

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

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

A P P E A R A N C E S

COMMISSIONERS PRESENT

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--

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>17</u>	<u>1</u>	change "Mr. Burdick" to "Chair Genest"
<u>17</u>	<u>7</u>	change "Mr. Burdick" to "Chair Genest"
<u>25</u>	<u>20</u>	Insert "could also fail to" after "State"
<u>25</u>	<u>20</u>	change "of" to "in"
<u>25</u>	<u>23</u>	change "finding" to "funding"
<u>26</u>	<u>8</u>	change "it" to "in"
<u>58</u>	<u>16</u>	cross off "of" after "program" & replace with "or"
<u>66</u>	<u>2</u>	change "and" to "or"
<u>66</u>	<u>3</u>	change "receipt" to "received"
<u>79</u>	<u>18</u>	change "prove" to "approve"

Commission on State Mandates – April 16, 2007

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Roll Call	13
II. Approval of Minutes	
Item 1 March 29, 2007	Postponed
III. Proposed Consent Calendar	
Item 2 (No consent calendar items)	--
IV. Appeal of Executive Director Decisions Pursuant to California Code of Regulations Title 2, Section 1181(c)	
Item 3 Staff Report (None)	--
V. Hearings and Decisions on Claims Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims:	
Item 4 <i>In-Home Supportive Services</i> CSM 4314 County of San Bernardino	--
Item 5 Proposed Statement of Decision <i>In-Home Supportive Services</i> (See Item 4 above)	--
Item 6 <i>In-Home Supportive Services II</i> OO-TC-23 County of San Bernardino	14
Item 7 Proposed Statement of Decision <i>In-Home Supportive Services II</i> (See Item 6 above)	47

I N D E X

Proceedings

Page

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

A. Test Claims:

Item 8	<i>California Youth Authority: Sliding Scale for Charges 02-TC-01 County of San Bernardino . Postponed</i>	
Item 9	<i>Proposed Statement of Decision California Youth Authority: Sliding Scale for Charges (See Item 8 above) Postponed</i>	
Item 10	<i>Reconveyance of Deed of Trust and Mortgage Discharge Certificate 02-TC-41 County of San Bernardino</i>	49
Item 11	<i>Proposed Statement of Decision Reconveyance of Deed of Trust and Mortgage Discharge Certificate (See Item 10 above)</i>	63
Item 12	<i>Pupil Discipline Records 00-TC-10 Sweetwater Union High School District and Grant Joint Union High School District</i>	64
Item 13	<i>Proposed Statement of Decision Pupil Discipline Records (See Item 12 above).</i>	75

I N D E X

Proceedings

Page

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

A. Test Claims:

Item 14	<i>California State Teachers' Retirement Systems (CalSTRS) Creditable Compensation/ Service Credit 01-TC-02, 02-TC-19 Lassen County Office of Education, San Luis Obispo County Office of Education, Grant Joint Union High School District and Santa Monica Community College</i>	78
Item 15	<i>Proposed Statement of Decision California State Teachers' Retirement Systems (CalSTRS) Creditable Compensation/ Service Credit (See Item 14 above)</i>	90
Item 16	<i>Peace Officer Instructor Training 02-TC-02, 02-TC-19 San Bernardino Community College District</i>	Postponed
Item 17	<i>Proposed Statement of Decision Peace Officer Instructor Training (See Item 16 above)</i>	Postponed

I N D E X

<u>Proceedings</u>	<u>Page</u>
VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Adoption of Proposed Statewide Cost Estimate	
Item 18 The Stull Act 98 TC 25 Denair Unified School District and Grant Joint Unified School District	Postponed
VII. Mandate-Reform Proposals and Pending Legislation	
Item 18 Position on Department of Finance And Legislative Analyst's Mandate Reform Proposals and Pending Legislation	91
VIII. Staff Reports	
Item 19 Chief Legal Counsel's Report . .	115
Item 20 Executive Director's Report . .	116
IX. Public Comment	116
X. Closed Executive Session	118
XI. Report from Closed Executive Session	118
XII. Adjournment	119
Reporter's Certificate	120

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.

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

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

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.

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?

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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

MS. HIGASHI: Mr. Glaab?

MEMBER GLAAB: No.

MS. HIGASHI: Mr. Lujano?

MR. LUJANO: Aye.

MS. HIGASHI: Ms. Olsen?

MEMBER OLSEN: No.

MS. HIGASHI: Mr. Worthley?

MEMBER WORTHLEY: No.

MS. HIGASHI: Mr. Genest?

CHAIR GENEST: Yes. Aye.

MS. HIGASHI: The motion carries.

CHAIR GENEST: Okay, what's the next item?

MS. HIGASHI: The next item is Item 7.

MS. TOKARSKI: Item 7 is the Statement of
Decision for the item you just heard.

The sole issue before the Commission is whether
the proposed Statement of Decision accurately reflects
the Commission's decision on the *In-Home Supportive
Services II* test claim. Staff recommends that 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.

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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."

Commission on State Mandates – April 16, 2007

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.

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

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.

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?

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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

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: Okay, let's move on to the next
issue.

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

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

Do we have a motion on that?

MEMBER GLAAB: So moved.

CHAIR GENEST: Second?

MS. OLSEN: Second.

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

MS. OLSEN: He moved and I seconded.

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

Commission on State Mandates – April 16, 2007

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

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.

Commission on State Mandates – April 16, 2007

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

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

Commission on State Mandates – April 16, 2007

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

Commission on State Mandates – April 16, 2007

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

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?

Commission on State Mandates – April 16, 2007

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

(A chorus of "ayes" was heard.)

CHAIR GENEST: Opposed?

MEMBER OLSEN: No.

CHAIR GENEST: Ms. Olsen votes no.

MEMBER BRYANT: I abstain.

CHAIR GENEST: Ms. Bryant abstains.

MS. HIGASHI: We've got five votes.

CHAIR GENEST: Is it seven, so it passes?

MS. HIGASHI: Yes.

The next item is Item 13, which would be the
Statement of Decision.

CHAIR GENEST: Did we want -- you said there
would be a time --

MEMBER WORTHLEY: Is that where we addressed
this issue?

MS. HIGASHI: It's triggered by the Statement
of Decision.

CHAIR GENEST: So that is Item 13, I guess.

MR. FELLER: Yes. The sole issue is whether
the proposed Statement of Decision accurately reflects
the Commission's decision on the final staff analysis.
Unless there is objection, staff recommends that the
Commission adopt the proposed Statement of Decision.
Staff also recommends the Commission allow minor changes
to be made to the Statement of Decision, including

Commission on State Mandates – April 16, 2007

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

Commission on State Mandates – April 16, 2007

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

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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?

Commission on State Mandates – April 16, 2007

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

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.

Commission on State Mandates – April 16, 2007

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

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

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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."*

Commission on State Mandates – April 16, 2007

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

Commission on State Mandates – April 16, 2007

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

Commission on State Mandates – April 16, 2007

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

Commission on State Mandates – April 16, 2007

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,

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.

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

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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.

Commission on State Mandates – April 16, 2007

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?

Commission on State Mandates – April 16, 2007

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

Commission on State Mandates – April 16, 2007

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.)*

12 --o0o--

13

14

15

16

17

18

19

20

21

22

23

24

25

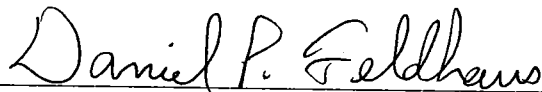
REPORTER'S CERTIFICATE

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 5th day of May 2007.



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