ITEM 2
PROPOSED MINUTES

COMMISSION ON STATE MANDATES

Department of Water Resources
1416 Ninth Street, First Floor, Auditorium
Sacramento, California
December 4, 2006

Present: Member Anne Sheehan, Chairperson
Representative of the Director of the Department of Finance
Member Amy Hair, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Sean Walsh[1]
Representative of the Director of the Office of Planning and Research
Member Paul Glaab
City Council Member
Member Sarah Olsen
Public Member

Absent: Member J. Steven Worthley
County Supervisor

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 1:32 p.m.

APPROVAL OF MINUTES

Item 1 October 4, 2006

Member Lujano made a motion to adopt the October 4, 2006 hearing minutes, which was seconded by Member Glaab. The motion carried 4-0. Member Olsen abstained.

Item 2 October 26, 2006

Member Glaab made a motion to adopt the October 26, 2006 hearing minutes. With a second by Member Olsen, the motion carried unanimously.

PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

[1] Arrived during the hearing of Item 7.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Item 12 Proposed Parameters and Guidelines
Charter Schools III, 99-TC-14
Western Placer Unified School District and Fenton Avenue Charter School, Claimants
Education Code Sections 47605, subdivision (b), and 47635
Statutes 1998, Chapter 34 (AB 544); Statutes 1999, Chapter 78 (AJR 19)
California Department of Education Memo (May 22, 2000)
And
Request to Consolidate With *Charter Schools* (CSM 4437)
and *Charter Schools II* (99-TC-03)

Item 15 Request to Amend Parameters and Guidelines
To Add Time Study Language to *All Parameters & Guidelines*,
04-PGA-04 State Controller's Office, Requestor

Member Olsen made a motion to adopt items 12 and 15 on the consent calendar. With a second by Member Glaab, the items were unanimously adopted.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

Item 4 Staff Report (if necessary)

There were no issues to consider.

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing of the test claim items.

TEST CLAIMS

Item 5 *Pupil Safety Notices*, 02-TC-13
Education Code Sections 32242, 32243, 32245, 46010.1; 48904, 48904.3, 48987 and Welfare and Institutions Code Section 18285
Statutes 1983, Chapter 498 (SB 813); Statutes 1984, Chapter 482 (AB 3757); Statutes 1984, Chapter 948 (AB 2549); Statutes 1986, Chapter 196 (AB 1541); Statutes 1986, Chapter 332 (AB 2824); Statutes 1992, Chapter 445 (AB 3257); Statutes 1992, Chapter 1317 (AB 1659); Statutes 1993, Chapter 589 (AB 2211); Statutes 1994, Chapter 1172 (AB 2971); Statutes 1996, Chapter 1023 (SB 1497); Statutes 2002, Chapter 492 (AB 1859)
California Code of Regulations, Title 5, Section 11523
San Jose Unified School District, Claimant

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the test claim concerns pupil safety notices issued by school districts to parents, guardians, staff, and students regarding health, safety, and legal issues. The test claim also includes statutes permitting school districts to

withhold the transcripts, grades, and a diploma of a student who has willfully damaged or failed to return school property. Although schools have discretion to withhold these items, Ms. Shelton explained that they are mandated to establish rules and regulations governing the procedures for withholding the grades, transcripts, and diplomas. In addition, Ms. Shelton stated that a transferee's school is mandated to continue to withhold grades, transcripts, and diplomas until it receives notice from the school district that initiated the decision to withhold these items that the decision has been rescinded.

Staff found that the activities listed in the staff analysis constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Staff recommended that the Commission adopt the staff analysis, which partially approves the test claim.

Parties were represented as follows: Keith Petersen, representing the claimant; and Donna Ferebee, with the Department of Finance.

Mr. Petersen stated that there were no new issues. He disagreed with staff's application of the *Kern High School* case, but noted agreement with the application of the *City of Merced* case.

Ms. Ferebee concurred with the final staff analysis. She also clarified that the Legislature had not appropriated funds from the Child Health and Safety Fund pursuant to Education Code section 32245.

Ms. Shelton explained that if the Legislature appropriates funds for the lead notices, there is a statute that provides for offsetting savings. However, if there is no appropriation, then there is no offset to identify.

Member Olsen made a motion to adopt the staff recommendation. With a second by Member Glaab, the motion carried unanimously.

Item 6 Proposed Statement of Decision
Pupil Safety Notices, 02-TC-13
See Above

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the issue before the Commission is whether the proposed Statement of Decision accurately reflected the Commission's decision in the previous item. She noted that the final decision would reflect the hearing testimony and vote count.

Member Glaab made a motion to adopt the proposed Statement of Decision. With a second by Member Olsen, the motion carried unanimously.

Item 7 *California Fire Incident Reporting System (CFIRS) Manual*
4419, 00-TC-02
Health and Safety Code Section 13110.5
Statutes 1987, Chapter 345 (SB 2187)
CFIRS Manual – Version 1.0 (July 1990)
San Ramon Valley Fire Protection District and City of Newport Beach, Claimants

Katherine Tokarski, Commission Counsel, presented this item. She noted that this amended test claim alleges that a 1987 amendment to the Health and Safety Code and the 1990 addition of the

California Fire Incident Reporting System (CFIRS) Manual imposed a reimbursable state-mandated program.

