



ORIGINAL

**PUBLIC HEARING
COMMISSION ON STATE MANDATES**



TIME: 9:00 a.m.

DATE: Thursday, October 27, 2011

**PLACE: State Capitol, Room 447
Sacramento, California**



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
Certified Shorthand Reporters
8414 Yermo Way, Sacramento, California 95828
Telephone 916.682.9482 Fax 916.688.0723
FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

DIANA DUCAY
(Commission Chair)
Representative for ANA MATOSANTOS, Director
State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

KEN ALEX, Director
Office of Planning & Research

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member



COMMISSION STAFF PRESENT

DREW BOHAN
Executive Director
(Items 2, 13, 16, and 17)

NANCY PATTON
Assistant Executive Director
(Item 14)

ERIC FELLER
Staff Counsel
(Items 4, 6, and 7)

HEATHER HALSEY
Staff Counsel
(Items 3 and 5)

KENNY LOUIE
Staff Counsel
(Item 10)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

CAMILLE SHELTON
Chief Legal Counsel
(Items 8, 9, and 15)



PUBLIC TESTIMONY

Appearing Re Item 3 (Deferred Maintenance):

For Clovis Unified School District:

ART PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 4 (Deferred Maintenance [CCD]):

For Santa Monica Community College District:

KEITH B. PETERSEN
President
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5 (Tuberculosis Control):

For County of Santa Clara:

JULIANA F. GMUR
Manager, Financial Services
MAXIMUS
3130 Kilgore Road, Suite 400
Rancho Cordova, California 95670

For California Department of Public Health:

LEHOA NGUYEN
Staff Counsel
California Department of Public Health
Office of Legal Services
1501 Capitol Avenue, Suite 71-5064
Sacramento, California 95814

JAN YOUNG, RN, MS
TB Control Branch
Division of Communicable Disease Control
Center for Infectious Diseases
California Department of Public Health
850 Marina Bay Parkway, Building P, 2nd Floor
Richmond, CA 94804-6403

For Department of Finance:

JEFF CAROSONE
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

DONNA FEREBEE
Staff Counsel III
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6 (Community College Construction):

For Santa Monica Community College District:

KEITH B. PETERSEN
President
SixTen and Associates

For Department of Finance:

DONNA FEREBEE
Staff Counsel III
Department of Finance

**Appearing Re Item 7 (Pupil Suspensions II, Expulsions II,
Educational Services Plans for Expelled Pupils):**

For San Juan Unified School District:

KEITH B. PETERSEN
President
SixTen and Associates

For San Diego Unified School District:

ART PALKOWITZ
Stutz, Artiano, Shinoff & Holtz

For Department of Finance:

DONNA FEREBEE
Staff Counsel III
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 8 (Modified Primary Election):

For County of Orange:

JULIANA F. GMUR
Manager, Financial Services
MAXIMUS

For Department of Finance:

JEFF CAROSONE
Principal Program Budget Analyst
Department of Finance

DONNA FEREBEE
Staff Counsel III
Department of Finance

For California State Association of Counties and League
of California Cities:

ALLAN BURDICK
California State Association of Counties
SB-90 Service
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

**Appearing Re Item 9 (Peace Officer Procedural
Bill of Rights):**

For City of Los Angeles:

ALLAN BURDICK
California State Association of Counties
SB-90 Service

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 9 (Peace Officer Procedural Bill of Rights): *continued*

For Department of Finance:

JEFF CAROSONE
Principal Program Budget Analyst
Department of Finance

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

Appearing Re Item 10 (Health Fee Elimination):

For Six Claimants:

KEITH B. PETERSEN
President
SixTen and Associates

For Controller's Office:

SHAWN D. SILVA
Staff Counsel
State Controller's Office
300 Capitol Mall, Suite 1850
Sacramento, California 95814

STEPHEN VAN ZEE
Audit Manager
State Controller's Office
3301 C Street, Suite 700
Sacramento, California 95816



ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call	14
II. Approval of Minutes	
Item 1 July 28, 2011	15
III. Proposed Consent Calendar	
Item 12	16
IV. Appeal of Executive Director Decisions Pursuant to California Code of Regulations Title 2, Section 1181(c)	
Item 2 Appeal of Executive Director's Decision (None)	17
V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims and Statements of Decision	
Item 3 <i>Deferred Maintenance,</i> 02-TC-44 Clovis Unified School District	55
Item 4 <i>Deferred Maintenance (CCD),</i> 02-TC-48 Santa Monica Community College District	18
Item 5 <i>Tuberculosis Control,</i> 03-TC-14 County of Santa Clara	22

I N D E X

Proceedings

Page

V.	Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A.	Test Claims and Statements of Decision	
	Item 6 <i>Community College Construction, 02-TC-47</i> Santa Monica Community College District	25
B.	Parameters and Guidelines and Statements of Decision	
	Item 7 Proposed Parameters and Guidelines <i>Pupil Suspensions II, Expulsions II, Educational Services Plans for Expelled Pupils</i> 96-358-03, 03A, 97-TC-09, 98-TC-23, 01-TC-18 San Juan Unified School District and Kern County Office of Education	60
	Item 8 Proposed Parameters and Guidelines <i>Modified Primary Election, 01-TC-13</i> County of Orange	28
	Item 9 Proposed Amendments to Parameters and Guidelines <i>Peace Officer Procedural Bill of Rights, 09-PGA-05</i> City of Los Angeles	39

I N D E X

Proceedings

Page

V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

C. Incorrect Reduction Claim and Statement of Decision

Item 10 *Health Fee Elimination*,
09-4206-I-19, 09-4206-I-20,
09-4206-I-23, 09-4206-I-26,
09-4206-I-27, 09-4206-I-30,
Citrus Community College
District, Cerritos Community
College District, Los Rios
Community College District,
Redwoods Community College
District, Allan Hancock
Joint Community College
District, Rancho Santiago
Community College District
and Pasadena Community
College District 51

D. Request to Review Claiming Instructions and Statement of Decision

Item 11 *Request to Add Boilerplate
Language*
09-RCI-01
Castro Valley Unified School
District, Grossmont Union
High School, San Jose Unified
School District, San Diego
County Office of Education,
Gavilan Joint Community
College District, San Mateo
County Community College
District, State Center
Community College District 54

I N D E X

Proceedings

Page

VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8

A. Statewide Cost Estimates

Item 12* *Crime Statistic Reports for the Department of Justice and Amendment, 02-TC-04, 02-TD-22, 07-TC-10 City of Newport Beach, County of Sacramento* 16

VII. Hearings on County Applications for Findings of Significant Financial Distress Pursuant to Welfare and Institutions Code Section 17000.6 and California Code of Regulations, Title 2, Article 6.5

Item 13 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commissions or to a Hearing Officer (*None*) 64

VIII. Reports

Item 14 Legislative Update 65

Item 15 Chief Legal Counsel: Recent Decisions, Litigation Calendar. 65

Item 16 Executive Director: Workload, Budget, New Practices, and Next Meetings/Hearings 66

I N D E X

Proceedings

Page

IX.	Action Pursuant to Government Code Section 11125.3(a)(2)	
	Item 17 Action to Amend Agenda to Add a Closed Session Item for Personnel to Appoint an Interim Executive Director and to Discuss Process for Appointing a Permanent Executive Director.	72
X.	Public Comment	73
XI.	Closed Executive Session	78
XII.	Report from Closed Executive Session . . .	78
	Adjournment	78
	Reporter's Certificate	79



Commission on State Mandates – October 27, 2011

1 BE IT REMEMBERED that on Thursday, October 27,
2 2011, commencing at the hour of 9:03 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:



7 CHAIR DUCAY: The meeting of the Commission on
8 State Mandates will come to order.

9 Drew, will you please call the roll?

10 MR. BOHAN: Yes.

11 Mr. Alex?

12 MEMBER ALEX: Here.

13 MR. BOHAN: Mr. Chivaro?

14 MEMBER CHIVARO: Here.

15 MR. BOHAN: Mr. Lujano?

16 MEMBER LUJANO: Here.

17 MR. BOHAN: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MR. BOHAN: And Chair Ducay?

20 CHAIR DUCAY: Here.

21 Drew, the last meeting's minutes?

22 MR. BOHAN: Two quick logistical notes,
23 Madam Chair.

24 The first is, this is our first meeting that
25 we're pretty much paperless. We do have one copy of the

Commission on State Mandates – October 27, 2011

1 items without exhibits over here in hard copy, but none
2 of you do, unless you printed them out yourselves.

3 And behind each of you is a power strip that
4 we've put in, one on each side of the back wall there.
5 And if you need it, if you're running low on power and
6 you brought your power cord, you can plug in. And we're
7 prepared to shift some of these computers around if you
8 have a problem. We brought a few back-ups.

9 And the second thing is, we changed the minutes
10 around in order to save the stafftime so that we could
11 focus more on reducing our backlog. Instead of very
12 detailed minutes, we just basically have what looks like
13 an agenda with the core vote and a little, brief
14 description with the transcript attached. Because we've
15 got Dan here providing us every word that's said, we've
16 made that change.

17 So with that, this is the item on approval of
18 the minutes.

19 CHAIR DUCAY: Okay. Do I have a motion?

20 MEMBER CHIVARO: I move approval.

21 MEMBER OLSEN: I so move -- second.

22 CHAIR DUCAY: Okay, Drew, do you want to call
23 the roll on the minutes?

24 MR. BOHAN: Sure.

25 Mr. Alex?

Commission on State Mandates – October 27, 2011

1 MEMBER ALEX: Aye.

2 MR. BOHAN: Mr. Chivaro?

3 MEMBER CHIVARO: Aye.

4 MR. BOHAN: Mr. Lujano?

5 MEMBER Lujano: Aye.

6 MR. BOHAN: Ms. Olsen?

7 MEMBER OLSEN: Aye.

8 MR. BOHAN: And Ms. Ducay?

9 CHAIR DUCAY: Aye.

10 Okay. Move on to the Consent Calendar.

11 MR. BOHAN: The Consent Calendar today just has

12 one item, it's Item 12. An earlier version of the agenda

13 had item 8 on it, and we pulled it off, so there's only

14 one item you'll be voting on, Item 12.

