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6601 GENERAL (Revised 03/09)

This and the following sections set forth the guidelines to complete the Economic and Fiscal Impact Statement (STD. 399). Pursuant to Government Code Section 11346.5, a rulemaking agency is required, prior to the issuance of an executive regulation, to include in the notice of proposed adoption, amendment, or repeal of a regulation the following:

1. A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
2. An estimate, prepared in accordance with instructions adopted by the Department of Finance (DOF), of the cost or savings to any state agency or local government; the cost to any local government that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; any other nondiscretionary costs or savings including revenue changes imposed on state and local governments; and the cost or savings in federal funding to the state.

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6602 DEFINITION (Revised 03/09)

For the purposes of implementing these guidelines, the following definitions apply:

Agency, Local. Any city, county, special district, authority, or other political subdivision of the state.

Agency, State. Every office, officer, department, division, bureau, board, council, or commission in state government. A "state agency" does not include an agency in the judicial or legislative branches of state government.

Costs. All additional expenses for which either supplemental financing or the redirection of existing staff and/or resources (with or without the need for supplemental funding) is required. Costs include those which can be absorbed in an agency's existing budget.

Direct Costs

1. Personnel needed to perform a line function or activity prescribed (expressed or implied) in the regulation.
2. Fringe benefits associated with those personnel, e.g., retirement, OASDI, workers' compensation.
3. Operating expenses associated with those personnel, e.g., if compliance is achieved by contracting with a private vendor.
4. Any additional equipment which will have to be purchased or leased in order to comply with the regulation.
5. Allocation of other personnel-related costs if not otherwise allocated through an indirect cost system. Some agencies may allocate the costs of rent, space, utilities, etc., directly to the personnel involved.

Indirect Costs. Any costs related to the additional personnel or operating expenses described in the preceding which are not directly allocated or assigned to those personnel. They do not include a pro rata share of the costs of any manager or supervisor above the first line supervisors since it is assumed that any such supervisors would be in place whether or not the personnel hired to comply with the regulations were there. For example, if a regulation necessitated the hiring of additional staff in a county welfare department, it would not be appropriate to assign, through an indirect cost system, a portion of the costs of the county welfare director to those new personnel since the director would exist to perform his/her functions even if the new personnel were not hired.

Mandate. A requirement with a consequence of noncompliance of either (1) a criminal penalty, (2) a civil liability, or (3) an administrative penalty.

Public Agency. Any state agency, city, county, special district, school district, community college district, county superintendent of schools, or federal agency.

Reasonable Compliance. No universal definition is available. However, the "prudent person" test can be utilized to arrive at an appropriate definition of the term. For example, if an agency is required by regulation to provide transportation for certain persons, it clearly would not be appropriate to purchase limousine-type luxury automobiles to do so. On the other hand, it would not be appropriate to provide the service by purchasing tandem bicycles. Reasonable compliance can be achieved with some mode of transportation between the two extremes cited. The issuing agency must evaluate each instance separately and determine what "reasonable compliance" would be. The estimate developed must clearly indicate the mode or level of activity it has assumed would achieve such compliance.

Since compliance connotes that the regulation involves a requirement, costs incurred by state or local agencies in exercising any authority granted by a regulation which is permissive or optional are not germane and need not be estimated.

Regulation. Every rule, order, or standard of general application or the amendment, supplement, or revision of any rule, order or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

The term "emergency" means a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare. An emergency regulation is adopted pursuant to Government Code Section

11346.1.

Revenues. Any changes in the amounts of operating income received by state and local agencies as the result of an executive regulation must also be identified. In this context, "revenue" includes taxes, state and/or federal assistance, fees, licenses, and so forth.

Savings. Both actual budget reductions and the "freeing up" of staff and/or resources for reassignment to other areas of legitimate concern of the agency.

School District. Any school district, community college district, or county superintendent of schools.

Special District. Any agency of the state which performs governmental or proprietary functions within limited boundaries. Special district includes a redevelopment agency, a joint powers agency or entity, a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area. Special district does not include a city, a county, a school district, or a community college district.

