

ITEM 8
PROPOSED PARAMETERS AND GUIDELINES
AND
STATEMENT OF DECISION

Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(a) and 53235.2(a)

Statutes 2005, Chapter 700

Local Agency Ethics (AB 1234)
07-TC-04

This matter was rescheduled from July 27, 2012 to September 28, 2012. Except to reflect the date change, no other revisions were made to this document.

Executive Summary

The following is the proposed statement of decision for this matter prepared pursuant to section 1188.1 of the Commission's regulations. As of January 1, 2011, Commission hearings on the adoption of proposed parameters and guidelines are conducted under article 7 of the Commission's regulations.¹ Article 7 hearings are quasi-judicial hearings. The Commission is required to adopt a decision that is correct as a matter of law and based on substantial evidence in the record.² Oral or written testimony is offered under oath or affirmation in article 7 hearings.³

Summary of the Mandate

The test claim statute addresses activities of local agencies related to transparency and ethics training for members of the legislative bodies of local agencies. Specifically, it addresses the policymaking, reporting, recordkeeping, ethics training and notice requirements imposed on local agencies if they provide any type of compensation, salary, or stipend to a member of a legislative body, or provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim legislation imposes a partially reimbursable state-mandated

¹ California Code of Regulations, Title 2, section 1187.

² Government Code section 17559(b); California Code of Regulations, Title 2, section 1187.5.

³ *Ibid.*

program on general law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B, that are required by their enabling acts to provide reimbursement of expenses to perform the following activities:

1. Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;⁴
2. Provide expense report forms;⁵
3. Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;⁶
4. Maintain training records, inclusive of training date and training provider, for five years.⁷

Staff Recommendation

Staff recommends that the Commission:

- Adopt the attached proposed statement of decision and proposed parameters and guidelines; and
- Authorize staff to make any non-substantive, technical corrections to these parameters and guidelines following the hearing.

⁴ Government Code section 53232.2(b).

⁵ Government Code section 53232.3(a).

⁶ Government Code section 53235(a).

⁷ Government Code section 53235.2(a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
FOR:

Government Code Sections 53232.2(b),
53232.3(a) and (b), 53235(a), and 53235.2(a)
Statutes 2005, Chapter 700

Period of reimbursement beginning:
July 1, 2006.

Case No.: 07-TC-04

Local Agency Ethics (AB 1234)

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

*(Proposed for Adoption:
September 28, 2012)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) adopted this statement of decision and parameters and guidelines during a regularly scheduled hearing on September 28, 2012. [Witness list will be included in the final statement of 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 parameters and guidelines and statement of decision by a vote of [Vote count will be included in the final statement of decision].

I. Summary of the Mandate

The test claim statute addresses activities of local agencies related to transparency and ethics training for members of the legislative bodies of local agencies. Specifically, it addresses the policymaking, reporting, recordkeeping, ethics training and notice requirements imposed on local agencies if they provide any type of compensation, salary, or stipend to a member of a legislative body, or provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim legislation imposes a partially reimbursable state-mandated

program upon on general law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B, that are required by their enabling acts to provide reimbursement of expenses, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. Procedural History

The test claim statement of decision was adopted on May 25, 2012.⁸ Claimant requested that the Commission issue expedited draft proposed parameters and guidelines, which Commission staff issued for comment on June 5, 2012.⁹ On June 27, 2012, the Department of Finance filed comments recommending one clarifying change but otherwise concurring with the draft parameters and guidelines.¹⁰

III. Commission Findings

The test claim statement of decision, the draft parameters and guidelines, the comments filed by the Department of Finance were reviewed and considered by the Commission as discussed below.

III. Period of Reimbursement

The Department of Finance requested an amendment to add the following underlined language to the boilerplate provisions of Section III, Period of Reimbursement: “6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law and for which funds have not been appropriated in the annual Budget Act.”

The Commission did not add the requested language. To suspend the operation of a mandate pursuant to state law, Government code section 17581 requires that funds not be appropriated in the Budget Act. In addition, the suspension statute also requires a specific identification of the mandate being suspended in a schedule. The language in 17581(a)(2) states the following: the “statute or executive order, or portion thereof, or the commission’s test claim number, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.” Therefore, the Commission did not make this change because it is unnecessary and already covered by the language that the suspension of the mandate is “pursuant to state law.” In addition, the added language may be confusing since it only partially addresses the requirements of Government Code section 17581 to suspend a mandated program for local agencies.

