

ITEM 9

PROPOSED DECISION

PARAMETERS AND GUIDELINES AMENDMENT

Government Code Sections 3301, 3303, 3304, 3305, 3306

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1187; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

Peace Officers Procedural Bill of Rights

11-PGA-09 (CSM-4499, 05-RL-4499-01, 06-PGA-06)

County of Los Angeles, Requester

EXECUTIVE SUMMARY

I. Summary of the Mandate

The *Peace Officers Procedural Bill of Rights (POBOR)* test claim decision was adopted November 30, 1999, and parameters and guidelines for the *POBOR* mandate were most recently amended March 28, 2008. The March 28, 2008 parameters and guidelines provide for reimbursement to counties and cities, and some special districts, as specified, for providing an administrative appeal to an officer subject to certain disciplinary actions, providing notice and transcripts of an interrogation to an officer under investigation or to an officer who is a witness to an investigation, and providing an officer the opportunity to review and respond to adverse comments placed in the officer's personnel file.

II. Summary of the Request

This request to amend parameters and guidelines for the *POBOR* program proposes to increase the current unit cost reasonable reimbursement methodology (RRM) adopted March 28, 2008 from \$37.25 per sworn officer to \$169.21 per sworn officer, to reimburse local agencies for all direct and indirect costs of the program. The proposed amendment also provides for actual cost claiming instead of claiming under the RRM, at the option of each individual claimant in any claim year. The Department of Finance (Finance) opposes the request and challenges the methodology used to support the proposed increase in the unit cost RRM.

III. Procedural History

On March 27, 2012, the County of Los Angeles (requester), filed a request to amend the parameters and guidelines to update the RRM and increase reimbursement under the RRM from \$37.25 per sworn officer to \$111.99 per sworn probation officer, and \$152.77 per all other sworn officers.¹ On May 18, 2012, Finance submitted written comments on the request to amend the parameters and guidelines.² On June 19, 2012, requester submitted rebuttal comments, in which

¹ Exhibit A, Request to Amend Parameters and Guidelines, March 27, 2012. Based on the filing date of the request, if the Commission adopts the proposal and amends the parameters and guidelines, it will affect costs incurred beginning July 1, 2011. (Gov. Code, § 17557.)

² Exhibit B, Finance Comments on Request to Amend, May 18, 2012.

it revised its RRM proposal to \$169.21 for *all* sworn officers.³ On March 28, 2014, Commission staff issued a draft proposed decision.⁴ On April 11, 2014, requester requested an extension of time and postponement of the hearing, which was granted for good cause. On May 19, 2014, requester again requested an extension of time and postponement of the hearing, which was granted for good cause. On June 5, 2014, requester requested an informal conference, which was granted and noticed for June 24, 2014. An informal conference was held at the Commission's office on June 24, 2014. No comments were received on the draft proposed decision.

IV. Staff Findings

Commission staff analyzed the evidence and arguments submitted by requester, and concludes that the statutory requirements of an RRM have not been satisfied, and substantial evidence does not support a finding that requester's proposal would reasonably reimburse local government for their actual costs to comply with the mandate.

An RRM is meant to be based on an *approximation* of local costs, and need not precisely reimburse every actual dollar expended on the program. However, an RRM must be reasonable; satisfying the statutory requirements of an RRM is not the end of the inquiry. Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, "to set aside a decision of the commission on the ground that the commission's decision is not supported by substantial evidence."⁵

Here, requester has proposed an amendment to the parameters and guidelines that preserves the option for actual cost claiming, but also "updates" the RRM for all eligible claimants from \$37.25 to \$169.21 per sworn peace officer employed for all direct and indirect costs of the program.

Requester's RRM proposal is based 115 sample values of allowable costs from 31 jurisdictions over a period of years, and excludes those claims that were reduced to zero pursuant to audit. However, the sample data, because it consists of audited actual cost claims, also excludes agencies that experienced sufficiently low costs to make reimbursement under the \$37.25 RRM appropriate, or agencies for which it was not cost-effective to file a claim at all.⁶ The use of audited claim data from only those jurisdictions that filed actual cost claims very likely excludes smaller, less-expensive jurisdictions, and necessarily excludes jurisdictions that filed for reimbursement under the RRM.

Furthermore, requester asserts that it utilized the same methodology as the current RRM.⁷ But the procedures used in developing the current RRM were applied to a subset of cost claims from *all claimants*, while here, the sample comes from only those that chose to file higher actual cost claims rather than utilize the \$37.25 per officer RRM. At the time the current RRM was proposed and adopted, all claimants filing for reimbursement under the *POBOR* mandate were required to file actual cost claims; no RRM option was previously available. Now, requester

³ Exhibit C, Revised Request to Amend Parameters and Guidelines, June 19, 2012.

⁴ Exhibit D, Draft Proposed Decision.

