



June 29, 2018

Mr. Patrick J. Dyer  
MGT Consulting  
2251 Harvard Street, Suite 134  
Sacramento, CA 95815

Ms. Jill Kanemasu  
Division of Accounting and Reporting  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, CA 95816

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Proposed Decision and Proposed Parameters and Guidelines, Schedule for Comments, and Notice of Hearing**

*Local Agency Employee Organizations: Impasse Procedures II*, 16-TC-04  
Government Code Sections 3505.4(a-d) and 3505.5(a-d);  
Statutes 2012, Chapter 314 (AB 1606)  
City of Oxnard, Claimant

Dear Mr. Dyer and Ms. Kanemasu:

The Draft Proposed Decision and Parameters and Guidelines for the above-captioned matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the Draft Proposed Decision and Parameters and Guidelines by **July 20, 2018**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

**Hearing**

This matter is set for hearing on **Friday, September 28, 2018** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about September 14, 2018. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Halsey", is written over the word "Sincerely,".

Heather Halsey  
Executive Director

**ITEM \_**  
**DRAFT PROPOSED DECISION**  
**AND**  
**PROPOSED PARAMETERS AND GUIDELINES**

Government Code Sections 3505.4(a-d) and 3505.5(a-d)

Statutes 2012, Chapter 314 (AB 1606)

*Local Agency Employee Organizations: Impasse Procedures II*

16-TC-04

The period of reimbursement begins July 1, 2015.

City of Oxnard, Claimant

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**EXECUTIVE SUMMARY**

**I. Summary of the Mandate**

These Parameters and Guidelines address the mandated activities arising from amendments to the Meyers-Milias-Brown Act by Statutes 2012, chapter 314 (AB 1606), which imposed a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations, available at the option of the employee organization.

On May 25, 2018, the Commission on State Mandates (Commission) adopted the Decision approving the test claim and finding that the test claim statute imposes a reimbursable state-mandated program on local agencies<sup>1</sup> within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission partially approved the Test Claim, finding only the following activities to be reimbursable:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)

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<sup>1</sup> Other than charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e).

- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

## **II. Procedural History**

On May 25, 2018, the Commission adopted the Decision partially approving the Test Claim.<sup>2</sup> On May 30, 2018, Commission staff issued the Test Claim Decision and Draft Expedited Parameters and Guidelines.<sup>3</sup> On June 20, 2018, the State Controller's Office (Controller) filed comments concurring with the Draft Expedited Parameters and Guidelines.<sup>4</sup> Neither the claimant nor the Department of Finance (Finance) filed comments on the Draft Expedited Parameters and Guidelines. On June 29, 2018, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>5</sup>

## **III. Discussion**

The Draft Expedited Parameters and Guidelines were issued based on the activities that were approved and denied in the Test Claim Decision. The Controller filed comments seeking clarification of eligible claimants.<sup>6</sup> The claimant did not file comments.

The period of reimbursement begins July 1, 2015, based on the filing date of the Test Claim on May 12, 2017.

Government Code section 3505.5(e) provides that charter cities or charter counties with a charter prescribing, at a minimum, binding arbitration in the case of an impasse are exempt from the provisions of sections 3505.5 and 3505.4. Accordingly, the Controller requests that exemption be reflected in the Eligible Claimants section of the Parameters and Guidelines.<sup>7</sup>

The reimbursable activities are described below.

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any

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<sup>2</sup> Exhibit A, Test Claim Decision.

<sup>3</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>4</sup> Exhibit C, Controller's Comments on Draft Expedited Parameters and Guidelines.

<sup>5</sup> Exhibit D, Draft Proposed Decision and Proposed Parameters and Guidelines.

<sup>6</sup> Exhibit C, Controller's Comments on Draft Expedited Parameters and Guidelines.

