at the parameters and guidelines stage and thus was included in the 1984 claims bill.

On the motion of Member Sherwood, second by Member Di Orio, the amended parameters and guidelines were adopted unanimously.

Item 13 CSM-4485
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Mandate Reimbursement Process - Amendment

Mr. Stewart presented this item pertaining to the rate of reimbursement for local entities' contracted assistance in the preparation of mandate reimbursement claims. The Budget Act of 1995, by way of provisions in the State Controller's and the Commission's budget items, had

required this amendment to the parameters and guidelines. He pointed out that the changes, paralleling the Budget Act, would only be in effect for 1995-96 and that the item was not placed on the consent calendar because of indications that some mandate consultants might have wanted to discuss it. No one, however, appeared to testify on the item, and it was approved unanimously on the motion of Member Richardson, second by Member Sherwood.

Item 14 CSM-4448
Revenue and Taxation Code Sections 97, 97.01, 97.02, 97.03, 97.035, 97.5, 98, and 99
Chapter 697, Statutes of 1992
Chapter 699, Statutes of 1992
Chapter 700, Statutes of 1992
Chapter 899, Statutes of 1992
Chapter 1369, Statutes of 1992
Chapter 66, Statutes of 1993
Chapter 68, Statutes of 1993
Chapter 904, Statutes of 1993
Chapter 905, Statutes of 1993
Chapter 1279, Statutes of 1993
Allocation of Property Tax Revenues: ERAF

Mr. Stewart noted that this agenda item displays estimated costs covering fiscal years 1992-93 through 1995-96, but that the claims bill will have to include costs covering 1996-97 as well.

Mr. Zimmerman then presented the statewide cost estimate, indicating that the data had been compiled by staff from the County of Los Angeles, refined at the suggestion of the Department of Finance to weight the data based on taxing entities instead of population, and finally - again at Finance's suggestion - reduced in value for all but the initial two years to account for one time costs. Mr. Kaye and Mr. Apps concurred with the statewide estimate totaling $2,659,000 for fiscal years 1992-93 through 1995-96.

Member Sherwood and Chairperson Parker asked about the reliability of the sample used. Mr. Kaye and Mr. Zimmerman pointed out that the sixteen responding counties represented almost 80 percent of the state's population and over 40 percent of the state's taxing entities. The members then concurred that the sample appeared to be adequate and requested that future statewide cost estimates include a statement about the sample size in terms of population covered as well as the number of responding entities.

Member Sherwood moved approval of the statewide cost estimate with Member Di Orio seconding. The motion passed unanimously.

Applications for a Finding of Significant Financial Distress Pursuant to CCR, Title 2, Chapter 2.5, Article 6.5

Welfare and Institutions Code Section 17000.6 (SB 1033)

Procedural Issues

Item 15 Assignment of hearing panel or hearing officer pursuant to CCR, Title 2, regulation section 1186.62 for San Diego County and/or other applicant counties.

Item 16 Determination of vote requirement for hearing panels.

Mr. Stewart stated that Items 15 and 16 had been put on the agenda as placeholders to permit the Commission to entertain the option of conducting SB 1033 hearings as a hearing panel or with a hearing officer. Items 15 and 16 were not acted upon. Instead, Chairperson Parker asked that the Members continue to conduct those hearing with her, constituted as a full Commission.

Item 17 Discussion/action item on SB 1033 workload and processes

Mr. Stewart presented this item as information only. In addition to San Diego County, which has a application before the Commission, Los Angeles, Orange, Shasta and Solano counties were reported to be working on applications. Also, Contra Costa and Nevada counties had made recent inquiries. In all, he reported that about fifteen counties had made contact with staff concerning the SB 1033 process.

Other Business

Item 18 Executive Director's report on Commission staff activities, budget and legislation

Mr. Stewart presented Item 18, reporting first that a second Associate Governmental Program Analyst position funded by the Budget Act of 1995 was being advertised currently. He then reported that the Local Government Committees of the Legislature would be holding a joint hearing on the mandate process on December 4, 1995, and that he would be furnishing information to legislative staff and attending the hearing. Mr. Stewart next described the effect that SB 11, now Chapter 945/95, would have on the mandate process commencing next July. He said that the staff would begin the process of drafting amendments to Commission regulations to reflect the new legislation and that no action by the Members would be needed for the staff to start that work. The Members expressed concern about the apparent lack of flexibility in SB 11 with respect to timelines, and it was discussed that adjustments to the mandate test claim process would have to be incorporated in the amended regulations. Mr. Hori and Mr. Stewart stated that SB 11 had clear upside potential in terms of moving the mandate process along and Chairperson Parker agreed that it could be viewed as a positive opportunity.

The meeting recessed to Closed Executive Session at 1:12 p.m.

Closed Executive Session

A. Personnel matters pursuant to Government Code section 11126, subdivision (a), and Government Code section 17526.

B. Litigation matters pursuant to Government Code section 11126, subdivision (q)(1), regarding *County of Los Angeles v. Commission on State Mandates of the State of California, State of California, et al.*, Los Angeles Superior Court No. BS 026858, 2nd Civil No. B091453

San Diego Unified School District v. State of California, et al., San Diego County Superior Court No. 674127, 4th Civil No. D023914

Carmel Valley Fire Protection District, et al. v. State of California, et al., Los Angeles Superior Court No. BC 115599, Second Appellate District, Division Five

Mammoth Lakes Fire Protection District v. State of California, et al., Mono County Superior Court No. 11515

Redevelopment Agency of the City of San Marcos v. State of California, Commission on State Mandates, San Diego Superior Court No. 686818

County of San Diego v. State of California, et al., San Diego Superior Court No. 634931, Court of Appeal No. D 018634, Calif. Supreme Court No. S 046843

City of San Jose v. State of California, et al., Santa Clara County Superior Court No. 734424, Court of Appeal No. H014099

Billy Goff, et al. v. California Commission on State Mandates, Sacramento County and Board of Supervisors, et al., Sacramento County Superior Court No. 95CS01215

Stephen Pincus, et al. v. California Commission on State Mandates, Alameda County, et al., San Francisco Superior Court No. 972504

Reconvened Open Session

Chairperson Parker reconvened the open session of the hearing at 2:47 p.m. and announced that only matters of personnel and litigation were discussed.

There being no further business, Chairperson Parker adjourned the meeting at 2:48 p.m.

K.G. Stewart

KIRK G. STEWART
Executive Director

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Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
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PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)

Mandate Reimbursement Process

[FOR FISCAL YEAR 1995-96 ONLY, THESE PARAMETERS AND GUIDELINES ARE AMENDED, PURSUANT TO THE REQUIREMENTS OF PROVISION 11 OF ITEM 0840-001-001 AND PROVISION 1 OF ITEM 8885-001-001 OF THE BUDGET ACT OF 1995, TO INCLUDE APPENDIX A. NO OTHER CHANGES TO THE MARCH 26, 1987, VERSION OF THE PARAMETERS AND GUIDELINES ARE MADE.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d)(3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs

would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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.

C. Reimbursable Activities -- Reimbursement Claims

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.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such

costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The

reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Year 1995-96[1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of **[Test (1)]** ten percent of the claims prepared and submitted by the independent contractor or **[Test (2)]** the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the

[1] The limitation added by the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, is shown as part A. of this Appendix.

incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

Notice And Agenda

COMMISSION ON STATE MANDATES
Public Hearing

State Capitol
Room 437
Sacramento, California

January 30, 1997
10:00 a.m.

I ROLL CALL

II REMEMBRANCE OF ALLAN E. TEBBETTS

III APPROVAL OF MINUTES

Item 1 MINUTES
Hearing of December 19, 1996

IV ACTION ON MANDATE CLAIMS

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5

A. TEST CLAIMS

NONE

B. STATEMENT OF DECISION

NONE

C. PARAMETERS AND GUIDELINES

Item 2 CSM-4485
Commission on State Mandates (pursuant to Budget Act Provision)
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process - Amendment for Budget Act of 1996

D. STATEWIDE COST ESTIMATES

NONE

E. INCORRECT REDUCTION CLAIMS

NONE

F. REQUESTS TO SCHEDULE A RECONSIDERATION OF PREVIOUS TEST CLAIMS

Item 3 Request of Member Pichardo
CSM-4257
Chapter 641, Statutes of 1986
Open Meetings Act (re School Districts)

Item 4 Request of Department of Conservation
CSM-4155-A
Public Resources Code Section 2762
Chapter 1131, Statutes of 1975
As affected by Chapter 1097, Statutes of 1990
Public Resources Code Section 2207(e)
Mineral Resources Policies

G. DETERMINATION OF TEST CLAIMS IN DISPUTE

Item 5 CSM-4155-A
Public Resources Code Section 2762
Chapter 1131, Statutes of 1975
As affected by Chapter 1097, Statutes of 1990
Public Resources Code Section 2207(e)
Mineral Resources Policies

Item 6 CSM-96-281-01
County of Los Angeles
Chapter 641, Statutes of 1995, et al.
Domestic Violence Treatment Services Authorization and Case Management

IV ADOPTION OF PROPOSED REGULATORY ACTION

Item 7 Action item to adopt Proposed Amendment to California Code of Regulations, Title 2, Chapter 2.5, Section 1182, to implement Senate Bill 805, Chapter 154, Statutes of 1996, which increases Commission membership from five (5) to seven (7) members.

V OTHER BUSINESS

Item 8 Executive Director's report on Commission staff activities, budget and legislation.

Note: All back-up material and supporting documentation for this meeting are available for public inspection at the office of the Commission on State Mandates, Executive Director, 1414 K Street, Suite 315, Sacramento, California 95814; (916) 323-3562.

In addition, a complete copy of the above described materials will be available for public inspection at the meeting.

If you are in need of any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission on State Mandates (916) 323-3562 at least 5-7 working days prior to the meeting.

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ITEM 2

PROPOSED PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)

Mandate Reimbursement Process

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Letter from Mr. Allan Burdick, dated September 25, 1996, regarding interpretation of the Proposed P's&G's amendment 0017

Attachment E
Letter from Mr. Keith Petersen, dated December 16, 1996, regarding the proposed amendment to the P's&G's, and attached relevant portion of the August transcript..... 0019

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ITEM 2

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)

Mandate Reimbursement Process

Executive Summary

These proposed amendments to the parameters and guidelines concerning the mandate reimbursement process were included in the Budget Acts of 1995 and 1996 as provisions to the support budget appropriations for the State Controller's Office and for the Commission on State Mandates. The provisions state:

> The[1] Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:
>
> (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
>
> (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

Only one set of parameters and guidelines is known to be affected by this Budget Act language, those titled *Mandate Reimbursement Process, Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1986*, which pertain to the general procedure for local government submittal of mandate claims. The original parameters and guidelines were adopted on November 20, 1986; they were amended on March 26, 1987. The original Test Claim number was CSM-4204.

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1 The 1995 introductory phrase "In addition, the" was replaced with "The" in the Budget Act of 1996.

The Budget Act of 1995 provisions were dealt with by the Commission on State Mandates at its October 26, 1995, meeting by amending the subject Parameters and Guidelines via an "Appendix A" to cover the one year to which the Budget Act of 1995 applied -- 1995-96. The reason for not amending the body of the Parameters and Guidelines was (and remains) that Budget Act language is only applicable to a given budget year. The staff proposal before you is a simple amendment to last year's "Appendix A" to include the identical requirement added by the Budget Act of 1996 to reflect the legislatively required changes as being applicable to both 1995-96 and 1996-97.

This proposed amendment was originally heard by the Commission on August 29, 1996, and the item was continued to allow Mr. Allen Burdick, representing the California State Association of Counties, the opportunity to submit a written request for clarification on the reimbursement process.

In his correspondence to the Commission dated September 25, 1996, Mr. Burdick made the following proposals:

1) That the option to have the governing board of the local agency certify in writing that it has determined that contracting out is the least costly method of accomplishing the work, is not a requirement of the budget language. He states that the idea emanated from the fact that the agreement is typically authorized by the governing board of the local agency.

2) That a local agency be allowed to include a declaration that it could not complete the claim for less than the contractor. Further that the declaration, included in the claim, could be signed by a department head or designee and there would be no need for two signatures.

3) For the local agency to include a detailed cost estimate of time and expenses that staff would likely incur if filing the claim themselves. Further, that the signature on the claim could be the only certification of reasonableness necessary.

4) To add language clarifying available options to local agencies to meet the new budget requirements.

Mr. Keith Peterson, representing Sixten and Associates Mandate Reimbursement Services, suggests that the proposed language in Appendix A is consistent with the discussions held at a pre-hearing in the Fall of 1995, when the amendment was being discussed in the context of the Budget Act of 1995. He states that the proposed amendment as presented on August 29, 1996, should be satisfactory "... unless the State Controller and other interested parties have reached different conclusions about the import of the Budget language."

Staff recommends that the proposed parameters and guidelines be adopted as presented on August 29, 1996 (included as Attachment A). The Budget Act language permits no less than an estimate of comparative of local agency costs for reimbursement claim preparation to be one of the tests to be applied for contract reimbursement. The proposed parameters and guidelines permit broad local discretion in the preparation, presentation and certification of such cost estimates.

ATTACHMENT A

Hearing Date: August 29, 1996
File: CSM-4485 (Amendment)
Staff: K. Stewart

Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: _____
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PROPOSED PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)

Mandate Reimbursement Process

[FOR FISCAL YEARS 1995-96 AND 1996-97 ONLY, THESE PARAMETERS AND GUIDELINES ARE AMENDED, PURSUANT TO THE REQUIREMENTS OF (1) PROVISION 11 OF ITEM 0840-001-001 AND PROVISION 1 OF ITEM 8885-001-001 OF THE BUDGET ACT OF 1995 AND (2) PROVISION 9 OF ITEM 0840-001-0001 AND PROVISION 1 OF ITEM 8885-001-0001 OF THE BUDGET ACT OF 1996 TO INCLUDE APPENDIX A. NO OTHER CHANGES TO THE MARCH 26, 1987, VERSION OF THE PARAMETERS AND GUIDELINES ARE MADE.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d)(3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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.

C. Reimbursable Activities -- Reimbursement Claims

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.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each documentation to support the amounts for which reimbursement is mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-96 and 1996-97 [1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of **[Test (1)]** ten percent of the claims prepared and submitted by the independent contractor or **[Test (2)]** the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district,

---

[1] The limitation added by (1) the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, and (2) the Budget Act of 1996, Chapter 162, Statutes of 1996, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

STATE OF CALIFORNIA

PETE WILSON, *Governor*

COMMISSION ON STATE MANDATES
4 K Street, Suite 315
RAMENTO, CA 95814
916) 323-3562

ATTACHMENT B

July 18, 1996

To Attached Mailing List

RE: Proposed Amendment to Parameters and Guidelines
CSM-4485: *Mandate Reimbursement Process*
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)

You may recall that the Budget Act of 1995 included a provision in both the State Controller's and the Commission's support appropriations requiring that these particular Parameters and Guidelines be amended to reflect prescribed cost limitations. The Commission adopted those changes at its meeting of October 26, 1995.

Those identical provisions have been included in the Budget Act of 1996, and a copy is attached for your reference. The enclosed proposed amendment to Parameters and Guidelines is intended to simply show that the 1995-96 change imposed by the Legislature now applies to both 1995-96 and 1996-97. (Changes are underlined for ease of comparison.) I propose to include this item on the Commission's August 29, 1996, agenda.

Sincerely,

Kirk G. Stewart
Executive Director

Enclosures

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FILE COPY

Senate Bill No. 1393

CHAPTER 162

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 15, 1996. Filed with Secretary of State July 15, 1996]

I object to the following appropriations contained in Senate Bill 1393.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I reduce this item from $1,620,084,000 to $1,619,964,000 by reducing:

(a) 10-Support for operation of the Trial Courts from $1,512,376,000 to $1,512,256,000,

and by deleting Provision 10.

I am deleting the $120,000 legislative augmentation. Although this augmentation has been identified for a weapons screening system in the San Bernardino County Superior Court, I now understand that the purpose of this augmentation is for a pilot (or model) Drug Court Treatment Program in San Bernardino County. The authority for this proposed pilot is contained in separate legislation. This legislation is an appropriate mechanism for this appropriation so that the pilot has statutory authorization.

I am deleting Provision 10 to conform to this action.

Item 0450-111-0001—For local assistance, State Trial Court Funding. I reduce this item from $192,984,000 to $192,864,000.

I am revising this item to conform to the action I have taken in Item 0450-101-0932.

Item 0530-001-0001—For support of Secretary for Health and Welfare. I reduce this item from $1,290,000 to $1,289,000 by reducing:

(a) 10-Secretary for Health and Welfare from $2,256,000 to $2,255,000

and by deleting Provision 1.

I am deleting Provision 1 because it duplicates current law and is unnecessary. Strategic planning already is required statewide and current law requires annual reporting to the Legislature on the statewide effort. A separate report by the Health and Welfare Agency is not needed.

Item 0540-001-0001—For support of Secretary for Resources. I delete Provision 1.

I am deleting Provision 1 which prohibits the expenditure of $320,000 unless specific reports have been submitted by the Department of Fish and Game to the Legislature. This is an inappropriate restriction on the Secretary's budget and it is an infringement on the separation of powers in that it usurps the Executive Branch's authority to administer state government effectively. The Agency is committed to ensuring that required reports are submitted in a timely manner to the Legislature and continues to oversee the process on an agency-wide basis.

Item 0690-101-0372—For local assistance, Office of Emergency Services. I reduce this item from ($27,743,000) to ($26,743,000) by reducing:

(a) For transfer to the Public Facilities and Local Agency Disaster Response Account (0251) from ($25,072,000) to ($24,072,000),

and deleting Provision 2.

I am deleting the $1,000,000 which the Legislature had reserved in the Disaster Relief Fund (quarter-cent sales tax fund) for payment of costs related to the restoration of the San Francisco City Hall which was damaged in the Loma Prieta earthquake. The total cost of the additional work for the restoration of the City Hall is

ATTACHMENT C

Item | Amount

3. It is the intent of the Legislature that the local government entities currently utilizing the services of the existing state criminalistic laboratories shall continue to utilize the services of any replacement laboratories.

0825-001-0001—For support of O. J. Hawkins Data Center 9,368,000

Schedule:

(a) 10-O. J. Hawkins Data Center 29,828,000
(b) Reimbursements ..... —2,206,000
(c) Amount payable from the Fingerprint Fees Account, General Fund (Item 0825-001-0017) ..... —409,000
(d) Amount payable from the Motor Vehicle Account, State Transportation Fund (Item 0825-001-0044) . —17,051,000
(e) Amount payable from the Dealer's Record of Sale Account (Item 0825-001-0460) ..... —794,000

0825-001-0017—For support of O. J. Hawkins Data Center, for payment to Item 0825-001-0001, payable from the Fingerprint Fees Account, General Fund 409,000

0825-001-0044—For support of O. J. Hawkins Data Center, for payment to Item 0825-001-0001, payable from the Motor Vehicle Account, State Transportation Fund 17,051,000

0825-001-0460—For support of O. J. Hawkins Data Center, for payment to Item 0825-001-0001, payable from the Dealer's Record of Sale Account 794,000

0840-001-0001—For support of State Controller 61,813,000

Schedule:

(a) 100000-Personal Services 67,332,000
(b) 300000-Operating Expenses and Equipment 35,075,000
(c) Reimbursements ..... —31,333,000
(d) Amount payable from the Motor Vehicle Fuel Account, Transportation Tax Fund (Item 0840-001-0061) ..... —2,903,000
(e) Amount payable from the Highway Users Tax Account, Transportation Tax Fund (Item 0840-001-0062) ..... —814,000
(f) Amount payable from the Local Revenue Fund (Item 0840-001-0330) ..... —395,000

Item | Amount

(g) Amount payable from the State School Building Lease-Purchase Fund (Item 0840-001-0344) ..... —712,000
(i) Amount payable from the Federal Trust Fund (Item 0840-001-0890) —2,097,000
(j) Amount payable from the State Penalty Fund (Item 0840-001-0903) ..... —937,000
(k) Amount payable from nongovernmental cost funds, Retail Sales Tax Fund (Item 0840-001-0988) ... —180,000
(*l*) Amount payable from various special funds (Item 0840-011-0494) ... —206,000
(m) Amount payable from various bond funds (Item 0840-011-0797) —816,000
(n) Amount payable from various nongovernmental cost funds (Item 0840-011-0988) ..... —201,000

Provisions:

1. The appropriation made by this item shall be in lieu of the appropriation in Section 1564 of the Code of Civil Procedure for all costs, expenses, or obligations connected with the administration of the Unclaimed Property Law, with the exception of payment of owners' or holders' claims pursuant to Section 1540, 1542, 1560, or 1561 of the Code of Civil Procedure, or of payment of the costs of compensating contractors for locating and recovering unclaimed property due the state.
2. Of the claims received for reimbursement of court-ordered or voluntary desegregation programs pursuant to Sections 42243.6, 42247, and 42249 of the Education Code, the State Controller shall pay only those claims that have been subjected to audit by school districts in accordance with the State Controller's procedures manual for conducting audits of education desegregation claims. Furthermore, the State Controller shall pay only those past-year actual claims for desegregation program costs that are accompanied by all reports issued by the auditing entity, unless the auditing entity was the State Controller.
3. No less than 0.9 personnel-year in the Audits Division shall be used to audit education desegregation claims.

0014

Item Amount

4. The State Controller may, with the concurrence of the Director of Finance and the Chairperson of the Joint Legislative Budget Committee, bill affected state departments for activities required by Section 20050 of the State Administrative Manual, relating to the administration of federal pass-through funds.

   No billing may be sent to affected departments sooner than 30 days after the Chairperson of the Joint Legislative Budget Committee has been notified by the Director of Finance that he or she concurs with the amounts specified in the billings.

5. (a) Notwithstanding subdivision (b) of Section 1531 of the Code of Civil Procedure, the Controller may publish notice in any manner that the Controller determines reasonable, provided that: (1) none of the moneys used for this purpose may be redirected from funding for the Controller's audit activities, (2) no photograph is used in the publication of notice, and (3) no elected official's name is used in the publication of notice.

   (b) No funds appropriated by this act may be expended by the Controller to provide information to the public, other than holders of unclaimed property (as defined in subdivision (e) of Section 1501 of the Code of Civil Procedure), concerning the unclaimed property program or possible existence of unclaimed property held by the Controller's office, except for informational announcements to the news media or through the exchange of information on electronic bulletin boards.

6. The Controller shall increase his or her audits of the provider billings in the Medi-Cal program in such a manner as to enhance General Fund resources by at least $16,000,000 (in addition to any corresponding enhancement in federal funds).

7. Of the moneys appropriated to the State Controller by this act, the State Controller shall not expend more than $500,000 to conduct post eligibility fraud audits of the Supplemental Security Income/State Supplementary Payment Program (SSI/SSP) for a General Fund savings

Item Amount

of $1,400,000 to the State Department of Social Services (Item 5180-111-0001).

8. The State Controller shall redirect, from his or her administrative activities, resources sufficient enough to ensure the collection of at least $165,000,000 of General Fund Abandoned Property revenues for the 1996–97 fiscal year.

9. The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:

   (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

   (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

10. The Controller shall prepare a report of the actions taken pursuant to the 1995 internal audit of the Controller's office and on the performance results of the office for the 1995–96 fiscal year. The report shall include, but is not limited to, a historical analysis of expenditures and program output and an assessment of the office's performance as measured against specific performance measures that the office is currently developing. The Controller shall submit the report to the Joint Legislative Budget Committee and the fiscal committees of the Legislature by January 15, 1997.

11. The funds appropriated to the Controller by this act may not be expended for any performance review or performance audit except pursuant to specific statutory authority. It is

0015

Item		Amount
Schedule:		
(a) 10-Council of State Governments	302,000	
(b) 20-National Conference of State Legislatures	296,000	
(c) 30-Western States Legislative Forestry Task Force	22,000	
(d) 35-Pacific Fisheries Legislative Task Force	22,000	
(e) 40-Governmental Accounting Standards Board	69,000	
(f) 50-State and Local Legal Center	8,000	
(g) 60-National Governors' Association	140,000	
(h) 70-Council of State Policy and Planning Agencies	13,000	
(i) 80-Coastal States' Organization	11,000	
(j) 90-Western Governors' Association	30,000	
(k) 91-National Center for State Courts	254,000	
(l) 92-Western Interstate Commission for Higher Education	79,000	
(m) 93-Education Commission of the States	100,000	
(n) 94-For the Sake of Salmon	75,000	
20-001-0001—For support of Commission on the Status of Women		418,000
Schedule:		
(a) 100000-Personal Services	358,000	
(b) 300000-Operating Expenses and Equipment	63,000	
(c) Reimbursements	—3,000	
30-001-0001—For support of California Law Revision Commission		563,000
Schedule:		
(a) 10-Law Revision Commission	563,000	
40-001-0001—For support of California Commission on Uniform State Laws		117,000
55-001-0001—For support of Bureau of State Audits, for transfer to the State Audit Fund		9,057,000
Schedule:		
(a) 10-State Auditor	9,462,000	
(b) Reimbursements	—405,000	
60-001-0001—For support of Department of Finance		21,724,000
Schedule:		
(a) 10-Annual Financial Plan	13,666,000	

Item		Amount
(b) 20-Program and Information System Assessments	5,687,000	
(c) 30-Supportive Data	8,855,000	
(d) 40.01-Administration	4,367,000	
(e) 40.02-Distributed Administration	—3,892,000	
(f) Reimbursements	—6,959,000	

Provisions:

1. The funds appropriated by this item for CALSTARS shall be transferred by the Controller, upon order of the Department of Finance, or made available by the Department of Finance as a reimbursement, to other items and departments for CALSTARS-related activities by the Department of Finance.
2. The funds appropriated in this act for purposes of CALSTARS-related data processing costs may be transferred between any items in this act by the Controller upon order of the Director of Finance. Any funds so transferred shall be used only for support of CALSTARS-related data processing costs incurred.

8885-001-0001—For support of Commission on State Mandates, Program 10 1,314,000

Provisions:

1. The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:
   (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district.
   (b) The maximum amount of reimbursement authorized by subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

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OCT 01 1996
COMMISSION ON
STATE MANDATES

California State Association of Counties
SB 90 Service

ATTACHMENT D

September 25, 1996

Kirk G. Stewart
Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Dear Kirk

The purpose of this letter is to follow-up on the discussion at the last Commission meeting concerning the interpretation of the staff's proposed parameter and guideline amendment to the Mandate Reimbursement Process test claim. I just wanted to make sure the staff's proposed language covers what I expect are the various ways that a local agency might comply with the new provision. The purpose of the staff's amendment is bring the P's and G's into compliance with the Budget Control language to provide the state with some assurance it is not providing reimbursement for contractor claims preparation services which are in excess of what it would cost the local agency to prepare the claims with its own staff. Based on the discussion at the pre-hearing held by your staff, the following are the basic options available to comply with the new budget language requirement:

1. Self-Certification By Including A Provision in the Contract for Services

I think it was the Controller's suggestion, that one option for meeting the new requirement would be for a local agency to include a provision in its agreement with a contractor specifying that it has determined that contracting out is the least costly method of accomplishing the work. Since that agreement is typically authorized by the governing board of the local agency, that is where the idea came from to have the "governing board or its designee" provide for a certification. That was not something the legislature required.

2. Certification or Statement Attached to the Mandate Reimbursement Claim

In the event there is not a contract (some jurisdictions use purchase orders) or there was not a provision included in the contract, an agency should be able to include a declaration that the local agency could not complete the work for less then the contractor and attached it to the mandate reimbursement claim. This could be signed by a department head or other person authorized to sign on behalf

NORTH
[illegible] Auburn Blvd., Suite 2000
[illegible]mento, CA 95841
[illegible]16) 485-8519

BAY AREA
20111 Stevens Creek Blvd., Suite 145
Cupertino, CA 95014
(408) 366-0260

SOUTH
221 East Walnut, Suite 179
Pasadena, CA 91101
(818) 564-1087

of the agency. However, since each claim must be signed by an authorized representative certify that everything in the claim is true and correct, there is probably no need for two signatures.

3. Inclusion of a Cost Estimate With the Claim

Another option is to prepare a detailed cost estimate containing the estimated time and expenses the agency's staff would likely incur if it were to do the work. That estimate would then set the limit which the state would be obligated to reimburse a local agency for payment to a contractor. In this case, the signature on the bottom of claim should be all that is needed for the local agency to certify to the reasonableness of its estimate.

Someone at the August Commission meeting suggest that there should be some additional language added to the staff's proposed language to clarify what options are available to a local agency to meet the new budget requirements. It may be helpful to add wording that states a local agency can either include a cost estimate in its claim or where it has already determined that contracting out the work is the most cost effective way of completing the claims, it can either certify to that opinion in its agreement with the contractor or include a declaration so certifying.

I hope this clarifies the point I was trying to make at the last hearing. If you have any questions or need additional information, please let me know.

Sincerely,

Allan P. Burdick
Service Director

SIXTEN AND ASSOCIATES
Mandate Reimbursement Services

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ATTACHMENT E

RECEIVED
DEC 19 1996
COMMISSION ON STATE MANDATES

December 16, 1996

Kirk Stewart, Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Subject: CSM#-4485
Commission Amendment to the Parameters and Guidelines
Chapter 486, Statutes of 1975
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process

Dear Mr. Stewart:

The Commission has proposed an amendment to the above referenced parameters and guidelines to incorporate a reimbursement limitation required by the Budget Act of 1996. This amendment was originally heard at the August 29, 1996 public hearing and set over for additional comment which was received from Mr. Burdick in his letter of September 25, 1996.

I was recently able to obtain a copy of the August transcript. My recollection and understanding of the discussions with the state agencies prior to the October 26, 1995 amendment of the parameters and guidelines for the 1995 Budget Act are consistent with your statement on pages 31 and 32 of the August transcript. I would see no reason to change the proposed amendment language presented by staff to the Commissioners on August 29, 1996 unless the State Controller and other interested parties have reached different conclusions about the import of the Budget language.

My recollection of the discussion at the October 6, 1995 prehearing on this matter, which I attended, is that a local agency not requesting reimbursement for more than the 10% limit (they could actually pay the consultant more, but not request reimbursement for the amount in excess), or an amount which would exceed the cost incurred by the agency if it had itself performed the function, would have the governing board or its designee certify that the contractor fees are a cost-effective method of preparing and submitting the claim. Whether the certification was a part of the contract with the consultant, or a separate

document, was not a significant point of dispute. Either method seems adequate since the contract, and certification if it is a separate document, has to be submitted with the Mandate Reimbursement Process claim in any case in order to be paid.

