

## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
January 25, 2007

Present: Member Anne Sheehan, Chairperson  
Representative of the Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro<sup>1</sup>  
Representative of the State Controller  
Member Cynthia Bryant  
Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Paul Glaab  
City Council Member  
Member Sarah Olsen  
Public Member

#### CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:34 a.m.

Chairperson Sheehan welcomed Member Bryant to the Commission on State Mandates.

#### ELECTION OF OFFICERS

##### Item 1 Staff Report

Paula Higashi, Executive Director, noted that the annual election of officers is usually held in January. She stated that the members eligible for election as chairperson and vice-chairperson are the statutorily named members of the Commission.

Member Bryant nominated Mike Genest, Director of the Department of Finance, for chairperson and Bill Lockyer, State Treasurer, for vice-chairperson. Member Glaab seconded the motion for Mr. Genest and Member Worthley seconded the motion for Mr. Lockyer. The motions carried unanimously.

#### APPROVAL OF MINUTES

##### Item 2 December 4, 2006

Member Glaab made a motion to adopt the December 4, 2006 hearing minutes, which was seconded by Member Olsen. The motion carried 5-0. Member Worthley abstained.

---

<sup>1</sup> Arrived during the hearing of Item 7.

**PROPOSED CONSENT CALENDAR**

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

DISMISSAL OF WITHDRAWN TEST CLAIM

- Item 11 Proposed Statement of Decision  
Test Claim Dismissal: *De-Certification of Punch-Card Voting Systems*  
02-TC-20  
Secretary of State's September 18, 2001 Order, As Amended  
December 17, 2001 and May 23, 2002  
County of Los Angeles, Claimant

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 13 *DNA Database* (00-TC-27) and Amendment to  
*Postmortem Examinations: Unidentified Bodies* (02-TC-39)  
Penal Code Section 14250  
Statutes 2000, Chapter 822 and Statutes 2001, Chapter 467  
County of San Bernardino and County of Los Angeles, Claimants

ADOPTION OF PROPOSED RULEMAKING CALENDAR

- Item 14 Proposed Rulemaking Calendar, 2007

Member Worthley made a motion to adopt items 11, 13, and 14 on the consent calendar. With a second by Member Glaab, the items were unanimously adopted.

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

- Item 4 Staff Report (if necessary)

There were no appeals to consider.

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

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

TEST CLAIM

- Item 7 *Training Requirements for Instructors and Academy Staff*, 02-TC-03  
California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082 (Register 2001, No. 29)  
County of Sacramento, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the test claim addresses regulations adopted by the Commission on Peace Officers Standards and Training, or "POST," which requires specified training for certain POST instructors and key staff

of POST training academies. She stated that POST training is provided to law enforcement officers by POST-approved institutions, and POST can certify training courses and curriculum developed by other entities as meeting required minimum training standards.

Staff found that the regulations at issue establish requirements that flow from a discretionary decision by the local agency to participate in POST, and a discretionary decision to provide POST-certified training or establish a POST training academy. Staff further found that local agencies have alternatives to providing POST-certified training or establishing a POST training academy.

Therefore, staff found that the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution. Staff recommended that the Commission adopt the staff analysis and deny the test claim.

Parties were represented as follows: Allan Burdick and Pamela Stone, on behalf of the California State Association of Counties SB 90 Service; Bryon Gustafson, on behalf of the Commission on POST; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Mr. Burdick stated that the representative for the County of Sacramento was planning to be present. He asked if this item could be put over to the end of the agenda so he could find out what happened to the representative.

Chairperson Sheehan stated that he could make the call while the Commission heard from the other parties that were present.

Ms. Castaneda concurred with the staff analysis that the POST requirements are discretionary and that any activities required are not reimbursable.

Mr. Gustafson did not object to the staff analysis.

[At this time, Member Chivaro entered the room.]

Chairperson Sheehan stated that this item would be put on hold until the end of the meeting.

REQUEST FOR RECONSIDERATION OF PRIOR FINAL DECISION PURSUANT  
TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1188.4

Item 5      *Binding Arbitration*, 01-TC-07  
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3,  
1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9  
Statutes 2000, Chapter 906 (SB 402)  
City of Palos Verdes Estates, Claimant  
Chair, Commission on State Mandates, Requestor

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that this item was the reconsideration of a prior final decision on the *Binding Arbitration* test claim, which was adopted by the Commission on July 28, 2006. She stated that the binding arbitration statutes in the context of labor relations between local public agencies and their law enforcement officers and firefighters provide that where an impasse in negotiations has been declared and if the employee organization requests it, the parties would be subjected to binding arbitration.

Ms. Borzelleri explained that the statutes were effective January 1, 2001, and were declared unconstitutional on April 21, 2003. She noted that the final staff analysis released earlier in the month recommended denial of the test claim because the claimant, City of Palos Verdes, stated

that binding arbitration had not been triggered in its jurisdiction. Thus, no costs mandated by the state were imposed. However, on January 23, 2007, the County of Napa joined as a co-claimant on this test claim, and submitted a declaration signed under penalty of perjury that it did reach an impasse in negotiations with its deputy sheriffs association and engaged in some of the activities that staff is recommending as being mandated by the binding arbitration statutes. She indicated that the County of Napa alleged costs incurred of at least \$1,000.

Accordingly, Ms. Borzelleri stated that staff issued a supplemental staff analysis modifying the staff's recommendation to a partial approve. The reimbursement period would be limited to January 1, 2001, through April 20, 2003. She indicated that the regulations required a super majority of five affirmative votes of the Commission to adopt the staff recommendation and change the prior final decision adopted on July 28, 2006.

Parties were represented as follows: Pamela Stone and Judy Smith, representing the City of Palos Verdes; Jacqueline Gong, on behalf of the County of Napa, and Donna Ferebee and Carla Castaneda, with the Department of Finance.

Ms. Stone encouraged the Commission to adopt the new staff analysis.

Ms. Gong stated full support of the staff analysis. She added that the County of Napa is so far the only county in California that has gone through the entire binding arbitration process in 2001.

Ms. Smith stated support for the County of Napa to join as a co-test claimant.

Ms. Castaneda stated no objections to the staff analysis.

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

Item 6 Proposed Statement Of Decision  
*Binding Arbitration, 01-TC-07*  
See Above

Item 6 was postponed to the next hearing.

Regarding item 7, Mr. Burdick reported that he still could not locate the representative for the County of Sacramento.

#### TEST CLAIM

Item 9 *Pupil Discipline Records, 00-TC-10*  
Education Code Sections 48201, 48900.8, and 49079  
Statutes 1997, Chapter 637 (AB 412), Statutes 2000, Chapter 345  
(AB 29), Sweetwater Union High School District, Claimant  
Consolidated with  
*Notification to Teachers: Pupils Subject to Suspension or Expulsion II,*  
00-TC-11  
Education Code Sections 48201 and 49079; Statutes 2000, Chapter 345  
(AB 29), Carpinteria Unified School District and Sweetwater Union and  
Grant Joint Union High School District, Co-Claimants

Item 9 was postponed.

