

**ITEM 2
PROPOSED MINUTES**

COMMISSION ON STATE MANDATES

Department of Water Resources
1416 Ninth Street, First Floor, Auditorium
Sacramento, California
April 16, 2007

Present: Member Michael Genest, Chairperson
 Director of the Department of Finance
 Member Francisco Lujano, Vice Chairperson
 Representative of the State Treasurer
 Member Richard Chivaro
 Representative of the State Controller
 Member Cynthia Bryant
 Director of the Office of Planning and Research
 Member J. Steven Worthley
 County Supervisor
 Member Sarah Olsen
 Public Member
 Member Paul Glaab
 City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Genest called the meeting to order at 9:32 a.m.

APPROVAL OF MINUTES

Item 1 March 29, 2007

Item 1 was postponed.

PROPOSED CONSENT CALENDAR

There were no items on the consent calendar.

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

Item 3 Staff Report

There were no appeals 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 4 *In-Home Supportive Services*, CSM 4314
Welfare and Institutions Code Sections 12301, 12302, and 12306;
Statutes 1981, Chapter 69 (Senate Bill 633); and
Department of Social Services Manual Letter No. 81-30 (Dated July 19,
1981) and Attached Interim Instruction notice dated January 19, 1982
County of San Bernardino, Claimant
- Item 5 Proposed Statement of Decision
In-Home Supportive Services, CSM 4314
See Above

The claimant withdrew this test claim.

- Item 6 *In Home Supportive Services II*, 00-TC-23
Government Code Section 16262.5
Welfare and Institutions Code Sections 12301.3, 12301.4, 12301.6,
12301.8, 12302.25, 12302.7, 12303.4, 12306.1, 14132.95, 17600 and
17600.110
Statutes 1999, Chapters 90 (AB 1682) and 91 (SB 710); Statutes 2000,
Chapter 445 (SB 288)
County of San Bernardino, Claimant

Katherine Tokarski, Commission Counsel, presented this item. She stated that the test claim statutes require that all counties establish an “employer of record” for In-Home Supportive Services (IHSS) care providers other than the recipient of the services. The test claim statutes also require counties to appoint an IHSS advisory committee with specific membership requirements.

Ms. Tokarski noted the claimant’s assertion that state funding provided at the time of the test claim filing was inadequate to cover the actual cost of the advisory committee. The claimant sought to recover the remainder of its claimed costs for creating and operating an advisory committee through mandate reimbursement. However, state agencies that have filed comments on the test claim contend that adequate funds have been appropriated for this purpose.

Moreover, Ms. Tokarski noted the claimant’s allegation that the requirement to establish an “employer of record” results in multimillion-dollar increased costs for wages and benefits, with estimates varying widely according to which form of “employer of record” is selected: a public authority, a contract with an outside agency, or the county itself. She stated that the claimant also sought reimbursement for any collective bargaining that may result if providers unionize after the “employer of record” is established.

Staff found that while counties may incur increased costs for higher wages and benefits as an indirect result of the requirement to act as or establish an “employer of record,” the courts have held that a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program. Staff also found that any increased wage and benefit costs that may be incurred indirectly following implementation of the test claim statutes is not a new program or higher level of service. Moreover, staff found that the plain language of the test claim statute does not require collective bargaining but, rather, confirms that the code section does not prohibit collective bargaining or other negotiations on wages and benefits.

Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Bonnie Ter Keurst, representing the County of San Bernardino; Allan Burdick, on behalf of the California State Association of Counties, SB 90 Service; Steve Lakich, representing the County of Sacramento; Jim Norris, with the Department of Social Services; and Carla Castaneda and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst supported the items that staff found to be reimbursable.

Mr. Burdick argued that the legislation established a reimbursable state-mandate program. He introduced Steve Lakich, Director of Labor Relations for the County of Sacramento, who discussed the legislation requirements.

