ITEM 1
PROPOSED MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
February 27, 2003

Present: Chairperson Robert Miyashiro
Representative of the Director of the Department of Finance
Member Bruce Van Houten
Representative of the State Treasurer
Member Sherry Williams
Representative of the Director of the Office of Planning and Research
Member Walter Barnes
Representative of the State Controller
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

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

APPROVAL OF MINUTES

Item 1 January 23, 2003

Upon motion by Member Lazar and second by Member Williams, the minutes were adopted. Member Van Houten abstained.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 4 *Teacher Incentive Program*, 99-TC-15
San Diego Unified School District, Claimant
Education Code Sections 44395 and 44396
Statutes 1998, Chapter 331 (AB 858)

Item 5 *Criminal Background Checks II*, 00-TC-05
Napa County Office of Education, Claimant
Education Code Sections 44830.1, 44830.2, 45125, 45125.01, and 45125.2
Penal Code Sections 11077 and 11105.02
Statutes 1972, Chapter 1437 (AB 1685)
Statutes 1992, Chapter 1026 (SB 1769)
Statutes 1998, Chapter 594 (AB 1392)
Statutes 1998, Chapter 840 (AB 2102)

Statutes 1999, Chapter 78 (AB 1115)
California Code of Regulations, Title 11, Sections 700-708

PROPOSED STATEMENTS OF DECISION INCORRECT REDUCTION CLAIMS

Certification of Teacher Evaluator's Demonstrated Competence
Education Code Section 35160.5
Statutes 1983, Chapter 498 (SB 813)

Item 6 Manhattan Beach Unified School District, Claimant, 99-4136-I-03

Item 7 Ventura County Office of Education, Hayward Unified School District, Kings Canyon Joint Unified School District, Visalia Unified School District, Salinas City Elementary School District, Conejo Valley Unified School District, Claremont Unified School District, Oak Grove Elementary School District, Ventura Unified School District, Oceanside City Unified School District, Roseville Joint Union High School District, Folsom Cordova Unified School District, Palmdale School District, Moreland Elementary School District, Novato Unified School District, Modesto City Schools, San Benito Union High School District, Manteca Unified School District, El Monte Elementary School District, Las Virgenes Unified School District, Del Norte County Unified School District, Glendale Unified School District, Garden Grove Unified School District, San Lorenzo Unified School District, Lompoc Unified School District, Mojave Unified School District, Lodi Unified School District, San Juan Unified School District, Los Altos Elementary School District, Salinas Union High School District, Los Angeles County Office of Education, Morgan Hill Unified School District, Fairfield-Suisun Unified School District, Ojai Unified School District, Bellflower Unified School District, Berryessa Union School District, Livingston Union School District, Whittier Union High School District, Claimants, 99-4136-I-01, -02, and -04 through -39

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

RULEMAKING, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

Item 13 Proposed Order to Initiate Rulemaking: Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Article 1. General, Article 3. Test Claims, Article 4. Mandates Recognized by the Legislature, Article 9. Conflict of Interest

Member Williams moved for adoption of the consent calendar, which consisted of items 4, 5, 6, 7, and 13. With a second by Member Lazar, the consent calendar was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

APPEAL OF EXECUTIVE DIRECTOR DECISION TO DENY REQUEST FOR POSTPONEMENT OF HEARING

Item 2 *Standardized Account Code Structure*, 97-TC-17
Brentwood Union School District, Appellant and Claimant
Statutes 1993, Chapter 237 (SB 94)
Statutes 1995, Chapter 525 (AB 438)
Statutes 1997, Chapter 299 (AB 1578)
State Board of Education's Revision of the California School Accounting Manual (Part II)

Item 2 was withdrawn.

TEST CLAIM

Item 3 *Standardized Account Code Structure*, 97-TC-17
Brentwood Union School District, Claimant
Statutes 1993, Chapter 237 (SB 94)
Statutes 1995, Chapter 525 (AB 438)
Statutes 1997, Chapter 299 (AB 1578)
State Board of Education's Revision of the California School Accounting Manual (Part II)

Item 3 was postponed because the claimant filed an amendment to the test claim.

