

Edmund G. Brown Jr.
GOVERNOR



STATE OF CALIFORNIA COMMISSION ON STATE MANDATES

REPORT TO THE LEGISLATURE: APPROVED MANDATE CLAIMS

July 1, 2015 – December 31, 2015

Michael Cohen
Chairperson
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Finance

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State Treasurer

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Director
Office of Planning and Research

Sarah Olsen
Public Member

Donald Saylor
County Supervisor
County of Yolo

M. Carmen Ramirez
City Council Member
City of Oxnard

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814
(916) 323-3562
www.csm.ca.gov

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I. INTRODUCTION

Commission on State Mandates

Test Claim Process

Article XIII B, section 6 of the California Constitution requires the state to provide a subvention of funds to reimburse local government for the costs of new programs or increased levels of service mandated by the state. To implement article XIII B, section 6, the Legislature created the Commission on State Mandates (Commission) to succeed the State Board of Control in making determinations whether new statutes or executive orders are state-mandated programs.¹ The Commission was established to render sound quasi-judicial decisions and to provide an effective means of resolving disputes over the existence of state-mandated local programs. The Commission provides the sole and exclusive procedure for local agencies and school districts (claimants) to resolve disputes over the existence of state-mandated local programs and costs mandated by the state. The Commission is required to hear and decide claims (test claims) filed by local agencies and school districts that they are entitled to be reimbursed by the state for costs mandated by the state.²

Parameters and Guidelines

Government Code section 17557 provides that if the Commission determines that a statute or executive order imposes a mandate upon local agencies and school districts, the Commission is required to determine the amount to be subvended to local agencies and school districts for reimbursement by adopting parameters and guidelines. In adopting parameters and guidelines, the Commission may adopt a reasonable reimbursement methodology (RRM). Once parameters and guidelines are adopted, the Commission is required to adopt a statewide cost estimate of the mandated program (Gov. Code, § 17553).

Alternative Processes

Government Code section 17557.1 and 17557.2 provide an alternate process for determining the amount to be subvended for mandated programs. Under 17557.1, local governments and the Department of Finance may jointly develop reasonable reimbursement methodologies (RRMs) and statewide estimates of costs for mandated programs for approval by the Commission in lieu of parameters and guidelines and statewide cost estimates. Government Code section 17557.2 requires that joint RRMs have broad support and, if approved, they remain in effect for five years unless otherwise specified. Jointly developed RRMs and statewide estimates of costs that are approved by the Commission are included in the Commission's Annual Reports to the Legislature. To date, only one jointly developed RRM has ever been approved and it expired and was not extended by the parties so the Commission adopted parameters and guidelines for that program.

Government Code sections 17572 and 17573 provide another alternative process where the Department of Finance and local agencies, school districts, or statewide associations may jointly request that the Legislature determine that a statute or executive order imposes a state-mandated program, establish a reimbursement methodology, and appropriate funds for reimbursement of costs. This process is intended to bypass the Commission's test claim process, thus providing the Commission with more time to complete the caseload backlog. To date, this process has not been successfully utilized.

¹ Statutes 1984, chapter 1459, Government Code section 17500, et seq.

² Government Code section 17551.

Report to the Legislature

The Commission is required to report to the Legislature at least twice each calendar year on the number of mandates it has found, the estimated statewide costs of each mandate, and the reasons for recommending reimbursement.³ In 2010, SB 894 (Stats. 2010, ch. 699) was enacted to require the Commission to expand its Report to the Legislature to include:

- The status of pending parameters and guidelines that include proposed reimbursement methodologies.
- The status of pending joint proposals between the Department of Finance and local governments to develop reasonable reimbursement methodologies in lieu of parameters and guidelines.
- The status of joint proposals between the Department of Finance and local governments to develop legislatively-determined mandates.
- Any delays in the completion of the above-named caseload.

This report fulfills these requirements.

Legislative Analyst

After the Commission submits its report to the Legislature, the Legislative Analyst is required to submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the Commission's reports. The Legislative Analyst's report shall make recommendations as to whether each mandate should be repealed, funded, suspended, or modified.

