



JOHN CHIANG
California State Controller

December 22, 2014

RECEIVED
December 22, 2014
*Commission on
State Mandates*

LATE FILING

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: **Incorrect Reduction Claim (IRC)**

Peace Officers Procedural Bill of Rights, 12-4499-I-02

Government Code Sections 3300-3310

Statutes 1976, Chapter 465; Statutes 1978, Chapter 775, 1173, 1174, and 1178;

Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;

Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

Fiscal Years: 2003-2004, 2004-2005, 2005-2006, 2006-2007, and 2007-2008

City of Los Angeles, Claimant

Dear Ms. Halsey:

The State Controller's Office is transmitting our response to the above-named IRC.

If you have any questions, please contact me by telephone at (916) 323-5849.

Sincerely,

JIM L. SPANO, Chief
Mandated Cost Audits Bureau
Division of Audits

JLS/sk

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**RESPONSE BY THE STATE CONTROLLER'S OFFICE
TO THE INCORRECT REDUCTION CLAIM (IRC) BY
THE CITY OF LOS ANGELES**

Peace Officers Procedural Bill of Rights Program

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Note: References to Exhibits relate to the city's IRC filed on September 28, 2012, as follows:

- Exhibit I – PDF page 10
- Exhibit II – PDF page 71
- Exhibit III – PDF page 108
- Exhibit IV – PDF page 133

References to Files relate to the city's Supplemental Material filed on October 10, 2012, as follows:

- File #1 – PDF page 2
- File #2 – PDF page 18
- File #3 – PDF page 24
- File #4 – PDF page 50
- File #5 – PDF page 85

Tab 1

1 **OFFICE OF THE STATE CONTROLLER**

Division of Audits

2 3301 C Street, Suite 725

Sacramento, CA 94816

3 Telephone No.: (916) 323-5849

4
5 **BEFORE THE**

6 **COMMISSION ON STATE MANDATES**

7 **STATE OF CALIFORNIA**

8
9
10 **INCORRECT REDUCTION CLAIM (IRC)**
11 **ON:**

IRC No.: 12-4499-I-02

12 *Peace Officers Procedural Bill of Rights*
13 *Program*

AFFIDAVIT OF BUREAU CHIEF

14 Government Code Sections 3300-3310
15 Statutes 1976, Chapter 465; Statutes 1978,
16 Chapter 775, 1173, 1174, and 1178; Statutes
1979, Chapter 405; Statutes 1980, Chapter
1367; Statutes 1982, Chapter 994; Statutes
1983, Chapter 964; Statutes 1989, Chapter
1165; and Statutes 1990, Chapter 675

17 **CITY OF LOS ANGELES. Claimant**

18 I, Jim L. Spano, make the following declarations:

- 19 1) I am an employee of the State Controller's Office (SCO) and am over the age of 18
- 20 years.
- 21 2) I am currently employed as a bureau chief, and have been so since April 21, 2000.
- 22 Before that, I was employed as an audit manager for two years and three months.
- 23 3) I am a California Certified Public Accountant.
- 24 4) I am an employee of the SCO and am over the age of 18 years.
- 25 5) I am currently employed as a bureau chief, and have been so since April 21, 2000.
- Before that, I was employed as an audit manager for two years and three months.

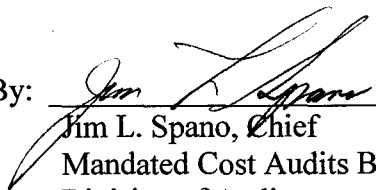
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- 6) I reviewed the work performed by the SCO auditor.
- 7) Any attached copies of records are true copies of records, as provided by the City of Los Angeles or retained at our place of business.
- 8) The records include claims for reimbursement, along with any attached supporting documentation, explanatory letters, or other documents relating to the above-entitled Incorrect Reduction Claim.
- 9) A field audit of the claims for fiscal year (FY) 2003-04, FY 2004-05, FY 2005-06, FY 2006-07, and FY 2007-08 commenced February 10, 2009, and ended on September 29, 2009.

I do declare that the above declarations are made under penalty of perjury and are true and correct to the best of my knowledge, and that such knowledge is based on personal observation, information, or belief.

Date: December 22, 2014

OFFICE OF THE STATE CONTROLLER

By: 
Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 2

**STATE CONTROLLER'S OFFICE ANALYSIS AND RESPONSE
TO THE INCORRECT REDUCTION CLAIM BY
THE CITY OF LOS ANGELES**

For Fiscal Year (FY) 2003-04, FY 2004-05, FY 2005-06, FY 2006-07, and FY 2007-08

**Peace Officers Procedural Bill of Rights Program
Government Code Sections 3300-3310
Statutes 1976, Chapter 465;
Statutes 1978, Chapter 775, 1173, 1174, and 1178;
Statutes 1979, Chapter 405;
Statutes 1980, Chapter 1367;
Statutes 1982, Chapter 994;
Statutes 1983, Chapter 964;
Statutes 1989, Chapter 1165; and
Statutes 1990, Chapter 675**

SUMMARY

The following is the State Controller's Office's (SCO) response to the Incorrect Reduction Claim (IRC) that the City of Los Angeles submitted on September 28, 2012. The SCO audited the city's claims for costs of the legislatively mandated Peace Officers Procedural Bill of Rights (POBOR) Program for the period of July 1, 2003, through June 30, 2008. The SCO issued its final report on September 29, 2009 (**Exhibit III**).

The city submitted reimbursement claims totaling \$50,281,773 (**Exhibit IV**)—\$10,076,122 for fiscal year (FY) 2003-04, \$8,749,350 for FY 2004-05, \$9,395,485 for FY 2005-06, \$8,457,653 for FY 2006-07, and \$13,603,163 for FY 2007-08. Subsequently, the SCO audited these claims and determined that \$20,131,194 is allowable and \$30,150,579 is unallowable. The city claimed ineligible costs and misstated productive hourly wage rates.

The following table summarizes the audit results:

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2003, through June 30, 2004</u>			
Direct costs:			
Salaries	\$ 4,858,882	\$ 2,110,512	\$ (2,748,370)
Benefits	1,519,373	654,782	(864,591)
Services and supplies	708,683	—	(708,863)
Total direct costs	7,086,938	2,765,294	(4,321,644)
Indirect costs	2,989,184	1,279,800	(1,709,384)
Total program costs	<u>\$ 10,076,122</u>	4,045,094	<u>\$ (4,321,644)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 4,045,094</u>	

<u>Cost Elements</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
<u>July 1, 2004, through June 30, 2005</u>			
Direct costs:			
Salaries	\$ 4,401,434	\$ 1,751,065	\$ (2,650,369)
Benefits	1,599,249	636,890	(962,359)
Total direct costs	6,000,683	2,387,955	(3,612,728)
Indirect costs	2,748,667	1,114,991	(1,633,676)
Total program costs	<u>\$ 8,749,350</u>	3,502,946	<u>\$ (5,246,404)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 3,502,946</u>	
<u>July 1, 2005, through June 30, 2006</u>			
Direct costs:			
Salaries	\$ 4,985,402	\$ 1,993,037	\$ (2,992,365)
Benefits	1,916,184	765,985	(1,150,199)
Total direct costs	6,901,586	2,759,022	(4,142,564)
Indirect costs	2,493,899	1,012,656	(1,481,243)
Total program costs	<u>\$ 9,395,485</u>	3,771,678	<u>\$ (5,623,807)</u>
Less amount paid by the State ¹		(3,771,678)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>July 1, 2006, through June 30, 2007</u>			
Direct costs:			
Salaries	\$ 4,516,381	\$ 1,800,575	\$ (2,715,806)
Benefits	1,966,746	784,387	(1,182,359)
Total direct costs	6,483,127	2,584,962	(3,898,165)
Indirect costs	1,974,526	797,347	(1,177,179)
Total program costs	<u>\$ 8,457,653</u>	3,382,309	<u>\$ (5,075,344)</u>
Less amount paid by the State ¹		(3,382,309)	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>	
<u>July 1, 2007, through June 30, 2008</u>			
Direct costs:			
Salaries	\$ 6,699,960	\$ 2,664,537	\$ (4,035,423)
Benefits	3,184,851	1,267,328	(1,917,523)
Total direct costs	9,884,811	3,931,865	(5,952,946)
Indirect costs	3,718,352	1,497,302	(2,221,050)
Total program costs	<u>\$ 13,603,163</u>	5,429,167	<u>\$ (8,173,996)</u>
Less amount paid by the State ¹		—	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 5,429,167</u>	

<u>Summary: July 1, 2003, through June 30, 2008</u>	<u>Actual Costs Claimed</u>	<u>Allowable per Audit</u>	<u>Audit Adjustment</u>
Direct costs:			
Salaries	\$ 25,462,059	\$ 10,319,726	\$ (15,142,333)
Benefits	10,186,403	4,109,372	(6,077,031)
Services and supplies	708,683	—	(708,683)
Total direct costs	36,357,145	14,429,098	(21,928,047)
Indirect costs	13,924,628	5,702,096	(8,222,532)
Total program costs	<u>\$ 50,281,773</u>	20,131,194	<u>\$ (30,150,579)</u>
Less amount paid by the State ¹		<u>(7,153,987)</u>	
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 12,977,207</u>	

Recap by Component

Administrative activities	\$ 4,072,635	\$ 179,583	\$ (3,893,052)
Interrogations	17,519,767	1,709,075	(15,810,692)
Adverse comment	28,689,371	18,242,536	(10,446,835)
Total program costs	<u>\$ 50,281,773</u>	<u>\$ 20,131,194</u>	<u>\$ (30,150,579)</u>

¹ Payment information current as of December 17, 2014.

I. PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM CRITERIA

Parameters and Guidelines – August 17, 2000

On July 27, 2000, the Commission on State Mandates (Commission) adopted parameters and guidelines and corrected them on August 17, 2000, for Government Code Sections 3300-3310 Statutes 1976, Chapter 465; Statutes 1978, Chapter 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675 [Tab 4]. These parameters and guidelines are applicable to the county's FY 2003-04, FY 2004-05, and FY 2005-06 claims.

The Commission amended the parameters and guidelines [Tab 5] on December 4, 2006, pursuant to Statutes of 2005, Chapter 72, section 6 (AB 138), which added section 3313 to the Government Code to direct the Commission to review the statement of decision adopted in 1999 to clarify whether the subject legislation imposed a mandate consistent with the California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions. The Commission found that the test claim legislation constitutes a state-mandated program with the following changes:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed), pursuant to Government Code section 3304, is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations in which the chief of police is removed. (Stats. 1998, ch. 786, subsection 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a new punitive action protected by the due process

clause does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Commission also added the SCO's "source document language" defining the types of documentation required to support claimed costs. Section IV, Reimbursable Activities, requires the city to claim actual costs. It states, in part:

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 cost are those cost actually incurred to implement the mandated activities. Actual cost 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, training packets, and declarations...corroborating documents cannot be substituted for source documents.

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 by the State Controller's Office.

These parameters and guidelines were the version extant for the city's FY 2006-07 claim.

The Commission amended the parameters and guidelines again [Tab 6] on March 28, 2008, to allow claimants the options of claiming costs using a reasonable reimbursement methodology or by filing an actual cost claim. These parameters and guidelines were the version extant for the city's FY 2007-08 claim. The city chose the option of filing an actual cost claim.

SCO Claiming Instructions

The SCO annually issues mandated cost claiming instructions, which contain filing instructions for mandated cost programs. The SCO issued POBOR Program claiming instructions on October 2, 2000. The October 2000 claiming instructions [File #1] are believed to be, for the purposes and scope of the audit period, substantially similar to the version extant at the time the city filed its mandated cost claims.

III. THE CITY CLAIMED UNALLOWABLE SALARIES, BENEFITS, AND RELATED INDIRECT COSTS

Issue

The city's IRC contests Finding 1 in the SCO's final audit report issued September 29, 2009 [Exhibit III], related to unallowable salaries, benefits, and related indirect costs. The SCO concluded that the city claimed ineligible salaries and benefits totaling \$21,464,469 [Tab 7] because costs claimed were for ineligible activities. Related unallowable indirect costs totaled \$8,307,090. The city believes that the SCO erred by limiting the scope of the eligible activities for the Administrative Activities, Interrogations, and Adverse Comment cost components. We will address the issues raised by the city by individual cost component in the same order that they were raised by the city.

Administrative Activities

SCO's Analysis

The city claimed salary and benefit costs for ineligible activities totaling \$2,746,417 [Tab 7]. The parameters and guidelines [Tab 4], section IV(A) (Administrative Activities, Ongoing Activities), allow for reimbursement of the following ongoing activities:

1. Developing or updating internal policies, procedures, manuals, and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate.
3. Updating the status of POBOR cases.

During our audit of the city's POBOR claims filed for FY 2003-04 through FY 2007-08, we examined the time study that the city conducted in FY 2003-04. During our examination of the city's time study, we determined that the following two activities are reimbursable:

- **Status** – This activity occurs in the Administrative Records Section (ARS) and involves the time needed to update status changes within POBOR case files. Per Los Angeles Police Department (LAPD) staff, the cases are updated for every activity and/or procedural change.
- **Assign** – This activity solely consists of updating the database and noting the case assignment to an investigator for adjudication.

We also determined that the following seven activities are not reimbursable:

- **Comment** – The ARS section in Internal Affairs (IA) performs this task by creating a file and a case number when the Professional Standards Bureau receives a "1.28" complaint form. Per LAPD staff, this activity is an internal procedure created by LAPD to ensure compliance with the investigation time frame of one year.
- **Locate** – This activity denotes the time required for the Classifications Unit to read the "1.28" (complaint form) and determine the best entity to perform the investigation. After determining which entity will investigate, the form is sent to the ARS.
- **Invest** – When the investigation is complete, the case file is sent to the Review and Evaluation Section. This activity consists of updating the database to note this information.
- **IA Review** – This activity consists of the time it takes to update the database for Internal Affairs' Group (IAG) review. Per LAPD staff, this activity is similar to Invest, but one IAG section or division will review the investigation of another IAG investigation unit for thoroughness, facts, results, and conclusions. The IA review is another type of review and another change in status.
- **Appeal** – This activity takes place when the case is sent to the Advocate Section, where another file is created and entered into the Advocate Database. Per LAPD staff, the case is at this point, in the appeal phase and is no longer being investigated or reviewed. This activity pertains to the procedural process of transferring a case in the Advocate Unit, tracking the appeal process, and tracking the case.

- **Note** – This activity consists of distributing copies of the face sheet (which contains the summary of allegations and the names of the involved parties) to concerned entities. This activity occurs in the ARS and is based on the time it takes to update the database for the activity.
- **Close out** – The ARS closes out the case file and documents this activity. This activity is a database update function.

The Commission staff analysis (dated July 27, 2000) [Tab 8] for the proposed parameters and guidelines noted that “before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary hearings, and maintaining files for those cases.”

Accordingly, it is our understanding that reimbursement is unallowable for activities related to managing case files. The parameters and guidelines allow reimbursement for those activities that relate to updating the status report of the mandate-related activities.

City’s Response

Administrative Activities Cost Component

For the Administrative Activities cost component, the City claimed \$2,864,828 in salaries and benefits for the audit period. The SCO determined that \$118,411 is allowable and \$2,746,417 is unallowable. The SCO disallowed the costs because it believed the City claimed reimbursement for unallowable activities. Related unallowable indirect costs totaled \$1,054,878. The total disallowed costs were \$3,801,295.

The City claimed costs for nine activities under this component. The SCO determined that the following two activities are reimbursable:

- **Status:** This activity occurs in the Administrative Records Section (ARS) and involves the time needed to update status changes within POBOR case files. Per LAPD staff, the cases are updated for every activity and/or procedural change.
- **Assign:** This activity consists solely of updating the database and noting the case assignment to an investigator for adjudication.

The SCO disallowed all costs claimed for all other activities included in the Administrative Activities component of the claims. The seven activities as defined by the City’s Police Department are as follows:

- **Locate:** This activity denotes the time required for the Classifications Unit to read the complaint form and determine the best entity to perform the investigation. After determining which entity will investigate, the form is sent to the Administrative Records Section.
- **Invest:** When the investigation is complete, the case file is sent to the Review and Evaluation Section. This activity consists of updating the database to note this information.
- **IA Review:** This activity consists of the time it takes to update the database for Internal Affairs Group (IAG) review. Per LAPD staff, this activity is similar to Invest, but one IAG section or division will review the investigation of another IAG investigation unit for thoroughness, facts, results, and conclusions. It is another level of review and another change *in status*.
- **Appeal:** This activity takes place when the case is going to the Advocate Section, where another file is created and entered into the Advocate Database. Per LAPD staff, the case is in the appeal phase and is no longer being investigated or reviewed. This activity pertains to the procedural process of transferring a case in the Advocate Unit, tracking the appeal process, and tracking where the case is in the process.

- Note: This activity consists of distributing copies of the face sheet, which contains the summary of allegations and the names of the involved parties, to concerned parties. This activity occurs in ARS and is based on the time it takes to update the database for the activity.
- Close Out: Staff of ARS closes out the case file and documents this activity. This activity is a database update function.

The SCO's audit adjustment is based on their contention that the costs are unallowable because the City claimed reimbursement for activities that are not identified in the parameters and guidelines as reimbursable costs. As mentioned above, the SCO found that only two (2) of the nine (9) administrative activities included in the City's time study were allowable. The SCO determined that seven (7) administrative activities for which time was claimed by the City are not reimbursable because they include a number of administrative steps not covered by the parameters and guidelines and are not necessary to complete the administrative activities associated with each case. The SCO believes the activities are related to managing those case files.

The City finds the SCO has incorrectly interpreted the parameters and guidelines and statement of decision for the POBOR program. Their extremely narrow and limited interpretation has resulted in the disallowance of nearly 95% of the costs. The City does not agree with the SCO's interpretation of what is necessary to comply with the constitutional "due process" activities afforded all government employees and what additional activities are imposed on peace officers by the POBOR mandate. The City asserts that all of the seven activities are necessary for a local agency the size and complexity of the Los Angeles Police Department to carry out the administrative activities associated with the mandate.

SCO's Comment

The city states its belief that we deemed "that the seven (7) administrative activities for which time was claimed by the city are not reimbursable because they include a number of administrative steps not covered by the parameters and guidelines and are not necessary to complete the administrative activities associated with each case." While the city is correct that we deemed the seven activities to be outside the scope of the mandated program, our audit report does not state that the seven activities in question are "not necessary to complete the administrative activities associated with each case." The issue is whether or not those activities are reimbursable under the mandated program. We determined that the costs claimed were for activities related to managing case files, not the reimbursable activity of updating the status report of the mandate-related activities. Our final audit report [Exhibit III] was issued on September 29, 2009. Since that time, the city has not provided any additional information or clarification identifying how the seven activities in question constitute the reimbursable activity of updating the status report of the mandate-related activities.

The city also states, "that all of the seven activities are necessary for a local agency the size and complexity of the Los Angeles Police Department to carry out the administrative activities associated with the mandate." However, the size and complexity of the city's Police Department has no bearing on whether or not the costs are reimbursable under the mandated program.

The city also states that it "does not agree with SCO's interpretation of what is necessary to comply with the constitutional 'due process' activities afforded all government employees." However, our audit report includes no references or findings related to compliance with constitutionally protected due process activities. Further, we made no such interpretation when conducting our audit, as suggested by the city. The scope of our audit appears on page 2 of the audit report, which states:

We conducted our audit to determine whether costs claimed represent increased costs resulting from the POBOR Program for the period of July 1, 2003, through June 30, 2008. Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

The city is taking the reimbursable activity of "updating" out of context. In the staff analysis for the proposed POBOR Program's parameters and guidelines (Item #10 in the Commission hearing of July 27, 2000) (Tab 8), the Commission discussed its analysis of the test claimant's proposed parameters and guidelines for administrative activities. On page 901, this analysis addresses the following related to "updating the status of the POBOR cases:"

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases." "Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBAR cases."

Therefore, it is still our contention that these activities are part of file maintenance activities that go beyond what the reimbursable activity intended and are unallowable for reimbursement. To the extent that the city claimed costs for activities not identified as reimbursable under the mandated program, the costs are unreasonable, regardless of the reason that the costs were incurred.

Interrogations

SCO's Analysis

The city claimed salary and benefit costs for ineligible activities totaling \$11,289,312 [Tab 7]. The parameters and guidelines [Tab 4] (section IV(C) (Interrogations) state that claimants are not eligible for interrogation activities when an interrogation of a peace officer occurs in the normal course of duty. It further states:

When required by a seriousness of investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

The parameters and guidelines (section IV(C) also state that the following activities are reimbursable:

Tape recording the interrogation when the peace officer employee records the interrogation.

Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.

The city claimed the following 15 activities under the cost component of Interrogations:

1. Admin Task (Administrative Task)
2. Call out
3. CO Contact (Commanding Officer Contact)
4. Evidence Collect
5. Interview in person
6. Interview Telephone
7. Kickback Editing
8. Meet/Brief/Notify
9. Non-Evidence Task
10. Paraphrasing
11. Prep for Interview
12. Report Formatting
13. Telephone contact
14. Travel
15. VI Computer Task

The city did not provide a formal description of these activities. LAPD staff stated that these activities involved time for conducting investigations, collecting evidence, writing reports, and editing reports. We determined that these activities are unallowable because they relate to the investigation process. While the activities enumerated above were not included in the city's time study, we noted that the city's time study did include the following five activities under the component of Interrogations that were not included in its claims:

- **Interview** – Conducting the interrogation of the accused officer. The start and end time of the interrogation is noted. Per LAPD staff, interrogations usually take place during normal working hours and rarely happen during overtime (accused officer's off-duty time). The city's time study did not specify if and when the officers were paid overtime for the interviews.
- **ID, ID-A, ID-W** – Providing prior notice to the officer (accused and/or witness) regarding the nature of the interrogation and identification of the investigating officer. This activity occurs in the Administrative or Criminal Investigation Division.
- **Determine** – Determination of the investigating officers. This activity is assigned to the section Officer-in-Charge (OIC).
- **Tape** – Tape recording the interrogation. Per LAPD staff, this activity rarely happens. In fact, no time increments were claimed for the tape recording activity.
- **Booking tape** – Booking (storing) the tape at the Scientific Investigation Division.

We were able to calculate how much time was spent to conduct the five activities that were omitted from the city's claims. We also determined that four of the activities (ID, Determine, Tape, and Booking tape) are allowable and one activity (Interview) is unallowable. Interview is unallowable because the city indicated that most peace officer interviews occur during normal working hours. In addition, the city did not keep track of the instances when officers were compensated for interviews that took place during their off-duty time.

City's Response

For the Interrogations cost component, the city claimed \$12,505,518 in salaries and benefits for the audit period. The SCO determined that \$1,216,206 in salaries and benefits is allowable and \$11,289,312 is unallowable. The costs were unallowable because, according to the SCO, the City claimed reimbursement for unallowable activities. The related unallowable indirect costs totaled \$4,525,705. The total direct and indirect costs for the audit period were \$15,815,017.

The parameters and guidelines for the POBOR program allow the following activities for reimbursement under the Interrogation cost component:

- When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during the off-duty time in accordance with regular department procedures.
- Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers.
- Tape recording the interrogation when the peace officers employee records the interrogation.
- Providing the peace officer employee with access to the recording prior to any further investigation at a subsequent, or if any further proceedings are contemplated.

- Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer.

The City claimed the following 15 activities under the cost component of Interrogations:

Admin Task (Administrative Task)
 Call Out
 Contact (Commanding Officer Contact)
 Evidence Collect
 Interview inperson
 Interview Telephone
 Kickback Editing
 Meet/Brief/Notify
 Non-Evidence Task
 Paraphrasing
 Prep for Interview
 Report Formatting
 Telephone Contact Travel
 VI Computer Task

The SCO determined that the activities above are unallowable because they relate to the investigation process. In explaining its position in its final audit report, the SCO referenced the CSM's final staff analysis. The SCO stated: "In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM final staff analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBOR was enacted.

In addition, the amended parameters and guidelines (section VIC.-Interrogations) state that the Investigative activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses are not reimbursable.

The City disagrees with the State Controller's interpretation of the primary eligible activities of the Interrogation component. The City asserts the Parameters and Guidelines, as amended by the CSM based on the Controller's request at its March 28, 2008 hearing, do not accurately reflect the original Statement of Decision which found that eligible costs included: "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." The Controller has limited reimbursement to only officers being compensated for overtime. The City believes the costs for conducting interrogations during regular work time is reimbursable, as is preparation for those interrogations.

The City's position is based on the SCO's interpretation of the POBOR Parameters and Guidelines used when auditing the claims. That interpretation is not consistent with the Statement of Decision. The Statement of Decision is given deference when there is a discrepancy between the finding of a judicial body (CSM) and the documents that arise from that finding.

The Commission, in 1999, addressed the various POBOR test claim statutes which provide safeguards and protections of peace officers that are subject of investigation or discipline. Of primary concern is whether, or to what extent, these safeguards or protections were more

expansive that those already in existence through statute, case law and the Constitution. As evidenced in the SOD, the Commission clearly made sure it separated out the pre-existing due process rights and to delineate the scope and extent of those state mandated activities. The SOD stated:

Government Code section 3303, subdivision (a) establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer.

This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended the Government Code section 3303, subdivision (a) results in the payment of overtime to the investigated employee and, thus imposes reimbursable state mandated activities. The claimant stated the following:

"If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force works hours that are not consistent with the work hours of the Investigators in the Internal Affairs section. Even in smaller departments without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs when the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section."

The Commission agreed. Conducting the investigation when the peace officer is not on duty, **and** compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts. (See pages 12 and 13 of the SOD).

On November 30, 1999, the CSM adopted its SOD that the test claim legislation constitutes a partial reimbursable state mandated program. The City re-examined the statement of decision and noted that the SCO is taking the language in their response out of context. The language cited by the City is found in the SOD titled "Compensation and Timing of an Interrogation." The purpose of this section was to address the test claimant's assertion that government code section 3303, subdivision (a) results in payments of overtime to the investigated employee and, thus imposes reimbursable state mandated activities. (See page 12 and 13 of the SOD).

The use of the conjunctive "and" and the plural "requirements" refers to the fact that the Commission found that both costs of conducting the interrogation during on-duty hours and the costs of paying overtime for off-duty time are reimburseable [sic] activities of the mandate. Based on the above, the City believes it properly claimed the costs of conducting the interrogation while the officer was on duty and those costs for compensating officers when the interrogation was performed during off-duty hours.

SCO's Comment

The city is objecting to our determination that costs related to interrogations conducted during a police officer's regular on duty time are unallowable. This issue has appeared often in the administrative record of this mandated program. The city believes that the Commission determined costs for conducting interrogations during regular on-duty time and preparing for those interrogations to be allowable in the statement of decision and then erred when the parameters and guidelines were initially adopted and then again when the parameters and guidelines were amended. We disagree.

The city is relying solely on language that appears in the statement of decision. However, the statement of decision does not define the reimbursable activities. The purpose of the statement of decision [Tab 3] is stated on page 2 of that document, as follows:

Issue: Does the test claim legislation, which established rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514?

On November 30, 1999, the Commission adopted its statement of decision that the test claim legislation constitutes a partial reimbursable mandated program within the meaning of Article XIII B, section 6 of the California Constitution, and Government Code section 17514. On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by Commission staff were issued to the interested parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the test claim legislation, and the Commission's statement of decision. Subsequently, the reimbursable activities were written into regulation when the Commission adopted the parameters and guidelines for POBOR on July 27, 2000, and corrected them on August 17, 2000 [Tab 4].

We re-examined the statement of decision and noted that the city is taking the language cited in its response out of context. The language cited by the city is found in the Compensation and Timing of an Interrogation section of the statement of decision. The purpose of this section was to address the test claimant's assertion that Government Code section 3303, subdivision (a) results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities.

Further, the city is basing its entire argument on one sentence in the original statement of decision that reads "Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts." Based on this one sentence, the city goes on to conclude that conducting investigations of peace officers is a reimbursable activity, which would include all investigative costs and interrogation costs incurred. This is an enhanced conclusion, given the circumstances surrounding the issue addressed by the Commission in that portion of the statement of decision.

The Commission evaluated only the test claimant's assertion that the test claim legislation imposed the payment of overtime to the investigated employee. The city ignores all of the language that prefaces the Commission staff analysis of this issue, which states that "The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal admonition by a supervisor." The Commission even italicized the word "not" to make its point clear. Therefore, the Commission had already made a determination that costs incurred for interrogations conducted during a peace officer's normal duty hours were not reimbursable before the evaluation of the test claimant's assertion about overtime costs even began. In addition, the test claimant's assertion and the Commission staff analysis in this section of the statement of decision did not include any references to investigation costs. Regardless, the city is using the Commission staff's language stating its conclusion about overtime costs as support for its contention that **all** interrogation and investigation costs are reimbursable. The city is apparently suggesting that the Commission staff somehow contradicted itself and reached a totally different conclusion from the one it had already emphasized in the beginning of its analysis. We believe that the city's conclusion is unsupported and unreasonable.

To fully understand the Commission's intent in relation to the Interrogation activity, we also re-examined the Commission's staff analysis for the proposed parameters and guidelines (Item #10 for its hearing of July 27, 2000) [Tab 8] regarding the Interrogations cost component. This document contains the following language:

Section IV, (C) (1) and (2), Compensating and Timing of an Interrogation, Interrogation Notice

The Commission's Statement of Decision includes the following reimbursable activity:

"Conducting an interrogation of a peace officer while the office is on duty, or compensating the peace officer for off-duty time in accordance with regular departmental procedures. (Gov. Code, § 3303, subd. (a).)"

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a) requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking [sic] hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, *the claimant contended that this section resulted in the payment of overtime to the peace officer employee* [emphasis added]. (See page 12 of the Commission's statement of decision.)

The staff analysis goes on to state:

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate the allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

Based on the foregoing, staff has modified Section IV (C) as follows:

"1. Conducting an interrogation of a peace officer while the officer is on duty or compensating When required by the seriousness of investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)"

The Commission re-examined this issue in the final staff analysis [Tab 9] for Item #13 – Request to Amend Parameters and Guidelines for its hearing held on December 4, 2006. Page 22 of that analysis states:

The County of San Bernardino, the City of Sacramento, and the City of Los Angeles contend that investigation costs and the cost to conduct the interrogation are reimbursable.

However,...the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct the interrogation.

Therefore, to state that interrogations conducted during an officer's regular on-duty time, preparing for those interrogations, and conducting investigations of peace officers are reimbursable activities is contrary to the preponderance of evidence found in the administrative record for this mandated program.

The city is attempting to expand the Commission's staff analysis of the Interrogations cost component to include activities that were not included in the adopted parameters and guidelines. The adopted parameters and guidelines [Tab 4] (section IV(C) – Interrogation) state that "claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or any other routine or unplanned contact with, a supervisor or any other public safety officer." The document goes on to specify five activities that are reimbursable.

Section IVC (1) describes only one reimbursable activity that relates to interrogations. It states “when required by seriousness of investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.”

To state that interrogations conducted during an officer’s regular on-duty time are reimbursable is contrary to the wording that appears in the statement of decision, the staff analysis for the proposed parameters and guidelines, and the adopted parameters and guidelines. Therefore, the preponderance of evidence on this issue does not support the city’s contention.

Adverse Comment

SCO’s Analysis

The city claimed salary and benefit costs for ineligible activities totaling \$7,428,740 [Tab 7]. Depending on the circumstances surrounding an adverse comment, the parameters and guidelines, section IV(D) (Adverse Comment), allow some or all of the following four activities upon receipt of an Adverse Comment:

- Providing notice of adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting on the document the peace officer’s refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines also state:

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

The city claimed costs for 16 activities under this cost component. During our examination of the city’s time study, we determined that the following 11 activities are reimbursable:

- **Review** – This activity involves the review of the “1.28” (complaint form) and the circumstances leading to the adverse comment. This is the preliminary review of the comment to determine if it is an adverse comment and warrants further investigation. The Complaint Classification Unit performs this activity. This activity also includes the time it takes to prepare a face sheet concerning the complaint.
- **Note** – This activity consists of providing notice to the peace officer of the adverse comment or complaint fact sheet. This activity is associated with the first notice of adverse comment to the officer that an investigation is taking place.
- **Respond** – This activity is also associated with providing first notice of adverse comment and that an investigation is taking place. The activity provides the officer with an opportunity to respond within 30 days.
- **Sign** – This activity occurs when the officer under investigation reviews and signs the adverse comment or complaint fact sheet, which is the first notice of complaint from Internal Affairs.

- **Refuse** – If the accused officer refuses to sign the face sheet or initial the adverse comment, the time involved is noted.
- **Approval** – This activity consists of the review by Internal Affairs Management of a completed case prior to sending the case to an Area or Division for notification to the officer under investigation.
- **Adjudication** – This activity consists of the time spent by the Command Officer (accused officer's supervisor) of the Area to adjudicate the complaint. This activity would include a review of the completed complaint and the formulation of a Letter of Transmittal (LOT).
- **CO review** – According to LAPD staff, CO review is closely tied with "Adjudication." This activity consists of the time spent by the commanding officer of the Area to review the complaint and LOT.
- **Preparation** – This activity consists of the preparation of the Charge Sheet for the Chief of Police to sign.
- **Serve** – This activity entails ensuring that the accused officer is served with the Charge Sheet and obtaining the officer's signature or noting the officer's refusal to sign the Charge Sheet.
- **Accuracy** – This activity involves reviewing the accused officer's response to the complaint or "1.28" (complaint form).

The city also claimed the following five activities that are not reimbursable:

- **Preliminary** – This activity involves investigating the circumstances surrounding the adverse comment.
- **Collect** – This activity consists of the preliminary investigation conducted by supervisors, detectives, and the command staff in the area where the complaint was taken. This activity can include report writing, interviews, or any activity where information is gathered for the "1.28" (complaint form).
- **Area invest** – This activity consists of the time spent by the areas to investigate the complaint or "1.28" (complaint form). This activity occurs after the preliminary investigation.
- **Inspect** – This activity occurs when the assigned advocate reviews the investigation for status and thoroughness.
- **RE invest** – This activity involves the time needed to conduct any additional investigations.

These activities were unallowable because they are part of the city's investigative process and we noted that investigative activities are ineligible for reimbursement.

City's Response

The City claimed \$20,278,116 in salaries and benefits for the Adverse Comment component in the audit period. The Controller determined that \$12,849,376 is allowable and \$7,428,740 is unallowable. The SCO deemed the costs were unallowable because the City claimed reimbursement for unallowable activities. The related disallowed or unallowable indirect costs were \$2,726,507. The total disallowed costs contested by the City for this component is \$10,115,247.

The City identified 16 activities in its time study under this cost component. The Controller found that 11 activities were eligible for reimbursement and five were not. The City appreciates the fact the Controller did find the majority of the activities were reimbursable. Once again, the disagreement between the City and the SCO is over the interpretation of the parameters and guidelines and original statement of decision. The Controller commented the five disallowed activities are part of the investigative process and therefore, not reimbursable. It is the City's position that most of those activities are necessary to meet the mandated activities necessary to comply with the Adverse Comment requirements and therefore should be reimbursable. The activities which the SCO disallowed which City believes are eligible for reimbursement are as follows:

The five activities for which the City claimed costs that were disallowed by the State Controller's office are as follows:

- **Preliminary:** This activity involves investigating the circumstances surrounding the adverse comment.
- **Collect:** This activity consists of the preliminary investigation conducted by supervisors, detectives, and the command staff in the Area where the complaint was taken. This activity can include report writing, interviews, or any activity in which information is gathered for the Police Department's complaint form.
- **Area Invest:** This activity consists of the time spent by Area staff to investigate the complaint. This activity occurs after the preliminary investigation.
- **Inspect:** This activity occurs when the assigned Advocate reviews the investigation for status and thoroughness.
- **RE Invest:** This activity involves the time needed to conduct any additional investigations.

The SCO pointed out that the amended parameters and guidelines (section IV.D.-Adverse Comment) state that -investigating a complaint, interviewing a complainant, and preparing a complaint investigation report are not reimbursable activities. As is the case with the other two claim components, Interrogations and Administrative Activities, the parameters and guidelines are not consistent with the mandate requirements and the original statement of decision.

SCO's Comment

The city states in its response that the reimbursable activities identified by the parameters and guidelines for the Adverse Comment cost component "are not consistent with the mandate requirements and the original statement of decision." However, the city did not indicate how the reimbursable activities cited in the parameters and guidelines for this cost component are inconsistent with the original statement of decision.

In its response to the draft audit report, the city stated "The City does not dispute the Controller's statement that the revised Parameters and Guidelines (section IV(D)-Adverse Comment) state that the 'investigating a complaint,' 'interviewing a complainant,' and 'preparing a complaint investigation report' are not reimbursable activities." In that audit report, we stated our determination that five activities included in the city's time study under the Adverse Comment cost component involved tasks related to conducting investigations and are not reimbursable activities under the mandated program. The city does not dispute its awareness of how we determined unallowable costs under this cost component.

Therefore, we conclude that the city is basing its argument that these activities are reimbursable on the Commission staff analysis for the payment of overtime to peace officers being interrogated. This analysis was addressed above for costs claimed under the Interrogations cost component and was pled by the test claimant for activities appearing in Government Code section 3303, subdivision (a). The

costs for Adverse Comment were pled by the test claimant for activities appearing in Government Code sections 3305 and 3306. Accordingly, costs claimed under the Adverse Comment cost component have no relevance to costs claimed under the Interrogations cost component. The city's position is an expanded interpretation of the language in the parameters and guidelines that is taken out of context. The costs for conducting investigations were never included in the Adverse Comment cost component as reimbursable activities.

The parameters and guidelines state that "review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel" is one of allowable activities for this component. We noted in the audit report the 11 activities included in the city's time study that related to the reimbursable activities cited in the Adverse Comment cost component. However, other activities relating to starting an investigation, conducting an investigation, summarizing investigation results, and conducting any additional investigations are not reimbursable under the mandated program.

III. CONCLUSION

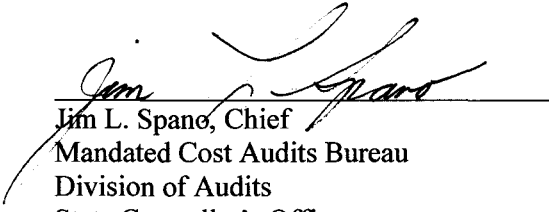
The SCO audited the City of Los Angeles' claims for costs of the legislatively mandated Peace Officers Procedural Bill of Rights Program (Government Code Sections 3300-3310 Statutes 1976, Chapter 465; Statutes 1978, Chapter 775, 1173, 1174, and 1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675) for the period of July 1, 2003, through June 30, 2008. The city claimed \$50,281,773 for the mandated program. Our audit found that \$20,131,194 is allowable and \$30,150,579 is unallowable. The costs are unallowable primarily because the city claimed ineligible costs.

The Commission should find that: (1) the SCO correctly reduced the city's FY 2003-04 claim by \$6,031,028; (2) the SCO correctly reduced the city's FY 2004-05 claim by \$5,246,404; (3) the SCO correctly reduced the city's FY 2005-06 claim by \$5,623,807; (4) the SCO correctly reduced the city's FY 2006-07 claim by \$5,075,344; and (5) the SCO correctly reduced the city's FY 2007-08 claim by \$8,173,996.

IX. CERTIFICATION

I hereby certify by my signature below that the statements made in this document are true and correct of my own knowledge, or, as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on December 22, 2014, at Sacramento, California, by:



Jim L. Spano, Chief
Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

Tab 3

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM:

Government Code Sections 3300 through 3310,

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

Filed on December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM 4499

Peace Officers Procedural Bill of Rights

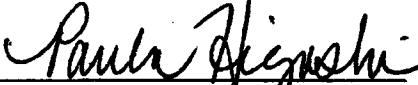
STATEMENT OF DECISION
PURSUANT TO GOVERNMENT
CODE SECTION 17500 ET SEQ. ;
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, DIVISION 2,
CHAPTER 2.5, ARTICLE 7

(Adopted November 30, 1999)

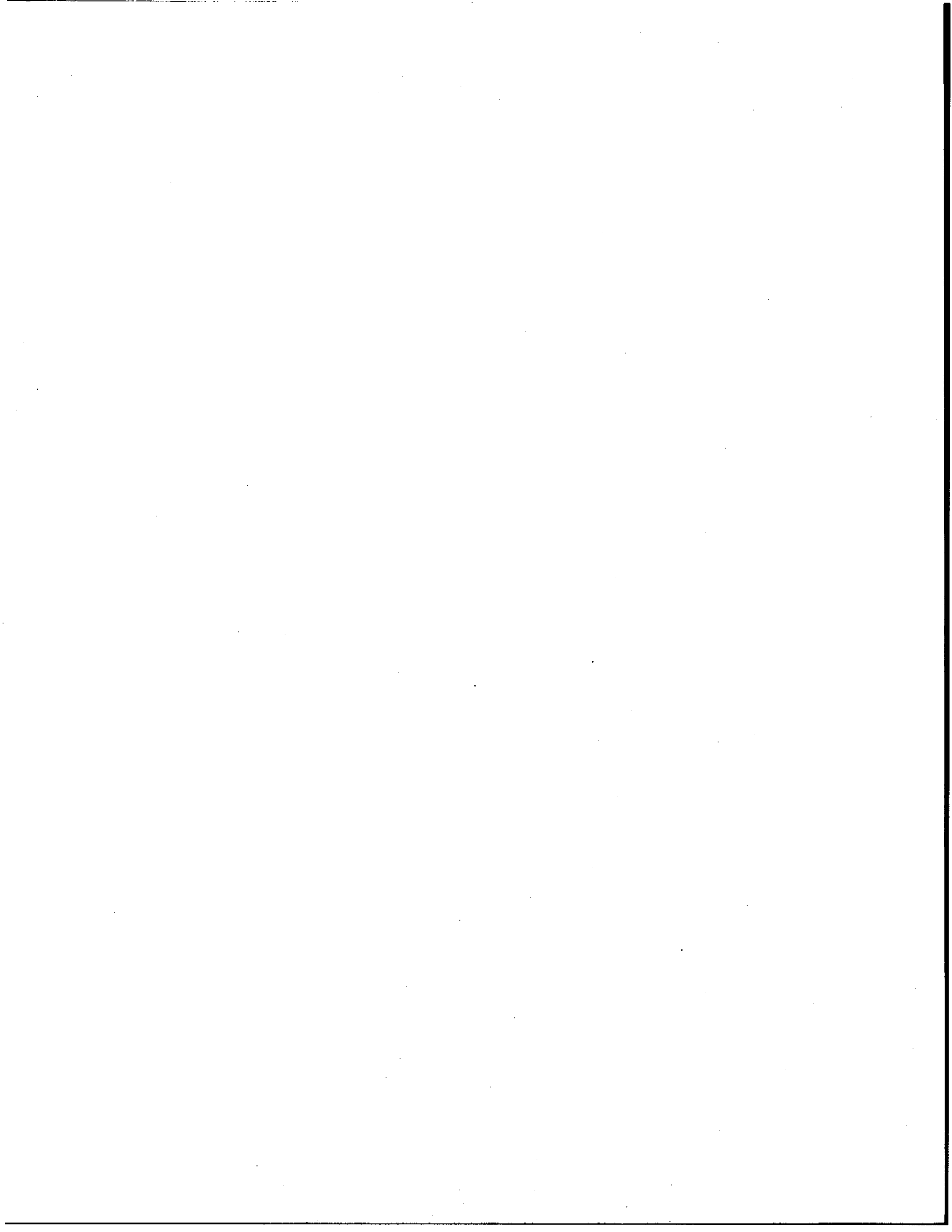
STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on December 1, 1999.



Paula Higashi, Executive Director



**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM:

Government Code Sections 3300 through 3310,

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

Filed on December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM 4499

Peace Officers Procedural Bill of Rights

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

(Adopted November 30, 1999)

STATEMENT OF DECISION

On August 26, 1999 the Commission on State Mandates (Commission) heard this test claim during a regularly scheduled hearing. Ms. Pamela A. Stone appeared for the City of Sacramento. Mr. Allan Burdick appeared for the League of California Cities/SB 90 Service. Ms. Elizabeth Stein appeared for the California State Personnel Board. Mr. James Apps and Mr. Joseph Shinstock appeared for the Department of Finance. The following persons were witnesses for the City of Sacramento: Ms. Dee Contreras, Director of Labor Relations, and Mr. Edward J. Takach, Labor Relations Officer.

