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GOVERNOR



# STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

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## REPORT TO THE LEGISLATURE: APPROVED MANDATE CLAIMS

July 1, 2014 – December 31, 2014

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## **I. INTRODUCTION**

### **Commission on State Mandates**

#### Test Claim Process

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

#### Parameters and Guidelines

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

#### Alternative Processes

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

AB 1222 also provided a process where the Department of Finance and local agencies, school districts, or statewide associations may jointly request that the Legislature determine that a statute or executive order imposes a state-mandated program, establish a reimbursement methodology, and appropriate funds for reimbursement of costs. This process is intended to bypass the Commission's test claim process, thus providing the Commission with more time to complete the caseload backlog. To date, this process has not been successfully utilized.

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

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

## **Report to the Legislature**

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

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

This report fulfills these requirements.

## **Legislative Analyst**

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

## **The Legislature**

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

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

## **Mandate Funding Provisions**

The Government Code provides that if the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.<sup>6</sup> Under Proposition 1A, which amended article XIII

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

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

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

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

B, section 6 of the California Constitution, city, county, city and county, or special district mandate claims for costs incurred prior to the 2004-2005 fiscal year that have not been paid prior to the 2005-2006 fiscal year may be paid over a term of years, as prescribed by law. However, for the 2005-2006 fiscal year and every subsequent fiscal year, the Constitution now requires the Legislature to either appropriate in the annual Budget Act the full payable amount that has not been previously paid or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable.

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

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

## II. NEW MANDATES

The following table shows the statewide cost estimates that were adopted during the period of July 1, 2014 through December 31, 2014.

**Statewide Cost Estimates (SCE) Adopted  
During the Period of July 1, 2014 through December 31, 2014**

<i>Adoption Date, Claim Name and Number, and Initial Claiming Period</i>			<i>Estimated Costs for Initial Claiming Period</i>			<i>Estimated Future Annual Costs</i>
Date	Test Claim Name and Number	Initial Claiming Period	Education (K-14)	Local Agency	Totals	Annual
7/25/14	<i>Local Agency Ethics (AB 1234), 07-TC-04 [Amended SCE]</i>	7/1/06- 6/30/13	-	\$38,194	<b>\$38,194</b>	\$11,130
9/26/14	<i>Interagency Child Abuse and Neglect Investigation Reports (ICAN), 00-TC-22</i>	7/1/99- 6/30/13	-	\$90,390,726	<b>\$90,390,726</b>	\$2,619,683
9/26/14	<i>Peace Officers Procedural Bill of Rights II (POBOR II), 03-TC-18</i>	7/1/02- 6/30/13	-	\$3,436,091	<b>\$3,436,091</b>	\$351,125

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

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

<i>Adoption Date, Claim Name and Number, and Initial Claiming Period</i>			<i>Estimated Costs for Initial Claiming Period</i>			<i>Estimated Future Annual Costs</i>
Date	Test Claim Name and Number	Initial Claiming Period	Education (K-14)	Local Agency	Totals	Annual
9/26/14	<i>Immunization Records – Pertussis, 11-TC-02</i>	7/1/11-6/30/13	\$8,627,483	-	<b>\$8,627,483</b>	\$1,722,106
12/5/14	<i>Accounting for Local Revenue Realignment, 05-TC-01</i>	7/1/04-6/30/13	-	\$217,678	<b>\$217,678</b>	Unknown: likely minor or none.
<b>TOTAL</b>			\$8,627,483	\$94,082,689	<b>\$102,710,172</b>	

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

Following are tables showing parameters and guidelines, parameters and guidelines with proposed reasonable reimbursement methodologies (RRMs), requests to amend parameters and guidelines, requests to amend parameters and guidelines with proposed RRM, and statewide cost estimates that are pending Commission determination. A request to include an RRM in parameters and guidelines or amendments thereto is a request made by a local entity claimant, an interested party, Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5. These requests are often disputed by one or more of the parties and interested parties.

#### A. Pending Parameters and Guidelines

	<b>Program</b>	<b>Status</b>
1.	<i>Sheriff Court-Security Services, 09-TC-02*</i>	Tentatively set for hearing on March 27, 2015.
2.	<i>Discharge of Stormwater Runoff, 07-TC-09*</i>	Inactive pending court action.
3.	<i>Firearm Hearings for Discharged Inpatients (07-RRM-01), 99-TC-11*</i>	Set for hearing on January 23, 2015 to replace joint RRM expiring on 6/30/15.

\* Local agency programs

† School district or community college district programs

#### B. Pending Parameters and Guidelines with Proposed RRM

	<b>Program</b>	<b>Status</b>
1.	N/A	N/A

\* Local agency programs

† School district or community college district programs

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

	<b>Program</b>	<b>Status</b>
1.	<i>Open Meetings Act/Brown Act Reform (13-MR-02), CSM-4257/4469*</i>	Set for hearing on January 23, 2015.
2.	<i>Graduation Requirements, 11-PGA-03 (CSM-4435)†</i>	Inactive pending court action.

\* Local agency programs

† School district or community college district programs

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

	<b>Program</b>	<b>Status</b>
1.	N/A	

\* Local agency programs

† School district or community college district programs

**E. Pending Statewide Cost Estimates**

	<b>Program</b>	<b>Status</b>
1.	<i>State Authorized Risk of Assessment Tool for Sex Offenders (SARATSO), 08-TC-03*</i>	Set for hearing on January 23, 2015.
2.	<i>Medi-Cal Eligibility of Juvenile Offenders, 08-TC-04*</i>	Set for hearing on January 23, 2015.
3.	<i>Race to the Top, 10-TC-06†</i>	Tentatively set for hearing on March 27, 2015.
4.	<i>Sexually Violent Predators, CSM-4509 (12-MR-01)*</i>	Tentatively set for hearing on March 27, 2015.
5.	<i>Post Election Manual Tally (PEMT), 10-TC-08*</i>	Tentatively set for hearing on July 24, 2015
6.	<i>Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21*</i>	Hearing date to be set pending court action.

\* Local agency programs

† School district or community college district programs

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

**A. Pending Joint Reasonable Reimbursement Methodologies**

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

	<b>Program</b>	<b>Date of Notice by Local Agencies or Department of Finance</b>	<b>Status</b>
	None		

**B. Pending Joint Legislatively-Determined Mandates**

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

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

**C. Delays in the Process**

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

With regard to RRM included in parameters and guidelines amendments pursuant to Government Code sections 17557 and 17518.5, since the 2011-12 fiscal year, the Commission has adopted a total of five proposed RRM in parameters and guidelines, or amendments thereto, and has denied five proposals based on a lack of evidence in the record, that the proposed formula or unit cost reasonably represents the costs mandated by the state for all eligible claimants in the state. There are currently no pending parameters and guidelines or amendments thereto containing RRM.

With the exception of one newly filed test claim, the only pending test claims are those being stayed pending court action. That newly filed test claim will be expedited for hearing as soon as the comment period closes. Additionally, Commission staff expects to present all currently pending parameters and guidelines and amendments thereto, except for those being stayed pending court action, for hearing by the March 27, 2015 Commission meeting.

Commission staff also expects to complete the incorrect reduction claim backlog by the end of fiscal year 2015-2016. With regard to the twelve test claims which are on inactive status pending a determination by the California Supreme Court, Commission staff projects it will take approximately one full year dedicating all Commission resources to present those claims for hearing if the court either upholds the Commission decision being challenged or directs the Commission to rehear that claim and hear the remaining claims applying the law as specified by the court in its decision. These claims will take substantially longer to prepare for hearing than test claims generally, because of the complex and detailed records and mixed issues of fact and law that must be addressed.

Because test claim decisions, initial parameters and guidelines and statewide cost estimates have a statutory deadline of 12-18 months for completion, they will generally be prepared for hearing prior to other matters, including RRM in parameters and guidelines amendments. Thus, in order to promptly hear and decide parameters and guidelines amendment proposals that contain RRM, it is necessary that the Commission operate without a backlog of test claims, initial parameters and guidelines and statewide cost estimates. At present, there is no backlog of test claim, initial parameters and guidelines or statewide cost estimates.



## V. ADOPTED STATEWIDE COST ESTIMATES

*Local Agency Ethics, 07-TC-04* [Amended SCE]

Adopted: July 25, 2014

### AMENDED STATEWIDE COST ESTIMATE

Approximately \$19,352 to \$38,194 for Initial and First Year Annual Costs

(Approximate Prospective Cost of \$0 to \$11,130 Annually)

Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(f) and 53235.2(a)

Statutes 2005, Chapter 700

*Local Agency Ethics (AB 1234)*

07-TC-04

State Controller's Office, Requester

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### STAFF ANALYSIS

#### **Background and Summary of the Mandate**

This program addresses activities of local agencies related to transparency and ethics training for members of the legislative bodies of local agencies. Specifically, it addresses the policymaking, reporting, recordkeeping, and notice requirements imposed on local agencies if they provide any type of compensation, salary, or stipend to a member of a legislative body, or provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program on general law counties and those special districts subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution, *that are required by their enabling act to provide compensation or reimbursement of expenses to perform the reimbursable activities to their members*, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.<sup>9</sup> (Emphasis added.)

Eligible claimants were required to file initial reimbursement claims, for costs incurred between July 1, 2006, and June 30, 2012, with the State Controller's Office (SCO) by May 3, 2013. Late initial reimbursement claims may have been filed until May 3, 2014. Annual reimbursement claims for fiscal year 2012-2013 were due by February 18, 2014.

#### Eligible Claimants and Period of Reimbursement

General law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution, that are required by their enabling

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<sup>9</sup> Note that many special districts do not have such a requirement in their enabling act and so this determination will need to be made by the SCO on a district, by district basis. Only districts with such a statutory requirement are entitled to reimbursement under this program.

act to provide reimbursement of expenses to perform the reimbursable activities, are eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on October 23, 2007, establishing eligibility for reimbursement for the 2006-2007 fiscal year. Therefore, the costs incurred for compliance with the mandated activities are reimbursable on or after July 1, 2006.

### **Reimbursable Activities**

The parameters and guidelines were adopted on September 28, 2012 finding only the following limited activities reimbursable:

1. Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;<sup>10</sup>
2. Provide expense report forms;<sup>11</sup>
3. Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;<sup>12</sup> and
4. Maintain training records, inclusive of training date and training provider, for five years.<sup>13</sup>

The test claim decision specifically found that *providing the ethics training was not a reimbursable activity*, since the duty to receive the training is imposed on the local official, not the local agency.<sup>14</sup> Additionally, the Commission found that the *reimbursement of expenses which are paid by the local agency is not reimbursable*.<sup>15</sup>

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<sup>10</sup> Government Code section 53232.2(b).

<sup>11</sup> Government Code section 53232.3(a).

<sup>12</sup> Government Code section 53235(f).

