

MINUTES

COMMISSION ON STATE MANDATES

State Treasurer's Office

915 Capitol Mall, Room 587

Sacramento, California

May 27, 2010

Present: Member Cynthia Bryant, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Cathleen Cox
Acting Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor

Absent: Member Sarah Olsen
Public Member
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 9:35 a.m. Executive Director Paula Higashi called the roll.

APPROVAL OF MINUTES

Item 1 March 26, 2010

The March 26, 2010 hearing minutes were adopted by a vote of 4-0. Member Cox abstained.

Item 2 May 3, 2010

The May 3, 2010 hearing minutes were adopted by a vote of 5-0.

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

Item 3 Staff Report (if necessary)

There were no appeals to consider.

PROPOSED CONSENT CALENDAR

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

DISMISSAL OF WITHDRAWN TEST CLAIM

- Item 6* *Clean School Restrooms*, 04-TC-01
Education Code Sections 17070.755, 17584.3, and 35292.5
Statutes 2003, Chapter 358 (AB 1124); Statutes 2003, Chapter 909
(SB 892), Office of Public School Construction, State Allocation Board,
and State Department of General Services Forms: SAB Forms 40-21,
50-04, 892, 892R
Los Angeles Unified School District, Claimant

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

PROPOSED PARAMETERS AND GUIDELINES (GOV. CODE, § 17557)

- Item 7* *Academic Performance Index*, 01-TC-22
Education Code Sections 52056, Subdivision (c)
Statutes 1999-2000, 1st Extraordinary Session, Chapter 3; Statutes 2000,
Chapter 695 (SB 1552)
San Juan Unified School District, Claimant
- Item 8* *Crime Victims' Domestic Violence Incident Reports II*, 02-TC-18
Penal Code Sections 13730, Subdivision (c)(3), 12028.5;
Statutes 2001, Chapter 483 (AB 469); Statutes 2002, Chapter 833 (SB 1807)
County of Los Angeles, Claimant

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES STATE CONTROLLER'S OFFICE REQUEST TO UPDATE BOILERPLATE LANGUAGE (GOV. CODE, § 17557)

- Item 9* COUNTY PROGRAM
Seriously Emotionally Disturbed Students, 05-PGA-42
Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)
Penal Code Section 13701
Statutes 1991, Chapter 999 (SB 835), Statutes 1992, Chapter 224
(SB 1960)
- Item 10* SCHOOL PROGRAMS
A. *Annual Parent Notification*, 05-PGA-45
Education Code Section 35291
Education Code Section 48980, Subdivisions (a), (b), (c) (e) (g), (h),
(i)(j), (l), and (m)
Education Code Section 48900.1
Education Code Section 49063, Subdivision (k)
Education Code Section 58501
Statutes 1975, Chapter 448 (SB 445), Statutes 1977, Chapter 36
(AB 447), Statutes 1977, Chapter 965 (AB 530), Statutes 1979, Chapter
236 (AB 52), Statutes 1980, Chapter 975 (AB 2949), Statutes 1981,
Chapter 469 (SB 222), Statutes 1985, Chapter 459 (AB 220)
Statutes 1986, Chapter 87 (AB 1649), Statutes 1986, Chapter 97
(AB 1689), Statutes 1987, Chapter 1452 (SB 998), Statutes 1988,
Chapter 65 (AB 2507), Statutes 1988, Chapter 1284 (AB 3535), Statutes
1990, Chapter 10 (AB 1941), Statutes 1990, Chapter 403 (SB 3307),

Statutes 1992, Chapter 906 (AB 2900), Statutes 1993, Chapter 1296 (AB 369), Statutes 1997, Chapter 929 (SB 85), Statutes 1998, Chapter 846, Section 19 (AB 1468), Statutes 1998, Chapter 1031, Section 1 (AB 1216), Statutes 1999, Chapter 1X, Section 3, Statutes of 2000, Chapter 73, Section 1 (SB 1689)

- B. *Notifications of Truancy*, 05-PGA-56
Statutes 2007, Chapter 69 (AB 1698)
Education Code Section 48260.5
Statutes 1983, Chapter 498 (SB 813), Statutes 1994, Chapter 1023 (SB 1728), Statutes 1995, Chapter 19 (SB 102)
- C. *Notification to Teachers: Pupils Subject to Suspension or Expulsion*, 05-PGA-57
Education Code Section 49079
Statutes 1989, Chapter 1306 (SB 142); Statutes 1993, Chapter 1257 (SB 1130)
- D. *Pupil Suspensions, Expulsions and Expulsion Appeals*, 05-PGA-65
Consolidation of:
Pupil Suspensions from School – CSM 4456
Education Code Section 48911, Subdivisions (b) and (e)
Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668 (AB 2191), Statutes 1980, Chapter 73 (SB 1247), Statutes 1983, Chapter 498 (SB 813), Statutes 1985, Chapter 856 (AB 1758), Statutes 1987, Chapter 134 (AB 439)
Pupil Expulsions from School -CSM-4455
Education Code Sections 48915, Subdivisions (a) and (b), 48915.1, 48915.2, 48916 and 48918
Statutes 1975, Chapter 1253, Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668 (AB 2191), Statutes 1982, Chapter 318 (SB 1385), Statutes 1983, Chapter 498 (SB 813), Statutes 1984, Chapter 622 (SB 1685), Statutes 1987, Chapter 942 (AB 2590), Statutes 1990, Chapter 1231 (AB 3794), Statutes 1992, Chapter 152 (AB 3362), Statutes 1993, Chapters 1255 (AB 342), 1256 (SB 1198), 1257 Statutes 1994, Chapter 146 (SB 1130),
And,
Pupil Expulsion Appeals - CSM-4463
Education Code Sections 48919, 48921-48924
Statutes 1975, Chapter 1253 (AB 1770), Statutes 1977, Chapter 965 (AB 530), Statutes 1978, Chapter 668 (AB 2191), Statutes 1983, Chapter 498 (SB 813)

DISMISSAL OF WITHDRAWN REQUESTS TO AMEND PARAMETERS AND GUIDELINES (GOV. CODE, § 17557)

Item 11* *Interdistrict Transfer Requests: Parent's Employment*, 01-PGA-10 (CSM 4445)
Education Code Sections 48204(f) and 48980(e)
Statutes 1986, Chapter 172 (AB 2071), Statutes 1990, Chapter 10 (AB149), Statutes 1992, Chapter 507 (SB 1438)
Clovis Unified School District, Requestor

Item 12* *Caregiver Affidavits to Establish Residence for School Attendance*, 01-PGA-03 (CSM-4497)
Education Code Section 428204, Subdivision (a)
Family Code Sections 6550 and 6552
Statutes 1994, Chapter 98 (AB 1328)
Clovis Unified School District, Requestor

JOINT REQUEST TO EXTEND TERM OF REASONABLE REIMBURSEMENT METHODOLOGY (GOV. CODE § 17557.2, Subds. (f) and (g))

Item 13* *Firearm Hearings for Discharged Inpatients*, 07-RRM-01 (99-TC-11)
Welfare and Institutions Code Section 8103, Subdivisions (f) and (g)
Statutes 1999, Chapter 578 (AB 1587)
County of Los Angeles and Department of Finance, Requestors

Paula Higashi, Executive Director, noted that Items 14 and 16 have been removed from the consent calendar for technical corrections.

Member Worthley made a motion to adopt items 6, 7, 8, 9, 10A-D, 11, 12 and 13 on the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 5-0.

HEARING AND DECISION ON INCORRECT REDUCTION CLAIM, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, § 17551) (action)

Ms. Higashi swore in parties and witnesses participating in the hearing.

Item 4 *Investment Reports*, 01-9635802-I-01
Government Code Section 53646, Subdivisions (a), (b) and (e)
Statutes of 1995, Chapter 783
As Amended by Statutes of 1996, Chapters 156 and 749
County of Los Angeles, Claimant

Camille Shelton, Chief Legal Counsel, presented this item. Ms. Shelton stated that this incorrect reduction claim was filed by the County of Los Angeles on reimbursement claims for costs incurred in fiscal years 1996-97 and 1997-98 on the *Investment Reports* program.