15 CHAIR DUCAY: Do I have a motion to adopt the

16 Proposed Consent Calendar?

17 MEMBER ALEX: So moved.

18 MEMBER CHIVARO: Second.

19 CHAIR DUCAY: We have a motion and a second.

20 Do you want to call roll?

21 MR. BOHAN: Sure.

22 Mr. Alex?

23 MEMBER ALEX: Aye.

24 MR. BOHAN: Mr. Chivaro?

25 MEMBER Chivaro: Yes.

Commission on State Mandates – October 27, 2011

1 MR. BOHAN: Mr. Lujano?

2 MEMBER LUJANO: Aye.

3 MR. BOHAN: Ms. Olsen?

4 MEMBER OLSEN: Aye.

5 MR. BOHAN: And Chair Ducay?

6 CHAIR DUCAY: Aye.

7 Item 2.

8 MR. BOHAN: Item 2, Appeals of Executive
9 Director Decision. There aren't any.

10 CHAIR DUCAY: We'll move on to the swearing in
11 of the witnesses.

12 MR. BOHAN: Okay, would the parties and
13 witnesses for Items 3, 4, 5, 6, 7, 8, 9, 10, and 11 --
14 that's 3 through 11 -- please rise.

15 *(The parties stood to be sworn.)*

16 MR. BOHAN: Do you solemnly swear or affirm
17 that the testimony which you are about to give is true
18 and correct based on your personal knowledge,
19 information, or belief?

20 *(The parties responded affirmatively.)*

21 MR. BOHAN: Thank you very much.

22 CHAIR DUCAY: Okay, and Item 3, we're going to
23 be holding until our witness arrives, correct?

24 MR. BOHAN: Right. Thank you.

25 CHAIR DUCAY: Okay, we'll move on to Item 4.

Commission on State Mandates – October 27, 2011

1 MR. BOHAN: Yes, Item 4, Eric Feller, across
2 from me, one of our staff counsels, will be presenting
3 this. It's on *Deferred Maintenance for Community College*
4 *Districts*.

5 MR. FELLER: Good morning.

6 The test-claim statutes and regulations create
7 a grant program to assist community colleges with the
8 deferred maintenance projects. The statutes and
9 regulations authorize but do not require districts to
10 apply for funding.

11 Community college districts decide to seek
12 state funding for proposed deferred maintenance projects
13 which triggers the activities required by the test-claim
14 statutes, regulations, and the manual.

15 The staff finds the test-claim statutes and
16 executive orders do not constitute a state-mandated
17 program.

18 Would the parties and witnesses please state
19 your names for the record?

20 MR. PETERSEN: Keith Petersen, representing the
21 test claimant.

22 MS. GEANACOU: Susan Geanacou for the
23 Department of Finance.

24 Is this on?

25 *(Off record from 9:07 a.m. to 9:08 a.m.)*

Commission on State Mandates – October 27, 2011

1 CHAIR DUCAY: Mr. Petersen?

2 MR. PETERSEN: I'll stand on the written record
3 and answer any questions you might have.

4 CHAIR DUCAY: Department of Finance?

5 MS. GEANACOU: Yes, Susan Geanacou, Department
6 of Finance. It's working now.

7 Finance agrees with the staff recommendation to
8 deny this test claim. Participation for community
9 college districts in the *Deferred Maintenance* program is
10 optional.

11 As staff recommended, any requirements that
12 come with participation in the program stem from the
13 district's underlying discretionary choice to
14 participate.

15 There is no legal compulsion to participate in
16 the program and there is no practical compulsion to
17 participate, either. There are no penalties, as the
18 staff pointed out, for non-participation in the program.

19 This program is structured, similarly, to
20 programs that were reviewed by the Court and for which
21 state reimbursement was denied in the *Kern* case, which
22 was analyzed by the staff in their recommendation. And
23 for those reasons, we urge your support of the staff
24 recommendation.

25 CHAIR DUCAY: Okay, is there any questions from

1 the members?

2 (No response)

3 CHAIR DUCAY: Seeing none, is there a motion on
4 this item?

5 MEMBER CHIVARO: I'll move the staff
6 recommendation.

7 MEMBER OLSEN: Second.

8 CHAIR DUCAY: There's been a motion and a
9 second to move the staff recommendation.

10 Drew, would you call roll?

11 MR. BOHAN: Madam Chair, one final logistical
12 item. We've changed the process a little bit.

13 Historically, we've had two items for each of
14 the substantive items that require a vote. One was for
15 your adoption of our final staff analysis, and then there
16 was a second one to then adopt the statement of decision
17 that reflects that. We've merged the two, and we are
18 confident that it's consistent with our statutes and
19 regulations. So you simply vote on one because the
20 second vote was ministerial. So there will be only one
21 vote for each of these in contrast to past practice.

22 MEMBER OLSEN: So does that mean that our
23 motion should be to adopt the statement of decision
24 rather than the staff recommendation? Or does it matter?

25 MS. SHELTON: They're combined now. This is

Commission on State Mandates – October 27, 2011

1 taking place at the staff recommendation on an analysis
2 and the proposed statement of decision. So the motion is
3 made in your binders under staff recommendation. It does
4 say to adopt the proposed statement of decision.

5 CHAIR DUCAY: So then -- let me make sure I
6 understand. So then you need the motion to be both? Or
7 just the motion to accept the staff recommendation is
8 still okay?

9 MS. SHELTON: That's fine, if it's to adopt
10 this item, so...

11 CHAIR DUCAY: Okay, so it was just clarity for
12 everyone to understand that it's both?

13 MS. SHELTON: Yes, you are adopting a proposed
14 statement of decision if you go with the motion.

15 CHAIR DUCAY: Okay, so Drew, call the roll.

16 MR. BOHAN: Thank you.

17 Mr. Alex?

18 MEMBER ALEX: Aye.

19 MR. BOHAN: Mr. Chivaro?

20 MEMBER CHIVARO: Aye.

21 MR. BOHAN: Mr. Lujano?

22 MR. LUJANO: Aye.

23 MR. BOHAN: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MR. BOHAN: And Chair Ducay?

Commission on State Mandates – October 27, 2011

1 CHAIR DUCAY: Aye.

2 The motion is carried.

3 Item 5.

4 MR. BOHAN: Item 5 is similar -- excuse me,
5 it's not. It's *Tuberculosis Control* program.

6 And Heather Halsey, another staff counsel, will
7 present this item.

8 MS. HALSEY: Good morning. This test claim
9 addresses the activities required of local detention
10 facilities and local health officers relating to
11 tuberculosis control.

12 Staff finds that the provision of counsel to
13 non-indigent TB patients subject to an order of detention
14 and activities specified in the proposed statement of
15 decision related to the transfer or release of TB
16 patients from local detention facilities imposes a new
17 program or higher level of service on counties and
18 specified cities.

19 Staff finds that the remaining requirements of
20 the test-claim statute serve federal mandates or
21 requirements of existing law and do not mandate a higher
22 level of service.

23 Claimant has submitted a letter concurring with
24 that analysis. And none of the other parties or
25 interested parties have submitted comments on the draft

Commission on State Mandates – October 27, 2011

1 staff analysis.

2 Staff recommends that the Commission adopt the
3 proposed statement of decision to partially approve this
4 test claim.

5 Will the parties and witnesses please state
6 their names for the record?

7 MS. GMUR: Juliana Gmur on behalf of the test
8 claimant, County of Santa Clara.

9 MS. NGUYEN: Lehoa Nguyen, staff counsel for
10 the California Department of Public Health.

11 I'm here with Jan Young from the Tuberculosis
12 Control Program.

13 MR. CAROSONE: Jeff Carosone, Department of
14 Finance.

15 MS. FEREBEE: Donna Ferebee, Department of
16 Finance.

17 MS. GMUR: Good morning, Commissioners.

18 The test claimant is very pleased with the work
19 the staff has done on this. We concur with the staff
20 analysis, and we request that it be adopted today.

21 MS. NGUYEN: The Department of Finance also
22 concurs with the staff analysis, and we also commend the
23 Commission on the work that they've done.

24 CHAIR DUCAY: Department of Finance?

25 MS. FEREBEE: Yes. Finance agrees with the

Commission on State Mandates – October 27, 2011

1 staff analysis and the proposed statement of decision.
2 We agree that much of the claimed activities were
3 required under preexisting law or were federal
4 requirements.

5 And also, it did appear that several of the
6 activities claimed are more appropriate for -- or more
7 appropriately addressed at the P's & G's phase. And we
8 have no significant concerns with the remainder of the
9 recommendations. And we urge you to adopt the staff
10 analysis.

11 Thank you.

12 MEMBER ALEX: Well, then congratulations to the
13 staff.

14 CHAIR DUCAY: So is there any -- everybody's in
15 agreement. But is there any questions from the members?
16 Any other discussion?

17 *(No response)*

18 CHAIR DUCAY: Okay. Do we have a motion?

19 MEMBER OLSEN: I'll move adoption of staff
20 recommendation.

21 MEMBER CHIVARO: Second.

22 CHAIR DUCAY: Okay, Drew, we have a motion and
23 a second on the adoption of the staff recommendation.

24 Can you call the roll, please?

25 MR. BOHAN: Sure.

Commission on State Mandates – October 27, 2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Mr. Alex?