⁵ Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

⁶ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

⁷ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3 [emphasis added].

proposes to develop an updated RRM rate on the basis of audited cost claims, as was done before, but the available audited cost claims are necessarily skewed toward agencies for which it is more advantageous to file actual cost claims instead of utilizing the RRM.

Therefore, because the data include only those jurisdictions that filed actual cost claims, which can be expected to be the jurisdictions experiencing the highest costs, the RRM proposal does not “consider the variation in costs among local agencies,” as required by section 17518.5.

Based on the evidence in the record, staff finds that there is not substantial evidence that requester’s RRM proposal considers the variation in costs among local government claimants to implement the mandate in a cost efficient manner, and therefore the RRM must be denied.

Moreover, perpetuating the actual cost claiming option only serves to show that requester believes that the “updated” RRM will still be inadequate to fully reimburse eligible claimants. Requester states that under its proposed RRM rate, “*fewer claimants* would be inclined to go to the expense of filing small actual cost claims.” Requester acknowledges, however, that some claimants would still choose to file actual cost claims:

According to claiming scenarios developed by the County, under the current 2010-11 POBOR RRM rate structure, 16 claimants would need to file actual cost claims to recover their allowable costs. This compares with half as many or 8 claimants that would need to file actual cost claims to recover their allowable audited costs if the proposed 2010-11 general RRM rate was adopted.⁸

Based on requester’s evidence and conclusions, then, the RRM alone cannot reasonably reimburse all claimants, and must be coupled with an actual cost claiming option. Therefore, staff finds that the RRM does not balance accuracy with simplicity, as required by section 17557, and does not reimburse all costs mandated by the state, as require by Government Code sections 17514 and 17561 and article XIII B, section 6.

Staff Recommendation

Staff recommends that the Commission adopt the decision denying the request to amend parameters and guidelines, and direct staff to make any technical, non-substantive changes following the hearing.

⁸ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Government Code sections 3301, 3303, 3304,
3305, 3306;

Statutes 1976, Chapter 465; Statutes 1978,
Chapters 775, 1173, 1174, 1178; Statutes 1979,
Chapter 405; Statutes 1980, Chapter 1367;
Statutes 1982, Chapter 994; Statutes 1983,
Chapter 964; Statutes 1989, Chapter 1165;
Statutes 1990, Chapter 675

County of Los Angeles, Requester

Case No.: 11-PGA-09 (CSM-4499,
05-RL-4499-01, 06-PGA-06)

Peace Officers Procedural Bill of Rights

DECISION PURSUANT TO
GOVERNMENT CODE SECTION 17500
ET SEQ.; CALIFORNIA CODE OF
REGULATIONS, TITLE 2, DIVISION 2,
CHAPTER 2.5, ARTICLE 7.

(Adopted September 26, 2014)

DECISION

The Commission on State Mandates (Commission) adopted this decision during a regularly scheduled hearing on September 26, 2014. [Witness list will be included in the adopted decision.]

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the decision to deny the request to amend the parameters and guidelines by a vote of [Vote count will be included in the adopted decision].

I. Summary of the Mandate

This request to amend parameters and guidelines for the *Peace Officers Procedural Bill of Rights* program (*POBOR*) proposes to increase the current unit cost reasonable reimbursement methodology (RRM) adopted March 28, 2008 from \$37.25 per sworn officer to \$169.21 per sworn officer, to reimburse local agencies for all direct and indirect costs of the program. The proposed amended parameters and guidelines also provide for actual cost claiming instead of claiming under the RRM, at the option of each individual claimant in any claim year. The Department of Finance (Finance) opposes the request and challenges the methodology used to support the proposed increase in the unit cost RRM.

The *POBOR* mandate was first adopted November 30, 1999, and approved reimbursement for procedural rights and protections provided by statute to peace officers under interrogation, facing punitive action, or facing an adverse comment in the officer's personnel file. The activities eligible for reimbursement include providing an administrative appeal to an officer subject to certain disciplinary actions, providing notice and transcripts of an interrogation to an officer under investigation or to an officer who is a witness to an investigation, and providing an officer the opportunity to review and respond to adverse comments placed in the personnel file.

On April 26, 2006, the Commission reviewed its original findings pursuant to Legislative direction enacted in Statutes 2005, chapter 72 (AB 138) and adopted a statement of decision on reconsideration (05-RL-4499-01), which revised the activities approved in the prior decision in light of the California Supreme Courts intervening decision in *San Diego Unified School District v. State of California* (2003) 33 Cal.4th 859. On December 4, 2006, the Commission adopted amended parameters and guidelines pursuant to its April 26, 2006 reconsideration decision and a number of parameters and guidelines amendment requests.