Ms. Tokarski stated that all fire protection agencies in California have had a duty since January 1, 1974, to report information and data to the State Fire Marshal relating to each fire in their jurisdiction pursuant to Health and Safety Code section 13110.5. The CFIRS manual and reporting forms were issued in 1974.

Staff found that requiring the local implementation of a computerized version of CFIRS with submission of forms by diskette or magnetic tape constitutes a new program or higher level of service on local fire agencies because it is a significant substantive change to the program compared to what was required pre-1975. Ms. Tokarski noted that actual costs for implementing the new computerized CFIRS format may be eligible for one-time costs to acquire and implement any necessary hardware and software. However, staff also found that the activity is only reimbursable beginning July 1, 1990, based on the test claim filing date, until June 30, 1992, the date the State Fire Marshal issued its letter stating that fire incident reports may be submitted by hard copy rather than diskette or tape.

Ms. Tokarski indicated that the claimants failed to demonstrate how the 1990 CFIRS manual creates a new program or higher level of service for filing incident reports beyond the broad pre-1975 requirement. She noted that the State Fire Marshal submitted a late filing requesting an amendment to a sentence in the final staff analysis, which references the California All-Incident Reporting System rather than CFIRS. Staff recommended that the sentence be substituted with a statement regarding the purpose of CFIRS, to be taken from a State Fire Marshal letter.

Staff recommended that the Commission adopt the staff analysis, which partially approves the test claim.

Parties were represented as follows: Juliana Gmur, Terry Ulaszewski, and Glen Everroad, on behalf of the City of Newport Beach; Allan Burdick, on behalf of the California State Association of Counties SB 90 Service; Ginevra Chandler and Penny Nichols, on behalf of the State Fire Marshal; and Donna Ferebee, Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Gmur concurred with the staff analysis, but noted that it does not provide reimbursement for ongoing costs. She stated that the issue is the higher level of service between the original 1974 manual and the 1990 manual. She asserted that one of the primary differences between the manuals is the definition of an incident. In the old manual, an incident was a fire, whereas in the new manual, an incident is every time a vehicle is dispatched. Moreover, she argued that when filling out the reporting forms, the codes used to describe an incident are now more complex.

Ms. Gmur noted that a handout of relevant pages from the CFIRS manual was provided to the members.

Mr. Ulaszewski, the fire service support manager for the City of Newport Beach since 1997, stated that the changes mandated by the 1990 CFIRS manual required a higher level of service because it required a significant addition to resource needs. He outlined the following three issues: 1) there are significantly more reports, 2) there is a significant increase in the data intensity, and 3) there is a significant increase in the degree of difficulty to complete the forms.

Using statistics for last year, Mr. Ulaszewski reported a total of 8,684 incidents in his jurisdiction. Under the 1974 CFIRS manual, he would have made a total of 201 reports. Under

the 1990 manual, he would have made 2,710 reports. He argued that each report takes about an hour to do, and therefore, a significant amount of man hours would be required by the 1990 manual compared to the 1974 manual. Moreover, referencing the CFIRS Code Book in the handout and walking the members through the forms, he argued that the new codes in the 1990 manual were not user-friendly and were more complex, requiring a significant increase in the time spent on the reporting process. He noted that the 1990 book was much thicker and his printing costs are up because of the need to provide one for each station.

Considering the advancement of technology, Member Glaab asked if the forms were being filled out electronically. Mr. Ulaszewski stated yes, and that they had a computer software system online. He maintained that the state mandated that more data be provided, and to provide that data, more time and more costs are incurred to pay for software systems and consultants. He contended that these costs should be reimbursed.

Member Lujano asked what the fire captain would be doing if he was not filling out the reports and how many more firefighters were hired because of the new system. Mr. Ulaszewski responded that the fire captain would be training new recruits and no new firefighters were hired. Rather, more computer people have been hired in recent years.

Regarding Member Glaab's question, Mr. Everroad commented that between the time the 1990 manual was released and the current state of affairs, the State Fire Marshal proposed that the cities and fire districts themselves would be better suited to determine how to create the electronic reporting system. He noted that at the time, no consultants were available to them to satisfy the reporting requirements. Thus, between 1990 and 1993, he asserted that the costs largely related to hiring someone in a computer capacity to develop a software system to satisfy the reporting requirements because there was no off-the-shelf version available.

Mr. Everroad thanked staff for its recommendation, but maintained that it was shortsighted. He disagreed with staff's reliance on the State Fire Marshal's comments that the amount of data had not increased. He argued that the city had demonstrated that the new reporting requirements result in a greater than tenfold increase in the number of reports made and that the amount of time and staff required had increased. Mr. Everroad conceded that as of January 2003, CFIRS was no longer mandated.

Mr. Burdick commented that when the system was first implemented, there were only two software vendors and systems approved for use and purchased by local agencies. He asserted that both systems were flawed. He said that many local agencies, for the first time, purchased computers, trained their staff, and had to figure out and implement the whole process. This was time-consuming. Therefore, he argued that, in terms of those early years, staff's recommendation should be expanded to cover the additional time and effort that was required.

Ms. Castaneda had no objection to the staff analysis. She said that she would withhold any comments regarding the one-time costs until the parameters and guidelines phase.

Ms. Geanacou clarified that Health and Safety Code section 13110.5 only required fire incidents to be reported. She stated that if the Fire Marshal required other incidents to be reported, such a requirement is prohibited as it is contrary to the statutory law.