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

Item 10 was postponed.

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

**ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS**

- Item 12 Requests to Amend Parameters and Guidelines  
*Handicapped and Disabled Students*, 00-PGA-03/04 (CSM 4282)  
Government Code Sections 7570-7588  
Statutes 1984, Chapter 1747 (AB 3632)  
Statutes 1985, Chapter 1274 (AB 882)  
California Code of Regulations, Title 2, Sections 60000-60610  
(Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))  
Counties of Los Angeles and Stanislaus, Requestors  
(Continued from December 4, 2006 Hearing)

Camille Shelton, Chief Legal Counsel, presented this item. She noted that the Commission heard this item in December and that it was continued to obtain evidence regarding the fiscal impact of potential claims being filed or re-filed for costs incurred for fiscal years 2000-2001 through 2003-2004. She stated that staff obtained documentation from the State Controller's Office, the Department of Mental Health, and the Department of Education, which suggests that there will be increased costs that are eligible for reimbursement if the Commission amends the parameters and guidelines.

Staff continued to recommend that the Commission approve the request to amend the parameters and guidelines with respect to the offsetting revenue provision only, because the original parameters and guidelines incorrectly state that Medi-Cal and private-pay insurance proceeds cannot be used as offsetting revenue. Ms. Shelton noted that, as determined by the Commission when it reconsidered the original program, federal law under specified circumstances allows agencies to use these proceeds for this program. Therefore, the proposed amended parameters and guidelines include Medi-Cal and private-pay insurance as sources of offsetting revenue.

Staff recommended that the Commission adopt the proposed amended parameters and guidelines.

Parties were represented as follows: Leonard Kaye, representing the County of Los Angeles; Pamela Stone, on behalf of the County of Stanislaus; Allan Burdick, on behalf of the California State Association of Counties SB 90 Service; Jim Spano and Ginny Brummels, with the State Controller's Office; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Mr. Kaye agreed with the staff analysis and urged the Commission to adopt the staff recommendation.

Ms. Stone noted that the representative for the County of Stanislaus intended to be present for the hearing; however, could not appear due to an emergency. She stated full support of the staff analysis.

Mr. Burdick asserted that this particular test claim affects rural counties and would allow them to be reimbursed for only 10 percent of their costs. On behalf of the California State Association of Counties, he did not support giving rural counties 10 percent when urban counties received 100 percent. Mr. Burdick stated that he was not arguing the legal merits, but just wanted to note for the record that legislative intent originally resulted in larger counties getting 100 percent reimbursement and 10 percent for smaller counties.

Ms. Shelton clarified that the staff analysis does not change the percentages for reimbursing psychotherapy or other treatment services, which was affirmed by the Sixth District Court of Appeal, and thus, the Commission does not have jurisdiction to change that finding. She explained that the statute referred to by Mr. Burdick required the State Controller's Office not to audit those claims for counties that filed up to 100 percent. The statute also did not allow those counties that actually claimed the 90/10 percent split to go back and re-file their claims. She indicated that the staff analysis simply opens up the reimbursement period from 2000 to 2004 and clarifies the offsetting revenue provision; it does not change the reimbursable activities.

Mr. Kaye commented that Mr. Burdick's points were well taken. He noted that his comments were premised upon the very narrow issue before the Commission and in that regard, the County of Los Angeles agreed.

Chairperson Sheehan stated appreciation for the information that was provided since the December hearing.

Ms. Castaneda stated no objections to the correction of the legal error. She noted that the additional costs may be in the neighborhood of \$25 million because they have not been able to find data for the Medi-Cal offsets.

Ms. Shelton agreed that the data suggests there would be an increased cost to the state.

Member Worthley noted that he consulted with his county regarding this program and he was assured by the Health and Human Services financial director that most of the county's claims were covered by Medi-Cal. He also noted that they received funding from other sources, and so the county did not file a claim.

Ms. Shelton clarified that the data in the staff analysis does not reflect any potential categorical funds that were appropriated by the state during that time period.

Member Olsen made a motion to adopt the staff analysis. With a second by Member Worthley, the motion carried 6-0. Chairperson Sheehan abstained.

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

**TEST CLAIM**

- Item 7     *Training Requirements for Instructors and Academy Staff, 02-TC-03*  
California Code of Regulations, Title 11, Sections 1001, 1052, 1053,  
1055, 1070, 1071, and 1082 (Register 2001, No. 29)  
County of Sacramento, Claimant

The Commission resumed the hearing on item 7.

Ms. Higashi noted that there were no comments filed on the draft staff analysis by the County of Sacramento. She stated that the Commission could decide to proceed or postpone the item to the next meeting.

Mr. Burdick stated that he has not received a response from the County of Sacramento. He noted that this was very unusual for the county because they have been an active participant in the process.

Ms. Higashi suggested that the Commission members ask any questions they have because witnesses from the state agencies were present. She indicated that adoption of the Statement of Decision could be put over to the next meeting so the County of Sacramento could enter an appearance.

Member Olsen asked what the procedure would be if the County of Sacramento came in with a compelling argument and the staff analysis was already adopted. Ms. Higashi clarified that the Commission would have to rehear the test claim.

Mr. Burdick commented that because all of the witnesses are local, there would be no imposition if the item were postponed.

Chairperson Sheehan and Member Chivaro stated no objection to continuing the item.

Item 7 was continued to the next hearing.

- Item 8     Proposed Statement of Decision  
*Training Requirements for Instructors and Academy Staff, 02-TC-03*  
See Above

Item 8 was postponed.

**STAFF REPORTS**

- Item 15     Chief Legal Counsel's Report (info)  
Recent Decisions, Litigation Calendar

Ms. Shelton reported that the Department of Finance filed a lawsuit in the Sacramento County Superior Court challenging the Commission's decision on the *Peace Officer Procedural Bill of Rights* test claim, with respect to the finding that approves reimbursement for school districts and special districts.

Item 16 Executive Director's Report (info/action)  
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Next Hearing.* The March 29<sup>th</sup> hearing will have a long agenda. Staff proposed the addition of an April hearing and will contact the members to determine the date.
- *Other.* The Commission staff will undergo office construction next month.

**PUBLIC COMMENT**

There was no public comment.

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

PERSONNEL

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

PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Second District Court of Appeal, Case Number B188169, on appeal from Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
4. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]



6. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. Stat of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller, Sacramento County Superior Court, Case No. 06CS01335; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]*

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

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

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

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

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

#### **ADJOURNMENT**

Hearing no further business, and with a motion by Member Worthley and second by Member Glaab, Chairperson Sheehan adjourned the meeting at 10:26 a.m.

