

COMMISSION ON STATE MANDATES

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March 4, 2011

Ms. Juliana Gmur
MAXIMUS Financial Services
2380 Houston Ave
Clovis, CA 93611

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Final Staff Analysis, Proposed Statewide Cost Estimate and Hearing Date
Local Government Employment Relations, 01-TC-30
City of Sacramento and County of Sacramento, Claimants
Statutes 2000, Chapter 901 (SB 739)
California Code of Regulations, Title 8, Sections 31001-61630

Dear Ms. Gmur:

The final staff analysis and proposed statewide cost estimate for the above-named program are enclosed.

Hearing

This matter is set for hearing on **Thursday, March 24, 2011**, at 9:30 a.m. in Room 447, State Capitol, Sacramento, California. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Drew Bohan", written over a horizontal line.

Drew Bohan
Executive Director

Enclosures

ITEM 11
FINAL STAFF ANALYSIS
PROPOSED STATEWIDE COST ESTIMATE
\$4,925,403

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160,
32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310,
32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070

Register 2001, Number 49

Local Government Employee Relations
01-TC-30

City of Sacramento and County of Sacramento, Claimants

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statute amended the Meyers-Milias-Brown Act (MMBA) regarding employer-employee relations between local public agencies and their employees. The test claim statute and its attendant regulations created an additional method for creating an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (PERB) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Local Government Employee Relations* program (01-TC-30). The Commission found that the test claim statute and regulations constitute a new program or higher level of service and impose a state-mandated program on local agencies within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.

The claimant filed the test claim on August 1, 2002. The Commission adopted a Statement of Decision on December 4, 2006. The Commission adopted the parameters and guidelines on May 29, 2009, and issued corrected parameters and guidelines on June 16, 2009.¹ Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by December 1, 2009, and late claims by December 1, 2010.

Eligible Claimants and Period of Reimbursement

Any county, city, or city and county, special district or other local agency subject to the jurisdiction of PERB that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. However, the City of Los Angeles

¹ Exhibit A.

and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

The period of reimbursement for this program begins on July 1, 2001.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

1. Deduct from an employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b)).
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code, § 3502.5, subd. (c)).
3. Follow PERB procedures in responding to charges and appeals filed with PERB, by an entity other than the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or election. Mandated activities are:
 - a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Reg., tit. 8, §§ 32132, 32135 (Register 2001, No. 49));
 - b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
 - c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
 - d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
 - e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050 and 60070 (Register 2001, No. 49)); and
 - f. filing and responding to written motions in the course of the hearing. (Cal. Code Regs. tit. 8, § 32190. (Register 2001, No. 49.)

Statewide Cost Estimate

Staff reviewed the claims data submitted by 50 cities, 17 counties, and 6 special districts, and compiled by the SCO. The actual claims data showed that 258 claims were filed between fiscal years 2000-2001 and 2008-2009 for a total of \$4,925,403.² Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

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

² Claims data reported as of September 22, 2010.

There are 481 cities, 58 counties, and over 4,000 special districts in California. Of those, only 73 filed reimbursement claims for this program between 2001 and 2009. However, other eligible claimants could file reimbursement claims if they must participate in PERB hearings, which could increase the cost of the program.

2. *There is a wide variation in costs among claimants that is dependent on such circumstances as the number of PERB hearings, whether locals must attend informal conferences prior to the PERB hearings, and the amount of preparation required for the PERB hearing. These costs appear to be reimbursable.*

Staff reviewed the claims data and found a wide variation in costs among claimants.

Under the *Local Government Employee Relations* program, local agencies are reimbursed for participating in PERB hearings concerning unfair labor practices, and other circumstances. Therefore, the costs of this program will fluctuate depending on the number of entities that must participate in the PERB hearings each year, and the amount of preparation for the hearings.

The PERB decision-making process is quasi-judicial, and requires local agency representatives to be prepared for any hearing as required by any PERB agent, Administrative Law Judge, General Counsel, or the five-member PERB. Preparation may include drafting briefs, assembling documentation, evidence and exhibits, preparing witnesses, and attendance at the hearings.

The SCO conducted a preliminary desk review of these claims and approved them for reimbursement.