The issues in dispute involved the State Controller's reduction of costs claimed following a desk audit of the salaries and benefits of county employees accumulating and compiling data necessary to render the quarterly report of investments and the costs claimed for investment software.

For the reasons stated in the analysis, staff concluded that the State Controller's office incorrectly reduced the costs claimed by the County of Los Angeles. However, the reimbursement claims filed by the County for salaries and benefits include daily investment activities and costs that are not reimbursable.

Staff recommended that the Commission adopt the analysis and remand the reimbursement claims back to the State Controller's office for further review and reinstatement of those costs that are eligible for reimbursement in accordance with the Commission's decision on this incorrect reduction claim.

Parties were represented as follows: Hasmik Yaghobyan, County of Los Angeles; Jill Kanemasu, State Controller's Office; and Lorena Romero, Department of Finance.

Hasmik Yaghobyan, County of Los Angeles, thanked the Commission staff for its analysis and concurred with its recommendations. The Department of Finance and the State Controller's Office concurred.

With a motion by Member Lujano and a second by Member Chivaro, the staff recommendation was adopted by a vote of 5-0.

Item 5 Proposed Statement of Decision: *Investment Reports*, 01-9635802-I-01
[See Item 4 above.]

Ms. Shelton presented this item and stated that staff recommends that the Commission adopt the proposed Statement of Decision.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Chivaro, the Statement of Decision was adopted by a vote of 5-0.

Item 14 General Cleanup Provisions
Proposed Amendments to California Code of Regulations, Title 2,
Chapter 2.5, Articles 1 through 3 and Articles 5 through 8, Sections
1181 – 1183.32, and 1185 – 1189.5

Nancy Patton, Assistant Executive Director presented this item. Ms. Patton stated that Section 1189.2 of the Commission's regulations authorizes the Commission to adopt an order to initiate rulemaking. The purpose of the proposed regulations is to encourage the use of electronic filing, move all subvention claim matters to Article 7, and make the Commission's procedures more efficient.

Following adoption of the order, staff will publish a notice of hearing and mail the notice and rulemaking package to all interested persons for public comment.

Staff removed this item from the consent calendar to revise the deadline for public comment from July 26, 2010 to July 30, 2010, so that it coincides with the proposed date for public hearing.

Staff recommended that the Commission adopt the order to initiate rulemaking as revised.

Ms. Higashi clarified that two dates, July 29, 2010 and July 30, 2010, are noted on this item's timetable. Later in this agenda, the Commission will vote and decide on which date will be the next hearing date.

With a motion by Member Chivaro and a second by Member Bryant, the staff recommendation was adopted by a vote of 5-0.

Item 16 Adoption of Strategic Plan

Ms. Patton presented this item. Ms. Patton stated that the Commission adopted an interim strategic plan on March 26, 2010. Staff posted the interim plan on the Commission's web site, issued it for public comment, and solicited comments from Commission staff. On May 10, 2010 and May 20, 2010, the Department of Finance and Commission staff submitted comments. No other comments were received. Staff made the changes proposed by the Department of Finance and Commission staff.

Upon request of the Commission Chair, staff has removed the proposed final strategic plan from the consent calendar to revise the language on the last goal regarding promotion of sustainability in the Commission's policies and procedures.

The following language is suggested:

“Actively promote sustainability in the Commission’s policies and procedures to ensure that our practices are protective of the environment and human health and are energy and resource efficient.”

This is a broader statement than previously included, which was about recycling and reduction of paper for the Commission by putting items on the Commission's Web site.

Staff recommends that the Commission adopt the final strategic plan with the revised language.

With a motion by Member Chivaro and a second by Member Cox, the staff recommendation was adopted by a vote of 5-0.

Item 17 Update on Implementation of Recommendations from Bureau of State Audits October 15, 2009 Report 2009-501
State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities

Ms. Patton reported that, with the adoption of this consent calendar, the last of the State Controller's Office proposed parameters and guidelines amendments to the boilerplate were adopted as recommended by the Bureau of State Audits.

Item 18 Legislative Update

Ms. Patton reported on three bills that are being tracked. The Commission has a “support” position on SB 894 and an “oppose unless amended” position on AB 2082.

Ms. Patton described AB 349. If the Governor's budget proposes to suspend state mandates, AB 349 would require the Department of Finance to provide to the Legislature all proposed statutory changes necessary to repeal the mandates proposed for suspension and, to the extent practicable, identify each affected section of law.

Staff recommends taking no position on AB 349 since it does not affect the Commission's responsibilities.

Chairperson Bryant asked if the Commission needs to formally take “no position”.

Ms. Higashi stated that by taking no action, the Commission would be taking no position.

Member Worthley asked whether or not this issue was considered in terms of costs and expenses related to creating or ceasing to operate a program. He added that when a financial piece of a program is suspended, it puts local governments in a bind. Oftentimes, local government must

consider whether or not to keep the program going because of the expenses incurred in creating the program while anticipating that the following year, the Legislature is going to come back and fund it. Member Worthley reiterated that the whole system is problematic for local government.

Allan Burdick, California State Association of Counties (CSAC), stated that the points brought up by Member Worthley are very critical. If the mandates are not repealed, there are additional costs and legal issues raised for both state and local government as to whether these programs should be carried out.

Mr. Burdick stated that it makes no sense to continue to have mandate programs on the books that are suspended on a budget-by-budget year basis. Some of these mandates have been suspended for 18 and 19 years, since the original statute that allowed for suspension was put in place in 1991.

Currently, if a mandate is suspended, the language in the statute that governs that program does not change. Somewhere buried in that 800 page budget is a little line that has a zero after it saying that this is a reimbursable mandate and it has been suspended.

Mr. Burdick suggested that the Commission review the overall program as well as the responsibility for the program and question the entire practice as to how it is being carried out and whether it is being done.

This particular amendment is very consistent with trying to have a manageable program by not having things that could incur costs on both state and locals or raise legal questions as to whether or not mandates are suspended.

Mr. Burdick encouraged the Commission to support this particular bill.

Appreciating Mr. Burdick's comments, Member Worthley stated that local governments are impacted by this type of rule. Member Worthley reminded the Commission that this is problematic for local government.

Item 19 Working Group Proposal: Mandate Redetermination Process

Ms. Higashi reported that Commission staff continues to work on with the Legislature, state agencies and local governments on the proposed Mandate Redetermination Process. She noted that this was also a recommendation of the Bureau of State Audits.

On May 12, 2010, the expanded working group met with other legislative staff, representatives from the League of Cities, CSAC and the CSAC SB-90 group. Although school district representatives were invited, none were able to attend.

Ms. Higashi reviewed the following additions to the draft language:

1. Requires the Commission to notify the Department of Finance, LAO, the State Controller and interested parties upon receipt of a complete request.
2. Requires the State Controller to notify eligible claimants that a complete request for mandate redetermination has been filed. This notification may be included in the next claiming instructions issued by the State Controller.

Ms. Higashi stated that the draft was submitted to Legislative Counsel and that a draft has been returned for review by the working group. Staff is in the process of reviewing it and continuing to receive comment on it. There are some technical drafting issues that staff needs to address.

References to Government Code 17514 were dropped off and only references were made to 17556. It appears as if a request for redetermination could only be filed to find “no costs mandated by the state”. Ms. Higashi noted that was not the intention in the working group draft provided to Legislative Counsel.

Another question, for all parties, is what happens if this is enacted as a trailer bill. It has been approved as placeholder trailer bill language by both houses.

There is a serious possibility that this will be enacted. Staff is still in the process of vetting it with all the parties and no mention has been made of how the Commission is expected to really carry out this new responsibility, which is additional workload.

Ms. Higashi stated that no timeline priorities are set in the proposed statutes or any other changes to the Commission’s program that would give any clue as to where these would land in the queue because there is still pending workload.

