

California State Auditor

B U R E A U O F S T A T E A U D I T S

State Mandates:

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



October 2003
2003-106

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October 15, 2003

2003-106

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning 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. This report concludes 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 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.

Respectfully submitted,

ELAINE M. HOWLE
State Auditor

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SUMMARY

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.*

RESULTS IN BRIEF

Although the Legislature did not anticipate high costs, local entities have filed significant claims with the State for the Peace Officers Procedural Bill of Rights (peace officer rights) and animal adoption mandates. Through fiscal year 2001–02, local entities submitted claims to the State Controller's Office (Controller) totaling about \$223.5 million for the peace officer rights mandate and \$60.8 million for the animal adoption mandate. The State actually paid \$50 million of the peace officer rights mandate claims but has not paid any of the animal adoption mandate claims. We question a large portion of the costs claimed by four local entities that received \$31 million of the \$50 million paid, and we are concerned that the State already may have paid more than some local entities are entitled to receive under the peace officer rights mandate.

The Commission on State Mandates (Commission) issued guidance specifying the particular activities for which local entities could claim reimbursement. Along with claiming instructions the Controller issued, local entities are required to follow the Commission's guidance when completing and filing their claims. However, based on our review of selected claims under each mandate, we question a high proportion of the costs claimed under the peace officer rights mandate and note lesser problems with the animal adoption claims. 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.

In addition, we question \$18.5 million of the \$19.1 million in direct costs they 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.

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.

The problems we identified 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.

Finally, 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.

RECOMMENDATIONS

To ensure that local entities receive reimbursement only for costs associated with the increased holding period for eligible animals, the Legislature should 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.

To identify potential claiming errors and to ensure that costs claimed are consistent with legislative and Commission intent, the Controller should perform a field review of initial reimbursement claims for selected new mandates. 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.

To ensure that local entities have prepared reimbursement claims for the peace officer rights mandate that are consistent with the Commission's intent, the Controller should audit the claims already paid, paying particular attention to the types of problems described in this 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.

To ensure that local entities develop and maintain adequate support for costs claimed under all state mandates, the Controller should 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.

All local entities that have filed, or plan to file, claims for reimbursement under the peace officer rights or animal adoption mandate should consider carefully the issues raised in this report to ensure that they submit claims that are for reimbursable activities and that are supported properly. Additionally, they should refile claims when appropriate. Further, 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.

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

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

AGENCY COMMENTS

The Commission and Controller indicate they agree with our findings and recommendations. The local entities whose animal adoption claims we reviewed generally agree with our findings and recommendations. However, three of the four local entities whose peace officer rights claims we reviewed continue to disagree with our findings. Our comments on the concerns they raise follow their responses. ■

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INTRODUCTION

BACKGROUND

The Commission on State Mandates (Commission) is a seven-member group consisting of the state controller, the state treasurer, the director of finance, the director of the Office of Planning and Research, as well as one public member and two local government or school district members appointed by the governor. It is a quasi-judicial body whose primary responsibility is to hear and decide if test claims filed by local entities identify mandates for which the State is required to reimburse implementation costs. A test claim is the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the State.

Section 6 of Article XIII B of the California Constitution requires that whenever the Legislature or any state agency mandates a new program or higher level of service for a local entity, the State must provide funding to reimburse the associated costs, with certain exceptions. The California Supreme Court defined a new program or higher level of service as a program that carries out the governmental function of providing a service to the public, or laws that, to implement a state policy, impose unique requirements on local agencies and do not apply generally to all residents and entities in the State.

As a quasi-judicial body, the Commission's role is similar to a court's in that it deliberates in a formal manner by considering evidence and hearing testimony from state agencies and interested parties. The courts have found that, in establishing the Commission, the Legislature intended to create an administrative forum for resolution of assertions of state mandates with procedures designed to avoid multiple proceedings, whether judicial or administrative, addressing the same alleged mandate. Like a court, the Commission does not initiate claims or actions but rules only on issues brought before it. For example, when the State enacts laws, the Commission does not evaluate the law to determine if a state-mandated local program exists until a local entity files a test claim asserting that a certain statute, executive order, or agency directive imposes a mandate. Outside of actual deliberations on the specific claim or

claims before it, the Commission, like a court, will not comment on the merits of a case that is pending or likely to come before it. It also will not give advisory opinions about potential issues.

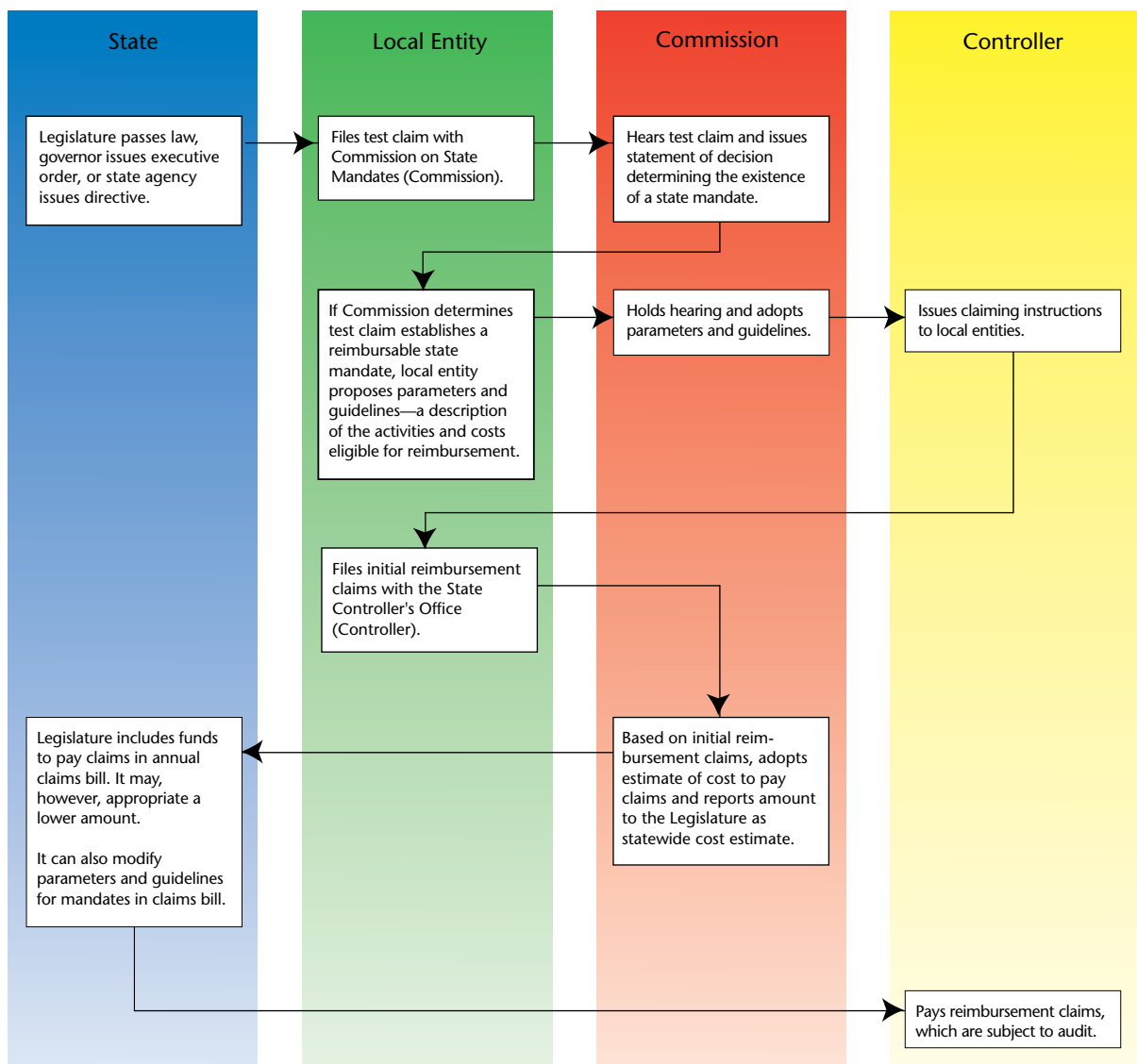
Before 1999, regulations established two test claim approval processes. The process for undisputed claims was 180 days, or six months, from the day the claim was submitted to the day the Commission adopted a statewide cost estimate. The process for claims that were disputed by affected state agencies was 540 days, or 18 months. However, the law was amended in September 1998 to establish a 365-day, or 12-month, process for all claims regardless of whether they were disputed. In September 1999, the Commission adopted regulations to comply with the law for a 365-day process. The law, both before and after it was amended, allows the Commission to grant extensions for comments and hearing postponements. The test claims for both mandates discussed in this report were disputed by the Department of Finance (Finance). The Peace Officers Procedural Bill of Rights (peace officer rights) mandate test claim was filed in December 1995 and by law had an 18-month approval process. The animal adoption mandate test claim was filed in December 1998 and, because of the change in law, had a 12-month approval process.

As shown in Figure 1, the process for determining whether a state mandate that is subject to reimbursement exists begins after a requirement has been imposed and a claimant submits a test claim alleging that a new program or higher level of service has been mandated and that it has incurred new costs as a result. If the Commission determines the test claim establishes that there are costs mandated by the State, it issues a statement of decision, which is legally binding and formally indicates that a state mandate exists. After it issues its statement of decision, the Commission must adopt parameters and guidelines for claiming reimbursement of such costs. The parameters and guidelines must describe the activities and costs related to a mandate that are eligible for reimbursement and, if necessary, provide directions on how to calculate certain costs.

Although the Commission is required to adopt parameters and guidelines, the test claimant (the local entity filing the test claim) is designated by statute to submit the proposed content of those guidelines. Most important, the parameters and guidelines must comply with the Commission's statement of decision. The Commission's regulations also require that they include a summary of the new program or higher level of service required by the State. The parameters and guidelines are

FIGURE 1

State Mandate Reimbursement Process



also to include a description of the most reasonable methods of complying with the mandate. The administrative records for the animal adoption and peace officer rights mandates show that state and local entity representatives participated extensively in the process. For example, Finance and the State Controller’s Office (Controller) provided comments on the test claims and the parameters and guidelines for both mandates. In addition, representatives of the local entities we reviewed and their consultants were included on mailing lists to receive comments and analyses related to key documents, such as the statement of decision and the parameters and guidelines.

State law requires that, once the Commission adopts parameters and guidelines, it must send them to the Controller. Within 60 days, the Controller must issue claiming instructions to claimants based on the reimbursable activities described within the Commission's guidelines. Local entities have 120 days from the issuance of the claiming instructions to file reimbursement claims with the Controller. They often employ consultants to assist them in preparing their claims. Claims filed before September 30, 2002, are subject to audit by the Controller for up to two years after the end of the calendar year in which they are filed or amended, unless the Legislature makes no appropriation for them. If this occurs, the two-year period starts once an appropriation and initial payment is made.¹ Through fiscal year 2001-02, local entities have submitted \$223.5 million in peace officer rights mandate claims and \$60.8 million in animal adoption mandate claims. The State paid \$50 million of the initial peace officer rights mandate claims in 2001, the year those claims were filed, so the Controller must initiate an audit of the initial claims by December 2003. The Controller is not facing a deadline for auditing the animal adoption mandate because none of those claims has yet been paid. As of September 2003, the Controller had not audited any claims under either mandate.

State law also requires the Commission to adopt a statewide cost estimate and report it to the Legislature. The statewide cost estimate can cover several years and generally encompasses the initial claims submitted to date as well as projected costs based on these claims. The Commission submits the statewide cost estimate to the Legislature as part of its semiannual report. This report also includes data from the Controller regarding the funding status of all mandates for which the Legislature previously has appropriated funds. Upon receipt of the semiannual report, the Legislature is required to introduce a local government claims bill (claims bill). A claims bill, at the time of its introduction, is to provide an appropriation sufficient to pay the estimated costs of the new mandates reported to the Legislature in the Commission's semiannual report. The Legislature has the authority to amend, modify, or supplement the Commission's parameters and guidelines for mandates contained in the claims bill. Although the statutory scheme

¹ Effective September 30, 2002, claims filed for reimbursement are subject to the initiation of an audit by the Controller no later than three years after the date the actual claim is filed or last amended, whichever is later, unless no funds are appropriated or no payment is made to a claimant. If this occurs, the three-year period begins on the day the initial payment is made.

contemplates that the Legislature will appropriate funds to reimburse the cost of a state-mandated local program, it can delete funding from the claims bill that funds the mandate. If the Legislature does so, claimants may seek relief in court to declare the mandate unenforceable.

BACKLOG OF UNFUNDED MANDATES

Traditionally, the Legislature has funded ongoing mandates in the annual Budget Act and has funded new mandates, or those recently identified by the Commission, in the claims bill. Funding in the Budget Act seldom has been sufficient to pay all ongoing local mandate claims, so the Legislature usually appropriates funding for this deficiency in the annual claims bill. However, according to the Controller, as of November 2002, the State had not paid more than \$1.2 billion of the nearly \$2.7 billion of costs claimed between fiscal years 1993–94 and 2001–02.

According to the Legislative Analyst's Office, in fiscal year 2002–03, due to its fiscal difficulties, the State did not fund noneducation mandates in the budget or claims bill but deferred mandate reimbursements to an unspecified date. The State did not repeal or suspend their legal obligations, however, so local entities must carry out these mandated tasks despite the delay in reimbursement. Nevertheless, the State ultimately will have to pay for these costs if the implementation of the mandate has not been suspended, including interest that amounted to \$56 million as of May 2002. As part of the State's 2003–04 Budget Act, the Legislature in many instances deferred state funding to reimburse local entities or suspended local entities' requirement to implement the mandates, including the animal adoption mandate.

PEACE OFFICER RIGHTS MANDATE

In 1976, seeking to ensure stable employer-employee relations and effective law enforcement services, the Legislature established California Government Code, sections 3300 through 3310. Subsequently, the Legislature amended the code sections through various statutes. We refer to these code sections, as amended, as the peace officer rights law. This law provides a series of rights and procedural safeguards to all peace officers that are subject to investigation or discipline, including those employed by local entities.

On December 21, 1995, the city of Sacramento filed a test claim with the Commission asserting that the peace officer rights law imposed a state-mandated local program that was subject to reimbursement by mandating uniform statewide procedures governing disciplinary procedures for local peace officers. The test claim also asserted that the requirements imposed by the peace officer rights law were broader than those imposed by the constitutional due-process clauses.

On November 30, 1999, the Commission adopted its statement of decision that the peace officer rights law constitutes a *partially* reimbursable state-mandated program—meaning only certain aspects of the new law imposed a state-mandated local program that is subject to reimbursement. By statute, the Commission is prohibited from finding that costs are mandated by the State if it finds that the statute is declaratory of existing law, based on judicial action. In the case of the peace officer rights mandate, the courts already had interpreted the requirements imposed on local entities by the constitutional due-process clauses as imposing some of the same obligations contained in the peace officer rights law, so the Commission was prohibited from finding that those activities were a reimbursable state mandate. Accordingly, the Commission’s statement of decision analyzed the peace officer rights law to determine which aspects of that law already were required under constitutional provisions and, therefore, not reimbursable, and which requirements imposed a higher level of service than required by constitutional provisions and are reimbursable.

The Commission made several substantive and technical modifications to the peace officer rights test claimant’s proposed parameters and guidelines to conform to its statement of decision before adopting them on July 27, 2000. On March 29, 2001, based on initial claims filed with the Controller at that time, the Commission adopted a statewide cost estimate of \$152.5 million for the peace officer rights mandate for fiscal years 1994–95 through 2001–02.

ANIMAL ADOPTION MANDATE

Animal control agencies within local governments care for stray and surrendered animals in California communities. This includes housing, veterinary care, and vaccinations. These agencies also pursue adoption or owner redemptions of those animals. Animals not successfully redeemed or adopted

usually are euthanized. Seeking to prevent the euthanization of adoptable or redeemable animals, the Legislature enacted Chapter 752, Statutes of 1998, which we refer to as the animal adoption law. This law requires an increase in the holding period from three days to four to six business days, as specified, for stray dogs and cats. It also requires a holding period of four to six business days for other specified animals, the verification of the temperament of feral (wild) cats, the posting of lost and found lists, the maintenance of impound records, and “necessary and prompt veterinary care” for impounded animals.

On December 22, 1998, Los Angeles County filed a test claim with the Commission to establish an animal adoption mandate so it could receive reimbursement from the State for the costs to implement the animal adoption law. According to the test claim, prior law provided that no dog or cat impounded by a public pound or specified shelter could be euthanized before three days after the time of impounding.

In 2001, responding to the test claim, the Commission issued a statement of decision that the animal adoption law imposed a partially reimbursable state-mandated program. In part, the Commission found that this law increased costs by requiring shelters to hold dogs and cats for longer than the three days previously required by law and by requiring shelters to perform the other specified activities listed earlier. On February 28, 2002, the Commission adopted parameters and guidelines that allow reimbursement for the care of only those animals eventually euthanized or that die during the increased holding period. Some costs related to animals adopted or redeemed, such as care, maintenance, and treatment, are excluded from reimbursement because the Commission ruled that shelters have sufficient fee authority to recover these costs. Finally, based on initial claims filed at the time, the Commission adopted a statewide cost estimate of \$79.2 million for the animal adoption mandate for fiscal years 1998–99 through 2003–04. In July 2003, Finance petitioned the Superior Court of California in Sacramento County asking it to direct the Commission to set aside its original decision. The petition is pending. However, as mentioned earlier, the animal adoption mandate has been suspended for fiscal year 2003–04.

PREVIOUS AUDIT OF ANOTHER STATE MANDATE

During a prior audit on a state mandate, *School Bus Safety II: State Law Intended to Make School Bus Transportation Safer Is Costing More Than Expected*, issued March 2002, we found that the School Bus Safety II mandate cost substantially more than the \$1 million annual cost anticipated when the Legislature passed the law that led to the mandate. The Commission reported in January 2001 that the mandate had an estimated annual cost of \$67 million for fiscal year 2001–02. The costs claimed varied significantly depending upon the approach taken by the consultants who assisted school districts in claiming reimbursement. We determined that the different approaches appeared to be the result of a lack of clarity in guidance adopted by the Commission. We also reported that the Commission could have avoided delays totaling more than 14 months in making its determination that a state mandate existed. Of the \$2.3 million in direct costs claimed by the seven school districts for fiscal year 1999–2000, we could trace only about \$606,000 to documents that sufficiently quantified the costs.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee asked the Bureau of State Audits to examine the Commission’s process for developing statewide cost estimates and establishing parameters and guidelines for claims reimbursement related to selected state mandates, including the peace officer rights mandate. We also were asked to review the Controller’s process for providing claiming instructions and for processing and monitoring claims. Finally, we were asked to determine whether a sample of submitted mandate claims, including those for the peace officer rights mandate, was consistent with the Commission’s parameters and guidelines.

We selected another mandate to examine as well—the animal adoption mandate—because of its possible significant fiscal impact. For fiscal years through 2001–02, local entities claimed reimbursement for more than \$284 million for the peace officer rights and animal adoption mandates combined, with a possible ongoing cost of more than \$57 million per year based on the most recent actual claims.

We interviewed Commission staff and evaluated their methodology in developing the statewide cost estimate for the two mandates. To gain an understanding of the process used

to estimate the costs associated with the laws leading to the mandates, we interviewed Finance staff and reviewed fiscal analyses of each mandate.

To understand the Commission's responsibilities in developing parameters and guidelines, we interviewed Commission staff and reviewed applicable laws, regulations, and procedures. To determine whether the parameters and guidelines provided clear and sufficient guidance for claiming reimbursable costs, we reviewed the language and interviewed Commission staff, local entities, and relevant consultants. We also determined whether the parameters and guidelines reflect each mandate's statement of decision.

Because the Legislative Analyst's Office pointed out specific areas of concern for both mandates in its analyses of the fiscal year 2002–03 and 2003–04 budget bills, we met with staff to understand their observations.