Ms. Chandler, Chief Counsel for the California Department of Forestry and Fire Protection, clarified that the State Fire Marshal conceded that between 1989 and 1992, it was unclear whether or not local fire departments had to report on fires using a computerized model. However, there was never confusion that fire departments could voluntarily report other kinds of

incidents. She also clarified that as of 1992, the Fire Marshal made clear that fire departments could report in the old hard copy. Thus, she argued that it was unfair for claimants to request reimbursement for a system that they chose to use at their own discretion.

Moreover, Ms. Chandler contended that one of the benefits of the computerized system for local reports is that there is also a separate Office of Emergency Services requirement that hazmat (hazardous materials) incidents be reported. This system allows fire departments to report hazmat incidents and the State Fire Marshal then makes the report to the Office of Emergency Services, thereby eliminating a potential reporting cost.

Chairperson Sheehan asked that the issue regarding the complexity of what needs to be reported be addressed. Ms. Chandler responded that the new manual does ask for additional, more detailed information. However, regarding the expanded codes, she contended that one can learn them fast if doing the reports regularly. Also, she asserted that the dispatcher fills out much of the form and the fireman fills out the rest when he gets back to the station. Further, Ms. Chandler noted that there is a free federal system available to all fire departments to help them work with the system. Thus, she maintained that it was not accurate to say that fire departments incur ongoing costs to hire people and purchase software systems when there is an available alternative.

Chairperson Sheehan requested clarification that the statutory requirement is just for fires. Ms. Chandler affirmed.

Ms. Gmur argued that there was nothing in the instruction manual designating incidents as optional or non-optional for reporting purposes. She maintained that the first page specifically states that a report was to be completed each time a fire department unit is dispatched.

Mr. Ulaszewski noted that the page Ms. Gmur was referring to still existed in the 1998 version. He also contended that he took a two-day training course, in which there was never any mention of the fact that the report was optional for other incidents. He maintained that during the initial years, a lot of money was spent trying to implement this program. Regarding the comment that a dispatcher begins filling out the form, he argued that his jurisdiction was part of a multi-agency dispatcher, and therefore, that service was not available to them.

Ms. Tokarski referred the Commission to a detailed quote in the questions and answers booklet provided by the State Fire Marshal, contemporaneous with the release of the 1990 CFIRS manual, which clarified that a new CFIRS report is only required for fire incidents. Therefore, without the other incidents, she stated that essentially, the same ten code categories from the old manual still apply.

After some technical clarifications requested by Member Lujano and Ms. Higashi, Ms. Gmur argued that even if the Commission found that only fire incident reports are required, there was still an increase in the amount of material that departments have to go through to report the fire. Ms. Gmur contended that the codes are still more complex.

Member Walsh asked if there were any other questions and answers booklets issued with subsequent releases of the manuals between 1990 and 1998. Ms. Nichols stated that there were only the two versions that were released. She noted that there was discussion at multiple public meetings of the State Board of Fire Services, as well as the CFIRS advisory committee, regarding the intentions of this program.

Mr. Ulaszewski explained that to a fire captain, an informal booklet issued prior to the manual, which is signed by the governor and the State Fire Marshal, would not command as much attention as the manual itself.

Chairperson Sheehan commented that it was hard for her to find that the program includes other incidents, especially when the very title of the program is California Fire Incident Reporting System.

Member Glaab commented that he was sensitive to the fact that expenses were incurred during the transition from a manual to electronic system.

Member Walsh made a motion to adopt the staff recommendation. With a second by Member Hair, the motion carried 6-0.

Item 8 Proposed Statement of Decision
California Fire Incident Reporting System (CFIRS) Manual
4419, 00-TC-02
See Above

Katherine Tokarski, Commission Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the staff analysis and recommendation on the test claim, including the earlier referenced amendment. Ms. Tokarski noted that minor changes, including those that reflect hearing testimony and vote count, would be included in the final Statement of Decision.

Member Walsh made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the motion carried unanimously.

Item 9 *Local Government Employment Relations*, 01-TC-30
Government Code Sections 3500, 3500.5, 3501, 3502.5, 3507.1, 3508.5, 3509, 3510, and 3511
Statutes 2000, Chapter 901 (SB 739)
California Code of Regulations, Title 8, Sections 31001-61630
City of Sacramento, County of Sacramento, Claimants

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the test claim dealt with statutes that amend the Meyers-Milias-Brown Act, requiring employer-employee relations between local public agencies and their employees. She noted that the test claim statutes primarily authorize an additional method for creating an agency shop arrangement without the employer's consent, and expand the jurisdiction of the Public Employment Relations Board (PERB) in resolving disputes and enforcing the statutory duties and rights of local public agencies, employers, and employees that are subject to the Meyers-Milias-Brown Act.

Ms. Borzelleri noted that there were still a few issues in dispute relating to the agency shop arrangements, as well as the PERB's administrative process, which replaces the previous court process for resolving disputes under the Meyers-Milias-Brown Act.

Staff recommended that the Commission adopt the staff analysis, which partially approves the test claim.

Parties were represented as follows: Pam Stone and John Liebert, on behalf of the claimants; Dee Contreras and Ed Takach, with the City of Sacramento; Krista Whitman, representing the

County of Sacramento; Donna Ferebee, Susan Geanacou, and Carla Castaneda, with the Department of Finance; and Wendi Ross, with the Department of Personnel Administration.