3. *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.*

As stated above, the SCO conducted a preliminary desk review of these claims. They reduced claims for various reasons, such as deducting penalties for late filings. They also rejected claims that were filed for amounts under the \$1,000 minimum threshold. The SCO may also conduct full field audits on this program, and reduce any claim it deems to be excessive or unreasonable.

4. *There may be several reasons that non-claiming local agencies did not file reimbursement claims, including but not limited to: (1) they did not incur more than \$1000 in increased costs for this program; (2) they did not have supporting documentation to file a reimbursement claim; and (3) they missed the deadline for filing reimbursement claims.*

Methodology

Fiscal Years 2000-2001 through 2008-2009

The statewide cost estimate for fiscal years 2000-2001 through 2008-2009 was developed by totaling the 258 actual reimbursement claims filed with the SCO for these years.

The statewide cost estimate includes eight fiscal years for a total of \$4,925,403. This averages to \$615,675 annually in costs for the state for this eight-year period. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2001-2002	18	\$ 123,130

2002-2003	27	\$ 184,753
2003-2004	35	\$ 253,199
2004-2005	30	\$ 525,115
2005-2006	28	\$ 546,881
2006-2007	36	\$1,191,655
2007-2008	43	\$1,408,892
2008-2009	41	\$691,778
TOTAL	258	\$4,925,403

Comments on the Draft Staff Analysis and Proposed Statewide Cost Estimate

On January 21, 2011, Commission staff issued the draft staff analysis and proposed statewide estimate for comment.³ On February 10, 2011, Department of Finance submitted comments stating it had no significant concerns with the proposed statewide cost estimate.⁴

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$4,925,403** for costs incurred in complying with the *Local Government Employee Relations* program.

³ Exhibit B.

⁴ Exhibit C.

Corrected: June 16, 2009

Adopted: May 29, 2009

PARAMETERS AND GUIDELINES

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901 (SB 739)

California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070

Register 2001, Number 49

Local Government Employee Relations

01-TC-30

I. SUMMARY OF THE MANDATE

The test claim statute amended the Meyers-Milias-Brown Act (hereinafter the “MMBA”) regarding employer-employee relations between local public agencies and their employees. The test claim statute and its attendant regulations created an additional method for creating an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (hereinafter “PERB”) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

On December 4, 2006, the Commission on State Mandates found that the test claim statute and regulations impose a partially reimbursable state-mandated program on local agencies for the following activities:

1. Deduct from an employees’ wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b)).
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code, § 3502.5, subd. (c)).
3. Follow PERB procedures in responding to charges and appeals filed with PERB, by an entity other than the local public agency employer, concerning an unfair labor practice, a unit determination, representation by an employee organization, recognition of an employee organization, or election. Mandated activities are:
 - a. procedures for filing documents or extensions for filing documents with PERB (Cal.Code Reg., tit. 8, §§ 32132, 32135 (Register 2001, No. 49));
 - b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));

- c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
- d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
- e. participate in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050 and 60070 (Register 2001, No. 49)); and
- f. filing and responding to written motions in the course of the hearing. (Cal. Code Regs. tit. 8, § 32190. (Register 2001, No. 49.)

II. ELIGIBLE CLAIMANTS

Any county, city, or city and county, special district or other local agency subject to the jurisdiction of PERB that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. However, the City of Los Angeles and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 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 test claim for this mandate was filed by the test claimants, the County of Sacramento and the City of Sacramento, on August 1, 2002. Therefore, the period of reimbursement begins on July 1, 2001.

Actual costs for one fiscal year shall be included in each claim. Pursuant to Government Code section 17561, subdivision (d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any given fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices and receipts.

Evidence corroborating the source documents may include, but is not limited to, time sheets, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, calendars, and declarations. Declarations must include a certification or declaration stating, "I

certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise reported in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below.

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the review and audit conducted by the State Controller’s Office.

For each eligible claimant, the following activities are eligible for reimbursement:

A. One Time Activities

1. Establish procedures and documentation for deduction from employees’ wages the payment of dues, or service fees, including transmittal of such payments, and handling proof of in lieu fee payments made to charitable organizations as required by the agency shop agreement pursuant to Government Code sections 3502.5, subdivisions (b) and (c).
2. Develop and provide training for employees charged with responsibility for responding to PERB administrative actions, including attorneys, supervisory and management personnel. (One time per employee).
3. Establish procedures and systems for handling PERB matters, including calendaring, docketing and file management systems.