The Legislature

Upon receipt of the report submitted by the Commission pursuant to Government Code Section 17600, funding shall be provided in the subsequent Budget Act for costs incurred in prior years. No funding shall be provided for years in which a mandate is suspended.⁴

The Legislature may amend, modify, or supplement the parameters and guidelines, reasonable reimbursement methodologies, and adopted statewide estimates of costs for the initial claiming period and budget year for mandates contained in the annual Budget Act. If the Legislature amends, modifies, or supplements the parameters and guidelines, reasonable reimbursement methodologies, or adopted statewide estimates of costs for the initial claiming period and budget year, it shall make a declaration in separate legislation specifying the basis for the amendment, modification, or supplement.⁵

Mandate Funding Provisions

If the Legislature deletes from the annual Budget Act funding for a mandate, the local agency or school district may file in the Superior Court of the County of Sacramento an action in declaratory relief to declare the mandate unenforceable and enjoin its enforcement for that fiscal year.⁶ Under Proposition 1A, which amended article XIII B, section 6 of the California Constitution, city, county, city and county, or special district mandate claims for costs incurred

³ Government Code section 17600.

⁴ Government Code section 17612(a).

⁵ Government Code section 17612(b).

⁶ Government Code section 17612(c).

prior to the 2004-2005 fiscal year that have not been paid prior to the 2005-2006 fiscal year may be paid over a term of years, as prescribed by law. However, for the 2005-2006 fiscal year and every subsequent fiscal year, the Constitution now requires the Legislature to either appropriate in the annual Budget Act the full payable amount that has not been previously paid or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable.

If payment for an initial reimbursement claim is being made more than 365 days after adoption of the statewide cost estimate, the State Controller’s Office (Controller) shall include accrued interest at the Pooled Money Investment Account rate.⁷

If the Legislature appropriates the amount of the statewide cost estimate and actual claims exceed this amount, the Controller will prorate the claims.⁸ If the funds to cover the remaining deficiency are not appropriated in the Budget Act, the Controller shall report this information to the legislative budget committees and the Commission.

II. NEW MANDATES

The following table shows the statewide cost estimates that were adopted during the period of July 1, 2015 through December 31, 2015.

**Statewide Cost Estimates (SCE) Adopted
During the Period of July 1, 2015 through December 31, 2015**

<i>Adoption Date, Claim Name and Number, and Initial Claiming Period</i>			<i>Estimated Costs for Initial Claiming Period</i>			<i>Estimated Future Annual Costs</i>
Date	Test Claim Name and Number	Initial Claiming Period	Education (K-14)	Local Agency	Totals	Annual
7/24/15	<i>Post Election Manual Tally (PEMT), 10-TC-08</i>	10/20/08-11/28/08	-	\$625,288	\$625,288	Unknown ⁹
TOTAL				\$625,288	\$625,288	

III. PENDING PARAMETERS AND GUIDELINES, AMENDMENTS, AND STATEWIDE COST ESTIMATE CASELOAD

Following are tables showing parameters and guidelines, parameters and guidelines which include proposed reasonable reimbursement RRM, requests to amend parameters and guidelines, requests to amend parameters and guidelines which include proposed RRM, and statewide cost estimates that are pending Commission determination. A request to include an RRM in parameters and guidelines or amendments thereto is a request made by a local entity claimant, an interested party, Finance, the Controller, or an affected state agency, pursuant to Government Code section 17557 and 17518.5 – which is distinct from the jointly proposed RRM, discussed above under “Alternative Processes”. These requests are often disputed by one or more of the parties and interested parties.

⁷ Government Code section 17561.5(a).

⁸ Government Code section 17567.

⁹ This mandate ended effective November 28, 2008, however, late initial claims may be filed until April 28, 2016 which may result in additional statewide costs.

A. Pending Parameters and Guidelines

	Program	Status
1.	<i>Training for School Employee Mandated Reporters</i> , 14-TC-02†	Set for hearing on January 22, 2016.
2.	<i>Discharge of Stormwater Runoff</i> , 07-TC-09*	Inactive pending court action.

* Local agency programs

† School district or community college district programs

B. Pending Parameters and Guidelines with Proposed RRMs

	Program	Status
1.	None	

* Local agency programs

† School district or community college district programs

C. Pending Requests to Amend Parameters and Guidelines

	Program	Status
1.	<i>Community College Construction (02-TC-47)</i> , 14-MR-03†	Set for hearing on January 22, 2016.
2.	<i>Behavioral Intervention Plans (CSM-4464)</i> , 14-MR-05*	Set for hearing on January 22, 2016.
3.	<i>Graduation Requirements</i> , 11-PGA-03 (CSM-4435)†	Inactive pending court action.

* Local agency programs

† School district or community college district programs

D. Pending Requests to Amend Parameters and Guidelines with Proposed RRMs

	Program	Status
1.	None	

* Local agency programs

† School district or community college district programs

E. Pending Statewide Cost Estimates

	Program	Status
1.	<i>Sheriff Court-Security Services</i> , 09-TC-02*	Set for hearing on January 22, 2016.
2.	<i>Immunization Records – Pertussis</i> , 11-TC-02, (14-PGA-01)†	Tentatively set for hearing on July 22, 2016.
3.	<i>Municipal Storm Water and Urban Runoff Discharges</i> , 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21*	Inactive pending court action.