  
PAULA HIGASHI  
Executive Director

**RECEIVED**  
FEB 16 2007  
COMMISSION ON  
STATE MANDATES

**ORIGINAL**

--oOo--

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

--oOo--

**TIME:** 9:34 a.m.

**DATE:** Thursday, January 25, 2007

**PLACE:** State Capitol, Room 126  
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

ANNE SHEEHAN, Chair  
Representative for MICHAEL GENEST  
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 HIGASHI  
Executive Director

NANCY PATTON  
Assistant Executive Director

CAMILLE SHELTON  
Chief Legal Counsel  
(Item 12)

DEBORAH BORZELLERI  
Senior Commission Counsel  
(Items 5 and 7)

KENNY LOUIE

--o0o--

PUBLIC TESTIMONY

**Appearing Re Item 5:**

For Co-Claimant City of Palos Verdes Estates:

PAMELA STONE  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

JUDY SMITH  
Assistant City Manager  
City of Palos Verdes Estates  
340 Palos Verdes Drive West  
Palos Verdes Estates, CA 90274

For Co-Claimant County of Napa:

JACQUELINE M. GONG  
Deputy County Counsel  
County of Napa  
1195 Third Street, Room 301  
Napa, CA 94559-3035

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5:** *continued*

For Department of Finance:

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

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

**Appearing Re Item 7:**

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

For Commission on Peace Officer Standards and Training:

BRYON G. GUSTAFSON  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, CA 95816-7083

For Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 7:** *continued*

For Department of Finance:

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

**Appearing Re Item 12:**

For Requestor County of Los Angeles:

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

For Requestor Stanislaus County:

PAMELA STONE  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, CA 95841

For Department of Finance

SUSAN S. GEANACOU  
Senior Staff Attorney  
Department of Finance

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 12:** *continued*

For State Controller's Office:

JIM L. SPANO, CPA, DGF  
Chief, Compliance Audits Bureau  
Controller of California  
300 Capitol Mall, Suite 518  
Post Office Box 942850  
Sacramento, CA 94250-5874

GINNY BRUMMELS  
Section Manager  
Local Reimbursement Section  
State Controller's Office  
3301 C Street, Suite 500  
Sacramento, CA 95816

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>3</u>	<u>14</u>	<u>Underneath Kenny Louie, should</u> <u>read "Commission Counsel"</u>
<u>22</u>	<u>5</u>	<u>Cross off "claimant" &amp; replace</u> <u>w/ "claim"</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>



I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Roll Call . . . . .	12
II. Election of Officers	
Item 1 Staff Report . . . . .	13
III. Approval of Minutes	
Item 1 December 4, 2006 . . . . .	15
IV. Proposed Consent Calendar	
Item 3 (Item 11, 13, and 14) . . . . .	15
V. Appeal of Executive Director Decisions Pursuant to California Code of Regulations Title 2, Section 1181(c)	
Item 4 Staff Report (None) . . . . .	16
VI. Hearings and Decisions on Claims Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Request for Reconsideration of Prior Final Decision Pursuant to California Code of Regulations, Title 2, Section 1188.4	
Item 5 Binding Arbitration 01-TC-07 City of Palos Verdes Estates . .	20
Item 6 Proposed Statement of Decision Binding Arbitration 01-TC-07 (See Item 5 above) . . . . .	Postponed

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 7

B. Test Claims:

Item 7      *Training Requirements for  
Instructors and Academy Staff*  
02-TC-03  
County of Sacramento . . . . . 17, 37

Item 8      Proposed Statement of Decision  
*Training Requirements for  
Instructors and Academy Staff*  
02-TC-03  
(See Item 7 above) . . . . . Postponed

Item 9      *Pupil Discipline Records*  
00-TC-10  
Sweetwater Union and Grant  
Joint Union High School  
Districts . . . . . Postponed

Item 10     Proposed Statement of Decision  
*Pupil Discipline Records*  
00-TC-10  
(See Item 9 above) . . . . . Postponed

C. Dismissal of Withdrawn Test Claim

Item 11\*    Proposed Statement of Decision  
Test Claim Dismissal:  
De-Certification of Punch-Card  
Voting Systems  
02-TC-20  
County of Los Angeles  
(Consent Calendar Item) . . . . . 15

I N D E X

<u>Proceedings</u>	<u>Page</u>
VII. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Adoption of Proposed Parameters and Guideline Amendments	
Item 12 Requests to Amend Parameters and Guidelines Handicapped and Disabled Students 00-PGA-03/04 (CSM 4282) Counties of Los Angeles and Stanislaus . . . . .	27
B. Adoption of Proposed Statewide Cost Estimate	
Item 13 DNA Database, 00-TC-27, and Amendment to Postmortem Examinations: Unidentified Bodies, 02-TC-39 County of San Bernardino and County of Los Angeles (Consent Calendar Item) . . . . .	15
B. Adoption of Proposed Rulemaking Calendar	
Item 14 Proposed Rulemaking Calendar 2007 (Consent Calendar Item) . . . . .	15
VIII. Staff Reports	
Item 15 Chief Legal Counsel's Report . .	40
Item 16 Executive Director's Report . .	42
IX. Public Comment . . . . .	43

I N D E X

<u>Proceedings</u>	<u>Page</u>
X. Closed Executive Session . . . . .	44
XI. Report from Closed Executive Session . . . . .	44
XII. Adjournment . . . . .	45
Reporter's Certificate . . . . .	46

--o0o--

**Commission on State Mandates – January 25, 2007**

1 BE IT REMEMBERED that on Thursday, January 25,  
2 2007, commencing at the hour of 9:34 a.m., thereof, at  
3 the State Capitol, Room 126, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR SHEEHAN: I would like to call the  
8 January 25th meeting of the Commission on State Mandates  
9 to order.

10 Can we call the roll?

11 MS. HIGASHI: Ms. Bryant?

12 MEMBER BRYANT: Here.

13 MS. HIGASHI: Mr. Chivaro is absent.

14 Mr. Glaab?

15 MEMBER GLAAB: Present.

16 MS. HIGASHI: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Mr. Worthley?

21 MEMBER WORTHLEY: Here.

22 MS. HIGASHI: And Ms. Sheehan?

23 CHAIR SHEEHAN: Present.

24 We have a quorum.

25 And welcome to -- at least one of our new

Commission on State Mandates – January 25, 2007

1 members -- Ms. Bryant, welcome to the Commission on State  
2 Mandates.

3 The first item of the year --

4 MS. HIGASHI: The first item of business is the  
5 annual election of officers. It's always held in  
6 January. However, this year it could be put off if there  
7 were difficulties in getting members appointed to the  
8 Commission.

9 Since we have a full commission, we can proceed  
10 with the election. It's up to the members.

11 The members that are eligible for election as  
12 chairperson and vice-chairperson are the statutorily  
13 named members of the Commission, and that is Mike Genest,  
14 Director of Finance; Bill Lockyer, Treasurer; John  
15 Chiang, Controller; Cynthia Bryant, Director of OPR; Paul  
16 Glaab; Steve Worthley; and Sarah Olsen.