At the hearing, oral and documentary evidence was introduced, the test claim was submitted, and the vote was taken.

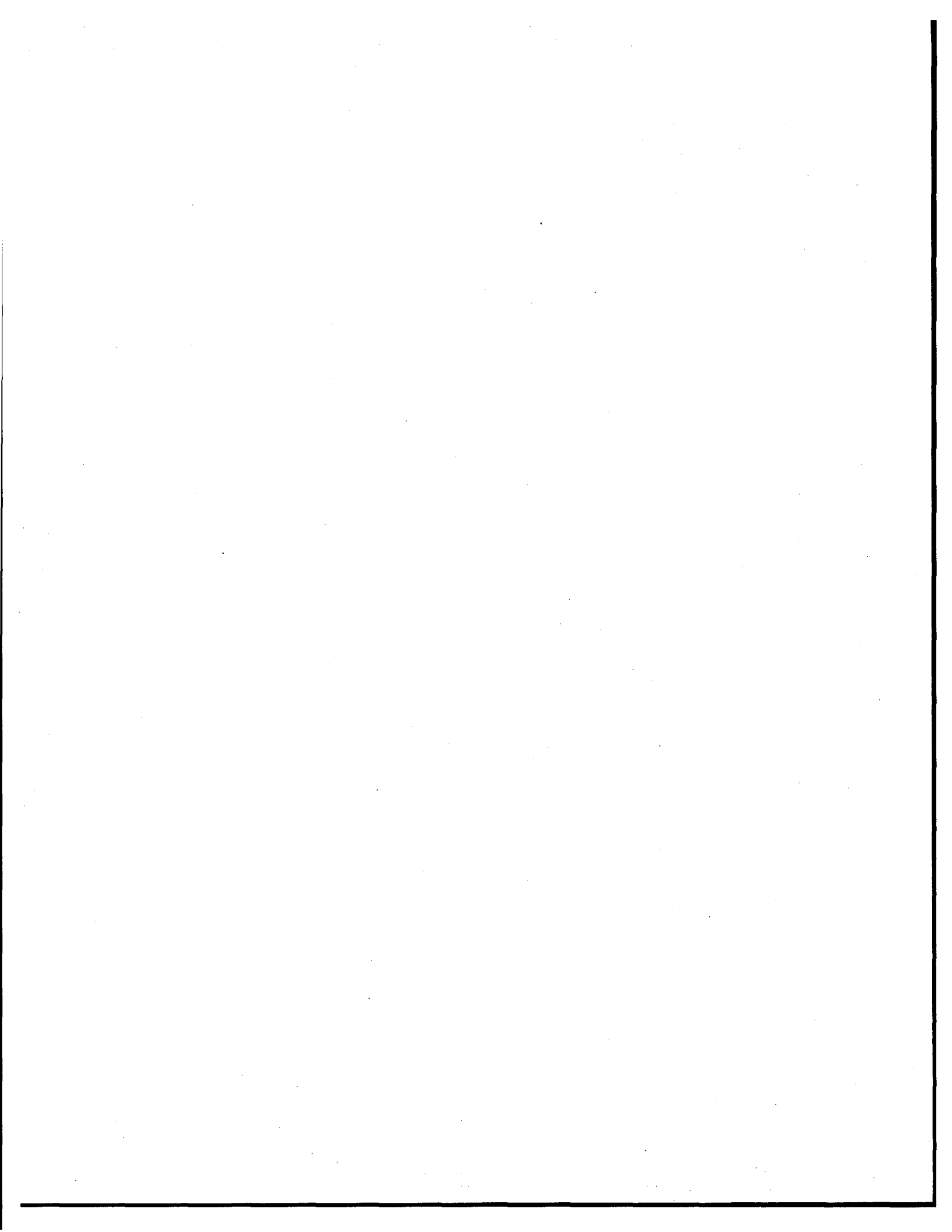
The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq. and section 6, article XIII B of the California Constitution and related case law.

The Commission, by a vote of 5 to 1, approved this test claim.

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BACKGROUND

In 1976, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights Act. The test claim legislation provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Legislative intent is expressly provided in Government Code section 3301 as follows:

“The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, within the State of California. ”

The test claim legislation applies to all employees classified as “peace officers” under specified provisions of the Penal Code, including those peace officers employed by counties, cities, special districts and school districts. ¹ The test claim legislation also applies to peace officers that are classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause (“at-will” employees)² and peace officers on probation who have not reached permanent status. ³

COMMISSION FINDINGS

Issue: Does the test claim legislation, which establishes rights and procedures for peace officers subject to investigation or discipline, constitute a reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514⁴?

For a statute to impose a reimbursable state mandated program, the statutory language must direct or obligate an activity or task upon local governmental agencies. In addition, the required

¹ Government Code section 3301 states: “For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code.”

² *Gray v. City of Gustine* (1990) 224 Cal.App.3d 621; *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795.

³ *Bell v. Duffy* (1980) 111 Cal.App.3d 643; *Barnes v. Personnel Department of the City of El Cajon* (1978) 87 Cal.App.3d 502.

⁴ Government Code section 17514 defines “costs mandated by the state” as follows: “Costs mandated by the state’ means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

activity or task must be new, thus constituting a "new program", or create an increased or "higher level of service" over the former required level of service. The court has defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing services to the public, or a law which, to implement a state policy, imposes unique requirements on local agencies and does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately prior to the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must be state mandated and impose "costs mandated by the state."

The test claim legislation requires local agencies and school districts to take specified procedural steps when investigating or disciplining a peace officer employee. The stated purpose of the test claim legislation is to promote stable relations between peace officers and their employers and to ensure the effectiveness of law enforcement services. Based on the legislative intent, the Commission found that the test claim legislation carries out the governmental function of providing a service to the public. Moreover, the test claim legislation imposes unique requirements on local agencies and school districts that do not apply generally to all residents and entities of the state. Thus, the Commission determined that the test claim legislation constitutes a "program" within the meaning of article XIII B, section 6 of the California Constitution.

The Commission recognized, however, that several California courts have analyzed the test claim legislation and found a connection between its requirements and the requirements imposed by the due process clause of the United States and California Constitutions. For example, the court in *Riveros v. City of Los Angeles* analyzed the right to an administrative appeal under the test claim legislation for a probationary employee and noted that the right to such a hearing arises from the due process clause.

"The right to such a hearing arises from the due process protections of the Fourteenth Amendment to the United States Constitution. . . . The limited purpose of the section 3304 appeal is to give the peace officer a chance to establish a formal record of the circumstances surrounding his termination and try to convince his employer to reverse its decision, either by showing that the charges are false or through proof of mitigating circumstances [citation omitted]. This is very nearly the same purpose for the hearing mandated by due process requirements, which must afford the officer a chance to refute the charges or clear his name. " (Emphasis added .)⁶

Thus, the Commission continued its inquiry and compared the test claim legislation to the prior legal requirements imposed on public employers by the due process clause to determine if the activities defined in the test claim legislation are new or impose a higher level of service.

⁵ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Gov. Code, § 17514.

⁶ *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4th 1342, 1359.

The Commission also considered whether there are any "costs mandated by the state." Since the due process clause of the United States Constitution is a form of federal law, the Commission recognized that Government Code section 17556, subdivision (c), is triggered. Pursuant to Government Code section 17556, subdivision (c), there are *no* "costs mandated by the state" and no reimbursement is required if the test claim legislation "implemented a federal law resulting in costs mandated by the federal government, unless the [test claim legislation] mandates costs which exceed the mandate in that federal law or regulation. "⁷

These issues are discussed below.

The Due Process Clause of the U.S. and California Constitutions

The due process clause of the United States and California Constitutions provide that the state shall not "deprive any person of life, liberty, or property without due process of law. "⁸ In the public employment arena, an employee's property and liberty interests are commonly at stake.

Property Interest in Employment

Property interests protected by the due process clause extend beyond actual ownership of real estate or money. The U.S. Supreme Court determined that a property interest deserving protection of the due process clause exists when an employee has a "legitimate claim" to continued employment.

"To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it. . . ."

"Property interests, of course, are not created by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law - - rules or understandings that secure certain benefits and that support claims of entitlement to those benefits. "⁹

Applying the above principles, both the U.S. Supreme Court and California courts hold that "permanent" employees, who can only be dismissed or subjected to other disciplinary

⁷ Government Code section 17513 defines "costs mandated by the federal government" as follows:

" 'Costs mandated by the federal government' means any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. 'Costs mandated by the federal government' includes costs resulting from enactment of state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. 'Costs mandated by the federal government does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district. "

⁸ U.S. Constitution, 14th Amendment; California Constitution, Article 1, §§ 7 and 15.

⁹ *Board of Regents v. Roth* (1972) 408 U.S. 564, 577.

measures for "cause", have a legitimate claim of entitlement to their job and thus, possess a property interest in continued employment.¹⁰

Moreover, California courts require employers to comply with due process when a permanent employee is dismissed¹¹, demoted¹², suspended¹³, receives a reduction in salary¹⁴ or receives a written reprimand.¹⁵

The Department of Finance and the State Personnel Board contended that due process property rights attach when an employee is transferred. They cited *Rumyon v. Ellis* and an SPB Decision (*Ramallo* SPB Dec. No. 95-19) for support.

The Commission disagreed with the State's argument in this regard. First, in *Rumyon v. Ellis*, the court found that the employee was entitled to an administrative hearing under the due process clause as a result of a transfer *and an accompanying reduction of pay*. The court did not address the situation where the employee receives a transfer alone.¹⁶ In addition, in *Howell v. County of San Bernardino*, the court recognized that "[a]lthough a permanent employee's right to continued employment is generally regarded as fundamental and vested, an employee enjoys no such right to continuation in a particular job assignment."¹⁷ Thus, the Commission found that local government employers are not required to provide due process protection in the case of a transfer.

Furthermore, although the SPB decision may apply to the State as an employer, the Commission found that that the SPB decision does not apply to actions taken by a local government employer.

Accordingly, the Commission found that an employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

When a property interest is affected and due process applies, the procedural safeguards required by the due process clause generally require notice to the employee and an opportunity to respond, with some variation as to the nature and timing of the procedural safeguards. In cases of dismissal, demotion, long-term suspension and reduction of pay, the California

¹⁰ *Stochower v. Board of Education* (1956) 350 U.S. 55 1, where the U.S. Supreme Court found that a tenured college professor dismissed from employment had a property interest in continued employment that was safeguarded by the due process clause; *Gilbert v. Homar* (1997) 520 U.S. 924, where the U.S. Supreme Court found that a police officer, employed as a permanent employee by a state university, had a property interest in continued employment and was afforded due process protections resulting from a suspension without pay; *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, where the California Supreme Court held a permanent civil service employee of the state has a property interest in continued employment and cannot be dismissed without due process of law.

¹¹ *Skelly, supra*, 15 Cal.3d 194.

¹² *Ng. v. State Personnel Board* (1977) 68 Cal. App. 3d 600.

¹³ *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal.3d 552, 558-560.

¹⁴ *Ng, supra*, 68 Cal.App.3d 600, 605.

¹⁵ *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438.

¹⁶ *Rumyon v. Ellis* (1995) 40 Cal.App.4th 961.

¹⁷ *Howell v. County of San Bernardino* (1983) 149 Cal.App.3d 200, 205.

Supreme Court in *Skelly* prescribed the following due process requirements *before* the discipline becomes effective:

- Notice of the proposed action;
- The reasons for the action;
- A copy of the charges and materials upon which the action is based; and
- The right to respond, either orally or in writing, to the authority initially imposing discipline.¹⁸

In cases of short-term suspensions (ten days or less), the employee's property interest is protected as long as the employee receives notice, reasons for the action, a copy of the charges, and the right to respond *either during the suspension, or within a reasonable time thereafter*.¹⁹

Similarly, the Commission found that in the case of a written reprimand where the employee is not deprived of pay or benefits, the employer is not required to provide the employee with the due process safeguards *before* the effective date of the written reprimand. Instead, the court in *Stanton* found that an appeals process provided to the employee *after* the issuance of the written reprimand satisfies the due process clause.²⁰

The claimant disagreed with the Commission's interpretation of the *Stanton* case and its application to written reprimands.

The claimant contended *Stanton* stands for the proposition that the due process guarantees outlined in *Skelly* do not apply to a written reprimand. Thus, the claimant concluded that an employee is not entitled to any due process protection when the employee receives a written reprimand. The claimant cited the following language from *Stanton* in support of its position:

"... As the City notes, no authority supports plaintiff's underlying assertion that issuance of a written reprimand triggers the due process safeguards outlined in *Skelly*. Courts have required adherence to *Skelly* in cases in which an employee is demoted [citations omitted] ; suspended without pay [citations omitted] ; or dismissed [citations omitted]. We find no authority mandating adherence to *Skelly* when a written reprimand is issued. "

"We see no justification for extending *Skelly* to situations involving written reprimands. Demotions, suspension and dismissal all involve depriving the public employee of pay or benefits; a written reprimand results in no such loss to the employee. "

The facts in *Stanton* are as follows. A police officer received a written reprimand for discharging a weapon in violation of departmental rules. After he received the reprimand, he appealed to the police chief in accordance with the memorandum of understanding and the

¹⁸ *Skelly, supra*, Cal.3d 194, 215.

¹⁹ *Civil Service Act*, Cal.3d 52, 564.

²⁰ *Stanton, supra* 226 Cal.App.3d 1438, 1442.

police chief upheld the reprimand. The officer then filed a lawsuit contending that he was entitled to an administrative appeal. The court denied the plaintiff's request finding that the meeting with the police chief satisfied the administrative appeals provision in the test claim legislation (Government Code section 3304), and thus, satisfied the employee's due process rights.

The Commission agreed that the court in *Stanton* held the rights outlined in *Skelly* do not apply when an employee receives a written reprimand. Thus, under *Skelly*, the rights to receive notice, the reasons for the reprimand, a copy of the charges and the right to respond are not required to be given to an employee *before* the reprimand takes effect.

However, the court found that the employee is guaranteed due process protection upon receipt of a written reprimand. The court found that when the appeals process takes place *after* the reprimand, due process is satisfied. The court in *Stanton* also states the following:

"Moreover, Government Code section 3303 et seq., the Public Safety Officer Procedural Bill of Rights Act, provides police officers who are disciplined by their departments with procedural safeguards. Section 3304, subdivision (b) states no punitive action may be taken by a public agency against a public safety officer without providing the officer with an opportunity for administrative appeal. Punitive action includes written reprimands. [Citation omitted.] Even without the protection afforded by *Skelly*, plaintiff's *procedural due process rights*, following a written reprimand,' *are protected* by the appeals process mandated by Government Code section 3304, subdivision (b). " (Emphasis added.)²¹

Accordingly, the Commission found that the due process clause of the United States and California Constitutions apply when a permanent employee is

- Dismissed;
- Demoted;
- Suspended;
- Receives a reduction in salary; and
- Receives a written reprimand.

Liberty Interest

Although probationary and at-will employees, who can be dismissed without cause, do not have a property interest in their employment, the employee may have a liberty interest affected by a dismissal when the charges supporting the dismissal damage the employee's reputation and impair the employee's ability to find other employment. The courts have defined the liberty interest as follows:

"[A]n employee's liberty is impaired if the government, in connection with an employee's dismissal or failure to be rehired, makes a 'charge

²¹ *Stanton, supra*, 226 Cal.App.3d 1438, 1442.

against him that might seriously damage his standing and associations in the community, ' such as a charge of dishonesty or immorality, or would 'impose on him a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities. ' [Citations omitted.] A person's protected liberty interests are not infringed merely by defamatory statements, for an interest in reputation alone is not a constitutionally protected liberty interest. [Citations omitted.] Rather, the liberty interest is infringed only when the defamation is made in connection with the loss of a government benefit, such as, . . . employment. [Citations omitted.] " 22

For example, in *Murden v. County of Sacramento*, the court found a protected liberty interest when a *temporary* deputy sheriff was dismissed from employment based on charges that he was engaging two female employees in embarrassing and inappropriate conversation regarding sexual activities. The court noted that the charge impugned the employee's character and morality, and if circulated, would damage his reputation and impair his ability to find other employment.

The court in *Murden* clarified that a dismissal based on charges that the employee was unable to learn the basic duties of the job does *not* constitute a protected interest.²³

When the employer infringes on a person's liberty interest, due process simply requires notice to the employee, and an opportunity to refute the charges and clear his or her name. Moreover, the "name-clearing" hearing can take place *after* the actual dismissal.²⁴

Accordingly, the Commission found that the due process clauses of the United States and California Constitutions apply when the charges supporting the dismissal of a probationary or at-will employee damage the employee's reputation and impair the employee's ability to find other employment.

Test Claim Legislation

As indicated above, employers are required by the due process clause to offer notice and hearing protections to *permanent* employees for dismissals, demotions, suspensions, reductions in salary and written reprimands.

Employers are also required by the due process clause to offer notice and hearing protections to *probationary* and *at-will* employees when the dismissal harms the employee's reputation and ability to obtain future employment.

As more fully discussed below, the Commission found that the test claim legislation imposes some of the *same* notice and hearing requirements imposed under the due process clause.

²² *Murden v. County of Sacramento* (1984) 160 Cal.App.3d 302, 308, quoting from *Board of Regents v. Roth*, *supra*, 408 U.S. at p. 573. See also *Paul v. Davis* (1976) 424 U.S. 693, 711-712; and *Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340.

²³ *Murden, supra* 0 Cal.App.3d, 308.

²⁴ *Murden supra*, 160 Cal.App.3d 302, 310; *Arnett v. Kennedy* (1974) 416 U.S. 134, 157; and *Codd v. Velger* (1977) 429 U.S. 624, 627.

Administrative Appeal

Government Code section 3304, as added by the test claim legislation, provides that "no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."²⁵

Punitive action is defined in Government Code section 3303 as follows:

"For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary²⁶, written reprimand, or transfer for purposes of punishment."

The California Supreme Court determined that the phrase "for purposes of punishment" in the foregoing section relates only to a transfer and not to other personnel actions.²⁷ Thus, in transfer cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to "compensate for a deficiency in performance," however, an appeal is not required.^{28, 29}

In addition, at least one California appellate court determined that employers must extend the right to an administrative appeal under the test claim legislation to peace officers for other actions taken by the employer that result in "disadvantage, harm, loss or hardship" and impact the peace officer's career.³⁰ In *Hopson*, the court found that an officer who received a report in his personnel file by the police chief regarding a shooting in violation of policies and procedures was entitled to an administrative appeal under Government Code section 3304. The court held that the report constituted "punitive action" under the test claim legislation

²⁵ In the Claimant's comments to the Draft Staff Analysis, the claimant recited Government Code section 3304, as amended in 1997 (*Stats. 1997, c. 148*) and 1998 (*Stats. 1998, c. 786*). These amendments made substantive changes to Government Code section 3304 by adding subdivisions (c) through (g). These changes include a statute of limitations concerning how long the agency can use acts as a basis for discipline, a provision prohibiting the removal of a chief of police without providing written notice describing the reasons for the removal and an administrative hearing, and a provision limiting the right to an administrative appeal to officers who successfully complete the probationary period. The Commission noted that *neither the 1997 nor 1998 statutes are alleged in this test claim.*

²⁶ The courts have held that "reduction in salary" includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal. 3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

²⁷ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

²⁸ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

²⁹ The claimant testified that what constitutes a transfer for purposes of punishment is in the eyes of the employee. The claimant stated that in the field of labor relations, peace officers will often request a full POBOR hearing and procedure on a transfer which is not acceptable to the officer in question, even though the transfer is not accompanied by a reduction in pay or benefits and no disciplinary action has been taken.

³⁰ *Hopson v. City of Los Angeles* (1983) 139 Cal.App.3d 347, 354, relying on *White v. County of Sacramento* (1982) 31 Cal.3d 676, 683.

based on the source of the report, its contents, and its potential impact on the career of the officer.³¹

The Commission recognized that the test claim legislation does not specifically set forth the hearing procedures required for the administrative appeal. Rather, the type of administrative appeal is left up to the discretion of each local agency and school district.³² The courts have determined, however, that the type of hearing required under Government Code section 3304 must comport with standards of fair play and due process.^{33, 34}

The Department of Finance and the State Personnel Board contended that Government Code section 3304 does not require an administrative appeal for probationary and at-will employees. They cited Government Code section 3304, subdivision (b), as it is *currently* drafted, which provides the following: "No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has *successfully completed the probationary period that may be required by his or her employing agency* without providing the public safety officer with an opportunity for administrative appeal."

However, the Commission determined that the italicized language in section 3304, subdivision (b), was added by the Legislature in 1998 and became effective on January 1, 1999. (Stats. 1998, c. 768). When Government Code section 3304, subdivision (b), was originally enacted in 1976, it did not limit the right to an administrative appeal to permanent employees only. Rather, that section stated the following:

"(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

Accordingly, the Commission found that an administrative appeal under Government Code section 3304, subdivision (b), was required to be provided to probationary and at-will employees faced with punitive action or a denial of promotion until December 31, 1998.

The Department of Finance also contended that the cost of conducting an administrative hearing is already required under the due process clause and the *Skelly* case, which predate the test claim legislation.

³¹ *Id.* at p. 353-354.

³² *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806; *Runyan, supra*, 40 Cal.App.4th 961, 965.

³³ *Doyle v. City of Chino* (1981) 117 Cal. App. 3d 673, 684. In addition, the court in *Stanton v. City of West Sacramento* (1991) 226 Cal.App.3d 1438, 1442, held that the employee's due process rights were protected by the administrative appeals process mandated by Government Code section 3304. Furthermore, in cases involving "misconduct", the officer is entitled to a liberty interest name-clearing hearing under Government section 3304. (*Lubey v. City and County of San Francisco* (1979) 98 Cal.App.3d 340; *Murden, supra*).

³⁴ The Commission noted that at least two cases have referred to the need for an administrative appeals procedure that would enable the officer to obtain court review pursuant to Code of Civil Procedure section 1094.5. Such a review implies that an evidentiary hearing be held from which a record and findings may be prepared for review by the court. (*Doyle, supra*, 117 Cal.App. 3d 673; *Henneberque, supra*, 147 Cal.App.3d 250.) In addition, the California Supreme Court uses the words "administrative appeal" of section 3304 interchangeably with the word "hearing." (*White, supra*, 31 Cal.3d 676.)

The Commission agreed that in some circumstances, the due process clause requires the same administrative hearing as the test claim legislation. However, as reflected by the table below, the Commission found that test claim legislation is broader than the due process clause and applies to additional employer actions that have not previously enjoyed the protections of the due process clause.

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Due Process	Test Claim Legislation
Dismissal of a permanent employee	Dismissal of permanent, <i>probationary</i> or <i>at-will</i> employees
Demotion of a permanent employee	Demotion of permanent, <i>probationary</i> or <i>at-will</i> employees
Suspension of a permanent employee	Suspension of permanent, <i>probationary</i> or <i>at-will</i> employees
Reduction in salary for a permanent employee	Reduction in salary for permanent, <i>probationary</i> or <i>at-will</i> employees
Written reprimand of a permanent employee	Written reprimand of permanent, <i>probationary</i> or <i>at-will</i> employees
Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment	Dismissal of a probationary or at-will employee which harms the employee's reputation and ability to find future employment
	Transfer of a permanent, probationary or at-will employee for purposes of punishment
	Denial of promotion for permanent, probationary or at-will employees on grounds other than merit
	Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee

Thus, the Commission found that the administrative appeal would be required in the absence of the test claim legislation when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the Commission determined that the administrative appeal *does not* constitute a new program or higher level of service because prior law requires such an appeal

under the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the administrative appeal in the above circumstances would not constitute "costs mandated by the state" since the administrative appeal merely implements the requirements of the United States Constitution.

The Commission found, however, that the due process clauses of the United States and California Constitutions do not require an administrative appeal in the following circumstances:

- 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 do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- 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.

Thus, in these situations, the Commission found that the administrative appeal required by Government Code section 3304 constitutes a new program or higher level of service and imposes "costs mandated by the state" under Government Code section 17514.

Compensation and Timing of an Interrogation

Government Code section 3303 describes the procedures for the interrogation of a peace officer. The procedures and rights given to peace officers under section 3303 do *not* apply to any interrogation in the normal course of duty, counseling, instruction, or informal verbal admonition by a supervisor. In addition, the requirements do not apply to an investigation concerned solely and directly with alleged criminal activities.³⁵

Government Code section 3303, subdivision (a), establishes procedures for the timing and compensation of a peace officer subject to investigation and interrogation by an employer. This section requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the "normal waking hours" of the peace officer, unless the seriousness of the investigation requires otherwise. If the interrogation takes place during the off-duty time of the peace officer, the peace officer "shall" be compensated for the off-duty time in accordance with regular department procedures.

The claimant contended that Government Code section 3303, subdivision (a), results in the payment of overtime to the investigated employee and, thus, imposes reimbursable state mandated activities. The claimant stated the following:

"If a typical police department works in three shifts, such as the Police Department for this City, two-thirds of the police force work hours [that are] not consistent with the work hours of Investigators in the Internal Affairs section.

³⁵ Gov. Code, § 3303, subd. (i).

Even in a smaller department without such a section, hours conflict if command staff assigned to investigate works a shift different than the employees investigated. Payment of overtime occurs to the employees investigated or those performing the required investigation, or is at least a potential risk to an employer for the time an employee is interrogated pursuant to this section. ”

The Commission agreed. Conducting the investigation when the peace officer is on duty, and compensating the peace officer for off-duty time in accordance with regular department procedures are new requirements not previously imposed on local agencies and school districts.

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 175 14.

Notice Prior to Interrogation

Government Code section 3303, subdivisions (b) and (c), require the employer, prior to interrogation, to inform and provide notice of the nature of the investigation and the identity of all officers participating in the interrogation to the employee.

The Commission recognized that under due process principles, an employee with a property interest is entitled to notice of the disciplinary action proposed by the employer.³⁶ Thus, an employee is required to receive notice when the employee receives a dismissal, suspension, demotion, reduction in salary or receipt of a written reprimand. Due process, however, *does not* require notice prior to an investigation or interrogation since the employee has not yet been charged and the employee’s salary and employment position have not changed.

Accordingly, the Commission found that providing the employee with prior notice regarding the nature of the interrogation and identifying the investigating officers constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 17514.

Tape Recording of Interrogation

Government Code section 3303, subdivision (g), provides, in relevant part the following:

“The complete interrogation of a public safety officer may be recorded. *If* a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. . . . The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation. ” (Emphasis added.)

The claimant contended that the activity of tape recording the interrogation and providing the peace officer with the tape recording of the interrogation as specified in section 3303, subdivision (g), constitute reimbursable state mandated activities. The claimant stated the following:

³⁶ *Skelly, supra*, 15 Cal.3d 194.

"As shown above, Government Code, section 3303 (g) allows the interrogation of a peace officer to be tape recorded. The section is silent as to whom may record the interrogation, and who may request that the session be recorded. In practice, the employee will almost always request to record the interrogation. As the employee desires to record same, the employer is faced with the requirement of also tape recording the interrogation in order to assure that the employee's tape is not edited, redacted, or changed in any manner, and to have a verbatim record of the proceedings. ³⁷

At the hearing, Ms. Dee Contreras, Director of Labor Relations for the City of Sacramento, testified as follows:

"If the employee comes in and tapes, and, trust me, they all come in and tape, if they're sworn peace officers, their attorneys come in with tapes. You wind up with two tape recorders on a desk. If they tape and we do not, then they have a record that we do not have or we must rely on a tape created by the employee we are investigating. That would not be a wise choice, from the employer's perspective. "

"If we take notes and they tape, our notes are never going to be exactly the same as the tape is going to be if it's transcribed, so we wind up with what is arguably an inferior record to the record that they have. "

"So it is essentially - - it says they may tape but the practical application of that is: For everybody who comes in with a tape recorder to tape, which is virtually every peace officer, we then must tape. ³⁸

The Department of Finance disagreed and contended that the test claim statute does not require local agencies to tape the interrogation. The Department further contended that if the local agency decides to tape the interrogation, the cost of providing the tape to the officer is required under the due process clause.

Based on the evidence presented at the hearing, the Commission recognized the reality faced by labor relations' professionals in their implementation of the test claim legislation. Accordingly, the Commission found that tape recording the interrogation when the employee records the interrogation is a mandatory activity to ensure that all parties have an accurate record. The Commission's finding is also consistent with the legislative intent to assure stable employer-employee relations are continued throughout the state and that effective services are provided to the people. ³⁹

³⁷ Claimant's comments to Draft Staff Analysis.

³⁸ August 26, 1999 Hearing Transcript, page 18, lines 7-2 1.

³⁹ This finding is consistent with one of the principles of statutory construction that "where statutes provide for performance of acts or the exercise of power or authority by public officers protecting private rights or in public interest, they are mandatory. " (3 Sutherland, Statutory Construction (5th ed. 1992) § 57.14, p. 36.) See also section 1183.1 of the Commission's regulations, which provides that the parameters and guidelines adopted on a mandated program shall provide a description of the most reasonable methods of complying with the mandate.

The Commission also recognized that Government Code section 3303, subdivision (g), requires that the employee shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The Commission found that providing the employee with access to the tape *prior to a further interrogation at a subsequent time* is a new activity and, thus, constitutes a new program or higher level of service.

However, the Commission found that providing the employee with access to the tape *if further proceedings are contemplated* does not constitute a new program or higher level of service when the further proceeding is a disciplinary action protected by the due process clause. Under certain circumstances, due process already requires the employer to provide an employee who holds either a property or liberty interest in the job with the materials upon which the disciplinary action is based.

Accordingly, the Commission found that even in the absence of the test claim legislation, the due process clause requires employers to provide the tape recording of the interrogation to the employee when:

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal⁴⁰; and when
- The disciplinary action is based, in whole or in part, on the interrogation of the employee.

Under these circumstances, the Commission found that the requirement to provide access to the tape recording of the interrogation under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing access to the tape recording merely implements the requirements of the United States Constitution.

However, when the further proceeding does not constitute a disciplinary action protected by due process, the Commission found that providing the employee with access to the tape is a new activity and, thus, constitutes a new program or higher level of service.

In sum, the Commission found that the following activities constitute reimbursable state mandated activities :

- Tape recording the interrogation when the employee records the interrogation.
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories:
 - (a) The further proceeding is not a disciplinary action;

⁴⁰ *Skelly, supra; Ng, supra; Civil Service Assn., supra; Stanton, supra; Murden, supra.*

- (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
- (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
- (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Documents Provided to the Employee

Government Code section 3303, subdivision (g), also provides that the peace officer "shall" be entitled to a transcribed copy of any interrogation notes made by a stenographer or any reports or complaints made by investigators or other persons, except those that are deemed to be confidential.

The Department of Finance and the SPB contended that the cost of providing copies of transcripts, reports and recordings of interrogations are required under the due process clause and, thus, do not constitute a reimbursable state mandated program.

In *Pasadena Police Officers Association*, the California Supreme Court analyzed Government Code section 3303, noting that it does not specify when an officer is entitled to receive the reports and complaints. The court also recognized that section 3303 does not specifically address an officer's due process entitlement to discovery in the event the officer is *charged* with misconduct.⁴¹ Nevertheless, the court determined that the Legislature intended to require law enforcement agencies to disclose the reports and complaints to an officer under investigation only *after* the officer's interrogation.⁴²

The Commission recognized that the court's decision in *Pasadena Police Officers Association* is consistent with due process principles. Due process requires the employer to provide an employee who holds either a property or liberty interest in the job with a copy of the charges and materials upon which the disciplinary action is based when the officer is charged with misconduct.⁴³

Accordingly, even in the absence of the test claim legislation, the Commission found that the due process clause requires the employer to provide a copy of all investigative materials, including non-confidential complaints, reports and charges when, as a result of the interrogation,

⁴¹ *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 575 (Exhibit A, Bates page 0135).

⁴² *Id.* at 579.

⁴³ *Skelly, supra.*

- A permanent employee is dismissed, demoted, suspended, receives a reduction in pay or a written reprimand; or
- A probationary or at-will employee is dismissed and the employee's reputation and ability to obtain future employment is harmed by the dismissal.

Under these circumstances, the requirement to produce documents under the test claim legislation *does not* impose a new program or higher level of service because this activity was required under prior law through the due process clause. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing the investigative materials in the above circumstances would not constitute "costs mandated by the state" since producing such documentation merely implements the requirements of the United States constitution.

However, the Commission found that the due process clause does not require employers to produce the charging documents and reports when requested by the officer in the following circumstances:

- (a) When the investigation *does not* result in disciplinary action; and
- (b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e. ; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment) ;
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employees for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

The Department of Finance and the State Personnel Board disagreed with this conclusion. They contended that "State civil service probationary or at-will employees are entitled to [the due process rights prescribed by] *Skelly* . . . by the State Personnel Board" to the charging documents and reports and, thus, Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program with respect to these employees. However, they cited no authority for this proposition.

The Department of Finance and the State Personnel Board also contended that Government Code section 3303, subdivision (g), does not constitute a reimbursable state mandated program when a permanent employee is transferred based on their assertion that a transfer is covered by the due process clause. As noted earlier, the Commission disagreed with this contention and found that a permanent employee does *not* enjoy the rights prescribed by the due process clause when the employee is transferred.

Accordingly, in the circumstances described above, the Commission found that producing the documents required by Government Code section 3303, subdivision (g), constitutes a new program or higher level of service and imposes "costs mandated by the state" under Government Code section 175 14.

Representation at Interrogation

Government Code section 3303, subdivision (i), provides that the peace officer "shall" have the right to be represented during the interrogation when a formal written statement of charges has been filed or whenever the interrogation focuses on matters that are likely to result in punitive action.

The claimant contended that Government Code section 3303, subdivision (i), results in reimbursable state mandated activities since additional professional and clerical time is needed to schedule the interview when the peace officer asserts the right to representation.

The Commission disagreed with the claimant's contention. Before the enactment of the test claim legislation, peace officers had the same right to representation under Government Code sections 3500 to 3510, also known as the Meyers-Milias-Brown Act (MMBA). The MMBA governs labor management relations in California local governments, including labor relations between peace officers and employers.⁴⁴

Government Code section 3503, which was enacted in 1961, provides that employee organizations have the right to represent their members in their employment relations with public agencies. The California Supreme Court analyzed section 3503 in *Civil Service Association v. City and County of San Francisco*, a case involving the suspension of eight civil service employees. The court recognized an employee's right to representation under the MMBA in disciplinary actions.

"We have long recognized the right of a public employee to have his counsel represent him at disciplinary hearings. (*Steen v. Board of Civil Service Commr.* (1945) 26 Cal.2d 716, 727; [Citations omitted.]) While *Steen* may have dealt with representation by a licensed attorney, the right to representation by a labor organization in the informal process here involved seems to follow from the right to representation contained in the Meyers-Milias-Brown Act and the right to representation recognized in *Steen*."⁴⁵

Peace officers employed by school districts have similar rights under the Educational Employment Relations Act, beginning with Government Code section 3540.⁴⁶

Based on the foregoing, the Commission found that the right to representation at the interrogation under Government Code section 3303, subdivision (i), does not constitute a new

⁴⁴ *Santa Clara County Dist. Attorney Investigators Assn. v. County of Santa Clara* (1975) 51 Cal.App.3d 255.

⁴⁵ *Civil Service Assn., supra*, 22 Cal.3d 552, 568.

⁴⁶ Government Code section 3543.2, which was added in 1975 (Stats. 1975, c. 961) provides that school district employees are entitled to representation relating to wages, hours of employment, and other terms and conditions of employment.

program or higher level of service under article XIII B, section 6 of the California Constitution.

Adverse Comments in Personnel File

Government Code sections 3305 and 3306 provide that no peace officer "shall" have any adverse comment entered in the officer's personnel file without the peace officer having first read and signed the adverse comment.⁴⁷ If the peace officer refuses to sign the adverse comment, that fact "shall" be noted on the document and signed or initialed by the peace officer. In addition, the peace officer "shall" have 30 days to file a written response to any adverse comment entered in the personnel file. The response "shall" be attached to the adverse comment.

Thus, the Commission determined that Government Code sections 3305 and 3306 impose the following requirements on employers:

- To provide notice of the adverse comment;⁴⁸
- To provide an opportunity to review and sign the adverse comment;
- To provide an opportunity to respond to the adverse comment within 30 days; and
- To note on the document that the peace officer refused to sign the adverse comment and to obtain the peace officer's signature or initials under such circumstances.

The claimant contended that county employees have a pre-existing statutory right to inspect and respond to adverse comments contained in the officer's personnel file pursuant to Government Code section 3 1011. The claimant further stated that Labor Code section 1198.5 provides city employees with a pre-existing right to review, but not respond to, adverse comments. Thus, the claimant contended that Government Code sections 3305 and 3306 constitute a new program or higher level of service under article XIII B, section 6 of the California Constitution.

As described below, the Commission found that Government Code sections 3305 and 3306 constitute a *partial* reimbursable state mandated program.

Due Process

Under due process principles, an employee with a property or liberty interest is entitled to notice and an opportunity to respond, either orally or in writing, prior to the disciplinary action proposed by the employer.⁴⁹ If the adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a

⁴⁷ The court in *Aguilar v. Johnson* (1988) 202 Cal. App. 3d 24 1, 249-252, held that an adverse comment under Government Code sections 3305 and 3306 include comments from law enforcement personnel and citizen complaints.

⁴⁸ The Commission found that notice is required since the test claim legislation states that "no peace officer shall have any adverse comment entered in the officer's personnel file *without the peace officer having first read and signed the adverse comment.*" Thus, the Commission found that the officer must receive notice of the comment before he or she can read or sign the document.

⁴⁹ *Skelly, supra*, 15 Cal.3d 194.

permanent peace officer or harms the officer's reputation and opportunity to find future employment, then the provisions of the test claim legislation which require notice and an opportunity to review and file a written response are already guaranteed under the due process clause.⁵⁰ Under such circumstances, the Commission found that the notice, review and response requirements of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service pursuant to article XIII B, section 6 of the California Constitution. Moreover, the Commission recognized that pursuant to Government Code section 17556, subdivision (c), the costs incurred in providing notice and an opportunity to respond do not impose "costs mandated by the state".

However, the Commission found that under circumstances where the adverse comment affects the officer's property or liberty interest as described above, the following requirements imposed by the test claim legislation *are not* required by the due process clause:

- Obtaining the signature of the peace officer on the adverse comment, or
- Noting the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances.

The Department of Finance and the State Personnel Board stated the following: "If the adverse comment can be considered a 'written reprimand,' however, the POBOR required 'notice' and the 'opportunity to respond' may already be required by due process. The extent of due process due an employee who suffers an official reprimand is not entirely clear. "

The Commission agreed that if the adverse comment results in, or is considered a written reprimand, then notice and an opportunity to respond is already required by the due process clause and are not reimbursable state mandated activities. However, due process does not require the local agency to obtain the signature of the peace officer on the adverse comment, or note the peace officer's refusal to sign the adverse comment and obtain the peace officer's signature or initials under such circumstances. Accordingly, the Commission found that these two activities required by the test claim legislation when an adverse comment is received constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 17514 even where there is due process protection.

The Legislature has also established protections for local public employees similar to the protections required by Government Code sections 3305 and 3306 in statutes enacted prior to the test claim legislation. These statutes are discussed below.

Existing Statutory Law Relating to Counties

Government Code section 3 101 1, enacted in 1974,⁵¹ established review and response protections for county employees. That section provides the following:

"Every county employee shall have the *right to inspect and review* any official record relating to his or her performance as an employee or to a grievance

⁵⁰ Hopson, *supra*, 139 Cal.App.3d 347.

⁵¹ Stats. 1974, c. 315.

concerning the employee which is kept or maintained by the county; provided, however, that the board of supervisors of any county may exempt letters of reference from the provisions of this section.

The contents of such records shall be made available to the employee for inspection and review at reasonable intervals during the regular business hours of the county.

The county shall provide an opportunity for the employee to *respond* in writing, or personal interview, to any information about which he or she disagrees. Such response shall become a permanent part of the employee's personnel record. The employee shall be responsible for providing the written responses to be included as part of the employee's permanent personnel record.

This section does not apply to the records of an employee relating to the investigation of a possible criminal offense. " (Emphasis added .)

Therefore, the Commission determined that under existing law, counties are required to provide a peace officer with the opportunity to review and respond to an adverse comment *if* the comment *does not* relate to the investigation of a possible criminal offense.⁵² Under such circumstances, the Commission found that the review and response provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment; and
- Obtaining the signature of the peace officer on the adverse comment; or

⁵² The Commission found that Government Code section 3 1011 does *not* impose a notice requirement on counties since section 3 10 11 does not require the county employee to review the comment *before* the comment is placed in the personnel file.

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Existing Statutory Law Relating to Cities and Special Districts

Labor Code section 1198.5, enacted in 1975,⁵³ established review procedures for public employees, including peace officers employed by a city or special district. At the time the test claim legislation was enacted, Labor Code section 1198.5 provided the following:

"(a) Every employer shall at reasonable times, and at reasonable intervals as determined by the Labor Commissioner, upon the request of an employee, permit that employee to inspect such personnel files which are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action.

(b) Each employer subject to this section shall keep a copy of each employee's personnel file at the place the employee reports to work, or shall make such file available at such place within a reasonable period of time after a request therefor by the employee. *A public employer shall, at the request of a public employee, permit the employee to inspect the original personnel files* at the location where they are stored at no loss of compensation to the employee.

(c) *This section does not apply to the records of an employee relating to the investigation of a possible criminal offense.* It shall not apply to letters of reference.

(d) If a local agency has established an independent employee relations board or commission, any matter or dispute pertaining to this section shall be under the jurisdiction of that board or commission, but an employee shall not be prohibited from pursuing any available judicial remedy, whether or not relief has first been sought from a board or commission.

(e) This section shall apply to public employers, including, but not limited to, every city, county, city and county, district, and every public and quasi-public agency. This section shall not apply to the state or any state agency, and shall not apply to public school districts with respect to employees covered by Section 4403 1 of the Education Code. Nothing in this section shall be construed to limit the rights of employees pursuant to Section 31011 of the Government Code or Section 87031 of the Education Code, or to provide access by a public safety employee to confidential preemployment information."⁵⁴ (Emphasis added.)

Therefore, the Commission determined that under existing law, cities and special districts are required to provide a peace officer the opportunity to review the adverse comment *if* the

⁵³ Stats. 1975, c. 908, § 1.

⁵⁴ Labor Code section 1198.5 was amended in 1993 to delete all provisions relating to local public employers (Stats. 1993, c. 59.) The Legislature expressed its intent when enacting the 1993 amendment "to relieve local entities of the duty to incur unnecessary expenses.. . ."

comment *does not* relate to the investigation of a possible criminal offense? Under such circumstances, the Commission found that the review provisions of Government Code sections 3305 and 3306 *do not* constitute a new program or higher level of service.

However, even if the adverse comment *does not* relate to the investigation of a possible criminal offense, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Providing notice of the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment *does* relate to the investigation of a possible criminal offense, the following activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Existing Statutory Law Relating to School Districts

Education Code section 4403 1 establishes notice, review and response protections to peace officers employed by school districts. Section 4403 1 provides in relevant part the following:

"(a) Materials in personnel files of employees that may serve as a basis for affecting the status of their employment are to be made available for the inspection of the person involved.

"(d) *Information of a derogatory nature, except [ratings, reports, or records that were obtained in connection with a promotional examination], shall not be entered or filed unless and until the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right*

⁵⁵ The Commission found that Labor Code section 1198.5 does *not* impose a notice requirement on counties since section 1198.5 does not require the city or special district employee to review the comment *before* the comment is placed in the personnel file.

to enter, and have attached to any derogatory statement, his own comments thereon..." (Emphasis added.)

Education Code section 87031 provides the same protections to community college district employees.⁵⁶

Therefore, the Commission determined that existing law, codified in Education Code sections 44031 and 87031, requires school districts and community college districts to provide a peace officer with notice and the opportunity to review and respond to an adverse comment *if* the comment *was* not obtained in connection with a promotional examination. Under such circumstances, the Commission found that the notice, review and response provisions of Government Code sections 3305 and 3306 do *not* constitute a new program or higher level of service.

However, even when Education Code sections 44031 and 87031 apply, if the adverse comment *was not* obtained in connection with a promotional examination, the Commission found that the following activities required by the test claim legislation were not required under existing law:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Accordingly, the Commission found that the above activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 175 14.

