

MINUTES

COMMISSION ON STATE MANDATES

State Capitol
Room 447
Sacramento, California
March 28, 2008

Present: Member Anne Sheehan, Chairperson
Representative of the 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 Sheehan called the meeting to order at 9:37 a.m.

APPROVAL OF MINUTES

Item 2 January 31, 2008

The January 31, 2008 minutes were adopted 5-0. Members Glaab and Olsen abstained because they were not present at the January 31, 2008 meeting.

PROPOSED CONSENT CALENDAR

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

PARAMETERS AND GUIDELINES

Item 4 *Racial Profiling: Law Enforcement Training*
01-TC-01
Penal Code Section 13519.4
Statutes of 2000, Chapter 684 (SB 1102)
County of Sacramento, Claimant

- Item 5 *Fire Safety Inspections of Care Facilities*
01-TC-16,
Statutes 1989, chapter 993 (SB 1098)
Health and Safety Code sections 1531.2, 1569.149, 1596.809, 13144.5, and
13235
City of San Jose, Claimant

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS

- Item 8 Adoption of Proposed Regulatory Action
Implementation of AB 1222 (Stats. 2007, Ch. 329)
Proposed Amendments to California Code of Regulations, Title 2, Chapter
2.5, Article 1. General, Article 3. Test Claims, Article 7. Hearings

Member Glaab made a motion to adopt items 4, 5 and 8 on the consent calendar. With a second by Member Chivaro, the items were unanimously adopted (7-0).

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

- Item 2 Appeal of Executive Director's Decision to Disallow Test Claim
Amendment, 07-TC-02
TO ADD:
Government Code Section 56326.5, Statutes 1991, Chapter 439 (AB 748);
Government Code Sections 56001, 56029, 56036, 56046, 56067, 56069,
56100, 56101, 56107, 56123, 56124, 56133, 56150, 56154, 56156, 56157,
56159, 56300, 56301, 56325, 56326.5, 56329, 56332, 56375, 56375.3,
56375.5, 56377, 56380, 56381, 56381.6, 56383, 56384, 56386, 56425,
56425.5, 56429, 56430, 56434, 56653, 56654, 56658, 56660, 56662, 56663,
56664, 56665, 56666, 56667, 56668, 56668.3, 56668.5, 56700.1, 56700.4,
56705, 56706, 56708, 56710, 56720, 56730, 56737, 56738, 56742.5, 56743,
56744, 56745, 56751, 56752, 56753, 56753.5, 56754, 56755, 56756, 56757,
56758, 56759, 56760, 56764, 56800, 56801, 56803, 56810, 56811, 56812,
56815, 56820, 56820.5, 56820.7, 56821, 56821.1, 56821.3, 56821.5,
56821.7, 56822, 56822.3, 56822.5, 56823, 56824, 56824.1, 56824.3,
56824.5, 56824.7, 56826, 56827, 56828, 56829, 56830, 56831, 56833,
56834, 56835, 56840, 56843, 56844, 56846, 56847, 56848, 56853, 56854,
56855, 56857, 56859, 56860, 56861, 56862, 56863, 56864, 56864.1, 56876,
56880, 56881, 56882, 56885.5, 56886, 56886.3, 56889, 56895, 56897,
57000, 57001, 57002, 57008, 57025, 57026, 57050, 57052, 57075, 57075.5,
57077, 57078, 57078.5, 57080, 57081, 57100, 57102, 57103, 57105, 57106,
57107, 57108, 57109, 57113, 57114, 57115, 57116, 57117, 57118, 57119,
57120, 57125, 57129, 57144, 57145, 57150, 57176, 57167.1, 57177,
57177.5, 57179, 57200, 57201, 57302, 57384, 57402, 57404, Statutes 2000,
Chapter 761 (AB 2838);
Government Code Section 56381, Statutes 2002, Chapter 493 (AB 1948);
LAFCO Municipal Services Review Guidelines, and LAFCO Municipal
Services Review Guidelines Appendices
TO:

Local Agency Formation Commission (LAFCO) Test Claim (02-TC-23)
Government Code Sections 56001, 56326.5, 56381, 56381.6, 56425,
56426.5, 56430, Statutes 1991, Chapter 438 (AB 748); Statutes 2000,
Chapter 761 (AB 2838); Statutes 2002, Chapter 493 (AB 1948)
LAFCO Municipal Services Review Guidelines (Final Draft,
October 3, 2002, Governor's Office of Planning and Research), LAFCO
Municipal Services Review Guidelines Appendices (Final Draft, October 3,
2002, Governor's Office of Planning and Research)
Sacramento, Metropolitan Fire District, Claimant and Appellant

Chief Counsel Camille Shelton presented this item. Ms. Shelton explained that Item 2 is an appeal of the Executive Director's decision to disallow a test claim amendment filed by the Sacramento Metropolitan Fire District to the LAFCO test claim. The proposed amendment pleads an additional 178 Government Code sections to the original claim. According to Ms. Shelton, the test claim amendment was disallowed because a complete test claim amendment that satisfies the requirements of Government Code section 17553 and section 1183 of the Commission's regulations was not timely filed.

Ms. Shelton explained that the law requires that all test claims and test claim amendments include information supported by declarations signed under the penalty of perjury, showing the actual increased costs incurred by the claimant during the fiscal year the claim was filed to implement the alleged mandate, and the actual or estimated annual costs that will be incurred by the claimant. The appellant failed to provide the required information. According to Ms. Shelton, the appellant was given an additional 30 days to file a complete test claim amendment after it was first notified of the filing deficiencies. The second document filed by the appellant still did not satisfy the filing requirements.

Government Code section 17553 does not give the Commission jurisdiction to accept any further filings to perfect the requirements of the proposed amendment. Thus, for the reasons stated in the analysis, staff recommended that the Commission deny the appeal and uphold the Executive Director's decision to disallow the proposed test claim amendment pursuant to Government Code section 17553 and section 1183 of the Commission's regulations. .

Juliana Gmur testified on behalf of the Sacramento Metropolitan Fire Department. Ms. Gmur reminded the Commission that the original LAFCO test claim was limited to special district claimants, and was filed by a special district. However, cities and counties also have costs. Therefore, she filed the amended test claim to add claimants; but she filed the amendment under the original fire district claimant, and the fire district had no eligible costs under the test claim amendment. She went on to explain that under old Commission rules, the amendment would not have been necessary, and as a result, if both claims were filed under the old rules or both filed under the new rules, there would be no problem.

Further, according to Ms. Gmur, it is not unheard of to go to various agencies to try to get most accurate information and that is why they went to a LAFCO and that they did in fact get the information that they needed from the LAFCO. Ms. Gmur added that the information gained from the LAFCO was relevant to both cities and counties, thereby, serving as the basis to pursue the statewide cost estimate based on easy-to-access numbers that are accurate.

Member Worthley asked claimants to clarify their position.

Ms. Gmur responded that she was unsure. She reviewed the regulations and found nothing that definitely states what entity can amend a test claim. But claimants do not want to be in a position where any party can amend another claimant's claim.

Alan Burdick, CSAC SB 90 service, explained that the test claim was filed under a different set of rules which allowed a local agency, and in this case a special district was a local agency, to file on behalf of all local agencies. Thus, when this case was filed, cities and counties believed that this claim would have application to all local agencies.

Ms. Shelton clarified that the substitution of a claimant is not an amendment, as specifically defined in the Commission's regulations, and those requirements have been in effect for a long time. If a claimant wants to add additional claimants to the original claim, they do not need to file a test claim amendment.

She pointed out that both the draft and final staff analyses were issued in 2007, indicating that the claim only applied to independent special districts. No comments were filed on that issue.

Ms. Shelton also stated that Government Code section 17553 was amended to specifically require that the claimant itself file declarations of actual costs incurred for that year and declarations of estimated or actual costs for future years. There are no declarations in this record at all from the claimant. The only declarations in the record are from Mr. Burdick showing a statewide cost estimate based on LAFCOs.

Chairperson Sheehan and Member Worthley questioned Ms. Gmur and Ms. Shelton regarding the application of the new versus the old rules and how claimants could have resolved this issue. Ms. Shelton reiterated that adding claimants does not require a test claim amendment. All they need is a letter from the original claimant stating that they are adding a co-claimant. Member Worthley asked if there was still time for the claimants to file such a letter. Ms. Shelton stated they could have filed the letter adding a co-claimant until the test claim was decided in 2007.

Ms. Gmur discussed the process of adding a co-claimant. Ms. Shelton reminded the Commission that when the test claim amendment was filed, they added new statutes that require a declaration of costs.

With a motion by Member Bryant and a second by Member Lujano, the Commission adopted the staff recommendation by a vote of 6 to 1, with Member Worthley voting no.

**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)**

TEST CLAIMS

- Item 3A *Crime Statistic Reports for the Department of Justice*
02-TC-04, 02-TC-11
Penal Code Sections 12025, 12031, 13012, 13014, 13023 and 13730;
Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Chapter 147 (SCR
64); Statutes 1984, Chapter 1609 (SB 1472); Statutes 1989, Chapter 1172
(SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter
1230 (AB 2250); Statutes 1995, Chapters 803 and 965 (AB 488 and SB
132); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571
(AB 491); Statutes 2000, Chapter 626 (AB 715); Statutes 2001, Chapters

468 and 483 (SB 314 and AB 469); and
California Department of Justice, Criminal Justice Statistics Center,
Criminal Statistics Reporting Requirements and Requirements Spreadsheet,
March 2000
City of Newport Beach and County of Sacramento, Claimants

- Item 3B *Proposed Statement of Decision: Crime Statistic Reports for the
Department of Justice, 02-TC-04, 02-TC-11*
[See description of statutes and executive orders in Item 3A above.]

These items were postponed.

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

AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 6 *Peace Officers Procedural Bill of Rights (POBOR)*
06-PGA-03, 06-PGA-06
Government Code Sections 3301, 3303, 3304, 3305, 3306
As Added and Amended by Statutes 1976, Chapter 465 (AB 301);
Statutes 1978, Chapters 775 (AB 2916), 1173 (AB 2443), 1174
(AB 2696), and 1178 (SB 1726); Statutes 1979, Chapter 405 (AB 1807);
Statutes 1980, Chapter 1367 (AB 2977); Statutes 1982, Chapter 994
(AB 2397); Statutes 1983, Chapter 964 (AB 1216); Statutes 1989,
Chapter 1165 (SB 353); and Statutes 1990, Chapter 675 (AB 389)
Department of Finance and County of Los Angeles, Requestors

Executive Director Paula Higashi presented this item. Ms. Higashi stated that this item addresses three proposals to amend the parameters and guidelines for the *Peace Officers Procedural Bill of Rights (POBOR)* program, and presented the history of the program, noting that the only issues before the Commission today were two proposed reasonable reimbursement methodologies in lieu of actual costs claimed, and an alternative proposal that would add a reasonable reimbursement methodology as an option to claiming actual school costs. All of the proposals are effective for the reimbursement period beginning on July 1, 2006.

Ms. Higashi noted that Department of Finance requests that the parameters and guidelines be amended to reimburse each eligible local agency at the rate of \$56.74 per officer. Los Angeles County originally proposed \$302.37 per officer, and subsequently submitted an alternative proposal that would allow claimants to continue to claim actual costs or to claim based on a reasonable reimbursement rate of \$36.86 per officer. Government Code section 17518.5 defines a reasonable reimbursement methodology and requires that it be based on cost information from a representative sample of eligible claimants or information provided by associations of local agencies and school districts or other projections of local costs; and that it consider the variation in costs among local agencies and school districts to implement the mandate in a cost-efficient manner.

Ms. Higashi reported that staff finds that the Finance and original L.A. County proposals satisfy the first element of the definition but do not satisfy the second element. Staff finds that the

County's alternative proposal of \$36.86 per officer satisfies both elements of the definition because it is based on cost information from a representative sample of eligible claimants and considers the variation in costs among local agencies to implement the mandate in a cost efficient manner.

