

**MINUTES**

**COMMISSION ON STATE MANDATES**

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

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

**CALL TO ORDER AND ROLL CALL**

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

**APPROVAL OF MINUTES**

Item 1 March 29, 2007

Item 1 was postponed.

**PROPOSED CONSENT CALENDAR**

There were no items on the consent calendar.

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

Item 3 Staff Report

There were no appeals to consider.

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

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

## TEST CLAIMS

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

The claimant withdrew this test claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Items 8 and 9 were postponed.

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

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

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

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

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

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

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

Member Glaab requested clarification as to what the time frame was prior to the legislation.

Ms. Ter Keurst responded that there was no time frame in statute for counties. Member Worthley noted that the terminology was that the recorder shall record without delay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Items 16 and 17 were postponed.

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

### **ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE**

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

This item was postponed.

## MANDATE REFORM PROPOSALS AND PENDING LEGISLATION (action)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **STAFF REPORTS**

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

Ms. Shelton had nothing further to report.

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

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

## **PUBLIC COMMENT**

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

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

PERSONNEL

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

PENDING LITIGATION

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

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

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

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

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

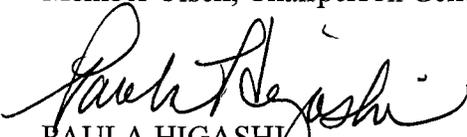
Hearing no further comments, Chairperson Genest adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the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

#### **REPORT FROM CLOSED EXECUTIVE SESSION**

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

#### **ADJOURNMENT**

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

  
PAULA HIGASHI  
Executive Director

RECEIVED  
MAY 17 2007  
COMMISSION ON  
STATE MANDATES

ORIGINAL

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:32 a.m.

DATE: Monday, April 16, 2007

PLACE: Resources Building  
First Floor Auditorium  
1416 Ninth Street  
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported by:

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

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**Daniel P. Feldhaus, C.S.R., Inc.**  
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A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHAEL GENEST, Chair  
Director  
State Department of Finance

CYNTHIA BRYANT  
Director  
State Office of Planning and Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

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

--oOo--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA A. HIGASHI  
Executive Director  
*(Item 20)*

ERIC D. FELLER  
Senior Commission Counsel  
*(Items 12 and 13)*

KENNY H. LOUIE  
Commission Counsel  
*(Items 10 and 11)*

NANCY PATTON  
Assistant Executive Director  
*(Item 18)*

CAMILLE N. SHELTON  
Chief Legal Counsel  
*(Item 19)*

KATHERINE A. TOKARSKI  
Commission Counsel  
*(Items 6, 7, 14, and 15)*

--o0o--

PUBLIC TESTIMONY

**Appearing Re Item 6:**

For County of San Bernardino

BONNIE TER KEURST  
Manager, Reimbursable Projects  
Office of Auditor/Controller-Recorder  
County of San Bernardino  
222 W. Hospitality Lane, Fourth Floor  
San Bernardino, California 92415

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  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

For County of Sacramento:

STEVE LAKICH  
Director, Labor Relations  
County of Sacramento  
800 H Street  
Sacramento, California 95814

For California Department of Social Services

JAMES NORRIS  
Senior Staff Counsel  
California Department of Social Services  
744 P Street  
Sacramento, California 95814

For California Department of Finance:

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

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 10:**

For County of San Bernardino

BONNIE TER KEURST  
Manager, Reimbursable Projects  
Office of Auditor/Controller-Recorder  
County of San Bernardino

For California Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

SUSAN S. GEANACOU  
Senior Staff Attorney  
Department of Finance

**Appearing Re Item 12:**

For Sweetwater Union High School District:

KEITH B. PETERSEN  
President  
SixTen and Associates  
5252 Balboa Avenue, Suite 990  
San Diego, California 92117

For California Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 14:**

For Sweetwater Union High School District:

KEITH B. PETERSEN  
President  
SixTen and Associates

For California Department of Finance:

DONNA D. FEREBEE  
Staff Counsel III  
Department of Finance

**Appearing Re Item 18:**

For California Department of Finance

THOMAS E. DITHRIDGE  
Mandates Unit  
Department of Finance  
915 L Street  
Sacramento, California 95814

For Legislative Analyst's Office:

MARIANNE O'MALLEY  
Fiscal and Policy Analyst  
Local Government  
Legislative Analyst's Office  
925 L Street  
Sacramento, California 95814

For Education Mandated Cost Network and San José Unified  
School District:

PATRICK DAY  
San José Unified School District

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Public Comment:**

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
MAXIMUS

--oOo--



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Commission on State Mandates – April 16, 2007

1 BE IT REMEMBERED that on Monday, April 16,  
2 2007, commencing at the hour of 9:32 a.m., thereof, at  
3 Resources Building, Auditorium, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR GENEST: All right, good morning.  
8 Am I audible out there in the audience? Are we  
9 all audible?

10 If you can't hear, raise your hand.

11 This meeting of the Commission on State  
12 Mandates will come to order.

13 Paula, can you call roll?

14 MS. HIGASHI: Ms. Bryant?

15 MEMBER BRYANT: Here.

16 MS. HIGASHI: Mr. Chivaro?

17 MEMBER CHIVARO: Here.

18 MS. HIGASHI: Mr. Glaab?

19 MEMBER GLAAB: Here.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Here.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Here.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Here.

Commission on State Mandates – April 16, 2007

1 MS. HIGASHI: Mr. Genest?

2 CHAIR GENEST: Here.

3 MS. HIGASHI: The items 1, 2 -- we have no  
4 items 1, 2, 3, and 4. And we will proceed to Item 6.

5 And at this time what I'd like to do is have  
6 all of the parties and witnesses in the audience who are  
7 here to present testimony or to represent parties on any  
8 of the test-claim items, to please stand.

9 *(Several persons stood.)*

10 MS. HIGASHI: Do you solemnly swear or affirm  
11 that the testimony which you are about to give is true  
12 and correct based on your personal knowledge,  
13 information, or belief?

14 *(A chorus of "I do's" was heard.)*

15 MS. HIGASHI: Thank you very much.

16 CHAIR GENEST: So should we follow up the  
17 witnesses on Item 6?

18 MS. HIGASHI: Yes. Our first Item is Item 6,  
19 Commission Counsel Katherine Tokarski will present it.

20 MS. TOKARSKI: Good morning.

21 The test-claim statutes for *In-Home Supportive*  
22 *Services II* require that all counties establish an  
23 "employer of record" for IHSS care providers other than  
24 the recipient of the services. The test-claim statutes  
25 also require counties to appoint an in-home supportive

1 services advisory committee with specific membership  
2 requirements.

3 The claimant asserts that the state funding  
4 provided at the time of the test-claim filing was  
5 inadequate to cover the actual cost of the advisory  
6 committee and seeks to recover the remainder of their  
7 claimed costs of creating and operating an advisory  
8 committee through the mandate reimbursement.

9 This remains an issue of dispute for the state  
10 agencies who have filed comments arguing that adequate  
11 funds have been appropriated for the mandatory advisory  
12 committees.

13 The claimant also alleges that the requirement  
14 to establish an "employer of record" results in  
15 multimillion-dollar increased costs for wages and  
16 benefits, with estimates varying widely according to  
17 which form of "employer of record" is ultimately  
18 selected: a public authority, a contract with an outside  
19 agency, or the county itself. The claimant is also  
20 seeking reimbursement for any collective bargaining that  
21 may result if providers unionize after the "employer of  
22 record" is established.

23 Staff finds that while counties may incur  
24 increased costs for higher wages and benefits as an  
25 indirect result of the requirement to act as or establish

1 an "employer of record," as stated repeatedly by the  
2 courts, a showing of increased costs is not determinative  
3 of whether the legislation imposes a reimbursable  
4 state-mandated program.

5 The test-claim statutes create a situation  
6 where the employer may be faced with a higher cost of  
7 compensation to its employees. As held by the Court,  
8 "*This is not the same as a higher cost of providing*  
9 *services to the public.*" Therefore, staff finds that any  
10 increased wage and benefit costs that may be incurred  
11 indirectly following implementation of the test-claim  
12 statutes is not a new program or higher level of service.

13 In addition, staff finds that the plain  
14 language of the test-claim statute does not require  
15 collective bargaining but, rather, confirms that the code  
16 section does not prohibit collective bargaining or other  
17 negotiations on wages and benefits.

18 Staff recommends the Commission adopt the staff  
19 analysis to partially approve this test claim for the new  
20 administrative activities listed in the conclusion  
21 beginning at page 27.

22 Will the parties and witnesses please state  
23 your names for the record?

24 MS. TER KEURST: Hi. I'm Bonnie Ter Keurst,  
25 and I'm with the County of San Bernardino.

Commission on State Mandates – April 16, 2007

1 MR. BURDICK: I don't think that microphone is  
2 on yet.

3 None of the microphones are working? Not even  
4 this one -- oh, you know what?

5 Do they work now?

6 AUDIENCE: Yes.

7 MR. BURDICK: And they thought I wasn't  
8 high-tech enough.

9 One button did it all.

10 MS. TER KEURST: Hi. I'm Bonnie Ter Keurst,  
11 and I'm with the County of San Bernardino.

12 MR. BURDICK: I'm Allan Burdick, and I'm  
13 representing the California State Association of  
14 Counties.

15 MR. LAKICH: I'm Steve Lakich. I'm the  
16 Director of Labor Relations representing the County of  
17 Sacramento.

18 MR. NORRIS: Jim Norris. I'm with the  
19 California Department of Social Services.

20 MS. CASTAÑEDA: Carla Castañeda, Department of  
21 Finance.

22 MS. GEANACOU: Susan Geanacou, Department of  
23 Finance.

24 CHAIR GENEST: Who is going to start?

25 MS. SHELTON: The claimant, normally.

Commission on State Mandates – April 16, 2007

1 MS. TER KEURST: Good morning.

2 I wanted just to make a brief comment, and that  
3 is we are in support of the items that the staff has  
4 found to be reimbursable.

5 And with that, I'm going to turn it over to  
6 some experts in the field.

7 MR. BURDICK: Thank you very much, Members of  
8 the Board -- or Members of the Commission. How did I say  
9 that? I've only been to a few of these Commission  
10 meetings in my day.

11 Again, Allan Burdick on behalf of the  
12 California State Association of Counties.

13 And we're here today, essentially, to argue  
14 that this very major, substantial piece of legislation,  
15 which established and changed, really, and brought to  
16 the counties the responsibility to be the employer of  
17 record, and to enter into and to participate in the  
18 collective-bargaining process is a reimbursable  
19 state-mandated program. We believe that these issues  
20 probably should be found to be reimbursable, and the  
21 details should be put over to the Parameter-and-Guideline  
22 process, because it's a very detailed process in terms of  
23 what's eligible or not.

24 If we get into the discussion about, is there a  
25 possibility or a requirement for increased compensation

Commission on State Mandates – April 16, 2007

1 or not, I think there would have to be a showing somehow  
2 that almost on an individual basis, on a county-by-  
3 county, as to whether or not that occurred.

4 But there clearly is a whole new responsibility  
5 that was placed on counties by the legislation.

6 I'd like to introduce Steve Lakich, who is the  
7 director of Labor Relations for the County of Sacramento.  
8 Steve served several years for the State of California as  
9 its deputy director of Labor Relations. He then also had  
10 a number of years with the City of Sacramento as their  
11 director of Labor Relations, and now with the County of  
12 Sacramento.

13 I think Steve went through this whole process  
14 from beginning to end. And he can show you how the  
15 legislation requirements require them to implement and  
16 carry out this legislation since its passage.

17 So with that, I would turn it over to Steve.

18 MR. LAKICH: Thank you, Allan.

19 Good morning, Members of the Commission. My  
20 office represents the public authority of Sacramento  
21 County, which is the IHSS program. They're now up to  
22 about 18,000 home-care workers. When we first started in  
23 the year 2000, we had about 9,200 home-care workers. So  
24 the program has grown substantially.

25 But when the Meyers-Millias-Brown Act was

1 amended to include the IHSS program to make the either  
2 58 counties the employer of record for  
3 collective-bargaining purposes for the IHSS workers,  
4 our board of supervisors established an employee  
5 relations ordinance, upon my recommendation, to have the  
6 rules established for recognition in the event a union  
7 attempted to organize the IHSS workers. And we did that  
8 in August of 2000. It was within two or three months the  
9 SEIU, which is the Service Employees International Union,  
10 petitioned the public authority for recognition. That  
11 is an option they had under the Meyers-Millias-Brown Act  
12 that it covered for. When they elected that option, they  
13 had to show an interest of at least 30 percent of the  
14 IHSS workers, some 9,200, in order to petition for the  
15 election.

16 When we received the petition, we asked the  
17 State Mediation Service to conduct a secret ballot  
18 election. It was an on-site -- I'm sorry, a mail ballot;  
19 and we had to mail those ballots to all 9,200 employees.

20 And the vote came in something like a 15-to-1  
21 ratio, that they won the election.

22 With that, we went into collective bargaining  
23 with the SEIU. It lasted a good five to six months. We  
24 reached our first agreement with SEIU in June of 2001.  
25 That is a two-year agreement.

**Commission on State Mandates – April 16, 2007**

1           The wages at that point, before they got  
2 recognition, was minimum wage, \$5.75 an hour. And that  
3 wage went up to \$7.50 an hour in June of 2000; and then  
4 went to \$8.50 an hour on October 1, 2001; and then to  
5 \$9.50 an hour on October 1, 2002.

6           Also, for the first time the IHSS workers were  
7 covered under health insurance. And the agency's  
8 contribution in the first year was \$160 per month, and it  
9 was with the Kaiser plan. In the second year, it went  
10 up to \$180 per month per eligible participant. That  
11 first year, the contract expired in 2003. And we then  
12 entered into our second collective-bargaining agreement  
13 effective July 1, 2003, and that ran through to  
14 October 31, 2004.

15           During the term of that agreement, the wages  
16 went up \$9.50 per hour; and the health insurance  
17 contribution went up to \$224 per month.

18           The third collective bargaining agreement was  
19 entered into on November 1, 2004; and it ran for two  
20 years, to November 30th, 2006. The wages stayed  
21 initially at \$9.50 an hour, and then went up to \$10 an  
22 hour as of January 1, 2006.

23           The agency's contribution for health insurance  
24 went up to \$281 per month; and for the first time,  
25 entered into a dental plan. And that cost the agency

1 \$11.50 per month.

2 Our last collective bargaining agreement was  
3 entered into this last December 1st, 2006; and it runs  
4 through November 2009.

5 And the wages go up to \$10 -- they were \$10 an  
6 hour. They went up to \$10.40 per hour as of January 1,  
7 2007. The health insurance will go up to 391.85 as of  
8 January 1, 2007. The dental insurance stays at the rate  
9 of \$11.50.

10 The IHSS office here in Sacramento employs  
11 20 employees now. And the county pays 17.5 cents for  
12 every dollar spent.

13 My office does the collective bargaining. Over  
14 that period of seven years we have billed the public  
15 authority a total of \$59,675 to do the collective  
16 bargaining administration.