Furthermore, the Commission found that when the adverse comment is obtained in connection with a promotional examination, the following activities constitute a new program or higher level of service and impose "costs mandated by the state" under Government Code section 17514:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

CONCLUSION

⁵⁶ Education Code sections 44031 and 87031 were derived from Education Code section 13001.5, which was originally added by Statutes of 1968, Chapter 433.

Based on the foregoing analysis, the Commission concluded that the test claim legislation constitutes a partial reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution for the following reimbursable activities:

1. Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - 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);
 - Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
 - 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.
2. Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
3. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)
4. Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
5. Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - (a) The further proceeding is not a disciplinary action;
 - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

6. Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):

(a) When the investigation *does not* result in disciplinary action; and

(b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is *not* affected (i.e. ; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

6. Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment is obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:

- Providing notice of the adverse comment;
- Providing an opportunity to review and sign the adverse comment;
- Providing an opportunity to respond to the adverse comment within 30 days; and
- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for:

- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment is related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities :
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Tab 4

COMMISSION ON STATE MANDATES

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August 17, 2000

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

RE: **Corrected Parameters and Guidelines**
Peace Officers Procedural Bill of Rights, CSM-4499
Government Code Sections 3300 through 3311
Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174,
and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes
of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter
1165; and Statutes of 1990, Chapter 675
City of Sacramento, Claimant

It was brought to the Commission's attention that pages five and six of the adopted Parameters and Guidelines contain two non-substantive, clerical errors. These errors are have been corrected, as reflected by the strikeout and underline. The corrected Parameters and Guidelines are enclosed.

Commission staff will begin development of a Statewide Cost Estimate. Please contact Piper Rodrian at (916) 323-8218 with questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

c: Mailing List
Enc.: Corrected Parameters and Guidelines

f:\Mandates\esm40004499\pgcorrecttrans

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Government Code Sections 3300 through 3310, As Added and Amended by Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

And filed December 21, 1995;

By the City of Sacramento, Claimant.

NO. CSM - 4499

**ADOPTION OF
PARAMETERS AND
GUIDELINES PURSUANT
TO GOVERNMENT CODE
SECTION 17557 AND
TITLE 2, CALIFORNIA
CODE OF REGULATIONS,
SECTION 1183.12**

(Adopted on July 27, 2000
Corrected on August 17, 2000)

ADOPTED PARAMETERS AND GUIDELINES

The Commission on State Mandates adopted the attached Parameters and Guidelines on July 27, 2000.


PAULA HIGASHI, Executive Director

PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

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

Peace Officers Procedural Bill of Rights

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Updating the status of the POBAR cases.

B. Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 – The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- 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);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- 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.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 – The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and
- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

C. Interrogations

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency

complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g));

- a) The further proceeding is not a disciplinary action;

- b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

- c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

- d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

- e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

- a) When the investigation does not result in disciplinary action; and

- b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is *not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of processing, service and retention of copies.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment (Gov. Code, §§ 3305 and 3306):

School Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools~~ counties are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;

- Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
- Providing notice of the adverse comment: and
 - Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then ~~schools-~~ cities and special districts are entitled to reimbursement for:
- Obtaining the signature of the peace officer on the adverse comment; or
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to review and sign the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.
- (c) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
- Providing notice of the adverse comment;
 - Providing an opportunity to respond to the adverse comment within 30 days; and
 - Obtaining the signature of the peace officer on the adverse comment; or

- Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

V. CLAIM PREPARATION AND SUBMISSION

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.

4. Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which 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 central government services distributed to 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 OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received 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 OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

Tab 5

Adopted: July 27, 2000
Corrected: August 17, 2000
Amended: December 4, 2006

PARAMETERS AND GUIDELINES

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

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982,
Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

05-RL-4499-01(4499)

05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22

BEGINNING IN FISCAL YEAR 2006-2007

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as "POBOR") to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be

required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)

- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause² does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begin on July 1, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If 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.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

² Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

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, training packets, 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.

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.

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, the following activities are reimbursable:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status report of mandate-reimbursable POBOR activities. "Updating the status report of mandate-reimbursable POBOR-activities" means tracking the procedural status of the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

B. Administrative Appeal

1. The administrative appeal activities listed below apply to permanent peace officer employees as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the

Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers.³

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - Transfer of permanent-employees for purposes of punishment;
 - Denial of promotion for permanent-employees for reasons other than merit; and
 - Other actions against permanent employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative body.
- f. The cost of witness fees.
- g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- a. Investigating charges.
 - b. Writing and reviewing charges.
 - c. Imposing disciplinary or punitive action against the peace officer.
 - d. Litigating the final administrative decision.
2. Providing the opportunity for, and the conduct of an administrative appeal hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). (Gov. Code, § 3304, subd. (b).)

The following activities and costs are reimbursable:

- a. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- b. Legal review and assistance with the conduct of the administrative appeal hearing.
- c. Preparation and service of subpoenas.
- d. Preparation and service of any rulings or orders of the administrative body.

³ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.

- e. The cost of witness fees.
- f. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the chief of police.
- d. Litigating the final administrative decision.

C. Interrogations

The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)⁴

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Preparation and review of overtime compensation requests are reimbursable.

2. Providing notice to the peace officer before the interrogation. The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. The notice shall inform the peace officer of the nature of the investigation. (Gov. Code, § 3303, subds. (b) and (c).)

The following activities relating to the notice of interrogation are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.

⁴ Interrogations of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers are not reimbursable. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

- b. Identification of the interrogating officers to include in the notice of interrogation.
 - c. Preparation of the notice.
 - d. Review of notice by counsel.
 - e. Providing notice to the peace officer prior to interrogation.
3. Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

The cost of media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn peace officers are not reimbursable.

4. Providing the peace officer employee with access to the recording prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - a. The further proceeding is not a disciplinary action;
 - b. The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
 - c. The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - d. The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - e. The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

The cost of media copying is reimbursable.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):
 - a) When the investigation does not result in disciplinary action; and
 - b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or

- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Review of the complaints, notes or recordings for issues of confidentiality by law enforcement, human relations or counsel; and the cost of processing, service and retention of copies are reimbursable.

The following activities are **not** reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. (Gov. Code, §§ 3305 and 3306.):⁵

School Districts

- (a) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
 1. Obtaining the signature of the peace officer on the adverse comment; or

⁵ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

2. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
 1. Providing notice of the adverse comment: and
 2. Obtaining the signature of the peace officer on the adverse comment; or
 3. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to respond to the adverse comment within 30 days; and
 3. Obtaining the signature of the peace officer on the adverse comment; or
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.

2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

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 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 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.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

1. Local Agencies

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 the 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 OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 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:

- a. 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 allowable indirect costs bears to the base selected; or
- b. 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 allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

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 chapter⁶ 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 OTHER REIMBURSEMENTS

Any offsets savings 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 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 REVISED CLAIMING INSTRUCTIONS

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

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4499-01) 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 for the test claim. The administrative record, including the Statement of Decision and the Statement of Decision on Reconsideration, is on file with the Commission.

Tab 6

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PROPOSED AMENDMENT TO
THE PARAMETERS AND GUIDELINES
FOR THE TEST CLAIM ON:

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

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

Filed on June 25, 2007 by the County of Los
Angeles, Claimant.

No. 06-PGA-06 [05-RL-4499-01 (4499)]

Peace Officers Procedural Bill of Rights

ADOPTION OF PARAMETERS AND
GUIDELINES AMENDMENT PURSUANT TO
GOVERNMENT CODE SECTION 17557 AND
TITLE 2, CALIFORNIA CODE OF
REGULATIONS, SECTION 1183.2

(Adopted on March 28, 2008)

PARAMETERS AND GUIDELINES

On March 28, 2008, the Commission on State Mandates adopted the attached Parameters
and Guidelines Amendment.

PAULA HIGASHI, Executive Director

Dated: April 4, 2008

Adopted: July 27, 2000
Corrected: August 17, 2000
Amended: December 4, 2006
Amended: March 28, 2008

AMENDED PARAMETERS AND GUIDELINES

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

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982,
Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights
05-RL-4499-01(4499)
06-PGA-06

BEGINNING IN FISCAL YEAR 2006-2007

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file.

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as "POBOR") to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause² does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities and reasonable reimbursement methodology in this parameters and guidelines amendment begin on July 1, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may, by February 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim for that fiscal year.
2. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between November 15 and February 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

Reimbursable costs for one fiscal year shall be included in each claim. If 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.

There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

² Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee’s reputation and ability to find future employment and, thus, a name-clearing hearing is required.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, an eligible claimant may file a reimbursement claim based on the reasonable reimbursement methodology described in Section V A. or for actual costs, as described in Section V. B.

For each eligible claimant, the following activities are reimbursable:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status report of mandate-reimbursable POBOR activities.
"Updating the status report of mandate-reimbursable POBOR-activities" means tracking the procedural status of the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

B. Administrative Appeal

1. The administrative appeal activities listed below apply to permanent peace officer employees as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers.³

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - Transfer of permanent-employees for purposes of punishment;
 - Denial of promotion for permanent-employees for reasons other than merit; and
 - Other actions against permanent employees that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.
- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative body.

³ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.

- f. The cost of witness fees.
- g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the peace officer.
- d. Litigating the final administrative decision.

2. Providing the opportunity for, and the conduct of an administrative appeal hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). (Gov. Code, § 3304, subd. (b).)

The following activities and costs are reimbursable:

- a. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- b. Legal review and assistance with the conduct of the administrative appeal hearing.
- c. Preparation and service of subpoenas.
- d. Preparation and service of any rulings or orders of the administrative body.
- e. The cost of witness fees.
- f. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the chief of police.
- d. Litigating the final administrative decision.

C. Interrogations

The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)⁴

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Preparation and review of overtime compensation requests are reimbursable.

2. Providing notice to the peace officer before the interrogation. The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. The notice shall inform the peace officer of the nature of the investigation. (Gov. Code, § 3303, subds. (b) and (c).)

The following activities relating to the notice of interrogation are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.
 - b. Identification of the interrogating officers to include in the notice of interrogation.
 - c. Preparation of the notice.
 - d. Review of notice by counsel.
 - e. Providing notice to the peace officer prior to interrogation.
3. Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

⁴ Interrogations of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers are not reimbursable. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

The cost of media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn peace officers are not reimbursable.

4. Providing the peace officer employee with access to the recording prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - a. The further proceeding is not a disciplinary action;
 - b. The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);
 - c. The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - d. The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - e. The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

The cost of media copying is reimbursable.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):
 - a) When the investigation does not result in disciplinary action; and
 - b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Review of the complaints, notes or recordings for issues of confidentiality by law enforcement, human relations or counsel; and the cost of processing, service and retention of copies are reimbursable.

The following activities are not reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. (Gov. Code, §§ 3305 and 3306.):⁵

School Districts

- (a) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
 1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
 1. Obtaining the signature of the peace officer on the adverse comment; or
 2. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

⁵ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

Counties

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days;
and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
1. Providing notice of the adverse comment: and
 2. Obtaining the signature of the peace officer on the adverse comment; or
 3. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days;
and
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to respond to the adverse comment within 30 days;
and
 3. Obtaining the signature of the peace officer on the adverse comment; or
 4. Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

V. CLAIM PREPARATION AND SUBMISSION

Claimants may be reimbursed for the Reimbursable Activities described in Section IV above by claiming costs mandated by the state pursuant to the reasonable reimbursement methodology or by filing an actual cost claim, as described below:

A. Reasonable Reimbursement Methodology

The Commission is adopting a *reasonable reimbursement methodology* to reimburse local agencies and school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), in lieu of payment of total actual costs incurred for the reimbursable activities specified in Section IV above.

1. Definition

The definition of reasonable reimbursement methodology is in Government Code section 17518.5, as follows:

- (a) *Reasonable reimbursement methodology* means a formula for reimbursing local agency and school districts for costs mandated by the state, as defined in Section 17514.
- (b) A reasonable reimbursement methodology shall be based on cost information from a representative sample of eligible claimants, information provided by associations of local agencies and school districts, or other projections of local costs.
- (c) A reasonable reimbursement methodology shall consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.
- (d) Whenever possible, a *reasonable reimbursement methodology* shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year,

the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

- (e) A reasonable reimbursement methodology may be developed by any of the following:
- (1) The Department of Finance.
 - (2) The Controller.
 - (3) An affected state agency.
 - (4) A claimant.
 - (5) An interested party.

2. Formula

The reasonable reimbursement methodology shall allow each eligible claimant to be reimbursed at the rate of \$ 37.25 per full-time sworn peace officer employed by the agency for all direct and indirect costs of performing the activities, as described in Section IV, Reimbursable Activities.

The rate per full-time sworn peace officer shall be adjusted each year by the Implicit Price Deflator referenced in Government Code section 17523.

Reimbursement is determined by multiplying the rate per full time sworn peace officer for the appropriate fiscal year by the number of full time sworn peace officers employed by the agency and reported to the Department of Justice.

B. ACTUAL COST CLAIMS

Although the Commission adopted a reasonable reimbursement methodology for this mandated program, any eligible claimant may instead choose to file a reimbursement claim based on actual costs.

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, training packets, 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.

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.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified above. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

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 above. Additionally, each reimbursement claim must be filed in a timely manner.

1. Direct Cost Reporting

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

a. 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.

b. 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.

c. 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 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.

d. 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.

e. 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 B. 1. a. Salaries and Benefits, for each applicable reimbursable activity.

f. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element B.1.a, Salaries and Benefits, and B.1.b, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element B.1.c, Contracted Services.

2. Indirect Cost Rates

a. Local Agencies

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 the 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 OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 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:

- i. 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 allowable indirect costs bears to the base selected; or

ii 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 allowable indirect costs bears to the base selected.

b. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

c. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

d. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

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 chapter⁶ 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

⁶This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

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 application of a reasonable reimbursement methodology must also 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 OTHER 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 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 REVISED CLAIMING INSTRUCTIONS

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

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4499-01) 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 for the test claim. The administrative record, including the Statement of Decision and the Statement of Decision on Reconsideration, is on file with the Commission.

Tab 7

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Summary of Claimed Costs and Adjustments by Reimbursable Activity
Salaries and Benefits

Fiscal Year	Claimed	Allowable	Audit	Claimed	Allowable	Audit	Total	Total	Audit		
Department	Salaries	Salaries	Adjustments	Benefits	Benefits	Adjustment	Claimed	Allowable	Adjustment		
W/P Reference	W/P Reference			W/P Reference							
Admin Activities											
FY 2003-04	F.1.1	\$ 370,032	\$ 6,951	\$ (363,081)	G.1.1	\$ 115,709	\$ 2,174	\$ (113,535)	\$ 485,741	\$ 9,125	\$ (476,616)
FY 2004-05		364,731	17,316	(347,415)		132,269	6,197	(126,072)	497,000	23,513	(473,487)
FY 2005-06		412,695	18,868	(393,827)		158,647	7,260	(151,387)	571,342	26,128	(545,214)
FY 2006-07		371,865	16,703	(355,162)		161,820	7,231	(154,589)	533,685	23,934	(509,751)
FY 2007-08		529,559	24,830	(504,729)		247,501	10,881	(236,620)	777,060	35,711	(741,349)
Subtotal		\$ 2,048,882	\$ 84,668	\$ (1,964,214)		\$ 815,946	\$ 33,743	\$ (782,203)	\$ 2,864,828	\$ 118,411	\$ (2,746,417)
Interrogations											
FY 2003-04	F.1.1	\$ 1,789,950	\$ 178,691	\$ (1,611,259)	G.1.1	\$ 559,718	\$ 55,877	\$ (503,841)	\$ 2,349,668	\$ 234,568	\$ (2,115,100)
FY 2004-05		1,493,993	147,963	(1,346,030)		543,963	53,873	(490,090)	2,037,956	201,836	(1,836,120)
FY 2005-06		1,706,155	168,391	(1,537,764)		655,676	64,713	(590,963)	2,361,831	233,104	(2,128,727)
FY 2006-07		1,546,102	149,266	(1,396,836)		673,791	65,050	(608,741)	2,219,893	214,316	(2,005,577)
FY 2007-08		2,395,617	225,176	(2,170,441)		1,140,553	107,206	(1,033,347)	3,536,170	332,382	(3,203,788)
Subtotal		\$ 8,931,817	\$ 869,487	\$ (8,062,330)		\$ 3,573,701	\$ 346,719	\$ (3,226,982)	\$ 12,505,518	\$ 1,216,206	\$ (11,289,312)
Adverse Comments											
FY 2003-04	F.1.1	\$ 2,698,900	\$ 1,835,467	\$ (863,433)	G.1.1	\$ 843,946	\$ 573,951	\$ (269,995)	\$ 3,542,846	\$ 2,409,418	\$ (1,133,428)
FY 2004-05		2,542,710	1,585,786	(956,924)		923,017	576,820	(346,197)	3,465,727	2,162,606	(1,303,121)
FY 2005-06		2,866,552	1,799,617	(1,066,935)		1,101,861	691,639	(410,222)	3,968,413	2,491,256	(1,477,157)
FY 2006-07		2,598,414	1,634,606	(963,808)		1,131,135	712,106	(419,029)	3,729,549	2,346,712	(1,382,837)
FY 2007-08		3,774,784	2,330,206	(1,444,578)		1,796,797	1,109,178	(687,619)	5,571,581	3,439,384	(2,132,197)
Subtotal		\$ 14,481,360	\$ 9,185,682	\$ (5,295,678)		\$ 5,796,756	\$ 3,663,694	\$ (2,133,062)	\$ 20,278,116	\$ 12,849,376	\$ (7,428,740)
Total		\$ 25,462,059	\$ 10,139,837	\$ (15,322,222)		\$ 10,186,403	\$ 4,044,156	\$ (6,142,247)	\$ 35,648,462	\$ 14,183,993	\$ (21,464,469)

City of Los Angeles
 Legislatively Mandated Peace Officers' Procedural Bill of Rights Program
 Schedule of Audited Claimed Costs, Summary of Adjustments
 Fiscal Years 2003-04 through 2007-08
 Audit ID # S09-MCC-047

	F.1.1				G.1.1				Claimed Related I/C	I.1.1			H.1.1			
	Salaries Claimed	Salaries Allowed per audit	Salaries Adjustments (unallowable activities)	Salaries Adjustments (misstated PHR)	Benefits Claimed	Benefits Allowed per audit	Benefits Adjustments (unallowable activities)	Benefits Adjustments (misstated PHR)		Allowed Related I/C as per audit	Related I/C Adjustments (related to activities)	Related I/C Adjustments (related to misstated PHR)	Claimed Serv / Suppl	Allowed Serv / Suppl as per audit	Serv / Suppl Adjustments (related to activities)	Serv / Suppl Adjustments (related to misstated PHR)
2003-04																
Admin Activities	370,032	6,951	(363,081)	-	115,709	2,174	(113,535)	-	227,644	4,277	(223,367)	-	117,457	23,798	(93,659)	-
Interrogations	1,789,950	178,691	(1,611,259)	-	559,718	55,877	(503,841)	-	1,101,177	109,930	(991,247)	-	-	-	-	-
Adverse Comment	2,698,900	1,835,467	(863,433)	-	843,946	573,951	(269,995)	-	1,660,363	1,129,179	(531,184)	-	591,226	124,799	(477,609)	11,182
Subtotal	4,858,882	2,021,109	(2,837,773)	-	1,519,373	632,002	(887,371)	-	2,989,184	1,243,386	(1,745,798)	-	708,683	148,597	(571,268)	11,182
2004-05																
Admin Activities	364,731	17,316	(347,415)	-	132,269	6,197	(126,072)	-	219,301	7,683	(211,618)	-	-	-	-	-
Interrogations	1,493,993	147,963	(1,346,030)	-	543,963	53,873	(490,090)	-	970,348	96,101	(874,247)	-	-	-	-	-
Adverse Comment	2,542,710	1,585,786	(956,924)	-	923,017	576,820	(346,197)	-	1,559,018	1,011,207	(547,811)	-	-	-	-	-
Subtotal	4,401,434	1,751,065	(2,650,369)	-	1,599,249	636,890	(962,359)	-	2,748,667	1,114,991	(1,633,676)	-	-	-	-	-
2005-06																
Admin Activities	412,695	18,868	(393,827)	-	158,647	7,260	(151,387)	-	199,637	6,997	(192,640)	-	-	-	-	-
Interrogations	1,706,155	168,391	(1,537,764)	-	655,676	64,713	(590,963)	-	881,570	87,007	(794,563)	-	-	-	-	-
Adverse Comment	2,866,552	1,805,778	(1,066,935)	6,161	1,101,861	694,012	(410,222)	2,373	1,412,692	918,652	(495,848)	1,808	-	-	-	-
Subtotal	4,985,402	1,993,037	(2,998,526)	6,161	1,916,184	765,985	(1,152,572)	2,373	2,493,899	1,012,656	(1,483,051)	1,808	-	-	-	-
2006-07																
Admin Activities	371,865	16,703	(355,162)	-	161,820	7,231	(154,589)	-	158,535	5,806	(152,729)	-	-	-	-	-
Interrogations	1,546,102	149,266	(1,396,836)	-	673,791	65,050	(608,741)	-	693,736	66,975	(626,761)	-	-	-	-	-
Adverse Comment	2,598,414	1,634,606	(963,808)	-	1,131,135	712,106	(419,029)	-	1,122,255	724,566	(397,689)	-	-	-	-	-
Subtotal	4,516,381	1,800,575	(2,715,806)	-	1,966,746	784,387	(1,182,359)	-	1,974,526	797,347	(1,177,179)	-	-	-	-	-
2007-08																
Admin Activities	529,559	25,936	(504,729)	1,106	247,501	11,331	(236,620)	450	285,233	11,055	(274,524)	346	-	-	-	-
Interrogations	2,395,617	227,289	(2,170,441)	2,113	1,140,553	108,212	(1,033,347)	1,006	1,367,418	129,737	(1,238,887)	1,206	-	-	-	-
Adverse Comment	3,774,784	2,411,312	(1,444,578)	81,106	1,796,797	1,147,785	(687,619)	38,607	2,065,701	1,356,510	(753,975)	44,784	-	-	-	-
Subtotal	6,699,960	2,664,537	(4,119,748)	84,325	3,184,851	1,267,328	(1,957,586)	40,063	3,718,352	1,497,302	(2,267,386)	46,336	-	-	-	-
Grand Total	\$ 25,462,059	\$ 10,230,323	\$ (15,322,222)	\$ 90,486	\$ 10,186,403	\$ 4,086,592	\$ (6,142,247)	\$ 42,436	\$ 13,924,628	\$ 5,665,682	\$ (8,307,090)	\$ 48,144	\$ 708,683	\$ 148,597	\$ (571,268)	\$ 11,182

* In this FY, the city claimed civilian employees' salary, benefit, and related indirect costs (all combined) under the services and supplies component.

Audit ID # S09-MCC-047

Summary of Salary Costs and Adjustments

F.1.PS

Purpose: To summarize claimed salary costs and audit adjustments that resulted from auditor's review.

F.1.PS

G.1.PS

Cost Components	Salaries Claimed	Allowed Salaries	Adjustment I Hour-related	Adjustment II PHR-related
2003-04	F.1.1		Finding 1 (Hours)	Finding 2 (PHR)
Administrative Activities	370,032	6,951	(363,081)	
Interrogations	1,789,950	178,691	(1,611,259)	
Adverse Comment	2,698,900	1,835,467	(863,433)	
Subtotal	\$ 4,858,882	\$ 2,021,109	\$ (2,837,773)	\$ - E.1.1
2004-05	F.1.1			
Administrative Activities	364,731	17,316	(347,415)	
Interrogations	1,493,993	147,963	(1,346,030)	
Adverse Comment	2,542,710	1,585,786	(956,924)	
Subtotal	\$ 4,401,434	\$ 1,751,065	\$ (2,650,369)	\$ - E.1.1
2005-06	F.1.1			
Administrative Activities	412,695	18,868	(393,827)	
Interrogations	1,706,155	168,391	(1,537,764)	
Adverse Comment	2,866,552	1,805,778	(1,066,935)	6,161
Subtotal	\$ 4,985,402	\$ 1,993,037	\$ (2,998,526)	\$ 6,161 E.1.1
2006-07	F.1.1			
Administrative Activities	371,865	16,703	(355,162)	
Interrogations	1,546,102	149,266	(1,396,836)	
Adverse Comment	2,598,414	1,634,606	(963,808)	
Subtotal	\$ 4,516,381	\$ 1,800,575	\$ (2,715,806)	\$ - E.1.1
2007-08	F.1.1			
Administrative Activities	529,559	25,936	(504,729)	1,106
Interrogations	2,395,617	227,289	(2,170,441)	2,113
Adverse Comment	3,774,784	2,411,312	(1,444,578)	81,106
Subtotal	\$ 6,699,960	\$ 2,664,537	\$ (4,119,748)	\$ 84,325 E.1.1
Total	\$ 25,462,059	\$ 10,230,323	\$ (15,322,222)	\$ 90,486
	EX1		EX1	EX3

^ In this FY, the city claimed civilian employees' salaries, benefits, and related indirect costs under the component of the services and supplies...
 The auditor will analyze these costs under the services and supplies portion of this audit.

- The city accidentally used the Productive Hourly rate for PSR I instead of II in this FY. The auditors have used the correct rate.
 The adjustment for understated PHR is **6,161** (7.25 difference in rate * allowed hours 849.78).
 This finding will be included with the misstated PHR finding (combined with FY 2007-08 and 2003-04)

W/P FI.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2003-04
Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2003-04

F.4.1

Administrative Activities

					F.3.8			
Captain II	\$	79.37	647.28	\$ 51,374.61	\$	79.37	-	\$ (51,374.61)
Captain III		85.07	916.98	78,007.49		85.07	-	(78,007.49)
Lieutenant		64.43	107.88	6,950.71		64.43	107.88	6,950.71
Lieutenant II		68.16	161.82	11,029.65		68.16	-	(11,029.65)
Sergeant I		54.67	269.70	14,744.50		54.67	-	(14,744.50)
Sergeant II		58.10	647.28	37,606.97		58.10	-	(37,606.97)
Detective II		54.98	1,186.68	65,243.67		54.98	-	(65,243.67)
Detective III		60.87	1,726.08	105,066.49		60.87	-	(105,066.49)
Sr. Clerk Typist	^	29.26	701.22	-		29.26	269.70	N/A
Clerk Typist	^	23.73	647.28	-		23.73	107.88	N/A
Principal Clerk Police I	^	35.84	970.92	-		35.84	107.88	N/A
Unreconciled difference				8.00				(8.00)
Subtotal			7,983.12	\$ 370,032		593.34	\$ 6,951	\$ (363,081)

Interrogations

					F.3.8			
Detective I	\$	51.23	3,662.53	\$ 187,631.4	\$	51.23	-	\$ (187,631.4)
Detective II		54.98	4,045.50	222,421.59		54.98	431.52	23,724.97
Detective III		60.87	3,409.01	207,506.44		60.87	1,186.68	72,233.21
Sergeant I		54.67	3,894.47	212,910.67		54.67	431.52	23,591.20
Sergeant II		58.10	4,514.78	262,308.72		58.10	539.40	31,339.14
Lieutenant I		64.43	5,458.73	351,705.97		64.43	431.52	27,802.83
Peace Off II - wit		42.23	2,211.54	93,393.33		42.23	-	(93,393.33)
Peace Off II - sub		42.23	5,968.88	252,065.80		42.23	-	(252,065.80)
Unreconciled difference				6.00				(6.00)
Subtotal			33,165.44	\$ 1,789,950		3,020.64	\$ 178,691	\$ (1,611,259)

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2003-04
Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2003-04

F.4.1

Adverse Comment

Lieutenant I	\$	64.43	3,613.98	\$ 232,848.7
Lieutenant II		68.16	5,016.42	341,919.19
Captain I		73.33	2,427.30	177,993.91
Captain II		79.37	3,506.10	278,279.16
Captain III		85.07	3,074.58	261,554.52
Sergeant I		54.67	10,949.82	598,626.66
Sergeant II		58.10	3,613.98	209,972.24
Detective I		51.23	269.70	13,816.73
Detective II		54.98	5,016.42	275,802.77
Detective III		60.87	3,937.62	239,682.93
Police Off II		42.23	1,618.20	68,336.59
Clerk Typist	^	23.73	269.70	-
Sr. Clerk Typist	^	29.26	2,049.72	-
Police Serv Rep. II	^	28.05	1,995.78	-
Mgmt Analyst II	^	43.35	4,045.50	-
Principal Clerk Police I	^	35.84	1,618.20	-
Unreconciled difference				67.00

F.3.8

64.43	2,858.82	\$ 184,193.8	\$ (48,655.0)
68.16	4,962.48	338,242.6	(3,676.6)
73.33	2,319.42	170,083.1	(7,910.8)
79.37	3,613.98	286,842.0	8,562.8
85.07	2,804.88	238,611.1	(22,943.4)
54.67	916.98	50,131.3	(548,495.4)
58.10	3,236.40	188,034.8	(21,937.4)
51.23	269.70	13,816.7	-
54.98	2,265.48	124,556.1	(151,246.7)
60.87	3,883.68	236,400.0	(3,282.9)
42.23	107.88	4,555.8	(63,780.8)
23.73	269.70	N/A	-
29.26	1,186.68	N/A	-
34.98	970.92	N/A	-
43.35	-	N/A	-
35.84	-	N/A	-
			(67.0)

Subtotal

53,023.02 \$ 2,698,900

29,667.00 \$ 1,835,467 \$ (863,433)

Total

94,171.58 \$ 4,858,882

\$ 2,021,109 \$ (2,837,773)

G.1.PS
G.1.1
I.1.1

F.1.1

^ In this FY, the city claimed civilian employees' salaries, benefits, and related indirect costs under the component of the services and supplies...
 The auditor will analyze these costs under the services and supplies portion of this audit.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2004-05
Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

FY 2004-05

Administrative Activities

Captain II	\$	83.34	517.92	\$ 43,163.45
Captain III		89.41	733.72	65,601.91
Lieutenant		66.91	86.32	5,775.67
Lieutenant II		70.40	129.48	9,115.39
Sergeant I		57.01	215.80	12,302.76
Sergeant II		60.12	517.92	31,137.35
Detective II		56.87	949.52	53,999.20
Detective III		62.76	1,381.12	86,679.09
Sr. Clerk Typist	*	29.47	561.08	16,535.03
Clerk Typist	*	23.93	517.92	12,393.83
Principal Clerk Police II	*	36.08	776.88	28,029.83
Unreconciled difference				(3.00)
Subtotal			6,387.68	\$ 364,731

Interrogations

Detective I	\$	53.37	2,930.56	\$ 156,404.0
Detective II		56.87	3,237.00	184,088.19
Detective III		62.76	2,727.71	171,191.08
Sergeant I		57.01	3,116.15	177,651.71
Sergeant II		60.12	3,612.49	217,182.90
Lieutenant II		70.40	4,367.79	307,492.42
Lieutenant I		-	-	-
Peace Off II - wit		43.46	1,769.56	76,905.08
Peace Off II - sub		43.46	4,673.63	203,115.96
Unreconciled difference				(38.00)
Subtotal			26,434.89	\$ 1,493,993

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

F.4.1

F.3.8			
\$ 83.34	-	\$ -	\$ (43,163.45)
89.41	-	-	(65,601.91)
66.91	86.32	5,776.00	0.33
70.40	-	-	(9,115.39)
57.01	-	-	(12,302.76)
60.12	-	-	(31,137.35)
56.87	-	-	(53,999.20)
62.76	-	-	(86,679.09)
29.47	215.80	6,359.63	(10,175.40)
23.93	86.32	2,065.64	(10,328.19)
36.08	86.32	3,114.43	(24,915.40)
		-	3.00
	474.76	\$ 17,316	\$ (347,415)

F.3.8			
\$ 53.37	-	\$ -	\$ (156,404.0)
56.87	345.28	19,636.07	(164,452.12)
62.76	949.52	59,591.88	(111,599.20)
57.01	345.28	19,684.41	(157,967.30)
60.12	431.60	25,947.79	(191,235.11)
70.40	-	-	(307,492.42)
66.91	345.28	23,102.68	23,102.68
43.46	-	-	(76,905.08)
43.46	-	-	(203,115.96)
		-	38.00
	2,416.96	\$ 147,963	\$ (1,346,030)

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2004-05
Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

W/P F.1.1

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

FY 2004-05

Adverse Comment

Lieutenant I	\$	66.91	2,891.72	\$ 193,485.0
Lieutenant II		70.40	4,013.88	282,577.15
Captain I		75.38	1,942.20	146,403.04
Captain II		83.34	2,805.40	233,802.04
Captain III		89.41	2,460.12	219,959.33
Sergeant I		57.01	8,761.48	499,491.97
Sergeant II		60.12	2,891.72	173,850.21
Detective I		53.37	215.80	11,517.25
Detective II		56.87	4,013.88	228,269.36
Detective III		62.76	3,150.68	197,736.68
Police Off II		43.46	1,294.80	56,272.01
Clerk Typist *		23.93	215.80	5,164.09
Sr. Clerk Typist *		29.47	1,640.08	48,333.16
Police Serv Rep. II *		35.51	1,596.92	56,706.63
Mgmt Analyst II *		44.00	3,237.00	142,428.00
Principal Clerk Police II *		36.08	1,294.80	46,716.38
Unreconciled difference				(2.00)

Subtotal

42,426.28 \$ 2,542,710

Total

75,248.85 \$ 4,401,434

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

F.4.1

F.3.8

\$ 66.91	2,287.48	\$ 153,055.3	\$ (40,429.7)
70.40	3,970.72	279,538.69	(3,038.46)
75.38	1,855.88	139,896.23	(6,506.80)
83.34	2,891.72	240,995.94	7,193.91
89.41	2,244.32	200,664.65	(19,294.68)
57.01	733.72	41,829.38	(457,662.60)
60.12	2,589.60	155,686.75	(18,163.45)
53.37	215.80	11,517.25	-
56.87	1,812.72	103,089.39	(125,179.97)
62.76	3,107.52	195,027.96	(2,708.72)
43.46	86.32	3,751.47	(52,520.54)
23.93	215.80	5,164.09	-
29.47	949.52	27,982.35	(20,350.80)
35.51	776.88	27,587.01	(29,119.62)
44.00	-	-	(142,428.00)
36.08	-	-	(46,716.38)
			2.00

23,738.00 \$ 1,585,786 \$ (956,924)

26,629.72 \$ 1,751,065 \$ (2,650,369)

G.1.PS

G.1.1

I.1.1

F.1.1

* Civilian Employees. The city calculated a separate indirect cost rate for these classifications.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2005-06
Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

W/PF.1.1

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2005-06

F.4.1

Administrative Activities

Captain II	\$	87.88	566.52	\$ 49,785.78
Captain III		93.85	802.57	75,321.19
Lieutenant		69.33	94.42	6,546.14
Lieutenant II		73.48	141.63	10,406.97
Sergeant I		59.36	236.05	14,011.93
Sergeant II		62.67	566.52	35,503.81
Detective II		59.28	1,038.62	61,569.39
Detective III		65.29	1,510.72	98,634.91
Sr. Clerk Typist *		28.73	613.73	17,632.46
Clerk Typist *		23.21	566.52	13,148.93
Principal Clerk Police II *		35.46	849.78	30,133.20
Subtotal			6,987.08	\$ 412,695

					F.3.8			
\$	87.88	-	\$	-	\$	(49,785.78)		
	93.85	-		-		(75,321.19)		
	69.33	94.42		6,546.14		-		
	73.48	-		-		(10,406.97)		
	59.36	-		-		(14,011.93)		
	62.67	-		-		(35,503.81)		
	59.28	-		-		(61,569.39)		
	65.29	-		-		(98,634.91)		
	28.73	236.05		6,782.00		(10,850.46)		
	23.21	94.42		2,191.49		(10,957.44)		
	35.46	94.42		3,348.13		(26,785.07)		
		519.31		\$ 18,868		\$ (393,827)		

Interrogations

Detective I	\$	55.42	3,205.56	\$ 177,652.1
Detective II		59.28	3,540.75	209,895.66
Detective III		65.29	2,983.67	194,803.81
Sergeant I		59.36	3,408.56	202,332.12
Sergeant II		62.67	3,951.48	247,639.25
Lieutenant I		-	-	-
Lieutenant II		73.48	4,777.65	351,061.72
Peace Off II - wit		45.69	1,935.61	88,438.02
Peace Off II - sub		45.69	5,128.75	234,332.59
Subtotal			28,932.03	\$ 1,706,155

					F.3.8			
\$	55.42	-	\$	-	\$	(177,652)		
	59.28	377.68		22,388.87		(187,506.79)		
	65.29	1,038.62		67,811.50		(126,992)		
	59.36	377.68		22,419.08		(179,913.04)		
	62.67	472.10		29,586.51		(218,052.74)		
	69.33	377.68		26,184.55		26,184.55		
	73.48	-		-		(351,061.72)		
	45.69	-		-		(88,438.02)		
	45.69	-		-		(234,332.59)		
		2,643.76		\$ 168,391		\$ (1,537,764)		

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2005-06
Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2005-06

F.4.1

Adverse Comment

	PHR	Hours	Amount	PHR	Hours	Salary	Adjustment I
Lieutenant I	\$ 69.33	3,163.07	\$ 219,295.6	\$ 69.33	2,502.13	\$ 173,472.67	\$ (45,823.0)
Lieutenant II	73.48	4,390.53	322,616.14	73.48	4,343.32	319,147.15	(3,468.99)
Captain I	77.98	2,124.45	165,664.61	77.98	2,030.03	158,301.74	(7,362.87)
Captain II	87.88	3,068.65	269,672.96	87.88	3,163.07	277,970.59	8,297.63
Captain III	93.85	2,690.97	252,547.53	93.85	2,454.92	230,394.24	(22,153.29)
Sergeant I	59.36	9,583.63	568,884.28	59.36	802.57	47,640.56	(521,243.72)
Sergeant II	62.67	3,163.07	198,229.60	62.67	2,832.60	177,519.04	(20,710.55)
Detective I	55.42	236.05	13,081.89	55.42	236.05	13,081.89	-
Detective II	59.28	4,390.53	260,270.62	59.28	1,982.82	117,541.57	(142,729.05)
Detective III	65.29	3,446.33	225,010.89	65.29	3,399.12	221,928.54	(3,082.34)
Police Off II	45.69	1,416.30	64,710.75	45.69	94.42	4,314.05	(60,396.70)
Clerk Typist *	23.21	236.05	5,478.72	23.21	236.05	5,478.72	-
Sr. Clerk Typist *	28.73	1,793.98	51,541.05	28.73	1,038.62	29,839.55	(21,701.49)
Police Serv Rep. II *	27.05	1,746.77	47,250.13	34.30	849.78	29,147.45	(18,102.67)
Mgmt Analyst II *	42.95	3,540.75	152,075.21	42.95	-	-	(152,075.21)
Principal Clerk Police II *	35.46	1,416.30	50,222.00	35.46	-	-	(50,222.00)
Subtotal		46,407.43	\$ 2,866,552		25,965.50	\$ 1,805,778	\$ (1,060,774)
Total		82,326.54	\$ 4,985,402		29,128.57	\$ 1,993,037	\$ (2,992,365)

F.3.8

6160.91

I.1.1

* Civilian Employees. The city calculated a separate indirect cost rate for these classificaitons.