<sup>7</sup> Exhibit C, Controller's Comments on Draft Expedited Parameters and Guidelines.

other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)

2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

#### **IV. Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and Parameters and Guidelines in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514 to provide for reimbursement beginning July 1, 2015.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the Proposed Decision following the hearing.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES  
FOR:

Government Code Sections 3505.4(a-d),  
and 3505.5(a-d);

Statutes 2012, Chapter 314 (AB 1606)

The period of reimbursement begins  
July 1, 2015.

Case No.: 16-TC-04

*Local Agency Employee Organizations:  
Impasse Procedures II*

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

*(Adopted September 28, 2018)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the Decision and Parameters and Guidelines during a regularly scheduled hearing on September 28, 2018. [Witness list will be included in the adopted Decision.]

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

The Commission [adopted/modified/rejected] the Decision and Parameters and Guidelines by a vote of [vote count will be in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller	
Mark Hariri, Representative of the State Treasurer, Vice Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

## **I. Summary of the Mandate**

These Parameters and Guidelines address the state-mandated activities arising from amendments to the Meyers-Milias-Brown Act (MMBA) by Statutes 2012, chapter 314 (AB 1606).<sup>8</sup> The Test Claim statutes added a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations.

On May 25, 2018, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that the test claim statute imposes a reimbursable state-mandated program on local government within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).) Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

## **II. Procedural History**

On May 25, 2018, the Commission adopted the Decision partially approving the Test Claim.<sup>9</sup> On May 30, 2018, Commission staff issued the Test Claim Decision and Draft Expedited Parameters and Guidelines.<sup>10</sup> On June 20, 2018, the Controller filed comments concurring with the Draft Expedited Parameters and Guidelines, but seeking additional clarification with respect to eligible claimants.<sup>11</sup> Neither the claimant nor the Department of Finance filed comments on the Draft Expedited Parameters and Guidelines. On June 29, 2018, Commission staff issued the Draft Proposed Decision and Proposed Parameters and Guidelines.<sup>12</sup>

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<sup>8</sup> The claimant did not plead the Public Employment Relations Board's regulations implementing Statutes 2011, chapter 680, which were effective January 1, 2012.

<sup>9</sup> Exhibit A, Test Claim Decision.

<sup>10</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>11</sup> Exhibit C, State Controller's Comments on the Draft Expedited Parameters and Guidelines.

<sup>12</sup> Exhibit D, Draft Proposed Decision and Proposed Parameters and Guidelines.

### **III. Discussion**

The Draft Expedited Parameters and Guidelines were issued in accordance with section 1183.9 of the Commission's regulations, based on the findings in the Test Claim Decision. Only one substantive comment, that charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e) are not eligible claimants, was received on the Draft Expedited Parameters and Guidelines. No "reasonably necessary activities" have been proposed by the parties.

The Parameters and Guidelines for this program include the findings adopted by the Commission in its Test Claim Decision with respect to the period of reimbursement, eligible claimants, and reimbursable activities. The Controller's proposed clarification to eligible claimants is approved and is consistent with the Test Claim Decision. The Commission therefore finds that the Parameters and Guidelines are supported by the findings in the Test Claim Decision and this Decision on the Parameters and Guidelines.

The Parameters and Guidelines contain the following information.

#### **A. Eligible Claimants (Section II. of the Parameters and Guidelines)**

Government Code section 3505.5(e) provides an exemption from the mandated activities for charter cities and charter counties, as follows:

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

The Test Claim Decision found that all mandated activities under the MMBA arise from sections 3505.4 and 3505.5. Therefore, section 3505.5(e) effectively exempts charter cities and charter counties, if their charter contains binding arbitration provisions, from the entire mandated program. Accordingly, the Controller requests that the Commission include exemption language in the Parameters and Guidelines, as follows:

Any city, county, city and county, or special district subject to the taxing restrictions of article XIII A, and the spending limits of article XIII B, of the California Constitution,<sup>13</sup> other than a charter city, charter county, or charter city

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<sup>13</sup> Government Code section 17518 defines "local agency" to mean "any city, county, special district, authority, or other political subdivision of the state." However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 ["[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues."]; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California*, *supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282



and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

The proposed language is consistent with the plain language of the Government Code and the Commission's Test Claim Decision, and is included in the Parameters and Guidelines.