On March 28, 2008, the Commission adopted amended parameters and guidelines providing for an RRM in the amount of \$37.25 per sworn officer, to reimburse eligible claimants for all direct and indirect costs of the program. The amended parameters and guidelines also provided an option for each individual claimant to file a reimbursement claim based on actual costs.⁹

On February 6, 2009, the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, held that the *POBOR* mandate is not reimbursable to school districts and special districts that are permitted, but not required, to employ peace officers. On May 8, 2009, the Superior Court for the County of Sacramento issued a judgment and writ pursuant to the Third District Court of Appeal's decision, directing the Commission to set aside and issue a new decision and parameters and guidelines consistent with the Court of Appeal's decision. The Commission complied with the writ and amended the parameters and guidelines on July 31, 2009 to omit as eligible claimants school districts, community college districts, and special districts, except for special police protection districts that wholly supplant the law enforcement functions of the county within their jurisdiction.

II. Summary of the Request to Amend

On March 29, 2012, the County of Los Angeles (requester), filed a request to amend the parameters and guidelines to update the RRM and increase reimbursement under the RRM from \$37.25 per sworn officer to \$111.99 per sworn probation officer, and \$152.77 per all other sworn officers.¹⁰ On June 19, 2012, requester, in response to state agency comments, revised its RRM proposal to \$169.21 for *all* sworn officers.¹¹

The RRM "is still based on measurements of allowed costs per sworn peace officer," and "still incorporates allowable *POBOR* costs reported in *SCO's POBOR* audits."¹² Requester's proposed amendment also preserves the ability of claimants to file actual cost claims.¹³

III. Procedural History

On March 27, 2012, requester filed a request to amend the parameters and guidelines to update the RRM and increase reimbursement under the RRM from \$37.25 per sworn officer to \$111.99

⁹ Exhibit E, Amended Parameters and Guidelines, March 28, 2008.

¹⁰ Exhibit A, Parameters and Guidelines Amendment Request, at p. 2.

¹¹ Exhibit C, Revised Request to Amend Parameters and Guidelines, June 19, 2012.

¹² Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

¹³ Exhibit A, Request to Amend Parameters and Guidelines.

per sworn probation officer, and \$152.77 per all other sworn officers.¹⁴ On May 18, 2012, Finance submitted written comments on the County's request to amend the parameters and guidelines.¹⁵ On June 19, 2012, requester submitted rebuttal comments in which it revised its RRM proposal to \$169.21 for all sworn officers.¹⁶ On March 28, 2014, Commission staff issued a draft proposed decision.¹⁷ On April 11, 2014, requester requested an extension of time and postponement of the hearing, which was granted for good cause. On May 19, 2014, the County again requested an extension of time and postponement of the hearing, which was granted for good cause. On June 5, 2014, requester requested an informal conference, which was granted and noticed for June 24, 2014. The informal conference was held Tuesday, June 24, 2014 from 2:00 p.m. - 3:00 p.m. at the Commission's Office. No comments were received on the draft proposed decision.

IV. Positions of the Parties

A. Requesters' Position

Requester proposes to revise the RRM adopted March 28, 2008, from \$37.25 to \$169.21 per sworn peace officer.¹⁸

Requester asserts that "[t]his revision was prompted by the recent availability of a large sample of audited allowable POBOR costs and an analysis that found that the average of the sampled values resulted in substantially greater RRM reimbursement rates than those currently available to eligible claimants."¹⁹

Requester states that "[t]he development of the updated RRM closely follows the procedures and assumptions the County used in developing the prior POBOR RRM."²⁰ Under the proposed amended parameters and guidelines, "claimants would be able to file reimbursement [claims] using either an RRM option or an actual cost option, as is the case now."²¹ Requester characterizes its proposal as an "update" of the current RRM because the proposal "is still based on measurements of allowed costs per sworn peace officer," and "still incorporates allowable POBOR costs reported in SCO's POBOR audits."²²

Requester asserts that "[a]ccording to a recent POBOR RRM rate study performed by the California State Association of Counties (CSAC)...current RRM reimbursement rates were found to be inaccurate." The CSAC study concluded that "the updated POBOR RRM rate for

¹⁴ Exhibit A, Request to Amend Parameters and Guidelines, March 27, 2012. Based on the filing date of the request, if the Commission adopts the proposal and amends the parameters and guidelines, it will affect costs incurred beginning July 1, 2011. (Gov. Code, § 17557.)

¹⁵ Exhibit B, Finance Comments on Request to Amend, May 18, 2012.

¹⁶ Exhibit C, Revised Request to Amend Parameters and Guidelines, June 19, 2012.

¹⁷ Exhibit D, Draft Proposed Decision.

¹⁸ Exhibit C, Revised Request to Amend Parameters and Guidelines, at pp. 2; 28.

¹⁹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 2.