However, if the local agency needed to exceed the 10% limit for reimbursement for the amount paid to a contractor, and small agencies easily could, the agency would have to prepare detailed findings as specified in the claiming instructions. These cost-study findings would also have to be certified by the governing board or its designee, and submitted with the MRP claim. Again, it does not seem particularly significant whether the certification occurs within the context of the contract or by a separate document.

It should be noted that the 10% limit was never seen as an absolute, since 10% of the claims amount for a larger agency may yield a very large ceiling. In that case, the other limitation that the consultant fees not exceed the cost the agency itself would have incurred had the agency performed the function would become the operative limit. In circumstances where the agency's cost study yields extreme results, the State Controller still has the Government Code authority to audit and reduce unreasonable claims.

In summary, it seemed the goal was to avoid unnecessary and costly time and motion studies by local agencies unless the agency was requesting reimbursement for consulting fees in excess of the 10% limit or the separately enforceable limit that the amounts paid to the contractor not exceed the amount that the local agency would have incurred for its own staff to perform the claims preparation function.

Sincerely,

Keith B. Petersen

Attachment: Excerpt from 8/29/96 COSM transcript

c: 10/25/96 mailing list

SIXTEN AND ASSOCIATES
Mandate Reimbursement Services

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PROOF OF SERVICE

RE: CSM#-4485
Commission Amendment to the Parameters and Guidelines
Chapter 486, Statutes of 1975
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am 18 years of age or older and am not a party to the entitled cause. My business address is 5252 Balboa Avenue, Suite 807, San Diego, CA 92117.

On December 16, 1996, I served the attached response of SixTen and Associates, to the parties on the attached "4485-96, CSM Mailing List for 1996-97" as updated October 25, 1996 for this claim that was provided by the Commission on State Mandates, by placing a true copy thereof to the Commission and other state agencies and persons in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 16, 1996 at San Diego, California.

RA Maddock

Roy A. Maddock

Orginated: 09/21/95
Updated:10/25/96

CSM-4485 (LABELED "4485-96.CSM MAILING LIST" FOR 1996-97)
Chapter 486, Statutes 1975
Chapter 1459, Statutes 1984
Chapter 303, Statutes 1995
Mandate Reimbursement Process

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Orginated: 09/21/95
Updated:10/25/96

CSM-4485 (LABELED "4485-96.CSM MAILING LIST" FOR 1996-97)
Chapter 486, Statutes 1975
Chapter 1459, Statutes 1984
Chapter 303, Statutes 1995
Mandate Reimbursement Process

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Accounting Division
Auditor-Controller's Department
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Mr. William Doyle, Chairman
Mandated Cost Network
Executive Committee
1153 El Prado Drive
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Orginated: 09/21/95
Updated:10/25/96

CSM-4485 (LABELED "4485-96.CSM MAILING LIST" FOR 1996-97)
Chapter 486, Statutes 1975
Chapter 1459, Statutes 1984
Chapter 303, Statutes 1995
Mandate Reimbursement Process

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Mr. Steve Conrad
County of Santa Clara
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San Jose, CA 95110

COSM TRA. BORNPT AUG 29, 996

1 of San Bernardino.

2 CHAIRPERSON PARKER: Okay, and basically the

3 County is in agreement --

4 MS. FAULKNER: The County is very pleased with the

5 final product here, but --

6 CHAIRPERSON PARKER: We had a great deal of

7 discussion about this, and I think even irrespective of the

8 timing issue, it was -- that we stepped back and had the

9 additional time to take a look at this. And in that sense,

10 I have these correctly reflected.

11 So I think the Ps&Gs are before us now. There

12 seems to be unanimity among everyone, and at least we have

13 not heard any opposition.

14 So, the Chair would entertain a motion.

15 MEMBER RICHARDSON: Move to adopt.

16 MEMBER SHERWOOD: Second.

17 CHAIRPERSON PARKER: Motion by Ms. Richardson and

18 second by Mr. Sherwood to adopt the parameters and

19 guidelines. All those in favor signify by saying aye.

20 (Ayes.)

21 CHAIRPERSON PARKER: Ps&Gs are adopted

22 unanimously. Thank you very much.

23 Item number 6.

24 EXECUTIVE DIRECTOR STEWART: Madam Chair, item 6

25 is an amendment to the parameters and guidelines having to

1 do with the mandate reimbursement process. This item is
2 identical to one that was acted on October of last year.
3 You may recall that the Budget Act of 1995 had a provision
4 in the Commission's budget, as well as in the State
5 Controller's budget, directing the Commission to amend these
6 parameters and guidelines to include certain limitations on
7 consultants' reimbursement for mandate reimbursement claims.
8 The Ps&Gs that are before you reflect the fact
9 that the Budget Act of 1996 contained an identical language,
10 so all this is is literally an update just to add one more
11 fiscal year to the change.
12 We've handled this as an appendix to the
13 underlying parameters and guidelines, this is the Budget
14 Act's one year life, as it was, unless and until the
15 Legislature embodies this change in statute. Probably the
16 appendix method is the most efficient way to handle this.
17 We'd recommend approval.
18 CHAIRPERSON PARKER: This basically is continuing
19 a policy to conform to the Budget Act that we started last
20 year. And we will be doing this on an annual basis as long
21 as this language is in the Budget Act to conform.
22 EXECUTIVE DIRECTOR STEWART: We would have to.
23 CHAIRPERSON PARKER: All right. Mr. Burdick, did
24 you want to make some comments for us?
25 MR. BURDICK: Yes, thank you. Chairwoman Parker

1 and Members of the Commission, I always hate to raise an
2 issue, but I just want to get a clarification on this point.
3 We're seeking a clarification from the State
4 Controller's Office and haven't received it, although it's
5 only been a couple of weeks ago, and so it hasn't been a
6 lengthy period of time, and we apologize for not raising it
7 to your staff. but since this is the first time this is
8 going to be tried this fall in an application, I just
9 thought it was worth making sure we're clear on that
10 language so that -- and how it's going to be applied and
11 used. And because this was kind of worked out at a meeting
12 that the Commission staff convened on a discussion of this
13 issue.
14 And the issue is, this is the question, this
15 relates to one of the requirements is that the Legislature
16 wanted in the budget control language, is to -- one of the
17 limits would be, is to limit the fees to any consulting firm
18 to what it would cost if the local agency did the claims and
19 preparation work, itself.
20 So, they're saying, you know, we don't want to pay
21 any more than it would cost if you did it yourself. And so
22 that's one of the tests that's in there.
23 At the meeting we had with your staff and there
24 was concurrence with the Controller's representatives and
25 others, that one way in which to do this could be is in your

1 contract statement that you had with the agency, you have a
2 fee in there that they could at that point designate that
3 that is the least expensive, most cost effective way in
4 which they could then, that service could be performed.
5 And so that's why we have that statement in there
6 that talks about certification by the governing board or its
7 designee.
8 The other question comes as we look at the
9 application, how it's going to work this first time. It
10 actually goes back and covers -- going to cover two contract
11 years in many cases. And so the question comes, you know,
12 how does this fit in. Does it have to be in the contract or
13 not.
14 And that option, putting in the contract, was
15 developed as a more expeditious way of going through this
16 particular process.
17 Another option, though, we thought was also that
18 could be done is if a local agency, after -- in preparing
19 its mandate reimbursement claim, which is signed and
20 certified by a representative of that agency, that they
21 could include in that claim some estimate or some
22 information in there, their process and methodology for
23 making that determination as to what their cost would be.
24 That would be included in the claim, but the claim would
25 then be signed by the representative of the agency under

1 penalty of perjury that everything within that claim was
2 true and correct.
3 We just wanted to make sure that we're clear on
4 this, that you have those two methods are available to a
5 local agency in order to comply with the requirements of
6 this language.
7 I mean I think that's -- I think it does, but I
8 just wanted to make sure that there was no question that you
9 could do one of two things. And number one, in a contract,
10 if you're hiring an outside contractor and you specify
11 there's a dollar amount of that contract, you could look at
12 that and you could specify, yes, that either that is -- you
13 could not do it for less than that amount, or you could
14 specify what your amount would be if you wanted it in that
15 particular contract.
16 Or secondly, when you're actually preparing the
17 claims and you've got all the costs and everything at the
18 end of the process, you could put your cost estimate in the
19 claim, and then that could be included in the claim which is
20 signed by a representative of that agency.
21 I think that the -- I just wanted to make that
22 clear. As I say, I think what the Legislature envisioned
23 when they developed this language was that that would
24 actually be included in the claim.
25 We came up with, I think, the community, if you

1 will, the state and local representatives came up with the
2 other language about this process of allowing for the
3 certification at the front end of the process as part of the
4 contract, which would also expedite the process.
5 So I just wanted to make it clear, since this is
6 the first time we're going to do this this fall --
7 MEMBER DiORIO: What do you mean first time? You
8 never filed a claim under last year's budget --
9 CHAIRPERSON PARKER: Well, --
10 MR. BURDICK: No, because this doesn't -- it
11 doesn't apply until the claims that are funded in last
12 year's budget, and those are the ones that we're filing this
13 November.
14 So this November is the first time --
15 CHAIRPERSON PARKER: But, Allan, I guess the
16 question is --
17 MEMBER DiORIO: Allen, this is the second year --
18 CHAIRPERSON PARKER: Yeah, yeah --
19 MEMBER DiORIO: --first time you raised --
20 CHAIRPERSON PARKER: --I -- yeah, I mean I agree
21 with what Stan's saying. The item before us today doesn't
22 have anything to do necessarily with your concern because
23 the concern that you're raising is with the test claim that
24 was filed under the requirements of last year.
25 MR. BURDICK: No. This is just strictly the

1 interpretation of budget language is what we're doing today.
2 MEMBER DiORIO: Oh.
3 MR. BURDICK: This is staff's amendment --
4 MEMBER DiORIO: -- I understand, but two --
5 MR. BURDICK: -- to the Ps&Gs --
6 MEMBER DiORIO: --years into the process, Allan,
7 if you had a concern you should have raised it. It's really
8 inappropriate --
9 CHAIRPERSON PARKER: But, Allan, you're asking --
10 you're -- I'm trying to separate. I think what your issue
11 is is separate from what we are doing today, only from --
12 you're trying to figure out how we're going to implement
13 language that has already been in effect for a year. That
14 has --
15 MR. BURDICK: Well, your language is different
16 than the Legislature's language. All right, yours is
17 different than what's in the budget control language.
18 MEMBER DiORIO: It has --
19 MR. BURDICK: I'm just asking for a clarification
20 of this language to make sure --
21 MEMBER DiORIO: Allan, we don't do verbal
22 clarifications. You either put it in writing, or we amend
23 it. Do you have specific language that you're citing to?
24 CHAIRPERSON PARKER: Allan, is the clarification
25 for the language that the Mandates Commission had in place

1 last year that's applicable to the claim that's --
2 MR. BURDICK: No, --
3 CHAIRPERSON PARKER: Is the claimant coming --
4 MR. BURDICK: -- it's this --
5 CHAIRPERSON PARKER: --up under this language or
6 last year's language?
7 MR. BURDICK: Well, this is the --
8 MEMBER DiORIO: It's the same language.
9 MR. BURDICK: -- with issues language, this is the
10 year in which it's going to -- people are going to actually
11 have to carry out and submit something to the state.
12 All I'm essentially saying is in order to make
13 sure that when a county submits something to the state that
14 that's satisfactory. I just wanted to get a clarification
15 as to whether or not we had a misunderstanding or not. And
16 like many things, until you get to the point or getting to
17 start to do something, you all of a sudden raise the
18 question, and they're looking at this.
19 And then discussing it with some other people in
20 the local community, there's been some difference on how
21 they interpreted that language.
22 MEMBER DiORIO: What language are you talking
23 about in front of us?
24 MR. BURDICK: Okay, it's the --
25 CHAIRPERSON PARKER: It's the --

1 MEMBER DiORIO: Specifically.

2 CHAIRPERSON PARKER: --the Ps&Gs, the attachment

3 A, is that --

4 MEMBER DiORIO: Well, I know it, but --

5 EXECUTIVE DIRECTOR STEWART: If you look at Bates

6 page 9, appendix A, the two paragraphs under Part A are the

7 Budget Act language, itself.

8 And then part B gets into how to implement it.

9 And the issue -- I'll just let you read it.

10 MEMBER BELTRAMI: Well, Kirk, while we're reading

11 it, do you have any problem with this clarification that's

12 being asked for?

13 EXECUTIVE DIRECTOR STEWART: My recollection of

14 the -- and it was a prehearing that was held in late

15 September or early October of last year, but the Budget Act

16 language that you have before you there talks about the

17 amount of reimbursement only exceeding, if there's

18 documentation that talks about limitations on cost to costs,

19 actual costs that would necessarily have been incurred by

20 the local government agency employee and such.

21 And the concern that arose at that time was the

22 possibility of having to get into cumbersome cost benefit

23 studies and things of that nature, and at the margin is this

24 costing more than the process is worth.

25 And the resolution that came from that point in

1 time was essentially to allow that certification by the
2 governing board or the governing board's designee, that it
3 indeed was cost beneficial to be using the contract of
4 assistance.
5 CHAIRPERSON PARKER: Let me ask a question.
6 Allan, you've not talked with Kirk and the staff about this
7 before? You've not --
8 MR. BURDICK: Because I was trying -- well, I've
9 been trying to get resolution with the Controller on the
10 interpretation. Part of the problem is there were no
11 written minutes from that, and that some of the people that
12 I've talked to do not remember. And I thought, well, let's
13 get something on the record, because --
14 CHAIRPERSON PARKER: Can we -- I guess what I
15 would prefer is if you could put them, I don't want to have
16 a situation where we're responding to something that we're
17 doing verbally. I would prefer if you would put this
18 clarification in writing to us, and then we could respond to
19 you either in a meeting on the record, or by th staff, so
20 that way we have it, it's clear what exactly it is.
21 MEMBER DiORIO: The question is whether we put
22 this over -- Allan, I assume you're getting at the language
23 where it says, submit an estimate of actual cost, and it
24 says, certified, versus just having a certification -- for
25 the cost process, itself?

1 MR. BURDICK: Yeah, what --
2 MEMBER DiORIO: Because this language isn't quite
3 clear whether we --
4 CHAIRPERSON PARKER: No, --
5 MEMBER DiORIO: --allow you to do it.
6 MR. BURDICK: Yeah.
7 CHAIRPERSON PARKER: --just the two options
8 that --
9 MR. BURDICK: Yeah, and I think that --
10 MEMBER DiORIO: Well, then it makes sense to vote
11 on this, so he's going to go back and amend it if you want
12 to go his route.
13 MR. BURDICK: Yeah, I mean I just -- in looking at
14 different, and I've talked to different people and including
15 some people from the Controller's staff, and his
16 recollection of the meeting isn't as clear as Kirk's,
17 because Kirk's is a hundred percent what I recall, and
18 that's exactly where it is.
19 And I just wanted to make sure we were clear. And
20 as I say, since I have not been able to get a response from
21 the Controller's office, and I apologize for this last
22 minute thing, and I thought well, we probably should raise
23 it just to make sure that it's clear, so that we don't have
24 this dispute down the road.
25 Because this November we're going to -- people are

1 going to be filing something to comply with this, and we
2 don't want to come back and all of a sudden say, uh-oh, we
3 got an issue, because that --
4 CHAIRPERSON PARKER: Agree.
5 MR. BURDICK: And so I do apologize for raising it
6 at the last minute, and I didn't mean to do it, but I
7 thought we're probably better off than coming back and
8 having an issue where a number of people have done
9 something, and you've said it doesn't comply.
10 MEMBER RICHARDSON: And you're asking what
11 constitutes appropriate documentation?
12 MR. BURDICK: We're really asking -- there are two
13 options, is this allowed for the two options. One is the
14 certification, in this case, in the contract document or the
15 agreement with the local agency; and secondly, or can the
16 local agency, when they file their claim, which is signed,
17 include that analysis within that particular claim. So that
18 it covers both of those situations.
19 MEMBER DiORIO: Well, clearly the latter we're
20 covered under this language. It's a question whether the
21 former would.
22 CHAIRPERSON PARKER: Kirk, you're looking
23 perplexed. I would prefer to, if we cannot answer this,
24 and -- I would just prefer to not --
25 MEMBER SHERWOOD: No, I would agree --

1 EXECUTIVE DIRECTOR STEWART: Is an answer from the
2 State Controller's office pending, Allan, on this?
3 MR. BURDICK: I can't answer --
4 EXECUTIVE DIRECTOR STEWART: Is that -- that --
5 MR. BURDICK: -- I don't want to make any comment
6 on that --
7 CHAIRPERSON PARKER: Allan, was it put --
8 MR. BURDICK: No, unfortunately it wasn't, it was
9 an approval request.
10 MEMBER DiORIO: Oh, Allan, Allan.
11 MR. BURDICK: Well, I just want to find out if
12 there's any disagreement before, but I understand I should
13 probably put everything in writing to the State Controller.
14 MEMBER DiORIO: Well, in all good agencies, Allan,
15 they want a document --
16 MR. BURDICK: Yeah.
17 CHAIRPERSON PARKER: I mean, if you're looking --
18 MEMBER BELTRAMI: How else can we --
19 CHAIRPERSON PARKER: Yeah, --
20 MEMBER DiORIO: Thank you.
21 MEMBER BELTRAMI: --things --
22 CHAIRPERSON PARKER: Well, if you're looking for
23 something to be put in the record here, I would just as soon
24 have something in writing that essentially reflects what it
25 is that you specifically would like a clarification or

1 determination on.

2 MEMBER SHERWOOD: I'd like to agree with that,

3 because I don't think I'm in a position to make a judgment

4 on this without understanding in more detail what we're

5 trying to get at here.

6 EXECUTIVE DIRECTOR STEWART: What I would

7 recommend is put the item over and, Allan, why don't you

8 comment on these parameters and guidelines so that we can

9 ship the comment out to various parties, and get a response

10 as we would in the normal course of reviewing a set of

11 Ps&Gs, and we'll put it back on the agenda probably in

12 October.

13 CHAIRPERSON PARKER: Is that going to be a problem

14 for us? I mean it's not going to be a problem for us

15 essentially, being out of compliance with Budget Act

16 language in the interim?

17 MEMBER DiORIO: Well, the other problem is if you

18 did so for 96, are we going to retroactively just deem that

19 as an interpretation for last year, since we literally have

20 the same language by now? I mean you're going to be

21 covering last year's claims?

22 MR. BURDICK: Well, I would assume whatever, how

23 you interpret it, that's -- you would interpret it the same

24 last year as now. I'm just saying that language cover, make

25 sure that that --

1 CHAIRPERSON PARKER: There wasn't --

2 MR. BURDICK: -- got both options, so if somebody
3 does an exercise in one option, you say, no, you actually
4 have to have something, you know, go back and get some kind
5 of statement from the governing board.

6 MEMBER BELTRAMI: I think that the Ps&Gs do
7 accurately reflect the consensus that came out of that
8 prehearing and last year's hearing on the matter, and that
9 is to allow the self-certification approach, as opposed to
10 the cumbersome study.

11 And it may be that the State Controller's office
12 could make the kind of interpretation that Allan's seeking,
13 which really from a technical how do we physically do it in
14 the world on a form standpoint is probably preferable to the
15 Commission dealing with it, if that kind of answer could be
16 coming from the division of accounting and reporting.

17 CHAIRPERSON PARKER: Well, --

18 MEMBER DiORIO: That's not a certification, per
19 se.

20 MR. BURDICK: That's right, and this is --

21 MEMBER DiORIO: --what you're --

22 MR. BURDICK: --language is intended, as Kirk
23 said, is to allow for this self-certification --

24 MEMBER DiORIO: I --

25 CHAIRPERSON PARKER: Well, I -- I --

1 MEMBER DiORIO: --but I think you may have an
2 issue there.
3 MR. BURDICK: Yeah, and that's --
4 MEMBER DiORIO: --real technical --
5 MR. BURDICK: -- and that's the question, you
6 know. People were not at the meeting, and there's different
7 recollections, and all of a sudden, as these went out and
8 people started looking at it again, and these questions came
9 up and --
10 CHAIRPERSON PARKER: Allan, you know, if you would
11 just send us -- and we'll try to -- we'll put this over --
12 MR. BURDICK: Thank you very much.
13 CHAIRPERSON PARKER: --and we'll try to get a
14 clarification on it. It sounds like, you know, at least one
15 route is, there's not a question. It's a matter of you
16 getting clarification on whether you have, how much
17 flexibility you have. Might as well do this up front,
18 rather than people essentially submitting claims and the
19 Controller's office being in the situation of having to make
20 a determination if they have sufficient information.
21 MR. BURDICK: Thank you, I appreciate that.
22 CHAIRPERSON PARKER: Gee, I thought this was going
23 to be just a slam-dunk.
24 All right, item 7. Paula.
25 MS. HIGASHI: Now, will this go faster? Do you

PUBLIC HEARING

STATE OF CALIFORNIA

COMMISSION ON STATE MANDATES

State Capitol

Room 437

Sacramento, California

Thursday, January 30, 1997

10:00 a.m.

Janet H. Nicol
Certified Shorthand Reporter
License Number 9764

1 APPEARANCES

2 COMMISSION MEMBERS PRESENT

3 Theresa Parker, Chairperson
Representative of the Department of Finance

4

Brad Kane
5 Representative of the State Controller

6 Nancy Patton
Representative of the Office of Planning and
7 Research

8 William Sherwood
Representative of the State Treasurer

9

10 STAFF PRESENT

11 Kirk Stewart, Executive Director

12 Paula Higashi, Counsel

13 Gary D. Hori, Counsel

14

PUBLIC SPEAKERS
15

Carol Berg, Ph.D., School Services of California, Inc.
16

William D. Ross, Esq.
17

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I N D E X

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1 whether your colleague essentially read the minutes and
2 pointed this out or not.
3 MEMBER KANE: I'll certainly point this one out as
4 well.
5 CHAIRPERSON PARKER: Is there objection to
6 unanimously adopting the minutes?
7 MEMBER SHERWOOD: That's it. You have it.
8 EXECUTIVE DIRECTOR STEWART: Got it. And we'll
9 correct it.
10 CHAIRPERSON PARKER: The minutes are adopted then.
11 Item 2.
12 EXECUTIVE DIRECTOR STEWART: Madam Chair, Item 2
13 is with respect to amended Parameters and Guidelines to the
14 Mandate Reimbursement Process.
15 As you're aware from last year, the Budget Act of
16 1995 had included a provision with respect to certain cost
17 limitations for mandate reimbursement, the claiming.
18 And the identical language was included in the
19 Budget Act of 1996.
20 What is before you is the item as it was presented
21 at your meeting last August the 29th, and it simply reflects
22 the language as it had been adopted for 1995's Budget Act,
23 updated to show it now reflecting the Budget Act of 1996 as
24 well.
25 We've prepared it as an appendix to the standing

1 Parameters and Guidelines for this mandate, because the
2 Budget Act was enacted essentially with the one-year life,
3 and this provision is not in the Government Code, like so
4 many mandate provisions are. We would recommend that it be
5 adopted as an appendix, referenced to the fiscal year.
6 We had received testimony last August from
7 Mr. Burdick asking for certain changes. The Commission put
8 the item over, so that CSAC SB 90 task force could submit
9 its request in writing.
10 That was received. It was sent out for comment.
11 And in view of the request and in view of the
12 Legislature's direction to the Commission to amend these
13 Parameters and Guidelines, staff continues to feel that
14 Parameters and Guidelines as we presented them to you last
15 August appropriately reflect the Legislature's direction and
16 give broad discretion to local governments in terms of how
17 they carry out the certification of those particular costs
18 to the State Controller's office.
19 And we would recommend their approval.
20 CHAIRPERSON PARKER: Okay. Is there anyone who
21 would like to speak on this item? Okay.
22 In our agenda item, obviously there's the letter
23 of correspondence from Mr. Burdick and there has been
24 discussion with other people in the field with respect to
25 this. It's noted in our agenda item.

1 So we have before us then the staff recommendation
2 on the Parameters and Guidelines, the reimbursement process.
3 Is there any comments by any members?
4 MEMBER SHERWOOD: Move for approval.
5 CHAIRPERSON PARKER: Motion by Mr. Sherwood.
6 MEMBER PATTON: Second.
7 CHAIRPERSON PARKER: Second by Ms. Patton.
8 All those in favor, signify by saying aye.
9 (Ayes.)
10 CHAIRPERSON PARKER: The motion is adopted
11 unanimously.
12 Item No. 3.
13 EXECUTIVE DIRECTOR STEWART: Madam Chair, Item No.
14 3 is a request to schedule reconsideration of a previous
15 test claim, on previous test claims, the Open Meetings Act.
16 This request was made at the December 19th meeting by Member
17 Pichardo and his request was limited to reopening the item
18 with respect to school districts.
19 The Open Meetings Act mandate had been revisited
20 by the Commission in 1994, July of 1994, and there had been
21 a staff recommendation before the Commission at that time
22 that certain elements of the Commission's prior decision on
23 open meetings be overturned and that only a very narrow
24 mandate be found.
25 There was discussion about the Commission's

1 CERTIFICATE OF SHORTHAND REPORTER

2

3 I, JANET H. NICOL, a Certified Shorthand Reporter
4 of the State of California, do hereby certify that I am a
5 disinterested person herein; that I reported the foregoing
6 hearing in shorthand writing; that I thereafter caused my
7 shorthand writing to be transcribed into typewriting.
8 I further certify that I am not of counsel or
9 attorney for any of the parties to said hearing, or in any
10 way interested in the outcome of said hearing.
11 IN WITNESS WHEREOF, I have hereunto set my hand
12 this 4th day of February 1997.
13
14
15 Janet H. Nicol
16
17 Janet H. Nicol
Certified Shorthand Reporter
License Number 9764
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MINUTES

COMMISSION ON STATE MANDATES

January 30, 1997
10:00 AM

State Capitol, Room 437
Sacramento, California

Present: Chairperson Theresa Parker
Representative of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Brad Kane
Representative of the State Controller
Member Nancy Patton
Representative of the Office of Planning and Research

Absent: Member Dave Cox
Representative of County Boards of Supervisors
Member Albert P. Beltrami
Public Member

There being a quorum present, Chairperson Parker called the meeting to order at 10:10 a.m.

Before taking up regular items of business, the Commission held a time of remembrance for the late Allan E. Tebbetts, an attorney with the firm of Carlsmith Ball Wichman Case & Ichiki, who had represented local interests before the Commission and its predecessor agency, the Board of Control. Executive Director Kirk Stewart read letters which had been received from Mr. William D. Ross, Esquire, and Ms. Diana K. Smith, Esquire, memorializing Mr. Tebbetts. (Copies attached.) Dr. Carol Berg, Education Mandated Cost Network, read a statement on behalf of the Long Beach Unified School District, which Mr. Tebbetts had represented. (Copy attached.) Commission Counsel Gary Hori and Mr. Ross gave testimonials concerning Mr. Tebbetts. Chairperson Parker asked for a moment of silence before proceeding to the remainder of the agenda.

Item 1 Minutes

The minutes for the meeting of December 19, 1996, were unanimously approved, with one correction: the words "Member Beltrami asked Member Sherwood ..." in the first sentence of the last paragraph on page 7 should have been "Member Beltrami asked Member Pichardo ...".

Item 2 CSM-4485
Commission on State Mandates (pursuant to Budget Act Provision)
Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process - Amendment for Budget Act of 1996

Mr. Stewart presented the proposed amendment to Parameters and Guidelines, which reflects provisions of the Budget Act of 1996 as found in the support budget items for the State Controller's Office and the Commission on State Mandates. Mr. Stewart noted that this item had been on the Commission's August 29, 1996, agenda but had been continued at the request of Mr. Alan Burdick of CSAC-SB 90 Services. He then recommended that, notwithstanding Mr. Burdick's comments which had been filed, the amendment be adopted as it had been presented on August 29, inasmuch as the proposal was designed to meet the legislative requirement while leaving broad discretion with local agencies on the paperwork needed to carry out their certifications. No one offered testimony on the item.

On the motion of Member Sherwood, seconded by Member Patton, the staff's proposed amendment to the CSM-4485 parameters and guidelines was unanimously adopted.

Item 3 Request of Member Pichardo
CSM-4257
Chapter 641, Statutes of 1986
Open Meetings Act (re School Districts)

Mr. Stewart presented this item, stating that it had been placed on the agenda at the request of Member Pichardo, representing the State Controller. He noted that the item, as shown on the agenda, pertained only to school districts as had been requested by Member Pichardo. Chairperson Parker, Member Kane and Member Sherwood briefly discussed the request and noted that when this topic was last discussed in 1994, all local governments had been included.

This item was put over to February 27, 1997, but with direction to staff to include within it a discussion of reconsideration of the *Open Meetings Act* mandate as it applies to all local governments, not just school districts.

Items 4 and 5, concerning *Mineral Resources Policies*, had been deferred until the February 27, 1997, hearing at the request of the County of Placer.

Item 6 CSM-96-281-01
County of Los Angeles
Chapter 641, Statutes of 1995, et al.
Domestic Violence Treatment Services Authorization and Case Management

Mr. Stewart indicated that the Department of Finance had submitted a letter in which it was stated that the Department would be taking issue with some aspects of the test claim and had requested that the test claim be found in dispute. He reported that there was no known controversy concerning placing the test claim in dispute.

On the motion of Member Sherwood, seconded by Member Patton, test claim CSM-96-281-01 was found to be in dispute for purposes of the timelines in SB 11 and the Commission's regulations.

Item 7 Action item to adopt Proposed Amendment to California Code of Regulations, Title 2, Chapter 2.5, Section 1182, to implement Senate Bill 805, Chapter 154, Statutes of 1996, which increases Commission membership from five (5) to seven (7) members.

Staff Counsel Paula Higashi presented this item and recommended approval of the proposed regulation change, noting that the required public hearing and comment period had taken place. The regulation change would make the Commission's quorum and vote requirement "a majority of the existing membership", meaning that that requirement [once the new regulations were filed with the Secretary of State] would rise from the present three to four upon the appointment of the sixth member of the Commission; and the four vote requirement would be the same for both a six and a seven member Commission. Ms. Higashi pointed out that the agenda materials had shown the staff recommendation to include the following:

1. Determine that no alternative considered would be more effective in implementing Chapter 154, Statutes of 1996 (S.B. 805), than the proposed regulatory action.
2. Determine that the proposed regulatory action does not impose any cost upon any local agency or school district that must be reimbursed in accordance with Government Code section 17561.
3. Adopt the amendment to Title 2, California Code of Regulations, section 1182, as proposed, to implement Chapter 154, Statutes of 1996 (S.B. 805.).
4. Authorize staff to make non-substantive changes to the text of the adopted regulations, or to update authority and reference citations, prior to filing with the Office of Administrative Law, and if requested by the Office of Administrative Law or Barclay's Publishers, to comply with publication requirements and filing with the Secretary of State. Included in this authorization are changes to structure, numbering, syntax, cross-reference, grammar, or punctuation.