Mr. Lakich stated that his office represents the public authority of Sacramento County and noted that this IHSS program now had about 18,000 home-care workers. He indicated that in August 2000 when the Meyers-Milius-Brown Act was amended to include the IHSS program to make the 58 counties the employer of record for collective bargaining purposes, his board of supervisors established an employee relations ordinance to have the rules established for recognition in the event a union attempted to organize the IHSS workers. He stated that within two or three months, the county went into collective bargaining with the Service Employees International Union. He described the process, which lasted over a period of seven years, and the outcomes. He noted that the Sacramento IHSS office has 20 employees and pay 17.5 cents for every dollar spent. Over the seven-year period, he stated that the public authority was billed a total of \$59,675 for the collective bargaining administration.

Mr. Burdick asserted that prior to the legislation, the state was responsible for setting the wage. He contended that the legislation was a major shift because it made counties responsible for the employment and determination of salaries, wages, and benefits for IHSS workers, and also subjected counties to the full collective bargaining process.

Regarding staff's finding about the "employer of record," Mr. Norris commented that to the extent a county chooses a more costly method, any costs incurred above those associated with the least-costly method of compliance should not be reimbursable. Additionally, he noted that staff found two advisory committee activities to be reimbursable, and argued that these were direct costs that were provided for through existing appropriations expressed in the test claim statute.

Ms. Castaneda concurred with the staff analysis but noted two minor objections. First, regarding a statement made in the staff analysis that the state could fail to allocate funds in future budget years, she noted that the Proposition 1A amendments to the Constitution in 2004 limited the state's ability to reduce funding without notifying locals that a mandate would be suspended. Secondly, she concurred with Mr. Norris that much of the advisory committee activities are funded through the department.

Regarding the collective bargaining issue, Ms. Geanacou added that the statutes clearly state that collective bargaining is not prohibited; rather, it is authorized, but in no way required. Thus, she argued that any increased labor costs in the form of wages or benefits are not reimbursable.

Chairperson Genest asked the claimants to respond to staff's statement regarding the court's finding that a showing of increased costs is not determinative of whether the legislation imposes a reimbursable state-mandated program.

Mr. Burdick disagreed with staff's interpretation of the case, contending that his interpretation is that if there is a new service required or an activity required that results in a cost, it is a reimbursable state mandate. He did not believe the state could impose programs and avoid reimbursement under the provisions of article XIII B, section 6.

Chairperson Genest asked Mr. Norris if he had quantified the least cost approach. Mr. Norris responded that he had not, but stated that it could be determined for each county depending on its circumstances.

Chairperson Genest asked questions regarding funding for the administrative costs of IHSS. Mr. Norris stated that there was a federal, state, and county share involved in the administration. Ms. Castaneda responded that the department budgets \$53,000 per year for the advisory committee, but only actual claims are paid.

Member Worthley was concerned about the concept in case law indicating that increased costs, in and of themselves, did not necessarily reflect an enhanced service. He submitted that this test claim legislation resulted in increased costs because of an enhancement of services provided and should be a reimbursable state-mandated program.

Ms. Ter Keurst contended that legislative intent states that the purpose of this law was expressly to establish a procedure for collective bargaining to address the wages and needs of IHSS personnel. She quoted the *Select Base Materials v. Board of Equalization* case, which said that "the fundamental rule of statutory construction is that the Court should ascertain the intent of the Legislature so as to effectuate the purpose of the law."

Ms. Tokarski acknowledged that this was a correct statement; however, she explained that it does not determine the essential purpose of statutory construction. She stated that the statute's plain meaning should control when the plain meaning is clear, noting that the legislative intent language that deals with collective bargaining in this test claim statutory scheme is limited to the following language: "Nothing in this section shall prohibit any negotiations or agreement regarding collective bargaining or any wage and benefit enhancements." Therefore, staff found that the plain language of the statute does not require collective bargaining, but rather confirms that the code section does not prohibit collective bargaining. Ms. Tokarski added that any negotiations undertaken as part of collective bargaining are done at the discretion of the counties.

Chairperson Genest commented that he was fairly convinced by staff's argument regarding the salary issue, but was not sure that administrative costs should be reimbursable without more information about how the program budget was built and what it funds.

Member Worthley maintained that the administrative costs should be reimbursable because once organized, counties are obligated by state law to negotiate.

Chairperson Genest stated his concern that those administrative costs are already covered within the overall allocation.