Ms. Higashi added that staff recommends that this alternative proposal be amended to include information from two additional audits issued by the State Controller's office and to apply the current implicit price deflator to arrive at a rate of \$37.25 per officer. Staff also finds that the County's alternative proposal allows eligible claimants to be reimbursed based on actual costs as well as the reimbursement methodology and thus balance accuracy with simplicity. Staff recommends that the Commission deny Finance's proposal and the County's original proposal and adopt the County's alternative proposal, as modified by staff.

Leonard Kaye with Los Angeles County reported that while its original proposal of \$302.74 is justified, it is not based on the audits conducted by the State Controller's Office. Therefore, we developed an alternate proposal that is based on the audit findings of the State Controller's Office. Mr. Kaye stated that it is very important to give eligible claimants a choice of using the reasonable reimbursement methodology or claiming actual costs, and he urged the Commission to adopt staff's recommendation.

Mr. Allan Burdick, CSAC-SB 90 Service, disagreed with Los Angeles County's recommendation, and supported the original proposal of \$302 per officer.

Member Worthley clarified and Mr. Burdick agreed that the \$302 rate was a significant reduction from the \$528 rate that was introduced last year. Mr. Burdick reiterated that the \$302 rate was the only rate that approaches accuracy, asserting that the \$302 rate would only reimburse the City of Los Angeles for about half of its costs. He also stated that if you apply that rate to the largest police departments, you're saying that each POBOR case costs only \$60. Finally, Mr. Burdick noted that local governments agreed to propose the \$302 rate.

Ms. Juliana Gmur, representing CSAC-SB 90 Service, stated that the \$302 rate was based on, and accurately reflects the original Statement of Decision for the POBOR program.

Ms. Higashi pointed out that table 4 in the staff analyses shows that if the \$302 rate were adopted, a majority of counties would be reimbursed well more than they claimed.

Lieutenant David McGill, Los Angeles Police Department, provided his credentials and 21-year employment history with the Department, and noted that \$60 per case is well below the cost of implementing the POBOR program. Lieutenant McGill stated that this process has been going on too long and the Los Angeles Police Department would like to end it. He reminded the Commission that POBOR is a very important program, and the investigations of peace officers must be held to the highest standard, and therefore, the cost of the investigation is not de minimis and certainly not \$60.

Ms. Carla Castañeda, Department of Finance, concurred with the staff recommendation to deny Finance's original proposal of \$56.74 per officer, and Los Angeles County's original proposal. However, Finance is opposed to the alternative proposal, because it gives the option of filing a reimbursement methodology or filing for actual costs. Ms. Castañeda stated that providing this option would result in increased costs to the state.

Ms. Molly Arnold, Department of Finance, added that Finance believes that providing claimants with an option of filing a reimbursement methodology or filing for actual costs could mean that the methodology does meet the statutory criteria of a reimbursement methodology, because the purpose of a methodology is to avoid actual costs.

Ms. Higashi responded that the actual cost section of the parameters and guidelines is not being amended; the reimbursement methodology is separate. Ms. Higashi stated that Los Angeles County's proposal provides a reasonable alternative that responds to situations where a jurisdiction finds that their costs escalated in a particular year because they had a major POBOR case.

Ms. Arnold continues to question whether or not it constitutes a reasonable reimbursement methodology. Chairperson Sheehan asked Ms. Arnold to clarify whether Finance believes the proposal does not meet the intent of the statute, or whether they are arguing that it is not allowed by the statute. Ms. Arnold responded that Finance is asking the Commission to reject the proposal.

Ms. Ginny Brummels, State Controller's Office reported that the State Controller's Office supports the staff recommendation, and is neutral on Finance's argument regarding providing both a reimbursement methodology and actual cost reimbursement.

Mr. Jim Spano, State Controller's Office, explained that his unit is responsible for the Controller audits, and asked Mr. Burdick: is your rationale to reject the staff recommendation and just claim actual costs.

Mr. Burdick responded yes, and stated that since the underlying parameters and guidelines exclude reimbursement for the largest component of the program – interrogations – their position is to reject the proposal before the Commission today and possibly request additional amendment to the parameters and guidelines. He reiterated that Los Angeles County's alternate proposal is too low.

Chairperson Sheehan responded that under the alternate proposal, claimants may still file for actual costs. Camille Shelton, Chief Counsel, clarified that the Commission does not have jurisdiction to consider any costs for interrogation or investigation because those are not reimbursable activities. The only jurisdiction the Commission has is the consideration of the three proposals before the Commission today.

Member Worthley stated that he struggles with basing so much of the decision on audits. Because the audits reflect attempts at trying to recover more than what a claimant may be entitled to. He stated that under several audits, the costs were zero, meaning the claims were reduced to zero, and questioned if that meant we should assume that the claimant's costs are zero. He stated that the claimant's costs are not zero because the only reason they were reduced to zero was for not providing proper information. Therefore, we're then taking an average that includes those failed efforts and using that to drive the price.

Member Sheehan asked the State Controller's Office to respond. Mr. Spano responded that the calculation excludes cities and counties that have zero allowable costs. Mr. Spano also clarified that only 3% of reductions are attributed to lack of documentation. The remaining reductions are based on their interpretation of the parameters and guidelines and what is outside the scope of the mandate. Here, that is interrogation and investigation costs. Mr. Spano also stated that during the audit process, if a claimant shows documentation to support costs we will allow it. Or claimants may conduct a time study to support the costs.

Lieutenant McGill responded that the ongoing argument is over what local governments believe is reimbursable and what the state says is reimbursable. He added that Los Angeles Police Department did conduct a time study, and continued to "get close to zero percent."

Member Worthley stated that \$60 to complete one claim is ludicrous. Again, this is the wrong way to develop a methodology. However, he supported staff's approach to using a low number that may work for many claimants, or they may still file for actual costs.

Ms. Annette Chinn, Cost Recovery Systems, representing approximately 40 smaller jurisdictions, reminded the Commission that Los Angeles County's alternative proposal is based on audited claims, when only one percent of local agencies have been audited.

Member Glaab stated that staff was recommending denial of the first two proposals, not because there is a disagreement about the dollar amount, but because they do not satisfy the statutory requirements for a reasonable reimbursement methodology. Mr. Glaab asked if it was possible to develop a reasonable reimbursement methodology. Ms. Higashi responded that what is reasonable is going to be up to the Commission. The Commission can only vote for what is placed before it, and is not authorized to negotiate a different methodology.

Ms. Higashi also stated that while the audit population is small, it is also representative of local governments because it includes small and large cities and counties from all over the state that employ over 50 % of all peace officers employed by local agencies in California.

Member Worthley stated that adoption today does not foreclose claimants from returning to the Commission with another request for amendment if they determine the rate is too low.

Member Bryant stated that she was concerned that the 2008 statute that allows reasonable reimbursement methodology was meant as an "either/or;" either a reimbursement methodology or actual costs. Ms. Higashi clarified that those terms apply only to reimbursement methodologies that are negotiated between local governments and Finance and applied in lieu of parameters and guidelines. She added that parameters and guidelines are before the Commission today.

Ms. Arnold clarified that Finance is not arguing that this proposal cannot be done, but may not constitute a real reimbursement methodology.

Member Worthley stated that it is still a worthwhile venture because it will allow more jurisdictions to use the methodology that will allow for administrative ease, which will then provide administrative ease to our staff. And, again, if we find that the number is too low, it can be revisited. Member Worthley then made a motion to approve the staff recommendation.

With a second by Member Olsen, the staff recommendation was adopted by a vote of 6-0, with Member Bryant abstaining.

[Chairperson Sheehan called a short recess at 10:47 a.m., and the meeting resumed at 10:58 a.m.]

- Item 7 *Graduation Requirements*
4181A, 05-PGA-05, 06-PGA-04, 06-PGA-05
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)
San Diego Unified School District, Castro Valley Unified School District, Clovis Unified School District, San Jose Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, Sweetwater Union High School District, Mountain View-Los Altos Hill High School District, and State Controller's Office, Requestors

Ms. Higashi stated that Mr. Art Palkowitz, the representative for one of the claimants, San Diego Unified School District, was unable to be at the hearing due to car trouble. Mr. Keith Petersen, the representative for co-claimants, is requesting a continuance of this matter. At the same time, all parties agree to further briefing for some of the issues. Therefore, Ms. Higashi requested that the Commission put the matter over. Member Sheehan agreed.

STAFF REPORTS

- Item 9 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton stated that the San Diego Unified School District case has been moved to the May 30th hearing. She also stated that the Commission is still awaiting a decision on *State of California, Department of Finance v. Commission on State Mandates, et al.*, regarding the Integrated Waste Management program.

- Item 18 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi provided updates on budget hearings, and explained that, the Legislative Analyst's Office supports the Commission's baseline budget without the Governor's proposed 10 % reduction.

Ms. Higashi introduced new staff members Chris Wong and Efrain Alanis. She then reminded the Commission members of the dates of the upcoming hearings.

PUBLIC COMMENT

There was no public comment.

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

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. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
2. *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*, Third District Court of Appeal, Case No. C055700; [AB 138; *Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II*]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights – School Districts and Special Districts]
4. *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*]
5. *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*]
6. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [Reconsideration of School Accountability Report Cards (SARC I)]

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).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Hearing no further comments, Chairperson Sheehan 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

At 11:16 a.m., Chairperson Sheehan reconvened in open session, and 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 pursuant to 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, Chairperson Sheehan adjourned the meeting at 11:17 a.m.


PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:37 a.m.
DATE: Friday, March 28, 2008
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for MICHAEL GENEST
Director, State Department of Finance

CYNTHIA BRYANT
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

J. STEVEN WORTHLEY
Supervisor and Chairman of the Board
County of Tulare



A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Items 6 and 10)

NANCY PATTON
Assistant Executive Director

CAMILLE SHELTON
Chief Legal Counsel
(Items 2 and 9)

ERIC FELLER
Senior Commission Counsel



A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 2:

For Claimant Sacramento Metropolitan Fire District:

JULIANA F. GMUR
Manager, Cost Services
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

For California State Association of Counties SB-90
Service:

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

Appearing Re Item 6:

For the Los Angeles Police Department

DAVID W. MCGILL
Lieutenant II
Adjutant, Office of the Chief of Staff
Los Angeles Police Department
150 N. Los Angeles Street, Room 613
Los Angeles, CA 90012

For the County of Los Angeles:

LEONARD KAYE, ESQ.
County of Los Angeles
Department of Auditor-Controller
500 West Temple Street, Suite 603
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For California State Association of Counties SB-90
Service:

ALLAN BURDICK
California State Association of Counties
SB 90 Service

JULIANA F. GMUR, Esq.
California State Association of Counties
SB 90 Service

For the Department of Finance:

MOLLY ARNOLD
State Capitol
Room 1145
Sacramento, California 95814

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

For the State Controller:

GINNY BRUMMELS
Manager, Local Reimbursements Section
Accounting & Reporting Division
State Controller
3301 C Street, Suite 500
Sacramento, California 95816

JIM SPANO
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 518
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For Cost Recovery Systems, Inc.:

ANNETTE S. CHINN
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, #294
Folsom, California 95630

Appearing re Item 7

For Co-Claimaints:

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

ALSO PRESENT

CHRIS RYAN
State Controller's Office
300 Capitol Mall
Sacramento, California 95814

DIANA D. HALPENNY, ESQ.
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, California 95814

KIMBERLY LEAHY
Assistant Finance Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

ALSO PRESENT

JEANNE OROPEZA
Department of Finance
915 L Street
Sacramento, California 95814

DAVID E. SCRIBNER
President/CEO
Scribner & Smith
2200 Sunrise Boulevard, Suite 220
Gold River, California 95670



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Commission on State Mandates – March 28, 2008

1 BE IT REMEMBERED that on Friday, March 28,
2 2008, commencing at the hour of 9:37 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:

6 --oOo--

7 CHAIR SHEEHAN: I would like to call
8 the March 28th meeting of the Commission on State
9 Mandates to order.

10 Could the clerk call the roll?

11 MS. HIGASHI: Ms. Bryant?

12 MEMBER BRYANT: Here.

13 MS. HIGASHI: Mr. Chivaro?

14 MEMBER CHIVARO: Here.

15 MS. HIGASHI: Mr. Glaab?

16 MEMBER GLAAB: Here.

17 MS. HIGASHI: Mr. Lujano?

18 MEMBER LUJANO: Here.

19 MS. HIGASHI: Ms. Olsen?

20 MEMBER OLSEN: Here.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: Ms. Sheehan?

24 CHAIR SHEEHAN: Here.

25 MS. HIGASHI: Thank you.

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1 CHAIR SHEEHAN: Thanks. We have a quorum.

2 All right. The first item of business are
3 the minutes of the previous meeting.

4 MEMBER GLAAB: Madam Chairman, I'll be
5 abstaining on that item as I was not present.

6 MEMBER OLSEN: And so will I.

7 CHAIR SHEEHAN: All right.

8 Are there any amendments, edits, changes to
9 the minutes from the members?

10 *(No response)*

11 CHAIR SHEEHAN: If not, we'll entertain a
12 motion for approval.

13 MEMBER WORTHLEY: So moved.

14 MEMBER LUJANO: Second.

15 CHAIR SHEEHAN: We have a motion and a second.

16 All those in favor, say "aye."

17 *(A chorus of "ayes" was heard.)*

18 CHAIR SHEEHAN: Any opposed?

19 And then the minutes will reflect the
20 abstention of the two who were not here.

21 Okay, let's see.

22 MS. HIGASHI: This brings us to the proposed
23 Consent Calendar.

24 CHAIR SHEEHAN: Oh, yes. Okay. With the blue
25 sheet in front of us.

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1 MS. HIGASHI: It's a blue sheet. We have Items
2 4, 5, and 8.

3 On Item 5, I just want to note that over the
4 last couple of days, a revision was negotiated with all
5 the parties to the reimbursable activities section. This
6 language has been agreed to by everyone, as far as I
7 know. And with that one modification, this is the
8 proposed Consent Calendar that we recommend.

9 CHAIR SHEEHAN: Okay, any objections or
10 comments on the Consent Calendar?

11 Any comments from the audience on this?

12 *(No response)*

13 CHAIR SHEEHAN: All right, if not, then we will
14 entertain a motion to approve the Consent Calendar.

15 MEMBER GLAAB: So moved.

16 MEMBER CHIVARO: Second.

17 CHAIR SHEEHAN: We have a motion and a second
18 to approve the Consent Calendar with the modification.

19 All those in favor, say "aye."

20 *(A chorus of "ayes" was heard.)*

21 CHAIR SHEEHAN: Any opposed?

22 That is approved.

23 MS. HIGASHI: Since we've postponed Item 3,
24 which is the test claim, we will not be swearing in
25 witnesses today.

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1 CHAIR SHEEHAN: Okay.

2 MS. HIGASHI: And we can go directly to Item 2.
3 And Chief Counsel Camille Shelton will present that
4 appeal.

5 CHAIR SHEEHAN: Okay. Okay, we postponed 3?

6 MS. HIGASHI: Item 3.

7 CHAIR SHEEHAN: I must have missed something.

8 MEMBER WORTHLEY: It was in this morning's
9 e-mail.

10 CHAIR SHEEHAN: Yes, I've been in meetings
11 since 8:30.

12 Okay, great. That's fine.

13 Anything else you'd like to postpone?

14 MS. SHELTON: Make the day go faster.

15 MS. HIGASHI: We are going to lock the doors at
16 noon on the day before hearings.

17 CHAIR SHEEHAN: Exactly.

18 MS. HIGASHI: And turn off the fax.

19 MS. SHELTON: Item 2 is an appeal of the
20 Executive Director's decision to disallow a test claim
21 amendment filed by Sacramento Metropolitan Fire District
22 to the LAFCO test claim. The proposed amendment pleads
23 an additional 178 Government Code statutes to the
24 original claim.

25 The test-claim amendment was disallowed because

1 a complete test-claim amendment that satisfies the
2 requirements of Government Code section 17553 and
3 section 1183 of the Commission's regulations was not
4 timely filed.

5 The law requires that all test claims and
6 test-claim amendments include information supported by
7 declarations signed under the penalty of perjury, showing
8 the actual increased costs incurred by the claimant
9 during the fiscal year the claim was filed to implement
10 the alleged mandate, and the actual or estimated annual
11 costs that will be incurred by the claimant.

12 This information has not been provided by the
13 appellant.

14 The appellant was given an additional 30 days
15 to file a complete test-claim amendment after it was
16 first notified of the filing deficiencies.

17 The second document filed by the appellant
18 still does not satisfy the filing requirements.

19 Government Code section 17553 does not give
20 the Commission jurisdiction to accept any further filings
21 to perfect the requirements of the proposed amendment.
22 Thus, for the reasons stated in the analysis, staff
23 recommends that the Commission deny the appeal and uphold
24 the Executive Director's decision to disallow the
25 proposed test-claim amendment pursuant to Government Code

1 section 17553 and section 1183 of the Commission's
2 regulations.

3 Will the representatives please state your
4 names for the record?

5 MS. GMUR: Juliana Gmur on behalf of the
6 Sacramento Metropolitan Fire District.

7 CHAIR SHEEHAN: Very good.

8 MS. GMUR: Good morning, Commissioners.

9 We get to present to you something a little
10 different today. And after hearing from Ms. Shelton, it
11 sounds pretty dire. But let us begin with the LAFCO test
12 claim.

13 As you may recall, the LAFCO test claim was
14 filed, and it was limited, as far as the claimants are
15 concerned, to special districts.

16 Indeed, it was filed by a special district.
17 The fire district filed it. And after some research and
18 reflection, it was decided that it needed to be amended
19 because cities and counties also have costs and so we
20 needed to expand the list of claimants -- or potential
21 claimants under the test claim.

22 So the amendment was filed.

23 Now, the question then became, as far as we
24 were looking for how to present the information, is we
25 need to have a declaration from the test claimant in

1 support of the costs.

2 The problem is that the test claimant, being a
3 fire district, they had no dog in the fight. And so they
4 have no costs under the amendment. The amendment is to
5 include other claimants. And they, indeed, actually were
6 bifurcated; and so they had costs under the test claim
7 which were pled under the test claim, but that was done
8 at a time when the rules were different.

9 If we were on either side of the rules, if
10 these were both filed under the old rules or both filed
11 under the new rules, we wouldn't be here. So to the
12 extent that they had costs, it was filed under the old
13 rules and in support of the underlying test claim.

14 As far as the amendment is concerned, they
15 wouldn't be a claimant under the amendment, and they had
16 no costs. But we can't leave Commission staff hanging.

17 So the question became, where do we get best
18 evidence? And so we perceived that best evidence, we
19 thought that LAFCOs could probably provide reliable
20 information. It's not unheard of to go to various
21 agencies to try to get most accurate information. It's
22 been done in the past. So we went to a LAFCO and,
23 indeed, we bore fruit. We ended up with a declaration.
24 They were able to give us information very quickly, and I
25 thought it was, indeed, an advantage since the

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1 information came from a LAFCO, it was both information
2 for cities and counties. And then it served as a basis
3 for us to pursue the statewide cost estimate, again,
4 based on easy-to-access numbers that are accurate.

5 So here we are.

6 This is not a case of sloppy filing. This is
7 not a case of, "Let's play hide the ball with the
8 Commission." This is just an extremely unique set of
9 circumstances. I don't know if Commission staff has ever
10 seen anything like it.

11 In the past, my experience with amendments is
12 that you're amending new activities for that test
13 claimant. So, of course, there would be additional
14 costs.

15 In this case, it's almost a switch-up of test
16 claimants. And, indeed, they were so gracious to file
17 it. But as I said, they really have no interest in
18 pursuing it. Once we get off the ground, we want to
19 substitute in a new test claimant who will be able to
20 better represent the future claimants and provide better
21 testimony and declarations.

22 That's where we are.

23 CHAIR SHEEHAN: Before I ask Camille to address
24 it, any questions from the Commission members for the
25 witness?

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1 MEMBER WORTHLEY: I guess I have a question.

2 CHAIR SHEEHAN: Yes.

3 MEMBER WORTHLEY: So as I understand it, your
4 position is that you really had no alternative. You
5 could not have pled a different party that could have
6 provided the facts in your amendment.

7 MS. GMUR: You know, I don't know. I have
8 looked through the information, and I haven't found
9 anything that says definitively who can amend a test
10 claim. But I believe that we do not want to be put in a
11 position where anybody can go in and amend someone else's
12 claim.

13 Usually, the test claimant controls what
14 they're doing. So we were expanding the claimants, but
15 we had the original test claimant still in there --

16 MEMBER WORTHLEY: I see. So the idea is --

17 MS. GMUR: -- until we can sub them out.

18 MEMBER WORTHLEY: -- we don't allow new parties
19 to enter into it. We are stuck with the parties that
20 began the process and --

21 MS. GMUR: My understanding is that Sacramento
22 Metro had to amend, but that a party can be substituted
23 in to take over for a test claimant.

24 And in this case, that's the direction we were
25 heading. We were looking for test claims to come in and

1 step in and take over. They are not well-suited, but
2 they are in the position to amend.

3 CHAIR SHEEHAN: Did you want to add?

4 MR. BURDICK: Madam Chairman and Members, I'm
5 Allan Burdick on behalf of the CSAC SB 90 Service.

6 And what I'd like to tell you is, to remind
7 people, you've heard this before, but this test claim was
8 filed under the rules a number of years ago in which a
9 local agency filed -- in this case, a special district
10 was a local agency -- on behalf of all local agencies.
11 And so this was intended originally and thought by local
12 agencies, cities and counties, that this claim filed by a
13 local special district would have had application to
14 everybody.

15 Subsequently, the law hasn't been changed; and
16 that was raised and discussed, you know, during the
17 hearing on the test claim.

18 But, you know, that's the issue they had all
19 along, is that because the requirement is, you know,
20 usually for a single test claimant and a local agency at
21 that time would step forward -- so it could be a city as
22 an example, you know, for all cities and for counties --
23 cities, counties, and special districts or whatever.

24 And, as you know, we normally have one test
25 claimant. And so locals were operating under the

1 expectation that this was going to be representing
2 everybody as it went forward.

3 So I just wanted to kind of point that out,
4 how we got into the situation where Sacramento
5 Metropolitan Fire District is caring for -- this LAFCO
6 statement was the most significant change in LAFCO law.
7 You know, it's not just a minor thing; it was a huge
8 effort, participating, you know, that went on at that
9 time.

10 And when the test claim went forward, you know,
11 at that point cities and counties were under the belief
12 that because you had one test claimant, that they were
13 being covered.

14 MEMBER WORTHLEY: Thank you.

15 CHAIR SHEEHAN: Camille?

16 MS. SHELTON: If you turn to page 5 of the
17 analysis, there's a discussion of what the Commission's
18 regulations do provide. And the addition or
19 substitution of a claimant is not an amendment, and
20 that's specifically defined in the Commission's
21 regulations, and it has been that way for quite a long
22 time.

23 If they wanted to add in specific claimants
24 to the original claim, they did not need to file a
25 test-claim amendment.

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1 The original claim was filed in 2003. It went
2 out with a draft staff analysis in 2007. It went out as
3 a draft, indicating that the analysis was made only with
4 respect to independent special districts.

5 There were no comments filed on that issue.
6 It went to hearing with a final staff analysis the same
7 way. There were no comments made at the hearing until
8 Mr. Burdick raised the issue and indicated that a
9 test-claim amendment had been filed.

10 This proposed amendment has not been filed
11 by a city or a county. It's still filed by Sacramento
12 Metropolitan Fire District. And it's filed
13 two-and-a-half years after Government Code 17553 was
14 amended to specifically require that the claimant itself
15 file a declaration of actual costs incurred for that year
16 and a declaration of estimated or actual costs for future
17 years. And I don't have any declarations in this record
18 at all from the claimant.

19 The only declarations in the record are one
20 from Mr. Burdick which, you know, does try to show a
21 statewide cost estimate based on LAFCOs. And if we had
22 the declarations from the claimant, that may work because
23 you have --

24 CHAIR SHEEHAN: We don't.

25 MS. SHELTON: -- you have information on there

1 about Fresno County LAFCO and how much they predicted
2 their percentages of increased activity would be, which
3 would be filtered down to their members.

4 But there's no evidence in the record
5 whatsoever about any costs incurred by Sac Metro.

6 MS. GMUR: No.

7 MS. SHELTON: For this amendment, there is no
8 evidence in the record for this --

9 MS. GMUR: For the amendment.

10 MS. SHELTON: -- and there's also a decision on
11 the original claim, which is a final decision.

12 MS. GMUR: True, true. And so that Sac Metro
13 can't at this point. But we are augmenting an existing
14 record. This isn't a new test claim. This is an
15 amendment of an original.

16 And to the extent that Sac Metro did have
17 costs, because they did under the test claim, that was
18 pled as part of the original test claim. And they don't
19 have costs now.

20 MS. SHELTON: Okay, but they've pled 178
21 additional statutes, and you have to satisfy the
22 requirements of Government Code section 17553 with
23 respect to the statutes that you're now claiming.

24 MS. GMUR: And the new statutes that we're now
25 claiming affect cities and counties, and they still don't

1 have costs under those.

2 This has really been a quandary when we put it
3 together to try to figure out how to get -- and it's
4 penalty of perjury. So Sac Metro -- Sac Metro has to
5 state under penalty of perjury what their costs are. So
6 we couldn't have them fudge a document. So they did
7 state in the record on this original test claim, which
8 was filed and was signed and they had costs. So that's
9 there for that cost.

10 And so in order to show costs on this one,
11 without something from the test claimant, we were left
12 finding data elsewhere, which we did.

13 MS. SHELTON: The requirements for filing a
14 test-claim amendment are the very same as the
15 requirements for filing a test claim. They're no
16 different.

17 I maybe suggest that this is not the right
18 claimant to have if they have no costs. I mean, because
19 to file a test-claim amendment, you have to show that
20 you've incurred actual costs.

21 MEMBER WORTHLEY: Madam Chairman, a question I
22 might have for our staff.

23 Then what could they have done? I mean, it
24 seems to me that they proceeded under an old rule under
25 which they are now trying to do would have been

1 acceptable.

2 The rules changed midstream, and now you have
3 to have special claimants.

4 And we're saying, but you can't amend your
5 claim to add new parties.

6 MS. SHELTON: They could have added
7 co-claimants to the original test claim at any point in
8 time. That was not considered an amendment. All that
9 you needed to do was to get the agreement from Sac Metro
10 and a letter filed saying, "We are adding the County of
11 Sacramento as a co-claimant." That's all they needed to
12 do.

13 MEMBER WORTHLEY: Has the statute of
14 limitations not run on their ability to do that?

15 MS. SHELTON: I haven't checked the substantive
16 issues on this. This is just a completeness review. I
17 don't know offhand, with all the statutes that they've
18 pled, whether we have or not.

19 MEMBER WORTHLEY: So that might still be an
20 opportunity for them to do that?

21 MS. HIGASHI: It doesn't --

22 MS. SHELTON: If they have the opportunity to
23 file a new test claim with a period of reimbursement,
24 yes. And those issues would have to be determined under
25 a separate completeness review if they did that.

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1 CHAIR SHEEHAN: But I think he asked if they
2 could --

3 MS. HIGASHI: Look at the statutes.

4 CHAIR SHEEHAN: The statutes run on the first
5 test claim to be able to add people -- isn't that what
6 you asked, Steve?

7 MEMBER WORTHLEY: Right.

8 MS. SHELTON: The statutes have run on the
9 first test claim, yes. But that claim had been
10 pending -- they filed it in '02. Excuse me, it was
11 resolved in '07.

12 CHAIR SHEEHAN: So what you're saying is they
13 had the opportunity to add people up until that time.

14 MS. GMUR: And if I may address that?

15 CHAIR SHEEHAN: Sure.

16 MS. GMUR: I personally did not file the
17 initial test claim. So when the draft staff analysis
18 come out and said it was limited to special districts, no
19 red flags went off in my head.

20 It wasn't until later analysis that -- I cannot
21 say one way or the other what the intent is.

22 Here's what I can say: The section with regard
23 to the pleading for special districts is clearly there in
24 the test claim. The problem is that there are a couple
25 of throwaway sentences talking about cities and counties.

1 It's not enough to hang my hat on. I can't
2 come back to them and say we pled it properly. We didn't
3 plead it properly. But it's not -- it's enough for me to
4 think maybe the intent was there, but that it wasn't
5 followed through.

6 I can't speak as to that. I wasn't privy to
7 anything that was happening at that time.

8 So all I can say is by the time it dropped on
9 my plate, we looked at it first to say, "Gee, were they
10 supposed to be included?" And then do the legal
11 analysis. Maybe there wasn't a purpose behind the
12 exclusion to see if there was -- and I must say that we
13 could have added parties, true, at the time; but the
14 statutes to support those parties was not pled.

15 It is a large bill with a lot of statutes in
16 it. And a few were pled. That scope needed to be
17 expanded, the future claimants needed to be added for it
18 to be complete. That's where we are.

19 CHAIR SHEEHAN: And that's definitely the
20 conundrum we're in, in terms of --

21 MS. GMUR: And I don't know that any other
22 party could have stepped in to amend. I don't think that
23 a county could step in and say, "I'm going to amend LAFCO
24 and I'm going to make it bigger." "I'm going to add
25 statutes to your test claim."

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1 MS. SHELTON: No, that's correct. To add a
2 party to the original claimant, the original claimant is
3 going to have to agree, obviously.

4 MS. SHEEHAN: Right.

5 MS. SHELTON: And the letter has to be signed
6 by the original claimant.

7 What they could have done was added counties
8 and cities as a co-claimant and then at that point
9 amended their claim to add more statutes if they wanted
10 to do that.

11 CHAIR SHEEHAN: Right.

12 MS. SHELTON: And even if they did amend more
13 statues for counties and cities, they would have still
14 had to have filed a declaration of costs. I mean, you
15 still need to have a declaration of costs from the
16 agency.

17 CHAIR SHEEHAN: Right, right.

18 MS. GMUR: And that's the problem. We have a
19 declaration of costs. It's not the test claimant.

20 But I was relying on the fact that what the
21 test claimant had filed in the past was sufficient; and
22 I didn't see any reason they couldn't refile now anything
23 new. And what they had filed in the past was deemed
24 acceptable because it was filed under the old rules.

25 CHAIR SHEEHAN: But resolved already. So

1 that's sort of the conundrum that we're in.

2 MS. GMUR: But with an amendment, you're still
3 augmenting an existing record. It's not a new test
4 claim. A new test claim wouldn't be a problem.

5 CHAIR SHEEHAN: We wouldn't be here.

6 MS. GMUR: So again, this is just a really
7 weird set of circumstances. I don't think that we've
8 been here before. This is just too strange.

9 MS. SHELTON: It is different.

10 The other factor that you need to consider,
11 too, is that the proposed amendment was severed from the
12 original test claim. So you can't piggyback. They've
13 been bifurcated completely.

14 MS. GMUR: Well, it wasn't bifurcated at the
15 time the original was filed. We filed prior to
16 bifurcation. That's why it was bifurcated because of the
17 filing of the amendment.

18 So I didn't know --

19 CHAIR SHEEHAN: But regardless, it was
20 bifurcated.

21 MS. GMUR: We are in uncharted territory
22 here, we really are. And I couldn't find any very clear
23 guidance on which way to go. We tried to put best
24 evidence forward.

25 CHAIR SHEEHAN: All right, well, I think the

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1 staff recommendation is to deny --

2 MS. SHELTON: To deny the appeal and uphold the
3 Executive Director's decision to disallow.

4 CHAIR SHEEHAN: Uphold Paula's decision on
5 that.

6 All right, any further questions on that?

7 *(No response)*

8 CHAIR SHEEHAN: What is the will --

9 MEMBER BRYANT: I'll move the staff
10 recommendation.

11 CHAIR SHEEHAN: Is there a second?

12 MEMBER LUJANO: I'll second.

13 CHAIR SHEEHAN: Okay, we have a motion to
14 approve the staff recommendation.

15 All those in favor, say "aye."

16 *(A chorus of "ayes" was heard.)*

17 CHAIR SHEEHAN: Any opposed?

18 MEMBER WORTHLEY: No.

19 CHAIR SHEEHAN: All right, Mr. Worthley will be
20 reflected as voting no.

21 Thank you.

22 MS. GMUR: Thank you so much.

23 CHAIR SHEEHAN: That's a tough one.

24 Okay, on to --

25 MS. HIGASHI: Another binder.

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1 CHAIR SHEEHAN: Yes.

2 What are we on to now? 6?

3 Item 6; right?

4 MS. HIGASHI: This brings us to Item 6.

5 CHAIR SHEEHAN: All right.

6 MS. HIGASHI: Item 6, Request to Amend
7 Parameters and Guidelines, Peace Officers Procedural Bill
8 of Rights.

9 This item addresses three proposals to amend
10 the parameters and guidelines for the Peace Officers
11 Procedural Bill of Rights program.

12 Pursuant to Government Code section 17557,
13 the Commission has the authority after public notice and
14 a hearing to amend, modify, or supplement parameters and
15 guidelines. In adopting parameters and guidelines, the
16 Commission is required to consult with the Department of
17 Finance, the affected state agency, the Controller, the
18 Fiscal and Policy Committees of the Assembly, Senate,
19 Leg. Analyst, and the claimants to consider a reasonable
20 reimbursement methodology that balances, accuracy with
21 simplicity.

22 The POBOR program, the decisions of the
23 Commission, the audits by the State Controller's Office
24 and the Bureau of State Audits report on this program
25 have a long history. However, today, the only issues

1 before the Commission are two proposed reasonable
2 reimbursement methodologies in lieu of actual costs
3 claimed, and an alternate proposal that would add a
4 reasonable reimbursement methodology as an option to
5 claiming actual school costs.

6 All of the proposals are effective for the
7 reimbursement period beginning on July 1, 2006.

8 The Department of Finance requests that the
9 parameters and guidelines be amended to reimburse each
10 eligible local agency at the rate of \$56.74 per officer.

11 Los Angeles County's original proposal is to
12 reimburse each jurisdiction \$302.37 per officer.

13 Los Angeles has also submitted an alternate
14 proposal which would be to allow claimants to continue
15 to claim actual costs or to claim based on a reasonable
16 reimbursement rate of \$36.86 per officer.

17 Government Code section 17518.5, as amended by
18 AB 1222, defines a reasonable reimbursement methodology
19 to mean a formula for reimbursing local agencies and
20 school districts for costs mandated by the State.

21 The new definition requires that two elements
22 be met. A reasonable reimbursement methodology shall be
23 based on cost information from a representative sample of
24 eligible claimants, information provided by associations
25 of local agencies and school districts, or other

1 projections of local costs. It shall also consider the
2 variation in costs among local agencies and school
3 districts to implement the mandate in a cost-efficient
4 manner.

5 Staff finds that the Department of Finance and
6 the L.A. County proposals satisfy the first element of
7 the new definition but do not satisfy the second element
8 of the definition.

9 Staff also finds that the County's alternate
10 proposal of \$36.86 per officer satisfies both elements of
11 the definition for the following reasons: It is based on
12 cost information from a representative sample of eligible
13 claimants, and it considers the variation in costs among
14 local agencies to implement the mandate in a
15 cost-efficient manner.

16 However, staff recommends that the County's
17 alternate proposal be updated to include two additional
18 audits issued by the State Controller's Office in 2008,
19 and to apply the current implicit price deflator to
20 their calculations. This technical modification would
21 change the County's formula to result in a recalculated
22 rate of \$37.25 per officer.

23 Staff also finds that the County's alternate
24 proposal allows eligible claimants to be reimbursed based
25 on actual costs or reasonable reimbursement methodology

1 and, thus, "balances accuracy and simplicity."

2 Therefore, staff recommends that the Commission
3 deny the Department of Finance's proposal of \$56.74 and
4 L.A. County's original proposal of \$302.74 because they
5 do not satisfy the requirements for a reasonable
6 reimbursement methodology and adopt L.A. County's
7 alternate proposal as updated by Commission staff. And
8 that is \$37.25. And it would also allow actual
9 cost-claiming to remain.

10 And then staff finally recommends that the
11 Commission authorize staff to make any nonsubstantive
12 technical corrections to the P's & G's following the
13 hearing if adopted.

14 Would the parties and witnesses state their
15 names for the record?

16 LT. MCGILL: Lieutenant David McGill,
17 Los Angeles Police Department.

18 MR. KAYE: Leonard Kaye, County of Los Angeles.

19 MR. BURDICK: Allan Burdick on behalf of the
20 CSAC SB 90 Service.

21 MS. ARNOLD: Molly Arnold, Department of
22 Finance.

23 MS. CASTAÑEDA: Carla Castañeda, Department of
24 Finance.

25 MS. BRUMMELS: Ginny Brummels, State

1 Controller's office.

2 MR. SPANO: Jim Spano, State Controller's
3 office.

4 CHAIR SHEEHAN: Who would like to start?

5 MR. KAYE: Thank you.

6 We initially proposed a reimbursement rate of
7 \$302.74. That, as you just heard, Commission staff found
8 was not adequate. It was not based on audit findings;
9 the final audit reports are not.

10 It was based upon certain assertions -- I won't
11 go into the details on the record -- that we in good
12 faith believed justified -- and we still do believe that
13 it's justified, the \$302.74 is absolutely justified, but
14 it's not audit-based.

15 And I understand the same situation occurred in
16 the Finance rate of \$56.74. That was based, I believe,
17 on the same general types of State Controller's Office
18 assertions of a high-ranking official which they, in good
19 faith, I'm sure, agreed that. But that would also not be
20 audit-based.

21 As Paula had indicated, we then developed an
22 alternate proposal. Feeling that particularly with the
23 long and troubled history for the POBOR's reimbursement
24 program, that this should be the beginning of the end.
25 That finally, we should come to some stipulation and

1 really give practical effect to a rate-setting mechanism
2 that all of us in this room have worked very, very hard
3 to have come about. And so I'm very proud to say that we
4 developed a rate which is based, as Paula had indicated,
5 on final audit findings of the State Controller's Office.

6 And that's not to say we're happy about it or
7 this or that. But we did that. That's an historical
8 fact and we filed that.

9 And we know absolutely that one size doesn't
10 fit all; that what's good for L.A. County is not
11 necessarily good for the state, although we believe
12 that's the case.

13 CHAIR SHEEHAN: Of course, they all do in L.A.

14 MR. KAYE: Yes.

15 What we firmly believe is that each local --
16 eligible local claimant should be given a choice. They
17 should be given the choice to accept what we understand
18 to be very, very important to the State, that it be an
19 audit-based model. And if they don't want to go to an
20 audit-based model and its result, then we feel they
21 should be given the right to file actual cost claims
22 which, of course, are subject to audit.

23 So there you have it.

24 And so we have no further qualifications or
25 conditions and urge your adoption of staff's

1 recommendation this morning.

2 Thank you.

3 CHAIR SHEEHAN: Yes, Allan?

4 MR. BURDICK: Well, I have to say, I'm slightly
5 flabbergasted with Mr. Kaye's comments to recommend that
6 you don't adopt his \$302 rate; and if you don't adopt
7 that rate, then to consider the other rate.

8 I think on behalf of 57 other counties,
9 489 cities, we are here to support the \$302 rate --

10 MEMBER WORTHLEY: Which is a reduction of your
11 five-hundred-and-something.

12 MR. BURDICK: -- which is a reduction of the
13 \$528, which was the original rate.

14 And I think there's a couple of things that
15 we're doing, basing our -- and I have here today
16 Lieutenant Dave McGill of the Los Angeles Police
17 Department who actually came here to testify but also
18 to answer questions on this, because I think he's the
19 only one in the room probably that actually managed an
20 internal affairs operation and understands this
21 particular mandate.

22 But the question is, it gets back to the
23 accuracy of these numbers. And from our standpoint, what
24 we like to do is to say we think the \$302 is the only way
25 it may approach some accuracy. I think at this point,

1 the \$302 rate still would only reimburse the City of
2 Los Angeles about half of its costs.

3 If you look at that rate and you apply it to
4 the largest police department in the state of California,
5 essentially you're saying that each case would cost \$60.

6 Now, we have agreed with our local labor unions
7 and others that we do not want to have a case-based rate.
8 But if you did that just for calculation purposes in
9 terms of accuracy, it would be \$60.

10 And I don't think that you could look at an
11 internal affairs department and officers looking at these
12 charges and believe a \$60 rate.

13 Now, in terms of supporting our \$302 rate in
14 the Los Angeles County proposal, which essentially was
15 where local government had agreed that they would bring
16 down their \$528 rate to \$300, when Los Angeles submitted
17 its \$302 rate, I think all local agencies looked at that
18 as being submitted on behalf of their particular position
19 of the \$300.

20 I would like to just kind of point out to the
21 people, this is the first RRM that is being considered
22 under the new statute, under 1222, that went into effect
23 in January.

24 If I can just quickly kind of go back about two
25 years, when we had the reconsideration, you were directed

1 by the Legislature to reconsider the POBOR case. You
2 found your Statement of Decision was correct. We talked
3 about amending the parameters and guidelines at that time
4 and were instructed that that was not on the table at
5 that particular hearing. It was a reconsideration of
6 the decision. At that time Chairwoman Sheehan asked us
7 that we go back and consider developing a reasonable
8 reimbursement methodology under the provisions of the
9 statute at that time.

10 We went back, put proposals on the table, but
11 it was found that essentially trying to meet those
12 statutory requirements was nearly impossible. And that
13 is what led to the revision of the current RRM
14 requirements that you're considering today and the
15 application of those.

16 So what we want to do, first, I want to
17 quickly, in just a second, have Juliana Gmur review your
18 Item 6, which essentially also provides for, as
19 Lieutenant McGill is going to testify to the cost, that
20 his costs are based on this Statement of Decision and our
21 interpretation of this Statement of Decision, which does
22 include interrogation costs.

23 So with that, maybe I can have Ms. Gmur --

24 MS. GMUR: Very quickly, Juliana Gmur on behalf
25 of the SB 90 Service.

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1 CHAIR SHEEHAN: Did you want to add something
2 really fast, Paula?

3 MS. HIGASHI: No.

4 MS. GMUR: In support of the \$302, the legal
5 document upon which we're basing this is the original
6 Statement of Decision going back. We believe that this
7 amount accurately reflects what the Commission stated at
8 that time. And so that's our legal basis in support of
9 this number.

10 CHAIR SHEEHAN: For the 300 number?

11 Now, do you want to add something?

12 MS. HIGASHI: I just wanted to make one comment
13 before we got too far off from Mr. Burdick's comments
14 about support of the \$302 rate by the counties.

15 If you turn to table 4, which follows the staff
16 analysis, what it shows you is if the original L.A.
17 County rate were implemented, it shows you, just using
18 the base year of '04-05, how much counties would actually
19 be reimbursed based on the actual claims that they filed
20 in '04-05. And the Controller's Office comments did
21 point out to some of these problems.

22 But if you look in the far right column, you
23 see that until you get down to the last few counties,
24 everybody is reimbursed well more than they claimed, and
25 sometimes a few thousand percent more than is claimed.

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1 CHAIR SHEEHAN: Marin is the winner. Good.

2 MEMBER WORTHLEY: Followed closely by
3 El Dorado.

4 CHAIR SHEEHAN: Yes, so -- yes. Thanks, Paula.

5 MR. BURDICK: I'm sorry, I'm not finding that
6 table.

7 Is that based on claims filed, or is that based
8 on audited claims?

9 MS. HIGASHI: It's based on audited filed.

10 CHAIR SHEEHAN: Claims filed.

11 MS. HIGASHI: Claims filed.

12 MEMBER OLSEN: It's the page following page 22.

13 CHAIR SHEEHAN: Right after the Staff Analysis.

14 Yes, Sarah's right. It would be page 23 if
15 they were numbered.

16 MS. HIGASHI: But the conclusions from that
17 table are referenced in the Staff analysis. And the
18 table was included in the original draft that was issued
19 as well.

20 CHAIR SHEEHAN: Did you want to speak now?

21 Go ahead.

22 LT. MCGILL: Good morning, again. Lieutenant
23 David McGill from the Los Angeles Police Department. And
24 being between these two gentlemen, it seems to me to be
25 the beginning of the end.

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1 CHAIR SHEEHAN: L.A. is well represented.

2 LT. MCGILL: I've testified before in front of
3 this Commission. And I will make my comments brief.

4 Certainly, we in the City of Los Angeles
5 believe that interrogations of police officers, in terms
6 of POBOR, is certainly an aspect of POBOR that has to be
7 followed and should be reimbursed, and the rate of \$60
8 an hour -- or \$60-an-officer reimbursement is well below
9 the cost of basically an hour's worth of work for one
10 employee -- one of my employees.

11 But having spent 21 years with the police
12 department, with 10,000 employees, we are kind of the big
13 dog in the fight here.

14 And I do -- the City does want to end this.
15 You know, it's been going on too long. But I do want to
16 make a couple of comments.

17 I have experience in both the practical side
18 as an investigator and as supervisor, but also manager
19 of Internal Affairs. And for eight years of my 21 years
20 I've worked Internal Affairs. And I am also the former
21 vice president of Internal Affairs, National Internal
22 Affairs Investigators Association.

23 So it's important to never lose sight of the
24 opening paragraph of POBOR, where "The Legislature hereby
25 finds and declares that the rights and protection

1 provided to peace officers under this chapter constitute
2 a matter of statewide concern."

3 And that's the basis of my argument, that this
4 is a very important statute. It's very important to us
5 as Internal Affairs investigators, as managers of a law
6 enforcement agency, that we conduct business at the
7 highest standards. The public demands it. Peace
8 officers are held to a much higher standard than any
9 other employee. Their conduct is closely scrutinized,
10 more so than any other occupation, I think, in the public
11 or private sector. Therefore, the investigations of
12 peace officers have to be held with the highest standard.

13 Society demands it, a corrupt-free law
14 enforcement agency, corrupt-free law enforcement
15 officers, and POBOR helps us get there, both in spirit
16 and in the letter of the law.

17 It's broad. It covers all investigations, from
18 the very minor to the very difficult criminal allegations
19 that we investigate. In fact, one of the aspects of
20 POBOR, I'm sure you're aware, that it covers all
21 interrogations that could -- emphasize "could" -- lead to
22 punitive action.

23 I mean, that's a very broad statement, and we
24 take that very seriously. So all of our investigations
25 are very focused and very high standards of investigative

1 practices.

2 Other states are starting to develop their
3 POBORs legislatively, and best practices are starting to
4 be developed nationally to help us with this in terms of
5 both the National Internal Affairs Investigators
6 Association, also IACP.

7 Why? Because severe public scrutiny will
8 result if we don't conduct our investigations in that
9 manner.

10 The manner in which we interview and
11 interrogate police officers from beginning to end must
12 follow the mandates of POBOR and the standard practical
13 manner in which agencies conduct such interviews and
14 interrogations. And, therefore, the interrogation of
15 peace officers costs, we believe, must be reimbursable
16 in our opinion.

17 The cost of the investigation is not de minimis
18 and certainly not in the area of, in our opinion, \$30 or
19 \$60. It is substantial as evidenced by original claims
20 several years ago.

21 And those are my comments. And I'll certainly
22 answer any questions that you have.

23 CHAIR SHEEHAN: I've got a question for
24 Mr. Burdick.

25 But let's hear from the rest -- from Molly or

1 whoever --

2 MS. CASTAÑEDA: Carla Castañeda, the Department
3 of Finance.

4 We concur with the staff recommendation to deny
5 our original proposal of \$56.74 per officer. We also
6 concur with the staff recommendation to deny the
7 Los Angeles County original proposal.

8 We are opposed to the staff recommendation to
9 adopt the alternate proposal.

10 We're concerned that having the option to
11 file a reimbursement claim with either reasonable
12 reimbursement methodology or actual costs would result
13 in increased costs to the State due to adverse selection.