⁸ Exhibit A.

⁹ Exhibit B.

¹⁰ Exhibit C.

The Commission also removes the following language from the parameters and guidelines:

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Activities that require varying levels of efforts are not appropriate for time studies. Claimants wishing to use time studies to support salary and benefit costs are required to comply with the State Controller's Time-Study Guidelines before a time study is conducted. Time study usage is subject to the review and audit conducted by the State Controller's Office.

This language was mistakenly included in the parameters and guidelines for the test claim as boilerplate language, but has not been adopted by the Commission as such.

IV. Conclusion

The Commission adopts the parameters and guidelines and statement of decision for the *Local Agency Ethics Program (AB 1234)*, 07-TC-04, with a period of reimbursement beginning July 1, 2006.

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(a) and 53235.2(a)

Statutes 2005, Chapter 700

Local Agency Ethics (AB 1234)

07-TC-04

I. SUMMARY OF THE MANDATE

The test claim statute addresses activities of local agencies related to transparency and ethics training for members of the legislative bodies of local agencies. Specifically, it addresses the policymaking, reporting, recordkeeping, ethics training and notice requirements imposed on local agencies if they provide any type of compensation, salary, or stipend to a member of a legislative body, or provide reimbursement for actual and necessary expenses incurred by a member of a legislative body in the performance of official duties.

On May 25, 2012, the Commission on State Mandates (Commission) adopted a statement of decision finding that the test claim statute imposes a partially reimbursable state-mandated program on general law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B, that are required by their enabling acts to provide reimbursement of expenses to perform the following:

1. Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;¹
2. Provide expense report forms;²
3. Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;³
4. Maintain training records, inclusive of training date and training provider, for five years.⁴

II. ELIGIBLE CLAIMANTS

General law counties and those eligible special districts subject to the tax and spend provisions of articles XIII A and XIII B of the California Constitution, that are required by their enabling act to provide reimbursement of expenses to perform the reimbursable activities are eligible to claim reimbursement.

¹ Government Code section 53232.2(b).

² Government Code section 53232.3(a).

³ Government Code section 53235(a).

⁴ Government Code section 53235.2(a).

III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e), states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The City of Newport Beach filed the test claim on October 23, 2007, establishing eligibility for reimbursement for the 2006-2007 fiscal year. Therefore, costs incurred are reimbursable on or after July 1, 2006.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(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.
3. Pursuant to Government Code section 17560(a), a local agency may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Government Code section 17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any 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, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, 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 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. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that is required by their enabling act to provide reimbursement of expenses to members of their legislative bodies, and that incurs increased costs, the following activities are reimbursable:

1. Adopt a written policy, in a public meeting specifying the types of occurrences that qualify a member of the legislative body to receive reimbursement of expenses relating to travel, meals, lodging and other actual and necessary expenses;⁵
2. Provide expense report forms to the members of the legislative body;⁶
3. Provide information on training courses to meet the ethics training requirements imposed by the test claim statute to its local officials at least once annually;⁷
4. Maintain training records indicating the dates that local officials satisfied the ethics training and the entity that provided the training, for five years.⁸

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed 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 the 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

⁵ Government Code section 53232.2(b).

⁶ Government Code section 53232.3(a).

⁷ Government Code section 53235(a).

⁸ Government Code section 53235.2(a).

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 are 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 attorney invoices with the claim and a description of the contract scope of services.

4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset 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, 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 both: (1) 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 2 CFR Part 225 (Office of Management and Budget (OMB) Circular A-87). Claimants have the option of using 10% of direct 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 costs 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 distribution 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 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 of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 Attachments A and B) shall be accomplished by: (1) separating 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 of allowable indirect costs bears to the base selected.

VI. RECORD 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 chapter⁹ is subject to the initiation of an audit by the 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. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. 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 offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 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.

⁹ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Pursuant to Government Code section 17561(d)(1), 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 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 and the Controller shall 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(d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The statements of decision for the test claim and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.