MEMBER ALEX: Aye.

MR. BOHAN: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MR. BOHAN: Mr. Lujano?

MEMBER LUJANO: Aye.

MR. BOHAN: Ms. Olsen?

MEMBER Olsen: Aye.

MR. BOHAN: And Chair Ducay?

CHAIR DUCAY: Aye.

MS. GMUR: Thank you, Commissioners.

CHAIR DUCAY: Thank you.

Item 6?

MR. FELLER: This is the *Community College Construction* test claim.

This test claim addresses capital construction plans in community college districts' capital outlay projects funded with or without assistance from the State, and state-supported energy conservation projects of a community college district.

Most of the activities in the test-claim statutes or regulations are not a new program of higher level of service because they have been required since before 1975. Others are downstream to a discretionary decision to participate in a grant or a construction

Commission on State Mandates – October 27, 2011

1 program.

2 Thus, staff found that the test claim is
3 reimbursable for only a few of the activities related to
4 the expanded requirements for the five-year plan for
5 capital construction that districts submit to the State
6 as specified in the analysis.

7 Staff recommends the Commission adopt the
8 attached proposed statement of decision to partially
9 approve the test claim for those activities.

10 Would the parties and witnesses please state
11 their names for the record?

12 MR. PETERSEN: Keith Petersen representing the
13 test claimant.

14 MS. FEREBEE: Donna Ferebee, Department of
15 Finance.

16 MR. PETERSEN: I'll stand on the written
17 submission and respond to any questions.

18 CHAIR DUCAY: Department of Finance?

19 MS. FEREBEE: Yes. Finance also agrees with
20 the recommendations in the staff analysis. Many of the
21 activities existed before 1975 and, therefore, are not
22 new.

23 We also agree that discretionary decisions the
24 districts make cannot lead to reimbursable state mandates
25 such as the decision to seek state funding and comply

Commission on State Mandates – October 27, 2011

1 with the requirements associated with that the decision
2 to submit a five-year plan for each college or
3 educational center as opposed to one capital construction
4 plan, and the decision to enter into energy management
5 agreements and borrow funds as was analyzed and laid out
6 in the staff analysis.

7 Also, we agree that there was no evidence of
8 any practical compulsion.

9 And again, we concur with the staff
10 recommendation.

11 CHAIR DUCAY: Okay, any questions from the
12 members?

13 *(No response)*

14 CHAIR DUCAY: Any discussion?

15 *(No response)*

16 CHAIR DUCAY: Seeing none, do we have a motion?

17 MEMBER CHIVARO: I'll move staff
18 recommendation.

19 MEMBER OLSEN: I'll second.

20 CHAIR DUCAY: We have a motion and a second to
21 move the staff recommendation.

22 Drew, would you call the roll?

23 MR. BOHAN: Mr. Alex?

24 MEMBER ALEX: Aye.

25 MR. BOHAN: Mr. Chivaro?

Commission on State Mandates – October 27, 2011

1 MEMBER CHIVARO: Aye.

2 MR. BOHAN: Mr. Lujano?

3 MEMBER LUJANO: Aye.

4 MR. BOHAN: Ms. Olsen?

5 MEMBER OLSEN: Aye.

6 MR. BOHAN: And Ms. Ducay?

7 CHAIR DUCAY: Aye.

8 Are we holding Item 7 over as well for our
9 witness?

10 MR. BOHAN: That's right. If we could, yes.

11 CHAIR DUCAY: Okay, Item 8?

12 MR. BOHAN: Again, this item was originally on
13 consent. We got late comments and pulled it off.

14 And Chief Counsel Camille Shelton will present
15 this on the *Modified Primary Elections* program.

16 MS. SHELTON: Good morning. This is the
17 proposed adoption of the parameters and guidelines on the
18 *Modified Primary Elections* program.

19 This program allowed decline-to-state voters
20 who don't declare a political party affiliation to choose
21 any political party to vote at a primary election if the
22 political party authorizes decline-to-state voters to
23 vote that way.

24 The Commission approved this test claim for two
25 activities. The first one was to add information to the

Commission on State Mandates – October 27, 2011

1 voter registration card to let new voters and voters that
2 transfer political parties the right to vote a partisan
3 ballot.

4 The second activity approved by the Commission
5 was to allow voters who decline to state a party
6 affiliation to vote the party ballot.

7 We understand that the claimant is still
8 recommending reimbursement for -- to refurbish and to --

9 MS. GMUR: Redesign --

10 MS. SHELTON: -- redesign the sample ballots.

11 She has a late filing, which is on yellow right
12 here.

13 Staff continues to recommend that the
14 Commission deny that activity because the Legislature has
15 established a process to notify existing voters of the
16 process by putting that information on the vote-by-mail
17 application, which is sent with every sample ballot.
18 That particular statute was not pled in this test claim.

19 So with the definition of what is reasonably
20 necessary to comply with the mandate, which excludes
21 those activities that are expressly required by statute,
22 staff recommends that the Commission deny the request.

23 Will the parties please state your names for
24 the record?

25 MS. GMUR: Juliana Gmur, appearing on behalf of

1 the test claimant, County of Orange.

2 MR. CAROSONE: Jeff Carosone, Department of
3 Finance.

4 MS. FEREBEE: Donna Ferebee, Department of
5 Finance.

6 MS. GMUR: Good morning again, Commissioners.

7 Before you, you have a late filing. I
8 apologize for its tardiness. There was already evidence
9 in the record regarding the one-time cost of redesigning
10 and republishing the sample ballot.

11 In looking at this, in the draft staff
12 analysis, the final staff analysis, staffed relied on the
13 fact that there was nothing in statute to support this --
14 which is correct, but is not the standard now.

15 Staff has just restated the standard, and has
16 probably appropriately stated it this time. But we still
17 think that it should be included. It is a one-time cost.
18 The law had just changed. And this was an opportunity
19 for the registrars of voters to inform those who have
20 declined to state about the change in law.

21 One of the things that the registrar pointed to
22 in his declaration is that the notice that's provided on
23 the registration card, most voters do not retain copies
24 of the registration card to know what their rights are.
25 They rely on the sample ballot to tell them what to do,

Commission on State Mandates – October 27, 2011

1 and how to do it, what they can do and cannot do in an
2 election. And with the change in law, they would be
3 relying just on that, having registered as decline-to-
4 state in the past. So without that notice, they would
5 not have known.

6 Now, the statute does say and the Commission
7 did find that there are two activities.

8 One is the notice provision. The notice
9 provision doesn't have any way for us to get in -- it's
10 specified in statute exactly what that notice provision
11 is.

12 We believe this falls under the second
13 provision, which is allow them to vote.

14 Registrars of voters provide two things: They
15 provide materials and they provide information.

16 We believe that in allowing someone to vote,
17 it's more than just handing them the ballot. It's
18 allowing them to understand what they're doing by
19 providing that information in the sample ballot.

20 CHAIR DUCAY: Department of Finance?

21 MR. CAROSONE: Jeff Carosone, Department of
22 Finance.

23 We have no significant concerns with the final
24 staff analysis. The analysis reflects our suggestion
25 that the activities of modifying the vote-by-mail notice

Commission on State Mandates – October 27, 2011

1 and application are not reasonably necessary to allow
2 decline-to-state voters to vote a party ballot. Voters
3 are already currently made aware of their right to do so
4 through information on the voter registration card.

5 In addition, we concur with the staff's
6 analysis which denied the request to include the
7 activities of redesigning and republishing the sample
8 ballot. There is no requirement in law to modify the
9 sample ballot to allow decline-to-state voters to vote a
10 party ballot.

11 CHAIR DUCAY: Ms. Ferebee, do you have anything
12 to add?

13 MS. FEREBEE: No.

14 CHAIR DUCAY: Okay. Do we have any questions
15 or discussion?

16 MEMBER OLSEN: Well, I'm inclined to think that
17 it does need to be in the sample ballot. I happen to
18 live in the district that has gone to the polls five
19 times in the last three months. Okay, I mean, we have
20 been just deluged with this stuff.

21 And I know that from opportunity-to-vote to
22 opportunity-to-vote, even though some of them have been
23 only a month apart in my district, I retain no
24 information from one to the next. I start with a blank
25 slate each time, not thinking about what I was told in

Commission on State Mandates – October 27, 2011

1 the sample ballot the time before. And I certainly don't
2 know anything about what was on my voter registration
3 card from umpteen years ago when I registered. So it
4 seems to me, that if the staff's recommendation is
5 relying solely on voter registration cards as the way of
6 giving out this information, that that is potentially
7 problematic.

8 MS. SHELTON: May I address that issue?

9 All the statements that you made, you know, we
10 obviously agree with. Except the Legislature has spoken,
11 and the Legislature did require a notice to voter
12 registration cards and did require notice to those people
13 that are currently voters in the vote-by-mail
14 application, which is attached to the sample ballot.

15 The problem here is a pleading problem. They
16 did not plead that statute. We have no jurisdiction over
17 that statute. And the plain language that defines what
18 is reasonably necessary to comply with a mandate says
19 that it can't be an activity required by statute.

20 It is an activity required by statute. They
21 did not plead it. And that's the basis of the
22 recommendation.

23 MS. GMUR: I disagree, I'm sorry.

24 I realize that we did not plead the sample
25 ballot itself. We're not looking for the sample ballots

1 from -- and I realize that the language we originally
2 pled was somewhat odd.

3 But we're not looking for all sample ballots
4 for all time. We're looking for at the time that the law
5 changed, registrars of voters went through and had to
6 change the sample ballot for that first election based on
7 this particular change in law. This would be a one-time
8 cost, back at the time that this change in law occurred.
9 And so we did not ask for every sample ballot. That is
10 another statute. That is not part of the *Modified*
11 *Primary* program at all. That's a completely different
12 horse of another color.