**B. Period of Reimbursement (Section III. of the Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on May 12, 2017, establishing reimbursement eligibility for the 2015-2016 fiscal year, beginning July 1, 2015.

**C. Reimbursable Activities (Section IV. of the Parameters and Guidelines)**

The Commission approved the following reimbursable activities:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

Neither the claimant nor any other interested parties or persons proposed additional reasonably necessary activities. Accordingly, only these activities approved in the Test Claim Decision are included in the Parameters and Guidelines.

**D. The Remaining Sections of the Parameters and Guidelines**

Section V. of the Parameters and Guidelines (Claim Preparation and Submission) identifies the following direct costs that are eligible for reimbursement: salaries and benefits, materials and supplies, contracted services, and fixed assets. However, training and travel costs are not included in the Parameters and Guidelines because those activities were not approved in the Test

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[Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B's spending limits.]

Claim Decision, nor has the claimant requested these costs as reasonably necessary to perform the mandated activities or submitted any evidence to support such a request.<sup>14</sup>

The remaining sections of the Parameters and Guidelines contain standard boilerplate language.

#### **IV. Conclusion**

Based on the foregoing, the Commission hereby adopts the Decision and Parameters and Guidelines.

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<sup>14</sup> California Code of Regulations, title 2, section 1183.6 states: “The parameters and guidelines shall describe the claimable reimbursable costs and contain the following information: [¶] ... [¶] (d) Reimbursable Activities. A description of the specific costs and types of costs that are reimbursable, including one-time costs and on-going costs, and reasonably necessary activities required to comply with the mandate. ‘Reasonably necessary activities’ are those activities necessary to comply with the statutes, regulations and other executive orders found to impose a state-mandated program. Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.”

## **PROPOSED PARAMETERS AND GUIDELINES**

Government Code Sections 3505.4(a-d) and 3505.5(a-d)

Statutes 2012, Chapter 314 (AB 1606)

### *Local Agency Employee Organizations: Impasse Procedures II*

16-TC-04

The period of reimbursement begins July 1, 2015.

#### **I. SUMMARY OF THE MANDATE**

These Parameters and Guidelines address the mandated activities arising from amendments to the Meyers-Milias-Brown Act by Statutes 2012, chapter 314 (AB 1606), which imposed a factfinding procedure after a local agency and an employee organization reach an impasse in their collective bargaining negotiations, available at the option of the employee organization.

On May 25, 2018, the Commission on State Mandates (Commission) adopted the Decision finding that the test claim statute imposes a reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, (other than charter cities or counties with a charter prescribing binding arbitration in the case of an impasse pursuant to Government Code section 3505.5(e)). The Commission partially approved the Test Claim, finding only the following activities to be reimbursable:

- Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
- Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
- Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)
- Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

## II. ELIGIBLE CLAIMANTS

Any city, county, city and county, or special district subject to the taxing restrictions of article XIII A, and the spending limits of article XIII B, of the California Constitution,<sup>1</sup> other than a charter city, charter county, or charter city and county with a charter prescribing binding arbitration in the case of an impasse, pursuant to Government Code section 3505(e), whose costs for this program are paid from proceeds of taxes that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimant filed the Test Claim on May 12, 2017, establishing eligibility for reimbursement for the 2015-2016 fiscal year. Therefore, costs incurred beginning on or after July 1, 2015 are reimbursable.

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

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a local agency or school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a local agency 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. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).