Member Cox asked, in recognition of the Commission receiving no direction as to the priority list for the redeterminations, if the Commission is taking proactive steps in setting a priority schedule.

Ms. Higashi stated that the Commission has statutory mandates for test claims but none for IRCs or this redetermination process. Therefore, test claims continue to be the Commission’s top priority. However, staff is beginning to work on IRCs.

The Legislature is taking actions in budget subcommittees that rely on this process. The analyses are already reading that a statute can be amended; then after it is amended, a budget trailer bill can ask for a redetermination.

A sentence has been added so the Legislature, through statute, may ask the Department of Finance to take advantage of this process and request redetermination of a particular mandate.

Member Worthley questioned that under the definition of “subsequent change to the law”, there was no term of materiality. He stated that a minor change with little or no financial merit should not trigger this process.

Ms. Higashi stated that the issue of a threshold was raised in the Assembly Budget Subcommittee by the CSBA representative and echoed by CSAC and League of Cities. She explained that for both a test claim and reimbursement claim filing, the threshold is \$1,000 per claimant. To be consistent, one might say that the threshold should be \$1,000 for this process too. However, staff believes that is a low figure.

The next draft may identify what that threshold should be. At one point, staff thought perhaps it should be \$1,000 per county plus \$1,000 per city or \$1,000 per school district. Staff would not want to go through this process if the threshold was only \$1,000.

Member Worthley expressed the desire to put more of the burden to get to the point of materiality on the applicants and the responding parties and less of the burden on the Commission. If the applicants have to spend a lot of time and energy, they may take a closer look at the bottom line and ask if it is really worth the effort.

Ms. Higashi noted that the specificity for the Commission’s filing requirements is included in subdivision (d) on page two of the draft legislation. The burden is on the requestor, whether it is the Department of Finance or a claimant, and not on Commission staff to go on a fact-finding expedition at the State Library.

Member Worthley agreed by stating that it would be helpful from a workload standpoint to make the job less difficult for Commission staff.

Ms. Higashi added that if it is enacted, staff would begin a rulemaking package in September or October to meet the effective date.

Allan Burdick urged the Commission to continue to request that this matter be heard through the regular process and not as a trailer bill. Mr. Burdick recalled when former Commission Chairperson Sheehy believed that this was an important item and something to be done in a public hearing as a policy matter and not be done through the budget process.

Mr. Burdick reiterated that the locals appreciate being able to participate. However, currently, neither school boards, CSAC nor the League feel as true partners in this process yet.

Ms. Higashi stated that this item is in conference right now because both subcommittees approved the placeholder language.

Member Worthley asked if there will be more public process.

Chairperson Bryant stated that if both houses adopted the language, it is out of conference and the language is identical.

Ms. Higashi stated that she was told that placeholder language could change in conference.

Jeff Carosone, Department of Finance, stated that both houses did adopt placeholder trailer bill language to be worked out, but has not yet heard that it is going to be discussed in a specific conference committee hearing. Both houses did take the same action, which would keep it out of conference. However, they did leave open the possibility of continuing to tweak the language.

Chairperson Bryant stated that it is not the Commission's role to tell the Legislature how to conduct its business. She did not want to take an action and did not think that the Commission should make that plea at the Legislature.

Member Worthley understood Chairperson Bryant's response but stated that he is in favor of being able to lead the Legislature so it works better for the Commission. Member Worthley stated that a more public approach that gives the stakeholders greater input in the final outcome would benefit everybody.

Allan Burdick presented the likelihood of litigation if this matter passes in a trailer bill. He pointed out the substantial amount of time and resources that Commission staff would have to spend and stated that CSAC, the League and CSBA are trying to avoid litigation.

Mr. Burdick restated the urgency of this issue and pointed out that this is not the kind of thing that should be done behind closed doors.

Ms. Higashi asked if the school district, city or county representatives have a suggestion as to what the minimal dollar threshold should be for triggering a redetermination.

Mr. Burdick stated that CSAC, the League and the school boards have not discussed the issue of a threshold but are concerned about having a clear and convincing standard.

Ms. Higashi stated that she will prepare a memo for the working group identifying the appropriate changes as well as an insertion point in the proposed language for a dollar amount.

STAFF REPORTS

Item 20 Chief Legal Counsel's Report (info)

Ms. Shelton reported that there are two lawsuits pending against the Commission. The first one is a recent filing by the Department of Finance challenging the *Graduation Requirements* parameters and guidelines amendment. The second is *BIPS* with a pending hearing date of December 10, 2010.

The other two cases are listed for information only. They are still in the process of being briefed and hearing dates are not yet set.

Item 21 Executive Director's Report (info)

Pending Workload

Ms. Higashi reviewed the pending caseload.

Having completed the first incorrect reduction claim on *Investment Reports*, staff is hopeful that it will help in reviewing the other claims that are pending which are batched according to claimant representatives and jurisdictions. As appropriate and as requested, staff will schedule prehearing conferences or informal conferences to meet with the State Controller's Office to expedite the process of completing the remaining seventy-two claims without requiring a separate staff analysis and Statement of Decision for each.

Budget

Ms. Higashi reported that the budget subcommittee hearing process has been completed with Assembly Subcommittee actions on the following programs:

- The \$475,000 *In-Home Support Services* mandate was approved in both houses. It is an appropriation to cover the statewide cost estimate adopted by the Commission.
- The *Mandated Reimbursement Process I and II* program was suspended.
- *Open Meetings Act* and *Brown Act Reform* will end up in conference.
- *Handicapped and Disabled Students I, II and Seriously Emotionally Disturbed Pupils* is also a conference item. There are a number of subcommittees in both houses acting on it. One action taken required the Department of Finance to actually prepare a report to propose alternative, more cost effective methods of delivering the services.

Meeting Dates

After discussion, the Commission agreed on the following 2010 meeting/hearing dates: June 24 (tentative), July 29, September 30, October 28 (tentative), and December 2.

Future Agenda Items

Ms. Higashi identified test claims, incorrect reduction claims, parameters and guidelines and statewide cost estimates that staff is currently working on that will be scheduled for the July and September hearings.

Camille Shelton pointed out that one test claim analysis is over 200 pages with hundreds of regulations pled. Ms. Higashi described the size and depth of *Employment of College Faculty and Instructors* as not huge because it is limited in scope; *CEQA* as moderate; and *School Bus Safety* as unknown as of yet.

PUBLIC COMMENT

Nancy Patton stated that Ginny Brummels from the State Controller's Office recently retired. Ms. Brummels and the Commission staff have been working together specifically on mandate issues for the last ten years.

Ms. Patton declared that Ms. Brummels has been an invaluable help to the Commission in the mandates process. She was especially busy at work putting together the AB 3000 and the hideous deficiency report. However, Ms. Brummels decided she still did not have enough to do, so she changed her whole life and became a marathon runner in her spare time.

Ms. Patton asked Ms. Brummels to come forward and read a resolution from the Commission to honor her.

Ms. Brummels said it has truly been an honor and a privilege to work with the Commission and the Commission staff is a great resource for the Controller's office.

Ms. Brummels commented that while listening to the topics of the mandates on the current agenda, many of them, such as *Open Meetings Act*, are coming back again for yet another round and she realized it was time to get out before the next round. Ms. Brummels reiterated that it was a pleasure working with all those involved in the mandate process.

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 10:05 a.m.


PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:30 a.m.
DATE: Thursday, May 27, 2010
PLACE: State Treasurer's Office
915 Capitol Mall, Room 587
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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A P P E A R A N C E S

COMMISSIONERS PRESENT

CYNTHIA BRYANT
(Commission Chair)
Representative for ANA MATOSANTOS
Director, State Department of Finance

CATHLEEN COX
Acting Director
Director, Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

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



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 19 and 21)

NANCY PATTON
Assistant Executive Director
(Items 16, 16, 17, and 18)

CAMILLE SHELTON
Chief Legal Counsel
(Items 4, 5, and 20)



A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 4 & 5 (Investment Reports):

For County of Los Angeles:

HASMIK YAGHOBYAN
County of Los Angeles
Department of Auditor-Controller
500 West Temple Street, Suite 603
Los Angeles, California 90012

For Department of Finance:

LORENA ROMERO
Department of Finance
915 L Street
Sacramento, California 95814

For Controller's Office:

JILL KANEMASU
Chief, Bureau of Payments
Division of Accounting and Reporting
State Controller's Office
3301 C Street,
Sacramento, California 95816

Appearing Re Item 18 (Legislative Update):

For California State Association of Counties:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 21 (Executive Director's Report):

For California State Association of Counties:

ALLAN BURDICK
California State Association of Counties

For Department of Finance:

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

Appearing Re Public Comment:

GINNY BRUMMELS
(former employee of State Controller's Office)



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Commission on State Mandates – May 27, 2010

1 BE IT REMEMBERED that on Thursday, May 27,
2 2010, commencing at the hour of 9:35 a.m., thereof, at
3 the State Treasurer's Office, 915 Capitol Mall, 5th
4 Floor, Room 587, Sacramento, California, before me,
5 DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following
6 proceedings were held:

7 --oOo--

8 CHAIR BRYANT: This meeting of the Commission
9 on State Mandates will come to order.

10 Paula, will you call the roll?

11 MS. HIGASHI: Mr. Chivaro?

12 MEMBER CHIVARO: Here.

13 MS. HIGASHI: Ms. Cox?

14 MEMBER COX: Here.

15 MS. HIGASHI: Mr. Glaab is absent.

16 Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen is absent.

19 Mr. Worthley?

20 MEMBER WORTHLEY: Here.

21 MS. HIGASHI: Ms. Bryant?

22 CHAIR BRYANT: Here.

23 MS. HIGASHI: Item 1 is approval of the minutes
24 of March 26th.

25 CHAIR BRYANT: Are there any objections or

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1 corrections to the March 26th minutes?

2 MEMBER CHIVARO: Move approval.

3 CHAIR BRYANT: Is there a second?

4 MEMBER WORTHLEY: Second.

5 CHAIR BRYANT: We have a motion and a second.

6 All those in favor of adopting the minutes?

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

8 CHAIR BRYANT: Any opposed?

9 *(No response)*

10 CHAIR BRYANT: Abstentions?

11 MEMBER COX: I need to abstain.

12 CHAIR BRYANT: The minutes are adopted.

13 MS. HIGASHI: Item 2, adoption of the minutes
14 from May 3rd.

15 CHAIR BRYANT: Are there any objections or
16 additions or corrections to the minutes of the May 3rd
17 meeting?

18 MEMBER CHIVARO: Move approval.

19 CHAIR BRYANT: Is there a second?

20 MEMBER COX: Second.

21 CHAIR BRYANT: We have a motion and a second
22 for adoption of the minutes.

23 All those in favor?

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

25 CHAIR BRYANT: Any opposed or abstentions?

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1 (No response)

2 CHAIR BRYANT: The minutes are adopted.

3 MS. HIGASHI: We have no appeals under Item 3.

4 And this brings us to the proposed Consent Calendar.

5 On the proposed Consent Calendar, it should be
6 before you on green paper.

7 Item 6, Item 7, Item 8, Item 9, Item 10 --
8 which consists of Parts A, B, C, D -- Item 11, Item 12,
9 and Item 13.

10 We've taken two items off the proposed consent
11 calendar, the Strategic Plan and the rulemaking, for
12 technical discretion.

13 CHAIR BRYANT: Are there any objections to the
14 proposed Consent Calendar?

15 MEMBER WORTHLEY: Move approval, Madam Chair.

16 CHAIR BRYANT: Is there a second?

17 MEMBER CHIVARO: Second.

18 CHAIR BRYANT: It's been moved and seconded to
19 adopt the proposed consent calendar.

20 All those in favor, signify by saying "aye."

21 (A chorus of "ayes" was heard.)

22 CHAIR BRYANT: Any opposed or abstentions?

23 (No response)

24 CHAIR BRYANT: The motion carried.

25 MS. HIGASHI: Thank you very much.

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1 This brings us to the hearing portion of our
2 meeting.

3 Will the parties and witnesses for Items 4 and
4 5 please stand?

5 *(Parties and witnesses stood up.)*

6 MS. HIGASHI: Do you solemnly swear or affirm
7 that the testimony which you are about to give is true
8 and correct, based upon your personal knowledge,
9 information, or belief?

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

11 MS. HIGASHI: Thank you.

12 This item will be presented by Chief Counsel
13 Camille Shelton.

14 MS. SHELTON: Item 4 is an incorrect-reduction
15 claim filed by the County of Los Angeles on reimbursement
16 claims for costs incurred in fiscal years 1996-97 and
17 1997-98 on the *Investment Reports* program.

18 The issues in dispute involve the State
19 Controller's reduction of costs claimed following a desk
20 audit of the salaries and benefits of county employees
21 accumulating and compiling data necessary to render the
22 quarterly report of investments and the costs claimed
23 for investment software.

24 For the reasons stated in the analysis, staff
25 concludes that the State Controller's office incorrectly

1 reduced the costs claimed by the County of Los Angeles.
2 However, the reimbursement claims filed by the County for
3 salaries and benefits include daily investment activities
4 and costs that are not reimbursable.

5 Staff recommends that the Commission adopt the
6 analysis and remand the reimbursement claims back to the
7 State Controller's office for further review and
8 reinstatement of those costs that are eligible for
9 reimbursement in accordance with the Commission's
10 decision on this incorrect-reduction claim.

11 Will the parties and witnesses please state
12 your names for the record?

13 MS. KANEMASU: Jill Kanemasu.

14 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of
15 County of Los Angeles.

16 MS. ROMERO: Lorena Romero, Department of
17 Finance.

18 CHAIR BRYANT: Go ahead.

19 MS. YAGHOBYAN: Thanks. I just want to thank
20 the staff for their analysis, and we are concurring with
21 their recommendations.

22 CHAIR BRYANT: Controller or Finance, do you
23 have anything to add?

24 MS. ROMERO: Finance also concurs.

25 MS. KANEMASU: State Controller's office

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1 concurs.

2 CHAIR BRYANT: Are there any questions or
3 comments from the members?

4 *(No response)*

5 CHAIR BRYANT: Is there any additional
6 discussion? Any public comment?

7 *(No response)*

8 CHAIR BRYANT: Is there a motion on this item?

9 MEMBER LUJANO: Move approval.

10 MEMBER CHIVARO: Second.

11 CHAIR BRYANT: We have a motion and a second.

12 All those in favor?

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

14 CHAIR BRYANT: Any opposed?

15 *(No response)*

16 CHAIR BRYANT: Abstentions?

17 *(No response)*

18 CHAIR BRYANT:

19 MS. YAGHOBYAN: Thank you.

20 MS. HIGASHI: This brings us to the Proposed
21 Statement of Decision, Item 5.

22 MS. SHELTON: Staff recommends that the
23 Commission adopt the proposed Statement of Decision.

24 MEMBER WORTHLEY: Move approval, Madam Chair.

25 MEMBER CHIVARO: Second.

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1 CHAIR BRYANT: There's been a motion and a
2 second.

3 Is there any public comment?

4 *(No response)*

5 CHAIR BRYANT: All those in favor, say "aye."

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

7 CHAIR BRYANT: Any opposed?

8 *(No response)*

9 CHAIR BRYANT: Abstentions?

10 *(No response)*

11 CHAIR BRYANT: The motion carries.

12 MS. HIGASHI: Thank you.

13 This brings us to Item 14. This will be
14 presented by Ms. Patton.

15 MS. PATTON: Good morning.

16 Section 1189.2 of the Commission's regulations
17 authorizes the Commission to adopt an order to initiate
18 rulemaking. The purpose of the proposed regulations is
19 to encourage the use of electronic filing, move all
20 subvention claim matters to Article 7, and to make our
21 procedures more efficient.