Ms. Tokarski explained that Welfare and Institutions Code section 12306 requires a state and county split of non-federal administration costs. When the Legislature required additional administrative activities by these statutes and did not provide 100 percent funding, the county had a share of cost depending on whether there was federal funding and also costs mandated by the state. As to the advisory committee costs, she indicated that there was language in the Department of Social Services claiming instructions that provides for 100 percent reimbursement of advisory committee direct costs, not administrative costs.

In response to Mr. Norris' arguments, Mr. Burdick asserted that the legislation allowed counties to determine which option best fits its particular situation and that there was no requirement in the mandate process that counties adopt the least costly method.

Mr. Lakich commented that under the Meyers-Milias-Brown Act, the employees have the option to organize if they so choose, and thus, the discretion under the law is with the employees and not the employer.

Member Lujano requested clarification as to whether the discretion applies under all four options. Mr. Lakich affirmed.

Mr. Burdick noted that in the vast majority of counties, the public authority option has been determined best for this particular program.

Mr. Norris clarified that some of the options available to counties did not include involvement in collective bargaining. He asserted that if the county actively chooses to become the employer, then collective bargaining costs can come into play.

Ms. Tokarski stated that under all four options, an advisory committee has to be established to help the county board of supervisors determine which option to choose. The only exception is for counties that already established a public authority prior to enactment of this statute, which affects six counties. She noted that the activity to establish the employer of record for IHSS providers, limited to the administrative costs that are incurred by the county workers to implement this part of the mandate, is limited to a reimbursement period of July 12, 1999, through December 31, 2002. Reimbursement for increased wages or benefits is not included.

Camille Shelton, Chief Legal Counsel, added that any activities related to collective bargaining are not included.

Member Worthley viewed this as a semantic issue. By doing it in-house, he stated that counties were attempting to try and control costs. He maintained that no matter which option is chosen, the county ultimately pays the cost.

Chairperson Genest stated that he was now comfortable with the staff recommendation.

Member Bryant made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried 4-3, with Member Worthley, Member Olsen, and Member Glaab voting "No."

Item 7 Proposed Statement of Decision
In Home Supportive Services II, 00-TC-23
See Item 6

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *In Home Supportive Services II* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision. Ms. Tokarski noted that minor changes, including those that reflect the hearing testimony and vote count, will be included in the final Statement of Decision.

Member Lujano made a motion to adopt the staff recommendation, which was seconded by Member Bryant. The motion carried 4-2, with Member Glaab and Member Worthley voting "No." Member Olsen abstained.

- Item 8 *California Youth Authority: Sliding Scale for Charges*, 02-TC-01
Welfare and Institutions Code Sections 912, 912.1, and 912.5
Statutes 1996, Chapter 6 (SB 681); Statutes 1998, Chapter 632 (SB 2055)
County of San Bernardino, Claimant
- Item 9 Proposed Statement of Decision
California Youth Authority: Sliding Scale for Charges, 02-TC-01
See Above

Items 8 and 9 were postponed.

- Item 10 *Reconveyance of Deed of Trust and Mortgage Discharge Certificate*
02-TC-41
Civil Code Section 2941
Statutes 2000, Chapter 1013 (AB 996)
County of San Bernardino, Claimant

Kenny Louie, Commission Counsel, presented this item. He stated that the test claim statute requires county recorders to process and record deed of trust reconveyances and mortgage discharge certificates within two business days from the date of receipt. He noted that before the enactment of the test claim statute, county recorders were already required to process and record these documents. Thus, staff found that the statute merely imposes a deadline, and does not mandate any new activities or provide any tangible increase in the level of service provided to the public.

Staff recommended that the Commission deny the test claim because it does not impose a new program or higher level of service on counties, and therefore, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

Parties were represented as follows: Bonnie Ter Keurst, representing the County of San Bernardino; and Carla Castaneda and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst stated that the issue before the Commission was whether the statute imposed a higher level of service. She concurred with the staff analysis that there was no new program; however, she contended that there was a higher level of service being provided given the new two-day processing window. She indicated that she submitted the *Long Beach* case, which uses terminology that brings to light new legal requirements when compared to the prior process.