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

Item 8 Request to Amend Parameters and Guidelines
Investment Reports, 00-PGA-02
City of Newport Beach, Requestor
Government Code Section 53646, subdivisions (a), (b), and (e)
Statutes 1995, Chapter 783 (SB 564)
Statutes 1996, Chapters 156 and 749 (SB 864 and SB 109)

Nancy Patton, Staff Services Manager, presented this item. She noted that the Commission approved the *Investment Reports* test claim in 1997. It imposed a reimbursable state-mandated program by requiring local agencies to render an annual statement of investment policy and to render quarterly reports of investments.

The staff analysis was broken into two parts. Regarding Part I. Reimbursable Activities, Ms. Patton stated that the City of Newport Beach submitted its proposed amendments to the parameters and guidelines on October 13, 2000. After four prehearing conferences, staff, with the assistance of Conny Jamison, expert consultant, reviewed all filings and comments on the proposal and prepared the final proposed amendments to the Reimbursable Activities section, as follows:

1. Delete the words “accumulating” and “accumulate” from section B. Quarterly Report Investments, part 1. Implementation Costs, and part 2. Ongoing Costs.
2. Limit reimbursement to activities related to each investment that is held on the last day of each quarter and included in a quarterly report of investments.
3. Add reimbursable activities to conform to the Statement of Decision and test claim statutes.
4. Specify non-reimbursable activities.
5. Reference costs reimbursements received by counties in the Offsetting Savings and Reimbursements section.

Ms. Patton indicated that claimants opposed the proposed modifications. She clarified that the issue before the Commission was whether the test claim statutes and the Statement of Decision authorize reimbursement for:

- Reporting information on all investments held in the portfolio throughout the quarterly reporting period,
- Maintaining subsidiary ledgers,
- Managing the investment function,
- Implementing local statements of investment policy,
- Compiling and preparing information to be included in monthly reports on investments and transactions, and
- Providing copies of the quarterly investment reports to their depositories.

Staff found that reimbursement for the claimant’s proposed amendments exceed the test claim statutes and Statement of Decision.

Regarding Part II. Supporting Documentation, Ms. Patton noted that the Bureau of State Audits report on the *School Bus Safety II* audit recommended that the Commission work with the Controller, other affected state agencies, and interested parties to make sure that the language in the parameters and guidelines and claiming instructions reflect the Commission’s intentions, as well as the Controller’s expectations regarding supporting documentation. On January 23, 2003, the Commission adopted the proposed documentation language, which staff included in these parameters and guidelines for *Investment Reports*.

Staff recommended that the Commission approve the proposed amendments to the parameters and guidelines.

Parties were represented as follows: Pamela Stone and Glen Everroad, representing the City of Newport Beach; Vee-Jay Brann, for the County of Kings; Leonard Kaye, for the County of Los Angeles; Christopher Rieger, for the Los Angeles County Treasury; Allan Burdick, for the California State Association of Counties; Shawn Silva, for the State Controller’s Office; and Susan Geanacou and Oscar Chaves, for the Department of Finance.

Testimony on Part I. Reimbursable Activities

Ms. Stone disagreed with staff's position that because an activity was not found in the Statement of Decision, that reimbursement should be limited to those activities related to each investment that is held on the last day of each quarter and included in a quarterly report of investments. She asserted that the Legislature delegated the development of an investment policy to the respective investment boards, treasuries, and chief fiscal officers. The governing board then adopts this policy. Thus, if the governing board requires a county to specify whether it was out of compliance during the reporting period, and not just four given days per year, the costs should be reimbursed.

Mr. Brann agreed with Ms. Stone. He added that the investment policy guided their investments at the County of Kings, noting that the guidelines described in the policy were used on a daily basis to measure compliance. The intent of the Legislature was for the treasurer to invest and be in compliance with the investment policy at all times. Therefore, the report was not a point-in-time document.

Regarding the activity which states, "Obtaining and reporting current market value as of the date of the quarterly report, and reporting the source of this valuation for all investments held by the local agency and under management of any outside party…," Mr. Brann noted that at the County of Kings, some investments were managed by the county itself and not by any outside party. He suggested adding "and/or" before "under the management of any outside party."

Paula Higashi, Executive Director, stated that the final language of the test claim statutes do not include the word "or." Mr. Brann requested clarification as to the intent of staff regarding other revenue sources. Ms. Higashi said that the proposed amendments acknowledge in the Offsetting Savings section that some local entities, depending on their type, receive costs reimbursements.

