

ITEM 8

PROPOSED STATEWIDE COST ESTIMATE

\$1,006,755 (for initial claiming period of 2015-2016 through 2017-2018)

(Estimated Annual Cost for Fiscal Year 2018-2019 and following ranges from \$335,731 to \$1,794,652 plus the implicit price deflator)

Government Code Sections 3505.4(a-d) and 3505.5(a-d)

Statutes 2012, Chapter 314 (AB 1606)

Local Agency Employee Organizations: Impasse Procedures II

16-TC-04

The Commission on State Mandates (Commission) adopted this Statewide Cost Estimate by a vote of [vote count will be included in the adopted Statewide Cost Estimate] during a regularly scheduled hearing on July 26, 2019 as follows:

Member	Vote
Lee Adams, County Supervisor	
Keely Bosler, Director of the Department of Finance, Chairperson	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

STAFF ANALYSIS

Background and Summary of the Mandate

The City of Oxnard (claimant) filed the Test Claim on May 12, 2017, establishing a potential period of reimbursement beginning July 1, 2015. The Test Claim statute¹ amended the Meyers-Miliias-Brown Act (MMBA) to add a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations.

¹ Though the claimant plead two statutes, the Commission found that it only had jurisdiction over one: Statutes 2012, Chapter 314 (AB 1606). The claimant did not plead the Public Employment Relations Board's regulations implementing Statutes 2011, chapter 680, which were effective January 1, 2012.

In the Test Claim filing, the claimant included the following cost information:

The City of Oxnard contends that the actual increased costs to comply with this new mandate is \$373, 836.57 in total. For fiscal year 2015-2016, its total costs were \$327, 302.63 when the City had to enter mediation as required by these statutes for two separate impasse cases. The City first incurred increased costs as a result of this statute on May 12, 2016...Estimated annual costs to be incurred by the City of Oxnard to implement the alleged mandate during the fiscal year 2016-2017 is \$46,533.94 – the fiscal year immediately following the fiscal year for which the claim was filed.²

The claimant also provided a statewide cost estimate (as required by Government Code 17553) of \$3.8 million, based on the claimant's per-case cost and an estimated annual statewide case count of 100.³

On May 25, 2018, the Commission adopted the Test Claim Decision, finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, as specified.⁴

The Decision and Parameters and Guidelines were adopted on September 28, 2018.⁵

The State Controller's Office (Controller) issued claiming instructions on December 27, 2018.⁶ Eligible claimants were required to file initial reimbursement claims with the Controller for costs incurred for fiscal years 2015-2016, 2016-2017, and 2017-2018 by April 26, 2019.⁷ Late initial claims may be filed until April 26, 2020, but will incur a 10 percent late filing penalty of the total amount of the initial claim without limitation, pursuant to Government Code section 17561(d)(3).⁸ Thereafter, annual claims are due on the date specified in Government Code section 17560 (currently February 15), and late claims filed within one year of that deadline will incur a late penalty of 10 percent late filing penalty not to exceed \$10,000, pursuant to Government Code section 17568 and claims filed more than one year after that deadline will not be accepted.⁹

Eligible Claimants and Period of Reimbursement:

Any city, county, city and county, or special district subject to the taxing restrictions of article XIII A, and the spending limits of article XIII B, of the California Constitution,¹⁰ other than a

² Exhibit A, Test Claim, page 10-11.

³ Exhibit A, Test Claim, page 11-12.

⁴ Exhibit B, Test Claim Decision.

⁵ Exhibit C, Decision and Parameters and Guidelines.

⁶ Exhibit D, Controller's Claiming Instructions Program No. 371, page 1.

⁷ Exhibit D, Controller's Claiming Instructions Program No. 371, page 1.

⁸ Government Code Sections 17560 and 17568.

⁹ Exhibit D, Controller's Claiming Instructions Program No. 371, pages 1-2.

¹⁰ Government Code section 17518 defines "local agency" to mean "any city, county, special district, authority, or other political subdivision of the state." However, the courts have made it

charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes 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 reimbursement for that fiscal year. The claimant filed the Test Claim on May 12, 2017, establishing eligibility for reimbursement for increased costs incurred beginning with the 2015-2016 fiscal year. Therefore, increased costs incurred on or after July 1, 2015 are reimbursable.