²⁰ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²¹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²² Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

2010-2011 should be \$193.91 per officer,” and that “claimants electing to use the RRM claiming option were underpaid[,]...receiving only 21% of the reimbursement due them.”²³ CSAC arrived at the 21 percent figure by dividing current RRM by its proposed updated rate of \$193.91.²⁴

Requester asserts that its RRM rate update study “was prompted by the promising results from the CSAC study.” However, while the CSAC study excluded from its updated rate those audited claims in which less than 10 percent of claimed costs were allowable, requester did not exclude those claims. Requester, “upon SCO’s recommendation,” only excluded from its rate study “8 findings of no allowable costs.”²⁵ The County argues that this approach is consistent with the methodology of the current RRM, and submits evidence that the current RRM was based on an average of allowable costs, and therefore excluded from the per-officer rate calculation those claims in which costs were reduced to zero pursuant to audit.²⁶ Accordingly, requester states that its RRM rate update study relied on a sample of 31 jurisdictions, while the CSAC studies relied on only 19 sample values, and found that “claimants electing to use the RRM claiming option...were receiving only 27% of the reimbursement due them.”²⁷ This conclusion also was based on comparing the current RRM rate to the proposed updated rate.²⁸

Requester asserts that an “update of the current POBOR RRM is now necessary as it has been four years since it was last studied and adopted.”²⁹ Requester states that it has collaborated with the State Controller’s Office (SCO) to develop the current RRM proposal: “SCO provided the County with schedules of allowable cost audit findings which were then incorporated in the County’s computation of updated RRM rates.”³⁰ Requester further asserts that it included “each year in a jurisdiction’s audit period as a sample value,” resulting in 115 sample values.³¹

Requester claims that “[i]n addition to providing POBOR claimants electing to use the POBOR RRM claiming option with the full amount due them, there are other benefits to adopting the proposed rates.” Specifically, requester asserts that under the current RRM, “121 cities and counties which have less than 25 sworn peace officers, cannot meet the \$1,000 minimum requirement to file a RRM reimbursement claim.” Requester further states that “[i]t is also unlikely that these small agencies will be able or willing to file small actual cost claims requiring extensive documentation.”³²

²³ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²⁴ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

²⁵ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

²⁶ Exhibit C, Revised Request to Amend Parameters and Guidelines, at pp. 3; 13.

²⁷ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

²⁸ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4, fn. 6.

²⁹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3.

³⁰ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

³¹ Exhibit C, Revised Request to Amend Parameters and Guidelines, at p. 4.

³² Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

Under requester's proposed updated RRM, "only 13 of the (above) 121 cities and counties, which have less than 7 officers, would not be able to meet the \$1,000 minimum requirement to file a RRM reimbursement claim." Requester further maintains that "under the proposed RRM rate structure, fewer claimants would be inclined to go to the expense of filing small actual cost claims, resulting in savings to local government." And, requester asserts, "the State would have fewer actual cost claims to audit and review, resulting in savings to the State." Requester finds that "under the current 2010-11 POBOR RRM rate structure, 16 claimants would need to file actual cost claims to recover their allowable costs," while "half as many or 8 claimants...would need to file actual cost claims to recover their allowable audited costs if the proposed [updated] RRM rate was adopted."³³

Requester therefore concludes that "based on new samples of allowable cost audit findings, adoption of the proposed 2010-11 POBOR RRM reimbursement rate of \$169.21 per sworn peace officer is required."³⁴

B. Department of Finance Position

Finance argues that requester's methodology is flawed, in that requester excluded "eight eligible local agencies that did not have any allowable costs due to audit exceptions from the formula used to calculate the proposed RRM rate."³⁵ Finance argues that the prior RRM rates included eligible local agencies that were found to have zero allowable costs due to audit exceptions, and asserts that the prior method appropriately captured the variation of costs among eligible local agencies.³⁶

V. Commission Findings

A. Reasonable Reimbursement Methodology (Section V. of Parameters and Guidelines)

1. The purpose of an RRM is to reimburse local government efficiently and simply, with minimal auditing and documentation required.

Article XIII B, section 6 provides: "[w]henever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service [with exceptions not applicable here]..." This reimbursement obligation was "enshrined in the Constitution ... to provide local entities with the assurance that state mandates would not place additional burdens on their increasingly limited revenue resources."³⁷ Section 17561(a) states: "[t]he state *shall* reimburse each local agency and school district for *all* 'costs mandated by the state,' as defined in Section 17514." (Emphasis added.) The courts have

³³ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

³⁴ Exhibit C, Revised Request to Amend Parameters and Guidelines, at p. 4.

³⁵ Exhibit B, Finance Comments on Request to Amend, May 18, 2012.

³⁶ Exhibit B, Finance Comments on Request to Amend Parameters and Guidelines, at p. 1.