17 So are there any questions?

18 MR. BURDICK: I'd like to do a quick summary,  
19 if I could. And that's essentially just to kind of put  
20 this in place and help to set the parameters, is prior to  
21 this legislation, the State was responsible for setting  
22 the wage. They made a determination as to what was a  
23 reimbursable wage for these in-home supportive services  
24 workers. I remember a number of legislative hearings  
25 with SEIU and others flowing in to convince the State as

1 to what it should do and how it should set that wage.  
2 And they would set the wage for those.

3 This legislation made a major shift. What it  
4 did is it shifted to counties the responsibility for  
5 these employees, which it had no responsibility with  
6 before for the determination of the employment of these  
7 particular people.

8 As Steve pointed out, it also subjected him to  
9 the full collective bargaining process. And I think you  
10 all are aware that the Meyers-Millias-Brown Act is very  
11 similar to the State Employer Relations Act, which  
12 requires full-blown collective bargaining and counties  
13 are now subject to the PERB. And in the event it is  
14 found that they are not bargaining in good faith, that  
15 activity will go to the PERB, the bargaining group, and  
16 they can come back and force the county then to  
17 renegotiate to provide for a fair result in their  
18 bargaining.

19 So this is a new program and a total shift of  
20 responsibility for the employment and the determination  
21 of salaries, wages, and benefits for these -- in  
22 Sacramento's case, over 9,000 at that time -- in-home  
23 supportive services workers.

24 Thank you very much.

25 MR. NORRIS: Good morning, Members of the

1 Commission. I just have a couple comments to make with  
2 regard to this test claim.

3 DSS would like to submit these two comments for  
4 your consideration.

5 The first concerns the staff's "employer of  
6 record" finding. Namely, the staff's findings are that  
7 the county administrative costs incurred in establishing  
8 an "employer of record" are fully reimbursable, no matter  
9 what method of compliance is chosen by the County. We  
10 think that there is a least-cost method in terms of  
11 administrative costs that a county could use; and that  
12 it is only these costs that are arguably required by the  
13 test-claim statute. And, therefore, only those costs  
14 should be reimbursable.

15 Under the statute, the county is free to choose  
16 a more costly method of compliance when a central  
17 less-costly method is available. To the extent a county  
18 chooses a more costly method, we think that any costs  
19 incurred above those associated with the least-costly  
20 method of compliance are not, in fact, required by the  
21 statute.

22 We think that this concept should be expressed  
23 in the staff's analysis and the proposed Statement of  
24 Decision in such a way as to limit those findings.

25 We also would like to make a comment with

1 respect to the county's activities in connection with the  
2 advisory committees. We noticed that included in this  
3 list of county activities subject to reimbursement are  
4 two activities that appear to be advisory committee  
5 activities rather than county activities. These are  
6 located on page 5 of the proposed Statement of Decision.

7 We think to the extent that these items are  
8 intended to describe the advisory committee activities,  
9 that these activities involve advisory committee direct  
10 costs that are provided for us through the existing  
11 appropriations expressed in the test-claim statute.

12 That's all I have.

13 MS. CASTAÑEDA: Carla Castañeda with the  
14 Department of Finance.

15 We concur with the staff analysis on the  
16 finding of the program and the higher level of service.

17 We have two minor objections. One, on page 26  
18 of the staff analysis, the second paragraph from the  
19 bottom, beginning with "various," the last statement,  
20 "*In addition, the State allocate such funds of any future*  
21 *budget year.*" We would note that the Proposition 1-A  
22 amendments to the Constitution in 2004 have limited the  
23 State's ability to reduce finding without notifying  
24 locals of suspending the mandates.

25 In addition to that, we also concur with the

1 Department of Social Services that much of the advisory  
2 committee's activities are funded through the department.  
3 And we'd note that during the parameters-and-guidelines  
4 phase.

5 MS. GEANACOU: Susan Geanacou, Department of  
6 Finance.

7 I have one additional comment I'd like to add.  
8 It regards some of the testimony you've heard this  
9 morning about collective bargaining. We would simply  
10 affirm the recommended staff analysis portion,  
11 particularly that on pages 13 through 16 regarding  
12 collective bargaining claimed costs; that the statutes  
13 clearly state that collective bargaining is not  
14 prohibited. In other words, it's authorized, but in no  
15 way is it required. And, in other words, it is  
16 discretionary. And so any increased labor costs in the  
17 form of wages or benefits are not reimbursable,  
18 notwithstanding the testimony you heard this morning from  
19 the County of Sacramento.

20 Thank you.

21 CHAIR GENEST: I have a question of a couple  
22 folks, if I could go first here.

23 For CSAC or either of the two county  
24 representatives, whoever wants to speak to it, what do  
25 you say about the staff's statement that the courts have

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1 made it clear? I don't want to mischaracterize this, but  
2 it's something to the effect the courts have made clear  
3 that the costs of additional salaries, increased  
4 salaries, would not be reimbursable? Did I say that  
5 correctly? Close enough?

6 MS. GEANACOU: Close enough.

7 CHAIR GENEST: So what is your response to  
8 that?

9 MR. BURDICK: Well, we disagree, I think, with  
10 that finding, specifically. There is, I think, an  
11 interpretation that can be made from statute that the  
12 Commission staff has been taking is that those costs are  
13 not reimbursable.

14 Our interpretation of those cases is that, if  
15 there is a new service required or an activity required  
16 that results in a cost, that that is a reimbursable state  
17 mandate.

18 If you take the Commission's and staff's  
19 interpretation, you could interpret it to say that the  
20 State of California could impose any reporting  
21 requirements that it wants on local agencies and that  
22 would not be a benefit to the public. It could be a new  
23 program, it could be an increased level of service or a  
24 requirement on the county, but there would be no  
25 responsibility whatsoever, if you follow that

1 interpretation, to reimburse counties.

2 And we do not believe that that is a proper  
3 interpretation of the cases by the Court, nor do we  
4 believe that the State could impose those programs  
5 and avoid reimbursement under the provisions of  
6 Article XIIIIB, Section 6.

7 CHAIR GENEST: I also had a question for the  
8 Department of Health Services representative.

9 You refer to -- and I may have a series of  
10 questions here -- you refer to the least-cost approach.

11 Have you quantified that? Do you know what the  
12 least cost would be?

13 MR. NORRIS: No, I haven't. But it would be on  
14 a county-by-county basis. But I think it could be  
15 determined for each county which method of compliance  
16 would be the least costly for that county in its  
17 circumstances. And any choice of compliance that  
18 requires costs above those, I think, would be  
19 discretionary costs, in that the county would have had  
20 a least-cost method to use to comply with the statute.

21 CHAIR GENEST: Then I guess my follow-up to  
22 that is, the State does fund the administrative costs of  
23 in-home supportive services?

24 MR. NORRIS: Yes.

25 CHAIR GENEST: And we pay some percentage of

1 the total?

2 MR. NORRIS: We do.

3 CHAIR GENEST: And the county pays the  
4 other percent back after the federal amount is  
5 subtracted?

6 MR. NORRIS: Yes, this is correct.

7 CHAIR GENEST: And I think the county said  
8 17 and a half for the program.

9 But does that apply to the administration of  
10 the program as well?

11 MR. NORRIS: The administration -- the sharing  
12 ratio may be a little bit different. I'm not exactly  
13 sure what it is. But certainly there's a federal, state,  
14 and county share involved in the administration.

15 CHAIR GENEST: I guess my question on this may  
16 be more appropriate for our P's & G's, but I still have a  
17 question now. If you in the department allocate money  
18 that assumes a certain total, and then you allocate the  
19 state's share of that total for administration, did you  
20 allocate or add any money to the total for these  
21 administrative costs, either at the least-cost level or  
22 any other level, when you allocated money after this law  
23 was enacted?

24 MR. NORRIS: I don't know the answer to that.  
25 I don't have it with me. One of our finance experts --

1 CHAIR GENEST: I think the record shows that  
2 there wasn't.

3 But my question isn't exactly that. It's, what  
4 about the rest of it? In other words, does the State  
5 Department of Social Services know exactly what every  
6 item of cost that a county undertakes to run this program  
7 is, and do you budget precisely? Or is it done in some  
8 generalized fashion that is more or less adequate, in  
9 your view, to fund the total package of administrative  
10 costs?

11 MR. NORRIS: As I understand it, the  
12 administrative costs are precisely those -- the  
13 administrative costs that the department allocates are  
14 precisely those that the County claims. And I don't  
15 think that we allocated any sort of general way but,  
16 rather, we allocate to the claim that the county submits.

17 CHAIR GENEST: Well, did the county submit  
18 claims for this cost to the department, when you were  
19 building your allocation?

20 MR. NORRIS: I'm not sure about that. I think  
21 that those costs were built into the county's claim. I'm  
22 not certain about that, though.

23 CHAIR GENEST: Well, that seems to me a pretty  
24 important question.

25 I don't know if Finance has an answer to that.

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1 I don't recall that being in the record.

2 MS. CASTAÑEDA: As we understand it, from the  
3 advisory committee, the Department budgets \$53,000 per  
4 county, but they do pay on what is actually claimed.

5 On the other pieces, we don't know.

6 CHAIR GENEST: Does any other member of the  
7 committee have a question?

8 MEMBER WORTHLEY: Mr. Chairman, just to  
9 respond to the point that you brought up about, this is  
10 kind of a common theme, we're going to hear several times  
11 today, and that is about this concept that we have case  
12 law which indicates that increased costs, in and of  
13 themselves, do not necessarily reflect an increased or  
14 enhanced service. The key there is "*in and of*  
15 *themselves.*" What are they tied to? If they're tied to  
16 an enhancement of service, then they should be  
17 reimbursable.

18 I would submit to you that the test claim  
19 presented today is an indication of the fact it's an  
20 enhancement. When you go from minimum wage, with no  
21 benefits, to \$10.40 an hour and over \$4, I think it is,  
22 in benefits, to employees, and your employees go from  
23 9,000 to 18,000, if that's not an enhancement, my gosh, I  
24 don't know what would be an enhancement. In other words,  
25 if it was a bad situation, people would be leaving the

1 business. Instead, they're flocking to this business  
2 because it's an enhancement.

3 And we're saying that just because it's an  
4 increased cost, we shouldn't have to reimburse them. I'm  
5 saying the increased costs are related to the enhancement  
6 which results from the services provided; and, therefore,  
7 the State should be bound.

8 MS. TER KEURST: Can I add just a brief comment  
9 to that?

10 I addressed this in the staff analysis, and I  
11 asked some other people to because I in no way claim to  
12 be an expert in this field.

13 But I did want to comment on that particular  
14 item, because that's more an issue of how the mandate  
15 process works.

16 And one of the things in the legislative intent  
17 was that this law was put there expressly for the purpose  
18 of collective bargaining, requiring DSS to establish a  
19 timetable for all of this to happen. But it's expressly  
20 for an employer of IHSS personnel for purposes of  
21 collective bargaining.

22 So it's not just a matter of there's a new law  
23 and the wages were a result of. This law was created to  
24 address the wages and the need for these people.

25 And in the response that I wrote, I quoted from

1 a case, the Select Base Materials v. Board of  
2 Equalization case, where it says, "The fundamental rule  
3 of statutory construction is that the Court should  
4 ascertain the intent of the Legislature so as to  
5 effectuate the purpose of the law."

6 And our position is, the purpose of the law in  
7 this case was to establish a procedure for collective  
8 bargaining.

9 CHAIR GENEST: Does staff have a response?

10 MS. TOKARSKI: Yes, I addressed that citation  
11 at the bottom of page 13, footnote 26. And certainly  
12 that is a correct statement of statutory construction.  
13 However, the essential purpose of statutory construction  
14 is not determined by that. The statute's plain meaning  
15 should control when the plain meaning is clear, and you  
16 do not go to leg. intent language.

17 The legislative language that deals with  
18 collective bargaining in this entire test-claim statute  
19 scheme is limited to the language that's found in the  
20 middle of that page 13.

21 "Nothing in this section shall prohibit any  
22 negotiations or agreement regarding collective bargaining  
23 or any wage and benefit enhancements." And therefore  
24 staff found that the plain language of the test-claim  
25 statute did not require collective bargaining, but

1 confirms that the code section does not prohibit  
2 collective bargaining.

3           You can also say that any negotiations  
4 undertaken as part of collective bargaining, once that  
5 road is gone down, are then also at the discretion of the  
6 counties. There is nothing that required them to grant  
7 health benefits or dental benefits or get the salaries up  
8 as high as they went. That's all undertaken at the  
9 option of the county at that point, that level of  
10 negotiation. And that's certainly not required by this  
11 test-claim statutory scheme.

12           CHAIR GENEST: It seems like we have two issues  
13 here. One is, the one you're talking about, whether the  
14 salaries -- the additional -- the higher cost of the  
15 salaries are reimbursable mandates in themselves, which  
16 the staff analysis says they are not. But the other  
17 issue is, the administrative costs, in the case of one  
18 county, 59,000 over several years, I think you said it  
19 was, whether those are reimbursable.

20           And I'm fairly convinced myself by the staff's  
21 analysis on the salary issue.

22           I'm not so sure about the reimbursability of  
23 the administrative costs because I don't know what --  
24 it's not as if this is an entire program in itself. This  
25 is a shared program with many requirements and many

1 activities that are funded in a shared way by the State  
2 and the counties.

3 We heard from the Department of Social Services  
4 that counties then submit bills, and we pay a share of  
5 that bill, the feds pay a share, and the counties pay the  
6 rest. And we don't know whether, I guess, whether bills  
7 were submitted by counties for this purpose.

8 So I'm a little unclear on whether even the  
9 administrative -- where the administrative costs fit in  
10 the larger question of the whole program. So I'm not  
11 sure I can support the staff analysis in that respect  
12 without knowing more about how the program budget was  
13 built, what is funded in it, how accurate it is. In  
14 other words, does the State know with great certainty  
15 that every cost is covered by the budget, and any  
16 additional requirement must be funded in order for it  
17 to be affordable within the shared scheme? I don't think  
18 this budget is that precise. I think there's probably  
19 lots of room within the allocation, which is a fairly  
20 large allocation, especially relative to the kinds of  
21 costs we're talking about here.

22 So I'm a little unclear on that. And it sounds  
23 likes you're going to have disagreement on the salary  
24 issue as well.

25 MEMBER WORTHLEY: Mr. Chairman, in going to

1 what you're talking about, I think there is -- I would  
2 support your position. I think I hear you saying that  
3 even though it doesn't -- the statute on its face does  
4 not require that there be negotiations -- collective  
5 negotiations or bargaining, the fact of the matter is,  
6 the State created a scheme whereby bargaining became  
7 feasible.

8 It was infeasible before because you had every  
9 essentially employer was every person who hired an  
10 individual person to take care of them. But we created  
11 an agency that's where the county then became the  
12 employer of record.

13 At that point then it became possible for them  
14 to organize. In fact, they did. I'd doubt out of  
15 58 counties that there's one county that didn't organize.  
16 Just as it happened in Sacramento County, it happened in  
17 my county, in Tulare County. And then consequently, once  
18 they organized, then you were bound by state law to  
19 collective bargaining. So it was a foreseeable outcome  
20 of the statute that you would have this sort of thing  
21 happening.