13 What we are looking at here is specifically
14 just putting that information in that ballot at the time
15 of the change in law so that voters will be educated that
16 that change had occurred. That's all.

17 We admit that it is an entirely different
18 statute that requires the sample ballot be published.
19 We're not talking about that when we're talking about the
20 fact that we had to go back and change it.

21 MS. SHELTON: I guess my only confusion with
22 that argument is that that statute that did require that
23 the vote-by-mail application be modified to have that
24 information was part of the *Modified Primary* bill. It
25 was enacted in the same bill that the *Modified Primary*

Commission on State Mandates -- October 27, 2011

1 program was adopted.

2 And I don't understand -- I guess if you -- and
3 that is attached to the sample ballot, so it's on the
4 same document, it's just on the back of the sample
5 ballot. So I'm not understanding why you would have two
6 notices to the voter.

7 MS. GMUR: We did.

8 CHAIR DUCAY: Is there any other discussion or
9 questions on this item?

10 MEMBER OLSEN: Yes.

11 Okay, so, Camille, would that be then that the
12 most reasonable way would have been to have one notice
13 to the voters from the staff's perspective and the --

14 MS. SHELTON: Clearly, the Legislature has
15 implemented the process and has wanted notice to those
16 new voters who are just registering to vote and those who
17 transfer registration. So if I am going from Republican
18 to Democrat or Democrat to Republican, I have to fill out
19 a new registration card.

20 That card has the information, that if I'm a
21 decline-to-state voter, you have the option of voting a
22 primary ballot.

23 They also -- the Legislature also implemented
24 the program by providing notice to continuing voters.
25 That is required by law. And they didn't plead it. So

Commission on State Mandates – October 27, 2011

1 it's a pleading problem, not what is necessary.

2 Clearly, the Legislature thought it was
3 necessary. It's in law. We just don't have jurisdiction
4 over that statute.

5 MEMBER OLSEN: Okay.

6 MR. BURDICK: Madam Chair, Members, I am Allan
7 Burdick on behalf of CSAC SB90 Service; and thank you for
8 letting me weigh in here a little bit.

9 I was actually involved back in the early
10 implementation of this, so I thought I would share a
11 little bit of that after the bill was signed. The
12 Secretary of State and the county registrars of voters,
13 essentially -- or the county clerks, in some cases, but
14 primarily the registrars -- were involved in a series of
15 discussions of how to implement this. And at that time,
16 there were a series of different voting systems out
17 there. There still are more than one voting system. But
18 there were even more at that time, some of which are no
19 longer allowed.

20 There was a discussion of how do you implement
21 this, what you do. And there was probably a three-month
22 period, at least -- there was both discussion before this
23 bill was adopted and then, I think -- I think this was a
24 2000 statute, as I recall.

25 MS. GMUR: Yes.

Commission on State Mandates – October 27, 2011

1 MR. BURDICK: And I think Bill Lockyer carried
2 the bill.

3 And then the first election was the 2002
4 primary. And during that period of time, there was a lot
5 of discussion: How do we implement this? What do we do?
6 Some people went to different colored ballots and
7 different kinds of measures. There were just all kinds
8 of attempts to try to reach agreement with the Secretary
9 of State on what to do.

10 And I would tell you, I think the election
11 officials -- what they did was, based on their
12 discussions and the advice of the Secretary of State, and
13 I think what everybody felt was reasonably necessary to
14 fully implement the intent of this legislation. And I
15 think -- I know that, you know, sometimes attorneys will
16 look at the statute and say, "Gee, I don't really see
17 that." But I think clearly -- I wish the Secretary of
18 State was here because I think that if those people were
19 there that were involved in this process back in 2000 and
20 2001, it could clearly show the fact that this program
21 was implemented consistently with very close, at that
22 time, cooperation we had between counties and the
23 Secretary of State's office.

24 So I just want to share a little bit of
25 actually what happened when implemented. And it seems to

Commission on State Mandates – October 27, 2011

1 me, it would be improper to try to narrow this down and
2 not allow for reimbursement.

3 I doubt if the counties -- I think counties are
4 going to have a hard time going back and documenting that
5 and supporting it, anyway, and may not end up resulting
6 in actual claims to the State. But I think the cost
7 should be allowed.

8 Thank you.

9 CHAIR DUCAY: Do we have any other discussion
10 or questions?

11 *(No response)*

12 CHAIR DUCAY: Seeing none, do we have a motion
13 on this item?

14 MEMBER CHIVARO: I'll move staff
15 recommendation.

16 MEMBER LUJANO: Second.

17 CHAIR DUCAY: We have a motion and a second to
18 move the staff recommendation on this item.

19 Will you call the roll?

20 MR. BOHAN: Mr. Alex?

21 MEMBER ALEX: Aye.

22 MR. BOHAN: Mr. Chivaro?

23 MEMBER CHIVARO: Aye.

24 MR. BOHAN: Mr. Lujano?

25 MEMBER LUJANO: Aye.

Commission on State Mandates – October 27, 2011

1 MR. BOHAN: Ms. Olsen?

2 MEMBER OLSEN: No.

3 MR. BOHAN: And Ms. Ducay?

4 CHAIR DUCAY: Aye.

5 MS. GMUR: Thank you very much.

6 MR. BURDICK: Thank you very much.

7 CHAIR DUCAY: Motion carried.

8 Item 9?

9 MS. SHELTON: Item 9 is a proposed request to
10 amend the parameters and guidelines for the *Peace Officer*
11 *Procedural Bill of Rights*. This program provides a
12 series of rights and procedural safeguards to peace
13 officers employed by local agencies that are subject to
14 investigation and discipline.

15 The City of Los Angeles is requesting that the
16 Commission adopt a reasonable reimbursement methodology
17 in the form of a unit cost just for the City of
18 Los Angeles for all activities except the activity of
19 providing the opportunity for an administrative appeal in
20 the amount of \$425.

21 Under the existing parameters and guidelines to
22 the program, all local agencies are eligible to claim
23 either based on actual costs or a unit cost of \$37 per
24 officer.

25 Staff recommends that the Commission deny the

Commission on State Mandates – October 27, 2011

1 City's request for two reasons.

2 First, the request does not comply with the
3 statute that governs the reasonable reimbursement
4 methodology provision. The claimant has provided no cost
5 information from a representative sample of eligible
6 claimants, and has not considered the variation of costs
7 among other local agencies in its request.

8 In addition, the request is not consistent with
9 the statutory scheme for mandates. The statutory scheme
10 envisions that test claims and parameters and guidelines
11 be based on a class action when a statute applies equally
12 to all like claimants.

13 And for those reasons, staff recommends that
14 the Commission deny this request.

15 Will the parties and witnesses please state
16 your names for the record?

17 MR. BURDICK: Allan Burdick on behalf of the
18 City of Los Angeles.

19 MS. GEANACOU: Susan Geanacou on behalf of the
20 Department of Finance.

21 MR. CAROSONE: Jeff Carosone, Department of
22 Finance.

23 MR. BURDICK: The City of Los Angeles disagrees
24 with the staff's position. However, first, it would like
25 to request, based on good cause, a postponement of this

1 until the March hearing in March 2012.

2 The reason for that is that there are four
3 other sets of parameters and guidelines before the
4 Commission which deal with proposed reasonable
5 reimbursement methodologies. The Executive Director of
6 the Commission had postponed those hearings, some of
7 which were scheduled originally for this hearing or other
8 hearings to March; and has requested, those four
9 claimants, as well as other interested parties, to
10 comment on the RRM statutes that are subject to
11 underlying of this particular test claim; and has asked
12 for comments on those by December, following which we
13 anticipate some discussion, I think, amongst not only the
14 parties, but also amongst the statewide associations and
15 others about the interpretation of this statute.

16 And so based upon that, the City would first
17 like to request that you postpone this until the
18 March hearing and give them the opportunity, first, to
19 participate in and have those discussions, consider
20 whether or not a reasonable reimbursement methodology
21 formula amongst other agencies could include a single
22 component for one agency, such as the City of
23 Los Angeles, the County of Los Angeles, the L.A. Unified
24 School District, or somebody else.

25 So, anyway, we request a postponement, and we

Commission on State Mandates – October 27, 2011

1 believe that that is good cause, and we hope you agree
2 with that.

3 Thank you.

4 CHAIR DUCAY: Department of Finance?

5 MR. CAROSONE: Jeff Carosone, Department of
6 Finance.

7 We concur with the staff's analysis. We don't
8 feel like a postponement is necessary. The staff
9 analysis rejects the City of Los Angeles' request to
10 adopt an RRM that applies solely to that entity.

11 Clearly, the request does not meet the requirements of
12 Government Code 17518.5 which dictates the criteria for
13 developing an RRM. The proposal is not based on cost
14 information from a representative sample of eligible
15 claimants, nor does the proposal consider the variation
16 in cost among other local agencies.

17 We feel this request goes against the very
18 intent of developing an RRM, which is to realize
19 efficiencies in the process in a fair cost-effective
20 manner that, again, is representative of the entity
21 seeking reimbursement.

22 This type of request actually sets a bad
23 precedent by having local entities seek an
24 individualized, customized reimbursement rate which
25 violates the principles of developing an RRM.

Commission on State Mandates – October 27, 2011

1 We concur with the recommendations to deny the
2 request.

3 CHAIR DUCAY: Any questions or discussion?

4 MS. SHELTON: Do you want me just to let you
5 know what the regulatory authority is for the request?

6 CHAIR DUCAY: Yes.

7 MS. SHELTON: It's under section 1187.9. And
8 any party may request that the Commission continue an
9 item for good cause.