Ms. Ter Keurst noted that Bank of America sponsored this bill to address the issue of lawsuits it faced as a result of not meeting the timelines required by law. She stated their contention that the problem was not their own negligence, but the counties' for not working within the time frames that banks were required to follow. She added that the bill's objective, as stated in the legislative analysis opposition comments, was to protect property owners by assuring the timely recording of reconveyance. She urged the Commission to reconsider the staff recommendation.

Ms. Castaneda concurred with the staff analysis, noting that staff's recommendation was similar to the decision in the *Fifteen-Day Voter Registration* program where the only change was to shorten the time frame.

Member Glaab requested clarification as to what the time frame was prior to the legislation. Ms. Ter Keurst responded that there was no time frame in statute for counties. Member Worthley noted that the terminology was that the recorder shall record without delay.

Member Glaab commented that to accomplish something under a specific timetable would result in some additional costs.

Chairperson Genest stated that the issue was whether those costs constituted a reimbursable mandate.

Mr. Louie acknowledged that there may be increased costs. However, he explained that as of this date, no court has held that the imposition of a deadline constitutes a higher level of service.

Member Worthley noted that the Commission has taken a very narrow perspective on what is considered an enhancement. He maintained that this new requirement was a benefit to the public resulting in increased costs because of the enhanced service provided, and thus, should be a reimbursable mandate.

Member Olsen asked if any court has found that the imposition of a deadline is not an enhancement. Ms. Shelton responded that there was no court case on the issue. She clarified that the courts have found that to establish a new program or higher level of service, new activities must be imposed or a shift of financial responsibility must occur. This is not the case here. She explained that the courts have been clear that costs alone do not constitute a reimbursable state-mandated program under the Constitution. The three elements must be met: there has to be a mandate, a new program or higher level of service, and increased costs.

Member Glaab agreed that this was not a new program. However, quoting a statement from the staff analysis, he maintained that the new two-day window constituted a unique requirement on counties.

Chairperson Genest noted that the Constitution does not say that legislative action resulting in costs to local government must be a reimbursable program.

Member Bryant agreed with Ms. Shelton and stated her belief that “two days” was not a huge difference from “without delay.” In her view, the statute was a clarification of current practice.

Member Bryant made a motion to adopt the staff recommendation, which was seconded by Member Olsen. The motion carried 5-2, with Member Glaab and Member Worthley voting “No.”

Item 11 Proposed Statement of Decision
Reconveyance of Deed of Trust and Mortgage Discharge Certificate
02-TC-41
See Item 10

Member Glaab made a motion to adopt the proposed Statement of Decision on the *Reconveyance of Deed of Trust and Mortgage Discharge Certificate* test claim discussed in the previous item. . With a second by Member Olsen, the motion carried 6-1, with Member Worthley voting “No.”

- Item 12 *Pupil Discipline Records*, 00-TC-10
Education Code Sections 48201, 48900.8, and 49079
Statutes 1997, Chapter 637 (AB 412), Statutes 2000, Chapter 345
(AB 29),
Sweetwater Union High School District, Claimant
Consolidated with
Notification to Teachers: Pupils Subject to Suspension or Expulsion II,
00-TC-11
Education Code Sections 48201 and 49079; Statutes 2000, Chapter 345
(AB 29), Carpinteria Unified School District and Grant Joint Union High
School District, Co-Claimants

Eric Feller, Senior Commission Counsel, presented this item. He noted that the test claim legislation requires school districts to request suspension and expulsion records for transfer pupils, requires notification of the pupil's teachers regarding the suspension or expulsion offenses that were committed, and expands the list of offenses for which teachers and non-transferring pupils must be notified.