- The city accidentally used the Productive Hourly rate for PSR I instead of II in this FY. The auditors have used the correct rate. The adjustment for understated PHR is **6,161** (7.25 difference in rate * allowed hours 849.78). This finding will be included with the misstated PHR finding (combined with FY 2007-08 and 2003-04)

G.1.PS

G.1.1

I.1.1

F.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2006-07
 Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2006-07

F.4.1

Administrative Activities

Captain II	\$	89.51	504.00	\$ 45,113.04
Captain III		95.59	714.00	68,251.26
Lieutenant		70.61	84.00	5,931.24
Lieutenant II		74.85	126.00	9,431.10
Sergeant I		60.47	210.00	12,698.70
Sergeant II		63.84	504.00	32,175.36
Detective II		60.38	924.00	55,791.12
Detective III		66.50	1,344.00	89,376.00
Sr. Clerk Typist *		28.33	546.00	15,468.18
Clerk Typist *		22.91	504.00	11,546.64
Principal Clerk Police II *		34.50	756.00	26,082.00
Subtotal			6,216.00	\$ 371,865

					F.3.8		
\$	89.51	-	\$	-	\$ (45,113.04)		
	95.59	-		-	(68,251.26)		
	70.61	84.00		5,931.24	-		
	74.85	-		-	(9,431.10)		
	60.47	-		-	(12,698.70)		
	63.84	-		-	(32,175.36)		
	60.38	-		-	(55,791.12)		
	66.50	-		-	(89,376.00)		
	28.33	210.00		5,949.30	(9,518.88)		
	22.91	84.00		1,924.44	(9,622.20)		
	34.50	84.00		2,898.00	(23,184.00)		
		462.00		\$ 16,703	\$ (355,162)		

Interrogations

Detective I	\$	56.45	2,851.80	\$ 160,984.1
Detective II		60.38	3,150.00	190,197.00
Detective III		66.50	2,654.40	176,517.60
Sergeant I		60.47	3,032.40	183,369.23
Sergeant II		63.84	3,515.40	224,423.14
Lieutenant I		-	-	-
Lieutenant II		74.85	4,250.40	318,142.44
Peace Off II - wit		46.54	1,722.00	80,141.68
Peace Off II - sub		46.54	4,562.25	212,327.12
Subtotal			25,738.65	\$ 1,546,102

					F.3.8		
\$	56.45	-	\$	-	\$ (160,984.1)		
	60.38	336.00		20,287.68	(169,909.32)		
	66.50	924.00		61,446.00	(115,071.60)		
	60.47	336.00		20,317.92	(163,051.31)		
	63.84	420.00		26,812.80	(197,610.34)		
	60.72	336.00		20,401.92	20,401.92		
	74.85	-		-	(318,142.44)		
	46.54	-		-	(80,141.68)		
	46.54	-		-	(212,327.12)		
		2,352.00		\$ 149,266	\$ (1,396,836)		

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2006-07
 Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed PHR	Allowed Hours	Allowed Salary	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2006-07

F.4.1

Adverse Comment

F.3.8

Lieutenant I	\$ 70.61	2,814.00	\$ 198,696.5	\$ 70.61	2,226.00	\$ 157,177.86	\$ (41,518.7)
Lieutenant II	74.85	3,906.00	292,364.10	74.85	3,864.00	289,220.40	(3,143.70)
Captain I	79.43	1,890.00	150,122.70	79.43	1,806.00	143,450.58	(6,672.12)
Captain II	89.51	2,730.00	244,362.30	89.51	2,814.00	251,881.14	7,518.84
Captain III	95.59	2,394.00	228,842.46	95.59	2,184.00	208,768.56	(20,073.90)
Sergeant I	60.47	8,526.00	515,567.22	60.47	714.00	43,175.58	(472,391.64)
Sergeant II	63.84	2,814.00	179,645.76	63.84	2,520.00	160,876.80	(18,768.96)
Detective I	56.45	210.00	11,854.50	56.45	210.00	11,854.50	-
Detective II	60.38	3,906.00	235,844.28	60.38	1,764.00	106,510.32	(129,333.96)
Detective III	66.50	3,066.00	203,889.00	66.50	3,024.00	201,096.00	(2,793.00)
Police Off II	46.54	1,260.00	58,640.40	46.54	84.00	3,909.36	(54,731.04)
Clerk Typist *	22.91	210.00	4,811.10	22.91	210.00	4,811.10	-
Sr. Clerk Typist *	28.33	1,596.00	45,214.68	28.33	924.00	26,176.92	(19,037.76)
Police Serv Rep. II *	33.99	1,554.00	52,820.46	33.99	756.00	25,696.44	(27,124.02)
Mgmt Analyst II *	41.99	3,150.00	132,268.50	41.99	-	-	(132,268.50)
Principal Clerk Police II *	34.50	1,260.00	43,470.00	34.50	-	-	(43,470.00)
Subtotal		41,286.00	\$ 2,598,414		23,100.00	\$ 1,634,606	\$ (963,808)
Total		73,240.65	\$ 4,516,381		25,914.00	\$ 1,800,575	\$ (2,715,806)

G1.PS

G1.1

L1.1

F.1.1

* Civilian Employees. The city calculated a separate indirect cost rate for these classificaitons.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2007-08
 Audit ID # S09-MCC-047
 Summary of Salary Costs and Adjustments

F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

FY 2007-08

Administrative Activities

Captain II	\$ 82.37	735.12	\$ 60,551.83
Captain III	86.45	1,041.42	90,030.76
Lieutenant	73.53	122.52	9,008.90
Lieutenant II	74.90	183.78	13,765.12
Sergeant I	62.48	306.30	19,137.62
Sergeant II	67.04	735.12	49,282.44
Detective II	61.65	1,347.72	83,086.94
Detective III	64.73	1,960.32	126,891.51
Sr. Clerk Typist *	28.66	796.38	22,824.25
Clerk Typist *	22.86	735.12	16,804.84
Principal Clerk Police *	34.62	1,102.68	38,174.78
Subtotal		9,066.48	\$ 529,559

Interrogations

Detective I	\$ 57.40	4,159.55	\$ 238,758.2
Detective II	61.65	4,594.50	283,250.93
Detective III	64.73	3,871.63	250,610.61
Sergeant I	62.48	4,422.97	276,347.17
Sergeant II	67.04	5,127.46	343,744.92
Lieutenant I	73.53	-	-
Lieutenant II	74.90	6,199.51	464,343.30
Peace Off II - wit	53.65	2,511.66	134,750.56
Peace Off II - sub	53.65	7,526.75	403,810.14
Subtotal		38,414.03	\$ 2,395,617

Auditors' Analysis					
Allowed PHR	Allowed Hours	Allowed Hours times Claimed PHR	Allowed Salary (Allowed Hours times Allowed PHR)	Adjustment I Hour-related	Adjustment II PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

F.4.1

	F.3.8				
\$ 89.05	-	\$ -	\$ -	\$ (60,551.83)	\$ -
93.46	-	-	-	(90,030.76)	-
71.93	122.52	9,008.90	8,812.86	-	(196.03)
76.24	-	-	-	(13,765.12)	-
61.33	-	-	-	(19,137.62)	-
65.12	-	-	-	(49,282.44)	-
61.90	-	-	-	(83,086.94)	-
68.08	-	-	-	(126,891.51)	-
31.02	306.30	8,778.56	9,501.43	(14,045.69)	722.87
24.74	122.52	2,800.81	3,031.14	(14,004.04)	230.34
37.47	122.52	4,241.64	4,590.82	(33,933.14)	349.18
	673.86	\$ 24,830	\$ 25,936	\$ (504,729)	\$ 1,106

F.3.8

\$ 57.53	-	\$ -	\$ -	\$ (238,758.17)	\$ -
61.90	490.08	30,213.43	30,335.95	(253,037.49)	122.52
68.08	1,347.72	87,237.92	91,752.78	(163,373.00)	4,514.86
61.33	490.08	30,620.20	30,056.61	(245,726.97)	(563.59)
65.12	612.60	41,068.70	39,892.51	(302,676.21)	(1,176.19)
71.93	490.08	36,035.58	35,251.45	36,035.58	(784.13)
76.24	-	-	-	(464,343.30)	-
47.97	-	-	-	(134,751.00)	-
47.97	-	-	-	(403,810.14)	-
	3,430.56	\$ 225,176	\$ 227,289	\$ (2,170,441)	\$ 2,113

F.3.8

City of Los Angeles
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F.1.PS

City's Data				
Activities	Classification	PHR Claimed	Hours Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis					
Allowed PHR	Allowed Hours	Allowed Hours times Claimed PHR	Allowed Salary (Allowed Hours times Allowed PHR)	Adjustment I Hour-related	Adjustment II PHR-related
(d)	(e)	(f)=(e)*(a)	(g)=(e)*(d)	(h)=(f)-(c)	(i)=(g)-(f)

FY 2007-08

F.4.1

Adverse Comment

Lieutenant I	\$ 73.53	4,104.42	\$ 301,798.0	\$ 71.93	3,246.78	\$ 238,735.73	\$ 233,540.89	\$ (63,062.27)	\$ (5,194.85)
Lieutenant II	74.90	5,697.18	426,718.78	76.24	5,635.92	422,130.41	429,682.54	(4,588.37)	7,552.13
Captain I	73.00	2,756.70	201,239.10	78.92	2,634.18	192,295.14	207,889.49	(8,943.96)	15,594.00
Captain II	82.37	3,981.90	327,989.10	89.05	4,104.42	338,081.08	365,498.60	10,091.97	27,417.53
Captain III	86.45	3,491.82	301,867.84	93.46	3,185.52	275,388.20	297,718.70	(26,479.64)	22,330.50
Sergeant I	62.48	12,435.78	776,987.53	61.33	1,041.42	65,067.92	63,870.29	(711,919.61)	(1,197.63)
Sergeant II	67.04	4,104.42	275,160.32	65.12	3,675.60	246,412.22	239,355.07	(28,748.09)	(7,057.15)
Detective I	57.40	306.30	17,581.62	57.53	306.30	17,581.62	17,621.44	-	39.82
Detective II	61.65	5,697.18	351,231.15	61.90	2,572.92	158,621.00	159,263.75	(192,610.15)	642.75
Detective III	64.73	4,471.98	289,471.27	68.08	4,410.72	285,505.91	300,281.82	(3,965.36)	14,775.91
Police Off II	53.65	1,837.80	98,597.97	47.97	122.52	6,573.20	5,877.28	(92,024.77)	(695.91)
Clerk Typist *	22.86	306.30	7,002.02	24.74	306.30	7,002.02	7,577.86	-	575.84
Sr. Clerk Typist *	28.66	2,327.88	66,717.04	31.02	1,347.72	38,625.66	41,806.27	(28,091.39)	3,180.62
Police Serv Rep. I *	34.63	2,266.62	78,493.05	37.48	1,102.68	38,185.81	41,328.45	(40,307.24)	3,142.64
Mgmt Analyst II *	41.42	4,594.50	190,304.19	44.83	-	-	-	(190,304.19)	-
Principal Clerk Polict *	34.62	1,837.80	63,624.64	37.47	-	-	-	(63,624.64)	-
Subtotal		60,218.58	\$ 3,774,784		33,693.00	\$ 2,330,206	\$ 2,411,312	\$ (1,444,578)	\$ 81,106
Total		107,699.09	\$ 6,699,960		37,797.42	\$ 2,580,212	\$ 2,664,537	\$ (4,119,748)	\$ 84,325

G.1.PS

G1.1

G1.1

I.1.1

F.1.1

* Civilian Employees. The city calculated a separate indirect cost rate for these classifications.

Cit of Los Angeles
Peace Officers Procedural Bill of Rights Program
FY's 2003-04 through 2007-08
Analysis of Claimed Activities

Program Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code Sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to Peace Officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code Section 17561 and adopted the statement of decision. The CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code Section 17514. The CSM further defined that activities covered by due process are not reimbursable.

The parameters and guidelines establish the state mandate and define reimbursement criteria. The CSM adopted the parameters and guidelines on July 27, 2000 and corrected it on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative Appeal, Interrogation, and Adverse Comment. In compliance with Government Code Section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the POBOR test claim to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in San Diego Unified School District v. Commission on State Mandates (2004) 33 Cal. 4th 859 and other applicable court decisions. On April 26, 2006, CSM reviewed its original findings and adopted a Statement of Decision on reconsideration. The Statement of Decision became final on May 1, 2006. CSM found that the above-mentioned court case supports CSM's 1999 Statement of Decision. CSM further found that the test claim legislation constitutes a partial reimbursable state-mandated program for all activities previously approved by CSM except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed.

Cit of Los Angeles
Peace Officers Procedural Bill of Rights Program
FY's 2003-04 through 2007-08
Analysis of Claimed Activities

- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by CSM on this reconsideration applies to costs incurred and claimed beginning on July 1, 2006.

Pursuant to Government Code section 17557 and Title 2, California Code of Regulations, Section 1183.2, CSM adopted amended parameters and guidelines on March 28, 2008. The amended parameters and guidelines provides that claimants may be reimbursed for the reimbursable activities by claiming costs pursuant to the reasonable reimbursement methodology or by filing an actual cost claim. CSM adopted the reasonable reimbursement methodology to reimburse local agencies and school districts for all direct and indirect costs, as authorized by Government Code section 17557, subdivision (b), in lieu of payment of total actual costs incurred for the reimbursable activities. The amended parameters and guidelines apply to costs incurred and claimed beginning on July 1, 2006.

The reasonable reimbursement methodology shall allow each eligible claimant to be reimbursed at the rate of \$37.25 per full-time sworn peace officer employed by the agency and reported to the Department of Justice. The rate per full-time sworn peace officer shall be adjusted each year by the Implicit Price Deflator referenced in Government Code section 17523.

Current Audit Background

For the purposes of this audit, we reviewed the city's time study, conducted by the Los Angeles Police Department in May of 2004. The time study was designed to keep track of POBOR related activities performed by the LAPD staff. The city used the time study results to claim costs for the current audit period covering FY's 2003-04 through 2007-08.

The city also used the same time study results to claim costs retroactively for the prior audit period, covering FY's 1994-95 through 2001-02. Our office has audited prior year claims and made adjustments to the city's time study results.

One of the objectives of the current audit was to take a fresh look at the city's time study and revisit prior findings. We've been able to sit down with the city's staff and go over the time study methodology and activities included in the time study. After discussing these activities we reached the conclusions described further in this document.

The following is our analysis of activities claimed by the City of Los Angeles and the guidelines for reimbursable activities as outlined in the parameters and guidelines.

Cit of Los Angeles
Peace Officers Procedural Bill of Rights Program
FY's 2003-04 through 2007-08
Analysis of Claimed Activities

ADMINISTRATIVE ACTIVITIES

The parameters and guidelines for the POBOR program allow reimbursement for the following Administrative Activities:

- ❖ Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
- ❖ Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
- ❖ "Updating the status report of mandate-reimbursable POBAR-activities"-tracking the procedural status of the mandate-reimbursable activities only.

Administrative activities claimed by LAPD and analysis of allowable and unallowable activities:

1. Comment – The Administrative Records section in Internal Affairs performs this task by creating a file and a case number when the Professional Standards Bureau receives a 1.28 complaint form. Per LAPD staff, this activity is an internal procedure created by LAPD to ensure compliance with the investigation time frame of 1 year (complaint has to be completed within one year of initiation).

- ❖ Unallowable:
- ❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases"
- ❖ Also, the 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Activities occurring before the assignment of the case to an administrative investigator" are not reimbursable. "These activities including taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation" are not reimbursable.

2. Locate - The complaint Classifications Unit reads the 1.28(complaint form) and determines the best entity to investigate. After it is determined which entity is to investigate, the 1.28 is sent to administrative records section.

- ❖ Unallowable:
- ❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases"
- ❖ Also, the 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Activities occurring before the assignment of the case to an administrative investigator" are not reimbursable. "These activities including taking an initial complaint,

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Analysis of Claimed Activities

setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation" are not reimbursable.

3. **Status** - This activity occurs in the Administrative Records Section (ARS) and involves the time needed to update status changes within POBOR case files. Per LAPD staff, the cases are updated for every activity and/or procedural change.

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "Updating the status report of mandate-reimbursable POBOR activities' means that only tracking the procedural status of the mandate-reimbursable activities" is reimbursable.

4. **Assign** - This activity is solely updating the database and noting the case assignment to an investigator for adjudication.

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 7, states that "Identification of the interrogating officers" is reimbursable.

❖ Also, the 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "Updating the status report of mandate-reimbursable POBAR activities' means that only tracking the procedural status of the mandate-reimbursable activities" is reimbursable.

5. **Invest** - When the investigation is complete, it is sent to the Review and Evaluation Section. This function consists of updating the database.

❖ **Unallowable:**

❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "...Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases".

6. **IA Review** - This is the time it takes to update the database for Internal Affairs' review. Per LAPD staff, this activity is similar to Invest, but another IAG section or division will review the investigation of another IAG investigation unit for thoroughness, facts, results, and conclusions. It is another type of review and another change in status.

❖ **Unallowable:**

❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "...Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases."

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FY's 2003-04 through 2007-08
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7. Appeal - The case is going to the Advocate Section where another file is created and entered into the Advocate Database. Per LAPD staff, during this activity the case is in the appeal phase and is no longer being investigated or reviewed. This activity pertains to LAPD's procedural process of transferring a case in its Advocate Unit, tracking the appeal process, and tracking where the case is.
- ❖ Unallowable:
 - ❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "...Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases".
8. Note - This activity is distributing copies of the face sheet (contains the summary of allegations and the names of the involved parties) to concerned entities. This activity occurs in the Administrative Records Section (ARS) and is the time it takes to update the database to perform this activity.
- ❖ Unallowable:
 - ❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "...Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases".
 - ❖ Also, the 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Investigation activities, including... reviewing the allegations, communicating with other departments..." are not reimbursable.
9. Close out - The Administrative Records Section closes out the case file and documents this activity. This is an update database function.
- ❖ Unallowable:
 - ❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "...Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases".
 - ❖ Also, the 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation" are not reimbursable.

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FY's 2003-04 through 2007-08
Analysis of Claimed Activities

ADVERSE COMMENT

The parameters and guidelines for the POBOR program allow these adverse comment activities for reimbursement:

- ❖ Providing notice of the adverse comment;
- ❖ Providing an opportunity to respond to the adverse comment within 30 days; and
- ❖ Obtaining the signature of the peace officer on the adverse comment; or
- ❖ Noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

Adverse comment activities claimed by LAPD and analysis of allowable and unallowable activities:

1. **Preliminary** – This activity involves the investigation of the circumstances of the adverse comment.

- ❖ **Unallowable:**
- ❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses" are not reimbursable.
- ❖ Also, the 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "investigating a complaint", "interviewing a complainant", and "preparing a complaint investigation report" are not reimbursable activities.

2. **Review** – This activity involves the review of the 1.28 (complaint form) and the circumstances leading to the adverse comment. This is the preliminary review of the comment to determine if it's an adverse comment and warrants further investigation. The Complaint Classification Unit performs this activity. This activity also includes the time it takes to prepare a face sheet concerning the complaint (contains the summary of allegations and the names of the involved parties). Per LAPD staff - the face sheet is part of the accused officer's background information.

- ❖ **Allowable:**
- ❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment" are reimbursable activities. Same section also states that "Preparation of notice of adverse comment" is also a reimbursable activity.

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3. **Collect** – This is the preliminary investigation conducted by Supervisors, Detectives, and the Command Staff in the Areas where the complaint was taken. This can include report writing, interviews, or any activity where information is gathered for the 1.28.
 - ❖ **Unallowable:**
 - ❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses" are not reimbursable.
 - ❖ Also, the 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "investigating a complaint", "interviewing a complainant", and "preparing a complaint investigation report" are not reimbursable activities.

4. **Area Invest** – This is for the time spent by the Areas to investigate the complaint or 1.28 (complaint form). This activity occurs after the preliminary investigation.
 - ❖ **Unallowable:**
 - ❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses" are not reimbursable.
 - ❖ Also, the 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "investigating a complaint", "interviewing a complainant", and "preparing a complaint investigation report" are not reimbursable activities.

5. **Inspect** – The assigned Advocate reviews the investigation for status and thoroughness.
 - ❖ **Unallowable:**
 - ❖ The 2008 parameters and guidelines, Section IV A (Administrative Activities), page 5, states that "...Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases."

6. **Note** – Providing notice to the Peace Officer of the adverse comment or complaint fact sheet. This is usually the first notice the subject receives of the complaint. This activity is associated with the first notice of adverse comment and that an investigation is taking place.
 - ❖ **Allowable:**
 - ❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 10, states that that "providing notice of the adverse comment" is a reimbursable activity.

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FY's 2003-04 through 2007-08
Analysis of Claimed Activities

- 7. **Respond** – This activity is associated with the first notice of adverse comment and that an investigation is taking place. The activity provides the Officer an opportunity to respond within 30 days
 - ❖ **Allowable:**
 - ❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 10, states that "providing an opportunity to respond to the adverse comment within 30 days" is a reimbursable activity.

- 8. **Sign** – This activity occurs when the Officer under investigation reviews and signs the adverse comment or complaint fact sheet. This is the first notice of complaint from Internal Affairs.
 - ❖ **Allowable:**
 - ❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 10, states that "providing an opportunity to review and sign the adverse comment" and "obtaining the signature of the peace officer on the adverse comment" is a reimbursable activity.

- 9. **Refuse** – If the accused Officer refuses to sign the face sheet or initial the adverse comment, the time involved is noted. This is the first notice of a complaint.
 - ❖ **Allowable:**
 - ❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 10, states that "noting the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances" is a reimbursable activity.

- 10. **Approval** – This activity is the review by Internal Affairs Management of a completed case prior to it being sent to the Areas or Divisions for notification to the Officer under investigation.
 - ❖ **Allowable:**
 - ❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel..." is reimbursable.

- 11. **Adjudication** – This is the time committed by the Command Officer (accused Officer's Supervisor) of the Area to adjudicate the complaint. This would include a review of the completed complaint, and the formulation of a Letter of Transmittal (LOT).
 - ❖ **Allowable:**
 - ❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel..." is reimbursable.

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Analysis of Claimed Activities

12. **CO Review** – According to LAPD staff, “CO review” is closely tied with “Adjudication.” This is the time committed by the Commanding Officer of the Area to review the complaint and LOT (Letter of Transmittal).

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel..." is reimbursable.

13. **Preparation** – This activity is the preparation of the “Charge Sheet” for the Chief of Police to sign.

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel..." and "preparation of notice of adverse comment" are reimbursable activities.

14. **Serve** – This activity is ensuring that the accused Officer is served with the “Charge Sheet” and obtaining the Officer’s signature or noting that the Officer refuses to sign the charge sheet.

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 10 states that “providing an opportunity to review and sign the adverse comment” and "noting the peace officer's refusal to sign the adverse comment and obtaining the signature of the peace officer under such circumstances" is a reimbursable activity.

15. **Accuracy** – This activity involves reviewing the accused Officer’s response to the complaint or 1.28 (complaint form).

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11 states that "review of peace officer's response to adverse comment" is a reimbursable activity.

16. **RE Invest** – This activity involves the time needed to conduct any additional investigations.

❖ **Unallowable:**

❖ The 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11 states that “investigating a complaint” is not a reimbursable activity.

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Analysis of Claimed Activities

INTERROGATION ACTIVITIES

The parameters and guidelines for the POBOR program allow these interrogation activities for reimbursement:

- ❖ Compensating the peace officer for interrogations occurring during off-duty time.
- ❖ Providing notice to the peace officer before the interrogation.
- ❖ Recording the interrogation when the peace officer employee records the interrogation.
- ❖ Providing the peace officer employee with access to the recording prior to any further proceedings.
- ❖ Producing transcribed copies of any notes made by a stenographer at an interrogation and copies of reports or complaints made by investigators or other persons.

Interrogation activities claimed by LAPD and analysis of allowable and unallowable activities:

The city of Los Angeles claimed the following activities under the component of Interrogations:

1. Admin Task (Administrative Task)
2. Call out
3. CO Contact (Commanding Officer Contact)
4. Evidence Collect
5. Interview in person
6. Interview Telephone
7. Kickback Editing
8. Meet/Brief/Notify
9. Non-Evidence Task
10. Paraphrasing
11. Prep for Interview
12. Report Formatting
13. Telephone contact
14. Travel
15. VI Computer Task

The city did not provide a formal description of the activities, listed above. However, per LAPD staff, these activities involved time for conducting investigations, collecting evidence, writing reports, and editing reports.

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Analysis of Claimed Activities

- ❖ Unallowable: (applies to all 15 activities mentioned above in this section)
- ❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 9, states that "Investigation activities, including assigning an investigator to the case, reviewing the allegations, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses" are not reimbursable.
- ❖ Also, the 2008 parameters and guidelines, Section IV D (Adverse Comment), page 11, states that "investigating a complaint", "interviewing a complainant", and "preparing a complaint investigation report" are not reimbursable activities.

In addition, the activities mentioned above were not included in the time study supporting documents that were attached to the claims. Instead, the city's time study included the following activities under the component of Interrogations, none of which were actually included in the claims:

1. Interview – This activity is concerned with conducting the interrogation of the accused Officer. The activity notes the start and end time of the interrogation. Per LAPD staff, interrogations usually take place during normal working hours and rarely happen during overtime (during accused Officer's off-duty time). The city's time study did not specify if and when the Officers were paid overtime for the interviews.
 - ❖ Unallowable:
 - ❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 7, states that "Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty..."

2. ID, ID-A, ID-W – Providing prior notice to the Officer (accused and/or witness) regarding the nature of the interrogation and identification of the investigating Officer. This activity occurs in the Administrative or Criminal Investigation Division.
 - ❖ Allowable:
 - ❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 7, states that "Providing notice to the peace officer before the interrogation..." and that "The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers and all other persons to present during the interrogation..." are reimbursable activities... This section further states that "identification of the interrogating officers to (be) include(d) in the notice of interrogation".

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Analysis of Claimed Activities

3. **Determine** – Determination of the investigating Officers. This activity is assigned to the section Officer-in-Charge (OIC).

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 7, states that "Providing notice to the peace officer before the interrogation..." and that "The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers and all other persons to present during the interrogation..." are reimbursable activities.. This section further states that "identification of the interrogating officers to (be) include(d) in the notice of interrogation"

4. **Tape** – This activity involves tape recording the interrogation. Per LAPD staff, this activity rarely happens. In fact, no time increments were claimed for the tape recording activity.

❖ **Allowable:** (only if the accused or witness officer or their attorney / representative requested the recording).

❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 7, states that "Recording the interrogation when the peace officer employee records the interrogation" is a reimbursable activity.

5. **Booking tape** – The activity is booking (storing) the tape at SID for storage.

❖ **Allowable:**

❖ The 2008 parameters and guidelines, Section IV C (Interrogation Activities), page 8, states that "The cost of media and storage, and the cost of transcription are reimbursable".

W/P F.3.3

F.3.PS Administrative Activities

* Activities in **BOLD** font are reimbursable
 ** See workpaper F.2.PS for analysis of time study activities

LAPD Database Minutes (counted by auditor)

Auditor's Calc of Allowable Min per case

Clerk Typist ^

Activity **	Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
Appeal	89	36	
Assign *	1,083	107	
Close Out	1,203	441	
Comment	5,002	578	
Invest	697	148	
Note Admin	3,519	253	
Status *	1,114	315	
Totals	12,707	1,878	7

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) = (a) / 12,707	Apply % to Average Min claimed sum (b) * 7
0		
1,083	8.52%	
0		
0		
0		
0		
1,114	8.77%	
2,197	17.29%	1.00

^ city claimed 7 min/case for this class

7
7

F.3.8

5.20616114

Senior Clerk Typist ^

Activity **	Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
Appeal	66	11	
Assign *	1,481	106	
Close Out	481	177	
Comment	1,985	249	
IA Review	10	9	
Invest	2,026	275	
Locate	17	4	
Note Admin	2,466	173	
Status *	1,935	244	
Totals	10,467	1,248	8

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) = (a) / 10,467	Apply % to Average Min claimed sum (b) * 8
0		
1,481	14.15%	
0		
0		
0		
0		
0		
1,935	18.49%	
3416	32.64%	3.00

^ city claimed 8 min/case for this class

8
8

F.3.8

9.76

Principal Clerk Police II ^

Activity **	Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
Comment	1,693	142	
Invest	5	1	
Locate	13	1	
Status *	82	16	
Totals	1,793	160	11

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) = (a) / 1,793	Apply % to Average Min claimed sum (b) * 11
0		
0		
0		
82	4.57%	
82	4.57%	1.00

^ city claimed 11 min/case for this class

11
11

F.3.8

5.125

F.3.PS

Administrative Activities

* Activities in **BOLD** font are reimbursable
 ** See workpaper F.2.PS for analysis of time study activities

LAPD Database Minutes (counted by auditor)

Auditor's Calc of Allowable Min per case

Detective II ^

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 1,493	Apply % to Average Min claimed sum (b) * 13
------------------------------------	--	--

Locate	1,493	117	13
^ city claimed 13 min/case for this class			

0	0.00%	-	F.3.8
----------	--------------	----------	--------------

Detective III ^

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 1,677	Apply % to Average Min claimed sum (b) * 11
------------------------------------	--	--

Appeal	160	11	
Comment	20	2	
Locate	1,497	140	
	1,677	153	19
^ city claimed 19 mins/case for this class			

0			
0			
0	0.00%	-	F.3.8

Sergeant I ^

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 3	Apply % to Average Min claimed sum (b) * 3
------------------------------------	--	---

Locate	3	1	3
^ city claimed 3 min/case for this class			

0	0.00%	-	F.3.8
----------	--------------	----------	--------------

Sergeant II ^

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 1,417	Apply % to Average Min claimed sum (b) * 7
------------------------------------	--	---

Assign *	1	1	
Comment	5	1	
IA Review	130	5	
Locate	1281	205	
	1,417	212	7
^ city claimed 7 min/case for this class			

1	0.07%		
0			
0			
0			
1	0.07%	-	F.3.8

W/P F.3.3

F.3.PS

Administrative Activities

* Activities in **BOLD** font are reimbursable
 ** See workpaper F.2.PS for analysis of time study activities

LAPD Database Minutes (counted by auditor)

Auditor's Calc of Allowable Min per case

Lieutenant I ^

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 1	Apply % to Average Min claimed sum (b) * 1
------------------------------------	--	---

Status *	<u>1</u>	<u>1</u>			
	1	1	<table border="1"><tr><td>1</td></tr><tr><td>1</td></tr></table>	1	1
1					
1					

<u>1</u>	<u>100.00%</u>	<table border="1"><tr><td>1.00</td></tr></table>	1.00	F.3.8
1.00				
1	100.00%			

^ city claimed 1 min/case for this class

1

Lieutenant II ^

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 1	Apply % to Average Min claimed sum (b) * 1
------------------------------------	--	---

Appeal	<u>2</u>	<u>1</u>			
	2	1	<table border="1"><tr><td>2</td></tr><tr><td>2</td></tr></table>	2	2
2					
2					

<u>-</u>	<u>0.00%</u>	<table border="1"><tr><td>-</td></tr></table>	-	F.3.8
-				
0	0.00%			

^ city claimed 2 min/case for this class

Captain II ^ (did not find this activity for this class in the time study)

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)		
<u>15</u>	<u>1</u>			
15	1	<table border="1"><tr><td>15</td></tr><tr><td>7</td></tr></table>	15	7
15				
7				

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 1	Apply % to Average Min claimed sum (b) * 1
------------------------------------	--	---

IA Review	<u>15</u>	<u>1</u>			
	15	1	<table border="1"><tr><td>15</td></tr><tr><td>7</td></tr></table>	15	7
15					
7					

<u>-</u>	<u>0.00%</u>	<table border="1"><tr><td>-</td></tr></table>	-	F.3.8
-				
0	0.00%			

^ city claimed 7 mins/case for this class

Captain III ^ (did not find this activity for this class in the time study)

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 10	Apply % to Average Min claimed sum (b) * 10
------------------------------------	---	--

IA Review	<u>10</u>	<u>1</u>			
	10	1	<table border="1"><tr><td>10</td></tr><tr><td>10</td></tr></table>	10	10
10					
10					

<u>-</u>	<u>0.00%</u>	<table border="1"><tr><td>-</td></tr></table>	-	F.3.8
-				
0	0.00%			

^ city claimed 10 min/case for this case

F.3.PS Adverse Comments

* Activities in **BOLD** font are reimbursable
 ** See workpaper F.2.PS for analysis of time study activities

Clerk Typist ^

Activity **	Minutes	# of Entries	Average Min	Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 4,217	Apply % to Average Min claimed sum (b) *3
	Sum Total (a)	(records) (b)	Claimed (a) / (b)			
Accuracy *	4,194	1,282		4,194	99.45%	
Approval *	23	5		23	0.55%	
Totals	4,217	1,287	3	4,217	100.00%	3.00

^ city claimed 3 min/case for this class

Senior Clerk Typist ^

Time Study-test of actual minutes/ activities provided.

Activity *	Minutes	# of Entries	Average Min	Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 5748	Apply % to Average Min claimed sum (b) *19
	Sum Total (a)	(records) (b)	(a) / (b)			
Adjudication *	456	26		456	7.93%	
Approval *	55	26		55	0.96%	
Collect	311	27				
Inspect	1,490	135				
Preparation *	2,450	55		2,450	42.62%	
Serve *	907	34		907	15.78%	
Sign *	79	3		79	1.37%	
	5,748	306	19	3947	68.66%	13.00

^ city claimed 23 min/case for this class

Police Serv Rep ^

Time Study-test of actual minutes/ activities provided.

Activity *	Minutes	# of Entries	Average Min	Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) /1551	Apply % to Average Min claimed sum (b) * 22
	Sum Total (a)	(records) (b)	(a) / (b)			
Adjudication *	519	18		519	33.46%	
CO Review *	30	1		30	1.93%	
Collect	450	19				
Area Invest	320	16				
Sign *	232	16		232	14.96%	
	1,551	70	22	781	50.35%	11.00

^ city claimed 22 min/case for this class

W/P F.3.3

F.3.PS

Adverse Comments

* Activities in **BOLD** font are reimbursable

Mgmt Analyst II ^

POBAR Time Study Summary for activities 3-11-09

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 45	Apply % to Average Min claimed sum (b) *45
------------------------------------	---	---

Collect 45 1

45 **1**

45
45

0 **0.00%** **-**

F.3.8

^ city claimed **45** min/case for this class

Principal Clerk Police II ^

****Not found in time study. Must have been confused with Police Officer II**

POBAR Time Study Summary for activities 3-11-09

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) /	Apply % to Average Min claimed sum (b) *
------------------------------------	--	---

**
**
**

- 0.00%
0
0

-
18

0 **0.00%** **-**

F.3.8

^ city claimed **18** min/case for this class

Police Officer II ^

POBAR Time Study Summary for activities 3-11-09

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 925	Apply % to Average Min claimed sum (b) * 18
------------------------------------	--	--

Adjudication * **30** **1**
 Collect - 1
 Area Invest 895 50

925 **52**

18
18

30 **3.24%** **1.00**

F.3.8

^ city claimed **18** min/case for this class

Detective I ^

POBAR Time Study Summary for activities 3-11-09

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 3	Apply % to Average Min claimed sum (b) * 3
------------------------------------	--	---

Sign * 3 1

3 **1**

3
3

3 **100.00%** **3.00**

F.3.8

^ city claimed **3** min/case for this class

F.3.PS

Adverse Comments

* Activities in **BOLD** font are reimbursable

Detective II ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 8365	Apply % to Average Min claimed sum (b) *58
------------------------------------	---	---

Accuracy *	3,455	103	
Area Invest	4,440	31	
Collect	380	7	
Review *	90	2	
	8,365	143	58
^ city claimed 56 min/case for this class			56

	3,455	41.30%	
	90	1.08%	
	3545	42.38%	25.00

F.3.8

Detective III ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 4,586	Apply % to Average Min claimed sum (b) * 45
------------------------------------	--	--

Accuracy *	551	26	
Approval *	3,265	63	
Collect	190	3	
Review *	580	11	
	4,586	103	45
^ city claimed 44 min/case for this class			44

	551	12.01%	
	3,265	71.19%	
	580	12.65%	
	4396	95.85%	43.00

F.3.8

Sergeant I ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 55,262 mir	Apply % to Average Min claimed sum (b) *123
------------------------------------	---	--

Accuracy *	155	4	
Adjudication *	3,930	27	
Area Invest	39,778	340	
Collect	11,002	74	
Note *	120	1	
Respond *	90	2	
Sign *	187	3	
	55,262	451	123
^ city claimed 122 min/case for this class			122

	155	0.28%	
	3,930	7.11%	
	120	0.22%	
	90	0.16%	
	187	0.34%	
	4,482	8.11%	10.00

F.3.8

F.3.PS

Adverse Comments

* Activities in **BOLD** font are reimbursable

Sergeant II ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 28,771min.	Apply % to Average Min claimed sum (b) *40
------------------------------------	---	---

Accuracy *	22,316	551
Adjudication *	2	1
Approval *	2,245	71
Area Invest	1,455	13
Collect	635	7
RE Invest	825	15
Review *	1,153	46
Sign *	140	10

22,316	77.56%	
2	0.01%	
2,245	7.80%	
1,153	4.01%	
140	0.49%	

28,771	714	40
		40

25856	89.87%	36.00
--------------	---------------	--------------

F.3.8

^ city claimed **40** min/case

Lieutenant I ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 6,904min	Apply % to Average Min claimed sum (b) *40
------------------------------------	---	---

Adjudication *	5,254	107
Area Invest	200	4
Collect	1,195	35
Note *	5	1
Sign *	250	26

5,254	76.10%	
5	0.07%	
250	3.62%	

6,904	173	40
		40

5509	79.79%	32.00
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F.3.8

^ city claimed **40** min/case for this class

Lieutenant II ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 5,316 min.	Apply % to Average Min claimed sum (b) *56
------------------------------------	---	---

Adjudication *	420	4
Approval *	4,776	86
Collect	90	2
Note *	10	1
Sign *	20	2

420	7.90%	
4,776	89.84%	
10	0.19%	
20	0.38%	

5,316	95	56
		56

5226	98.31%	55.00
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F.3.8

^ city claimed **56** min/case for this class

F.3.PS

Adverse Comments

* Activities in **BOLD** font are reimbursable

Captain I ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) /1,870	Apply % to Average Min claimed sum (b) * 28
------------------------------------	---	--

Adjudication *	1,725	52
Collect	125	13
Sign *	20	2

1,725	92.25%	
20	1.07%	

1,870	67	28
		27

1745	93.32%	26.00	F.3.8
-------------	---------------	--------------	--------------

^ city claimed 27 min/case for this class

Captain II ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) /795	Apply % to Average Min claimed sum (b) * 40
------------------------------------	---	--

Accuracy *	85	3
Adjudication *	435	4
Approval *	275	13

85	10.69%	
435	54.72%	
275	34.59%	

795	20	40
		39

795	100.00%	40.00	F.3.8
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^ city claimed 39 min/case

Captain III ^

Time Study-test of actual minutes/ activities provided.

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min (a) / (b)
-----------------------------	----------------------------------	--------------------------

Allowed Min Per Activity (a)	% of Allowed Min to Sum of Min Claimed (b) =(a) / 1750	Apply % to Average Min claimed sum (b) * 18
------------------------------------	---	--

Adjudication *	1510	31
Approval *	60	3
Area Invest	20	2
CO Review *	20	1
Collect	155	11
Sign *	45	4

1,510	83.43%	
60	3.31%	
20	1.10%	
45	2.49%	

1,810	52	35
		34

1635	90.33%	31	F.3.8
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^ city claimed 34 min/case for this class

W/P F.3.3.

F.3.PS

Interrogations Activities

* Activities in **BOLD** font are reimbursable
 ** See workpaper F.2.PS for analysis of time study activities

Detective I ^ ****Detective I did not appear in the time study**

Activity **	Minutes	# of Entries	Average Min	Allowed Min Per Activity	% of Allowed	Apply %
	Sum Total (a)	(records) (b)	Claimed (a) / (b)		Min to Sum of Min Claimed	to Average Min claimed
Claimed:						
Admin Task	660	22				
Call out	-	-				
co Contact	-	-				
Evidence Collect	174	6				
Interview in person	-	-				
Interview Telephone	888	8				
Kickback Editing	810	5				
Meet/Brief/Notify	-	-				
Non-Evidence Task	126	7				
Paraphrasing	756	6				
Prep for Interview	120	2				
Report Formatting	12	1				
Telephone contact	408	38				
Travel	78	4				
VI Computer Task	-	-				
	4,032	99	41	0	0.00%	0
^ city claimed 41 min/case						
			41			
*No activities in time study for this classification						
	-	-	-	0	0.00%	-

F.3.8

Detective II ^

Activity **	Minutes	# of Entries	Average Min	Allowed Min Per Activity	% of Allowed	Apply %
	Sum Total (a)	(records) (b)	Claimed (a) / (b)		Min to Sum of Min Claimed	to Average Min claimed
Claimed:						
Admin Task	5,982	204				
Call out	-	-				
co Contact	276	14				
Evidence Collect	6,180	131				
Interview in person	10,716	110				
Interview Telephone	1,056	38				
Kickback Editing	1,926	24				
Meet/Brief/Notify	1,152	59				
Non-Evidence Task	5,022	105				
Paraphrasing	16,230	109				
Prep for Interview	1,926	51				
Report Formatting	14,274	94				
Telephone contact	8,556	699				
Travel	3,684	60				
VI Computer Task	264	19				
	77,244	1,717	45	0	0.00%	0
^ city claimed 45 min/case for this class						
			45			

W/P F.3.3

F.3.PS

Interrogations Activities

Activities in time study for this class, but not claimed, are as follows:

	(a)	(b) =(a) / 3,423	sum (b) * 27
Access *	85	6	2.48%
Booking *	-	-	-
Booking Tape *	45	9	1.31%
ID *	449	41	13.12%
ID-W *	44	7	1.29%
Interview	2,800	65	
	3,423	128	5.00

Detective III ^

	Minutes	# of Entries	Average Min	Allowed Min	% of Allowed	Apply %
	Sum Total	(records)	Claimed			
	(a)	(b)	(a) / (b)	Per Activity	Min to Sum of	to Average Min
					Min Claimed	claimed
Claimed:						
Admin Task	1,926	48				
Call out	-	-				
co Contact	-	-				
Evidence Collect	12	2				
Interview in person	60	1				
Interview Telephone	18	1				
Kickback Editing	-	-				
Meet/Brief/Notify	84	3				
Non-Evidence Task	6	1				
Paraphrasing	-	-				
Prep for Interview	-	-				
Report Formatting	510	4				
Telephone contact	78	11				
Travel	-	-				
VI Computer Task	-	-				
	2,694	71	38	0	0.00%	-
^ city claimed 38 min/case for this class						

Activities in time study for this class, but not claimed, are as follows:

	(a)	(b) =(a) / 590	sum (b) * 24
Determine *	335	21	56.78%
Interview	255	4	
	590	25	13.00

Sergeant I ^

	Minutes	# of Entries	Average Min	Allowed Min	% of Allowed	Apply %
	Sum Total	(records)	Claimed			
	(a)	(b)	(a) / (b)	Per Activity	Min to Sum of	to Average Min
					Min Claimed	claimed
Claimed:						
Admin Task	1,584	79				
Call out						
co Contact	24	2				
Evidence Collect	864	22				
Interview in person	4,626	43				
Interview Telephone	288	14				

w/p F.3.3

F.3.PS

Interrogations Activities

Kickback Editing	1,092	22			
Meet/Brief/Notify	642	31			
Non-Evidence Task	1,290	20			
Paraphrasing	5,250	45			
Prep for Interview	1,938	55			
Report Formatting	8,172	60			
Telephone contact	1,920	259			
Travel	1,476	21			
VI Computer Task					
	29,166	673	43	0	0.00%
^ city claimed 43 min/case for this class			43		

Activites in time study for this class, but not claimed, are as follows:

	(a)	(b) =(a) 501	sum (b) * 16
ID *	85	12	16.97%
ID-A *	66	6	13.17%
Interview	350	13	-
	501	31	5.00

F.3.8

Sergennt II ^

Minutes Sum Total	# of Entries (records)	Average Min Claimed
(a)	(b)	(a) / (b)

Allowed Min Per Activity	% of Allowed Min to Sum of Min Claimed	Apply % to Average Min claimed
--------------------------	--	--------------------------------

Claimed:

Admin Task	13,488	356			
Call out	30	1			
co Contact	468	35			
Evidence Collect	5,802	147			
Interview in person	16,728	256			
Interview Telephone	1,410	66			
Kickback Editing	2,928	34			
Meet/Brief/Notify	2,562	107			
Non-Evidence Task	5,820	170			
Paraphrasing	35,616	224			
Prep for Interview	5,832	129			
Report Formatting	36,930	209			
Telephone contact	9,756	969			
Travel	4,380	119			
VI Computer Task					
	141,750	2,822	50	0	0.00%
^ city claimed 50 min/case for this classification			50		

Activites in time study for this class, but not claimed, are as follows:

	(a)	(b) =(a) / 12,974	sum (b) * 30
Access *	157	5	1.21%
Booking *	200	7	1.54%
Booking Tape *	77	5	0.59%
Determine *	135	4	1.04%
ID *	712	84	5.49%
ID-A *	472	64	3.64%
ID-W *	876	55	6.75%
Interview	10,345	208	-
	12,974	432	30
	2,629	20.26%	6.00

F.3.8

W/P F.3.3

F.3.PS

Interrogations Activities

Lieutenant I ^

POBAR Time Study Summary for activities

Minutes Sum Total (a)	# of Entries (records) (b)	Average Min Claimed (a) / (b)
-----------------------------	----------------------------------	-------------------------------------

Allowed Min Per Activity	% of Allowed Min to Sum of Min Claimed	Apply % to Average Min claimed
-----------------------------	--	--------------------------------------

Claimed:

Admin Task	1,410	17	
Call out			
co Contact			
Evidence Collect			
Interview in person			
Interview Telephone			
Kickback Editing	30	1	
Meet/Brief/Notify	36	2	
Non-Evidence Task			
Paraphrasing			
Prep for Interview			
Report Formatting			
Telephone contact	42	5	
Travel			
VI Computer Task			
1,518	25	61	
^ city claimed 61 min/case for this class			61

0	0.00%	-
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Activities in time study for this class, but not claimed, are as follows:

ID *	10	1	
Interview	30	1	
	40	2	20

(a)	(b) =(a) /40	sum (b) * 20
10	25.00%	
-		
10	25.00%	5.00

F.3.8

Administrative Activities

F.3.PS

	Claimed Information		Auditor Verified		Allowed	
	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Min per Case as per Adjust 1 (math errors)	Hours per case (Adj 1 only) (math errors)	Min per Case % of allow activ	Allowed Hours per case
	(a)	(b) = (a) / 60	(c)	(d) = (c) / 60	(e)	(f) = (e) / 60
Clerk Typist	7.00	0.12	N/A	N/A	1.00	0.02
Senior Clerk Typist	8.00	0.13	N/A	N/A	3.00	0.05
Principal Clerk Police II	11.00	0.18	N/A	N/A	1.00	0.02
Detective II	13.00	0.22	N/A	N/A	-	-
Detective III	19.00	0.32	N/A	N/A	-	-
Sergeant I	3.00	0.05	N/A	N/A	-	-
Sergeant II	7.00	0.12	N/A	N/A	-	-
Lieutenant I	1.00	0.02	N/A	N/A	1.00	0.02
Lieutenant II	2.00	0.03	N/A	N/A	-	-
Captain II	7.00	0.12	N/A	N/A	-	-
Captain III	10.00	0.17	N/A	N/A	-	-
		1.47				0.11

did not appear in the time study
 did not appear in the time study

Adverse Comment

	Claimed Information		Auditor Verified		Allowed	
	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Min per Case as per Adjust 1 (math errors)	Hours per case (Adj 1 only) (math errors)	Min per Case % of allow activ	Allowed Hours per case (Adj 1 and 2)
	(a)	(b) = (a) / 60	(c)	(d) = (c) / 60	(e)	(f) = (e) / 60
Clerk Typist	3.00	0.05	3.00	0.05	3.00	0.05
Senior Clerk Typist	23.00	0.38	19.00	0.32	13.00	0.22
Police Serv Rep	22.00	0.37	22.00	0.37	11.00	0.18
Mgmt Analyst II	45.00	0.75	45.00	0.75	-	-
Principal Clerk Police II	18.00	0.30	18.00	0.30	-	-
Police Officer II	18.00	0.30	18.00	0.30	1.00	0.02
Detective I	3.00	0.05	3.00	0.05	3.00	0.05
Detective II	56.00	0.93	58.00	0.97	25.00	0.42
Detective III	44.00	0.73	45.00	0.75	43.00	0.72
Sergeant I	122.00	2.03	123.00	2.05	10.00	0.17
Sergeant II	40.00	0.67	40.00	0.67	36.00	0.60
Lieutenant I	40.00	0.67	40.00	0.67	32.00	0.53
Lieutenant II	56.00	0.93	56.00	0.93	55.00	0.92
Captain I	27.00	0.45	28.00	0.47	26.00	0.43
Captain II	39.00	0.65	40.00	0.67	40.00	0.67
Captain III	34.00	0.57	35.00	0.58	31.00	0.52
		9.83		9.90		5.50

did not appear in the time study

Interrogations

	Claimed Information		Auditor Verified		Allowed	
	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Min per Case as per Adjust 1 (math errors)	Hours per case (Adj 1 only) (math errors)	Min per Case % of allow activ	Allowed Hours per case
	(a)	(b) = (a) / 60	(c)	(d) = (c) / 60	(e)	(f) = (e) / 60
Detective I	40.74	0.68	N/A	N/A	-	-
Detective II	45.00	0.75	N/A	N/A	5.00	0.08
Detective III	37.92	0.63	N/A	N/A	13.00	0.22
Sergeant I	43.32	0.72	N/A	N/A	5.00	0.08
Sergeant II	50.22	0.84	N/A	N/A	6.00	0.10
Lieutenant I	60.72	1.01	N/A	N/A	5.00	0.08
		4.63				0.56

did not appear in the time study

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08
 Audit ID # S09-MCC-047

Allowable Hours for FY 2003-04

Interrogations

Claimed Information		
Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2003-04
(a)	(b) = (a) / 60	(c) = (b) * 5394
<input checked="" type="checkbox"/> F.3.7		
Detective I	40.74	0.68
Detective II	45.00	0.75
Detective III	37.92	0.63
Sergeant I	43.32	0.72
Sergeant II	50.22	0.84
Lieutenant I	60.72	1.01
PO II Wit interview		
PO II Subject interview		
	4.63	33,165.43