10 The section does give the Commission
11 discretion, but it does say that the following policies
12 should be taken into consideration:

13 Continuances are not favored by the Commission.

14 The parties are expected to submit for decision
15 all matters in controversy at a single hearing and to
16 produce at such hearing all necessary evidence.

17 I will say that Mr. Burdick is correct that
18 we do have currently, tentatively scheduled, a number of
19 parameters and guidelines and parameters and guidelines
20 amendments that are requesting reimbursement based on an
21 RRM, and discussions have been made with respect to those
22 items about what is an RRM and what the Legislature did
23 intend.

24 I feel like this particular request is a little
25 bit different because it doesn't even address the

Commission on State Mandates – October 27, 2011

1 elements that are identified in statute as to what is
2 required to submit to an RRM.

3 The other claims have at least provided some
4 type of evidence to try to meet those standards.

5 MR. BURDICK: Can I make just one comment on
6 that?

7 I think that this does touch on one of the
8 issues out there, I think, that would eventually have to
9 get to this, if you looked at this discussion, you know,
10 and that is, I think the sampling, does it have a
11 representative sample of the agencies, is it done in a
12 cost-efficient manner? The variation of costs, I think,
13 is particularly key. And I know that's one of the real
14 key issues of Drew's letter to all the claimants, is
15 variation in costs. And I think, you know, if we go
16 forward, I can clearly demonstrate that.

17 But I would rather just postpone this, have
18 those discussions, and come back, and hopefully have some
19 general agreement, or maybe the City of Los Angeles may
20 decide to come back with an amended proposal which
21 everybody would agree to.

22 So I'm simply -- what the City is really
23 looking for is to see if we can develop some consensus in
24 the next five months, and come back to do something that
25 everybody can support.

Commission on State Mandates – October 27, 2011

1 MS. GEANACOU: If I could make a comment,
2 please?

3 I think Mr. Burdick mentions a variation in
4 cost that I think it explicitly says, or more than
5 suggests, that there are multiple claimants to which the
6 numbers or the variations would apply or stem from. And
7 in this case, the costs are those only incurred by one
8 claimant entity. And I think the members should keep
9 that in mind as it regards this particular request and
10 not the others that are pending for a spring
11 determination.

12 MR. BURDICK: And I would like to just comment
13 on that just briefly, and that is, essentially that this
14 includes an additional -- an adjustment to the LA cost
15 that was included in the original RRM based on an updated
16 and reissued audit by the State Controller's Office.
17 But it does contain all of the other samples that the
18 Commission found to be the number of agencies to be a
19 reasonably representative sample. None of those agencies
20 are excluded. Every city and county is still included in
21 this. There is nobody excluded.

22 So while there was an adjustment to the City of
23 Los Angeles based on a reissuance of an audit report, and
24 based on that, the costs were so significantly different
25 than the other costs, the City proposed one for its own.

Commission on State Mandates – October 27, 2011

1 And I think you also have to look at the flip
2 side, I think, as we look at reasonable reimbursement
3 methodologies, and that is that one of these large
4 agencies -- and typically, it's going to be either, I
5 think, one of the three LAs, or the City and County of
6 San Francisco, if they happen to be unique in the
7 application -- I can't really think of anybody else,
8 maybe the City of Vernon would be the only other that I
9 think might be different. But that they could, in a
10 sense, overinflate the dollar amount because of the fact
11 that they may be -- or if they were lower, and they're
12 just considered in the sample. And very often, it's not
13 a weighted average. And in those cases, then other
14 agencies would be, you know, overly reimbursed for the
15 additional cost so it can work both ways. You know, it
16 could either adversely affect and increase it or decrease
17 it.

18 And I think that, you know, those agencies are
19 so unique that that could happen in some cases.

20 And your Commission has agreed that there can
21 be multiple factors. Currently, there's just one factor
22 for everybody, the Commission kind of used in their
23 analysis as an example there could be one for like,
24 urban, suburban, or rural counties. You know, basically
25 there could be three. You know, kind of the

Commission on State Mandates – October 27, 2011

1 understanding is, well, why can't there being one if
2 somebody is particularly unique?

3 I mean, we're getting into the merits and I
4 probably shouldn't be doing that. I'm just really
5 requesting the postponement before we get into all the
6 details.

7 Just commenting on my good friends from the
8 Department of Finance.

9 CHAIR DUCAY: Any other discussion?

10 MEMBER ALEX: Can I ask staff if you have --
11 would any of the proceedings that are referenced,
12 that are going to come before us in March, do you think
13 they would have any effect on your view of this
14 particular item?

15 MR. BOHAN: I would say probably not. But I
16 wouldn't want to say for sure. Because we've put out,
17 as Mr. Burdick has referenced, a letter requesting
18 feedback. And we requested a response within a time
19 frame, and we got invited to extend until late December,
20 and we granted that request because one of the claimants
21 wanted to put together -- to hire a consultant to conduct
22 a statistical analysis.

23 And we weren't sure of the relevance of it, and
24 thought about it a little bit, and went ahead and granted
25 it. And we figured, well, there's a lot of issues

Commission on State Mandates – October 27, 2011

1 swirling around here. So I would say probably not. And
2 I wouldn't want to say that for sure.

3 MEMBER ALEX: And can I ask the Department of
4 Finance if you feel there's any prejudice by putting it
5 over to March?

6 MS. GEANACOU: Well, based on the comments I've
7 heard and from the Executive Director and appear to be
8 agreed to by the Chief Counsel, it doesn't appear that
9 there is necessarily a tie-in between the request for a
10 hearing today and those that are pending for the spring.
11 So I don't think it's necessary to continue this over.

12 This is seemingly a unique request particular
13 to one entity. And the comments we've heard about how a
14 large urban entity in this case may have costs that are
15 particularly higher than their counterparts, that can be
16 addressed through a request to amend as the staff points
17 out. The existing RRM, which is based on -- which is set
18 at \$37.25 per officer, if the City believes that that RRM
19 is far too low in light of their unique circumstances,
20 they can file for a modification to that RRM, which would
21 take into consideration their higher costs that they say
22 they've been incurring since its adoption -- or actual --
23 yes, they can continue to file for actual -- based on
24 their actual costs.

25 So I do think there would be prejudice. I

Commission on State Mandates – October 27, 2011

1 think it is unnecessary to continue this item.

2 MR. BURDICK: If I could make just one comment
3 on that.

4 And one of the key issues before, that your
5 Executive Director has raised, is variation in costs, and
6 what is a variation, what should they be?

7 In the current RRM, there are three cities, I
8 think, that have costs in that. One of them is a dollar
9 per RRM, one of them is \$20 per RRM, the City of LA in
10 the current RRM was \$8 per officer. And these are
11 approximations.

12 In addition, there was the City of Stockton;
13 but I don't think it was included. And they had a figure
14 at one time of about \$180. But these were, you know,
15 based on old audited claims by the State Controller. And
16 at that time, many of those have been gone back and
17 redone and found that those were wrong.

18 The City of Los Angeles did not feel that at
19 that time. I think they just wanted to say, you know, we
20 don't want to tell the Commission what to do. They
21 argued at the Commission hearing that the \$37 was a
22 flawed RRM. I did not believe -- you would have to take
23 the first "R" out of there. I don't think it's
24 reasonable at all, as a methodology -- reimbursement
25 methodology. I don't believe it was reasonable at all.

Commission on State Mandates – October 27, 2011

1 But, you know, I think it does raise the variation of
2 costs in this particular issue, because now we have
3 agencies that would be from a dollar to over \$400. And
4 when you think you're going to develop one number based
5 on those kinds of variations, to me, that's the kind of
6 issue that needs to be addressed in the discussion by the
7 Commission on variation of costs.

8 CHAIR DUCAY: Any other questions or
9 discussion?

10 *(No response)*

11 CHAIR DUCAY: Do I have a motion?

12 MEMBER LUJANO: No, actually, I'm inclined to
13 allow them to postpone it. We have done it in the past
14 if there's some good items that need to be discussed. So
15 I don't think there should be a problem to allow them to
16 pull it or to postpone it until March.

17 MEMBER ALEX: I agree.

18 CHAIR DUCAY: Okay.

19 MEMBER LUJANO: So do we need a motion for
20 that?

21 MS. SHELTON: Yes.

22 MEMBER LUJANO: Then I would make a motion to
23 postpone the hearing of their item until March 24.

24 MEMBER ALEX: Second.

25 CHAIR DUCAY: Okay, we have a motion and a

Commission on State Mandates – October 27, 2011

1 second to postpone this request to the March Commission
2 meeting.

3 Is there any other discussion on this item
4 before we call the roll?

5 (No response)

6 CHAIR DUCAY: Drew, call the roll.

7 MR. BOHAN: Mr. Alex?

8 MEMBER ALEX: Aye.

9 MR. BOHAN: Mr. Chivaro?

10 MEMBER CHIVARO: Aye.

11 MR. BOHAN: Mr. Lujano?

12 MEMBER LUJANO: Aye.

13 MR. BOHAN: Ms. Olsen?

14 MEMBER OLSEN: Aye.

15 MR. BOHAN: And Ms. Ducay?

16 CHAIR DUCAY: No.

17 MR. BURDICK: And on behalf of the City of
18 Los Angeles, thank you very much.

19 CHAIR DUCAY: Number 10?

20 MR. BOHAN: Kenny Louie, staff counsel, will
21 present this item.

22 MR. LOUIE: Item 10 deals with seven incorrect
23 reduction claims dealing with the *Health Fee Elimination*
24 program, followed by community college districts under
25 the *Health Fee Elimination* program.