<sup>13</sup> Government Code section 53235.2(a).

<sup>14</sup> On page 26 of the test claim decision it states: “The plain language of Government Code section 53235.1 does not require local agencies to perform any activities. Rather, it provides a training timetable and specifies frequency requirements imposed on local agency officials if the local agency provides compensation or reimbursement of expenses. This section provides that if the local agency provides compensation or reimbursement of expenses then “*each local agency official* in local agency service as of . . . shall receive the training. . . .” Thus the training requirement is imposed on the local agency officials themselves, and not on the local agency.”

<sup>15</sup> On page 33 of the test claim decision it states: “With regard to claimants’ alleged activity of requiring reimbursement of expenses, the test claim statute does not require reimbursement. Rather, the test claim statute added requirements for those local agencies that provide reimbursement, whether or not they are required to do so. General law counties were required to reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.<sup>15</sup> With regard to those eligible special districts that are required to provide reimbursement to the members of their legislative bodies, the test claim statute did not add this requirement to their special acts or principal acts. They also were

## Offsetting Revenues

The Parameters and Guidelines provide:

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, *reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.* [Emphasis added].

As was noted in the test claim decision, most enterprise districts (such as water and sanitary districts) are primarily funded with fees. To the extent they have used fees, as opposed to proceeds of taxes, to pay for the costs of the program, those costs are not reimbursable.

## Amended Statewide Cost Estimate

### Request to Amend Previously Adopted Statewide Cost Estimate

The Commission adopted a statewide cost estimate of \$0 for this program on July 26, 2013. That estimate was based on one reimbursement claim submitted by one special district, Idyllwild Water District (Idyllwild), to the SCO. Based on the most recent *Special Districts Annual Report* available at the time, Commission staff determined that Idyllwild Water District was not subject to the tax and spend limitations of articles XIII A and XIII B of the California Constitution, and was therefore not an eligible claimant.<sup>16</sup>

On May 5, 2014, the SCO filed a request for an amended statewide cost estimate based on late claims filed by Colusa County and evidence submitted to the SCO to support Idyllwild's standing as an eligible special district claimant, subject to the taxing and spending limitations of the California Constitution.

### Assumptions

In the previously adopted statewide cost estimate staff reviewed the only claim available at the time. That claim was filed by Idyllwild for fiscal year 2011-2012 for a total of \$21,195.<sup>17</sup> To be eligible to claim reimbursement for state mandated costs, a claimant must be both: 1) a local agency; and 2) subject to the tax and spend limitations of articles XIII A and B of the California

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required reimburse the members of their legislative bodies under the law in effect immediately prior to the enactment of the test claim statute.<sup>15</sup> Therefore, the Commission finds that the requirement for general law counties and certain eligible special districts to reimburse the members of their legislative bodies is not new, and not eligible for reimbursement pursuant to article XIII B, section 6.”

<sup>16</sup> The SCO issues an annual report that identifies those special districts that collect tax revenue and are subject to the spending limitations of article XIII B. On October 30, 2012, the SCO issued its *Special Districts Annual Report* for fiscal year 2010-2011. This report showed that Idyllwild Water District was not subject to the appropriations limit of article XIII B, thus making it an ineligible claimant for mandates purposes. Special districts have a statutory duty to submit annual reports to the SCO pursuant to Government Code section 12463, which provide the information on which the SCO's annual report is based.

<sup>17</sup> Claims data reported as of May 17, 2013.

Constitution. With the May 5, 2014, request to amend the previously adopted statewide cost estimate, the SCO provided a board resolution from Idyllwild establishing the district's appropriation limit, demonstrating that it is subject to the tax and spend limitations of articles XIII A and B of the California Constitution. Additionally, the SCO request included data for late claims from the County of Colusa received on May 23, 2013.

While it appears Idyllwild has standing as an eligible claimant to file a test claim for state mandated costs because it is a local agency subject to the taxing and spending limitations of the California Constitution; for purposes of reimbursement, a special district must also demonstrate that the costs incurred in complying with the mandated program were paid for using proceeds of taxes and not service charges or some other source of non-tax revenue. All revenues other than tax revenues are offsetting revenues for mandate reimbursement purposes.

Based on this information, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *Future annual amounts claimed for reimbursement may increase and exceed the estimated annual claim amount in this statewide cost estimate.*
  - There are currently 44 general law counties and approximately 610 eligible special districts in California. However, very few eligible claimants have filed a reimbursement claim. Although the deadline of May 3, 2014 to file late initial claims for this program for fiscal years 2006-2007 through 2011-2012 has passed, more eligible claimants may file annual claims for this program in the future.
- *There may be several reasons that non-claiming general law counties and eligible special districts did not file for reimbursement, including but not limited to:*
  - The Commission approved only a few minor administrative activities for this program and found that the test claim statute does not impose a state-mandated program on most local agencies and that the most costly activities claimed, the compensation and reimbursement of members of local agency legislative bodies for ethics training and related travel are not required by the test claim statute. Therefore, eligible claimants may not be able to reach the \$1,000 threshold for filing annual reimbursement claims.
  - Eligible claimants did not have supporting documentation to file a reimbursement claim.
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*
  - The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.
  - The test claim decision specifically denied the costs of training or travel to training, so to the extent that reimbursement claims are submitted for these activities, they will be reduced by the SCO upon audit. In a desk review of the filed claim forms, Commission staff notes that it appears that many of the claimed activities exceed the limited scope of this reimbursable mandate. For example:
    - Colusa County filed claims for three fiscal years totaling \$14,408.25. Of that total, \$12,319.92 is claimed for the activity to "Provide expense report forms to the members of the legislative body." In their claims, compensation for several employees, including several board of supervisor members, is listed at two or more hours each with the expense description reading "Ethics Training" under

each employee's name. This was submitted for the reimbursable activity to "Provide expense report forms to the members of the legislative body."

- The \$3,494 claim from Lake Hemet Municipal Water District for FY 2012-13 lists expenditures under the category of "Maintain training records indicating the dates and providers for five years," however, attached documentation identifies costs as "Ethics Training and Printed Materials" provided by a contracted law firm.
- The \$21,195 claim from Idyllwild Water District for fiscal year 2011-12 included \$13,260 for the reimbursable activity to "Provide information on training courses to meet the ethics training requirements at least once annually." Expenses for one employee are claimed under this activity. This employee's expenses include 152 hours of salary and benefits, as well as materials and travel.
- In its capacity as an auditor, the SCO may determine the extent to which proceeds of taxes are used by a special district to fund the costs of this reimbursable program, since only costs which must be paid with proceeds of taxes are reimbursable. It is expected that many enterprise districts, even if subject to the taxing and spending restrictions of the Constitution, will nonetheless not be entitled to reimbursement since they did not expend proceeds of taxes for the program.
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because fewer eligible claimants may be able to reach the \$1,000 threshold for filing annual reimbursement claims.*
  - a. Given the low cost of the three ongoing activities to provide expense report forms; provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually; and maintain training records, inclusive of training date and training provider, for five years' it may be difficult for many claimants to reach the threshold for future claims. Presumably adopting the policy in the initial claiming period is the most costly activity and the initial claiming period has ended.

## Methodology

### *Fiscal Years 2006-2007 through 2012-2013*

The amended statewide cost estimate for fiscal years 2006-2007 through 2012-2013 was developed by totaling the three reimbursement claims filed with the SCO for the initial claiming period (2006-2007 through 2011-2012) as well as the two annual claims filed for 2012-2013. The two annual claims filed for the 2012-2013 fiscal year were:

1. \$5,374 claimed by County of Colusa, filed January 21, 2014; and
2. \$3,494 claimed by Lake Hemet Municipal Water District, filed February 6, 2014.

Staff finds that the averages for the most recent three-year period are likely the most indicative of future annual costs. Based on the last three years of claims data, costs averaged \$11,130 annually. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
<i>Initial Claiming Period</i>		
2006-2007	1 <sup>18</sup>	\$4,803
2007-2008	0	\$0
2008-2009	0	\$0
2009-2010	0	\$0
2010-2011	1 <sup>19</sup>	\$3,328
2011-2012	1	\$21,195
<b>Subtotal</b>	<b>3</b>	<b>\$29,326</b>
<i>Annual Claims</i>		
2012-2013	2	\$8,868
<i>TOTAL</i>	<b>8</b>	<b>\$38,194</b>

### **Draft Proposed Amended Statewide Cost Estimate**

On June 6, 2014, Commission staff issued the draft proposed amended statewide cost estimate for comment. On June 16, 2014, the SCO filed comments on the draft proposed amended statewide cost estimate recommending no changes.

### **Conclusion**

On July 25, 2014, the Commission adopted the amended statewide cost estimate of approximately \$19,352 to \$38,194 for initial and first year annual costs incurred in complying with the *Local Agency Ethics (AB 1234)* program and approximate prospective costs of \$0 to \$11,130 annually.

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<sup>18</sup> The County of Colusa filed late claims for two fiscal years of the initial claiming period. The respective figures in this table have been adjusted by Commission staff to account for the 10% late filing penalty that would be assessed by the SCO.

<sup>19</sup> See above.

Adopted: September 26, 2014

## **STATEWIDE COST ESTIMATE**

**\$90,390,726**

### **(Approximate Prospective Cost of \$2,619,683 Annually)**

Penal Code Sections 11165.9, 11166, 11166.2, 11166.9<sup>20</sup>, 11168 (formerly 11161.7), 11169, 11170, and 11174.34 (formerly 11166.9) as added or amended by Statutes 1977, Chapter 958; Statutes 1980, Chapter 1071; Statutes 1981, Chapter 435; Statutes 1982, Chapters 162 and 905; Statutes 1984, Chapters 1423 and 1613; Statutes 1985, Chapter 1598; Statutes 1986, Chapters 1289 and 1496; Statutes 1987, Chapters 82, 531, and 1459; Statutes 1988, Chapters 269, 1497, and 1580; Statutes 1989, Chapter 153; Statutes 1990, Chapters 650, 1330, 1363, and 1603; Statutes 1992, Chapters 163, 459, and 1338; Statutes 1993, Chapters 219 and 510; Statutes 1996, Chapters 1080 and 1081; Statutes 1997, Chapters 842, 843, and 844; Statutes 1999, Chapters 475 and 1012; and Statutes 2000, Chapter 916

California Code of Regulations, Title 11, Section 903 (Register 98, Number 29)

“Child Abuse Investigation Report” Form SS 8583 (Rev. 3/91)

*Interagency Child Abuse and Neglect Investigation Reports*  
00-TC-22

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## **STAFF ANALYSIS**

### **Background and Summary of the Mandate**

This mandate addresses amendments to California’s mandatory child abuse reporting laws commonly referred to as ICAN.

On December 19, 2007, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved this test claim for the reimbursable activities described in section IV, as they are performed by city and county police or sheriff’s departments, county welfare departments, county probation departments designated by the county to receive mandated reports, district attorneys’ offices, and county licensing agencies.

Eligible claimants were required to file initial reimbursement claims, for costs incurred between July 1, 1999, and June 30, 2013, with the State Controller’s Office (SCO) by July 15, 2014.<sup>21</sup> Late initial reimbursement claims may be filed until July 15, 2015.<sup>22</sup> Annual reimbursement claims for fiscal year 2013-2014 are due by February 18, 2015.

### **Eligible Claimants and Period of Reimbursement**

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<sup>20</sup> Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 (SB 1313)).

<sup>21</sup> State Controller’s Office, Interagency Child Abuse and Neglect (ICAN) Investigation Reports Claiming Instructions Number 2014-03R, dated April 28, 2014.

<sup>22</sup> Government Code section 17568.

Any city, county, and city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on June 29, 2001, establishing eligibility for reimbursement for the 1999-2000 fiscal year. Therefore, costs incurred on or after July 1, 1999 are reimbursable under this test claim for statutes in effect before July 1, 1999. For statutes effective after July 1, 1999, they are reimbursable as specified in the parameters and guidelines.

However, Penal Code section 11169 was amended in Statutes 2011, chapter 468 (AB 717), effective January 1, 2012, to repeal the mandate for law enforcement agencies to report to DOJ, and to require that all other affected departments in the local agencies report to DOJ only “substantiated” reports of suspected child abuse, and not “inconclusive” reports.

Thus, law enforcement agencies are eligible for reimbursement for the costs of completing investigations of suspected child abuse in order to determine whether a report of suspected child abuse is unfounded, inconclusive, or substantiated, for the purpose of forwarding those reports to DOJ from July 1, 1999 until December 31, 2011. In addition, law enforcement agencies are eligible for reimbursement for the costs of notifying suspected abusers that they have been listed in the Child Abuse Central Index at the time that a report is submitted to DOJ from July 1, 1999 until December 31, 2011, when the mandate to forward reports to DOJ was repealed.

For all other affected local agencies, the reimbursement period for forwarding reports that are “inconclusive” to DOJ is reimbursable from July 1, 1999 until December 31, 2011. Beginning January 1, 2012, only forwarding reports to DOJ that are “substantiated” is reimbursable.

## **Reimbursable Activities**

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

### **A. One-Time Activities**

#### **1. Policies and Procedures**

City and county police or sheriff’s departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

- a. Update Departmental policies and procedures necessary to comply with the reimbursable activities identified in IV B. (One-time costs only)
- b. Develop ICAN due process procedures reasonably necessary to comply with federal due process procedural protections under the 14th Amendment which need to be afforded suspects reported to the DOJ's Child Abuse Central Index [CACI]. (One-time costs only)

#### **2. Training**

City and county police or sheriff’s departments, county welfare departments, and county probation departments where designated by the county to receive mandated reports, may claim reimbursement for the increased costs to:

Develop and implement training for ICAN staff to implement State Department of Justice (DOJ) ICAN requirements. Reimbursable specialized ICAN training costs include those incurred to compensate instructors for their time in participating in training sessions and to provide necessary facilities,



training materials and audio visual presentations. (One time per employee whose job responsibilities involve ICAN mandated activities)

## **B. On-going Activities**

### **1. Distributing the Suspected Child Abuse Report Form**

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

- a. Distribute the child abuse reporting form adopted by DOJ (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters.<sup>23</sup>

### **2. Reporting Between Local Departments**

- a. Accepting and Referring Initial Child Abuse Reports when a Department Lacks Jurisdiction:

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to an agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect.<sup>24</sup>

- b. Cross-Reporting of Suspected Child Abuse or Neglect from County Welfare and Probation Departments to the Law Enforcement Agency with Jurisdiction and the District Attorney's Office:

- 1) County probation departments shall:
  - i. Report by telephone immediately, or as soon as practically possible, to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.
  - ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.

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<sup>23</sup> Penal Code section 11168, as added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916.

<sup>24</sup> Penal Code sections 11165.9 (Stats. 2000, ch. 916, § 8 (AB 1241)).

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.<sup>25</sup>

2) County welfare departments shall:

- i. Report by telephone immediately, or as soon as practically possible, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse, as defined in Penal Code section 11165.6, except acts or omissions coming within subdivision (b) of section 11165.2, or reports made pursuant to section 11165.13 based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare department.

***Reimbursement is not required for making an initial report of child abuse and neglect from a county welfare department to the law enforcement agency having jurisdiction over the case, which was required under prior law to be made "without delay."***

- ii. Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency, including the law enforcement agency having jurisdiction over the case, to which it is required to make a telephone report under Penal Code section 11166.

As of January 1, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.<sup>26</sup>

c. Cross-Reporting of Suspected Child Abuse or Neglect from the Law Enforcement Agency to the County Welfare and Institutions Code Section 300 Agency, County Welfare, and the District Attorney's Office:

City and county police or sheriff's departments shall:

- 1) Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance

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<sup>25</sup> Penal Code section 11166 (h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

<sup>26</sup> Penal Code section 11166(h) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (i) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (j) by Statutes 2005, chapter 42 (AB 299).

of child abuse reported to it, except acts or omissions coming within Penal Code section 11165.2(b), which shall be reported only to the county welfare department.<sup>27</sup>

- 2) Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse.
- 3) Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.

As of January 1, 2006, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.<sup>28</sup>

d. Receipt of Cross-Reports by District Attorney's Office:

District attorneys' offices shall:

Receive reports of every known or suspected instance of child abuse reported to law enforcement, county probation or county welfare departments, except acts or omissions of general neglect coming within Penal Code section 11165.2(b).<sup>29</sup>

e. Reporting to Licensing Agencies:

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

- 1) Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person.

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<sup>27</sup> Penal Code section 11166(i) (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)). Renumbered at subdivision (j) by Statutes 2004, chapter 842 (SB 1313), and renumbered again at subdivision (k) by Statutes 2005, chapter 42 (AB 299).

<sup>28</sup> *Ibid.*

<sup>29</sup> Penal Code section 11166 (As added by Stats. 1980, ch. 1071; amended by Stats. 1981, ch. 435; Stats. 1982, ch. 905; Stats. 1984, ch. 1423; Stats. 1986, ch. 1289; Stats. 1987, ch. 1459; Stats. 1988, chs. 269 and 1580; Stats. 1990, ch. 1603; Stats. 1992, ch. 459; Stats. 1993, ch. 510; Stats. 1996, chs. 1080 and 1081; and Stats. 2000, ch. 916 (AB 1241)).

- 2) Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under Penal Code section 11166.2. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials.

As of July 31, 2001, initial reports may be made by fax or electronic transmission, instead of by telephone, and will satisfy the requirement for a written report within 36 hours.<sup>30</sup>

f. Additional Cross-Reporting in Cases of Child Death:

- 1) City and county police or sheriff's departments shall:

Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency.<sup>31</sup>

- 2) County welfare departments shall:

- i. Cross-report all cases of child death suspected to be related to child abuse or neglect to law enforcement.<sup>32</sup>

- ii. Create a record in the Child Welfare Services/Case Management System (CWS/CMS) on all cases of child death suspected to be related to child abuse or neglect.<sup>33</sup>

- iii. Enter information into the CWS/CMS upon notification that the death was subsequently determined not to be related to child abuse or neglect.<sup>34</sup>

### 3. Reporting to the State Department of Justice

- a. **From July 1, 1999 to December 31, 2011**, city and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:<sup>35</sup>

- 1) Complete an investigation for purposes of preparing the report

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<sup>30</sup> Penal Code section 11166.2 (Added by Stats. 1985, ch. 1598 § 4; amended by Stats. 1987, ch. 531 § 5; Stats. 1988, ch. 269 § 3; Stats. 1990, ch. 650 § 1 (AB 2423); Stats. 2000, ch. 916 § 18 (AB 1241)).

<sup>31</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>32</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>33</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313); Stats. 2010, ch. 618, § 10 (AB 2791)).

<sup>34</sup> Penal Code section 11166.9 (Stats. 2000, ch. 916, § 23 (AB 1241)); Renumbered at Penal Code section 11174.34 (Stats. 2004, ch. 842 § 13 (SB 1313)).

<sup>35</sup> Pursuant to amendments to Penal Code section 11169(b) enacted by Statutes 2011, chapter 468 (AB 717), the mandate to report to DOJ *for law enforcement agencies only* ends on January 1, 2012. In addition, the duty for all other affected agencies is modified to exclude an "inconclusive" report.

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice.<sup>36</sup> Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.

***Reimbursement is not required in the following circumstances:***

- i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).
  - ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the “Child Abuse Investigation Report” Form SS 8583 or subsequent designated form to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).
  - iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583, including the collection of physical evidence, the referral to a child abuse investigator, and the conduct of follow-up interviews.
- 2) Forward reports to the Department of Justice

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice (currently form 8583) and may be sent by fax or electronic transmission.<sup>37</sup>

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<sup>36</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

<sup>37</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated or inconclusive to a finding of unfounded or from inconclusive or unfounded to substantiated.

***Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.***

- b. **Beginning January 1, 2012**, county welfare departments, or county probation departments where designated by the county to receive mandated reports shall:

1) Complete an investigation

Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12, for purposes of preparing and submitting the state “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice.<sup>38</sup> Except as provided in paragraph below, this activity includes review of the initial Suspected Child Abuse Report (Form 8572), conducting initial interviews with parents, victims, suspects, or witnesses, where applicable, and making a report of the findings of those interviews, which may be reviewed by a supervisor.

***Reimbursement is not required in the following circumstances:***

- i. Investigative activities conducted by a mandated reporter to complete the Suspected Child Abuse Report (Form SS 8572) pursuant to Penal Code section 11166(a).
- ii. In the event that the mandated reporter is employed by the same child protective agency required to investigate and submit the “Child Abuse Investigation Report” Form SS 8583, or subsequent designated form, to the Department of Justice, pursuant to Penal Code section 11169(a), reimbursement is not required if the investigation required to complete the Form SS 8572 is also sufficient to make the determination required under section 11169(a), and sufficient to complete the essential information items required on the Form SS 8583, pursuant to Code of Regulations, title 11, section 903 (Register 98, No. 29).
- iii. Investigative activities undertaken subsequent to the determination whether a report of suspected child abuse is substantiated, inconclusive, or unfounded, as defined in Penal Code section 11165.12, for purposes of preparing the Form SS 8583.

2) Forward reports to the Department of Justice

Prepare and submit to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated, as defined in Penal Code section 11165.12. Unfounded or inconclusive reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been

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<sup>38</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; “Child Abuse Investigation Report” Form SS 8583.

filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission.<sup>39</sup>

This activity includes costs of preparing and submitting an amended report to DOJ, when the submitting agency changes a prior finding of substantiated to a finding of inconclusive or unfounded, or from inconclusive or unfounded to substantiated, or when other information is necessary to maintain accuracy of the CACI.