Audited Information			
Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2003-04	Audit Adjustment (in hours)
(d)	(e) = (d) / 60	(f) = (e) * 5394	(g) = (f) - (c)
<input checked="" type="checkbox"/> F.3.3	-	-	(3,662.53)
<input checked="" type="checkbox"/> F.3.3	5.00	0.08	(3,613.98)
<input checked="" type="checkbox"/> F.3.3	13.00	0.22	(2,222.33)
<input checked="" type="checkbox"/> F.3.3	5.00	0.08	(3,462.95)
<input checked="" type="checkbox"/> F.3.3	6.00	0.10	(3,975.38)
<input checked="" type="checkbox"/> F.3.3	5.00	0.08	(5,027.21)
			(2,211.54)
			(5,968.88)
	0.56	3,020.64	(30,144.79)

F.1.1

F.1.PS

H.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08
 Audit ID # S09-MCC-047

Allowable Hours for FY 2004-05

F.3.PS

Administrative Activities

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2004-05
	(a)	(b) = (a) / 60	(c) = (b) * 4316
	F.3.5		
Clerk Typist	7.00	0.12	517.92
Senior Clerk Typist	8.00	0.13	561.08
Principal Clerk Police II	11.00	0.18	776.88
Detective II	13.00	0.22	949.52
Detective III	19.00	0.32	1,381.12
Sergeant I	3.00	0.05	215.80
Sergeant II	7.00	0.12	517.92
Lieutenant I	1.00	0.02	86.32
Lieutenant II	2.00	0.03	129.48
Captain II	7.00	0.12	517.92
Captain III	10.00	0.17	733.72
		1.47	6,387.67

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2004-05	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4316	(g) = (f) - (c)
F.3.3	1.00	0.02	86.32	(431.60)
F.3.3	3.00	0.05	215.80	(345.28)
F.3.3	1.00	0.02	86.32	(690.56)
F.3.3	-	-	-	(949.52)
F.3.3	-	-	-	(1,381.12)
F.3.3	-	-	-	(215.80)
F.3.3	-	-	-	(517.92)
F.3.3	1.00	0.02	86.32	-
F.3.3	-	-	-	(129.48)
F.3.3	-	-	-	(517.92)
F.3.3	-	-	-	(733.72)
		0.11	474.76	(5,912.92)

F.1.1

Adverse Comment

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2004-05
	(a)	(b) = (a) / 60	(c) = (b) * 4316
	F.3.6		
Clerk Typist	3.00	0.05	215.80
Senior Clerk Typist	23.00	0.38	1,640.08
Police Serv Rep	22.00	0.37	1,596.92
Mgmt Analyst II	45.00	0.75	3,237.00
Principal Clerk Police II	18.00	0.30	1,294.80
Police Officer II	18.00	0.30	1,294.80
Detective I	3.00	0.05	215.80
Detective II	56.00	0.93	4,013.88
Detective III	44.00	0.73	3,150.68
Sergeant I	122.00	2.03	8,761.48
Sergeant II	40.00	0.67	2,891.72
Lieutenant I	40.00	0.67	2,891.72
Lieutenant II	56.00	0.93	4,013.88
Captain I	27.00	0.45	1,942.20
Captain II	39.00	0.65	2,805.40
Captain III	34.00	0.57	2,460.12
		9.83	42,426.28

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2004-05	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4316	(g) = (f) - (c)
F.3.3	3.00	0.05	215.80	-
F.3.3	13.00	0.22	949.52	(690.56)
F.3.3	11.00	0.18	776.88	(820.04)
F.3.3	-	-	-	(3,237.00)
F.3.3	-	-	-	(1,294.80)
F.3.3	1.00	0.02	86.32	(1,208.48)
F.3.3	3.00	0.05	215.80	-
F.3.3	25.00	0.42	1,812.72	(2,201.16)
F.3.3	43.00	0.72	3,107.52	(43.16)
F.3.3	10.00	0.17	733.72	(8,027.76)
F.3.3	36.00	0.60	2,589.60	(302.12)
F.3.3	32.00	0.53	2,287.48	(604.24)
F.3.3	55.00	0.92	3,970.72	(43.16)
F.3.3	26.00	0.43	1,855.88	(86.32)
F.3.3	40.00	0.67	2,891.72	86.32
F.3.3	31.00	0.52	2,244.32	(215.80)
		5.50	23,738.00	(18,688.28)

F.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08
 Audit ID # S09-MCC-047

Allowable Hours for FY 2004-05

Interrogations

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2004-05
	(a)	(b) = (a) / 60	(c) = (b) * 4316
	F.3.7		
Detective I	40.74	0.68	2,930.56
Detective II	45.00	0.75	3,237.00
Detective III	37.92	0.63	2,727.71
Sergeant I	43.32	0.72	3,116.15
Sergeant II	50.22	0.84	3,612.49
Lieutenant I	60.72	1.01	4,367.79
PO II Wit interview			1,769.56
PO II Subject interview			4,673.63
		4.63	26,434.90

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2004-05	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4316	(g) = (f) - (c)
	F.3.3	-	-	(2,930.56)
	F.3.3	5.00	0.08	345.28
	F.3.3	13.00	0.22	949.52
	F.3.3	5.00	0.08	345.28
	F.3.3	6.00	0.10	431.60
	F.3.3	5.00	0.08	345.28
				-
				-
		0.56	2,416.96	(24,017.94)

F.1.1

F.1.PS

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08
Audit ID # S09-MCC-047

F.3.PS

Allowable Hours for FY 2005-06

Administrative Activities

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2005-06
	(a)	(b) = (a) / 60	(c) = (b) * 4721
	F.3.5		
Clerk Typist	7.00	0.12	566.52
Senior Clerk Typist	8.00	0.13	613.73
Principal Clerk Police II	11.00	0.18	849.78
Detective II	13.00	0.22	1,038.62
Detective III	19.00	0.32	1,510.72
Sergeant I	3.00	0.05	236.05
Sergeant II	7.00	0.12	566.52
Lieutenant I	1.00	0.02	94.42
Lieutenant II	2.00	0.03	141.63
Captain II	7.00	0.12	566.52
Captain III	10.00	0.17	802.57
		1.47	6,987.07

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2005-06	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4721	(g) = (f) - (c)
	F.3.3			
	1.00	0.02	94.42	(472.10)
	3.00	0.05	236.05	(377.68)
	1.00	0.02	94.42	(755.36)
	-	-	-	(1,038.62)
	-	-	-	(1,510.72)
	-	-	-	(236.05)
	-	-	-	(566.52)
	1.00	0.02	94.42	-
	-	-	-	(141.63)
	-	-	-	(566.52)
	-	-	-	(802.57)
		0.11	519.31	(6,467.77)

F.1.1

Adverse Comment

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2005-06
	(a)	(b) = (a) / 60	(c) = (b) * 4721
	F.3.6		
Clerk Typist	3.00	0.05	236.05
Senior Clerk Typist	23.00	0.38	1,793.98
Police Serv Rep	22.00	0.37	1,746.77
Mgmt Analyst II	45.00	0.75	3,540.75
Principal Clerk Police II	18.00	0.30	1,416.30
Police Officer II	18.00	0.30	1,416.30
Detective I	3.00	0.05	236.05
Detective II	56.00	0.93	4,390.53
Detective III	44.00	0.73	3,446.33
Sergeant I	122.00	2.03	9,583.63
Sergeant II	40.00	0.67	3,163.07
Lieutenant I	40.00	0.67	3,163.07
Lieutenant II	56.00	0.93	4,390.53
Captain I	27.00	0.45	2,124.45
Captain II	39.00	0.65	3,068.65
Captain III	34.00	0.57	2,690.97
		9.83	46,407.43

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2005-06	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4721	(g) = (f) - (c)
	F.3.3			
	3.00	0.05	236.05	-
	13.00	0.22	1,038.62	(755.36)
	11.00	0.18	849.78	(896.99)
	-	-	-	(3,540.75)
	-	-	-	(1,416.30)
	1.00	0.02	94.42	(1,321.88)
	3.00	0.05	236.05	-
	25.00	0.42	1,982.82	(2,407.71)
	43.00	0.72	3,399.12	(47.21)
	10.00	0.17	802.57	(8,781.06)
	36.00	0.60	2,832.60	(330.47)
	32.00	0.53	2,502.13	(660.94)
	55.00	0.92	4,343.32	(47.21)
	26.00	0.43	2,030.03	(94.42)
	40.00	0.67	3,163.07	94.42
	31.00	0.52	2,454.92	(236.05)
		5.50	25,965.50	(20,441.93)

F.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08

Audit ID # S09-MCC-047

F.3.PS

Allowable Hours for FY 2005-06

Interrogations

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2005-06
	(a)	(b) = (a) / 60	(c) = (b) * 4721
	<input checked="" type="checkbox"/> F.3.7		
Detective I	40.74	0.68	3,205.56
Detective II	45.00	0.75	3,540.75
Detective III	37.92	0.63	2,983.67
Sergeant I	43.32	0.72	3,408.56
Sergeant II	50.22	0.84	3,951.48
Lieutenant I	60.72	1.01	4,777.65
PO II Wit interview			1,935.61
PO II Subject interview			5,128.75
		4.63	28,932.03

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2005-06	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4721	(g) = (f) - (c)
	<input checked="" type="checkbox"/> F.3.3	-	-	(3,205.56)
	<input checked="" type="checkbox"/> F.3.3	5.00	0.08	377.68
	<input checked="" type="checkbox"/> F.3.3	13.00	0.22	1,038.62
	<input checked="" type="checkbox"/> F.3.3	5.00	0.08	377.68
	<input checked="" type="checkbox"/> F.3.3	6.00	0.10	472.10
	<input checked="" type="checkbox"/> F.3.3	5.00	0.08	377.68
				(1,935.61)
				(5,128.75)
		0.56	2,643.76	(26,288.27)

F.1.1

F.1.PS

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08

Audit ID # S09-MCC-047

F.3.PS

Allowable Hours for FY 2006-07

Administrative Activities

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2006-07
	(a)	(b) = (a) / 60	(c) = (b) * 4200
F.3.5			
Clerk Typist	7.00	0.12	504.00
Senior Clerk Typist	8.00	0.13	546.00
Principal Clerk Police II	11.00	0.18	756.00
Detective II	13.00	0.22	924.00
Detective III	19.00	0.32	1,344.00
Sergeant I	3.00	0.05	210.00
Sergeant II	7.00	0.12	504.00
Lieutenant I	1.00	0.02	84.00
Lieutenant II	2.00	0.03	126.00
Captain II	7.00	0.12	504.00
Captain III	10.00	0.17	714.00
		1.47	6,215.99

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2006-07	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4200	(g) = (f) - (c)
F.3.3				
F.3.3	1.00	0.02	84.00	(420.00)
F.3.3	3.00	0.05	210.00	(336.00)
F.3.3	1.00	0.02	84.00	(672.00)
F.3.3	-	-	-	(924.00)
F.3.3	-	-	-	(1,344.00)
F.3.3	-	-	-	(210.00)
F.3.3	-	-	-	(504.00)
F.3.3	1.00	0.02	84.00	-
F.3.3	-	-	-	(126.00)
F.3.3	-	-	-	(504.00)
F.3.3	-	-	-	(714.00)
		0.11	462.00	(5,754.00)

F.1.1

Adverse Comment

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2006-07
	(a)	(b) = (a) / 60	(c) = (b) * 4200
F.3.6			
Clerk Typist	3.00	0.05	210.00
Senior Clerk Typist	23.00	0.38	1,596.00
Police Serv Rep	22.00	0.37	1,554.00
Mgmt Analyst II	45.00	0.75	3,150.00
Principal Clerk Police II	18.00	0.30	1,260.00
Police Officer II	18.00	0.30	1,260.00
Detective I	3.00	0.05	210.00
Detective II	56.00	0.93	3,906.00
Detective III	44.00	0.73	3,066.00
Sergeant I	122.00	2.03	8,526.00
Sergeant II	40.00	0.67	2,814.00
Lieutenant I	40.00	0.67	2,814.00
Lieutenant II	56.00	0.93	3,906.00
Captain I	27.00	0.45	1,890.00
Captain II	39.00	0.65	2,730.00
Captain III	34.00	0.57	2,394.00
		9.83	41,286.00

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2006-07	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4200	(g) = (f) - (c)
F.3.3				
F.3.3	3.00	0.05	210.00	-
F.3.3	13.00	0.22	924.00	(672.00)
F.3.3	11.00	0.18	756.00	(798.00)
F.3.3	-	-	-	(3,150.00)
F.3.3	-	-	-	(1,260.00)
F.3.3	1.00	0.02	84.00	(1,176.00)
F.3.3	3.00	0.05	210.00	-
F.3.3	25.00	0.42	1,764.00	(2,142.00)
F.3.3	43.00	0.72	3,024.00	(42.00)
F.3.3	10.00	0.17	714.00	(7,812.00)
F.3.3	36.00	0.60	2,520.00	(294.00)
F.3.3	32.00	0.53	2,226.00	(588.00)
F.3.3	55.00	0.92	3,864.00	(42.00)
F.3.3	26.00	0.43	1,806.00	(84.00)
F.3.3	40.00	0.67	2,814.00	84.00
F.3.3	31.00	0.52	2,184.00	(210.00)
		5.50	23,100.00	(18,186.00)

F.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08
Audit ID # S09-MCC-047

F.3.PS

Allowable Hours for FY 2006-07

Interrogations

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2006-07
	(a)	(b) = (a) / 60	(c) = (b) * 4200
	F.3.7		
Detective I	40.74	0.68	2,851.80
Detective II	45.00	0.75	3,150.00
Detective III	37.92	0.63	2,654.40
Sergeant I	43.32	0.72	3,032.40
Sergeant II	50.22	0.84	3,515.40
Lieutenant I	60.72	1.01	4,250.40
PO II Wit interview			1,722.00
PO II Subject interview			4,562.25
		4.63	25,738.65

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2006-07	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 4200	(g) = (f) - (c)
F.3.3	-	-	-	(2,851.80)
F.3.3	5.00	0.08	336.00	(2,814.00)
F.3.3	13.00	0.22	924.00	(1,730.40)
F.3.3	5.00	0.08	336.00	(2,696.40)
F.3.3	6.00	0.10	420.00	(3,095.40)
F.3.3	5.00	0.08	336.00	(3,914.40)
			-	(1,722.00)
			-	(4,562.25)
		0.56	2,352.00	(23,386.65)

F.1.1

F.1.PS

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08
 Audit ID # S09-MCC-047

Allowable Hours for FY 2007-08

Interrogations

Claimed Information

	Average Time Claimed (minutes)	Time Claimed per case (in hours)	Hours Claimed FY 2007-08
	(a)	(b) = (a) / 60	(c) = (b) * 6126
	F.3.7		
Detective I	40.74	0.68	4,159.55
Detective II	45.00	0.75	4,594.50
Detective III	37.92	0.63	3,871.63
Sergeant I	43.32	0.72	4,422.97
Sergeant II	50.22	0.84	5,127.46
Lieutenant I	60.72	1.01	6,199.51
PO II Wit interview			2,511.66
PO II Subject interview			7,526.75
		4.63	38,414.04

Audited Information

	Allowed Min per Case % of allow activ	Allowed Hours per case	Allowed Hours FY 2007-08	Audit Adjustment (in hours)
	(d)	(e) = (d) / 60	(f) = (e) * 6126	(g) = (f) - (c)
	F.3.3			
	F.3.3			
	F.3.3			
	F.3.3			
	F.3.3			
	F.3.3			
		0.56	3,430.56	(34,983.48)

F.1.1

F.1.PS

WIP F.4.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 FY 2003-04 thour FY 2007-08
 Audit ID # S09-MCC-047

Review of Productive Hourly Rates

EX3

F.4.PS

F.4.PS

City Data		Auditor's Analysis				
Employee Classification	PHR Claimed	Bi-weekly Salary	Annual Salary	Productive Hours	Audited PHR	Audit Adjustment
	(a)	(b)	(c) = (b) * 26.1	(d)	(e) = (c) / (d)	(f) = (e) - (a)
FY 2003-04						
Lieutenant I	64.43	4,001.44	104,437.58	1,621	64.43	(0.00)
Lieutenant II	68.16	4,233.12	110,484.43	1,621	68.16	(0.00)
Captain I	73.33	4,554.27	118,866.45	1,621	73.33	(0.00)
Captain II	79.37	4,929.60	128,662.56	1,621	79.37	0.00
Captain III	85.07	5,283.76	137,906.14	1,621	85.07	0.00
Sergeant I	54.67	3,395.69	88,627.51	1,621	54.67	0.00
Sergeant II	58.10	3,608.34	94,177.67	1,621	58.10	(0.00)
Detective I	51.23	3,181.54	83,038.19	1,621	51.23	(0.00)
Detective II	54.98	3,414.96	89,130.46	1,621	54.98	0.00
Detective III	60.87	3,780.36	98,667.40	1,621	60.87	(0.00)
PO II	42.23	2,622.84	68,456.12	1,621	42.23	0.00
Clerk Typist	^ 23.73	1,455.67	37,992.99	1,601	23.73	0.00
Senior Clerk Typist	^ 29.26	1,794.56	46,838.02	1,601	29.26	(0.00)
Police Serv Represent II	^ 28.05 *	2,145.62	56,000.68	1,601	34.98	6.93 *
Mgmt Analyst II	^ 43.35	2,659.45	69,411.65	1,601	43.36	0.01
Principal Clerk Pol II	^ 35.84	2,198.19	57,372.76	1,601	35.84	(0.00)
FY 2004-05						
Lieutenant I	66.91	4,158.99	108,133.74	1,616	66.91	0.00
Lieutenant II	70.40	4,375.32	113,758.32	1,616	70.40	(0.01)
Captain I	75.38	4,685.15	121,813.90	1,616	75.38	(0.00)
Captain II	83.34	5,179.98	134,679.48	1,616	83.34	0.00
Captain III	89.41	5,557.25	144,488.50	1,616	89.41	0.00
Sergeant I	57.01	3,543.33	92,126.58	1,616	57.01	(0.00)
Sergeant II	60.12	3,736.36	97,145.36	1,616	60.11	(0.01)
Detective I	53.37	3,316.97	86,241.22	1,616	53.37	(0.00)
Detective II	56.87	3,534.86	91,906.36	1,616	56.87	0.00
Detective III	62.76	3,900.76	101,419.76	1,616	62.76	(0.00)
PO II	43.46	2,701.15	70,229.90	1,616	43.46	(0.00)

F.4.7

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 FY 2003-04 thour FY 2007-08
 Audit ID # S09-MCC-047
 Review of Productive Hourly Rates

EX3

F.4.PS

F.4.PS

City Data		Auditor's Analysis				
Employee Classification	PHR Claimed (a)	Bi-weekly Salary (b)	Annual Salary (c) = (b) * 26.1	Productive Hours (d)	Audited PHR (e) = (c) / (d)	Audit Adjustment (f) = (e) - (a)
Clerk Typist	23.93	1,489.05	38,715.30	1,618	23.93	(0.00)
Senior Clerk Typist	29.47	1,833.76	47,677.76	1,618	29.47	(0.00)
Police Serv Represent II	35.51	2,210.08	57,462.08	1,618	35.51	0.00
Mgmt Analyst II	44.00	2,738.39	71,198.14	1,618	44.00	0.00
Principal Clerk Pol II	36.08	2,245.09	58,372.34	1,618	36.08	(0.00)
FY 2005-06						
Lieutenant I	69.33	4,297.65	112,168.67	1,618	69.33	(0.00)
Lieutenant II	73.48	4,555.47	118,897.77	1,618	73.48	0.00
Captain I	77.98	4,834.17	126,171.84	1,618	77.98	0.00
Captain II	87.88	5,447.89	142,189.93	1,618	87.88	0.00
Captain III	93.85	5,817.91	151,847.45	1,618	93.85	(0.00)
Sergeant I	59.36	3,680.02	96,048.52	1,618	59.36	0.00
Sergeant II	62.67	3,885.11	101,401.37	1,618	62.67	0.00
Detective I	55.42	3,435.81	89,674.64	1,618	55.42	0.00
Detective II	59.28	3,674.61	95,907.32	1,618	59.28	(0.00)
Detective III	65.29	4,047.23	105,632.70	1,618	65.29	(0.00)
PO II	45.69	2,832.39	73,925.38	1,618	45.69	(0.00)
Clerk Typist	23.21	1,464.58	38,225.54	1,647	23.21	(0.00)
Senior Clerk Typist	28.73	1,812.97	47,318.52	1,647	28.73	0.00
Police Serv Represent II	27.05 *	2,164.46 F.4.9	56,492.41	1,647	34.30	7.25 *
Mgmt Analyst II	42.95	2,710.20	70,736.22	1,647	42.95	(0.00)
Principal Clerk Pol II	35.46	2,237.82	58,407.10	1,647	35.46	0.00
FY 2006-07						
Lieutenant I	70.61	4,469.56 F.4.10	116,655.52	652 F.4.5	70.61	0.00
Lieutenant II	74.85	4,737.69	123,653.71	1,652	74.85	0.00
Captain I	79.43	5,027.54	131,218.79	1,652	79.43	0.00
Captain II	89.51	5,665.81	147,877.64	1,652	89.51	0.00
Captain III	95.59	6,050.63	157,921.44	1,652	95.59	0.00
Sergeant I	60.47	3,827.22	99,890.44	1,652	60.47	(0.00)
Sergeant II	63.84	4,040.51	105,457.31	1,652	63.84	(0.00)

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 FY 2003-04 thour FY 2007-08
 Audit ID # S09-MCC-047
 Review of Productive Hourly Rates

EX3

F.4.PS

F.4.PS

City Data		Auditor's Analysis				
Employee Classification	PHR Claimed (a)	Bi-weekly Salary (b)	Annual Salary (c) = (b) * 26.1	Productive Hours (d)	Audited PHR (e) = (c) / (d)	Audit Adjustment (f) = (e) - (a)
Detective I	56.45	3,573.24	93,261.56	1,652	56.45	0.00
Detective II	60.38	3,821.59	99,743.50	1,652	60.38	(0.00)
Detective III	66.50	4,209.12	109,858.03	1,652	66.50	0.00
PO II	46.54	2,945.69	76,882.51	1,652	46.54	(0.00)
Clerk Typist	22.91	1,493.31	38,975.39	1,701	22.91	0.00
Senior Clerk Typist	28.33	1,846.31	48,188.69	1,701	28.33	(0.00)
Police Serv Represent II	33.99	2,215.06	57,813.07	1,701	33.99	(0.00)
Mgmt Analyst II	41.99	2,736.75	71,429.18	1,701	41.99	0.00
Principal Clerk Pol II	34.50	2,248.30	58,680.63	1,701	34.50	(0.00)
FY 2007-08						
Lieutenant I	73.53	4,588.68	119,764.55	1,665	71.93	(1.60)
Lieutenant II	74.90	4,863.28	126,931.61	1,665	76.24	1.34
Captain I	73.00	5,034.74	131,406.71	1,665	78.92	5.92
Captain II	82.37	5,680.72	148,266.79	1,665	89.05	6.68
Captain III	86.45	5,962.29	155,615.77	1,665	93.46	7.01
Sergeant I	62.48	3,912.59	102,118.60	1,665	61.33	(1.15)
Sergeant II	67.04	4,154.15	108,423.32	1,665	65.12	(1.92)
Detective I	57.40	3,670.06	95,788.57	1,665	57.53	0.13
Detective II	61.65	3,948.96	103,067.86	1,665	61.90	0.25
Detective III	64.73	4,343.10	113,354.91	1,665	68.08	3.35
PO II	53.65	3,059.93	79,864.17	1,665	47.97	(5.68)
Clerk Typist	22.86	1,576.45	41,145.35	1,663	24.74	1.88
Senior Clerk Typist	28.66	1,976.56	51,588.22	1,663	31.02	2.36
Police Serv Represent II	34.63	2,388.15	62,330.72	1,663	37.48	2.85
Mgmt Analyst II	41.42	2,856.55	74,555.96	1,663	44.83	3.41
Principal Clerk Pol II	34.62	2,387.31	62,308.79	1,663	37.47	2.85

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 FY 2003-04
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 Review of Productive Hourly Rates

Employee Classification	PHR Claimed (a)
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F.4.PS		Auditor's Analysis		
Bi-weekly Salary (b)	Annual Salary (c) = (b) * 26.1	Productive Hours (d)	Audited PHR (e) = (c) / (d)	Audit Adjustment (f) = (e) - (a)

Employee Classification	PHR Claimed (a)	Bi-weekly Salary (b)	Annual Salary (c) = (b) * 26.1	Productive Hours (d)	Audited PHR (e) = (c) / (d)	Audit Adjustment (f) = (e) - (a)
Lieutenant I	64.43	4,001.44	104,437.58	1,621	64.43	(0.00)
Lieutenant II	68.16	4,233.12	110,484.43	1,621	68.16	(0.00)
Captain I	73.33	4,554.27	118,866.45	1,621	73.33	(0.00)
Captain II	79.37	4,929.60	128,662.56	1,621	79.37	0.00
Captain III	85.07	5,283.76	137,906.14	1,621	85.07	0.00
Sergeant I	54.67	3,395.69	88,627.51	1,621	54.67	0.00
Sergeant II	58.10	3,608.34	94,177.67	1,621	58.10	(0.00)
Detective I	51.23	3,181.54	83,038.19	1,621	51.23	(0.00)
Detective II	54.98	3,414.96	89,130.46	1,621	54.98	0.00
Detective III	60.87	3,780.36	98,667.40	1,621	60.87	(0.00)
PO II	42.23	2,622.84	68,456.12	1,621	42.23	0.00
Clerk Typist	^ 23.73	1,455.67	37,992.99	1,601	23.73	0.00
Senior Clerk Typist	^ 29.26	1,794.56	46,838.02	1,601	29.26	(0.00)
Police Serv Represent I	^ 28.05 *	2,145.62	56,000.68	1,601	34.98	6.93 *
Mgmt Analyst II	^ 43.35	2,659.45	69,411.65	1,601	43.36	0.01
Principal Clerk Pol II	^ 35.84	2,198.19	57,372.76	1,601	35.84	(0.00)

F.4.7

F.4.2

F.1.PS

F.1.1

H1.1

* The city accidentally used the rate for PSR I instead of II in this FY. The auditors will use the correct rate.

^ In this FY, the city claimed civilian employees' salaries, benefits, and related indirect costs under the component of the services and supplies... The auditor will analyze these costs under the services and supplies portion of this audit.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 FY 2004-05
 Audit ID # S09-MCC-047
 Review of Productive Hourly Rates

Employee Classification	PHR Claimed
	(a)

F.4.PS		Auditor's Analysis			
Bi-weekly Salary	Annual Salary	Productive Hours	Audited PHR	Audit Adjustment	
(b)	('c) = (b) * 26	(d)	(e) = ('c) / (d)	(f) = (e) - (a)	

F.4.8

F.4.3

Lieutenant I	66.91	4,158.99	108,133.74	1,616	66.91	0.00
Lieutenant II	70.40	4,375.32	113,758.32	1,616	70.40	(0.01)
Captain I	75.38	4,685.15	121,813.90	1,616	75.38	(0.00)
Captain II	83.34	5,179.98	134,679.48	1,616	83.34	0.00
Captain III	89.41	5,557.25	144,488.50	1,616	89.41	0.00
Sergeant I	57.01	3,543.33	92,126.58	1,616	57.01	(0.00)
Sergeant II	60.12	3,736.36	97,145.36	1,616	60.11	(0.01)
Detective I	53.37	3,316.97	86,241.22	1,616	53.37	(0.00)
Detective II	56.87	3,534.86	91,906.36	1,616	56.87	0.00
Detective III	62.76	3,900.76	101,419.76	1,616	62.76	(0.00)
PO II	43.46	2,701.15	70,229.90	1,616	43.46	(0.00)
Clerk Typist	23.93	1,489.05	38,715.30	1,618	23.93	(0.00)
Senior Clerk Typist	29.47	1,833.76	47,677.76	1,618	29.47	(0.00)
Police Serv Represent II	35.51	2,210.08	57,462.08	1,618	35.51	0.00
Mgmt Analyst II	44.00	2,738.39	71,198.14	1,618	44.00	0.00
Principal Clerk Pol II	36.08	2,245.09	58,372.34	1,618	36.08	(0.00)

F.1.PS
 F.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 FY 2005-06
 Audit ID # S09-MCC-047
 Review of Productive Hourly Rates

Employee Classification	PHR Claimed (a)
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F.4.PS		Auditor's Analysis			
Bi-weekly Salary (b)	Annual Salary ('c) = (b) * 26.1	Productive Hours (d)	Audited PHR (e) = ('c) / (d)	Audit Adjustment (f) = (e) - (a)	

F.4.9

F.4.4

Lieutenant I	69.33	4,297.65	112,168.67	1,618	69.33	(0.00)
Lieutenant II	73.48	4,555.47	118,897.77	1,618	73.48	0.00
Captain I	77.98	4,834.17	126,171.84	1,618	77.98	0.00
Captain II	87.88	5,447.89	142,189.93	1,618	87.88	0.00
Captain III	93.85	5,817.91	151,847.45	1,618	93.85	(0.00)
Sergeant I	59.36	3,680.02	96,048.52	1,618	59.36	0.00
Sergeant II	62.67	3,885.11	101,401.37	1,618	62.67	0.00
Detective I	55.42	3,435.81	89,674.64	1,618	55.42	0.00
Detective II	59.28	3,674.61	95,907.32	1,618	59.28	(0.00)
Detective III	65.29	4,047.23	105,632.70	1,618	65.29	(0.00)
PO II	45.69	2,832.39	73,925.38	1,618	45.69	(0.00)
Clerk Typist	23.21	1,464.58	38,225.54	1,647	23.21	(0.00)
Senior Clerk Typist	28.73	1,812.97	47,318.52	1,647	28.73	0.00
Police Serv Represent II	27.05 *	2,164.46 F.4.9	56,492.41	1,647	34.30	7.25 *
Mgmt Analyst II	42.95	2,710.20	70,736.22	1,647	42.95	(0.00)
Principal Clerk Pol II	35.46	2,237.82	58,407.10	1,647	35.46	0.00

F.1.PS

F.1.1

* The city accidentally used the rate for PSR I instead of II in this FY. The auditors will use the correct rate.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Productive Hourly Rates
 FY 2006-07
 Audit ID # S09-MCC-047

Employee Classification	PHR Claimed
	(a)

F.4.PS Auditor's Analysis				
Bi-weekly Salary	Annual Salary	Productive Hours	Audited PHR	Audit Adjustment
(b)	('c) = (b) * 26.1	(d)	(e) = ('c) / (d)	(f) = (e) - (a)

Lieutenant I	70.61	F.4.10 59.56	116,655.52	F.4.5 52	70.61	0.00
Lieutenant II	74.85	4,737.69	123,653.71	1,652	74.85	0.00
Captain I	79.43	5,027.54	131,218.79	1,652	79.43	0.00
Captain II	89.51	5,665.81	147,877.64	1,652	89.51	0.00
Captain III	95.59	6,050.63	157,921.44	1,652	95.59	0.00
Sergeant I	60.47	3,827.22	99,890.44	1,652	60.47	(0.00)
Sergeant II	63.84	4,040.51	105,457.31	1,652	63.84	(0.00)
Detective I	56.45	3,573.24	93,261.56	1,652	56.45	0.00
Detective II	60.38	3,821.59	99,743.50	1,652	60.38	(0.00)
Detective III	66.50	4,209.12	109,858.03	1,652	66.50	0.00
PO II	46.54	2,945.69	76,882.51	1,652	46.54	(0.00)
Clerk Typist	22.91	1,493.31	38,975.39	1,701	22.91	0.00
Senior Clerk Typist	28.33	1,846.31	48,188.69	1,701	28.33	(0.00)
Police Serv Represent II	33.99	2,215.06	57,813.07	1,701	33.99	(0.00)
Mgmt Analyst II	41.99	2,736.75	71,429.18	1,701	41.99	0.00
Principal Clerk Pol II	34.50	2,248.30	58,680.63	1,701	34.50	(0.00)

F.1.PS
 F.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Review of Productive Hourly Rates
 FY 2007-08
 Audit ID # S09-MCC-047

Employee Classification	PHR Claimed
	(a)

F.4.PS Auditor's Analysis				
Bi-weekly Salary	Annual Salary	Productive Hours	Audited PHR	Audit Adjustment
(b)	('c) = (b) * 26.1	(d)	(e) = ('c) / (d)	(f) = (e) - (a)

		F.4.11	F.4.6		
Lieutenant I	73.53	4,588.68	119,764.55	1,665	71.93 (1.60)
Lieutenant II	74.90	4,863.28	126,931.61	1,665	76.24 1.34
Captain I	73.00	5,034.74	131,406.71	1,665	78.92 5.92
Captain II	82.37	5,680.72	148,266.79	1,665	89.05 6.68
Captain III	86.45	5,962.29	155,615.77	1,665	93.46 7.01
Sergeant I	62.48	3,912.59	102,118.60	1,665	61.33 (1.15)
Sergeant II	67.04	4,154.15	108,423.32	1,665	65.12 (1.92)
Detective I	57.40	3,670.06	95,788.57	1,665	57.53 0.13
Detective II	61.65	3,948.96	103,067.86	1,665	61.90 0.25
Detective III	64.73	4,343.10	113,354.91	1,665	68.08 3.35
PO II	53.65	3,059.93	79,864.17	1,665	47.97 (5.68)
Clerk Typist	22.86	1,576.45	41,145.35	1,663	24.74 1.88
Senior Clerk Typist	28.66	1,976.56	51,588.22	1,663	31.02 2.36
Police Serv Represent II	34.63	2,388.15	62,330.72	1,663	37.48 2.85
Mgmt Analyst II	41.42	2,856.55	74,555.96	1,663	44.83 3.41
Principal Clerk Pol II	34.62	2,387.31	62,308.79	1,663	37.47 2.85

F.1.PS
 F.1.1

The consultants used 1,800 productive hours to calculate PHR in this fiscal year. However, the city provided their own calculation of productive hours in this year as well as all preceding years in the audit period. The city advised that the consultants made a mistake and did not use their productive hours that were provided to them.

In addition, the actual average salary information for each classification (provided by the city in the report) did not match with consultant's calculation. The city provided the auditors a report with the average salary information (excluding any bonuses) and the auditors recalculated average annual salary information for each class based on the city report. The city used the same report for all fiscal years under the audit period and used the average salary amounts per classification (base amounts, excluding bonuses). It appears that the consultant actually used an average of all steps of salary increases including all the bonuses. However, the city advised the auditors that the base salary average excluding any bonuses should be used in the calculation of the rates.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Years 2003-04 Through 2007-08
 Audit ID # S09-MCC-047
 Summary of Benefit Costs and Adjustments
 G1.PS

Purpose: To summarize claimed salary costs and audit adjustments that resulted from auditor's review.

Cost Components	Benefits Claimed	Benefits Allowed	Adjustment I Hour-related	Adjustment II PHR-related
2003-04	G1.1		Finding 1 (Hours)	Finding 2 (PHR)
Administrative Activities	115,709	2,174	(113,535)	
Interrogations	559,718	55,877	(503,841)	
Adverse Comment	843,946	573,951	(269,995)	
Subtotal	\$ 1,519,373	\$ 632,002	\$ (887,371)	\$ - E.1.1
2004-05	G1.1			
Administrative Activities	132,269	6,197	(126,072)	
Interrogations	543,963	53,873	(490,090)	
Adverse Comment	923,017	576,820	(346,197)	
Subtotal	\$ 1,599,249	\$ 636,890	\$ (962,359)	\$ - E.1.1
2005-06	G1.1			
Administrative Activities	158,647	7,260	(151,387)	
Interrogations	655,676	64,713	(590,963)	
Adverse Comment	1,101,861	694,012	(410,222)	2,373 •
Subtotal	\$ 1,916,184	\$ 765,985	\$ (1,152,572)	\$ 2,373 E.1.1
2006-07	G1.1			
Administrative Activities	161,820	7,231	(154,589)	
Interrogations	673,791	65,050	(608,741)	
Adverse Comment	1,131,135	712,106	(419,029)	
Subtotal	\$ 1,966,746	\$ 784,387	\$ (1,182,359)	E.1.1
2007-08	G1.1			
Administrative Activities	247,501	11,331	(236,620)	450
Interrogations	1,140,553	108,212	(1,033,347)	1,006
Adverse Comment	1,796,797	1,147,785	(687,619)	38,607
Subtotal	\$ 3,184,851	\$ 1,267,328	\$ (1,957,586)	\$ 40,063 E.1.1
Total	\$ 10,186,403	\$ 4,086,592	\$ (6,142,247)	\$ 42,436
	EX 1		EX 1	EX 3

- The city accidentally used the Productive Hourly rate for PSR I instead of II in this FY. The auditors have used the correct rate. The adjustment for understated PHR is 6,161 (7.25 difference in rate * allowed hours 849.78). This finding will be included with the misstated PHR finding (combined with FY 2007-08 and 2003-04) Resulting from PHR finding, Benefits were understated as follows:
 6,161 understated salaries * 38.51% ben rate for civilians = 2,373 understated benefits.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2003-04
 Audit ID # S09-MCC-047
 Summary of Benefit Costs and Adjustments

G.2.PS City's Data				
Activities	Classification	Salaries Claimed	Ben Rate Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed Salaries	Allowed Benefit Rate	Allowed Benefit Costs	Adjustment Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2003-04

F.1.1 G.2.1

Administrative Activities								
	Sworn personnel	\$ 370,032	31.27%	\$ 115,709.0	\$ 6,951	31.27%	\$ 2,173.58	\$ (113,535.4)
	Civilian personnel	^ -	25.48%	-	^ -		-	-
	Subtotal	\$ 370,032		\$ 115,709	\$ 6,951		\$ 2,174	\$ (113,535)
Interrogations								
	Sworn personnel	\$ 1,789,950	31.27%	\$ 559,717.5	\$ 178,691	31.27%	\$ 55,876.68	\$ (503,840.9)
	Civilian personnel	^ -	25.48%	-	^ -		-	-
	Subtotal	\$ 1,789,950		\$ 559,718	\$ 178,691		\$ 55,877	\$ (503,841)
Adverse Comment								
	Sworn personnel	\$ 2,698,900	31.27%	\$ 843,946.0	\$ 1,835,467	31.27%	\$ 573,950.5	\$ (269,995.5)
	Civilian personnel	^ -	25.48%	-	^ -		-	-
	Subtotal	\$ 2,698,900		\$ 843,946	\$ 1,835,467		\$ 573,951	\$ (269,995)
		B.2.1		B.2.1				
	Total	\$ 4,858,882		\$ 1,519,373	\$ 2,021,109		\$ 632,002	\$ (887,371)

G.1.1

^ In this FY, the city claimed civilian employees' salaries, benefits, and related indirect costs under the component of the services and supplies... The auditor will analyze these costs under the services and supplies portion of this audit.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2004-05
 Audit ID # S09-MCC-047
 Summary of Benefit Costs and Adjustments

G.2.PS		City's Data		
Activities	Classification	Salaries Claimed	Ben Rate Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed Salaries	Allowed Benefit Rate	Allowed Benefit Costs	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2004-05

F.1.1 G2.2

Administrative Activities				
	Sworn personnel	\$ 307,778	36.41%	\$ 112,062.0
	Civilian personnel	56,953	35.48%	20,206.92
	Subtotal	\$ 364,731		\$ 132,269
Interrogations				
	Sworn personnel	\$ 1,493,993	36.41%	\$ 543,963.1
	Civilian personnel	-	35.48%	-
	Subtotal	\$ 1,493,993		\$ 543,963
Adverse Comment				
	Sworn personnel	\$ 2,243,352	36.41%	\$ 816,804.5
	Civilian personnel	299,358	35.48%	106,212.22
	Subtotal	\$ 2,542,710		\$ 923,017
	Total	\$ 4,401,434		\$ 1,599,249

		\$ 5,776	36.41%	\$ 2,103.04	\$ (109,958.9)
		11,540.00	35.48%	4,094.39	(16,113.00)
	Subtotal	\$ 17,316		\$ 6,197	\$ (126,072)
		\$ 147,963	36.41%	\$ 53,873.33	\$ (490,089.7)
		-	35.48%	-	-
	Subtotal	\$ 147,963		\$ 53,873	\$ (490,090)
		\$ 1,525,053	36.41%	\$ 555,271.80	\$ (261,532.7)
		60,733.00	35.48%	21,548.07	(84,664.15)
	Subtotal	\$ 1,585,786		\$ 576,820	\$ (346,197)
	Total	\$ 1,751,065		\$ 636,890	\$ (962,359)

G1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2005-06
 Audit ID # S09-MCC-047
 Summary of Benefit Costs and Adjustments

G.2.PS City's Data				
Activities	Classification	Salaries Claimed	Ben Rate Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

G.1.PS Auditors' Analysis			
Allowed Salaries	Allowed Benefit Rate	Allowed Benefit Costs	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2005-06

F.1.1 G.2.3

Administrative Activities								
	Sworn personnel	\$ 351,781	38.43%	\$ 135,189.4	\$ 6,546	38.43%	\$ 2,515.23	\$ (132,674.2)
	Civilian personnel	60,914	38.51%	23,457.98	12,322	38.51%	4,745.20	(18,712.78)
	Subtotal	\$ 412,695		\$ 158,647	\$ 18,868		\$ 7,260	\$ (151,387)
Interrogations								
	Sworn personnel	\$ 1,706,155	38.43%	\$ 655,675.6	\$ 168,391	38.43%	\$ 64,712.66	\$ (590,962.9)
	Civilian personnel	-	38.51%	-	-	38.51%	-	-
	Subtotal	\$ 1,706,155		\$ 655,676	\$ 168,391		\$ 64,713	\$ (590,963)
Adverse Comment								
	Sworn personnel	\$ 2,559,985	38.43%	\$ 983,802.2	\$ 1,741,312	38.43%	\$ 669,186.20	\$ (314,616.0)
	Civilian personnel	306,567	38.51%	118,058.95	64,466	38.51%	24,825.86	(93,233.10) • 2373
	Subtotal	\$ 2,866,552		\$ 1,101,861	\$ 1,805,778		\$ 694,012	\$ (407,849)
	Total	\$ 4,985,402		\$ 1,916,184	\$ 1,993,037		\$ 765,985	\$ (1,150,199)

G.1.1

- The city accidentally used the Productive Hourly rate for PSR I instead of II in this FY. The auditors have used the correct rate. The adjustment for understated PHR is 6,161 (7.25 difference in rate * allowed hours 849.78). This finding will be included with the misstated PHR finding (combined with FY 2007-08 and 2003-04) Resulting from PHR finding, Benefits were understated as follows:
 6,161 understated salaries * 38.51% ben rate for civilians = 2,373 understated benefits.