Commission on State Mandates – October 27, 2011

1 Activities associated with the provision of
2 health services to students were found to be
3 reimbursable. The State Controller's Office reduced the
4 reimbursement claims filed by the community college
5 districts on the basis of the districts understating
6 offsetting revenues resulting from health fees that the
7 districts have authority to charge.

8 The districts argue that they are only required
9 to claim -- or identify outstanding costs to the extent
10 that they actually charged a health fee.

11 Courts have found that to the extent that
12 community college districts do have authority to charge
13 fees, that those costs are not reimbursable. As a
14 result, the Court disagreed with the districts in that
15 regard.

16 The districts also raised various substantive
17 and jurisdictional issues. Ultimately, staff found that
18 the State Controller correctly reduced the majority of
19 reimbursement claims filed by the districts, except for
20 the portions related to the provision of physicals for
21 athletes and employees.

22 As a result, staff recommends that the
23 Commission adopt the proposed recommendation or proposed
24 SOD.

25 And will the witnesses and parties state their

Commission on State Mandates – October 27, 2011

1 names for the record, please?

2 MR. PETERSEN: Keith Petersen, representing six
3 of the seven districts.

4 MR. SILVA: Shawn Silva with the State
5 Controller's Office.

6 MR. VANZEE: Steve Vanzee, State Controller's
7 Office.

8 CHAIR DUCAY: Mr. Petersen?

9 MR. PETERSEN: Stand on the written
10 submissions.

11 CHAIR DUCAY: State Controller's?

12 MR. SILVA: We concur with the Commission
13 staff's recommendations.

14 CHAIR DUCAY: Okay, do we have any questions or
15 discussion from the members?

16 MEMBER CHIVARO: Move adoption of the staff
17 recommendation.

18 MEMBER LUJANO: Second.

19 CHAIR DUCAY: We have a motion and a second to
20 adopt the staff recommendation.

21 Seeing no other discussion, Drew, would you
22 call the roll?

23 MR. BOHAN: Certainly.

24 Mr. Alex?

25 MEMBER ALEX: Aye.

Commission on State Mandates – October 27, 2011

1 MR. BOHAN: Mr. Chivaro?

2 MEMBER CHIVARO: Aye.

3 MR. BOHAN: Mr. Lujano?

4 MEMBER LUJANO: Aye.

5 MR. BOHAN: Ms. Olsen?

6 MEMBER OLSEN: Aye.

7 MR. BOHAN: Chair Ducay?

8 CHAIR DUCAY: Aye.

9 So moved on that.

10 MR. BOHAN: Madam Chair, Item 11 is a *Request*
11 *to Add the Boilerplate Language* that -- you might as well
12 stay here, Keith.

13 We are requesting that the members pull this
14 item, and we'll bring it back next time.

15 We believe our conclusion is accurate. It was
16 accurate in the first draft. We did a second draft. We
17 think it was still accurate.

18 However, we recently reviewed this item, and
19 feel that some of the language that we've put into our
20 staff analysis is superfluous. And we're concerned that
21 folks might view that as some sort of an advisory opinion
22 by the Commission, and it wasn't intended to be that. It
23 was simply intended to address and refute the arguments
24 that were put forth by the State Controller's Office.
25 But we think that we'd all do better if we took it back,

Commission on State Mandates – October 27, 2011

1 shorten it, clean it up, and just got to the point.

2 CHAIR DUCAY: Do we need a motion, or can we
3 just hold that over?

4 MR. PETERSEN: Can I do that next time?

5 MS. SHELTON: Except that the regs allow the
6 Executive Director to set the hearing. So you can pull
7 it.

8 CHAIR DUCAY: We can just pull it?

9 MS. SHELTON: You don't need to have a motion
10 on that.

11 MR. PETERSEN: Give me another shot at cleaning
12 up my stuff.

13 Can I do that next time?

14 CHAIR DUCAY: Okay, then that will be held over
15 until the next meeting.

16 Thank you.

17 MR. BOHAN: And, Madam Chair, I notice that the
18 witness that had a flight issue is here. If you'd like,
19 we could go back to the items that we skipped over.

20 CHAIR DUCAY: So that is Item 3, is the first
21 item that was held over.

22 MR. BOHAN: That's right.

23 CHAIR DUCAY: Okay.

24 MR. BOHAN: Heather, are you ready? We're
25 moving back to 3.

Commission on State Mandates – October 27, 2011

1 Heather Halsey is our staff counsel on this
2 matter. It's the second of the two *Deferred Maintenance*
3 programs test claims.

4 MS. HALSEY: This test claim addresses
5 activities required as a condition of participation in a
6 state grant program, the *Deferred Maintenance* program.
7 It's fairly similar to the earlier *Deferred Maintenance*
8 program. We addressed that test claim earlier this
9 morning, except for this one applies to K-12 instead of
10 community colleges.

11 Staff finds that this is a voluntary program
12 and does not impose a state-mandated program on school
13 districts. None of the parties have commented on the
14 draft staff analysis for this test claim.

15 Staff recommends that the Commission adopt the
16 proposed statement of decision to deny the test claim.

17 Will the parties and witnesses please state
18 their names for the record?

19 MR. PALKOWITZ: Good morning. Art Palkowitz on
20 behalf of San Diego -- of Clovis Unified School District.

21 MS. GEANACOU: Susan Geanacou for the
22 Department of Finance.

23 CHAIR DUCAY: Mr. Palkowitz?

24 MR. PALKOWITZ: Yes, thank you.

25 Thank you for accommodating my scheduling

1 issue.

2 The matter that I want to address on this test
3 claim is not regarding the handbook. I understand the
4 staff's analysis, and I agree with that.

5 Regarding the statutes, I wanted to comment
6 that this is one of the issues we've dealt with on
7 numerous occasions, and this deals with the analysis of
8 whether you have an initial discretionary decision and
9 then a subsequent decision.

10 So in this test claim, the school districts
11 are put in a position where they provide funds to the
12 maintenance fund. And then once that maintenance fund is
13 established, they are required to do certain tasks that
14 shall be done according to the code section.

15 It's our feeling that that is a type of
16 mandatory activity that they have to do. That once the
17 decision to establish the fund is taken upon the
18 District, they're forced to follow Ed. Code. And we
19 believe that's a downstream expense that should be
20 considered a mandate and reimbursed.

21 The analysis refers to the *Kern* case. And in
22 the *Kern* case, that dealt with educational programs where
23 it was determined that a school district had the option
24 whether to participate in those programs. And the
25 districts asked for reimbursement for posting brown

Commission on State Mandates – October 27, 2011

1 agendas if they didn't participate. And the Court felt
2 that was not appropriate nor required.

3 This is building educational facilities. This
4 is a decision that is really, one could say, districts
5 don't have much option, when they have got to build
6 facilities to house their students.

7 So we feel the *Kern* case is not an applicable
8 application here. And we believe that once that decision
9 is made to participate in a maintenance fund, that the
10 district should get reimbursed for the activities under
11 the Ed. Code that require them to take specific acts.

12 Thank you.

13 CHAIR DUCAY: All right, Finance?

14 MS. GEANACOU: Yes, thank you. Susan Geanacou,
15 Department of Finance.

16 My comments will be very similar to those which
17 I set forth on the community college similar test claim.

18 I will say that I don't think we're in a
19 position at Finance to weigh the competing importance of
20 the programs at issue here versus those that were
21 discussed in the *Kern* case. However, we do think that
22 the *Kern* case analysis, as applied by the staff here, is
23 squarely on point and should drive the outcome here.

24 So fundamentally, I'll say, we support the
25 staff analysis to deny the test claim. We agree that

1 participation in the *Deferred Maintenance* program is
2 optional; therefore, any requirements that come from
3 participation in the program stem from the District's
4 underlying choice to participate in the program in the
5 first place.

6 They have no legal compulsion to participate,
7 and they have no practical compulsion to participate,
8 either, as there are no penalties for non-participation
9 other than simply losing the funding -- the state funding
10 that accompanies their choice to participate.

11 The *Deferred Maintenance* program, as I said
12 before, is structured similar to programs that were
13 reviewed by the Court and for which state reimbursement
14 was denied in the *Kern* case that was analyzed by the
15 staff.

16 And, again, in response to Mr. Palkowitz's
17 comments about the importance of the program here, we are
18 not disputing the importance of the program, nor are we
19 assessing it as compared to those that were discussed by
20 the Court in the *Kern* case.

21 CHAIR DUCAY: Thank you.

22 Do we have any questions or discussion?

23 MEMBER OLSEN: No.

24 CHAIR DUCAY: No? Okay.

25 Do we have a motion on this item?

Commission on State Mandates – October 27, 2011

1 MEMBER OLSEN: I'll move the staff
2 recommendation.

3 MEMBER CHIVARO: Second.

4 CHAIR DUCAY: All right, we have a motion and a
5 second.

6 Any other discussion?

7 *(No response)*

8 CHAIR DUCAY: Drew, will you call the roll?

9 MR. BOHAN: Mr. Alex?

10 MEMBER ALEX: Aye.

11 MR. BOHAN: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MR. BOHAN: Mr. Lujano?

14 MEMBER LUJANO: Aye.

15 MR. BOHAN: Ms. Olsen?

16 MEMBER OLSEN: Aye.

17 MR. BOHAN: Ms. Ducay?

18 CHAIR DUCAY: Aye.

19 The motion carried on that item.

20 Now, we are going on to 7?

21 MR. BOHAN: Item 7.

22 Mr. Feller will present this one. It is a very
23 large and long and complicated set of parameters and
24 guidelines.

25 MR. FELLER: You flatter me.

Commission on State Mandates – October 27, 2011

1 This item proposes the adoption of six new sets
2 of parameters and guidelines for the reimbursement of the
3 *Pupil Expulsions II, Pupil Suspensions II, and*
4 *Educational Service Plans for Expelled Pupils* programs
5 which requires school districts to perform various
6 activities related to suspending and expelling pupils
7 from school who commit specified offenses.