17 Are there any nominations for officers?

18 MEMBER BRYANT: I'll nominate the Department of  
19 Finance.

20 MEMBER GLAAB: Second.

21 MS. HIGASHI: For clarification -

22 CHAIR SHEEHAN: For chair?

23 MEMBER BRYANT: For chair.

24 MS. HIGASHI: -- Mike Genest, Director of  
25 Finance then, for chairperson?

Commission on State Mandates – January 25, 2007

1 MEMBER BRYANT: Yes, I guess.

2 MS. HIGASHI: Are there any other nominations?

3 CHAIR SHEEHAN: We should go get him, so he can  
4 sit here.

5 MS. HIGASHI: Are there any other nominations?

6 MEMBER BRYANT: I nominate Bill Lockyer, State  
7 Treasurer, for vice-chair.

8 MEMBER WORTHLEY: Second.

9 MS. HIGASHI: So we'll have you vote on this as  
10 a combined motion.

11 CHAIR SHEEHAN: Yes, that would be great.

12 MS. HIGASHI: Are there any other nominations?

13 *(No response)*

14 MS. HIGASHI: Hearing none, all those in favor  
15 of electing Mike Genest, Director of Finance as  
16 chairperson of the Commission, and Bill Lockyer, State  
17 Treasurer, as vice-chairperson of the Commission, please  
18 signify by saying "aye."

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

20 MS. HIGASHI: The motion carries.

21 Congratulations.

22 CHAIR SHEEHAN: Very good.

23 Next time, we should elect as chair the person  
24 who is not here. That will teach them to show up.

25 So, okay, thank you.

Commission on State Mandates – January 25, 2007

1 Next item of business?

2 MS. HIGASHI: The next item is Item 2, minutes  
3 of our December 4th meeting.

4 CHAIR SHEEHAN: All right, are there any  
5 changes, edits to the minutes?

6 *(No response)*

7 CHAIR SHEEHAN: If not, we'll entertain a  
8 motion.

9 MEMBER GLAAB: So moved.

10 MEMBER OLSEN: Second.

11 CHAIR SHEEHAN: Motion by Mr. Glaab and second  
12 by Ms. Olsen to approve the minutes.

13 All those in favor, say "aye."

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

15 CHAIR SHEEHAN: Any opposed?

16 MEMBER WORTHLEY: I'll abstain.

17 CHAIR SHEEHAN: So the record will reflect that  
18 Mr. Worthley abstains on the vote of the minutes.

19 Other than that, they are approved.

20 MS. HIGASHI: Item 3 is the Proposed Consent  
21 Calendar. The Consent Calendar consists of items 11, 13,  
22 and 14.

23 Please note that the Consent Calendar sheet  
24 that you should have --

25 CHAIR SHEEHAN: It's yellow; right?



1 Yes, it should be at everyone's place for the  
2 Proposed Consent Calendar for today.

3 MEMBER WORTHLEY: Move approval, Madam Chair.

4 MEMBER GLAAB: Second.

5 CHAIR SHEEHAN: We have a motion from  
6 Mr. Worthley and a second from Mr. Glaab to approve the  
7 Consent Calendar.

8 All those in favor, say "aye."

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

10 CHAIR SHEEHAN: Any opposed?

11 *(No response)*

12 CHAIR SHEEHAN: The Consent Calendar is  
13 approved. All right.

14 MS. HIGASHI: There are no appeals to consider  
15 under Item 4.

16 CHAIR SHEEHAN: Okay.

17 MS. HIGASHI: At this time we're at the hearing  
18 portion of our meeting.

19 I'd like to ask the parties and witnesses to  
20 stand for the swearing in of witnesses.

21 *(Several persons stood to be affirmed)*

22 MS. HIGASHI: Do you solemnly swear or affirm  
23 that the testimony which you are about to give is true  
24 and correct, based upon your personal knowledge,  
25 information or belief?

Commission on State Mandates – January 25, 2007

1 (A chorus of "I dos" was heard.)

2 MS. HIGASHI: Thank you very much.

3 Madam Chair?

4 CHAIR SHEEHAN: Item 5; right?

5 MS. HIGASHI: I would suggest that we not begin  
6 with Item 5, because Item 5 has a different vote  
7 requirement.

8 CHAIR SHEEHAN: Oh, okay, we'll wait until --

9 MS. HIGASHI: A majority vote.

10 CHAIR SHEEHAN: Then should we move to 7?

11 MS. HIGASHI: Yes.

12 CHAIR SHEEHAN: So all those who want to speak  
13 on Item 7, if they could come forward.

14 And then, Ms. Borzelleri, you'll present this  
15 item for us?

16 MS. BORZELLERI: Correct.

17 CHAIR SHEEHAN: Great. Thank you.

18 MS. BORZELLERI: This is the test claim for  
19 *Training Requirements for Instructors and Academy Staff*.  
20 This test claim addresses regulations adopted by the  
21 Commission on Peace Officers Standards and Training,  
22 which we'll refer to as "POST," that requires specified  
23 training for certain POST instructors and key staff of  
24 POST training academies.

25 POST training is provided to law enforcement

1 officers by POST-approved institutions, and POST can  
2 certify training courses and curriculum developed by  
3 other entities as meeting required minimum training  
4 standards.

5 Staff finds that the regulations at issue  
6 establish requirements that flow from a discretionary  
7 decision by the local agency to participate in POST, and  
8 a discretionary decision to provide POST-certified  
9 training or establish a POST training academy. Staff  
10 further finds that local agencies have alternatives to  
11 providing POST-certified training or establishing a POST  
12 training academy.

13 Therefore, the test claim regulations do not  
14 impose a state-mandated program on local agencies within  
15 the meaning of Article XIII B, Section 6 of the  
16 California Constitution.

17 Staff recommends the Commission adopt the staff  
18 analysis and deny this test claim.

19 Will the parties please state your name for the  
20 record?

21 MR. BURDICK: Yes, Allan Burdick on behalf of  
22 the CSAC SB-90 Service.

23 MR. GUSTAFSON: Bryon Gustafson behalf of the  
24 Commission on POST.

25 MS. GEANACOU: Susan Geanacou, Department of

1 Finance.

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

4 CHAIR SHEEHAN: Are you here for the --

5 MR. BURDICK: Actually, I think the  
6 representative of the County of Sacramento was planning  
7 to be here. And I'm just wondering if this could be put  
8 over maybe to the end of the agenda, and I could check  
9 and see what happened to our representative. She might  
10 be -- and I apologize for the difference in the vote  
11 recommendation, but if I just step outside and try my  
12 cell phone and see if I can find out what happened.

13 CHAIR SHEEHAN: Sure. Why don't you step  
14 outside and call? In the meantime, we can at least hear  
15 from them. And then if she is on her way or something,  
16 we can move to the next agenda item and then come back to  
17 this.

18 MR. BURDICK: Okay.

19 CHAIR SHEEHAN: Because we expected her to be  
20 here also.

21 MR. BURDICK: All right. Could I ask Ms. Stone  
22 to be up here, in case there's any --

23 MS. STONE: Sure.

24 MR. BURDICK: In case there's any comments.

25 MS. STONE: Excuse me.

Commission on State Mandates – January 25, 2007

1 CHAIR SHEEHAN: Just to hold down the seat.

2 MS. STONE: Okay. I'm really good at holding  
3 down seats.

4 CHAIR SHEEHAN: Exactly. She's there to --  
5 So, I don't know -- Ms. Geanacou?

6 MS. GEANACOU: I think Ms. Castañeda will speak  
7 first.

8 MS. CASTAÑEDA: Carla Castañeda, Department of  
9 Finance.

10 We concur with the staff analysis that the POST  
11 requirements are discretionary, and that any activities  
12 required after that would not be reimbursable.