To determine whether expenditures and activities claimed by local entities were consistent with the mandates' parameters and guidelines, we examined a sample of four claims for each mandate for the most recent fiscal year for which claims data was available—fiscal year 2001–02. In assessing what costs we deemed to be reimbursable, we relied primarily on the plain language in the statement of decision and the parameters and guidelines. Overall, we reviewed eight claims from six different local entities. Specifically, we reviewed the fiscal year 2001–02 peace officer rights claims filed by the city of Los Angeles, Stockton, San Francisco, and Los Angeles County. We also reviewed the fiscal year 2001–02 animal adoption claims filed by the cities of Los Angeles and Stockton, as well as San Jose and San Diego County. When selecting the sample of claims for each mandate, we considered the dollar amount, the geographic area (urban, suburban, and rural), and the structure (city or county) of the local entities filing claims. For each mandate, our sample also included the two consultants who helped prepare claims amounting to more than 70 percent of the total dollars claimed and included one claim completed by a local entity not assisted by a consultant. Additionally, based on a summary of all claims submitted for fiscal year 2001–02 for both mandates, we identified the mandate requirements that pose the greatest state-reimbursable costs.

We interviewed the consultants and personnel at the local entities we selected to determine how reimbursable costs were being identified and examined the claims to assess whether the types of activities local entities claimed were allowable. To determine whether sufficient supporting documentation existed for the claims, we examined the Controller's and local entities' claims files.

Finally, to understand the Controller's responsibilities and authority for preparing mandate claiming instructions and for processing and monitoring mandate claims, we reviewed the applicable laws, regulations, and procedures and interviewed Controller staff. ■

CHAPTER 1

Claimed Costs for the Peace Officer Rights and Animal Adoption Mandates Are Higher Than Expected and Frequently Questionable

CHAPTER SUMMARY

The Legislature did not anticipate significant costs associated with the Peace Officers Procedural Bill of Rights (peace officer rights) and animal adoption mandates when enacting the laws leading to these mandates. However, local entities have submitted, for fiscal years through 2001–02, \$223.5 million in peace officer rights claims, of which the State paid \$50 million, and \$60.8 million in animal adoption claims, none of which the State has paid. We question a significant amount of costs the local entities we reviewed claimed for peace officer rights activities because they are not in accordance with the guidance of the Commission on State Mandates (Commission). In addition, they could not support claimed costs adequately and made errors on their claims. To a lesser degree, local entities claiming costs under the animal adoption mandate could not support costs adequately. Additionally, they made calculation errors resulting in a net overstatement of claimed costs.

The high level of questionable costs related to the peace officer rights mandate is due primarily to claimants broadly interpreting the Commission’s guidance, which is incorporated into each mandate’s claiming instructions. Although we noted minor concerns, overall the Commission’s guidance and the claiming instructions issued by the State Controller’s Office (Controller) appear adequate. We question \$16.2 million of the total \$19.1 million of direct costs claimed by the four entities we reviewed because the activities related to these costs do not correspond with the reimbursable activities outlined in the Commission’s statement of decision and its parameters and guidelines.

In varying degrees, claimants under the peace officer rights and animal adoption mandates lacked adequate support for their claimed costs and made errors in their claim calculations. In particular, none of the local entities whose peace officer rights

claims we reviewed had adequate support for the amount of time spent on activities claimed, leading us to question \$18.5 million of the \$19.1 million in direct costs they claimed. Additionally, we noted calculation errors in these claims that resulted in overstatements of \$3.7 million for one fiscal year 2000–01 claim and a total of \$377,000 for fiscal year 2001–02 claims. Because we evaluated entities’ claims against several criteria—nature of activity, sufficiency of support, and accuracy of calculations—the costs we question cannot be combined with each other to determine an overall effect.

To a lesser extent, we also found unsupported costs in animal adoption claims. We question \$979,000 of the \$5.4 million total costs claimed primarily because claimants could not adequately support the amount of time spent on reimbursable activities and a net total of \$675,000 because of claimant errors in calculations. In addition, although the Commission’s animal adoption guidance is generally clear, it could have devised a better formula for determining the reimbursable amount of the costs of new facilities. The current formula lacks a key factor needed to isolate the costs associated with building a facility large enough to address the increased need for space caused by the mandate, as opposed to other factors, such as preexisting shelter overcrowding or predicted animal population growth.

LOCAL ENTITIES FILED HIGHER THAN EXPECTED CLAIMS UNDER BOTH MANDATES

The Legislature did not anticipate significant state-reimbursable costs when it considered the peace officer rights and animal adoption legislation. Even though the original legislation related to the peace officer rights mandate was considered a state-mandated local program when it was enacted in 1976, fiscal analyses at that time and for amendments thereafter anticipated that the State would incur little or no costs for various reasons. The Legislature also believed the animal adoption legislation imposed a state-mandated local program but did not expect significant state-reimbursable costs because it believed local entities would generate sufficient revenue to offset any increased costs caused by the mandate. However, as of April 2003, local entities have submitted claims for the peace officer rights mandate totaling \$223.5 million for fiscal years 1994–95 through 2001–02 and \$60.8 million for the animal adoption mandate for fiscal years 1998–99 through 2001–02. Although

As of April 2003, local entities have submitted claims for activities through fiscal year 2001–02 totaling \$223.5 million and \$60.8 million for the peace officer rights and animal adoption mandates, respectively.

no payments have been made on any of the animal adoption claims, the State has paid \$50 million to local entities for peace officer rights claims.

The Legislature Did Not Anticipate High Costs for Either Mandate

Throughout the legislative history surrounding peace officer rights, the Legislature expected the State to incur no significant costs.

At the time it was considering passage of the laws that the Commission later determined imposed state mandates for the peace officer rights and animal adoption mandates, the Legislature did not expect that passage of the laws would have a significant financial impact on the State. Although the final authority for determining whether a law imposes a mandate rests with the Commission, the legislative counsel is required to inform the Legislature if it believes a proposed law would create a mandate. The legislative counsel found that only four of the 11 bills on which the peace officer rights mandate is based would impose a state-mandated local program. The Assembly Revenue and Taxation Committee analysis for the final version of the original 1976 legislation, the only bill for which state costs were anticipated, indicates that anticipated costs were minor. For the other three bills, the legislative counsel believed the State would not be required to reimburse any resulting mandated costs. For two of the bills, the legislative counsel found that local entities could pursue other ways of obtaining reimbursement, such as levying service charges, fees, or assessments, that would be sufficient to pay for the mandated program or increased level of service. As for the fourth bill, the legislative counsel determined that it changed the definition of what constitutes a crime, which specifically negates any obligation of state reimbursement according to Article XIII B, Section 6, of the California Constitution. In short, throughout the legislative history surrounding peace officer rights, the Legislature expected the State to incur no significant costs.

When the Legislature was considering the animal adoption legislation, subsequently enacted as Chapter 752, Statutes of 1998, legislative committee staff that prepared the fiscal analysis did not predict significant state-reimbursable costs because, at least in the fiscal analysis prepared for the Assembly Committee on Appropriations, they believed that holding animals for longer periods before resorting to euthanization would generate revenue from increased adoption and owner redemption of

animals. The committee believed that the fees associated with these activities could be used to offset any increased costs and could also reduce costs associated with euthanization.

Further, the Department of Finance (Finance) argued that the legislation would not impose a state mandate. Finance cited *County of Los Angeles v. State of California*, in which the California Supreme Court stated that a state-imposed law is reimbursable only if it applies uniquely to local entities and not generally to all residents and entities in the State. Later, when the Commission was considering whether the enacted law constituted a reimbursable mandate, Finance again contended that the costs were not reimbursable because they were not unique to local government and commented that the law imposed animal control activities on both public- and private-sector entities. In addition, Finance argued that local entities had sufficient fee authority to recover the costs associated with all animals held in their shelters, so these costs should not be deemed a state mandate.

The Commission's February 2001 statement of decision differed from Finance's argument. The Commission found that local entities have sufficient fee authority to recover the costs associated only with adopted or redeemed animals. Thus, it determined these costs are not reimbursable. However, it found that local entities do not have sufficient fee authority in certain circumstances. In particular, the Commission's guidance allows reimbursement for cost of care associated only with those animals that die or ultimately are euthanized. It does not direct local entities to reduce their claimed costs by the amount of adoption or redemption revenue they generate or any savings that might result from decreased euthanizations. The Commission's guidance does indicate that dog license fees could offset claimed costs. However, under existing law, claimants can first apply revenues from dog license fees to the costs associated with administering the dog licensing program and then to other costs such as animal control field operations, so it is likely that claimants would apply little, if any, revenue from dog license fees to shelter costs appearing on the animal adoption claims.

Additionally, the Commission found in its statement of decision that, although the animal adoption law applies to public and private shelters, current law does not *require* private shelters to accept stray animals. Private shelters have the discretion not to accept or care for stray animals in the first place, so the Commission found that the animal adoption law did not

impose any new mandatory obligations on them. In spite of the Commission’s decision, Finance continues to maintain that the State should not be required to reimburse local entities for their compliance with the animal adoption mandate. In July 2003, it petitioned the Superior Court of California in Sacramento County asking the court to direct the Commission to set aside its original decision. That petition is pending.

Local Entities Filed Significant Claims Under Both Mandates

As shown in Table 1, as of April 2003 claimants have submitted \$223.5 million in peace officer rights claims for fiscal years 1994–95 through 2001–02 and \$60.8 million in animal adoption claims for fiscal years 1998–99 through 2001–02.

TABLE 1

Claims Filed for Fiscal Years 1994–95 Through 2001–02 for the Peace Officer Rights and Animal Adoption Mandates (In Millions)

Fiscal Year	Costs Claimed	
	Peace Officer Rights Mandate	Animal Adoption Mandate
1994–95	\$ 18.4	NA
1995–96	21.1	NA
1996–97	21.6	NA
1997–98	22.9	NA
1998–99	28.7	\$ 3.9
1999–2000	34.3	17.8
2000–01	40.1	18.1
2001–02*	36.4	21.0
Totals	\$223.5	\$60.8

Source: Claims on file with the State Controller’s Office as of April 2003.

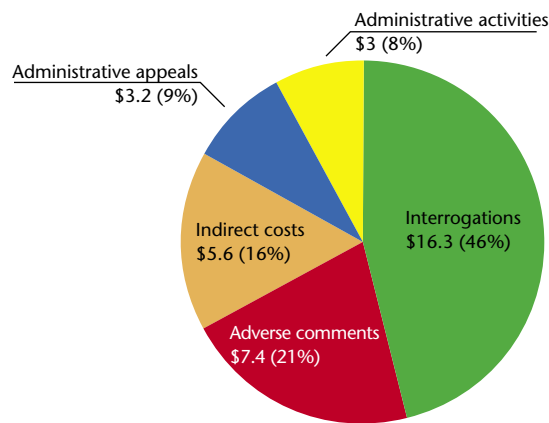
NA = Not applicable. Eligibility for reimbursement did not occur for the animal adoption mandate until January 1999.

* The amounts shown for fiscal year 2001–02 include \$900,000 in estimated claims for the peace officer rights mandate and \$900,000 in estimated claims for the animal adoption mandate. Figures 2 and 3 on the following pages include amounts for actual claims only.

Claims under both mandates generally increased each year until fiscal year 2001–02, when the level of peace officer rights claims declined. However, these figures likely will increase because claimants can submit late or amended claims for that year until January 2004. In Figures 2 and 3, we provide a breakdown of the costs claimed under each category of reimbursable costs for each mandate for fiscal year 2001–02.

FIGURE 2

**Categories of Costs Claimed Under the
Peace Officer Rights Mandate for Fiscal Year 2001–02*
(Dollars in Millions)**



Source: Claims on file with the State Controller’s Office as of April 2003.

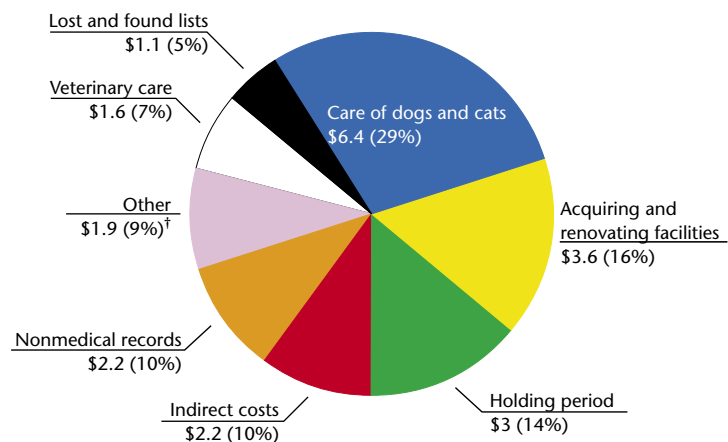
* The total of this figure is \$35.5 million, which is \$900,000 less than the amount shown on Table 1 for fiscal year 2001–02. This figure does not include estimated claims because they do not provide a breakdown of costs by category.

As Figure 2 shows, the largest category of costs claimed for fiscal year 2001–02 under peace officer rights was interrogations, which accounted for 46 percent of the total costs claimed. However, Figure 2 must be used with caution because it represents a breakdown of the costs as claimed and may not be representative of the actual reimbursable costs incurred by local entities under the peace officer rights mandate. We audited four claims, which accounted for more than 60 percent of the \$36.4 million claimed under peace officer rights in fiscal year 2001–02. As described in the following sections of this report, we found that the four local entities we reviewed claimed reimbursement for activities that are not in accordance with the Commission’s guidance. They also did not have adequate support for the amounts they claimed.

As shown in Figure 3, the largest category of expense claimed under the animal adoption mandate for fiscal year 2001–02 was for the care of dogs and cats, which accounted for 29 percent of total costs claimed. We reviewed four claims, which in total represented 26 percent of the \$21 million claimed. The animal adoption parameters and guidelines allow some discretion in terms of the particular categories under which certain costs can be claimed. For instance, computer software costs, which are allowable because the software is used to maintain records on impounded animals as specified by the mandate, can be claimed under the one-time cost category, “Computer Software,” but the same costs could be claimed alternatively under the “Procuring Equipment” component or be included as part of indirect costs. Therefore, the computer software cost component by itself does not necessarily provide a clear indication of the total amount local entities spent on computer software to comply with the animal adoption mandate.

FIGURE 3

**Categories of Costs Claimed Under the
Animal Adoption Mandate for Fiscal Year 2001–02*
(Dollars in Millions)**



Source: Claims on file with the State Controller’s Office as of April 2003.

* The sum of the individual wedges, which is \$22 million, is larger than the \$20.1 million claimed by \$1.9 million. The difference represents revenues or reimbursements that are required to be offset against costs incurred. The \$20.1 million claim total is \$900,000 less than the amount shown in Table 1 because Figure 3 does not include estimated claims, which do not provide a breakdown by category.

[†] “Other” includes the costs of care of other animals, testing of feral cats, procuring equipment and computer software, developing policies and procedures, and training, each of which represents 3 percent or less of the total amount claimed.

As of the date of this report, the State has paid none of the animal adoption claims submitted by local entities. However, the Controller has paid \$50 million of the \$223.5 million in total claims submitted for the peace officer rights mandate for fiscal years through 2001–02. The four local entities we reviewed received \$31 million, or 62 percent, of that \$50 million. As described in the next sections, we question a significant portion of the costs these four entities claimed for fiscal year 2001–02.

LOCAL ENTITIES CLAIMED REIMBURSEMENT FOR QUESTIONABLE ACTIVITIES UNDER THE PEACE OFFICER RIGHTS MANDATE

Concluding that the peace officer rights law primarily implements rights already granted under the U.S. and California constitutions, the Commission considered many activities included in the law nonreimbursable. However, through a broad interpretation of the Commission’s parameters and guidelines, the four local entities we reviewed claimed \$16.2 million in questionable direct costs, representing 85 percent of the total direct costs they claimed. The entities used different methods to determine the amounts they claimed. Some entities included detailed lists of specific activities with estimates of time spent on each activity, while others claimed time in broad categories for entire groups of employees. Even though they used different methods, all four claimed reimbursement for questionable activities. Because we question such a large portion of their claimed costs, we are concerned that the State already may have paid them more than they are entitled to receive.

Many Activities Included in the Peace Officer Rights Law Are Not Reimbursable

The Commission found that many activities included in the peace officer rights law are not reimbursable because they already were required under constitutional provisions. In fact, when Commission staff initially reviewed the test claim filed by the city of Sacramento, they asked for additional information from the city because their initial research indicated that the activities required under the law merely implemented the existing procedural requirements of the due-process clause of the 14th Amendment to the U.S. Constitution. In its later statement of decision, the Commission noted that the due-process clauses in the U.S. and California constitutions provide that the State shall not deprive any person of life, liberty, or property without

The Commission found that many of the activities included in the peace officer rights law were already required under the due-process clauses of the U.S. and California constitutions.

due process of law. Further, the Commission found that, before enactment of the peace officer rights law, the court had interpreted the due-process clause as a guarantee of procedural protection for various employees, including peace officers. After eliciting additional information from the city of Sacramento, the Commission determined that the requirements in the peace officer rights law exceeded the rights afforded under the U.S. and California constitutions.

However, in its statement of decision, the Commission determined that only those duties that exceeded the preexisting constitutional requirements impose a state mandate. For example, as described in the Appendix, the Commission clarified that the peace officer rights law requires local entities to afford peace officers the right to administrative appeals in more circumstances than previously required by the constitutional provisions. Accordingly, it allowed for reimbursement of the costs of conducting an administrative appeal only when the limited circumstances apply. The parameters and guidelines ultimately adopted by the Commission allow reimbursement for only selected steps in the disciplinary process outlined in the peace officer rights law. The Commission grouped these activities under four broad categories, which we discuss more fully in the following sections.

Three of the four entities we reviewed claimed virtually all the time their staff spent on the investigation of complaints or on the entire disciplinary process for peace officers. In explaining their position, representatives from the city and county of San Francisco (San Francisco) and Los Angeles County indicated that the peace officer rights law imposes requirements on local entities that take up a substantial portion of staff time. In contrast to these two claimants, Stockton acknowledged that it claimed a larger scope of activities than it should have once we pointed out our concerns. Moreover, although the city of Los Angeles claimed reimbursement for a lesser proportion of staff time compared with the other three claimants, it still claimed for a broader scope of activities than the parameters and guidelines allow. In short, the entities seemed to focus on the four broad categories of expense in the parameters and guidelines and not on the specific activities outlined within the categories.

Categories of Reimbursable Activities Under the Peace Officer Rights Mandate

- Interrogations
- Adverse comments
- Administrative activities
- Administrative appeals

In fact, in justifying a broad interpretation of the parameters and guidelines, the consultant who assisted one local entity explained that the entity's methods for complying with the mandate may be very different from the methods used by the test claimant that proposed the parameters and guidelines. Accordingly, the consultant asserted that it was appropriate for the local entity to identify and claim reimbursement for all activities it believed it carried out to comply with the mandate, even if they were not identified specifically in the parameters and guidelines. Although we acknowledge that local entities may have different activities related to the disciplinary process, they should claim reimbursement only for activities the Commission found to be reimbursable. If a local entity believes the Commission should have identified more reimbursable activities, that entity could have brought these issues to the Commission's attention when it considered the proposed parameters and guidelines. Alternatively, the entity could have submitted a subsequent request to amend the parameters and guidelines to include additional activities.

Commission staff and our legal counsel have advised us that the statement of decision is legally binding on the claimants and that claimants should be familiar with the analysis and conclusion it contains when submitting their claims.

In addition, although three of the four claimants specifically referenced language in the Commission's statement of decision when responding to our concerns, they 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. Although the parameters and guidelines are designed to give claimants guidance on activities and costs that may be claimed for reimbursement, they are based on the statement of decision, which presents the Commission's legal decision as to whether a state mandate exists and the legal analysis that supports that decision. Commission staff and our legal counsel have advised us that the statement of decision is legally binding on the claimants and that claimants should be familiar with the analysis and conclusion it contains when submitting their claims. In addition, claimants should turn to the formal administrative record as an interpretive aid if they do not find sufficient guidance in the plain meaning of the parameters and guidelines or the statement of decision. The administrative record contains a variety of information in addition to the parameters and guidelines and statement of decision, including comments from interested parties, Commission staff analyses, and minutes from Commission hearings.

Admittedly, this process may require claimants to review various materials, including the legal analysis contained in the Commission’s statement of decision, when submitting claims. However, we were surprised that claimants and their consulting firms (consultants) were not more knowledgeable of the guidance included in the administrative record. Representatives of the consultants who assisted three of the four claimants were included on various Commission mailing lists for comments and analyses related to key documents, such as the test claim, the Commission’s statement of decision, and the parameters and guidelines. In addition, representatives of the consultant who assisted two of the four claimants and a representative from Los Angeles County, which prepared its own claim, participated in a hearing before the Commission to discuss the test claim. Nevertheless, the local entities we reviewed claimed costs for nonreimbursable activities based on their broad interpretations of the Commission’s statement of decision and parameters and guidelines. As shown in Table 2, we question \$16.2 million of the \$19.1 million they claimed in direct costs for fiscal year 2001–02.

