

**COMMISSION ON STATE MANDATES**

980 NINTH STREET, SUITE 300  
SACRAMENTO, CA 95814  
PHONE: (916) 323-3562  
FAX: (916) 445-0278  
E-mail: csminfo@csm.ca.gov



September 10, 2009

Mr. Keith Petersen  
SixTen and Associates  
3270 Arena Boulevard, Suite 400-363  
Sacramento, CA 95834

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

**RE: Final Staff Analysis, Proposed Statewide Cost Estimate, and Hearing Date**  
*Reporting Improper Governmental Activities, 02-TC-24*  
Education Code Section 87164  
Statutes 2001, Chapter 416, Statutes 2002, Chapter 81  
Santa Monica Community College District, Claimant

Dear Mr. Peterson:

The final staff analysis and proposed statewide cost estimate are enclosed.

**Hearing**

This test claim is set for hearing on Friday, **September 25, 2009**, at **9:30 a.m.** in the State Capitol, Room 447, 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.

**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.

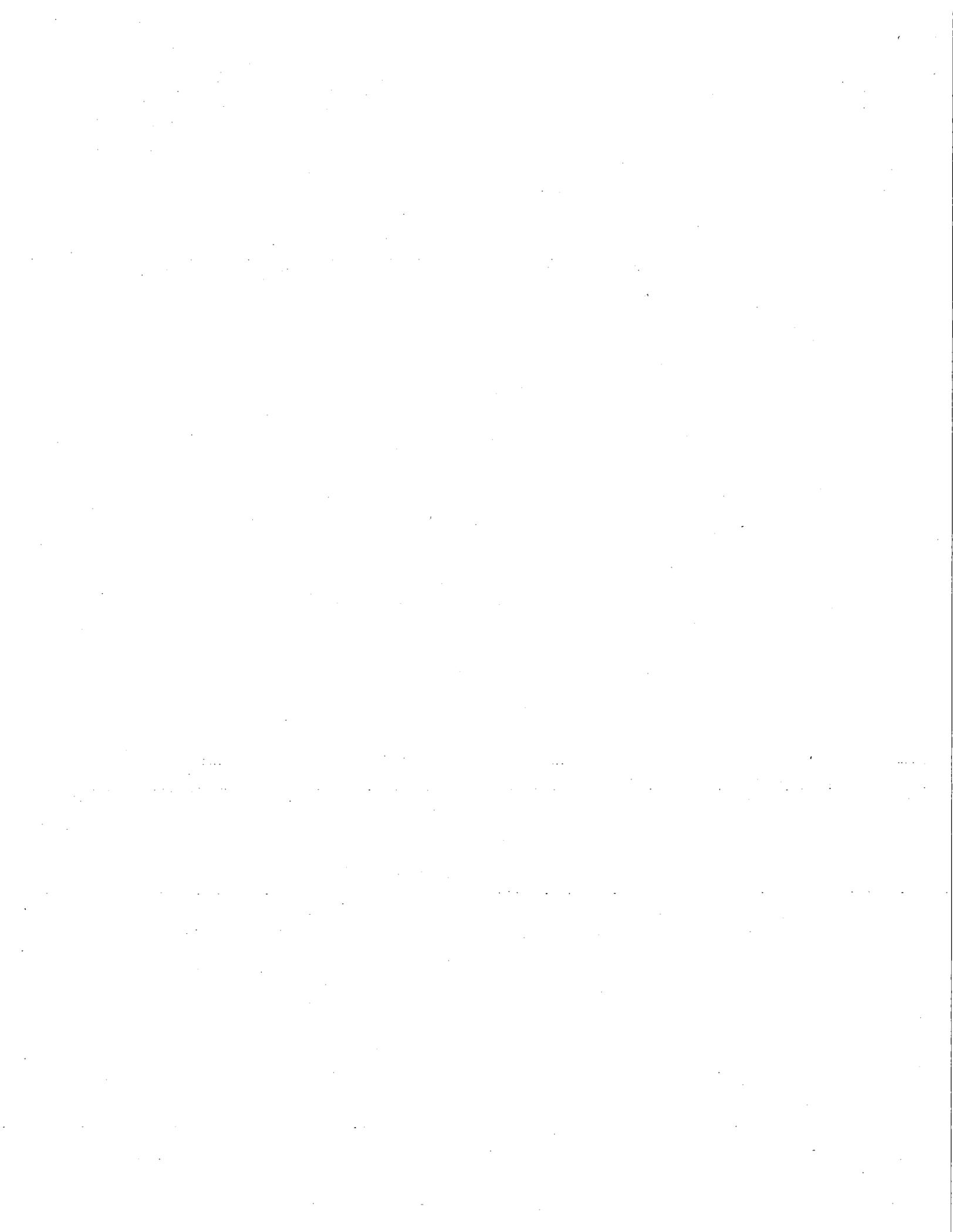
Please contact Nancy Patton at (916) 323-8217 if you have questions.