13 CHAIR SHEEHAN: Okay, and did you want to add  
14 anything?

15 MR. GUSTAFSON: No, I think the staff analysis  
16 is fine. Thank you.

17 *(Mr. Chivaro entered the room.)*

18 CHAIR SHEEHAN: All right, then why don't we  
19 move on to the next item, and see if the individual --  
20 did you want to --

21 MS. STONE: I'm not going to say anything right  
22 now. I'm just holding the chair.

23 CHAIR SHEEHAN: All right. Then why don't we  
24 move on to Item 12 -- well, we can go back to 5, I guess.  
25 Actually, you can stay.

1 MS. STONE: Well, I'm here on Item 12, too,  
2 so pick one.

3 MS. HIGASHI: Let's go back to Item 5.

4 CHAIR SHEEHAN: Let's do 5, yes, because you  
5 guys can -- Finance can stay put, Ms. Stone, and then  
6 Mr. Liebert and others can come forward. All right, and  
7 then we'll just hold off on this one.

8 Ms. Borzelleri, is this one yours also?

9 MS. BORZELLERI: Correct.

10 This is the reconsideration of a prior final  
11 decision on the *Binding Arbitration* test claim.

12 The prior final decision on this test claim, as  
13 you're aware, was adopted at the Commission's July 28th,  
14 2006, hearing. The binding arbitration statutes in the  
15 context of labor relations between local public agencies  
16 and their law enforcement officers and firefighters  
17 provide that where an impasse in negotiations has been  
18 declared and if the employee organization requests it,  
19 the parties would be subjected to binding arbitration.

20 These statutes were effective January 1, 2001,  
21 and then declared unconstitutional on April 21st, 2003.

22 The final staff analysis that we released  
23 earlier this month recommended denial of the test claim,  
24 since the claimant, City of Palos Verdes Estates, stated  
25 that binding arbitration had not been triggered in its

1 jurisdiction. Therefore, the test claim statutes could  
2 not have imposed costs mandated by the state. However,  
3 on January 23rd, just a couple of days ago, the County of  
4 Napa stepped forward and joined as a co-claimant on this  
5 test claimant. The County submitted a declaration signed  
6 under penalty of perjury that it, in fact, did reach an  
7 impasse in negotiations with its deputy sheriffs  
8 association, and did engage in some of the activities  
9 that we determined, or are recommending were mandated by  
10 the binding arbitration statutes.

11 The County alleged that it incurred costs of at  
12 least a thousand dollars, which is the statutory minimum  
13 to make a claim.

14 Staff then prepared a supplemental staff  
15 analysis -- you should have received that, Members, there  
16 are green copies on the table over there -- which  
17 modified the staff's recommendation to partially approve  
18 the test claim and adopt the final staff analysis, the  
19 earlier release, with regard to issues 1, 2, and 3, and  
20 adopt the supplemental staff analysis with regard to  
21 issue 4.

22 The reimbursement period would be limited to  
23 that period of time when the statutes were presumed  
24 constitutional, which is January 1, 2001, through  
25 April 20th, 2003.

1           The regulations require a super majority of  
2 five affirmative votes of the Commission to adopt this  
3 staff recommendation and change the prior final decision  
4 that was adopted on July 28th, 2006.

5           Will the parties please state your name?

6           MS. STONE: Good morning, Madam Chair. Pamela  
7 Stone on behalf of the City of Palos Verdes Estates.

8           MS. GONG: Good morning. Jacqueline Gong for  
9 the County of Napa.

10          MS. SMITH: Judy Smith, Palos Verdes Estates.

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

13          MS. CASTAÑEDA: Carla Castañeda, Department of  
14 Finance.

15          MS. STONE: Good morning, Madam Chair, Members  
16 of the Commission. We would like to appreciate the fact  
17 that your staff has undergone the analysis and come up  
18 with the requests for reconsideration and the  
19 supplemental analysis. And we would like to encourage  
20 your Commission to adopt the new staff analysis,  
21 including the supplement based on the findings of Napa  
22 County.

23                 And with us, we have Jacqueline Gong, Deputy  
24 County Counsel from the County of Napa, who was the lucky



1 person to experience binding arbitration from start to  
2 finish.

3 MS. GONG: Good morning. I just want to say  
4 that we are fully in support of the staff analysis, and  
5 would ask that you adopt the reconsideration.

6 Napa County is probably the one, if not the  
7 only county in the state of California --

8 CHAIR SHEEHAN: So far. So far, yes.

9 MS. GONG: -- that went through the entire  
10 SB 402 binding arbitration process in 2001. And I think  
11 because of that, we do meet the test standards; and we  
12 ask that you grant this petition to have us serve as a  
13 co-test claimant here.

14 And if you have any questions, I'd be very open  
15 to that.

16 CHAIR SHEEHAN: Any questions from the Members  
17 for the Napa representative?

18 *(No response)*

19 CHAIR SHEEHAN: No? Okay.

20 MS. SMITH: I'm just -- Palos Verdes Estates  
21 supports Napa joining as a co-test claimant.

22 CHAIR SHEEHAN: All right.

23 Finance?

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

1           We have no objections to the staff analysis,  
2 given this new submitted declaration of increased costs.

3           CHAIR SHEEHAN: Okay, all right.

4           Any questions from the Members on this one?

5           *(No response)*

6           CHAIR SHEEHAN: If not, we'll entertain a  
7 motion.

8           MEMBER LUJANO: Move approval.

9           MEMBER GLAAB: Second.

10          CHAIR SHEEHAN: We have a motion by the  
11 Treasurer's office, a second by Mr. Glaab, to adopt the  
12 staff recommendation on the reconsideration.

13          Do you need a roll call, since we have a -- or  
14 is a voice vote sufficient?

15          MS. HIGASHI: We should do a roll call.

16          CHAIR SHEEHAN: All right, so if we can call  
17 the roll on this one, just because the requirements are  
18 higher.

19          MS. HIGASHI: Ms. Bryant?

20          MEMBER BRYANT: Aye.

21          MS. HIGASHI: Mr. Chivaro?

22          MEMBER CHIVARO: Aye.

23          MS. HIGASHI: Mr. Glaab?

24          MEMBER GLAAB: Aye.

25          MS. HIGASHI: Mr. Lujano?

1 MEMBER LUJANO: Aye.

2 MS. HIGASHI: Ms. Olsen?

3 MEMBER OLSEN: Aye.

4 MS. HIGASHI: Mr. Worthley?

5 MEMBER WORTHLEY: Aye.

6 MS. HIGASHI: Ms. Sheehan?

7 CHAIR SHEEHAN: Aye.

8 MS. HIGASHI: Thank you. The motion carries.

9 MS. STONE: Thank you very much.

10 CHAIR SHEEHAN: Thank you.

11 MS. HIGASHI: What we will do is we will  
12 postpone Item 6 to the next hearing. We'll have to  
13 update the Proposed Statement of Decision.

14 CHAIR SHEEHAN: All right, the final. That  
15 sounds fine. So that will come back for vote only at our  
16 next meeting.

17 MS. STONE: Thank you very much.

18 CHAIR SHEEHAN: Mr. Burdick?

19 So how did your phone call go?

20 MR. BURDICK: Members of the Commission, thank  
21 you very much. Allan Burdick.

22 The phone call is, like many early ones, is  
23 people are scurrying around to try to find the person, to  
24 see if that person is sick or what the problem was.

25 Normally, I would have had some kind of --

1 CHAIR SHEEHAN: Notice.

2 MR. BURDICK: -- notice or something.

3 And the person is -- at least we have a regular  
4 attender that makes almost every single meeting. I don't  
5 know whether somebody all of a sudden got sick or what  
6 happened. But it's just very unusual that no word, no  
7 show, or no nothing on this.

8 I know this particular issue is one that the  
9 Commission has heard a number of times. And it related  
10 to POST. In a couple of cases we've been successful  
11 based on the legislative language. Sometimes we haven't.

12 We've continued to disagree with the Commission's  
13 position in the past.

14 Now that we have -- I see our learned member,  
15 Mr. Chivaro, here who maybe will help us provide some  
16 additional insight.

17 But in any means, I don't have an answer for  
18 you. I'm sorry.

19 CHAIR SHEEHAN: Why don't we go on to 12?

20 MS. HIGASHI: We can do that.

21 CHAIR SHEEHAN: Possibly she will show up. And  
22 then we can decide if we want to put it over or what the  
23 Members would like to do then.

24 So let's go on to Item 12 then.

25 MS. HIGASHI: Item 12 will be presented by

1 Chief Counsel, Camille Shelton.

2 MS. SHELTON: This item was last heard by  
3 the Commission in December. The Commission continued the  
4 matter to obtain evidence regarding the fiscal impact of  
5 potential claims being filed or re-filed if the  
6 Parameters and Guidelines are amended for costs incurred  
7 for fiscal years 2000-2001 through 2003-2004.

8 Staff obtained documentation from the State  
9 Controller's Office, the Department of Mental Health, and  
10 the State Department of Education, which suggests that  
11 there will be increased costs that are eligible for  
12 reimbursement if the Commission amends the Parameters and  
13 Guidelines.

14 The fiscal information is summarized in the  
15 analysis and in the attached tables. And Mr. Louie and I  
16 are available to answer any questions about the fiscal  
17 information.

18 Staff continues to recommend that the  
19 Commission approve the request to amend the parameters  
20 and guidelines with respect to the offsetting revenue  
21 provision only. The original Parameters and Guidelines  
22 incorrectly states that Medi-Cal and private-pay  
23 insurance proceeds cannot be used as offsetting revenue.

24 As determined by the Commission when it  
25 reconsidered the original program, federal law under

1 specified circumstances allows agencies to use these  
2 proceeds for this program. Thus, the proposed amended  
3 Parameters and Guidelines include Medi-Cal and  
4 private-pay insurance as sources of offsetting revenue.

5 Staff recommends that the Commission adopt the  
6 proposed amended parameters and guidelines which begins  
7 on page 13 of your binders.

8 Will the parties and representatives please  
9 state your names for the record?

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

11 MS. STONE: Pamela Stone on behalf of the  
12 County of Stanislaus.

13 MR. SPANO: Jim Spano, State Controller's  
14 Office.

15 MS. GEANACOU: Susan Geanacou, Department of  
16 Finance.

17 MS. CASTAÑEDA: Carla Castañeda, Department of  
18 Finance.

19 MS. BRUMMELS: Ginny Brummels, State  
20 Controller's Office.

21 CHAIR SHEEHAN: Do you want to start?

22 MR. KAYE: Thank you. Good morning.

23 We certainly agree with the Commission staff,  
24 and urge you, that you adopt the recommendation. We find  
25 that their analysis is very detailed, and apparently

1 based on the State Controller's Office records, so  
2 there's no doubt about that.

3 Further, we've reviewed their legal analysis,  
4 and we find that it's sound. So, therefore, we are in  
5 complete agreement with Commission staff.

6 MS. STONE: Good morning, Madam Chair, Members  
7 of the Commission.

8 Linda Downs, who is from the County of  
9 Stanislaus, was on her way here this morning, when she  
10 received a call that she had to return based upon an  
11 emergency. And she wished for you individuals to know  
12 that it was not of her making that she could not appear  
13 before you this morning.

14 But I've been requested to present to you that  
15 we are in full support of the Commission staff analysis,  
16 both factually, based upon the numbers provided by the  
17 State Controller's Office, and upon their legal analysis,  
18 and request that you adopt the amendments to the  
19 parameters and guidelines.

20 Thank you.

21 MR. BURDICK: Madam Chair, Members of the  
22 Commission, Allan Burdick representing the California  
23 State Association of Counties.

24 I apologize, I just couldn't sit there and go  
25 on. These two counties have done a great job

1 representing all the counties. This particular test  
2 claim does not affect either of these counties. It  
3 affects rural counties. And the large counties, there  
4 was legislation which corrected audits conducted by the  
5 State Controller which allowed many of the larger  
6 counties, and those that had been filing claims, to be  
7 reimbursed fully for their costs.

8 This claim only reimburses -- would allow the  
9 rural counties 10 percent of their costs. And I, just on  
10 behalf of CSAC, I can't say they support giving the rural  
11 counties 10 percent when the urban counties got  
12 100 percent.

13 Now, I'm not going to -- I am not an attorney  
14 and I am not going to go in and argue the legal merits of  
15 this. All I'm saying is that the Legislature passed  
16 legislation to specifically provide 100 percent  
17 reimbursement for large counties that had been audited;  
18 and in this particular case, you know, we're going back.  
19 So I'm not arguing the legal merits. All I'm just saying  
20 is, legislative intent originally resulted in larger  
21 counties getting 100 percent reimbursement, and in this  
22 case, with 10 percent for smaller counties.

23 And so I just think from that standpoint, I  
24 need to say that I think that on behalf of those counties  
25 that are subject to this particular claim at this time



1 and because of the amount of money for these smaller  
2 counties is relatively small, and they're getting  
3 10 percent of what the larger counties got, which  
4 obviously is much more, I just kind of felt it was  
5 necessary to put that on the record.

6 CHAIR SHEEHAN: Camille, would you like to  
7 respond?

8 MS. SHELTON: I need to make a clarification.

9 This analysis does not change the percentages  
10 for reimbursing psychotherapy or other treatment  
11 services. That was affirmed by the Sixth District Court  
12 of Appeal, and we don't have jurisdiction to go back and  
13 change that finding.