Staff found that the test claim legislation imposes a reimbursable state mandate for the following activities:

1. For a school district into which a pupil is transferring, to request from the school district in which the pupil was last enrolled, any records the district maintains in its ordinary course of business or receives from a law enforcement agency regarding acts committed by the transferring pupil that resulted in the pupil's suspension from school or expulsion from the school district.
2. For a school district, upon receipt of a pupil's transfer record, to inform any teacher of the pupil that the pupil was suspended from school or expelled from the school district, and to inform the teacher of the act that resulted in that action.
3. For a school district to inform the teacher of each pupil who has engaged in or is reasonably suspected to have engaged in, any of the following four offenses: sexual harassment; hate violence; harassment, threats, or intimidation; and terroristic threats against school officials or property or both. This information is based on any records maintained by the district in its ordinary course of business, or received from a law enforcement agency. According to preexisting subdivision (d) of section 49079, this information provided to the teacher regarding pupil offenses is from the previous three school years.

Mr. Feller stated that one activity was in dispute: upon a pupil's transfer from one school district to another, to provide a pupil's records that result in the pupil's suspension from school or expulsion from the school district. He explained that the test claim statute does not expressly require the school district to provide the records, thus staff recommended that this be decided in the parameters and guidelines phase. Mr. Feller stated that the Department of Finance argued the activity was not a mandate, whereas the Sweetwater Union High School District and San Diego Unified School District argued that it was a reimbursable mandate. The Carpinteria Unified School District and Grant Joint Union High School District agreed with the staff analysis.

Parties were represented as follows: Keith Petersen, representing Sweetwater Union High School District; and Donna Ferebee, with the Department of Finance.

Regarding the activity in dispute, Mr. Petersen asserted that Education Code section 48201, subdivision (b), expressly states that the district receiving a student will ask the sending district to send all expulsion records. He disagreed with staff's reliance on the concept of the plain language of the statute instead of legislative intent, and disagreed that the sending district is not practically compelled to send the records. He argued that the sending district is the only location where those records exist.

Ms. Ferebee concurred with the staff analysis except with regard to the activity in dispute. She stated that staff correctly found that providing these records is not required by statute, and thus, should not be considered at the parameters and guidelines stage because only the most reasonable methods of complying with the mandate to request the records should be considered. She asserted that the Legislature did not require the records be provided by the sending district, and argued that the Legislature knows how to say what it wants to say. The Department of Finance recommended striking from the proposed Statement of Decision staff's recommendation that this activity be considered at the parameters and guidelines phase.

Member Olsen did not agree with the staff analysis. She stated that the logical conclusion is that there is an implicit requirement for the sending district to provide the records when the receiving district is required to request the records, and that a district that does not send records could be held liable for not doing so.

Chairperson Genest commented that the Commission was to decide what is a reimbursable mandate, not what makes common sense. He agreed with the staff recommendation regarding the three activities that are reimbursable; however, while he acknowledged that the activity in dispute is a good thing to do, he agreed with Ms. Ferebee that there is no mandate to provide the requested records.

Member Worthley noted that the Commission has the authority to determine at the parameters and guidelines phase whether providing the records is a reasonable method to comply with the mandate, and stated that it would be appropriate to do so.

Member Olsen asked questions regarding the time frame for the parameters and guidelines, to which staff responded.

Member Glaab asked if the sending districts normally complied with the request for records. Mr. Peterson responded that from his information and belief, they did.

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

Item 13 Proposed Statement of Decision
*Pupil Discipline Records, 00-TC-10 and Notification to Teachers: Pupils
Subject to Suspension or Expulsion II, 00-TC-11*
See Item 12

Eric Feller, Senior Commission Counsel, presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the test claim. Staff recommended that the Commission adopt the proposed Statement of Decision and that the Commission allow minor changes, including the hearing testimony and vote count, to be included in the final Statement of Decision.

Member Worthley requested clarification regarding the activity for sending school districts to provide expulsion records to the receiving districts. Ms. Higashi clarified that the claimants would have to propose the reimbursable activities.

Ms. Shelton added that the Commission had the discretion to include the most reasonable methods of complying with the mandate in the parameters and guidelines. These methods are defined to include those activities that are not directly mandated by the statute.

Ms. Ferebee stated for the record the Department of Finance's objection to leaving the disputed activity up for discussion during the parameters and guidelines phase.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the motion carried 6-0. Member Olsen abstained.

[At this time, the Commission took a short recess.]