Sincerely,

Handwritten signature of Paula Higashi in cursive script.  
PAULA HIGASHI  
Executive Director

Enclosure

j:mandates/2002/02-TC-24/sce/scefsatrans



**ITEM 8  
FINAL STAFF ANALYSIS  
STATEWIDE COST ESTIMATE**

Education Code Section 87164

Statutes 2001, Chapter 416

Statutes 2002, Chapter 81

*Reporting Improper Governmental Activities*  
02-TC-24

Santa Monica Community College District, Claimant

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**Executive Summary**

The proposed statewide cost estimate includes two fiscal years for a total of \$41,516 for the *Reporting Improper Governmental Activities* program. Following is a breakdown of estimated total costs per fiscal year:

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
2006-2007	1	\$17,211
2007-2008	2	\$24,305
<b>TOTAL</b>	<b>3</b>	<b>\$41,516</b>

**Summary of the Mandate**

The approved test claim statutes address the procedures used to protect community college employees and applicants for employment from employees, officers, or administrators who intentionally engage in acts of reprisal, or coercion against an employee or applicant for employment who has disclosed improper governmental activity of the employer.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Reporting Improper Governmental Activities* program (02-TC-24). The Commission found that the test claim statute constitutes a new program or higher level of service and imposes a state-mandated program on community college districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514, for the cost of community college employees or applicants for employment filing complaints with the State Personnel Board (SPB), including the cost for SPB to conduct informal hearings or investigations of the complaint.

**Statewide Cost Estimate**

Staff reviewed the State Controller's (SCO) report on claims filed by two community college districts. The actual claims data showed that three claims were filed for fiscal years 2006-2007 and 2007-2008 for a total of \$41,516.<sup>1</sup> Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program.

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<sup>1</sup> Claims data reported as of August 18, 2009.

### Assumptions

1. *The actual amount claimed for reimbursement may increase if late or amended claims are filed.*
2. *Non-claiming community college districts did not file claims because: (1) no complaints were filed with SPB and thus, they did not incur more than \$1,000 in increased costs for this program; or (2) they did not have supporting documentation to file a reimbursement claim.*
3. *The total costs of this program may increase in future years if there are increases in the number of reports of improper governmental activities filed against community college district employees, officers or administrators.*
4. *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.*

### Methodology

#### *Fiscal Years 2006-2007 through 2007-2008*

The proposed statewide cost estimate for fiscal years 2006-2007 and 2007-2008 was developed by totaling the three unaudited reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes two fiscal years for a total of \$41,516 for the *Reporting Improper Governmental Activities* program.

### Comments on the Draft Staff Analysis

No comments were filed on the draft staff analysis.

### **Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$41,516** for costs incurred in complying with the *Reporting Improper Governmental Activities* program.

## STAFF ANALYSIS

### Summary of the Mandate

The approved test claim statutes address the procedures used to protect community college employees and applicants for employment from employees, officers, or administrators who intentionally engage in acts of reprisal, or coercion against an employee or applicant for employment who has disclosed improper governmental activity of the employer.

The Commission on State Mandates (Commission) adopted the Statement of Decision for the *Reporting Improper Governmental Activities* program (02-TC-24). The Commission found that the test claim statute constitutes a new program or higher level of service and imposes 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 cost of community college employees or applicants for employment filing complaints with the State Personnel Board (SPB), including the cost for SPB to conduct informal hearings or investigations of the complaint.