B. On-Going Activities

1. Deduct from employees’ wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code, §, 3508.5, subd. (b).)
2. On a monthly basis, receive from the employee proof of in lieu fee payments made to charitable organizations pursuant to an agency shop arrangement that was established by signed petition and election in Government Code section 3502.5, subdivision (b). (Gov. Code, § 3502.5, subd. (c).)
3. When a person or entity other than the public entity files with the PERB an unfair practice charge, unit determination, representation by an employee organization, , recognition of an employee organization, or an election request, or the public agency employer is ordered by PERB to join in a matter, the following activities are reimbursable:
 - a. filing documents or requests for extension of time to file documents with PERB (Cal. Code Regs., tit.8, §§ 32132, 32135);
 - b. proof of service, including mailing and service costs (Cal. Code Regs., tit. 8, § 32140);

- c. preparation for and participation in informal conferences as required by any PERB Board agents and PERB Administrative Law Judges to clarify issues and explore the possibility of a voluntary settlement including, but not limited to, preparation of briefs, documentation and evidence, exhibits, witnesses and expert witnesses (Cal. Code Regs., tit.8, §§ 32170, subd. (e) and 32650);
- d. responding to subpoenas and investigative subpoenas, including the time spent obtaining the information or documentation requested in the subpoena, and copying and service charges (Cal. Code Regs., tit. 8, §§ 32149, 32150);
- e. the conduct of depositions, including service of subpoenas, deposition reporter and transcription fees, expert witness fees, preparation for the deposition and the time of any governmental employee or attorney incurred in the conduct of the deposition (Cal. Code Regs., tit. 8, § 32160);
- f. preparation for and participation in any hearing as required by any PERB Board agent, PERB Administrative Law Judge, the five-member PERB, or the General Counsel, including preparation of answer to complaint or answer to amendment, witnesses, evidence, exhibits, expert witnesses, statements^{1,2}, stipulated facts³ and informational briefs, oral argument, response to exceptions, response to administrative appeal or compliance matter.

Effective July 1, 2001 through May 10, 2006: California Code of Regulations, title 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, and 60070. (Register 2001, No. 49.)

Effective May 11, 2006: California Code of Regulations, title 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980. (Register 2001, No. 49.)

Effective May 11, 2006, responses to petitions for board review pursuant to former sections 60010, 60030, 60050, and 60070 of the California Code of Regulations, title 8, are not reimbursable. (Register 2006, No. 15.)

- g. The preparation, research, and filing of motions, including correction of transcript and responding to written motions in the course of a hearing and immediately after. (Cal. Code Regs., tit. 8, § 32190, 32209.)

¹ Section 32206.

² Section 32455 – preparation of written position statements or other documents filed with the General Counsel.

³ Section 32207.

C. Non-Reimbursable Activities

1. The following activities initiated by the local public agency are *not* state-mandated activities:
 - a. file an unfair practice charge (Cal. Code of Regs., tit. 8, §§ 32602, 32604, 32615, 32621, 32625, 32650);
 - b. appeal of a ruling on a motion (Cal. Code of Regs., tit. 8, § 32200);
 - c. amend complaint (Cal. Code of Regs., tit. 8, §§ 32625, 32648);
 - d. appeal of an administrative decision, including request for stay of activity and appeal of dismissal (Cal. Code of Regs., tit. 8, §§ 32350, 32360, 32370, 32635, and 60035);
 - e. statement of exceptions to Board agent decision (Cal. Code of Regs., tit. 8, § 32300);
 - f. request for reconsideration (Cal. Code of Regs., tit. 8, § 32410); and
 - g. request for injunctive relief (Cal. Code of Regs., tit. 8, § 32450).
2. Sections 3501, 3507.1 and 3509 of the Government Code do not apply to persons who are peace officers as defined in section 830.1 of the Penal Code. Therefore, increased costs related to peace officers are ineligible for reimbursement under this program. (Gov. Code, § 3511.)
3. Effective May 11, 2006, activities based on former sections 60010, 60030, 60050, and 60070 of California Code of Regulations, title 8, are not reimbursable.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for the reimbursable activities identified in section IV of this document. Each reimbursable cost must be supported by source documentation as described in section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after

deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services were also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and invoices with the claim and a description of the contract scope of services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include (1) the overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) if the indirect cost rate claimed exceeds 10%.