Ms. Stone agreed with the staff recommendation but stated that there were issues that had not been fully addressed. She noted that the claimants would be requesting one-time training in the parameters and guidelines because the requirements to go through the PERB process were extremely complex.

Mr. Liebert provided detailed background information regarding agency shop arrangements and disagreed with staff's position that creating an agency shop arrangement is not a new program. Quoting Government Code section 3502.5, he argued that creating an agency shop arrangement was an alternative procedure as far as negotiations were concerned. Regarding staff's reliance on the Senate Rules Committee analysis and Attorney General's opinion to support its position, Mr. Liebert contended that those citations clearly supported the intent of the bill, which he argued was to provide employees with an alternative process to obtain an agency fee arrangement through a fair and democratic process. He maintained that this was a mandated process and not one that merely reflects the negotiating of the collective bargaining contract and all the terms and conditions of employment.

In addition, Mr. Liebert asserted that the parties are mandated to jointly seek to agree on who shall conduct the election, which also mandates on the employer the obligation to engage in joint discussion, as well as providing a list of employees entitled to vote in the election. He contended that the items that should be reimbursable involve activities mandated by PERB or the State Mediation or Conciliation Service in conducting agency shop elections.

Mr. Liebert disagreed with staff's conclusion with regard to rescission of an agency shop arrangement. He submitted that section 3509, subdivision (a), of the Meyers-Milias-Brown Act was later amended to provide that "PERB has the jurisdiction to adopt rules to apply in areas where a public agency has no rule."

Ms. Contreras agreed with Mr. Liebert that if an agency has local rules, then PERB rules do not apply. She stated that the City of Sacramento had local rules and that an employer-employee relations policy was adopted about 30 years ago. She discussed the issues of two cases that the city was currently dealing with, asserting that the increase in unfair labor practice charges was profound.

Ms. Contreras also argued that the difference between filing an unfair labor practice charge with PERB and going through the administrative process was huge. Asserting that there are holes in the staff recommendation, she urged the Commission to go back and look at it very carefully.

Ms. Whitman discussed two issues: 1) situations where the local entity has to go to PERB in the event of a strike or work stoppage, and 2) situations where there is a ruling before PERB that is in the employer's favor and then goes to appeal. Regarding the first issue, she noted staff's conclusion that the filing of an unfair labor practice by the employer is discretionary because the employer has other options. Ms. Whitman disagreed, arguing that giving in to the demands of employees was hardly good public policy, that holding firm was not an option where the services provided are essential to the public health and safety, and that contracting out was not an option due to the county's charter provision and state law. Using the example of a wastewater treatment plant, she maintained that the procedural step of going to PERB was not discretionary. She contended that going to PERB was mandatory for the same reason that expelling a student with a handgun is mandatory.

Regarding the second issue, Ms. Whitman also disagreed with staff's conclusion that responding to appeals is not mandatory. She explained that not responding would result in the PERB decision that was in the county's favor to be overturned immediately without opportunity for a response by the county. She submitted that the county should be able to protect those positive rulings through the appellate process.

Ms. Castaneda concurred with the staff recommendation regarding the deduction of dues and service fees from employee wages, but continued to oppose the activities to receive from the employee any proof of in lieu fee payments made to charitable organizations, and following PERB procedures because they should not result in increased costs.

Ms. Geanacou introduced Ms. Ross, Labor Relations Counsel with the Department of Personnel Administration. Ms. Ross stated that she has been practicing before PERB for approximately 14 years. She contended that PERB is the subject matter expert, and thus, when an unfair labor practice charge is filed, responding to the charge does not require a lot of energy. Oftentimes, PERB itself dismisses the charge upon investigation. She explained that PERB has a settlement conference with the parties if a complaint is issued, and if the parties go to hearing, it does not necessitate a lot of discovery. Noting that she has never been to deposition, she asserted that the discovery practice that is part and parcel of court actions is nil at PERB, as well as motion practice.

Ms. Ross noted that PERB's process for addressing strike activity was not great because it could take the Board days to respond about whether or not it is going to go to court to seek injunctive relief. Otherwise, she stated that it was an excellent process that works very well.

In light of Ms. Ross' testimony, Ms. Geanacou requested a continuance of the hearing in order to allow the Department of Finance to obtain more information from the Department of Personnel Administration, PERB, and other sources that there are offsetting savings associated with participating in the PERB process as opposed to the more costly court procedures. Also, she asked Commission staff what discovery mechanisms were available for the Commission to possibly use its subpoena powers to obtain information.

Ms. Stone argued that experts were present to demonstrate that as a result of the change in going to PERB, the number of actions filed by employees and employee organizations have created a tremendous amount of work for local agencies. She contended that the evidence that can be presented by local agencies are far and above whatever small cost savings there may be.

Mr. Liebert detailed the different procedures for going to court compared to going to PERB.

Regarding the subpoena questions, Ms. Higashi stated that the Commission's regulations provide for the issuance of subpoenas and require that a request be made at least six weeks before a hearing so that it can come before the Commission in time. Also, she noted that a majority vote of the Commission would have to occur.

Member Walsh asked why subpoena power was necessary. Ms. Geanacou responded that the actual cost data they were seeking may not be something claimants produce naturally.

Ms. Shelton noted that at the time the test claim was filed, the Government Code did not require a full cost analysis and only required claimants to estimate costs of $200.

Ms. Whitman stated that if she received a subpoena in her office, she would not be able to respond because they did not track individual items. The information just was not available.

With regard to the issue about agency shop arrangements and the election, Ms. Borzelleri stated that the only thing required is for the petitioner to show that 30 days have passed for them to negotiate. Government Code section 3502.5, subdivision (b), does not require the actual negotiation to occur. She noted that the claimant filed a document dated December 2, 2006, regarding procedures for mandated agency shop elections. However, it was never filed with the test claim, and therefore, the Commission does not have jurisdiction to make a finding.

Ms. Shelton added that an amendment to the test claim was not requested on a form provided by the Commission. The document has not been analyzed for completeness, and has not been issued for public comment, so the Commission had no jurisdiction over the document. She noted that if it truly is an amendment to the test claim, the executive director could sever the document as a separate test claim to make a separate ruling.

As to the issue of agency shop rescissions, Ms. Borzelleri stated that rescissions to agreements under subdivision (d) were not subject to the regulations at the time the test claim was filed. Regarding the PERB process, she stated that the *County of Los Angeles* case is controlling here and the fact that there are alternatives is the controlling principle. She maintained staff's position that filing a case with PERB is discretionary, adding that the same rationale holds for filing appeals.

Ms. Contreras continued to disagree. She contended that it may be cheaper in some way to go to PERB rather than to court; however, the number of times they have had to defend themselves have significantly increased. Thus, no savings can be identified.

Ms. Geanacou reiterated her request for a continuance. Chairperson Sheehan stated her concern that this matter was not new and there has already been an opportunity to examine the issue.

Ms. Shelton clarified that costs mandated by the state is a finding that must be made at the test claim phase. If a finding is made that there are increased costs mandated by the state, it cannot be overturned unless there is a request to reconsider or there is litigation over the decision.

After further discussion about the request to continue, Member Walsh made a motion to grant the Department of Finance's request for a continuance. The motion failed because there was no second.

Member Walsh made a motion to adopt the staff recommendation. With a second by Member Glaab, the motion carried unanimously.

[A short break was taken at this time.]

Item 10 Proposed Statement of Decision
Local Government Employment Relations, 01-TC-30
See Above

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the sole issue before the Commission is whether the proposed Statement of Decision accurately reflected the Commission's decision on the previous item. She noted that the hearing testimony and vote count would be reflected in the final Statement of Decision.

Member Walsh made a motion to adopt the proposed Statement of Decision. With a second by Member Olsen, the motion carried unanimously.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Item 11 Proposed Parameters and Guidelines
Local Recreational Areas: Background Screenings, 01-TC-11
Public Resources Code Section 5164, Subdivisions (b)(1) and (b)(2)
Statutes 2001, Chapter 777 (AB 351)
City of Los Angeles, Claimant

Item 11 was postponed.

Item 13 Requests to Amend Parameters and Guidelines:
Peace Officer Procedural Bill of Rights
04-PGA-05, 05-PGA-18, 05-PGA-19, 05-PGA-20, 05-PGA-21; and 05-PGA-22 (4499; 05-RL-4499-01)
Government Code Sections 3301, 3303, 3304, 3305, and 3306
As Added and Amended by Statutes 1976, Chapter 465 (AB 301); Statutes 1978, Chapters 775 (AB 2916), 1173 (AB 2443), 1174 (AB 2696), and 1178 (SB 1726); Statutes 1979, Chapter 405 (AB 1807); Statutes 1980, Chapter 1367 (AB 2977); Statutes 1982, Chapter 994 (AB 2397); Statutes 1983, Chapter 964 (AB 1216); Statutes 1989, Chapter 1165 (SB 353); and Statutes 1990, Chapter 675 (AB 389)
Directed by Government Code Section 3313, as added by Statutes 2005, Chapter 72 (AB 138, § 6, eff. July 19 2005)

California State Association of Counties, County of Los Angeles, County of San Bernardino, Department of Finance, and State Controller's Office, Requestors

Camille Shelton, Chief Legal Counsel, presented this item. She noted that in April 2006, the Commission reconsidered the *Peace Officer Procedural Bill of Rights* test claim as directed by the Legislature, and made some modifications to the original findings. She stated that several parties filed requests to amend the reimbursable activities and to add a reasonable reimbursement methodology for purposes of claiming costs.

Staff recommended that the following changes be made to the reimbursable activities section of the parameters and guidelines for costs incurred beginning July 1, 2006:

1. add time study language to support salary and benefit costs when an activity is task-repetitive (time study usage is subject to the review and audit conducted by the Controller's Office);
2. delete specific activities related to the administrative appeal hearing and the receipt of an adverse comment that the Commission expressly denied in the Statement of Decision on reconsideration;
3. clarify administrative activities and activities related to administrative appeal, interrogations, and adverse comments that are consistent with the Commission's Statement of Decision adopted in 1999, the Statement of Decision on reconsideration, and the Commission's prior findings when adopting the original parameters and guidelines; and

4. include language to clarify that certain activities are not reimbursable, including investigation and conducting an interrogation, because the Commission expressly denied reimbursement for these activities when it adopted the original parameters and guidelines in 2000, and again when it adopted the Statement of Decision on reconsideration in April 2006.

Staff further recommended that the Commission not adopt the reasonable reimbursement methodologies proposed by the California State Association of Counties, the County of Los Angeles, and the Department of Finance because they do not meet the statutory requirements of Government Code section 17518.5, and therefore, must be denied.

Staff recommended that the Commission adopt the proposed amendments to the parameters and guidelines, which clarify the reimbursable activities, add current boilerplate language, and require eligible claimants to claim reimbursement based on actual costs. Ms. Shelton noted a technical correction to the proposed amendments.

Parties were represented as follows: Leonard Kaye, on behalf of the County of Los Angeles; Dee Contreras, on behalf of the City of Sacramento; David McGill and Laura Filatoff, on behalf of the City of Los Angeles; Bonnie Ter Keurst, on behalf of the County of San Bernardino; Steve Keil, on behalf of the California State Association of Counties; Staci Heaton, on behalf of the Regional Council of Rural Counties; Jim Spano, with the State Controller's Office; and Carla Castaneda, with the Department of Finance.

Ms. Contreras stated that their prior efforts identified issues from the field perspective and broadened the parameters and guidelines from the original staff recommendation. She noted that based on the Commission's recommendation, the city sought a reasonable reimbursement methodology, but no agreement was reached. She contended that no one really engaged in any dialogue to develop a methodology. She asserted that the Commission had the ability to update the parameters and guidelines consistent with prior decisions and to recommend moving towards a reasonable reimbursement methodology. However, she contended that it was going to require direct intervention by the Commission to move the process forward.

Ms. Contreras stated her concern about any disregard of the prior record and testimony, and asked for the Commission's support in recognizing that there are increased costs of a substantial nature on every jurisdiction in the state that does police activities.

Mr. McGill, a lieutenant with the Los Angeles Police Department, discussed his current role having been with the department for about 20 years. He noted that the City of Los Angeles submitted reimbursement claims to the state going back to fiscal year 1994-1995 for activities required of his employees related to this mandate. The claims totaled about $69 million. He asserted that they spent countless hours and an enormous amount of resources to prove their worth, but differences of opinion over the interpretation of the eligible costs remain. Though their claim is being denied, he stated that the work continued in the field.

Mr. McGill argued that the costs of this mandate are not and will never be de minimis and that efforts have changed over the last 30 years since this mandate was enacted. He contended that differences between Skelly and the Peace Officer Procedural Bill of Rights include the fact that written reprimands, the most common form of discipline, are covered under the Peace Officer Procedural Bill of Rights; and interviewees must be informed of the investigation prior to questioning. Regarding the adverse comments issue, he stated that it entails a huge obligation to

ensure that they are in compliance with the mandate. Mr. McGill urged the development of a reasonable reimbursement methodology.

Ms. Filatoff noted that the Controller's auditors felt that a lot of the City of Los Angeles' documentation had shortcomings. Thus, she stated that the staff worked with the auditors cooperatively in putting together a sufficient time study. Despite the effort, the auditors still disallowed the claim. She contended that the process was frustrating and time-consuming, and that there needed to be a more cost-effective way for local agencies to be reimbursed. She urged the Commission to adopt some form of a reasonable reimbursement methodology.

Ms. Ter Keurst commented that she attended the reasonable reimbursement methodology meetings. Stating that there was discussion about clarifying the parameters and guidelines, she indicated that she submitted a request for amendment to clarify what was adopted in the original Statement of Decision. She disagreed with staff's conclusion regarding interrogation because it was inconsistent with the original Statement of Decision. She urged the Commission to reconsider the amendments.

Ms. Heaton stated that of the 30 small rural counties, all have fewer resources per person to implement mandates. She supported continuing the work towards developing a reasonable reimbursement methodology to ease the reimbursement process.

Mr. Keil expressed frustration about the rejection of any effort at a reasonable reimbursement methodology and provided some history about the *Peace Officer Procedural Bill of Rights* claim. He discussed the California State Association of Counties' methodology proposals, maintaining that they were trying to make this process work. He noted that the Legislature believed the Commission had the authority to deal with the issue. He asked for the Commission's support in trying to find a way to develop a reasonable reimbursement methodology.

Mr. Kaye stated the State Controller's concern that the California State Association of Counties' proposal is based on filed claims rather than the reimbursable activities adopted by the Commission, and that as much as 75 percent of the $528 rate may be for non-reimbursable activities. In light of this, he argued that at least 25 percent is reimbursable and the minimum threshold should be about $134 per officer. Mr. Kaye also discussed the approach taken by the County of Los Angeles in developing a methodology. He requested that the parties continue the proceedings with a spirited attempt to develop something simple and reasonable.

Mr. Spano stated that conducting audits has been a struggle, primarily because of the different interpretations of the reimbursable activities. He supported the development of a reasonable reimbursement methodology, but noted that it will be difficult to move forward unless there is some clarification to the reimbursable activities. At this point, he submitted that the Controller's Office did not know what activities to include in the calculation.

Ms. Castaneda agreed that the majority of the disagreements related to the reimbursable activities. She supported the final staff analysis, as well as any effort towards developing a reasonable reimbursement methodology.

Chairperson Sheehan asked Ms. Shelton to address some of the issues in terms of the reimbursable activities. Ms. Shelton responded that some statements in the original Statement of Decision were being taken out of context. She clarified that the test claim legislation does not mandate local agencies to interrogate an officer and it does not mandate local agencies to investigate. Rather, these activities are based on local policy and regulation. She maintained

that the Commission made those clarifications in the Statement of Decision on reconsideration, and explained that the Commission is bound by those findings.

Moreover, Ms. Shelton indicated that staff reviewed all of the requests to amend the reimbursable activities. Staff disagreed with the Controller's request to reimburse the receipt of an adverse comment only when it results in some type of discipline. Ms. Shelton explained that case law was clear that the adverse comment section applies to any adverse comment, including citizen complaints that do not result in investigation or discipline.

Chairperson Sheehan expressed her concern about how long this issue has been around and wanted to move forward.

Member Glaab stated that he was sensitive to the pleadings before the Commission, and being a local elected official, he knew the costs were real. He was disappointed that a mutually beneficial methodology had not been developed.

Mr. Keil commented that the parties should collectively identify the problems and work toward a solution.

Ms. Shelton clarified that Government Code section 17518.5 provides a definition of a reasonable reimbursement methodology, which is effective January 1, 2005. Prior to this, the Commission had the ability to adopt unit costs based on a consensus of the parties. With the new definition, however, the Commission is required to find: 1) that the total amount to be reimbursed statewide is equivalent to total estimated local agency and school district costs to implement the mandate in a cost-efficient manner; and 2) for 50 percent or more of the eligible local agency and school districts, that the amount reimbursed is estimated to fully offset their projected cost to implement the mandate in a cost-efficient manner.

Member Walsh made a motion to adopt the staff recommendation, which was seconded by Member Hair. The motion carried 5-1, with Member Glaab voting "No."

Chairperson Sheehan expressed hope that everyone could go forward and have further discussions about a reasonable reimbursement methodology to bring closure to this issue.

Ms. Contreras asked if staff could facilitate the process. After some clarification by Ms. Shelton, Chairperson Sheehan committed to making sure the process was facilitated by the Commission once a proposal was brought forward.

Pamela Stone, a claimant representative, expressed concerns about the Commission not having jurisdiction to work on the matter because nothing was now pending before the Commission. Ms. Higashi clarified that discussions for developing reasonable reimbursement methodologies would continue for this and other programs. She noted that staff was working with other parties to figure out if there is a better definition to achieve the objectives everyone hoped would be achieved when Government Code section 17518.5 was enacted. She added that she just needed to see requests for meetings and workshops.

Chairperson Sheehan commented that the issue had gone on far too long. With something to move forward with, she encouraged the parties to contact her personally if anyone felt that staff was not being responsive. She stated that she has had numerous discussions with staff about the issue and that the will was to try and resolve the matter. A proposal was just needed to start.

Item 14 Requests to Amend Parameters and Guidelines
Handicapped and Disabled Students, 00-PGA-03/04 (CSM 4282)
Government Code Sections 7570-7588
Statutes 1984, Chapter 1747 (AB 3632);
Statutes 1985, Chapter 1274 (AB 882)

California Code of Regulations, Title 2, Sections 60000-60610
(Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))
Counties of Los Angeles and Stanislaus, Requestors

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the County of Los Angeles and the County of Stanislaus requested to amend the original parameters and guidelines for the *Handicapped and Disabled Students* program pursuant to Government Code section 17557. If the Commission approves any of the counties' requests, she noted that the reimbursement period affected would be July 1, 2000, through June 30, 2004.

Staff made the following findings and recommendations:

- Reimbursable Activities – the request to add or amend the reimbursable activities are not consistent with the Statement of Decision. Staff recommended that the Commission deny these requests.
- Indirect Cost Language – the proposed indirect cost language does not identify any additional costs that could not have been previously claimed, and thus, it is not necessary to amend Section VI. Claim Preparation. Staff recommended that the Commission deny this request.
- Offsetting Revenue – the County of Stanislaus requested that the Commission specifically identify offsetting revenue because various counties did not claim costs as they were under the impression that realignment funds received under the Bronzan-McCorquodale Act would be considered an offset. The Controller's Office opposed the request, arguing that counties should not be allowed to file new claims because no changes were made to the reimbursable activities. Staff noted that there was no evidence in the record regarding the fiscal impact of potential claims being filed. Based on the evidence in the record, staff recommended that the Commission amend the language regarding offsetting revenue.

  Ms. Shelton stated that the proposed language amends the parameters and guidelines to correct a legal error found by the Commission when it reconsidered the original *Handicapped and Disabled Students* program, as directed by the Legislature for costs incurred beginning July 1, 2004. The original parameters and guidelines incorrectly stated that Medi-Cal and private insurance proceeds could not be used as offsetting revenue. The Commission determined during its reconsideration that under specified circumstances, federal law allows agencies to use these proceeds to pay for this program.

Parties were represented as follows: Leonard Kaye, on behalf of the County of Los Angeles; Pam Stone and Linda Downs, on behalf of the County of Stanislaus; Ginny Brummels and

Jim Spano, with the State Controller's Office; and Carla Castaneda, with the Department of Finance.

Ms. Stone stated the necessity for clarifying the offsetting revenue, and thanked Commission staff for its recommendation. Regarding the indirect cost language, she argued that the proposed change was just clean up and to make it consistent with current boilerplate language.

Mr. Kaye concurred with Ms. Stone and added that the proposed parameters and guidelines were sort of like a legal curiosity because they still included language from the repealed Short-Doyle program. He noted that medication-monitoring and other activities should be reimbursable back to July 1, 2000, which is the effective date of the parameters and guidelines. Moreover, he disagreed with the argument that the Statement of Decision is controlling because he believed that at the time the parameters and guidelines were adopted, the Short-Doyle program was already repealed.

Mr. Spano agreed with the staff recommendation, but was concerned about the offsetting revenues section. He asked how the realignment funds fall into play in the proposed parameters and guidelines.

Ms. Castaneda stated no objections to the staff analysis and supported the correction of law.

Chairperson Sheehan asked what the implications are of the realignment issue and stated reluctance to move forward until she had a better understanding of the impacts.

Ms. Brummels stated that she estimated $1.3 million based on eight counties that had filed claims for one or more years between fiscal years 2000-2001 through 2003-2004. She noted that there were 14 small rural counties that did not file claims for any of those fiscal years.

After some discussion about this estimate, Mr. Spano clarified that they were speaking about counties that had not filed claims and now will be given the opportunity to file. He asked if they were also opening the door for the counties that had filed claims and deducted realignment funds. He noted that they could recover a potential $20 million.

Ms. Shelton clarified that if the Commission amends the parameters and guidelines, then the Controller has to issue revised claiming instructions that apply to all eligible claimants.

Mr. Spano commented that he would just like to eliminate any confusion down the line because the parameters and guidelines currently state that claimants are entitled to only 10 percent of treatment costs. He explained that if realignment funds are allowed to be recovered, but yet they are only allowed to claim 10 percent of treatment costs, there may be a conflict.

Ms. Shelton noted that the 90-10 split for medical treatment costs was in Short-Doyle, a finding the Commission made in the original Statement of Decision. She explained that the Sixth District Court of Appeal upheld the Commission's decision, and therefore, the Commission does not have jurisdiction to go back and change that finding. She added that the Legislature directed the Commission to reconsider the original program, but only directed the Commission to reconsider it beginning July 1, 2004. Thus, effective July 1, 2004, she stated that counties can claim 100 percent of their treatment costs. However, Statutes 2002, chapter 1167 (AB 2781) states that if a county claimed the 90-10 split, they cannot go back and re-file to claim 100 percent.

Chairperson Sheehan and Member Walsh asked what the ballpark costs would be for the worst-case scenario. There was some discussion after which Ms. Shelton clarified that in 2004,

the Legislature enacted SB 1895 to clarify that any money used from realignment to fund costs of any part of the program did not have to be identified as an offset. Based on that language, Ms. Shelton stated that they could have used the realignment funds for any reimbursable activity and not just the treatment services.

Mr. Kaye stated his belief that costs could range anywhere between 10 percent of the $1.3 million estimate up to $1.3 million. Chairperson Sheehan was concerned that the amount could be higher.

After further discussion, Chairperson Sheehan stated that she would feel more comfortable if a survey of the counties was conducted in order to obtain a better idea about the fiscal impacts.

Stating his concern about the assumption that the realignment is only applied against treatment costs, Mr. Spano indicated that to his knowledge, this was the case and the amount in question was less than four or five million.

Ms. Higashi asked the claimants if they planned to re-file claims if the Commission adopted these amendments to the parameters and guidelines. Mr. Kaye, on behalf of the County of Los Angeles, and Ms. Downs, on behalf of the County of Stanislaus, said no.

Ms. Shelton commented that the Commission was not required to amend the parameters and guidelines. The counties made a request and the Commission had discretion about how to proceed.

The members agreed that more information was necessary to make an informed decision. Chairperson Sheehan postponed the item until the January hearing.

PUBLIC COMMENT

There was public comment regarding mandate reform.

Robert Miyashiro, representing the Education Mandated Cost Network, commented that this hearing was illustrative of the need for mandate reform. He noted that he had seen the problem from both sides having been the former chairperson and now involved with the claimant community. He acknowledged that everyone was working hard in the process, but it was the process itself that was causing all of the frustration. He pointed out three key elements to think through:

1. Timing. Need to be sensitive to the timing of the entire process, from when the Legislature passes a new law to when a test claim is filed to when the agency receives reimbursement.
2. Simplicity. Need to strive for simplicity as the process is entirely complicated and confusing, especially for those actually implementing the mandates and filing the claims.
3. Outcomes. Need to look toward outcomes because right now mandates strictly focuses on process and documentation and it is not known if the intent of the Legislature or the Governor is even realized with the passage of the law.

Patrick Day, director of maintenance operations, purchasing, and contract management for the San Jose Unified School District, stated that there is agreement among public school educators who work with mandates that reform is needed in all facets of the process. He asserted that when a process gets going, people who implement the change at the lowest level must be involved in the discussions and have equal authority in approving potential recommendations if

the changes are to be beneficial.

Allan Burdick, representing the California State Association of Counties, urged the Commission to take leadership at the legislative side to get the process going and to put the pressure on.

Steve Keil, representing the California State Association of Counties, stated that local government officials were very pleased when the Commission started a mandate reform discussion earlier in the year using an outside facilitator to look at the process from the big picture. He noted that local government is prepared to proceed and suggested that everyone give up some procedural advantages for the greater good.

Chairperson Sheehan made a commitment to help with the reform process.

STAFF REPORTS

Item 16 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton had nothing to add to her report.

Item 17 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi had nothing to add to her report.

ADJOURNMENT

Hearing no further business, Chairperson Sheehan adjourned the meeting at 5:39 p.m.

PAULA HIGASHI
Executive Director