8 The Commission found that the costs incurred
9 to perform new activities mandated by the test-claim
10 statutes constitute a reimbursable state-mandated program
11 beginning fiscal year 1995-96.

12 Staff recommends the Commission adopt this
13 analysis and this decision along with the six attached
14 proposed parameters and guidelines for the program.

15 Staff also recommends the Commission adopt the
16 proposed amendments to the preexisting parameters and
17 guidelines to cap reimbursement that was set on June 30,
18 2012, because costs for those activities may be claimed
19 under the consolidated six set of parameters and
20 guidelines that are effective beginning July 1, 2012.

21 The only recommended change to the parameters
22 and guidelines document before you is to update the unit
23 cost numbers in their reasonable reimbursement
24 methodology to reflect more recent State Controller's
25 claiming instructions. That would be for the final set

Commission on State Mandates -- October 27, 2011

1 of parameters and guidelines that we issue.

2 Would the parties and witnesses please state
3 your names for the record?

4 MR. PETERSEN: Keith Petersen representing the
5 test claimant, San Juan Unified.

6 MR. PALKOWITZ: Art Palkowitz on behalf of
7 San Diego Unified School District.

8 MS. FEREBEE: Donna Ferebee on behalf of the
9 Department of Finance.

10 CHAIR DUCAY: Okay, Mr. Petersen, are you going
11 to go first?

12 MR. PETERSEN: Well, after 15 years -- this
13 test claim was filed in 1996 -- I think we got it worked
14 out.

15 We've done a lot of -- over the last few years,
16 there's been several prehearings, meetings, discussions,
17 exchanges of technical information. This horse is pretty
18 well flogged, so I'm ready to go.

19 CHAIR DUCAY: Okay. Mr. Palkowitz?

20 MR. PALKOWITZ: Yes, thank you.

21 I would like to thank staff for working with
22 Keith on this and coming to a conclusion.

23 And I think it's good for all of us to realize
24 this is a unit rate that we've agreed on. And I think
25 claimants feel really hopeful that this could be used in

Commission on State Mandates – October 27, 2011

1 further test claims to get unit rates which we would feel
2 would be beneficial for all parties.

3 CHAIR DUCAY: Ms. Ferebee?

4 MS. FEREBEE: Yes, Donna Ferebee, Department of
5 Finance.

6 We agreed with the assessment of "long and
7 complicated," that's for sure.

8 We concurred with the final staff analysis. We
9 agreed with the staff's findings as to the three bulleted
10 changes sought by the claimant summarized on pages 5 and
11 6 of the analysis. And we thought the remainder of the
12 recommendations appeared to us to be appropriate.

13 Thank you.

14 CHAIR DUCAY: Okay. Members?

15 MEMBER ALEX: Well, having missed the previous
16 15 years, but having had some analogous experiences, I
17 just want to congratulate the staff and the parties for
18 getting it taken care of.

19 CHAIR DUCAY: Any other questions or comments?

20 Do we have a --

21 MEMBER CHIVARO: I'll move staff
22 recommendation.

23 MEMBER LUJANO: Second.

24 MEMBER OLSEN: Second.

25 CHAIR DUCAY: Okay, we have a motion and two

Commission on State Mandates – October 27, 2011

1 seconds.

2 So if there's no other discussion, Drew, would
3 you call the roll, please?

4 MR. BOHAN: Certainly.

5 Mr. Alex?

6 MEMBER ALEX: Aye.

7 MR. BOHAN: Mr. Chivaro?

8 MEMBER CHIVARO: Aye.

9 MR. BOHAN: Mr. Lujano?

10 MEMBER LUJANO: Aye.

11 MR. BOHAN: Ms. Olsen?

12 MEMBER OLSEN: Aye.

13 MR. BOHAN: And Ms. Ducay?

14 CHAIR DUCAY: Aye.

15 The motion carried on that item.

16 Item 12 was on the Consent Calendar.

17 MR. BOHAN: That's right.

18 CHAIR DUCAY: So we're going on to Item 13.

19 MR. BOHAN: That's right, Item 13 there were no
20 SB 1033 applications filed, so nothing to entertain
21 there.

22 CHAIR DUCAY: Okay. I was trying to catch up.

23 MR. BOHAN: No, no worries.

24 So 12 and 13 --

25 CHAIR DUCAY: Our first technical difficulty

Commission on State Mandates – October 27, 2011

1 with this new process.

2 MR. BOHAN: Once we got the microphones licked.

3 Items 12 and 13, there is not anything to --
4 any order of business.

5 Item 14 is our Legislative Update from Nancy
6 Patton.

7 CHAIR DUCAY: Okay.

8 MS. PATTON: Good morning.

9 We had two bills this year: SB 112 the
10 Governor signed. This provided some technical
11 clarification for P's & G's amendments, and gave the
12 State Controller 30 additional days to file their
13 claiming instructions.

14 AB 202 was vetoed by the Governor. It would
15 have required parties, claimants to go into binding
16 arbitration with the Department of Finance over joint
17 reasonable reimbursement methodologies. And the Governor
18 stated in his veto message that "This bill creates a new
19 avenue for deciding the cost of mandates which may prove
20 to be more complicated and costly than the existing
21 process," if that's possible.

22 And those were the only two bills for this
23 year.

24 CHAIR DUCAY: Item 15.

25 MR. BOHAN: Chief Counsel's report.

Commission on State Mandates – October 27, 2011

1 MS. SHELTON: Just a couple of things to
2 report.

3 The Court has set the hearing on the *San Diego*
4 *Water Permit* case for November 4th. That should be
5 interesting, and come down next week.

6 Also, the challenge to the Commission's
7 adoption of parameters and guidelines amendments in the
8 *Grad Requirements* case, which is also dealing with a
9 formula RRM, is set for a hearing on March 9th.

10 I did not include in this report the Court's
11 ruling in the *LA Water Permit* case, which I have made
12 you aware of. I'm not sure if the public is aware of.

13 The Court has found that to be federally
14 mandated. No word yet whether the counties and cities
15 are going to file an appeal.

16 If an appeal is not filed, then those matters
17 will be brought back before the Commission on
18 December 1st to set aside the statement of decision and
19 the parameters and guidelines. So watch for our agenda.

20 CHAIR DUCAY: Okay, Item 16?

21 MR. BOHAN: Item 16 is the ED report. Just a
22 couple items.

23 First, I wanted to report on the action plan
24 we set forth in May. We are ahead of schedule.

25 With the conclusion of today's meeting, we will

Commission on State Mandates – October 27, 2011

1 have two 2002 test claims left to be decided. These are
2 the monsters, the great, big claims that have statutes
3 cited all the way back to 1975.

4 We also have seven 2003 test claims. And we
5 expect all nine of those -- the '02 and the '03 test
6 claims -- to be presented to you by the March-next-year
7 hearing. So we're very pleased to say that we're on
8 track with those.

9 With regards to IRCs, with your vote on the
10 *Health Fee Elimination* program set of IRCs, seven have
11 been disposed of, which has dropped us down considerably
12 there.

13 We are conducting a couple informal conferences
14 where we're hoping to, by virtue of that decision, move
15 more quickly on some of the additional ones that are on
16 the exact, same program and expect to move swiftly ahead.

17 You'll recall the BSA report was critical of
18 the Commission's speed with which we are bringing IRCs
19 forth. And we're really hoping to address that, and I
20 think we are.

21 Second, I wanted to point out that on pending
22 claims, all of them are now up on the computer. So
23 everybody can see those. And they're fully complete,
24 with a handful of small exceptions we expect to have
25 completed by the of end of next week. Just a few little

Commission on State Mandates – October 27, 2011

1 pieces. But the critical ones, the test claims and all
2 the most important documents are all up.

3 And I'm just going to embarrass Heidi Palchik
4 and ask her to stand up, please.

5 Heidi and everybody on the staff has worked on
6 this, it's been a team effort. But, really, Heidi has
7 been the glue that was --

8 MR. BURDICK: We're going to applaud you.

9 She's going to stand up, so we can applaud.

10 MR. BOHAN: Yes.

11 Her sanity seems to be intact as of this
12 morning. But it's really been a tremendously complicated
13 and difficult task. It doesn't seem like much if you're
14 not seeing it; but sharing a wall with her, I know it's
15 really a big job.

16 And really, it's not to take away from Nancy
17 and Jason and everybody else who has been working on it,
18 but she's really been the glue.

19 *(Applause)*

20 MR. BOHAN: A couple other quick notes.

21 We're also -- this is, we think, an exciting
22 thing, creating a PHP, which to those of you that are
23 more knowledgeable than I am about computer matters, it
24 stands for "personal homepage."

25 Essentially, what it will be is, it will not

Commission on State Mandates – October 27, 2011

1 only have these pending claims, it will link them all
2 together. So if you currently want to find a particular
3 test claim and if there's an IRC filed on it and there
4 are parameters and guidelines and they were done ten
5 years apart, it's very difficult to do. Everything will
6 all be in one searchable place, and that will be done
7 hopefully very soon.

8 And Jason -- I don't think he's here anymore
9 but --

10 MS. PATTON: He's in the back.

11 MR. BOHAN: He's in the back -- there's Jason.
12 He has been our tech guy. One of the best in the
13 business at this, and so we're excited to have that ready
14 to roll out very soon.

15 Finally, I just wanted to say -- well, two more
16 things.

17 One, this is my last meeting. And I wanted to
18 thank all of you up at the dais and my staff for the
19 great support we've gotten.