³⁷ *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; *CSBA v. State of California* (2011) 192 Cal.App.4th 770, 785-786.

interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.³⁸

The statutes providing for the adoption of an RRM, along with the other statutes in this part of the Government Code, are intended to implement article XIII B, section 6.³⁹ Prior section 17557 provided authority for the Commission, extending back to 1984, to “adopt an allocation formula or uniform allowance.”⁴⁰ The current version of section 17557 provides, and has, since 2004, that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider [an RRM] that balances accuracy with simplicity.”⁴¹

Express statutory authority for the adoption of an RRM was originally enacted in 2004, and was amended in 2007 to promote greater flexibility in adoption of an RRM.⁴² The former section 17518.5 provided that an RRM must “meet the following conditions:”

- (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
- (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.⁴³

In a 2007 report, the Legislative Analyst’s Office (LAO) stated that an RRM is intended to reduce local and state costs to file, process, and audit claims; and reduce disputes regarding mandate reimbursement claims and the SCO’s audit reductions. The report identifies, under the heading “Concerns With the Mandate Process,” the difficulties under the statutes then-in-effect:

³⁸ *CSBA v. State of California (CSBA II)* (Cal. Ct. App. 4th Dist. 2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.”

See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

³⁹ Government Code section 17500 et seq.

⁴⁰ Government Code section 17557 (Stats. 1984, ch. 1459).

⁴¹ Government Code section 17557 (Stats. 2004, ch. 890 (AB 2856); Stats. 2007, ch. 329 (AB 1222)).

⁴² Government Code section 17518.5 (enacted by Stats. 2004, ch. 890 (AB 2856); amended by Stats. 2007, ch. 329 (AB 1222)).

⁴³ Government Code section 17518.5 (Stats. 2004, ch. 890 § 6 (AB 2856)).

- Most mandates are not complete programs, but impose increased requirements on ongoing local programs. Measuring the cost to carry out these marginal changes is complex.
- Instead of relying on unit costs or other approximations of local costs, reimbursement methodologies (or “parameters and guidelines”) typically require local governments to document their actual costs to carry out each element of the mandate.
- The documentation required makes it difficult for local governments to file claims and leads to disputes with the State Controller’s Office.

The LAO’s recommendation to address these issues was to:

Expand the use of unit-based and *other simple claiming methodologies* by clarifying the type of easy-to-administer methodologies that the Legislature envisioned when it enacted this statute...⁴⁴

The LAO’s recommendations were implemented in Statutes 2007, chapter 329 (AB 1222) which currently defines an RRM as follows:

- (a) “Reasonable reimbursement methodology” means a formula for reimbursing local agencies and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state, rather than detailed documentation of actual costs
- (e) A reasonable reimbursement methodology may be developed by any of the following:
 - (1) The Department of Finance.
 - (2) The Controller.

⁴⁴ Exhibit E, “State-Local Working Group Proposal to Improve the Mandate Process,” Legislative Analyst’s Office, June 21, 2007, page 3. See also, Exhibit E, Assembly Bill Analysis of AB 1222 (2007), concurrence in Senate Amendments of September 4, 2007 [purpose of RRM process is to “streamline the documentation and reporting process for mandates”]; *Kaufman & Broad Communities, Inc. v. Performance Plastering* (Cal. Ct. App. 3d Dist. 2005) 133 Cal.App.4th 26, at pp. 31-32 [Reports of the Legislative Analyst’s Office may properly be considered, as legislative history, to determine the legislative intent of a statute].

- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party.⁴⁵

Thus, Government Code section 17518.5, as amended in 2007, eliminates both the prior rule that 50 percent of eligible claimants have their costs fully offset, and the rule that the total amount to be reimbursed under an RRM must be equivalent to the total statewide cost estimate. These objective requirements have been replaced with a more flexible definition, which focuses on the sources of the information used to develop an RRM,⁴⁶ and only requires that the end result “balances accuracy with simplicity.” Given the LAO’s “Concerns with the Mandates Process” to which the amendments were addressed, the new statute should also be interpreted as imposing less stringent requirements for documentation of costs, and less burdensome measuring of the marginal costs of higher levels of service.⁴⁷

As noted above, an RRM “shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or *other projections of other local costs*.”⁴⁸ Section 1183.131 of the Commission’s regulations provides that a proposed RRM “shall include any documentation or *assumption relied upon* to develop the proposed methodology.”⁴⁹ The statute does not provide for a minimum number of claimants to constitute a representative sample; accordingly, the regulations provide that a “‘representative sample of eligible claimants’ does not include eligible claimants that do not respond to surveys or otherwise participate in submitting cost data.”⁵⁰ The statute provides that an RRM “[w]henever possible... shall be based on general allocation formulas, uniform cost allowances, and *other approximations of local costs* mandated by the state, *rather than detailed documentation* of actual costs.”⁵¹ There is no requirement that the data upon which an RRM is based include actual cost claims, or audited data, or otherwise be verified; an “approximation” is sufficient. The section expressly provides for an RRM as an alternative to the requirement for detailed documentation of actual costs.⁵²

Additionally, section 17518.5(c) provides that an RRM “shall *consider* the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.” There is no requirement that an RRM *mitigate or eliminate* cost variation among local government claimants. And finally, section 17557 provides that the Commission “shall consult with the Department of Finance, the affected state agency, the Controller, the fiscal and policy

⁴⁵ Government Code section 17518.5(b-d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

⁴⁶ Government Code section 17518.5 (as amended, Stats. 2007, ch. 329 (AB 1222)).