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2006-07
 Audit ID # S09-MCC-047
 Summary of Benefit Costs and Adjustments

G.2.PS		City's Data		
Activities	Classification	Salaries Claimed	Ben Rate Claimed	Amount Claimed
		(a)	(b)	(c)=(a)*(b)

Auditors' Analysis			
Allowed Salaries	Allowed Benefit Rate	Allowed Benefit Costs	Adjustment I Hour-related
(d)	(e)	(f)=(e)*(d)	(g)=(f)-(c)

FY 2006-07

F.1.1 **G.2.4**

Administrative Activities				
	Sworn personnel	\$ 318,768	43.58%	\$ 138,920.4
	Civilian personnel	53,097	43.13%	22,899.67
	Subtotal	\$ 371,865		\$ 161,820
Interrogations				
	Sworn personnel	\$ 1,546,102	43.58%	\$ 673,791.3
	Civilian personnel	-	43.13%	-
	Subtotal	\$ 1,546,102		\$ 673,791
Adverse Comment				
	Sworn personnel	\$ 2,319,829	43.58%	\$ 1,010,981
	Civilian personnel	278,585	43.13%	120,153.71
	Subtotal	\$ 2,598,414		\$ 1,131,135
	Total	\$ 4,516,381		\$ 1,966,746

\$ 5,931	43.58%	\$ 2,585.00	\$ (136,335.00)	
10,772	43.13%	4,646.00	(18,253.67)	
\$ 16,703		\$ 7,231	\$ (154,589)	
\$ 149,266	43.58%	\$ 65,050.12	\$ (608,741.13)	
-	43.13%	-	-	
\$ 149,266		\$ 65,050	\$ (608,741)	
\$ 1,577,921	43.58%	\$ 687,657.97	\$ (323,323.51)	
56,685	43.13%	24,448.24	(95,705.47)	
\$ 1,634,606		\$ 712,106	\$ (419,029)	
\$ 1,800,575		\$ 784,387	\$ (1,182,359)	

G.1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2007-08
 Audit ID # S09-MCC-047
 Summary of Benefit Costs and Adjustments

G2.PS		City's Data		
Activities	Classification	Salaries Claimed	Ben Rate Claimed	Benefit Amount Claimed
		(a)	(b)	(c)=(a)*(b)

FY 2007-08

Administrative Activities				
	Sworn personnel	\$ 451,755	47.61%	\$ 215,080.6
	Civilian personnel	77,804	41.67%	32,420.93
	Subtotal	\$ 529,559		\$ 247,501
Interrogations				
	Sworn personnel	\$ 2,395,617	47.61%	\$ 1,140,553
	Civilian personnel	-	41.67%	-
	Subtotal	\$ 2,395,617		\$ 1,140,553
Adverse Comment				
	Sworn personnel	\$ 3,368,643	47.60%	\$ 1,603,474
	Civilian personnel	406,141	47.60%	193,323.12
	Subtotal	\$ 3,774,784		\$ 1,796,797
	Total	\$ 6,699,960		\$ 3,184,851

Auditors' Analysis						
Adjusted Salaries after hours adjustment	Allowed Salaries after PHR adjustment	Allowed Benefit Rate	Adjusted Benefits after hours adjustment	Allowed Benefits (both hours and PHR adjustment)	Adjustment I Hour-related	Adjustment II PHR-related
(d)	(e)	(f)	(g)=(d)*(f)	(h)=(e)*(f)	(i)=(g)-(c)	(j)=(h)-(g)

F.1.1 F.1.1 G2.5

\$ 9,009.00	\$ 8,813.00	47.61%	\$ 4,289.00	\$ 4,195.87	\$ (210,791.56)	\$ (93.00)
15,821.00	17,123.00	41.67%	6,592.31	7,135.15	(25,828.62)	542.84
\$ 24,830	\$ 25,936		\$ 10,881	\$ 11,331	\$ (236,620)	\$ 450
\$ 225,176.00	\$ 227,289.00	47.61%	\$ 107,206.29	\$ 108,212.29	\$ (1,033,346.96)	\$ 1,006.00
-	-	41.67%	-	-	-	-
\$ 225,176	\$ 227,289		\$ 107,206	\$ 108,212	\$ (1,033,347)	\$ 1,006
\$ 2,246,392	\$ 2,320,600	47.60%	\$ 1,069,282.59	\$ 1,104,605.60	\$ (534,191.48)	\$ 35,323.01
83,814.00	90,712.00	47.60%	39,895.46	43,178.91	(153,427.65)	3,283.55
\$ 2,330,206	\$ 2,411,312		\$ 1,109,178	\$ 1,147,785	\$ (687,619)	\$ 38,607
\$ 2,580,212	\$ 2,664,537		\$ 1,227,265	\$ 1,267,328	\$ (1,957,586)	\$ 40,063

G1.1

City of Los Angeles
 Legislatively Mandated Peace Officers Procedural Bill of Rights Program
 Fiscal Year 2003-04
 Audit ID # S09-MCC-047
 Summary of Benefit Rates Analysis

Fiscsal Year	Benefit Rate Claimed	Benefit Rate Adjustment	Allowed Benefit Rate	
FY 2003-04				
Sworn personnel	31.27%	0.00%	31.27%	
Civilian personnel	25.48%	0.00%	25.48%	
FY 2004-05				
Sworn personnel	36.41%	0.00%	36.41%	
Civilian personnel	35.48%	0.00%	35.48%	
FY 2005-06				
Sworn personnel	38.43%	0.00%	38.43%	
Civilian personnel	38.51%	0.00%	38.51%	
FY 2006-07				
Sworn personnel	43.58%	0.00%	43.58%	* City rounded to 43.6%
Civilian personnel	43.13%	0.00%	43.13%	* City rounded to 43.1%
FY 2007-08				
Sworn personnel	47.61%	0.00%	47.61%	*City rounded to 47.6
Civilian personnel	41.67%	0.00%	41.67%	*City rounded to 47.7

Tab 8

ITEM 10

PROPOSED PARAMETERS AND GUIDELINES

Government Code Sections 3300 through 3310

As Added and Amended by Statutes of 1976, Chapter 465;

Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter

994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and

Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

Executive Summary

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

Staff Analysis

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines, as modified by staff were issued to the parties. (Exhibit H.) Staff made several substantive and technical modifications to the claimant's proposed parameters and guidelines to conform the parameters and guidelines to the Commission's Statement of Decision.

All of the modifications to the claimant's proposed parameters and guidelines are discussed in the staff analysis and outlined in the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

On July 5, 2000, the claimant filed comments on the draft staff analysis disputing one issue; namely, reimbursement of legal defense costs. (Exhibit I.)

The Commission found that Government Code section 3304, subdivision (b), constitutes a reimbursable state mandate by requiring local agencies to provide the opportunity for an administrative appeal for specified disciplinary actions. The claimant is requesting, as part of this activity, the defense of any lawsuit resulting from the agency's disciplinary action.

In this regard, the claimant is requesting reimbursement for attorneys' fees, witness fees, and all associated court costs in defense of its case.

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

The claimant also cites Government Code section 3309.5, a statute included in the POBAR legislation, to assert that the superior court has original jurisdiction over any proceeding brought by a peace officer for alleged POBAR violations. Section 3309.5 was designed to allow a peace officer to pursue a remedy immediately in court during the investigation and not require that the officer wait until after an administrative appeal. Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

The Department of Finance contends that legal defense costs are not reimbursable since there is no reference in the Commission's Statement of Decision that defending the agency's administrative action constitutes a reimbursable state mandated activity. The Department further states that it is not clear that the Commission's approval of the costs associated with an administrative appeal extends to or encompasses judicial review.

For the reasons stated below, staff disagrees with the claimant's request.

Legal Defense Costs Relating to an Agency's Final Disciplinary Action

The claimant contends that legal defense costs are reimbursable on the ground that judicial review of POBAR cases has been expanded by the courts to an independent review of the validity of the final administrative decision issuing the disciplinary action.

Before the test claim legislation was enacted, local agencies were issuing disciplinary actions. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even before POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision. A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action even in the absence of POBAR. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an interrogation and following the receipt of an adverse comment.

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission's Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 constitutes a reimbursable state mandate.

Section 1183, subdivision (e)(3), of the Commission's regulations requires that the test claim filing include a detailed description of the following: activities required under prior law or executive order, what new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service *and* whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying "the activities found to be required under prior statutes or executive orders, and the activities found to be required under the statutes or executive orders that contain the mandate or increased level of service." The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the claimant's test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission's regulations.

Moreover, the claimant never alleged during the test claim phase, and the Commission did not find, that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant's proposed parameters and guidelines by striking out the words "together with the defense of same in any court proceeding."

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission's regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

Staff Recommendation

Staff recommends that the Commission adopt the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

Claimant

City of Sacramento

Chronology

11/30/99 Commission adopts Statement of Decision
12/29/99 Claimant files proposed parameters and guidelines
01/19/00 Department of Finance files comments
02/23/00 Claimant replies to the Department of Finance comments
05/24/00 Pre-hearing Conference held
05/26/00 Staff requests further comments
06/07/00 Claimant files further comments in response to staff request
06/14/00 The State Controller's Office files comments
06/20/00 Draft Staff Analysis and Claimant's Proposed Parameters and Guidelines as Modified by Staff issued
07/05/00 Claimant files comments

Summary of the Mandate

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBAR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 (Exhibit A).

STAFF ANALYSIS

On June 20, 2000, the draft staff analysis and claimant's parameters and guidelines as modified by staff were issued to the parties. The draft staff analysis was based on a review of the claimant's proposed parameters and guidelines, the comments submitted by the parties, the test claim legislation, and the Commission's Statement of Decision. (Exhibit H.)

On July 5, 2000, the claimant filed comments on the draft staff analysis addressing one issue; namely the reimbursement of legal defense costs on claims filed by peace officer employees alleging a POBAR violation under Government Code section 3309.5. (Exhibit I.) The staff analysis on this issue is provided below under Section IV. (B), Administrative Appeal.

Staff has also modified the claimant's proposed parameters and guidelines, as reflected by ~~underline and strikeout~~, to conform the parameters and guidelines to the test claim legislation and the Commission's Statement of Decision (See page 21). These modifications are discussed below.

Section IV. "Reimbursable Activities," Subdivision (A), "Administrative Activities"¹

The claimant's proposed parameters and guidelines include the following administrative activities:

1. Developing or updating policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.
3. Maintenance of the systems to conduct the mandated activities.
4. Providing direct supervision over the agency staff performing the mandated activities.

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and *maintaining* files for those cases. Thus, the component "maintenance of the systems to conduct the mandated activities" is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBAR cases."

Staff has also modified the claimant's proposed parameters and guidelines by striking the proposed activity of "providing direct supervision over the agency staff performing the mandated activities." If a claimant is requesting reimbursement for an employee providing direct supervision regarding the mandated activities, the claimant simply has to comply with Section V., Claim Preparation and Submission, and submit supporting documentation to the Controller's Office identifying the employee, describing the reimbursable activities performed, and the actual time devoted to the mandated activity. Thus, adding a separate component in Section IV. for employee supervision is duplicative and unnecessary.

Finally, staff has designated the administrative activities as on-going activities. Due to a lack of specificity in the test claim legislation, hundreds of court cases have been, and continue to be issued. The case law has provided new interpretations of the legislation and clarified the responsibilities of local agencies. Thus, staff finds that it is reasonably necessary for local agencies to update their internal policies and procedures, and train their employees on an on-going basis.

Thus, staff's modifications to Section IV. (A), are as follows:

"A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate.

¹ See page 22, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

3. ~~Maintenance of the systems to conduct the mandated activities.~~ Updating the status report of the POBAR cases.

4. ~~Providing direct supervision over the agency staff performing the mandated activities.~~

Section IV. "Reimbursable Activities, Subdivision (B), "Administrative Appeal"²

The Commission's Statement of Decision includes a list of activities the Commission found to be reimbursable under article XIII B, section 6 of the California Constitution. The first activity listed in the Statement of Decision states the following:

"Providing the opportunity for an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interests *are not* affected (i.e., the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- 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."

The claimant's proposed parameters and guidelines includes the language provided above, but also adds the following italicized phrase: "Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, *together with the defense of same in any court proceeding.*" Thus, the claimant is requesting attorneys' fees, witness fees, and all associated court costs in defense of its case.

The Department of Finance contends that legal defense costs are not reimbursable. They state the following:

"While providing the opportunity for and the conduct of an administrative appeal was included in the Commission's Statement of Decision, there is no reference to the defense of same in any court proceeding. It is not clear to us that the Commission's approval of the costs of an administrative appeal in its decision necessarily extends to or encompasses judicial review. Unless the claimant can establish a nexus between the two processes, we believe that it is not appropriate to include the costs of the latter in these parameters and guidelines."

In response, the claimant cites Government Code section 3309.5, a statute included in the test claim legislation, to assert that the test claim legislation gives the superior court original jurisdiction over any proceeding brought by a peace officer for alleged POBAR violations.

The claimant also states that "although at first blush it would seem that only those actions involving a violation by the public entity of the officer's rights under POBAR would be subject to judicial review, that is not what has occurred in practice." The claimant, citing

² See pages 22-23, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

the case of *Fukuda v. City of Angels*³, contends that the courts have expanded the judicial review of POBAR cases to an independent review of the validity of the final administrative decision issuing the disciplinary action. The claimant therefore asserts that reimbursement should be required for all costs related to defending the agency's final administrative decision in court.

The analysis regarding legal defense costs is provided below.

Legal Defense Costs Relating to the Agency's Final Administrative Decision

The claimant first contends that defending a lawsuit attacking the validity of the final administrative decision issuing a disciplinary action is a reimbursable state mandated activity.

The claimant cites the *Fukuda* case. The *Fukuda* case involves an administrative mandamus proceeding under Code of Civil Procedure section 1094.5 brought by a police officer against his employer following the employer's final decision to discharge the plaintiff. A writ of mandamus proceeding under Code of Civil Procedure section 1094.5 is available to review "any final administrative order or decision made as the result of a proceeding in which, by law, a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer." Thus, the plaintiff in *Fukuda* was attacking the validity of the employer's final decision of discharge.

The plaintiff in *Fukuda*, however, did not allege any POBAR violations. In fact, the test claim legislation is not even mentioned in the case. The plaintiff was simply contesting the final disciplinary action taken by the employer. Thus, staff finds that the *Fukuda* case is not relevant here.

Moreover, local agencies were issuing disciplinary actions before the test claim legislation was enacted. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.

Thus, even before POBAR was enacted, a peace officer could file a court action under Code of Civil Procedure section 1094.5 attacking the validity of the agency's final disciplinary decision.⁴ A peace officer can also file a civil suit for damages as a result of an agency's disciplinary action even in the absence of POBAR. Therefore, defending lawsuits attacking the validity of the final disciplinary action is not new.

Accordingly, staff finds that defending a lawsuit attacking the validity of the final administrative decision does not constitute a reimbursable state mandated activity.

Legal Defense Costs Relating to Claims Filed Under Government Code Section 3309.5

The claimant also proposes to include in the parameters and guidelines the activity of defending lawsuits brought under Government Code section 3309.5. The claimant has included this activity in the section of the parameters and guidelines addressing the right to an administrative appeal under Government Code section 3304, subdivision (b).

Government Code section 3309.5 gives the superior court original jurisdiction over proceedings alleging that a local agency has violated a peace officer's POBAR rights, including the right to an administrative appeal, and the rights granted an officer during an

³ *Fukuda v. City of Angels* (1999) 20 Cal.4th 805; (Exhibit J.)

⁴ Code of Civil Procedure section 1094.5 was originally added by the Legislature in 1945 (Stats. 1945, ch. 358). (Exhibit K)

interrogation and following the receipt of an adverse comment. Section 3309.5 was specifically designed to allow a peace officer to pursue a remedy immediately in the courts during the investigation and not require that the officer wait until after an administrative appeal.⁵ Thus, Government Code section 3309.5 establishes a legal cause of action for peace officer employees.

Government Code section 3309.5 states the following:

"(a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer." (Emphasis added.)

Although section 3309.5 is part of POBAR, the claimants never alleged during the test claim hearing, or in response to the Commission's Statement of Decision, or during the hearing on the Statement of Decision that section 3309.5 imposes reimbursable state mandated activities.⁶

On June 20, 2000, staff issued a draft analysis on the claimant's proposed parameters and guidelines concluding that legal defense costs resulting directly from section 3309.5 cannot be included in the parameters and guidelines because the Commission has not made a finding that section 3309.5 constitutes a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17514.

On July 5, 2000, the claimant filed a response to the draft staff analysis contending that the staff analysis regarding legal defense costs under Government Code section 3309.5 is wrong. The claimant contends that the issue of litigation of POBAR rights has been a "thread" through the entire test claim process. The claimant also states that defense costs under section 3309.5 should be included in the parameters and guidelines since the Statement of Decision defines the scope of the mandate and the parameters and guidelines define the activities. The claimant states the following:

"Attached to the original test claim as filed are all of the statutes upon which the test claim was based. On [page 372 of the test claim], is contained Chapter 405, Statutes of 1979, which added Government Code section 3309.5 to POBAR. Reference to this statute is had on the face sheet of the test claim [page number omitted] as well as on the face page of the narrative of the test claim [page number omitted].

⁵ See, *Mounger v. Gates* (1987) 193 Cal.App.3d 1248, 1256. (Exhibit L)

⁶ Exhibit M, Test claim filings submitted by the claimant; Exhibit N, August 26, 1999 Hearing Transcript (test claim hearing); and Exhibit O, November 30, 1999 Hearing Transcript (SOD hearing).

Secondly, the issue of litigation of POBAR rights has been a thread going through the entire test claim process. Your staff has analyzed at depth numerous cases involving POBAR, particularly in connection with the scope of the mandate, and to what extent POBAR exceeds the requirements of *Skelly v. State Personnel Board* [citation omitted]. In fact, the first 312 pages of the test claim is devoted to litigation concerning *Skelly* and POBAR.

The issue of litigation concerning POBAR was raised by Ms. Dee Contreras at the hearing on the test claim in this matter. Furthermore, the record on the test claim is replete with references concerning litigation over POBAR rights. (See Comments to Draft Staff Analysis received by the Commission on August 6, 1999, commencing at page 9.)

Thus, even prior to Claimant's submission of Draft Parameters and Guidelines, the issue of litigation over POBAR rights was clearly submitted and in issue."

Staff disagrees with the claimant.

Section 1183, subdivision (e)(3), of the Commission's regulations requires that the test claim filing include a detailed description of the following:

- What activities were required under prior law or executive order, and
- What new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and
- Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556.

Thus, whether a statute constitutes a new program or higher level of service and whether the statute imposes costs mandated by the state are issues to be determined by the Commission at the test claim phase. Only after the Commission determines that a statute constitutes a reimbursable state mandate can the Commission proceed to the parameters and guidelines.

Section 1183.1, subdivision (a), of the Commission's regulations requires that the proposed parameters and guidelines include a summary of the mandate identifying "the activities found to be required under prior statutes or executive orders, and the activities found to be required under the statutes or executive orders that contain the mandate or increased level of service." (Emphasis added.) The proposed parameters and guidelines may also include a description of the most reasonable methods of complying with the mandate.

Thus, in order for an activity to be included in the parameters and guidelines, the activity must either be:

- Required by the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate, or
- A reasonable method of complying with the statutes found by the Commission during the test claim phase to impose a reimbursable state mandate.

In the present case, the Commission has not made a finding that Government Code section 3309.5 imposes a reimbursable state mandate.

The claimant's test claim filing includes section 3309.5 on the face sheet as a statute alleged to contain a mandate. The first page of the test claim narrative includes a sentence stating the following: "Chapter 405/79 added section 3309.5, making it unlawful to violate this act, thereby relieving the officer of any requirement to exhaust administrative remedies before seeking 'appropriate injunctive or other extraordinary relief' before superior court if violations are alleged."⁷

However, the test claim filing does not contain a description of whether section 3309.5 constitutes a new program or higher level of service or imposes costs mandated by the state, as required by the Commission's regulations. Instead, the claimant's test claim filing limits the discussion of these issues to Government Code sections 3303 and 3304. These sections address the administrative appeal and interrogation rights under POBAR.

On September 5, 1997, the claimant filed supplemental comments clarifying the test claim. Again, the claimant's comments addressed Government Code sections 3303 and 3304. The claimant also addressed sections 3305, and 3306, which relate to the rights following the receipt of an adverse comment. Section 3309.5 was not mentioned in the claimant's supplemental comments.⁸

The claimant contends that its comments on the test claim draft staff analysis, beginning on page 9, is replete with references concerning litigation over POBAR rights. However, the cases cited in these comments do not address Government Code section 3309.5. Rather, the case law cited by the claimant defines the phrase "transfer for purposes of punishment", a punitive action entitling the employee to an administrative appeal under POBAR.⁹

The claimant also contends that the issue of litigation was raised during the test claim hearing. Staff agrees there was testimony relating to case law involving an employee's pre-existing due process rights. There was also testimony on case law relating to the POBAR rights regarding the administrative appeal, interrogation of an officer, and the receipt of adverse comments. However, there was no testimony addressing Government Code section 3309.5.¹⁰

In short, the claimant never alleged during the test claim phase, and the Commission did not find that Government Code section 3309.5 constitutes a new program or higher level of service, and imposes costs mandated by the state under article XIII B, section 6 of the California Constitution and Government Code section 17514. Thus, there has been no determination by the Commission that section 3309.5 constitutes a reimbursable state mandate.

Accordingly, staff has modified the claimant's proposed parameters and guidelines by striking out the words "together with the defense of same in any court proceeding."

If, however, the Commission wants to include this activity in the parameters and guidelines, the Commission would have to make finding pursuant to section 1183.1, subdivision (a)(4), of the Commission's regulations that defending a 3309.5 lawsuit is a reasonable method of complying with the requirement to provide an opportunity for an administrative appeal under Government Code section 3304, subdivision (b).

⁷ Exhibit M, Bates page 192.

⁸ Exhibit M, Bates page 232.

⁹ Exhibit M, Bates page 244.

¹⁰ Exhibit N.

1998 Amendment to Government Code Section 3304

Staff has also included the Commission's recognition that Government Code section 3304 was amended in 1998 (Stats. 1998, ch. 748) to limit the right to an administrative appeal to the chief of police and those employees who have successfully completed probation. (See Exhibit A, Statement of Decision, page 10.) The amendments became effective on January 1, 1999. Thus, claimants are eligible for reimbursement for providing the opportunity for an administrative appeal to probationary and at-will employees, except the chief of police, only until December 31, 1998.

Thus, staff has modified Section IV. (B) as follows:

"B. On-Going Activities Administrative Appeal

1. Reimbursement period of July 1, 1994 through December 31, 1998 - The administrative appeal activities listed below apply to permanent employees, at-will employees, and probationary employees.

1. Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions, together with the defense of same in any court proceeding (Gov. Code, § 3304, subd. (b)):

- 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);
- Transfer of permanent, probationary and at-will employees for purposes of punishment;
- Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
- 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.

Included in the foregoing, but not limited thereto, are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.

2. Reimbursement period beginning January 1, 1999 - The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):

- Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);
- Transfer of permanent employees for purposes of punishment;
- Denial of promotion for permanent employees for reasons other than merit; and

- Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.

Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas; witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body."

Section IV. "Reimbursable Activities, Subdivision (C), "Interrogations"¹¹

The Commission found that several activities required by the test claim legislation involving the interrogation of a peace officer constituted reimbursable state-mandated activities. (See the Commission's Statement of Decision, pages 25 and 26.)

The claimant contends that all of the interrogation activities found by the Commission to be reimbursable apply not only to the peace officer-employee under investigation, but also to civilian and peace officer witnesses. For example, the claimant states the following:

"Government Code Section 3303(g) does not distinguish between taping an officer who is a witness versus taping an officer who is the target of an investigation. The public safety officer, whether or not the target of the investigation, can bring his or her own recording device, and their right to record is independent of our right to record. Where it says *may* be recorded, it in essence requires recording, and doesn't differentiate between interrogation of witnesses and interrogation as the targeted employee. However, because of the fact that 'witness' peace officers may subsequently become targets as a result of their heightened standard of conduct, peace officer witnesses must be taped as well. Finally, if you tape all of the peace officers involved in an investigation and do not tape civilian witnesses as well, you do not have a complete record."¹²

Government Code section 3303, which addresses investigations and interrogations, expressly states in the first paragraph that the rights granted with regard to interrogations apply only when a peace officer is under investigation that could lead to punitive action. The first paragraph of section 3303 states in pertinent part the following:

"When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action [defined in the test claim legislation as dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment], the interrogation shall be conducted under the following conditions." (Emphasis added.)

Thus, based on the language of section 3303, staff finds that the rights granted by POBAR, including the right to tape an interrogation, do *not* extend to civilian witnesses.

However, staff agrees with the claimant that POBAR rights under Government Code section 3303 do attach when a peace officer is interrogated as a witness to an incident since

¹¹ See pages 23-25, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

¹² Exhibit L.

the officer's own actions regarding the incident can result in punitive action. The claimant provides the following example:

For example, an actual case situation occurred wherein there was an allegation that an officer failed to handle a particular call properly, that there was the possibility of excessive force was used and the individual was in the hospital. Given the seriousness of the allegations, we commenced speaking with the witnesses immediately. Everyone involved except the complainant, from the officer who was alleged to have used excessive force, as well as his sergeant, was a peace officer covered by POBR. When the sergeant, who was thought to be a witness, came in for questioning, he was informed that the subject of the questioning was one of his subordinate officers. However, in the course of discussions with the sergeant, it became apparent that he failed to file a required form when a person is hospitalized or injured. In Sacramento City, when someone is injured, the sergeant is required to file a form which is an alert to indicate that the arrestee has been hospitalized. In this situation, as you walk through the incident, we became apprized that the sergeant failed to file the required form."

"....."

"In the normal due process case, the employee would have uttered statements which indicated that he did not file the appropriate form, you could ask him whether or not he had filed the form, and the issue would be over. However, with POBR, you have to give the sergeant, who was previously called as a witness, a copy of the transcript of his prior testimony as he is entitled to it since he was interrogated on the matter previously in the officer's case. Since you never know when a witness may end up being the subject of discipline, not only do you have to more carefully prepare each case, but you may also have to tape record each peace officer's testimony should the eventuality occur that the witness becomes the target of an investigation. This is just an example of why there needs to be more and thorough preparation."

"As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation."¹³

Thus, staff has added the following paragraph to Section IV. (C) of the proposed parameters and guidelines:

¹³ Exhibit I, pages 2 and 3.

"Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)"

Staff has also added the following paragraph, which was included on page 12 of the Commission's Statement of Decision and expressed in Government Code section 3303, subdivision (i):

"Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)"

Section IV. (C) (1) and (2). Compensation and Timing of an Interrogation, Interrogation Notice

The Commission's Statement of Decision includes the following reimbursable activity:

"Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)"

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission's Statement of Decision.)

The claimant's proposed parameters and guidelines restates the activity as expressed in the Statement of Decision, but also adds "the review of the necessity for the questioning and responses given" as a reimbursable component. The claimant's proposed parameters and guidelines state the following:

"Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)"

"Included in the foregoing, but not limited thereto, is the *review of the necessity for the questioning and responses given*; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel." (Emphasis added.)

Following the pre-hearing conference in this case, staff requested further comments on the proposed activity "to review the necessity for the questioning and responses given" to determine if the activity was consistent with, and/or reasonably related to, the

Commission's Statement of Decision and the activities mandated by the test claim legislation.

In response to staff's request, the claimant asserts that it is more difficult to prepare for an investigation under POBAR because Government Code section 3303, subdivision (c), requires that the employee receive prior notice identifying the nature and subject of the questioning. The claimant states the following:

"It is more difficult to prepare for an investigation involving a peace officer than it is for those who are not entitled to POBR rights. In the normal due process case involving an employee who is not entitled to POBR rights, you do not have to inform the employee about the nature and subject of the questioning, and you do not have to prepare questions focused upon a particular area, seeking to get the information you can from the employee. In non-POBR matters, you can explore other areas in the questioning as they arise, which allows for a much more free-form questioning process."

"In contrast, however, with employees covered by POBR, you must tell the employee prior to the initial questioning what the purpose of the meeting is, what it is you will be discussing with him or her, and you have to be prepared to be clearly on point as to where you are going and your expectations about the questioning process. You cannot engage in broader questioning for information, because the employee has the right to know the subject about which he or she is being interrogated."¹⁴

The claimant further states the following:

"As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation. . . ."

"Obviously, if you are going to re-interview a peace officer, you have to be prepared to give them a copy of their prior transcript. You also have to go back and review it, to make sure where conflicts with what transpired previously in order to ask intelligent questions. In a non-POBR matter, you can follow up by asking additional questions without regard to the reasons you have the employee in for questioning in the first place. However, with POBR, the whole questioning is focused on what you have identified as the allegation. Thus, the definition of what the allegations are must come early in the process. If someone calls to complain about something, the subsequent investigation may bring to light little about the complaint of the citizen, but may demonstrate an internal operating problem or conflict which you have to address. The additional rights granted by POBR make that more difficult as indicated above."¹⁵

Staff finds that the activity to review the necessity for the questioning and responses given is too broad and goes beyond the scope of Government Code section 3303, subdivision (a), and the Commission's Statement of Decision.

¹⁴ Exhibit F, pages 1 and 2.

¹⁵ *Id.* at page 3.

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR was enacted.

Nevertheless, Government Code section 3303, subdivision (c), does impose a new requirement on local agencies to provide the peace officer with notice identifying the nature of the investigation prior to the interrogation. The Commission found that the notice requirement constituted a reimbursable state mandated activity under article XIII B, section 6 of the California Constitution. Accordingly, staff finds that the activity of reviewing agency complaints or other documents to prepare the notice of interrogation is a reasonable method of complying with Government Code section 3303, subdivision (c).

Based on the foregoing, staff has modified Section IV. (C) as follows:

"1. Conducting an interrogation of a peace officer while the officer is on duty, or compensating. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing, but not limited thereto, is the review of the necessity for the questioning and responses given; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel.

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

Included in the foregoing, but not limited thereto, is the review of agency complaints or other documents to prepare the notice of interrogation; the nature of the interrogation; review by counsel; determination of the investigating officers; redaction of the agency complaint for names of the complainant or officer accused parties or witnesses or confidential information; and preparation and presentation to officer of notice of agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer."

Section IV. (C) (3), (4), and (5). Tape Recording and Transcription of the Interrogation

Government Code section 3303, subdivision (g), states the following:

"The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation."

The Commission found that Government Code section 3303, subdivision (g); imposed the following reimbursable state mandated activities (see pages 25 and 26 of the Statement of Decision):

- Tape recording the interrogation when the employee records the interrogation. (Gov. Code, § 3303, subd. (g).)
- Providing the employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):
 - (a) The further proceeding is not a disciplinary action;
 - (b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - (c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - (d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;
 - (e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.
- Producing transcribed copies of any notes made by a stenographer at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer in the following circumstances (Gov. Code, § 3303, subd. (g)):
 - (a) When the investigation *does not* result in disciplinary action; and
 - (b) When the investigation results in:
 - A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e., the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
 - A transfer of a permanent, probationary or at-will employee for purposes of punishment;
 - A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
 - Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

The claimant's proposed parameters and guidelines combine these activities into one paragraph:

"Producing transcribed of any notes made by a stenographer or tape recording at an interrogation, and reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, *whether or not the investigation results in any disciplinary action.* (Gov. Code, § 3303, subd. (g)).

Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies." (Emphasis added.)

Staff finds that the claimant's proposed paragraph, which authorizes reimbursement for the cost of transcription and tape recording *whether or not the investigation results in any disciplinary action*, is inconsistent with the Commission's Statement of Decision.

First, the proposed paragraph implies, and the claimant requests, reimbursement for taping *all* interrogations. However, the Commission found that reimbursement is required for tape recording the interrogation *only when* the employee tapes the interrogation.

The Commission also limited the right to reimbursement for the costs of providing the employee with access to the tape or transcription of the notes when: (1) the investigation did not result in disciplinary action; and 2) when the disciplinary action did not involve a pre-existing due process right to such materials.

Thus, staff has modified the claimant's proposed parameters and guidelines to accurately reflect the Commission's Statement of Decision.

The claimant also contends that the cost of transcribing the tape recordings of an interrogation is reasonably necessary to comply with the mandate. The claimant contends that "the tape is meaningless without a transcription."¹⁶ Staff agrees and has included this component in Section IV. (C) (3) of the parameters and guidelines.

Thus, staff has modified Section IV. (C) as follows:

"3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g)).

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

4. Providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):

a) The further proceeding is not a disciplinary action;

b) The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

c) The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

¹⁶ Exhibit F.

d) The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

e) The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

Included in the foregoing is the cost of tape copying.

4.5. Producing transcribed copies of any notes made by a stenographer or tape recording at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, whether or not the investigation results in any disciplinary action in the following circumstances (Gov. Code, § 3303, subd. (g)):

a) When the investigation does not result in disciplinary action; and

b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e.: the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing, but not limited thereto, is the review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; cost of tape copying, tape and storage; cost of transcription, processing, service and retention of copies."

Section IV. "Reimbursable Activities, Subdivision (D), "Adverse Comment"¹⁷

Government Code sections 3305 and 3306 provide peace officers with procedural rights to receive notice, and review and respond to an adverse comment entered in the officer's personnel file.

The Commission found that Government Code sections 3305 and 3306 constitute a partial reimbursable state mandated program for those activities not previously required by the due process clause and/or statutory law. (See pages 26 through 28 of the Statement of Decision.)

The claimant's proposed parameters and guidelines contains the same activities listed in the Commission's Statement of Decision regarding adverse comments, and also includes the following paragraph:

¹⁷ See pages 25-27, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

"Included in the foregoing, but not limited thereto, are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; *officer's time in response to adverse comment*; review of response to adverse comment, attaching same to adverse comment and filing." (Emphasis added.)

As indicated in the above paragraph, the claimant is requesting reimbursement for the officer's time in response to the adverse comment. Staff disagrees with this request.

Government Code section 3306, which addresses the officer's response to an adverse comment, states the following:

"A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment."

The Commission found that section 3306 requires the local agency to provide an opportunity to respond to the adverse comment within 30 days. (See page 19 of the Statement of Decision.) However, the Commission never found, and the statute does not require, that the officer file a response. Rather, the decision to file a response to the adverse comment is left up to the individual officer.

Therefore, staff finds that compensating local agencies for the officer's time in responding to an adverse comment is not mandated by the state and is, thus, not eligible for reimbursement. Accordingly, staff modified Section IV. (D) of the proposed parameters and guidelines by striking out the words "officer's time in response to adverse comment."

Section VI. "Supporting Data"¹⁸

The State Controller's Office requests that language be included to validate the quantity of work performed for the costs claimed. The Controller's Office requests eligible claimants to identify the following:

Number of cases in process at the beginning of the fiscal year ____
Number of new cases added during the fiscal year ____
Number of cases completed or closed during the fiscal year ____
Number of cases in process at the end of the fiscal year ____"

Staff has included this language in Section VI. Supporting Data.

Other Non-substantive, Clarifying Modifications

Staff made other non-substantive, clarifying modifications to the remainder of the claimant's proposed parameters and guidelines. Changes were also made to Sections V. and IX. to conform the language to other parameters and guidelines adopted by the Commission.

Staff Recommendation

Staff recommends that the Commission adopt the Claimant's Proposed Parameters and Guidelines, as Modified by Staff, beginning on page 21.

¹⁸ See page 28, Claimant's Proposed Parameters and Guidelines, As Modified by Staff.

Tab 9

ITEM 13
FINAL STAFF ANALYSIS
REQUESTS TO AMEND PARAMETERS AND GUIDELINES

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

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

Directed by Government Code Section 3313, as added by Statutes 2005, Chapter 72 (Assem. Bill No. 138, § 6, eff. July 19 2005)

Peace Officers Procedural Bill of Rights (POBOR)¹

California State Association of Counties, City of Sacramento, County of Los Angeles
County of San Bernardino, Department of Finance, and State Controller's Office, Requestors

05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22
(CSM-4499 and 05-RL-4499-01)

EXECUTIVE SUMMARY

Background

The Legislature enacted the Peace Officers Procedural Bill of Rights Act (commonly abbreviated as "POBOR"), by adding Government Code sections 3300 through 3310, in 1976. POBOR provides a series of rights and procedural safeguards to peace officers employed by local agencies and school districts that are subject to investigation or discipline. Generally, POBOR prescribes certain procedural protections that must be afforded officers during interrogations that could lead to punitive action against them; gives officers the right to review and respond in writing to adverse comments entered in their personnel files; and gives officers the right to an administrative appeal when any punitive action, as defined by statute, is taken against them, or they are denied promotion on grounds other than merit.

On November 30, 1999, the Commission approved the POBOR test claim and adopted the original Statement of Decision (CSM 4499). The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the

¹ Staff substituted the acronym "POBOR" throughout this document for all variations used in requests, comments, and other filings from interested parties and affected state agencies.

state pursuant to Government Code section 17556, subdivision (c). The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on POBOR to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission *except* the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers “who successfully completed the probationary period that may be required” by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer’s refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

Requests to Amend Parameters and Guidelines

In May 2005, before the Commission reconsidered its original POBOR decision, the State Controller’s Office filed a request to amend the parameters and guidelines. The request remained pending when the Commission adopted its Statement of Decision on reconsideration in May 2006.

At the time the Commission adopted the Statement of Decision on reconsideration, the Commission directed staff to work with state agencies and interested parties to develop and recommend a reasonable reimbursement methodology pursuant to Government Code section 17519.5 for inclusion in the revised parameters and guidelines. Subsequently, proposed amendments were filed by the State Controller’s Office to supersede the proposed amendments previously filed in May, 2005; the Counties of San Bernardino and Los Angeles; the California State Association of Counties (CSAC); and the Department of Finance. The parties have proposed changes to the reimbursable activities and have proposed different reasonable reimbursement methodologies, as described in the analysis.

Proposed Changes to Reimbursable Activities

Staff has reviewed the proposed amendments and recommends that the following changes be made to the parameters and guidelines for costs incurred beginning July 1, 2006:

- The addition of time study language 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.
- Deletion of specific activities relating to the administrative appeal hearing and the receipt of an adverse comment that the Commission expressly denied in the Statement of Decision on reconsideration.
- Clarification of administrative activities, and activities related to the administrative appeal, interrogations, and adverse comments that are consistent with the Commission’s Statement of Decision adopted in 1999, the Statement of Decision on reconsideration,

and the Commission's prior findings when adopting the original parameters and guidelines. Language is included to clarify that certain activities are *not* reimbursable, including investigation and conducting the interrogation. The Commission expressly denied reimbursement for these activities when it adopted the original parameters and guidelines in 2000 and, again, when it adopted the Statement of Decision on reconsideration in April 2006.

Reasonable Reimbursement Methodology

Upon adoption of the POBOR Statement of Decision on reconsideration, the Commission directed staff to form a working group to develop a reasonable reimbursement methodology to reimburse local governments for state-mandated costs. The California State Association of Counties (CSAC), the County of Los Angeles, and the DOF filed proposals. The following three proposals were reviewed by claimants, affected state agencies and Commission staff and discussed in three pre-hearing conferences.

- The California State Association of Counties requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would reimburse local agencies \$528 per peace officer employed by the agency on January 1 of the claim year, with annual adjustments based on the Implicit Price Deflator.
- The County of Los Angeles requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would allow local agencies to be reimbursed based on *approximations of local costs mandated by the state*. This proposal is based on studies of claims data submitted to the Controller's Office for the 2001-2002 through 2004-05 fiscal years. The County describes its proposal as a reimbursement formula which reflects differences in POBOR case loads among local law enforcement agencies and differences in the numbers of peace officers employed by those agencies. The reasonable reimbursement methodology is comprised of three components: (1) *Unit Case Costs* are determined by multiplying the number of unit level cases X 12 standard hours X productive hourly rate; (2) *Extended Case Costs* are determined by multiplying number of extended cases X 162 standard hours X productive hourly rate; 3) *Uniform Costs* are determined by multiplying the number of peace officers X standard rate of \$100. The costs from these three components are then totaled for the annual claim amount.
- The Department of Finance (DOF) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology. Under this methodology, a distinct "base rate" would be calculated for each claimant based on SCO audited amounts for four years of claims. The annual reimbursement would be the result of multiplying the "base rate" by the number of covered officers. The base rates would be adjusted annually by an appropriate factor to capture the normal cost increases. A process for determining *mean* reimbursement rates while final reimbursement rates are determined.

Based on the plain meaning of Government Code section 17518.5, the statute defining *reasonable reimbursement methodology*, staff finds that:

- The Department of Finance, the State Controller, affected state agencies, a claimant, or an interested party is authorized to develop a reasonable reimbursement methodology.

- There is no statutory requirement or authority for the Commission to audit reimbursement claims and to develop a reasonable reimbursement methodology proposal that complies with section 17518.5.
- The conditions or criteria for defining a reasonable reimbursement methodology are defined in section 17518.5 and may not be changed by the Commission.

For the reasons stated in the analysis, staff concludes that the proposed reasonable reimbursement methodologies submitted by the California State Association of Counties, the County of Los Angeles, and the Department of Finance do not meet the following conditions in section 17518.5, and, therefore, must be denied:

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

Staff Recommendation

Staff recommends the Commission:

- adopt the proposed amendments to the parameters and guidelines for the Peace Officer Bill of Rights program, as modified by staff, beginning on page 49; and,
 - authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.
-

STAFF ANALYSIS

Requestors

California State Association of Counties
County of Los Angeles
County of San Bernardino
Department of Finance
State Controller's Office

Chronology

- 11/30/1999 Commission on State Mandates (Commission) adopts original Statement of Decision
- 07/27/2000 Commission adopts parameters and guidelines
- 03/29/2001 Commission adopts statewide cost estimate
- 10/15/2003 Bureau of State Audits issues report on Peace Officers' Procedural Bill of Rights (commonly referred to as POBOR) and Animal Adoption Programs, Report No. 2003-106
- 05/05/2005 State Controller's Office files proposed amendments to the parameters and guidelines
- 07/19/2005 AB 138 (Statutes 2005, chapter 72) becomes effective, directing the Commission to reconsider the original POBOR Statement of Decision by July 1, 2006
- 04/26/2006 Commission reconsiders POBOR test claim, adopts Statement of Decision, and directs staff to work with state agencies and interested parties to develop and recommend a reasonable reimbursement methodology pursuant to Government Code section 17518.5 for inclusion in the revised parameters and guidelines²
- 05/23/2006 County of Los Angeles files proposed amendments to the parameters and guidelines
- 05/25/2006 Commission staff holds first prehearing conference
- 05/25/2006 California State Association of Counties files proposed amendments to the parameters and guidelines³
- 06/15/2006 County of Los Angeles files proposed amendments to the parameters and guidelines to replace and supersede proposed amendments filed on May 23, 2006⁴

² See Exhibit A.

³ See Exhibit B.

⁴ See Exhibit C.

06/15/2006 County of San Bernardino files proposed amendments to parameters and guidelines⁵

06/29/2006 State Controller's Office files proposed amendment to parameters and guidelines to supersede amendment previously filed on May 5, 2005.⁶

06/29/2006 Department of Finance files proposed amendments to parameters and guidelines⁷

7/27/2006 Commission staff holds second prehearing conference.

08/04/2006 County of Los Angeles files comments.
City of Sacramento files comments.
Department of Finance files comments.
State Controller's Office files comments.⁸

08/17/2006 County of Los Angeles files rebuttal comments.
Department of Finance files rebuttal comments.⁹

08/31/2006 Commission issues draft staff analysis and proposed amendments to parameters and guidelines, as modified by staff.¹⁰

09/08/06 County of Los Angeles requests a pre-hearing conference, an extension of time to file comments, and a postponement of the hearing¹¹

09/11/06 County of Los Angeles' requests are granted.¹²

09/22/06 City of Los Angeles and City of Sacramento file comments on the draft staff analysis.

09/28/06 County of Los Angeles files comments on the draft staff analysis.

10/25/06 Pre-hearing conference held.

10/30/06 County of San Bernardino and Department of Finance file comments on the draft staff analysis.¹³

⁵ See Exhibit D.

⁶ See Exhibit E.

⁷ See Exhibit F.

⁸ See Exhibit G for all comments.

⁹ See Exhibit G.

¹⁰ See Exhibit H.

¹¹ Exhibit I.

¹² Exhibit I.

¹³ See Exhibit J for all comments to the draft staff analysis.

Summary of the Mandate

On November 30, 1999, the Commission approved the test claim and adopted the original Statement of Decision on the POBOR program. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on POBOR to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration

became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the POBOR legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause¹⁴ does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

Proposed Amendments to the Parameters and Guidelines

The Commission received five proposed amendments to the parameters and guidelines, filed by the California State Association of Counties, the County of Los Angeles, the County of San Bernardino, the Department of Finance, and the State Controller's Office, as follows:

The *California State Association of Counties* (05-PGA-19) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would reimburse local agencies \$528 per peace officer employed by the agency on January 1 of the claim year, with annual adjustments based on the Implicit Price Deflator.