The test claim was filed on June 5, 2003. The Commission on State Mandates (Commission) adopted the Statement of Decision on September 27, 2007, and the parameters and guidelines on September 26, 2008.<sup>2</sup> Eligible claimants were required to file initial reimbursement claims with the State Controller's Office (SCO) by March 31, 2009, and must file late claims by March 31, 2010.

### Reimbursable Activities

For each eligible claimant, the following activities are reimbursable when an employee or applicant for employment files a complaint with the State Personnel Board alleging retaliation, acts of reprisal, or similar improper acts prohibited by Education Code section 87163:

- Beginning January 1, 2003, fully comply with the rules of practice and procedure of the State Personnel Board, set forth in California Code of Regulations, title 2, sections 56 – 57.4. This includes serving the employee or applicant for employment and the State Personnel Board with a written response to the applicant for employment's complaint addressing the allegations, and responding to investigations or attending hearings, and producing documents during investigations or hearings (Ed. Code, § 87164, subd. (c)(1), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2003, pay for all costs associated with the State Personnel Board hearing regarding a complaint filed by an employee or applicant for employment (Ed. Code, § 87164, subd. (c)(2), as added and amended by Stats. 2002, ch. 81).
- Beginning January 1, 2002, if the State Personnel Board finds that a supervisor, community college administrator, or public school employer has violated Education Code section 87163, to make an entry into that individual's official personnel file by placing a copy of the State Personnel Board's decision in that individual's official personnel file (Ed. Code, § 87164, subd. (f), as added by Stats. 2001, ch. 416).

### Statewide Cost Estimate

Staff reviewed the claims data submitted by two community college districts, and compiled by the State Controller's Office (SCO). The actual claims data showed that three claims were filed for fiscal years 2006-2007 and 2007-2008 for a total of \$41,516.<sup>3</sup> Based on this data, staff made

<sup>2</sup> Exhibit A, parameters and guidelines.

<sup>3</sup> Exhibit B, claims data reported as of August 18, 2009.

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 if late or amended claims are filed.*

There are 71 community college districts in California. Of those, only two filed reimbursement claims for this program. If other eligible claimants file reimbursement claims or late or amended claims, the amount of reimbursement claims may exceed the statewide cost estimate. For this program, late claims may be filed until March 2010.

2. *Non-claiming community college districts did not file claims because: (1) no complaints were filed with SPB and thus, they did not incur more than \$1,000 in increased costs for this program; or (2) they did not have supporting documentation to file a reimbursement claim.*

This program provides reimbursement only when community college district employees and applicants for employment submit complaints to the SPB, after which the SPB is required to initiate an informational hearing or investigation of the complaint. Therefore, reimbursement will only occur if complaints are filed.

Reimbursement for this program is authorized on or after January 1, 2002. However, no claims were filed until 2006-2007. No reimbursement claims were filed for fiscal years 2001-2002 through 2005-2006 because either no complaints were filed, or claimants did not retain the appropriate documentation for these years to file reimbursement claims.

3. *The total costs of this program may increase in future years if there are increases in the number of reports of improper governmental activities filed against community college district employees, officers or administrators.*
4. *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.*

If the SCO audits this program and deems any reimbursement claim to be excessive or unreasonable, it may be reduced.

Methodology

*Fiscal Years 2006-2007 and 2007-2008*

The proposed statewide cost estimate for fiscal years 2006-2007 and 2007-2008 was developed by totaling the three unaudited reimbursement claims filed with the SCO for these years.

The proposed statewide cost estimate includes two fiscal years for a total of \$41,516 for the *Reporting Improper Governmental Activities* program.