20 This has been a tremendous opportunity but an
21 unanticipated one came up. And after consulting my
22 two- and three-year-olds, we took a vote and decided to
23 make a very difficult decision to move on.

24 But it really -- it's common to say this sort
25 of thing when one parts, but this is truly the finest

1 bunch of folks I've ever worked with.

2 I just want to call out quickly two people.

3 One is Nancy who is our do-everything person in
4 the office with a smile on her face and a great sense of
5 humor, one of the more reliable people I've ever met.

6 And Camille, who -- it is said nobody is
7 irreplaceable. After all, we elect a new president every
8 four or eight years. But if there's anybody
9 irreplaceable in any institution I've been in, she's
10 sitting right here. This is complicated stuff, and she's
11 always there to sort it out when we get in a jam.

12 And with that, I just wanted to say we have one
13 action item, and that is to adopt the tentative hearing
14 calendar for next year. And the dates are all spelled
15 out in the report.

16 We would suggest, with the Chair's concurrence,
17 that the -- there's a proposal to move each day that's
18 stated there one day forward, because our Chair asked
19 that the meetings occur on Fridays rather than Thursdays.
20 So each day spelled out there is a Thursday. If you
21 move January 26th to the 27th, March 22nd to the 23rd,
22 et cetera, that would be the requested motion, to adopt
23 this proposed calendar.

24 CHAIR DUCAY: Do we have any discussion on the
25 date change to Friday?

Commission on State Mandates – October 27, 2011

1 MEMBER OLSEN: It's fine with me.

2 CHAIR DUCAY: Everybody -- okay.

3 And then the time will be discussed later?

4 MR. BOHAN: Right. This is -- typically, the
5 meetings are at 9:30, but there's discussion about
6 different time frames. We can post them at a different
7 time.

8 CHAIR DUCAY: Okay, so do we have a motion to
9 adopt the hearing calendar for next year, with the only
10 exception of it being one day later, to Friday?

11 MEMBER OLSEN: Move.

12 MEMBER CHIVARO: Second.

13 CHAIR DUCAY: If there's no other discussion,
14 Drew, will you call the roll on that?

15 MR. BOHAN: Certainly.

16 Mr. Alex?

17 MEMBER ALEX: Aye.

18 MR. BOHAN: Mr. Chivaro?

19 MEMBER CHIVARO: Aye.

20 MR. BOHAN: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MR. BOHAN: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MR. BOHAN: And Ms. Ducay?

25 CHAIR DUCAY: Aye.

Commission on State Mandates – October 27, 2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Thank you.

And then we have the late addition of Item 17 to amend our closed session.

MR. BOHAN: That's right. This is the final item. It requires a two-thirds vote, which given that there are five of you here, it would be four of you. And this is simply to amend the agenda. Bagley-Keene requires that you make this vote if you want to amend the agenda. It would be to add a discussion during closed session about the appointment of an interim executive director.

MEMBER ALEX: So moved.

MEMBER OLSEN: Second.

CHAIR DUCAY: We have a motion and a second. Drew, will you call the roll?

MR. BOHAN: Yes.

Mr. Alex?

MEMBER ALEX: Aye.

MR. BOHAN: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MR. BOHAN: Mr. Lujano?

MEMBER LUJANO: Aye.

MR. BOHAN: Ms. Olsen?

MEMBER OLSEN: Aye.

MR. BOHAN: And Chair Ducay?

Commission on State Mandates – October 27, 2011

1 CHAIR DUCAY: Aye.

2 The last item on our public agenda is for
3 *Public Comment*.

4 MR. BURDICK: Madam Chair and Members, a couple
5 of items.

6 The first is, this is really on behalf of my
7 role as staff to both the League of California Cities and
8 California State Association of Counties Advisory
9 Committee on State Mandates. We're saddened with the
10 leaving of Drew.

11 We have found, since he's been here, we have
12 been very pleased with his plans, his action, his
13 leadership. And hopefully, as you discuss this in your
14 executive session today, you will look at some of the
15 fine things he brought to this role, and hopefully find a
16 replacement that has those very same attributes.

17 And I think just really on behalf of the two
18 associations, although we don't have anything really
19 official, we have been exceptionally pleased with his
20 performance.

21 And, you know, we would also like to second,
22 you know, his comments on Nancy and Camille. While we
23 don't always agree, you're very blessed to have them, as
24 well as the rest of the staff.

25 And I think Drew will say, probably he

Commission on State Mandates – October 27, 2011

1 inherited, you know, just an ideal staff. You know, and
2 you guys, you're very fortunate.

3 So I would like to do that since -- I'd like to
4 share with you, I think, based on all my discussions with
5 local people, they have been very, very pleased with
6 Drew's performance, leadership, and your staff.

7 MR. BOHAN: The check is in the mail.

8 MR. BURDICK: The other thing I want to is to
9 comment on, is the fact that I notice that we have two
10 empty seats there today. And locals are very saddened by
11 the removal of the two locally elected members from the
12 Commission.

13 I think that particularly Members Lujano,
14 Chivaro, and Olsen have shared over the last several
15 years the input and comments from Mr. Glaab and
16 Mr. Worthley. And I thought they were very valuable
17 members.

18 And I don't know what the role of the
19 Commission can be; but I would like to request, if there
20 was any way they can be thanked, and something for their
21 participation, I would like to request that.

22 The second thing I'd like to do is, I'd like
23 to urge the Commission to request the Governor to replace
24 those members as soon as possible, so that we could have
25 representatives from local government who could share

Commission on State Mandates – October 27, 2011

1 their input with you.

2 So with that, I'll shut up and get out of here.
3 I've taken too much of your time already today. But
4 those are two issues.

5 And again, you know, I'd like to personally
6 thank Drew for many of the changes that have been brought
7 and the leadership he has shown.

8 Thank you very much.

9 CHAIR DUCAY: Thank you.

10 Nancy?

11 MS. PATTON: Drew, the Commission and the staff
12 has a resolution for you that I would like to read.

13 *"Whereas Drew Bohan has*
14 *distinguished himself as Executive*
15 *Director of the Commission on State*
16 *Mandates; and*

17 *"Whereas he has advised and*
18 *assisted the Commission in*
19 *determining if cities, counties, and*
20 *school districts should be reimbursed*
21 *pursuant to section 6, Articles XII B*
22 *of the California Constitution and*
23 *section 17514 of the Government Code;*

24 *"Whereas he implemented an*
25 *efficient plan to eliminate the*

Commission on State Mandates – October 27, 2011

1 *Commission's long-standing caseload*
2 *backlog;*

3 *"Whereas he has successfully and*
4 *effectively directed and assisted*
5 *staff in significantly reducing the*
6 *Commission's caseload;*

7 *"Whereas he has directed staff*
8 *in completing a complex process to*
9 *shift to electronic filing of all*
10 *mandate-related documents and conduct*
11 *Commission hearings electronically,*
12 *thereby saving the state and local*
13 *governments money and reducing the*
14 *effects on the environment;*

15 *"Whereas Drew Bohan is being*
16 *honored by the Members and staff on*
17 *the Commission on State Mandates in*
18 *appreciation of his outstanding*
19 *dedication, leadership, and service*
20 *to the state of California;*

21 *"Now, therefore, be it resolved*
22 *that the Commission on State Mandates*
23 *formally congratulates Drew upon his*
24 *new position as chief deputy director*
25 *with the California Energy*

Commission on State Mandates – October 27, 2011

1 *Commission.*"

2 *(Applause)*

3 MS. PATTON: I just wanted to say on behalf of
4 our staff that we have really enjoyed working with you
5 and we're really going to miss you. And we wish you the
6 best in your new job.

7 CHAIR DUCAY: Thank you.

8 No other public comment?

9 *(No response)*

10 CHAIR DUCAY: We will move to closed session.

11 The Commission will meet in closed executive
12 assessing pursuant to Government Code section 11126(e)
13 to confer and receive advice from legal counsel for
14 consideration and action, as necessary and appropriate,
15 upon the pending litigation listed on the published
16 notice and agenda, to confer with and receive advice from
17 legal counsel regarding potential litigation. And the
18 Commission will also confer on personnel matters. And
19 pursuant to Government Code sections 11126, subdivision
20 (a)(1), to appoint an interim executive director and to
21 consider the process for appointing a permanent executive
22 director.

23 We will reconvene in open session in
24 approximately 30 minutes.

25 Thank you.

Commission on State Mandates – October 27, 2011

1 *(The Commission met in executive closed*
2 *session from 10:13 a.m. to 10:27 a.m.)*

3 CHAIR DUCAY: The Commission met in closed
4 executive session pursuant to Government Code section
5 11126(e) to confer with and receive advice from legal
6 counsel for consideration and action, as necessary and
7 appropriate, upon the pending litigation listed on the
8 published notice and agenda, and to confer with and
9 receive advice from legal counsel regarding potential
10 litigation.

11 The Commission also met in closed session
12 pursuant to Government Code section 11126, subdivision
13 (a) (1), to confer on personnel matters and to appoint
14 Nancy Patton as Acting Executive Director as listed on
15 the published revised notice and agenda.

16 With no further business to discuss, do we have
17 a motion to adjourn?

18 MEMBER OLSEN: So moved.

19 MEMBER CHIVARO: Second.

20 CHAIR DUCAY: We have a motion and a second.
21 And we'll adjourn the meeting.

22 Thank you.

23 *(The meeting concluded at 10:28 a.m.)*



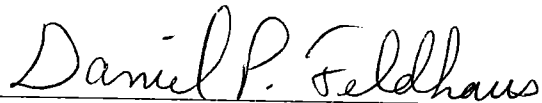
REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 17th of November 2011.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter