

STATE MANDATES

The High Level of Questionable Costs Claimed Highlights the Need for Structural Reforms of the Process

Audit Highlights . . .

Our review of the Peace Officers Procedural Bill of Rights (peace officer rights) and the animal adoption mandates found that:

- The costs for both mandates are significantly higher than what the Legislature expected.*
- The local entities we reviewed claimed costs under the peace officer rights mandate for activities that far exceed the Commission on State Mandates' (Commission) intent.*
- The local entities we reviewed lacked adequate supporting documentation for most of the costs claimed under the peace officer rights mandate and some of the costs claimed under the animal adoption mandate.*
- Structural reforms are needed to afford the State Controller's Office an opportunity to perform a field review of initial claims for new mandates early enough to identify potential problems.*
- Commission staff have indicated that the Commission will not be able to meet the statutory deadlines related to the mandate process for the foreseeable future due to an increase in caseload and a decrease in staffing.*

REPORT NUMBER 2003-106, OCTOBER 2003

Commission on State Mandates' and State Controller's Office's responses as of October 2004¹

The Joint Legislative Audit Committee asked the Bureau of State Audits to review California's state mandate process and local entity claims submitted under the Peace Officers Procedural Bill of Rights (peace officer rights) and animal adoption mandates. Our review found that the costs for both mandates are significantly higher than what the Legislature initially expected. In addition, we found that the local entities we reviewed claimed costs under the peace officer rights mandate for activities that far exceeded the Commission on State Mandates' (Commission) intent. Further, claimants under both mandates lacked adequate supporting documentation and made errors in calculating costs claimed.

The problems we identified highlight the need for some structural reforms of the mandate process. Specifically, the mandate process does not afford the State Controller's Office (Controller) the opportunity to perform a field review of the first set of claims for new mandates early enough to identify potential claiming problems. In addition, the Commission could improve its reporting of statewide cost estimates to the Legislature by disclosing limitations and assumptions related to the claims data it uses to develop the estimates. Finally, Commission staff have indicated that the Commission will not be able to meet the statutory deadlines related to the mandate process for the foreseeable future due to an increase in caseload and cutbacks in staffing. Specifically, we found:

Finding #1: Local entities claimed reimbursement for questionable activities under the peace officer rights mandate.

We question a large portion of the costs claimed by four local entities that received \$31 million of the \$50 million paid under the peace officer rights mandate, and we are concerned that

¹ San Jose and San Diego County responses as of January 2004; city of Los Angeles, San Francisco, Stockton, and Los Angeles County responses as of October 2004.

the State already may have paid more than some local entities are entitled to receive. 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. We also noted that the local entities we reviewed did not appear to look at the statement of decision or the formal administrative record surrounding the adoption of the statement of decision for guidance when they developed their claims.

We recommended that, to ensure local entities have prepared reimbursement claims for the peace officer rights mandate that are consistent with the Commission’s intent, the Controller audit the claims already paid, paying particular attention to the types of problems described in our report. If deemed appropriate based on the results of its audit, the Controller should request that the Commission amend the parameters and guidelines to address any concerns identified, amend its claiming instructions, and require local entities to adjust claims already filed. The Controller should seek any statutory changes needed to accomplish the identified amendments and to ensure that such amendments can be applied retroactively.

We also recommended that, to assist local entities in preparing mandate reimbursement claims, the Commission include language in its parameters and guidelines to notify claimants and the relevant state entities that the statement of decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines; it also should point out that the support for such legal and factual findings is found in the administrative record of the test claim.

Further, we recommended that all local entities that have filed, or plan to file, claims for reimbursement under the peace officer rights mandate consider carefully the issues raised in our report to ensure that they submit claims that are for reimbursable activities. Additionally, they should refile claims when appropriate. Finally, if local entities identify activities

they believe are reimbursable but are not in the parameters and guidelines, they should request that the Commission consider amending the parameters and guidelines to include them.

Controller Action: Partial corrective action taken.