***Reimbursement is not required for the costs of the investigation required to make the determination to file an amended report.***

#### **4. Notifications Following Reports to the Child Abuse Central Index**

- a. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:
  - 1) Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice.<sup>40</sup>

This activity includes, where applicable, completion of the Notice of Child Abuse Central Index Listing form (SOC 832), or subsequent designated form.

***For law enforcement agencies only, this activity is eligible for reimbursement from July 1, 1999 until December 31, 2011, pursuant to Penal Code section 11169(b), as amended by Statutes 2011, chapter 468 (AB 717), which ends the mandate to report to DOJ for law enforcement agencies.***

- 2) Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect.<sup>41</sup>

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<sup>39</sup> Penal Code section 11169(a) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916, § 27 (AB 1241); Stats. 2011, ch. 468, § 2 (AB 717)); Code of Regulations, Title 11, section 903; "Child Abuse Investigation Report" Form SS 8583.

<sup>40</sup> Penal Code section 11169(c) (Stats. 1997, ch. 842, § 5 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

<sup>41</sup> Penal Code section 11170 (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

- 3) Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter.<sup>42</sup>
  - 4) Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependent children. The notification shall include the name of the reporting agency and the date of the report.<sup>43</sup>
- b. City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, county welfare departments, county licensing agencies, and district attorney offices shall:

Obtain the original investigative report from the agency that submitted the information to the CACI pursuant to Penal Code section 11169(a), and objectively review the report, when information regarding an individual suspected of child abuse or neglect, or an instance of suspected child abuse or neglect, is received from the CACI while performing existing duties pertaining to criminal investigation or prosecution, or licensing, or placement of a child.<sup>44</sup>

**Reimbursement for this activity does not include investigative activities conducted by the agency, either prior to or subsequent to receipt of the information that necessitates obtaining and reviewing the investigative report.**

- c. City and county police or sheriff's departments, county probation departments, and county welfare departments shall:

Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of

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<sup>42</sup> Penal Code section 11170(b) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

<sup>43</sup> *Ibid.*

<sup>44</sup> Penal Code section 11170(b)(6) (Stats. 2000, ch. 916 (AB 1241)); now subdivision (b)(10), as amended by Statutes 2012, chapter 848 (AB 1707).



the information, and no later than the actual judicial proceeding that determines placement.<sup>45</sup>

## **5. Record Retention**

- a. City and county police or sheriff's departments, and county probation departments if designated by the county to receive mandated reports shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of eight years (a higher level of service above the two-year record retention requirement pursuant to Gov. Code §§ 26202 (cities) and 34090 (counties).) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.<sup>46</sup>

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

***Reimbursement is not required for the first two years of record retention required under prior law, but only for the eight years following.***

- b. County welfare departments shall:

Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of seven years (a higher level of service above the three-year record retention requirement pursuant to Welf. & Inst. Code, § 10851.) If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years.<sup>47</sup>

This activity includes retaining copies of the Suspected Child Abuse Report form SS 8572, received from a mandated reporter, and the Child Abuse Summary Report form SS 8583, with the original investigative report.

***Reimbursement is not required for the first three years of record retention required under prior law, but only for the seven years following.***

## **6. Due Process Procedures Offered to Person Listed in CACI**

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<sup>45</sup> Penal Code section 11170(c) (Added by Stats. 1980, ch. 1071 § 4; amended by Stats. 1981, ch. 435, § 5; Stats. 1982, ch. 162, § 3; Stats. 1984, ch. 1613, § 3; Stats. 1985, ch. 1598, § 8.5; Stats. 1986, ch. 1496, § 3; Stats. 1987, ch. 82, § 4; Stats. 1989, ch. 153, § 2; Stats. 1990, ch. 1330 § 2 (SB 2788); Stats. 1990, ch. 1363, § 15.7 (AB 3532); Stats. 1992, ch. 163, § 113 (AB 2641); Stats. 1992, ch. 1338, § 2 (SB 1184); Stats. 1993, ch. 219, § 221.1 (AB 1500); Stats. 1996, ch. 1081, § 5 (AB 3354); Stats. 1997, ch. 842, § 6 (SB 644); Stats. 1997, ch. 843, § 5 (AB 753); Stats. 1997, ch. 844, § 2.5 (AB 1065); Stats. 1999, ch. 475, § 8 (SB 654); Stats. 2000, ch. 916, 28 (AB 1241)).

<sup>46</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2001, ch. 133 (AB 102); Stats. 2004, ch. 842 (SB 1313); Stats. 2011, ch. 468 (AB 717)).

<sup>47</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241)).

City and county police or sheriff's departments, county probation departments if designated by the county to receive mandated reports, and county welfare departments shall:

Provide due process reasonably necessary to comply with federal due process procedural protections under the 14th Amendment that must be afforded to individuals reported to the DOJ's Child Abuse Central Index. This activity includes a hearing before the agency that submitted the individual's name to CACI. This activity includes any due process procedures available to persons listed in the CACI prior to the enactment of Statutes 2011, chapter 468.

**Reimbursement is not required for a hearing meeting the requirements of due process if a court of competent jurisdiction has determined that child abuse has occurred, or while the allegation is pending before a court.**<sup>48</sup>

### **Offsetting Revenues and Reimbursements**

The parameters and guidelines provide:

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

To the extent that the claimant has used funding from other sources, as opposed to proceeds of taxes, to pay for the cost of the program, those costs are not reimbursable.

### **Statewide Cost Estimate**

#### Assumptions

Staff reviewed the reimbursement claims data submitted by 58 cities and 6 counties and compiled by the SCO. The actual claims data showed that 789 initial claims were filed for fiscal years 1999-2000 through 2012-2013 for a total of \$90,390,726. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are currently 58 counties and approximately 478 cities in California. Of those, only 58 cities and 6 counties filed claims. If eligible claimants file late or amended initial claims, the reimbursement claims would exceed the statewide cost estimate. Late initial claims for this program for fiscal years 1999-2000 through 2012-2013 may be filed until July 15, 2015.
- *The number of reimbursement claims filed will vary from year to year.*

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<sup>48</sup> (Penal Code section 11169(h) (Stats. 1997, ch. 842 (SB 644); Stats. 2000, ch. 916 (AB 1241); Stats. 2011, ch. 468 (AB 717)); *Humphries v. County of Los Angeles* (9th Cir. 2009) 554 F.3d 1170; *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859.

This program allows reimbursement for certain specific activities associated with the mandatory reporting of child abuse and neglect. Claims will be case load driven and, thus, will vary annually depending on the number of incidences of child abuse and neglect that come to a mandatory reporting agencies notice.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. The reimbursable activities in this program are only a small part of a larger process. Claimants may file claims for activities that, while part of the larger process, are not reimbursable and those claims may therefore be reduced by the SCO. In particular, the criminal investigation activity is not an approved activity for this program, so there may be reductions where costs were claims for investigations that went beyond what was needed to make the mandated determinations.

- *Future annual reimbursement for this program will likely be lower than the annual costs for the initial claims because there was a significant change in the activities "3.Reporting to the State Department of Justice" and "4. Notifications Following Reports to the Child Abuse Central Index" as of January 1, 2012.*

Beginning January 1, 2012 only county welfare departments, or county probation departments where designated by the county to receive mandated reports, may claim reimbursement for these activities. Prior to January 1, 2012 city and county police or sheriff's departments were able to claim reimbursement for these activities as well.

### Methodology

#### *Fiscal Years 1999-2000 through 2012-2013*

The statewide cost estimate for fiscal years 1999-2000 through 2012-2013 was developed by totaling the 789 reimbursement claims filed with the SCO for these years, for a total of \$90,390,726. The projected annual future cost of \$2,619,683 is based on the 2012-2013 fiscal year only, since this is the only fiscal year for which the DOJ reporting requirements were reduced for county welfare departments and county probation departments and eliminated for city and county police or sheriff's departments for the whole fiscal year.

Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
1999-2000	49	\$4,450,878
2000-2001	51	\$3,904,886
2001-2002	53	\$4,547,122
2002-2003	56	\$5,042,269
2003-2004	57	\$5,807,605
2004-2005	57	\$6,300,066
2005-2006	59	\$6,537,541
2006-2007	59	\$6,892,112
2007-2008	58	\$8,747,223
2008-2009	58	\$9,417,051
2009-2010	62	\$10,039,542
2010-2011	63	\$10,044,776

2011-2012	59	\$6,039,972
2012-2013	48	\$2,619,683
<b>TOTAL</b>	<b>789</b>	<b>\$90,390,726</b>

**Draft Proposed Statewide Cost Estimate**

On August 5, 2014, Commission staff issued a draft proposed statewide cost estimate. On August 15, 2014, the State Controller’s Office (SCO) submitted revised claims data which has been included in this proposed statewide cost estimate. On August 15, 2014, the SCO filed comments recommending no additional changes to the draft proposed statewide cost estimate.

**Conclusion**

On September 26, 2014 the Commission adopted the statewide cost estimate of **\$90,390,726 (Approximate Prospective Cost of \$2,619,683 Annually)** for costs incurred in complying with the *Interagency Child Abuse and Neglect Investigation Reports* program.

Adopted: September 26, 2014

## **STATEWIDE COST ESTIMATE**

**\$3,436,091**

**(Approximate Prospective Cost of \$351,125 Annually)**

Government Code Sections 3304, 3306.5, 3309 and 3312

Statutes 1976, Chapter 465; Statutes 1998, Chapter 786;  
Statutes 2000, Chapter 209; and Statutes 2002, Chapter 170

*Peace Officers Procedural Bill of Rights II*

03-TC-18

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### **STAFF ANALYSIS**

#### **Background and Summary of the Mandate**

This program addresses discrete new activities that impose a higher level of service associated with the pre-existing Peace Officers Procedural Bill of Rights Act (POBOR) mandate (Gov. Code, § 3300 et seq.). POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies, school districts, and special districts that are subject to investigation or discipline.

On December 1, 2011, the Commission on State Mandates (Commission) adopted the test claim statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Specifically, the Commission found that specified notices required to be provided to an officer in order to take disciplinary action, activities regarding providing access to officer personnel files, and the notice requirements to search an officer's locker imposed an incremental higher level of service above what was required under prior law.

Eligible claimants were required to file initial reimbursement claims, for costs incurred between July 1, 2002, and June 30, 2013, with the State Controller's Office (SCO) by July 10, 2014. Late initial reimbursement claims may be filed until July 10, 2015. Annual reimbursement claims for fiscal year 2013-2014 are due by February 15, 2015.