Member Van Houten asked if the investment policy would remain the same today if the quarterly report did not exist. Mr. Brann noted that another piece of legislation requiring investment policies ended in 1991. After that point, counties were no longer required to have an investment policy. However, counties quite often maintained one anyway.

Mr. Kaye quoted several statements from Ms. Jamison's report that supported reimbursement for specific activities. He commented that the report was pertinent as it reflected a good understanding of the operational requirements of a treasurer's office in complying with the test claim legislation.

Mr. Rieger agreed with the comments made by Ms. Stone, Mr. Brann, and Mr. Kaye. He expressed concern that the staff proposal may lead other treasurers throughout California to think that compliance with the guidelines was not necessary the other days of the year. He asserted that the report was not a point-in-time document, and that problems may arise if investments were not monitored daily.

Member Van Houten asked if the county would still be doing cash flows if the quarterly report did not exist. Mr. Rieger stated that the legislation required a six-month projection, which was new. He indicated that because of the volume of investments in Los Angeles County, cash flow balancing would be done daily even if the quarterly report was not mandated. However, other counties may not. Member Van Houten stated that the Legislature mandated the quarterly report because the counties would not be doing investment reports or other functions otherwise.

Mr. Silva commented that the statute was really a sunshine law designed to expose the activities and performance of the treasurer's office to the public. He argued that the parameters and guidelines should be narrow enough to preclude pre-existing activities and duties, such as entering transactions on a daily basis. Such duties flow from the fiduciary duty of public commissioners and public trustees of public funds. He agreed that the obvious, additional activities required to generate and present a report to a board should be reimbursed.

In addition, Mr. Silva asserted that the statute does not direct that a local entity establish any specific standards as far as percentages of specific investments. Therefore, the performance of certain activities by local entities, such as daily reconciliation, was not driven by the statute, but rather by their choices of policies and limitations on specific investments.

Ms. Geanacou supported the staff analysis.

Regarding Member Van Houten's statement, Mr. Burdick commented that in measuring a mandate, the issue was not whether the county would have been performing the activities absent the law, but whether they would have been required to do it. He also noted that the reason this item was before the Commission was because the parties needed clarification on the Commission's decision and specific issues.

Member Lazar requested comments on this legislation being a sunshine law. Mr. Burdick stated that a law was passed in the 1980s requiring monthly investment reports, with a provision that the law sunset, or be repealed, after five years. Then legislation was passed in 1995, which expanded upon the original mandate, and required quarterly reports. Ms. Jamison agreed that the law did sunset and noted that some agencies stopped producing reports while most continued because it was good practice. Paul Starkey, Chief Legal Counsel, clarified that the term "sunshine" means to bring government activities to light. He agreed with Mr. Silva that the purpose of this being a sunshine law was to expose the activities and performance of the treasurer's office to the public. Mr. Kaye also agreed that it was a sunshine law, noting that the intent of the Legislature was not just to tell citizens what was happening in the treasurer's office four days out of the year, but the entire year.

On the issue that local agencies should be reimbursed for reporting information required by the statement of investment policy, Ms. Higashi pointed out that the Commission made no findings on these provisions in the Statement of Decision, and therefore, the activity would exceed that scope of the Statement of Decision.

Mr. Burdick noted that Ms. Jamison concluded in her report that, although only mandated to report quarterly, the daily activities during that 90-day period were required. Ms. Higashi stated that the report by Ms. Jamison was produced for the Commission in preparation for the Los Angeles County incorrect reduction claim on *Investment Reports*, and it was not necessarily relevant on the issue before the Commission.

<u>Testimony on Part II. Supporting Documentation</u>

Ms. Patton repeated her opening statement regarding Part II. Supporting Documentation.

Ms. Stone indicated that the main problem related to the requirement for contemporaneous documentation for the tasks being performed. Her interpretation of the proposed supporting documentation language was that claimants must retroactively have a new labor distribution system such that the employees can record time spent performing specific mandated activities. She noted that most local government time-reporting systems were not that sophisticated.

Also, Ms. Stone asserted that most governmental entities would not be aware of a change in the reimbursable activities until receipt of the State Controller's claiming instructions. Since there is no notice or knowledge that time must be tracked, it is impossible to retroactively have contemporaneous documentation. Therefore, she requested that there be a different standard between the time that parameters and guidelines are adopted and the time that claiming instructions are issued.