County free libraries established pursuant to Chapter 6 (commencing with Section 19100) of Part II of the Education Code, areas receiving county fire protection services pursuant to Government Code Section 25643, and county road districts established pursuant to Chapter 7 (commencing with Section 1550) of Division 2 of the Streets and Highways Code shall be considered special districts for all purposes of this section.

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6603 ECONOMIC IMPACT STATEMENT (Revised and renumbered from 6680 on 03/09)

Government Code Section 11346.3 provides guidelines on how to assess the proposed regulation's economic impact on California businesses. The Economic Impact Statement (EIS) section has been added to the STD. 399 for this purpose. The issuing state agencies must include a completed STD. 399 form with each proposed regulation that is submitted to the OAL for publication in the California Regulatory Notice Register.

Questions on the EIS may be directed to the:

California Labor and Workforce Development Agency
801 K Street, Suite 2101
Sacramento, CA 95814
Telephone number: (916) 327-9064
Fax number: (916) 327-9158

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6604 CONTENTS OF FISCAL IMPACT STATEMENT (FIS)

(Revised and renumber from 6603 on 03/09)

A state agency that adopts, amends, or repeals a routine regulation or emergency regulation must make a local mandate determination and an estimate of fiscal impact resulting from the "regulation" on the following:

Local Government

1. Any costs which must be reimbursed pursuant to Section 6 of Article XIII B of the California Constitution and Part 7 (commencing with Section 17500) of Division 4 of the Government Code. See Government Code Section 17514 and SAM Section 6620.
2. Any costs which are not reimbursable under that provision of the Constitution but which will necessarily be incurred in reasonable compliance with the regulations.
3. Any savings.
4. Any other impacts such as revenue changes.

State Agencies

1. Any costs that necessarily will be incurred in reasonable compliance, administration, implementation, and/or enforcement by the issuing state agency and/or any other state agency.
2. Any savings.
3. Any other impacts such as revenue changes.

Federal Funding to the State

1. Any additional funding required.
2. Any reduction in such funding.

The required estimate must include a definitive statement on each of these items. For example, even if there are no resultant reductions in or savings of federal funds, that fact must be so stated and reported. Each of the items is further defined and explained along with suggested methodologies for developing estimates of "costs" and "savings," in the succeeding sections.

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6605 FISCAL IMPACT ON LOCAL GOVERNMENT (Revised and renumbered from 6620 on 03/09)

Subdivision (a) of Article XIII B provides that whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates:

1. Legislative mandates requested by the local agency affected.
2. Legislation defining a new crime or changing an existing definition of a crime.
3. Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Subdivision (c) of Article XIII B provides that a mandated new program or higher level of service includes a transfer by the Legislature from the state to cities, counties, cities and counties, or special districts of complete or partial financial responsibility for a required program for which the state previously had complete or partial financial responsibility.

Government Code Sections 17500 et seq. require the state to reimburse local agencies and school districts for any costs that they are required to incur after July 1, 1980, as a result of a statute enacted or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program.

Government Code Section 17516 defines "executive order" as:

Any order, plan, requirement, rule, or regulation issued by any of the following: (1) the Governor, (2) any officer or official serving at the pleasure of the Governor, or (3) any agency, department, board, or commission of state government.

It is important to note that only those executive orders which implement state statutes that impose a mandate on local governments fall within the purview of Section 6 of Article XIII B of the California Constitution, and that any regulation listed as a statutory exception under subdivisions (a) through (g) of Government Code Section 17556 may have a fiscal impact, but is not a state reimbursable mandate. Specifically, any costs which local governments incur as the result of a regulation which implements a ballot measure approved by the voters, a court order, or a federal directive would not be reimbursable by the state; however, as described in the following sections, the issuing state agency is nevertheless required to include an estimate of these non-reimbursable costs.