On the motion of Member Sherwood, seconded by Member Patton, the staff recommendation concerning the regulation change was unanimously adopted.

Item 8 Executive Director's report on Commission staff activities, budget and legislation

Mr. Stewart reported that the Commission's office move to the Justice Building at 1300 I Street had taken place the previous weekend. He stated that General Services had done a wonderful job of design and construction, and he commended the work of Mary Ann Aguayo in the planning and coordination with General Services and the Department of Justice for the new office. He also reported that the "Move Team" of Elsa Delgado, Julie Gordon and Andrew Mendonsa had done a great job.

Mr. Stewart reported that the Governor's Budget proposes a $1,007,000 General Fund appropriation and 10.7 personnel years for the Commission for 1997-98, a $312,000 and 1.2 PY reduction compared to the current year. In lieu of direct funding for SB 1033 work (except for $50,000) the budget also proposes funding via deficiency authorization should SB 1033 work develop. The Governor's Welfare Reform proposal, however, calls for an end to the county General Assistance mandate, and, if enacted, that proposal would cause an end to the Commission's SB 1033 involvement. He reported that the State Mandates Claims Fund has a balance of $461,000, according to the Governor's Budget fund condition statement.

He reported that the Commission's formal reports to the Legislature on approved and denied test claims were delivered on January 14.

Looking ahead at future agendas, Mr. Stewart noted that the Commission will need to include a discussion of Strategic Planning in February, because such a plan is required of all agencies by late May in order to meet the July 1 deadline for Governor's Office approval. He noted that the hearing on February 14 is intended to cover the remaining special education items and that the agenda for February 27 will be lengthy, covering the school suspension, expulsion and exclusion items first discussed on October 31, plus five-to-eight other test claims, one set of P&Gs, and one SCE. Mr. Stewart recommended a 9:00 a.m. start for both hearings and stated that the February 14 hearing would be in Hearing Room B of the Energy Commission. Chairperson Parker requested that a closed session item be placed on the agenda for February 14. Mr. Stewart recommended that the closed session be held at 8:30 a.m. to avoid causing travel difficulties for the public.

There being no further business, the meeting was adjourned in memory of Allan E. Tebbetts at 10:50 a.m.

Kirk G. Stewart, Executive Director

Paula Higashi

Paula Higashi, Interim Executive Director

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MINUTES
COMMISSION ON STATE MANDATES

February 14, 1997
9:00 a.m.

Energy Commission, Hearing Room B
Sacramento, California

Present: Chairperson Theresa Parker
Representative of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Mario Pichardo
Representative of the State Controller
Member Diane Richardson
Representative of the Office of Planning and Research
Member Dave Cox
Representative of County Boards of Supervisors
Member Albert P. Beltrami
Public Member

Roll call was taken, there being a quorum present, Chairperson Parker recessed the Commission to closed executive session at 8:30 a.m. to discuss personnel issues and pending litigation.

At 9:04 a.m., Chairperson Parker reconvened open session.

Before taking up regular items of business, Chairperson Parker announced the resignation of its Executive Director, Mr. Kirk Stewart, effective at the end of the meeting. She thanked Mr. Stewart for his invaluable service. She then announced the appointment of Commission Staff Counsel, Ms. Paula Higashi, as Interim Executive Director.

Chairperson Parker recused herself and Member Sherwood assumed the chair. Ms. Higashi assumed the role of Commission Executive Director.

Ms. Higashi noted that following *Special Education* items, would be heard today:

- Nonpublic Schools (Individualized Service Agreements)
- Parental Notice and Access To A Student's Education Records
- Ten Percent Funding Cap or Restriction on Total Enrollment

Ms. Higashi then noted that following *Special Education* items, originally scheduled for this hearing, were continued to the February 27, 1997 Commission hearing:

- Maximum Enrollment Caseloads for Speech, Language and Hearing Specialists *combined with* Maximum Caseload for Resource Specialist Program (including Maximum Caseload)
- Ages 3, 4, 5, 18, 19, 20, and 21 (CSM-3986-A)
- Ages 3, 4, and 5; Preschool Transportation Programs Not Requiring Intensive Services

Chairperson Sherwood introduced the Commission's newest member, Mr. Dave Cox, Sacramento County Supervisor, representing county boards of supervisors.

Item 1 CSM-3986

Riverside County Superintendent of Schools, et al.
Special Education
Chapter 1247, Statutes of 1977
Chapter 797, Statutes of 1980 et al.

- Nonpublic Schools (Individualized Service Agreements)
- Parental Notice and Access To A Student's Education Records
- Ten Percent Funding Cap or Restriction on Total Enrollment

Claimants were represented by counsel as follows: Mr. G. Craig Biddle and Mr. Jack B. Clarke, Jr. for the Riverside County Superintendent of Schools and Ms. Diana K. Smith for the supplemental test claimants. Representing the Department of Finance were Deputy Attorney Generals Mr. Daniel G. Stone and Ms. Kyungah Suk. Dr. Caryl Miller and Dr. Ray Easler, Riverside County SELPA, were sworn in as witnesses.

- Nonpublic Schools (Individualized Service Agreements)

Ms. Lucila Ledesma of the Commission's staff presented *Nonpublic Schools (Individualized Service Agreements)* and recommended denial of the issue. Extensive discussion ensued involving three sample forms prepared by the Riverside County Special Education Local Plan Area: the Individualized Education Program (IEP) form (Exhibit 1), the Master Contract (Exhibit 2), and the Individual Service [Agreement] Contract (ISA) (Exhibit 3).

Mr. Daniel G. Stone, the Department of Finance (DOF), asserted that the additional information in the ISA is "reasonably required" by the state. The state has overall oversight responsibility to make sure that a free appropriate public education is provided to special education students, even when it is provided by a nonstate entity, such as a nonpublic school. The ISA weds the IEP with the nonpublic provider. It is an individual contract for each individual student. A situation may exist where only one or a few services listed on the IEP need be provided by a nonpublic school. The ISA makes clear which of the specific services, of all of those identified for a student on that student's IEP, that this agency has agreed contractually to provide. The DOF added that these standardized forms may have been developed at the request of local educational agencies and SELPAs, which would make this program ineligible for reimbursement under Government Code section 17556, subdivision (a).

Mr. Jack Clarke, Jr., Riverside County Superintendent of Schools, asserted that the IEP and Master Contract are federally required, whereas the ISA is state imposed. The DOF's position that the ISA is "reasonable" is not supported by *Hayes*. If the ISA is in addition to federal requirements, the local agencies are entitled to subvention. The IEP is the centerpiece of special education services in the United States; a program could not be implemented without it. The Master Contract, which contains the contract language, fulfills the federal requirement for the state to oversee this program. Mr. Clarke referred to the ISA as a "useless appendage" which could consume a substantial amount of personnel time because it does not legally ensure compliance with the IEP and is simply a duplication of information already

contained in the IEP. Mr. Clarke alleged that the Master Contract binds the nonpublic schools provider to comply with the IEP. All services provided by nonpublic schools are contained in the Master Contract as shown in the IEP; the nonpublic schools must comply with the IEP.

In response to questions from Commission Member Cox, Dr. Caryl Miller explained the three forms at issue. She clarified that a Master Contract is signed with each provider, not each student. Prior to 1993, a number of the SELPAs or school districts were found "out of compliance" by the State because they did not have individualized service contracts—hence the new legislation. Dr. Miller asserted that the ISA has no bearing on the identification or delivery of services that the student receives—that would be on the IEP and Master Contract. For example, Riverside SELPA uses the IEP and the Master Contract and files the ISA in the student's file for no other reason than to satisfy the State during coordinated compliance reviews. The Master Contract, not the ISA, is what is amended to include additional services. The Master Contract is the legal document for services and is based on the IEP. Dr. Miller further asserted that though the California Department of Education has an exemplary form for suggested use, it is not binding as long as the components as listed in the Education Code are included. The ISA contains information that was basically transferred from the IEP and Master Contract.

Chairperson Sherwood noted that these contracts, though not presently binding, were binding from 1993-1996.

Ms. Ledesma added that federal law describes the IEP in detail, then makes the state accountable for providing a free appropriate public education to all students. The state must have a contract with the agency. The IEP contains no contractual terms.

The discussion then turned to a second issue, involving the claimant's eligibility period. Riverside mistakenly claimed Chapter 1172, Statutes of 1994 (a reenactment), rather than Chapter 1296, Statutes of 1993 (the statute of origination). Mr. Clarke explained that the analysis clearly intended to go from 1980 forward-- this period is included in context in Riverside's comprehensive analysis (which was required by the Commission). Mr. Clarke asserted that Riverside has had a broad based attack on the ISA from the beginning and requested that claimant be granted the opportunity to find a legal basis for the Commission to consider intent.

Mr. Gary D. Hori, Legal Counsel for the Commission, replied that Riverside's oversight is fatal because the 1994 statute is a reenactment of the pre-existing statute, so there is no new program or higher level of service. Mr. Hori suggested that claimant may wish to consider filing an amended claim using the 1993 and 1994 statutes. However, this would shrink the claimant's eligibility period; the lookback period for eligibility would commence July 1, 1996, rather than October 11, 1993 (the date of origination of the legislation), *assuming* a state mandate was found. Mr. Hori added that the Commission has the power and authority to consider claimant's intent to file its test claim on the proper statute, though any decision must have a legal basis to it (which he was unable to provide).

Member Pichardo proposed to find that the ISA constitutes an unfunded state mandate, but to restrict the claimant's eligibility to July 1, 1996. The Commission determined, however, that the only appropriate actions would be to deny the claim or take no action. Member Pichardo then changed his motion, recommending the Commission take no action. There was no second to the motion.

Member Cox moved for denial of the claim. There was no second to the motion.

Finally, on the motion of Member Beltrami, seconded by Member Pichardo, the Commission, on a vote of 4 Ayes with Member Cox voting No, adopted the first Staff Recommendation to deny Education Code section 56365, subdivision (a), because the requirement that private school placement be an available option for local education agencies is within the federal mandate. However, no action was taken on Education Code section 56366, subdivision (a)(2), as amended by Chapter 1172/94, relating to the basic requirement to contract with private schools when disabled students are placed there as a means of providing them with a free appropriate pubic education or the requirement to utilize state-designed contract forms (ISA forms), giving the claimant the option to come back with an amended claim.

- Parental Notice and Access To A Student's Education Records

Mr. Hori presented the *Parental Notice and Access To A Student's Education Records* portion of the *Special Education* test claim and recommended that it be denied. After a previous Commission hearing on this issue, the Commission had allowed both the claimant and the DOF to submit supplemental briefs.

Mr. Jack Clarke, Jr., after restating certain points, indicated he was content to rely on Riverside's brief. Likewise, the DOF was content to rely on its brief.

Regarding the different state and federal timelines, Mr. Hori explained two federal acts—Individuals with Disabilities Education Act (IDEA) and Family Educational Rights and Privacy Act of 1974 (FERPA)—and California's response to those acts. He then submitted that the legal basis to deny this test claim hinges on the existence of prior state law. Regarding parents' access rights, Mr. Hori explained that there is a litany of access rights granted to parents— based on FERPA and the 14th Amendment.

On the motion of Member Richardson, seconded by Member Pichardo, the Commission, on a unanimous roll call vote, adopted the staff recommendation to deny the *Parental Notice and Access To A Student's Education Records* portion of the test claim.

- Ten Percent Funding Cap or Restriction on Total Enrollment

Turning to *Ten Percent Funding Cap or Restriction on Total Enrollment*, Mr. Hori recommended denial of the issue, explaining that, although the claimants submit that this cap causes a financial shortfall, the question is actually whether the statute imposes a new program or higher level of service above and beyond federally mandated floor of activities embodied in the IDEA. Commission staff submitted that the special education activity stems from the federal mandate and that the financial shortfall faced by California and its local educational agencies to carry out the special education mandate is caused by a lack of federal funds.

Mr. W. Craig Biddle, Riverside County Superintendent, submitted that the first state "cap" went into effect in the 1980s and placed a ten percent cap on SELPAs. Therefore, the special education program was not funded in the same manner as the year before. Smaller school districts, at eight percent, for example, got more money, whereas Riverside County, at 12.5 percent, got less money. This shortfall encroached into their general population funds for regular education. Though Riverside requested waivers, they were denied. Explaining the history of the claim, Mr. Biddle pointed out that one Board of Control (BOC) did not agree with Riverside. The issue went to court, where it was remanded. This BOC agreed with Riverside that the cap imposed a state mandate. The issue then returned to court, where it again was remanded. This funding cap issue is the core of the case—the basis of the whole problem in special education. Mr. Biddle requested the Commissioners follow the *Hayes* case.

In response, Mr. Stone stated his agreement with the staff recommendation and noted that previous BOC rulings are not relevant or binding on the Commission; the matter was remanded for the Commission to decide. The question is actually what one thinks of the way the state is contributing to the funding of this program. That is a financial budget financing question. The services are required as a matter of federal law. Further, no matter what the state funding mechanism, there would be a shortfall of considerable dimension. The ten percent cap is at the state's discretion, which is based on statewide averages.

Mr. Clarke added that federal law gave the state some oversight responsibility. The state, by passing this onto the locals, created a state mandate that causes a shortfall. The local agencies, the school districts, are required to serve the regular education children at a reduced revenue limit. Thus, the state has created a mandate on local agencies to provide special and regular education in a manner it would not otherwise have to do.

Member Beltrami noted that this is a federal requirement, not a state requirement, and that the federal government should be funding it. Member Sherwood agreed, adding that the state puts the cap as a method (it could have been a dollar limit). The services are required as a federal mandate, though federal law does not provide for 100 percent funding. The State has not mandated services to be provided.

On the motion of Member Beltrami, seconded by Member Pichardo, the Commission unanimously adopted the staff recommendation to deny the *Ten Percent Funding Cap or Restriction on Total Enrollment* portion of the test claim.

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There being no further business, the meeting was adjourned at 11:45 a.m.

Paula Higashi

PAULA HIGASHI
Executive Director
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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

PROPOSED PARAMETERS AND GUIDELINES Chapter 486, Statutes of 1975 Chapter 1459, Statutes of 1984 Chapter 303, Statutes of 1995 (Budget Act of 1995) Chapter 162, Statutes of 1996 (Budget Act of 1996)	No. CSM-4485 *Mandate Reimbursement Process*

The attached Proposed Parameters and Guidelines of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above entitled matter.

This Decision shall become effective on January 30, 1997. IT IS SO ORDERED January 30, 1997.

K. G. Stewart

Kirk G. Stewart, Executive Director
Commission on State Mandates

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ORIGINAL

Hearing Dates: 9/29/96 & 1/30/97
File: CSM-4485 (Amendment)
Staff: K. Stewart

Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: **January 30, 1997**
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PROPOSED PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)

Mandate Reimbursement Process

[FOR FISCAL YEARS 1995-96 AND 1996-97 ONLY, THESE PARAMETERS AND GUIDELINES ARE AMENDED, PURSUANT TO THE REQUIREMENTS OF (1) PROVISION 11 OF ITEM 0840-001-001 AND PROVISION 1 OF ITEM 8885-001-001 OF THE BUDGET ACT OF 1995 AND (2) PROVISION 9 OF ITEM 0840-001-0001 AND PROVISION 1 OF ITEM 8885-001-0001 OF THE BUDGET ACT OF 1996 TO INCLUDE APPENDIX A. NO OTHER CHANGES TO THE MARCH 26, 1987, VERSION OF THE PARAMETERS AND GUIDELINES ARE MADE.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Revenue and Taxation Code (Government Code Section 17552).

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 2231(d)(3) of the Revenue and Taxation Code (RTC), all claims for reimbursement of costs shall be submitted within 120 days of notification by the State Controller of the enactment of the claims bill.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by RTC Section 2233.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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.

C. Reimbursable Activities -- Reimbursement Claims

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.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each documentation to support the amounts for which reimbursement is mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs

Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-96 and 1996-97 [1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of **[Test (1)]** ten percent of the claims prepared and submitted by the independent contractor or **[Test (2)]** the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district,

[1] The limitation added by (1) the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, and (2) the Budget Act of 1996, Chapter 162, Statutes of 1996, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

Hearing date: September 25, 1997
Last Amended: January 30, 1997
File Number: CSM-4485-97
Commission Staff
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ITEM #8

TEST CLAIM ANALYSIS

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Chapter 282, Statutes of 1997 (Budget Act of 1997)

Mandate Reimbursement Process

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Exhibit C
December 16, 1996, Letter from Sixten and Associates 0019

Exhibit D
Pertinent portion of the Budget Act of 1997, Ch. 282, Statutes of 1997 0041

Hearing Date: September 25, 1997
Last Amended: January 30, 1997
File: CSM-4485-97
Commission Staff
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ITEM #8

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Chapter 282, Statutes of 1997 (Budget Act of 1997)

Mandate Reimbursement Process

Executive Summary

These proposed amendments to the parameters and guidelines concerning the mandate reimbursement process were included in the Budget Acts of 1995, 1996, and 1997 as part of the support budget appropriations for the State Controller's Office and for the Commission on State Mandates. The provisions of the Budget Act of 1997 state:

> "The[1] Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:
>
> (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.
>
> (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district."

Only one set of parameters and guidelines is known to be affected by this Budget Act language, those titled *Mandate Reimbursement Process, Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984*, which pertain to the general procedure for local government submittal of mandate claims. The original parameters and guidelines were adopted on November 20, 1986; they were amended on March 26, 1987. The original Test Claim number was CSM-4204.

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1 The 1995 introductory phrase "In addition, the" was replaced with "The" in the Budget Act of 1996 and the Budget Act of 1997.

The Budget Act of 1996 provisions were dealt with by the Commission on State Mandates at its January 30, 1997, meeting by amending the subject Parameters and Guidelines via an "Appendix A" to cover the one year to which the Budget Act of 1996 applied -- 1996-97. The reason for not amending the body of the Parameters and Guidelines was (and remains) that Budget Act language is only applicable to a given budget year. The staff proposal before you is a simple amendment to last year's "Appendix A" to include the identical requirement added by the three Budget Acts to reflect the legislatively required changes as being applicable to 1995-96, 1996-97, and 1997-98.

Written Comments

In his correspondence to the Commission dated September 25, 1996, Mr. Burdick made the following proposals:

1) That the option to have the governing board of the local agency certify in writing that it has determined that contracting out is the least costly method of accomplishing the work, is not a requirement of the budget language. He states that the idea emanated from the fact that the agreement is typically authorized by the governing board of the local agency.

2) That a local agency be allowed to include a declaration that it could not complete the claim for less than the contractor. Further that the declaration, included in the claim, could be signed by a department head or designee and there would be no need for two signatures.

3) For the local agency to include a detailed cost estimate of time and expenses that staff would likely incur if filing the claim themselves. Further, that the signature on the claim could be the only certification of reasonableness necessary.

4) To add language clarifying available options to local agencies to meet the new budget requirements.

Mr. Keith Peterson, representing Sixten and Associates Mandate Reimbursement Services, suggested that the proposed language in the 1996 Appendix A is consistent with the discussions held at a pre-hearing in the Fall of 1995, when the amendment was discussed in the context of the Budget Act of 1995. He stated that the proposed amendment as presented on August 29, 1996, should be satisfactory "... unless the State Controller and other interested parties have reached different conclusions about the import of the Budget language."

Staff Recommendation

Staff recommends that the proposed parameters and guidelines be adopted as presented in Exhibit A, together with the technical corrections made in sections IV and VI to remove references to Revenue and Taxation Code sections and to clarify language. The Budget Act language permits no less than an estimate of comparative of local agency costs for reimbursement claim preparation to be one of the tests to be applied for contract reimbursement. The proposed parameters and guidelines permit broad local discretion in the preparation, presentation and certification of such cost estimates.

Hearing Date: September 25, 1997
File: CSM-4485-97 (4th Amendment)
Staff: Commission Staff

Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
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PROPOSED PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Chapter 282, Statutes of 1997 (Budget Act of 1997)

Mandate Reimbursement Process

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I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

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Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate

reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

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All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

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Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. ~~Pursuant to Section 2231(d)(3) of the Revenue and Taxation Code (RTC), all~~ All claims for reimbursement of costs shall be submitted within 120 days ~~of notification by~~ from the date on which the State Controller ~~of the enactment of the claims bill.~~ issues claiming instructions.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed~~, except as otherwise allowed by RTC Section 2233~~.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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.

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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.

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VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each ~~documentation to support the amounts for which reimbursement is~~ mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs (Rev: 9/17/97)

(a) Local agencies, with the exception of public school employers, have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal method.

~~Public school employers shall use the J-41A Non-Restrictive Indirect Cost Rate.~~

(b) School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education

(c) County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

G. Legal Costs

Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
and
Chapter 1459, Statutes of 1984

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-96, ~~and~~ 1996-97, and 1997-98 [1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of **[Test (1)]** ten percent of the claims prepared and submitted by the independent contractor or **[Test (2)]** the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have

[1] The limitation added by (1) the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, ~~and~~ (2) the Budget Act of 1996, Chapter 162, Statutes of 1996, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, and (3) the Budget Act of 1997, Chapter 282, Statutes of 1997, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

1 PUBLIC HEARING

2 STATE OF CALIFORNIA

3 COMMISSION ON STATE MANDATES

4

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10 State Capitol

11 Room 437

12 Sacramento, California

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17

18 Thursday, January 30, 1997

19 10:00 a.m.

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23

24 Janet H. Nicol
Certified Shorthand Reporter

25 License Number 9764

CSM TRANSCRIPT 1-30-97

1 whether your colleague essentially read the minutes and
2 pointed this out or not.
3 MEMBER KANE: I'll certainly point this one out as
4 well.
5 CHAIRPERSON PARKER: Is there objection to
6 unanimously adopting the minutes?
7 MEMBER SHERWOOD: That's it. You have it.
8 EXECUTIVE DIRECTOR STEWART: Got it. And we'll
9 correct it.
10 CHAIRPERSON PARKER: The minutes are adopted then.
11 Item 2.
12 EXECUTIVE DIRECTOR STEWART: Madam Chair, Item 2
13 is with respect to amended Parameters and Guidelines to the
14 Mandate Reimbursement Process.
15 As you're aware from last year, the Budget Act of
16 1995 had included a provision with respect to certain cost
17 limitations for mandate reimbursement, the claiming.
18 And the identical language was included in the
19 Budget Act of 1996.
20 What is before you is the item as it was presented
21 at your meeting last August the 29th, and it simply reflects
22 the language as it had been adopted for 1995's Budget Act,
23 updated to show it now reflecting the Budget Act of 1996 as
24 well.
25 We've prepared it as an appendix to the standing

1 Parameters and Guidelines for this mandate, because the
2 Budget Act was enacted essentially with the one-year life,
3 and this provision is not in the Government Code, like so
4 many mandate provisions are. We would recommend that it be
5 adopted as an appendix, referenced to the fiscal year.
6 We had received testimony last August from
7 Mr. Burdick asking for certain changes. The Commission put
8 the item over, so that CSAC SB 90 task force could submit
9 its request in writing.
10 That was received. It was sent out for comment.
11 And in view of the request and in view of the
12 Legislature's direction to the Commission to amend these
13 Parameters and Guidelines, staff continues to feel that
14 Parameters and Guidelines as we presented them to you last
15 August appropriately reflect the Legislature's direction and
16 give broad discretion to local governments in terms of how
17 they carry out the certification of those particular costs
18 to the State Controller's office.
19 And we would recommend their approval.
20 CHAIRPERSON PARKER: Okay. Is there anyone who
21 would like to speak on this item? Okay.
22 In our agenda item, obviously there's the letter
23 of correspondence from Mr. Burdick and there has been
24 discussion with other people in the field with respect to
25 this. It's noted in our agenda item.

1 So we have before us then the staff recommendation
2 on the Parameters and Guidelines, the reimbursement process.
3 Is there any comments by any members?
4 MEMBER SHERWOOD: Move for approval.
5 CHAIRPERSON PARKER: Motion by Mr. Sherwood.
6 MEMBER PATTON: Second.
7 CHAIRPERSON PARKER: Second by Ms. Patton.
8 All those in favor, signify by saying aye.
9 (Ayes.)
10 CHAIRPERSON PARKER: The motion is adopted
11 unanimously.
12 Item No. 3.
13 EXECUTIVE DIRECTOR STEWART: Madam Chair, Item No.
14 3 is a request to schedule reconsideration of a previous
15 test claim, on previous test claims, the Open Meetings Act.
16 This request was made at the December 19th meeting by Member
17 Pichardo and his request was limited to reopening the item
18 with respect to school districts.
19 The Open Meetings Act mandate had been revisited
20 by the Commission in 1994, July of 1994, and there had been
21 a staff recommendation before the Commission at that time
22 that certain elements of the Commission's prior decision on
23 open meetings be overturned and that only a very narrow
24 mandate be found.
25 There was discussion about the Commission's

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California State Association of Counties
SB 90 Service

EXHIBIT B

September 25, 1996

Kirk G. Stewart
Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Dear Kirk

The purpose of this letter is to follow-up on the discussion at the last Commission meeting concerning the interpretation of the staff's proposed parameter and guideline amendment to the Mandate Reimbursement Process test claim. I just wanted to make sure the staff's proposed language covers what I expect are the various ways that a local agency might comply with the new provision. The purpose of the staff's amendment is bring the P's and G's into compliance with the Budget Control language to provide the state with some assurance it is not providing reimbursement for contractor claims preparation services which are in excess of what it would cost the local agency to prepare the claims with its own staff. Based on the discussion at the pre-hearing held by your staff, the following are the basic options available to comply with the new budget language requirement:

1. Self-Certification By Including A Provision in the Contract for Services

I think it was the Controller's suggestion, that one option for meeting the new requirement would be for a local agency to include a provision in its agreement with a contractor specifying that it has determined that contracting out is the least costly method of accomplishing the work. Since that agreement is typically authorized by the governing board of the local agency, that is where the idea came from to have the "governing board or its designee" provide for a certification. That was not something the legislature required.

2. Certification or Statement Attached to the Mandate Reimbursement Claim

In the event there is not a contract (some jurisdictions use purchase orders) or there was not a provision included in the contract, an agency should be able to include a declaration that the local agency could not complete the work for less then the contractor and attached it to the mandate reimbursement claim. This could be signed by a department head or other person authorized to sign on behalf

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SOUTH
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Pasadena, CA 91101
(818) 564-1587

of the agency. However, since each claim must be signed by an authorized representative certify that everything in the claim is true and correct, there is probably no need for two signatures.

3. Inclusion of a Cost Estimate With the Claim

Another option is to prepare a detailed cost estimate containing the estimated time and expenses the agency's staff would likely incur if it were to do the work. That estimate would then set the limit which the state would be obligated to reimburse a local agency for payment to a contractor. In this case, the signature on the bottom of claim should be all that is needed for the local agency to certify to the reasonableness of its estimate.

Someone at the August Commission meeting suggest that there should be some additional language added to the staff's proposed language to clarify what options are available to a local agency to meet the new budget requirements. It may be helpful to add wording that states a local agency can either include a cost estimate in its claim or where it has already determined that contracting out the work is the most cost effective way of completing the claims, it can either certify to that opinion in its agreement with the contractor or include a declaration so certifying.

I hope this clarifies the point I was trying to make at the last hearing. If you have any questions or need additional information, please let me know.

Sincerely,

Allan P. Burdick
Service Director

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EXHIBIT C

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COMMISSION ON STATE MANDATES

December 16, 1996

Kirk Stewart, Executive Director
Commission on State Mandates
1414 K Street, Suite 315
Sacramento, CA 95814

Subject: CSM#-4485
Commission Amendment to the Parameters and Guidelines
Chapter 486, Statutes of 1975
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process

Dear Mr. Stewart:

The Commission has proposed an amendment to the above referenced parameters and guidelines to incorporate a reimbursement limitation required by the Budget Act of 1996. This amendment was originally heard at the August 29, 1996 public hearing and set over for additional comment which was received from Mr. Burdick in his letter of September 25, 1996.

I was recently able to obtain a copy of the August transcript. My recollection and understanding of the discussions with the state agencies prior to the October 26, 1995 amendment of the parameters and guidelines for the 1995 Budget Act are consistent with your statement on pages 31 and 32 of the August transcript. I would see no reason to change the proposed amendment language presented by staff to the Commissioners on August 29, 1996 unless the State Controller and other interested parties have reached different conclusions about the import of the Budget language.

My recollection of the discussion at the October 6, 1995 prehearing on this matter, which I attended, is that a local agency not requesting reimbursement for more than the 10% limit (they could actually pay the consultant more, but not request reimbursement for the amount in excess), or an amount which would exceed the cost incurred by the agency if it had itself performed the function, would have the governing board or its designee certify that the contractor fees are a cost-effective method of preparing and submitting the claim. Whether the certification was a part of the contract with the consultant, or a separate

document, was not a significant point of dispute. Either method seems adequate since the contract, and certification if it is a separate document, has to be submitted with the Mandate Reimbursement Process claim in any case in order to be paid.

However, if the local agency needed to exceed the 10% limit for reimbursement for the amount paid to a contractor, and small agencies easily could, the agency would have to prepare detailed findings as specified in the claiming instructions. These cost-study findings would also have to be certified by the governing board or its designee, and submitted with the MRP claim. Again, it does not seem particularly significant whether the certification occurs within the context of the contract or by a separate document.

It should be noted that the 10% limit was never seen as an absolute, since 10% of the claims amount for a larger agency may yield a very large ceiling. In that case, the other limitation that the consultant fees not exceed the cost the agency itself would have incurred had the agency performed the function would become the operative limit. In circumstances where the agency's cost study yields extreme results, the State Controller still has the Government Code authority to audit and reduce unreasonable claims.

In summary, it seemed the goal was to avoid unnecessary and costly time and motion studies by local agencies unless the agency was requesting reimbursement for consulting fees in excess of the 10% limit or the separately enforceable limit that the amounts paid to the contractor not exceed the amount that the local agency would have incurred for its own staff to perform the claims preparation function.

Sincerely,

Keith B. Petersen

Attachment: Excerpt from 8/29/96 COSM transcript

c: 10/25/96 mailing list

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PROOF OF SERVICE

RE: CSM#-4485
Commission Amendment to the Parameters and Guidelines
Chapter 486, Statutes of 1975
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Mandate Reimbursement Process

I, the undersigned, declare as follows:

I am employed in the County of San Diego, State of California. I am 18 years of age or older and am not a party to the entitled cause. My business address is 5252 Balboa Avenue, Suite 807, San Diego, CA 92117.