#### **Eligible Claimants and Period of Reimbursement**

Any city, county, city and county, or special police protection district named in Government Code section 53060.7 that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on September 26, 2003, establishing eligibility for reimbursement for the 2002-2003 fiscal year. Therefore, costs incurred pursuant to Government Code sections 3304, 3306.5, and 3309 are reimbursable on or after July 1, 2002. However, because Government Code section 3312 was effective January 1 2003, costs incurred pursuant to Government Code section 3312 are reimbursable on or after January 1, 2003.

## Reimbursable Activities

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

1. Draft, review, edit, and approve a written notice and give it to a chief of police that is dismissed when the charges supporting the dismissal *do not* damage the chief of police's ability to find other employment and trigger existing notice requirements under the due process clause of the United States and California Constitutions. Written notice must be accompanied by the reason or reasons for the dismissal. (Gov. Code, § 3304(c), Stats. 1998, ch. 786.)
2. Within one year of discovery of any misconduct, draft, review, edit, and approve a written notice and give it to the peace officer being investigated, stating that he or she may face disciplinary action after the investigation is completed. (Gov. Code, § 3304(d), Stats. 1998, ch. 786.)
3. After the investigation and any predisciplinary response or procedure utilized by the employer, draft, review, edit, and approve a written notice that the employer has decided to impose discipline on the officer and give it to the peace officer. (Gov. Code, § 3304(f), Stats. 1998, ch. 786):
  - a. Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interest *are not* affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
  - b. Transfer of permanent, probationary and at-will employees for purposes of punishment;
  - c. Denial of promotion for permanent, probationary, and at-will employees for reasons other than merit; and
  - d. Other actions against permanent, probationary, and at-will employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

*Conducting investigations and the filing and service of the written notice are not reimbursable activities.*

4. On or after January 1, 2003, draft, review, edit, and approve a notice in order to take any of the following disciplinary actions for wearing a pin or displaying any other item containing the American flag (Gov. Code, § 3312 (Stats. 2002, ch. 170)):
  - a. Dismissal of a probationary or at-will officer when the charges supporting the dismissal *do not* damage the officer's ability to find other employment;
  - b. Demotion, suspension, salary reduction, or written reprimand of a probationary or at-will officer;
  - c. Transfer for purposes of punishment of a permanent, probationary, or at-will officer;
  - d. Denial of promotion to a permanent, probationary, or at-will officer; and
  - e. Other actions against permanent, probationary, or at-will officer that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the officer.

The notice must include: (1) a statement that the officer's pin or other item violates an existing rule, regulation, policy, or local agency agreement or contract regarding the wearing of a pin, or the displaying of any other item, containing the American flag; (2) a citation to the specific rule, regulation, policy, or local agency agreement or contract that the pin or other item violates; and (3) a statement that the officer may file an appeal against the employer challenging the alleged violation pursuant to the applicable grievance or appeal procedures adopted by the department or public agency that otherwise comply with existing law.

5. Perform the following activities upon receipt of a request by an officer to inspect his or her personnel file (Gov. Code, § 3306.5):

**Counties**

Permit a peace officer to inspect letters of reference and records relating to the investigation of a possible criminal offense if they are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a) (Stats. 2000, ch. 209).) Under these circumstances, the following activities are eligible for reimbursement:

- a. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b), Stats. 2000, ch. 209.)

*This activity does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.*

- b. File in an officer's personnel file a copy of the officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file. (Gov. Code, § 3306.5(c), Stats. 2000, ch. 209.)
- c. Within 30 calendar days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), review the request and either:
  - i. Grant the request and make the requested changes to the personnel file; or
  - ii. Notify the officer of the decision to refuse the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer. This activity includes drafting, reviewing, editing, and approving the written statement, and filing the written statement in the officer's personnel file. (Gov. Code, § 3306.5(d), Stats. 2000, ch. 209.)

**Cities and Special Police Protection Districts Named in Government Code Section 53060.7**

- a. Permit a peace officer to inspect personnel files at reasonable times and intervals, and during usual business hours, upon request by the officer. The personnel files that an officer may inspect are limited to those that are used or have been used to determine that officer's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action. (Gov. Code, § 3306.5(a), Stats. 2000, ch. 209.)

- b. Make the personnel file or copy thereof available within a reasonable period of time after a request therefor by the officer. (Gov. Code, § 3306.5(b), Stats. 2000, ch. 209.)  
*This activity does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty.*
  - c. File in an officer's personnel file a copy of the officer's written request to correct or delete a portion of the officer's personnel file, which the officer believes to be mistakenly or unlawfully placed in the file. (Gov. Code, § 3306.5(c), Stats. 2000, ch. 209.)
  - d. Within 30 calendar days of receiving an officer's request to correct or delete a portion of his or her personnel file pursuant to Government Code section 3306.5(c), review the request and either:
    - i) Grant the request and make the requested changes to the personnel file; or
    - ii) Notify the officer of the decision to refuse the request. If the employer refuses to grant the request, in whole or in part, the employer shall state in writing the reasons for refusing the request, and that written statement shall become part of the personnel file of the officer. This activity includes drafting, reviewing, editing, and approving the written statement, and filing the written statement in the officer's personnel file. (Gov. Code, § 3306.5(d) (Stats. 2000, ch. 209).)
6. Notify an officer, either orally or in writing, that a search of the officer's employer assigned locker or storage space will be conducted, if during the course of an investigation into officer misconduct an employer determines it is necessary to conduct a search of the officer's employer assigned locker or storage space. For written notices this also includes drafting, reviewing, editing, and approving the notice. (Gov. Code, § 3309, Stats. 1976, ch. 465.)

### **Offsetting Revenues and Reimbursements**

The parameters and guidelines provide:

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

To the extent that the claimant has used fees, as opposed to proceeds of taxes, to pay for the cost of the program, those costs are not reimbursable.

### **Statewide Cost Estimate**

#### Assumptions

Staff reviewed the reimbursement claims data submitted by 18 cities and 5 counties and compiled by the SCO. The actual claims data showed that 23 initial claims were filed for fiscal years 2002-2003 through 2012-2013 for a total of \$3,395,994. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*



- There are currently 58 counties and approximately 478 cities in California. Of those, only 18 cities and 5 counties filed claims. If eligible claimants file late or amended initial claims, the reimbursement claims would exceed the statewide cost estimate. Late initial claims for this program for fiscal years 2002-2003 through 2012-2013 may be filed until July 10, 2015.
- *The number of reimbursement claims filed will vary from year to year.*
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

This program allows reimbursement for certain specific activities associated with a series of rights and procedural safeguards owed to peace officers. Claims will be case load driven and, thus, will vary annually depending on the number of disciplinary incidents.

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. The reimbursable activities in this program are only a small part of a larger process and add a few new activities onto a pre-existing state-mandated program. Claimants may file claims for activities that, while part of the larger process, are not reimbursable and those claims may therefore be reduced by the SCO. For example, some of the reimbursable activities will occur after an investigation but the investigation itself is not reimbursable. Similarly, the activities involved in making a personnel file available to an officer does not include scheduling an appointment to inspect personnel file, monitoring the officer while he or she reviews information, or paying the officer for time away from normal duty as this was clearly prohibited in the test claim decision and parameters and guidelines. Additionally, there may be activities claimed under this program which are reimbursable under the original POBOR program, but not under this POBOR II program.

### Methodology

#### *Fiscal Years 2002-2003 through 2012-2013*

The statewide cost estimate for fiscal years 2002-2003 through 2012-2013 was developed by totaling the 122 reimbursement claims filed with the SCO for these years, for a total of \$3,436,091. Staff finds that the average annual costs claimed for the most recent three-year period is the most indicative of potential future annual costs. For the most recent three-year period, costs averaged \$351,125 annually.

Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2002-2003	4	\$224,197
2003-2004	5	\$236,846
2004-2005	5	\$293,367
2005-2006	5	\$261,521
2006-2007	6	\$353,080
2007-2008	11	\$259,604
2008-2009	17	\$353,054
2009-2010	17	\$401,046
2010-2011	16	\$323,389
2011-2012	18	\$342,159
2012-2013	18	\$387,828
<b>TOTAL</b>	<b>122</b>	<b>\$3,436,091</b>

### **Draft Proposed Statewide Cost Estimate**

On August 15, 2014, Commission staff issued a draft proposed statewide cost estimate. On August 25, 2014, the State Controller's Office (SCO) submitted amended claims data that slightly increased the total claimed amount, but not the number of claims filed. The amended data was incorporated into this proposed statewide cost estimate. No comments were received on the draft proposed statewide cost estimate.

### **Conclusion**

On September 26, 2014, the Commission adopted the statewide cost estimate of **\$3,436,091 (Approximate Prospective Cost of \$351,125 Annually)** for costs incurred in complying with the *Peace Officers Procedural Bill of Rights II* program.

Adopted: September 26, 2014

## **STATEWIDE COST ESTIMATE**

**\$8,627,483**

**(Approximate Prospective Cost of \$1,722,106 Annually)**

Health and Safety Code Section 120335

Statutes 2010, Chapter 434 (AB 354)

*Immunization Records – Pertussis*

11-TC-02

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### **STAFF ANALYSIS**

#### **Background and Summary of the Mandate**

This program prohibits schools from admitting or advancing pupils to the 7th through 12th grade levels during the 2011-2012 fiscal year and, beginning in fiscal year 2012-2013, pupils entering or advancing to the 7th grade level, unless the pupil is fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age, or has documented a permanent medical exemption or a personal belief exemption to immunization against pertussis.

On July 26, 2013, the Commission on State Mandates (Commission) adopted a statement of decision finding that Health and Safety Code section 120335(d), as added and replaced by the test claim statute, imposes a partially reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Parameters and guidelines were adopted on December 6, 2013 approving the reimbursable activities described below under the *Reimbursable Activities* section.

Eligible claimants were required to file initial reimbursement claims (for costs incurred for fiscal years 2011-2012 through 2012-2013) with the State Controller's Office (SCO) by July 15, 2014. Late initial reimbursement claims may be filed until July 15, 2015.

#### Eligible Claimants and Period of Reimbursement

Any "school district" as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Twin Rivers Unified School District filed the test claim on September 26, 2011, establishing eligibility for reimbursement for the 2010-2011 fiscal year. However, Health and Safety Code section 120335(d) did not become operative until July 1, 2011. Therefore, costs incurred for the activities in the parameters and guidelines are eligible for reimbursement beginning July 1, 2011.