Mr. Kaye agreed with Ms. Stone. He also mentioned that Elaine Howle, State Auditor, was concerned that the difference between source documents and corroborating documents was overly restrictive. For instance, a time study approach may be used after claiming instructions are issued. Regarding the certification section, he was unclear whether school districts should submit their own claims to the state, and if so, whether they would have the necessary personal knowledge regarding that information to sign off on the form.

As to supporting documentation, Mr. Rieger requested adding language indicating that some type of cost allocation system on a pro-rata basis could be used.

Ms. Patton stated that the law requires claimants to file reimbursement claims based on actual costs. She acknowledged that parameters and guidelines may not be adopted for several years after mandated programs have been implemented. However, if different documentation is necessary for the earlier years, claimants have the opportunity to make a proposal when submitting the initial parameters and guidelines. Regarding time studies, Ms. Patton noted that when new parameters and guidelines language was adopted in January 2002, it was stated that time studies could be used if an appropriate methodology was described.

Mr. Burdick commented that all local agencies objected to the language proposed by the State Controller's Office in response to the *School Bus Safety II* audit report. He argued that the documentation language went far beyond what the federal government required of the state, and thus, the state should not hold local government to such a standard. He asserted that this new requirement would cost the state more money and urged the Commission to take another look.

Ms. Higashi commented that no alternative proposals, such as the other methods described in the Office of Management and Budget Circular A-87 form, have been brought forward.

Mr. Silva agreed with the proposed language. He maintained that when an entity claims funds from the state, there has to be a certain level of assurance that the claim is accurate, and thus, there is a need for documentation.

Member Williams made a motion to adopt the staff analysis and recommendation. With a second by Member Barnes, the motion carried unanimously.

[At this time, a short break was taken.]

Item 9 Proposed Amendment of Parameters and Guidelines
Mandate Reimbursement Process, CSM-4485
Statutes 1975, Chapter 486 (AB 1375)
Statutes 1984, Chapter 1459 (SB 2337)
Statutes 1995, Chapter 303 (Budget Act of 1995) (AB 903)
Statutes 1996, Chapter 162 (Budget Act of 1996) (SB 1393)
Statutes 1997, Chapter 282 (Budget Act of 1997) (AB 107)
Statutes 1998, Chapter 324 (Budget Act of 1998) (AB 1656)
Statutes 1999, Chapter 50 (Budget Act of 1999) (SB 160)
Statutes 2000, Chapter 52 (Budget Act of 2000) (AB 1740)
Statutes 2001, Chapter 106 (Budget Act of 2001) (SB 739)
Statutes 2002, Chapter 379 (Budget Act of 2002) (AB 425)

Tina Poole, Program Analyst, presented this item. She noted that the Commission adopted the Statement of Decision for the *Mandate Reimbursement Process* program on March 27, 1986. The test claim legislation allows local agencies and school districts to be reimbursed for costs incurred in preparing and presenting successful test claims to the Commission and submitting reimbursement claims to the State Controller's Office. She added that incorrect reduction claims were considered an element of reimbursement claims.

The parameters and guidelines for this program were originally adopted on November 26, 1986. Ms. Poole stated that each year, the Commission makes technical amendments to these parameters and guidelines to incorporate related language in the most recently enacted state budget act. Staff recommended that the Commission adopt the proposed amendments, which included the documentation language adopted by the Commission for the *School Bus Safety II* program.

Parties were represented as follows: Allan Burdick, for the California State Association of Counties; Shawn Silva, for the State Controller's Office; and Susan Geanacou and Dirk Anderson, for the Department of Finance.

Mr. Burdick noted that a lot of time and effort was spent working with the Controller's Office trying to clarify the *Investment Reports* Parameters and Guidelines. He suggested that a provision be added to the parameters and guidelines granting the Controller the authority to establish alternatives to supporting documentation requirements, such as time studies and unit costs, and include them in the claiming instructions. This would save state and local government time, as well as future requests to amend parameters and guidelines.

Member Barnes acknowledged the effort put forth by Mr. Burdick's office to work out the issues with *Investment Reports*. Regarding Mr. Burdick's suggestion, he believed that the Controller already has the authority and that the issue does not need to be addressed by the parameters and guidelines. He explained that contemporaneous documents produced at the time encompass a number of things, including time studies developed appropriately. He made a commitment to look at their claiming instructions and to meet with the claimants and other agencies to provide clarification.