TABLE 2

**Questioned Costs Resulting From Broad Interpretations in Fiscal Year 2001–02
Peace Officer Rights Mandate Claims**

Cost Category	Local Entities				Totals
	Los Angeles County	City of Los Angeles	City and County of San Francisco	City of Stockton	
Direct costs claimed	\$3,920,000	\$8,977,000	\$5,799,000	\$388,000	\$19,084,000
Questioned costs by category:*					
Interrogations	2,561,000	3,357,000	3,379,000	124,000	9,421,000
Adverse comments	NA	1,860,000	1,712,000	NA	3,572,000
Administrative activities	NA	1,390,000	224,000	0	1,614,000
Administrative appeals	1,269,000	NA	104,000	235,000	1,608,000
Total questioned costs	\$3,830,000	\$6,607,000	\$5,419,000	\$359,000	\$16,215,000
Percent questioned	97.7%	73.6%	93.4%	92.5%	85.0%

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

* Since we evaluated the local entities’ direct cost claims against two separate criteria—support and eligibility—the costs we question in this table cannot be added to the costs we question in Table 3 on page 42.

In assessing what costs we deemed to be questionable in the sections that follow, we relied on the plain language in the statement of decision and parameters and guidelines. In addition, we highlight certain other parts of the administrative record that served to emphasize and corroborate the plain language.

Broad Interpretations and Misunderstanding of the Parameters and Guidelines Led to Questionable Interrogation Costs

Rather than focusing on only the reimbursable activities surrounding the interrogation of a peace officer in connection with an investigation, some local entities we reviewed generally

claimed reimbursement for all their activities related to the investigative process. Under the interrogations category, the parameters and guidelines list only five specific activities eligible for reimbursement and include tasks that are reasonably necessary to carry out these activities. However, as explained in the paragraphs that follow, the local entities claimed reimbursement for a greater scope of activities than what the Commission intended. As a result, we question at least \$9.4 million of the \$10.1 million they claimed under the interrogations category of expense.

For example, we question about \$3.4 million of the \$3.5 million claimed by San Francisco. It claimed reimbursement for the entire working year of 28 staff in its police department, including 10 of the 12 staff in its management control division, which is dedicated to peace officer discipline activities. In addition, San Francisco claimed costs for 90 percent of the total annual working hours of the 30 staff in the Office of Citizen Complaints (Citizen Complaints), which is dedicated to

investigating citizen complaints against peace officers. The other 10 percent of Citizen Complaints' staff time was spent on administration or other areas not dealing at all with peace officer discipline. Representatives of the police department and Citizen Complaints defended this approach, stating that these staff are dedicated to peace officer discipline activities. In addition, the representatives stated that an activity is reimbursable unless it is excluded specifically in the parameters and guidelines. However, San Francisco's argument suggests that the Commission be expected to spell out activities that are not reimbursable. Such

Reimbursable Interrogation Activities

The activities listed below are reimbursable only when a peace officer is under investigation or becomes a witness for an investigation that could lead to certain disciplinary actions:

- Compensating the subject for interrogations occurring during off-duty time, when required by the seriousness of the investigation.
- Providing subject prior notice regarding the interrogation.
- Tape recording of the interrogation, if the subject also records it.
- Providing subject access to a tape of the interrogation prior to certain further proceedings.
- Producing transcribed copies of notes of the interrogation and copies of reports or complaints that are not confidential, when requested by the subject.

a view appears to be at odds with the focus of the mandate process, which is to determine whether laws impose mandates and, if so, to define which activities are reimbursable.

Under the interrogations category, the San Francisco police department claimed \$2.7 million for the full working year of 23 employees; however, we question the entire amount because it could not demonstrate that the time claimed was spent on reimbursable activities.

The police department and Citizen Complaints used different approaches in determining how to allocate the total staff time spent on the disciplinary process to the various categories of expense, including interrogations. According to San Francisco's consultant, the police department believed that the staff whose time was claimed were 100 percent dedicated to activities related to peace officer rights. Therefore, based on information provided by the management control division, the consultant made judgments as to the most appropriate place to claim the full efforts of these employees. Under the interrogations category, the police department claimed \$2.7 million for the full working year of 23 employees. We question all these costs because the police department could not demonstrate that the time claimed was spent on any reimbursable activities.

To determine how to claim reimbursement for its costs, Citizen Complaints developed a list of discipline-related activities that each classification of employee generally performs. It based time estimates on common ranges of time spent on each activity and experience in training new investigators. Citizen Complaints grouped the percentages by category of expense and charged the resulting portion of annual salaries and benefits to the respective categories. However, the activities described often did not correspond with the reimbursable activities described in the parameters and guidelines. Because of this, it was difficult to quantify exactly how much of the amount claimed is reimbursable. Focusing on activities that comprised the largest costs, we determined that at least \$725,000 of the \$847,000 the office claimed under interrogations related to activities that are not reimbursable under the parameters and guidelines.

In particular, we question the \$672,000 charged for its investigators to perform such activities as establishing or verifying the identity of the involved officers, consulting with legal staff and supervisors, preparing questions for the interrogation, and preparing summary reports. We also question the \$53,000 charged for its attorneys to review sustained case reports, summary reports, and supporting evidence and analysis, and to conduct legal research. None of these activities is included in the parameters and guidelines as reimbursable activities. Citizen Complaints' staff contend that virtually all staff time is reimbursable because the activities performed serve

to establish the nature of the investigation, which is essential to the notice of interrogation provided to the officer. However, Commission staff pointed out in their analysis of the test claimant's proposed parameters and guidelines that the peace officer rights law does not require local entities to investigate an allegation, prepare for the interrogation, conduct the interrogation, or review the responses given by the officers and witnesses.

Similar to Citizen Complaints, the city of Los Angeles developed a list of the key activities it performs in its disciplinary process. After identifying certain activities that it believed were not reimbursable, it grouped the remaining activities under the four categories of expense, including interrogations. However, the activities included under the four categories on its list did not correspond to the descriptions of reimbursable activities in the parameters and guidelines. Thus, it was difficult to assess exactly how much of the costs claimed are reimbursable. We focused on the activities that accounted for the highest costs and determined that at least \$3.4 million of the \$3.8 million the city of Los Angeles claimed related to activities that are not reimbursable.

We determined that at least \$3.4 million of the \$3.8 million the city of Los Angeles claimed under the interrogations category related to activities that are not reimbursable.

The \$3.4 million questioned was for time spent in interrogations by both interrogators and subjects. However, as described earlier, Commission staff indicated that reimbursement is not allowed for conducting interrogations. In addition, the time claimed for the subjects of interrogations was for regular hours spent in interrogations and did not include overtime, but in its discussion of compensation for interrogations in the parameters and guidelines, the Commission stated that compensating the peace officers for interrogations occurring during off-duty time was reimbursable. The city of Los Angeles states that the reimbursable activities described under the interrogations category of expense in the parameters and guidelines are intended only to clarify what specific activities are linked to the basic interrogation process; therefore, the interrogation time of witnesses or potential targets of interrogations when they are peace officers should be allowed, and the time spent by interrogating officers should be allowed. However, these activities are not allowable per the parameters and guidelines.

Los Angeles County took a very broad interpretation of the parameters and guidelines in claiming costs. We question \$2.6 million of the \$2.7 million it claimed under the interrogations category because these costs are for all the time its staff spent investigating complaints against peace officers.

According to Los Angeles County, the implementation of the peace officer rights law requires substantial investigator time and such costs are reimbursable; however, Commission staff had previously pointed out that the law does not require local entities to investigate allegations.

According to Los Angeles County, the implementation of the peace officer rights law requires substantial investigator time, and such implementation costs are reimbursable. Los Angeles County also states that the parameters and guidelines provide no express or implied limitation as to the amount of time that may be devoted to an investigation. In particular, Los Angeles County pointed to language in the introductory section of the interrogations category of expense that precedes the listing of reimbursable activities to support its claiming of substantial investigator time. However, Los Angeles County staff neglected to note that the introductory language provides reimbursement only for the specific activities detailed later within the interrogations section. Therefore, we fail to see how the introductory language supports Los Angeles County's contention.

Los Angeles County pointed to language in the body of the statement of decision that refers to "conducting the ***investigation*** when the peace officer is on duty." [Emphasis added.] However, the conclusion of the statement of decision refers to "conducting the ***interrogation*** of a peace officer while the officer is on duty." [Emphasis added.] Also, the parameters and guidelines refer to interrogations. As we already noted, the Commission determined that reimbursement would be allowed only if the interrogation occurred when the officer was off duty. Further, as described previously, Commission staff pointed out in their analysis of the test claimant's proposed parameters and guidelines that the peace officer rights law does not require local entities to investigate allegations. Therefore, even though the wording within the statement of decision appears to have a minor inconsistency, investigative time is clearly not reimbursable.

We also question \$124,000 of the more than \$152,000 Stockton claimed under the interrogations category. Stockton's consultant based its interrogation charges on all the staff time spent processing less complex cases rather than focusing on the specific reimbursable activities in the parameters and guidelines. For example, Stockton claimed reimbursement for reviewing complaint forms, interviewing complainants and all involved parties, and preparing investigative reports. Time spent on complex cases was charged to the administrative appeals category as discussed later. City officials agree that their claim was prepared incorrectly and plan to submit a revised claim.

Although Only Two Local Entities Claimed Reimbursement, They Overstated Adverse Comment Costs

Reimbursable Adverse Comment Activities

Depending on the circumstances surrounding an adverse comment, reimbursement is allowed for some or all of the four activities listed below:

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

Applying different interpretations to the parameters and guidelines, two of the local entities we reviewed claimed adverse comment costs and two did not. Although not specifically defined in either the peace officer rights law, which was the basis for the mandate, or the parameters and guidelines, an adverse comment is generally considered to be something that is contrary or harmful to one's interests or welfare. In the context of the peace officer rights mandate, an adverse comment is in writing. At most, reimbursement is provided for four specific adverse comment activities and tasks that are necessary to carry out those activities. The two local entities that claimed costs under this category listed activities not consistent with the parameters and guidelines, so we question at least \$3.6 million of the \$4.8 million they claimed under this category of expense.

In particular, we question at least \$1.9 million of the \$3 million the city of Los Angeles claimed in its fiscal year 2001–02 claim. City officials indicated that to provide the officer with notice of an adverse comment, it must first determine whether the comment is, in fact, adverse and whether the complainant and complaint are credible. Therefore, the city of Los Angeles claimed time for activities such as interviewing the complainant, completing the complaint form, and preparing a complaint investigation report for each case. In defending its interpretation, the city referred to language that appears in the parameters and guidelines after the specific list of reimbursable activities. The language referred to by the city of Los Angeles states that “included in the foregoing” [the already specified reimbursable activities] are the following:

- Review of circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel including determination of whether the circumstances or documentation constitute an adverse comment.
- Preparation of adverse comment and review for accuracy.

- Notification and presentation of the adverse comment to the officer.
- Notification of the officer’s rights regarding the adverse comment.
- Review of the response to the adverse comment.
- Attaching the response to the adverse comment and filing.

It is our understanding that these activities should apply only in the limited context of providing notice of the adverse comment to the peace officer and providing the officer an opportunity to review, sign, and respond to the adverse comment. In responding to our point of view, Commission staff stated that activities such as interviewing the complainant, preparing the complaint investigation report, and other investigative activities are not reimbursable. Further, Commission staff emphasized that the peace officer rights law provides procedural protections for peace officers but does not require local entities to investigate allegations against peace officers.

Commission staff emphasized that the peace officer rights law provides procedural protections for peace officers but stated that activities such as interviewing complainants and preparing investigation reports are not reimbursable.

We also question \$1.7 million of the \$1.8 million in adverse comment costs San Francisco claimed for fiscal year 2001–02. As mentioned previously, San Francisco claimed costs related to its Office of Citizen Complaints and its police department. Similar to the city of Los Angeles, these two organizations claimed reimbursement for activities such as investigators conducting examinations to verify complaints and scheduling, preparing for, and conducting interviews. In clarifying its rationale, Citizen Complaints stated that all activities and involvement of its staff “from receipt of a complaint through the completion of the intake serve to establish the nature of the investigation, which is essential to the notice to the officer.” However, it appears that Citizen Complaints claimed all time spent on activities related to peace officer rights rather than the time spent on the reimbursable portion. Based on the foregoing discussion, it is clear that the Commission did not intend to allow reimbursement for such a broad scope of activities. Moreover, \$602,000 of the \$1.7 million San Francisco claimed related to the full-time efforts of five sergeants whose time also was included as part of the 23 positions claimed under the interrogations category.

In response to our concern about its claiming reimbursement for the time to schedule and prepare for interviews under the adverse comment category, San Francisco argued that

if an activity is not specifically excluded in the parameters and guidelines, then “it should be open to discussion as the department’s appropriate response” to the peace officer rights law. Although we agree that local entities have some discretion in determining how they will carry out mandated activities, the activities for which they claim reimbursement still must be consistent with the Commission’s intent. When we requested input on this issue from Commission staff, they stated that for an activity to be reimbursable, it must be required by the statute that led to the mandate, as determined in the Commission’s statement of decision, or must be a reasonable method of complying with the statute, as determined in the Commission’s parameters and guidelines. The Commission, when adopting parameters and guidelines, has the discretion to determine the most reasonable method of complying with the mandate. However, in laying out what is reimbursable under the adverse comment category, neither the statute nor the parameters and guidelines include the type of activities San Francisco claimed.

Los Angeles County and Stockton did not claim any costs under the adverse comment category of the parameters and guidelines. Los Angeles County officials indicated that, due to time constraints, they focused on the two largest areas of expense (interrogations and administrative appeals) and chose not to pursue reimbursement under the other categories. However, county officials also said in July 2003 that they might revise the county’s claim to include such costs in the future. After reconsidering the parameters and guidelines, a Stockton official stated that Stockton believes the parameters and guidelines allow reimbursement for all activities related to preparation, review, notification, presentation, and review of the response for an adverse comment, and as of July 2003, Stockton was reviewing its records to determine actual costs.

Reimbursable Administrative Activities

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

Differing Interpretations of Mandated Administrative Activities Led to Questionable Claims

The administrative activities category of expense is the clearest example of differing interpretations of the parameters and guidelines, even between divisions within the same local entity. The parameters and guidelines provide reimbursement for only three administrative activities. The local entity that took the broadest interpretation of the parameters and guidelines with regard to

With regard to administrative activities, the city of Los Angeles took the broadest interpretation of the parameters and guidelines, claiming \$2.2 million in costs, at least \$1.4 million of which we question.

administrative activities, the city of Los Angeles, claimed \$2.2 million in administrative activity costs, at least \$1.4 million of which we question. San Francisco's management control division claimed a total of \$14,000 for time spent developing or updating internal policies, procedures, manuals, or other material relating to the rights of public safety officers. This activity is expressly allowed as a reimbursable activity in the parameters and guidelines, and the amount of time claimed does not appear to be unreasonable. However, as we describe in more detail later, its Office of Citizen Complaints claimed a total of \$335,000 in administrative activity costs, at least \$224,000 of which we question. Stockton claimed an immaterial amount for a half day's worth of training in peace officer rights for its staff, which is also expressly allowed as a reimbursable activity. Los Angeles County did not claim any administrative activity costs, citing the same reasoning with which it handled adverse comment expenses. It may revise its claim to include costs for administrative activity expenses, which it believed were small compared with the costs it already has claimed. Overall, we question a total of \$1.6 million of the \$2.5 million in administrative activity costs claimed.

The city of Los Angeles did not claim any charges for training related to the peace officer rights mandate or the development of policies and procedures; therefore, all of the \$2.2 million it claimed for administrative activity costs was claimed for updating the status of peace officer rights mandate cases. Only those activities described as being performed by its clerical staff seem to correspond even loosely to updating the status of cases, yet the city of Los Angeles also charged time for such activities as a lieutenant logging in and assigning cases. Therefore, we question all time charged under administrative activities except for that charged by the clerical staff. The city of Los Angeles contends that all costs associated with all administrative activities for each claim, as well as maintaining the entire system that is required by the peace officer rights law, are reimbursable. The city further states that the administrative activities section of the parameters and guidelines includes whatever administrative activities are necessary to implement and carry out the policies and procedures pertaining to the conduct of the mandated activities.

However, the Commission's staff analysis of the proposed parameters and guidelines indicated that staff altered the proposed language regarding "maintenance of the systems to conduct the mandated activities" to "updating the status

report of [peace officer rights mandate] cases,” believing that the original activity proposed was too ambiguous and broad. In particular, staff stated in their analysis that activities such as conducting investigations, issuing disciplinary actions, and maintaining files for cases are not reimbursable. When we requested further clarification, Commission staff stated that “update the status report of the [peace officer rights mandate] cases” was intended to provide reimbursement to track the procedural status of reimbursable cases so local entities could ensure compliance with the procedural requirements imposed by the peace officer rights law.

The staff analysis of the proposed parameters and guidelines indicates that activities such as maintaining files are not reimbursable, yet San Francisco claimed reimbursement for such costs.

San Francisco’s Citizen Complaints claimed \$335,000 in administrative activity costs, at least \$224,000 of which we question. We do not question activities claimed for development and implementation of policies and procedures or updating the status of peace officer rights mandate cases. However, we do question activities claimed for preparing and maintaining records. Citizen Complaints’ staff state that the preparation and maintenance of records serve to update the status of peace officer rights cases. However, as noted previously, the staff analysis of the proposed parameters and guidelines indicates that activities such as conducting investigations, issuing disciplinary actions, and maintaining files are not reimbursable.

Although none of the four local entities we reviewed mentioned this, one omission in the Commission’s parameters and guidelines should be noted. The proposed parameters and guidelines as revised and accepted by the Commission provide reimbursement for updating the status report of peace officer rights mandate cases. However, the adopted parameters and guidelines provide reimbursement for updating the status of peace officer rights mandate cases. When we asked Commission staff about the absence of the word “report,” they stated that it was omitted inadvertently. They further stated that the Commission could not correct this error on its own without a state or local entity filing a request. It seems reasonable that inclusion of the word “report” may provide a stronger connotation that the activities intended are limited in nature and that not all administrative activities should be considered reimbursable.

Reimbursable Administrative Appeal Activities

Administrative appeals are reimbursable for cases involving the following disciplinary actions and classifications of employees as of January 1, 1999:

- Dismissal, demotion, suspension, salary reduction, or written reprimand received by the chief of police, whose liberty interest is not affected.
- Transfer of permanent employees for purposes of punishment.
- Denial of promotion for permanent employees for reasons other than merit.
- Other actions against permanent employees or the chief of police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.

Local Entities Also Overstated Administrative Appeal Costs

Three of the four entities claimed administrative appeal costs. We question the entire \$1.6 million they claimed because they claimed reimbursement for all administrative appeals without consideration of the employee's classification or the disciplinary action imposed. The parameters and guidelines provide for reimbursement for administrative appeals under very limited circumstances.² In the Appendix, we present some of the analysis included in the Commission's statement of decision for the peace officer rights mandate that clarifies the types of employees and disciplinary actions for which administrative appeals are reimbursable.

We question the entire \$1.3 million Los Angeles County claimed in administrative appeal charges because the county claimed costs for administrative

appeals related to disciplinary actions that are not reimbursable under the parameters and guidelines. The parameters and guidelines do not provide reimbursement for administrative appeals for disciplinary actions such as dismissal, suspension, demotion, salary reduction, or written reprimand unless they are received by a chief of police whose liberty interest is not affected.³

Los Angeles County staff later asserted that up to 25 percent of the administrative appeals its in-house staff work on are reimbursable because they relate to transfer, denial of promotion, or other actions causing harm to permanent employees. However, it has not developed the data necessary to support this estimate. In addition, Los Angeles County claimed time for writing and reviewing charges before an appeal had been requested. The parameters and guidelines do not provide reimbursement if this occurs before the subject requests an appeal. Los Angeles County staff contend that writing and

² For the period from July 1994 through December 1998, the parameters and guidelines allowed reimbursement of administrative appeal activities for a broader group of employees. However, because of a change in the law, effective January 1, 1999, the parameters and guidelines further limited the classifications of employees, as shown in the text box.