On December 16, 1996, I served the attached response of SixTen and Associates, to the parties on the attached "4485-96, CSM Mailing List for 1996-97" as updated October 25, 1996 for this claim that was provided by the Commission on State Mandates, by placing a true copy thereof to the Commission and other state agencies and persons in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 16, 1996 at San Diego, California.

RA Maddock
Roy A. Maddock

Orginated: 09/21/95
Updated:10/25/96

CSM-4485 (LABELED "4485-96.CSM MAILING LIST" FOR 1996-97)
Chapter 486, Statutes 1975
Chapter 1459, Statutes 1984
Chapter 303, Statutes 1995
Mandate Reimbursement Process

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CSM-4485 (LABELED "4485-96.CSM MAILING LIST" FOR 1996-97)
Chapter 486, Statutes 1975
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Orginated: 09/21/95
Updated: 10/25/96

CSM-4485 (LABELED "4485-96.CSM MAILING LIST" FOR 1996-97)
Chapter 486, Statutes 1975
Chapter 1459, Statutes 1984
Chapter 303, Statutes 1995
Mandate Reimbursement Process

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of San Bernardino.

CHAIRPERSON PARKER: Okay, and basically the County is in agreement --

MS. FAULKNER: The County is very pleased with the final product here, but --

CHAIRPERSON PARKER: We had a great deal of discussion about this, and I think even irrespective of the timing issue, it was -- that we stepped back and had the additional time to take a look at this. And in that sense, I have these correctly reflected.

So I think the Ps&Gs are before us now. There seems to be unanimity among everyone, and at least we have not heard any opposition.

So, the Chair would entertain a motion.

MEMBER RICHARDSON: Move to adopt.

MEMBER SHERWOOD: Second.

CHAIRPERSON PARKER: Motion by Ms. Richardson and second by Mr. Sherwood to adopt the parameters and guidelines. All those in favor signify by saying aye.

(Ayes.)

CHAIRPERSON PARKER: Ps&Gs are adopted unanimously. Thank you very much.

Item number 6.

EXECUTIVE DIRECTOR STEWART: Madam Chair, item 6 is an amendment to the parameters and guidelines having to

1 do with the mandate reimbursement process. This item is
2 identical to one that was acted on October of last year.
3 You may recall that the Budget Act of 1995 had a provision
4 in the Commission's budget, as well as in the State
5 Controller's budget, directing the Commission to amend these
6 parameters and guidelines to include certain limitations on
7 consultants' reimbursement for mandate reimbursement claims.
8 The Ps&Gs that are before you reflect the fact
9 that the Budget Act of 1996 contained an identical language,
10 so all this is is literally an update just to add one more
11 fiscal year to the change.
12 We've handled this as an appendix to the
13 underlying parameters and guidelines, this is the Budget
14 Act's one year life, as it was, unless and until the
15 Legislature embodies this change in statute. Probably the
16 appendix method is the most efficient way to handle this.
17 We'd recommend approval.
18 CHAIRPERSON PARKER: This basically is continuing
19 a policy to conform to the Budget Act that we started last
20 year. And we will be doing this on an annual basis as long
21 as this language is in the Budget Act to conform.
22 EXECUTIVE DIRECTOR STEWART: We would have to.
23 CHAIRPERSON PARKER: All right. Mr. Burdick, did
24 you want to make some comments for us?
25 MR. BURDICK: Yes, thank you. Chairwoman Parker

1 and Members of the Commission, I always hate to raise an
2 issue, but I just want to get a clarification on this point.
3 We're seeking a clarification from the State
4 Controller's Office and haven't received it, although it's
5 only been a couple of weeks ago, and so it hasn't been a
6 lengthy period of time, and we apologize for not raising it
7 to your staff. but since this is the first time this is
8 going to be tried this fall in an application, I just
9 thought it was worth making sure we're clear on that
10 language so that -- and how it's going to be applied and
11 used. And because this was kind of worked out at a meeting
12 that the Commission staff convened on a discussion of this
13 issue.
14 And the issue is, this is the question, this
15 relates to one of the requirements is that the Legislature
16 wanted in the budget control language, is to -- one of the
17 limits would be, is to limit the fees to any consulting firm
18 to what it would cost if the local agency did the claims and
19 preparation work, itself.
20 So, they're saying, you know, we don't want to pay
21 any more than it would cost if you did it yourself. And so
22 that's one of the tests that's in there.
23 At the meeting we had with your staff and there
24 was concurrence with the Controller's representatives and
25 others, that one way in which to do this could be is in your

1 contract statement that you had with the agency, you have a
2 fee in there that they could at that point designate that
3 that is the least expensive, most cost effective way in
4 which they could then, that service could be performed.
5 And so that's why we have that statement in there
6 that talks about certification by the governing board or its
7 designee.
8 The other question comes as we look at the
9 application, how it's going to work this first time. It
10 actually goes back and covers -- going to cover two contract
11 years in many cases. And so the question comes, you know,
12 how does this fit in. Does it have to be in the contract or
13 not.
14 And that option, putting in the contract, was
15 developed as a more expeditious way of going through this
16 particular process.
17 Another option, though, we thought was also that
18 could be done is if a local agency, after -- in preparing
19 its mandate reimbursement claim, which is signed and
20 certified by a representative of that agency, that they
21 could include in that claim some estimate or some
22 information in there, their process and methodology for
23 making that determination as to what their cost would be.
24 That would be included in the claim, but the claim would
25 then be signed by the representative of the agency under

1 penalty of perjury that everything within that claim was
2 true and correct.
3 We just wanted to make sure that we're clear on
4 this, that you have those two methods are available to a
5 local agency in order to comply with the requirements of
6 this language.
7 I mean I think that's -- I think it does, but I
8 just wanted to make sure that there was no question that you
9 could do one of two things. And number one, in a contract,
10 if you're hiring an outside contractor and you specify
11 there's a dollar amount of that contract, you could look at
12 that and you could specify, yes, that either that is -- you
13 could not do it for less than that amount, or you could
14 specify what your amount would be if you wanted it in that
15 particular contract.
16 Or secondly, when you're actually preparing the
17 claims and you've got all the costs and everything at the
18 end of the process, you could put your cost estimate in the
19 claim, and then that could be included in the claim which is
20 signed by a representative of that agency.
21 I think that the -- I just wanted to make that
22 clear. As I say, I think what the Legislature envisioned
23 when they developed this language was that that would
24 actually be included in the claim.
25 We came up with, I think, the community, if you

1 will, the state and local representatives came up with the
2 other language about this process of allowing for the
3 certification at the front end of the process as part of the
4 contract, which would also expedite the process.
5 So I just wanted to make it clear, since this is
6 the first time we're going to do this this fall --
7 MEMBER DiORIO: What do you mean first time? You
8 never filed a claim under last year's budget --
9 CHAIRPERSON PARKER: Well, --
10 MR. BURDICK: No, because this doesn't -- it
11 doesn't apply until the claims that are funded in last
12 year's budget, and those are the ones that we're filing this
13 November.
14 So this November is the first time --
15 CHAIRPERSON PARKER: But, Allan, I guess the
16 question is --
17 MEMBER DiORIO: Allen, this is the second year --
18 CHAIRPERSON PARKER: Yeah, yeah --
19 MEMBER DiORIO: --first time you raised --
20 CHAIRPERSON PARKER: --I -- yeah, I mean I agree
21 with what Stan's saying. The item before us today doesn't
22 have anything to do necessarily with your concern because
23 the concern that you're raising is with the test claim that
24 was filed under the requirements of last year.
25 MR. BURDICK: No. This is just strictly the

1 interpretation of budget language is what we're doing today.
2 MEMBER DiORIO: Oh.
3 MR. BURDICK: This is staff's amendment --
4 MEMBER DiORIO: -- I understand, but two --
5 MR. BURDICK: -- to the Ps&Gs --
6 MEMBER DiORIO: --years into the process, Allan,
7 if you had a concern you should have raised it. It's really
8 inappropriate --
9 CHAIRPERSON PARKER: But, Allan, you're asking --
10 you're -- I'm trying to separate. I think what your issue
11 is is separate from what we are doing today, only from --
12 you're trying to figure out how we're going to implement
13 language that has already been in effect for a year. That
14 has --
15 MR. BURDICK: Well, your language is different
16 than the Legislature's language. All right, yours is
17 different than what's in the budget control language.
18 MEMBER DiORIO: It has --
19 MR. BURDICK: I'm just asking for a clarification
20 of this language to make sure --
21 MEMBER DiORIO: Allan, we don't do verbal
22 clarifications. You either put it in writing, or we amend
23 it. Do you have specific language that you're citing to?
24 CHAIRPERSON PARKER: Allan, is the clarification
25 for the language that the Mandates Commission had in place

1 last year that's applicable to the claim that's --
2 MR. BURDICK: No, --
3 CHAIRPERSON PARKER: Is the claimant coming --
4 MR. BURDICK: -- it's this --
5 CHAIRPERSON PARKER: --up under this language or
6 last year's language?
7 MR. BURDICK: Well, this is the --
8 MEMBER DiORIO: It's the same language.
9 MR. BURDICK: -- with issues language, this is the
10 year in which it's going to -- people are going to actually
11 have to carry out and submit something to the state.
12 All I'm essentially saying is in order to make
13 sure that when a county submits something to the state that
14 that's satisfactory. I just wanted to get a clarification
15 as to whether or not we had a misunderstanding or not. And
16 like many things, until you get to the point or getting to
17 start to do something, you all of a sudden raise the
18 question, and they're looking at this.
19 And then discussing it with some other people in
20 the local community, there's been some difference on how
21 they interpreted that language.
22 MEMBER DiORIO: What language are you talking
23 about in front of us?
24 MR. BURDICK: Okay, it's the --
25 CHAIRPERSON PARKER: It's the --

1 MEMBER DiORIO: Specifically.

2 CHAIRPERSON PARKER: --the Ps&Gs, the attachment

3 A, is that --

4 MEMBER DiORIO: Well, I know it, but --

5 EXECUTIVE DIRECTOR STEWART: If you look at Bates

6 page 9, appendix A, the two paragraphs under Part A are the

7 Budget Act language, itself.

8 And then part B gets into how to implement it.

9 And the issue -- I'll just let you read it.

10 MEMBER BELTRAMI: Well, Kirk, while we're reading

11 it, do you have any problem with this clarification that's

12 being asked for?

13 EXECUTIVE DIRECTOR STEWART: My recollection of

14 the -- and it was a prehearing that was held in late

15 September or early October of last year, but the Budget Act

16 language that you have before you there talks about the

17 amount of reimbursement only exceeding, if there's

18 documentation that talks about limitations on cost to costs,

19 actual costs that would necessarily have been incurred by

20 the local government agency employee and such.

21 And the concern that arose at that time was the

22 possibility of having to get into cumbersome cost benefit

23 studies and things of that nature, and at the margin is this

24 costing more than the process is worth.

25 And the resolution that came from that point in

1 time was essentially to allow that certification by the
2 governing board or the governing board's designee, that it
3 indeed was cost beneficial to be using the contract of
4 assistance.
5 CHAIRPERSON PARKER: Let me ask a question.
6 Allan, you've not talked with Kirk and the staff about this
7 before? You've not --
8 MR. BURDICK: Because I was trying -- well, I've
9 been trying to get resolution with the Controller on the
10 interpretation. Part of the problem is there were no
11 written minutes from that, and that some of the people that
12 I've talked to do not remember. And I thought, well, let's
13 get something on the record, because --
14 CHAIRPERSON PARKER: Can we -- I guess what I
15 would prefer is if you could put them, I don't want to have
16 a situation where we're responding to something that we're
17 doing verbally. I would prefer if you would put this
18 clarification in writing to us, and then we could respond to
19 you either in a meeting on the record, or by th staff, so
20 that way we have it, it's clear what exactly it is.
21 MEMBER DiORIO: The question is whether we put
22 this over -- Allan, I assume you're getting at the language
23 where it says, submit an estimate of actual cost, and it
24 says, certified, versus just having a certification -- for
25 the cost process, itself?

1 MR. BURDICK: Yeah, what --

2 MEMBER DiORIO: Because this language isn't quite

3 clear whether we --

4 CHAIRPERSON PARKER: No, --

5 MEMBER DiORIO: --allow you to do it.

6 MR. BURDICK: Yeah.

7 CHAIRPERSON PARKER: --just the two options

8 that --

9 MR. BURDICK: Yeah, and I think that --

10 MEMBER DiORIO: Well, then it makes sense to vote

11 on this, so he's going to go back and amend it if you want

12 to go his route.

13 MR. BURDICK: Yeah, I mean I just -- in looking at

14 different, and I've talked to different people and including

15 some people from the Controller's staff, and his

16 recollection of the meeting isn't as clear as Kirk's,

17 because Kirk's is a hundred percent what I recall, and

18 that's exactly where it is.

19 And I just wanted to make sure we were clear. And

20 as I say, since I have not been able to get a response from

21 the Controller's office, and I apologize for this last

22 minute thing, and I thought well, we probably should raise

23 it just to make sure that it's clear, so that we don't have

24 this dispute down the road.

25 Because this November we're going to -- people are

1 going to be filing something to comply with this, and we
2 don't want to come back and all of a sudden say, uh-oh, we
3 got an issue, because that --
4 CHAIRPERSON PARKER: Agree.
5 MR. BURDICK: And so I do apologize for raising it
6 at the last minute, and I didn't mean to do it, but I
7 thought we're probably better off than coming back and
8 having an issue where a number of people have done
9 something, and you've said it doesn't comply.
10 MEMBER RICHARDSON: And you're asking what
11 constitutes appropriate documentation?
12 MR. BURDICK: We're really asking -- there are two
13 options, is this allowed for the two options. One is the
14 certification, in this case, in the contract document or the
15 agreement with the local agency; and secondly, or can the
16 local agency, when they file their claim, which is signed,
17 include that analysis within that particular claim. So that
18 it covers both of those situations.
19 MEMBER DiORIO: Well, clearly the latter we're
20 covered under this language. It's a question whether the
21 former would.
22 CHAIRPERSON PARKER: Kirk, you're looking
23 perplexed. I would prefer to, if we cannot answer this,
24 and -- I would just prefer to not --
25 MEMBER SHERWOOD: No, I would agree --

1 EXECUTIVE DIRECTOR STEWART: Is an answer from the
2 State Controller's office pending, Allan, on this?
3 MR. BURDICK: I can't answer --
4 EXECUTIVE DIRECTOR STEWART: Is that -- that --
5 MR. BURDICK: -- I don't want to make any comment
6 on that --
7 CHAIRPERSON PARKER: Allan, was it put --
8 MR. BURDICK: No, unfortunately it wasn't, it was
9 an approval request.
10 MEMBER DiORIO: Oh, Allan, Allan.
11 MR. BURDICK: Well, I just want to find out if
12 there's any disagreement before, but I understand I should
13 probably put everything in writing to the State Controller.
14 MEMBER DiORIO: Well, in all good agencies, Allan,
15 they want a document --
16 MR. BURDICK: Yeah.
17 CHAIRPERSON PARKER: I mean, if you're looking --
18 MEMBER BELTRAMI: How else can we --
19 CHAIRPERSON PARKER: Yeah, --
20 MEMBER DiORIO: Thank you.
21 MEMBER BELTRAMI: --things --
22 CHAIRPERSON PARKER: Well, if you're looking for
23 something to be put in the record here, I would just as soon
24 have something in writing that essentially reflects what it
25 is that you specifically would like a clarification or

1 determination on.

2 MEMBER SHERWOOD: I'd like to agree with that,

3 because I don't think I'm in a position to make a judgment

4 on this without understanding in more detail what we're

5 trying to get at here.

6 EXECUTIVE DIRECTOR STEWART: What I would

7 recommend is put the item over and, Allan, why don't you

8 comment on these parameters and guidelines so that we can

9 ship the comment out to various parties, and get a response

10 as we would in the normal course of reviewing a set of

11 Ps&Gs, and we'll put it back on the agenda probably in

12 October.

13 CHAIRPERSON PARKER: Is that going to be a problem

14 for us? I mean it's not going to be a problem for us

15 essentially, being out of compliance with Budget Act

16 language in the interim?

17 MEMBER DiORIO: Well, the other problem is if you

18 did so for 96, are we going to retroactively just deem that

19 as an interpretation for last year, since we literally have

20 the same language by now? I mean you're going to be

21 covering last year's claims?

22 MR. BURDICK: Well, I would assume whatever, how

23 you interpret it, that's -- you would interpret it the same

24 last year as now. I'm just saying that language cover, make

25 sure that that --

1 CHAIRPERSON PARKER: There wasn't --

2 MR. BURDICK: -- got both options, so if somebody
3 does an exercise in one option, you say, no, you actually
4 have to have something, you know, go back and get some kind
5 of statement from the governing board.

6 MEMBER BELTRAMI: I think that the Ps&Gs do
7 accurately reflect the consensus that came out of that
8 prehearing and last year's hearing on the matter, and that
9 is to allow the self-certification approach, as opposed to
10 the cumbersome study.

11 And it may be that the State Controller's office
12 could make the kind of interpretation that Allan's seeking,
13 which really from a technical how do we physically do it in
14 the world on a form standpoint is probably preferable to the
15 Commission dealing with it, if that kind of answer could be
16 coming from the division of accounting and reporting.

17 CHAIRPERSON PARKER: Well, --

18 MEMBER DiORIO: That's not a certification, per
19 se.

20 MR. BURDICK: That's right, and this is --

21 MEMBER DiORIO: --what you're --

22 MR. BURDICK: --language is intended, as Kirk
23 said, is to allow for this self-certification --

24 MEMBER DiORIO: I --

25 CHAIRPERSON PARKER: Well, I -- I --

1 MEMBER DiORIO: --but I think you may have an
2 issue there.
3 MR. BURDICK: Yeah, and that's --
4 MEMBER DiORIO: --real technical --
5 MR. BURDICK: -- and that's the question, you
6 know. People were not at the meeting, and there's different
7 recollections, and all of a sudden, as these went out and
8 people started looking at it again, and these questions came
9 up and --
10 CHAIRPERSON PARKER: Allan, you know, if you would
11 just send us -- and we'll try to -- we'll put this over --
12 MR. BURDICK: Thank you very much.
13 CHAIRPERSON PARKER: --and we'll try to get a
14 clarification on it. It sounds like, you know, at least one
15 route is, there's not a question. It's a matter of you
16 getting clarification on whether you have, how much
17 flexibility you have. Might as well do this up front,
18 rather than people essentially submitting claims and the
19 Controller's office being in the situation of having to make
20 a determination if they have sufficient information.
21 MR. BURDICK: Thank you, I appreciate that.
22 CHAIRPERSON PARKER: Gee, I thought this was going
23 to be just a slam-dunk.
24 All right, item 7. Paula.
25 MS. HIGASHI: Now, will this go faster? Do you

PUBLIC HEARING

COMMISSION ON STATE MANDATES

REC
OCT 08 97

--o0o--

ORIGINAL

TIME: 9:30 a.m.

DATE: September 25, 1997

PLACE: State Capitol, Room 437
Sacramento, California

--o0o--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

1 A P P E A R A N C E S

2

3 CRAIG L. BROWN, Chairman

4 PAULA HIGASHI, Executive Director

5 GARY D. HORI

6 DAVE COX

7 RICHARD CHIVARO

8 NANCY PATTON

9 WILLIAM SHERWOOD

10 AL BELTRAMI

11 JOANN STEINMEIER

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1 Paula, what's the first item?

2 MS. HIGASHI: The first item is approval of the

3 minutes of the July hearing.

4 MR. COX: Move to approve, Mr. Chairman.

5 MR. SHERWOOD: Second.

6 MR. BROWN: Okay. We have a motion and a

7 second. Discussion, anybody? No discussion about it.

8 All in favor say "aye."

9 (Response by several commission members.)

10 MR. BROWN: All opposed?

11 (No response.)

12 MR. BROWN: The motion carries. Please record

13 me as abstaining since I wasn't here for the meeting.

14 The next item, please.

15 MS. HIGASHI: I have a proposed consent calendar

16 that all of you have before you. I'd like to just read

17 through the items that staff is proposing.

18 They're Items 2 and 3, which are proposed

19 statements of decision for Habitual Truant and Domestic

20 Violence Arrest Policies and Standards.

21 Item 4, which is for the Commission to a make a

22 finding of disputed test claims for Suspensions II and

23 Pupil Expulsions II.

24 And the third and the last is Item 8, approval

25 of proposed parameters and guidelines. It's an

amendment to the Mandate Reimbursement Process.

MR. BELTRAMI: Move the consent calendar is accepted.

MS. STEINMEIER: Second.

MR. BROWN: We have a motion and a second. Is there anybody who would like to be heard, on the Commission or in the audience, who like an item removed? Hearing none, all those in favor?

(Response by several commission members.)

MR. BROWN: Opposed?

(No response.

MR. BROWN: Motion carries. Please record -- Paula, please record me as abstaining on the two statements of decision since I was not present when they were taken up. The next item, please.

MS. HIGASHI: Regarding Item -- I have some announcements I'd like to make regarding some of the agenda items. First the proposed parameters and guidelines, Item 5, Threats Against Peace Officers, has been postponed to the November hearing.

Item 6, the proposed parameters and guidelines on Investment Reports, that's been postponed to the October hearing. However, staff will be having a prehearing conference with the parties on this matter in the probation office later today.

REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 6th day of October, 1997.

Yvonne K. Fenner

Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

MINUTES
COMMISSION ON STATE MANDATES
Thursday, September 25, 1997
9:30 a.m.
State Capitol, Room 437
Sacramento, California

Present: Chairperson Craig L. Brown
Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Nancy Patton
Representative of the Director of the Office of Planning and Research
Member Albert Beltrami
Public Member
Member Dave Cox
Representative of County Boards of Supervisors
Member Joann Steinmeier
Representative of School Boards

There being a quorum present, Chairperson Brown called the meeting to order at 9:32 a.m.

Item 1 Hearing of July 31, 1997

The minutes for the meeting of July 31, 1997 were presented and approved without objection on the motion of Member Cox, second by Member Sherwood. Chairperson Brown abstained.

Consent Calendar: Action On Mandate Claims

The Consent Calendar, consisting of Items 2, 3, 4, and 8, was approved unanimously upon motion of Member Beltrami and second by Member Steinmeier, except for abstentions by Chairperson Brown on Items 2 and 3.

Item 2 Proposed Statement of Decision
Habitual Truant (a.k.a. Truancy Counseling) - CSM-4487
Tustin Unified School District
Education Code Sections 48262 and 48264.5
Chapter 1184, Statutes of 1975; Chapter 1023, Statutes of 1994

Item 3 Proposed Statement of Decision
Domestic Violence Arrest Policies and Standards - CSM 96-362-02
Penal Code Section 13701
Chapter 246, Statutes of 1995

Item 4 Findings of Disputed Test Claims
Suspensions II - CSM 96-358-04 and CSM 96-358-04A
San Juan Unified School District
Education Code Section 48900, et al.
Chapter 972, Statutes of 1995, et al.
Pupil Expulsions II - CSM 96-358-03 and CSM 96-358-03A
San Juan Unified School District
Education Code Section 48900, et al.
Chapter 15, Statutes of 1996, et al.

Item 8 *Amendment of Parameters and Guidelines*
Mandate Reimbursement Process
for Budget Act of 1997 – CSM 4485-97
Commission on State Mandates (pursuant to Budget Act Provision)
Chapter 486, Statutes of 1975; Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Chapter 718, Statutes of 1997 (Budget Act of 1997)

Announcements/Postponements

Ms. Higashi announced that Item 5 was postponed to the November hearing and Items 6, 7, 9, and 10 were postponed to the October hearing. On the motion of Member Cox and second by Member Sherwood, the Commission continued the items outlined by staff.

Item 5 Proposed Parameters and Guidelines
Threats Against Peace Officers - CSM 96-365-02
County of San Diego
Penal Code Section 832.9
Chapter 1249, Statutes of 1992; Chapter 666, Statutes of 1995

Item 6 Proposed Parameters and Guidelines
Investment Reports – CSM 96-358-02
County of Santa Clara
City of Newport Beach
Government Code Section 53646
Chapter 783, Statutes of 1995; Chapter 156, Statutes of 1996
Chapter 749, Statutes of 1996

Item 7 Proposed Parameters and Guidelines
Pupil Suspensions From School - CSM 4456
San Diego Unified School District
Education Code Sections 48900, 48900.2 and 48911
Chapter 965, Statutes of 1977; Chapter 668, Statutes of 1978;
Chapter 73, Statutes of 1980; Chapter 318, Statutes of 1982;
Chapter 498, Statutes of 1983; Chapter 536, Statutes of 1984;

(Item 7 Cont.)
Chapter 318, Statutes of 1985; Chapter 856, Statutes of 1985;
Chapter 1136, Statutes of 1986; Chapter 134, Statutes of 1987;
Chapter 383, Statutes of 1987; Chapter 1306, Statutes of 1989;
Chapter 909, Statutes of 1992.
Amended to Include:
Education Code Sections 48900.3 and 48900.4
Chapter 146, Statutes of 1994; Chapter 1017, Statutes of 1994

Item 9 Presentation of Staff's Draft Modification to Proposed Amendment to California Code of Regulations, Title 2, Chapter 2.5, Section 1188, Reconsideration, After Close of Public Comment Period. (Action on release of modification; no action to adopt staff's draft modification.)

Item 10 Request for Reconsideration
Test Claim on *Medically Indigent Adults*
CSM 4285, CSM 4299
Chapter 328, Statutes of 1982; Chapter 1594, Statutes of 1982
County of San Bernardino, Requester

Item 11 Executive Director's Report

Ms. Higashi provided an update on the Strategic Plan, as follows:

Goal 1- to define core values. The Commission staff has held 2 meetings facilitated by our consultant to refine the Mission Statement and Core Values. After a third meeting, the final products will be presented to the Commission.

Goal 2- to streamline operations. The Executive Director reported meetings with State Controller's staff and the CSAC SB 90 Group. Staff also conducted a workshop to discuss updates to the Guidebook and the Commission's website. Ms. Higashi explained that the Commission will convene a parameters and guidelines workshop to develop "boilerplate" Ps & Gs; update the Guidebook; and develop new procedures for development of statewide cost estimates and review of claiming instructions. All of these projects will involve interested parties, including the State Controller's staff.

Other projects, included in the Strategic Plan, and in progress, are as follows:
(1) review of CSM procedures;
(2) conduct position study;
(3) establish Internet policy;
(4) define ex parte communications and consider regulations;
(5) establish the CSM Website.

Member Beltrami encouraged staff to speed up development of the Website.
Ms. Higashi reported that the site should be open for the November meeting. She added that a mailing would be sent to all parties on the Commission's mailing list to announce our opening of the Website and to obtain e-mail addresses to expedite notification of future developments.

Item 12 Agenda Items for Future Meetings

Ms. Higashi reviewed the agenda for the October 30, 1997 meeting. She explained that the remaining Special Education issues would be considered with all items put over from this meeting. She added that if the workshop on the measurement date issue goes well that staff may be able to bring this item before the Commission members at the October hearing.

Closed Session

At 9:45 a.m., Chairperson Brown recessed the public session of the Commission meeting to convene in closed session for the purpose of discussing personnel matters, pursuant to Government Code sections 11126, 17526, and 17531. (Member Cox departed at the beginning of closed session.)

At 9:56 a.m., Chairperson Brown reconvened the open session of the Commission hearing. He announced that while in closed session, the Commission discussed personnel matters as indicated on the agenda and that no other matters were discussed.

Adjournment

At 9:57 a.m., the meeting was adjourned by Chairperson Brown

Paula Higashi
Executive Director
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NOTICE AND AGENDA
COMMISSION ON STATE MANDATES

Public Meeting and Hearing
State Capitol, Room 437
Sacramento, California

October 29, 1998

Closed Executive Session – 9:00 a.m. – State Capitol, Room 125

Open Session – 9:30 a.m. – State Capitol, Room 437

I. CALL TO ORDER AND ROLL CALL

II. PERSONNEL MATTERS

Closed Executive Session pursuant to Government Code sections 17526, subdivision (a) and 11126.

- Consideration of the selection and appointment of the Administrative Advisor II (C.E.A. – Chief Counsel to the Commission) pursuant to Government Code sections 17529 and 19889 et seq.; finalists may be interviewed. (action)

<Recess and Reconvene in Room 437>

Report from Closed Executive Session

III. APPROVAL OF MINUTES (action)

Item 1 September 24, 1998

IV. HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

A. TEST CLAIMS (action)

Item 2 *Non-Profit, Special Use Property Requirements* -CSM- 97-238-01
City of San Diego, Claimant
Code of Civil Procedure Sections 1235.155, 1263.320, 1263.321
Evidence Code Sections 823 and 824
Government Code Section 7267.9
Statutes of 1992, Chapter 7

Item 3 *Property Tax Shift From Local Governments To Educational Revenue Augmentation Fund ("ERAF")* – CSM - 97-TC- 04
County of Sonoma and 47 Counties, Co-Claimants
Revenue & Taxation Code Sections 95, et seq; 95.1, et seq.; 97.01et seq.; 97.03; 97.035; and 97.038; Education Code Section 41204.5
Statutes of 1992, Chapters 699, 700, 703, and 1369; Statutes of 1993, Chapters 66, 68, 130, 904, 905, 906 and 1279.

B. ADOPTION OF PROPOSED STATEMENTS OF DECISION (action)

Item 4 *Dismissal/Withdrawal of Test Claim: Employee Tuberculosis Screening*
CSM-98-TC-02
Contra Costa Community College District, Claimant
Education Code Section 87408.6
Statutes of 1981, Chapter 470, Section 348
Statutes of 1990, Chapter 1302, Section 40
Statutes of 1996, Chapter 1023, Section 42

Item 5 *Test Claim: American Government Course Document Requirement*
CSM–97-TC-02 (a.k.a. 97-258-01)
San Diego Unified School District, Co-Claimant
Sweetwater Union High School District, Co-Claimant
Education Code Section 51230
Statutes of 1996, Chapter 778

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8.