- Item 14 *California State Teachers' Retirement System (CalSTRS) Creditable Compensation/Service Credit, 01-TC-02, 02-TC-19*
Education Code Sections 22000, 22002, 22119.2, 22119.5, 22146, 22455.5, 22458, 22460, 22461, 22501, 22502, 22503, 22504, 22509, 22711, 22712.5, 22713, 22714, 22717, 22717.5, 22718, 22724, 22800, 22801, 22803, 22851, 22852, 22950 and 22951
Statutes 1993, Chapter 893 (AB 1796); Statutes 1994, Chapters 507 (AB 2647), 603 (AB 2554), and 933 (AB 3171); Statutes 1995, Chapters 390 (AB 1122), 394 (AB 948), and 592 (AB 1298); Statutes 1996, Chapters 383 (AB 3221), 608 (AB 2673), 634 (SB 2041), 680 (SB 1877) and 1165 (AB 3032); Statutes 1997, Chapters 482 (SB 471) and 838 (SB 227); Statutes 1998, Chapters 1006 (AB 1102), 1048 (SB 2085), and 1076 (SB 2126); Statutes 1999, Chapter 939 (SB 1074); Statutes 2000, Chapters 402 (AB 649), 880 (SB 1694), 1020 (AB 820), 1021 (AB 2700), 1025 (AB 816), and 1032 (SB 1435); Statutes 2001, Chapters 77 (SB 165), 159 (SB 662), 802 (SB 499) and 803 (SB 501); Statutes 2002, Chapter 375 (AB 2982)
Lassen County Office of Education, San Luis Obispo County Office of Education, Grant Joint Union High School District, and Santa Monica Community College District, Claimants

Katherine Tokarski, Commission Counsel, presented this item. She stated that this consolidated test claim concerned the State Teachers Retirement System, or CalSTRS, and that the claimants, as a result of a number of statutory changes, sought reimbursement for increased costs of employer contributions to the defined benefit retirement programs for their employees. However, the affected state agencies disputed the claimants' arguments that any increased monthly contributions to CalSTRS are reimbursable, and cited cases to support their position.

Ms. Tokarski explained that the California Supreme Court has consistently ruled that evidence of additional costs alone do not result in a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution. Staff found that the test claim statutes created a situation similar to that in the *City of Anaheim* case where the employers were faced with "a higher cost of compensation to its employees." The court held that it was not the same as a higher cost of providing services to the public. Therefore, staff found that the increased costs resulting from the test claim statutes, without more, does not impose a new program or higher level of service.

Staff also found that some of the test claim statutes imposed a new program or higher level of service, and costs mandated by the state, by requiring school districts to engage in new reporting and notice activities. Ms. Tokarski stated that the state agencies argued that these activities should not be reimbursable on the same rationale as other employment-related mandates. However, staff found that those cases did not describe a situation where there were distinct administrative activities required by the test claim statutes in addition to the higher contribution costs.

Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Keith Petersen, representing the Santa Monica Community College District; and Donna Ferebee, with the Department of Finance.

Mr. Petersen stated that the issue had to do with the difference between increased costs and increased level of service, and more specifically, whether the changes to the CalSTRS compensation plan is a higher level of service or just higher cost. He asserted that there are some legal issues that may be worthy of litigation, including the difference between a defined benefit plan and a defined contribution plan, as well as the difference between “creditable services and salaries.” He contended that staff’s reliance on the *Anaheim* and *San Diego* cases excluded some reasonable legal issues.

Ms. Ferebee concurred with the staff analysis that increased costs for an employer’s share of retirement contributions are not reimbursable state mandates. However, she maintained that the reporting and notice activities are not reimbursable because a higher cost to local government for compensating its employees was not the same as a higher cost of providing services to the public. The Department of Finance recommended that the Commission deny the test claim entirely.

Member Worthley commented that the Commission would be missing a very serious point if it does not connect the dots and recognize that an enhancement has a correlation to what people are paid and the quality of work provided. He acknowledged the case law but stated that the courts have not seen the right fact situation.

Chairperson Genest asked staff to respond to the Department of Finance’s argument.