³ A liberty interest in employment arises when a government charge may seriously damage one's reputation to the extent that it forecloses the employee's freedom to pursue other employment opportunities.

review of charges is a necessary component of the appeals process because it provides peace officers who dispute decisions with an opportunity for appeal. However, Commission staff confirmed our understanding that activities occurring before the officer requests an administrative appeal are not reimbursable. Los Angeles County also claimed reimbursement for costs it incurred by contracting with attorneys to defend the county in Superior Court. These costs are not reimbursable, according to the staff analysis of the proposed parameters and guidelines.

After we presented our findings to city officials, Stockton agreed that its claim was significantly overstated.

We also question Stockton's claim of \$235,000 for administrative appeal costs. Stockton's consultant determined administrative appeal costs by calculating time spent investigating and processing difficult or complex personnel complaint cases rather than limiting the costs claimed to those provided for in the parameters and guidelines. After we presented our findings to city officials, Stockton agreed that its claim was significantly overstated.

In addition, we question San Francisco's entire claim of \$104,000 in administrative appeal costs because it claimed reimbursement for all the work it performed under this category without distinguishing between types of administrative appeals that are reimbursable under the peace officer rights mandate and those that are not. Although San Francisco later asserted that 83 percent of its sustained cases involve disciplinary actions that are reimbursable and provided us some additional data to evaluate, it did not use the data to determine the costs it claimed. In addition, the new data did not indicate which staff worked on the appeals or how much time they spent.

The city of Los Angeles did not seek reimbursement of any administrative appeals costs. Staff cited the complexity of the city's administrative appeals system, the limited scope of the appeals activities and cases eligible for state reimbursement, and the difficulty in documenting the eligible costs in accordance with the State's guidelines as reasons for not seeking reimbursement.

THE COMMISSION'S ANIMAL ADOPTION GUIDANCE DOES NOT ADEQUATELY REQUIRE CLAIMANTS TO ISOLATE THE REIMBURSABLE PORTION OF ACQUIRING SPACE

Although the Commission's guidance related to the animal adoption mandate will, for the most part, instruct a claimant on how to isolate those portions of costs related to the mandate, the

Commission could have devised a better formula for determining the reimbursable amount of the costs of new facilities. The current formula does not adequately isolate how much of a claimant's construction costs relate to the increased holding period as opposed to other causes, such as premandate animal shelter overcrowding or anticipated animal population growth.

The Commission found that, because holding animals for longer periods may increase the daily number of animals housed in a shelter, the increased holding period imposed by the animal adoption mandate could create a need for increased shelter space. Accordingly, the parameters and guidelines allow local entities to claim reimbursement for costs associated with increasing shelter space to comply with the mandate. Costs claimed for acquiring or renovating shelter facilities for fiscal years 1998–99 through 2001–02 totaled \$10.7 million, about 18 percent of all mandate costs. For the animal adoption mandate, we reviewed claims submitted by the cities of Los Angeles and Stockton, whose peace officer rights claims we also reviewed. Additionally, we reviewed claims submitted by San Diego County and San Jose. Stockton and San Jose claimed a total of \$1.6 million for facilities in fiscal year 2001–02. San Diego County and the city of Los Angeles claimed no costs for facilities in that period.

Stockton and San Jose appropriately used the formula provided by the Commission's guidance, which instructs claimants to prorate their construction costs by the number of eligible animals housed during the year divided by the total number of animals housed in the facility. Eligible animals are stray or abandoned (stray) animals eventually euthanized or that die during the increased holding period. The formula seems appropriate to the extent that a local entity claims only the extra space it needs to comply with the mandate. However, a local entity also might be adding space to deal with increases in animal populations due to growth in the community. In such a case, construction costs would be greater than necessary to comply with the mandate. The formula does not take this scenario into account, so local entities could be claiming more costs than the Commission intended. For example, if a locality with 5,000 eligible animals and 20,000 total animals constructed a \$1 million facility with 50 dog runs, the reimbursable amount would be \$250,000 ($\$1,000,000 \times 5,000 \div 20,000$) under the current formula. If that same locality decided to add 25 additional dog runs to

Current Acquiring Space Formula

$$a = b \times c$$

- (a) Reimbursable amount
- (b) Total construction costs
- (c) Ratio of eligible animals to total animals

account for projected animal population growth and the total construction costs consequently rose to \$1.5 million, the reimbursable amount would be \$375,000 ($\$1,500,000 \times 5,000 \div 20,000$). The current formula has no way of taking out the additional \$125,000 that relates to planned population growth.

Although both entities appropriately used the current formula to prorate their construction costs, San Jose apparently constructed a facility larger than what the mandate would have required. It explained that the size of its new facility provides additional capacity for potential population growth and capacity to contract with a limited number of smaller cities. Therefore, the costs claimed by San Jose likely are higher than needed to comply with the mandate.

IN VARYING DEGREES, CLAIMANTS UNDER BOTH MANDATES LACKED ADEQUATE SUPPORT FOR THEIR COSTS AND INACCURATELY CALCULATED CLAIMED COSTS

Claims submitted for both mandates lacked adequate support and reflected calculation errors. Although claims under both mandates lacked adequate support, the problems were much more severe for the peace officer rights claims. In particular, none of the four local entities we reviewed could adequately support the amount of time they indicated was spent on reimbursable activities. We found that \$18.5 million of the \$19.1 million in direct costs these local entities claimed lacked adequate support. As discussed previously, we also questioned a significant portion of the claims because we believe that many of the activities listed are not reimbursable because of their nature. The costs we question because of inadequate support overlap with those we question because of the nature of the activity, so they cannot be combined with the amounts we questioned earlier to determine the overall effect.

Under the animal adoption mandate, time spent on reimbursable activities was generally not a significant driver of claimed costs. However, we did find some time-related activities, as well as other direct costs, that were not supported adequately. In total, \$979,000 of the \$5.4 million in animal adoption claims we audited lacked adequate support.

We found that \$18.5 million of the \$19.1 million the four local entities we reviewed claimed in direct costs under the peace officer rights mandate lacked adequate support.

Under the animal adoption mandate, each claimant had errors that potentially overstated its claim; however, in some areas the local entities could have claimed higher amounts.

Claimants also erred in determining their reimbursable costs. Although we saw mistakes that led to an understatement of some claimed costs, most mistakes tended to overstate claimed costs. Under the peace officer rights mandate, two of the four local entities made errors totaling \$377,000 in their fiscal year 2001–02 claims. Although we generally focused our review on fiscal year 2001–02 claims, we found that one entity also made a significant error in its fiscal year 2000–01 claim, resulting in an overstatement of \$3.7 million. The two errors related to the fiscal year 2001–02 claims could overlap the earlier costs that lacked adequate support, so the \$377,000 cannot be combined with the \$18.5 million in costs that lacked adequate support, as described earlier, to determine the overall effect. Under the animal adoption mandate, each claimant had errors that potentially overstated its claim. However, we also found areas in which some of the local entities could have claimed higher amounts. In fact, two of the four claims we audited would be higher if the overstating errors were corrected and the claimant requested reimbursement for all that was allowable. The net result of correcting errors and claiming full amounts for all four local entities is a potential overstatement of \$675,000, which is 13 percent of the \$5.4 million we audited.

None of the Peace Officer Rights Claimants Could Adequately Support the Amount of Time Spent on Reimbursable Activities

As shown in Table 3 on the following page, we question \$18.5 million of the \$19.1 million in direct costs the four local entities we reviewed claimed in fiscal year 2001–02 because the charges depend on unsupported information regarding time spent on reimbursable activities.

Even though the parameters and guidelines require it, none of the four local entities tracked the actual time devoted to each reimbursable activity by each employee. We acknowledge that this would have been challenging in preparing the initial claims because the Commission found that only selected activities in an entity’s disciplinary process are reimbursable, and claiming guidance was not developed until after the years related to the initial claims had passed. In accordance with the Controller’s claiming instructions issued in October 2000, the initial claiming period for the peace officer rights mandate included costs for fiscal years 1994–95 through 1999–2000. Therefore, for the initial claiming period, local entities would have had to gather historical data for six fiscal years. We also acknowledge

TABLE 3

Unsupported Costs in Fiscal Year 2001–02 Peace Officer Rights Mandate Claims

Cost Category	Local Entities				Totals
	Los Angeles County	City of Los Angeles	City and County of San Francisco	City of Stockton	
Direct costs claimed	\$3,920,000	\$8,977,000	\$5,799,000	\$388,000	\$19,084,000
Unsupported costs by category:*					
Interrogations	2,561,000	3,814,000	3,501,000	152,000	10,028,000
Adverse comments	NA	3,001,000	1,845,000	NA	4,846,000
Administrative activities	NA	2,162,000	349,000	0	2,511,000
Administrative appeals	774,000	NA	104,000	235,000	1,113,000
Total unsupported costs	\$3,335,000	\$8,977,000	\$5,799,000	\$387,000	\$18,498,000
Percent unsupported	85.1%	100.0%	100.0%	99.7%	96.9%

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

* Since we evaluated the local entities’ direct cost claims against two separate criteria—support and eligibility—the costs we question in this table cannot be added to the costs we question in Table 2.

that tracking the actual amount of time spent by each employee on each reimbursable activity on an ongoing basis could be cumbersome and costly. Nevertheless, we anticipated that local entities would have performed a time study at some point after the claiming guidance was available to track the actual time spent on reimbursable activities and used this as an estimate for past and current claiming purposes.

In particular, if it is not practical to track actual efforts, we would expect local entities to document the methodology and results of time studies as part of the support for activities claimed whenever the determination of costs depends on a measure of staff time. Key elements of an adequate time study include having employees who are conducting the reimbursable activities track the actual time they spend when they are conducting each activity, recording the activities over a reasonable period of time, maintaining documentation that reflects the results, and periodically considering whether the results continue to be representative of current processes. However, instead of conducting such a time study, claimants based the amount of time they claimed on interviews and informal estimates developed after the related activities were performed.

The city of Los Angeles had no documentation to support that the time estimates it used reflected the actual experience of its employees.

For example, we question the entire \$9 million the city of Los Angeles claimed because there was not sufficient evidence supporting the amount of time spent. The city of Los Angeles estimated time using a spreadsheet of activities related to its disciplinary process for peace officers. Its staff stated that the time estimates were based on a review of cases processed in fiscal year 2000-01, but the city had no documentation to support that the time estimates it used reflected the actual experience of its employees. City staff further stated that, for fiscal year 2001-02, the city's internal affairs office reviewed the time estimates and concluded that they were on the conservative side and clearly understated the time in most cases. For each particular activity on the spreadsheet, the city specified the employee classification that typically performs the task and designated each activity as relating to one of the four reimbursable activity categories or as a nonreimbursable activity. The city of Los Angeles multiplied the estimated time spent per case on each activity it designated as reimbursable by the total number of cases processed during the year to determine the total number of hours claimed for each activity. However, the city of Los Angeles had no documentation regarding individual employees or actual time spent to support the estimates, so we could not determine whether the hours claimed were reasonable.

Similarly, we question the entire \$5.8 million San Francisco claimed. As described earlier, San Francisco's claim was developed primarily by gathering data from two groups within the city and county that used different methods for determining time spent on activities related to peace officer rights. Citizen Complaints developed its time estimates based on the amount of time commonly spent on various activities and on experiences in training new employees. In contrast, the police department essentially claimed reimbursement for the entire working year of 28 employees, five of whom were included twice in the claim. It did not attempt to determine how much time was spent on specific reimbursable activities because it viewed all these employees' time as reimbursable. However, the claiming instructions, issued before local entities are required to submit their claims, explicitly state that costs for salaries are to be supported by descriptions of the reimbursable activities performed and the actual time devoted to each reimbursable activity by each employee. The claiming instructions further state that all costs claimed shall be traceable to source documents, such as employee time records, that show evidence of the validity of such costs and their relationship

to the state-mandated program. In addition, neither method San Francisco used to support the number of hours claimed constituted an acceptable time study.

We also question \$3.3 million of the \$3.9 million Los Angeles County claimed because the costs were not supported sufficiently. Under the interrogations category, we question \$2.6 million of the \$2.7 million claimed because the county's methods lacked adequate support for employee time. In particular, Los Angeles County claimed \$1.7 million of the \$2.7 million for the efforts of the investigators working in its internal affairs bureau and based its estimate of time on a ratio of cases involving peace officers to total cases with no support for the time spent on each case. It defended its time estimates by stating that no time standard for investigative activities exists and the parameters and guidelines do not limit the amount of time that can be spent on such activities. However, as noted earlier, the claiming instructions state that only actual time spent on reimbursable activities may be claimed. In addition, the county claimed \$865,000 for the investigative efforts of staff in its stations or units based on an average number of hours per peace officer case. Although the county asserted that the average was determined based on a "time study of 19 cases," the average actually was based on interviews. According to county staff, one employee developed the averages based on interviews with other employees who worked on the 19 cases. There were no records to show whether the employees who performed the work had tracked their actual efforts. Under the administrative appeals category, we question \$774,000 of the \$1.3 million Los Angeles County claimed because the amount of staff time charged was based only on the proportion of peace officer cases to total cases, with no support for the time spent on each case, similar to the method described earlier for the investigators in the internal affairs bureau.

Under the administrative appeals category, we question \$774,000 of the \$1.3 million Los Angeles County claimed because the amount of staff time charged was based only on the proportion of peace officer cases to total cases, with no support for the time spent on each case.

Finally, for reasons similar to those already described, we question \$387,000 of the \$388,000 Stockton claimed, which represents the total costs it claimed under the interrogations and administrative appeals categories. In contrast to other local entities, Stockton acknowledged the weakness in its support and plans to reassess its claim, including time estimates, before submitting an amended one.

We recognize that there may be instances when it may be impractical to maintain source documents with the level of detail needed to identify actual costs. In such cases, a properly

prepared and documented time study may be a reasonable substitute for actual time sheets. Despite some assertions to the contrary, none of the four local entities we reviewed used an adequate time study to support their estimates of time spent for any activity they claimed. The Controller is working with local entities to develop guidance regarding the appropriate use and conduct of time studies. Although we think this type of guidance would be helpful, the Controller had not provided such guidance to local entities as of the issuance of this report.

Animal Adoption Claimants Did Not Always Document Their Costs Sufficiently

Similar to the peace officer rights mandate but to a lesser extent, the animal adoption claimants we reviewed did not always have sufficient documentation for the costs they claimed. Table 4 on the following page shows that in total, the claimants could not adequately support \$979,000 of the \$5.4 million they claimed. Although time spent on reimbursable activities generally was not a significant driver of claimed costs under this mandate, entities did not always have adequate support for their estimates of time spent on reimbursable activities. The Controller's animal adoption claiming instructions generally require claimants to support time estimates with documentation, such as employee time records that identify the actual time spent on mandated activities. As in the peace officer rights discussion, we acknowledge that tracking actual time for the initial animal adoption claims would have been challenging, but we anticipated local entities would base their time estimates on a documented time study. In actuality, claimants generally based time estimates on employee interviews rather than documented time studies. In some cases, claimants also did not have sufficient documentation to support other direct costs.

The animal adoption claimants we reviewed generally based time estimates on employee interviews rather than documented time studies.

For example, as shown in Table 4, the city of Los Angeles could not adequately support \$476,000 of the \$2.5 million it claimed. To calculate the \$365,000 it claimed for veterinary care, the city multiplied the cost for various veterinary treatments by the number of times it administered them. However, city staff could not provide documents that adequately supported the cost of the various treatments. Also, the city of Los Angeles claimed \$111,000 in nonmedical record costs but could not provide supporting documentation for its estimate of how long it takes to maintain a nonmedical record, which city staff estimated at 20 minutes per record. Neither San Diego County

TABLE 4

Unsupported Costs in Fiscal Year 2001–02 Animal Adoption Mandate Claims

Cost Category	Local Entities				Totals
	City of Los Angeles	San Diego County*	City of San Jose	City of Stockton	
Total costs claimed	\$2,473,000	\$400,000	\$900,000	\$1,587,000	\$5,360,000
Unsupported costs by category:					
Care of dogs and cats	0	0	123,000	0	123,000
Lost and found lists	0	54,000	NA	0	54,000
Nonmedical records	111,000	117,000	NA	35,000	263,000
Veterinary care	365,000	0	174,000	0	539,000
Total unsupported costs	\$ 476,000	\$171,000	\$297,000	\$ 35,000	\$ 979,000

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

* San Diego County has contracts to shelter the animals of multiple cities within the county. Each city shares in the shelter costs incurred by San Diego County. The amounts in this column include costs for all the contract cities as well as the county.

nor Stockton, which respectively claimed \$117,000 and \$35,000 in nonmedical record costs, had supporting documentation for their nonmedical record time estimates. However, their estimates were much lower than the 20 minutes estimated by the city of Los Angeles, ranging from six to 12 minutes for San Diego County and five minutes for Stockton. San Diego County also did not have adequate support for the percentage of time its call center employees dealt with lost and found list issues as opposed to requests from the public for other information. The employee who prepared the claim obtained a signed memo from the supervisor of the call center for the percentage estimate, but the estimate was not based on a documented time study. Because this percentage is a key figure in San Diego County’s calculation of lost and found list costs, we question the \$54,000 claimed.

In another example of insufficient documentation, San Jose had a contract with a local humane society for the housing and care of its animals. Although San Jose claimed costs it incurred under the contract, some of the services the humane society provided were not reimbursable, and the contract terms were not detailed sufficiently to identify the cost of the nonreimbursable activities. For example, San Jose claimed \$174,000 in reimbursement for a proration of the contract cost of veterinary care, which included providing emergency

San Jose's contract with a local humane society for the housing and care of its animals did not adequately distinguish between reimbursable and nonreimbursable activities.

treatment to injured animals. However, the parameters and guidelines for the mandate specifically exclude emergency treatment from reimbursement, and San Jose could not identify the portion of its contract veterinary costs associated with emergency treatment. In addition, San Jose claimed \$123,000 for a proration of its shelter contract costs under the care of dogs and cats category. However, its shelter contract includes costs associated with the euthanization of animals, which the parameters and guidelines specifically exclude.

Although some components of the claim might have been overstated by including nonreimbursable activities, San Jose likely understated others because of its inability to isolate the costs from the overall contract. For example, it did not claim any holding period or nonmedical record costs because they could not be isolated from overall contract costs. As a result, we could not determine whether the total costs claimed were reasonable.

Local Entities Made Errors in Calculating Claimed Costs Under Both Mandates

Claimants also calculated reimbursable costs incorrectly. In calculating the effect of these errors, we sometimes employed estimation techniques such as averaging. In such cases, we indicate that the amount calculated is an estimate. For peace officer rights claims, we noted two errors totaling \$377,000 related to fiscal year 2001–02 claims. These errors involved incorrect calculations of salaries and benefits and inclusion of costs for disciplinary cases involving civilian employees in calculations that should relate only to peace officers. One claimant also overstated the indirect costs in its fiscal year 2000–01 claim by \$3.7 million. In addition, we noted multiple errors during our review of animal adoption claims, including use of incorrect animal census data in various calculations. We also noted a few mistakes that led to an understatement of certain costs on the animal adoption claims, but most mistakes we found resulted in an overstatement of claimed costs. The net effect of all the errors represented an overstatement of \$675,000 for the four animal adoption claims we reviewed.

The city of Los Angeles made two of the three calculation errors we noted in our review of peace officer rights claims. The city overstated indirect costs in its fiscal year 2000–01 claim by \$3.7 million due to various calculation errors. Although we generally focused on fiscal year 2001–02 claims, we reviewed the city of Los Angeles' indirect costs for fiscal year 2000–01

because the indirect cost rate of 78.51 percent it used in its claim for that year was so high compared with the rates, ranging from 13 percent to 25 percent, used in other years.

The city of Los Angeles overstated indirect costs on its peace officer rights mandate claim for fiscal year 2000–01 by \$3.7 million due to various calculation errors.

Two factors contributed to the overstatement. First, the city used the wrong indirect cost rate. When benefits are claimed as a direct cost, as they were in fiscal year 2000–01, the benefit rate should not be included in the indirect cost rate because it results in a double counting of benefit costs. The indirect cost rate for the city of Los Angeles should have been 42.13 percent in fiscal year 2000–01. However, the city mistakenly included the fringe benefit rate of 36.38 percent as well, leading to the 78.51 percent indirect cost rate that it used in its fiscal year 2000–01 claim. Second, when benefits are claimed as a direct cost, which the city did in fiscal year 2000–01, total indirect costs should be calculated by multiplying the indirect cost rate by salaries only. However, the city added benefits to salaries and multiplied the resulting total by the indirect cost rate. As a result, the city claimed \$6.1 million for indirect costs in its fiscal year 2000–01 claim. This is \$3.7 million more than it should have claimed. City staff agree they made an error and plan to submit an amended claim.