22 Following adoption of the order, staff will
23 publish a notice of hearing and mail the notice and
24 rulemaking package to all interested persons for public
25 comment.

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1 We removed this item from the consent calendar
2 to revise the deadline for public comment from July 26th
3 to July 30th, so that it coincides with the proposed date
4 for public hearing.

5 Staff recommends that the Commission adopt the
6 order to initiate rulemaking as revised.

7 CHAIR BRYANT: Thank you.

8 MS. HIGASHI: Let me just offer a
9 clarification.

10 On the hearing date, throughout this agenda
11 item on the timetable, we have two notes noted, July 29
12 or 30; and it will be dependent on which date the
13 Commission actually ends up picking later in the agenda.

14 CHAIR BRYANT: Okay.

15 Is there a motion?

16 MEMBER CHIVARO: Move approval.

17 MEMBER LUJANO: Second.

18 CHAIR BRYANT: We have a motion and a second.

19 Is there any public comment?

20 *(No response)*

21 CHAIR BRYANT: All those in favor, say "aye."

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

23 CHAIR BRYANT: Any opposed or abstentions?

24 *(No response)*

25 CHAIR BRYANT: The motion carries.

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1 MS. HIGASHI: This takes us to Item 16.

2 Ms. Patton will present adoption of the
3 strategic plan.

4 CHAIR BRYANT: Item 15, we have no --

5 MS. HIGASHI: We have no SB 1033 applications.

6 MS. PATTON: On March 26th, the Commission
7 adopted an interim strategic plan. Staff posted the
8 interim plan on the Commission's Web site, issued it for
9 a public comment, and solicited comments from Commission
10 staff.

11 On May 10th and May 20th, Department of Finance
12 and Commission staff submitted comments. No other
13 comments were received. We made the changes proposed by
14 the Department of Finance and Commission staff.

15 Upon request of the Chair, we have removed the
16 proposed final strategic plan from the Consent Calendar
17 to revise the language on the last goal regarding
18 promotion of sustainability in the Commission's policies
19 and procedures.

20 And the following language is suggested:

21 *"Actively promote sustainability in the*
22 *Commission's policies and procedures to ensure*
23 *that our practices are protective of the*
24 *environment and human health and our energy*
25 *and are energy and resource efficient."*

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1 This is a broader statement than what we said
2 before, which was about recycling and reduction of paper
3 for the Commission, by putting things on the Commission's
4 Web site.

5 MEMBER WORTHLEY: Go green.

6 MS. PATTON: Go green.

7 Staff recommends that the Commission adopt the
8 final strategic plan with the revised language.

9 CHAIR BRYANT: Are there any questions or
10 comments?

11 *(No response)*

12 CHAIR BRYANT: Any public comment on this item?

13 *(No response)*

14 CHAIR BRYANT: Do we have a motion?

15 MEMBER CHIVARO: Move approval.

16 MEMBER COX: Second.

17 CHAIR BRYANT: All those in favor, say "aye."

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

19 CHAIR BRYANT: Any opposed or abstentions?

20 *(No response)*

21 CHAIR BRYANT: The motion carries.

22 MS. HIGASHI: Item 17, Ms. Patton, the BSA
23 audit report.

24 MS. PATTON: I don't have anything to add to
25 what is already in the binder, except to note that when

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1 you adopted the Consent Calendar this morning, you
2 adopted the last of the proposed amendments to the
3 boilerplate, the P's & G's that the Bureau of State
4 Audits has recommended that we implement. So we're done
5 with those.

6 CHAIR BRYANT: Is that a big sigh of relief?

7 MS. HIGASHI: Then Item 18 is our Leg. Update.

8 MS. PATTON: We are currently tracking three
9 bills, SB 894, which the Commission has a "support"
10 position on; AB 2082, which we have an "unopposed, unless
11 amend" position on; and before you this morning is our
12 staff analysis on AB 349.

13 Under this bill, if the Governor's budget
14 proposes to suspend state mandates, the Department of
15 Finance would be required on or after January 1, 2012, to
16 provide to the Legislature all proposed statutory changes
17 necessary to repeal the mandates proposed for suspension,
18 and to the extent practicable, identify each affected
19 section of law.

20 We are recommending taking no position on this
21 bill since it does not affect our responsibilities.

22 CHAIR BRYANT: Are we taking -- do we need to
23 decide if we want to do that or...

24 MS. HIGASHI: Just by no action, you would not
25 be taking a position.

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1 CHAIR BRYANT: Okay.

2 MEMBER WORTHLEY: Just a question.

3 You know, creating a program involves expenses.
4 Ceasing to operate a program may also incur expenses.

5 I don't know if anybody has considered whether
6 or not that issue is in terms of cost.

7 And another problem, of course, is that when
8 you have a program and you suspend the financial piece
9 of it, it also puts the local governments in a bind,
10 oftentimes, you know, whether or not to keep the program
11 going because of those expenses that are incurred in
12 creating it, or anticipating that the following year, the
13 Legislature is going to come back and fund it, and then
14 you have to restart it up again.

15 It just -- the whole system, really, is
16 problematic for local government.

17 And I see someone here that's here that maybe
18 can speak to that issue.

19 CHAIR BRYANT: Do you have a comment?

20 MR. BURDICK: Madam Chair and Members, Allan
21 Burdick, staff to the CSAC League of Cities Advisory
22 Committee on State Mandates, one of the strong supporters
23 of AB 349.

24 I think the point that was raised by
25 Mr. Worthley is very critical in terms of if these

1 mandates are not repealed, the additional costs and the
2 legal issues that are raised for both state and local
3 government as to whether these programs should be carried
4 out.

5 It really makes no sense whatsoever to continue
6 to have programs on the books which are suspended on a
7 budget-by-budget year basis. And some of these mandates
8 have been suspended for 18, 19 years, since the original
9 statute was put in place back in 1991 to allow for
10 suspension.

11 Currently, if a mandate is suspended, the
12 language in the statute that governs that program does
13 not change. So if you were to look up and say, "Have I
14 got a requirement to comply with this," if you wanted
15 to know and you looked at the Penal Code, Health and
16 Welfare, whatever code it was, you would say, "Yes,
17 you're required to do this."

18 Somewhere buried in that 800-page budget,
19 there's a little line that has a zero after it, that
20 says, "This is a reimbursable mandate that has been
21 suspended."

22 Now, I think that the Commission should really
23 look at the overall program and responsibility for that
24 program and question this whole practice as to, you know,
25 how it's being carried out and whether it's done.

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1 And I think that this particular amendment is
2 very consistent, as it should be, with saying: Let's try
3 to be able to have a manageable program. Let's not have
4 things out there that could incur costs on both state and
5 locals; raise a series of questions as to -- legal
6 questions -- as to whether things are suspended or not.
7 So I would actually encourage the Commission to take
8 another look at that and consider supporting this
9 particular bill.

10 Thank you very much.

11 CHAIR BRYANT: Thank you.

12 Any other comments from Commission members?

13 MEMBER WORTHLEY: Just -- I appreciate the
14 comment by Mr. Burdick.

15 I can see why we take no position because it
16 really doesn't affect us as a commission. It affects the
17 local governments that are impacted by this type of a
18 rule. But I just want to call it to the attention of the
19 Commission that this is problematic for local government.
20 And I think Mr. Burdick has confirmed that.

21 CHAIR BRYANT: Thank you.

22 Next item?

23 MS. HIGASHI: Item 19. This is regarding the
24 Working Group Proposal on the Mandate Redetermination
25 Process.

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1 This also was one of the recommendations in the
2 BSA audit report that the Commission staff continue to
3 work with the staff and the Legislature and state
4 agencies and local governments regarding this process.

5 I've provided you with an update. And I just
6 wanted to talk about some of the changes that had been
7 made to the draft.

8 On May 12th, the expanded working group met,
9 and that meeting included other legislative staff,
10 representatives from the League of Cities, CSAC, and the
11 CSAC SB-90 group.

12 Although school district representatives had
13 been invited, none of them were able to attend that
14 meeting.

15 After that meeting, we made some revisions to
16 the draft that you saw at the last meeting. And
17 basically, the revisions require the Commission to notify
18 the Department of Finance, the LAO, the State Controller,
19 and interested parties upon receipt of a complete
20 request. And this is so everyone is placed on notice
21 that one of these requests is pending.

22 The second requires the State Controller to
23 notify eligible claimants that a complete request for
24 mandate redetermination has been filed, noting that this
25 notification may be included in the next claiming

1 instructions issued by the State Controller.

2 And this is obviously because of the fact that
3 if it is a mandate that is currently being claimed, that
4 if a request is filed to change that, so that that
5 mandate would no longer be reimbursable, that it would
6 be appropriate to notify the claimants so they would be
7 aware of it.

8 And the other would be, if it's a denied
9 mandate that would potentially become approved, it would
10 also put claimants on notice to save their receipts or
11 their documentation.

12 I've heard from the Deputy Controller, who is
13 responsible for legislation, and he had let me know that
14 they were fine with these changes.

15 The other are just some -- a few clarifying
16 text edits that were made.

17 Since that date, the draft was submitted to
18 Legislative Counsel. And this week, we got a draft back.
19 And we are in the process of reviewing it and continuing
20 to receive comment on it.

21 There are some technical issues that we need
22 to address just in the drafting that references to
23 Government Code 17514 were dropped off, and only
24 references were made to 17556 in the Constitution. So
25 it appears as if one of these redeterminations could only

1 be filed if you were trying to find no costs mandated by
2 the State, and that was not the intention in the draft
3 that the working group had provided.

4 Other issues that have come up for all of us,
5 are just what happens if this does get enacted as
6 trailer-bill language? And right now, it has been
7 approved as placeholder language -- trailer-bill language
8 by both houses. The Assembly subcommittee voted this
9 week to approve it as placeholder language. And it's the
10 draft that you have here that's gone to Leg. Counsel.

11 So there is a serious possibility that this
12 will be enacted. We are still in the process of vetting
13 it with all the parties, and no mention has been made of
14 how the Commission is expected to really carry out this
15 new responsibility if this is enacted. So it would be
16 additional workload for us.

17 And at this time, there are no priorities set
18 in the proposed statutes or any other changes to our
19 program that would give us any clue as to where these
20 would land in the queue, because we certainly have
21 pending workload, still.

22 So if you have any questions, I'd be happy to
23 take them or comments from the audience.

24 MEMBER COX: I have a question.

25 MEMBER WORTHLEY: Madam Chair?

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1 CHAIR BRYANT: Cathleen?

2 MEMBER COX: The question I just have is that
3 it is in recognition that you have received no direction
4 or any sort of inkling about where this would lie in the
5 priorities of the Commission.

6 What kind of proactive steps are you taking to
7 kind of anticipate it either being at the top or being at
8 the bottom or being, you know, at the top three? Or is
9 it too premature, is it premature?

10 MS. HIGASHI: I think it's premature because we
11 would -- at this point, we have statutory mandates for
12 test claims. We do not have any for IRCs, we do not have
13 any in this process.

14 MEMBER COX: Okay.

15 MEMBER WORTHLEY: Madam Chair?

16 CHAIR BRYANT: Mr. Worthley?

17 MS. HIGASHI: And so the test claims continue
18 to be our top priority. And as we can fit them in, we
19 are beginning to work on IRCs as well. But we do know
20 that the Legislature is taking actions in budget
21 subcommittees that are as if this process was a done
22 deal.

23 In the analyses, they're already saying, "Well,
24 we can amend this statute; and then after we amend this
25 statute, do budget trailer-bill language. Then someone

1 can ask for a redetermination.”

2 And one of the sentences that was added, that
3 you may recall is the one regarding having the
4 Legislature through statute, may ask the Department of
5 Finance to take advantage of this process and request a
6 redetermination of a particular mandate. And so I
7 presume that process would be used.

8 MEMBER WORTHLEY: A couple of comments.

9 One is that as I was looking through this, I
10 looked under the definition of “subsequent change to the
11 law.” I don’t see any term of materiality there.

12 Is that handled in some other fashion? In
13 other words, some minor change that really has little or
14 no financial change ought not to trigger this.

15 MS. HIGASHI: This is an issue that came up in
16 the Assembly Budget Subcommittee. It was raised by the
17 CSBA representative. And it was echoed by CSAC, as well
18 as the League of Cities, as to, you know, what is the
19 threshold.

20 For a test-claim filing, the threshold is
21 \$1,000 per claimant.

22 For a filing a reimbursement claim, it is only
23 \$1,000 per claimant.

24 And this is an issue that if you were to be
25 consistent, you would say \$1,000; but to us, that seems

1 terribly low. So it seems like it should be a higher
2 threshold. And we know that the next draft will probably
3 identify what that threshold should be but, you know, we
4 need to pick a number, and I'm not sure what that number
5 should be.

6 At one point, I know we were thinking, "Well,
7 gee, if it's a local government claim, should it be
8 \$1,000 per county plus \$1,000 per city or \$1,000 per
9 school district?" You know, what should it be? Because
10 we certainly don't want to go through this process if all
11 it is, is \$1,000.

12 MEMBER WORTHLEY: And my other comment is --
13 and maybe somewhat related to it -- when we think about a
14 process or procedure, as I look at these statements of
15 "Identification of all the following, if relevant" and
16 are laid out here, putting more of the burden on the
17 applicants and the responding parties and less on us --
18 I realize we're the final determiner, but I feel
19 oftentimes like we -- maybe there's a way to put more of
20 this on them.

21 I mean, where it would hopefully come back to
22 the Commission more as a consent item, where all parties
23 have agreed upon the consequences of the action by the
24 Legislature, and not really take staff time.

25 I know, I'm probably dreaming about that. But

1 from a conceptual standpoint, trying to put more of the
2 burden on them and less on our staff would also go to the
3 point of materiality. I mean, if they have to spend a
4 lot of time and energy to get this accomplished, then
5 they're going to take a look at the bottom line and say,
6 "Is this really worth the effort to do it?"

7 MS. HIGASHI: And that's exactly what we have
8 in subdivision (d) on page two. All of that detail is
9 that the Commission's procedures shall specify that the
10 requests that are filed shall contain at least the
11 following elements and documents. So the burden is on
12 the requester, whether it's Finance or whether it's a
13 claimant. So it's not the Commission staff on a
14 fact-finding expedition at the State Library.

15 MEMBER WORTHLEY: Right.

16 I think that would be helpful, you know,
17 looking at the workload for us going forward, as a
18 commission, putting as much of that burden as we can on
19 those folks, and then they will have to use their own
20 discretion whether or not to pursue something and then
21 hopefully make the job less difficult for our staff

22 MS. HIGASHI: So that if this were enacted in
23 the Commission's regulations, we would have to start a
24 rulemaking package immediately, like in September or
25 October to try to get this into effect, by the effective

1 date.

2 CHAIR BRYANT: Mr. Burdick?

3 MR. BURDICK: Yes, Allan Burdick again, Madam
4 Chair and Members.

5 Just a quick comment, and that is to urge that
6 the Commission continue to request that this matter be
7 heard through the regular process and not as a trailer
8 bill.

9 That I think the Commission -- I don't know
10 whether it was a formal action or not, I remember at that
11 time the Chair was Mr. Leahy last year who -- and I think
12 the members joined in, that this is an important item and
13 something to be done in a public hearing and with people
14 really as a policy matter and not being handled by the
15 budgeteers that are out there.

16 We appreciate locals are able to participate in
17 this.

18 I don't think any of us, school boards, CSAC or
19 the League working jointly together, every step of the
20 way, would feel we are true partners in this at this
21 point yet. We have had some opportunities. We don't
22 feel that -- you know, we feel there's a lot of work left
23 to be done in supporting that. But I would request that
24 if that action was taken by the Commission in the past,
25 or at least in that sense to be put forward again to both

1 the Governor and members of the Legislature, that this
2 process should be handled through the regular legislative
3 process through a bill and public hearing, and not be
4 done by a trailer bill.

5 MS. HIGASHI: Could I just comment?

6 CHAIR BRYANT: Yes.

7 MS. HIGASHI: It's in conference. This item is
8 in conference right now because both subcommittees
9 approved the placeholder language.

10 MEMBER WORTHLEY: But what does that mean,
11 Paula, as far as a request?

12 MS. HIGASHI: It means that they'll take it up
13 in conference, is my understanding.

14 Jeff?

15 MEMBER WORTHLEY: Well, there will be no more
16 further public process --

17 CHAIR BRYANT: No, if they took up -- if they
18 both adopted this language, it's out of conference. It's
19 identical.

20 Right, Jeff?

21 MS. HIGASHI: This placeholder language?
22 Because I was told that it was placeholder language, that
23 it could change in conference.

24 MR. CAROSONE: Right. Jeff Carosone,
25 Department of Finance.

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1 Both houses did adopt placeholder trailer-bill
2 language to be worked out, but I haven't heard that it's
3 going to be discussed in specific conference committee
4 hearings.

5 MS. HIGASHI: Okay.

6 MR. CAROSONE: So both houses did take the same
7 action, which would keep it out of conference. But they
8 did leave open the possibility of continuing to tweak the
9 language.

10 CHAIR BRYANT: I mean, I continue to be of a
11 mind that it's not our role to tell the Legislature how
12 to conduct its business.

13 And I sympathize with what you're saying, but
14 I just don't know that we would take, necessarily -- I
15 really wouldn't want to take an action -- I don't think
16 it's up to us to make that plea at the Legislature.

17 MEMBER WORTHLEY: Madam Chair, I understand
18 your response. But if we could lead the Legislature a
19 little bit, so that it works better for our Commission,
20 I'm all for it.

21 CHAIR BRYANT: If we could figure out how to
22 lead the Legislature, we could rule the world.

23 MEMBER WORTHLEY: I understand.

24 But what I'm saying is to the extent -- and I
25 think the comment made by Mr. Burdick is that a more

1 public approach is one that allows for the people who are
2 affected by this -- these rules -- to be able to have
3 their input. So the stakeholders have a greater input
4 in what the final outcome is, and that would benefit us
5 all, I believe.

6 MR. BURDICK: Can I just make a final comment?

7 The one impact it has, if it does get done
8 again in trailer-bill language, is that chances are,
9 we're off to court. And I have the feeling that your
10 staff would be spending time on this issue as we go to
11 court. So I'm trying to avoid -- I think the CSAC, the
12 League, and CSBA are trying to avoid litigation.

13 A trailer bill, chances are we're heading for
14 litigation. So that's the basis. And the only thing is
15 referring back to last spring, the committees seemed to
16 be at that point -- obviously, a different chair but the
17 members and representatives the same -- as urging, you
18 know, that this is very important, the kind of thing that
19 needs to be done carefully, it has substantial impact on
20 all parties, costs related to that as well, and,
21 therefore, is not the kind of thing that should be done
22 kind of behind closed doors.

23 Anyway --

24 MS. HIGASHI: Could I ask one question of the
25 parties who are here?

1 Do the school districts' or cities' or
2 counties' representatives have any suggestion as to what
3 the minimal dollar threshold should be for triggering one
4 of these redeterminations?

5 MR. BURDICK: We haven't really discussed that
6 issue. And as far as I know, almost all of our
7 discussions have been between the three parties. We try
8 to keep CSAC, the League, and the school boards totally
9 consistent, in lockstep. And as I say, the meeting they
10 weren't able to attend with the LAO was a last-minute
11 thing and we were going to represent them. If the
12 meeting hadn't been adjourned so abruptly, we would have
13 represented the school boards' interest at that point in
14 time, but we didn't have a chance to do that.

15 But we have not dealt with that.

16 But I'll take it back and we'll try to deal
17 with that issue. Because we are concerned about the
18 standard issue of, you know, what standard do you have
19 to reach in terms of in that first step to make a
20 determination go forward. And, you know, should it be
21 something like "clear and convincing" or greater than
22 that? You know, I'll leave that to the attorneys.

23 CHAIR BRYANT: Okay, thank you.

24 Anything further on this?

25 MS. HIGASHI: No, that's it.

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1 I will be preparing a memo for the working-
2 group members identifying the changes that we think would
3 be appropriate. And we'll also identify a place in the
4 proposed language where a dollar amount could be inserted
5 once that policy decision is made.

6 CHAIR BRYANT: Okay, thank you.

7 MS. HIGASHI: Item 20.

8 MS. SHELTON: Item 20 is just my Chief Legal
9 Counsel's report identifying two lawsuits that are
10 pending against the Commission.

11 The first one listed there is a recent filing
12 by the Department of Finance challenging the *Graduation*
13 *Requirements* parameters and guidelines amendment.

14 The second one is still the *BIPs* case, filed by
15 the Department of Finance. And we have a pending hearing
16 date of December 10th.

17 The other two cases on the back are listed just
18 for information only. I've reported on those in the
19 past, and they are still in the process of being briefed;
20 and a hearing date has not been set.

21 CHAIR BRYANT: Okay. Are we going to have
22 closed session? We don't need it today?

23 MS. HIGASHI: We don't need it.

24 CHAIR BRYANT: Okay, good.

25 MS. HIGASHI: Item 21 is my report.

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1 As I noted earlier, we still have test claims
2 pending. We have 46 test claims. And we still have
3 incorrect-reduction claims pending. We now are down to
4 156. So we'd like to let out a small cheer for that.

5 MS. PATTON: Paula, I hate to tell you, but
6 there's a new one sitting on my desk, so...

7 CHAIR BRYANT: Back to 157.

8 MS. PATTON: We're back to 157.

9 MS. HIGASHI: I know.

10 Actually, and then Art had a filing, so we're
11 not sure if that adds a count -- a test-claim count, too.
12 So whatever. We are working.

13 And we're hopeful that at least by having the
14 first incorrect-reduction claim on *Investment Reports*
15 completed, that this will help us in reviewing the others
16 that are still pending. We have them batched, according
17 to who has filed them, different claimant representatives
18 have filed them. And there are city claims and there are
19 county claims. And we are going through all of them as
20 we have time to see what we can do.

21 As is appropriate and as is requested, we are
22 happy to schedule prehearing conferences or informal
23 conferences to allow the claimants and their
24 representatives to meet with State Controller's office
25 staff, to see if we can perhaps expedite the process of

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1 getting through these without having to require a
2 separate staff analysis and statement of decision on each
3 of the seventy- -- I think it's 72 pending.

4 Regarding the budget, we are now through with
5 our budget subcommittee hearing process. And the
6 Assembly subcommittee met this week. And what they did
7 that is significant, I guess, is -- and I'm going to ask
8 Jeff to correct me if I get this confused because I've
9 gone to so many budget hearings that I'm not sure who did
10 what anymore.

11 But the *In-Home Support Services* mandate, the
12 \$475,000, was approved in both houses. So that would be
13 an appropriation to cover the statewide cost estimate
14 that the Commission adopted.

15 The *Mandate Reimbursement Process I and II*
16 program was taken up this week as well. And the vote was
17 to suspend the mandates. And it was also the same vote
18 taken last week. So the proposed budget will be
19 suspending *MRP I* and *MRP II*.

20 Open Meetings Act, Brown Act Reform, that will
21 end up in conference. There was one vote taken to amend
22 the statute. And yesterday's -- this week's vote was the
23 opposite.

24 And then *Handicapped and Disabled Students I*
25 *and II*, and *Seriously Emotionally Disturbed Pupils*, this

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1 is a conference item as well. And it seems like that
2 there are a number of subcommittees in both houses acting
3 on it. So it's kind of confusing at this point in time
4 as to what's going to happen.