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6606 FUNDING FOR REIMBURSABLE LOCAL COSTS

(Revised and renumbered from 6621 on 03/09)

Pursuant to Government Code Section 17561(b)(1) (B), when a regulation involves reimbursable costs, it "...shall be accompanied by a bill appropriating the funds therefore, or alternatively, an appropriation for these costs shall be included in the Budget Bill for the next succeeding fiscal year." Use of the second alternative must receive prior approval of DOF. If the state agency fails to provide appropriate funding, then affected local agencies are authorized to file claims for reimbursement with the Commission on State Mandates.

In order to prepare the local mandate determination required by Government Code Section 11346.5; i.e., a determination as to whether the proposed regulation imposes a mandate on local agencies or school districts, it is necessary to first answer the following question:

Will the regulation require local entities to undertake a new program or to provide an increased level of service in an existing program?

If the answer to this question is "No," then check box 4, 5, or 6 in Section A of STD. 399. If the answer is "Yes," it is then necessary to determine if the costs resulting from the mandate are not state reimbursable based on one or more of the statutory exceptions in subdivisions (a) through (g) of the Government Code Section 17556 as follows:

1. Implements a federal mandate.
2. Implements a court mandate.
3. Implements a mandate in a ballot measure approved by the voters.
4. Results from a documented request from the only local governments affected.
5. Provides (or fall within the purview of existing) revenue sources or other financing mechanisms.
6. Results in savings that are equal to or exceed any costs.
7. Creates, eliminates, or changes the penalty for a new crime or infraction.

In addition to these statutory exclusions, the courts have held that costs of statutes and regulations are not reimbursable if they:

1. Result from an action undertaken at the option of a local government (County of Contra Costa vs. State of California, 177 Cal App 3d 62.79 (1986).
2. Are not unique to local government, e.g., affect both the private sector and the public sector (County of Los Angeles vs. State of California et al, 43 Cal App 3d 46 (1987)).

If it is determined that the regulation does not impose a reimbursable mandate on local government, it is still necessary to include a specific statement reflecting that determination in the notice and to develop estimates of any nonreimbursable local costs. If it is determined that the regulation does impose a reimbursable mandate on local government, then it is important to state the mandate precisely. This is normally best accomplished by employing a statement, expressed in mandatory terms, which identifies both the affected local governments by group and the activity that will be required of them, e.g., "county clerks shall provide each polling precinct worker with an American flag," "school districts shall provide each student with a lunch box at no cost to the student," "all local governments shall record on videotape all meetings of their governing bodies." With the mandate so stated, it is then possible to proceed to develop an estimate of its cost to local government.

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6607 COST ESTIMATING METHODOLOGY

(Revised and renumbered from 6622 on 03/09)

A standard methodology has been developed for use in estimating costs in regulations. The main components of that methodology are (1) statement of the mandate, (2) background or introductory material, (3) working data, (4) assumptions, (5) calculations, and (6) conclusion.

Descriptions of these components are as follows:

Statement of the Mandate

This is described in SAM Section 6606.

Background or Introductory Material

This component must include the following:

1. A legal description of the legislation which is the basis for the regulation, e.g., Chapter 1234, Statutes of 1996 (SB 123, Smith).
2. Any other pertinent historical data.

Working Data

Working data are any available statistical data and their sources which would identify the affected universe. (For example: Secretary of State data on the number of registered voters and/or polling places, State Department of Education data on school enrollees, or State Controller's reports for the number of local governments.) Also, any "market place" information or standard costs of items needed to comply with the mandate, e.g., quoted process for forms, lunch boxes, video cameras (sales, rentals, or contract services). In addition, it is very useful and, in some instances essential, that a representative sampling of the affected local governments be contacted and queried as to the impact of the mandate on them. Very often organizations representing the affected local governments such as the California State Association of Counties (CSAC) and the League of California Cities can either provide such information directly or identify those local governments most likely to be most affected by and/or able to provide information regarding the mandate's impact on them. Each county has designated a person, usually in the County Executive's Office, as a "local mandate coordinator" for purposes of providing information, upon request, on pending legislation and handling Commission on State Mandates claims. Those coordinators should also be able to assist in developing fiscal estimates for regulations.