Ms. Tokarski cited the *City of Anaheim* case, in which the court found that the city’s claim for reimbursement for the higher contribution costs failed because the test claim statute did not compel the city to do anything. Any increase in costs to the city was incidental to PERS compliance with the test claim statute, and pension payments to retired employees do not constitute a new program or higher level of service. Ms. Tokarski explained that the activities recommended for approval in this test claim were distinct activities and not just an increase in costs for providing the compensation that ultimately results in pension payments to the teachers.

Chairperson Genest asked when the case was decided. Ms. Shelton responded that it has been relied upon since 1987.

Ms. Ferebee argued that the administrative costs are not intended to enhance any public service. She maintained that they are tied to the entire compensation package and do not rise to the level of a new program or higher level of service.

Mr. Peterson responded that the activities staff recommended for approval are administrative procedures dealing with putting people on the plan and taking people off the plan. They had nothing to do with compensation, and thus, the *Anaheim* case does not apply because it does not

speak to administrative activities. He contended that the issue was whether these activities were new, and he maintained that they were new.

Chairperson Genest asked for a motion on the Department of Finance's position to reject the test claim entirely. There was no motion made.

Member Olsen moved the staff recommendation, which was seconded by Member Lujano. The motion carried 4-3, with Member Glaab, Member Worthley, and Chairperson Genest voting "No."

- Item 15 See Proposed Statement of Decision
California State Teachers' Retirement System (CalSTRS)
Creditable Compensation/Service Credit, 01-TC-02, 02-TC-19
See Item 14

Katherine Tokarski, Commission Counsel, presented this item. The sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the test claim. Staff recommended that the Commission adopt the proposed Statement of Decision. Ms. Tokarski noted that minor changes, including those that reflect the hearing testimony and vote count, will be included in the final Statement of Decision.

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

- Item 16 *Peace Officer Instructor Training*, 02-TC-26
California Code of Regulations, Title 11: Section 1082 (Register 2002, No. 35); Sections 1001, 1052, 1053, 1055, 1070, and 1071 (Register 2001, No. 29); Section 1056 (Register 2001, No. 4); and Section 1058 (Register 91, No. 50)
San Bernardino Community College District, Claimant
- Item 17 Proposed Statement of Decision
Peace Officer Instructor Training, 02-TC-26
See Above

Items 16 and 17 were postponed.

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 18 *The Stull Act*, 98-TC-25
Education Code Sections 44660-44665 (Former Ed. Code, §§ 13485-13490)
Statutes 1983, Chapter 498 (SB 813)
Statutes 1999, Chapter 4 (SB 412)
Denair Unified School District and Grant Joint Union High School District, Claimants

This item was postponed.

MANDATE REFORM PROPOSALS AND PENDING LEGISLATION (action)

- Item 18 Position on Department of Finance and Legislative Analyst's Mandate Reform Proposals and Pending Legislation (Discussion continued from March 29, 2007)
(AB 1170, AB 1222, and AB 1576)

Nancy Patton, Assistant Executive Director, presented this item. She stated that at the March hearing, the Department of Finance and the Legislative Analyst's Office presented overviews of their mandate reform proposals. The Commission requested that staff analyze both proposals and other pending legislation related to mandate reform and present the analyses to the Commission at this hearing.

Ms. Patton noted that following completion of staff's analysis, the Department of Finance submitted a revised reform proposal to include amendments that make it similar to the Legislative Analyst's Office proposal. Staff made the following recommendations:

1. Support AB 1222. This bill would require test claimants to include the effective date and register numbers when pleading regulations in their test claims, which would assist staff and other state agencies when analyzing test claims, as well as the Commission in making more informed mandate determinations.
2. Support the revised mandate reform proposal. This proposal is a combination of the Legislative Analyst's Office proposal and the Department of Finance's proposal, and includes necessary technical amendments so that the procedures can coexist with the current mandate determination and reimbursement process. The proposal would codify procedures for legislatively determining mandates and would ease the criteria that must be met to adopt reasonable reimbursement methodologies. Ms. Patton stated that staff would submit this proposal to the Governor's Office for approval if supported by the Commission.
3. Request that the reform proposal be carried by Assemblyman Laird and that a working group be established. The working group would review the draft proposal and work on technical amendments that would provide a complete process that coexists with the Commission's existing process.