14 We would support either a reasonable
15 reimbursement rate or continue going with the actual
16 costs as they exist.

17 CHAIR SHEEHAN: Molly?

18 MS. ARNOLD: We'd like to address the question
19 of whether or not an alternative that is a stated rate or
20 actual cost really constitutes a reasonable reimbursement
21 methodology. The purpose of a reasonable reimbursement
22 methodology is to avoid having to do actual costs.

23 And that staff has suggested that it is an
24 appropriate alternative in order to achieve an RRM that
25 takes into account the costs that fluctuate among the

1 areas, we would suggest that's already built into the
2 RRM. It's the audit-based RRM methodology.

3 So we particularly oppose the concept of
4 having --

5 CHAIR SHEEHAN: The option?

6 MS. ARNOLD: -- an RRM that, within it, has an
7 option for actual costs.

8 MS. HIGASHI: Could I just respond?

9 CHAIR SHEEHAN: Sure.

10 MS. HIGASHI: I just wanted to make a
11 clarification.

12 We're not amending the actual costs part. The
13 RRM is the RRM. So when you collapse it together, I'm
14 not saying that that's necessarily the RRM, because we
15 also have P's & G's where there are RRMs built in within
16 the document, but only for certain activities, not the
17 entire program.

18 And so I'm not quite sure I get where you're
19 going with that. But I viewed L.A. County's proposal as
20 a reasonable alternative that does respond to the
21 arguments in terms of accuracy, whether it's L.A. or any
22 other jurisdiction, saying, "Our costs escalated this
23 year because we had a major case," whatever. They still
24 have the option of claiming the actual costs and
25 capturing their actual reimbursements.

1 And so it's something that we will need to
2 explore further as we go through these discussions.

3 MS. ARNOLD: Well, our concern is that this is
4 different than establishing an RRM for a component and
5 then actual costs for other components.

6 This, based on our understanding of the
7 proposal, is that you could assert either the RRM or your
8 actual costs for the entire cost. And our sense was,
9 that's not really an RRM, is our -- we understood staff
10 to suggest that the purpose of providing the alternative
11 was to give credence to the variation of costs among
12 areas, that that was the decided purpose of allowing
13 that.

14 And our suggestion is that what the statute
15 means, is that that's to be built into the RRM.

16 We think it is when it's based on an audited
17 method and that, therefore, the alternative really
18 doesn't go where the statute is suggesting.

19 MS. HIGASHI: And maybe I would agree with you
20 if we were talking about the second type of RRM, that is
21 the Finance-claimant negotiated RRM.

22 So I'll just reserve the right to continue the
23 dialogue.

24 CHAIR SHEEHAN: Are you saying, Molly, that
25 what staff is recommending here is not allowed under the

1 statute?

2 MS. ARNOLD: The fact that it's an alternative
3 doesn't -- I raise the question of whether or not it
4 constitutes a reasonable reimbursement methodology, that
5 to have either/or.

6 CHAIR SHEEHAN: You're saying, you're not clear
7 whether it meets the intent of the statute?

8 MS. ARNOLD: Right.

9 CHAIR SHEEHAN: You're not outright saying that
10 it is disallowed by the statute?

11 MS. ARNOLD: I'm suggesting that this body has
12 the ability to adopt an RRM, and we are arguing in favor
13 of rejecting this particular alternative and we hope that
14 you agree with us.

15 CHAIR SHEEHAN: Gotcha. Okay.

16 Did you want to add anything or just --

17 MS. BRUMMELS: The State Controller's Office
18 would support the Commission staff recommendation.

19 And as far as the alternative to provide actual
20 costs, the State Controller's Office is neutral on that
21 issue.

22 CHAIR SHEEHAN: Nothing to add to that?

23 MR. SPANOS: Madam Chair and Members, I'm here
24 just because this is based on the audit results, and I'm
25 the one responsible for the audits.

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1 CHAIR SHEEHAN: The numbers? Okay. The
2 2100 percent for Marin County.

3 Okay, I guess the question, Allan, that I have
4 for you is under your rationale to reject the staff
5 recommendation, it does, in fact, allow you to do actual
6 costs, notwithstanding what Ms. Arnold's position is.

7 So, I mean, you can do that.

8 MR. BURDICK: Yes. And I think at this point,
9 if we were coming back, the problem is that when you
10 adopted the parameters and guidelines in December of '06,
11 which was at that point when our Chair announced, "Now,
12 we can begin the negotiations," essentially the
13 Commission ended the negotiations at that point because
14 they took interrogation off the table as an item, which
15 was the major component of this claim.

16 And so our position is coming back -- in order
17 for us to do that, we will now have to file another
18 amendment to the parameters and guidelines --

19 CHAIR SHEEHAN: Oh, boy.

20 MR. BURDICK: -- requesting that interrogations
21 be added.

22 Whether we do that or not, I don't know. I
23 think at this point, we're just kind of pointing out that
24 we believe that those costs are -- we don't understand
25 how the Statement of Decision can be read otherwise. We

1 think it's pretty clear to us that it's included. That
2 the only thing that isn't in there is apparently an
3 officer who is on overtime. And we're still not even
4 clear what that means. Just the overtime pay or is that
5 his whole pay? Is that just the increment that's there
6 or not? I'm not sure.

7 And so most departments don't track that, so
8 they can't claim any interrogation costs. And
9 Los Angeles would say, you know, "We can't track that."

10 So I think that our position is that we could
11 have accepted, I think, the \$56 offer from the Department
12 of Finance, which we rejected and felt that was not
13 reasonable.

14 And now to suggest that we -- yes, now to
15 suggest that we accept something substantially less than
16 that just puts us in a very difficult position to say,
17 "Obviously, no." Our position was, you know, we
18 started -- we knew when we put the \$528 on the table
19 initially it was essentially to begin the negotiation
20 process. That was based on the claims that happened to
21 be available at that time, claims filed.

22 And at that point, we continued to discuss
23 these things; and we agreed we would come down to a \$300
24 rate. And that was the absolute bottom line. So we were
25 making a major concession at that point but wanted to

1 resolve this particular issue. So that's kind of where
2 we are.

3 We just want to say today, I think, from an
4 accuracy standpoint, we think the \$302 is the closest --
5 you know, I looked at this, and, obviously, its
6 numbers -- I don't know, we had a series -- we've seen
7 more spreadsheets on what the number is. It's just
8 getting back and saying, you know, essentially, as I look
9 here at the City of Los Angeles and say, "That means that
10 you're going to get about \$60 for processing every case"
11 seems pretty absurd.

12 I think the City of Los Angeles, if they look
13 at their actual costs per case, are closer to a thousand
14 dollars per case.

15 Which in a law enforcement environment, with
16 law enforcement and officers -- and we're talking about,
17 you know, lieutenants and above and sergeants in some
18 cases and fully-loaded rates, whatever, \$60 is probably,
19 you know, 15 minutes or something in that nature, I would
20 assume.

21 CHAIR SHEEHAN: And I guess what I keep coming
22 back to is that, notwithstanding the concern you have on
23 the interrogation, you still can file for actual cost if
24 you demonstrate those.

25 MR. BURDICK: Yes, we were just trying to

1 prevent coming back with a requested amendment.

2 And if you adopt the \$302, we'd be happy in
3 terms of a settlement and the thing is over and done with
4 and so forth.

5 CHAIR SHEEHAN: Yes.

6 MR. BURDICK: And we may be back -- we may or
7 may not, I don't know -- with a request to amend the
8 parameters and guidelines. This has been going on for
9 nearly nine years. And I think we would all like to
10 resolve it.

11 CHAIR SHEEHAN: I'm with you there.

12 MR. BURDICK: It just seems the \$37 is -- you
13 know, when we rejected \$56, was...

14 CHAIR SHEEHAN: Camille, did you want to add
15 something?

16 MS. SHELTON: Just to clarify that. The
17 Commission does not have jurisdiction to consider any
18 costs for interrogation or investigation because those
19 are not reimbursable activities.

20 The only jurisdiction you have are the
21 consideration of the three proposals with respect to
22 Exhibit A, which is the P's & G's adopted in
23 December '06.

24 CHAIR SHEEHAN: I think she has a copy of that
25 letter, Allan.

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1 MR. BURDICK: Yes. I'm just reminding that the
2 State Controller tells us when they audit -- there's
3 Mr. Spano coming in -- they audit to the parameters and
4 guidelines and Statement of Decision.

5 Is that a true statement? I don't want to put
6 words in your mouth.

7 But my recollection of the discussions with Jim
8 or his staff, when they have audit exams, they say, you
9 know, "We used to audit in the old days to the statute."
10 That's changed to, I think, Statement of Decision and
11 parameters and guidelines. And that essentially is what
12 we're saying, and it's based on our interpretation of the
13 Statement of Decision, is how we're filing the claims.

14 And that's the only thing I wanted to point
15 out, is that it is our interpretation if we need to come
16 back -- in order for you to adopt the \$302, if we have
17 to do that, you know, that's, I guess, a legal question
18 that's out there.

19 To me, I could assume you could adopt the \$302,
20 and this matter will be resolved.

21 MS. SHELTON: The counties and cities'
22 interpretation of the parameters and guidelines is not
23 before you because the document is what it is, so...

24 CHAIR SHEEHAN: Okay, any other comments from
25 the witnesses?

1 (No response)

2 CHAIR SHEEHAN: Questions from the Members?

3 MEMBER WORTHLEY: Well, not a question perhaps
4 but a statement.

5 I really struggle that we're basing so much of
6 this decision on the audits. Because in my mind, the
7 audits reflect either that somebody is throwing
8 everything but the kitchen sink in there and trying to
9 recover them, and so they're trying to recover way beyond
10 what they're entitled to. I mean, I look at Los Angeles
11 County with -- or LAPD -- with \$60 million of claims, and
12 they've got \$550,000 -- .91 percent of their claim.

13 So it says to me that they either are trying
14 to get a whole lot more than they would ever be entitled
15 to under any reasonable assertion of what's a reasonable
16 guideline, or there's a failure to have properly provided
17 the record that would support their claims.

18 And so, you know, to me, a way of doing it
19 would be to say if you look at a particular case, you say
20 what's a reasonable period of time to do that, what's a
21 reasonable cost for doing these various things. It's
22 like doing an efficiency type of an analysis.

23 And here, we're saying -- you know, are we
24 saying that it is zero costs? I mean, there's
25 several audits that they've got zero. Are we saying that

1 there's no costs involved under this parameters and
2 guidelines?

3 No. It's because they failed to provide the
4 proper information, or they didn't properly plead it, or
5 something went wrong. But we're taking some average of
6 whatever failed efforts by cities and counties to get
7 recovery for their costs, and we're using that to drive
8 the value and the price. And to me, that's just
9 nonsensical.

10 CHAIR SHEEHAN: Would the Controller's office
11 like to address the process you used for the audits?

12 MR. SPANOS: Sure. And I believe that when the
13 calculation was made, they excluded the counties and
14 cities that have zero allowable costs.

15 Our process basically is to audit what's being
16 claimed by the jurisdiction, cities and counties. So if
17 a city and county claims interrogation costs and it's not
18 reimbursable, then we don't allow those costs right now.
19 So we basically audit to what's being claimed or can be
20 supported by the agencies.

21 You know, in our audit process, roughly
22 3 percent of the costs, I believe, relate to costs that
23 appears to have been eligible activities but there wasn't
24 documentation supporting the dollar amounts involved.
25 That's 3 percent only.

1 The remaining part primarily related to
2 activities that based on our understanding of the
3 parameters and guidelines is outside the scope of the
4 mandate, which is interrogation and investigation, and
5 there's a lot of other activities outside of strictly
6 interrogation.

7 So, I mean, our job is to -- so am I saying
8 that whatever is being claimed by cities and counties is
9 the entire costs that they're entitled to? There may be
10 other costs right now, but our job is to audit what they
11 claim and what they put in front of us.