The city of Los Angeles also made an error in its fiscal year 2001–02 claim that we estimate resulted in an overstatement of \$354,000. It included costs related to disciplinary actions against civilian employees. However, procedural protections for civilian employees facing disciplinary action are not reimbursable under the peace officer rights mandate. Because the city’s data on new cases do not include information regarding whether the subject of the investigation is a peace officer or a civilian employee, we based our estimate on data regarding closed cases. The city of Los Angeles agrees that it made an error and plans to submit an amended claim.

The third error we noted relates to San Francisco. Its Office of Citizen Complaints (Citizen Complaints) made errors in calculating salaries that led to a net overstatement of \$23,000 in the costs claimed for salaries and benefits. Specifically, it made several errors when computing various averages to develop the salary rates used in the claim.

The two errors related to fiscal year 2001–02 claims overlap the costs we questioned earlier. Therefore, these errors should not be added to the costs we previously questioned based on the nature of activities claimed or on the lack of supporting documentation.

We found a number of errors in animal adoption claims that resulted in an overstatement for a particular component of a local entity's claim. However, we also found areas in which local entities did not claim as much as they might have if they had taken full advantage of what the parameters and guidelines allow. Table 5 summarizes the errors we found, including the areas in which claimants could have claimed reimbursement for more costs than they actually did claim. As shown in Table 5, the net result of these errors ranged from a \$797,000 overstatement by Stockton to an understatement of \$122,000 by San Diego County.

TABLE 5

Errors Found in Fiscal Year 2001–02 Animal Adoption Mandate Claims

Claim Category	Local Entities				Totals
	City of Los Angeles	San Diego County*	City of San Jose	City of Stockton	
Total costs claimed	\$2,473,000	\$ 400,000	\$ 900,000	\$1,587,000	\$5,360,000
Errors by category:					
Acquiring space/facilities	NA	NA	33,000	392,000	425,000
Care of dogs and cats	324,000	0	31,000 [†]	340,000	695,000
Veterinary care	0	0	(37,000) [†]	0	(37,000)
Holding period	127,000	(143,000)	NA	45,000	29,000
Indirect costs	(361,000)	21,000	NA	20,000	(320,000)
Offsetting savings	NA	0	(117,000)	NA	(117,000)
Net overstatement (understatement)	\$ 90,000	\$(122,000)	\$ (90,000)	\$ 797,000	\$ 675,000

NA = Not applicable. Because the local entity did not claim any costs in this category, there were no questioned costs.

* San Diego County has contracts to shelter the animals of multiple cities within the county. Each city shares in the shelter costs incurred by San Diego County. The amounts in this column include costs for all the contract cities as well as the county.

[†] Because we also question the entire amount claimed in this category for lack of support, the effect of this error should not be combined with the amount shown in Table 4.

The errors we found under the first three categories in Table 5, representing a net of \$1,083,000, all relate to compiling or applying animal census data. Stockton included in its count of eligible animals those turned in by their owners and those euthanized for humane reasons upon arrival at the shelter. The parameters and guidelines define both types of animals as ineligible. We estimate that this mistake caused Stockton to overstate the acquiring space component of its animal adoption claim by roughly \$392,000, or 45 percent of the costs it claimed

for that component. The reason for the mistake was an apparent lack of understanding about which animals were eligible for reimbursement among Stockton’s animal control personnel who gathered information for the claim.

In contrast, Stockton animal control personnel correctly provided an estimate of the annual census of dogs and cats housed in its shelter, but its consultant mistakenly used the number of animals coming into the shelter (intake) in preparing the claim. The intake amount is a much smaller number; for example, one dog held five days would count as one dog in the intake figure but would count as five animal days in the annual census number. By using the intake figure rather than the annual census, Stockton overstated its cost per dog

or cat. This caused significant overstatement of the care of dogs and cats component of the claim. Stockton’s consultant also miscalculated the number of reimbursable days, which caused an understatement of the care of dogs and cats component of the claim. We estimate that the net effect of these errors is an overstatement of \$340,000.

Formula Used to Determine the Claimable Amount for Care of Dogs and Cats

$$a = b \times c \times d$$

- (a) Claimable amount
- (b) Daily cost per dog or cat (the ratio of total care of dogs and cats to annual census of dogs and cats)
- (c) Eligible dogs and cats
- (d) Number of reimbursable days

The city of Los Angeles understated its annual census of dogs and cats by including only strays in the figure, instead of including *all* dogs and cats. This resulted in an overstatement of at least \$324,000 in the care of dogs and cats component of its claim. However, the city 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, 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. As the formula shows, including only strays in the census calculation would lead to an inflated cost per animal and an overstatement on the claim.

San Jose had several errors in its calculations, primarily related to the number of eligible animals, the number of total animals, and its annual census. These errors led to an estimated overstatement of \$31,000 in the costs for the care of dogs and

cats, an estimated overstatement of \$33,000 in the costs for acquiring space, and an estimated understatement of \$37,000 in the costs for veterinary care. The combination of these three errors resulted in a net overstatement of about \$27,000.

We estimate that the combination of three errors in calculating holding period costs led to a net overstatement of \$127,000 on the animal adoption claim submitted by the city of Los Angeles.

Another common mistake related to the claiming of holding period costs. The parameters and guidelines allow reimbursement under this category for the costs associated with holding shelters open to the public on one weekend day, one weekday evening, or, under certain circumstances, for costs incurred in establishing an after-hours redemption process. The city of Los Angeles claimed \$805,000 for holding its shelters open on Saturdays. However, we estimate that it overstated these costs by a net total of \$127,000. Specifically, \$317,000 of the \$805,000 claimed under this category is not reimbursable because it relates to the labor costs of animal control officers. These officers performed field operation duties not specifically related to holding shelters open to the public; therefore, their labor costs should not be included in the claim. This overstatement error was offset by the fact that the city claimed reimbursement for the activities of 12 fewer animal care technicians than we estimated it was entitled to claim. In addition, in computing the salaries and benefits for the staff time claimed, the city of Los Angeles used a different measure for total annual work hours than the Controller's standard of 1,800 hours. These two conditions led to an estimated understatement of \$190,000.

Stockton also claimed holding period costs that should not have been included. Specifically, the number of employees working on Saturday as contained in Stockton's fiscal year 2001-02 employee schedule did not match what was claimed. Its claim calculations included costs for five employees; however, the schedule revealed that only three employees generally worked in the shelters on Saturday. Two of the five employees worked in the field. In addition, the claim included full eight-hour shifts for each employee, even though Stockton's shelter is open to the public for only four hours on Saturdays. The rest of the employees' time is devoted to feeding animals, cleaning cages, and performing other duties related to the care of animals. These activities are not reimbursable as holding period costs under the animal adoption mandate, as they would have to be performed regardless of whether or not the shelter was open to the public. We estimate that the combination of these errors caused Stockton's claim to be overstated by \$45,000.

To a lesser extent, claimants also made overstatement errors when calculating their indirect costs. San Diego County's errors resulted in an estimated overstatement of \$21,000. In addition, Stockton incorrectly calculated its indirect cost rate, resulting in an estimated overstatement of \$20,000.

The city of Los Angeles and San Diego County could have claimed higher amounts in some areas. To determine indirect costs, the city of Los Angeles used the component that calculates departmental overhead rather than also using the component that calculates citywide central service costs, resulting in a significantly lower amount claimed. From our review of the claiming instructions issued by the Controller, we determined that nothing prohibited the city of Los Angeles from using both components. In fact, the city did use both components on its peace officer rights claim. This resulted in a \$361,000 understatement of indirect costs on the city's claim.

San Diego County claimed the much lower costs associated with an after-hours redemption process rather than costs associated with holding its shelters open on Saturday.

San Diego County claimed the much lower costs associated with an after-hours redemption process rather than costs associated with holding its shelters open on Saturday. The county employee who prepared the claim explained that he claimed the redemption process because he initially believed it was this process that enabled the county to employ the four-day holding period on all its animals. Although this may be the case, we found nothing in the parameters and guidelines that required local entities to identify and claim only for the practice that allowed them to employ the four-day holding period on all its animals. Therefore, we found that San Diego County would have been entitled to claim the higher costs associated with opening its shelters on Saturdays. San Diego County estimates that it costs \$170,000 to hold its shelters open on Saturdays. Because it claimed \$27,000 for establishing the after-hours process, we estimate that San Diego County would have been entitled to an additional \$143,000 if it had claimed for Saturday costs instead. San Diego County concurs that its claim contained errors and stated that it intends to file an amended claim.

In addition, San Jose did not need to claim \$117,000 in excess dog license revenue, or revenue in excess of the costs of administering the dog license function, as an offset. As discussed earlier in this chapter, these revenues can be applied to other costs, such as field operations, before being applied to shelter costs covered under the animal adoption mandate. San Jose had field operation costs far exceeding its excess dog license revenue and could have applied the revenues to those costs rather than including them in its animal adoption claim.

RECOMMENDATIONS

To ensure that local entities receive reimbursement only for costs associated with the increased holding period for eligible animals, the Legislature should 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. Specifically, if a local entity acquires or builds a new shelter facility that is larger than needed to comply with the increased holding period, the formula needs an additional factor to isolate the costs associated with the increased holding period from the costs incurred to meet other needs, such as preexisting shelter overcrowding or predicted animal population growth.

If the Commission amends the parameters and guidelines of the animal adoption mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space, the Controller should amend its claiming instructions accordingly and require local entities that have claimed such costs to amend their claims to address the change.

To assist local entities in preparing mandate reimbursement claims, the Commission should 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.

To ensure that local entities have prepared reimbursement claims for the peace officer rights mandate that are consistent with the Commission's intent, the Controller should audit claims already paid under that mandate. In conducting the audit, the Controller should pay particular attention to the types of problems described in this report. If deemed appropriate based on the results of its audit, the Controller should do the following:

- Request that the Commission amend the parameters and guidelines to address any concerns the Controller identifies.
- Amend the claiming instructions and require local entities who have filed claims to adjust their claims accordingly.

- Seek statutory changes, if needed, to accomplish any identified amendments and to ensure that the amendments can be applied retroactively to all claims submitted.

To clarify which costs are reimbursable under the administrative activities section of the peace officer rights mandate parameters and guidelines, the Controller should request that the Commission amend the parameters and guidelines to better explain what activities are included in “updating the status of the cases.”

To ensure that local entities claim reimbursement for appropriate costs under the animal adoption mandate, the Controller should 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.

To ensure that local entities develop and maintain adequate support for costs claimed under all state mandates, the Controller should finalize its guidance on what constitutes an acceptable time study for local entities to follow and under what circumstances they can use a time study to estimate the amount of time their employees spend on reimbursable activities.

All local entities that have filed, or plan to file, claims for reimbursement under the peace officer rights or animal adoption mandate should consider carefully the issues raised in this report to ensure that they submit claims that are for reimbursable activities and that are supported properly. Additionally, they should refile claims when appropriate. Further, if local agencies 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. ■

CHAPTER 2

Structural Reforms Are Needed to Identify Mandate Costs More Accurately and to Ensure That Claims Reimbursement Guidance Is Consistent With Legislative and Commission Intent

CHAPTER SUMMARY

As described in the Introduction of our report, state and local entities participated extensively in the administrative process for the Peace Officers Procedural Bill of Rights (peace officer rights) and animal adoption mandates. However, as described in Chapter 1, we questioned a high level of costs during our review of claims. These problems highlight the need for structural reforms of the process to ensure that local entities claim reimbursement for activities that are consistent with legislative intent and the parameters and guidelines. Additionally, changes are needed to estimate mandate costs better. Audits of mandate reimbursement claims do not occur in time to identify and correct potential claiming errors that can lead to reporting and payment of nonreimbursable costs for a mandate.

Also, the statewide cost estimate is not a good indicator of future mandate costs to the Legislature because it is based on incomplete data. This problem is compounded because the Commission on State Mandates (Commission) staff do not adequately analyze the data used to prepare the cost estimate and the Commission's report to the Legislature does not disclose how incomplete the data are. Further, according to Commission staff, a lack of staffing and a high caseload of test claims likely will delay the Commission's development of statewide cost estimates for future mandates. This in turn will delay notification to the Legislature of the potential cost of mandates and, ultimately, payments to local entities.

CLAIMS AUDITS DO NOT OCCUR EARLY ENOUGH TO IDENTIFY POTENTIAL ERRORS OR NEEDED REVISIONS TO THE PARAMETERS AND GUIDELINES

Audits of mandate reimbursement claims performed by the State Controller's Office (Controller) do not occur early enough to identify potential claiming errors and needed revisions to the parameters and guidelines. The Controller has the authority to review claims and to suggest changes to the parameters and guidelines; however, its general practice is to conduct field audits after claims are paid. In the case of the peace officer rights mandate, the Controller's staff told us it does not intend to perform any audits pending the outcome of our review, even though some of the claims have been paid. In addition, staff indicated that the Controller's focus is on auditing paid claims to ensure that any inappropriate claiming could be identified before the three-year statutory time limit for auditing claims expires. Therefore, the Controller has not performed audits of the animal adoption claims because the Legislature has not appropriated funds to pay them. However, Chapter 1 illustrates that a significant portion of claims already filed are questionable and that changes are needed to ensure that the State pays only for appropriate costs.

Under current regulations, the Controller does not have sufficient time to perform a field review that could result in changes to the parameters and guidelines that would apply to the first set of reimbursement claims.

Although field audits of reimbursement claims afford the Controller an opportunity to suggest changes to the parameters and guidelines, these changes affect only future reimbursement claims under the Commission's current regulations and would not affect the parameters and guidelines for any claims that local entities already have submitted, including the first set of claims to be submitted (initial reimbursement claims). The initial reimbursement claims can involve multiple years of costs. For example, the initial reimbursement claims for the peace officer rights mandate included six years of costs. Under current regulations, the Controller would need to request an amendment to the parameters and guidelines before the deadline for filing initial reimbursement claims in order to affect them. The Controller may not receive a majority of the initial claims until the initial filing deadline, so it does not have sufficient time to perform a field review that could result in changes to the parameters and guidelines that would apply to the initial reimbursement claims. Although the Controller later can question the amount of a paid claim based on a subsequent audit and reduce any claim it determines is excessive or unreasonable, this puts the State in the position of cost recovery on a claim-by-claim basis instead of ensuring that claims are reasonable before paying them. Therefore, structural reform is

needed to provide the Controller an opportunity to perform a field review of initial reimbursement claims before the original parameters and guidelines are considered final.

Controller field reviews before the original parameters and guidelines are considered final would help identify and correct problem areas before the State pays for claims.

We would not expect the Controller to review initial claims for every new mandate, particularly small ones. Thus, the change we are proposing should not require the Controller to perform a review of all new mandates, but should continue to afford the flexibility it currently has. Commission staff stated that the Commission can seek a regulatory amendment to change the filing deadline for requests to amend the parameters and guidelines. Therefore, it can seek a regulatory change to allow the Controller sufficient time to perform field reviews of reimbursement claims and request needed changes to the parameters and guidelines that would apply to initial claims before the development of the statewide cost estimate. Although this would lengthen the administrative process and might require local entities to adjust their initial reimbursement claims, the field reviews would help identify and correct problem areas before the State pays for claims. This also would help the Commission report a more accurate statewide cost estimate.

THE COMMISSION'S STATEWIDE COST ESTIMATES ARE NOT GOOD INDICATORS OF FUTURE MANDATE COSTS

The Commission's statewide cost estimates do not provide a good indication of the future costs of mandates. Although Commission staff base their projections of future costs on the initial claims submitted to the Controller, these estimates are based on incomplete information because the number and dollar amount of the initial claims are subject to change for up to one year after the initial filing deadline. As a result, the level of claims local entities ultimately submit for a particular year often exceeds the Commission's estimated costs. In particular, as of April 2003, local entities submitted additional or amended initial claims exceeding the amounts included in the Commission's statewide cost estimates for the peace officer rights mandate by a total of \$46.7 million and animal adoption mandates by a total of \$8.9 million. The effect of this incomplete data is compounded because the Commission uses that data to project costs in future years when reporting to the Legislature as required by Government Code, Section 17600. For one of the two mandates we reviewed, Commission staff did not adjust for anomalies in the initial claims data when developing cost estimates, and the Commission's reports to the Legislature

did not adequately disclose how incomplete the data are for both mandates. As a result, the Commission's estimates are understated and users of the estimates may not understand how incomplete they are.

Based on initial claims data for the peace officer rights mandate, as of March 2001, the Commission estimated costs to the State of \$152.5 million for the eight-year period of fiscal years 1994–95 through 2001–02. Local entities actually submitted \$223.5 million in claims for these years as of April 2003, \$71 million more than the estimate. In developing the estimate, Commission staff used the \$100.3 million in initial claims local entities submitted by March 2001 for the first six years of costs. However, as shown in Table 6, by April 2003, the Controller already had received \$147 million in claims for these six years, \$46.7 million more than the estimate. In addition, because the actual claims data Commission staff used were incomplete, the projections they developed for fiscal years 2000–01 and 2001–02 based on the actual claims data also were understated. As of April 2003, the Controller received about \$24.3 million more in claims for fiscal years 2000–01 and 2001–02 than the Commission projected in its estimate. Furthermore, local entities can submit late or amended claims for fiscal year 2001–02 until January 2004, so this difference will likely increase.

TABLE 6
Peace Officer Rights Mandate Amounts Claimed Initially
Compared With Amounts Claimed as of April 2003
(Dollars in Millions)

Fiscal Year	As of March 2001		As of April 2003		Increase in Amount Claimed
	Number of Claims Filed	Total Dollars Claimed	Number of Claims Filed	Total Dollars Claimed	
1994–95	165	\$ 11.2	214	\$ 18.4	\$ 7.2
1995–96	182	13.6	241	21.1	7.5
1996–97	185	13.8	243	21.6	7.8
1997–98	191	15.8	250	22.9	7.1
1998–99	194	21.0	253	28.7	7.7
1999–2000	201	24.9	262	34.3	9.4
Totals	1,118	\$100.3	1,463	\$147.0	\$46.7

Source: Claims on file with the State Controller's Office.

For animal adoption, the Commission estimated that the mandate would cost \$79.2 million for fiscal years 1998–99 through 2003–04. Commission staff based the estimate on the \$51.9 million in claims filed with the Controller as of December 2002 for fiscal years 1998–99 through 2001–02. However, as shown in Table 7, local entities submitted \$60.8 million in claims for these years as of April 2003, \$8.9 million more than the estimate. This difference likely will increase because they can submit late or amended claims for fiscal year 2001–02 until January 2004. In addition, because the claims data were incomplete, the \$27.3 million in costs Commission staff projected for fiscal years 2002–03 and 2003–04 are likely understated as well.

TABLE 7

**Animal Adoption Mandate Amounts Claimed Initially
Compared With Amounts Claimed as of April 2003
(Dollars in Millions)**

Fiscal Year	As of December 2002		As of April 2003		Increase in Amount Claimed
	Number of Claims Filed	Total Dollars Claimed	Number of Claims Filed	Total Dollars Claimed	
1998–99	149	\$ 3.7	163	\$ 3.9	\$0.2
1999–2000	255	17.5	269	17.8	0.3
2000–01	277	17.6	289	18.1	0.5
2001–02*	215	13.1	279	21.0	7.9
Totals	896	\$51.9	1,000	\$60.8	\$8.9

Source: Claims on file with the State Controller’s Office.

* Fiscal year 2001–02 claims are open for amendment until January 15, 2004.

Moreover, Commission staff did not adjust for anomalies in the actual claims data when they developed the projections for fiscal years 2002–03 and 2003–04, which led to a further understatement of costs. Specifically, they did not fully consider the amount of animal adoption claims filed related to all the previous four years. Instead, they used the data related only to the fiscal year 2001–02 claims plus a minor increase for each year based on growth factors obtained from the Department of Finance (Finance). However, as Table 7 shows, the Controller received only 215 claims as of December 2002 for fiscal year 2001–02, far less than the 277 claims received for the prior year. Commission staff should have anticipated that more claims

would come in for fiscal year 2001-02 because the initial filing deadline for those claims was January 15, 2003, more than a month after they obtained the claims data from the Controller. In fact, as of April 2003, the Controller has received 279 claims for fiscal year 2001–02 and probably will receive more by the final deadline of January 2004 because, as mentioned earlier, claimants can file late or amended claims until then.

The Commission's statewide cost estimates will likely be incomplete because they are prepared before the final deadlines for submitting late or amended claims.

Even though Commission staff use actual claims data to prepare statewide cost estimates, the estimates will likely be incomplete because they are prepared before the final deadlines for submitting late or amended claims. Local entities generally have up to one year after the initial filing deadline to submit late or amended claims. The general practice of Commission staff is to prepare a statewide cost estimate within 30 days after they receive the initial claims data from the Controller, so the claims data they use will almost always be incomplete. This impact is multiplied when, as was the case with the peace officer rights and animal adoption mandates, the initial claims submitted relate to multiple fiscal years. In addition, as described earlier, Commission staff did not always adjust the cost estimates to account for trends in the claims data or the impact that upcoming filing deadlines could have on the completeness of the data. Further, although the Commission's report on the statewide cost estimate specifies when staff obtained the claims data from the Controller, it does not sufficiently disclose to the Legislature how incomplete the data are. Specifically, the Commission's report does not indicate the assumptions made as is done in the more detailed staff analysis. For example, the Commission's report to the Legislature did not include the assumption staff made while developing the estimate for the animal adoption mandate that late or amended claims may be filed. This information would help the Legislature understand whether the data related to the years presented are complete and would highlight those years with incomplete data.

Another factor that affects the accuracy of the statewide cost estimate is the accuracy of the amounts local entities include in their claims. As discussed in Chapter 1, we question a significant amount of the activities local entities claimed under the peace officer rights mandate and identified errors in the claims related to the animal adoption mandate as well. Earlier in this chapter, we discussed how difficult it is to estimate mandate costs with confidence until initial reimbursement claims are submitted and subjected to some level of field review to ensure consistency with the parameters and guidelines. We believe that if the

Controller performs a field review of the initial reimbursement claims for selected new mandates, as discussed previously, this would help ensure that claimed costs are accurate. In turn, this structural reform would improve the accuracy of the claims data the Commission includes in its statewide cost estimates.

COMMISSION STAFF ASSERT THAT LACK OF STAFFING WILL CONTINUE TO AFFECT THE COMMISSION'S ABILITY TO MEET STATUTORY DEADLINES RELATED TO THE MANDATE PROCESS

We identified several delays occurring at the Commission involving the better part of 20 months for the peace officer rights mandate and nine months for the animal adoption mandate.

The Commission took almost five years for the peace officer rights mandate and four years for the animal adoption mandate to reach a statement of decision and prepare a statewide cost estimate. Although its processes allow the Commission to grant extensions of time or even postponement of hearings based on good cause, we identified several delays occurring at the Commission involving the better part of 20 months for the peace officer rights mandate and nine months for the animal adoption mandate. Commission staff believe such delays will continue because of recent increases in workload and decreases in staffing.

To meet the statutory deadlines, the Commission uses a standard timeline—set forth in regulation—to hear and decide the disposition of test claims, to adopt parameters and guidelines, and to develop a statewide cost estimate. In certain circumstances, this timeline can be extended to allow interested parties and affected state agencies additional time for review and comments. For example, any interested party or affected state agency may request an extension of time before the date set for filing responses. The request must explain the reasons an extension is necessary, propose a new date, and be approved by the Commission's executive director. In addition, any party may request a postponement of a hearing regarding a test claim, parameters and guidelines, or a statewide cost estimate until the next scheduled hearing or another date. This request must explain the reasons for the postponement and must be approved by the Commission's executive director.

We found delays in the timelines for both mandates. The peace officer rights mandate timeline included a combined delay of more than seven months because Commission staff failed to follow up with the claimant regarding the submittal of a rebuttal and the submittal of Commission-requested materials in a timely fashion. In addition, Commission staff took 13 months

to issue the draft staff analysis of the test claim from the time they received requested additional information from all parties. For the animal adoption mandate, Commission staff took almost nine months to issue the draft staff analysis from the last date a comment, rebuttal, or amendment to the test claim was filed. Commission staff told us the delays were partially caused by competing priorities and a staffing shortage. Although we acknowledge that Commission staff needed some time to analyze the information received, we believe most of these delays reflected time beyond what was needed for the analysis.

Commission staff also indicated that the workload has increased while the number of staff has decreased because of the State's fiscal crisis. Commission staff stated that a new statutory requirement contributed to a large increase in the number of test claims filed by local entities. Commission staff also reported that the Commission has heard and ruled on an increased number of challenges filed by local entities asserting that the Controller incorrectly reduced their reimbursement claims (incorrect reduction claims). According to staff, the Commission heard and ruled on 70 incorrect reduction claims during fiscal year 2002–03, as opposed to only three during fiscal year 2001–02. Further, Commission staff indicated that the Commission faces a significant caseload of test claims that will prevent it from meeting the statutory deadlines related to the mandate process for the foreseeable future.

Commission staff stated that the Commission would not be able to hear, decide, or adopt parameters and guidelines or statewide cost estimates within its regulatory 12-month timeline for the 51 test claims that were filed during fiscal year 2002–03.

Commission staff stated that, as of July 2003, they had a caseload of 113 test claims, compared with only 82 test claims as of July 2002. Included in the 113 test claims are 51 that were filed during fiscal year 2002–03 that have yet to be heard or decided. Commission staff stated that this is due, in part, to Chapter 1124, Statutes of 2002, which requires local entities to submit test claims related to laws in effect before 2002, by September 30, 2003. Commission staff also stated that, based on the current budget, staffing, and workload, the Commission would not be able to hear, decide, or adopt parameters and guidelines or statewide cost estimates within its regulatory 12-month timeline for the 51 test claims that were filed during fiscal year 2002–03. Also, as a result of the current state budget crisis, Commission staff stated that the Commission's authorized staffing levels were reduced from 14 in fiscal year 2002–03 to 10 in fiscal year 2003–04. Unless the Commission is able to increase staffing to handle the caseload effectively, it likely will continue to face delays in accomplishing its workload.

RECOMMENDATIONS

To identify potential claiming errors and to ensure that costs claimed are consistent with legislative and Commission intent, the Controller should perform a field review of initial reimbursement claims for selected new mandates. 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 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.

To project more accurate statewide cost estimates, Commission staff should analyze more carefully the completeness of the initial claims data used to develop the estimates and adjust the estimates accordingly.

When reporting its statewide cost estimates to the Legislature, the Commission should disclose the incomplete nature of the initial claims data used to develop the estimates and the assumptions it made regarding the initial claims data.

The Commission should ensure that it carries out its process for deciding test claims, approving parameters and guidelines, and developing the statewide cost estimates in as timely a manner as possible. To ensure that it is able to do so, the Commission should continue to assess its caseload and work with Finance and the Legislature to obtain sufficient staffing.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive style with a long horizontal flourish at the end.

ELAINE M. HOWLE
State Auditor

Date: October 15, 2003

Staff: Karen L. McKenna, CPA, Audit Principal
John F. Collins II, CPA
Joe Azevedo
Ben Belnap
Suzi Ishikawa
Jerry A. Lewis

APPENDIX

The Commission Found That the Due-Process Clauses of the U.S. and California Constitutions Impose Administrative Appeal Requirements Similar to Parts of the Peace Officer Rights Law

In its statement of decision for the Peace Officers Procedural Bill of Rights (peace officer rights) mandate, the Commission on State Mandates (Commission) determined that a portion of the peace officer rights law imposes some of the same notice and hearing requirements imposed under existing due-process clauses in the U.S. and California constitutions. To the extent that certain requirements already were imposed on local entities before the peace officer rights law, the commission found that no mandate subject to state reimbursement exists. The Commission found that the peace officer rights law is broader than the due-process clauses and applies to additional employer actions that did not previously enjoy the protections of the due-process clauses. Accordingly, the Commission found that a state mandate exists to the extent that the peace officer rights law imposed new duties that exceeded those preexisting obligations. For example, in its statement of decision for the peace officer rights mandate, the Commission included the table presented on the following page in its discussion of administrative appeals to distinguish between the types of employer actions previously required under the due-process clauses of both the U.S. and California constitutions and those new duties imposed by the mandate. Although this particular discussion focused on administrative appeals, the Commission made similar distinctions in discussing other categories of expense in the statement of decision. The text in italics represents those employer actions required by the peace officer rights law that go beyond already existing due-process requirements for administrative appeals.

TABLE A.1

**Comparison of Administrative Appeal Requirements
Before and After the Peace Officer Rights Mandate**

Due Process (Requirements Before Mandate)	Peace Officer Rights Law (Requirements After Mandate)
Dismissal of a permanent employee	Dismissal of a permanent, <i>probationary</i> , or <i>at-will</i> employee
Demotion of a permanent employee	Demotion of a permanent, <i>probationary</i> , or <i>at-will</i> employee
Suspension of a permanent employee	Suspension of a permanent, <i>probationary</i> , or <i>at-will</i> employee
Reduction in salary for a permanent employee	Reduction in salary for a permanent, <i>probationary</i> , or <i>at-will</i> employee
Written reprimand of a permanent employee	Written reprimand of a permanent, <i>probationary</i> , or <i>at-will</i> employee
Dismissal of a probationary or at-will employee that harms the employee's reputation and ability to find future employment	Dismissal of a probationary or at-will employee that harms the employee's reputation and ability to find future employment
None	<i>Transfer of a permanent, probationary, or at-will employee for purposes of punishment</i>
None	<i>Denial of promotion for a permanent, probationary, or at-will employee on grounds other than merit</i>
None	<i>Any other disciplinary actions not listed above against a permanent, probationary, or at-will employee that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee</i>

Source: The November 1999 statement of decision for the peace officer rights mandate by the Commission on State Mandates.

The Commission determined that under the following circumstances, the administrative appeal requirements in the peace officer rights law *do not* constitute a new program or higher level of service because prior law requires such an appeal under the due-process clauses:

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

However, the Commission also stated that the due-process clauses of the U.S. and California constitutions do not require an administrative appeal in the following circumstances:

- Dismissal, demotion, suspension, salary reduction, or written reprimand received by probationary and at-will employees whose liberty interests are not affected.⁴
- Transfer of permanent, probationary, and at-will employees for purposes of punishment.
- Denial of promotion for permanent, probationary, and at-will employees for reasons other than merit.
- Other actions against permanent, probationary, and at-will employees that result in disadvantage, harm, loss, or hardship and impact the employee's career opportunities.

Thus, the Commission found that in the previously named situations, the administrative appeal required by the peace officer rights law constitutes a new program or higher level of service and as such imposes costs mandated by the State. In the parameters and guidelines it issued to claimants as guidance, the Commission included these actions as reimbursable in the administrative appeals category for the period July 1, 1994, through December 31, 1998. However, the parameters and guidelines provide a further limitation starting January 1, 1999, because of a change in the law. Specifically, Government Code, Section 3304(b), no longer affords these protections for probationary and at-will employees, but now affords the protections contained in the first and last of the four items listed above to a chief of police.

⁴ A liberty interest in employment arises when a government charge may seriously damage one's reputation to the extent that it forecloses the employee's freedom to pursue other employment opportunities.

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Agency's comments provided as text only.

Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

October 1, 2003

Ms. Elaine M. Howle
State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: Response to Bureau of State Audits' Draft Report on the
Peace Officers Procedural Bill of Rights and Animal Adoption Programs

Dear Ms. Howle:

Thank you for the opportunity to respond to the Bureau of State Audits' Draft Report, "State Mandates: The High Level of Questionable Costs Claimed Highlights the Need for Structural Reforms of the Process." We appreciate your accurate description of the mandate reimbursement process and the Commission's quasi-judicial role in it. Following are our responses to the specific recommendations in the report that relate to the Commission.

Recommendation: To ensure that local entities receive reimbursement only for costs associated with the increased holding period for eligible animals, the Legislature should 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.

Response: Based on the findings in the report, amendments to the parameters and guidelines appear to be appropriate. If a statute is enacted to implement this recommendation, the Commission staff will work with state agencies and interested parties in the development of an alternative formula. The alternative formula would be included in a proposed amendment presented to the Commission for adoption.

Recommendation: To assist local entities in preparing mandate reimbursement claims, the Commission should 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 should also point out that the support for such legal and factual findings is found in the administrative record of the test claim.

Response: The Commission staff will add the suggested language to proposed parameters and guidelines that are presented to the Commission for adoption.

Ms. Elaine M. Howle
October 1, 2003
Page 2

Recommendation: 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 field reviews and identify any inappropriate claiming as well as suggest any needed changes to the parameters and guidelines prior to 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.

Response: The Commission staff will work with the State Controller's Office as that office determines how to identify potential claiming errors and ensure that costs claimed are consistent with legislative and Commission intent. The staff will develop and propose appropriate changes to the regulations and statutes in consultation with affected state agencies and interested parties. Any changes to the Commission's regulations will be submitted to the Commission for approval and adoption. If it were necessary to seek appropriate statutory changes, a legislative proposal would be submitted to the Commission and the Governor's Office for approval prior to submission to the Legislature.

Recommendation: To project more accurate statewide cost estimates, the Commission staff should more carefully analyze the completeness of the initial claims data they use to develop the estimates and adjust the estimates accordingly. Additionally, when reporting to the Legislature, the Commission should disclose the incomplete nature of the initial claims data it uses to develop the estimates.

Response: The Commission staff agrees with the audit findings supporting this recommendation and will immediately implement it.

Recommendation: To ensure that it is able to meet its statutory deadlines in the future, the Commission should continue to assess its caseload and work with the Department of Finance and the Legislature to obtain sufficient staffing to deal with its caseload.

Response: The Commission recognizes the importance of completing test claim determinations to provide policymakers with timely statewide cost estimates for mandated programs. The Commission will continue to assess its caseload during every meeting. Today, 137 test claims are pending; 29 more were filed since the report was completed. Over the past year, the number of pending test claims has increased by 61 percent. As noted in the report, unless staffing is increased to effectively handle the caseload, there will be significant delays. We will continue to work with the Department of Finance and the Legislature to address this issue.

Sincerely,

(Signed by: Paula Higashi)

PAULA HIGASHI
Executive Director

Agency's comments provided as text only.

State Controller's Office
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

October 1, 2003

Ms. Elaine M. Howle
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

Thank you for the opportunity to respond to the draft report dealing with your report, *State Mandates: The High Level of Questionable Costs Claimed Highlights the Need for Structural Reforms of the Process*. Enclosed is the State Controller's Office (SCO) response to specific recommendations in your report.

The SCO has worked with the Commission on State Mandates' staff, affected state agencies, interested parties, and claimants in recommending changes to the parameters and guidelines to provide greater clarity as to reimbursable activities and in strengthening documentation requirements necessary to support actual costs claimed. My staff has been very proactive in the mandated cost process, both from an administrative and an audit perspective. Like your audit, the SCO audits have also disclosed significant findings relating to unsupported and unallowable costs.

As discussed in your report, structural reforms are needed to more accurately identify mandated costs and to ensure that claims reimbursement guidance is consistent with legislative and Commission intent. I support any efforts made to improve and streamline the mandated cost process.

I appreciate your recommendations and will ensure that they will be implemented in a timely manner.

Sincerely,

(Signed by: Steve Westly)

STEVE WESTLY
California State Controller

Enclosure

**STATE CONTROLLER'S OFFICE
RESPONSE TO BUREAU OF STATE AUDITS REPORT
OCTOBER 1, 2003**

OVERVIEW

The State Controller's Office (SCO) appreciates the assistance of the Bureau of State Audits (BSA) in reviewing and identifying issues and providing recommendations for improvements concerning the mandated cost program. The SCO has been very proactive in working with other affected state agencies, local agency representatives, and the Commission on State Mandates (Commission) in clarifying specific reimbursable activities and documentation requirements in the parameters and guidelines and related claiming instructions. Additionally, over the last two years, the SCO has made improvements in processing and monitoring mandated cost claims and has expanded the field audit process.

RESPONSE TO RECOMMENDATIONS

The SCO concurs with the findings and recommendations of the audit and is committed to improving the program to the maximum extent possible by working with the Commission, other affected state agencies, and local agency representatives. There are several plans that will be developed to address the recommendations. The plans and their status will be reported to the BSA in our update, which is due 60 days from the issuance of your final report.

Recommendations – Chapter 1

To ensure that local entities receive reimbursement only for costs associated with the increased holding period for eligible animals, the Legislature should 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. Specifically, if a local entity acquires or builds a new shelter facility that is larger than needed to comply with the increased holding period, the formula needs an additional factor to isolate the cost associated with the increased holding period from the costs incurred to meet other needs, such as preexisting shelter overcrowding or predicted animal population growth.

If the Commission amends the parameters and guidelines of the animal adoption mandate to correct the formula for determining the reimbursable portion of acquiring additional shelter space, the Controller should amend its claiming instructions accordingly and require local entities who have claimed such costs to amend their claims to address the change.

Response:

The SCO agrees with this recommendation. Specific actions in response to the above recommendation are as follows:

- The SCO agrees that the Legislature should 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.

- The SCO will recommend that the legislation addresses the appropriate reimbursable period for the change and authorizes the SCO to require that claims be refiled.
- As required under current law and regulation, within 60 days of the adoption of any amendments to the parameters and guidelines, the SCO will reissue claiming instructions to ensure consistency with the amended parameters and guidelines.

To ensure that local entities have prepared reimbursement claims for the peace officer rights mandate that are consistent with the Commission's intent, the Controller should audit claims already paid under that mandate. In conducting the audit, the Controller should pay particular attention to the types of problems described in this report.

Response:

The SCO agrees with this recommendation. Specific action in response to the above recommendation is as follows:

- By November 1, 2003, the SCO will update the audit program to incorporate audit issues identified in the report and will commence the audits prior to December 31, 2003.

If deemed appropriate based on the results of its [peace officer rights] audit, the Controller should do the following:

- **Request that the Commission amend the parameters and guidelines to address any concerns the Controller identifies.**
- **Amend the claiming instructions and require local entities who have filed claims to adjust their claims accordingly.**
- **Seek statutory changes, if needed, to accomplish any identified amendments and to ensure that the amendments can be applied retroactively to all claims submitted.**

Response:

The SCO agrees with this recommendation. Specific actions in response to the above recommendation are as follows:

- Within 60 days of publication of the SCO audits of peace officer rights mandates initiated prior to December 31, 2003, the SCO will request the Commission to amend the parameters and guidelines for issues that will require greater specificity as to reimbursable activities, provided those activities are consistent with the Commission's adopted statement of decision. In requesting an amendment, the SCO will seek appropriate direction relating to retroactive application of the change in reimbursable activities for previously filed claims and authorization for claims to be refiled with the SCO.
- Within 60 days of the adoption of any amendments to the parameters and guidelines, the SCO will reissue the claiming instructions to ensure consistency with the amended parameters and guidelines.
- By December 1, 2003, the SCO will work with the Commission in assessing whether regulatory and/or statutory changes are necessary for amendments to be applied retroactively to previously filed claims. If statutory changes are necessary, the SCO will seek necessary legislation.

To clarify which costs are reimbursable under the administrative activities section of the peace officer rights mandate parameters and guidelines, the Controller should request that the Commission amend the parameters and guidelines to better explain what activities are included in “updating the status of the cases.”

Response:

The SCO agrees with this recommendation. Specific actions in response to the above recommendation are as follows:

- Within 60 days of the publication of SCO audits of peace officer rights mandates initiated prior to December 31, 2003, the SCO will request the Commission to amend the parameters and guidelines for administrative activity costs for updating the status report to require greater specificity as to reimbursable activities, provided those activities are consistent with the Commission’s adopted statement of decision and clarification contained in the Commission staff analysis of the proposed parameters and guidelines.
- Within 60 days of the adoption of any amendments to the parameters and guidelines, the SCO will reissue the claiming instructions to ensure consistency with the amended parameters and guidelines.
- By December 1, 2003, the SCO will work with the Commission in assessing whether regulatory and/or statutory changes are necessary for amendments to be applied retroactively to previously filed claims. If statutory changes are necessary, the SCO will seek necessary legislation.

To ensure that local entities claim reimbursement for appropriate costs under the animal adoption mandate, the Controller should either 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 properly calculate reimbursable costs under the care and maintenance section of the parameters and guidelines.

Response:

The SCO agrees with this recommendation. Specific actions in response to the above recommendation are as follows:

- By December 1, 2003, the SCO will request the Commission to amend the parameters and guidelines for the animal adoption mandate to emphasize that the average daily census must be based on all animals housed, to properly calculate reimbursable costs under the care and maintenance section.
- Within 60 days of the adoption of any amendments to the parameters and guidelines, the SCO will reissue the claiming instructions to ensure consistency with the amended parameters and guidelines.

To ensure that local entities develop and maintain adequate support for costs claimed under all state mandates, the Controller should finalize its guidance on what constitutes an acceptable time study for local entities to follow and under what circumstances they can use a time study to estimate the amount of time their employees spend on reimbursable activities.

Response:

The SCO agrees with this recommendation. Specific actions in response to the above recommendation are as follows:

- By December 1, 2003, the SCO will develop a plan for implementation of time study guidelines. Over the past year, the SCO has been meeting with representatives from cities, counties, and school districts to develop guidance on what constitutes an acceptable time study and to identify the appropriate circumstances for its application. The SCO plans to discuss the results with affected state agencies prior to finalizing the guidelines.

Recommendations – Chapter 2

To identify potential claimant errors and ensure that costs claimed are consistent with legislative and Commission intent, the Controller should perform a field review of initial reimbursement claims for selected new mandates. 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 suggest any needed changes to the parameters and guidelines prior to 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.

Response:

The SCO agrees in principle with the recommendations. Specific action in response to the above recommendations is as follows:

- By January 1, 2004, the SCO will develop a plan to commence reviews of filed claims for selected new mandates prior to payment. The plan will include meeting with the Commission and other affected state agencies to identify what regulatory or statutory changes and audit resources are necessary to allow the Controller sufficient time to perform field reviews prior to payment and avoid any loss of recoveries from post-payment audits because of the current three-year time limit. The proposed change will allow the SCO to identify inappropriate claiming as well as suggest any needed changes to the parameters and guidelines prior to the development of the statewide cost estimate, the payment of claims, and the effective date of the amended parameters and guidelines.

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Agency's comments provided as text only.

City of Los Angeles
1500 City Hall East
Los Angeles, CA 90012-4190

September 30, 2003

0110-38000-0000

Mr. Steven M. Hendrickson*
Chief Deputy State Auditor
California State Auditor
Bureau Of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Mr. Hendrickson:

Enclosed is the response from the City of Los Angeles to the Bureau of State Auditors regarding the draft review of the Animal Adoption mandate and the Peace Officer Rights mandate.

If you have any questions regarding this matter, please contact Angela L. Berumen of my staff at 213/485-8099 or by e-mail at aberumen@cao.lacity.org

Sincerely,

(Signed by: William T Fujioka)

William T Fujioka
City Administrative Officer

Enclosures

* California State Auditor's comments begin on page 81.

City of Los Angeles
INTERDEPARTMENTAL CORRESPONDENCE

Date: September 29, 2003

To: WILLIAM T FUJIOKA, City Administrative Officer

From: JERRY GREENWALT, General Manager
Department of Animal Services

Subject: **RESPONSE TO BUREAU OF STATE AUDITORS REVIEW OF THE ANIMAL
ADOPTION REIMBURSEMENT CLAIM**

The Department of Animal Services (Department) received the results of the recent audit/review performed by the State of California, Bureau of State Audits (BSA). The audit was a review of a Department claim submitted under the Animal Adoption mandate required under SB 1785 for the Fiscal Year 2001-02. The following information is submitted as a result of the BSA audit.

The Department has reviewed the audit findings as submitted by the BSA and determined that they are substantially correct. The audit was found to be fair and without procedural errors. Some records were missing and the Department was unable to produce them at the auditor's request; thus, disallowances were made to claimed amounts. However, the Department was unable to verify the value of the reported disallowances because the records sampled and the sampling techniques used by the BSA to complete the audit were not made available to the Department.

Based on the audit information supplied by the BSA, the Department will submit amended Animal Adoption claims for reimbursement, with the supporting documentation available for future audits.

If you have any questions please call Agnes Ko, Senior Management Analyst II, at (213) 473-7617, or Ross Pool, Management Assistant, at (213) 473-7515.

JG:AK:RP

cc: Todd Bouey, CAO
Agnes Ko
Ross Pool

Los Angeles Police Department Response to the
California State Auditor, Bureau of State Audits

We believe your office does not understand the requirements placed on local government by the Peace Officer Procedural Bill of Rights (POBOR), therefore, your findings do not reflect the work required to comply with the state mandated requirements that are imposed on the Los Angeles Police Department (LAPD). As you correctly state in Chapter 1 of your report titled, "Excerpts Related to the Peace Officer Rights Mandate," the Commission (Commission on State Mandates) found that many of the activities included in the peace officers right law are not reimbursable because they were already required under the constitutional provisions (due-process clause of the 14th Amendment of the United States Constitution). It appears you accurately concluded that the reimbursable portions are "the requirements in the peace officer rights law (that) exceed the rights afforded peace officers under the United States and California constitution." If that is a fair representation of your comments, then we fully agree on how you should determine if an activity is reimbursable.

Our disagreement with your report and the majority of the findings related to our Department centers around your comments on what activities are mandated by the POBOR Act that exceeds a police officer's constitutional right. Suffice it to say, in all three of the areas or components that you discussed in your report, namely, (1) interrogations, (2) adverse comments, and (3) administrative activities, we believe the Bureau has understated what activities go beyond a peace officer's constitutional due process rights and therefore are mandated by the POBOR Act. Given that basic disagreement, a section-by-section or issue-by-issue response has not been prepared.

We take considerable issue with your comment that one hundred (100) percent of the costs included in City's state mandated cost reimbursement claims that were audited are "unsupported." We have considerable evidence to document that the work was done and there are files, which you have seen, that contain detailed information on the cases included in the state mandated cost claims at issue. While the data may not be in the form you prefer, we feel it clearly demonstrates that the work was done and that it can be determined that the amount of time associated with the activities claimed is very reasonable.

The City does agree with your findings on pages 12 and 13 of the report relating to the calculation errors in claiming indirect costs and employee benefits. Your findings appear to be correct.

Since your report goes to the Legislature, we would like to raise one issue for their consideration. The issue is how much time should local agencies expend to provide the level of documentation that you apparently desire. If you would like the City to purchase and implement a detailed activity based cost accounting system and have the Department's officers spend the commensurate time documenting their activities to meet those requirements, then we would request that you provide us with the money to purchase and implement that system as well as to pay LAPD for the cost of its personnel to maintain that system. Our job is to provide law enforcement services to the citizens of Los Angeles and in this case, make sure LAPD's peace officers are provided the additional protections afforded to them by the state mandate Peace Officers Procedural Bill of Rights. Given the

Los Angeles Police Department Response to the
California State Auditor, Bureau of State Audits

● limited resources of both state and local government, we find it offensive to suggest that we need to be spending considerable more time on administrative and accounting systems to justify the costs which we obviously incurred.

We understand the federal government has recently recognized the need to reduce many of the burdensome documentation requirements on states just to justify the reimbursement of its federal expenditures. We believe that the primary requirement should be to provide evidence the product or service was delivered and efforts should be focused on minimizing the time and money spent documenting that evidence. If there is adequate proof the service has been provided, we believe the documentation should be kept to a reasonable minimum. In other words, we find it counterproductive for the State to be moving in the opposite direction of the federal government and demanding greater documentation, which does not appear to be benefiting anyone except accountants and consultants. Hopefully the Legislature will recognize that the delivery of the service is what is of the utmost importance and the time spent on unnecessary documentation between the various levels of California government is not in the best interest of its taxpayers.

● In closing, we understand you are just trying to do your job. We hope, however, the Legislature will not attempt to use your findings to avoid paying its constitutional obligation to local government. With all due respect, your report minimizes the state mandated requirements placed on local government that are needed to comply with the POBOR act.

We would like to express our appreciation for the professional conduct of your staff.

Questions regarding this matter may be referred to Ms. Laura Filatoff at (213) 485-5296.

COMMENTS

California State Auditor's Comments on the Response From the City of Los Angeles

To provide clarity and perspective, we are commenting on the response to our audit from the city of Los Angeles. The numbers correspond with the numbers we have placed in the city's response.

- We were surprised that the city of Los Angeles indicated it was not given the opportunity to verify the value of amounts we questioned related to its animal adoption claim. We briefed city staff on the nature and quantification of the various problems we noted with its claim. Had city staff asked for more information regarding our calculations, we would have been happy to provide it.
- We disagree with the city of Los Angeles' assertions that we did not understand or have understated or minimized the state mandated requirements under the Peace Officers Procedural Bill of Rights (peace officer rights) mandate. As described beginning on page 24 of our report, the administrative record shows that the Commission on State Mandates (Commission) found that many activities included in the peace officer rights law are not reimbursable because they already were required under constitutional provisions. In addition, Commission staff have confirmed our understanding of the record. Moreover, as we state on page 26 of our report, if a local entity believes the Commission should have identified more reimbursable activities, that entity could have brought these issues to the Commission's attention when it considered the proposed parameters and guidelines. Alternatively, the entity could have submitted a subsequent request to amend the parameters and guidelines to include additional activities.
- Page numbers and certain titles in the draft that we shared with the city of Los Angeles, such as "*Excerpts Related to the Peace Officer Rights Mandate*," differ from our final report. The statutes governing our work require us to maintain strict confidentiality of information related to an audit until that audit is completed

and released to the public. Thus, when an audit involves more than one entity, it is our practice to provide each entity with an excerpt of our draft report for comment.

- We found that 100 percent of the direct costs the city of Los Angeles claimed are unsupported because the methods the city used to determine time spent did not comply with the parameters and guidelines. Specifically, as described on page 41 of our report, the parameters and guidelines require local entities to track the actual time devoted to each reimbursable activity by each employee. The city of Los Angeles did not use this methodology in preparing its claim. Further, in acknowledging that tracking actual efforts may be challenging on pages 41 and 42 of our report, we describe using an adequate time study as an acceptable alternative for determining costs. However, as we point out on page 43, we found that the city's method for estimating time was deficient because it had no documentation to support that the time estimates it used reflected the actual experience of its employees. Thus, we found that the city of Los Angeles neither used an acceptable methodology nor adequately supported its claim.
- We have not asserted that local entities need to acquire new accounting systems. However, they do need to develop and maintain adequate supporting documentation that isolates costs for reimbursable activities. As described on pages 42 and 44 of our report, a time study conducted for a period of time may be a reasonable way to support claimed costs if it is not practical to track actual efforts on an ongoing basis. Further, as we note in our report, the State Controller's Office (Controller) is working with local entities to develop guidance regarding the appropriate use and conduct of time studies. However, the Controller has not yet provided such guidance as of the issuance of our report.

Agency's comments provided as text only.

County of Los Angeles
Kenneth Hahn Hall of Administration
Department of Auditor-Controller
500 West Temple Street, Room 525
Los Angeles, CA 90012-2766

October 1, 2003

Elaine M. Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Howle:

**Los Angeles County's Response
Bureau of State Audits' State Mandates Report
Peace Officers Procedural Bill of Rights**

We submit our response to the portion of the subject report which applies to Los Angeles County.

Leonard Kaye of my staff is available at (213) 974-8564 to answer questions you may have concerning this submission.

Very truly yours,

(Signed by: J. Tyler McCauley)

J. Tyler McCauley
Auditor-Controller

Enclosures

* California State Auditor's comments begin on page 89.

Los Angeles County's Response
Bureau of State Audits' State Mandates Report
Peace Officers Procedural Bill of Rights

Our review addresses the Bureau of State Audits' (BSA) finding that our Police Officer Procedural Bill of Rights (POBAR) claim is overstated.

BSA's principal concern is that "[t]he entities seemed to focus on the four broad categories of expense in the parameters and guidelines and not on the specific activities outlined within the categories."

As noted by BSA, Los Angeles County [County] elected to seek reimbursement under only two expense categories – "Interrogations" and "Administrative Appeals." No reimbursements were claimed under the "Adverse Comment" and "Administrative Activities" expense categories as the County did not have sufficient time to adequately document these costs. Otherwise, our claim would have been higher. If the County was motivated to seek reimbursement for costs that were perceived to be outside the scope of this mandate, it is unlikely that two entire categories would have been unclaimed.

For the two categories in which the County sought reimbursement, the BSA questions virtually all of the claimed costs. We believe that the POBAR's Statement of Decision (SOD)¹ and parameters and guidelines (Ps&Gs) are complex documents and that there may be reasonable differences in ascertaining costs that were intended to be reimbursed. Although we do not agree with BSA's conclusion that only a small percentage of the claimed costs are allowable, we do agree that the BSA's report identifies issues that may require further clarification from the Commission.

Further, the County will prepare future POBAR's claims in light of BSA's recommendations.

Following are our comments addressing BSA's conclusions that our POBAR's administrative appeal costs and interrogation costs [including investigation costs] were improperly claimed or not adequately supported.

Investigations

Implementation of the POBAR's program requires the County to conduct "prompt, thorough, and fair investigations"². Such investigative costs are reimbursable. In this regard, Commission's SOD states, on page 13, that:

¹ BSA notes that its report is based on "... the plain language in the statement of decision and parameters and guidelines" [BSA Report, page 4]. Accordingly, the County's response is also based on such language.

² The County uses the "prompt, thorough, and fair investigations" terminology here in order to describe the POBAR's investigative costs claimed under the "Interrogations" expense category. As noted by the Commission on page 16 of their POBAR's Statement of Decision, the California Supreme Court in *Pasadena Police Officers Association v. City of Pasadena* [[1990] 52 Cal.3d 564], supports Commission's finding that POBAR's imposed new and reimbursable duties, not required under prior law. With regard to POBAR's investigations, the Court stated:

"To keep the peace and enforce the law, a police department needs the confidence and cooperation of the community it serves. Even if not criminal in nature, acts of a police officer that tend to impair the public's trust in its police department can be harmful to the department's efficiency and morale. Thus, when allegations of officer misconduct are raised, it is essential that the department conduct a prompt, thorough, and fair investigation. Nothing can more swiftly destroy the community's confidence in its police force than its perception that concerns raised about an officer's honesty or integrity will go unheeded or will lead only to a superficial investigation." [Emphasis added.]

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

Accordingly, the Commission found that Government Code section 3303, subdivision (a), constitutes a new program or higher level of service under article XIII B, section 6 of the California Constitution and imposes “costs mandated by the state” under Government Code section 17514.” [Emphasis added.]³

In addition, Section IV. C. of the POBAR’s Ps&Gs, details reimbursable activities for “interrogations” to include:

“... reimbursement for the performance of ... [investigations] ... only when a peace officer is under investigation, and is subjected to an interrogation by the commanding officer, or any other member of the employing public safety department, that could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for the purpose of punishment.” [Emphasis added.]

Further, Section IV. C.1. of the POBAR’s Ps&Gs also provides for reimbursement of “off-duty compensation” “... when required by the seriousness of the investigation” [emphasis added].

Also, claiming POBAR’s investigative costs is not prohibited in Commission’s SOD or Ps&Gs.

Moreover, Commission’s SOD and Ps&Gs provide no reimbursement limitations on claimants’ costs in conducting a prompt, thorough, and fair investigation.

Investigation Costs

The County claimed its reimbursable POBAR’s investigative costs using methodologies acceptable to the State Controller’s Office [SCO].

For POBAR’s investigations occurring at the Sheriff’s unit level, a time study was conducted. The time spent by unit-level personnel investigating a POBAR’s matter over a period of several weeks or more averaged 14 hours per case. Computations, such as the determination of an appropriate productive hourly rate for investigators, were performed in accordance with SCO’s instructions. In this instance, the productive hourly rate was found to be \$47.48. Therefore, the claimed cost

³ BSA recognizes that this Commission language plainly indicates that local law enforcement agencies are required to “investigate an allegation” [BSA Report, page 6]. However, BSA contends that “investigative time is still clearly not reimbursable” [BSA Report, page 6]. BSA explains this result by indicating that Commission’s [above] “... wording within the statement of decision appears to have a minor inconsistency” [BSA Report, page 6]. We contend that BSA’s conclusion is erroneous and that the Commission conclusion is correct here.

to conduct a prompt, thorough, and fair investigation at the unit level was \$664.72 [14 hours @ \$47.48 per hour], an amount that is reasonable, proper, and computed in accordance with SCO claiming instructions⁴.

For more complex [than unit level] POBAR's investigations, all the time charged by each full-time investigator assigned to the Sheriff's Internal Affairs Bureau [IAB] was identified and only the time spent on a POBAR's case assigned to a particular investigator was charged in the County's claim. Such POBAR's time charges were based on the ratio of POBAR's cases to other types of cases. This methodology is acceptable to SCO as long as the level of effort to conduct a POBAR's investigation is at least equivalent to that required to conduct a non-POBAR's investigation. Our experience is that POBAR's cases require the same or more work than other cases.

In addition, POBAR cases require "... providing prior notice to the peace officer regarding the nature of the interrogation and identification of the investigating officers" [Ps&Gs, page 3]. In this regard, on pages 3-4, the Ps&Gs expressly provide reimbursement for:

"... review of agency complaints or other documents to prepare the notice of interrogation; determination of the investigating officers; redaction of the agency complaint for names of the complainant or other accused parties or witnesses or confidential information; preparation of notice or agency complaint; review by counsel; and presentation of notice or agency complaint to peace officers."

Accordingly, the County claimed costs for the [above] reimbursable activities. However, according to BSA's report, in their insert regarding "reimbursable interrogation activities", the [above] costs are limited to merely "providing subject prior notice regarding the interrogation." It appears that BSA is simply deleting an entire list of reimbursable activities from the Ps&Gs⁵.

Further, the "prior notice" duties are not duties that can be accomplished in a few minutes. Prior notice and related duties set forth in the PS&Gs are not trivial and require substantial effort in order to "... comport with standards of fair play and due process" [SOD, page 10].

It should also be noted that there are no time standards for performing any of the many reimbursable POBAR's activities detailed in the Ps&Gs. Perhaps, local law enforcement agencies can be surveyed to establish such standards. Here, several standards may be appropriate to account for local agency differences in performing specific POBAR's tasks. Clearly, one size does not fit all.

Also, Commission acknowledges local agency differences in performing reimbursable "administrative appeals" activities.

⁴ It should be noted that SCO has not issued claiming instructions regarding specific requirements for conducting a time study. However, SCO has routinely accepted time studies as proper documentation of time spent on reimbursable activities.

⁵ If such a list of reimbursable activities is to be deleted from the POBAR's Ps&Gs, a motion to amend these Ps&Gs should be filed with the Commission --- the agency with sole and exclusive jurisdiction in the matter.

Administrative Appeals

Reimbursement for a broad variety of POBAR's administrative appeals activities is available. In this regard, Commission's SOD, on page 10, explains:

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

In the County's POBAR claim studied by BSA, costs claimed for POBAR's administrative appeals were detailed. The first phase of the administrative appeals process is initiated when a POBAR's decision is disputed by a permanent peace officer. The second phase is initiated when a POBAR's appeal hearing is requested.

BSA contends that administrative appeal costs incurred before a hearing is requested, during the first [above] phase, is not reimbursable. [BSA Report, page 8.]

We contend that administrative appeal costs in both [of the above] phases are subject to reimbursement under the POBAR's parameters and guidelines [Ps&Gs]. The POBAR's Ps&Gs, indicate, on page 3, that reimbursement is allowable for "providing the opportunity for, and the conduct of an administrative appeal".

In addition, the Ps&Gs, on page 3, plainly state that reimbursement is to be provided for "... preparation and review of the various documents to commence and proceed with the administrative". Accordingly, an initial writing and reviewing of charges during the initial [above] phase is required.

Therefore, the [above] initial appeals duties are an integral and necessary component of the POBAR's appeals process and, in particular, provide those permanent peace officers who dispute their POBAR's decisions with an opportunity for appeal.

Without this writing and reviewing of charges there would be no opportunity to request or conduct a POBAR's administrative hearing.

It should be noted that not all POBAR's cases are administratively appealed. POBAR's case investigations at the peace officer's station or unit of assignment levels may not undergo administrative appeal. However, the County provided an opportunity for appeal in all cases.

Further, not all of the County's administrative appeal costs are subject to reimbursement. Only certain administrative appeal costs are subject to reimbursement. After January 1, 1999, such reimbursable costs, as noted by BSA on page 7 of their report, include:

"Dismissal, demotion, suspension, salary reduction, or written reprimand received by the chief of police, whose liberty interest is not affected.