## Reimbursable Activities

The parameters and guidelines authorize reimbursement of each eligible claimant for the following activities:

- A. For fiscal year 2011-2012 only, for students entering the 7<sup>th</sup> through 12<sup>th</sup> grades:
- (1) Receive and review the following documents for all pupils entering the 7<sup>th</sup> through 12<sup>th</sup> grades to determine whether to unconditionally admit or conditionally admit the pupil:
    - a) A written record of the pertussis vaccination (Tdap booster) that contains the name of the pupil, birth date of the pupil, the date of the pertussis vaccination, and the name of the physician or agency administering the vaccine; *or*
    - b) Documentation showing a pupil's permanent medical exemption or personal beliefs exemption to immunization. A permanent medical exemption shall be granted upon the filing of a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated. A personal beliefs exemption for the pertussis booster shall be granted upon the filing of a letter or affidavit from the pupil's parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of minor, or the person seeking admission if an emancipated minor, that such pertussis booster immunization is contrary to his or her beliefs; *or*
    - c) Documentation showing a pupil is temporarily exempted from immunization for medical reasons.

Pupils who are fully immunized against pertussis based on records provided by the student's physician or agency performing the immunization, or who have documented a permanent medical exemption or a personal belief exemption to immunization against pertussis shall be unconditionally admitted to grades 7 through 12. Pupils who have a temporary medical exemption shall be admitted to grades 7 through 12 on condition that the required immunization is obtained at the termination of the exemption.

*Reimbursement is not required to perform activities generally required to admit students since those activities are not new. Reimbursement is limited to receiving and reviewing the above documents.*

- (2) If it is determined that a pupil seeking admission lacks documentation that he or she has been fully immunized against pertussis, and does not have a permanent medical exemption or a personal belief exemption to the pertussis immunization, advise the pupil, or the parent or guardian, to contact a physician or agency that provides immunizations.
- (3) For any already admitted pupil found not to have received all immunizations for pertussis which are required before admission or advancement to grades 7 through 12, or who is found not to have complied with requirements for conditional admission, notify that pupil's parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunization for pertussis, or lawful exemption therefrom, is not obtained within 10 school days.

- (4) Report to the attendance supervisor or building administrator any pupil excluded from further attendance who fails to obtain the required immunizations within 10 school days following notice, unless the pupil is exempt for medical reasons or personal beliefs, until the pupil provides written evidence that he or she has received the pertussis immunization required.

B. Beginning July 1, 2012, only for students entering the 7<sup>th</sup> grade:

- (1) Receive and review the following documents for all pupils entering the 7<sup>th</sup> grade to determine whether to unconditionally admit or conditionally admit the pupil:
  - a) A written record of the pertussis vaccination (Tdap booster) that contains the name of the pupil, birth date of the pupil, the date of the pertussis vaccination, and the name of the physician or agency administering the vaccine; *or*
  - b) Documentation showing a pupil's permanent medical exemption or personal beliefs exemption to immunization. A permanent medical exemption shall be granted upon the filing of a written statement from a licensed physician to the effect that the physical condition of the pupil or medical circumstances relating to the pupil are such that immunization is permanently not indicated. A personal beliefs exemption for the pertussis booster shall be granted upon the filing of a letter or affidavit from the pupil's parent or guardian or adult who has assumed responsibility for his or her care and custody in the case of minor, or the person seeking admission if an emancipated minor, that such pertussis booster immunization is contrary to his or her beliefs.
  - c) Documentation showing a pupil is temporarily exempted from immunization for medical reasons.

Pupils who are fully immunized against pertussis based on records provided by the student's physician or agency performing the immunization, or who have documented a permanent medical exemption or a personal belief exemption to immunization against pertussis shall be unconditionally admitted to grade 7. Pupils who have a temporary medical exemption shall be admitted to grade 7 on condition that the required immunization is obtained at the termination of the exemption.

*Reimbursement is not required to perform activities generally required to admit students since those activities are not new. Reimbursement is limited to receiving and reviewing the above documents.*

- (2) If it is determined that a pupil seeking admission lacks documentation that he or she has been fully immunized against pertussis, and does not have a permanent medical exemption or a personal belief exemption to the pertussis immunization, advise the pupil, or the parent or guardian, to contact a physician or agency that provides immunizations.
- (3) For any already admitted pupil who is later found not to have complied with requirements for conditional admission, notify that pupil's parents or guardians of the requirement to exclude the pupil from school if written evidence of the required immunization for pertussis, or lawful exemption therefrom, is not obtained within 10 school days.
- (4) Report to the attendance supervisor or building administrator any pupil excluded from further attendance who fails to obtain the required immunizations within 10 school days following notice, unless the pupil is exempt for medical reasons or personal

beliefs, until the pupil provides written evidence that he or she has received the pertussis immunization required.

In addition, the following activities are specifically excluded from reimbursement: (1) reporting the immunization status of students to county health departments or the state; (2) recording and maintaining student immunization records; (3) periodically reviewing student immunization records to ensure compliance with the test claim statute. These activities are not required to implement the test claim statute and are instead addressed by the Department of Public Health regulations that were not properly pled and therefore beyond the Commission's jurisdiction.

### **Offsetting Revenues and Reimbursements**

The parameters and guidelines provide:

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

To the extent that the claimant has used fees or any funds provided by the state or federal government, as opposed to proceeds of local taxes, to pay for the cost of the program, those costs are not reimbursable.

### **Statewide Cost Estimate**

#### Assumptions

Staff reviewed the reimbursement claims data submitted by approximately 237 school districts and compiled by the SCO.<sup>49</sup> The data showed that 406 initial claims were filed for fiscal years 2011-2012 through 2012-2013 for a total of \$8,627,483. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*

There are currently 1050 school districts in California. Of those, only 237 school districts filed initial reimbursement claims, through July 31, 2014, totaling \$8,627,483 for this program for fiscal years 2011-2012 through 2012-2013. If other eligible claimants file late or amended initial claims, the amount of reimbursement claims may exceed the statewide cost estimate. Late initial reimbursement claims for this program for fiscal years 2011-2012 through 2012-2013 may be filed until July 15, 2015. There also may be several reasons that non-claiming school districts did not file reimbursement claims, including but not limited to, (1) they did not incur more than \$1,000 in increased costs for this program and (2) they did not have supporting documentation to file a reimbursement claim.

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<sup>49</sup> Claims data reported as of July 31, 2014.

- *The annual costs of the program may vary depending on school district enrollment for students entering the 7<sup>th</sup> grade.*

The higher or lower the number of student enrollment year after year will directly correlate to the requirements for documentation of immunization.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. Furthermore, there are certain requirements in Department of Public Health regulations related to this program that were not properly pled and were therefore not included as reimbursable activities. To the extent that a claimant has included these activities in its reimbursement claim, the SCO, in its capacity as an auditor, may reduce the amount claimed.

### Methodology

#### *Fiscal Years 2011-2012 through 2012-2013*

The statewide cost estimate for fiscal years 2011-2012 through 2012-2013 was developed by totaling the 237 reimbursement claims filed with the SCO for these years totaling \$8,627,483. The projected annual future cost of \$1,722,106 is based solely on the 2012-2013 fiscal year, because, beginning July 1, 2012, the reimbursable activities are limited to students entering the 7<sup>th</sup> grade only as opposed to grades 7 through 12 in the 2011-2012 fiscal year.

Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2011-2012	231	\$6,905,377
2012-2013	175	\$1,722,106
<b>TOTAL</b>	<b>406</b>	<b>\$8,627,483</b>

### **Draft Proposed Statewide Cost Estimate**

On August 11, 2014, Commission staff issued a draft proposed statewide cost estimate. On August 15, 2014, the State Controller’s Office (SCO) submitted revised claims data which included 9 late or amended initial reimbursement claims through July 31, 2014 totaling an additional \$66,706, which were incorporated into this proposed statewide cost estimate. On August 20, 2014, the SCO filed comments recommending no additional changes to the draft proposed statewide cost estimate.

### **Conclusion**

On September 26, 2014, the Commission adopted the proposed statewide cost estimate of \$8,627,483 (Approximate Prospective Cost of \$1,722,106 Annually) for costs incurred in complying with the *Immunization Records - Pertussis* program.

Adopted: December 5, 2014

**STATEWIDE COST ESTIMATE**  
**\$217,678**

**(Unknown future annual costs: likely minor or none.)**

Health & Safety Code Sections 33681.12, 33681.13, 33681.14, 33681.15; Revenue & Taxation  
Code Sections 97.68, 97.70, 97.71, 97.72, 97.73, 97.75  
Statutes of 2003, Chapter 162; Statutes of 2004, Chapter 211; Statutes of 2004, Chapter 610

*Accounting for Local Revenue Realignments*

05-TC-01

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**STAFF ANALYSIS**

**Background and Summary of the Mandate**

This program addresses the shifting and swapping of revenue in three areas: the Educational Revenue Augmentation Fund (ERAF) established by each county; making the Vehicle License Fund (VLF) Swap permanent; and the “triple flip” of sales and use taxes to service debt payments on State Economic Recovery Bonds, “back-filled” from the ERAF, which was in turn replaced by direct subventions from the General Fund.

On September 27, 2013, the Commission on State Mandates (Commission) adopted a test claim statement of decision finding that the test claim statutes impose a partially reimbursable state-mandated program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Parameters and guidelines were adopted on January 24, 2014 approving the reimbursable activities described below under the *Reimbursable Activities* section.

Eligible claimants were required to file initial reimbursement claims, for costs incurred between July 1, 2004, and June 30, 2013, with the State Controller’s Office (SCO) by August 28, 2014. Late initial reimbursement claims may be filed until August 28, 2015. Annual reimbursement claims for fiscal year 2013-2014 are due by February 17, 2015.

Eligible Claimants and Period of Reimbursement

Any county, or city and county, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement.

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim was filed on August 12, 2005, establishing eligibility for reimbursement for the 2004-2005 fiscal year. However, the approved activities have different periods of reimbursement, based on their effective and ending dates, as specified under *Reimbursable Activities*, below.

All reimbursable activities under Revenue and Taxation Code sections 97.71, 97.72, 97.73, and Health and Safety Code sections 33681.12, 33681.13, and 33681.14 are mandated **only** for the 2004-2005 and 2005-2006 fiscal years, and therefore are no longer reimbursable after June 30, 2006. Activities under Health and Safety Code section 33681.15, “A. ERAF III Shift”, “4. ERAF



Shift from Redevelopment Agencies”, discussed under *Reimbursable Activities*, may result in continuing state-mandated increased costs for all counties or cities and counties beyond June 30, 2006.

Reimbursement for the activities required under “C. Triple Flip” by Revenue and Taxation Code sections 97.68 ends, for all claimants **except** the City and County of San Francisco (San Francisco), on June 30, 2006. Reimbursement for the activities required under “B. Vehicle License Fee Swap” by Revenue and Taxation Code section 97.70 ends, for all claimants **except** San Francisco, on June 30, 2006.

The relevant period of reimbursement for each of the activities is specified below.