⁴⁷ *Kaufman & Broad Communities, supra*, 133 Cal.App.4th 26, at pp. 31-32 [LAO reports may be relied upon as evidence of legislative history].

⁴⁸ Government Code section 17518.5(b) (Stats. 2007, ch. 329 § 1 (AB 1222)).

⁴⁹ Register 2008, number 17.

⁵⁰ Code of Regulations, Title 2, section 1183.13 (Register 2008, No. 17).

⁵¹ Government Code section 17518.5(d) (Stats. 2007, ch. 329 § 1 (AB 1222)).

⁵² See Exhibit E, Assembly Floor Analysis, AB 1222 [“Establishes a streamlined alternative state mandate reimbursement process...”].

committees of the Assembly and Senate, the Legislative Analyst, and the claimants to consider a reasonable reimbursement methodology that *balances accuracy with simplicity*.”

Based on the foregoing, the Commission finds that the primary requirements for the development of an RRM are to consider variation in costs among local government claimants, and to ensure that the RRM balances accuracy with simplicity and reasonably reimburses eligible claimants for costs mandated by the state.

2. Substantial evidence in the record does not support a finding that the proposed RRM is consistent with the Constitutional and statutory requirements, and reasonably represents the costs of the mandate.

An RRM is to be based on an *approximation* of local costs, and need not precisely reimburse every actual dollar expended on the program. However, an RRM must be reasonable; satisfying the statutory requirements of an RRM is not the end of the inquiry. Ever present is the constitutional requirement that the end result must *reasonably represent* the costs mandated by the state for the program, as required by article XIII B, section 6; and substantial evidence, as discussed below, must support the Commission’s decision to adopt an RRM.

Government Code section 17559 allows a claimant or the state to petition for a writ of administrative mandamus under section 1094.5 of the Code of Civil Procedure, “to set aside a decision of the commission on the ground that the commission’s decision is not supported by substantial evidence.”⁵³ Substantial evidence has been defined in two ways: first, as evidence of ponderable legal significance...reasonable in nature, credible, and of solid value;⁵⁴ and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁵⁵

The California Supreme Court has stated that “[o]bviously the word [substantial] cannot be deemed synonymous with ‘any’ evidence.”⁵⁶ Moreover, substantial evidence is not submitted by a party; it is a standard of review, which requires a reviewing court to uphold the determinations of a lower court, or in this context, the Commission, if those findings are supported by substantial evidence. A court will not reweigh the evidence of a lower court, or of an agency exercising its adjudicative functions; rather a court is “obliged to consider the evidence in the light most favorable to the [agency], giving to it the benefit of every reasonable inference and resolving all conflicts in its favor.”⁵⁷

The evidence required to adopt an RRM is necessarily more relaxed than that required to approve reimbursement for actual costs because the statute employs terms like “projections” and “approximations”.⁵⁸ When the Legislature added section 17518.5 to the Government Code, however, it did not change the existing requirement in section 17559 that all of the Commission’s findings be based on substantial evidence in the record. Neither did the enactment

⁵³ Government Code section 17559(b) (Stats. 1999, ch. 643 (AB 1679)).

⁵⁴ *County of Mariposa v. Yosemite West Associates* (Cal. Ct. App. 5th Dist. 1998) 202 Cal.App.3d 791, at p. 805.

⁵⁵ *Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 335.

⁵⁶ *People v. Bassett* (1968) 69 Cal.2d 122, at p. 139.

⁵⁷ *Martin v. State Personnel Board* (Cal. Ct. App. 3d Dist. 1972) 26 Cal.App.3d 573, at p. 577.

⁵⁸ See Government Code 17518.5].

of a new statutory definition for an RRM alter the underlying constitutional requirement that the state must reimburse all costs mandated by the state.⁵⁹ Statutory enactments must be considered in the context of the entire statutory scheme of which they are a part and be harmonized with the statutory framework as a whole.⁶⁰ Thus, the plain language of the statutory and regulatory mandates scheme, undergirded by the reimbursement requirement of the California Constitution, permits an RRM to be adopted on the basis of a number of different types of evidence or approximations, but requires substantial evidence in the record to support the adoption of an RRM, and requires the adopted RRM to reasonably reimburse local government for all costs mandated by the state.