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

Item 10 Proposed Parameters and Guidelines
Immunization Records: Hepatitis B, 98-TC-05
Los Angeles County Office of Education, Claimant
Education Code Section 48216
Health and Safety Code Sections 120325, 120335, 120340, and 120375
Statutes 1978, Chapter 325 (AB 2260); Statutes 1979, Chapter 435 (AB 805); Statutes 1982, Chapter 472 (SB 818); Statutes 1991, Chapter 984 (SB 407); Statutes 1992, Chapter 13 (AB 2798); Statutes 1994, Chapter 1172 (AB 2971); Statutes 1995, Chapters 219 and 415 (AB 382 and SB 1360); Statutes 1996, Chapter 1023 (SB 1497); Statutes 1997, Chapters 855 and 882 (SB 727 and AB 381)
California Code of Regulations, Title 17, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

Cathy Cruz, Program Analyst, presented this item. She noted that the Commission adopted the Statement of Decision for the *Immunization Records: Hepatitis B* test claim on August 24, 2000. The test claim legislation added mumps, rubella, and hepatitis B to the list of diseases an entering student must be immunized against prior to first admission into a school, and required hepatitis B immunizations for students entering the seventh grade. The test claim legislation also amended the monitoring, record keeping, reporting, and parent notification requirements relative to the enforcement of the pupil immunization requirements.

Ms. Cruz indicated that the claimant, Los Angeles County Office of Education, originally proposed uniform cost allowances. However, on July 10, 2002, the claimant withdrew its proposal because the California Department of Education, State Controller's Office, and Department of Finance asserted that the data provided was not representative of the state and could not be used to properly develop a statewide unit cost. Instead, the state agencies recommended reimbursing actual costs until a credible reimbursement rate could be developed. Therefore, the parameters and guidelines, as modified by staff, provide for reimbursing actual costs for those new activities specifically required by *Immunization Records: Hepatitis B*.

The claimant concurred with staff's draft analysis and proposed parameters and guidelines issued on August 27, 2002. Staff recommended that the Commission adopt the proposed parameters and guidelines, which included the documentation language adopted by the Commission for the *School Bus Safety II* program.

Parties were represented as follows: Carol Berg, Education Mandated Cost Network, for the Los Angeles County Office of Education; Art Palkowitz, for the San Diego Unified School District; Pamela Stone, for the California State Association of Counties; Shawn Silva, for the State Controller's Office; and Susan Geanacou, Blake Johnson, and Cheryl Black, for the Department of Finance.

Dr. Berg supported the staff recommendation. She noted that an effort to satisfy the Department of Finance and State Controller's Office regarding the survey was unsuccessful. Thus, the claimant agreed to go with actual costs for three years, at which time a reasonably accurate unit cost may be established. *Immunization Records: Hepatitis B* may then be proposed for inclusion in the State Mandates Apportionment System along with *Immunization Records.*

Mr. Palkowitz commented that the supporting documentation language related to declarations signed under penalty of perjury was new and may create future problems. He stated that he was

not aware that this type of standard existed and asserted that this would create a higher threshold that was not done by other state government bodies.

Chairperson Miyashiro requested the State Controller's Office to comment. Mr. Silva noted that the declaration language was from the Code of Civil Procedure. By definition, it includes a penalty of perjury statement. He said that the Controller's Office was not against someone making a declaration under "penalty of perjury of information, knowledge, or belief." He explained that the goal was to comply with the definition of a declaration under the Code of Civil Procedure and to recognize that the declaration could be based on information and belief.

Chairperson Miyashiro asked if the penalty of perjury statement was included purposefully. Mr. Silva replied that it was included as part of the proposal for the supporting documentation language in *Investment Reports* and *School Bus Safety II*.

Mr. Palkowitz noted that while Mr. Silva states that the Controller's Office was not against someone making a declaration under "penalty of perjury of information, knowledge, or belief," auditors only accept what is written in the parameters and guidelines. Thus, it was difficult for claimants to use verbal agreements as supporting evidence. Dr. Berg agreed.

Mr. Johnson supported the proposed parameters and guidelines.