Reimbursable Activities

The Parameters and Guidelines authorize reimbursement as follows:

For each eligible claimant that incurs increased costs,¹¹ the following activities are reimbursable:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)

clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 ["[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues."]; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California, supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B's spending limits.])

¹¹ Government Code section 3505.5(e) provides that charter cities, charter counties, and charter cities and counties are exempt from sections 3505.5 and 3505.4 if their charter provides a procedure that applies in the case of an impasse with its employee organizations that includes, at a minimum, a process for binding arbitration, therefore they are not eligible claimants for this program.

4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)”¹²

Offsetting Revenues and Reimbursements

The Parameters and Guidelines provide the following:

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 applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.¹³

Statewide Cost Estimate

Commission staff reviewed the 23 reimbursement claims filed by 18 local agencies and data compiled by the Controller.¹⁴ The unaudited reimbursement claims total \$532,224 for fiscal year 2015-2016, \$106,277 for fiscal year 2016-2017, and \$368,254 for fiscal year 2017-2018 totaling \$1,006,755 for the initial reimbursement period.¹⁵

Assumptions

Based on the claims data, staff made the following assumptions and used the following methodology to develop the Statewide Cost Estimate for this program.

- *The annual amount claimed for reimbursement may increase and exceed this Statewide Cost Estimate.*

There are approximately 481 cities, 57 counties, and 1 city and county which, except for an unknown number of which that have a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505(e),¹⁶ are eligible to seek reimbursement for this program. In addition there are over 3,000 special districts, an unknown number of which are subject to the taxing restrictions of article XII A, and the spending limits of article XIII B, of the

¹² Exhibit C, Decision and Parameters and Guidelines, pages 9-10.

¹³ Exhibit C, Decision and Parameters and Guidelines, page 12.

¹⁴ Claims data reported as of May 15, 2019.

¹⁵ Claims data reported as of May 15, 2019.

¹⁶ See Exhibit B, Test Claim Decision, pages 1, 25, and 42 and Exhibit C, Decision and Parameters and Guidelines, page 8 (excluding “...a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e)...” from subvention for this program).

California Constitution,¹⁷ and are therefore eligible to seek reimbursement for this program.¹⁸ Of those, only 18 local agencies filed a total of only 23 reimbursement claims for the initial reimbursement period: 7 for fiscal year 2015-2016, 7 for fiscal year 2016-2017, and 9 for fiscal year 2017-2018. The 18 local agencies that filed reimbursement claims consist of 11 cities, 6 counties, and one special district. If other eligible claimants file late or amended claims, the amount of reimbursement claims may exceed the Statewide Cost Estimate. Late initial claims may be filed until April 26, 2020.¹⁹ There were total of 122 impasses that resulted in approved MMBA factfinding panels during the initial claiming period for an average of 41 impasses per year.²⁰ However, only 23 reimbursement claims were filed for the initial claiming period and therefore, less than 20 percent of such claims that could have been filed were in fact filed. See Table A below:

Table A²¹

Fiscal Year	Number of Initial Claims Filed	Activity 1 Select a Member and Pay Costs	Activity 2 Meet Within 10 Days	Activity 3 Furnish Records	Activity 4 Receive and Make Findings Publicly Available	Indirect Costs	Total
2015-2016	7	\$91,891	\$241,995	\$145,272	\$22,701	\$30,366	\$532,224
2016-2017	7	\$25,786	\$38,376	\$38,830	\$2,058	\$1,227	\$106,277

¹⁷ Government Code section 17518 defines “local agency” to mean “any city, county, special district, authority, or other political subdivision of the state.” However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California*, *supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B’s spending limits.].)

¹⁸ Exhibit C, Decision and Parameters and Guidelines (“...other than a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate.”), page 8.

¹⁹ Exhibit D, Controller’s Claiming Instructions Program No. 371, pages 1-2.

²⁰ See Exhibit F, PERB 2015-2016 Annual Report; Exhibit F, PERB 2016-2017 Annual Report, Exhibit F, PERB 2017-2018 Annual Report, <https://www.perb.ca.gov/AnnualReports.aspx> (accessed on April 23, 2019).