Tom Dithridge, Department of Finance, discussed Finance's revised mandate reform proposal. He noted that the revised proposal would have limited application to situations where there is agreement between the administration and the local affected agencies and representatives about the existence of a mandate, and where there is an opportunity to reach agreement on a reimbursement methodology; that Finance continued to recommend repeal of the current reasonable reimbursement methodology statute because it is flawed; and that Finance was pursuing statutory procedures to work with local governments to develop reasonable reimbursement methodologies.

Patrick Day, Director of Maintenance Operations, Purchasing and Contract Management for San Jose Unified School District, and Vice-Chair for the Education Mandated Cost Network, stated that State Controller, John Chiang, appeared at the California Associations of School Business Officials' annual conference in San Jose. He shared some of the quotes made by the Controller regarding the mandates process and the need for comprehensive reform. Mr. Day encouraged the Commission to lead a comprehensive reform process that allows public school employees to be an integral part of the process.

Regarding the issue of whether or not to include school districts in the proposal, Mr. Dithridge clarified that the Department of Finance was open to including school districts in its proposal.

Member Worthley expressed concern about bringing an agreement that bypasses the Commission straight to the Legislature. Mr. Dithridge commented that, even if it passed through the Commission first, the proposal would not affect the Legislature's ability to question the appropriateness of the cost estimate.

Chairperson Genest noted that in theory, the whole process could be done without statutory changes, but the proposal sought a legislative framework to give it credibility and standing.

Member Chivaro stated that the Controller supported comprehensive reform of the mandates system that would result in more expeditious determinations of mandates and one that includes school districts in the process.

After further discussion, Ms. Patton repeated staff's recommendations for clarification. Staff did not recommend going forward with the section of the proposal that would put into statute procedures for the Department of Finance staff to work with local governments to develop reasonable reimbursement methodologies because it was not necessary and could be done under the current process. Marianne O'Malley, Legislative Analyst's Office, and Ms. Patton further discussed this issue.

Member Bryant commented that it would be beneficial to appoint a legislative subcommittee. However, she noted that because she also works for the Governor's Office, she could not vote on the matter. Chairperson Genest stated that he was in the same position, but liked the idea of a legislative subcommittee.

Member Worthley made a motion to adopt the staff recommendations, which was seconded by Member Chivaro. The motion carried 5-0. Member Bryant and Chairperson Genest abstained.

Ms. Higashi asked if there was interest in the legislative subcommittee issue. Member Lujano and Member Glaab volunteered to serve on the subcommittee.

Member Olsen made a motion to create a legislative subcommittee. With a second by Member Glaab, the motion carried unanimously.

STAFF REPORTS

Item 19 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton had nothing further to report.

Item 20 Executive Director's Report (info/action)
Workload, Budget, and Next Hearing

Ms. Higashi reported that the Commission had a budget hearing the next day.

PUBLIC COMMENT

Allan Burdick, on behalf of the California State Association of Counties, commented that conceptually, local government supported the mandate reform proposals. He also pointed out the difficulty with the existing reasonable reimbursement methodology language.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
4. *County of San Bernardino v. Commission on State Mandates, et al.*, Los Angeles County Superior Court, Case No. BS106052; San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]
5. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 06CS01335; [AB 138; *Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II*]
6. *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 07CS00079, CSM 06-L-02, [*Peace Officer Procedural Bill of Rights*]
7. *Department of Finance and California Integrated Waste Management Board v. Commission on State Mandates, Santa Monica Community College District, and Lake Tahoe Community College District*, Sacramento County Superior Court, Case No. 07CS00355, CSM 06-L-03 [*Integrated Waste Management*]

8. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, CSM 06-04 [*Emergency Procedures: Earthquake Procedures and Disasters*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

Hearing no further comments, Chairperson Genest adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Genest reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, and with a motion by Member Worthley and second by Member Olsen, Chairperson Genest adjourned the meeting at 11:51 a.m.

PAULA HIGASHI
Executive Director