22 And then once they became organized, then the  
23 counties had become responsible for bargaining. So  
24 you're bound by state law at that point to comply.

25 So I would think that at least that portion of

1 it should be reimbursable because it's foreseeable in the  
2 scheme created by the statute that the result that would  
3 happen, in fact, had happened.

4 CHAIR GENEST: If I understand you, I don't  
5 think we do agree. Because I think if you're arguing  
6 that the salaries are reimbursable --

7 MEMBER WORTHLEY: I'm talking now about the  
8 administrative costs.

9 CHAIR GENEST: Administrative costs?

10 MEMBER WORTHLEY: I'm talking about the costs  
11 of negotiations and so forth. Because once they become  
12 organized, then we have no -- you can't back out and say,  
13 "Oh, we don't want to negotiate." You're obligated by  
14 state law at that point to negotiate.

15 CHAIR GENEST: I would agree with that.

16 The only question that I have -- and maybe it's  
17 not for this hearing but would be for the P's & G's  
18 aspect -- is whether that cost is already covered within  
19 the overall allocation. That's my question.

20 MEMBER WORTHLEY: I don't believe it is.

21 CHAIR GENEST: Only because the overall  
22 allocation, as far as we know, is not really precise.  
23 And counties cause it to go up by virtue of adding more  
24 bills for the next year to be covered. So I don't know  
25 if it's covered or not.

1 MS. TOKARSKI: Welfare and Institutions Code  
2 section 12306 requires a state and county split of  
3 non-federal administration costs. So when the State  
4 Legislature, by these statutes, required additional  
5 administrative activities that were not previously  
6 required and did not provide funding -- 100 percent  
7 funding -- then there's still a county share of costs,  
8 whether it be 17 and a half or 35 percent, depending on  
9 whether there's a federal part of the costs covered.  
10 Then you have unreimbursed costs mandated by the state,  
11 you know, according to this analysis.

12 And the precise amount that was funded, it  
13 shouldn't matter exactly because there is a share of  
14 administrative costs to the county under this formula.

15 Now, for the advisory committee costs that's  
16 referred to by the state agencies, there is language in  
17 DSS claiming instructions that allows for 100 percent  
18 reimbursement of advisory committee direct costs. And  
19 it's very specific, and it allows certain costs and  
20 doesn't allow other costs.

21 That doesn't cover the entire time period,  
22 reimbursement period, for the test claim. But that's an  
23 example of where the State has taken action to provide  
24 100 percent reimbursement of -- in this case not  
25 administrative costs, but direct costs.

1           That's not true of any of the other findings  
2           that I'm recommending.

3           MR. BURDICK: Mr. Chair, if I could just make  
4           two comments in response to the Department of Social  
5           Services.

6           I think the first one is, the legislation  
7           provides option for counties to adopt. And their  
8           position is, it should be the least-costly one.

9           And I think the Legislature, in providing  
10          options for counties, provides those options for you to  
11          look at, to make a determination of which of those  
12          options best fit your particular situation.

13          And there is no requirement in the mandate  
14          process that you adopt the least costly. I think the  
15          whole intent in government is to find the one that's the  
16          most effective and efficient and meets the needs of the  
17          people; and not necessarily, you know, costs should not  
18          be -- is one of the factors that should be considered,  
19          but it should not be the governing factor and the only  
20          factor.

21          Secondly, I'd like Mr. Lakich to just comment.  
22          I think the discussion is going -- there seems to be some  
23          agreement on the requirement to bargain. But I'd just  
24          like Mr. Lakich to again comment on the obligation of the  
25          county under the statute.

1 MR. LAKICH: Under the Meyers-Millias-Brown  
2 Act, it's the employees who have the option to organize  
3 if they so choose. By amending the MMB and including  
4 home-care workers, it's the home-care workers that have  
5 the discretion to organize or not to organize, not the  
6 employers.

7 And once the employees decide to organize and  
8 there's a secret-ballot election, the county is obligated  
9 then to deal with that union's exclusive representative.  
10 It has to continue to do so until the employees elect, if  
11 they do, to decertify the union.

12 So the discretion under the law is with the  
13 employees and not the employer.

14 MEMBER LUJANO: Is this under all four options  
15 or just when the county decides to be the employer of  
16 record?

17 MR. LAKICH: It's the employer of record.

18 MR. BURDICK: Yes.

19 MEMBER LUJANO: No. Well, there's four  
20 options. So is it under all four options if they go with  
21 the contract or if they go with a non-profit consortium,  
22 they can organize and then the county has to deal with  
23 them; or is it only when the county becomes the employer  
24 of record?

25 MR. LAKICH: I believe it would be all four

1 options. If the purpose of putting the home care workers  
2 under the Meyers-Millias-Brown Act was to create an  
3 employer of record for collective-bargaining purposes,  
4 whatever options you selected, I think you'd be  
5 obligated. The employees could organize to have  
6 collective bargaining.

7 We elected to have the public authority as an  
8 option because it was the best fit for the board of  
9 supervisors, because our board then becomes the public  
10 authority. And it made it a lot simpler to meet with  
11 me and others in closed session to deal with the  
12 collective-bargaining issues.

13 But if they elected to do it under contract,  
14 they still would have, in my view, the right to have  
15 collective bargaining.

16 MR. BURDICK: And I think you'll find that in  
17 the vast majority of counties, that the public authority  
18 option is the option that has been determined best for  
19 this particular program.

20 CHAIR GENEST: Does the Department of Social  
21 Services -- did you have something to say?

22 MR. NORRIS: Yes. Just to the point about the  
23 options that are available.

24 Of the four options that were available to the  
25 County, the mandate was merely to establish an employer

1 of record. And the options were given as to how to do  
2 that.

3 Some of those options didn't involve the County  
4 becoming involved in any sort of collective bargaining  
5 at all. For example, if the contract mode had been  
6 chosen, the providers that were at that time not subject  
7 to any sort of collective bargaining were to be  
8 transferred over to the contract mode; then the  
9 contractor, as the employer, would have been subject to  
10 whatever labor relations laws were applicable, including  
11 collective bargaining if necessary.

12 So had that option been chosen by any county,  
13 there would have been no need for the county to be  
14 involved in any sort of collective bargaining, no  
15 collective-bargaining admin costs would have been  
16 involved -- none of that.

17 I think that it's only if the county chooses --  
18 actively chooses to become the employer, that any sort of  
19 costs, if there are, for collective-bargaining purposes,  
20 come into play.

21 CHAIR GENEST: Can we get staff's response to  
22 that point? In other words, you're saying that there is  
23 a reimbursable mandate. Here in the administrative  
24 requirement, I think it has to do mostly with the  
25 advisory committee. But this just sounds like perhaps

1 that wouldn't be true.

2 So can you respond to what he said about that?

3 MS. TOKARSKI: As far as the advisory  
4 committee, there has to be an advisory committee  
5 established.

6 CHAIR GENEST: Under all four options?

7 MS. TOKARSKI: Under all four options, to help  
8 the county board of supervisors to determine which option  
9 to choose.

10 So the advisory committee is mandatory. The  
11 only exception to that is for counties, and I believe  
12 San Francisco City and County, that had already  
13 established a public authority prior to the enactment of  
14 this statute. And we think that affects maybe six  
15 counties.

16 And everybody else needed to establish an  
17 advisory committee in order to go forward and choose the  
18 appropriate form of employer of record for that  
19 particular county.

20 CHAIR GENEST: So is that the only reimbursable  
21 mandate that you are identifying in your recommendations?

22 MS. TOKARSKI: There is the very first  
23 activity, I think is what Mr. Norris is referring to, and  
24 that's the middle of page 27. It's a time-limited  
25 activity from the July 12, 1999, beginning of the

1 operation of the statute, to December 31st, 2002, which,  
2 on January 1st, 2003, the counties were required to have  
3 selected their employer of record.

4 So the activity is to establish the employer of  
5 record for in-home support services providers, limited to  
6 the administrative costs that were incurred by the county  
7 workers to implement this part of the mandate. It does  
8 not include any reimbursement for increased wages or  
9 benefits that may be negotiated.

10 But there's clearly -- according to the filings  
11 by the County of San Bernardino, they went through a lot  
12 of behind-the-scenes activities to form their employer of  
13 record.

14 CHAIR GENEST: Any other -- oh, excuse me.

15 MS. SHELTON: It also does not include,  
16 according to this bullet, any activities related to  
17 collective bargaining, as well.

18 CHAIR GENEST: Okay. So are there any  
19 questions from any members of the Commission?

20 MEMBER WORTHLEY: Mr. Chair, I just have one  
21 statement. I mean, in a certain sense, that's a semantic  
22 issue. Somebody has to pay. Whatever way you choose to  
23 go, somebody has to pay. And, ultimately, it comes back  
24 to the county and state and federal government pay. So  
25 you could use whatever form you'd want, but they're going

1 to charge you a fee if they're a for-profit organization.  
2 So that was the reason why most counties went with the  
3 public authority, is to try to control costs. Because if  
4 they hire somebody else to do the services, who might  
5 then enter into a contract with somebody else to perform  
6 the actual negotiation services, you end up paying and  
7 paying and paying more.

8 So by doing it in-house, the attempt is to try  
9 to control costs.

10 Ultimately, to use some other form of means by  
11 which you do the negotiations for you, you're going to  
12 end up paying for that. The county still pays for it.

13 So whatever way you chose, it still comes back  
14 to the counties, the state, and federal government for  
15 paying for these services. By doing it with the public  
16 authority the intent was to control those costs.

17 All they can do is negotiate for you to come  
18 back and say, "This is what we negotiated. Pay up." And  
19 so the idea of controlling costs internally was for the  
20 benefit of the public authority. So I see that as really  
21 a semantic issue.

22 You can choose whatever one you want; but the  
23 bottom line is, you ended up having to pay for it.

24 CHAIR GENEST: Does anybody here -- are we  
25 ready to make a motion on this?

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1 I was initially uncomfortable with the staff  
2 recommendations just because I didn't know how this  
3 particular reimbursable mandate fit into the overall  
4 funding for the program. And maybe that's still a  
5 question. But maybe this isn't the part of the process  
6 for that question to be addressed. So I guess I'm now  
7 comfortable with the staff recommendation.

8 If there's anybody here who is willing to make  
9 that motion.

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

12 CHAIR GENEST: Do we have a second?

13 MEMBER LUJANO: I'll second.

14 CHAIR GENEST: All in favor?

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

16 CHAIR GENEST: Opposed?

17 MEMBER WORTHLEY: No.

18 MEMBER OLSEN: No.

19 MEMBER GLAAB: No.

20 CHAIR GENEST: Should we do a roll call on  
21 that?

22 MS. HIGASHI: Ms. Bryant?

23 MEMBER BRYANT: Aye.

24 MS. HIGASHI: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.

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1 MS. HIGASHI: Mr. Glaab?  
2 MEMBER GLAAB: No.  
3 MS. HIGASHI: Mr. Lujano?  
4 MR. LUJANO: Aye.  
5 MS. HIGASHI: Ms. Olsen?  
6 MEMBER OLSEN: No.  
7 MS. HIGASHI: Mr. Worthley?  
8 MEMBER WORTHLEY: No.  
9 MS. HIGASHI: Mr. Genest?  
10 CHAIR GENEST: Yes. Aye.  
11 MS. HIGASHI: The motion carries.  
12 CHAIR GENEST: Okay, what's the next item?  
13 MS. HIGASHI: The next item is Item 7.  
14 MS. TOKARSKI: Item 7 is the Statement of  
15 Decision for the item you just heard.  
16 The sole issue before the Commission is whether  
17 the proposed Statement of Decision accurately reflects  
18 the Commission's decision on the *In-Home Supportive*  
19 *Services II* test claim. Staff recommends that the  
20 Commission adopt the proposed Statement of Decision  
21 beginning on page 3, which accurately reflects the staff  
22 analysis and recommendation on this test claim.  
23 Minor changes, including those that reflect the  
24 hearing testimony and vote count will be included when  
25 issuing the final Statement of Decision.

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1 CHAIR GENEST: Do we have a motion?  
2 MEMBER LUJANO: Move approval.  
3 MEMBER BRYANT: Second.  
4 CHAIR GENEST: All in favor?  
5 *(A chorus of "ayes" was heard.)*  
6 CHAIR GENEST: Opposed?  
7 MEMBER GLAAB: No.  
8 MEMBER WORTHLEY: No.  
9 CHAIR GENEST: Roll call.  
10 MS. HIGASHI: Ms. Bryant?  
11 MEMBER BRYANT: Aye.  
12 MS. HIGASHI: Mr. Chivaro?  
13 MEMBER CHIVARO: Aye.  
14 MS. HIGASHI: Mr. Glaab?  
15 MEMBER GLAAB: No.  
16 MS. HIGASHI: Mr. Lujano?  
17 MEMBER LUJANO: Aye.  
18 MS. HIGASHI: Ms. Olsen?  
19 MEMBER OLSEN: Abstain.  
20 MS. HIGASHI: Mr. Worthley?  
21 MEMBER WORTHLEY: No.  
22 MS. HIGASHI: And Mr. Genest?  
23 CHAIR GENEST: Aye.  
24 MS. HIGASHI: Adopted.  
25 MS. HIGASHI: The motion is carried.

1           This brings us to Item 10, the test claim on  
2     *Reconveyance of Deed of Trust and Mortgage Discharge*  
3     *Certificate*. This item will be presented by Commission  
4     Counsel Kenny Louie.

5           MR. LOUIE: Thank you.

6           This is the *Reconveyance of Deed of Trust and*  
7     *Mortgage Discharge Certificate*. This test claim deals  
8     with the statute which specifies the deadline at which  
9     county recorders must process and record these documents.  
10    The test-claim statute requires county recorders to  
11    process and record reconveyances and discharge  
12    certificates within two business days from the date of  
13    receipt.

14           Before the enactment of the test-claim statute,  
15    county recorders were already required to process and  
16    record these documents. Thus, the test-claim statute  
17    merely imposes a deadline, and does not mandate any new  
18    activities or provide any tangible increase in the level  
19    of service to the public.

20           Staff recommends that the Commission deny this  
21    test claim because it does not impose a new program or  
22    higher level of service on counties and, thus, does not  
23    constitute a reimbursable state-mandated program within  
24    the meaning of Article XIII B, Section 6 of the  
25    California Constitution.

1 Will the parties and witnesses state their name  
2 for the record?

3 MS. TER KEURST: Bonnie Ter Keurst, County of  
4 San Bernardino.

5 MS. CASTAÑEDA: Carla Castañeda, Department of  
6 Finance.

7 MS. GEANACOU: Susan Geanacou, Department of  
8 Finance.

9 MS. TER KEURST: I get to start.

10 Good morning again.

11 CHAIR GENEST: Good morning.

12 MS. TER KEURST: I think we're only dealing  
13 with a couple of similar issues to the last one. But I'd  
14 just like to make few remarks addressing the final staff  
15 analysis.