The Controller reports that it has developed an audit program and initiated audits of the peace officer rights claims. As of its October 2004 response, the Controller planned to complete the audits by December 2004. In addition, it expected to submit to the Commission suggested amendments to the parameters and guidelines by November 2004 to clarify that costs for activities guaranteed by the due process clauses of the U.S. and California Constitutions are not reimbursable.

Commission Action: Corrective action taken.

Commission staff report that they have developed language to implement our recommendation for inclusion in all new parameters and guidelines adopted after early December 2003.

Local Entities Action: Partial corrective action taken.

The city of Los Angeles reports that, subsequent to our audit, the Controller audited its fiscal year 2001–02 peace officer rights claim and disallowed the entire claim because the city did not substantiate the time study data that was the basis for the claim. To address the Controller’s concern, the city of Los Angeles reports that it performed a comprehensive time study and provided all of the data to the Controller in September 2004. However, as of October 2004, it had not submitted any revised peace officer rights claims. Los Angeles County reports that it conducted a time study of its peace officer rights activities from May to October 2004 and asserts that the Controller indicated this data can be used to support its claims related to fiscal years 2001–02 through 2004–05. However, its one-year response did not indicate whether the county had submitted any revised claims and suggested that more clarification regarding the scope of reimbursable services is needed. In addition, Los Angeles County continues to believe that a broad scope of its investigation activities are reimbursable and asserts that the parameters and guidelines provide no limitation on claimants’ costs in conducting prompt, thorough, and fair investigations. The city and County of San Francisco (San Francisco) reports that it has examined its peace officer rights process carefully as a result of our audit and a subsequent Controller field audit. As part of this process, San Francisco indicated that it conducted a time study in May 2004 and submitted the results to the

Controller in June 2004. Further, San Francisco believes that its time study substantially supports the costs it initially claimed and, as of October 2004, gave no indication that it intended to revise its previously submitted claims. The city of Stockton (Stockton) indicated that, in January 2004, it filed an amended peace officer rights claim for fiscal year 2001–02 that was approximately \$522,000 less than its original claim. In addition, Stockton reported that the Controller was in the process of auditing all of its claims back to fiscal year 1994–95, but had not issued a report as of Stockton’s October 2004 response.

Finding #2: In varying degrees, claimants under the peace officer rights and animal adoption mandates lacked adequate support for their costs and inaccurately calculated claimed costs.

We questioned \$18.5 million of the \$19.1 million in direct costs that four local entities claimed under the peace officer rights mandate because of inadequate supporting documentation. The local entities based the amount of time they claimed on interviews and informal estimates developed after the related activities were performed instead of recording the actual staff time spent on reimbursable activities or developing an estimate based on an acceptable time study.

Additionally, we noted several errors in calculations of costs claimed under the peace officer rights mandate. Although we generally focused on fiscal year 2001–02 claims, the largest error we noted was in the fiscal year 2000–01 claim of one local entity. It overstated indirect costs by about \$3.7 million because it used an inflated rate and applied the rate to the wrong set of costs in determining the amount it claimed. We noted two other errors related to fiscal year 2001–02 claims involving employee salary calculations and claiming costs for processing cases that included those of civilian employees, resulting in a total overstatement of \$377,000.

We also found problems with the animal adoption claims. The four local entities we reviewed could not adequately support \$979,000 of the \$5.4 million they claimed for fiscal year 2001–02. In some instances, this lack of support related to the amount of staff time spent on activities. In another instance, a local entity could not adequately separate the reimbursable and nonreimbursable costs it incurred under a contract with a nonprofit organization that provided shelter and medical services for the city’s animals.

In addition, we noted numerous errors in calculations the four local entities performed to determine the costs they claimed under the animal adoption mandate for fiscal year 2001–02. Although these errors caused both understatements and overstatements, the four claims were overstated by a net total of about \$675,000. Several errors resulted from using the wrong numbers in various calculations involving animal census data.