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<sup>1</sup> Government Code section 17518 defines “local agency” to mean “any city, county, special district, authority, or other political subdivision of the state.” However, the courts have made it clear that only those local agencies subject to the tax and spend provisions of articles XIII A and XIII B are eligible to claim reimbursement under article XIII B, section 6. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [“[R]ead in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”]; *Dept. of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 763 [quoting *County of San Diego v. State of California*, *supra*, 15 Cal.4th 68, 81]; *Redevelopment Agency of San Marcos v. Commission on State Mandates* (1997) 55 Cal.App.4th 976; *City of El Monte v. Commission on State Mandates* (2000) 83 Cal.App.4th 266, 281-282 [Redevelopment agencies cannot assert an entitlement to reimbursement under article XIII B, section 6, while enjoying exemption from article XIII B’s spending limits.].)

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

#### **IV. REIMBURSABLE ACTIVITIES**

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

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

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

For each eligible claimant that incurs increased costs,<sup>2</sup> the following activities are reimbursable:

1. Within five (5) days after receipt of the written request from the employee organization to submit the parties' differences to a factfinding panel, select a member of the factfinding panel, and pay the costs of that member; pay half the costs of the PERB-selected chairperson, or another chairperson mutually agreed upon, including per diem, travel, and subsistence expenses, and; pay half of any other mutually incurred costs for the factfinding process. (Gov. Code §§ 3505.4(a) and (b); 3505.5(b), (c) and (d).)
2. Meet with the factfinding panel within ten (10) days after its appointment. (Gov. Code § 3505.4(c).)
3. Furnish the factfinding panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the factfinding panel. (Gov. Code § 3505.4(c-d).)

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<sup>2</sup> Government Code section 3505.5(e) provides that charter cities, charter counties, and charter cities and counties are exempt from sections 3505.5 and 3505.4 if their charter provides a procedure that applies in the case of an impasse with its employee organizations that includes, at a minimum, a process for binding arbitration, therefore they are not eligible claimants for this program.

4. Receive and make publicly available the written advisory findings and recommendations of the factfinding panel if the dispute is not settled within 30 days of appointment of the panel. (Gov. Code § 3505.5(a).)

## **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**

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

### **B. Indirect Cost Rates**

Indirect costs are costs that are incurred for a common or joint purpose, benefiting more than one program, and are not directly assignable to a particular department or program without efforts

disproportionate to the result achieved. Indirect costs may include both: (1) overhead costs of the unit performing the mandate; and (2) the costs of the central government services distributed to the other departments based on a systematic and rational basis through a cost allocation plan.

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

If the claimant chooses to prepare an ICRP, both the direct costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & B) and the indirect costs shall exclude capital expenditures and unallowable costs (as defined and described in 2 CFR part 225, appendices A and B (OMB Circular A-87 attachments A & 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 & 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 that the total amount of allowable indirect costs bears to the base selected; or
2. The allocation of allowable indirect costs (as defined and described in OMB Circular A-87 attachments A & B) shall be accomplished by: (1) separating a department into groups, such as divisions or sections, and then classifying the division's or section's total costs for the base period as either direct or indirect; and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate that is used to distribute indirect costs to mandates. The rate should be expressed as a percentage which the total amount of allowable indirect costs bears to the base selected.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>3</sup> 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

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<sup>3</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

Any offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

## **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the test claim and parameters and guidelines adopted by the Commission.

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

## **IX. REMEDIES BEFORE THE COMMISSION**

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

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

## **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the Test Claim and Parameters and Guidelines are legally binding on all parties and provide the legal and factual basis for the Parameters and Guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.



**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.

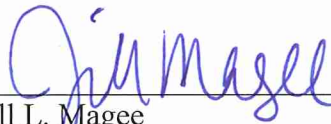
On June 29, 2018, I served the:

- **Draft Proposed Decision and Proposed Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued June 29, 2018**

*Local Agency Employee Organizations: Impasse Procedures II*, 16-TC-04  
Government Code Sections 3505.4(a-d) and 3505.5(a-d);  
Statutes 2012, Chapter 314 (AB 1606)  
City of Oxnard, 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 June 29, 2018 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 5/30/18

**Claim Number:** 16-TC-04

**Matter:** Local Agency Employee Organizations: Impasse Procedures II

**Claimant:** City of Oxnard

### 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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