²¹ Claims data reported as of May 15, 2019.

Fiscal Year	Number of Initial Claims Filed	Activity 1 Select a Member and Pay Costs	Activity 2 Meet Within 10 Days	Activity 3 Furnish Records	Activity 4 Receive and Make Findings Publicly Available	Indirect Costs	Total
2017-2018	9	\$71,402	\$86,765	\$202,106	\$6,146	\$3,765	\$368,254 ²²

There may be several reasons that non-claiming local agencies did not file reimbursement claims, including but not limited to: they did not incur costs of more than \$1,000 during a fiscal year; they had relatively low reimbursable costs after identifying offsetting revenues used for this program and determined that it was not cost-effective to participate in the reimbursement claim process.

- *The total amount for this program may be lower than the Statewide Cost Estimate based on the Controller's audit findings.*

The Controller may conduct audits and reduce any claim it deems to be excessive or unreasonable. Therefore, costs may be lower than the Statewide Cost Estimate based on the audit findings.

- *The future annual costs for this program may increase or decrease proportionately with the growth or reduction in occurrences of impasses that result in factfinding.*

The future annual costs of this program have a direct correlation with the number of occurrences of impasse which result in factfinding. This assumption is based on future occurrences of impasse that result in factfinding, which may increase or decrease.²³ However, the number of impasses that resulted in MMBA factfinding remained virtually unchanged during fiscal years 2015-2016 through 2017-2018, with an average of about 41 factfinding panels being approved annually.²⁴

- *The future annual costs for this program may increase or decrease proportionately depending on the salaries and benefits of the selected member of the factfinding panel*

²² According to the claims data reported as of May 15, 2019, this amount reflects offsetting revenue applied to one claim of \$1,930.

²³ Note that prior to the factfinding process under the MMBA, PERB must review the request and determine whether it meets the requirements to require a factfinding panel: "Within five working days from the date the request is filed, the Board shall notify the parties whether the request satisfies the requirements of this Section. If the request does not satisfy the requirements of subsection (a)(1) or (2), above, no further action shall be taken by the Board. If the request is determined to be sufficient, the Board shall request that each party provide notification of the name and contact information of its panel member within five working days." (Cal. Code. Regs., tit. 8 § 32802(c).)

²⁴ See Exhibit F, PERB 2015-2016 Annual Report; Exhibit F, PERB 2016-2017 Annual Report, Exhibit F, PERB 2017-2018 Annual Report, <https://www.perb.ca.gov/AnnualReports.aspx> (accessed on April 23, 2019).

and the PERB-selected or mutually agreed upon chairperson, the per diem, travel, and subsistence expenses, and any other mutually incurred costs for the factfinding process (activity 1); the duration of the MMBA factfinding panel proceedings (activity 2); and with the amount of materials and supplies required to furnish the MMBA factfinding panel with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel (activity 3).

Occurrences of impasse that result in factfinding have remained virtually unchanged during fiscal years 2015-2016 through 2017-2018, with an average of about 41 factfinding panels being approved annually. Therefore, though an increase or decrease in the number of impasses that result in MMBA factfinding would affect future costs, future annual costs are more likely to fluctuate based on: (1) an increase or decrease in the salaries and benefits of employees performing the reimbursable activities and the cost of expenses incurred by the panel member selected and the PERB-selected or mutually-agreed chairperson and any other mutually incurred costs for the factfinding process; (2) the duration of participation in the MMBA factfinding panel; and (3) in the cost of materials and supplies.

In fact, only three of the seven local agencies that filed claims for FY 2015-2016, one of the seven for FY 2016-2017, and three of the nine for FY 2017-2018 actually claimed for activities 1, 2, 3, and 4 for that year and approximately half claimed indirect costs for all three fiscal years. The lowest claim was filed by the City of Livermore, with \$1,233 in total costs claimed for FY 2017-2018, for only activity 1 with no costs claimed for activities 2, 3, or 4 and no indirect costs. On the other hand, the highest claim was filed by the test claimant, the City of Oxnard, for FY 2015-2016 with costs of \$257,670 in total, \$70,962 for activity 1, \$105,406 for activity 2, \$66,338 for activity 3, and \$14,176 for activity 4, plus \$788 in indirect costs to perform those activities.²⁵