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) and the indirect shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B).) However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

The distributions base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

In calculating an ICRP, the claimant shall have the choice of one of the following methodologies:

1. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) classifying a department's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in 2 CFR Part 225, Appendix A and B (OMB Circular A-87 Attachments A and B)) shall be accomplished by (1) separate a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount allowable indirect costs bears to the base selected.

VI. RECORDS RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁴ is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING REVENUES AND REIMBURSEMENTS

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 received from any federal, state or non-local source shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

⁴ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1)(A), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon the request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

COMMISSION ON STATE MANDATES

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SACRAMENTO, CA 95814
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Exhibit B

January 21, 2011

Ms. Juliana Gmur
MAXIMUS Financial Services
2380 Houston Ave
Clovis, CA 93611

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Draft Staff Analysis, Proposed Statewide Cost Estimate and Hearing Date
Local Government Employment Relations, 01-TC-30
City of Sacramento and County of Sacramento, Claimants
Statutes 2000, Chapter 901 (SB 739)
California Code of Regulations, Title 8, Sections 31001-61630

Dear Ms. Gmur:

The draft staff analysis and proposed statewide cost estimate for the above-named program are enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by Friday, **February 11, 2011**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents on the Commission's website. Please see the Commission's website at <http://www.csm.ca.gov/dropbox.shtml> for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

Hearing

This matter is set for hearing on **Thursday, March 24, 2011**, at 9:30 a.m. in Room 447, State Capitol, Sacramento, California. The final staff analysis will be issued on or about March 10, 2011. This matter is proposed for the Consent Calendar. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,



Drew Bohan
Executive Director

Enclosures

ITEM _____

PROPOSED STATEWIDE COST ESTIMATE

Government Code Sections 3502.5 and 3508.5

Statutes 2000, Chapter 901

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Register 2001, Number 49

Local Government Employee Relations
01-TC-30

City of Sacramento and County of Sacramento, Claimants

EXECUTIVE SUMMARY

The proposed statewide cost estimate includes seven fiscal years for a total of **\$4,925,403** for the *Local Government Employee Relations* program. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2001-2002	18	\$ 123,130
2002-2003	27	\$ 184,753
2003-2004	35	\$ 253,199
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2005-2006	28	\$ 546,881
2006-2007	36	\$1,191,655
2007-2008	43	\$1,408,892
2008-2009	41	\$691,778
TOTAL	258	\$4,925,403

Background and Summary of the Mandate

The test claim statute and regulations amended the Meyers-Milias-Brown Act (MMBA) regarding employer-employee relations between local public agencies and their employees. The test claim statute and regulations created an additional method for creating an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (PERB) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Local Government Employee Relations* program (01-TC-30). The Commission found that the test claim statute and regulations constitute a new program or higher level of service and impose

a state-mandated program on local agencies within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514 for the following activities:

1. Deduct from an employee's wages the payment of dues or service fees and transmit such fees to the employee organization.
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations.
3. Follow PERB procedures in responding to specific charges and appeals filed with PERB, by an entity other than the local public agency employer.

Eligible Claimants and Period of Reimbursement

Any county, city, or city and county, special district or other local agency subject to the jurisdiction of PERB that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. However, the City of Los Angeles and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

The period of reimbursement for this program begins on July 1, 2001.