14 The statute that Mr. Burdick was referring to  
15 did allow or require the State Controller's Office not to  
16 audit those claims for those counties that filed up to  
17 100 percent. But it did not allow those counties that  
18 actually claimed the 90/10 percent split to go back and  
19 re-file those claims.

20 This analysis would just simply open up the  
21 reimbursement period from 2000 through 2004. It doesn't  
22 change the reimbursable activities. All that it does is  
23 clarify the offsetting revenue provision.

24 MR. BURDICK: Just kind of in response, though,  
25 I think the bottom line is still the big counties got

1 100 percent, and the little counties are getting  
2 10 percent.

3 MR. KAYE: Could I make a comment?

4 CHAIR SHEEHAN: Absolutely.

5 MR. KAYE: I think Mr. Burdick's points are  
6 very well taken. However, our comments -- my comments,  
7 specifically -- were premised upon the very narrow issue  
8 that was placed before Commission staff. And in that  
9 regard, we're in complete agreement.

10 We are not necessarily in agreement about  
11 anything else. But --

12 CHAIR SHEEHAN: Clearly, clearly.

13 MR. KAYE: -- in the matter before you, yes.

14 CHAIR SHEEHAN: We won't hold you to it.

15 MR. KAYE: Yes.

16 CHAIR SHEEHAN: All right, did you want to --  
17 go ahead.

18 MR. SPANO: Madam Chair and council members --  
19 or Commission Members, I'm here on behalf of the State  
20 Controller's office as well as Ginny Brummels, in case  
21 there's any information being provided by the  
22 Controller's office.

23 CHAIR SHEEHAN: We appreciate the additional  
24 information that was provided from our December meeting.  
25 Because for those of you that are here, we had quite a

1 lengthy discussion. It was helpful to clarify, get a  
2 better feeling of the numbers before we take action on  
3 this.

4 Finance, whoever wants to speak?

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

7 We also have no objections to the correction of  
8 the legal error. But we do think that the claims may  
9 come in, the additional costs may be in the neighborhood  
10 of 25 million. Because we have not been able to find the  
11 Medi-Cal offsets. So we see the realignment dollars that  
12 are there, and there may be new claimants. But the  
13 Department of Mental Health was not able to give us, by  
14 county, data for the Medi-Cal offices for insurance. And  
15 '03-04, '04-05 are kind of --

16 CHAIR SHEEHAN: Unsure.

17 MS. CASTANEDA: Yes.

18 CHAIR SHEEHAN: I know they gave us some  
19 figures from Mental Health.

20 MS. SHELTON: Without actually looking at the  
21 claims, we weren't able to determine if anybody actually  
22 deducted that, either.

23 CHAIR SHEEHAN: But I think as we discussed in  
24 December, until we actually get -- we're not going to be  
25 able to have, really, a determination until we get

1 through this process.

2 MS. SHELTON: Right. The data does suggest  
3 that there would be an increased cost to the state.

4 CHAIR SHEEHAN: Yes, I think everyone  
5 acknowledges that. And then it's a matter of what are  
6 the offsets. But we don't know.

7 MEMBER WORTHLEY: Madam Chair?

8 CHAIR SHEEHAN: Yes.

9 MEMBER WORTHLEY: I did consult with my county  
10 about looking at the claim. We would have potentially  
11 the largest claim that was not filed. And I checked, and  
12 I double-checked, to make sure that we did not have a  
13 valid claim. And I was assured by our Health and Human  
14 Services financial director that most of our claims have  
15 been covered by Medi-Cal. Those that are not have been  
16 paid for by the Tulare County Department of Education.  
17 They might have some kind of claim, I don't know. But  
18 apparently they have received funding from some other  
19 source that would have been paid directly to the County.

20 So the County has no claim. I just wanted to  
21 make sure that we weren't - because I said, "Everybody  
22 else is filing claims. How come we haven't?" But  
23 according to our staff, the county does not have a claim.

24 I can't speak for the other counties, but I can  
25 say that that is the largest of the claims, and most

1 of them were never filed.

2 MS. SHELTON: I do want to also just clarify,  
3 too, that the numbers that we have on the tables don't  
4 reflect any potential money categorical funds that were  
5 appropriated by the state during that time period.

6 It was 12-point-something million dollars. And  
7 so money was appropriated --

8 CHAIR SHEEHAN: Okay, and this really was to  
9 sort of come back because we had quite a discussion in  
10 December on some of the other issues.

11 Other questions from Commission members?

12 (No response)

13 CHAIR SHEEHAN: What is the will of the  
14 Commission on this one?

15 MEMBER OLSEN: I'll move staff analysis.

16 CHAIR SHEEHAN: Do you want to move staff  
17 analysis?

18 MEMBER OLSEN: Yes.

19 CHAIR SHEEHAN: Okay, we have a motion to move  
20 staff analysis.

21 MEMBER WORTHLEY: I second.

22 CHAIR SHEEHAN: All right, we have a motion and  
23 a second to adopt the staff analysis.

24 All those in favor, say "aye."

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

Commission on State Mandates – January 25, 2007

1 CHAIR SHEEHAN: Any opposed?

2 (No response)

3 CHAIR SHEEHAN: I'm going to abstain on this  
4 one.

5 Okay, the motion does carry.

6 So it was a motion by Ms. Olsen, second by  
7 Mr. Worthley.

8 I hope you got that. Thank you.

9 MR. KAYE: Thank you.

10 CHAIR SHEEHAN: Going back to -- well, we've  
11 got a few other issues before we go back; and then if  
12 not, we could possibly put it over, Item 5.

13 Go ahead, Paula.

14 MS. HIGASHI: Item 7 is the item that we  
15 started, but we didn't really get very far on -- just for  
16 the record, we wanted to note that there were no comments  
17 filed on the draft staff analysis by the County of  
18 Sacramento. And so it's up to the Commission to decide  
19 if they wish to proceed with it or to postpone it to  
20 another meeting.

21 CHAIR SHEEHAN: What happened to Allan?

22 So you don't know -- you were not able to get  
23 ahold of her at the County?

24 MR. BURDICK: No, and I haven't got any  
25 response back from them.

1 I don't know if you want to just put it over --  
2 could you put it over for vote only, and just allow the  
3 County to make a short statement, maybe at the next  
4 meeting? I'd doubt if it's going to have any significant  
5 impact.

6 But this is very unusual for Sacramento County.  
7 They've been an active participant from this process.  
8 And normally they're here, and I just have --

9 CHAIR SHEEHAN: They're local. They're right  
10 here.

11 MS. HIGASHI: My suggestion would be that since  
12 the witnesses are here from the state agencies, that if  
13 Members have questions, that maybe we should go through  
14 that part of the hearing, if you're comfortable voting on  
15 the staff analysis, to do so? We could put over adoption  
16 of the Statement of Decision to the next meeting. So the  
17 County could enter an appearance, at least.