A. ADOPTION OF PARAMETERS AND GUIDELINES (action)

Item 6 *Domestic Violence Treatment Services – Authorization and Case Management* – CSM–96-281-01
County of Los Angeles, Claimant
Penal Code Section 1203.097, Subdivisions (b)(3)(I), (b)(4), (c)(1), (c)(2), and (c)(5)
Statutes of 1991, Chapter 641

Item 7 *Airport Land Use Commissions/Plans* – CSM 4507
County of San Bernardino, Claimant
Public Utilities Code Sections 21670 and 21670.1
Statutes of 1994, Chapter 644
Statutes of 1995, Chapter 66
Statutes of 1995, Chapter 91

B. ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES (action)

Item 8 *Mandate Reimbursement Process – Amendment for Budget Act of 1998* – CSM 4485-PGA-98-01
Commission on State Mandates (pursuant to Budget Act Provision)
Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)

C. ADOPTION OF PROPOSED RULEMAKING ORDERS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1189.2, SUBDIVISION (B). (action)

Item 9 *Commission Orders to Initiate Rulemaking:*
Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 to Implement AB 1963 (Stats. 1998, ch. 681, and effective September 22, 1998), to Establish Procedures for Amendments to Parameters and Guidelines, and Review of Claiming Instructions, and to adopt Forms.

VI. EXECUTIVE DIRECTOR'S REPORT (information)

Item 10 Executive Director's Report
Workload and Next Hearing

ADJOURNMENT

Notice and Agenda

Workshop on Implementation of AB 1963
(Statutes of 1998, Chapter 681, effective September 22, 1998)

Commission on State Mandates
1300 I Street, Suite 950
Conference Room
Sacramento

October 30, 1998

AGENDA

9:00 – 9:10	Introductions and Agenda Overview
9:10 – 9:20	AB 1963 Summary
9:20 – 10:15	Review of Proposed Regulatory Changes
10:15 –10:30	Break
10:30 –11:45	Alternative Approaches: Incorrect Reduction Claims
11:45 – 1:00	Lunch Break
1:00 – 2:15	Discussion of Alternative Approaches
2:15 – 2:30	Wrap-up

Hearing Date: October 29, 1998
Document Date: October 23, 1998
f:/mandates/csm4000/4485/1029toc.doc

ITEM # 8

PROPOSED AMENDMENT OF PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1993, Chapter 324 (Budget Act of 1998)

Mandate Reimbursement Process

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Exhibit A

Proposed Amendment of Parameters and Guidelines, dated October 22, 1998 0009

Exhibit B

Budget Act of 1998 0017

Exhibit C

Letter from SB 90 Service, dated October 19, 1998 0023

Exhibit D

Government Code Section 800 0027

Hearing Date: October 29, 1998
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ITEM # 8

PROPOSED AMENDMENT OF PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)

Mandate Reimbursement Process

Executive Summary

September 24, 1998 Hearing

The annual Budget Act amendments to the parameters and guidelines for the Mandate Reimbursement Process were considered on September 24, 1998. At that hearing, the Commission approved one change requested by Mr. Allan Burdick, DMG Maximus[1] and postponed action on his request to delete the specific $90/hour maximum for legal counsel costs. (See Section VI. Claim Preparation, Subsection G. Legal Costs.)

Mr. Burdick suggested tying the $90/hour rate to "a state regulation or procedure for reimbursing attorney costs, or else allowing whatever the local agency may have in terms of its limitation for attorney costs." Dr. Carol Berg, Education Mandated Cost Network, concurred with Mr. Burdick. She also noted that in the Collective Bargaining Parameters and Guidelines, the attorney rate started at $100/hour and is still set at that rate. The Commission noted that the current hourly rate for the Attorney General and the Department of Personnel Administration is $100/hour.

Mr. Jim Apps, Department of Finance, recalled that the $90 was based on the rate specified either in the Budget Act or in accompanying legislation as to the limit upon the amounts that could be paid to outside counsel.

The Commission postponed action on the proposed amendment of the parameters and guidelines and requested staff to find out the basis for the $90 limitation.

Background

On April 24, 1986, the Commission determined that Statutes of 1975, Chapter 486 and Statutes of 1984, Chapter 1459, imposed state mandated costs upon local governments by prescribing the procedures which must be followed before state mandated costs are recognized and subsequently paid. The Department of Finance, the State Controller's Office, and the Education Mandated

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[1] Section VI. Supporting Documentation, Subsection F. Allowable Overhead Costs for Community College Districts.

and subsequently paid. The Department of Finance, the State Controller's Office, and the Education Mandated Cost Network submitted comments and suggested changes to the claimant's proposed parameters and guidelines. Commission staff also suggested amendments.

On November 20, 1986, the Commission adopted the original parameters and guidelines. The Department of Finance (DOF) had suggested limiting reimbursement for legal costs and/or legal counsel to the current hourly rate charged by the Attorney General's Office, which was $72.70 per hour. The DOF stated that this would be consistent with existing language in parameters and guidelines for other mandates. In response, the claimant stated that if this were consistent with existing policy, they would not object. *However, staff noted that the majority of other parameters and guidelines did not contain any such limitation.*

In 1986, staff recommended adding Section VI G. to the proposed parameters and guidelines to read as follows:

> "G. Legal Costs
> The hourly rate for legal counsel shall not exceed the greater of the following:
> 1) The hourly rate charged by the Attorney General of the State of California.
> -or-
> 2) The hourly rate established by Budget Item 9810-001-001. ($90 per hour)

Budget Act Item 9810-001-001 established a maximum state reimbursable hourly rate of $90 for attorney fees.[2] Commissioner Pelkofer, Deputy State Controller, disagreed with the staff proposal concerning legal costs. "Member Pelkofer stated that a more appropriate method would be to establish a threshold hourly rate with a statement that informs a claimant that with proper documentation, reimbursement will be made for any amounts that do not exceed the threshold hourly rate, and any amounts that exceed the threshold rate, will be subject to review by the State Controller's Office for appropriateness. Member Pelkofer moved this amendment." The Commission unanimously adopted this amendment which resulted in the current language setting the maximum state reimbursable hourly rate of $90.[3]

Hourly Rates in Statute and Budget Acts

Government Code section 800 originally provided that in a civil action to appeal or review the award, finding, or other determination of any administrative proceeding under the Government

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[2] The 1985 Budget Act (Stats. 1985, ch. 111) included Item 9810-001-001 for payment of attorney fee claims. Paragraph 2 set the maximum hourly rate of $90 and paragraph 3 limited expenditures under this item to $100,000 for a single action. The Governor vetoed this item from the 1986 Budget Act because the "control provisions no longer provide a reasonable cap on hourly rates." The Governor's veto message further stated, "I would support restoration of this appropriation with an appropriate limit on hourly rates. Attorney fee claims which cannot be paid from Budget Act appropriations pursuant to Section 5.00 will be subject to the Board of Control claims process. I am directing the Department of Finance to apply the criteria contained in the Budget Act of 1985 in its review of claims which are presented to the Board [of Control]." ... Section 5.00 states: "(a) No funds appropriated by this act or appropriated under any other statute may be used to pay attorney's fees in actions arising in state courts unless payment of the fees is either: (1) specifically authorized and set forth in an item or section of this act; or (2) expressly authorized by a statutory provision other than Section 1021.5 of the Code of Civil Procedure. (b) This section shall not be construed as making an appropriation of funds for the payment of court-awarded attorney's fees. (Stats. 1985, ch. 186, pp. 84-85, 617.)

[3] Minutes, Hearing of November 20, 1986, Item 5, pages 3-4.

attorney's fees to one thousand five hundred dollars ($1,500). Statutes of 1988, Chapter 903 set an hourly rate of one hundred dollars ($100) per hour, and a ceiling of seven thousand five hundred dollars ($7,500). (See Exhibit C.)

Victim's of Crime Program – Board of Control. Government Code section 13965, subdivision (d) provides that the Board of Control shall pay attorney's fees representing the reasonable value of legal services rendered to an applicant under the Victims of Crime Program, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim.

Legal Fees, Mandated Reporters of Child Abuse. State law requires certain persons to report child abuse and elder abuse to law enforcement and other protective services agencies. If a mandated reporter is sued for making this report and incurs defense costs, there is a Board of Control procedure for recovery of attorneys' fees. The Board of Control may award attorneys' fees at an hourly rate not to exceed the rate charged by the Attorney General's Office. Moreover, the Board may award total attorney's fees up to fifty thousand dollars. ($50,000.) (Pen. Code, § 11172; Welf. & Inst. Code, § 15634.) The current hourly rate charged by the Attorney General's Office is $100 per hour.

Prior Budget Acts. In Budget Item 9810-001-001, the 1987, 1988, 1989, 1990, and 1991 Budget Acts limited payment of specified attorney fee claims to a maximum hourly rate of $125.[4] (Stats. 1987, ch. 135, p. 548; Stats. 1988, ch. 313, p. 484; Stats. 1989, ch. 93, p. 511; Stats. 1990, ch. 467, No. 9 West's Cal. Legis. Service, p. 2262; Stats. 1991, ch. 118, p. 477.) *If the Commission had tied the maximum hourly rate to the Budget Item, claimants would have had an automatic increase to $125 per hour, beginning in fiscal year 1987-88.*

The 1992 Budget Act deleted the maximum hourly rate. (Stats. 1992, ch. 587, p. 464.)

Recent Budget Acts. The 1995, 1996, 1997, and 1998 Budget Acts have required the Commission on State Mandates to provide limitations in the parameters and guidelines for the Mandate Reimbursement process, as follows:

"(a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district.

"(b) The maximum amount of reimbursement authorized by subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the

[4] Item 9810-001-001 –For payment of specified attorney fee claims, settlements, compromises, and judgments arising from actions in state courts against the state, its officers, and officers and employees of state agencies... supported from the General Fund. ...2. Payments from this item shall only be made for state court actions filed pursuant to Section 1021.5 of the Code of Civil Procedure, the "private attorney general" doctrine, or the "substantial benefit" doctrine. Payments for state court actions shall not exceed a maximum hourly rate of $125.

incurring of the additional costs claimed by the local agency or school district." (See Exhibit B.)

Review of Parameters and Guidelines by SB 90 Service, dated October 19, 1998

Ms. Pamela Stone, California Cities SB 90 Service, reviewed current parameters and guidelines to determine if other mandates have historically provided for reimbursement of attorneys' fees without limitation. (See Exhibit C.) Based on their review, the SB 90 Service requests that the Commission removes the limit placed on attorneys' fees from the Mandate Reimbursement Process Parameters and Guidelines. Ms. Stone concludes, "Most local entities have policies which limit or curtail either the hourly rate or total charges of consultants. Because local entities generally do not incur costs on the possibility of future reimbursement through the Mandate Reimbursement Process...the most appropriate course of action would be to defer to usual custom and practice of the local entity."

Attorneys' Services

According to Ms. Stone, eight mandated programs were identified as providing reimbursement for legal counsel costs:

- Two programs (*Firefighters Cancer Presumption and Peace Officers Cancer Presumption*) provided reimbursement of 50% of legal counsel costs. It should also be noted that other costs are also reimbursable at the rate of fifty percent.
- Six programs include reimbursable activities provided by attorneys (district attorneys, indigent defense counsel) and do not include hourly rate limitations. (*Developmentally Disabled: Attorney's Services, Mentally Disordered Sex Offenders: Extended Commitments, Not Guilty by Reason of Insanity, Mentally Retarded Defendants: Diversion, Conservatorship: Developmentally Disabled Adults, and Sexually Violent Predators.*)

Consultants and Contractors

Ms. Stone noted that the "Commission has historically recognized the need for consultants and contractors to assist claimants in complying with various mandated programs. Generally these have not contained a specified limit or hourly rate." (Ten (10) programs are identified.)

Ms. Stone found two programs that limit the amounts that contractors may charge. In *Collective Bargaining* (recently amended by the Commission), contracted services, including attorneys' fees, may be charged at a rate not greater than $100. In *Graduation Requirements*, for the 1984-85 fiscal year, contractor services could not exceed $65 per hour, subject to the implicit price deflator. The hourly rate for fiscal year 1995-96 was $93.81.

Staff Comments and Recommendation

The $90 maximum hourly rate is the same amount set in Budget Item 9810-001-001 in 1985 and 1986. Although the 1987 Budget Act increased that maximum hourly rate to $125, no changes have been made to the parameters and guidelines. The rate remained at $125 until all references to it were deleted in 1992.

If the Commission had adopted the language of the original staff recommendation and set the maximum hourly rate cap to the one set in Budget Item 9810-001-001, the rate would have automatically increased in 1987 to $125 and remained at that rate until 1992 when it was deleted.

On the other hand, if the Commission had adopted DOF's initial recommendation and set the maximum hourly rate of reimbursement at the same rate as the Attorney General's hourly rate, the current rate would be $100.

Another approach, which was not considered, would have been to set the rate at $90 in 1986, subject to the Department of Finance deflator.

The SB 90-Service reviewed parameters and guidelines and claiming instructions and found little to support the Department of Finance's original assertion that an hourly rate limitation would be consistent with existing language in parameters and guidelines for other mandates. Staff concurs with the SB 90 Service.

Based on these findings, the Commission has at least three options:

Option 1. – Adopt the SB 90 Service recommendation to delete Section VI.G. Legal Costs.

> ~~G. Legal Costs~~
>
> ~~Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.~~
>
> ~~Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.~~

By deleting Section VI.G. Legal Costs, claims for legal counsel costs would be filed under the contract services provision, Section VI.D, and the limitations set forth in Appendix A, Reimbursement for Independent Contractor Cost, included in the Proposed Parameters and Guidelines. (See Exhibit A.)

Appendix A specifies how to claim costs incurred for independent contractor/legal counsel to assist in the preparation, submission and/or presentation of successful claims. Costs reimbursed by the state shall not exceed the lesser of two tests: (1) ten percent of the amount of the claims prepared and submitted, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district. The maximum amount of reimbursement may be exceeded only if the claimant establishes, by appropriate documentation. In the absence of specified documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2).

Option 2. – Adopt the Department of Finance's original recommendation to refer to the Attorney General's hourly rate.

> G. Legal Costs
>
> Legal counsel costs not exceeding ~~$90 per hour~~ <u>the hourly rate charged by the Attorney General of the State of California</u> will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding ~~$90 per hour~~ the hourly rate charged by the Attorney General of the State of California will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding ~~$90 per hour~~ this hourly rate is subject to approval by the State Controller's Office.

Option 2 would tie the maximum hourly rate to a standard, which will increase as state costs for attorneys' salaries and wages increase. If legal counsel's hourly rate is higher than the Attorney General's hourly rate, claimant may submit appropriate supporting documentation to substantiate reimbursement at a higher hourly rate under Appendix A. The hourly rate currently charged by the Attorney General is $100.

Option 3. – Increase Hourly Rate to $125

G. Legal Costs

Legal counsel costs not exceeding ~~$90~~ $125 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.

Any amounts exceeding ~~$90~~ $125 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding ~~$90~~ $125 per hour is subject to approval by the State Controller's Office.

If the Commission wishes to retain an hourly rate to preserve Member Pelkofer's original intent, staff recommends that the maximum hourly rate be increased to $125. This is the last rate set by Budget Item 9810-001-001. This rate is higher than the hourly rate charged by the Attorney General and established by Government Code section 800. If claimants incur higher hourly rates, they may submit appropriate supporting documentation under Appendix A.

Staff Recommendation

Staff recommends adoption of the Proposed Parameters and Guidelines, as amended by Option 1, and presented in Exhibit A. Elimination of the maximum hourly rate for legal counsel, would conform to parameters and guidelines recently adopted by the Commission. The proposed parameters and guidelines permit broad local discretion in the preparation, submission and presentation of claims. Appendix A provides appropriate limitations, consistent with the Budget Act language.

EXHIBIT A

Hearing Date: October 29, 1998
File: CSM-4485-98 (5th Amendment)
Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
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PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

(October 23, 1998)

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Chapter 282, Statutes of 1997 (Budget Act of 1997)
Chapter 324, Statutes of 1998 (Budget Act of 1998)

Mandate Reimbursement Process

[FOR FISCAL YEARS 1995-96, 1996-97, ~~AND~~ 1997-98, AND 1998-99 ONLY, THESE PARAMETERS AND GUIDELINES ARE AMENDED, PURSUANT TO THE REQUIREMENTS OF (1) PROVISION 11 OF ITEM 0840-001-001 AND PROVISION 1 OF ITEM 8885-001-001 OF THE BUDGET ACT OF 1995, ~~AND~~ (2) PROVISION 9 OF ITEM 0840-001-0001 AND PROVISION 1 OF ITEM 8885-001-0001 OF THE BUDGET ACT OF 1996, ~~AND~~ (3) PROVISION 9 OF ITEM 0840-001-0001 AND PROVISION 1 OF ITEM 8885-001-0001 OF THE BUDGET ACT OF 1997 (4) PROVISION 8 OF ITEM 0840-001-0001 AND PROVISION 1 OF ITEM 8885-001-0001 OF THE BUDGET ACT OF 1998 TO INCLUDE APPENDIX A. EXCEPT FOR REMOVING REFERENCES TO REVENUE AND TAXATION CODE SECTIONS AND TO CLARIFY LANGUAGE, NO OTHER CHANGES TO THE MARCH 26, 1987, VERSION OF THE PARAMETERS AND GUIDELINES ARE MADE.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district

is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Government Code, see section 17552.

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. All claims for reimbursement of costs shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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.

C. Reimbursable Activities -- Reimbursement Claims

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.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs (Revised 9/98)

Government Code section 17564, subdivision (b), provides that claims for indirect costs shall be filed in the manner prescribed by the State Controller's Office, as follows:

(a) Local agencies have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal (ICRP) method.

(b) School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education

(c) County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

(d) Community College Districts must use one of the following three alternatives:
1. An ICRP based on OMB Circular A-21;
2. The State Controller's FAM-29C which uses the CCFS-311; or
3. Seven percent (7%).

~~G. Legal Costs~~

~~Legal counsel costs not exceeding $90 per hour will be considered reimbursable, subject to proper documentation being submitted, which verifies the amounts for which reimbursement is sought.~~

~~Any amounts exceeding $90 per hour will be subject to review by the State Controller's Office for verification and appropriateness. The reimbursability of any legal costs exceeding $90 per hour is subject to approval by the State Controller's Office.~~

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975

and

Chapter 1459, Statutes of 1984

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-96, 1996-97, and 1997-98, and 1998-99 [5]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of **[Test (1)]** ten percent of the claims prepared and submitted by the independent contractor or **[Test (2)]** the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have

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[5] The limitation added by (1) the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, (2) the Budget Act of 1996, Chapter 162, Statutes of 1996, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, ~~and~~ (3) the Budget Act of 1997, Chapter 282, Statutes of 1997, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, and (4) the Budget Act of 1998, Chapter 324, Statutes of 1998, in Item 0840-001-0001, Provision 8, and Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

APPENDIX A (Cont.)

been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

CHAPTER 324

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 21, 1998. Filed with Secretary of State August 21, 1998.]

I object to the following appropriations contained in Assembly Bill 1656.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I reduce this item from $1,676,286,000 to $1,666,286,000 by reducing:

(a) 10-Support for operation of the Trial Courts from $1,517,580,000 to $1,513,580,000,

(d) 45-Court Interpreters from $46,411,000 to $40,411,000,

and by revising Provision 4 and deleting Provision 5.

I am deleting the $4,000,000 legislative augmentation to provide for increased juror compensation and a juror childcare pilot project. If lack of childcare is an impediment to jury service, a pilot can be conducted without additional state resources. In addition, there is no compelling evidence to suggest that a $5 per day increase in juror compensation will make a difference in the number of persons willing to serve on a jury.

I am deleting the $6,000,000 legislative augmentation to provide for an increased Minimum Service Level (MSL) of $220 per day for compensation of court interpreters.

The Budget already increases the MSL to $180 per day and funds interpreter coordinators. The Administrative Office of the Courts should assess the impact of these changes prior to additional increases.

I am revising Provision 4 to conform to this action.

"4. The funds appropriated in Schedule (d) shall be for payments for services of contractual court interpreters, certified court interpreters employed by the courts, and the following court interpreter coordinators: one each in counties of the 1st through the 15th classes, 0.5 each in counties of the 16th through the 31st classes, and 0.25 each in counties of the 32nd through 58th classes. Courts in counties with a population of 500,000 or less are encouraged, but not required, to coordinate interpreter services on a regional basis. For the purposes of this provision, "court interpreter coordinators" may be full- or part-time court employees, or those contracted by the court to perform these services.

The Judicial Council shall set statewide or regional rates and policies for payment of court interpreters, ~~not to be less than $220 a day and~~ not to exceed the rate paid to interpreters in the federal court system. The Judicial Council shall adopt appropriate rules and procedures for the administration of these funds. The Judicial Council shall report to the Legislature and Director of the Department of Finance quarterly regarding expenditures from this schedule and projections for annual expenditures for the use of interpreters in the courts and the use and administration of these funds."

I am deleting Provision 5, which would have required the Judicial Council to report anticipated cost increases resulting from contractual salary adjustments for trial court employees to the Legislature and the Department of Finance by October 1, 1998. The Task Force on Trial Court Employees has sufficient authority under Chapter 850, Statutes of 1997, to review any salary issues.

Item 0450-111-0001—For local assistance, State Trial Court Funding. I reduce this item from $632,860,766 to $622,860,766.

I am reducing this item to conform to the actions I have taken in Item 0450-101-0932.

EXHIBIT B

Item | Amount

(1) 85.60.010-Santa Barbara Replacement Laboratory—Acquisition and Preliminary Plans 646,000
(2) 85.60.020-Santa Rosa Replacement Laboratory—Acquisition and Preliminary Plans 542,000
(3) 85.60.030-Fresno Replacement Laboratory—Preliminary Plans 397,000
(4) 85.60.040-Eureka Replacement Laboratory—Acquisition 1,500,000
(5) 85.60.050-Hawkins Data Center—Replace/Upgrade Computer Room Emergency Power Configuration—Preliminary Plans, Working Drawings, Construction and Equipment 1,767,000

Provisions:

1. For the project in Schedule (3) in this item, the department shall be allowed to construct a one-story laboratory on the California State University, Fresno, campus.

0820-402—In the event the bonds authorized for the projects scheduled in Item 0820-301-0660 Budget Act of 1997 are not sold, the Department of Justice shall commit a sufficient portion of its support appropriation provided for in this Budget Act to repay any interim financing costs including but not limited to loans from the Pooled Money Investment Account. It is the intent of the Legislature that this commitment shall be included in future Budget Acts until outstanding interim financing costs are repaid either through the sale of bonds or from an appropriation.

0820-490—Reappropriation, Department of Justice. Notwithstanding any other provision of law, the balance of funds provided in the following citation are reappropriated on the effective date of this act for the purposes and subject to the limitations, unless otherwise specified, provided for in the appropriations, and shall be available for expenditure until June 30, 1999.

0001-General Fund

(1) The balance of the $350,000 appropriated from Item 0820-001-0001, Budget Act of 1997, for the necessary expenditures pursuant to the trial of State ex rel State Lands Commission v. City of Los Angeles in accordance with Provision 4 of that item.

Item | Amount

0820-491—Reappropriation, Department of Justice. The balances of the appropriations provided for in the following citations are reappropriated for the purposes and subject to the limitations, unless otherwise specified, provided for in those appropriations. The amount available for reappropriation in this item, for construction of the Riverside Crime Laboratory, shall be equal to the original appropriation as reduced by the amount expended in Schedule (.5) of Item 0820-301-0001:

0660—Public Building Construction Fund

Item 0820-301-0660, Budget Act of 1997

(1) 85.50.070-Central Valley Crime Laboratory—Construction
(2) 85.50.080-Riverside Crime Laboratory—Construction

0840-001-0001—For support of State Controller 61,793,000

Schedule:

(a) 100000-Personal Services 65,844,000
(b) 300000-Operating Expenses and Equipment 32,348,000
(c) Reimbursements ..... –28,089,000
(d) Amount payable from the Motor Vehicle Fuel Account, Transportation Tax Fund (Item 0840-001-0061) ..... –2,904,000
(e) Amount payable from the Highway Users Tax Account, Transportation Tax Fund (Item 0840-001-0062) ... –818,000
(f) Amount payable from the Local Revenue Fund (Item 0840-001-0330) ..... –397,000
(g) Amount payable from the State School Building Lease-Purchase Fund (Item 0840-001-0344) ..... –716,000
(h) Amount payable from the Federal Trust Fund (Item 0840-001-0890). –1,289,000
(i) Amount payable from the State Penalty Fund (Item 0840-001-0903) ... –933,000
(j) Amount payable from nongovernmental cost funds, (Retail Sales Tax Fund) (Item 0840-001-0988) .. –181,000
(k) Amount payable from various special funds (Item 0840-011-0494) ... –181,000
(l) Amount payable from various bond funds (Item 0840-011-0797) ..... –715,000

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(m) Amount payable from various non-governmental cost funds (Item 0840-011-0988)..... –176,000

Provisions:

1. The appropriation made by this item shall be in lieu of the appropriation in Section 1564 of the Code of Civil Procedure for all costs, expenses, or obligations connected with the administration of the Unclaimed Property Law, with the exception of payment of owners' or holders' claims pursuant to Section 1540, 1542, 1560, or 1561 of the Code of Civil Procedure, or of payment of the costs of compensating contractors for locating and recovering unclaimed property due the state.
2. Of the claims received for reimbursement of court-ordered or voluntary desegregation programs pursuant to Sections 42243.6, 42247, and 42249 of the Education Code, the Controller shall pay only those claims that have been subjected to audit by school districts in accordance with the Controller's procedures manual for conducting audits of education desegregation claims. Furthermore, the Controller shall pay only those past-year actual claims for desegregation program costs that are accompanied by all reports issued by the auditing entity, unless the auditing entity was the Controller.
3. No less than 0.9 personnel-year in the Audits Division shall be used to audit education desegregation claims.
4. The Controller may, with the concurrence of the Director of Finance and the Chairperson of the Joint Legislative Budget Committee, bill affected state departments for activities required by Section 20050 of the State Administrative Manual, relating to the administration of federal pass-through funds.

   No billing may be sent to affected departments sooner than 30 days after the Chairperson of the Joint Legislative Budget Committee has been notified by the Director of Finance that he or she concurs with the amounts specified in the billings.
5. (a) Notwithstanding subdivision (b) of Section 1531 of the Code of Civil Procedure, the Controller may publish notice in any manner that the Controller determines reasonable, provided that: (1) none of the moneys used for this purpose may be redirected from funding for the Controller's audit activities, (2) no photograph is used in the publication of notice, and (3) no elected official's name is used in the publication of notice.

   (b) No funds appropriated by this act may be expended by the Controller to provide information to the public, other than holders of unclaimed property (as defined in subdivision (e) of Section 1501 of the Code of Civil Procedure), concerning the unclaimed property program or possible existence of unclaimed property held by the Controller's office, except for informational announcements to the news media or through the exchange of information on electronic bulletin boards.
6. The Controller's Office shall, through audits of Medi-Cal program and providers, enhance the General Fund resources or reduce the General Fund expenditures in the amount of $22,100,000, through identification of overpayments, cost avoidance, and other appropriate measures.
7. Of the moneys appropriated to the Controller by this act, the Controller shall not expend more than $500,000 to conduct post eligibility fraud audits of the Supplemental Security Income/State Supplementary Payment Program (SSI/SSP).
8. The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:

   (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

   (b) The maximum amount of reimbursement provided in subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished

Item Amount

without incurring the additional costs claimed by the local agency or school district.

9. The funds appropriated to the Controller by this act may not be expended for any performance review or performance audit except pursuant to specific statutory authority. It is the intent of the Legislature that audits conducted by the Controller, or under the direction of the Controller, shall be fiscal audits that focus on claims and disbursements, as provided for in Section 12410 of the Government Code. Any report, audit, analysis, or evaluation issued by the Controller for the 1998–99 fiscal year shall cite the specific statutory or constitutional provision authorizing the preparation and release of the report, audit, analysis, or evaluation.

10. The Controller shall deliver his or her monthly report on General Fund cash receipts and disbursements within 10 days after the close of each month to the Joint Legislative Budget Committee, the fiscal committees of the Legislature, the Department of Finance, the Treasurer's office, and the Office of the Legislative Analyst.

11. For purposes of the review and payment of any claim for reimbursement by local government submitted pursuant to Section 54954.4 of the Government Code, the Controller shall use the procedures that were in effect at the time the claim was submitted.

12. The Controller shall not release a Request for Proposal for an automated statewide travel expense reimbursement system until the Controller has declared, as part of the monthly reporting process to the Department of Information Technology, that all mission-critical Year 2000 projects are complete and that no further Year 2000 activity for mission critical systems is foreseen.

Once the Request for Proposal is released, the Director of Finance may allocate funds from Item 9903-001-0988 for the hiring of external consultants to develop and implement this system.

0840-001-0061—For support of State Controller, for payment to Item 0840-001-0001, payable from the Motor Vehicle Fuel Account, Transportation Tax Fund 2,904,000

Item Amount

0840-001-0062—For support of State Controller, for payment to Item 0840-001-0001, payable from the Highway Users Tax Account, Transportation Tax Fund 818,000

0840-001-0330—For support of State Controller, for payment to Item 0840-001-0001, payable from the Local Revenue Fund 397,000

0840-001-0344—For support of State Controller, for payment to Item 0840-001-0001, payable from the State School Building Lease-Purchase Fund 716,000

0840-001-0890—For support of Controller, for payment to Item 0840-001-0001, payable from the Federal Trust Fund 1,289,000

0840-001-0903—For support of State Controller, for payment to Item 0840-001-0001, payable from the State Penalty Fund 933,000

0840-001-0988—For support of State Controller, for payment to Item 0840-001-0001, payable from nongovernmental cost funds (Retail Sales Tax Fund).... 181,000

0840-011-0494—For support of Controller, for payment to Item 0840-001-0001, payable from the various special funds 181,000

Provisions:

1. Notwithstanding any other provision of law, the Director of Finance may authorize expenditures in excess of the amount appropriated by this item not sooner than 30 days after notification in writing of the necessity therefor is provided to the chairpersons of the fiscal committees and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the committee, or his or her designee, may in each instance determine.

0840-011-0797—For support of Controller, for payment to Item 0840-001-0001, payable from the various bond funds 715,000

Provisions:

1. Notwithstanding any other provision of law, the Director of the Department of Finance may authorize expenditures in excess of the amount appropriated by this item not sooner than 30 days after notification in writing of the necessity therefor is provided to the chairpersons of the fiscal committees and the Chairperson of the Joint Legislative Budget Committee, or not sooner than what-

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Item | Amount

8885-001-0001—For support of Commission on State Mandates, Program 10 1,215,000

Provisions:

1. The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:
   (a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district.
   (b) The maximum amount of reimbursement authorized by subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.
2. In the case where the commission receives one or more county applications for a finding of significant financial distress pursuant to Section 17000.6 of the Welfare and Institutions Code, and where the commission files a request under Section 27.00 of the Budget Act in order to carry out its duties with respect to those applications, then, notwithstanding the provisions of Section 17000.6 of the Welfare and Institutions Code, the time limit imposed on the commission to reach its preliminary and final decisions shall be tolled until such time as the commission has received spending authorization.