Here, requester has proposed an amendment to the parameters and guidelines that preserves the option for actual cost claiming, but also “updates” the RRM for all eligible claimants from \$37.25 to \$169.21 per sworn peace officer employed for all direct and indirect costs of the program. Requester states that this proposed rate is based on 115 audited cost claims from 31 jurisdictions over multiple claim years, and excludes claims that were reduced to zero pursuant to an audit. The data also excludes, by definition, any jurisdictions that did not file actual cost claims, but instead relied on the level of reimbursement provided under the existing \$37.25 RRM. Requester states that the SCO assisted in the preparation of the RRM proposal by providing “accurate schedules of allowable costs,”⁶¹ and that both Finance and the SCO agree “that a single POBOR RRM rate for all eligible peace officers, including probation officers, is preferable.”⁶²

- i. *The proposed RRM rate does not consider the variation in local costs to implement the mandate in a cost-efficient manner.*

As discussed above, one of only two express statutory requirements for adoption of an RRM is that the RRM must “consider the variation in costs among local agencies...to implement the mandate in a cost-efficient manner.” As discussed above, the initial enactment and subsequent amendment of section 17518.5 evidence the Legislature’s intent that reimbursement under an RRM may be based on a wide range of costs and still satisfy the Constitution, as long as the RRM reasonably represents the costs mandated by the state. Moreover, the plain language of section 17518.5 does not require an RRM proposal to “mitigate” or “address” variation in costs among local government; nor does it suggest that “cost-efficient” implementation means the least expensive implementation possible. However, an RRM proposal that does not “consider” the variation in costs among local government, and provides for excessive or unreasonable reimbursement, does not satisfy the statute and cannot be supported.

For the reasons below, the Commission finds that requester’s proposal does not consider the variation in costs among local agencies, because the data excludes agencies that filed reimbursement claims using the \$37.25 per officer RRM, and therefore, the proposed RRM is skewed toward those local agencies that experienced higher costs to comply with the mandate, thus making the filing for reimbursement for actual costs in their financial interest.

⁵⁹ *CSBA II*, *supra* 192 Cal.App.4th 770, 786.

⁶⁰ *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 743.

⁶¹ Exhibit A, Parameters and Guidelines Amendment Request, at p. 2.

⁶² Exhibit C, Revised Parameters and Guidelines Amendment Request, at p. 2.

The RRM proposal is based 115 sample values of allowable costs from 31 jurisdictions over a period of years. In developing its RRM proposal, requester states that “[a]llowable cost findings from 39 SCO POBOR audits were examined...[and] upon SCO’s recommendation, 8 findings of no allowable costs were excluded from samples used to compute allowable cost averages.”⁶³ In response to comments from Finance, requester’s revised proposal incorporated data from each jurisdiction’s entire audit period, and incorporated data pertaining to probation department costs under the mandate.⁶⁴ The RRM proposal still excludes cost claims that were reduced to zero pursuant to the SCO’s audits. In this respect, excluding zero claims is consistent with the methodology used for the prior RRM adopted by the Commission.⁶⁵

However, the sample data available from the SCO (a data set consisting of audited actual cost claims over a period of years) also excludes agencies that experienced sufficiently low costs to make reimbursement under the \$37.25 RRM appropriate, or agencies for which it was not cost-effective to file a claim at all.⁶⁶ Due to the expense and effort required to file actual cost claims under the *POBOR* mandate,⁶⁷ some claimants that experienced costs roughly in line with the level of reimbursement that they would receive under the RRM would likely opt to file an RRM claim. Others (the County alleges approximately 120 jurisdictions) may not have been able to file under the RRM because they could not meet the minimum claim threshold of one-thousand dollars, due to a small number of sworn officers employed, and may not have attempted to file an actual cost claim, whether or not they experienced one-thousand dollars in mandated costs in a given year.⁶⁸ The use of audited claim data from only those jurisdictions that filed actual cost claims very likely excludes smaller, less-expensive jurisdictions, and necessarily excludes jurisdictions that filed for reimbursement under the RRM.

Furthermore, requester asserts that it utilized the same methodology as the current RRM.⁶⁹ But the procedures used in developing the current RRM were applied to a subset of cost claims from *all claimants* and, here, the sample comes from only those that chose to file higher actual cost claims rather than utilize the \$37.25 per officer RRM. At the time the current RRM was proposed and adopted, all claimants filing for reimbursement under the *POBOR* mandate were required to file actual cost claims; no RRM option was previously available. Those claims were often found, pursuant to SCO audits, to include ineligible costs, or to provide inadequate supporting documentation, and so the current *POBOR* RRM was developed on the basis of audited claims from the pool of all jurisdictions that filed actual cost claims over a period of years.⁷⁰ Now, eligible claimants have an option to file under the RRM, and presumably some claimants have chosen that option during the audit period.⁷¹ Now, the County proposes to

⁶³ Exhibit A, Request to Amend Parameters and Guidelines Amendment, at pp. 4; 14.

⁶⁴ Exhibit C, Revised Parameters and Guidelines Amendment Request, at p. 2.

⁶⁵ Exhibit C, Revised Request to Amend Parameters and Guidelines, at p. 13.