### **Reimbursable Activities**

For each eligible claimant that incurs increased costs, only the following activities are reimbursable:

#### **A. ERAF III Shift**

The following requirements of the test claim statutes impose a reimbursable state-mandated program upon all counties beginning in the 2004-2005 fiscal year.

##### 1. ERAF Shift from Counties and Cities

For 2004-2005 and 2005-2006 fiscal years only, beginning August 5, 2004:

- a. Reduce revenue otherwise required to be allocated to each county by the amounts listed in Revenue and Taxation Code section 97.71(a)(1), and deposit that amount in the county’s ERAF.<sup>50</sup>
- b. Reduce revenue otherwise required to be allocated to a city and county by an amount identified by the Controller pursuant to Revenue and Taxation Code section 97.71(b)(2-3), and deposit that amount in the county’s ERAF.<sup>51</sup>
- c. Reduce revenue otherwise required to be allocated to each city within the county by an amount identified by the Controller pursuant to Revenue and Taxation Code section 97.71(b)(2-3), and deposit that amount in the county’s ERAF.<sup>52</sup>
- d. Where applicable, accept from a city, in lieu of reduction of that city’s revenues, an amount equal to the required reduction, and deposit those moneys in the county’s ERAF.<sup>53</sup>

**Reimbursement is not required for** calculating the amounts of revenue otherwise required to be allocated to a city, county, or city and county, which must be reduced and deposited in the county ERAF.<sup>54</sup>

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<sup>50</sup> Revenue and Taxation Code section 97.71(a)(1); (c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>51</sup> Revenue and Taxation Code section 97.71(b); (c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>52</sup> Revenue and Taxation Code section 97.71(c) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>53</sup> Revenue and Taxation Code section 97.71(b)(5) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

2. ERAF Shift from Special Districts

For fiscal years 2004-2005 and 2005-2006 only, beginning August 5, 2004:

- a. Reduce the amount of ad valorem property tax otherwise required to be allocated to an enterprise special district, including an enterprise special district located in more than one county, in amounts determined by the Controller and received from the Director of Finance, for each enterprise special district in the county.<sup>55</sup>
- b. Deposit the amounts reduced from each enterprise special district in the county's ERAF.<sup>56</sup>
- c. Reduce the amount of ad valorem property tax otherwise required to be allocated to a nonenterprise special district, including a nonenterprise special district located in more than one county, in amounts determined by the Controller for each special district in each county.<sup>57</sup>
- d. Deposit the amounts reduced from each nonenterprise special district in the county's ERAF.<sup>58</sup>

**Reimbursement is not required for** calculating the amounts of ad valorem property tax otherwise required to be allocated to an enterprise or nonenterprise special district which must be reduced and deposited in the county ERAF.<sup>59</sup>

3. ERAF Shift from Redevelopment Agencies

For fiscal years 2004-2005 and 2005-2006 only, beginning August 5, 2004:

- a. Receive funds directly from a redevelopment agency in the amount identified by the Director of Finance, and deposit those funds in the county's ERAF.<sup>60</sup>
- b. Receive from the legislative body of the community associated with a redevelopment agency by March 1 of the applicable fiscal year, a report as to how

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<sup>54</sup> Revenue and Taxation Code section 97.71(a)(1); (b)(3) (Stats. 2004, ch. 211 (AB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>55</sup> Revenue and Taxation Code section 97.72(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>56</sup> Revenue and Taxation Code section 97.72(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>57</sup> Revenue and Taxation Code section 97.73(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>58</sup> Revenue and Taxation Code section 97.73(b) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>59</sup> Revenue and Taxation Code sections 97.72(a)(2); 97.73(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004, ch. 610 (AB 2115)).

<sup>60</sup> Health and Safety Code section 33681.12(a)(1) (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

the redevelopment agency intends to secure the funds required to be transferred to the county.<sup>61</sup>

- c. If a redevelopment agency fails to transmit the full amount of funds required by section 33681.12, is precluded by court order from transmitting that amount, or is otherwise unable to meet its full obligation pursuant to section 33681.12 the county auditor, by no later than May 15 of the applicable fiscal year, shall transfer any amount necessary to meet the obligations determined under section 33681.12 from the legislative body's allocations pursuant to Chapter 6 (commencing with section 95) of the Revenue and Taxation Code.<sup>62</sup>
- d. If the legislative body of the community associated with a redevelopment agency, pursuant to section 33681.12(d), reported to the county auditor that it intended to remit the amount required on behalf of the redevelopment agency and the legislative body fails to transmit the full amount as authorized by section 33681.12 by May 10 of the applicable fiscal year: the county auditor shall, no later than May 15 of the applicable fiscal year, transfer an amount necessary to meet the redevelopment agency's obligation pursuant to section 33681.12 from the legislative body's allocations pursuant to Chapter 6 (commencing with section 95) of the Revenue and Taxation Code. If the amount of the legislative body's allocations are not sufficient to meet the redevelopment agency's obligation pursuant to section 33681.12, the county auditor shall transfer an additional amount necessary to meet the redevelopment agency's obligation from the property tax increment revenue apportioned to the redevelopment agency pursuant to section 33670, provided that no moneys allocated to the agency's Low and Moderate Income Housing Fund shall be used for this purpose.<sup>63</sup>

**Reimbursement is not required** to calculate the amount of moneys to be remitted to the county auditor by a redevelopment agency.<sup>64</sup>

#### 4. ERAF Shift from Redevelopment Agencies

##### Beginning September 20, 2004:

If a redevelopment agency enters into an agreement with an authorized issuer, as defined, pursuant to section 33681.15, in order to obtain a loan, financed by bonds, to make the payment required by section 33681.12 to the county auditor for deposit in the county's ERAF, the county auditor shall receive a schedule of payments for that loan. And in the event the redevelopment agency fails to timely repay the loan in accordance with the schedule, the county auditor shall receive notification from the trustee for the bonds of the amount that is past due. The county auditor shall then reallocate funds from the legislative body of the community associated with a redevelopment agency and shall pay to the authorized issuer, on behalf of the

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<sup>61</sup> Health and Safety Code section 33681.12(d) (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

<sup>62</sup> Health and Safety Code section 33681.13(e) (added by Stats. 2004, ch. 211 (SB 1096)).

<sup>63</sup> Health and Safety Code section 33681.14(c) (added by Stats. 2004, ch. 211 (SB 1096)).

<sup>64</sup> Health and Safety Code section 33681.12 (added by Stats. 2004, ch. 211 (SB 1096); amended by Stats 2004, ch. 610 (AB 2115)).

redevelopment agency, the past due amount on the loan from the first available proceeds of the property tax allocation that would otherwise be transferred to the legislative body pursuant to Chapter 6 (commencing with section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. This transfer shall be deemed a reallocation of the property tax revenue from the legislative body to the agency for the purpose of payment of the loan, and not as a payment by the legislative body on the loan.<sup>65</sup>

## **B. Vehicle License Fee Swap**

The following requirements of the test claim statutes impose a reimbursable state-mandated program upon all counties for the 2004-2005 and 2005-2006 fiscal years, beginning August 5, 2004, and for the City and County of San Francisco ONLY, continuing in the 2006-2007 fiscal year.

1. Establish a Vehicle License Fee Property Tax Compensation Fund in the treasury of the county.<sup>66</sup> This is a one-time activity, by definition.
2. Reduce the total amount of ad valorem property tax otherwise required to be allocated to a county's ERAF by the countywide vehicle license fee adjustment amount.<sup>67</sup>
3. If, after performing the adjustments and allocations required by section 97.68, there is not enough ad valorem property tax revenue that is otherwise required to be allocated to a county ERAF for the auditor to complete the allocation reduction, the auditor shall also reduce the total amount of ad valorem property tax revenue otherwise required to be allocated to all school districts and community college districts in the county, in order to produce the remainder of the countywide vehicle license fee adjustment amount. Reductions to school districts and community college districts shall be made in proportion to each district's share of total ad valorem property tax revenue. School districts and community college districts subject to reductions when ERAF moneys are insufficient shall not include any districts that are excess tax school entities, as defined in Revenue and Taxation Code section 95.<sup>68</sup>
4. Allocate the countywide vehicle license fee adjustment amount to the Vehicle License Fee Property Tax Compensation Fund established in the treasury of each county.<sup>69</sup>
5. Allocate the moneys in the Vehicle License Fee Property Tax Compensation Fund to each city in the county, and to the county or city and county, based on each entity's

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<sup>65</sup> Health and Safety Code section 33681.15(e-g) (added by Stats 2004, ch. 610 (AB 2115)).

<sup>66</sup> Revenue and Taxation Code section 97.70(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

<sup>67</sup> Revenue and Taxation Code section 97.70(a)(1)(A) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

<sup>68</sup> Revenue and Taxation Code section 97.70(a)(1)(B) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

<sup>69</sup> Revenue and Taxation Code section 97.70(a)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

vehicle license fee adjustment amount.<sup>70</sup> Allocate one-half of the entity's vehicle license fee adjustment amount on or before January 31 of each fiscal year, and the other one-half on or before May 31 of each fiscal year.<sup>71</sup>

6. On or before June 30 of each fiscal year, report to the Controller the vehicle license fee adjustment amount for the county and each city in the county for that fiscal year.<sup>72</sup>

**Reimbursement for activities B 1-6 is not required for** calculating each entity's vehicle license fee adjustment amount for the 2004-2005 and 2005-2006 fiscal years.<sup>73</sup>

7. For the City and County of San Francisco only: Beginning in the 2006-2007 fiscal year calculate each entity's vehicle license fee adjustment amount, and the countywide vehicle license fee adjustment amount, defined as the sum of the vehicle license fee adjustment amounts of all entities in the county, pursuant to section 97.70(c)(1)(C).<sup>74</sup>

This activity includes increasing the prior year's vehicle license fee adjustment amount for each entity based on the percentage change from the prior fiscal year to the current fiscal year in gross taxable assessed valuation within the jurisdiction of the entity, as reflected in the equalized assessment roll for those fiscal years.

### C. Triple Flip

The following requirements of the test claim statutes impose a reimbursable state-mandated program upon all counties for the 2004-2005 and 2005-2006 fiscal years, and for the City and County of San Francisco ONLY, continuing in the 2006-2007 fiscal year.

1. Establish a Sales and Use Tax Compensation Fund in the treasury of the county.<sup>75</sup>  
This is a one-time activity, by definition.
2. During the fiscal adjustment period, reduce, by the countywide adjustment amount provided by the Department of Finance, the amount otherwise required to be allocated to a county's ERAF, and deposit that amount in the Sales and Use Tax Compensation Fund.<sup>76</sup>

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<sup>70</sup> Revenue and Taxation Code section 97.70(b)(1) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

<sup>71</sup> Revenue and Taxation Code section 97.70(b)(2) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

<sup>72</sup> Revenue and Taxation Code section 97.70(c)(3) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)).

<sup>73</sup> Revenue and Taxation Code section 97.76 (added, Stats. 2004, ch. 211 (SB 1096); amended Stats. 2004, ch. 610 (AB 2115)).

<sup>74</sup> Revenue and Taxation Code section 97.70(c)(1)(C) (Stats. 2004, ch. 211 (SB 1096); Stats. 2004 ch. 610 (AB 2115)). See also Revenue and Taxation Code section 97.76 (Stats. 2004, ch. 211 (SB 1096)).

<sup>75</sup> Revenue and Taxation Code section 97.68(a)(2) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

<sup>76</sup> Revenue and Taxation Code section 97.68(a-b) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

**Reimbursement is not required** to calculate the countywide adjustment amount; the amount is annually estimated by the Department of Finance, pursuant to section 97.68(b)(2), except in a fiscal year in which the suspension of 0.25 percent taxing authority is ended, pursuant to Revenue and Taxation Code section 7203.1.

3. During the fiscal adjustment period, allocate revenues in the Sales and Use Tax Compensation Fund among the county and the cities in the county pursuant to the portions of the countywide adjustment amount identified by the Department of Finance for each city and for the county. Allocate one half of the amount identified for each city and for the county in each January during the fiscal adjustment period, and one half the amount identified for each city and for the county in each May during the fiscal adjustment period.<sup>77</sup>

**Reimbursement is not required** to calculate the portion of the countywide adjustment amount attributable to the county and each city within the county; the amounts are provided by the Department of Finance, pursuant to section 97.68(c)(1), and recalculated after the end of each fiscal year, pursuant to section 97.68(c)(3), except a fiscal year in which the suspension of 0.25 percent taxing authority is ended, pursuant to Revenue and Taxation Code section 7203.1.

4. If the amount recalculated by the Department of Finance after the end of each fiscal year based on the actual amount of sales and use taxes not transmitted for the prior fiscal year is greater than the amount allocated to a city or to the county based on the portion of the countywide adjustment amount estimated by the Department of Finance, transfer an amount of ad valorem property tax revenue equal to this difference from the Sales and Use Tax Compensation Fund to that local agency.<sup>78</sup>
5. If the amount recalculated by the Department of Finance after the end of each fiscal year based on the actual amount of sales and use taxes not transmitted for the prior fiscal year is less than the amount allocated to a city or to the county based on the portion of the countywide adjustment amount estimated by the Department of Finance, in the fiscal year following the fiscal year for which the allocation was made, reduce the total amount of ad valorem property tax revenue otherwise allocated to that city or county from the Sales and Use Tax Compensation Fund by an amount equal to this difference and instead allocate this difference to the county ERAF.<sup>79</sup>
6. If there is an insufficient amount of moneys in a county's Sales and Use Tax Compensation Fund to make the necessary transfers, transfer from the county ERAF to the Sales and Use Tax Compensation Fund an amount sufficient to make the full amount of these transfers.<sup>80</sup>
7. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on October 1 of any fiscal year:

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<sup>77</sup> Revenue and Taxation Code section 97.68(c) (Stats. 2003, ch. 162 (AB 1766); Stats. 2004, ch. 211 (SB 1096)).

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

- a. Allocate that portion of the countywide adjustment amount attributable to the county and each city within the county on or before January 31 of that fiscal year. The countywide adjustment amount shall be defined as the combined total revenue loss to the county and each city within the county, as estimated by the director of the Department of Finance based on the prior year's *first quarter* sales and use tax revenues transmitted under section 7204; *plus* the difference between 1) the total amount allocated from the Sales and Use Tax Compensation Fund among the county and the cities in the county pursuant to the portions of the countywide adjustment amount identified by the Department of Finance in the prior year; and 2) the actual amount of sales and use tax not transmitted to all entities in the county for the prior year as a result of the 0.25% suspension of local sales and use tax authority.
- b. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.
- c. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.<sup>81</sup>

**Reimbursement is not required, under Section 97.68(d)(1),** to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.<sup>82</sup>

8. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on January 1 of any fiscal year:
  - a. Allocate that portion of the countywide adjustment amount attributable to the county and each city within the county; one half of the amount on or before January 31 of that fiscal year, and the remaining half of the amount on or before May 31 of that fiscal year. The countywide adjustment amount shall be defined as the combined total revenue loss to the county and each city within the county, as estimated by the director of the Department of Finance based on the sales and use tax revenues transmitted under section 7204 for the *first two quarters* of the

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<sup>81</sup> Revenue and Taxation Code section 97.68(d)(1) (Stats. 2004, ch. 211 (SB 1096)).

<sup>82</sup> Revenue and Taxation Code section 97.68(d)(1)(C)(ii) (Stats. 2004, ch. 211 (SB 1096)).

prior fiscal year as determined by the Board of Equalization and reported to the director on or before that August 15; *plus* the difference between the total amount allocated to all entities in the county in the prior year and the actual amount of sales and use tax not transmitted to all entities in the county for the prior year.

- b. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by section 7203.1, on or before January 31 of the following fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.
- c. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.<sup>83</sup>

**Reimbursement is not required, under Section 97.68(d)(2),** to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.<sup>84</sup>

9. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on April 1 of any fiscal year:
  - a. Reduce the amount otherwise required to be allocated in May of that fiscal year from the Sales and Use Tax Compensation Fund by the amount reported by director representing that portion of the countywide adjustment amount attributable to the estimated sales and use tax revenue losses resulting from the rate suspension applied by section 7203.1 for the fourth quarter of that fiscal year for the county and each city in the county.
  - b. After May allocations have been made, transfer any moneys remaining in the county Sales and Use Tax Compensation Fund to the county ERAF.
  - c. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by section 7203.1, on or

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<sup>83</sup> Revenue and Taxation Code section 97.68 (d)(2) (Stats. 2004, ch. 211 (SB 1096)).

<sup>84</sup> Revenue and Taxation Code section 97.68(d)(2)(C)(ii) (Stats. 2004, ch. 211 (SB 1096)).



before January 31 of that fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.

- d. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.<sup>85</sup>

**Reimbursement is not required, under Section 97.68(d)(3)**, to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.<sup>86</sup>

10. If the suspension of sales and use tax authority under section 7203.1 ceases to be operative on July 1 of any fiscal year:

- a. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is greater than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by section 7203.1, on or before January 31 of that fiscal year, reallocate from the entity to the county ERAF the difference between those amounts.
- b. If, for any county or city, the portion of the countywide adjustment amount allocated to that entity from the Sales and Use Tax Compensation Fund is less than the actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by section 7203.1, on or before January 31 of the following fiscal year, reallocate from the county ERAF to that entity the difference between those amounts.<sup>87</sup>

**Reimbursement is not required, under Section 97.68(d)(4)**, to calculate or identify countywide adjustment amount, or the portion attributable to the county and to each city within the county, or the difference between the countywide adjustment amounts allocated to the county and to each city and the actual sales and use tax revenues not transmitted to the county and to each city as a result of the suspension of sales and use tax authority; the county auditor shall be notified of those amounts by the director of the Department of Finance.<sup>88</sup>

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<sup>85</sup> Revenue and Taxation Code section 97.68(d)(3) (Stats. 2004, ch. 211 (SB 1096)).

<sup>86</sup> Revenue and Taxation Code section 97.68(d)(3)(C)(ii) (Stats. 2004, ch. 211 (SB 1096)).

<sup>87</sup> Revenue and Taxation Code section 97.68(d)(4) (Stats. 2004, ch. 211 (SB 1096)).

<sup>88</sup> Revenue and Taxation Code section 97.68(d)(4)(B)(2) (Stats. 2004, ch. 211 (SB 1096)).

## Offsetting Revenues and Reimbursements

The parameters and guidelines provide:

Any offsets the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

## Statewide Cost Estimate

### Assumptions

Staff reviewed the reimbursement claims data submitted by 8 counties and compiled by the SCO.<sup>89</sup> The actual claims data showed that 16 initial claims were filed for fiscal years 2004-2005 through 2005-2006 for a total of \$217, 678. Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

- *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate.*
  - There are currently 58 counties in California. Of those, only 8 counties filed claims. If eligible claimants file late or amended initial claims, the reimbursement claims would exceed the statewide cost estimate. Late initial claims for the majority of activities in this program, which are reimbursable only for fiscal years 2004-2005 through 2005-2006, may be filed until August 28, 2015.
  - One remaining activity under Health and Safety Code section 33681.15, may have resulted in state-mandated increased costs for fiscal years 2006-2007 through 2012-2013 in the initial claiming period. No initial claims have been filed for costs during those fiscal years, however, such costs may be included in late initial claims, due by August 28, 2015. This activity may also result in continuing increased costs, beyond the initial claiming period.
  - San Francisco is the only local agency eligible to claim costs for the activities required by Revenue and Taxation Code sections 97.68 and 97.70 in fiscal years 2006-2007 through 2012-13, and annually thereafter. No claims have been filed by San Francisco for the initial claiming period to date. San Francisco may file a late claim and may also file an annual claim for 2013-14 by February 15, 2015, and future annual claims thereafter.
- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*
  - The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable. The reimbursable activities in this program are part of a larger process and several activities were specifically identified in the test claim decision and parameters and guidelines as non-reimbursable. Claimants may file claims for activities that, while part of the larger process, are not reimbursable and those claims may therefore be reduced by the SCO.

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<sup>89</sup> Claims data reported as of September 10, 2014.

## Methodology

### *Fiscal Years 2004-2005 through 2005-2006*

The statewide cost estimate for fiscal years 2004-2005 through 2005-2006 was developed by totaling the 16 reimbursement claims filed with the SCO for these years, for a total of \$217,678. One remaining activity under Health and Safety Code section 33681.15, may result in state-mandated increased costs on or after July 1, 2006. However, to date, no claims have been filed for fiscal years after 2005-2006. Additionally, beginning in fiscal year 2006-2007, San Francisco is the only potential claimant eligible to claim costs for activities required by Revenue and Taxation Code sections 97.68 and 97.70. All other activities cease to be reimbursable as of June 30, 2006.

San Francisco has not submitted a claim on this program. Therefore, staff cannot estimate potential future annual costs on these few remaining activities because there is a lack of data to support such an estimate. San Francisco could submit a late initial claim by August 28, 2015 or future annual claims by the annual deadline of February 15. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2004-2005	8	\$123,285
2005-2006	8	\$94,393
<i>TOTAL</i>	<b>16</b>	<b>\$217,678</b>

### **Draft Proposed Statewide Cost Estimate**

On October 10, 2014, Commission staff issued a draft proposed statewide cost estimate. No comments were received on the draft proposed statewide cost estimate.

### **Conclusion**

On December 5, 2014, the Commission adopted the proposed statewide cost estimate of \$217,678 for costs incurred in complying with the *Accounting for Local Revenue Realignments* program.