8910-001-0001—For support of Office of Administrative Law 1,006,000

Schedule:

(a) 10-Regulatory Oversight 1,076,000
(b) Reimbursements ..... −70,000

Provisions:

1. In addition to the amount that is otherwise appropriated by this item, $538,250 is hereby appropriated from the General Fund on January 1, 1999, contingent upon certification by the Finance Director that 50 percent of the backlog of regulatory determinations existing on July 1, 1998, is eliminated by January 1, 1999.
2. In addition to the amount that is otherwise appropriated by this item, $538,250 is hereby appropriated from the General Fund on April 1, 1999, contingent upon certification by the Finance Director that 75 percent of the backlog of regulatory determinations existing on July 1, 1998, is eliminated by April 1, 1999.
3. The Director of Finance may allocate funds to the Office of Administrative Law from Item 9903-001-0001 for the purchase of services and data processing software, hardware, and related equipment to publish the California Code of Regulations and provide access to the California Code of Regulations by the public at no cost, pursuant to Chapter 501 of the Statutes of 1996, upon at least 30 days written notice to the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee in each house of the Legislature that considers the budget.

8940-001-0001—For support of Military Department 23,1

Schedule:

(a) 10-Army National Guard 36,129,000
(b) 20-Air National Guard 12,400,000
(c) 30.01-Office of the Adjutant General 8,276,000
(d) 30.02-Distributed Office of the Adjutant General ..... −8,276,000
(e) 35-Military Support to Civil Authority 3,159,000
(f) 40-Military Retirement 2,587,000
(fx) 50-California Cadet Corps Program 250,000
(g) 65-California National Guard youth programs 5,152,000
(h) Reimbursements ..... −2,232,000
(i) Amount payable from the Armory Discretionary Improvement Fund (Item 8940-001-0485) ..... −150,000
(j) Amount payable from the Federal Trust Fund (Item 8940-001-0890) ..... −34,153,000

0021

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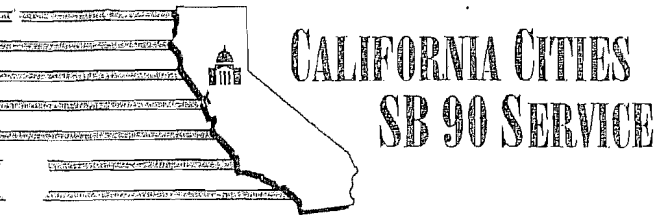
EXHIBIT C



RECEIVED
OCT 20 1998
COMMISSION ON
STATE MANDATES

October 19, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Re: Mandate Reimbursement Process
Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984
Parameters and Guidelines Amendment re: Attorneys Fees

Dear Ms. Higashi:

As the Commission on State Mandates reexamines the issue of the limit of $90.00 per hour placed in the Parameters and Guidelines on attorneys fees for this mandate, I would like to bring to your attention that other mandates have historically provided for the reimbursement of attorneys fees without any such limitation. While I have not made an exhaustive study of this subject, I would like you to be aware that the following mandated programs do not have such a limit, except as noted below:

Firefighters Cancer Presumption, 1568/82
Provides for reimbursement of 50% of legal counsel costs.[1]

Cancer Presumption - Peace Officers, 11711/89
Provides for reimbursement of 50% of legal counsel costs.

Developmentally Disabled: Attorney's Services, 694/75
Provides for reimbursement of court appointed attorneys and clerical support, including case preparation and representation at the proceeding.

Mentally Disordered Sex Offenders: Extended Commitments, 991/79
Provides for reimbursement of District Attorney costs if the Attorney General consents for the District Attorney to represent the state pursuant to Welfare & Institutions Code, section 6316.2.

Not Guilty By Reason of Insanity, 1114/79, 650/82
Provides reimbursement for the costs of the District Attorney and indigent defense counsel.

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[1] Note that for this mandated program, other costs are also reimbursable at the rate of fifty percent. The same is also true for the Peace Officers Cancer Presumption program.

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4320 AUBURN BLVD., SUITE 2000
SACRAMENTO, CA 95841
(916) 485-8102

BAY AREA
20111 STEVENS CREEK BLVD., SUITE 1[illegible]
CUPERTINO, CA 95014
(408) [illegible]

SOUTH
[illegible] EAST WALNUT, SUITE 1[illegible]
PASADENA, CA [illegible]

Mentally Retarded Defendants: Diversion, 1253/80

Provides reimbursement for District Attorney reports required by Penal Code, section 1001.22(b) and related hearings.

Conservatorship: Developmentally Disabled Adults, 1304/80

Provides reimbursement for the costs of providing legal counsel to establish the conservatorship, terminate the conservatorship, removed the conservator, to obtain orders affecting the legal capacity of the conservatee, and regarding orders authorizing removal from the temporary conservatee's place of residence.

Sexually Violent Predators, 762/95 and 763/95

The Parameters and Guidelines heard and adopted at the Commission's September 24, 1998, meeting provides for reimbursement for both the county's designated counsel as well as for indigent defense counsel.

Additionally, the Commission has historically recognized the need for consultants and contractors to assist claimants in complying with various mandated programs. Generally, these have not contained a specified limit or hourly rate. Those programs which contain no limit whatsoever on the charges of contractors include:

Business Tax Reporting Requirements, 1490/84
Child Abduction and Recovery, 1399/76
Perinatal Services, 1603/90
Law Enforcement/Inmate AIDS Testing, 1579/88 and 768/91
School Crimes Statistics Reporting and Validation, 1607/84, 78/88 and 1457/89
Emergency Procedures: Earthquake and Disasters, 1659/84
AIDS Prevention Instruction, 818/91
Pupil Health Screenings, 1208/76, 373/91 and 759/92
School Bus Safety (K-12), 624/92
Charter Schools, 781/92

For some mandated programs, the Controller's Claiming Instructions have included the following proviso for consultant reimbursement: "Contracting costs are reimbursable to the extent that the function to be performed requires special skill or knowledge that is not readily available from the claimant's staff or the service to be provided by the contractor is cost effective." This requirement of cost effectiveness is found in the Claiming Instructions for the following mandates:

Threats Against Peace Officers, 1249/92

Investment Reports, 783/95, 156/96 and 749/96
Services to Handicapped Students, 1747/84 and 1274/85
Unitary Countywide Tax Rate, 921/87
Sudden Infant Death Syndrome: Autopsy Protocols, 955/89
SIDS: Contact by Local Health Officer, 268/91
Allocation of Property Tax Revenue: ERAF, 697/92
Crime Victims' Rights, 411/95
Physical Examination for Scoliosis, 1347/80
Juvenile Court Notices II, 1423/84, 1019/94 and 71/95
Removal of Chemicals, 1107/84
Pupil Classroom Suspension: Counseling, 956/77 and 498/83
Interdistrict Attendance Permits, 172/86, 742/86, 853/89, 10/90 and 120/92
Parent Classroom Visits, 1284/88 and 213/89
Law Enforcement Agency Notification, 1117/89
Notification to Teachers: Pupils Subject to Suspension or Expulsion, 1306/89 and 1257/93
School District of Choice: Transfers and Appeals, 160/93 and 1262/94
Intradistrict Attendance, 161/93 and 915/93
Interdistrict Transfer Requests: Parent's Employment, 172/86, 10/90 and 507/92
Pupil Suspensions from School, 965/77, 668/78 and 73/80
Habitual Truant, 1184/75 and 1023/94
Pupil Exclusions, 668/78

Apart from the subject program, only two other programs have been found which have limits on the amounts that contractors may charge:

Collective Bargaining, 961/75

Contracted services, including attorneys' fees, may be charged at a rate not greater than $100 per hour. Prior to the 1987/88 fiscal year, the cap on the hourly rate was $65.00 per hour.

Graduation Requirements, 498/83

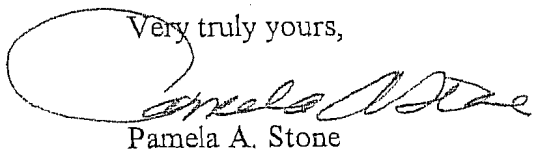
Contractor services can not exceed $65 per hour for the 1984-85 fiscal year, subject to the implicit price deflator. The hourly rate for fiscal year 1995-96 was $93.81.

Because the majority of mandated programs do not contain a limit on the charge per hour of attorneys or consultants, we believe that the best solution to the limit placed on attorneys fees in the Mandate Reimbursement Process is to remove all such limits. Most local entities have policies which limit or curtail either the hourly rate or total

charges of consultants. Because local entities generally do not incur costs on the possibility of future reimbursement through the Mandate Reimbursement Process, we believe that the most appropriate course of action would be to defer to usual custom and practice of the local entity.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Pamela A. Stone
Legal Counsel

EXHIBIT D

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 800

800. In any civil action to appeal or review the award, finding, or other determination of any administrative proceeding under this code or under any other provision of state law, except actions resulting from actions of the State Board of Control, where it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant if he or she prevails in the civil action may collect reasonable attorney's fees, computed at one hundred dollars ($100) per hour, but not to exceed seven thousand five hundred dollars ($7,500), where he or she is personally obligated to pay the fees, from the public entity, in addition to any other relief granted or other costs awarded.

This section is ancillary only, and shall not be construed to create a new cause of action.

Refusal by a public entity or officer thereof to admit liability pursuant to a contract of insurance shall not be considered arbitrary or capricious action or conduct within the meaning of this section.

ITEM 8

GIRARD & VINSON
ATTORNEYS AT LAW

LATE FILING

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Lois Schwartz
Edward D. Barron
Michelle L. Mueller

OF COUNSEL
Sally Jensen Dutcher

* Professional Law Corporation

FACSIMILE TRANSMISSION

TO: Paula Higashi FAX: (916) 445-0278

FROM: Paul C. Minney, Esq.

REGARDING: Mandate Reimbursement Process

DATE: October 26, 1998 TIME: 5:00 p.m.

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 18

COMMENTS:

ORIGINAL TO FOLLOW BY MAIL: YES X NO ___

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IF YOU HAVE NOT RECEIVED THE TOTAL NUMBER OF PAGES INDICATED ABOVE, PLEASE CALL (925) 746-7660

Attorneys Committed To Professional Excellence

GIRARD & VINSON
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Lois Schwartz
Edward D. Barron
Michelle L. Mueller

OF COUNSEL
Sally Jensen Durcher

*Professional Law Corporation

October 26, 1998

Via Facsimile and First Class Mail
(916) 445-0278

Paula Higashi, Executive Director
Commission on State Mandates
1300 "T" Street, Suite 950
Sacramento, CA 95814

Re: Mandate Reimbursement Process
Proposed Amendment of Parameters and Guidelines -- Legal Costs
Support of Staff Recommendation dated October 29, 1998

Dear Paula:

On behalf of Mandated Cost Systems, Inc. I support and concur in the staff's recommendation regarding the elimination of the maximum hourly rate for legal counsel in the above-referenced Parameters and Guidelines.

As you are well aware, the preparation of test claims and incorrect reduction claims, etc. before the Commission on State Mandates is extremely novel and esoteric work. Moreover, due to the complexity of the ever expanding Education Code, school districts are forced to seek legal counsel to assist them in the preparation of filing successful test claims and reimbursement claims. It would not be appropriate to cap the legal costs to a rate provided by a state agency (for example, the Attorney General of the State of California) because school districts do not shop in the public sector for legal representation in these matters. A rate cap too far below an average market rate would essentially eliminate access to qualified legal services for school districts in these areas.

In support of our position that the cap on legal services should be eliminated and that the rate established by a state agency (for example, the Attorney General of the State of California) is too low to provide adequate legal services to school districts in preparation of test claims and reimbursement claims, I have attached fifteen (15) declarations in support of eliminating the contract reimbursement rate (or eliminating the cap) for the Mandated Reimbursement Process. Although these declarations are but a small sampling, the average hourly rate charged by private sector laws for education law and mandated reimbursable work is greater than$135.00 per hour.

Attorneys Committed To Professional Excellence

To: *Paul Higashi*
Re: *Support of Staff Recommendation dated October 29, 1998 -- Mandated Reimbursement Process Parameters and Guidelines*
Page: 2

As you noted in the Staff Recommendation, the elimination of the maximum hourly rate for legal counsel would conform to the Parameters and Guidelines recently adopted by the Commission. In addition to the inequities provided by a cap on legal services which is far below market rate, continuity in the drafting of Parameters and Guidelines, which is an important goal, would be achieved.

Very truly yours,

GIRARD & VINSON

Paul C. Minney
Attorney at Law

PCM/hsd

cc: Steve Smith, President, Mandated Cost Systems, Inc.
Diana Halpenny, Chairperson, Education Mandated Cost Network
Carol Berg, Education Mandated Cost Network
Jim Cunningham, Education Mandated Cost Network
Pamela Stone, Esq.

GIRARD & VINSON
ATTORNEYS AT LAW

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of:	CSM NO. 4485
Mandate Reimbursement Process,	DECLARATION OF _____ IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Jenelle Cantrelle, declare as follows:

1. I am the Director, Fiscal Svcs of the Orcutt Union School District, State of California. My responsibilities as Director include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district. (Orcutt Bd of Ed executes the agreement for our attorney)

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 135 /hour;

b. Non-Mandated Reimbursable Program Work: $ 135 /hour;

c. Other: _____; $_____/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10-26-98

Jenelle Cantrelle

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of:	CSM NO. 4485
Mandate Reimbursement Process,	DECLARATION OF SALIDA UNION SCHOOL DISTRICT IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

COMMISSION OF STATE MANDATE

I, MELANIE THOMPSON, declare as follows:

1. I am the BUSINESS MANAGER of the SALIDA UNION School District, State of California. My responsibilities as BUSINESS MANAGER include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates;

a. Mandated Reimbursable Program Work: $ 130.00 /hour;

b. Non-Mandated Reimbursable Program Work: $ 130.00 /hour.

c. Other: _____ : $ 130.00 /hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/26/98

Melanie Thompson

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF Ronald D. Moore, Ph.D. IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Ronald D. Moore, Ph.D., declare as follows:

1. I am the Superintendent of the Chowchilla Union High School District, State of California. My responsibilities as Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 120 /hour;

b. Non-Mandated Reimbursable Program Work: $ 120 /hour.

c. Other: _____ ; $ 120 /hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 26 October 1998

Ronald D. Moore

Ronald D. Moore, Ph.D.

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF _____ IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Harley North, declare as follows:

1. I am the Superintendent of the Evergreen Union School District, State of California. My responsibilities as Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 135.00 /hour;

b. Non-Mandated Reimbursable Program Work: $ 135.00 /hour.

c. Other: _____ : $ 135.00/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10-26-98

Harley C. North

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF Gary W. Glover IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Gary W. Glover, declare as follows:

1. I am the Superintendent of the Arcohe Union School District, State of California. My responsibilities as Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 125.00 /hour;

b. Non-Mandated Reimbursable Program Work: $ 125.00 /hour,

c. Other: litigation, real property work, and developer work. $140-150 /hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10-26-98

Gary W. Glover

Gary W. Glover, Superintendent

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of:	CSM NO. 4485
Mandate Reimbursement Process,	DECLARATION OF Gateway Unified IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Timothy P. Brock, declare as follows:

1. I am the Director of Business Services of the Gateway Unified School District, State of California. My responsibilities as Business Manager include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 120 /hour;

b. Non-Mandated Reimbursable Program Work: $ 120 /hour.

c. Other: _____: $ 120 /hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 24, 1998

Timothy P. Brock

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of:	CSM NO. 4485
Mandate Reimbursement Process,	DECLARATION OF Sierra Unified School District IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Dr. Don A. Witzansky, declare as follows:

1. I am the Superintendent of the Sierra Unified School District, State of California. My responsibilities as Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 120 /hour;

b. Non-Mandated Reimbursable Program Work: $120 /hour.

c. Other: _____; $_____/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/26/98

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of:	CSM NO. 4485
Mandate Reimbursement Process,	DECLARATION OF Round Valley Unified SD IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Andrea Harris, declare as follows:

1. I am the Superintendent of the Round Valley Unified School District, State of California. My responsibilities as Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 110.00 /hour;

b. Non-Mandated Reimbursable Program Work: $ 110.00 /hour.

c. Other: _____: $ 110.00/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/26/98

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF Ken Poulsen IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Ken Poulsen, declare as follows:

1. I am the Superintendent of the Placer Hills Union School District, State of California. My responsibilities as Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 130.00 /hour;

b. Non-Mandated Reimbursable Program Work: $_____/hour.

c. Other: _____: $_____/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/22/98

KEN POULSEN / Superintendent

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF Legal Fees IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, William J. Dalrymple, declare as follows:

1. I am the Chief Business Officer of the Byron Union School District, State of California. My responsibilities as Business Manager include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 135 /hour;

b. Non-Mandated Reimbursable Program Work: $ 140 /hour.

c. Other: _____: $_____/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 23, 1998

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF _____ IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, RICHARD ODEGARD, declare as follows:

1. I am the BUSINESS MANAGER of the MARTINEZ UNIFIED School District, State of California. My responsibilities as BUSINESS MANAGER include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work; $ 120 /hour;

b. Non-Mandated Reimbursable Program Work: $ 120 /hour.

c. Other: _____; $_____/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/22/98

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of:	CSM NO. 4485
Mandate Reimbursement Process,	DECLARATION OF Dr. Herbert D. Bartelt, Jr. IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Dr. Herbert D. Bartelt, Jr., declare as follows:

1. I am the Assistant Superintendent Business Services of the Newhall School District, State of California. My responsibilities as Assistant Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 145 /hour;

b. Non-Mandated Reimbursable Program Work: $ 190 /hour.

c. Other: Fair Hearing : $ 175 /hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/23/98

Dr. Herbert D. Bartelt, Jr.

Post-it® Fax Note 7671 | Date 10/23/98 | # of pages 2
To Marietta Cz | From [illegible]
Co./Dept. Ford Harvey | Co. TUHS
Phone # | Phone #
Fax # 916 487-9660 | Fax # (415) 945-3766

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF _____ IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Ron Kuntz, declare as follows:

1. I am the Assistant Superintendent of Administrative Svcs. of the Tamalpais Union School District, State of California. My responsibilities as Asst. Superintendent include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 135.00 /hour;

b. Non-Mandated Reimbursable Program Work: $ 125.00 /hour;

c. Other: _____ : $ _____ /hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/23/98

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of:	CSM NO. 4485
Mandate Reimbursement Process,	DECLARATION OF _____ IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, Rebecca S. Leffew, declare as follows:

1. I am the Business Manager of the Pioneer-Olivet Union School District, State of California. My responsibilities as Business Manager include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 110 - /hour;

b. Non-Mandated Reimbursable Program Work: $ 110 - /hour.

c. Other: Litigation : $ 120 - /hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10/22/98

Rebecca S. Leffew

BEFORE THE COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

In the Matter of: Mandate Reimbursement Process,	CSM NO. 4485 DECLARATION OF _____ IN SUPPORT OF INCREASING THE CONTRACT REIMBURSEMENT RATE FOR THE MANDATE REIMBURSEMENT PROCESS

I, DIANE ROBBINS, declare as follows:

1. I am the BUSINESS MANAGER of the LUCERNE ELEMENTARY School District, State of California. My responsibilities as BUSINESS MANAGER include executing the warrants which reimburse contractors and vendors of the school district. I am also responsible for executing legal services agreements and other contracts with law firms working the district.

2. The law firms currently working with our school district are charging the following hourly rates:

a. Mandated Reimbursable Program Work: $ 150.00 /hour;

b. Non-Mandated Reimbursable Program Work: $ 150.00 /hour.

c. Other: _____: $_____/hour.

3. Based upon the difficulty of obtaining qualified and skilled legal representation in the field of education law, including collective bargaining and the mandated reimbursement program, I would firmly support an increase in the contract reimbursement rate for these services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 10-23-98

Diane Robbins

PUBLIC HEARING

COMMISSION ON STATE MANDATES

---oOo---

ORIGINAL

---oOo---

TIME: 9:15 a.m.

DATE: October 29, 1998

PLACE: State Capitol, Room 437

Sacramento, California

---oOo---

---oOo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

---oOo---

Reported by: STACEY L. HEFFERNAN, CSR, RPR
License No. 10734

A P P E A R A N C E S

---oOo---

ROBIN J. DEZEMBER, Chairman

PAULA HIGASHI, Executive Director

CAMILLE SHELTON

DAVE COX

BARRETT McINERNEY

NANCY PATTON

WILLIAM SHERWOOD

AL BELTRAMI

JOANN STEINMEIER

---oOo---

PUBLIC PRESENTATIONS: (ITEM NO. 2)

DONALD W. DETISCH, Esq.

Law Offices of Detisch & Christensen

444 West C Street, Suite 200

San Diego, California 92101

DEBRA J. BEVIER, Deputy City Attorney

Office of the City Attorney, Litigation Division

1200 Third Avenue, Suite 1200

San Diego, California, 92101

RICHARD G. THOMSON, Senior Warden

St. Mark's City Heights Episcopal Church

AGENDA INDEX

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AGENDA ITEM		PAGE
	B. ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES (action)	
	Item No. 8:	121
	C. ADOPTION OF PROPOSED RULEMAKING ORDERS (Pursuant to California Code of Regulations, Title 2, Section 1189.2 Subdivision (B) (action)	
	Item No. 9: (Taken off)	**
VI	Executive Director's Report	**

---oOo---

1 MR. HIGASHI: Mr. Dezember.

2 CHAIRMAN DEZEMBER: Aye.

3 MS. BERG: Thank you very much.

4 CHAIRMAN DEZEMBER: Thank you for coming out.

5 We have one more item, Item 8; is that correct?

6 MS. HIGASHI. Yes.

7 ---oOo---

8 ITEM NO. 8

9 ---oOo---

10 MS. HIGASHI: Item 8 is the Proposed Amendment of the
11 Parameters and Guidelines of the Mandate Reimbursement Process.
12 These Parameters and Guidelines were before you last month.
13 The Commission requested that they be returned this month after
14 staff had had an opportunity to provide background information
15 as to why there was a ninety-dollar maximum hourly rate for
16 reimbursement of attorney's fees.

17 Staff has done that research and provided information
18 for you today, as well as options, which you may wish to pursue
19 in terms of how to set a rate or not set a rate, or whether or
20 not you want to make any change at all.

21 I would just, in the interest of time, request that
22 the parties state their names and present their positions --

23 CHAIRMAN DEZEMBER: Okay. Thank you.

24 MS. HIGASHI: -- because it's pretty clear.

25 CHAIRMAN DEZEMBER: Mr. Burdick, are you going to
26 proceed first?

27 MR. BURDICK: Allan Burdick on behalf of the SB 90
28 Service. We also have Pam Stone also on behalf of the SB 90

1 Service.

2 MS. BERG: Carol Berg, Education Mandated Cost

3 Network.

4 MR. BURDICK: I think the issue we brought before you

5 last time was simply the matter of attorney fees and the cap.

6 It's been researched. We provided some information. What we

7 would recommend is that that you remove the cap, because the

8 cap, I think, as staff has found in the analysis on fees, is

9 not used in most cases. And that would be our primary

10 recommendation.

11 If you had decided that you should use a cap, then I

12 think you should go back and take the -- I guess the

13 $125-an-hour cap that was established seven years ago and then

14 adjust that to today's rate, at your inclusive price to inflate

15 or some cost of living adjustment from the date that it was set

16 seven years ago, so that you bring it current. And, if you're

17 going to do that, I would also suggest that you add some

18 language which allows for that to be adjusted on an annual

19 basis so that it does keep pace with the price of inflation in

20 the future.

21 If you have any questions, we'd be happy to answer

22 them.

23 CHAIRMAN DEZEMBER: Thank you. And staff's

24 recommendation is Option 1; is that correct?

25 MS. HIGASHI. Yes, that's correct, to eliminate the

26 cap.

27 CHAIRMAN DEZEMBER: That is to eliminate the language

28 requiring a cap--

1 MS. HIGASHI: Correct.

2 CHAIRMAN DEZEMBER: -- consistent with actions we've
3 taken in past decisions, I understand.

4 MS. HIGASHI: That's correct. The most recent
5 Statement of Decision in the Parameters and Guidelines adopted
6 by the Commission, which involved attorneys' costs, were the
7 sexually violent -- the sexually violent predator statute, and,
8 in that particular test claim, there were no hourly rate caps
9 set for reimbursement for attorneys' costs.

10 MR. COX: How do we control costs, from that
11 standpoint, if we take the cap off?

12 MS. STEINMEIER: I concur, Mr. Cox. That's one of my
13 concerns.

14 MS. STONE: If I might, Chairman Dezember?

15 CHAIRMAN DEZEMBER: Yes.

16 MS. STONE: I think one of the concerns in your board
17 is -- the Commission is quite correct in being concerned with
18 outrageous attorneys' fees and costs. And I think that's a
19 concern everyone has. I've been both in the private sector and
20 in the public sector for more years than I care to admit to.

21 And the one thing I've noted -- and I've also been
22 responsible for auditing outside counsel fees and going through
23 the process -- is that when attorneys' fees are at issue, local
24 government is loathe to just allow the attorneys' fees/bills to
25 be run up at infinitum.

26 Most local governmental entities have policies and
27 processes by which they go through a rigorous, first of all,
28 selection, because there are two issues with attorneys' fees:

1 one is not just the rate per hour, but, the second is, is how
2 efficiently and effectively the attorney can accomplish the
3 work. It makes no sense, whatsoever, to hire a firm to do work
4 at a low rate per hour and then have them make up for it by
5 charging an exorbitant number of hours.
6 So most governmental entities have established
7 policies and procedures that monitor both the hourly rate as
8 well as the efficiency and efficacy of the firm performing the
9 work so that they are not faced with basically limitless
10 bills.
11 The other thing that I would like to bring to your
12 attention is the fact that local entities are not going to go
13 out and hire counsel on the hope and prayer of obtaining
14 reimbursement at some juncture in the future through the
15 mandate reimbursement process. Most entities undertake the
16 hiring of counsel with the expectation that if they are lucky
17 they may be paid at some point in the future, but, the costs
18 that they are incurring at the present will be coming out of
19 current dollars. And they are not going to engage in
20 speculative litigation or presentation without realizing that
21 they're the ones up front, personally, responsible for those
22 costs.
23 MS. HIGASHI: I'd also call your attention to
24 Appendix A of the Parameters and Guidelines; it's Exhibit A,
25 Bates page 15. And this is the provision where the specific
26 amendment is being made to incorporate in the reference to this
27 years' budget act.
28 MR. COX: Um-hum.

1 MS. HIGASHI: And this is where there are other
2 limitations imposed upon the local entity when filing a
3 reimbursement claim; it uses outside contractors.
4 MR. COX: I will move the elimination of the cap.
5 MS. STEINMEIER: Seconded.
6 CHAIRMAN DEZEMBER: I'm sorry. I didn't hear the
7 motion; it went so fast.
8 MS. HIGASHI: Option 1.
9 CHAIRMAN DEZEMBER: Okay.
10 MR. BELTRAMI: Question, Mr. Chairman.
11 CHAIRMAN DEZEMBER: Yes, Mr. Beltrami.
12 MR. BELTRAMI: Paula, what's wrong with the A.G. using
13 that as a guideline since I'm assuming that the cost of living
14 adjustment --
15 MS. HIGASHI: The A.G. rate is $100 an hour, and it's
16 probably on the low side. The State does not have to pay for
17 malpractice insurance, for instance. Attorneys have not had
18 any salary increases for a long time, so that rate is probably
19 on the low end.
20 And there is a late filing, which I passed out to you,
21 which was submitted by Paul Minney. And it included some
22 information that his client had collected from school
23 districts, I believe, who had contracts with outside counsel,
24 just as a reference as to the types of rates they were being
25 charged or that they had contracted for. And they were all
26 above the ninty-dollar rate.
27 MS. SHELTON: They ranged, I believe, from 110 to
28 approximately $175 an hour, with the median being around 135

1 to 145.

2 CHAIRMAN DEZEMBER: Yes, Mr. McInerney.

3 MR. MCINERNEY: If I can make one comment -- having
4 been out of private practice now only about two weeks, I'm
5 closer it than anyone else -- among the sophisticated clients,
6 the whole idea of bargaining over hourly rates is almost out
7 the window. It's almost a sucker's bet on the part of the
8 attorney.

9 You can pay me $50 an hour, and, off of that $50 an
10 hour, I can run up a bill five or six times higher than what
11 I'd be paid at my regular rate of $250 an hour. A client call,
12 and I can give a "yes" or "no" to a question, and that was a
13 six-minute phone call; on the other hand, I can send it out to
14 my little minions, they can write "Review File" for about the
15 next two and a half weeks, send me a memo out of the nature of
16 the American judicial system, and, by the time I'm through at
17 $50 an hour, I have racked up a ten-thousand-dollar bill for
18 what was, essentially, a six-minute answer.

19 MR. BELTRAMI: But can't you do at $125 an hour?

20 MR. MCINERNEY: You can. What I'm saying --

21 MR. BELTRAMI: Or $200 an hour?

22 MR. MCINERNEY: But the focus really needs to be on
23 the value of the services provided. And that gets to the
24 auditing issue as opposed to the hourly rate. Because the
25 hourly rate, depending on who's doing the work and how the work
26 is being done, I know on the -- I had submitted for private
27 A.G. fees, after we had won on the Mono Lake Cases. And,
28 initially, I was almost embarrassed to write down the number

1 until I saw the Kronick, Moskovitz' bill. I looked like
2 ~~Omelvadine Myers~~ O'Melveney and Meyers (phonetic) or, rather -- no, the other one,
3 the ones who work out of the front shops.
4 So the bottom line is the hourly issue is almost a
5 misleading issue. And it's going to be up to the school
6 districts to look at the billing to see whether or not -- to
7 check off boxes on Form Interrogatories that that really took
8 somebody three and a half hours in deep thought.
9 CHAIRMAN DEZEMBER: Thank you.
10 Any other discussion?
11 We have a motion and a second.
12 Please call the roll upon it.
13 MS. HIGASHI: Mr. Cox.
14 MR. COX: Aye.
15 MS. HIGASHI: Mr. McInerney.
16 MR. MCINERNEY: Yes.
17 MS. HIGASHI: Ms. Patton.
18 MS. PATTON: Aye.
19 MS. HIGASHI: Mr. Sherwood.
20 MR. SHERWOOD: Aye.
21 MS. HIGASHI: Ms. Steinmeier
22 MS. STEINMEIER: Aye.
23 MS. HIGASHI: Mr. Beltrami.
24 MR. BELTRAMI: Yes.
25 MS. HIGASHI: Mr. Dezember.
26 MR. DEZEMBER: Yes.
27 Thank you very much.
28 Do we have other matters to come before the

REPORTER'S CERTIFICATE

---oOo---

STATE OF CALIFORNIA)

) ss.