16 The issue before you is one of higher level of  
17 service. We concur with the staff's analysis, in that  
18 there is no new program or that there isn't a shift in  
19 financial responsibility from the State to the county.  
20 However, we do differ on the issue of higher level of  
21 service.

22 On page 6 of the staff analysis, it reads, "To  
23 determine if the program is new or imposes a higher level  
24 of service, the test-claim legislation must be compared  
25 with legal requirements in effect immediately before the

1 enactment of the test-claim legislation." And is also  
2 cited in the analysis from the San Diego Unified School  
3 District school case, "A higher level of service occurs  
4 when the new requirements were intended to provide an  
5 enhanced service to the public."

6 The county's position is that the new  
7 requirement is a two-day processing window.

8 Staff, in the analysis on page 7, then goes  
9 on to discuss some comments that I made, in quoting  
10 from the October 4, 2006, hearing on the test claim  
11 *Fifteen-Day Close of Voter Regulation*. And that one  
12 dealt with a time frame as well.

13 In that hearing, staff said, "There aren't too  
14 many higher-level-of-service cases that have been decided  
15 by the courts."

16 And that's one of the pieces that I was looking  
17 at was the fact that there aren't a lot of court cases  
18 out here on this issue.

19 And going on, one of them, though, is Long  
20 Beach Unified School District v the State of California.

21 And that case was a higher level of service regarding  
22 racial desegregation where you had existing federal law,  
23 and the State came and required additional requirements  
24 imposed. And the Court said that was a higher level of  
25 service.

1 In the process, to find a higher level of  
2 service is requiring a finding that the State is  
3 mandating new requirements on the local agencies and  
4 school districts.

5 The analysis then goes on to quote from the  
6 San Diego Unified school case, and in part reads:  
7 *"A statute or executive order mandates a reimbursable*  
8 *higher level of service when the statute or executive*  
9 *order as compared to the requirements in effect*  
10 *immediately before the enactment of the test legislation*  
11 *increases the actual level of government service to the*  
12 *public provided in the existing program."*

13 In submitting that case, my intent was to bring  
14 to light the terminology as used, which was new  
15 requirements and legal requirements as compared to the  
16 prior process. Those comments are directed at that word,  
17 "requirement," not "activities."

18 Finally, the analysis reads, *"Thus the*  
19 *test-claim statute merely imposes a deadline and does not*  
20 *mandate any new activities or provide any tangible*  
21 *increase to the level of service to the public."*

22 That's the statement we disagree with. The  
23 word "merely" imposes a deadline, suggests minimal  
24 impact.

25 Bank of America sponsored the bill, addresses

1 the issue of lawsuits it faced as a result of not meeting  
2 the timelines required by the law. Their contention was  
3 that the problem was not their negligence but belonged to  
4 the counties for not working within the time frames that  
5 the banks were required to follow and adhere to.

6 In the legislative analysis opposition  
7 comments, it referred to the bill's objective as  
8 protecting property owners by assuring the timely  
9 recording of reconveyance.

10 In a newspaper article directed at a class  
11 action suit on this matter, it stated, "*Property owners*  
12 *whose titles have not been cleared can face difficulties*  
13 *in securing new or refinanced loans or selling their*  
14 *property.*"

15 Those are all very tangible issues for the  
16 county to deal with.

17 And with that, I would like to ask you to  
18 reconsider this claim.

19 MS. CASTAÑEDA: Carla Castañeda, Finance.

20 We concur with the staff analysis; and also  
21 note that the decision was similar to the *Fifteen Day*  
22 *Voter Program* where all the requirements are the same  
23 except for the timeframe. Only a shorter timeframe.

24 MS. GEANACOU: I have no further comments,  
25 unless there are questions from the members.

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1 CHAIR GENEST: Questions from the members?

2 Mr. Glaab?

3 MEMBER GLAAB: Yes, Mr. Chairman, I just have a  
4 question. I want a clarification, if I can.

5 The way that it was done prior to this was, I'm  
6 reading 30 days, it needed to be recorded in 30 days; is  
7 that correct?

8 MS. TER KEURST: That's a time frame for the  
9 institutions, not for the counties, per se.

10 Prior, as I understand it, the documents would  
11 come in from the institutions. They did have that time  
12 frame.

13 The counties didn't. There was nothing written  
14 in the statute to say the counties had to turn it around  
15 to the institutions in a certain time frame. That's my  
16 understanding.

17 MEMBER WORTHLEY: Mr. Chairman, as I understand  
18 it, the language as cited in the report is, "*The recorder*  
19 *shall record it without delay.*" That was the only  
20 terminology. There was no specified time frame.

21 CHAIR GENEST: In the prior?

22 MEMBER WORTHLEY: Yes.

23 MEMBER GLAAB: Then under the current, what  
24 we're looking at now is, we're requiring it in two days,  
25 not "without delay."

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1 MS. TER KEURST: Correct.

2 MEMBER GLAAB: Well, it would seem to me, being  
3 a small business owner myself, that if I'm required to do  
4 something without delay, that conveys one particular  
5 meaning -- meaning, that we will get it done as soon as  
6 we possibly can. But when somebody says to me that I  
7 have to do it under a specific timetable, it's going to  
8 incur some additional costs by which to accomplish this.

9 CHAIR GENEST: I don't think the argument is  
10 that there are no costs, necessarily. I think the  
11 argument is whether or not those costs are reimbursable  
12 or constitute a reimbursable mandate.

13 Is that correct?

14 MR. LOUIE: That's correct. Staff knows that  
15 there may be increased costs with this. However, as of  
16 this date, no court has held that the imposition of a  
17 deadline or the specification of a deadline constitutes a  
18 higher level of service.

19 MEMBER WORTHLEY: Mr. Chairman, if I might.

20 I had the same concern about the previous case  
21 that was cited, that we discussed a moment ago.

22 This issue really comes down to, what do we  
23 call enhancement of services? And this Commission has  
24 taken, in my view, a very narrow perspective on what is  
25 considered an enhancement.

1           If this is not enhancement, then why the heck  
2 did the Legislature pass the law? I mean, we're talking  
3 about the fact that now it has to be done within two  
4 days.

5           If you were to take us to an extreme position,  
6 this is two business days. But suppose the Legislature  
7 said it has to be done within two days, regardless of  
8 business days? That means somebody would have to come in  
9 on a Sunday and be paid overtime to do this. Now, I'm  
10 using an extreme example, but the logic is the same here.  
11 What I'm saying is, we can mandate anything; but because  
12 they're required to do it, anyway, the fact that it may  
13 cost them ten times more to do it is not an enhancement.

14           I think it is an enhancement. That's why the  
15 Bank of America, I'm sure, wanted this to be passed,  
16 because it was an enhancement to them. It helped them to  
17 do their business services and conduct their business.  
18 It's a benefit to the people that it's done.

19           I don't disagree with the statute because it's  
20 beneficial. But it's beneficial because it's an  
21 enhancement.

22           And we're focused on the fact that just because  
23 it costs more money doesn't mean that it's entitled to  
24 reimbursement, unless it is an enhancement. And we don't  
25 seem to ever be able to find an enhancement.

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1 I'm saying, this is an enhancement. This is a  
2 benefit to the public, and that benefit is then what  
3 makes it a reimbursable mandate, because it's an  
4 increased cost related to an enhanced service.

5 I don't know how it could be any clearer.

6 MEMBER OLSEN: Mr. Chair, I'd like to get some  
7 clarification from Mr. Louie.

8 Mr. Louie, you said no court to date has found  
9 that the imposing of a deadline is an enhancement.

10 Can we talk about the other side of that, which  
11 is, has the court to date found that it is not? Or is it  
12 that the court is simply silent on it?

13 MR. LOUIE: I'd defer to this Ms. Shelton.

14 MS. SHELTON: There hasn't been a case that has  
15 gone to court on this issue. What the courts have found,  
16 though, to establish a new program or higher level of  
17 service, you have to have new required activities  
18 imposed.

19 Here, we don't have a new required activity  
20 imposed. The same activity was required under prior law,  
21 and that's the key.

22 And, yes, we are being conservative because the  
23 cases have consistently said, "a new program or higher  
24 level of service," only is there if there's a new  
25 required activity imposed or there's been a shift of

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1 costs. And in this case, neither one of those occurred.

2 MEMBER OLSEN: So it's your contention that a  
3 new required -- that there is not a difference in kind  
4 between doing it in a prompt manner and doing it within  
5 two days?

6 MS. SHELTON: We acknowledge that there are  
7 definitely probably increased costs incurred. We have  
8 declarations in the file of increased costs. But the  
9 courts have all been very clear that costs alone does not  
10 mean that it's a reimbursable state-mandated program  
11 under the Constitution.

12 MEMBER WORTHLEY: Because there's no finding of  
13 enhancement.

14 MS. SHELTON: You have to meet all of the  
15 elements. You have to have a mandate, you have to have a  
16 new program of higher level of service, you have to have  
17 increased costs. And all three must be present for there  
18 to be a reimbursable state-mandated program.

19 The activities required before of the county  
20 recorders office are the same activities required now.  
21 The time has changed.

22 MEMBER WORTHLEY: And to that end,  
23 Mr. Chairman, it goes back -- there's certain maxims in  
24 life we talk about: Time is money, right? Time is  
25 money. If we have to do something within two days as

1 opposed to doing it 30 days or 45 days, and if we don't  
2 have a steady flow of paperwork, so now people get to it  
3 when they get around to it. Now, we're saying they have  
4 to do it. So now it may require them to pay extra  
5 overtime or violate the rule. Those are basically the  
6 options you have.

7 Unless you're saying people have got excess  
8 capacity or are sitting around waiting for papers to fall  
9 in their box so they can do the work. I just see that as  
10 an enhancement.

11 And right now, we have a bill pending that  
12 relates to this mandate, that would say if this  
13 Commission on Mandates does not render a decision within  
14 one year of a test claim being filed, it will be deemed  
15 to be a reimbursable mandate.

16 Well, how are we going to respond to that?  
17 We're either going to have to violate the rule or not be  
18 able to meet it, so there will be a reimbursable  
19 automatically. Hire more people or work overtime. Those  
20 are our options.

21 And what would be the benefit? It will be an  
22 enhancement to the people who are filing the claims  
23 because their claims will be handled in an expeditious  
24 manner and they will get paid faster. That's an  
25 enhancement.

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1 MEMBER GLAAB: Mr. Chairman, at the top of  
2 page 6, I'd like to draw my fellow commissioners to a  
3 statement.

4 "The courts have defined a program subject to  
5 Article VIII B, Section 6, of the California Constitution  
6 as one that carries out the government function providing  
7 public services or a law," and this is where I'm  
8 focusing, "and imposes unique requirements on local  
9 agencies."

10 It would seem to me that getting something done  
11 as quickly as possible versus two days constitute a  
12 unique requirement. And that's what I'm focusing in on.

13 And I agree with staff that this is not a new  
14 program. I clearly see that.

15 CHAIR GENEST: I think those words mean a  
16 requirement that is uniquely required of local  
17 governments as opposed to the population in general.

18 Is that your point?

19 MEMBER GLAAB: Yes, the unique requirement, I  
20 find the two-day period of time is a unique requirement.

21 CHAIR GENEST: Well, the Constitution doesn't  
22 say that anytime the Legislature takes any action that  
23 results in a cost to local government they must be  
24 reimbursed. It says what it specifically says, which  
25 isn't that. It's not that broad or sort of, "Whatever

1 you do, you get reimbursed."

2 So I think we have to look at what does it say?  
3 And at this point, I don't think it's a question of  
4 whether there is a cost. I think everybody would agree,  
5 if you have to do something faster, there's a higher  
6 probability that that would cost you more. And we have  
7 that, I guess, in the record.

8 The question is, is it a reimbursable mandate?

9 MEMBER WORTHLEY: Mr. Chair, if you look at the  
10 last sentence on that paragraph. It says, "*A higher*  
11 *level of service occurs when the new requirements were*  
12 *intended to provide an enhanced service to the public.*"  
13 That's the key: "*enhanced service to the public.*" This  
14 is an enhanced service to the public that we're talking  
15 about.

16 MS. SHELTON: Just for the record, the footnote  
17 cited to that is a San Diego Unified School District case  
18 where the legislation in that issue did impose new  
19 activities related to expulsion of students. So there  
20 were new mandated activities imposed in that case.

21 And here, you know, we don't have a case on  
22 record where there are any new activities required.  
23 There's a new deadline required but the activities are  
24 not new.

25 CHAIR GENEST: Did you have a question?

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1 MEMBER BRYANT: I was just going to say, I  
2 agree with Ms. Shelton completely, that "without delay"  
3 the Legislature, the law already stated that this should  
4 be done without delay. And I don't think "two days" is a  
5 huge difference from "without delay," whatever that  
6 meaning is. And the fact that counties were continually  
7 doing this activity, it doesn't really change anything.  
8 To me, it's more of a clarification of current practice.

9 CHAIR GENEST: Well, I'm not sure -- I think  
10 we've got it all out, and we need to move on so we can  
11 get to other matters.

12 We don't appear to have agreement.

13 But do we have a motion?

14 MEMBER BRYANT: I'll move the staff  
15 recommendation.

16 MEMBER OLSEN: I'll second staff  
17 recommendation.

18 CHAIR GENEST: Let's take a roll call on this,  
19 Ms. Higashi.

20 MS. HIGASHI: Ms. Bryant?

21 MEMBER BRYANT: Aye.

22 MS. HIGASHI: Mr. Chivaro?

23 MEMBER CHIVARO: Aye.

24 MS. HIGASHI: Mr. Glaab?

25 MEMBER GLAAB: No.

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1 MS. HIGASHI: Mr. Lujano?

2 MEMBER LUJANO: Aye.

3 MS. HIGASHI: Ms. Olsen?

4 MEMBER OLSEN: Aye.

5 MS. HIGASHI: Mr. Worthley?

6 MEMBER WORTHLEY: No.

7 MS. HIGASHI: Mr. Genest?

8 CHAIR GENEST: Aye.

9 MS. HIGASHI: The motion carries.

10 CHAIR GENEST: Okay, let's move on to the next  
11 issue.

12 MS. HIGASHI: The next item is the proposed  
13 Statement of Decision on this.

14 CHAIR GENEST: And this isn't the subject that  
15 we just discussed, it's just does the Statement of  
16 Decision accurately reflect our vote.

17 Do we have a motion on that?

18 MEMBER GLAAB: So moved.

19 CHAIR GENEST: Second?

20 MS. OLSEN: Second.

21 CHAIR GENEST: One of you moved and the  
22 other --

23 MS. OLSEN: He moved and I seconded.

24 CHAIR GENEST: All right, let's have a roll  
25 call on that.

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MS. HIGASHI: Ms. Bryant?

MEMBER BRYANT: Aye.

MS. HIGASHI: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HIGASHI: Mr. Glaab?

MEMBER GLAAB: Aye.

MS. HIGASHI: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HIGASHI: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HIGASHI: Mr. Worthley?