The *County of Los Angeles* (05-PGA-18) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would allow local agencies to

¹⁴ Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

be reimbursed based on *approximations of local costs mandated by the state*. This proposal is based on studies of claims data submitted to the Controller's Office for the 2001-2002 through 2004-2005 fiscal years. The County of Los Angeles describes its proposal as a reimbursement formula which reflects differences in POBOR case loads among local law enforcement agencies and differences in the numbers of peace officers employed by those agencies. The reasonable reimbursement methodology is comprised of three components: (1) *Unit Case Costs* are determined by multiplying (the number of unit level cases) X (12 standard hours) X (productive hourly rate); (2) *Extended Case Costs* are determined by multiplying (the number of extended cases) X (162 standard hours) X (productive hourly rate); and (3) Uniform Costs are determined by multiplying (the number of peace officers) X (standard rate of \$100). The costs from these three components are then totaled for the annual claim amount.

In response to the draft staff analysis, the County of Los Angeles contends that the Commission should approve its time survey forms and instructions with respect to the activities performed by the agency's Unit Level, Internal Affairs, and Administrative Appeals unit, and make them applicable to the time studies used by all claimants.

The *County of San Bernardino* (05-PGA-20) requests that the parameters and guidelines be amended to allow claimants to file reimbursement claims based on actual costs or the CSAC-SB 90 Group reasonable reimbursement methodology proposal of \$528 per peace officer. The County of San Bernardino also proposes amendments to: (1) update the parameters and guidelines based on the reconsideration; (2) clarify the descriptions of "Interrogations" and "Adverse Comment" under Section IV. Reimbursable Activities; and (3) update and clarify Sections V. through X. to conform with recently adopted language.

The *Department of Finance (DOF)* (05-PGA-22) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology. Under this methodology, a distinct "base rate" would be calculated for each claimant based on the State Controller's audited amounts for four years of claims. The annual reimbursement would be the result of multiplying the "base rate" by the number of covered officers. The base rates would be adjusted annually by an appropriate factor to capture the normal cost increases. A process for determining *mean* reimbursement rates while final reimbursement rates are determined.

The *State Controller's Office (SCO)* (05-PGA-21) requests that the parameters and guidelines amendment previously filed on May 5, 2005, be superseded by their June 29, 2006 filing. The SCO proposes changes to clarify reimbursable activities consistent with the Statement of Decision adopted November 30, 1999, and to add the "time study" language and the Commission's previously adopted standardized language. The proposed amendments do not include changes reflected in the Commission's Statement of Decision adopted April 26, 2006.

Discussion

Staff reviewed the proposed amendments to the parameters and guidelines and the comments received. Non-substantive technical changes were made for purposes of clarification, consistency with language in recently adopted parameters and guidelines, and conformity to the Statement of Decision on reconsideration and statutory language. Substantive changes were considered, and if appropriate, were made as described below.

Section IV. REIMBURSABLE ACTIVITIES

Government Code section 17557, subdivision (d), allows local agencies, school districts, and the state to file a written request with the Commission to amend the parameters and guidelines. Any amendment to the parameters and guidelines must be consistent with, and not contradict, the Statement of Decision. The Statement of Decision is the legal determination on the question of whether a state mandate exists and, if so, what the mandate is.¹⁵ The findings and conclusion in the Statement of Decision are binding on the parties once it is mailed or served unless a writ of mandate pursuant to Government Code section 17559 and Code of Civil Procedure section 1094.5 is issued by a court to set aside the Commission's decision.¹⁶ In addition, the Commission does not have jurisdiction to retry an issue that has become final. It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void.¹⁷

Thus, for purposes of this item, the proposed amendments must be consistent with the Commission's Statement of Decision adopted in 1999 and the Statement of Decision on reconsideration adopted on April 26, 2006. The Statement of Decision on reconsideration amends the 1999 decision and applies to costs incurred and claimed for the 2006-2007 fiscal year.

Furthermore, the Commission, when adopting parameters and guidelines, or a proposed amendment to the parameters and guidelines, has the discretion to determine the most reasonable methods of complying with the mandate. The most reasonable methods of complying with the mandate are those methods not specified in statute or executive order that are necessary to carry out the mandated activity. (Cal. Code Regs., tit. 2, § 1183.1, subd. (a)(4).) Any proposed method of complying with a mandated activity must be consistent with an activity approved by the Commission in the Statement of Decision as a reimbursable state-mandated activity.

Thus, for an activity to be reimbursable, it must either be required by the statutes or executive order found by the Commission in the Statement of Decision to impose a reimbursable state mandated activity; or be a reasonable method of complying with the statutes or executive order

¹⁵ Government Code sections 17500 and 17552; *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 332-333; and *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, 1201.)

¹⁶ California Code of Regulations, title 2, section 1188.2, subdivision (b).

¹⁷ See, *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is res judicata, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final.

found by the Commission in the Statement of Decision to impose a reimbursable state-mandated activity.¹⁸

Time Studies

The SCO requests that the parameters and guidelines be amended to include language authorizing the use of time studies to support salary and benefit costs for task-repetitive activities. The SCO's proposed language states the following:

Claimants may use time studies to support salary and benefit costs when an activity is task-repetitive. Time study usage is subject to the time study guidelines included in the State Controller's annual claiming instructions. If the claimant performs a time study, the claimant should separately study Unit Level cases and Internal Affairs cases, as their caseloads are significantly different in size, type, complexity, duration, and volume.¹⁹

The DOF generally agrees with the use of time studies.²⁰ The City of Los Angeles agrees with the use of time studies, but argues that the Commission should include specific language for an entity's use of time studies.²¹

When BSA audited this program, BSA recognized that there may be instances when it is impractical to maintain source documents with the level of detail needed to identify actual costs. In such cases, BSA acknowledged that a properly prepared and documented time study may be a reasonable substitute for actual time sheets. BSA concluded, however, that none of the claims of the four local entities reviewed by BSA used an adequate time study.²² Claimants based the amount of time they claimed on interviews and informal estimates developed after the related activities were performed.²³

¹⁸ The County of San Bernardino, in comments to the draft staff analysis, argues that the analysis of this item goes beyond the scope of the Legislature's directive in AB 138 to reconsider the POBOR decision. The Commission's jurisdiction for this item is partly based on AB 138, in that the parameters and guidelines for the POBOR program must conform to the changes adopted by the Commission in the Statement of Decision on reconsideration. The Commission's jurisdiction, however, is also based on several requests to amend the parameters and guidelines, pursuant to Government Code section 17557, with respect to activities previously found to constitute reasonable methods of complying with the mandate. Thus, the Commission has jurisdiction to address all the amendments proposed by the State Controller's Office with respect to the reimbursable activities.

¹⁹ SCO proposal of June 29, 2006, page 2.

²⁰ Exhibit F.

²¹ Exhibit J.

²² Administrative Record for CSM 4499, pp. 1455-1456.

²³ Administrative Record for CSM 4499, p. 1453.

BSA describes the key elements to an adequate time study as follows:

Key elements of an adequate time study include having employees who are conducting the reimbursable activities track the actual time they spend when they are conducting each activity, recording the activities over a reasonable period of time, maintaining documentation that reflects the results, and periodically considering whether the results continue to be representative of current processes.²⁴

Based on the BSA recommendation, staff has included the following language under Section IV. Reimbursable Activities:

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.

In response to the draft staff analysis, the County of Los Angeles contends that the Commission should approve its time survey forms and instructions with respect to the activities performed by the agency's Unit Level, Internal Affairs, and Administrative Appeals unit, and make them applicable to the time studies used by all claimants.²⁵ The County of Los Angeles proposes the following language:

Claimants may use Unit Level, Internal Affairs, and Administrative Appeals time studies to support salary and benefit costs for reimbursable activities of a repetitive nature. Time study usage is subject to the time study guidelines included in the State Controller's claiming instructions. The addendum contains acceptable formats and instructions for recording Unit Level, Internal Affairs, and Administrative Appeals time in performing reimbursable activities.

Staff has not included the language proposed by the State Controller's Office or the County of Los Angeles because the Controller has independent authority to issue time study guidelines and approve time studies when issuing claiming instructions and auditing reimbursement claims. (Gov. Code, §§ 17560 and 17561.) The Commission has no authority to approve the State Controller's time study guidelines at the parameters and guidelines stage.

Section IV. A. Administrative Activities

Section IV. A (2)

Section IV. A (2) currently authorizes reimbursement for the following activity: "Attendance at specific training for human resources, law enforcement, and legal counsel regarding the requirements of the mandate."

SCO requests the addition of the following sentence to Section IV. A (2): "The training must relate to mandate-reimbursable activities."

Staff finds that the proposed language is consistent with the Commission's findings when adopting the parameters and guidelines by limiting reimbursement for training "regarding the

²⁴ *Ibid.*

²⁵ Exhibit J.

requirements of the mandate.” Thus, staff recommends that the Commission add the proposed language to Section IV. A (2).

Section IV. A (3)

Section IV. A (3) currently states the following: “Updating the status of the POBOR cases.”

SCO requests that Section IV. A (3) be amended as follows (proposed language is underlined):

Updating the status report of mandate-reimbursable POBOR cases. The updating relates to tracking the procedural status of cases. It does not relate to maintaining or updating the cases (e.g. setting up, reviewing, evaluating, or closing the cases).

In response to the SCO proposal, the City of Sacramento and the City of Los Angeles filed comments contending that the proposal is too narrow because of the time constraints imposed by the POBOR legislation.²⁶ The City of Sacramento states the following:

The proposal concerning administrative activities and updating the cases is much too narrowly drawn. There are strict time constraints imposed by POBOR: if the time limits are not met, the case must be dismissed and no discipline can be imposed. Therefore, not only must the case filed be updated, but they must be reviewed in order to make sure that all deadlines have been met. To restrict the language as desired by the Controller would make it next to impossible to assure that the time limits set forth in POBOR are met. In order to make sure that the time lines are met, the case must be reviewed at various points in order to make sure that all investigations are completed, as well as to make sure all interrogations are completed timely. This is reasonably necessary in order to make sure that the time lines are met.

Staff finds that the City’s comments go beyond the scope of the test claim statutes and are not consistent with the Commission’s findings in the Statement of Decision on reconsideration. As indicated in footnote 5, page 6 of the Commission’s Statement of Decision on reconsideration (05-RL-4499-01), the POBOR Act has been subsequently amended by the Legislature. One of those amendments imposed the time limitations described by the City.²⁷ The subsequent amendments were not pled in this test claim and, thus, they were not analyzed to determine whether they impose reimbursable state-mandated activities within the meaning of article XIII B, section 6. The City’s arguments relating to the time limitations imposed by subsequent legislation are outside the scope of the Commission’s decision in POBOR (CSM 4499). Thus, the City’s rationale is not consistent with the Commission’s findings.

Staff further finds that the SCO proposal is consistent with the Commission’s findings when it adopted the parameters and guidelines. The Commission adopted the following finding:

²⁶ Exhibits G and J.

²⁷ Statutes 1997, chapter 148.

The claimant's proposed parameters and guidelines include the following administrative activities:

[¶]

3. Maintenance of the systems to conduct mandated activities.

[¶]

The Department of Finance states that the component "maintenance of the systems to conduct the mandated activities" is too ambiguous. Staff agrees.

Before the test claim legislation was enacted, local law enforcement agencies were conducting investigations, issuing disciplinary actions, and maintaining files for those cases. Thus, the component "maintenance of the systems to conduct the mandated activities" is too broad. Accordingly, staff has modified this component to provide that claimants are eligible for reimbursement for "updating the status report of the POBOR cases."²⁸

Staff has clarified the activity and added the following proposed language to Section IV. C (3):

Updating the status report of the mandate-reimbursable POBOR eases activities.
"Updating the status report of mandate-reimbursable POBOR eases activities" means tracking the procedural status of eases the mandate-reimbursable activities only.
Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

Section IV. B. Administrative Appeal

Government Code section 3304 gives specified officers the right to request an administrative appeal hearing when any punitive action is taken against the officer, or the officer is denied promotion on grounds other than merit. Government Code section 3304 states that "no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal."

Punitive action is defined in Government Code section 3303 as follows:

"For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary,²⁹ written reprimand, or transfer for purposes of punishment."

The California Supreme Court determined that the phrase "for purposes of punishment" in the foregoing section relates only to a transfer and not to other personnel actions.³⁰ Thus, in transfer

²⁸ Item 10, July 27, 2000 Commission Hearing (Administrative Record ("AR") for CSM 4499, p. 901.)

²⁹ The courts have held that "reduction in salary" includes loss of skill pay (*McManigal v. City of Seal Beach* (1985) 166 Cal.App.3d 975, pay grade (*Baggett v. Gates* (1982) 32 Cal.3d 128, rank (*White v. County of Sacramento* (1982) 31 Cal.3d 676, and probationary rank (*Henneberque v. City of Culver City* (1983) 147 Cal.App.3d 250.

³⁰ *White v. County of Sacramento* (1982) 31 Cal.3d 676.

cases, the peace officer is required to prove that the transfer was intended for purposes of punishment in order to be entitled to an administrative appeal. If the transfer is to "compensate for a deficiency in performance," however, an appeal is not required.³¹

As indicated on page 30 of the Commission's Statement of Decision on reconsideration (05-RL-4499-01), the Legislature amended Government Code section 3304 in 1998 by limiting the right to an administrative appeal to only those peace officers "who [have] successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.) Thus, as of January 1, 1999, providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) is no longer a reimbursable state-mandated activity. Therefore, staff proposes that Section IV. B be amended to clarify that the right to an administrative appeal applies only to permanent peace officers, as specifically defined in Government Code section 3301,³² and to chiefs of police that are removed from office under the circumstances specified in the Statement of Decision.

In response to the draft staff analysis, the City of Sacramento argues that under POBOR, all chiefs of police are entitled to a written notice, the reason for removal, and the opportunity for an administrative appeal, regardless of whether the reason for removal involves a liberty interest.³³ Under the POBOR statutes, the City is correct. However, the Commission found in the Statement of Decision on reconsideration that reimbursement was not required when the charges supporting the dismissal of a chief of police constitute moral turpitude, which harms the employee's reputation and ability to find future employment, since a due process hearing was already required under prior state and federal law. Thus, with respect to the removal of the chief of police, Government Code section 3304 constitutes a reimbursable state-mandated activity only when local officials want to remove the chief of police under circumstances that *do not* create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment). This finding is binding on the parties.³⁴

The SCO further requests that the last paragraph in Section IV. B (1) and (2) be amended to clarify that reimbursement for the administrative appeal begins only after the peace officer requests an administrative appeal, and does not include the costs for the investigation or preparation of charges that were incurred before the officer requested the appeal. SCO further

³¹ *Holcomb v. City of Los Angeles* (1989) 210 Cal.App.3d 1560; *Heyenga v. City of San Diego* (1979) 94 Cal.App.3d 756; *Orange County Employees Assn., Inc. v. County of Orange* (1988) 205 Cal.App.3d 1289.

³² Pursuant to Government Code section 3301, POBOR applies to peace officers as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. POBOR does not apply to reserve or recruit officers, coroners, railroad police officers commissioned by the Governor, or non-sworn officers including custodial officers and sheriff security officers or police security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

³³ Exhibit J.

³⁴ *Heap, supra*, 6 Cal.2d 405, 407.

proposes to clarify that litigation costs incurred in any court challenge to the administrative decision are not reimbursable. The SCO proposal is as follows:

Included in the The foregoing includes only are the preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing, exclusive of prior preparation, review, and investigation costs. This includes legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body. The foregoing does not include activities such as writing and reviewing charges that occurred before the officer requested an administrative appeal or defending a lawsuit attacking the validity of the final administrative decision.

In response to the SCO request, the City of Sacramento argues that:

This proposal is much too narrowly drawn. Administrative appeal applies only to those situations where a hearing is not required by *Skelly*. Accordingly, prior preparation, review and investigative costs are necessary. Absent POBOR, these hearings would not take place at all. Thus, investigation and case preparation is imperative. So, too, defense of litigation is also reasonably necessary. If the employer wins at the administrative level and the employee wishes to contest, the only alternative is litigation.³⁵

For the reasons below, staff finds that the SCO proposal is consistent with the test claim legislation and the Commission's decisions. Staff has modified the proposal, however, to clarify the activities that are not reimbursable.

Government Code section 3304 gives the officer the right to request an administrative appeal when any punitive action, as defined by Government Code section 3303, is taken against the officer, or the officer is denied promotion on grounds other than merit.³⁶ The courts have concluded that the "limited purpose" of the administrative appeal is to provide the officer with a chance to establish a formal record of circumstances surrounding the punitive action and to attempt to convince the employing agency to reverse its decision.³⁷ Government Code section 3304 does not require an agency to investigate or impose disciplinary action against peace officer employees. When adopting the parameters and guidelines, the Commission concluded that:

Local agencies were issuing disciplinary actions before the test claim legislation was enacted. All that Government Code section 3304, subdivision (b), did was to require the local agency to provide the procedural protection of an administrative appeal for specified disciplinary actions.³⁸

³⁵ Exhibit G.

³⁶ See summary in *Baggett v. Gates* (1982) 32 Cal.3d 128, 135.

³⁷ *Riveros v. City of Los Angeles* (1996) 41 Cal.App.4 th1342, 1359.

³⁸ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, p. 903).

As determined by the Commission in the Statement of Decision on reconsideration: "POBOR deals with labor relations. It does not interfere with the employer's right to manage and control its own police department."³⁹ The Second District Court of Appeal also determined that POBOR is not intended to interfere with a local agency's right to regulate peace officers' qualifications for employment or the causes for which such peace officers may be removed.⁴⁰

Thus, the SCO is correct in concluding that investigation costs to prepare disciplinary charges, or costs to take punitive action against an officer are not reimbursable.

Moreover, the SCO's request to clarify that litigation costs are not reimbursable is consistent with the Commission's findings when it adopted the parameters and guidelines, expressly denying reimbursement for litigation costs.⁴¹

Thus, proposed Section IV. B, Administrative Activities, states the following:

B. Administrative Appeal

1. ~~Reimbursement period of July 1, 1994 through December 31, 1998—~~ The administrative appeal activities listed below apply to permanent peace officer employees, at-will employees, and probationary employees, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers.

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
- ~~dismissal, demotion, suspension, salary reduction or written reprimand received by probationary and at-will employees whose liberty interests are not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);~~
 - transfer of permanent, ~~probationary and at-will~~ employees for purposes of punishment;
 - denial of promotion for permanent, ~~probationary and at-will~~ employees for reasons other than merit; and
 - 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.

³⁹ Statement of Decision on reconsideration adopted April 26, 2006, page 39, citing to *Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26, and *Baggett, supra*, 32 Cal.3d 128, 125.

⁴⁰ *Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.

⁴¹ Item 10, July 27, 2000 Commission hearing (AR for CSM 4499, pp. 901-905).

- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative appeal hearing body.
- f. The cost of witness fees.
- g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.⁴²

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities are not reimbursable:

- a. Investigating charges.
 - b. Writing and reviewing charges.
 - c. Imposing disciplinary or punitive action against the peace officer.
 - d. Litigating the final administrative decision.
2. Reimbursement period beginning January 1, 1999— The administrative appeal activities listed below apply to permanent employees and the Chief of Police.

Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment).
(Gov. Code, § 3304, subd. (b)):

- ~~• Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);~~
- ~~• Transfer of permanent employees for purposes of punishment;~~
- ~~• Denial of promotion for permanent employees for reasons other than merit; and~~

⁴² The City of Sacramento, in comments to the draft staff analysis, argues that "no costs of the administrative appeal panel are included." The time and labor of the administrative appeal hearing body and its attendant clerical services has always been eligible for reimbursement, and remains eligible for reimbursement under this staff recommendation.

- ~~Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.~~

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas, witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities and costs are reimbursable:

- Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- Legal review and assistance with the conduct of the administrative appeal hearing.
- Preparation and service of subpoenas.
- Preparation and service of any rulings or orders of the administrative appeal hearing body.
- The cost of witness fees.
- The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- Investigating charges.
- Writing and reviewing charges.
- Imposing disciplinary or punitive action against the chief of police.
- Litigating the final administrative decision.

The City of Sacramento, in comments to the draft staff analysis, also requests reimbursement for witness preparation and locating and finding witnesses. The City of Sacramento has not filed a request to amend the parameters and guidelines pursuant to Government Code section 17557 and the City's comments have not gone out for comment as required by the Commission's regulations. Thus, the Commission does not have jurisdiction to consider these requests.

Section IV. C. Interrogations

Introductory Paragraphs in Section IV. C

Government Code section 3303 prescribes procedural protections that apply when a peace officer is interrogated in the course of an administrative investigation that might subject the officer to the punitive actions listed in the section (dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment). The introductory paragraphs to Section IV. C of the parameters and guidelines state the following:

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, or becomes

a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The SCO proposes the addition of the following three paragraphs to the introduction to clarify that the costs to investigate and review the allegations, costs to conduct the interrogation, and case finalization costs are not reimbursable:

Claimants are not eligible for reimbursement for activities occurring prior to the assignment of the case to an administrative investigator, e.g., taking the initial complaint; setting up the complaint file; interviewing parties; or reviewing the file and determining whether it warrants an administrative investigation.

Claimants are not eligible for investigative activities, e.g., assigning an investigator, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses, preparing of the interrogation, reviewing and preparing interview questions, conducting the interrogation, or reviewing the responses given by the officers and/or witnesses.

Claimants are also not eligible for case finalization costs, e.g., preparing case summary disposition reports, closing the case file, or attending executive review or committee hearings related to the investigation.

The County of San Bernardino, the City of Sacramento, and the City of Los Angeles contend that investigation costs and the cost to conduct the interrogation are reimbursable.

However, as identified below, the Commission has already rejected the arguments raised by the County and Cities for reimbursement of investigation costs and the cost to conduct the interrogation. Thus, staff finds that the SCO proposal is consistent with the Commission findings when adopting the parameters and guidelines and the Statement of Decision on reconsideration.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate and review complaints or to conduct interrogations. The Commission adopted the following findings when adopting the parameters and guidelines:

The Commission's Statement of Decision includes the following reimbursable activity:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

This activity was derived from Government Code section 3303, subdivision (a), which establishes the timing and compensation of a peace officer subject to an interrogation. Section 3303, subdivision (a), requires that the interrogation be conducted at a reasonable hour, preferably at a time when the peace officer is on duty, or during the normal waking hours of the peace officer, unless the seriousness of the investigation requires otherwise. At the test claim phase, the claimant contended that this section resulted in the payment of overtime to the peace officer employee. (See page 12 of the Commission's Statement of Decision.)

The claimant's proposed parameters and guidelines restate the activity as expressed in the Statement of Decision, but also add "the review of the necessity for the questioning and responses given" as a reimbursable component. The claimant's proposed parameters and guidelines state the following:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing, but not limited thereto, is the *review of the necessity for the questioning and responses given*; providing notice to all parties concerned of the time and place of the interview and scheduling thereof; preparation and review of overtime compensation requests; review of proceedings by counsel. (Emphasis added.)

Following the pre-hearing conference in this case, staff requested further comments on the proposed activity "to review the necessity for the questioning and responses given" to determine if the activity was consistent with, and/or reasonably related to, the Commission's Statement of Decision and the activities mandated by the test claim legislation.

In response to staff's request, the claimant asserts that it is more difficult to prepare for an investigation under POBOR because Government Code section 3303, subdivision (c), requires that the employee receive prior notice identifying the nature and subject of the questioning. The claimant states the following:

It is more difficult to prepare for an investigation involving a peace officer than it is for those who are not entitled to POBOR rights. In the normal due process case involving an employee who is not entitled to POBOR rights, you do not have to inform the employee about the nature and subject of the questioning, and you do not have to prepare questions focused upon a particular area, seeking to get the information you can from the employee. In non-POBOR matters, you can explore other areas

[quote continued] in the questioning as they arise, which allows for a much more free-form questioning process.

In contrast, however, with employees covered by POBOR, you must tell the employee prior to the initial questioning what the purpose of the meeting is, what it is you will be discussing with him or her, and you have to be prepared to be clearly on point as to where you are going and your expectations about the questioning process. You cannot engage in broader questioning for information, because the employee has the right to know the subject about which he or she is being interrogated. [Footnote omitted.]

The claimant further states the following:

As any peace officer who is a witness in the course of one individual's investigation could become the subject of their own investigation, it is imperative to do more preparation prior to the initial questioning. We now perform a more complete review to ascertain that witnesses who may become subjects are identified prior to interrogation. . . .

Obviously, if you are going to re-interview a peace officer, you have to be prepared to give them a copy of their prior transcript. You also have to go back and review it, to make sure where conflicts with what transpired previously in order to ask intelligent questions. In a non-POBOR matter, you can follow up by asking additional questions without regard to the reasons you have the employee in for questioning in the first place. However, with POBOR, the whole questioning is focused on what you have identified as the allegation. Thus, the definition of what the allegations are must come early in the process. If someone calls to complain about something, the subsequent investigation may bring to light little about the complaint of the citizen, but may demonstrate an internal operating problem or conflict which you have to address. The additional rights granted by POBOR make that more difficult as indicated above. [Footnote omitted.]

Staff finds that the activity to review the necessity for the questioning and responses given is too broad and goes beyond the scope of Government Code section 3303, subdivision (a), and the Commission's Statement of Decision.

Government Code section 3303, subdivision (a), addresses only the compensation and timing of the interrogation. It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBOR was enacted.⁴³

⁴³ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, p. 911-912).

In the Statement of Decision on reconsideration, the Commission concluded that the POBOR activities are not triggered until the local agency or school district decides to interrogate the officer, take punitive action against the officer, or place an adverse comment in the officer's personnel file. These initial decisions are not expressly mandated by state law, but are governed by local policy, ordinance, city charter, or memorandum of understanding.⁴⁴ In *Baggett v. Gates*, the Supreme Court clarified that POBOR *does not*: (1) interfere with the setting of peace officers' compensation; (2) regulate qualifications for employment; (3) regulate the manner, method, times, or terms for which a peace officer shall be elected or appointed; or (4) affect the tenure of office or purpose to regulate or specify the causes for which a peace officer can be removed. These are local decisions. The court found that POBOR only impinges on the local entity's implied power to determine the *manner* in which an employee can be disciplined.⁴⁵

On pages 38 and 39 of the Statement of Decision on reconsideration, the Commission expressly concluded that conducting the interrogation and investigative time are *not* reimbursable:

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that "[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior." These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that "[t]he interrogation shall be conducted ..." to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or

⁴⁴ Statement of Decision on reconsideration, page 14.

⁴⁵ *Baggett v. Gates* (1982) 32 Cal.3d 128, 137-140.

[Quote continued.] during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation. [Footnote omitted.]

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations. [Footnote omitted.] It does not interfere with the employer's right to manage and control its own police department. [Footnote omitted.]

The findings made by the Commission in the Statement of Decision on reconsideration are final and are binding on the parties. It is a well-settled principle of law that an administrative agency does not have jurisdiction to retry a question that has become final. If a prior decision is retried by the agency, that decision is void.⁴⁶

Thus, staff finds that SCO's proposed language is consistent with the Commission's findings. Staff recommends, however, that the language proposed by the SCO be made more specific. Staff recommends that the first introductory paragraph be modified to incorporate that language of Government Code section 3301, which specifically identifies the officers entitled to the procedural protections under POBOR when the employing agency wants to interrogate the officer. The proposed paragraph states the following:

⁴⁶ See, *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407, where the court held that the civil service commission had no jurisdiction to retry a question and make a different finding at a later time; *City and County of San Francisco v. Ang* (1979) 97 Cal.App.3d 673, 697, where the court held that whenever a quasi-judicial agency is vested with the authority to decide a question, such decision, when made, is *res judicata*, and as conclusive of the issues involved in the decision as though the adjudication had been made by the court; and *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143, where the court held that in the absence of express statutory authority, an administrative agency may not change a determination made on the facts presented at a full hearing once the decision becomes final. The Commission's Statement of Decision on reconsideration became final when it was mailed or served on May 1, 2006. (Cal. Code Regs., tit. 2, § 1188.2, subd. (b).)

~~Claimants are eligible for reimbursement for~~ The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)

In addition, staff has included the activities that are not reimbursable at the end of Section IV. C as follows:

The following activities are not reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

Section IV. C (1)

Section IV. C (1) currently states the following:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

Included in the foregoing is the preparation and review of overtime compensation requests.

The SCO proposes the following amendments to clarify that the interrogators' time to conduct the interrogation is not reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).) Interrogators' time is not reimbursable.

Included in the foregoing is the preparation and review of overtime compensation requests.

Claimants are not eligible for reimbursement under interrogation when a peace officer being investigated under POBOR is not subjected to an interview or interrogation, but is subject to possible sanctions.

The County of San Bernardino requests, on the other hand, that the parameters and guidelines be amended to authorize reimbursement for conducting the interrogation and the investigating officer's preparation time for the interrogation. The County of San Bernardino proposes the addition of the following italicized language:

Conducting an interrogation of a peace officer while the officer is on duty, or compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code section 3303, subd. (a).)

Included in the foregoing is the investigating officer's preparation time for the interrogation. Preparation costs are reimbursable to a maximum of 20 hours with appropriate supporting documentation. Also included is the preparation and review of overtime compensation requests.

Staff finds that SCO's proposed sentence that states, "Interrogators' time is not reimbursable" is consistent with the Commission's findings when adopting the parameters and guidelines. When the claimant submitted its proposed parameters and guidelines, it requested reimbursement for "conducting an interrogation of a peace officer while the officer is on duty."⁴⁷ The Commission disagreed that conducting the interrogation was reimbursable. The Commission found that the test claim legislation does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given. Local agencies were conducting interrogations before the enactment of the test claim legislation.⁴⁸

These findings were also included in the Statement of Decision on reconsideration. On pages 38 and 39 of the Statement of Decision on reconsideration, the Commission expressly concluded that conducting the interrogation and investigative time are *not* reimbursable:

In comments to the draft staff analysis, the Counties of Orange, Los Angeles, and Alameda, and the City of Sacramento contend that the interrogation of an officer pursuant to the test claim legislation is complicated and requires the employer to fully investigate in order to prepare for the interrogation. The County of Orange further states that "[t]hese investigations can vary in scope and depth from abuses of authority, the use of deadly force, excessive force when injuries may be significant, serious property damage, and criminal behavior." These local agencies are requesting reimbursement for the time to investigate.

The Commission disagrees and finds that investigation services are not reimbursable. First, investigation of criminal behavior is specifically excluded from the requirements of Government Code section 3303. Government Code section 3303, subdivision (i), states that the interrogation requirements do not apply to an investigation concerned solely and directly with alleged criminal

⁴⁷ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, p. 965.)

⁴⁸ Administrative Record for CSM 4499, page 912.

activities. Moreover, article XIII B, section 6, subdivision (a)(2), and Government Code section 17556, subdivision (g), state that no reimbursement is required for the enforcement of a crime.

The County of Los Angeles supports the argument that reimbursement for investigative services is required by citing Penal Code section 832.5, which states that each department that employs peace officers shall establish a procedure to investigate complaints. Penal Code section 832.5, however, was not included in this test claim, and the Commission makes no findings on that statute. The County of Los Angeles also cites to the phrase in Government Code section 3303, subdivision (a), which states that "[t]he interrogation shall be conducted ..." to argue that investigation is required. The County takes the phrase out of context. Government Code section 3303, subdivision (a), states the following:

The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

Government Code section 3303, subdivision (a), establishes the timing of the interrogation, and requires the employer to compensate the interrogated officer if the interrogation takes place during off-duty time. In other words, the statute defines the process that is due the peace officer who is subject to an interrogation. This statute does not require the employer to investigate complaints. When adopting parameters and guidelines for this program, the Commission recognized that Government Code section 3303 does not impose new mandated requirements to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review responses given by officers and/or witnesses to an investigation. [Footnote omitted.]

Thus, investigation services go beyond the scope of the test claim legislation and are *not* reimbursable. As explained by the courts, POBOR deals with labor relations. [Footnote omitted.] It does not interfere with the employer's right to manage and control its own police department. [Footnote omitted.]

These findings are binding on the parties.⁴⁹ Thus, staff has added the following proposed language at the end of Section IV. to identify the activities that are not reimbursable.

Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.

⁴⁹ *Heap, supra*, 6 Cal.2d 405, 407.

However, staff finds that the SCO's second proposed sentence is vague and ambiguous, and may already be covered by the parameters and guidelines. The second proposed sentence states that: "Claimants are not eligible for reimbursement under interrogation when a peace officer being investigated under POBOR is not subjected to an interview or interrogation, but is subject to possible sanctions." The City of Sacramento argues that this sentence:

...makes no sense whatsoever. It may be possible during the investigation and interrogation of other officers to ascertain that the officer, who is the subject of the investigation, did not commit the misconduct at issue, but was done by another officer. If the interrogation involves a witness officer, to whom the POBOR rights attach, the interrogation should be compensable."

When adopting the parameters and guidelines, the Commission concluded that the rights under Government Code section 3303 attach when a peace officer is interrogated as a witness to an incident, even if the officer is not under investigation since the officer's own actions regarding the incident can result in punitive action following the interrogation.⁵⁰ Thus, the Commission included the following language in the parameters and guidelines:

Claimants are eligible for reimbursement for the performance of the activities listed in this section only when a peace officer is under investigation, *or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.* (Gov. Code, § 3303.) (Emphasis added.)

Although the SCO's proposed language appears to clarify that reimbursement for the activities identified in the parameters and guidelines is not required when the peace officer witness is not subject to an interrogation, the italicized language above already addresses that issue. Thus, staff has not included the second proposed language in the parameters and guidelines.

Accordingly, staff proposes the following amendments to Section IV. (C)(1):

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)

~~Included in the foregoing is the p~~Preparation and review of overtime compensation requests are reimbursable.

Section IV. C (2)

Section IV. C (2) currently states the following:

2. Providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subds. (b) and (c).)

⁵⁰ Item 10, July 27, 2000 Commission Hearing (AR for CSM 4499, pp. 908-910.)

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

The SCO requests the following amendments to the second paragraph:

Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; ~~identification~~ ~~determination~~ of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or of other confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.

The City of Sacramento contends that the SCO proposal is too limited. The City argues that:

... it is imperative that it not be just the identification of the investigating officers, but determining who will, in fact, do the questioning. Often determining the investigating officer will have an impact on the outcome of the questioning. Accordingly, limiting the notice to just identifying the questioning officers is far too limited.

Staff agrees that the word "determination" is too broad and goes beyond the procedural protection required by Government Code section 3303, subdivisions (b) and (c). Subdivisions (b) and (c) require the employer, prior to interrogation, to inform and provide notice of the nature of the investigation and the "identity" of all officers participating in the interrogation. Government Code section 3303, subdivisions (b) and (c), state the following:

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

The verb "determine" means "to establish or ascertain definitely, as after consideration, investigation, or calculation."⁵¹ To "identify" means "to establish the identity of."⁵² Government Code section 3303, subdivision (c), simply requires the agency to provide the officer with notice identifying the interrogating officers. It does not require the agency to investigate or determine who the officer will be. As determined by the Commission,

⁵¹ Webster's II New College Dictionary, page 308.

⁵² *Id.* at page 548.

Government Code section 3303 does not require the local agency to investigate an allegation, prepare for the interrogation, conduct the interrogation, or review the responses given.⁵³

Thus, staff recommends that the Commission change the word "determination" to "identification" in the parameters and guidelines.

Staff also recommends the Commission delete the activities redacting the agency complaint for names of the complainant, parties, or witnesses, and preparing the agency complaint. These activities go beyond the scope of Government Code section 3303, subdivisions (c) and (d), and the Commission's Statement of Decision finding that the activity of providing notice before the interrogation was reimbursable.

Accordingly, staff proposes the following amendments:

2. ~~Providing prior notice to the peace officer before the interrogation, regarding the nature of the interrogation and identification of the investigating officers. (Gov. Code, § 3303, subs. (b) and (c).) The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. The notice shall inform the peace officer of the nature of the investigation.~~

~~Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.~~

The following activities are reimbursable:

- a. Review of agency complaints or other documents to prepare the notice of interrogation.
- b. Identification of the interrogating officers to include in the notice of interrogation.
- c. Preparation of the notice.
- d. Review of the notice by counsel.
- e. Providing notice to the peace officer prior to interrogation.

Section IV. C (3), (4), and (5)

Section IV. C (3) states the following:

3. Tape recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape and storage, and the cost of transcription.

⁵³ Statement of Decision on reconsideration, page 39.

The SCO proposes that Section IV. C (3) be amended as follows:

3. ~~Tape r~~Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

Included in the foregoing is the cost of tape media and storage, and the cost of transcription. Excluded is the investigator's time to record the session and transcription costs of non-sworn and peace officer complainant(s).

The SCO also proposes to delete the word "tape" before "recording" in Section IV. C (4) and (5).

The County of San Bernardino and the City of Sacramento agree with the deletion of the word "tape" in Section IV. C (3), (4), and (5), since they recognize that agencies use other media for recording. Staff agrees and recommends that the Commission adopt the SCO proposal to delete the word "tape."

However, the City of Sacramento contends that the costs to record the interrogation and the transcription costs of peace officer complainants are reimbursable. The City argues as follows:

We have no problem with eliminating the word "tape" concerning recording, as we understand that other agencies use various media for the recordation.

However, we want to make clear that the recordation of the interrogation, regardless of the media, is found to be reimbursable.

We do, however, have a problem with excluding the transcription cost of any peace officer complainant(s). When a peace officer complains, that officer is nonetheless afforded POBOR rights, in the event that something he or she says may result in discipline for misfeasance, or more probably, nonfeasance.

Staff finds that the SCO proposed language clarifies that the investigator's time to record the interrogation is not reimbursable. The proposed language is consistent with the record and the Commission's findings in the Statement of Decision (CSM 4499). Page 859 of the record for CSM 4499 is the Commission's Statement of Decision, dated November 30, 1999, on the issue of tape recording the interrogation. Based on testimony of the claimant, the Commission approved reimbursement for tape recording the interrogation when the employee records the interrogation. According to the claimant, a tape recorder is simply placed on a desk by the interrogator during the interrogation.⁵⁴ When the claimant submitted its proposed parameters and guidelines, it requested reimbursement for "conducting an interrogation of a peace officer while the officer is on duty."⁵⁵ The Commission disagreed that conducting the interrogation was reimbursable. The Commission adopted the staff finding and recommendation that the test claim legislation does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given.⁵⁶ Thus, reimbursement for the salary of the individual or individuals conducting the interrogation is not reimbursable. The Commission included this finding in the Statement of Decision on reconsideration.⁵⁷

⁵⁴ Administrative Record for CSM 4499, page 873.

⁵⁵ Administrative Record for CSM 4499, page 965.

⁵⁶ Administrative Record for CSM 4499, page 912.

⁵⁷ Statement of Decision on reconsideration, pages 38 and 39.

Staff further agrees with the SCO that any costs incurred for non-sworn officers are not reimbursable. By the terms set forth in Government Code section 3301, POBOR expressly applies to "peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 of the Penal Code." The legislation, however, does not apply to reserve or recruit officers,⁵⁸ coroners, or railroad police officers commissioned by the Governor. Non-sworn officers, such as custodial officers and sheriff's or police security officers, are not "peace officers."⁵⁹ The Legislature has made clear, in Penal Code section 831.4, subdivision (b), that "[a] sheriff's or police security officer is not a peace officer nor a public safety officer as defined in Section 3301 of the Government Code [POBOR]."

Thus, staff recommends that the word "tape" be deleted from Sections IV. (C)(3), (4), and (5), and that Section IV. (C)(3) be further amended as follows:

3. ~~Tape r~~Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

~~Included in the foregoing is the~~ The cost of tape media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn and peace officers are not reimbursable.

Section IV. D. Adverse Comment

Government Code sections 3305 and 3306 provide that no peace officer shall have any adverse comment entered in the officer's personnel file without the peace officer having first read and signed the adverse comment. If the peace officer refuses to sign the adverse comment, that fact "shall" be noted on the document and signed or initialed by the peace officer. In addition, the peace officer "shall" have 30 days to file a written response to any adverse comment entered in the personnel file. The response "shall" be attached to the adverse comment.

As indicated on page 42 of the Commission's Statement of Decision on reconsideration, the Commission, based on the Supreme Court's decision in *San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4th 859, 888-889, denied the activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause as follows:

The Commission finds that obtaining the officer's signature on the adverse comment or indicating the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause, are designed to prove that the officer was on notice about the adverse comment. Since providing notice is already guaranteed by the due process clause of the state and federal constitutions under these circumstances, the Commission finds that the obtaining the signature of the officer or noting the officer's refusal to sign the adverse comment is part and parcel of the federal notice mandate and results in "de minimis" costs to local government.

⁵⁸ *Burden v. Snowden* (1992) 2 Cal.4th 556, 569.

⁵⁹ Penal Code sections 831, 831.4.

Therefore, the Commission finds that, under current law, the Commission's conclusion that obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, when the adverse comment results in a punitive action protected by the due process clause is not a new program or higher level of service and does not impose costs mandated by the state. Thus, the Commission denies reimbursement for these activities.

Staff recommends that the Commission amend the parameters and guidelines to delete these activities.

The SCO also proposes to amend the introductory paragraph to Section IV. D, as follows:

Perform the following limited activities upon receipt of an adverse comment. The following limited reimbursable activities pertain to peace officers recommended for an adverse comment. (Gov. Code, §§ 3305 and 3306).

The SCO further requests that the following language be added to the end of Section IV. D:

The foregoing relates only to peace officers investigated under POBOR who were subjected to an adverse comment by investigation staff. Reimbursement is limited to activities that occurred subsequent to the completion of a case that resulted in an adverse comment recommendation. Reimbursable activities are limited to providing notice of the adverse comment to the peace officer and providing the officer an opportunity to review, sign, and respond to the adverse comment. Such activities include a limited review of the circumstances or documentation leading to an adverse comment recommendation by supervisor, command staff, human resources staff, or counsel to determine whether the recommendation constitutes an adverse comment or a written reprimand; preparation and review for accuracy of adverse comment notice; notification and presentation of adverse comment to officer and notification concerning rights regarding the notice; review of officer's response to the adverse comment, and attachment of response to the adverse comment and its filing.

A complaint is not an adverse comment. The foregoing does not include any activities related to investigating a complaint, which is part of the investigative process. Activities such as, but not limited to, determining whether a complaint is valid and may lead to an adverse comment and/or possible criminal offense, interviewing the complainant, and preparing the complaint investigation report are not reimbursable.

Staff finds that the SCO's proposal to limit reimbursement to those activities occurring after an officer is investigated that results in a "recommended" adverse comment is not consistent with the test claim legislation and the Commission's decision on reconsideration. Pursuant to Government Code section 3305, an officer has the right to notice and to provide a response when "any" adverse comment is placed in the officer's personnel file. When interpreting this statute, the Third District Court of Appeal, in *Sacramento Police Officers Association v. Venegas*, concluded that an adverse comment includes any document that creates an adverse impression that could influence future personnel decisions, including decisions that do not constitute

discipline or punitive action. The court further found that citizen complaints that are not investigated can be an adverse comment. The court stated the following:

The events that will trigger an officer's rights under those statutes [sections 3305 and 3306] are not limited to formal disciplinary actions, such as the issuance of letters of reproof or admonishment or specific findings of misconduct. Rather, an officer's rights are triggered by the entry of any adverse comment in a personnel file or any other file used for a personnel purpose. [Citation omitted.]

Aguilar [v. Johnson (1988)] 202 Cal.App.3d 241, addressed the meaning of an adverse comment for the purposes of sections 3305 and 3306 of the Bill of Rights Act. It noted: "Webster defines comment as 'an observation or remark expressing an opinion or attitude ...' (Webster's Third New Intern. Dict. (1981) p. 456.) 'Adverse' is defined as 'in opposition to one's interest: Detrimental, Unfavorable.' (Id. at p. 31.)" (*Aguilar, supra*, 202 Cal.App.3d at p. 249.) Thus, for example, under the ordinary meaning of the statutory language, a citizen's complaint of brutality is an adverse comment even though it was "uninvestigated" and the chief of police asserted that it would not be considered when personnel decisions are made. (*Id.* at pp. 249-250.)

