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September 30, 2014

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Ms. Jill Kanemasu
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Division of Accounting and Reporting
3301 C Street, Suite 700
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And Parties, Interested Parties and Interested Persons (See Mailing List)

RE: **Adopted Statewide Cost Estimate**
Peace Officer Procedural Bill of Rights II, 03-TC-18
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
City of Newport Beach, Claimant

Dear Ms. Tseng, Mr. Burdick, and Ms. Kanemasu:

On September 26, 2014, the Commission on State Mandates adopted the above-entitled statewide cost estimate.

Please contact Kerry Ortman at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

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

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[1] 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

[1] Exhibit B. Parameters and Guidelines.

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.*

  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 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 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:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
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
TOTAL	**122**	**$3,436,091**

Draft Proposed Statewide Cost Estimate

On August 15, 2014, Commission staff issued a draft proposed statewide cost estimate.[2] 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.

[2] Exhibit C. Draft Proposed Statewide Cost Estimate.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

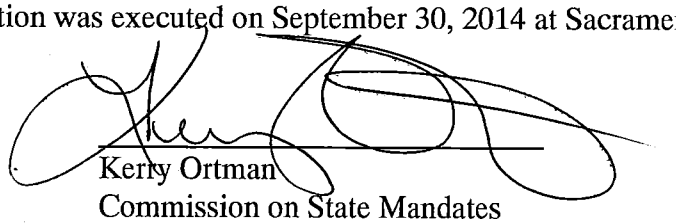
I am a resident of the County of Placer and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On September 30, 2014, I served the:

Statewide Cost Estimate
Peace Officer Procedural Bill of Rights II, 03-TC-18
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
City of Newport Beach, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 30, 2014 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/25/14

Claim Number: 03-TC-18

Matter: Peace Officers Procedural Bill of Rights (POBOR) II

Claimant: City of Newport Beach

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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