MEMBER WORTHLEY: No.

MS. HIGASHI: Mr. Genest?

CHAIR GENEST: Aye.

MS. HIGASHI: The motion carries.

CHAIR GENEST: So that brings us to what now?

MS. HIGASHI: This brings us to Item 12.

Item 12 will be presented by Senior Commission  
Counsel Eric Feller.

MR. FELLER: Good morning.

The test-claim legislation requires school  
districts to request suspension and expulsion records for  
transfer pupils, and requires notification of the pupil's  
teachers of the suspension or expulsion offenses that  
have been committed.

1           The test-claim legislation also expands the  
2 list of offenses for which teachers and non-transferring  
3 pupils must be notified.

4           Staff finds that the test-claim legislation  
5 imposes a reimbursable state mandate for the following  
6 activities:

7           First, for a school district into which a pupil  
8 is transferring to request from the school district in  
9 which the pupil was last enrolled, any records the  
10 district maintains in its ordinary course of business or  
11 receives from a law enforcement agency regarding acts  
12 committed by the transferring pupil that resulted in the  
13 pupil's suspension from school or expulsion from the  
14 school district.

15           Second, for a school district, upon receipt of  
16 a pupil's transfer record, to inform any teacher of the  
17 pupil, that the pupil was suspended from school or  
18 expelled from the school district and inform the teacher  
19 of the act that resulted in that action.

20           Third, for a school district to inform the  
21 teacher of each pupil who has engaged in or is reasonably  
22 suspected to have engaged in any of the following four  
23 offenses: sexual harassment; hate violence; harassment,  
24 threats or intimidation; and terroristic threats against  
25 school officials or property or both.

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1           This information is based on records maintained  
2 by the district in its ordinary course of business and  
3 receipt from a law enforcement agency. According to  
4 preexisting subdivision (d) of section 49079, this  
5 information is provided to the teacher regarding pupil  
6 offenses from the previous three school years.

7           Claimants Carpinteria Unified and Grant Joint  
8 Union School Districts submitted a letter agreeing with  
9 the staff analysis, which is a late filing you should  
10 have before you.

11           One activity is in dispute: whether it's a  
12 state mandate, upon a pupil's transfer from one school  
13 district to another, to provide a pupil's records that  
14 result in the pupil's suspension or expulsion from school  
15 or expulsion from the school district. The test-claim  
16 statute does not expressly require the school district to  
17 provide the records, so staff recommends that this be  
18 decided in the parameters-and-guidelines phase.

19           Finance and Claimant Sweetwater School District  
20 disagree with that.

21           Finance believes it should be determined at  
22 this phase that the activity is not a mandate, and  
23 Claimant Sweetwater, along with Interested Party  
24 San Diego Unified School District, believe it should be  
25 determined now that this is a mandate.

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

3           MR. PETERSEN: Keith Petersen representing  
4 Sweetwater.

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

7           CHAIR GENEST: Mr. Petersen?

8           MR. PETERSEN: As Commission staff indicated,  
9 there is one open issue, and that is the cost of the  
10 sending district to provide the expulsion records to  
11 the receiving district. Education Code 48201,  
12 subdivision (b), expressly states that the receiving  
13 district, when they receive a student, will ask the  
14 sending district to send all expulsion records.

15           Commission staff indicates that the code  
16 section does not expressly require the sending district  
17 to provide those documents.

18           Again, they rely on the concept of the plain  
19 language of the statute as opposed to the legislative  
20 intent.

21           Since the sending district is the only location  
22 where those records exist, there is no other way to get  
23 those records to the receiving district.

24           Staff said that the sending district is not  
25 practically compelled -- in other words, not penalized

1 for not doing it -- so it's not a mandate. We disagree.  
2 That's the only location of the records.

3 CHAIR GENEST: Finance?

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

6 Finance concurs with the final staff analysis  
7 except to the extent that it acknowledges that the  
8 parameters-and-guidelines stage is appropriate for  
9 considering for reimbursement for a school district's  
10 response and provision of records regarding the pupil's  
11 suspension and expulsion.

12 The analysis correctly finds that providing  
13 these pupil records is not required by statute and is  
14 not mandated by the State. Finance asserts that it is  
15 no more appropriate for consideration at the  
16 parameters-and-guidelines stage.

17 The parameters and guidelines should determine  
18 the most reasonable method to comply with the mandate to  
19 request the records. This should involve activities  
20 relating to making the request itself.

21 The Legislature did not require these records  
22 be provided by the school district. And we would argue,  
23 the Legislature knows how to say what it wants to say.

24 MR. PETERSEN: Yes.

25 MS. FEREBEE: And the absence of such a

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1 requirement in the law should not be regarded as an  
2 oversight. It should be assumed that the Legislature  
3 intended to leave it out of the statute. Reimbursement  
4 for an act we must assume was deliberately left out of  
5 the law and should not be found reimbursable by the State  
6 at this stage or at the parameters-and-guidelines stage.

7 Accordingly, Finance recommends striking the  
8 portions of the proposed decision that finds providing  
9 the records reciprocal to a request for them under  
10 Education Code section 48201(b)(1), and suggests that  
11 this be considered at the parameters-and-guidelines  
12 phase.

13 Finance asserts that it should not be.

14 Thank you.

15 CHAIR GENEST: Questions?

16 MEMBER OLSEN: I have to say -- I apologize,  
17 but I find the staff analysis on this one to be nearly  
18 ludicrous. And maybe I'm just missing something, and  
19 that's a possibility here. But a school district  
20 receives a student, they ask for suspension records. The  
21 sending district decides, "Oh, there is no requirement  
22 for me to send them, so I'm not going to send those  
23 records."

24 The receiving district then has a problem with  
25 the student. Let's say there's a hate crime. Let's say

1 there is some horrendous violence on campus that this  
2 student is involved in. And the parents of a child who  
3 is killed or hurt or maimed in that violence go and look  
4 for the deep pocket.

5 And I've got to tell you, that that deep pocket  
6 is not hard to find here. It's the sending district who  
7 did not inform the receiving district.

8 I mean, there is -- it seems to me that just  
9 the logical conclusion is that there is a requirement,  
10 that once you have required one side to request the  
11 records, there is an implicit requirement for the other  
12 side to provide them.

13 CHAIR GENEST: Well, I guess this is like the  
14 mirror image for me of some of the others.

15 Common sense, to me, is the mandate here.

16 I was going before where your analysis takes  
17 up, and think about a school district who, in the third  
18 issue, who knows the pupil has engaged in sexual  
19 harassment, hate violence, harassment threats,  
20 terroristic threats, and decides not to tell the teacher  
21 that. So it seems to me it would be gross dereliction of  
22 duty for the district not to have a policy to tell the  
23 teacher when it knows about that sort of problem.

24 But it sounds to me as if this law is the first  
25 place where that's explicit. So that is a new

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1 requirement and, therefore, it's a higher level of  
2 service, even though you can't imagine a school district  
3 not performing that level of service on its own -- out of  
4 its own good judgment prior to the enactment of this law.  
5 It is a new state law requirement.

6           Whereas I agree with Finance, the Legislature  
7 must be just assuming -- your analysis is correct,  
8 Ms. Olsen -- that once we've required them to request it,  
9 the sending district will give it of its own volition and  
10 doesn't need to be required of state law.

11           It sounds pretty technical; but all this stuff  
12 is. We're not here to decide what makes common sense.  
13 If we were, a lot of this would fall by the way. We're  
14 here to decide what is a reimbursable mandate.

15           And I think these three things mentioned in the  
16 staff analysis are reasonable reimbursable mandates. But  
17 I do tend to side with the Finance analysis, that there  
18 isn't a mandate to provide the record once requested.  
19 It's just a good thing to do.

20           MEMBER WORTHLEY: Mr. Chairman, I'm looking at  
21 the staff report. It says that the Commission has the  
22 authority to determine at the parameters-and-guidelines  
23 phase whether to provide the record is the most  
24 reasonable method to comply with the mandate to request  
25 the records.

1           So, I mean, the analysis has given us the  
2           wherewithal to go to what my colleague has said here,  
3           that we don't have to find a mandate on the findings  
4           side. If we can find it on the parameters and guidelines  
5           as a reasonable -- what's the term there, the magic  
6           language? -- the most reasonable method to comply. And  
7           I think that's the appropriate thing for us to do.

8           MEMBER OLSEN: Okay, well, then I have a  
9           follow-up question on that.

10           I don't necessarily have a problem with that  
11           approach, but from the point of adopting -- let's say we  
12           were to adopt the staff analysis this time, the staff  
13           findings. How long does it take for parameters and  
14           guidelines to come back to us? Are any of us going to be  
15           still sitting on this Commission when that happens?  
16           That's my question.

17           MEMBER WORTHLEY: Time is money. An enhanced  
18           board --

19           MEMBER OLSEN: Yes, that's my practical  
20           question, though, here.

21           MS. SHELTON: Well, we hope so. But under the  
22           current regulations -- under the regulations and under  
23           the statutes, the claimant has 30 days to file the  
24           proposed parameters and guidelines.

25           We also have regulations that allow the

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1 Commission staff to send out a proposed, and then the  
2 parties to comment on that, which does speed things up.

3 The Department of Finance has taken on roles to  
4 negotiate reimbursement, reasonable reimbursement  
5 methodologies to come up with some sort of a unit cost,  
6 which hopefully will make things go a little bit faster.

7 But, yes, it should come back.

8 But the period of reimbursement does not  
9 change. That is established by law. So, you know, it's  
10 based on the filing of the test claim, and that won't  
11 change.

12 MEMBER OLSEN: Understood. But on average, how  
13 long -- I mean, do we have statistics on how long it  
14 takes to turn this around?

15 MS. HIGASHI: Nancy has that data.

16 MS. PATTON: Well, it was about six months  
17 before we started doing these reasonable reimbursement  
18 methodologies. Now, I really couldn't even give you --  
19 actually getting those going have sort of delayed the  
20 P's and G's. But they're not going to take seven years.  
21 They're not going to take five years. And you should  
22 have the opportunity to vote on them.

23 MEMBER GLAAB: Mr. Chairman?

24 CHAIR GENEST: Yes?

25 MEMBER GLAAB: I just have a quick question for

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1 our school representative.

2 From a practical point of view, when a  
3 receiving school requests the records from the sending  
4 school district or school, is it normally complied with?

5 MR. PETERSEN: Well, on information and belief,  
6 the answer is yes. I don't think school professionals  
7 are concerned about mandate reimbursement.

8 MEMBER GLAAB: Thank you.

9 MR. PETERSEN: It doesn't mean we shouldn't be  
10 reimbursed, but, yes.

11 CHAIR GENEST: Well, I don't know if we have  
12 any support up here for a motion that would adopt the  
13 Department of Finance position.

14 MEMBER WORTHLEY: Mr. Chairman, I would move  
15 that we adopt the recommendation from staff and that  
16 we -- is this the appropriate time to talk about the  
17 parameters and guidelines, that are to be addressed in  
18 the parameters and guidelines?

19 MS. HIGASHI: We should adopt the  
20 recommendation first. And then if there's any direction  
21 for staff.

22 MEMBER WORTHLEY: I would move approval of the  
23 adoption of the recommendation of staff.

24 MEMBER GLAAB: Second.

25 CHAIR GENEST: All those in favor?

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1 (A chorus of "ayes" was heard.)  
2 CHAIR GENEST: Opposed?  
3 MEMBER OLSEN: No.  
4 CHAIR GENEST: Ms. Olsen votes no.  
5 MEMBER BRYANT: I abstain.  
6 CHAIR GENEST: Ms. Bryant abstains.  
7 MS. HIGASHI: We've got five votes.  
8 CHAIR GENEST: Is it seven, so it passes?  
9 MS. HIGASHI: Yes.  
10 The next item is Item 13, which would be the  
11 Statement of Decision.  
12 CHAIR GENEST: Did we want -- you said there  
13 would be a time --  
14 MEMBER WORTHLEY: Is that where we addressed  
15 this issue?  
16 MS. HIGASHI: It's triggered by the Statement  
17 of Decision.  
18 CHAIR GENEST: So that is Item 13, I guess.  
19 MR. FELLER: Yes. The sole issue is whether  
20 the proposed Statement of Decision accurately reflects  
21 the Commission's decision on the final staff analysis.  
22 Unless there is objection, staff recommends that the  
23 Commission adopt the proposed Statement of Decision.  
24 Staff also recommends the Commission allow minor changes  
25 to be made to the Statement of Decision, including

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1 reflecting the witnesses, any hearing testimony, and vote  
2 count that will be included in the final Statement of  
3 Decision.

4 CHAIR GENEST: Did you have a comment on that?

5 MEMBER WORTHLEY: Does that include the issue  
6 about reimbursing the sending school? Is that included  
7 in this proposed Statement of Decision?

8 MS. HIGASHI: Mr. Worthley, the claimant would  
9 propose reimbursable activities.

10 MEMBER WORTHLEY: So that's a future event for  
11 us to do?

12 MS. HIGASHI: Correct.

13 MS. SHELTON: I was just going to add that the  
14 Commission at the parameters-and-guidelines phase has the  
15 discretion to include the best reasonable activities in  
16 the parameters and guidelines. And those are defined to  
17 include those activities that are not directly mandated  
18 by the statute.

19 MEMBER WORTHLEY: I move approval,  
20 Mr. Chairman, of the --

21 CHAIR GENEST: I think Finance has something.

22 MS. FEREBEE: Yes, thank you. Donna Ferebee,  
23 Department of Finance.

24 I just wanted to just be sure that I state on  
25 the record that what our objection is, is to the language

1 in the decision that speaks to this matter coming up; and  
2 suggests that it would be approved at the  
3 parameters-and-guidelines stage by referring to the  
4 provision of the records as reciprocal to their request.  
5 And in that regard, we were asking to have that language  
6 stricken from the decision, the proposed decision.

7 MR. PETERSEN: Too late for that.

8 CHAIR GENEST: Do we have a motion?

9 MEMBER WORTHLEY: I move approval for the  
10 proposed Statement of Decision.

11 MEMBER GLAAB: Second.

12 CHAIR GENEST: All in favor?

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

14 MEMBER OLSEN: I'm going to abstain.

15 CHAIR GENEST: Ms. Olsen abstains.

16 Okay.

17 MS. HIGASHI: Go to your next binder.

18 Does anyone need to take a five-minute break  
19 before we start?

20 CHAIR GENEST: Why don't we just assume that we  
21 do? So we'll be back in five minutes.

22 *(A recess was taken from 10:50 a.m.*  
23 *to 10:58 a.m.)*

24 CHAIR GENEST: The next item, is it Item 14?

25 MS. HIGASHI: Yes, Item 14 will be presented by

1 Commission Counsel Katherine Tokarski.

2 MS. TOKARSKI: We're still in the morning, so  
3 good morning again.

4 This consolidated test claim concerns the State  
5 Teachers Retirement System, or CalSTRS. The claimants  
6 are seeking reimbursement for increased costs of employer  
7 contributions to the defined benefit retirement programs  
8 for their employees as a result of a number of statutory  
9 changes.