Transfer of permanent employees for purposes of punishment.

Denial of promotion for permanent employees for reasons other than merit.

Other actions against permanent employees or the chief of police that result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.”

The [above] categories of reimbursable administrative appeals are subject to interpretation. In particular, the last category requires that administrative appeals cases be reviewed to determine the extent to which a particular action will, in fact, “... result in disadvantage, harm, loss, or hardship and impact the career opportunities of the employee.”

Documentation

The County maintains that its 507 page POBAR’s claim [examined by BSA] is well documented and supported. It is detailed and includes schedules identifying specific work products ... evidence that the work was actually done. Our POBAR’s claim is amply footnoted to show that claimed costs were developed in accordance with SCO’s claiming instructions and Commission’s Ps&Gs and Statement of Decision.

Further, we believe that the POBAR’s program imposes substantial new duties and costs on local law enforcement agencies. In this regard, the Commission’s cost estimate for State-wide implementation for the POBAR’s program [adopted on March 29, 2001] was \$152,506,000. Further analysis suggests that this estimate was reasonable considering that 60,668⁶ city or county peace officers are affected.

Finally, we recognize the importance of BSA’s study of the POBAR’s reimbursement program and will cooperate in every possible way in implementing required changes. Nevertheless, we disagree with BSA’s conclusion that POBAR’s does not impose substantial costs on local law enforcement agencies.

⁶ As reported by the State Department of Justice for the year 2000.

COMMENTS

California State Auditor's Comments on the Response From Los Angeles County

To provide clarity and perspective, we are commenting on the response to our audit from Los Angeles County. The numbers correspond with the numbers we have placed in the county's response.

- As we state on page 26 of our report, although we acknowledge that local entities may have different activities related to the disciplinary process, they should claim reimbursement only for activities the Commission on State Mandates (Commission) found to be reimbursable. If a local entity believes the Commission should have identified more reimbursable activities, that entity could have brought these issues to the Commission's attention when it considered the proposed parameters and guidelines. Alternatively, the entity could have submitted a subsequent request to amend the parameters and guidelines to include additional activities.
- In its response, Los Angeles County repeatedly refers to *investigations* as a reimbursable activity even though the Commission's guidance focuses on *interrogations*, a procedural step in the disciplinary process. Specifically, as described on page 31 of our report, Los Angeles County bases its conclusion that investigations are reimbursable on a minor wording inconsistency in the Commission's statement of decision. Nonetheless, the conclusion of the Commission's statement of decision refers to "conducting the interrogation of a peace officer while the officer is on duty," and the parameters and guidelines also refer to interrogations. Further, Commission staff pointed out in their analysis of the test claimant's proposed parameters and guidelines that the peace officer rights law does not require local entities to investigate allegations.
- Page numbers in our final report differ from the draft that we shared with Los Angeles County.
- Los Angeles County's characterization of the parameters and guidelines in this context is misleading because it suggests that the words omitted from the quotation refer to investigations. Instead, the omitted words make it clear that this text is not part

of the list of reimbursable activities. For clarity, we repeat the first part of the text in section IV.C, the interrogations section, to include the words the county omitted as follows: “Claimants are eligible for reimbursement for the performance of *the activities listed in this section* only when a peace officer is under investigation, or becomes a witness to an incident under investigation, and is subjected to an interrogation . . .” [Emphasis added.]

- Los Angeles County’s argument suggests that the Commission be expected to spell out activities that are not reimbursable. As described on pages 28 and 29 of our report, where we discuss a similar argument raised by the city and county of San Francisco, such a view appears to be at odds with the focus of the mandate process, which is to determine whether laws impose mandates and, if so, to define which activities are reimbursable.
- We disagree with Los Angeles County’s assertion that it claimed costs using methodologies acceptable to the State Controller’s Office (Controller), whose claiming guidance incorporates the Commission’s parameters and guidelines. As we describe on page 41 of our report, the parameters and guidelines require local entities to track the actual time devoted to each reimbursable activity by each employee. The county did not use this methodology in preparing its claim. Further, in acknowledging that tracking actual efforts may be challenging on pages 41 and 42 of our report, we describe using an adequate time study as an acceptable alternative for determining costs. However, as we point out on page 44, we found that the county’s “time study” used to support a portion of its costs was deficient because it was developed based on interviews with the employees who performed the work and there were no records to show whether the employees who performed the work had tracked their actual efforts. Further, no time study existed for the remaining time estimates. Thus, despite the volume of paperwork provided with its claim, we found that Los Angeles County neither used acceptable methodologies nor adequately supported its claim.
- Los Angeles County is mistaken when it contends that we recognize that the Commission’s language plainly indicates that local agencies are required to “investigate an allegation.” In particular, on page 31 of our report, we state just the opposite as follows: “Commission staff pointed out in their analysis of the test claimant’s proposed parameters and guidelines that the peace officer rights law does *not* require local entities to investigate allegations.” [Emphasis added.]

- Los Angeles County is mistaken when it contends that we are simply deleting an entire list of reimbursable activities from the parameters and guidelines. On page 28 of our report, we point out that under the interrogations category, the parameters and guidelines list only five specific activities eligible for reimbursement and include tasks that are reasonably necessary to carry out these activities. The language the county cited describes the tasks related to one of the five activities—providing the peace officer prior notice of the interrogation. We would have considered such tasks as reimbursable had the county demonstrated that they were performed in the context of providing the officer prior notice. However, rather than isolating the activities its staff performed related to the notice of interrogation, Los Angeles County claimed reimbursement for all the time its staff spent investigating complaints against peace officers.
- As we state on page 38 of our report, Commission staff confirmed our understanding that activities occurring before the officer requests an administrative appeal are not reimbursable.
- Los Angeles County has mischaracterized our conclusion. As we describe on page 27 of our report, we question a high level of the direct costs claimed by the four local entities we reviewed because they claimed costs for nonreimbursable activities based on their broad interpretations of the Commission’s statement of decision and parameters and guidelines.

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Agency's comments provided as text only.

County of San Diego
Auditor and Controller
1600 Pacific Highway
San Diego, CA 92101-2478

September 30, 2003

Elaine M. Howle, State Auditor*
Bureau of State Audits
California State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

ATTENTION: TANYA ELKINS

ANIMAL ADOPTION GUIDANCE AUDIT

Thank you for the opportunity to review and submit our comments on the draft report concerning the animal adoption claim for reimbursable costs. We are submitting the following comments in response to the recommendations and statements from your recent audit.

Supporting Documentation Section:

We note the draft report acknowledges that tracking actual time for the initial animal adoption claims would have been challenging, and that claimants generally based time estimates on employee interviews rather than documented time studies. We further note that the Auditor and Controller is working with local entities to develop guidance regarding the appropriate use and conduct of time studies.

Table 4 and Text:

We request that references in the text and in Table 4 to "unsupported costs" be reworded or otherwise clarified to indicate that a particular claimant did not submit sufficient supporting documentation to properly evaluate a claimed item and therefore avoid any implication that such claim may be false or excessive.

Errors Section and Table 5:

We also request that the draft report reflect the fact that the two errors attributed to County of San Diego (Table 5), have since been addressed to the satisfaction of the auditors, and that the County has indicated its intention to file an amended claim. We concur that the net effect of these errors will increase our claim by \$122,000 as indicated in Table 5.

* California State Auditor's comments appear on page 95.

Recommendations:

We have carefully considered the issues that arose in this draft report and look forward to working with the Auditor and Controller in developing suitable time studies to ensure that prospective claims for reimbursable activities are adequately supported. Additionally, the County of San Diego intends to file an amended claim to provide sufficient documentation on the two items referenced in Table 4, and to correct the two errors in Table 5 for the Fiscal Year 2001/02.

If you have any questions, please contact Vicki Owens, Budget Officer of the Department of Animal Services, at (619) 767-2622 or Gina Surgeon of Revenue and Cost Accounting at (619) 685-4825.

Sincerely,

(Signed by: William J. Kelly)

WILLIAM J. KELLY
Chief Financial Officer

RCA:GS:lc

COMMENTS

California State Auditor's Comments on the Response From San Diego County

To provide clarity and perspective, we are commenting on the response to our audit from San Diego County (San Diego). The numbers correspond with the numbers we have placed in San Diego's response.

- Our text on page 45 of the report makes clear that we use the term "unsupported costs" to refer to costs for which local entities did not have adequate supporting documentation. Therefore, we have made no changes to the text or Table 4.
- We have added a sentence on page 52 of our report to indicate that San Diego concurs that its claim contained errors and that it intends to file an amended claim. However, because San Diego has yet to file an amended claim, the concerns we raise have not "been addressed to the satisfaction of the auditors."

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Agency's comments provided as text only.

City and County of San Francisco
Office of the Controller
City Hall, 1 Dr. Carlton B. Goodlett Place, Room 316
San Francisco, CA 94102-4694

October 1, 2003

Ms. Elaine M. Howle*
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: San Francisco Response to Draft of Report No. 2003-106

Dear Ms. Howle:

Thank you for sending a draft of your Peace Officers Bill of Rights (POBAR) Mandate Audit Report to the City and County of San Francisco. In general, we are disappointed with your findings. I am providing herein the City's official response, given the imposed five-day deadline and with the absence of your calculation work papers, which I request you send for us to do a detailed review.

It would appear to us the interpretation of POBAR eligible costs is exceedingly restrictive given your interpretation of due process rights afforded by the US and California constitutions. The 14th Amendment to the US Constitution provides a very broad framework for a citizen's protection that has been applied to public employee cases in the past. The finding of a new mandate by the Commission on State Mandates in this case was a clear recognition by the CSM that peace officers are afforded a higher level of protection than other public employees. The parameters and guidelines (Ps and Gs) ultimately adopted by the Commission in July 2000 enumerated several specifically reimbursable activities and several specifically ineligible activities or areas of cost. GC Sections 3300 through 3310¹ provide specific procedural protection for peace officers employed by local agencies when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. This also applies to peace officers classified as permanent employees, peace officers who serve at the pleasure of the local agency, and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

* California State Auditor's comments appear on page 101.

¹ As added and amended by Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990.

It is common for different local agencies to implement state mandates in various ways. An agency with the complexity and sophistication of systems such as San Francisco will necessarily be different than the test claimant (aka: the City of Sacramento). San Francisco is also a city and county government, which adds to the unique character of our city and county operations and the way we perform state requirements. Additionally, since neither a vague nor precise definition of parameters and guidelines exists in law, it is apparent that locals must rely on the plain definitional meaning of these words. In fact, local agencies and the State Controller have looked at Ps and Gs as a document that helps to determine a range of variations in cost categories that occur as a result of the imposition of a state mandate. The City and County of San Francisco examined what specific activities were undertaken by our agency to comply with the requirements of the peace officer rights law that were in excess of what we believed to be required under the 14th Amendment and those provisions that POBAR required that exceeded the requirements of the Skelly law.

● Additionally, your strict interpretation of Ps and Gs is, in fact, a relatively new phenomenon that has not historically been adhered to by the State and local agencies. Because it is impossible to construct a set of Ps and Gs that will work equally well for a small rural city as well as a large urban county, the State Controller has historically worked together with locals to determine what costs related to state mandates are in fact reasonable to claim through the SB 90 process.

The Commission on State Mandates process, while completely open to the public, is far from an approachable and easily understandable way to resolve mandate issues. It would be impossible for a local agency to know that its definition of the approved Ps and Gs is different from the State Controller's when it is customary for audits to start well after the filing window for locals has closed to appeal to the CSM. Locals would welcome State Controller feedback earlier in the process to help provide guidance on vague areas of the Ps and Gs. In fact, since reimbursement claims for POBAR were filed on January 30, 2001, almost three years ago, the only feedback our agency has received from the State related to these claims is a partial payment of the initial back-year filings. San Francisco has received no guidance or interpretations from the State related to the subject law in this case or this set of parameter and guidelines.

The BSA criticized local agencies for their lack of scholarship related to filing this set of reimbursement claims. Yet, the BSA spent several months focusing on the fine points of the subject laws and documents related to this program prior to issuing the draft analysis. From the time the Ps and Gs are approved at the Commission on State Mandates, the State Controller has 60 days to issue claiming instructions. Once those are issued, local agencies have 120 days in which to file claims. And incidentally, those claims in the case of POBAR extended back to fiscal year 1994-95.

Our intent is to claim costs that were reflective of the parameters and guidelines adopted for this program; however, if any errors or duplicative costs were claimed we stand ready to correct them. We emphasize that no State feedback has been provided to our agency prior to this report that would show otherwise. Additionally, several representatives from our agency attended statewide training workshops sponsored by the California State Association of Counties (CSAC), and the attorney who worked directly with the test claimant (City of Sacramento) to develop the Ps and Gs

City and County of San Francisco
Letter to Elaine M. Howle
Page 3 of 3
October 1, 2003

taught the sessions. Our agency also received several periodicals and newsletters from varying sources providing their interpretations on this matter. It is safe to say that nobody had a clear view of exactly what was required by the POBAR findings. We believe the City and County took reasonable steps to attempt to acquaint its staff with the new reimbursable mandate's requirements.

I also would respectfully urge the Bureau of State Audits to describe the mandate process in more accurate terms. I believe that substituting the word "challenging" with "impossible" is more appropriate because it is an impossible task to comply literally with the Ps and Gs documentation level related to tracking staff time for any SB 90 program for periods of time that have already passed. It would seem reasonable that there be differing stated source documentation requirements for claiming employee time for back years and prospective years. Preparing a time study based on complicated claiming instructions in time to prepare and file claims for back years is really not a workable solution as the system currently exists. We would agree that a time study could be the basis for claiming personnel costs for certain types of activities on an on-going basis. Moreover, instead of questioning the entire \$5.8 million San Francisco claimed due to a lack of proper documentation, perhaps it would be more useful to find out why documentation could not have existed.

The City will make every attempt to efficiently and effectively complete SB 90 claims. While we remain committed to implementing state-mandated programs, I must also use this opportunity to express the additional, continued hardship the State has placed on local governments by mandating programs, yet once again not providing adequate appropriation in the budget. According to the LAO, the State is estimated to owe local governments nearly \$1 billion in SB 90 reimbursements.

We appreciate the opportunity to review and comment upon this audit in a draft stage. Please contact Fusako Hara, SB 90 Coordinator at the San Francisco Controller's Office at 415-554-5427, if you have any questions.

Sincerely,

(Signed by: Ed Harrington)

ED HARRINGTON
Controller

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COMMENTS

California State Auditor's Comments on the Response From the City and County of San Francisco

To provide clarity and perspective, we are commenting on the response to our audit from the City and County of San Francisco (San Francisco). The numbers correspond with the numbers we have placed in San Francisco's response.

- San Francisco has incorrectly asserted that our interpretation of due process rights led to an exceedingly restrictive interpretation of eligible costs. Rather, as we point out on page 24 of our report, the Commission on State Mandates (Commission) found that many activities included in the peace officer rights law are not reimbursable because they already were required under constitutional provisions. Further, as indicated on page 28 of our report, we relied on the plain language in the statement of decision and parameters and guidelines in performing our analysis of claimed costs. We also confirmed our understanding of the parameters and guidelines with Commission staff.
- On page 26 of our report, we acknowledge that local entity methods for complying with mandates may vary and they may have different activities related to the disciplinary process. However, if a local entity believes the Commission should have identified more reimbursable activities, that entity could have brought these issues to the Commission's attention when it considered the proposed parameters and guidelines. Alternatively, the entity could have submitted a subsequent request to amend the parameters and guidelines to include additional activities.

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Agency's comments provided as text only.

City of San José
Parks, Recreation and Neighborhood Services
4 N. Second Street, Suite 600
San José, CA 95113

October 1, 2003

Elaine M. Howle*
State Auditor
555 Capital Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle,

Thank you for providing the City of San José with a draft copy of your report on state mandates and for the opportunity to respond. The Bureau's audit raised issues and identified areas in the Parameters and Guidelines that require further clarification.

In the excerpt from the section related to reimbursable portion of acquiring space, the auditors stated that San José constructed a facility larger than required by the mandate in order to accommodate potential population growth and capacity to contract with other cities. Prior to the design of the shelter, San José contracted with one other city to provide their long term sheltering needs. The sheltering needs of both cities were considered in the size of the facility. The facility is designed to accommodate the provision of the mandate for the animals that San José is legally responsible for, and those include animals from a contract city.

The auditor's report maintains that San José did not provide sufficient documentation to support the costs for Care of Dogs and Cats, and Veterinary care. As noted in the report, the claimed costs resulted from the costs incurred in contracting with the Humane Society for these services, which are not itemized to the level of detail necessary to prepare the cost reimbursement claim. The City requested the detail of its contractual costs when it became aware that the Bureau considers all the costs unsupported but given the limited time frame, the Humane Society is unable to provide the detail in time for this response.

In the errors section, the Bureau maintains that the City overstated the costs for acquiring space. The difference between the Bureau's calculation and the City's concerns the number of animals housed. The City did not include owned animals that were brought in to be euthanized as a "housed" animal. Once a pet owner requests that an animal be euthanized, the Humane Society has no requirement to house or care for that animal. In 2001/02, 81% of the owned animals requested to be euthanized were euthanized within 5 hours of arriving at the shelter. Sixty three percent were euthanized within 2 hours. Since there was never intent to care for or maintain those animals, they should not be included in the housed population.

* California State Auditor's comment appears on page 105.

The City of San José will carefully consider the issues raised in the report, and will refile a claim based on the information and recommendations provided by the Bureau. The claiming methodology outlined in the Parameters and Guidelines can be limiting for agencies that contract shelter services. The Parameters and Guidelines have no provisions for using a standard unit cost or cost per animal based on industry standards. In San Jose's situation the contract does not provide sufficient detail to satisfy claiming requirements, even though it is clear that the City has incurred reimbursable costs.

One notable change to our claiming approach in the future will occur when the City of San José opens its own shelter in the winter of 2003. When the City's shelter opens, we will be able to itemize, document and better support claimed costs. This change includes activities that previously could not be accurately determined because of our contractual arrangement for shelter services.

Thank you for this opportunity to comment on this BSA report. If you or your staff have any questions about this audit response, please contact Jon Cicirelli at (408) 501-2141.

Sincerely,

(Signed by: Sara L. Hensley)

SARA L. HENSLEY
Director of Parks, Recreation and
Neighborhood Services

COMMENT

California State Auditor's Comment on the Response From the City of San Jose

To provide clarity and perspective, we are commenting on the response to our audit from the city of San Jose (San Jose). The number corresponds with the number we have placed in San Jose's response.

- We continue to disagree with San Jose's definition of a "housed" animal because the animal adoption parameters and guidelines do not support such an interpretation. Specifically, the parameters and guidelines require claimants to include animals turned in by their owners in the count of housed animals. Additionally, the parameters and guidelines require claimants to include irremediably suffering animals in their count of housed animals, even though such animals would likely be euthanized sooner than animals euthanized at the request of owners. Thus, neither the amount of time an animal spends at the shelter nor the shelter's intent to care for the animal is a relevant factor in determining the number of housed animals. If San Jose questions the accuracy or fairness of the parameters and guidelines, it should request that the Commission on State Mandates consider amending them.

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Agency's comments provided as text only.

City of Stockton
Administrative Services
City Hall
425 N. El Dorado Street
Stockton, CA 95202-1997

October 1, 2003

Elaine M. Howle
State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

CITY OF STOCKTON RESPONSE TO AUDIT OF ANIMAL ADOPTION AND PEACE OFFICER
PROCEDURAL BILL OF RIGHTS MANDATES CLAIMS

Enclosed is our response to the issues concerning the City of Stockton in your audit report for Animal Adoption and Peace Officer Procedural Bill of Rights mandates claims.

Per your request, we have submitted the response on the diskette provided in a Microsoft Word format. If you need any additional information please contact Joe Maestretti in the Stockton Police Fiscal Affairs Unit at (209) 937-8886.

(Signed by: John Hinson)

John Hinson
Administrative Services Officer
City of Stockton

Enclosure

JH:jm

City of Stockton Response to
Animal Adoption and Peace Officer Procedural Bill of Rights Audit

The City of Stockton generally agrees with the findings, conclusions, and recommendations in the audit report on Animal Adoption and Peace Officer Procedural Bill of Rights mandates as they relate to the City of Stockton. The City of Stockton has hired a new consultant to help us review our claims and claiming processes, and we will file amended claims with the State Controller's Office for all claims that we find in error.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press