* Local agency programs

† School district or community college district programs

**IV. PENDING JOINT REASONABLE REIMBURSEMENT
METHODOLOGIES AND LEGISLATIVELY-
DETERMINED MANDATES**

A. Pending Joint Reasonable Reimbursement Methodologies

Following is a table showing programs where Department of Finance and test claimants are negotiating RRM's.

	Program	Date of Notice by Local Agencies or Department of Finance	Status
	None		

B. Pending Joint Legislatively-Determined Mandates

Following is a table showing programs for which Department of Finance and local agencies are negotiating legislatively-determined mandates (LDM's) they may jointly propose to the Legislature for adoption.

	Program	Date of Notice	Status
	None		

C. Delays in the Process

Government Code section 17600 requires the Commission to report any delays in the process for joint RRM's or LDM's being developed by Department of Finance and local entities and for RRM's proposed by any party pursuant to Government Code section 17518.5. There are currently no pending joint RRM's, LDM's or RRM's proposed by any party. Therefore, there are no delays in these processes.

With regard to RRM's included in parameters and guidelines amendments pursuant to Government Code sections 17557 and 17518.5, since the 2011-12 fiscal year, the Commission has adopted a total of six proposed RRM's in parameters and guidelines, or amendments thereto, and has denied five proposals based on a lack of evidence in the record, that the proposed formula or unit cost reasonably represents the costs mandated by the state for all eligible claimants in the state. There are currently no pending parameters and guidelines or amendments thereto containing RRM's.

With the exception of three newly filed test claims, the remaining 13 pending test claims are being stayed pending court action. Two of the newly filed test claims have been consolidated and are set for hearing on January 22, 2016. The third newly filed test claim is also stayed pending court action. Additionally, Commission staff expects to present all currently pending parameters and guidelines and amendments thereto, except for those being stayed pending court action, for hearing by the January 22, 2016 Commission meeting.

Commission staff also expects to complete the incorrect reduction claim backlog by the end of the 2016 calendar year. With regard to the thirteen test claims which are on inactive status pending a determination by the California Supreme Court, Commission staff projects it will take at least one full year, dedicating all Commission resources to present those claims for hearing, if the court either upholds the Commission decision being challenged or directs the Commission to rehear that claim and hear the remaining claims applying the law as specified by the court in its decision. These claims will take substantially longer to prepare for hearing than test claims generally, because of the complex and detailed records and mixed issues of fact and law that must be addressed.

Because test claim decisions, initial parameters and guidelines and statewide cost estimates have a statutory deadline of 12-18 months for completion, they will generally be prepared for hearing prior to other matters, including RRM amendments in parameters and guidelines. Thus, in order to promptly hear and decide parameters and guidelines amendment proposals that contain RRM amendments, it is necessary that the Commission operate without a backlog of test claims, initial parameters and guidelines and statewide cost estimates. At present, there is no backlog of test claims, initial parameters and guidelines or statewide cost estimates.

V. ADOPTED STATEWIDE COST ESTIMATES

Post Election Manual Tally (PEMT), 10-TC-08

Adopted: July 24, 2015

STATEWIDE COST ESTIMATE \$625,288

(This mandate ended effective November 28, 2008, however, late initial claims may be filed until April 28, 2016 which may result in additional statewide costs)

Former California Code of Regulations, Title 2, Division 7, Chapter 3, Sections 20121, 20122, 20123, 20124, 20125, and 20126

Register 2008, No. 43

Post Election Manual Tally (PEMT)

10-TC-08

STAFF ANALYSIS

Background and Summary of the Mandate

The test claim regulations require new standards and procedures to conduct post election manual tallies of votes for those races with very narrow margins of victory during elections conducted in whole or in part on a mechanical, electromechanical, or electronic voting system. The activities include determining the margin of victory and whether a ten percent manual tally is required for each contest. For races with less than a one-half percent margin of victory, counties select and manually tally nine percent of the precincts in the contest, and perform related duties. The test claim regulations were effective only from October 20, 2008 until April 12, 2009, coinciding with the November 2008 Presidential General Election, and the Commission found that the required activities had to be performed between October 28, 2008 and November 28, 2009. Therefore this mandate ended November 28, 2008.

On July 25, 2014, the Commission on State Mandates (Commission) adopted a decision¹⁰ on the *Post Election Manual Tally (PEMT)* test claim, 10-TC-08 finding that the test claim regulations imposed a partially reimbursable state-mandated program on counties within the meaning of article XIII B, section 6 of the California Constitution, and Government Code section 17514. Parameters and guidelines¹¹ were adopted on September 26, 2014, and corrected December 19, 2014 approving the reimbursable activities described below under the *Reimbursable Activities* section.

Eligible claimants were required to file initial reimbursement claims, for costs incurred for the period October 20, 2008 through November 28, 2008 by April 28, 2015 with the State Controller's Office (SCO). Late initial reimbursement claims may be filed until April 28, 2016.

¹⁰ Exhibit A. Test Claim Decision.

¹¹ Exhibit B. Parameters and Guidelines.

Eligible Claimants and Period of Reimbursement

Any county or city and county that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Generally, Government Code section 17557(e) provides that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. However, Under Government Code section 17573(b), the statute of limitations in section 17551 for filing a test claim is tolled during negotiations to establish a legislatively determined mandate (LDM), from the date a local agency contacts of Finance or responds to a Finance request to initiate a joint request for an LDM - to the date that the Budget Act for the subsequent fiscal year is adopted if a joint request is submitted to the Legislature, or to the date on which one of the parties notifies the other of its decision to not submit a joint request to the Legislature for an LDM. In this case the County of Santa Barbara and Finance attempted to establish an LDM, but did not succeed in doing so. However, on November 12, 2009, the California State Associations of Counties (CSAC) notified the Commission of its intent to pursue an LDM, thus tolling the statute of limitations.

After the negotiations failed, the County filed its test claim on March 28, 2011 establishing eligibility for reimbursement for the 2008-2009 fiscal year. However, the effective date of the test claim statute was October 20, 2008 and the reimbursable activities were required to be performed from October 20, 2008 through November 28, 2008. As a result, any costs incurred for the activities in these parameters and guidelines, from October 20, 2008 through November 28, 2008, are reimbursable.

Reimbursable Activities

The parameters and guidelines authorize reimbursement for the following 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 to 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, the following activities are reimbursable from October 20, 2008, through November 28, 2008:

1. After each election, determine the margin of victory as defined for single winner elections, multi-winner elections, and ballot measure contests in each contest based upon the semifinal official canvass results.¹²
2. For contests voted upon in more than one jurisdiction:
 - a) In any contest voted upon in more than one jurisdiction, the elections official in each jurisdiction in which votes were cast in the contest shall determine whether a 10 percent manual tally is required by former California Code of Regulations, title 2, section 20121(b), by calculating the overall margin of victory in all jurisdictions in which votes were cast in the contest.¹³
 - b) For a legislative or statewide contest, the elections official shall determine whether a ten percent manual tally is required by former California Code of Regulations, title 2, section 20121(b), based upon the semifinal official canvass results and margin of victory for the entire district for a legislative contest or the entire state for a state contest posted on the canvass website of the Secretary of State.¹⁴
3. For any contest in which the margin of victory is *less than* one-half of one percent,
 - a) Randomly select precincts, using a random number generator, until *nine percent* of the precincts in the contest have been selected.
 - b) Manually tally the results for that contest from the precincts selected for the *nine percent* sample. The manual tally shall begin as soon as practicable after the random selection of precincts for the manual tally. The manual tally shall be conducted in public view by hand without the use of electronic scanning equipment.¹⁵
 - c) When manually tallying the results, take appropriate measures to ensure that direct recording electronic ballots that were cancelled before being cast and ballots that are damaged or defective are not inadvertently tallied as valid ballots in the manual tally process.¹⁶
4. Document and disclose to the public any variances between the semifinal official canvass results and the manual tally results for *nine percent* of the precincts.¹⁷
5. For any contest with one or more variances, calculate the variance percentage by dividing the total number of variances found in the manual tally sample for the contest by the total number of votes cast for that contest in the manual tally sample. For single winner contests, only variances that narrow the margin between the winner and any of the losers shall be included in the total number of variances. For multi-winner contests, only variances that narrow the margin of victory between any of the winners and any of the losers shall be included in the total number of variances.¹⁸

¹² Former California Code of Regulations, title 2, section 20121(a).

¹³ Former California Code of Regulations, title 2, section 20122(a).

¹⁴ Former California Code of Regulations, title 2, section 20122(b).

¹⁵ Former California Code of Regulations, title 2, section 20121(b)(e)(f).

¹⁶ Former California Code of Regulations, title 2, section 20121(i)(j).

¹⁷ Former California Code of Regulations, title 2, section 20123(b).

¹⁸ Former California Code of Regulations, title 2, section 20124(a).

6. If the variance percentage represents at least one-tenth of the margin of victory for that contest based on the semifinal official canvass results, then additional precincts must be manually tallied for that contest.¹⁹ Additional precincts shall be tallied in randomly selected blocks of five percent until the total number of variances presumed to exist – re-calculated pursuant to California Code of Regulations, title 2, section 20124(a) – is smaller than 10 percent of the overall margin of victory in that contest, based on the semifinal official canvass results, or until all ballots have been manually tallied, whichever occurs first.²⁰
7. Preserve the voter verifiable paper audit trail (VVPAT) records, memory cards and devices, and direct recording electronic voting machines and notify the Secretary of State if any variance is found between the manually tallied VVPAT and corresponding electronic vote results that cannot be accounted for by some obvious mechanical problem.²¹
8. Keep and make available to the public a log to record the manual tally process for all precincts selected, including the results of each round of manual tallying for each precinct included in the sample, how variances were resolved, and details of any actions taken that are contrary to California Code of Regulations, title 2, sections 20120 et seq.²²
9. Track, record in the log, and report to the public by each precinct, the number of undervotes and overvotes discovered in the manual tally of a contest.²³
10. Revise the notice prepared pursuant to Elections Code section 15360(d), to include the time and place of the initial selection of precincts for the additional *nine percent* manual tally and any additional random selection of precincts which may become necessary to comply with escalation requirements.²⁴

The costs to prepare the notice for the one percent manual tally required by Elections Code section 15360(d), and to issue and post the combined notice are not new and are not reimbursable.
11. Permit the public to observe all parts of the manual tally process, including the random selection of precincts, in a manner that allows the public to verify the tally.

Offsetting Revenues and Reimbursements

The parameters and guidelines²⁵ provide:

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

¹⁹ Former California Code of Regulations, title 2, section 20124(a).

²⁰ Former California Code of Regulations, title 2, section 20124(b).

²¹ Former California Code of Regulations, title 2, section 20124(c).

²² Former California Code of Regulations, title 2, section 20125(a).

²³ Former California Code of Regulations, title 2, section 20125(b).

²⁴ Former California Code of Regulations, title 2, section 20126(b).

²⁵ Exhibit B. Parameters and Guidelines.

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.

To the extent that the claimant has used fees or any funds provided by the state or federal government, as opposed to proceeds of local taxes, to pay for the cost of the program, those costs are not reimbursable.

Statewide Cost Estimate

Assumptions

Staff reviewed the reimbursement claims data submitted by the 14 counties that submitted initial claims, which was compiled by the SCO.²⁶ Based on this data, staff made the following assumptions and used the following methodology to develop a statewide cost estimate for this program:

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

a. Additional counties are likely to file late initial reimbursement claims.

There are currently 58 counties in California. Of those combined, only 14 counties filed initial reimbursement claims totaling \$625,288. The reimbursable activities of this program are based on the number of counties who incurred costs during the 2008 November General Election for those races with very narrow margins of victory and conducted in whole or in part on a mechanical, electromechanical, or electronic voting system. If eligible claimants file late initial claims, the cost of reimbursing those claims may exceed the statewide cost estimate. Late initial reimbursement claims for this program for the period October 20, 2008 through November 28, 2008 may be filed until April 28, 2016.

o There are reasons why a county that has incurred costs might not file a claim.

There also may be several reasons that non-claiming counties did not file reimbursement claims, including but not limited to, (1) they did not incur more than \$1,000 in increased costs for this program and (2) they did not have supporting documentation to file a reimbursement claim.

- *The total amount of reimbursement for this program may be lower than the statewide cost estimate because the SCO may reduce any reimbursement claim for this program.*

The SCO may conduct audits and reduce any claims it deems to be excessive or unreasonable.

Methodology

October 20, 2008 through November 28, 2008

The statewide cost estimate for the period October 20, 2008 through November 28, 2008 was developed by totaling the 14 initial reimbursement claims filed with the SCO for this period. All activities cease to be reimbursable after November 28, 2008.

²⁶ Claims data reported as of May 5, 2015.

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

Fiscal Year	Number of Initial Claims Filed with SCO	Estimated Cost
2008-2009	14	\$625,288
TOTAL	14	\$625,288

Draft Proposed Statewide Cost Estimate

On June 15, 2015, Commission staff issued the draft proposed statewide cost estimate.²⁷ No comments were filed on the draft proposed statewide cost estimate.

Staff Recommendation

Staff recommends the Commission adopt the proposed statewide cost estimate of **\$625,288** for costs incurred in complying with the *Post Election Manual Tally* program.

²⁷ Exhibit C. Draft Proposed Statewide Cost Estimate.