Statewide Cost Estimate

Staff reviewed the claims data submitted by 50 cities, 17 counties, and 6 special districts, and compiled by the SCO. The actual claims data showed that 258 claims were filed between fiscal years 2001-2002 and 2008-2009 for a total of \$4,925,403.¹ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

1. *The actual amount claimed for reimbursement may increase and exceed the statewide cost estimate, if other eligible claimants must participate in PERB hearings.*
2. *There is a wide variation in costs among claimants that is dependent on such circumstances as the number of PERB hearings, whether locals must attend informal conferences prior to the PERB hearings, and the amount of preparation required for the PERB hearing. The reimbursement claims were reviewed and approved by the SCO after cost adjustments for late filing penalties. Therefore, the claimed costs appear to be reimbursable.*
3. *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.*
4. *There may be several reasons that non-claiming local agencies did not file reimbursement claims, including but not limited to: (1) they did not incur more than \$1000 in increased costs for this program; (2) they did not have supporting documentation to file a reimbursement claim; and (3) they missed the deadline for filing reimbursement claims.*

Methodology

Fiscal Years 2000-2001 through 2008-2009

The proposed statewide cost estimate for fiscal years 2000-2001 through 2008-2009 was developed by totaling the 258 actual reimbursement claims filed with the SCO for these years.

¹ Claims data reported as of September 22, 2010.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$4,925,403** for costs incurred in complying with the *Local Government Employee Relations* program.

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim statute amended the Meyers-Milias-Brown Act (MMBA) regarding employer-employee relations between local public agencies and their employees. The test claim statute and its attendant regulations created an additional method for creating an agency shop arrangement, and expanded the jurisdiction of the Public Employment Relations Board (PERB) to include resolving disputes and enforcing the statutory duties and rights of those public employers and employees subject to the MMBA.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Local Government Employee Relations* program (01-TC-30). The Commission found that the test claim statute and regulations constitute a new program or higher level of service and impose a state-mandated program on local agencies within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514.

The claimant filed the test claim on August 1, 2002. The Commission adopted a Statement of Decision on December 4, 2006 and the parameters and guidelines on May 29, 2009. Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by December 1, 2009, and late claims by December 1, 2010.

Eligible Claimants and Period of Reimbursement

Any county, city, or city and county, special district or other local agency subject to the jurisdiction of PERB that incurs increased costs as a result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. However, the City of Los Angeles and the County of Los Angeles are not eligible claimants because they are specifically excluded from PERB jurisdiction pursuant to Government Code section 3507.

The period of reimbursement for this program begins on July 1, 2001.

Reimbursable Activities

The Commission approved the following activities for reimbursement:

1. Deduct from an employees' wages the payment of dues or service fees required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5, and transmit such fees to the employee organization. (Gov. Code § 3508.5, subd. (b)).
2. Receive from the employee any proof of in lieu fee payments made to charitable organizations required pursuant to an agency shop arrangement that was established under subdivision (b) of Government Code section 3502.5. (Gov. Code, § 3502.5, subd. (c)).
3. Follow PERB procedures in responding to charges and appeals filed with PERB, by an entity other than the local public agency employer, concerning an unfair labor practice, a

unit determination, representation by an employee organization, recognition of an employee organization, or election. Mandated activities are:

- a. procedures for filing documents or extensions for filing documents with PERB (Cal. Code Reg., tit. 8, §§ 32132, 32135 (Register 2001, No. 49));
- b. proof of service (Cal. Code Regs., tit. 8, § 32140 (Register 2001, No. 49));
- c. responding to subpoenas and investigative subpoenas (Cal. Code Regs., tit. 8, §§ 32149, 32150 (Register 2001, No. 49));
- d. conducting depositions (Cal. Code Regs., tit. 8, § 32160 (Register 2001, No. 49));
- e. participating in hearings and responding as required by PERB agent, PERB Administrative Law Judge, or the five-member PERB (Cal. Code Regs., tit. 8, §§ 32168, 32170, 32175, 32176, 32180, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050 and 60070 (Register 2001, No. 49)); and
- f. filing and responding to written motions in the course of the hearing. (Cal. Code Regs. tit. 8, § 32190. (Register 2001, No. 49.)

Statewide Cost Estimate

Staff reviewed the claims data submitted by 50 cities, 17 counties, and 6 special districts, and compiled by the SCO. The actual claims data showed that 258 claims were filed between fiscal years 2000-2001 and 2008-2009 for a total of \$4,925,403.² Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

Assumptions

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

There are 481 cities, 58 counties, and over 4,000 special districts in California. Of those, only 73 filed reimbursement claims for this program between 2001 and 2009. However, other eligible claimants could file reimbursement claims if they must participate in PERB hearings, which could increase the cost of the program.