Assumptions

On occasion, data regarding the affected universe and/or the price of the mandated item are not readily obtainable. In these instances, it may be necessary to make some reasonable assumptions about the impact. These assumptions must be clearly stated and kept separate from the "hard" data used in developing the estimate.

Calculations

Any mathematical computations using working data and/or assumptions necessary to arrive at a resultant cost figure must be displayed. Costs for both the balance of the current fiscal year and for the subsequent two fiscal years must be developed. Separate calculations must be provided for local, state, and federal costs, as appropriate, as described in the succeeding sections. Any savings to each level of government must be similarly identified.

Conclusion

Determinations made by the issuing state agency regarding the applicability of the California Constitution to any resultant costs and/or the need to provide additional funding of any state costs. See SAM Section 6606 for the required information.

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6608 NONREIMBURSABLE LOCAL COSTS

(Revised and renumbered from 6623 on 03/09)

Local governments may incur costs as the result of the issuance of executive regulations. These costs must be identified and estimated by the issuing state agencies even when they are not reimbursable state mandated costs. These costs will generally result from regulations which fall under one of the statutory exceptions listed in Section 6606.

The basic estimating methodology is the same as that set forth in SAM Section 6607; however, it is important to clearly indicate that these are not constitutionally reimbursable mandates and to develop estimates of offsetting savings and costs. For these regulations no estimate of costs is required since only "other nondiscretionary costs" are specified in law; however, there may be occasions where it would be desirable to have an estimate of the costs that would be incurred if all eligible local governments took advantage of the authority conferred by the regulation.

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6609 SAVINGS TO LOCAL GOVERNMENTS

(Revised and renumbered from 6624 on 03/09)

In a sense, savings result from what might be called "negative mandates", since local governments are relieved from doing something they were previously required to do. The same basic estimating methodology as set forth in SAM Section 6607 can be employed to determine local savings in state regulations. In fact, it should be relatively simple to derive estimates of savings since affected local governments must be able to identify what they are doing and what the associated costs are. The discretionary savings must also be identified since the state would be providing local governments with the option, if they choose to take it, to reduce the cost of government.

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6610 INCREASES OR REDUCTIONS IN LOCAL REVENUES

(Revised and renumbered from 6625 on 03/09)

The state agency must prepare an estimate of any revenue changes at the local level as the result of a state executive regulation, any such impact must be included in the estimate prepared by the issuing agency. Any local revenue losses resulting from state executive regulations are not reimbursable under the I mandate law.

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6611 COSTS TO STATE AGENCIES

(Revised and renumbered from 6631 on 03/09)

The issuing state agency must accurately identify costs that other state agencies incur as a result of its regulation. The identification will allow the other affected state agencies to take the appropriate action to secure any needed funding. The basic methodology for estimating costs is set forth in SAM Section 6607. The primary difference, of course, is that the governments contacted for cost data would be state, rather than local agencies or school districts.

Each state agency must carefully review the weekly "California Regulatory Notice Register" published by the Office of Administrative Law (OAL) in order to determine whether any proposed regulation therein would impact that department. The state agency proposing to issue the regulation must notify any affected state agency of any potential impact. Each state agency will have to determine for itself whether it needs to obtain additional funding.

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6612 SAVINGS TO STATE AGENCIES (Revised and renumbered from 6632 on 03/09)

It is especially important to identify savings to a state agency or agencies when there may be corresponding costs to another state agency, e.g., a transfer of responsibility. Any savings must also be identified so that the total potential magnitude of such savings can be known.

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6613 FISCAL IMPACT ON FEDERAL FUNDING OF STATE PROGRAMS

(Revised and renumbered from 6640 on 03/09)

Increase in Federal Funding

Federal funding of state programs could increase as the result of state regulations if the state acts to exercise authority granted by the federal government. Most likely, this would involve programs which have established sharing ratios and the state acts to increase the size of either the client group or the payments themselves. In this context, it is important to distinguish between regulations which implement federal mandates and those which are issued under authority granted by the federal government. It must be noted that recent court cases have held that the threatened loss of federal funds is not equivalent to a federal mandate.