12 Now, during the audit process -- during the
13 audit process, if it comes to our attention there's
14 activities that are reimbursable, you know, we would say,
15 "Show us the documentation supporting the costs and we
16 would allow it." Or quite often, in most of the reports
17 we have issued, we have given them, the city and county,
18 an opportunity to do a time study, to go back and
19 determine what those costs are. And then we go back and
20 say, "We'll go back to suspend the audit and do the time
21 study and then we'll allow the costs."

22 Unless it takes too long and issue it, reissue
23 it later on, if it takes too long to do the time study.

24 LT. MCGILL: Can I make a comment, please?

25 CHAIR SHEEHAN: Sure.

1 LT. MCGILL: To defend my good name and the
2 LAPD.

3 This has been going on so long, my memory is a
4 little bit fuzzy. But not in this particular area,
5 because I remember when we first got involved in this,
6 we worked, hand in hand, with -- and forgive me, this is
7 where it's a little fuzzy -- whether it was the
8 Controller's office or the Department of Finance -- when
9 we put together a plan of how to seek reimbursement on
10 the activities.

11 One of the fundamental disagreements that, of
12 course, has come out over the years is: What constitutes
13 the activities, yes. And there is a fundamental
14 on-record disagreement with what we consider to be
15 reimbursable and what the State feels is reimbursable.

16 But we did a time study at the request of the
17 agency. We went through -- hand in hand, and went
18 through the whole process.

19 I mean, the exact records are difficult to come
20 up with because nobody ever keeps that type of record.

21 We did a time study. Very labor intensive, a
22 tremendous amount of resources to do it, and it was
23 disallowed at the end, at least from the word I got.

24 And maybe it was because of a certain way we
25 were doing it. But, again, we started hand in hand with

1 the Controller's office to say how do we do this thing?
2 And they checked off: Yeah, that looks good. That looks
3 fine. You're doing well.

4 And we did it for a month. And yet we get
5 close to the zero percent.

6 So, yes, we're in disagreement and we're a
7 little frustrated.

8 MEMBER WORTHLEY: Well, I'm looking at -- if we
9 look at Ventura County, where they made a claim for
10 \$587,000, they recovered \$245,000 or 41, almost
11 42 percent of what they claimed. Well, that would argue
12 that if someone properly produced their request and they
13 validated it, and that they at least got 41, 42 percent,
14 that would seem to at least be a reasonable place of
15 saying that's where you start.

16 You know, not taking the .91 percent and
17 averaging those out, because you're taking -- either
18 because people, again, were seeking the wrong thing to
19 recover or they didn't provide the validation for it and
20 were using that to drive these claims.

21 But I think you're right, when you get back
22 down to it and say, "\$60 to do one of these cases?,"
23 everybody can see that without being -- intuitively, that
24 is just absolutely ludicrous. It's ludicrous.

25 And a lot of it's being driven by this audit

1 process, which just tells me that people didn't properly
2 submit their claims or they failed to provide the
3 validation for what they were trying to claim.

4 Had they done it properly, they should have
5 gotten 100 percent of what they claimed.

6 And they end up with zero. Well, are we
7 thinking they had no costs? To me, this is the wrong
8 methodology to drive the process.

9 And to me the idea that you went through --
10 if you went through a process of actually evaluating
11 time and cost, materials and so forth, that would be the
12 proper way to do it. And then maybe you'd have some kind
13 of discount formula, too. I don't know. But I just
14 really struggle with this because I think we end up in a
15 ludicrous situation. And I think the staff came up with
16 the proper approach with L.A. County, which is either you
17 take this low number, which for many of these people it
18 would be a great, big jump. Right? If you look at these
19 people, they've got zero or they've got .91 percent,
20 they're going to jump at the 36 or 35 bucks, whatever it
21 is, because that's a heck of a lot more than they're
22 getting right now. But it's probably still way off the
23 benchmark in terms of what's a reasonable cost.

24 So I think you have to have the alternative so
25 people can at least go after their actual costs.

1 MR. BURDICK: I'd just like to comment on the
2 audit thing so that we're not casting aspersions on the
3 representatives of the Controller's office.

4 We did the time study but the process is, we
5 looked at it, we developed the time study, and we tried
6 to follow the guidelines that the Controller has. But
7 it's up to the agency to look at the activities. And
8 then, you know, the Controller doesn't buy off on the
9 time study in terms of the approach. We just have
10 guidelines.

11 But, you know, we tried to get them to buy off
12 on it. But it could be a huge job for the Controller to
13 take on. They didn't have the resources to do it.

14 And so what happened is L.A. did an amazing
15 job, I think, of their time study, Captain McGill and
16 their staff. The Controller looked at it and they felt,
17 though, that in each of those activities they were
18 broader, or different included things that may not be
19 part of that. And so that's -- that's part of this
20 problem.

21 And it kind of gets back to this, when we
22 developed the initial parameters and guidelines, they are
23 called parameters and guidelines in the sense because
24 they're supposed to be guidelines and give you parameters
25 as to what you can claim.

1 You know, now they have become -- every year,
2 they become more and more, you know, you've got to have
3 specific -- you know, if it's not there, you can't claim
4 it, you know, it's not broad.

5 The intent was always saying local agencies
6 carry out these differently.

7 Los Angeles County, because I think --
8 Los Angeles Police Department -- because of the spotlight
9 that is on them and with their law enforcement agencies
10 and others, they have to -- and I think they fully do
11 it -- I have to admit that we talked about many mandates.
12 The question is, how do you fully carry out a mandate to
13 what level of detail. Some law enforcement agencies, you
14 know, do not do that. They looked at major cases.

15 L.A. takes every case seriously, and so -- but
16 I will say we went through that, but the audit -- I think
17 both parties -- you know, the Controller came in and
18 said, "We don't think that should have been included, so
19 we can't" -- and they couldn't sort it out. And so it
20 gets disallowed.

21 It's a fundamental problem we have that I think
22 we need to work on. But, you know, I think in this case
23 both parties did their best, but I don't think we want to
24 cast aspersions. I don't think they meant to --

25 MR. MCGILL: I didn't mean anything by that.

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1 MR. BURDICK: No. But L.A. did do an amazing
2 job. Thank you.

3 MS. CHINN: If I may join the conversation. My
4 name is Annette Chinn from Cost Recovery Systems, and I
5 represent 40 maybe smaller-sized jurisdictions. And I
6 just wanted to point out one of our concerns, and I agree
7 with the Commissioner's comments, that we're basing this
8 unit cost on less than 1 percent of all of the agencies
9 out there that have been audited. So 10 out of 600 local
10 agencies, we're basing this 30-dollar number on.

11 And, again, perhaps when the State Controller's
12 Office selected the agencies that were going to be
13 reviewed, they picked the ones that were the highest and
14 the most suspect.

15 So instead of kind of taking an average
16 submission of a claim, they took the ones that looked
17 most suspect. So I just challenge that number, and would
18 recommend that perhaps -- let me develop this number.

19 We use a better average, something that's a
20 little bit more representative of everybody's claims,
21 not just of those highest people that maybe did have a
22 different interpretation than other local agencies.

23 So that's something that I would like you also
24 to consider. And that would have been one of my
25 arguments to say that we should still preserve that

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1 right to claim actual costs because I do not believe that
2 30-dollar average per officer is adequate to pay for my
3 clients' costs. And we would definitely recommend to all
4 of my clients that they file still an "actuals" and not
5 use that \$30 average because it's just much too low.

6 Thank you.

7 CHAIR SHEEHAN: Thanks.

8 All right, any other comments?

9 Mr. Glaab?

10 MEMBER GLAAB: Yes, thank you, Madam Chairman
11 and Members.

12 In the staff recommendations, we're denying
13 the first two, not because there seems to be a
14 disagreement about the dollar amount, but because it
15 does not satisfy the requirements for a reasonable
16 reimbursement methodology.

17 CHAIR SHEEHAN: Under the statute.

18 MEMBER GLAAB: Is it -- under the statute,
19 thank you.

20 Is it possible that they could come up with a
21 reasonable reimbursement methodology?

22 MS. HIGASHI: What is reasonable is going to
23 be up to the Commission to make a determination on.

24 The Commission can only vote on what is
25 actually placed before it.

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1 We do not have the authority to negotiate a
2 different methodology to change it.

3 So what we have before you is L.A. County's
4 alternate proposal as it was presented and filed by L.A.
5 County.

6 And it's up to you to decide.

7 CHAIR SHEEHAN: Well, but we also have Finance
8 and L.A. County's before us.

9 MS. HIGASHI: Exactly.

10 CHAIR SHEEHAN: And the staff recommendation on
11 that; right?

12 MS. HIGASHI: And the only comments I just want
13 to make, just so you're aware of this is, all of the
14 proposals are based on a claim period that was prior to
15 the reconsideration. So the numbers are different,
16 perhaps, from the numbers that are being claimed today,
17 although from the totals of the amounts claimed, you
18 would hardly notice a difference in the prior claims to
19 the post-reconsideration claims.

20 Second, when you look at the audit population,
21 yes, it is a small number of jurisdictions, but there are
22 large counties, small counties, large cities, smaller
23 cities, and they're from all over the state.

24 All totaled, they employed -- looking at the
25 2006 POST data, they employed over 50 percent of the

1 peace officers employed by local agencies in California.
2 And so what we've done is just respond to Mr. Kaye's
3 proposal, and leaving it up to the Commission members to
4 make that hard decision as to whether or not it's
5 appropriate or not.

6 MEMBER WORTHLEY: Madam Chairman, a question
7 I have about -- I think the adoption today does not
8 foreclose later on reviewing this.

9 I mean, one of the good things about this
10 proposal is, if people want to just take the easy way out
11 and not worry about validation, they can simply submit
12 their claims and get their money -- or maybe there will
13 be some requirements.

14 But if enough people or enough jurisdictions
15 say, "This is not anywhere close," and they are going to
16 then avail themselves of the actual costs, this matter
17 will come back before us, because it will be
18 determined --

19 MS. HIGASHI: Exactly.

20 MEMBER WORTHLEY: -- that low-end number is
21 probably just so darn low it's not realistic, and then
22 we can reevaluate this at that time.

23 So I think that's the best of both worlds for
24 today. I think it's going to be difficult to take
25 Mr. Burdick's approach of just picking a number, because

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1 I think the problem of trying to validate that is an
2 issue.

3 MR. BURDICK: We do, too.

4 MEMBER WORTHLEY: But I think if you adopt the
5 staff recommendation, we're not closing the door to this
6 issue coming back before us at a later time, and we can
7 revisit this number of the reasonable approach.

8 CHAIR SHEEHAN: That's right.

9 Ms. Bryant?

10 MEMBER BRYANT: I'd like to get back for a
11 minute to Finance's point about the reasonable-rate
12 method, RRM. I just have it in my head as an RRM and
13 whether or not an agency can submit its actual costs.
14 And it might be that I'm not understanding which
15 statutory scheme we're applying here.

16 But my understanding of the statute that took
17 effect in January of 2008 is that it's an either/or. You
18 either have -- you do an RRM in a negotiated setting, and
19 that's the deal until such time that the two parties
20 agree that the RRM ends or until it expires, because I
21 think it has an expiration date.

22 So I am a little uncertain about how we can
23 have the either/or in there.

24 Now, maybe it's pre-2008 law that we're
25 applying, but the either/or seems to me to go against

1 the intent of the changes to the statute that we made
2 effective January 1st of this year.

3 MS. HIGASHI: What you're referring to is the
4 provision that I mentioned of -- the new provision that
5 authorizes the Department of Finance and claimants to
6 negotiate an RRM in lieu of P's & G's.

7 The Commission retained its authority to have
8 jurisdiction over amendments to P's & G's.

9 Mr. Kaye has filed this as a proposed amendment
10 to the P's & G's, and he left in the actual cost-claiming
11 provisions in the P's & G's.

12 So just like you would be doing a bill markup,
13 the Commission has jurisdiction over amendments to the
14 P's & G's. And what he did was proposed an alternative
15 methodology for claiming costs. And that's the RRM
16 proposal before us.

17 The Finance proposal and the original L.A.
18 proposal amended the P's & G's as well. But they would
19 have replaced the actual cost-claiming method with only
20 the RRM.