We recommended that the Controller issue guidance on what constitutes an acceptable time study for estimating the amount of time employees spend on reimbursable activities and under what circumstances local entities can use time studies.

We also recommended that all local entities that have filed, or plan to file, claims for reimbursement under the peace officer rights or animal adoption mandate consider carefully the issues raised in our report to ensure that they submit claims that are supported properly. Additionally, they should refile claims when appropriate.

Controller Action: Partial corrective action taken.

The Controller indicates that it developed draft time study guidelines in consultation with representatives of local governments and their consultants and provided them to interested state agencies for comment in March 2004. As of October 2004, the Controller expected to make final guidelines available to claimants in January 2005.

Local Entities Action: Partial corrective action taken.

All six local entities we reviewed provided us responses generally indicating that they had taken some action to correct errors and develop better documentation to support their claims. In particular, the cities of Los Angeles, San Jose, and Stockton and San Diego County indicated that they have submitted revised animal adoption claims for fiscal year 2001–02. In addition, Stockton reports that it filed an amended peace officer rights claim for fiscal year 2001–02 that was approximately \$522,000 less than its original claim. Finally, although the city of Los Angeles, Los Angeles County, and San Francisco report that they have conducted time studies and have been working with the Controller to resolve issues related to their peace officer rights claims, their one-year responses to our audit did not indicate that any of them have submitted revised claims.

Finding #3: The Commission’s animal adoption guidance does not adequately require claimants to isolate reimbursable costs for acquiring space and its definition of average daily census could be clearer.

Although the guidance related to the animal adoption mandate generally is adequate, the Commission’s formula for determining the reimbursable amount of the costs of new facilities does not isolate how much of a claimant’s construction costs relate to holding animals for a longer period of time. The two local entities we audited that claimed costs for acquiring space in fiscal year 2001–02 used the current formula appropriately to prorate their construction costs. However, one of them needed space beyond that created by the mandate; as a result, the costs it claimed probably are higher than needed to comply with the mandate.

In addition, we found that one local entity understated its annual census of dogs and cats by including only strays in the figure, instead of including *all* dogs and cats. The entity made this mistake because it used a definition from an earlier section of the parameters and guidelines that limited the census number to strays. Although the parameters and guidelines could have been clearer by including a separate definition in the care of dogs and cats section of the guidance, we believe the context makes it clear that the total costs for *all* dogs and cats must be divided by a census figure including *all* dogs and cats to compute an accurate daily cost per dog or cat.

We recommended that the Legislature direct the Commission to amend the parameters and guidelines of the animal adoption mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space. If the Commission amends these parameters and guidelines, the Controller should amend its claiming instructions accordingly and require local entities to amend claims already filed.

In addition, we recommended that the Controller amend the claiming instructions or seek an amendment to the parameters and guidelines to emphasize that average daily census must be based on all animals housed to calculate reimbursable costs properly under the care and maintenance section of the parameters and guidelines.

Legislative Action: Legislation passed.

Chapter 313, Statutes of 2004, added Section 17572 to the Government Code to require the Commission to amend the parameters and guidelines for the animal adoption mandate. In particular, the legislation requires the Commission to amend the formula for determining the reimbursable portion of acquiring or building additional shelter space that is larger than needed to comply with the increased holding period to specify that costs incurred to address preexisting shelter overcrowding or animal population growth are not reimbursable. In addition, the legislation requires the Commission to clarify how the costs for care and maintenance shall be calculated. As of October 2004, Commission staff indicated that this matter is tentatively set for a March 2005 hearing.

Controller Action: Corrective action taken.

The Controller reports that it submitted to the Commission suggested parameters and guidelines amendments to clarify calculation of the average daily census and the documentation requirements for new animal shelters.

Finding #4: Structural reforms are needed to identify mandate costs more accurately and to ensure that claims reimbursement guidance is consistent with legislative and commission intent.

The problems we identified related to claims filed under the peace officer rights and animal adoption mandates highlight the need for some structural reforms of the mandate process. For example, it is difficult to gauge the clarity of the Commission's guidance and the accuracy of costs claimed for new mandates until claims are subjected to some level of field review. However, the mandate process does not afford the Controller an opportunity to perform a field review of the claims for new mandates early enough to identify potential claiming problems.

Also, inherent limitations in the process the Commission uses to develop statewide cost estimates for new mandates result in underestimates of mandate costs. Even though Commission staff base statewide cost estimates for mandates on the initial claims local entities submit to the Controller, these entities are allowed to submit late or amended claims long after the Commission adopts its estimate. The Commission could disclose this limitation in the statewide cost estimates it reports to the Legislature by stating what assumptions were made regarding

the claims data. In addition, Commission staff did not adjust for some anomalies in the claims data they used to develop the cost estimate for the animal adoption mandate that resulted in an even lower estimate.

We recommended that the Controller perform a field review of initial reimbursement claims for selected new mandates to identify potential claiming errors and to ensure that costs claimed are consistent with legislative and Commission intent. In addition, the Commission should work with the Controller, other affected state agencies, and interested parties to implement appropriate changes to the regulations governing the mandate process, allowing the Controller sufficient time to perform these field reviews and identify any inappropriate claiming as well as to suggest any needed changes to the parameters and guidelines before the development of the statewide cost estimate and the payment of claims. If the Commission and the Controller find they cannot accomplish these changes through the regulatory process, they should seek appropriate statutory changes.

We also recommended that Commission staff analyze more carefully the completeness of the initial claims data used to develop statewide cost estimates and adjust the estimates accordingly. Additionally, the Commission should disclose the incomplete nature of the initial claims data when reporting to the Legislature.

Controller Action: Corrective action taken.

The Controller reports that it, along with representatives from the Department of Finance, the Legislative Analyst's Office, the Commission, and local governments testified on mandate reform issues before the Assembly Special Committee on State Mandates. This committee subsequently authored Chapter 890, Statutes of 2004, that implemented certain reforms to the mandate process. In particular, the Controller indicates that the legislation requires the Commission, when adopting parameters and guidelines, to adopt a reasonable reimbursement methodology that balances accuracy and simplicity; specifies the content of a test claim filing with the Commission to include a statewide cost estimate; and codifies the period of reimbursement and procedures for amendment. As indicated in the following paragraph regarding Commission action, we note that the legislation also provides the Controller with an opportunity to review mandate claims and suggest any needed changes to the related parameters and guidelines before claims are paid.

Commission Action: Corrective action taken.

Commission staff indicate that the Commission and the Controller sponsored legislation clarifying that, after an audit is conducted, the parameters and guidelines for a mandated program could be amended so that claiming errors can be corrected prior to adoption of the statewide cost estimate and payment of claims. Further, Commission staff indicate that they have developed additional assumptions and revised the method for projecting future-year costs and for reporting statewide cost estimates to the Legislature.

Finding #5: Commission staff assert that lack of staffing will continue to affect the Commission's ability to meet statutory deadlines related to the mandate process.

Commission staff indicated that the Commission has developed a significant caseload and has experienced cutbacks in staffing because of the State's fiscal problems. As a result, staff state that the Commission will not be able to meet the statutory deadlines related to the mandate process for the foreseeable future. This will cause further delays in the mandate process in general, including determination of the potential cost of new mandates.

We recommended that the Commission continue to assess its caseload and work with the Department of Finance and the Legislature to obtain sufficient staffing to ensure that it is able to meet its statutory deadlines in the future.

Commission Action: Corrective action taken.

Commission staff report that, on an ongoing basis, they will submit budget change proposals to the Department of Finance for additional resources that support the Commission's caseload. In addition, staff will report caseload status to the Commission at each hearing and will continue to update relevant legislative committees on caseload issues. Finally, staff will continue to report pending statewide cost estimates to the Legislature to notify it of potential future costs to the state budget.