10 The affected state agencies dispute the  
11 claimants' arguments that any increased monthly  
12 contributions to CalSTRS are reimbursable, and cite case  
13 law to support their position. The California Supreme  
14 Court has consistently ruled that evidence of additional  
15 costs alone do not result in a reimbursable  
16 state-mandated program under Article XIII B, Section 6 of  
17 the California Constitution.

18 Staff finds that the test-claim statutes create  
19 a situation, as in the City of Anaheim case where the  
20 employers were faced with "a higher cost of compensation  
21 to its employees." As held by the Court, "*This is not*  
22 *the same as a higher cost of providing services to the*  
23 *public.*"

24 Therefore, staff finds that increased costs  
25 resulting from the test-claim statutes without more does

1 not impose a program or a new program or higher level of  
2 service than existing programs subject to Article XIII B,  
3 Section 6.

4 However, a number of the test-claim statutes do  
5 require that the school district employer engage in new  
6 reporting and notice activities. The state agencies  
7 argued that this part of the claim should be rejected on  
8 the same rationale as other employment-related mandates  
9 cases. Staff disagrees. Those cases did not describe a  
10 situation where there were distinct administrative  
11 activities required by the test-claim statutes in  
12 addition to the higher contribution costs. Therefore,  
13 staff finds that some of the test-claim statutes impose a  
14 new program or higher level of service, and costs  
15 mandated by the state, by requiring new activities to be  
16 performed by school districts.

17 Staff recommends the Commission adopt the staff  
18 analysis to partially prove this test claim as described  
19 in the conclusion beginning on page 24.

20 Will the parties and witnesses please state  
21 your names for the record?

22 MR. PETERSEN: Keith Petersen, representing  
23 Santa Monica College.

24 MS. FEREBEE: Donna Ferebee, Department of  
25 Finance.

1 CHAIR GENEST: Mr. Petersen?

2 MR. PETERSEN: Good morning.

3 The issues in this case have been discussed to  
4 a great extent already today. It has to do with the  
5 difference between increased costs and increased level of  
6 service.

7 I think the epitome of the bad court decisions  
8 on this are found on page 20, about two-thirds of the  
9 way down, it's part of that large, "However, the court  
10 continued." The last sentence in italics says  
11 "*Similarly, City is faced with a higher cost of*  
12 *compensation to its employees. This is not the same as a*  
13 *higher cost of providing services to the public.*" And  
14 that is the gist of the issue whether the changes to the  
15 CalSTRS compensation plan is a higher level of service or  
16 just higher cost. Commission staff says it's just higher  
17 cost, therefore not reimbursable.

18 I do believe there are some legal issues that  
19 may be worthy of litigation, and that is the difference  
20 between a defined benefit plan and a defined contribution  
21 plan; and also the difference between, quote, unquote,  
22 "*creditable services and salaries.*"

23 The staff's position on that is, there isn't.

24 The staff is stuck with the Anaheim case, the  
25 San Diego case.

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1 Both of those speak to higher costs rather than  
2 higher level of service. Both of those decisions, the  
3 holdings in those decisions are wider than the facts  
4 presented. And the way they're being applied now is  
5 excluding some reasonable legal issues.

6 But as I said, the Commission staff is hewing  
7 to those two decisions. And they also have a third one  
8 now, I believe CSAC Excess Insurance will speak to some  
9 of these issues, too.

10 CHAIR GENEST: Finance?

11 MS. FEREBEE: Donna Ferebee, Department of  
12 Finance.

13 Finance concurs with the final staff analysis  
14 insofar as it found the test-claim statutes do not impose  
15 a program or a new program or higher level of service.  
16 Increased costs for an employer's share of retirement  
17 contributions are clearly not reimbursable state  
18 mandates.

19 However, contrary to the staff analysis,  
20 Finance maintains that the reporting and notice  
21 activities are not reimbursable. A higher cost to the  
22 local government for compensating its employees is not  
23 the same as a higher cost of providing services to the  
24 public.

25 Costs associated with these activities are

1 really just higher costs of compensating employees rather  
2 than higher costs of providing services to the public.  
3 Accordingly, Finance recommends the Commission deny the  
4 test claim in whole.

5 CHAIR GENEST: Any questions from the  
6 Commission?

7 MEMBER WORTHLEY: Mr. Chairman, at the risk of  
8 sounding like a broken record, I do think that, one, we  
9 have a series of cases which talk about those kinds of  
10 impositions which affect society in general, such as  
11 workers' compensation changes, minimum-wage increases.  
12 Those affect everybody: Private, public alike.

13 Here, we have a statute aimed specifically at a  
14 public entity. And the only issue is, do we have, again,  
15 an enhancement? And I believe that if we don't connect  
16 the dots and recognize that enhancement has a correlation  
17 to what we pay people, then we miss a very serious point.

18 If I were to look at this as a public school  
19 versus a private school -- as a private school potential  
20 teacher, for example, as I look at what I would be able  
21 to get from a compensation standpoint of the private side  
22 versus the public, I not only look at my salary, I look  
23 at my benefit package. If the benefit package is greater  
24 on the public school side because of this statute, I may  
25 choose to work at the public school because of the higher

1 compensation.

2 I submit to you that if we want to pay teachers  
3 \$200,000 a year and police officers \$200,000 a year,  
4 you're going to have people quitting med school and law  
5 school and graduate school, and they're going to become  
6 teachers, and we'll probably have a better teaching  
7 profession, and that relates to enhancement. There is a  
8 correlation between what we pay people -- and that  
9 includes their compensation packages and their benefit  
10 packages -- and the quality of work that we get.

11 And this is what we're dealing right here is  
12 incremental, because it's a little piece here and a  
13 little piece there. But it all adds up.

14 And another thing is from a union standpoint,  
15 I might as well quit negotiating with the local school  
16 district and come to Sacramento, because if I can get the  
17 State of California to pass a law like this, then we  
18 don't need to negotiate with the local school system.

19 The other thing is the indirect unexpected  
20 expense here. When we're dealing with such things as --  
21 let's take a football program or a sports program, and  
22 now we include the stipends as part of the retirement.  
23 Well, that's a discretionary act. So the school may  
24 say, "Therefore, we're not going to have recreational  
25 facilities anymore. We're not going to have

1 intercollegiate sports because we can no longer afford to  
2 do that."

3           These are an imposition of costs back on the  
4 public schools. It's aimed directly at the public  
5 schools. The result is an enhancement of the type of  
6 people who will come to the school because they get paid  
7 more money. And we simply walk by and say, "That's not  
8 an enhancement, it's not reimbursable.

9           I understand we have some statutory -- some  
10 rules of law or case decisions in the way. But I just  
11 think they haven't seen the right fact situation.

12           At some point, they have to recognize the fact  
13 there's a correlation between what we pay people and the  
14 quality of services we provide.

15           CHAIR GENEST: I certainly wouldn't dispute  
16 that as a general principle. I don't know why it applies  
17 in this question of what's a reasonable mandate.

18           But I have a different question of staff about  
19 this, and that is with regard to the Department of  
20 Finance argument, which as I understand it, that there  
21 are a series of administrative duties imposed, but those  
22 duties all go to the compensation package and, therefore,  
23 should be looked at as part of the compensation, and  
24 subject to the same principles as we've been talking  
25 about all day, which is that increased compensation does

1 not constitute an increased level of service. Even  
2 though it may be an enhanced level of service, it's not  
3 an increased level of service under the case law.

4 So what is your response to Finance's argument  
5 there?

6 MS. TOKARSKI: My response is to rely on the  
7 same case that upset the claimant as well as upsets  
8 Finance, which is City of Anaheim, which deals with an  
9 increase in PERS benefits. In that case, it's unique to  
10 government. It's not like the workers' compensation  
11 cases that deal with employment statewide.

12 And in that case, the Court found that the  
13 City's claim for reimbursement for the higher  
14 contribution costs failed for the following reasons: The  
15 test-claim statute did not compel the City to do  
16 anything. Any increase in costs to the City was only  
17 incidental to PERS compliance, with the test-claim  
18 statute; and pension payments to retired employees do not  
19 constitute a program or service as that term is used in  
20 Section 6.

21 The activities that I recommend approval of are  
22 distinct, in that they are activities. They're not just  
23 an increase in costs for providing the compensation that  
24 ultimately results in pension payments to the teachers.

25 CHAIR GENEST: But that's a pretty fine point

1 because if the effort here is to improve the compensation  
2 package, there certainly will be some administrative  
3 activities necessary in order to achieve that, even if  
4 it's just, you know, filling out paperwork.

5 MS. TOKARSKI: It's possible. It's also  
6 possible that CalSTRS bills the county and they still  
7 write a check the way they always wrote a check, or if  
8 they have money taken from their budget, the way they  
9 always did, as far as the increase in compensation or  
10 contribution, I should say.

11 CHAIR GENEST: When was that case decided?

12 MS. TOKARSKI: Anaheim?

13 MR. BURDICK: A long, long time ago.

14 MS. SHELTON: I believe it's 1987, but it's  
15 been relied on since then in this line of cases as being  
16 consistent with the earlier three.

17 MS. TOKARSKI: It is '87. That's correct.

18 And so the activities that are listed in the  
19 conclusion are specific things required by statute for  
20 the school district employers to do; and that's distinct  
21 from the requirement --

22 CHAIR GENEST: Can I ask Finance for a response  
23 to that particular case, and why you think these  
24 circumstances are different or why you think that case  
25 could be overturned? Whatever your basis for your

1 recommendation is.

2 MS. FEREBEE: Yes. Really, the administrative  
3 costs are not intended to enhance any public service, I  
4 think in the sense that the prior cases that are relied  
5 on have been. It's really, you're looking at a higher  
6 level of service to the public; and these administrative  
7 activities don't rise to that level. They are tied to,  
8 as you put it, the entire compensation package.

9 CHAIR GENEST: But how -- I mean, how does that  
10 relate to -- was it the Anaheim decision? Were there --  
11 do you agree with the Anaheim decision, that some  
12 administrative costs relative to PERS did constitute a  
13 higher level of service? Or are you saying that was  
14 wrong and we should reverse that -- or the court should  
15 and we should apply that here?

16 MS. FEREBEE: I'm not saying that the Anaheim  
17 case is wrong. I would hesitate to do that because I  
18 think it stands for many important principles.

19 The only answer I have to that is that on this  
20 set of facts that we have here, these notice and  
21 reporting requirements don't rise to the level of a new  
22 program or higher level of service. They don't provide  
23 an enhancement service to the public.

24 They are administrative requirements to these  
25 teachers and, while important, don't rise to that level.

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1 CHAIR GENEST: So your recommendation would be  
2 to deny the test claim entirely?

3 MS. FEREBEE: Yes.

4 CHAIR GENEST: Okay. Yes?

5 MR. PETERSEN: I think there's been some  
6 confusion here. The activities approved by the  
7 Commission are administrative procedures dealing with  
8 putting people on the plan and taking people off the  
9 plan. It has nothing to do with their compensation. So  
10 Anaheim doesn't apply.

11 Anaheim did not speak to administrative  
12 activity, so it cannot be cited as a reason not to  
13 reimburse.

14 The activities approved by staff were under the  
15 traditional model: Is it an increased level of service,  
16 and staff said yes. You didn't have to do these  
17 procedures before, so it is an increased level of  
18 service.

19 It has nothing to do with retirement account  
20 amounts or what an employee will receive or what the  
21 employer has to pay. It's strictly the paper-pushing  
22 process, which is characterized by state agencies, quite  
23 often as merely administrative. But there's no such  
24 exception in case law or code for something that's merely  
25 administrative.

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1 The issue is whether it's new, and these are  
2 new.

3 CHAIR GENEST: Any other comments from the  
4 Commission?

5 Well, I would like to try to see if we can get  
6 a motion on the Department of Finance's position. I  
7 won't be the one, I'll ask for that motion. In other  
8 words, to reject the test claim entirely.

9 *(No audible response)*

10 CHAIR GENEST: We're not getting that motion?  
11 Okay.

12 Do we have another motion?

13 MEMBER OLSEN: I will move the staff  
14 recommendation.

15 MEMBER LUJANO: Second.

16 CHAIR GENEST: Let's take a roll call on that.

17 MS. HIGASHI: Ms. Bryant?

18 MEMBER BRYANT: Aye.

19 MS. HIGASHI: Mr. Chivaro?

20 MEMBER Chivaro: Aye.

21 MS. HIGASHI: Mr. Glaab?

22 MEMBER GLAAB: No.

23 MS. HIGASHI: Mr. Lujano?

24 MEMBER LUJANO: Aye.

25 MS. HIGASHI: Ms. Olsen?

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MEMBER OLSEN: Aye.

MS. HIGASHI: Mr. Worthley?

MEMBER WORTHLEY: No.

MS. HIGASHI: And Mr. Genest?

CHAIR GENEST: No.

MS. HIGASHI: The motion is carried.

CHAIR GENEST: Okay.

MS. HIGASHI: Item 15.

MS. TOKARSKI: Item 15 is the proposed  
Statement of Decision for the item you just voted on.  
Staff recommends the Commission adopt the proposed  
Statement of Decision beginning on page 3, which  
accurately reflects the staff analysis and recommendation  
on this test claim.

Minor changes, including those that reflect the  
hearing testimony and vote count will be included when  
issuing the final Statement of Decision.

CHAIR GENEST: Do we have a motion?

MEMBER WORTHLEY: So moved.

MEMBER GLAAB: Second.

CHAIR GENEST: All in favor?

(A chorus of "ayes" was heard.)

CHAIR GENEST: Opposed?

(No audible response)

MS. HIGASHI: Thank you.

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1 CHAIR GENEST: We're now up to item --

2 MS. HIGASHI: We're now up to *Mandate Reform*,  
3 item number 18.

4 MS. PATTON: Good morning. At the March 29th,  
5 2007, hearing, the Department of Finance and the  
6 Legislative Analyst's Office presented overviews of their  
7 mandate-reform proposals. The Commission requested that  
8 staff analyze both proposals and other pending  
9 legislation related to mandate reform and present the  
10 analyses to the Commission at this hearing.

11 Copies of the analysis of AB 1222 and the LAO  
12 and Finance proposals are in your binders under Item 18.

13 Following completion of our combined analysis,  
14 Department of Finance submitted a revised reform  
15 proposal. The revised proposal includes amendments that  
16 make it similar to the LAO's proposal. Finance's revised  
17 proposal does not change our staff recommendation.  
18 Finance's revised proposal is also under Item 18 in your  
19 binders.

20 Staff recommends first that the Commission  
21 support AB 1222. This bill would require test claimants,  
22 when pleading regulations on their test claims, to  
23 include the effective date and register numbers of the  
24 regulations. This would assist staff and other state  
25 agencies when they analyze test claims and would assist

1 the Commission in making more informed mandate  
2 determinations.

3 If the Commission wants to support AB 1222,  
4 staff will submit our analysis to the Governor's office  
5 for approval.