⁶⁶ Exhibit A, Request to Amend Parameters and Guidelines, at p. 4.

⁶⁷ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

⁶⁸ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.

⁶⁹ Exhibit A, Request to Amend Parameters and Guidelines, at p. 3 [emphasis added].

⁷⁰ See Exhibit E, Statement of Decision on POBOR PGA, March 28, 2008, at p. 13.

⁷¹ See Exhibit E, Statement of Decision on POBOR PGA, March 28, 2008, at pp. 14-15.

develop an updated RRM rate on the basis of audited cost claims, as was done before, but those claims will necessarily be skewed toward agencies that see fit to file actual cost claims instead of utilizing the RRM.

Therefore, because the data include only those jurisdictions that filed actual cost claims, which can be expected to be the jurisdictions experiencing the highest costs, the RRM proposal does not “consider the variation in costs among local agencies,” as required by section 17518.5.

Based on the evidence in the record, the Commission finds that there is not substantial evidence that the RRM proposal considers the variation in costs among local government claimants to implement the mandate in a cost efficient manner, and therefore the RRM must be denied.

- ii. *The proposed RRM rate does not balance accuracy with simplicity, and does not reasonably reimburse all costs mandated by the state.*

As discussed above, one of the requirements for an RRM is that it “balances accuracy with simplicity.”⁷² Underlying this requirement, however, is that an RRM must reasonably represent the costs mandated by the state by all eligible claimants. Section 17561(a) states: “[t]he state shall reimburse each local agency and school district for *all* ‘costs mandated by the state,’ as defined in Section 17514.” Government Code section 17514, in turn, defines “costs mandated by the state” as any increased cost incurred as a result of any state statute or executive order that mandates a new program or higher level of service. The courts have interpreted the Constitutional and statutory scheme as requiring “full” payment of the actual costs incurred by a local entity once a mandate is determined by the Commission.⁷³

The Commission finds, based on the following analysis, that the proposed amendment to the parameters and guidelines does not reasonably represent the costs mandated by the state by all local agencies and does not balance accuracy with simplicity.

The proposed RRM rate, as explained above, is based on sample data from those eligible claimants that chose to file actual cost claims, rather than file under the existing RRM. Therefore the data, as a practical matter, are skewed toward those agencies that had higher actual costs than the reimbursement provided under the RRM, and made the calculated decision to file actual cost claims. While it may be that claimants filing under the RRM are underpaid, as suggested by requester, requester’s study of actual cost claims does not provide reliable evidence in itself to substantiate the extent to which the RRM is inadequate, because the actual costs of those claimants that accepted reimbursement under the RRM are not known and were not considered.

⁷² Government Code section 17557 (Stats. 2010, ch. 719 (SB 856)).

⁷³ *CSBA v. State of California (CSBA II)* (2011) 192 Cal.App.4th 770, 786; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1284. The court in *County of Sonoma* recognized that the goal of article XIII B, section 6 was to prevent the state from forcing extra programs on local government in a manner that negates their careful budgeting of expenditures, and that a forced program is one that results in “increased actual expenditures.” The court further noted the statutory mandates process that refers to the reimbursement of “actual costs incurred.” See also, Government Code sections 17522 defining “annual reimbursement claim” to mean a claim for “actual costs incurred in a prior fiscal year; and Government Code section 17560(d)(2) and (3), referring to the Controller’s audit to verify the “actual amount of the mandated costs.”

Moreover, even if the current RRM does not adequately compensate claimants, and even if a number of cities and counties cannot meet the statutory minimum \$1000 threshold for filing a claim for reimbursement, those deficiencies do not support continuing the dual claiming structure proposed by requester. In fact, perpetuating the actual cost claiming option only serves to show that requester believes that the “updated” RRM will still be inadequate to fully reimburse eligible claimants. Requester states that under its proposed RRM rate, “*fewer claimants* would be inclined to go to the expense of filing small actual cost claims.” Requester acknowledges, however, that some claimants would still choose to file actual cost claims:

According to claiming scenarios developed by the County, under the current 2010-11 POBOR RRM rate structure, 16 claimants would need to file actual cost claims to recover their allowable costs. This compares with half as many or 8 claimants that would need to file actual cost claims to recover their allowable audited costs if the proposed 2010-11 general RRM rate was adopted.⁷⁴

Based on requester’s evidence and conclusions, then, the RRM alone cannot reasonably reimburse all claimants, and must be coupled with an actual cost claiming option. Therefore, the Commission finds that the RRM does not balance accuracy with simplicity, as required by section 17557, and does not reimburse all costs mandated by the state, as required by Government Code sections 17514 and 17561 and article XIII B, section 6.

VI. CONCLUSION

The proposed amendments to the parameters and guidelines are denied.

⁷⁴ Exhibit A, Request to Amend Parameters and Guidelines, at p. 6.