COUNTY OF SACRAMENTO)

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 19th day of November, 1998.

STACEY L. HEFFERNAN, CSR, RPR
Certified Shorthand Reporter
License No. 10750

MINUTES
COMMISSION ON STATE MANDATES
Thursday, October 29, 1998
9:30 a.m.
Commission on State Mandates
State Capitol
Room 437
Sacramento, California

Present: Chairperson Robin Dezember
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Barrett McInerney
Representative of the State Controller
Member Nancy Patton
Representative of the Director of the Office of Planning and Research
Member Albert Beltrami
Public Member
Member Dave Cox
Representative of County Boards of Supervisors
Member Joann Steinmeier
Representative of School Boards

I. CALL TO ORDER AND ROLL CALL

Chairperson Dezember called the meeting to order at 9:30 a.m. All members were present.

II. PERSONNEL MATTERS

Report on October 28, 1998, Closed Executive Session pursuant to Government Code sections 17526, subdivision (a), and 11126, regarding consideration of the selection and appointment of the Administrative Advisor II (C.E.A. – Chief Counsel to the Commission) pursuant to Government Code sections 17529 and 19889 et seq.; finalists may be interviewed. (action).

Chairperson Dezember reported that the Commission met in Closed Executive Session on October 28, to consider personnel matters, as noticed. The Commission directed staff to re-advertise the Chief Counsel position and initiate a new personnel search for candidates. The Commission did not continue the session to the following morning, as originally intended.

III. CONSENT CALENDAR

A. APPROVAL OF MINUTES (action)

Item 1 September 24, 1998

B. ADOPTION OF PROPOSED STATEMENTS OF DECISION (action)

Item 4 *Dismissal/Withdrawal of Test Claim: Employee Tuberculosis Screening* CSM-98-TC-02

Contra Costa Community College District, Claimant
Education Code Section 87408.6
Statutes of 1981, Chapter 470, Section 348
Statutes of 1990, Chapter 1302, Section 40
Statutes of 1996, Chapter 1023, Section 42

Member Cox moved approval of the consent calendar. With a second by Member Patton, and abstentions by Members Steinmeier and McInerney, the Chair entered the items as approved, without objection.

IV. HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

A. TEST CLAIMS (action)

Item 2 *Non-Profit, Special Use Property Requirements* -CSM- 97-238-01
City of San Diego, Claimant
Code of Civil Procedure Sections 1235.155, 1263.320, 1263.321
Evidence Code Sections 823 and 824
Government Code Section 7267.9
Statutes of 1992, Chapter 7

Camille Shelton of the Commission staff introduced this item and recommended the Commision deny this test claim.

Parties were represented as follows: Donald Detisch for the Law Offices of Detisch & Christensen; Debra Bevier for the Office of the City Attorney, San Diego; Richard Thomson and Reverend M.A. Collins for the St. Mark's City Heights Episcopal Church; and, Pedro Reyes and James Apps for the Department of Finance. Paula Higashi, Executive Director, swore the witnesses en masse.

Ms. Bevier strongly disagreed with staff's analysis. She held that Senate Bill 821 imposes a new program and higher level of service upon the City of San Diego and not upon the public at large. Ms. Bevier argued that 1) eminent domain is not always a discretionary action and 2) discretionary actions have produced findings of reimbursement for previous test claims before this Commission.

Mr. Detisch, who also disagreed with staff's analysis, presented his argument.

Member Cox asked Mr. Thomson if St. Mark's was here to help San Diego get reimbursed for property the church has already been paid for, or if a contingency exists where the church gets paid less if San Diego is not reimbursed under a state mandate.

Mr. Thompson replied that, to date, the church had not been paid just compensation. He firmly believed a state mandate existed, and realized San Diego was not able to pay for it under its regulations. St. Mark's agreed to accept a lesser amount if the City committed to pursuing state reimbursement.

Member Cox asked how the property was valued. Ms. Bevier responded that normal methodology resulted in $300,000, without depreciation or obsolescence resulted in over $700,000. The contingency agreement with St. Mark's currently was for $525,000 with the agreement that the City would pursue state reimbursement for $400,000. Member Cox asked if there was a willing seller / willing buyer at the $525,000 mark. Ms. Bevier disagreed, maintaining that litigation costs and threats caused them to arrive at that figure. She agreed with Member Cox that the current agreement was a negotiated sale price.

Mr. Thomson and Reverend Collins explained St. Mark's functions in the community and asked the Commission for just treatment under the law.

Mr. Detisch questioned Chairperson Dezember's participation, since he represents the one State Department that objected to this claim. The Chair replied that [voting] is part of his job function and that there is a separation in the Department of Finance, which keeps him apart from any matter, testified to under this process. Chairperson Dezember stated that no actual conflict of interest exists; he sits on this and on many other boards and commissions on behalf of the Director of Finance, and it's a relatively independent function within the department. He added that he is not involved, whatsoever, in the preparation of any action from the Department of Finance.

Member Cox added that members have the responsibility to recuse themselves in the event of a conflict, and that the board can ask a member to step aside as well, but that is not the case here.

Mr. Apps supported staff's analysis. In response to Member Beltrami, he explained that language similar to that in Section 9 is often included by the Legislature. Member Patten added that the Department of Finance's analysis includes that issue.

Member Cox noted concern that SB 821 may lead to a situation where a nonprofit organization holds out for a specific appraisal, and makes a side deal that they will get more if it is reimbursed by the State. He asked Mr. Apps if the bill limited the way to evaluate the value of property. Mr. Apps believed the threshold issue was more important—did the City voluntarily embark on that course of action? Mr. Reyes agreed with Member Cox that SB 821 established one methodology for evaluation, but maintained that the bill did not require the City to acquire the property in the first place.

Chairperson Dezember was confused by the City's use of eminent domain because they did not use the statutorily required process for evaluating the property—they instead negotiated a sale price. Ms. Bevier replied that the city negotiated only during litigation. The Chair maintained that the city made the initial choice to enter into eminent domain, and seems now to be complaining about the consequences of that choice.

Member Beltrami reasoned that, since it was not the City's policy to always acquire property through eminent domain, then the City had a choice. Ms. Bevier disagreed, noting that a resolution of necessity was passed in this action. Member Cox suggested the City did not acquire the property through eminent domain, but on a settlement. Ms. Bevier did not believe the two could be split, and insisted the city settled the matter only because of eminent domain. Member Cox noted the City had not fully litigated the matter.

Mr. Detisch said that they settled at the higher amount, but could accept a lesser amount if this is not found to be a state mandate.

The Chair clarified that the real issue was that the State had not required the City to enter into eminent domain. He questioned why the parties had entered into a contingency agreement—it appears like a bargain.

Member McInerney saw a multi-step process, each step being discretionary. The City decided to proceed with the project, decided the location of the project, and then decided how much to pay for the property. He noted that the City was not the victim in this case. Rather, the city failed to offer the value dictated by the law and instead secured a $175,000 bonus should the contingency not occur. If the church had demanded more than the value dictated by law, then litigation would have been necessary. Here, the City entered into litigation to get the leverage it needed for a bargain. Ms. Bevier disagreed.

Member Cox moved staff's recommendation to deny the claim. Member Sherwood seconded the motion, which passed unanimously.

For the record, Member Beltrami added that he sympathized with the City as far as SB 821 is concerned, but urged them to get past the issue of whether or not eminent domain is discretionary.

The Chair concluded by thanking the parties and assuring them that the Commission had considered all materials provided, and that those materials constitute the record upon which their decision was based.

Mr. Detisch asked for clarification of the Commission's decision. The Chair clarified that the four points in the staff analysis and recommendation were all included in the motion.

Item 3 *Property Tax Shift From Local Governments To Educational Revenue Augmentation Fund ("ERAF")* – CSM - 97-TC- 04

County of Sonoma and 47 Counties, Co-Claimants

Revenue & Taxation Code Sections 95, et seq; 95.1, et seq.; 97.01et seq.; 97.03; 97.035; and 97.038; Education Code Section 41204.5 Statutes of 1992, Chapters 699, 700, 703, and 1369; Statutes of 1993, Chapters 66, 68, 130, 904, 905, 906 and 1279.

Camille Shelton of the Commission staff introduced this item.

Parties were represented as follows: Kathleen Larocque, Sally Bryan McGouch, and James Botz for the County of Sonoma; Steven Woodside for the Law Offices of

McDonough, Holland & Allen; and, Allen Sumner, Kathryn Radtkey-Gaither, and Diane Cummins for the Department of Finance.

The Chair assured the parties that the Members had read the material, and it is part of the record of these proceedings.

Mr. Woodside noted that a total of 47 counties had formally joined this claim. He then outlined the legal and factual basis for the claim. Mr. Woodside held that the obligation to fund schools was shifted, contrary to the purpose of Article XIII B, Section 6 and demonstrated that, as the share of property tax was dramatically increased for schools, it went down by a virtual corresponding amount for the counties. Mr. Woodside disagreed with staff's recommendation to deny the claim because there is no "expenditure required by the county," and argued instead that the shifting of obligation, directly or indirectly, constitutes a state mandate.

Mr. Sumner maintained that a state mandate does not exist; counties are not being required to expend their funds to pay for a State program. He submitted that 1) a loss of revenue is not the de facto equivalent of a mandated expenditure; 2) counties are not legally entitled to a specific share of property tax revenue; and 3) the funding of schools is not exclusively a State obligation—there is no constitutional requirement that funding come exclusively from State general fund revenues. He reminded the Commission that Article XIII B is to be strictly construed when this Commission finds a mandate, and submitted that this claim does not ask for a strict construction, rather, it asks this Commission to go where no court has ever gone before.

Mr. Woodside disagreed with Mr. Sumner's submission that the Commission would have to make certain findings in order to approve this claim. He maintained that his case does not depend on a finding, nor does he assert, that the property tax belongs to the County. Instead, he claimed that if the Legislature touches a revenue source that was going to counties in order to satisfy a State obligation, that violates Article XIII B. Mr. Woodside asserted that if the DOF's position is accepted, this would render Section 6 a nullity—the Legislature could shift money before it reached local government in order to avoid Section 6 entirely.

Chairperson Dezember noted the State's right to allocate property tax and that counties have no entitlement to a particular amount of that tax. He concluded that the State is carrying out its obligations using a formula made of local property taxations allocated in accordance with the legislative pronouncements from the statute and some general fund money—this is not a State program shifted to the counties.

Mr. Woodside conceded that it has been a combination of revenues, but held that the legal obligation to fund has been a State, and never a County, obligation. The Chair disagreed with Mr. Woodside that a finding against the counties would violate Section 6, because that implies that Section 6 has frozen an entitlement for the counties to receive that revenue. Mr. Woodside maintained that Section 6 "froze" the fiscal balance between State and local government. Chairperson Dezember believed
Mr. Woodside was asking the Commission to make a determination on the requirements of Section 6.

Member Steinmeier was concerned that, by defining a revenue loss, the Commission would be going beyond what the courts have said. Mr. Woodside replied that the court has said on two occasions that pulling back revenue to satisfy a State obligation can constitute a new program, so he did not believe this would be an extension.
Mr. Sumner claimed that the shift has been upheld by every court that has reviewed it, and added that the Legislature did not require counties to expend their revenues in a particular way.

Mr. Woodside argued that requiring counties to spend revenue in a particular way absolutely violates Section 6, and by pulling back revenue, the State is indirectly doing just that.

The Chair expressed concern with the entitlement to property tax issue and also that, by granting this, the Commission would be reaching beyond existing law.

Member Cox submitted that it was the duty of the Commission to take jurisdictional responsibility, and that it was not a matter of expanding the scope of Article XIII B Section 6. He maintained that the loss of revenue did in fact create a new program with respect to cities and counties, because they began to fund a portion of the educational system which is primarily the responsibility of the State. Member Cox believed the claim should be approved. Considerable discussion ensued.

Mr. Sumner did not agree the Commission should claim jurisdiction and expand reimbursement to include revenue loss. He submitted that, if the Commission were to find that lost revenue constitutes a mandate, it would have to look at offsetting revenue sources, cost savings, etc. that were provided.

In response to Member Beltrami, Mr. Sumner said that he did consider the *Lucia Mar* case to be a strict interpretation by the Supreme Court because it was a program fully funded and operated by the State.

Member McInerney disagreed with using cases that specifically dealt with programs exclusively operated and entirely funded by the state. Mr. Woodside replied that the Constitution sets forth principles and the fundamental principle here is that you cannot shift funding obligations from the State to counties. Member McInerney responded that there is nothing in either case that specifically identifies that as descriptive dicta as opposed to conditions precedent, and therefore, the Commission would have to make that leap. The Chair disagreed with Mr. Woodside's interpretation of the cases, and called for a motion.

Member Cox moved and Member Beltrami seconded adoption of Option 3, with revisions relative to the claiming jurisdiction issue. Members Cox and Beltrami voted "Aye," and Members McInerney, Patton, Sherwood, Steinmeier and Dezember voted "No." Motion failed.

Chairperson Dezember moved the staff recommendation, Option 1. Member Patton seconded the motion. Motion carried 5-2, with Members Cox and Beltrami voting "No."

[The Commission took a brief recess.]

C. ADOPTION OF PROPOSED STATEMENTS OF DECISION (action)

Item 5 *Test Claim: American Government Course Document Requirement*
CSM–97-TC-02 (a.k.a. 97-258-01)
San Diego Unified School District, Co-Claimant
Sweetwater Union High School District, Co-Claimant
Education Code Section 51230
Statutes of 1996, Chapter 778

Camille Shelton presented this item.

Parties were represented as follows: Jim Cunningham for the San Diego Unified School District; Carol Berg with the Education Mandated Cost Network; and, Larry Hendee with the Sweetwater Union High School District.

Mr. Cunningham requested the Commission now approve Requests 1, 5, and 6. The first request had to do with the highly contested measurement date issue – he did not agree that the related paragraph should be included in the Commission's decision. Ms. Shelton noted that it was contained in the staff analysis adopted by the Commission. The Chair inquired as to the impact if it were left in. Mr. Cunningham replied that, if it were not removed, he would like to register his complaint that he does not agree with the legal conclusion reached in that paragraph. Dr. Berg added that it may lead to future confusion that this was a Commission holding, when in fact it was not. After considerable discussion, it was decided that the legal counsel memoranda on the measurement date issue would be put on the December agenda. Mr. Cunningham agreed with Member Patton's suggestion to include a footnote acknowledging his opposition.

In his Request 5, Mr. Cunningham asked the Commission to either add or change the Statement of Decision to allow claimants to use contractors to perform the training. He agreed with the Chair's request to deal with the issue at the parameters and guidelines stage, as long as he would not be precluded from raising the issue because it was not in the decision. In his Request 6, Mr. Cunningham alleges that the Commission made no determination on whether staff development funds from the 1997 or 1998 Budget Acts were required to be used as an offset. He agreed with the Chair's suggestion to delete the last sentence of the second paragraph, starting with "However," and to add a notation to the following paragraph. Regarding the measurement date issue, Mr. Cunningham proposed rulemaking. Chairperson Dezember replied that the issue would be up for discussion.

Upon motion by Member Cox and second by Member Beltrami, the motion to adopt the Proposed Statement of Decision, as amended, passed unanimously.

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8.

A. ADOPTION OF PARAMETERS AND GUIDELINES (action)

Item 6 *Domestic Violence Treatment Services – Authorization and Case Management* – CSM–96-281-01
County of Los Angeles, Claimant
Penal Code Section 1203.097, Subdivisions (b)(3)(I), (b)(4), (c)(1), (c)(2), and (c)(5)
Statutes of 1991, Chapter 641

Item postponed at the claimant's request.

Item 7 *Airport Land Use Commissions/Plans* – CSM 4507
County of San Bernardino, Claimant
Public Utilities Code Sections 21670 and 21670.1
Statutes of 1994, Chapter 644
Statutes of 1995, Chapter 66
Statutes of 1995, Chapter 91

Item postponed at the claimant's request.

B. ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES (action)

Item 8 Mandate Reimbursement Process – Amendment

for Budget Act of 1998 – CSM 4485-PGA-98-01
Commission on State Mandates (pursuant to Budget Act Provision)
Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)

Paula Higashi introduced this item.

Parties were represented as follows: Allan Burdick and Pam Stone, for California State Association of Counties SB 90 Service, and Carol Berg with the Education Mandated Cost Network.

Mr. Burdick requested the Commission adopt staff's Option 1 and remove the cap on attorneys' fees, or adjust it to a current rate.

The Chair noted that most governmental agencies have established policies and procedures that monitor both the hourly rate as well as the efficiency and efficacy of the firm. He added that most local entities will not risk hiring counsel with the hope of obtaining reimbursement.

Ms. Higashi noted that an amendment to the provision in Exhibit A (page 0015) has been made to incorporate the reference to this year's Budget Act. She agreed with the Chair that this would be consistent with actions the Commission has taken in past decisions.

Members Cox and Steinmeier were concerned with controlling costs without a cap. Ms. Stone explained that, in her experience, most local governmental entities set rigorous policies and procedures regarding attorneys' fees. Ms. Higashi noted that other limitations are imposed upon a local entity when filing a reimbursement claim when it uses outside contractors.

Member Cox moved to adopt the Proposed Amendments to the Parameters and Guidelines with staff's recommended Option 1 to delete the hourly limit on attorney's fees. Member Steinmeier seconded the motion.

Member Beltrami asked why they could not use the Attorney General rate as a guideline. Ms. Higashi replied that that rate is probably on the low end. She noted the late filing that contains information on types of rates charged. Ms. Shelton added that those rates ranged from $110 to $175 per hour. Member McInerney submitted that the focus needs to be on the value of the services provided—the hourly issue is almost misleading.

On a roll call vote, the motion passed unanimously.

C. ADOPTION OF PROPOSED RULEMAKING ORDERS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1189.2, SUBDIVISION (B). (action)

Item 9 *Commission Orders to Initiate Rulemaking:*
Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 to Implement AB 1963 (Stats. 1998, ch. 681, and effective September 22, 1998), to Establish Procedures for Amendments to Parameters and Guidelines, and Review of Claiming Instructions, and to adopt Forms.

Item postponed by staff.

VI. EXECUTIVE DIRECTOR'S REPORT (information)

Item 10 Executive Director's Report
Workload and Next Hearing

A written report was submitted.

ADJOURNMENT

There being no further business, Chairperson Dezember adjourned the meeting at 1:20 p.m.

Paula Higashi
Executive Director

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File

STATE OF CALIFORNIA PETE WILSON, *Governor*

COMMISSION ON STATE MANDATES
1000 I STREET, SUITE 950
SACRAMENTO, CA 95814
(916) 323-3562

November 4, 1998

Mr. Paige Vorhies, Chief
Bureau of Payments
State Controller's Office
3301 C Street, Suite 500
Sacramento, California 95816

And Interested Parties and Affected State Agencies

RE: Adoption of Amendment to Parameters and Guidelines
Mandate Reimbursement Process
CSM-4485

On October 29, 1998, the Commission on State Mandates adopted the amended parameters and guidelines for this test claim.

A copy of the final Parameters and Guidelines, as amended, is enclosed.

If you have any questions please contact me at (916) 323-3562.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure

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MAIL TO: Cisf
DATE: 11/5/98
INITIAL: CB

-552-

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	NO. CSM-4485
Mandate Reimbursement Process, Chapter 486, Statutes of 1975; Chapter 1459, Statutes of 1984; Chapter 303, Statutes of 1995 (Budget Act of 1995); Chapter 162, Statutes of 1996 (Budget Act of 1996); Chapter 282, Statutes of 1997 (Budget Act of 1997), and Chapter 324, Statutes of 1998 (Budget Act of 1998)	ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTIONS 1183.2 AND 1185.3. (Adopted on October 29, 1998)

AMENDMENT TO PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached *Amended* Parameters and Guidelines on October 29, 1998.

These *Amended* Parameters and Guidelines are effective on November 4, 1998.

PAULA HIGASHI, Executive Director

Hearing Date: October 29, 1998
File: CSM-4485-98 (5th Amendment)
Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
Fifth Amendment Adopted: October 29, 1998
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AMENDMENT TO PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975
Chapter 1459, Statutes of 1984
Chapter 303, Statutes of 1995 (Budget Act of 1995)
Chapter 162, Statutes of 1996 (Budget Act of 1996)
Chapter 282, Statutes of 1997 (Budget Act of 1997)
Chapter 324, Statutes of 1998 (Budget Act of 1998)

Mandate Reimbursement Process

[For fiscal years 1995-96, 1996-97, 1997-98, and 1998-99 only, these parameters and guidelines are amended, pursuant to the requirements of (1) provision 11 of Item 0840-001-001 and provision 1 of Item 8885-001-001 of the Budget Act of 1995, (2) provision 9 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1996, (3) provision 9 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1997 (4) provision 8 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1998 to include Appendix A.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Government Code, see section 17552.

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate

reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. All claims for reimbursement of costs shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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.

C. Reimbursable Activities -- Reimbursement Claims

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.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs (Revised 9/98)

Government Code section 17564, subdivision (b), provides that claims for indirect costs shall be filed in the manner prescribed by the State Controller's Office, as follows:

(a) Local agencies have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal (ICRP) method.

(b) School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education

(c) County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

(d) Community College Districts must use one of the following three alternatives:
1. An ICRP based on OMB Circular A-21;
2. The State Controller's FAM-29C which uses the CCFS-311; or
3. Seven percent (7%).

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Chapter 486, Statutes of 1975

and

Chapter 1459, Statutes of 1984

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-96, 1996-97, 1997-98, and 1998-99 [1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if

APPENDIX A (Cont.)

[1] The limitation added by (1) the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, (2) the Budget Act of 1996, Chapter 162, Statutes of 1996, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, (3) the Budget Act of 1997, Chapter 282, Statutes of 1997, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, and (4) the Budget Act of 1998, Chapter 324, Statutes of 1998, in Item 0840-001-0001, Provision 8, and Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1300 I Street, Suite 950, Sacramento, California 95814.

On November 5, 1998, I served the attached Adoption of Amendment to Parameters and Guidelines for the Commission on State Mandates by placing a true copy thereof in an envelope addressed to each of the persons listed on the **attached mailing list,** and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

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 November 5, 1998, at Sacramento, California.

Caroline Baltazar

Commission on State Mandates

Mailing List

05-Nov-98

CSM/SB# and Claim Title 4485 Mandate Reimbursement Process

Government Code Sec.

Chapters Chapters 486/75; 1459/84; 303/95; 162/96; 282/97; 324/98

Originated: 05-Nov-98

Issue Mandate Reimbursement Process - PIG

Mr. James Apps (A-15),
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Education Mandated Cost Network

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CSM/SB# and Claim Title 4485 Mandate Reimbursement Process

Government Code Sec.

Chapters Chapters 486/75; 1459/84; 303/95; 162/96; 282/97; 324/98

Originated: 05-Nov-98

Issue Mandate Reimbursement Process - PIG

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CSM/SB# and Claim Title 4485 Mandate Reimbursement Process

Government Code Sec.

Chapters Chapters 486/75; 1459/84; 303/95; 162/96; 282/97; 324/98

Originated: 05-Nov-98

Issue Mandate Reimbursement Process - PIG

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA

Public Meeting and Hearing

September 30, 1999

State Capitol, Room 437
Sacramento, California

9:00 A.M. - CLOSED EXECUTIVE SESSION (Tentative)

9:30 A.M. - PUBLIC MEETING AND HEARING

I. CALL TO ORDER AND ROLL CALL

II. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126.

Pending Litigation

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

- *County of San Bernardino* v. *State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
- *County of Sonoma* v. *Commission on State Mandates, et al.*, Case Number SV221243, in the Superior Court of California, County of Sonoma.
- *Gary D. Hori* v. *Commission on State Mandates, et al.*, Case Number 99AS01517, in the Superior Court of the State of California, County of Sacramento.
- *Goff* v. *Commission on State Mandates, County of Sacramento et al.*, remanded to Superior Court by the Court of Appeal, Third District, Case Number 95CS01215. (Re: County of Sacramento's First SB 1033 Application.)

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

III. REPORT FROM CLOSED EXECUTIVE SESSION - 9:30 a.m.

IV. PROPOSED CONSENT CALENDAR

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

V. APPROVAL OF MINUTES (action)

Item 1 August 26, 1999

Item 2 September 15, 1999

VI. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

A. TEST CLAIMS

Item 3 *Behavioral Intervention Plans* - CSM-4464
Butte County Office of Education, San Diego Unified School District, and San Joaquin County Office of Education, Co-Claimants
Education Code Section 56523
Statutes of 1990, Chapter 959
Title 5, California Code of Regulations,
Sections 3001 and 3052

B. INCORRECT REDUCTION CLAIM

Item 4 Request for Disqualification of the Commission Member Representing the State Controller pursuant to California Code of Regulations, Title 2, Section 1187.3, Subdivision (b), on Item 5, Open Meetings Act - CSM-96-4257-I-b, CSM-98-4257-I-54. Request of the San Diego Unified School District, Claimant, dated August 27, 1999.

Item 5 *Open Meetings Act* - CSM-96-4257-I-b; CSM-98-4257-I-54
San Diego Unified School District, Claimant
Statutes of 1986, Chapter 641

C. ADOPTION OF PROPOSED STATEMENT OF DECISION

Item 6 *Peace Officers Procedural Bill of Rights* - CSM-4499
City of Sacramento, Claimant
Statutes of 1976, Chapter 465
Statutes of 1978, Chapters 775, 1173, 1174, and 1178
Statutes of 1979, Chapter 405
Statutes of 1980, Chapter 1367
Statutes of 1982, Chapter 944
Statutes of 1983, Chapter 964
Statutes of 1989, Chapter 1165
Statutes of 1990, Chapter 675

D. REQUEST FOR RECONSIDERATION OF PRIOR FINAL DECISION PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1188.4.

Item 7 Long Beach Unified School District's June 24, 1996, Request to Hear and Decide Education Code Section 56026 - *Maximum Age Limit: Special Education for Ages 3 to 5, and 18 to 21*
Statutes of 1977, Chapter 1247
Statutes of 1980, Chapter 797, et al.
As Part of the Special Education Test Claim Filed by
Riverside County Superintendent of Schools and
Supplemental Claimants (Request to Reconsider the Statement of Decision dated November 30, 1998)

VII. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 8 *Criminal Background Checks, (a.k.a. Michelle Montoya School Safety Act)*
CSM-97-TC-16
Lake Tahoe Unified School District and Irvine Unified School District, Co-Claimants
Education Code Sections 44237, 45125, 45125.1, 44332.6, 44830.1, and 45122.1
Statutes of 1997, Chapters 588 and 589

Item 9 *Pupil Residency Verification and Appeals* – CSM-96-348-01
Sweetwater Union High School District and
South Bay Union School District, Co-Claimants
Education Code Sections 14502, 48204.5, and 48204.6
Revenue and Taxation Code Section 97.3
Specified Executive Orders, Standards, and Procedures
Statutes of 1984, Chapter 268
Statutes of 1995, Chapter 309

B. REQUESTS TO AMEND PARAMETERS AND GUIDELINES

Item 10 *Mandate Reimbursement Process – Amendment*
CSM-4485-PGA-98-01
Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)
Statutes of 1999, Chapter 50 (Budget Act of 1999)

Item 11 *Juvenile Court Notices II* – CSM-98-4475-PGA-1
Sweetwater Union High School District, Claimant
Statutes of 1995, Chapter 71

C. ADOPTION OF PROPOSED REGULATORY ACTION

Item 12 Proposed Amendments to California Code of Regulations, Title 2 Chapter 2.5, Section 1182.and Section 1187.2 Quorum and Voting Requirements (Tie Vote).

VIII. EXECUTIVE DIRECTOR'S REPORT

Item 13 Legislation, Workload, and October Agendas

IX. PUBLIC COMMENT

<RECESS>

1:00 P. M. (TENTATIVE)

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

PROPOSED PARAMETERS AND GUIDELINES

Item 14 *Special Education* - CSM-3986
Riverside County Superintendent of Schools, Claimant and North Region SELPA (Alameda Unified School District, Administrative Unit), Castro Valley Unified School District, Contra Costa SELPA, Grant Union High School District, Newport Mesa Unified School District, Oakland Unified School District, Palo Alto Unified School District, and San Mateo-Foster City School District, Supplemental Claimants

Education Code Sections 56026, subdivision (c)(4), 56171, subdivision (a), 56190, 56191, 56192, 56194, 56321, 56325, subdivision (b), 56346, 56362,
subdivisions (c), (d), (e), and (f), and 56363.3

Statutes of 1980, Chapters 797, 1329, and 1353; Statutes of 1981, Chapters 972, 1044, and 1094; Statutes of 1982, Chapter 1201; Statutes of 1987, Chapters 311 and 1452; Statutes of 1988, Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapter 1361; Statutes of 1993, Chapter 1296; Statutes of 1994, Chapter 1288; and Statutes of 1995, Chapter 530

Title 5, California Code of Regulations, Sections 3043 and 3067, subdivision (d)

ADJOURNMENT

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Hearing Date: September 30, 1999
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Document Date: September 15, 1999

Item #10

AMENDMENT TO PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)
Statutes of 1999, Chapter 50 (Budget Act of 1999)

Mandate Reimbursement Process

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Exhibit C
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Exhibit D
County of Los Angeles Comments to Staff's Draft, dated July 13, 1999 0029

Exhibit E
Education Mandated Cost Network's proposed amendment,
dated August 4, 1999 0039

Exhibit F
California State Association of Counties proposed amendment,
dated August 18, 1999 0041

Exhibit G
August 26, 1999, Commission hearing transcript (relevant portion) 0043

Hearing Date: September 30, 1999
File: CSM-4485-99 (6th Amendment)
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Document Date: September 15, 1999

Item #10

AMENDMENT TO PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)
Statutes of 1999, Chapter 50 (Budget Act of 1999)

Mandate Reimbursement Process

Executive Summary

The Mandate Reimbursement Process parameters and guidelines allow local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims, and submitting reimbursement claims to the State Controller. Incorrect reduction claims are considered an element of reimbursement claims. The original parameters and guidelines were adopted on November 20, 1986.

Since 1995, the State Budget Act has included supplemental language in the support appropriations for the State Controller's Office and the Commission on State Mandates. This language addresses local reimbursement for the costs of contracting with an independent contractor. The Commission adopted Appendix A to comply with the supplemental language (see Exhibit A).

Each year, the Commission has amended these parameters and guidelines and Appendix A to reflect this language. The Budget Act of 1999 states:

"The Commission on State Mandates shall provide in applicable parameters and guidelines, as follows:

(a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district.