6 Staff analyzed and compared the LAO and DOF  
7 mandate-reform proposals and finds that both proposals  
8 have merit. For example, both proposals would establish  
9 a procedure for Finance and local governments to develop  
10 reimbursement methodologies for statutes and executive  
11 orders that they believe are mandates, and request that  
12 the Legislature determine they are mandates and fund  
13 them, without the need for a Commission determination.

14 Staff finds that codifying procedures for  
15 legislatively determining mandates may shorten the time  
16 it takes to make local government mandate determinations  
17 and fund or suspend mandates pursuant to Article XIII B,  
18 Section 6, of the California Constitution and  
19 Proposition 1A.

20 However, there are also numerous technical  
21 amendments that must be made in order to enact procedures  
22 that will coexist with the current mandate determination  
23 and reimbursement process.

24 Therefore, the proposal before you is a  
25 combination of the LAO proposal and the original and

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1 revised Finance proposals and necessary technical  
2 amendments.

3 Staff recommends the Commission support the  
4 revised mandate-reform proposal.

5 The reform proposal would codify procedures for  
6 legislatively determining mandates and would ease the  
7 criteria that must be met to adopt reasonable  
8 reimbursement methodologies. If the Commission decides  
9 to support this proposal, staff will submit it to the  
10 Governor's Office for approval.

11 Staff recommends we request that the reform  
12 proposal be carried by Assemblyman Laird and that a  
13 working group be established to review the draft proposal  
14 and work on technical amendments that would provide a  
15 complete process that coexists with the Commission's  
16 process.

17 Tom Dithridge of the Department of Finance is  
18 here this morning to discuss Finance's revised reform  
19 proposal.

20 MR. DITHRIDGE: Thank you, Mr. Chairman and  
21 Members of the Commission. My name is Tom Dithridge. I  
22 am with the Department of Finance.

23 At the last Commission hearing about two and a  
24 half weeks ago, both the Department of Finance and the  
25 Legislative Analyst's Office presented outlines of

1 proposed reforms for the mandate process.

2 At the conclusion of that agenda item, the  
3 chair requested the Department of Finance come back to  
4 the Commission with a mandate-reform proposal.

5 You have before you a document, it's at the end  
6 of this item, as I understand it, and has bullets  
7 describing the provisions for a mandate reform. The  
8 proposal has been modified from our proposal that we  
9 initially described, but it does keep the basic  
10 provisions that we were trying to accomplish, which is  
11 to expedite the process where possible.

12 I will first point out that the revised mandate  
13 process that we're proposing here would have limited  
14 application. It would apply to situations where there  
15 is agreement between the administration and the local  
16 affected agencies or their representatives about the  
17 existence of a mandate, and where there is an opportunity  
18 to reach agreement on a reimbursement methodology. Where  
19 there is disagreement about the existence of the mandate  
20 or where we're not able to reach agreement on a  
21 reimbursement methodology, those issues would be brought  
22 back to the Commission.

23 The proposal you have before you anticipates  
24 that Finance and local governments would agree on the  
25 existence of a mandate. And we would notify the

1 Commission of the agreement.

2 Finance and the local governments would reach  
3 agreement on a reasonable reimbursement methodology.

4 We may do that working directly with specific local  
5 agencies or through their association representatives.

6 This one part would avoid the time-consuming  
7 process necessary to create the record required in the  
8 quasi-judicial process that the Commission must follow.

9 If we are successful through there, we would go  
10 back to the Legislature; and we would submit a joint  
11 proposal for funding the mandate, indicating what the  
12 costs would be and the Legislature would either approve  
13 that cost or they would, in the case of local agencies,  
14 would not approve that cost, and the mandate would be  
15 suspended.

16 A local government who has filed a claim with  
17 the Commission would accept the funds provided by the  
18 Legislature and withdraw any test claim that it had  
19 pending.

20 Under this process, a local government may  
21 reject a proposal approved by the Legislature and file a  
22 test claim with the Commission. In that event, the local  
23 government would not receive any funding, and would  
24 discourage any funding that had been received under a  
25 reasonable reimbursement methodology that had been

1 developed through this process.

2 The Commission or Finance and the local  
3 government would review the reimbursement methodology;  
4 and we're suggesting a five-year period for that review.  
5 I think the LAO had recommended a four-year period. And  
6 we also recommend -- well, first of all, as I indicated  
7 before, we would be happy to notify the Commission when  
8 we start this process and at the various steps during the  
9 process to keep the Commission advised. I think that was  
10 a concern of the Commission before. And we also continue  
11 to recommend the repeal of the current reasonable  
12 reimbursement methodology because we think it is flawed.

13 We also are pursuing procedures that are  
14 currently permitted under statute. And these procedures  
15 permit Finance and affected local governments to pursue  
16 reasonable reimbursement methodology once the Commission  
17 has determined that there is a mandate.

18 So even in those cases where we have a  
19 disagreement about the mandate, once the Commission makes  
20 that determination, we could move forward on the  
21 reasonable reimbursement methodology.

22 After the adoption of the Statement of  
23 Decision, the local government and Finance could work  
24 together on the methodology and hopefully simplify the  
25 process and simplify your review of the result.

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1           That's it, in a nutshell.

2           If you have any questions, I'm happy to answer  
3 them.

4           CHAIR GENEST: Are other people going to speak  
5 to this?

6           MR. DAY: I'm Patrick Day. I'm director of  
7 maintenance operations, purchasing and contract  
8 management for San José Unified School District and also  
9 the vice-chair for the Education Mandated Cost Network.

10           Last Friday at the California Association of  
11 School Business Officials annual conference in San José,  
12 John Chiang, California State Controller, addressed a  
13 standing-room-only crowd regarding mandated costs  
14 reimbursement reform.

15           Here are some of his quotes regarding the  
16 mandated costs reform process, and these are quotes.

17           *"Mandates are a broken system. We have a*  
18 *broken mandated cost process."*

19           *"We are all" -- and I will repeat that -*  
20 *"We are all on a sinking ship together. The system is*  
21 *designed for failure. We need to pay our bills,"* meaning  
22 mandated cost reimbursements, *"on time."* And I think he  
23 got a standing ovation on that from the school people.

24           *"It has the power to destroy when used*  
25 *inappropriately."*

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1 He stated the current makeup of the Commission  
2 on State Mandates, and then stated we need to have  
3 someone on the Commission that knows education.  
4 Mr. Chiang was asked what he believed about reform  
5 proposals that only addressed cities and counties but not  
6 education. He answered that he did not agree with this,  
7 and that it didn't make sense and is inconsistent, since  
8 the mandate process is for both local and education  
9 agencies.

10 Again, we're all on this sinking ship together.

11 It appears that the State Controller, the  
12 Educational Mandated Cost Network and many school  
13 districts, are in agreement about the need for  
14 comprehensive reform and we'd be all in this together.

15 I would like to encourage the Commission to  
16 lead a comprehensive mandate-reform process that includes  
17 current public school employees as well to be an integral  
18 part of this process, and let's try to figure this thing  
19 out.

20 Thank you.

21 CHAIR GENEST: Do we have another comment from  
22 Finance?

23 MEMBER WORTHLEY: Mr. Chairman, I have a  
24 question.

25 So the Department of Finance is still leaving

1 education out there, just to focus on local government  
2 and special districts?

3 MR. DITHRIDGE: Actually, if you look at the  
4 comments that I've provided, we very carefully included  
5 the word "local government" where appropriate. We used  
6 the word "local agency," which refers to cities and  
7 counties in only one place. And that's where we talk  
8 about the mandate being inoperative. And that's where  
9 it's not funded.

10 We are open to working with, and including  
11 school districts in this proposal, if they want to be  
12 included.

13 MEMBER WORTHLEY: It sounds like they do.

14 Mr. Chairman, is there any concern -- I  
15 appreciate this concept of basically trying to negotiate  
16 things outside of the realm of the Commission, because it  
17 seems like it would be much more expeditious, and I think  
18 that's kind of the heart and soul of this. But isn't  
19 there a concern about going before the Legislature, which  
20 created this problem to begin with? I'm concerned  
21 because you may have an agreement, you bring it to the  
22 Legislature, it could now be subject to interminable  
23 hearings and tinkering. I mean, is it up or down? I  
24 mean, does the Legislature have to approve it or  
25 disapprove it as it comes to them, or will they have the

1 opportunity to reopen it and say, "I like this part," "I  
2 don't like that part"? Would it not be simpler to think  
3 about a concept of having, like a stipulated agreement  
4 that would come before the Commission, as opposed to  
5 going back to the State Legislature?

6 MR. DITHRIDGE: We gave that some thought. And  
7 in reality, the Legislature could do that even with  
8 something that comes before the Commission, either  
9 through this process or through the normal process. Once  
10 it is proposed for funding, the Legislature can disagree  
11 with the funding.

12 So we're not affecting the Legislature's  
13 ability to question the appropriateness of the cost  
14 estimate. It just doesn't come into the reform process.  
15 We're not changing that in any way.

16 CHAIR GENEST: But you are recommending  
17 statutory changes?

18 MR. DITHRIDGE: We are recommending statutory  
19 changes to provide some structure for a process that  
20 would recognize that there's not a need for the  
21 Commission to use its valuable time to do this; and we  
22 could go directly to the Legislature.

23 CHAIR GENEST: I think that, in theory, this  
24 whole process here could be done without statutory  
25 changes. I think what you're seeking is a legislative

1 framework --

2 MR. DITHRIDGE: Correct.

3 CHAIR GENEST: -- to give it a certain  
4 credibility and standing.

5 I don't know what to say about the inclusion of  
6 school districts.

7 Does the school district representative agree  
8 with this entire proposal, or are there specific features  
9 you would want to see added to this?

10 MR. DAY: I believe what we're asking for is  
11 certainly what San José Unified School District is asking  
12 for, to be a part of discussions, to be a part of when  
13 these things are being talked about, to be an integral  
14 part of the process. Not, "Well, if you want to be  
15 involved, we'll let you." That doesn't sound quite as,  
16 "Hey, we're all in this together," as the State  
17 Controller said last Friday.

18 So, yes, we want to be involved from beginning  
19 to end. This is major for our school district. It's  
20 major for the educating of our students.

21 CHAIR GENEST: Well, I mean, I guess I'm not  
22 sure I know what you mean, when you want to be involved  
23 in. Do you want to be involved in negotiating these  
24 mandates as they come up in this new process that Finance  
25 is describing, or do you want to be involved as a member

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1 of the Commission? What are you exactly --

2 MR. DAY: Well, we would like to see an overall  
3 reform effort that includes the makeup of the Commission.

4 Now, that's not on the table here. We're going  
5 to continue to mention it when we get the opportunity  
6 that we need -- the whole system is broken, and we need  
7 to try to reform the system. This is one piece.

8 So if we're going to talk about one piece, we'd  
9 like to be there to discuss all of it, part of it,  
10 wherever.

11 CHAIR GENEST: Mr. Chivaro, did you have any  
12 comments about the Controller's speech?

13 MEMBER WORTHLEY: It was excellent.

14 MEMBER CHIVARO: An excellent speech.

15 No, I think as was articulated, the Controller  
16 does support comprehensive reform of the mandate system  
17 that results in a more expeditious and expedient  
18 determination of mandates and one that includes schools  
19 in the process. Whether that is the process of overall  
20 reform for the makeup of the Commission or just how  
21 mandates are determined, that's something that has yet to  
22 be fleshed out yet.

23 CHAIR GENEST: I don't know why the statutory  
24 framework that Finance is proposing couldn't be applied  
25 to schools. After all, everything in there is voluntary.

1 If somebody says they don't want to participate in it and  
2 they want to file a test claim through the normal  
3 process, they have that right, and nothing can take that  
4 right away. This is just -- and I think the effort here  
5 as to -- it's not comprehensive reform in a comprehensive  
6 sense. It's to try to clear out some of the underbrush,  
7 so that this kind of an effort here on the Commission  
8 that when we hear things, we don't have to hear as many  
9 things. And more things are taken care of off to the  
10 side in a way that people agree to in advance.

11 It may or may not work. There may not be a  
12 large group of people lining up who agree with us on  
13 things. But I think rather than being comprehensive  
14 reform, it's worth a try. The LAO believes it's worth a  
15 try. And I can see how it would really reduce our  
16 workload here on the Commission.

17 Whether or not it works, we'll have to see.  
18 You can't know that until you try it. But I don't  
19 know -- Tom, do you think there's a way to incorporate  
20 education into your proposal, or is there some -- now, I  
21 realize on the issue of the Prop. 1A suspension of a  
22 mandate, that does not apply to schools. So that's where  
23 schools are not in -- not because somebody doesn't want  
24 them in, but because the Constitution doesn't envision  
25 that. But are there other aspects of this that could

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1 apply to mandates in the schools?

2 MR. DITHRIDGE: I think the whole thing could  
3 apply to schools.

4 As I said last time, we tried to do this as an  
5 incremental process dealing with the cities, counties,  
6 and special districts, and then moving to the schools, so  
7 that we could understand the dynamics involved. And it's  
8 possible that the schools may need, in addition to a  
9 process like this, something -- some other process. I  
10 don't know, but I think they could easily be included in  
11 this; and I don't think there would be any downside to  
12 it.

13 MEMBER WORTHLEY: Mr. Chairman, I think there  
14 may be some misunderstanding by education because this  
15 is not -- we started out with a collaborative process,  
16 which would have involved all the stakeholders working  
17 together, but that was not funded by the Legislature. So  
18 what we now have is basically a unilateral step forward  
19 by the Department of Finance on this issue.

20 There have not been negotiations of all the  
21 stakeholders. I think that's kind of what I hear coming  
22 from education, that it's like everybody sitting around a  
23 table and worked out something.

24 The Department of Finance is making a good  
25 faith effort here to try to deal with reform that would

1 affect all the various local agencies and local  
2 governments. But it's not like it was a collaborative  
3 process, where everybody got in a room and they started  
4 writing stuff on the wall, and that kind of thing.

5 MR. DAY: I understand that. That's kind of  
6 the point. We'd like to be part of the collaborative  
7 process, if that was possible.

8 I appreciate the work that's being done to try  
9 to move things forward and to do what can be done.

10 We don't want to be forgotten, Education  
11 Mandated Cost Network doesn't want to be forgotten.  
12 San José Unified School District doesn't want to be  
13 forgotten, because we've got a responsibility to the  
14 students, and that takes resources. And this is one of  
15 the pieces that go into those resources, so we can  
16 educate kids and try to take care of people.

17 We know -- I know as a high school principal  
18 for five years, I know as the director over mandated  
19 costs for San José Unified School District, I know what  
20 the forms look like, I know what it takes. I know all of  
21 the steps to the process to our school district. I don't  
22 know that everybody else does. And I think that, again,  
23 the end user should have a voice in these things.

24 MS. PATTON: Mr. Chair, can I sort of summarize  
25 where we are now right now?

1           So before you is what staff analyzed. And our  
2 proposal is a combination of the LAO's proposal, both of  
3 Finance's original and revised proposal, and technical  
4 amendments that we think are really necessary, so that  
5 this new process can coexist with the existing process.