Rather than sampling any affected state and/or local entities, it would be appropriate and acceptable for the issuing state agency to either calculate the increased federal fund (based on an established sharing ratio) or to contact the federal agencies involved for their estimates of any fiscal impact.

Reductions (savings) in Federal Funds

As with increased federal funds decreases would most likely result for programs involving sharing ratios. The same methodology suggested for estimating federal fund increases may be used for federal fund reductions.

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6614 SIGNATURE REQUIRED FOR FISCAL IMPACT STATEMENT (FIS)

(Revised and renumbered from 6650 on 03/09)

A state agency adopting, amending, or repealing a routine or emergency regulation shall use the STD. 399 to make a determination and develop an estimate of that proposed regulation's fiscal impact on local governments. The Fiscal Impact Statement section of the STD. 399 must be completed and signed when a notice of proposed action is submitted for publication in the California Regulatory Notice Register.

The STD. 399 must be approved and signed by (1) the Agency fiscal officer and (2) the Agency Secretary; the highest ranking official in the state agency, if it is not under an Agency Secretary; or a designee having a written delegation from the Agency Secretary or the highest ranking official before it is submitted to OAL. Prior to submitting an emergency regulation to OAL for review, the DOF signature is required on the emergency regulation pursuant to Government Code Section 11346.1; however, the signature is not needed at that time.

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6615 ESTIMATES WHICH REQUIRE DEPARTMENT OF FINANCE ACTION

(Revised and renumbered from 6660 on 03/09)

Subdivision (c) of Government Code Section 11357 specifically authorizes the DOF to "...review any estimate...for content including, but not limited to, the data and assumptions used in its preparation."

A state agency is not required in all instances to obtain the concurrence of the DOF in its estimate of the fiscal impact of its proposed regulation on governmental agencies. Such concurrence is required when the adoption, amendment, or repeal of a regulation results in local agency costs or savings, in state agency costs or savings, or in other nondiscretionary instances such as local/state revenue increases or decreases which must be depicted on the STD. 399 as follows:

- | | |
|----------------------------------|-------------------|
| A.1-Reimbursable Local Costs | B.1-State Costs |
| A.2-Non-Reimbursable Local Costs | B.2-State Savings |
| A.3-Local Savings | B.4-Other |
| A.6-Other | |

In addition, the DOF's approval is required for the inclusion in any such estimate of any statement to the effect that reimbursement of local costs will be requested in a subsequent Governor's Budget, Section A.1 (b) on the STD. 399.

Requests for the DOF's concurrence in or approval of a cost estimate for a proposed regulation must be forwarded to the DOF Principal Program Budget Analyst assigned to the issuing state agency at least 30 days prior to the date on which the "notice of proposed adoption" is to be issued. The completed STD. 399 must be submitted to the DOF along with copies of the calculations and assumptions leading to dollar estimates. Those calculations and assumptions must address the proposed regulation's fiscal impact in the current fiscal year and in the two subsequent fiscal years. A copy of the local mandate determination and any attachments thereto must be retained by the issuing state agency in the rulemaking file required by Government Code Section 11347.3. Questions regarding any technical aspects of the state mandate law should be directed to that DOF analyst or other governmental agencies that may be affected by the proposed regulation.

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6616 INPUT FROM OTHER GOVERNMENTAL AGENCIES IN THE DEVELOPMENT OF FISCAL ESTIMATES

(Revised and renumbered from 6670 on 03/09)

State agencies that propose to issue regulations must allow for input from any and all other governmental agencies which express concern about the potential fiscal impact of the regulation on them. Such input must be solicited by the issuing state agency by practical means such as holding public hearings, publishing a notice in the California Regulatory Notice Register, and offering any other appropriate means.

Although the DOF's concurrence is required only for those circumstances set forth in SAM Section 6615, such concurrence may be requested for any other circumstances as well. When the DOF has concurred in the fiscal estimate, the DOF will, if requested, be primarily responsible for providing evidence and testimony to the Commission on State Mandates on any claim from a local government that the regulation results in increased costs. Conversely, the issuing state agency will be primarily responsible in instances where the DOF's concurrence was not obtained.

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