2. *There is a wide variation in costs among claimants that is dependent on such circumstances as the number of PERB hearings, whether locals must attend informal conferences prior to the PERB hearings, and the amount of preparation required for the PERB hearing. These costs appear to be reimbursable.*

Staff reviewed the claims data and found a wide variation in costs among claimants.

Under the *Local Government Employee Relations* program, local agencies are reimbursed for participating in PERB hearings concerning unfair labor practices, and other circumstances. Therefore, the costs of this program will fluctuate depending on the number of entities that must participate in the PERB hearings each year, and the amount of preparation for the hearings.

The PERB decision-making process is quasi-judicial, and requires local agency representatives to be prepared for any hearing as required by any PERB agent,

² Claims data reported as of September 22, 2010.

Administrative Law Judge, General Counsel, or the five-member PERB. Preparation may include drafting briefs, assembling documentation, evidence and exhibits, preparing witnesses, and attendance at the hearings,

The SCO conducted a preliminary desk review of these claims and approved them for reimbursement.

3. *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.*

As stated above, the SCO conducted a preliminary desk review of these claims. They reduced claims for various reasons, such as deducting penalties for late filings. They also rejected claims that were filed for amounts under the \$1,000 minimum threshold. The SCO may also conduct full field audits on this program, and reduce any claim it deems to be excessive or unreasonable.

4. *There may be several reasons that non-claiming local agencies did not file reimbursement claims, including but not limited to: (1) they did not incur more than \$1000 in increased costs for this program; (2) they did not have supporting documentation to file a reimbursement claim; and (3) they missed the deadline for filing reimbursement claims.*

Methodology

Fiscal Years 2000-2001 through 2008-2009

The statewide cost estimate for fiscal years 2000-2001 through 2008-2009 was developed by totaling the 258 actual reimbursement claims filed with the SCO for these years.

The statewide cost estimate includes eight fiscal years for a total of \$4,925,403. This averages to \$615,675 annually in costs for the state for this eight-year period. Following is a breakdown of estimated total costs per fiscal year:

Fiscal Year	Number of Claims Filed with SCO	Estimated Cost
2001-2002	18	\$ 123,130
2002-2003	27	\$ 184,753
2003-2004	35	\$ 253,199
2004-2005	30	\$ 525,115
2005-2006	28	\$ 546,881
2006-2007	36	\$1,191,655
2007-2008	43	\$1,408,892
2008-2009	41	\$691,778
TOTAL	258	\$4,925,403

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$4,925,403** for costs incurred in complying with the *Local Government Employee Relations* program.



DEPARTMENT OF
FINANCE

EXHIBIT C

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

February 10, 2011

Mr. Drew Bohan
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Mr. Bohan:

The Department of Finance has reviewed the proposed statewide cost estimate for Claim No. 01-TC-30 "Local Government Employment Relations."

Finance has no significant concerns with the recommendation of the Commission on State Mandates (Commission) to adopt the statewide cost estimate of \$4,925,403 for fiscal years 2001-02 through 2008-09. As noted by the Commission's analysis, Commission staff reviewed the reimbursement claims filed for the eight-year period and found that the average annual cost of the mandate claims is approximately \$615,675. The Commission also notes that actual costs may be higher or lower based on audit findings or submittal of amended or late claims.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied the statewide cost estimate have been provided with copies of this letter via either United States Mail or email. Pursuant to section 1181.2, subdivision (c)(1)(E) of the California Code of Regulations, "documents e-filed with the Commission need not be otherwise served on persons that have provided an e-mail address for the mailing list."

If you have any questions regarding this letter, please contact Carla Shelton, Associate Finance Budget Analyst at (916) 445-8913.

Sincerely,

NONA MARTINEZ
Assistant Program Budget Manager

Enclosure

DECLARATION OF CARLA SHELTON
DEPARTMENT OF FINANCE
CLAIM NO. CSM-01-TC-30

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2-10-11

at Sacramento, CA



Carla Shelton

Commission on State Mandates

Original List Date: 8/1/2002
Last Updated: 3/7/2011
List Print Date: 03/07/2011
Claim Number: 01-TC-30
Issue: Local Government Employment Relations

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

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, § 1181.2.)

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