5 One of the actions taken this week required the
6 Department of Finance to actually prepare a report to
7 propose alternative methods of delivering the services
8 that would be more cost-effective. And so we're not sure
9 where that will be. That's clearly a conference item.

10 Did I miss anything, Jeff?

11 MR. CAROSONE: I think you got it.

12 MS. HIGASHI: Okay.

13 In terms of what else is pending before you, we
14 actually need to have you decide what date you would like
15 to meet next. We still have this issue.

16 CHAIR BRYANT: The most controversial item ever
17 to come before the Commission.

18 MS. HIGASHI: Ever.

19 And today, I came up with a new idea, but I
20 won't mention it yet.

21 Okay, the June date is a placeholder date. We
22 typically have not had a June meeting. But in case we
23 need it, staff would recommend that it be the Thursday
24 date.

25 CHAIR BRYANT: Any objections to Thursday,

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1 June 24th, as a tentative date?

2 (A chorus of "noes" was heard.)

3 CHAIR BRYANT: Okay.

4 MS. HIGASHI: Okay, for the July date, staff
5 recommends Thursday, July 29th.

6 MEMBER COX: I won't be here. But you'll go
7 on.

8 CHAIR BRYANT: Send a designee.

9 MS. HIGASHI: Are you here on the 30th?

10 MEMBER COX: No.

11 MS. HIGASHI: Okay.

12 MEMBER CHIVARO: The 29th is fine.

13 MS. HIGASHI: Okay. Then for September,
14 instead of it being September 23rd, we're recommending
15 that that date be changed to September 30th.

16 It turns out that September 24th is the last
17 Friday of the month, but the last Thursday of the month
18 is September 30th.

19 CHAIR BRYANT: Okay.

20 MS. HIGASHI: October 28th is the Thursday date
21 we recommend.

22 And then December: December 2nd.

23 MEMBER LUJANO: What was it for September?

24 MS. HIGASHI: September 30th. I moved it up a
25 week.

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1 CHAIR BRYANT: Okay, any objections?

2 MEMBER WORTHLEY: Madam Chair, no, I had raised
3 the concern last time about interfering with the Air
4 Quality Board that I sit on. But it's the third
5 Thursday. And so by making sure these are in the final
6 weeks of the months -- except for December, of course, it
7 doesn't matter -- I don't have an issue with that. So
8 these work for me.

9 CHAIR BRYANT: Good.

10 MS. HIGASHI: Okay.

11 CHAIR BRYANT: All right.

12 MS. HIGASHI: Wow, this is huge.

13 CHAIR BRYANT: That was the fastest we've ever
14 done that.

15 MS. HIGASHI: Thank you.

16 On pages 4 and 5 of my report, we've identified
17 the test claims, incorrect-reduction claims, and
18 parameters and guidelines and statewide cost estimates
19 that we are working on presently. And they will be
20 scheduled for July and September.

21 The test claims that are pending are all -- the
22 first three listed are huge.

23 The analysis for the first one is --

24 MS. SHELTON: Huge.

25 MS. HIGASHI: -- huge.

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1 MS. SHELTON: Over 200 pages.

2 MS. HIGASHI: It's over 200 pages.

3 MS. SHELTON: It's huge.

4 MEMBER WORTHLEY: It's a novel.

5 MS. SHELTON: Hundreds of regulations piled, so...

6 MS. HIGASHI: So it's taking us quite a while.

7 MEMBER WORTHLEY: I hope you have a great
8 summer.

9 MS. HIGASHI: The second one, *Employment of*
10 *College Faculty and Instructors*, is not as huge because
11 it's limited in scope.

12 CEQA is moderate, but you've seen it before.
13 And then *School Bus Safety*, we're not sure yet.
14 So this is what it looks like.
15 Are there any questions?

16 (No response)

17 MS. HIGASHI: Any questions from the audience?

18 (No response)

19 MS. HIGASHI: So that's pretty much it.

20 I have nothing further to add, unless there are
21 questions.

22 CHAIR BRYANT: So is there any public comment
23 on items not on the agenda?

24 Paula?

25 MS. PATTON: I have public comment.

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1 CHAIR BRYANT: You have something.

2 MS. PATTON: Well, I think everyone here knows
3 Ginny Brummels from the State Controller's office. And
4 Ginny has recently retired, so we wanted to honor her
5 today.

6 Ginny and the staff of the Commission have been
7 working together specifically on mandate issues about the
8 last ten years.

9 She's just been invaluable -- you know, an
10 invaluable help to us on her process, and I hope we've
11 helped her on our process. Ginny and I have spent a lot
12 of time together over the last ten years. And, you know,
13 she's so busy at work, and especially when she's putting
14 together the AB 3000 and that hideous deficiency report.
15 But she decided, she still didn't have enough to do, so a
16 couple years ago, she changed her whole life and became a
17 marathoner, just in her spare time.

18 Anyway, Ginny, why don't you come up? We have
19 a resolution that I'd like to read from the Commission.

20 *(Applause)*

21 MS. PATTON: *Whereas Ginny Brummels has*
22 *distinguished herself as an outstanding State employee*
23 *for 34 and a half years, 33 of those years serving the*
24 *State Controller's office, beginning as the first female*
25 *traveling auditor performing road-fund audits, and*

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1 *retiring as manager of the Division of Accounting and*
2 *Reporting, Local Reimbursement Section;*

3 *Whereas she provided over ten years of*
4 *invaluable assistance and expertise to local governments*
5 *and State agencies on the process of reimbursement of*
6 *state-mandated programs and the funding for those*
7 *programs;*

8 *Whereas she is recognized throughout the state*
9 *and local governments for her leadership and knowledge of*
10 *the mandates process;*

11 *Whereas is she has advised and influenced the*
12 *Commission on State Mandates on significant issues*
13 *involving parameters and guidelines, statewide cost*
14 *estimates, and incorrect-reduction claims;*

15 *Whereas some members and staff of the*
16 *Commission admire her courage for undertaking her new*
17 *hobby of completing marathons;*

18 *Whereas other members and staff question her*
19 *crazy new hobby of completing marathons;*

20 *Whereas Ginny Brummels is being honored by the*
21 *members and staff of the Commission on State Mandates in*
22 *appreciation of her outstanding dedication, leadership,*
23 *and service to the State of California.*

24 *Now, therefore, be it resolved that the members*
25 *and staff of the Commission on State Mandates warmly*

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1 *congratulate Ginny Brummels upon her retirement and wish*
2 *her continued success and minutes off her marathon mile.*

3 *(Applause)*

4 MS. BRUMMELS: Well, it has truly been an honor
5 and a privilege to work with the Commission. I think the
6 staff of the Commission are just a great resource for the
7 Controller's office.

8 And, you know, it's interesting, sitting here
9 today, listening to the topics of the mandates that are
10 coming back around again for another round, like Open
11 Meetings Act going into suspension possibly again in the
12 mandate-reimbursement process. It's like a program is
13 never done. And that's why I felt I probably should get
14 out before we go into Round 5.

15 But it's been a good ten years. And I've
16 enjoyed working with all of you.

17 CHAIR BRYANT: Thank you.

18 *(Applause)*

19 CHAIR BRYANT: Anything to add, anybody?

20 *(No response)*

21 CHAIR BRYANT: Okay, congratulations, and thank
22 you for your service.

23 With no other business, we can entertain a
24 motion to adjourn.

25 MEMBER CHIVARO: So moved.

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CHAIR BRYANT: Is there a second? All those in favor?

(A chorus of "ayes" was heard.)

CHAIR BRYANT: The meeting is adjourned.

(Gavel sounded.)

(The meeting concluded at 10:15 a.m.)

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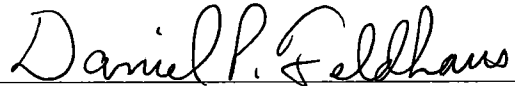
REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on June 18th, 2010.



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