6           There are some differences between what I'm  
7 proposing here and Finance's revised proposal. They are  
8 still recommending that all the reasonable reimbursement  
9 methodology criteria be repealed, and we are not.

10           When the Legislature enacted AB 2856 and put  
11 that reasonable reimbursement methodology in place, they  
12 said they wanted to put protections in place so that one  
13 local government couldn't come to the Legislature, adopt  
14 this reasonable reimbursement methodology that only  
15 helped them and not, you know, the other agencies, the  
16 other local governments. And I think, really, they were  
17 trying to protect, like, small and rural cities,  
18 counties, and schools. So that's the main difference.

19           We are proposing -- we are using the LAO's  
20 recommendation that instead of meeting both of these  
21 criteria, you only have to meet one, in conjunction with  
22 the Commission's proposed regulation changes that, you  
23 know, hopefully will go into effect in August. They're  
24 on track right now to do that. We think that will make  
25 it easier -- much easier to meet the criteria without

1 getting rid of them all together. That's the one  
2 difference between our proposal and Finance's. And also  
3 ours includes school districts, and his -- as I said,  
4 theirs will, too.

5 So as I said, those were the two main  
6 differences.

7 The other difference between our proposal and  
8 what the LAO recommended, we used a lot of the LAO's  
9 proposal because they have the detail that was necessary  
10 to make the two processes coexist.

11 Or, actually, it's -- I'm sorry, it's the other  
12 difference between ours and Finance's -- or no, it's the  
13 LAO's. They are recommending a whole process be put in  
14 statute for the mandates unit to do reasonable  
15 reimbursement methodologies, to go off with local  
16 governments and come up at the P's & G's phase. And we  
17 don't think that's necessary. They can do it now; they  
18 are doing it now. They're in the middle of negotiating  
19 reasonable reimbursement methodologies on several sets  
20 of P's & G's right now; and they're getting ready to send  
21 us their first proposal. So I think that process doesn't  
22 really need any more statutory change.

23 So that is what we're proposing. It's really a  
24 combination of the three, with technical amendments.  
25 And we're also proposing that we get together a working

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1 group that the Department of Finance or the LAO could  
2 lead, and work out the rest of the technical amendments.

3 MEMBER WORTHLEY: Would this require a motion  
4 or would it be a consensus of the Commission?

5 CHAIR GENEST: I think there is a motion that  
6 could be made.

7 MEMBER OLSEN: Before we go there, I noticed  
8 that there is a member of the LAO here. And I was  
9 wondering if they could come to the table, too, in case  
10 there's any comment to be made from their perspective.

11 MS. HIGASHI: Could I add one thing? There's  
12 one additional feature in the staff proposal, and that is  
13 a notice procedure so that when a mandate is suspended,  
14 that the parties would be notified of the suspended  
15 mandate by the Department of Finance.

16 MEMBER WORTHLEY: And the Department of Finance  
17 is willing to change that --

18 MS. O'MALLEY: Good morning. Mary Anne  
19 O'Malley from the Legislative Analyst's office.

20 Your staff correctly points out that the LAO  
21 proposal was three-part. A modification of the  
22 reasonable reimbursement methodology language, which your  
23 staff is recommending be included as part of your  
24 proposal, and then a fast-track proposal, which your  
25 staff is also recommending many of the elements of.

1           The second component of the LAO proposal which  
2 your staff is not recommending that you go forward with  
3 is a process of negotiating, in a collaborative process,  
4 a consolidated P's & G's statewide cost-estimate stage.  
5 And that, your staff correctly points out, that perhaps  
6 it is possible under current law to do that.

7           I would submit to you, though, it is not being  
8 done, and that there are certain advantages to spelling  
9 out a process, an optional process in statute for  
10 authorizing something of this nature.

11           What we're proposing is after the Commission  
12 adopts a statement of decision, local claimants, if they  
13 wish, and the Department of Finance, if they wish, can  
14 give you a work plan and say, "We plan to go off and  
15 develop a reasonable reimbursement methodology and  
16 provide you with a statewide cost estimate within a time  
17 certain. Here is our plan for contacting a range of  
18 affected local governments and making sure that we're  
19 going to be considering their different perspectives in  
20 terms of the cost."

21           They would come back -- and they would be  
22 coming on back to the Commission at that time and saying,  
23 "Here is how we followed through with our process, the  
24 one that we promised you that we would fulfill." They  
25 would give you a reasonable reimbursement methodology and

1 a statewide cost estimate.

2 At that time, the Commission's role would be  
3 largely procedural. Did they adopt a reasonable  
4 reimbursement methodology that was consistent with the  
5 statement of decision? Did they follow the work plan  
6 that they advised you of? And have they come up with a  
7 statewide cost estimate? If so, you would go ahead and  
8 adopt it.

9 The consolidation of the parameters and  
10 guidelines and the statewide cost-estimate stage would  
11 save the process about a year from current practices.

12 Under current Commission practices, it takes  
13 about three years to adopt a statement of decision,  
14 another year for the parameters and guidelines, and yet  
15 another year for the statewide cost estimate.

16 This process would consolidate the  
17 parameters-and-guidelines stage with the statewide cost  
18 estimate stage and would save about a year from your  
19 current process.

20 So I think that's the only comment I would have  
21 regarding your staff recommendation regarding the LAO  
22 proposal.

23 And in terms of the Department of Finance  
24 revised proposal, I really appreciate their efforts.

25 At this point, we haven't seen it in print,

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1 so I really can't comment on the Department of Finance  
2 proposal.

3 MEMBER BRYANT: I just want to say real quick,  
4 that whatever the Commission decides to do today, I think  
5 it might be worth considering appointing -- I'm not sure  
6 if we have one here -- a legislative subcommittee, so  
7 that as staff moves through the negotiations, they have  
8 somebody to ask questions of. I think that might be a  
9 good idea.

10 Also, because of my other hat that I wear in  
11 the Governor's office, I'm not going to vote on this  
12 matter, because in the end, I probably will discuss the  
13 legislation with the Governor.

14 CHAIR GENEST: I'm in that same position.

15 I really hope the Commission will adopt some  
16 sort of favorable statement -- I like the idea of a  
17 legislative subcommittee -- some sort of favorable  
18 statement urging the Legislature to move forward with  
19 something in the LAO/Department of Finance proposal  
20 range. But I'm in the same position as Ms. Bryant. In  
21 fact, at the end, I'll have to advise the Governor on the  
22 final bill.

23 MEMBER WORTHLEY: Mr. Chairman, I wonder if we  
24 might ask the staff to respond to the LAO's comments  
25 about this consolidation.

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1 MS. PATTON: Well, you know, we talked to some  
2 people in the Legislature. I think, you know, we still  
3 believe that it can be done under current law, and I  
4 disagree that it's not happening. But the first  
5 reasonable reimbursement methodology proposal that will  
6 be coming from Finance and locals, where they work  
7 together, is not due to us until April. That's the first  
8 one. So we haven't really tested it yet.

9 That language for reasonable reimbursement  
10 methodology, the criteria that must be met, is very  
11 difficult to meet. But they are attempting to do it now,  
12 even with it in place.

13 The other thing was a concern from some leg.  
14 staffers that we talked to, that they weren't really  
15 interested in seeing a lot of statutory changes if we  
16 don't need them. If we could go off and try this on this  
17 our own, do it. So that was, I think, where we were  
18 coming from on that.

19 MEMBER WORTHLEY: Mr. Chairman, I would like to  
20 support our staff. They're in the trenches, they deal  
21 with this all the time, they've analyzed this carefully  
22 and given it a lot of thought, and I think they're on the  
23 right track, and I would like to support them in this.  
24 And that would be a motion supporting AB 1222 and support  
25 a reform proposal that includes provisions from the LAO

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1 proposal and the original revised Finance proposals, with  
2 technical amendments.

3 CHAIR GENEST: Is there a second?

4 MEMBER CHIVARO: Second.

5 CHAIR GENEST: Mr. Glaab, did you have a  
6 comment?

7 MEMBER GLAAB: Yes, I just wanted to follow up.

8 I think if this Commission can, in fact, adopt  
9 what Ms. Patton is suggesting, is that we have the  
10 administrative ability to make the changes, that we  
11 should, in fact, do that. Because I also agree with the  
12 legislative staff people who you are speaking with, that  
13 I could see why they would not want to have a bunch of  
14 new statutes to have to deal with that when, in fact, we  
15 may have already statutes in effect that can do the work  
16 of this commission. So I would certainly say that.

17 I would also say to the gentleman from the  
18 educational community, we certainly want to include  
19 education in every step of the level, because it's  
20 important to us. I know Mr. Worthley and myself, we're  
21 the elected officials on this commission, school  
22 districts are very important up and down the state, and  
23 we certainly want to have you included.

24 So with that, I'll conclude my comments.

25 And I'd be a second to Mr. Worthley.

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1 CHAIR GENEST: Okay, without any further  
2 comment, let's have a roll call on that.

3 MS. HIGASHI: Ms. Bryant?

4 MEMBER BRYANT: Abstain.

5 MS. HIGASHI: Mr. Chivaro?

6 MEMBER CHIVARO: Aye.

7 MS. HIGASHI: Mr. Glaab?

8 MEMBER GLAAB: Aye.

9 MS. HIGASHI: Mr. Lujano?

10 MEMBER LUJANO: Aye.

11 MS. HIGASHI: Ms. Olsen?

12 MEMBER OLSEN: Aye.

13 MS. HIGASHI: Mr. Worthley?

14 MEMBER WORTHLEY: Aye?

15 MS. HIGASHI: And Mr. Genest?

16 CHAIR GENEST: Abstain.

17 MS. HIGASHI: The motion is carried.

18 CHAIR GENEST: Thank you.

19 MS. HIGASHI: Is there an interest of dealing  
20 with the leg. subcommittee issue?

21 MEMBER BRYANT: I think that's a brilliant  
22 idea.

23 CHAIR GENEST: Brilliant idea. We would, of  
24 course, need a chair for such a commission.

25 MEMBER BRYANT: I cannot volunteer.

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1 CHAIR GENEST: Actually, you wouldn't be a very  
2 appropriate chair, would you, given your other role.

3 MS. HIGASHI: It's just two members.

4 CHAIR GENEST: Are there two members who would  
5 be interested?

6 MEMBER LUJANO: Yes.

7 MEMBER GLAAB: I'd be happy to serve on that.

8 MS. HIGASHI: Mr. Lujano and Mr. Glaab.

9 MEMBER. OLSEN: That's fine. I'd be happy to;  
10 but if there are two others, that's fine.

11 CHAIR GENEST: So we should have a motion to  
12 create a legislative commission?

13 MS. HIGASHI: Subcommittee.

14 CHAIR GENEST: Subcommittee, sorry.  
15 Subcommittee.

16 MEMBER OLSEN: I'll move it.

17 MEMBER GLAAB: Second.

18 CHAIR GENEST: All in favor?

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

20 CHAIR GENEST: Opposed?

21 *(No audible response)*

22 CHAIR GENEST: Okay, that's passed.

23 And now can we move to the next issue?

24 MS. HIGASHI: Yes, we may.

25 The Chief Counsel's report, Item 19.

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1 MS. SHELTON: And I don't have anything further  
2 to add.

3 MEMBER WORTHLEY: None, it says.

4 CHAIR GENEST: My favorite comment of the day.

5 MS. HIGASHI: Item 20, are there any questions?

6 *(No audible response)*

7 MS. HIGASHI: We have a budget hearing  
8 tomorrow. And that's about it.

9 CHAIR GENEST: So we need to go into closed  
10 session?

11 MS. HIGASHI: Yes.

12 CHAIR GENEST: And then we'll reopen after  
13 that.

14 So we need everyone else to vacate the room.

15 MS. HIGASHI: Mr. Genest, one last thing. If  
16 there's any public comment.

17 CHAIR GENEST: Is there public comment?

18 MR. BURDICK: Mr. Chairman and Members, since  
19 I wasn't recognized on the prior two times, I will make  
20 my comments under public comment, and hope that they're  
21 appropriate.

22 Primarily, I'd like to address the legislative  
23 effort and the recommendation. And I think on behalf  
24 of local government we have a joint CSAC League of  
25 California Cities that has been dealing with this

1 particular issue and are supporting conceptually the  
2 proposals.

3 I would like to point out to the Commission  
4 that -- and I think it was addressed by staff -- was the  
5 difficulty with the language in the reasonable  
6 reimbursement methodology.

7 There was language, and still is language,  
8 in statute which we believe gives the Commission the  
9 same authority to be able to develop a reasonable  
10 reimbursement methodology. It doesn't define it as that,  
11 but it gives you broad powers in order to be able to put  
12 together a methodology for providing reimbursement.

13 And we'd like you to consider that in the sense  
14 that putting the statutory restrictions on that are in  
15 there in the current reasonable reimbursement method,  
16 they do make it very difficult.

17 So I'm not sure what the Department of  
18 Finance's rationale is, but it may be that by removing  
19 that, it essentially provides you, still gives you a  
20 little more flexibility on developing a process. And  
21 we'd like you to consider that.

22 So with that, I want to thank you very much for  
23 the opportunity to speak.

24 CHAIR GENEST: Thank you.

25 Other comments?

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1                   *(No audible response)*

2                   CHAIR GENEST: All right, the Commission will  
3 meet in closed executive concession pursuant to  
4 Government Code section 11126, subdivision (e), to  
5 confer with and receive advice from legal counsel for  
6 consideration of the action, as necessary and  
7 appropriate, upon the pending litigation listed  
8 on the published notice and agenda, and to confer with  
9 and receive advice from legal counsel regarding potential  
10 litigation, and pursuant to Government Code sections  
11 11126, subdivision (a), and 17526, the Commission will  
12 also confer on personnel matters listed on the published  
13 notice and agenda.  
14 We will reconvene in open session at this location in  
15 approximately 20 minutes -- or less.

16                   *(The Commission met in closed executive*  
17                   *session from 11:47 a.m. to 11:51 a.m.)*

18                   CHAIR GENEST: The Commission met in closed  
19 executive session pursuant to Government Code section  
20 11126, subdivision (e), to confer with and receive advice  
21 from legal counsel for consideration and action, as  
22 necessary and appropriate, on the pending litigation  
23 listed on the published notice and agenda, and potential  
24 litigation, and Government Code section 11126,  
25 subdivision (a), and 17256, to confer on personnel

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1 matters listed on the published notice and agenda.

2 All required reports from the closed session  
3 having been made and no further business to discuss,  
4 I will entertain a motion to adjourn.

5 MEMBER WORTHLEY: So moved.

6 MEMBER OLSEN: Second.

7 CHAIR GENEST: All those in favor?

8 *(Chorus of "ayes" was heard.)*

9 CHAIR GENEST: Opposed?

10 *(No audible response.)*

11 *(Proceedings concluded at 11:51 a.m.)*

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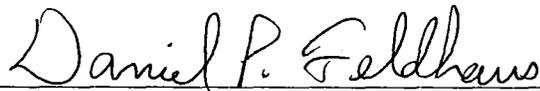
**REPORTER'S CERTIFICATE**

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 the 5<sup>th</sup> day of May 2007.



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