We find the reasoning in *Aguilar* persuasive, as did the Supreme Court in *County of Riverside, supra*, 27 Cal.4th 793. In its usual and ordinary import, the broad language employed by the Legislature in sections 3305 and 3306 does not limit their reach to comments that have resulted in, or will result in, punitive action against an officer. The Legislature appears to have been concerned with the potential unfairness that may result from an adverse comment that is not accompanied by punitive action and, thus, will escape the procedural protections available during administrative review of a punitive action. As we will explain, even though an adverse comment does not directly result in punitive action, it has the potential of creating an adverse impression that could influence future personnel decisions concerning an officer, including decisions that do not constitute discipline or punitive action. [Citation omitted.]⁶⁰

The Commission noted the *Venegas* case on pages 42 and 43 of the Statement of Decision on reconsideration as follows:

Finally, the courts have been clear that an officer's rights under Government Code sections 3305 and 3306 are not limited to situations where the adverse comment results in a punitive action where the due process clause may apply. Rather, an officer's rights are triggered by the entry of "any" adverse comment in a personnel file, "or any other file used for personnel purposes," that may serve as a basis for affecting the status of the employee's employment.⁶¹ In explaining the point, the Third District Court of Appeal stated: "[E]ven though an adverse comment does not directly result in punitive action, it has the potential for creating an adverse impression that could influence future personnel decisions

⁶⁰ *Sacramento Police Officers Association v. Venegas* (2002) 101 Cal.App.4th 916, 925-926.

⁶¹ *Sacramento Police Officers Assn. v. Venegas* (2002) 101 Cal.App.4th 916, 925.

[quote continued] concerning an officer, including decisions that do not constitute discipline or punitive action.”⁶² Thus, the rights under sections 3305 and 3306 also apply to uninvestigated complaints. Under these circumstances (where the due process clause does not apply), the Commission determined that the Legislature, in statutes enacted before the test claim legislation, established procedures for different local public employees similar to the protections required by Government Code sections 3305 and 3306. Thus, the Commission found no new program or higher level of service to the extent the requirements existed in prior statutory law. The Commission approved the test claim for the activities required by the test claim legislation that were not previously required under statutory law. [Footnote omitted.] Neither *San Diego Unified School Dist.*, nor any other case, conflicts with the Commission’s findings in this regard. Therefore, the Commission finds that the denial of activities following the receipt of an adverse comment that were required under prior statutory law, and the approval of activities following the receipt of an adverse comment that were *not* required under prior statutory law, was legally correct.

Thus, staff recommends that the introductory paragraph identify and clarify the officers that receive the right to notice and to respond to an adverse comment under POBOR as follows:

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5 (Gov. Code, §§ 3305 and 3306).⁶³

Staff further recommends that the end of the adverse comment section clearly identify what is reimbursable and what is not reimbursable as follows:

~~Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.~~

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.

⁶² *Id.* at page 926.

⁶³ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

Sections IV. and V. Reasonable Reimbursement Methodology

Upon adoption of the POBOR Statement of Decision on reconsideration, the Commission directed staff to form a working group to develop a reasonable reimbursement methodology to reimburse local governments for state-mandated costs. The California State Association of Counties (CSAC), the County of Los Angeles, and the DOF filed proposals. If the Commission adopts a reasonable reimbursement methodology, additional language would be added to Sections IV. and V.

In adopting parameters and guidelines, the Commission may adopt a reasonable reimbursement methodology as defined in Government Code section 17518.5.⁶⁴

A reasonable reimbursement methodology is defined in Government Code section 17518.5, as follows:

- (b) "Reasonable reimbursement methodology" means a formula for reimbursing local agency and school district costs mandated by the state that meets the following conditions:
 - (1) The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.
 - (2) For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.
- (c) Whenever possible, a reasonable reimbursement methodology shall be based on general allocation formulas, uniform cost allowances, and other approximations of local costs mandated by the state rather than detailed documentation of actual local costs. In cases when local agencies and school districts are projected to incur costs to implement a mandate over a period of more than one fiscal year, the determination of a reasonable reimbursement methodology may consider local costs and state reimbursements over a period of greater than one fiscal year, but not exceeding 10 years.

⁶⁴ Government Code section 17557, subdivision (b).

(d) A reasonable reimbursement methodology may be developed by any of the following:

- (1) The Department of Finance.
- (2) The State Controller.
- (3) An affected state agency.
- (4) A claimant.
- (5) An interested party.

Issue 1: Is the Commission authorized to develop and propose a reasonable reimbursement methodology, as defined in Government Code section 17518.5?

In comments filed on the draft staff analysis, claimants are critical of the Commission staff's reliance on the statutory definition of reasonable reimbursement methodology. Claimants argue that Commission staff should develop and propose alternatives to the pending proposals.

Government Code section 17518.5 provides that "[a] reasonable reimbursement methodology may be developed by any of the following:

- a. The Department of Finance.
- b. The State Controller.
- c. An affected state agency.
- d. A claimant.
- e. An interested party."

Based on the plain meaning of the statute, the Department of Finance, the State Controller, an affected state agency, a claimant, or an interested party are authorized to develop a reasonable reimbursement methodology. There is no statutory requirement or authority for the Commission to develop and submit alternatives to reasonable reimbursement methodology proposals.

Issue 2: Is the Commission required to develop "reasonable criteria" that it would accept in order to establish a reasonable reimbursement methodology?

In view of staff's findings that the CSAC and County of Los Angeles proposals for a reasonable reimbursement methodology do not comply with the statutory definition, claimants request that Commission staff develop "reasonable criteria that it would accept in order to establish a reasonable reimbursement methodology."⁶⁵

Government Code section 17518.5 defines reasonable reimbursement methodology as a proposed formula for reimbursing local government costs that meets the following two conditions:

- The total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner.

⁶⁵ See Exhibit J, City of Sacramento's Comments on the Draft Staff Analysis, dated September 22, 2006, page 434.

- For 50 percent or more of eligible local agency and school district claimants, the amount reimbursed is estimated to fully offset their projected costs to implement the mandate in a cost-efficient manner.

These conditions or "criteria" are defined in statute and may not be changed by the Commission. However, the Commission may determine what types of evidence it may rely upon to establish these two conditions.

Issue 3: Is the CSAC proposal a "reasonable reimbursement methodology," as defined in Government Code section 17518.5?

Background

CSAC requests that the parameters and guidelines be amended to allow claimants to "calculate the annual claim amount by multiplying the number of peace officers employed by a local agency on January 1 of the claim year by \$528 beginning with the 2006-2007 fiscal year. Subsequent year claims shall be adjusted by the implicit price deflator."

The estimate of \$528 per officer is derived from a report from the SCO and statistics supplied by Peace Officers Standards and Training (POST). According to CSAC, the SCO report includes the name of the claimants who filed POBOR reimbursement claims for fiscal year 2001-2002, the amount each claimant filed, the number of POBOR cases in progress at the beginning of the fiscal year and the number of POBOR cases added during the fiscal year. CSAC's analysis considers both cases in progress and cases added during the fiscal year. The total number of sworn officers from POST's year 2000 online statistical report was matched with each claimant. Claimants who were missing either the number of cases or number of sworn officers were eliminated from the analysis. The resulting sample consists of 184 claimants.

For each claimant, CSAC divided the actual amount claimed by the total number of sworn officers to determine the cost per officer. The cost per officer for the 184 claimants was totaled, then divided by 184 to establish the \$528 average cost per officer.

Comments

The CSAC proposal is supported by the County of Los Angeles, County of San Bernardino, and City of Los Angeles, and is opposed by the DOF and SCO. The City of Sacramento has "no problem" with this proposal.

The City of Los Angeles is critical of the draft staff analysis and its dismissal of "all RRM proposals as submitted for failure to comply with law in that they do not prove that the rate reflects the performance of activities in a cost-efficient manner." The City of Los Angeles believes that "a cost-per-officer approach is the best methodology and should be adopted by the Commission at its hearing with direction to Staff and an invitation to interested parties to work together to achieve a dollar amount to satisfy the Commission."⁶⁶

The City of Sacramento filed the following comments on the draft staff analysis:

- There is no requirement that all claims be audited before an RRM can be adopted.

⁶⁶ See Exhibit J, page 419.

- Rather than examining the request of \$528/officer, and proposing an alternative that allowed 55% of the total costs or \$290.40 per officer, the Commission [staff] denied the [CSAC] request in its entirety.
- The transaction costs to both State and local government in tracking and documenting costs of POBOR are substantial ... the costs to the SCO for its audits is substantial.

In its comments on the draft staff analysis, County of San Bernardino agrees with the comments by the City of Sacramento.⁶⁷

DOF believes that the CSAC proposal would result in payments to local governments for activities that were not deemed reimbursable by the Commission. DOF also notes that the proposed reimbursement rate was developed using data contained in unaudited claims. DOF cites reviews conducted by the Bureau of State Audits (BSA) and the SCO, finding that a large portion of the costs claimed as reimbursable by local agencies may be invalid and/or unsupported.

In its comments on the draft staff analysis, DOF states that it would "prefer a reimbursement methodology that utilizes unit costs or other data to eliminate the need for actual cost reporting. If an alternative reimbursement methodology is adopted by the Commission, Finance recommends that it be the only mechanism for reimbursement of POBOR related activities. Providing an actual cost option could increase state costs by allowing local governments to choose the method yielding the highest reimbursement rate and would hinder efforts to streamline the claims process."⁶⁸

SCO's comments are based on the definition of reimbursable activities in the Statements of Decision, final staff analysis to the parameters and guidelines, and parameters and guidelines, and consistent with the position of the BSA in its published 2003 audit report on POBOR. The SCO is concerned that the CSAC proposal is based on "filed claims rather than on reimbursable activities" adopted by the Commission and that as much as 75% of the \$528 rate may be for activities not reimbursable under POBOR.

Analysis

Staff reviewed the CSAC proposal and its underlying documentation and concludes that it is not a reasonable reimbursement methodology because it does not satisfy the conditions specified in Government Code section 17518.5. The statutory definition of reasonable reimbursement methodology requires that the proposed formula for reimbursing local agency and school district costs mandated by the state meets these conditions:

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

⁶⁷ See Exhibit J, page 460.

⁶⁸ See Exhibit J, page 453.

If CSAC's proposed \$528 is applied to 184 eligible claimants and multiplied by 52,914 peace officers employed by these claimants, the total amount to be reimbursed would be approximately \$28 million instead of \$36 million. Adoption of the CSAC proposal would result in the total amount reimbursed being less than the total amount claimed. However, there is no evidence that the total amount that would be reimbursed is equivalent to total estimated claimant costs to implement the mandate in a *cost-efficient manner*. CSAC's proposal is based on actual costs claimed for the 2001-2002 fiscal year. This is the same fiscal year that is the subject of the 2003 BSA report cited by the SCO and DOF.

The BSA report reviewed the costs claimed for the *Peace Officers Procedural Bill of Rights* mandate. In summary, BSA stated that the local entities reviewed:

Claimed costs under the peace officer rights mandate for activities that far exceed the Commission on State Mandates (Commission) intent.

Lacked adequate supporting documentation for most of the costs claimed under the peace officer rights mandate....

The BSA results in brief stated,

... Based on our review of selected claims under each mandate, we question a high proportion of the costs claimed under the peace officer rights mandate ... In particular, we question \$16.2 million of the \$19.1 million in direct costs that four local entities claimed under the peace officer rights mandate for fiscal year 2001-02 because they included activities that far exceed the Commission's intent. Although we noted limited circumstances in which the commission's guidance could have been enhanced, the primary factor contributing to this condition was that local entities and their consultants broadly interpreted the Commission's guidance to claim reimbursement for large portions of their disciplinary processes, which the Commission clearly did not intend. ...⁶⁹

The 184 eligible claimants in the CSAC sample claimed a total of \$36,168,183 in fiscal year 2001-2002. The BSA questioned \$16.2 million in direct costs claimed by four audited claimants that are included in the CSAC sample. The BSA questioned amount is 45% of the total amount claimed by the CSAC sample that was used to calculate the \$528 rate. The BSA audit finding provides evidence that the total amount that would be reimbursed under the CSAC formula is not equivalent to total estimated claimant costs to implement the mandate in a *cost-efficient manner*. Thus, staff finds that the CSAC proposal does not satisfy the first condition.

As to the second condition, if 184 eligible claimants are reimbursed \$528 per peace officer, more than 75% of the claimants would be reimbursed *more than* the actual amount claimed and receive an over payment of more than \$8 million. Accordingly, staff finds that the amount that would be reimbursed under the CSAC proposal does not fully offset their projected costs to implement the mandate in a *cost-efficient manner* because it would result in overpayment of 75% of the claimants. Thus, staff finds that the CSAC proposal does not satisfy the second condition.

Therefore, staff concludes that the CSAC proposal of \$528 per officer is not a reasonable reimbursement methodology because it does not satisfy the conditions required under Government Code section 17518.5.

⁶⁹ Bureau of State Audits Report, see Administrative Record for CSM-4499, page 1412.

Issue 4: Is the County of Los Angeles proposal a reasonable reimbursement methodology, as defined in Government Code section 17518.5?

Background

The County of Los Angeles (LA County) requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology that would allow local agencies to be reimbursed based on approximations of local costs mandated by the state. This proposal is based on studies of claims data submitted to the SCO for the 2001-2002 through 2004-2005 fiscal years. LA County describes its proposal as a reimbursement formula which reflects differences in POBOR case loads among local law enforcement agencies and differences in the numbers of peace officers employed by those agencies. The reasonable reimbursement methodology is comprised of three components: (1) *Unit Case Costs* are determined by multiplying (the number of unit level cases) X (12 standard hours) X (productive hourly rate); (2) *Extended Case Costs* are determined by multiplying (the number of extended cases) X (162 standard hours) X (productive hourly rate); and (3) *Uniform Costs* are determined by multiplying (the number of peace officers) X (standard rate of \$100). The costs from these three components are then totaled for the annual claim amount. Each formula is reviewed below.

1. Unit Case Costs

Number of Unit Cases	X	Standard Hours 12	X	Productive Hourly Rate	=	Total
_____				_____		_____

LA County defines a "unit case" as a POBOR case that requires less than 60 hours of reimbursable activities.

LA County conducted a time study from May-October 2004 to measure the amount of time spent on reimbursable POBOR activities⁷⁰ for "unit" level cases initiated during May 2004. According to the narrative, the sample size of 44 cases represented approximately 5% of the average unit level cases filed each year for the past five years. Sheriff's case staff was instructed to record time spent on performing "reimbursable activities," as noted in the POBOR parameters and guidelines. LA County checked the time logs to ensure that activity descriptions were appropriately categorized and evaluated them to ensure that the proper activities were time studied.

From this study, LA County reports that time logs on 18 unit-level POBOR cases resulted in the performance of 12 hours of reimbursable activities. The times reported for a unit level case ranged from a low of two hours (120 minutes) to a high of 57.3 hours (3440 minutes).

Based on this time study, LA County proposes that a standard time of 12 hours be used for reimbursement of "unit level cases."

⁷⁰ Review of the circumstances or documentation which led to initiating the POBOR case; conduct of a POBOR investigation including interrogating the officer and witnesses; preparation and review of the complaint or adverse comment for the officer's review and signature.

2 Extended Case Costs

Number of Extended Cases	X	Standard Hours	X	Productive Hourly Rate	=	Total
		162		\$		

An "extended case" is defined as a POBOR case that requires more than 60 hours of reimbursable activities. For fiscal year 2003-2004, LA County employees performed 26,405 hours of reimbursable activities on 163 cases. These hours were claimed under the Reimbursable Component of "Interrogations." LA County divided the total number of hours by the number of cases worked to calculate the proposed standard time of 162 hours for each extended case. The lowest average number of hours for an extended case was reported to be 64 hours of reimbursable activities.

3 Uniform Costs

Number of Peace Officers	X	Standard Rate	=	Total
		\$100		

LA County also proposes that each claimant be reimbursed \$100 for each peace officer employed by the jurisdiction on January 1st of the claim year.

LA County's Analysis of Summary and Claimant Data

LA County compared summary data based on its proposal with summary SCO data. The SCO data for four years (2001-2002 through 2004-2005) was reformatted to reflect data in ascending order by claimed costs and cases. (See Schedule 9 on page 8 of LA County's filing, dated June 15, 2006.)

A sample of nineteen additional claimants was developed and costs were calculated based on the application of the reimbursement methodology. The costs were computed by multiplying the number of cases reported to the SCO by the standard times proposed. A productive hourly rate of \$70 was used for unit cases and \$60 for extended cases. It was assumed that 90% of the cases reported to the SCO were unit-level cases and 10% were extended-level cases. (See Schedules 6-7 on pages 10-11 of their filing dated June 15, 2006 for detail.) LA County concludes that of the 19 claimants sampled, reimbursement methodology (RRM) costs for nine claimants were less than those claimed and RRM calculated costs for another nine claimants were more than those claimed. For one claimant, the RRM calculated cost was equivalent to claimed cost.

Comments

The City of Sacramento has "no problems" with the LA County proposal.⁷¹ In comments filed on the draft staff analysis, the City of Sacramento notes that the "Commission Staff adopts the criticisms of the State Controller, which did not provide any data to support its criticism...."⁷²

The SCO is critical of the entire proposal. In its letter dated August 4, 2006, the SCO comments that the County proposes to apply a methodology to all cities and counties, based on the results

⁷¹ See Exhibit G, page 333 for City of Sacramento's Comments filed on August 4, 2006.

⁷² See Exhibit J, pages 433-434, for City of Sacramento's Comments filed on September 22, 2006.

of an invalid time study it conducted for unit-level cases and its estimate of time spent for extended (Internal Affairs Bureau) cases.⁷³

The SCO does not believe that LA County's proposed standard time of 12 hours for unit level cases is representative of costs incurred by all cities and counties in California. Furthermore, the time study was not consistent with SCO guidelines or the BSA's standards, as is indicated in the proposal. The time study results were based on only 18 unit-level cases, not the 44 cases selected in the time study plan. Of the 18 cases, only 14 involved POBOR-related activities. Furthermore, SCO believes that only 2.29 hours relate to reimbursable POBOR activities; the remaining hours relate to ineligible activities occurring prior to cases being assigned to a unit-level investigation and ineligible administrative investigative activities.

The SCO comments that in developing the standard time of 162 hours for extended cases and the \$100/peace officer standard rate, LA County did not perform a time study; instead it estimated the investigators' time by applying a ratio of sworn-to-total cases (inclusive on non-sworn employees). The SCO believes that LA County's estimates are not supportable and include ineligible activities.

The DOF concurs with the SCO and also states that the uniform cost of \$100 per peace officer is not based on specific activities or empirical data. DOF asserts that the standard hours and the uniform cost would likely result in payments for non-reimbursable activities.

In rebuttal comments, LA County disagrees with the SCO's belief that for unit cases, only 2.29 hours relate to reimbursable activities. LA County and the SCO disagree as to what activities are reimbursable under the existing parameters and guidelines. In LA County's time study of unit cases, the Sheriff's Department staff logged time spent on "investigations." The SCO maintains that this activity is not reimbursable and this time should not be included in any calculation of reimbursable costs and LA County maintains that it is reimbursable.

Analysis

Staff reviewed LA County's proposal and its underlying documentation and concludes that it is not a reasonable reimbursement methodology because it does not satisfy the conditions specified in Government Code section 17518.5. The statutory definition of reasonable reimbursement methodology requires that the proposed formula for reimbursing local agency and school district costs mandated by the state meets these conditions:

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

LA County's proposal is based on three formulas. The first formula consists of a standard time of 12 hours for unit level cases. The 12 hours/unit-level case is derived from LA County's time study which logged time spent on investigation. The SCO reviewed these time logs and concluded that the 12 hours included time spent on ineligible investigative activities. Moreover, in the analysis above of the SCO's proposed amendments to clarify reimbursable activities, staff

⁷³ See letter from the State Controller's Office, dated August 4, 2006.

concur with the SCO, finding that costs for investigation are not reimbursable. Thus, staff finds that the total amount to be reimbursed statewide under this formula is *not* equivalent to total estimated costs to implement the mandate in a *cost-efficient* manner. Also, staff finds that there is no evidence in the record to determine if the proposed formula would meet the second condition. Therefore, staff concludes that the standard time for unit level cases does not meet the conditions for a reasonable reimbursement methodology.

As to the second formula of a standard time of 162 hours for extended cases, staff also finds that this formula does not satisfy the statutory conditions. First, the standard time of 162 hours per POBOR case is based on LA County's reimbursement claim. LA County claimed costs for review of the circumstances or documentation which led to initiating the POBOR case; conduct of a POBOR investigation including interrogating the officer and witnesses; preparation and review of the complaint or adverse comment for the officer's review and signature. Thus, staff finds that the second formula is also based on non-reimbursable costs. Therefore, staff finds that the total amount to be reimbursed statewide under this formula is not equivalent to total estimated costs to implement the mandate in a *cost-efficient* manner. As to the second condition, there is no evidence in the record to determine if the proposed formula would meet the second condition. Therefore, staff concludes that the standard time for extended level cases does not meet the conditions for a reasonable reimbursement methodology.

As to the third and final formula of a uniform cost allowance of \$100 for each peace officer employed by the jurisdiction on January 1 of the claim year, staff finds that the formula does not satisfy the statutory conditions. Since this uniform rate is not based on any reimbursable activities, there is no way to show that it is equivalent to total estimated costs to implement the mandate in a *cost-efficient* manner, or to fully offset "projected costs to implement the mandate" in a *cost-efficient* manner. Therefore, staff concludes that the third formula does not meet the conditions for a reasonable reimbursement methodology.

Based on this review, staff concludes that LA County's proposal consisting of three formulas is not a reasonable reimbursement methodology because it does not satisfy conditions required under Government Code section 17518.5.

Issue 5: Is the Department of Finance proposal a reasonable reimbursement methodology, as defined in Government Code section 17518.5?

Background

The DOF requests that the parameters and guidelines be amended to include a reasonable reimbursement methodology. Under DOF's proposal, a distinct "base rate" would be calculated for each claimant based on SCO audited amounts for four years of claims. The annual reimbursement would be the result of multiplying the "base rate" by the number of covered officers. The base rates would be adjusted annually by an appropriate factor to capture the normal cost increases. A process for determining *mean* reimbursement rates would exist while final reimbursement rates are determined.

Comments

Comments were filed on this proposal by the City of Sacramento and the County of Los Angeles. The City of Sacramento commented on the impracticability of having the SCO audit all claimants, especially before the substantial differences in interpretation of the parameters and

guidelines are rectified. The County of Los Angeles believes that auditing all POBOR claims could take considerable time and would be a formidable and expensive task.

In rebuttal comments, DOF recognizes that its proposal would place increased workload on the SCO to audit POBOR claims, and believes the amount of time required is overstated by the City of Sacramento. DOF points out that the County of Sacramento noted that there are 58 counties and 478 cities in California; however, the Controller has only received claims from approximately 250 of these entities. Finance's proposal would require future claimants to be reimbursed at the average of the existing entity specific rates until sufficient claims are available to be audited by the Controller." DOF also states that if there is a new workload requirement for the Controller, the need for additional staff would be reviewed as part of the budget process and DOF would take into account the potential costs and savings.

Analysis

Staff reviewed the DOF proposal and concludes that it is not a reasonable reimbursement methodology because it does not satisfy the conditions specified in Government Code section 17518.5. The statutory definition of reasonable reimbursement methodology requires that the *proposed formula* for reimbursing local agency and school district costs mandated by the state meets these conditions:

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

The DOF proposes auditing all eligible claimants in order to propose individual base rates or mean reimbursement rates for a reasonable reimbursement methodology. Without a proposed formula (mean reimbursement rate), staff cannot determine if the statutory conditions for a reasonable reimbursement methodology, as defined in Government Code section 17518.5, can be met.

Therefore, staff concludes that DOF's proposal is not a reasonable reimbursement methodology as defined in Government Code section 17518.5.

Conclusion on Reasonable Reimbursement Methodology Proposals

Based on the evidence in the record, staff recommends denial of the proposed reasonable reimbursement methodologies.

CONCLUSION AND STAFF RECOMMENDATION

Staff recommends the Commission:

- adopt the proposed amendments to the parameters and guidelines for the Peace Officer Bill of Rights program, as modified by staff, beginning on page 49; and,
- authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES AS MODIFIED BY STAFF

Government Code Sections ~~3300 through 3310~~ 3301, 3303, 3304, 3305, 3306

As Added and Amended by Statutes of 1976, Chapter 465;
Statutes of 1978, Chapters 775, 1173, 1174, and 1178;

Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982,
Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and
Statutes of 1990, Chapter 675

Peace Officers Procedural Bill of Rights

05-RL-4499-01(4499)

05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21, and 05-PGA-22

BEGINNING IN FISCAL YEAR 2006-2007

I. SUMMARY AND SOURCE OF THE MANDATE

In order to ensure stable employer-employee relations and effective law enforcement services, the Legislature enacted Government Code sections 3300 through 3310, known as the Peace Officers Procedural Bill of Rights (POBOR).

The test claim legislation provides procedural protections to peace officers employed by local agencies and school districts¹ when a peace officer is subject to an interrogation by the employer, is facing punitive action or receives an adverse comment in his or her personnel file. ~~The protections required by the test claim legislation apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at-will" employees), and peace officers on probation who have not reached permanent status.~~

~~On November 30, 1999, the Commission adopted its Statement of Decision that the test claim legislation constitutes a partial reimbursable state mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.~~

In 1999, the Commission approved the test claim and adopted the original Statement of Decision. The Commission found that certain procedural requirements under POBOR were rights already provided to public employees under the due process clause of the United States and California Constitutions. Thus, the Commission denied the procedural requirements of POBOR that were already required by law on the ground that they did not impose a new program or higher level of service, or impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c). Government Code section 17556, subdivision (c), generally provides that the Commission shall not find costs

¹ Government Code section 3301 states: "For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code."

mandated by the state for test claim statutes that implement a federal law, unless the test claim statute mandates costs that exceed the federal mandate. The Commission approved the activities required by POBOR that exceeded the requirements of existing state and federal law.

On July 27, 2000, the Commission adopted parameters and guidelines that authorized reimbursement, beginning July 1, 1994, to counties, cities, a city and county, school districts, and special districts that employ peace officers for the ongoing activities summarized below:

- Developing or updating policies and procedures.
- Training for human resources, law enforcement, and legal counsel.
- Updating the status of cases.
- Providing the opportunity for an administrative appeal for permanent, at-will, and probationary employees that were subject to certain disciplinary actions that were not covered by the due process clause of state and federal law.
- When a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the employer that could lead to certain disciplinary actions, the following costs and activities are eligible for reimbursement: compensation to the peace officer for interrogations occurring during off-duty time; providing prior notice to the peace officer regarding the nature of the interrogation and identification of investigating officers; tape recording the interrogation; providing the peace officer employee with access to the tape prior to any further interrogation at a subsequent time or if any further specified proceedings are contemplated; and producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of complaints of reports or complaints made by investigators.
- Performing certain activities, specified by the type of local agency or school district, upon the receipt of an adverse comment against a peace officer employee.

A technical correction was made to the parameters and guidelines on August 17, 2000.

In 2005, Statutes 2005, chapter 72, section 6 (AB 138) added section 3313 to the Government Code to direct the Commission to "review" the Statement of Decision, adopted in 1999, on the *Peace Officer Procedural Bill of Rights* test claim (commonly abbreviated as "POBOR") to clarify whether the subject legislation imposed a mandate consistent with California Supreme Court Decision in *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859 and other applicable court decisions.

On April 26, 2006, the Commission reviewed its original findings and adopted a Statement of Decision on reconsideration (05-RL-4499-01). The Statement of Decision on reconsideration became final on May 1, 2006. On review of the claim, the Commission found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision, which found that the test claim legislation constitutes a state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for counties, cities, school districts, and special districts identified in Government Code section 3301 that employ peace officers.

The Commission further found that the *San Diego Unified School Dist.* case supports the Commission's 1999 Statement of Decision that the test claim legislation constitutes a partial reimbursable state-mandated program within the meaning of article XIII B,

section 6 of the California Constitution and Government Code section 17514 for all activities previously approved by the Commission except the following:

- The activity of providing the opportunity for an administrative appeal to probationary and at-will peace officers (except when the chief of police is removed) pursuant to Government Code section 3304 is no longer a reimbursable state-mandated activity because the Legislature amended Government Code section 3304 in 1998. The amendment limited the right to an administrative appeal to only those peace officers "who successfully completed the probationary period that may be required" by the employing agency and to situations where the chief of police is removed. (Stats. 1998, ch. 786, § 1.)
- The activities of obtaining the signature of the peace officer on the adverse comment or noting the officer's refusal to sign the adverse comment, pursuant to Government Code sections 3305 and 3306, when the adverse comment results in a punitive action protected by the due process clause² does not constitute a new program or higher level of service and does not impose costs mandated by the state pursuant to Government Code section 17556, subdivision (c).

The Statement of Decision adopted by the Commission on this reconsideration applies to costs incurred and claimed for the 2006-2007 fiscal year.

II. ELIGIBLE CLAIMANTS

Counties, cities, a city and county, school districts and special districts that employ peace officers are eligible claimants.

III. PERIOD OF REIMBURSEMENT

The period of reimbursement for the activities in this parameters and guidelines amendment begin on July 1, 2006.

Pursuant to Government Code section 17560, reimbursement for state-mandated costs may be claimed as follows:

1. A local agency or school district may file an estimated reimbursement claim by January 15 of the fiscal year in which costs are to be incurred, and, by January 15 following that fiscal year shall file an annual reimbursement claim that details the costs actually incurred for that fiscal year; or it may comply with the provisions of subdivision (b).
2. A local agency or school district may, by January 15 following the fiscal year in which costs are incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
3. In the event revised claiming instructions are issued by the Controller pursuant to subdivision (c) of section 17558 between October 15 and January 15, a local agency or school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim.

² Due process attaches when a permanent employee is dismissed, demoted, suspended, receives a reduction in salary, or receives a written reprimand. Due process also attaches when the charges supporting a dismissal of a probationary or at-will employee constitute moral turpitude that harms the employee's reputation and ability to find future employment and, thus, a name-clearing hearing is required.

~~At the time this test claim was filed, Section 17557 of the Government Code stated that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. On December 21, 1995, the City of Sacramento filed the test claim for this mandate. Therefore, costs incurred for Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675 are eligible for reimbursement on or after July 1, 1994.~~

Reimbursable Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to section 17561, subdivision (d)(1) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of notification by the State Controller of the issuance of claiming instructions.

If total costs for a given year do not exceed \$1,000,200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

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, training packets, 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.

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.

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, the following activities are reimbursable:

For each eligible claimant, all direct and indirect costs of labor, supplies and services, training and travel for the performance of the following activities, are eligible for reimbursement:

A. Administrative Activities (On-going Activities)

1. Developing or updating internal policies, procedures, manuals and other materials pertaining to the conduct of the mandated activities.
2. Attendance at specific training for human resources, law enforcement and legal counsel regarding the requirements of the mandate. The training must relate to mandate-reimbursable activities.
3. Updating the status ~~report of the mandate-reimbursable POBOR eases activities.~~ “Updating the status report of mandate-reimbursable POBOR eases activities” means tracking the procedural status of eases the mandate-reimbursable activities only. Reimbursement is not required to maintain or update the cases, set up the cases, review the cases, evaluate the cases, or close the cases.

B. Administrative Appeal

1. ~~Reimbursement period of July 1, 1994 through December 31, 1998—~~ The administrative appeal activities listed below apply to permanent peace officer employees, at-will employees, and probationary employees, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. The administrative appeal activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers.³

The following activities and costs are reimbursable:

- a. Providing the opportunity for, and the conduct of an administrative appeal hearing for the following disciplinary actions (Gov. Code, § 3304, subd. (b)):
 - ~~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);~~
 - Transfer of permanent, probationary and at-will employees for purposes of punishment;
 - Denial of promotion for permanent, probationary and at-will employees for reasons other than merit; and
 - 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.
- b. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.
- c. Legal review and assistance with the conduct of the administrative appeal hearing.
- d. Preparation and service of subpoenas.
- e. Preparation and service of any rulings or orders of the administrative body.

³ Burden v. Snowden (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.

f. The cost of witness fees.

g. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas; witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities are not reimbursable:

a. Investigating charges.

b. Writing and reviewing charges.

c. Imposing disciplinary or punitive action against the peace officer.

d. Litigating the final administrative decision.

2. ~~Reimbursement period beginning January 1, 1999— The administrative appeal activities listed below apply to permanent employees and the Chief of Police.~~

~~Providing the opportunity for, and the conduct of an administrative appeal for the following disciplinary actions hearing for removal of the chief of police under circumstances that do not create a liberty interest (i.e., the charges do not constitute moral turpitude, which harms the employee's reputation and ability to find future employment.) (Gov. Code, § 3304, subd. (b).):~~

- ~~• Dismissal, demotion, suspension, salary reduction or written reprimand received by the Chief of Police whose liberty interest is not affected (i.e.: the charges supporting a dismissal do not harm the employee's reputation or ability to find future employment);~~
- ~~• Transfer of permanent employees for purposes of punishment;~~
- ~~• Denial of promotion for permanent employees for reasons other than merit; and~~
- ~~• Other actions against permanent employees or the Chief of Police that result in disadvantage, harm, loss or hardship and impact the career opportunities of the employee.~~

~~Included in the foregoing are the preparation and review of the various documents to commence and proceed with the administrative hearing; legal review and assistance with the conduct of the administrative hearing; preparation and service of subpoenas; witness fees, and salaries of employee witnesses, including overtime; the time and labor of the administrative body and its attendant clerical services; the preparation and service of any rulings or orders of the administrative body.~~

The following activities and costs are reimbursable:

a. Preparation and review of the various documents necessary to commence and proceed with the administrative appeal hearing.

b. Legal review and assistance with the conduct of the administrative appeal hearing.

- c. Preparation and service of subpoenas.
- d. Preparation and service of any rulings or orders of the administrative body.
- e. The cost of witness fees.
- f. The cost of salaries of employee witnesses, including overtime, the time and labor of the administrative appeal hearing body and its attendant clerical services.

The following activities are not reimbursable:

- a. Investigating charges.
- b. Writing and reviewing charges.
- c. Imposing disciplinary or punitive action against the chief of police.
- d. Litigating the final administrative decision.

C. Interrogations

~~Claimants are eligible for reimbursement for~~ The performance of the activities listed in this section are eligible for reimbursement only when a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5, is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. (Gov. Code, § 3303.)⁴

Claimants are not eligible for reimbursement for the activities listed in this section when an interrogation of a peace officer is in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer. Claimants are also not eligible for reimbursement when the investigation is concerned solely and directly with alleged criminal activities. (Gov. Code, § 3303, subd. (i).)

The following activities are reimbursable:

1. When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures. (Gov. Code, § 3303, subd. (a).)
Included in the foregoing is the preparation and review of overtime compensation requests are reimbursable.
2. Providing prior notice to the peace officer before the interrogation regarding the nature of the interrogation and identification of the investigating officers. The notice shall inform the peace officer of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be

⁴ Interrogations of reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, and school security officers are not reimbursable. (Burden v. Snowden (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

present during the interrogation. The notice shall inform the peace officer of the nature of the investigation. (Gov. Code, § 3303, subs. (b) and (c).)

~~Included in the foregoing is the review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officer.~~

The following activities relating to the notice of interrogation are reimbursable:

a. Review of agency complaints or other documents to prepare the notice of interrogation.

b. Identification of the interrogating officers to include in the notice of interrogation.

d. Preparation of the notice.

e. Review of notice by counsel.

f. Providing notice to the peace officer prior to interrogation.

3. ~~Tape~~ Recording the interrogation when the peace officer employee records the interrogation. (Gov. Code, § 3303, subd. (g).)

~~Included in the foregoing is the~~ The cost of tape media and storage, and the cost of transcription are reimbursable. The investigator's time to record the session and transcription costs of non-sworn and peace officers are not reimbursable.

4. Providing the peace officer employee with access to the ~~tape recording~~ prior to any further interrogation at a subsequent time, or if any further proceedings are contemplated and the further proceedings fall within the following categories (Gov. Code, § 3303, subd. (g)):

a. The further proceeding is not a disciplinary action;

b. The further proceeding is a dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest is not affected (i.e., the charges supporting the dismissal does not harm the employee's reputation or ability to find future employment);

c. The further proceeding is a transfer of a permanent, probationary or at-will employee for purposes of punishment;

d. The further proceeding is a denial of promotion for a permanent, probationary or at-will employee for reasons other than merit;

e. The further proceeding is an action against a permanent, probationary or at-will employee that results in disadvantage, harm, loss or hardship and impacts the career of the employee.

~~Included in the foregoing is the~~ The cost of tape media copying is reimbursable.

5. Producing transcribed copies of any notes made by a stenographer at an interrogation, and copies of reports or complaints made by investigators or other persons, except those that are deemed confidential, when requested by the officer, in the following circumstances (Gov. Code, § 3303, subd. (g)):

a) When the investigation does not result in disciplinary action; and

b) When the investigation results in:

- A dismissal, demotion, suspension, salary reduction or written reprimand received by a probationary or at-will employee whose liberty interest *is not* affected (i.e.; the charges supporting the dismissal do not harm the employee's reputation or ability to find future employment);
- A transfer of a permanent, probationary or at-will employee for purposes of punishment;
- A denial of promotion for a permanent, probationary or at-will employee for reasons other than merit; or
- Other actions against a permanent, probationary or at-will employee that result in disadvantage, harm, loss or hardship and impact the career of the employee.

Included in the foregoing is the Review of the complaints, notes or tape recordings for issues of confidentiality by law enforcement, human relations or counsel; and the cost of processing, service and retention of copies are reimbursable.

The following activities are not reimbursable:

1. Activities occurring before the assignment of the case to an administrative investigator. These activities include taking an initial complaint, setting up the complaint file, interviewing parties, reviewing the file, and determining whether the complaint warrants an administrative investigation.
2. Investigation activities, including assigning an investigator to the case, reviewing the allegation, communicating with other departments, visiting the scene of the alleged incident, gathering evidence, identifying and contacting complainants and witnesses.
3. Preparing for the interrogation, reviewing and preparing interrogation questions, conducting the interrogation, and reviewing the responses given by the officer and/or witness during the interrogation.
4. Closing the file, including the preparation of a case summary disposition reports and attending executive review or committee hearings related to the investigation.

D. Adverse Comment

Performing the following activities upon receipt of an adverse comment concerning a peace officer, as defined in Penal Code sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.4, and 830.5. (Gov. Code, §§ 3305 and 3306).⁵

⁵ The adverse comment activities do not apply to reserve or recruit officers; coroners; railroad police officers commissioned by the Governor; or non-sworn officers including custodial officers, sheriff security officers, police security officers, or school security officers. (Burden v. Snowden (1992) 2 Cal.4th 556, 569; Government Code section 3301; Penal Code sections 831, 831.4.)

School Districts

- (a) ~~If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then schools are entitled to reimbursement for:~~
- ~~• Obtaining the signature of the peace officer on the adverse comment; or~~
 - ~~• Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.~~
- (a) If an adverse comment *is* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.
- (b) If an adverse comment *is not* obtained in connection with a promotional examination, then school districts are entitled to reimbursement for:
1. Obtaining the signature of the peace officer on the adverse comment; or
 2. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

Counties

- (a) ~~If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then counties are entitled to reimbursement for:~~
- ~~• Obtaining the signature of the peace officer on the adverse comment; or~~
 - ~~• Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.~~
- (a) If an adverse comment *is* related to the investigation of a possible criminal offense, then counties are entitled to reimbursement for the following activities:
1. Providing notice of the adverse comment;
 2. Providing an opportunity to review and sign the adverse comment;
 3. Providing an opportunity to respond to the adverse comment within 30 days; and
 4. Noting the peace officer's refusal to sign the adverse comment ~~on the document~~ and obtaining the signature or initials of the peace officer under such circumstances.

- (b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then counties obtained are entitled to reimbursement for:
1. Providing notice of the adverse comment: and
 2. Obtaining the signature of the peace officer on the adverse comment; or
 3. Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

Cities and Special Districts

~~(a) If an adverse comment results in the deprivation of employment through dismissal, suspension, demotion, reduction in pay or written reprimand for a permanent peace officer, or harms the officer's reputation and opportunity to find future employment, then cities and special districts are entitled to reimbursement for:~~

- ~~• Obtaining the signature of the peace officer on the adverse comment; or~~
- ~~• Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.~~

(a) If an adverse comment *is* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

1. Providing notice of the adverse comment;
2. Providing an opportunity to review and sign the adverse comment;
3. Providing an opportunity to respond to the adverse comment within 30 days; and
4. Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

(b) If an adverse comment *is not* related to the investigation of a possible criminal offense, then cities and special districts are entitled to reimbursement for the following activities:

1. Providing notice of the adverse comment;
2. Providing an opportunity to respond to the adverse comment within 30 days; and
3. Obtaining the signature of the peace officer on the adverse comment; or
4. Noting the peace officer's refusal to sign the adverse comment on the document and obtaining the signature or initials of the peace officer under such circumstances.

~~Included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an adverse comment; preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.~~

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

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 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 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.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

1. Local Agencies

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 the 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 OMB Circular A-87 Attachments A and B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 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 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 allowable indirect costs bears to the base selected.

2. School Districts

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

3. County Offices of Education

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

4. Community College Districts

Community colleges have the option of using: (1) a federally approved rate, utilizing the cost accounting principles from the Office of Management and Budget Circular A-21, "Cost Principles of Educational Institutions"; (2) the rate calculated on State Controller's Form FAM-29C; or (3) a 7% indirect cost rate.

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 chapter⁶ 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 SAVINGS REVENUES AND OTHER REIMBURSEMENTS

Any offsetting savings 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 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 REVISED CLAIMING INSTRUCTIONS

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

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the revised claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon the revised 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, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

⁶ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision (CSM 4499) and the Statement of Decision on Reconsideration (05-RL-4499-01) 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 for the test claim. The administrative record, including the Statement of Decision and the Statement of Decision on Reconsideration, is on file with the Commission.

~~Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Claimed costs must be identified to each reimbursable activity identified in Section IV. of this document.~~

SUPPORTING DOCUMENTATION

~~Claimed costs shall be supported by the following cost element information:~~

~~A. Direct Costs~~

~~Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions.~~

~~Claimed costs shall be supported by the following cost element information:~~

~~1. Salaries and Benefits~~

~~Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.~~

~~Reimbursement includes compensation paid for salaries, wages, and employee benefits. Employee benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Employee benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.~~

~~2. Materials and Supplies~~

~~Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.~~

~~3. Contract Services~~

~~Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services. Submit contract consultant and attorney invoices with the claim.~~

~~4. Travel~~

Travel expenses for mileage, per diem, lodging, and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points, and travel costs.

5. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended, and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging, and per diem.

B. Indirect Costs

Indirect costs are defined as costs which 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 central government services distributed to 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 OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. SUPPORTING DATA

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

All claims shall identify the number of cases in process at the beginning of the fiscal year, the number of new cases added during the fiscal year, the number of cases completed or closed during the fiscal year, and the number of cases in process at the end of the fiscal year.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENT

Any offsetting savings the claimant experiences as a direct result of the subject mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received 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 OFFICE REQUIRED CERTIFICATION~~

~~An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.~~

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento 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 December 23, 2014, I served the:

SCO Comments on IRC

Peace Officer Procedural Bill of Rights (POBOR), 12-4499-I-02

Government Code Sections 3300-3310

Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and 1178;

Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes 1982, Chapter 994;

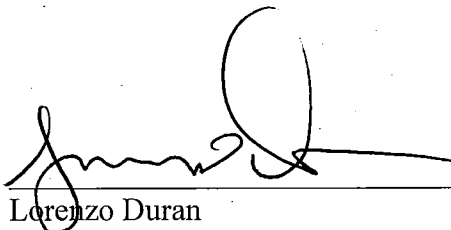
Statutes 1983, Chapter 964; Statutes 1989, Chapter 1165; and Statutes 1990, Chapter 675

Fiscal Years: 2003-2004, 2004-2005, 2005-2006, 2006-07, and 2007-08

City of Los Angeles, 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 December 23, 2014 at Sacramento, California.



Lorenzo Duran

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 12/23/14

Claim Number: 12-4499-I-02

Matter: Peace Officer Bill of Rights (POBOR)

Claimant: City of Los Angeles

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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