18 MR. BURDICK: That would be appreciated.

19 MS. HIGASHI: But there are no comments on the  
20 record.

21 CHAIR SHEEHAN: Bifurcate them?

22 All right, the witnesses are --

23 MEMBER OLSEN: Could I ask one question about  
24 that process, if that's the road on which we are about to  
25 go?

1 CHAIR SHEEHAN: That's up to the Commission,  
2 though, if you want to.

3 MS. OLSEN: If we adopt the staff analysis  
4 but not the Statement of Decision, and Sacramento comes  
5 in with a compelling argument, I don't anticipate that  
6 that would be the case. They'd have somebody here. But  
7 if that were the case, then at the next hearing, what do  
8 we have to do to then -- go and unadopt the staff's  
9 analysis? Or can we ignore the staff's analysis and deal  
10 with just the Statement of Decision?

11 MS. HIGASHI: We would have to rehear the test  
12 claim.

13 CHAIR SHEEHAN: Yes.

14 MR. BURDICK: Madam Chair, I might suggest that  
15 since all the witnesses are local, other than from the  
16 Commission standpoint of having to reissue stuff and so  
17 forth, there's not an imposition, really, on anybody that  
18 we very often have with people coming out or going into  
19 agencies that are not local. So just a comment.

20 CHAIR SHEEHAN: Yes, I don't -- I mean, Finance  
21 and POST were here. You guys can come back at the next  
22 meeting. I mean, I don't have a problem putting it over  
23 until the next meeting. That's sort of where I am in  
24 terms of -- just put the whole thing over. But I would  
25 encourage her -- to see if you can get her between now



1 and then, and let her know.

2 You know, I understand things can happen  
3 with -- you know, emergencies can come up and that sort  
4 of stuff.

5 MR. BURDICK: I have no idea. But I would  
6 appreciate that very much.

7 As I said, they are regular attenders whether  
8 they have an item or not. It's just a very unusual  
9 situation.

10 CHAIR SHEEHAN: I want to make sure we don't  
11 have any deadlines.

12 We're okay?

13 MS. HIGASHI: Yes.

14 CHAIR SHEEHAN: I mean, that's where I am, but  
15 I don't know what the sentiment of the other members are  
16 on this.

17 MEMBER CHIVARO: Put it over.

18 MEMBER WORTHLEY: Do we need a motion to  
19 continue?

20 MS. HIGASHI: No, just carry it.

21 MS. BURDICK: Thank you very much.

22 CHAIR SHEEHAN: Okay, you may write it, it may  
23 not change the recommendation, but at least out of  
24 courtesy. Okay.

25 MS. HIGASHI: This brings us to Item 15, Chief

1 Counsel's report.

2 MS. SHELTON: I do have one new filing to add.

3 The Department of Finance has filed a lawsuit in  
4 Sacramento County Superior Court, challenging the  
5 Commission's decision on the *Peace Officer Procedure Bill*  
6 *of Rights* test claim with respect to the finding which  
7 approves reimbursement for school districts and special  
8 districts.

9 CHAIR SHEEHAN: Okay.

10 MS. SHELTON: And that's it.

11 CHAIR SHEEHAN: And just filed --

12 MS. SHELTON: Just filed this week.

13 CHAIR SHEEHAN: Very good. All right.

14 Public comment?

15 Are there any members of the public who would  
16 like to address the Commission on items not on the  
17 agenda?

18 *(No response)*

19 CHAIR SHEEHAN: No? Okay, then we need to go  
20 into closed session.

21 MS. HIGASHI: I just have a very brief report.

22 CHAIR SHEEHAN: Oh, sorry. Yes, I did skip  
23 that -- oh, yes.

24 MS. HIGASHI: No, you're being very kind, since  
25 I have a cold.

Commission on State Mandates – January 25, 2007

1 CHAIR SHEEHAN: Very sorry.

2 MS. HIGASHI: Item 16. I just wanted to recap  
3 when our next meeting is. March 29th we have a very long  
4 agenda, and we've just now added another item to it.

5 What staff would like to propose is that we add  
6 an April hearing, and that we contact your offices to  
7 find out if we can schedule it on, say, May 27th, maybe a  
8 Friday or maybe a Wednesday? We're not sure --

9 CHAIR SHEEHAN: I'm sorry, April 27th?

10 MS. HIGASHI: April.

11 CHAIR SHEEHAN: April 27th? Okay.

12 MS. HIGASHI: That would be our first choice.

13 But I will check with everybody's calendar --

14 CHAIR SHEEHAN: Everybody's. Okay.

15 MS. HIGASHI: -- and put several dates out as  
16 options.

17 CHAIR SHEEHAN: Okay.

18 MS. HIGASHI: Because as you can see, having  
19 eight test claims would be very, very difficult.

20 CHAIR SHEEHAN: It's a lot.

21 April 27th. So Friday morning. Okay.

22 MS. HIGASHI: But that's a possibility that I  
23 would like to throw out now and check further with you.

24 CHAIR SHEEHAN: Does that work?

25 So you'll check with offices?

1 MS. HIGASHI: I'll check with all of you by  
2 e-mail.

3 CHAIR SHEEHAN: All right.

4 MS. HIGASHI: The others, I just want to note  
5 that we did notice everyone that we will be going through  
6 office construction next month. So there may be some  
7 disruptions in terms of our ability to respond, and some  
8 of us may be working from home during certain days  
9 because of the construction. It's taking place right in  
10 my office and in the main office area.

11 MEMBER WORTHLEY: We will be getting some  
12 additional space, Paula?

13 MS. HIGASHI: We'll see. Nancy has the plans.

14 CHAIR SHEEHAN: Give him all the notebooks,  
15 exactly.

16 MS. HIGASHI: We just need to buy more paper.

17 CHAIR SHEEHAN: Kill more trees.

18 MS. HIGASHI: And that's it, pretty much.

19 If you have any questions, you know, feel free  
20 to ask me or call me or e-mail me.

21 CHAIR SHEEHAN: Okay. All right, very good.  
22 Questions?

23 *(No response)*

24 CHAIR SHEEHAN: All right.

25 MS. HIGASHI: Okay.

1 CHAIR SHEEHAN: Then if not, then we will  
2 proceed into closed session. We just have a couple items  
3 in closed session.

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

15 And then we will reconvene when we are done.

16 *(The Commission met in closed executive*  
17 *session from 10:06 a.m. to 10:26 a.m.)*

18 CHAIR SHEEHAN: 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 upon the pending litigation  
23 listed on the published notice and agenda and potential  
24 litigation, and Government Code section 11126,  
25 subdivision (a), and 17526, to confer on personnel

1 matters listed on the published notice and agenda.

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

5 MEMBER WORTHLEY: Move.

6 MEMBER GLAAB: Second.

7 CHAIR SHEEHAN: We have a motion from  
8 Mr. Worthley and second from Mr. Glaab.

9 All those in favor, say "aye."

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

11 CHAIR SHEEHAN: Any opposed?

12 *(No response)*

13 CHAIR SHEEHAN: We are adjourned.

14 Thank you all.

15 *(Proceedings concluded at 10:26 a.m.)*

16 --oOo--

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 February 15, 2007.

*Daniel P. Feldhaus*

---

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