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

<b>Fiscal Year</b>	<b>Number of Claims Filed with SCO</b>	<b>Estimated Cost</b>
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<b>TOTAL</b>	<b>3</b>	<b>\$41,516</b>

Comments on the Draft Staff Analysis

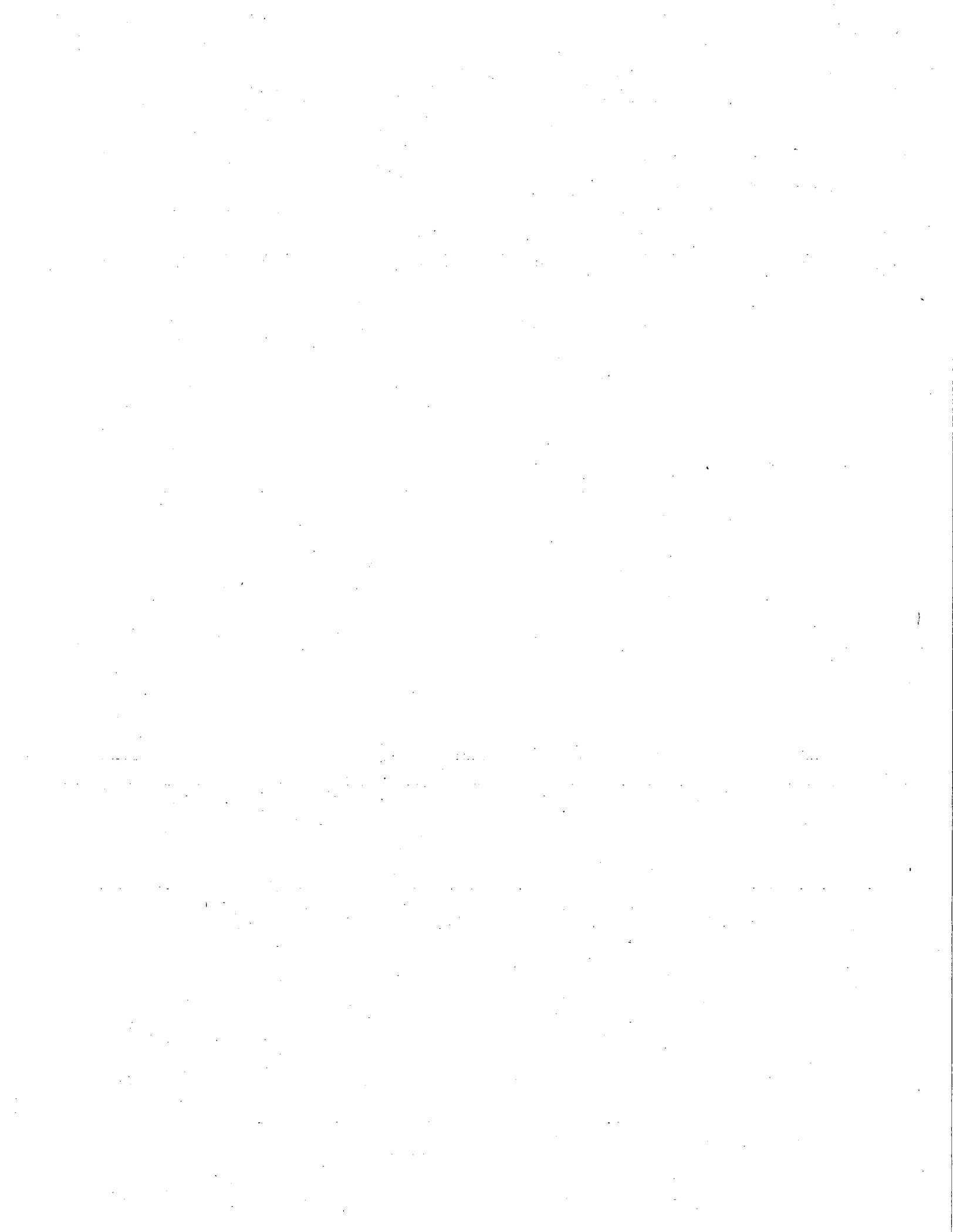
Staff issued the draft staff analysis on August 20, 2009.<sup>4</sup> No comments were filed on the draft staff analysis.

**Staff Recommendation**

Staff recommends that the Commission adopt the proposed statewide cost estimate of **\$41,516** for costs incurred in complying with the *Reporting Improper Governmental Activities* program.