This variability in claiming and in costs per activity and per impasse demonstrates several things. First, the data being relied upon for this estimate is limited since less than 20 percent of the number of instances of MMBA factfinding approved by PERB annually actually resulted in a reimbursement claim being filed for the initial claiming period, and therefore assumptions about future costs may prove to be incorrect in the future. Second, costs may vary per local agency and per impasse for a variety of reasons including the number of approved requests for MMBA factfinding the agency experiences, the level of employee selected to perform the mandated activities, whether the agency files reimbursement claims for costs for one or more of the reimbursable activities. Finally, it is not clear how many instances of impasse are represented by the number of reimbursement claims filed, since an impasse proceeding could span multiple fiscal years and an agency could have multiple impasse proceedings happening simultaneously.

It is noteworthy, that several local agencies did not claim for all four reimbursable activities and half of the reimbursement claims failed to claim activity 4. See Table B below:

²⁵ Claims data reported as of May 15, 2019.

Table B²⁶

Claimant	Reimbursable Activities					Total
	1	2	3	4	Ind. Costs	
City of Concord	\$501	\$105,291	\$302	-	-	\$106,904
City of Glendora	\$1,200	\$7,574	\$43,054	\$7,215	\$15,872	\$74,914
City of Oxnard	\$70,962	\$105,406	\$66,338	\$14,176	\$788	\$257,670
County of Sacramento	\$11,544	-	-	-	-	\$11,544
County of San Bernardino	\$4,609	\$15,625	\$2,950	-	\$9,780	\$32,964
County of Santa Barbara	-	\$54	\$9,086	-	\$3,926	\$13,066
County of Sonoma	\$3,075	\$8,045	\$23,542	\$1,310	-	\$35,972
Total 7 Claims FY15-16	\$91,891	\$241,995	\$145,272	\$22,701	\$30,366	\$532,224
City of Concord	\$4,256	-	-	-	-	\$4,256
City of Santa Barbara	-	-	\$7,595	-	-	\$7,595
City of Palo Alto	\$1,219	-	\$12,572	-	-	\$13,791
City of Sunnyvale	\$9,500	\$1,256	-	-	\$454	\$11,210
City of Oxnard	\$928	\$3,407	\$1,333	\$2,058	\$773	\$8,499
County of Riverside	\$1,433	\$16,079	\$17,330	-	-	\$34,842
County of Sacramento	\$8,450	\$17,634	-	-	-	\$26,084
Total 7 Claims FY16-17	\$25,786	\$38,376	\$38,830	\$2,058	\$1,227	\$106,277
City of Livermore	\$1,233	-	-	-	-	\$1,233
City of Salinas	\$11,941	-	-	-	-	\$11,941
City of Corona	\$6,997	-	\$49,767	-	-	\$56,764
City of Hesperia	\$2,515	\$9,146	\$14,892	\$2,898	\$1,919	\$31,370
City of Santa Maria	\$5,731	-	-	-	\$765	\$6,496
County of Riverside	\$16,243	\$49,322	\$120,484	\$2,795	-	\$188,844
County of Sacramento	\$4,039	-	-	-	-	\$4,039
County of Yuba	\$3,068	\$12,431	\$618	-	\$835	\$16,952
Moraga Fire Prot. District	\$19,635	\$15,866	\$16,345	\$453	\$246	\$50,615
Total 9 Claims FY17-18	\$71,402	\$86,765	\$202,106	\$6,146	\$3,765	\$368,254²⁷

- *The future annual costs for this program may increase or decrease proportionately with the receipt and public posting of the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within thirty (30) days of the appointment of the panel (activity 4).*

The Parameters and Guidelines allow for reimbursement for receiving and making publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel (activity 4). Thus these costs will be higher the more often the dispute is not settled within 30 days of the appointment of the panel, but it is also possible that all disputes could be settled within 30 days of appointment of the panel and thus reimbursable activity 4 could be eliminated entirely resulting in no costs for

²⁶ Claims data reported as of May 15, 2019.