21 And so we're considering this matter before us
22 today as a P's & G's amendment.

23 And remember, there is the other new procedure.
24 There's also the legislatively determined mandate
25 procedure, where the Legislature could decide that they

1 agree it should be a mandate, and Finance agrees, and
2 everyone comes up with a number and puts it in the
3 budget.

4 MS. ARNOLD: To clarify Finance's point, it
5 was not that this couldn't be done, but that we don't
6 think it constitutes a real RRM if you leave the
7 alternative for actual costs available. Because what it
8 does, is it leaves opportunities open for those that
9 don't actually have documentation to simply get money
10 based on that record, whereas you're still addressing the
11 actual costs and going through the process.

12 One of the purposes of an RRM is to have a
13 stream-lined administrative process; and you're not doing
14 that here.

15 CHAIR SHEEHAN: So if I had to summarize, what
16 Finance is saying is that under the new statute of an
17 RRM, we're not really adopting an RRM, we're adopting a
18 close-to-a-reasonable reimbursement methodology, plus the
19 alternative of actual costs as opposed to what would be
20 under the new statute, a true RRM, and that is it, the
21 negotiated. So we're sort of in between in terms of
22 that.

23 MEMBER WORTHLEY: Madam Chairman, I do think,
24 though, that that's still a worthwhile venture. Because
25 in the event that let's say, like, you look at the --

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1 CHAIR SHEEHAN: The in-between thing?

2 MEMBER WORTHLEY: Yes. Because if you look at
3 this audit, if you see how many people are below what
4 we're saying is going to be a reasonable reimbursement
5 rate, you know, they may -- I think you're going to see a
6 number of jurisdictions simply just submit that for
7 administrative ease, which will then be administrative
8 ease to our staff.

9 And to the extent that you have a larger
10 percentage -- a certain percentage that will go through
11 the process of claiming actual costs, we're going to be
12 reducing the workload for our staff.

13 Right now, they have to look at every claim
14 coming in. And it seems like this is an expedited
15 process. So you're not getting everything but you're
16 getting a percentage. And so that's a beneficial thing.
17 We're moving in the right direction.

18 And I think if we find out ultimately that this
19 number is way too low and there's still a lot of cost
20 claims being filed, we can revisit this and continue to
21 move that along until we get to the point where the
22 majority would be filing under the RRM. So I think it's
23 still a worthwhile venture. I don't see anything wrong
24 with it.

25 CHAIR SHEEHAN: So is that a motion?

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1 MEMBER WORTHLEY: That is a motion to approve
2 the staff recommendation.

3 MEMBER OLSEN: I'll second that.

4 CHAIR SHEEHAN: Okay, any further comments by
5 the Commissioners?

6 *(No response)*

7 CHAIR SHEEHAN: If not, we have a motion to
8 adopt the staff recommendation.

9 Would you like to amend your motion to make it
10 clear that we would deny the Department of Finance
11 proposal and deny the --

12 MEMBER WORTHLEY: Yes, that is the --

13 CHAIR SHEEHAN: -- the original L.A. County?

14 MEMBER WORTHLEY: Yes, the motion is to approve
15 the amended -- or I guess it's called "amended L.A.
16 proposal."

17 CHAIR SHEEHAN: Okay, so approve that.

18 MEMBER WORTHLEY: Right.

19 CHAIR SHEEHAN: And also denying the original
20 and the Department of Finance proposal?

21 MEMBER WORTHLEY: Yes.

22 CHAIR SHEEHAN: Okay.

23 MS. HIGASHI: Exactly as it is on page 3.

24 MEMBER WORTHLEY: That's it.

25 CHAIR SHEEHAN: That's what he meant to say.

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1 Okay, all those -- everybody understands the
2 motion?

3 *(No response)*

4 CHAIR SHEEHAN: Okay, all those in favor, say
5 "aye."

6 *(A chorus of "ayes" was heard.)*

7 CHAIR SHEEHAN: Opposed?

8 MEMBER BRYANT: I'm abstaining.

9 CHAIR SHEEHAN: The minutes will reflect that
10 she's abstaining on that. Right.

11 MR. BURDICK: Thank you very much.

12 MR. KAYE: Thank you.

13 CHAIR SHEEHAN: I was hoping when I was gone
14 last year that this would be resolved, you guys.

15 MS. HIGASHI: Can we take a five-minute break?

16 CHAIR SHEEHAN: Yes, we'll take a five-minute
17 break before we go to the next item.

18 *(A recess was taken at 10:47 a.m.)*

19 *(Proceedings resumed at 10:58 a.m.)*

20 CHAIR SHEEHAN: All right, so the March 28th
21 meeting of the Mandates Commission is continued.

22 Paula?

23 MS. HIGASHI: We're at Item 7. And I'd like
24 to have all the parties come to the table.

25 MR. PETERSEN: Can I have the big chair?

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1 CHAIR SHEEHAN: Make him sit in the small one,
2 and it will go faster.

3 MS. HIGASHI: We have just learned during the
4 break that Art Palkowitz, who is the representative for
5 the San Diego Unified School District, had car trouble
6 this morning, thereby missing his plane. And he is in
7 San Diego at this moment at his office.

8 His office said that he was prepared to
9 participate by speaker phone, which we don't think is an
10 appropriate substitute for a hearing of this magnitude.

11 Mr. Petersen, who represents the co-claimants
12 with Mr. Palkowitz, has requested that we continue this
13 matter. And at the same time, everyone is in agreement
14 that we are going to allow further briefing on some of
15 the issues related to issues 1, 7, and 10. And Finance
16 has some other issues that they also want to speak to.

17 So what I would like to request is that the
18 Commission put over this matter and that we meet with the
19 parties after the hearing today to set up a briefing
20 schedule and identify the issues in which we will put out
21 a letter and notice for further briefing, and that we get
22 this rescheduled as soon as possible.

23 CHAIR SHEEHAN: All right. Any questions from
24 the Commissioners?

25 *(No response)*

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1 CHAIR SHEEHAN: It sounds like that is
2 acceptable.

3 And then we'll have all of the parties here.

4 We'll call Art in the morning, make sure he
5 gets on his airplane that day.

6 MS. HIGASHI: We'll require him to be here the
7 day before.

8 MEMBER BRYANT: I suggest the night before.

9 CHAIR SHEEHAN: The night before, as Ms. Bryant
10 says, would be good. Or at a minimum, at least you can
11 put his office on the agenda so he could do it by
12 conference call, if he had to.

13 MS. HIGASHI: And so that's what we'll do.

14 MR. PETERSEN: Thank you.

15 CHAIR SHEEHAN: Thank you, all. We will see
16 you next time.

17 MS. HIGASHI: So this brings us to the very
18 end.

19 Item 9, Camille.

20 Did you have any updates?

21 MS. SHELTON: I do have updates.

22 The second case listed under the litigation
23 calendar, the San Diego Unified School District case has
24 been moved to the May 30th hearing, so that one has been
25 continued for a couple of weeks.

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1 And we're still waiting for a decision on the
2 first case, the Department of Finance versus the
3 Commission on State Mandates dealing with the Integrated
4 Waste Management program.

5 CHAIR SHEEHAN: All right, Paula, the Executive
6 Director's report?

7 MS. HIGASHI: We're starting our budget hearing
8 process. So over the next couple of weeks, I'll be in
9 meetings with budget committee staff - "prehearings" is
10 what we call them -- and then we'll actually have budget
11 hearings in the subcommittees.

12 The only change that I should note is that it's
13 our understanding that the Leg. Analyst's office supports
14 our baseline budget without the 10 percent reduction.

15 CHAIR SHEEHAN: Dang.

16 MEMBER GLAAB: Wow. How did that happen?

17 CHAIR SHEEHAN: The Leg. Analyst does, but the
18 budget committee? How does the budget committee feel
19 about that?

20 MS. HIGASHI: So that will be coming up in the
21 near future in public hearing.

22 CHAIR SHEEHAN: Okay.

23 MS. HIGASHI: But I just didn't want anyone to
24 be surprised.

25 We have recently added two new folks to our

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1 staff, and I just wanted to introduce them so you would
2 recognize them in case you meet them in the future.

3 We have Chris Wong.

4 Chris, stand up.

5 CHAIR SHEEHAN: Go ahead and stand up.

6 MS. HIGASHI: And Efrain Alanis.

7 CHAIR SHEEHAN: Welcome, welcome.

8 MS. HIGASHI: We managed to get them on board.

9 CHAIR SHEEHAN: Very good.

10 MS. HIGASHI: And with that, are there any
11 other questions about our workload?

12 As you can see, our workload didn't change a
13 whole lot today.

14 CHAIR SHEEHAN: I see that.

15 Hope springs eternal.

16 MS. HIGASHI: And we have a number of test
17 claims coming up on the May agenda, and parameters and
18 guidelines. And it appears that there will be
19 potentially some lengthy hearings unless we get
20 agreement on at least the P's & G's issues.

21 MEMBER WORTHLEY: Are you bringing lunch in?

22 CHAIR SHEEHAN: Exactly.

23 MS. HIGASHI: We'll have to figure it out. But
24 we'll be working very hard at trying to get as much --

25 CHAIR SHEEHAN: Resolved.

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1 MS. HIGASHI: -- resolved and on the consent
2 calendar as possible.

3 CHAIR SHEEHAN: That would be great.

4 MEMBER GLAAB: What is the date of the meeting?

5 MS. HIGASHI: The May hearing is on May 29th,
6 which is a Thursday, just a reminder.

7 The hearing that used to be the July hearing is
8 moved to August 1st, which is a Friday.

9 So just a reminder to all of you to put those
10 dates on your calendar.

11 CHAIR SHEEHAN: So May 29th is the next one;
12 right?

13 MS. HIGASHI: Yes.

14 CHAIR SHEEHAN: Yes, it's actually on my
15 schedule.

16 MS. HIGASHI: Okay.

17 CHAIR SHEEHAN: Anything else from staff?

18 MS. HIGASHI: With that, unless there are any
19 questions, that completes my report.

20 CHAIR SHEEHAN: Okay, and this is the time on
21 the agenda for any public comment on business not before
22 us previously on the agenda.

23 Anyone from the public that wants to address
24 the Commission at this point in time?

25 *(No response)*

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1 CHAIR SHEEHAN: If not, then I'm going to throw
2 you all out and we're going into closed session.

3 For the record, the Commission will meet in
4 closed executive session pursuant to Government Code
5 section 11126, subdivision (e), to confer with and
6 receive advice from legal counsel for consideration and
7 action, as necessary and appropriate, upon the pending
8 litigation listed on the published notice and agenda, and
9 to confer with and receive advice from legal counsel
10 regarding potential litigation, and pursuant to
11 Government Code section 11126, subdivision (a), and 17526
12 to confer on personnel matters listed on the published
13 notice and agenda.

14 We will reconvene in open session in ten or
15 15 minutes.

16 Thanks.

17 *(The Commission met in closed executive*
18 *Session from 11:05 a.m. to 11:16 a.m.)*

19 CHAIR SHEEHAN: We're now back in open session.

20 The Commission met in closed session pursuant
21 to Government Code section 11126, subdivision (e), to
22 confer with and receive advice from legal counsel for
23 consideration and action, as necessary and appropriate,
24 upon pending litigation listed on the public notice and
25 agenda, and potential litigation, and pursuant to

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1 Government Code section 11126, subdivision (a), and
2 17526, to confer on personnel matters listed on the
3 published notice and agenda.

4 All required reports from closed session having
5 been made; and if there's no further business to discuss,
6 I will entertain a motion to adjourn.

7 MEMBER GLAAB: So moved.

8 MEMBER CHIVARO: Second.

9 CHAIR SHEEHAN: We have a motion and a second.

10 All those in favor say "aye."

11 *(A chorus of "ayes" was heard.)*

12 CHAIR SHEEHAN: Any opposed?

13 *(No response)*

14 CHAIR SHEEHAN: We are adjourned.

15 *(Proceedings concluded at 11:17 a.m.)*

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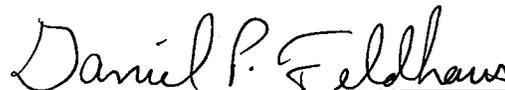
REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

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

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on April 21, 2008.



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