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<sup>4</sup> Exhibit C.



# Commission on State Mandates

Original List Date: 6/18/2003  
Last Updated: 9/10/2009  
List Print Date: 09/10/2009  
Claim Number: 02-TC-24  
Issue: Reporting Improper Governmental Activities

## Agenda 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.)

Mr. Jim Spano State Controller's Office (B-08) Division of Audits 300 Capitol Mall, Suite 518 Sacramento, CA 95814	Tel: (916) 323-5849 Fax: (916) 327-0832
Ms. Carla Castaneda Department of Finance (A-15) 915 L Street, 12th Floor Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 323-9584
Mr. Robert Miyashiro Education Mandated Cost Network 1121 L Street, Suite 1060 Sacramento, CA 95814	Tel: (916) 446-7517 Fax: (916) 446-2011
Ms. Harmeet Barkschat Mandate Resource Services, LLC 5325 Elkhorn Blvd. #307 Sacramento, CA 95842	Tel: (916) 727-1350 Fax: (916) 727-1734
Ms. Sandy Reynolds Reynolds Consulting Group, Inc. P.O. Box 894059 Temecula, CA 92589	Tel: (951) 303-3034 Fax: (951) 303-6607
Mr. Michael Johnston Clovis Unified School District 1450 Herndon Ave Clovis, CA 93611-0599	Tel: (559) 327-9000 Fax: (559) 327-9129
Mr. Steve Shields Shields Consulting Group, Inc. 1536 36th Street Sacramento, CA 95816	Tel: (916) 454-7310 Fax: (916) 454-7312
Ms. Beth Hunter Centration, Inc. 8570 Utica Avenue, Suite 100 Rancho Cucamonga, CA 91730	Tel: (866) 481-2621 Fax: (866) 481-2682
Ms. Carol Bingham California Department of Education (E-08) Fiscal Policy Division 1430 N Street, Suite 5602 Sacramento, CA 95814	Tel: (916) 324-4728 Fax: (916) 319-0116

Mr. Erik Skinner California Community Colleges Chancellor's Office (G-01) 1102 Q Street Sacramento, CA 95814-6511	Tel: (916) 323-7007 Fax: (916) 322-4783
Chris Bonvenuto Santa Monica Community College District 1900 Pico Blvd. Santa Monica, CA 90405-1628	Tel: (310) 434-4201 Fax: (310) 434-8200
Mr. David E. Scribner Max8550 2200 Sunrise Boulevard, Suite 220 Gold River, CA 95670	Tel: (916) 852-8970 Fax: (916) 852-8978
Mr. Joe Rombold School Innovations & Advocacy 11130 Sun Center Drive, Suite 100 Rancho Cordova, CA 95670	Tel: (916) 669-5116 Fax: (888) 487-6441
Mr. David Cichella California School Management Group 3130-C Inland Empire Blvd. Ontario, CA 91764	Tel: (209) 834-0556 Fax: (209) 834-0087
Ms. Ginny Brummels State Controller's Office (B-08) Division of Accounting & Reporting 3301 C Street, Suite 500 Sacramento, CA 95816	Tel: (916) 324-0256 Fax: (916) 323-6527
Ms. Jeannie Oropeza Department of Finance (A-15) Education Systems Unit 915 L Street, 7th Floor Sacramento, CA 95814	Tel: (916) 445-0328 Fax: (916) 323-9530
Ms. Susan Geanacou Department of Finance (A-15) 915 L Street, Suite 1280 Sacramento, CA 95814	Tel: (916) 445-3274 Fax: (916) 449-5252
Ms. Jolene Tollenaar MGT of America 455 Capitol Mall, Suite 600 Sacramento, CA 95814	Tel: (916) 712-4490 Fax: (916) 290-0121
Ms. Suzanne Ambrose State Personnel Board (E-09) 801 Capitol Mall, Room 150 Sacramento, CA 95814	Tel: Fax: (916) 653-1028
Mr. Keith B. Petersen SixTen & Associates 3270 Arena Blvd., Suite 400-363 Sacramento, CA 95834	Tel: (916) 419-7093 Fax: (916) 263-9701