²⁷ According to the claims data reported as of May 15, 2019, this amount reflects offsetting revenue applied to one claim of \$1,930.

this activity.²⁸ It is unclear whether those local agencies that did not claim activity 4 for the initial claiming period settled within 30 days of appointment of the panel, failed to perform all of the activities as required by law, misclaimed costs, or did not adequately document costs for some of the activities to allow for proper claiming of those specific activities.

Methodology

The Statewide Cost Estimate for the initial claiming period of fiscal years 2015-2016, 2016-2017, and 2017-2018 was developed by totaling the 23 unaudited reimbursement claims filed by 18 local agencies to the Controller.

Following is a breakdown of actual costs claimed per fiscal year for the initial reimbursement period. See Table C below:

Table C²⁹

Reimbursement Period	Number of Initial Claims Filed	Cost
Fiscal Year 2015-2016	7	\$532,224
Fiscal Year 2016-2017	7	\$106,277
Fiscal Year 2017-2018	9	\$368,254
TOTAL	23	\$1,006,755

Assuming that each reimbursement claim reflects a single impasse proceeding,³⁰ the actual claims data indicates that reimbursement claims were filed for just under 20 percent of the impasses that resulted in factfinding panels during the initial claiming period. Of the local agencies filing claims, one agency filed claims for each of the three fiscal years 2015-2016, 2016-2017, and 2017-2018; three filed claims for two of the three fiscal years, and the remaining 14 local agencies filed one claim each for the initial claiming period. The ongoing annual cost estimate takes the average costs claimed per reimbursement claim (\$43,772) and multiplies that number times 7.67 (the average number of claims filed per year for the initial claiming period) and by 41 (the average number of impasses that result in approved factfinding statewide annually over the past three years) to provide a range of potential future costs. Thus the potential future cost ranges from \$335,731 (if the same number of claims are filed annually as were filed for the initial claiming period) to \$1,794,652 (if costs for every impasse that resulted in an approved factfinding panel were claimed) plus the implicit price deflator annually. See Table D below:

²⁸ Exhibit C, Decision and Parameters and Guidelines (“4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)”), page 10.

²⁹ Claims data reported as of May 15, 2019.

³⁰ As discussed above, it is unclear whether each claim represents one or more (or fewer, if a multiple-year proceeding) impasse proceeding. However, we are making this assumption for the sake of analysis.

Table D

Average Cost Per Reimbursement Claim	Multiplied by Number of Claims Filed	Ongoing Annual Cost
\$43,772	7.67 ³¹	\$335,731, plus the implicit price deflator
\$43,772	41 ³²	\$1,794,652, plus the implicit price deflator

Accordingly, assuming that the average number of reimbursement claims per fiscal year continues to be 7.67 in fiscal year 2018-2019 and forward, the estimated average annual cost will be \$335,730.90 (\$43,771.96 x 7.67) plus the implicit price deflator.

Additionally, if every local agency with an approved MMBA factfinding by PERB is eligible to file and actually files a reimbursement claim (average of 41 x average cost per claim of \$43,772 = \$1,794,652) statewide costs could potentially increase up to \$1,794,652, annually. This is a possible but unlikely scenario.

Draft Proposed Statewide Cost Estimate

On May 29, 2019, Commission staff issued the Draft Proposed Statewide Cost Estimate.³³ No comments were filed on the Draft Proposed Statewide Cost Estimate.

Staff Recommendation

Staff recommends that the Commission adopt this Proposed Statewide Cost Estimate of \$335,731, plus the implicit price deflator for the initial reimbursement period of fiscal years 2015-2016, 2016-2017, and 2017-2018 and the estimated cost for fiscal year 2018-2019 and following of \$335,731 to \$1,794,652 plus the implicit price deflator.

³¹ Average number of claims filed per fiscal year for the initial claiming period.

³² The average number of requests for a factfinding panel that are approved by PERB annually. Note that because some special districts are not subject to the tax and spend limitations of the California Constitution, those districts are not eligible for reimbursement. Data is not available to support a determination of what number of ineligible districts might have an impasse that would result in a factfinding panel. However, for the initial claiming period, 23 claims were filed by cities and counties and only one claim was filed by a non-enterprise special district.

³³ Exhibit E, Draft Proposed Statewide Cost Estimate.