(b) The maximum amount of reimbursement authorized by subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been

accomplished without the incurring of the additional costs claimed by the local agency or school district."[1]

The proposed amendments would make the following changes:

- Update the caption of the parameters and guidelines and "Appendix A" to cite the Budget Act of 1999;
- Update text to conform with 1998 amendments to the Commission's statutory scheme;
- Replace older text with text of recently adopted parameters and guidelines text; and
- Include reimbursement for participation in workshops convened by the Commission.

Written Comments

After enactment of the 1999 Budget Act, staff made technical amendments to the 1998 parameters and guidelines (see Exhibit B), and mailed the proposal to affected State agencies and interested parties for review and comment (see Exhibit C). The County of Los Angeles and the Education Mandated Cost Network (EMCN) filed comments and requested amendments.

County of Los Angeles' Proposed Technical Amendments

The County of Los Angeles, in its letter dated July 13, 1999, requested the following technical changes (see Exhibit D):

- Conform references to annual filing deadlines, in Section IV, Period of Claim, to reflect the 1998 amendments to Government Code section 17560.
- Replace the last sentence of Paragraph A., Supporting Data, of Section VI., Claim Preparation, with language that conforms to the 1998 amendments.
- Replace language in Paragraph F, Allowable Overhead Costs, of Section VI., Claim Preparation, with language adopted in the *Sexually Violent Predator* parameters and guidelines on September 24, 1998.[2]
- Rename the caption of Paragraph F of Section VI. From "Allowable Overhead Costs to "Indirect Costs".

Education Mandated Cost Network's Proposed Amendment

The EMCN requested the addition of language to the parameters and guidelines allowing reimbursement for costs associated with participating in Commission workshops, rulemaking proceedings, and similar business (see Exhibit E). The EMCN submitted that the local costs for these activities would not have been incurred but for the state-mandated activities or but for the creation of the Commission.

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1 Statutes of 1999, Chapter 50, p. 654, Item 8885-001-0001, Provision 1.
2 CSM-4509.

Staff Analysis

In response to the County of Los Angeles, staff has reviewed the proposed amendments and proposes the following changes:

- Section IV. The outdated text in Section IV on initial reimbursement claims should be deleted since it is not relevant for filing annual reimbursement claims. Therefore, staff agrees that the outdated text in the second paragraph should be replaced with Government Code section 17560.
- Section VI, Supporting Data. Staff agrees that this section should be updated. Rather than using the County's proposed language, staff proposes the language adopted in the Supporting Data section in the parameters and guidelines for *Sexually Violent Predators*.[3] Staff agrees that Section F should be re-labeled. The proposed amendment renames the section "Indirect Costs" and replaces the language pertaining to local agency costs with that adopted in the *Sexually Violent Predators* parameters and guidelines.[4] Staff also proposes other conforming amendments to Section V. Reimbursable Costs to replace the phrase "allowable overhead" with "indirect costs".

The August 26, 1999, staff analysis disagreed with the EMCN that local agencies should be reimbursed for participation in Commission workshops, rulemaking proceedings, and similar business. However, based on testimony and discussion at that hearing, Commission members, staff and claimants agreed that participation in workshops convened by the Commission should be reimbursable. Staff amended the parameters and guidelines accordingly. The Commission disagreed with claimants that reimbursement should be provided for participation rulemaking proceedings and similar Commission business.

Staff Recommendation

Staff recommends the Commission adopt the proposed amendments to the parameters and guidelines (see Exhibit A).

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[3] This language was developed in workshops attended by claimants' representatives, Commission staff, State Controller's Office staff and Department of Finance staff.

[4] See footnote 2.

Hearing Date: September 30, 1999
File: CSM-4485-99 (6th Amendment)
Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
Fifth Amendment Adopted: October 29, 1998
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Document Date: September 15, 1999

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)
Statutes of 1999, Chapter 50 (Budget Act of 1999)

Mandate Reimbursement Process

[For fiscal years 1995-96, 1996-97, 1997-98, ~~and~~ 1998-99 and 1999-00 only, these parameters and guidelines are amended, pursuant to the requirements of (1) provision 11 of Item 0840-001-001 and provision 1 of Item 8885-001-001 of the Budget Act of 1995, (2) provision 9 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1996, (3) provision 9 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1997 (4) provision 8 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1998 **(5) provision 8 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1999** to include Appendix A.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Government Code, see section 17552.

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

~~Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.~~

~~Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. All claims for reimbursement shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.~~

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

(a) A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).

(b) A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.

(c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of Section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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 indirect costs ~~allowable overhead~~.

C. Reimbursable Activities -- Reimbursement Claims

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 indirect costs ~~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.

VI. Claim Preparation

A. Supporting Data

~~All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A~~

~~list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.~~

~~For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.~~

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. ~~Indirect costs may be included in the overhead calculation.~~

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

1. Classes

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

2. Commission Workshops

Participation in workshops convened by the Commission is reimbursable. Such costs include, but are not limited to, salaries and benefits, transportation, and per diem. This does not include reimbursement for participation in rulemaking proceedings.

F. ~~Allowable Overhead Costs (Revised 9/98)~~Indirect Costs

1. Local Agencies

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan. ~~Government Code section 17564, subdivision (b), provides that claims for indirect costs shall be filed in the manner prescribed by the State Controller's Office, as follows:~~

~~(a)~~ Local agencies must claim indirect costs based on the following alternatives: Compensation for indirect costs is eligible for reimbursement using the procedure provided in the OMB Circular A-87. Claimants have the option of using ten (10) percent of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds ten (10) percent. If more than one department claims indirect costs for the mandated program, each department must have its own IRCP prepared in accordance with OMB Circular A-87 (or subsequent replacement). An ICRP must be submitted with the claim when the indirect cost rate exceeds ten (10) percent.

2. School Districts

~~(b)~~ School districts must use the J-380 (or subsequent replacement) non-restrictive -indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

~~(c)~~ County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

~~(d)~~ Community College Districts must use one of the following three alternatives:

~~1.~~ a. An ICRP based on OMB Circular A-21;
~~2.~~ b. The State Controller's FAM-29C which uses the CCFS-311; or
~~3.~~ c. Seven percent (7%).

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486

and

Statutes of 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-96, 1996-97, 1997-98, ~~and~~ 1998-99, and 1999-00 [1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or

[1] The limitation added by (1) the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, (2) the Budget Act of 1996, Chapter 162, Statutes of 1996, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, (3) the Budget Act of 1997, Chapter 282, Statutes of 1997, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, and (4) the Budget Act of 1998, Chapter 324, Statutes of 1998, in Item 0840-001-0001, Provision 8, and Item 8885-001-0001, Provision 1, (5) the Budget Act of 1999, Chapter 50, Statutes of 1999, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

[Test (2)] the actual costs that necessarily would have been incurred for that purpose if performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

CHAPTER 50

An act making appropriations for the support of the government of the State of California and for several public purposes in accordance with the provisions of Section 12 of Article IV of the Constitution of the State of California, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor June 29, 1999. Filed with Secretary of State June 29, 1999.]

I object to the following appropriations contained in Senate Bill 160:

Item 0250-001-0001—For support of Judiciary. I reduce this item from $239,105,000 to $239,104,000 by reducing:

(c) 30-Judicial Council from $58,996,000 to $58,995,000,

and by deleting Provision 6.

I am deleting Provision 6 which would require the Judicial Council to develop and support a strategic committee on drug court strategy in the Judicial Council's drug court program and the Department of Alcohol and Drug Programs (DADP) Partnership Program. The DADP Partnership Program already has an existing committee assigned to determining administration of the Partnership Program, and the Judicial Council administers the drug court program. Therefore, this language is unnecessary because it would create duplicative activities that can best be handled by existing resources and their mutual coordination.

I am reducing $1,000 from this item to reflect savings that will be achieved based on vetoing Provision 6 of this Item.

Item 0250-101-0001—For local assistance, Judiciary. I reduce this item from $11,875,000 to $11,775,000 by reducing the following:

(b) 30.20-California Drug Court Project from $1,958,000 to $1,858,000.

I am deleting the $100,000 legislative augmentation which would have supported establishment of a drug court program in the City of Fontana. This proposal would have created a local exception to the statewide application process to the Department of Alcohol and Drug Programs' Partnership Program and the Judicial Council's drug court program. Such an exception is not conducive to the already existing support program and evaluation system that is in place. However, if the County of San Bernardino wishes to tailor its own drug court program for the City of Fontana, the authority to do so exists pursuant to Chapter 1132, Statutes of 1996.

I am sustaining the $10,000,000 legislative augmentation to this item for the Equal Access Fund which will provide legal services for indigents in civil matters; however, I am sustaining this augmentation on a one-time basis.

Item 0450-101-0932—For local assistance, State Trial Court Funding. I reduce this item from $1,776,178,000 to $1,771,678,000 by reducing:

(d) 45-Court Interpreters from $51,619,000 to $47,119,000.

I am reducing the $7,000,000 legislative augmentation, which would have increased trial court interpreter compensation from the current level of $200 per day to $250 per day, by $4,500,000 and sustaining $2,500,000 of the augmentation. This will provide sufficient funding to allow the Judicial Council to ensure certified and registered interpreters are available for trial court criminal proceedings only to avoid criminal trials from being dismissed or re-tried due to lack of available certified interpreters.

Item 0450-111-0001—For transfer by the Controller to the Trial Court Trust Fund. I reduce this item from $890,370,000 to $885,870,000.

I am reducing this item to conform to the actions I have taken in Item 0450-101-0932.

EXHIBIT B

Item	Amount
CALSTARS-related activities by the Department of Finance.	
2. The funds appropriated in this act for purposes of CALSTARS-related data processing costs may be transferred between any items in this act by the Controller upon order of the Director of Finance. Any funds so transferred shall be used only for support of CALSTARS-related data processing costs incurred.	
8860-025-0001—For support of Department of Finance, Program 25—School Attendance Audit Contract.....	3,000,000
Provisions:	
1. The funds appropriated in this item are for a contract with the Controller's Office to perform audits of school attendance records.	
8885-001-0001—For support of Commission on State Mandates, Program 10.....	1,370,000
Provisions:	
1. The Commission on State Mandates shall provide, in applicable parameters and guidelines, as follows:	
(a) If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that necessarily would have been incurred for that purpose if performed by employees of the local agency or school district.	
(b) The maximum amount of reimbursement authorized by subdivision (a) may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.	
2. In the case where the commission receives one or more county applications for a finding of significant financial distress pursuant to Section 17000.6 of the Welfare and Institutions Code, and where the commission files a request under Section 27.00 of the Budget Act in order to carry out its duties with respect to those applications, then, notwithstanding the provisions of Section 17000.6 of the Welfare and Institutions Code, the time limit imposed on the commission to reach its preliminary and final decisions shall be tolled until such time as the commission has received spending authorization.	
8910-001-0001—For support of Office of Administrative Law.....	2,241,000
Schedule:	
(a) 10-Regulatory Oversight..... 2,381,000	
(b) Reimbursements..... −140,000	
8940-001-0001—For support of Military Department....	24,464,000
Schedule:	
(a) 10-Army National Guard..... 36,796,000	
(b) 20-Air National Guard..... 12,358,000	
(c) 30.01-Office of the Adjutant General..... 5,349,000	
(d) 30.02-Distributed Office of the Adjutant General..... −5,349,000	
(e) 35-Military Support to Civil Authority..... 2,865,000	
(f) 40-Military Retirement..... 2,587,000	
(g) 65-California National Guard youth programs..... 6,358,000	
(h) Reimbursements..... −2,057,000	
(i) Amount payable from the Armory Discretionary Improvement Account (Item 8940-001-0485)..... −150,000	
(j) Amount payable from the Federal Trust Fund (Item 8940-001-0890)..... −34,293,000	
Provisions:	
1. No expenditures shall be made from the funds appropriated in this item as a substitution for personnel, equipment, facilities, or other assistance, or for any portion thereof, that, in the absence of the expenditure, or of this appropriation, would be available to the Adjutant General of the State Military Forces, the California National Guard, or the California National Guard Reserve from the federal government.	
2. The funds appropriated in Schedule (f) shall be for military retirements, in accordance with Sections 228 and 256 of the Military and Veterans Code.	
3. Of the amount appropriated in this item, $635,000 shall be used to provide temporary emergency	

0014

: OF CALIFORNIA
MMISSION ON STATE MANDATES
I STREET, SUITE 950
AMENTO, CA . 95814
b) 323-3562
., 445-0278
: csminfo@csm.ca.gov

EXHIBIT C

July 1, 1999

To: All Interested Persons (See enclosed mailing list)

RE: July 29, 1999 Hearing
Item 6. Proposed Amendment of Parameters and Guidelines
Mandate Reimbursement Process - CSM-4485
Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)
Statutes of 1999, Chapter 50 (Budget Act of 1999)

The Budget Act of 1999 includes provisions requiring the Commission on State Mandates to adopt parameters and guidelines for the Mandate Reimbursement Process. The proposed amendments to the parameters and guidelines add references to the Budget Act of 1999. (See enclosure.)

Adoption of the proposed amendments is scheduled for the Commission's July 29, 1999 hearing. Please fax comments and proposed changes to the Commission and the mailing list by noon on Wednesday, July 14, 1999.

Please contact me if you have any questions.

Sincerely,

Shirley Opie

Shirley Opie
Staff Services Manager

Cc: Paula Higashi

Enclosures: Proposed Amendments and Mail List
hdates\4000s\4485\99pgatr

Hearing Date: July 29, 1999
Re: CSM-4485-99 (6th Amendment)
Adopted: November 20, 1986
First Amendment Adopted: March 26, 1987
Second Amendment Adopted: October 26, 1995
Third Amendment Adopted: January 30, 1997
Fourth Amendment Adopted: September 25, 1997
Fifth Amendment Adopted: October 29, 1998
f:\mandates\csm4000\4485\pga072999
Document Date: July 1, 1999

AMENDMENT TO PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486
Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995)
Statutes of 1996, Chapter 162 (Budget Act of 1996)
Statutes of 1997, Chapter 282 (Budget Act of 1997)
Statutes of 1998, Chapter 324 (Budget Act of 1998)
Statutes of 1999, Chapter 50 (Budget Act of 1999)

Mandate Reimbursement Process

[For fiscal years 1995-96, 1996-97, 1997-98, ~~and~~ 1998-99 and 1999-00 only, these parameters and guidelines are amended, pursuant to the requirements of (1) provision 11 of Item 0840-001-001 and provision 1 of Item 8885-001-001 of the Budget Act of 1995, (2) provision 9 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1996, (3) provision 9 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1997 (4) provision 8 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1998 **(5) provision 8 of Item 0840-001-0001 and provision 1 of Item 8885-001-0001 of the Budget Act of 1999** to include Appendix A.]

I. Summary of Mandate

Chapter 486, Statutes of 1975, established the Board of Control's authority to hear and make determinations on claims submitted by local governments that allege costs mandated by the State. In addition, Chapter 486/75 contains provisions authorizing the State Controller's Office to receive, review, and pay reimbursement claims for mandated costs submitted by local governments.

Chapter 1459, Statutes of 1984, created the Commission on State Mandates, which replaced the Board of Control with respect to hearing mandate cost claims. This law established the "sole and exclusive procedure" by which a local agency or school district is allowed to claim reimbursement as required by Section 6 of Article XIII B of the California Constitution for State mandates under the Government Code, see section 17552.

Together these laws establish the process by which local agencies are to receive reimbursement for State-mandated programs. As such, they prescribe the procedures

which must be followed before mandated costs are to be recognized. They also dictate reimbursement activities by requiring localities to file claims according to instructions issued by the Controller.

II. Commission on State Mandates Decision

On March 27, 1986, the Commission on State Mandates determined that local agencies and school districts incurred "costs mandated by the State" as a result of Chapter 486, Statutes of 1975, and Chapter 1459, Statutes of 1984. Specifically, the commission found that these two statutes imposed a new program by requiring local governments to file claims in order to establish the existence of a mandated program as well as to obtain reimbursement for the costs of mandated programs.

III. Eligible Claimants

All local agencies and school districts incurring increased costs as a result of this mandate are eligible to claim reimbursement of those costs.

IV. Period of Claim

Section 17557 of the Government Code (GC) requires test claims to be submitted on or before November 30 following the fiscal year in which costs were incurred in order to establish eligibility for reimbursement for that fiscal year. This claim was filed by Fresno County on November 27, 1985. Therefore, only costs incurred on or after July 1, 1984, are eligible for reimbursement.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. All claims for reimbursement of costs shall be submitted within 120 days from the date on which the State Controller issues claiming instructions.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed.

V. Reimbursable Costs

A. Scope of Mandate

Local agencies and school districts filing successful test claims and reimbursement claims incur State-mandated costs. The purpose of this test claim was to establish that local governments (counties, cities, school districts, special districts, etc.) cannot be made financially whole unless all state mandated costs -- both direct and indirect -- are reimbursed. Since local costs would not have been incurred for test claims and reimbursement claims but for the implementation of State-imposed mandates, all resulting costs are recoverable.

B. Reimbursable Activities -- Test Claims

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.

C. Reimbursable Activities -- Reimbursement Claims

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.

VI. Claim Preparation

A. Supporting Data

All claims must be submitted in a timely fashion and contain sufficient documentation to support the amounts for which reimbursement is sought. A list of the mandates causing the claiming costs should be included, but it is not necessary to show the claiming costs for each mandate.

For auditing purposes, all costs claimed must be traceable to source documents or worksheets that show evidence of and the validity of such costs. These documents must be kept on file for a period of no less than 3 years from the date of the final payment of the claim pursuant to this mandate, and made available on the request of the State Controller.

B. Salaries and Benefits

Employee costs should be supported by the following: employee name, position (job title), productive hourly rate, hours worked, salary and benefit amounts, and a description of the tasks performed as they relate to this mandate.

C. Service and Supplies

Identify any direct costs for materials that have been consumed or expended specifically for this mandate. Indirect costs may be included in the overhead calculation.

D. Contract Services

Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable. Provide copies of the invoices and/or claims that were paid.

E. Training

Include the costs of classes designed to assist the claimant in identifying and correctly preparing State-required documentation for specific reimbursable mandates. Such costs include, but are not limited to, salaries and benefits, transportation, registration fees, per diem, and related costs incurred because of this mandate.

F. Allowable Overhead Costs (Revised 9/98)

Government Code section 17564, subdivision (b), provides that claims for indirect costs shall be filed in the manner prescribed by the State Controller's Office, as follows:

(a) Local agencies have the option of using 10% of direct labor as indirect costs or preparing a departmental rate for this program using the Indirect Cost Rate Proposal (ICRP) method.

(b) School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education

(c) County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

(d) Community College Districts must use one of the following three alternatives:
1. An ICRP based on OMB Circular A-21;
2. The State Controller's FAM-29C which uses the CCFS-311; or
3. Seven percent (7%).

VII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimants experience as a direct result of this statute must be deducted from the costs claims. In addition, reimbursement for this mandate received from any source, e.g., federal, state, etc., shall be identified and deducted from this claim.

VIII. Required Certification

The following certification must accompany the claim:

I DO HEREBY CERTIFY:

THAT sections 1090 to 1096, inclusive, of the Government Code and other applicable provisions of the law have been complied with; and

THAT I am the person authorized by the local agency to file claims for funds with the State of California.

SIGNATURE OF AUTHORIZED REPRESENTATIVE	DATE
TITLE	TELEPHONE NUMBER

(Continue to Appendix A)

PARAMETERS AND GUIDELINES

Statutes of 1975, Chapter 486

and

Statutes of 1984, Chapter 1459

APPENDIX A

Limitation on Reimbursement for Independent Contractor Costs During Fiscal Years 1995-96, 1996-97, 1997-98, ~~and~~ 1998-99, and 1999-00 [1]

A. If a local agency or school district contracts with an independent contractor for the preparation and submission of reimbursement claims, the costs reimbursable by the state for that purpose shall not exceed the lesser of (1) 10 percent of the amount of the claims prepared and submitted by the independent contractor, or (2) the actual costs that would necessarily have been incurred for that purpose if performed by employees of the local agency or school district.

The maximum amount of reimbursement provided for an independent contractor may be exceeded only if the local agency or school district establishes, by appropriate documentation, that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district.

B. Costs incurred for contract services and/or legal counsel that assist in the preparation, submission and/or presentation of claims are recoverable within the limitations imposed under A. above. Provide copies of the invoices and/or claims that were paid. For the preparation and submission of claims pursuant to Government Code sections 17561 and 17564, submit an estimate of the actual costs that would have been incurred for that purpose if performed by employees of the local agency or school district; this cost estimate is to be certified by the governing body or its designee.

If reimbursement is sought for independent contractor costs that are in excess of [Test (1)] ten percent of the claims prepared and submitted by the independent contractor or [Test (2)] the actual costs that necessarily would have been incurred for that purpose if

[1] The limitation added by (1) the Budget Act of 1995, Chapter 303, Statutes of 1995, in Item 0840-001-001, Provision 11, and in Item 8885-001-001, Provision 1, (2) the Budget Act of 1996, Chapter 162, Statutes of 1996, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, (3) the Budget Act of 1997, Chapter 282, Statutes of 1997, in Item 0840-001-0001, Provision 9, and in Item 8885-001-0001, Provision 1, and (4) the Budget Act of 1998, Chapter 324, Statutes of 1998, in Item 0840-001-0001, Provision 8, and Item 8885-001-0001, Provision 1, (5) the Budget Act of 1999, Chapter 50, Statutes of 1999, in Item 0840-001-0001, Provision 8, and in Item 8885-001-0001, Provision 1, is shown as part A. of this Appendix.

performed by employees or the local school district, appropriate documentation must be submitted to show that the preparation and submission of these claims could not have been accomplished without the incurring of the additional costs claimed by the local agency or school district. Appropriate documentation includes the record of dates and time spent by staff of the contractor for the preparation and submission of claims on behalf of the local agency or school district, the contractor's billed rates, and explanation on reasons for exceeding Test (1) and/or Test (2). In the absence of appropriate documentation, reimbursement is limited to the lesser of Test (1) and/or Test (2). No reimbursement shall be permitted for the cost of contracted services without the submission of an estimate of actual costs by the local agency or school district.

Commission on State Mandates

Originated: 11/05/1998 Today's Date 07/01/1999

Mailing List

CSM/SB # 4485 Claim Title Mandate Reimbursement Process - P&G's

vernment Code Section

Chapters Chapters 486/75; 1459/84; 303/95; 162/96; 282/97; 324/98

Issue Mandate Reimbursement Process

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r. Allan Burdick, MG-MAXIMUS 320 Auburn Blvd. Suite 2000 ENTO CA 95841	*Tel:* (916) 485-8102 *FAX:* (916) 485-0111
r. Peter Carton, hools Legal Service O Box 2445 AKERSFIELD CA 93303-2445	*Tel:* (805) 636-4830 *FAX:* (805) 636-4843
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r. Jim Cunningham, Leg. Mandate Spclst. (Interested Party) n Diego City Schools 00 Normal Street Room 3159 N DIEGO CA 92103-2682	*Tel:* (619) 293-8205 *FAX:* (619) 293-8474
. Paul Dauer, v Offices of Paul F. Dauer 5 American River Dirve Suite C AMENTO CA 95864	*Tel:* (916) 974-3400 *FAX:* (916) 974-3405

CSM/SB # 4485 **Claim Title** Mandate Reimbursement Process - P&G's

ernment Code Section

Chapters Chapters 486/75; 1459/84; 303/95; 162/96; 282/97; 324/98

Issue Mandate Reimbursement Process

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Marcia C. Faulkner, Manager, Reimbursable Projects unty of San Bernadino ice of the Auditor/Controller W. Hospitality Lane, 4th Floor N BERNARDINO CA 92415-0018	*Tel:* (909) 386-8850 *FAX:* (909) 386-8830
Leslie Hobson, Senior Administrative Analyst unty of Placer Fulweiler Ave. BURN CA 95603	*Tel:* (530) 889-4026 *FAX:* (530) 889-4023
Bob Jones, Tax Collector unty of Fresno litor-Controller Box 1247 ESNO CA 93715-1247	*Tel:* (209) 488-3496 *FAX:* (209) 488-3493
Leonard Kaye, Esq., nty of Los Angeles itor-Controller's Office W. Temple Street, Room 603 ANGELES CA 90012	*Tel:* (213) 974-8564 *FAX:* (213) 617-8106
Steve Keil, ornia State Association of Counties K Street Suite 101 RAMENTO CA 95814-3941	*Tel:* (916) 327-7523 *FAX:* (916) 441-5507
Virginia Lee, SB 90 Coordinator y of Santa Clara oller-Treasurer Division y Gov't Cntr, E. Wing 70 W. Hedding St., 2nd OSE CA 95110	*Tel:* (408) 299-2541 *FAX:* (408) 289-8629

CSM/SB # 4485 Claim Title Mandate Reimbursement Process - P&G's

ernment Code Section

Chapters Chapters 486/75; 1459/84; 303/95; 162/96; 282/97; 324/98

Issue Mandate Reimbursement Process

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N RAFAEL CA 94901 *FAX:* (415) 456-3826

. Paul Minney, Interested Party
ard & Vinson

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. Joseph D. Mullender, Jr.,
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. .. B. Petersen, President (Interested Party)
en & Associates

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N DIEGO CA 92117 *FAX:* (858) 514-8645

Sam Robinson,
land Unified School District

5 Second Avenue *Tel:* (510) 836-8100
KLAND CA 94606 *FAX:* (510) 839-5328

William D. Ross,
Offices of William D. Ross
ofessional Corp.
South Grand Ave. Suite 300 *Tel:* (213) 892-1592
ANGELES CA 90071-2610 *FAX:* (213) 892-1519

Steve Smith, CEO (Interested Person)
lated Cost Systems

Watt Avenue Suite C *Tel:* (916) 487-4435
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CSM/SB # 4485 Claim Title Mandate Reimbursement Process - P&G's

ernment Code Section

Chapters Chapters 486/75; 1459/84; 303/95; 162/96; 282/97; 324/98

Issue Mandate Reimbursement Process

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CRAMENTO CA 95816 FAX: (916) 323-6527

r. David Wellhouse,
ellhouse & Associates
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CRAMENTO CA 95826 FAX: (916) 368-5723

EXHIBIT D

COUNTY OF LOS ANGELES
DEPARTMENT OF AUDITOR-CONTROLLER

KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET, ROOM 525
LOS ANGELES, CALIFORNIA 90012
PHONE: (213) 974-8301 FAX: (213) 626-5427

ALAN T. SASAKI
AUDITOR-CONTROLLER

July 13, 1999

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, California 95814

Dear Ms. Higashi:

County of Los Angeles Comments
Parameters and Guidelines (Ps&Gs) Amendments
Mandate Reimbursement Process CSM 4485

Our comments on amending the subject Ps&Gs are attached.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Sincerely,

for

Alan Sasaki
Auditor-Controller

AS:JN:LK
Enclosures

County of Los Angeles Comments
Parameters and Guidelines (Ps&Gs) Amendments
Mandate Reimbursement Process CSM 4485

IV. Period of Claim

The first paragraph refers to Government Code section 17557 as having a "November 30" deadline for test claim submissions. While this was the law on March 27, 1986 when the Commission decided the claim, it is no longer the law. Therefore, the paragraph would be better placed in "Section II Commission on State Mandates Decision" providing the history of the decision.

The second paragraph, developed before Chapter 681, Statutes of 1998 amended Government Code section 17560, needs to be updated. As section 17560 deals exclusively and explicitly with "Deadlines for filing reimbursement claims", it is recommended that it be inserted, in its entirety, in place of the second paragraph, as follows:

> " Reimbursement for state-mandated costs may be claimed as follows:
>
> (a) A local agency or school district may file an estimated reimbursement claim by ***January 15*** of the fiscal year in which costs are to be incurred, and, by ***January 15*** following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
>
> (b) A local agency or school ***district may, by January 15*** following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
>
> (c) In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of Section 17558 between ***October 15 and January 15*** , a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. "

VI. Claim Preparation

Under "A. Supporting Data", the last sentence indicating the record retention period is no longer the law. It should be replaced with Government Code section 17558.5(a) which now provides that:

> " (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. "

VI. Claim Preparation

Regarding indirect costs, "Section F. Allowable Overhead Costs" should be updated to include language recently adopted by the Commission, in their Sexually Violent Predator Parameters and Guidelines [September 24, 1998] and other decisions. This recently adopted language is:

"Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is reimbursable utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing a departmental Indirect Cost Rate Proposal (ICRP) for the department if an indirect cost rate in excess of 10% is claimed. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate is in excess of 10%."

In addition, the caption to this section should be changed to "Indirect Costs" to reflect the modern trend in Commission's language as well as the language found in Government Code section 17564(b) providing for claims for "indirect costs".

Also the first sentence is confusing as Government Code section 17564(b) does not indicate any State Controller's Office (SCO) requirement's "as follows:". If SCO wishes to promulgate specific regulations, under the general authority of section 17564(b), it should do so.

The current indirect cost language is not clear. Certain forms and formulas are used but not explained. Further, what is said, is subject to different interpretation. For example, should actual cost claims be based solely on actual costs incurred in a specific fiscal year or based on "provisionally approved" budgeted figures? Are such budgeted costs deemed to be actual costs?

Therefore, it is recommended that the indirect cost language proposed above replace the current indirect cost language.

COUNTY OF LOS ANGELES
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ALAN T. SASAKI
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DECLARATION OF SERVICE

STATE OF CALIFORNIA, County of Los Angeles:

Delia Gomez states: I am and at all times herein mentioned have been a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to nor interested in the within action; that my business address is 603 Kenneth Hahn Hall of Administration, City of Los Angeles, County of Los Angeles, State of California;

That on the 14th day of July, 1999, I served the attached:

Documents: County of Los Angeles comments on parameters and guidelines amendments of Mandate Reimbursement Process, *including a 1 page letter dated 7/13/99 and a 2 page narrative attachment, all pursuant to CSM 4485*, now pending before the Commission on State Mandates..

upon all Interested Parties listed on the attachment hereto and by

[X] by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date. Commission on State Mandates copy only.

[ ] by placing [ ] true copies [ ] original thereof enclosed in a sealed envelope addressed as stated on the attached mailing list.

[X] by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.

[ ] by personally delivering the document(s) listed above to the person(s) as set forth below at the indicated address.

PLEASE SEE ATTACHED MAILING LIST

That I am readily familiar with the business practice of the Los Angeles County for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence would be deposited within the United States Postal Service that same day in the ordinary course of business. Said service was made at a place where there is delivery service by the United States mail and that there is a regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of July, 1999, at Los Angeles, California.

Delia Gomez

Della Gomez

Commission on State Mandates

Originated: 11/05/1998 Today's Date 07/01/1999

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