Chairperson Miyashiro said that he asked this item be removed from the consent calendar to discuss, specifically, supporting documentation and reimbursement based on actual costs. Moving toward a system where an appropriate reimbursement rate is negotiated and put forth in the front end would result in auditing to find out whether or not the activities were actually provided rather than whether or not the performed activities were reimbursable according to the parameters and guidelines. He asserted that the inefficiencies of the current process, which takes an inordinate amount of time and relies on subsequent audits, justify re-thinking of how things are done.

Chairperson Miyashiro noted that currently, a unit rate of $5.15 was provided for *Immunization Records*. Rather than experiencing a contentious debate three years later about expenses and costs already incurred, he stated that he would like to explore the marginal cost of the new duties imposed, given that there was some base level of activity. Those new figures would be brought back to the Commission for consideration as a unit reimbursement rate.

Dr. Berg supported the unit cost approach, as well as the State Mandates Apportionment System process, which was underutilized. She stated that she would be happy to work with the Department of Finance and State Controller's Office to get any of the existing mandates into that system.

Chairperson Miyashiro clarified that he was not endorsing the survey data submitted by the claimant for this program because there were some problems. However, he wanted to see work up front to determine what reasonable costs there might be. His goal was to set forth a system that promotes some level of efficiency locally.

Ms. Stone encouraged that there be a process established so that unit rates could be used more. Members Lazar and Williams were supportive of establishing such a process.

Chairperson Miyashiro directed staff, with the participation of other departmental staff, to bring back a figure after considering everything that was available and that had been provided, as well as the amounts currently being paid.

Ms. Higashi stated that following the hearing, the parties would set a date for a meeting to discuss the issues raised. Dr. Berg noted that the claimant did not want to miss the budget round this year.

Member Barnes requested clarification as to what the action was. Ms. Higashi clarified that staff was taking the item back and would return with a new proposal. Chairperson Miyashiro reiterated his direction that staff propose a figure.

Item 11 Proposed Parameters and Guidelines
Presidential Primaries 2000, 99-TC-04
County of Tuolumne, Claimant
Statutes 1999, Chapter 18 (SB 100)
Elections Code Sections 15151 and 15375

Nancy Patton, Staff Services Manager, presented this item. She noted that the Commission adopted the Statement of Decision for the *Presidential Primaries 2000* program on October 25, 2001. The test claim legislation was enacted to ensure that California's presidential primary delegates would be recognized at the national party convention in the year 2000. The test claim legislation also requires local election officials to transmit both semi-final and final election results for presidential primaries in two separate tallies to the Secretary of State: First, the total number of votes each candidate received; and second, the number of votes each candidate received from registered voters of each political party and from "declines-to-state" voters.

Staff modified the proposed parameters and guidelines as follows:

- Deleted activities to analyze the test claim legislation and respond to public inquiries because neither the test claim legislation nor the Statement of Decision supported reimbursement of these activities.
- Clarified that training was necessary since this was a new elections process conducted by both permanent employees and temporary poll workers. However, training was limited to one-time per employee and to costs solely related to this program.
- Clarified that although this program was only conducted for the 2000 primary election, the test claim statutes have not been repealed, and therefore, the parameters and guidelines must provide for the possibility of reimbursement.
- Narrowed the language regarding purchasing elections materials to limit reimbursement to included documentation language adopted by the Commission last month in the *School Bus Safety II* program.

Staff recommended that the Commission adopt the proposed parameters and guidelines, as modified by staff.

Parties were represented as follows: Pamela Stone and Tim Johnson, for the County of Tuolumne; Tom Lutzenberger and Susan Geanacou, for the Department of Finance; and Shawn Silva, for the State Controller's Office.

Ms. Stone commented that although this mandate was instituted for the March 2000 primary, absent repeal, they could have it again in 2004. Since it would be four years since employees performed this activity, Ms. Stone requested the provision to allow training only one-time per employee be changed to allow local government to re-train these employees.

Ms. Stone also stated that the original parameters and guidelines submitted by the County of Tuolumne addressed the issue of documentation. She commented that the modifications to the documentation language would require that they have contemporaneous time records for March 2000, which was in excess of three years after the date in which the election was held. Because it would be difficult to get retroactively contemporaneous documentation, Ms. Stone requested that the original language with regard to source documentation be used.

Mr. Johnson stated that there was a need to provide public information and education to the voters, and therefore, there should be some consideration taken into the parameters and guidelines for that responsibility.

Mr. Lutzenberger supported the staff analysis. It was noted in their analysis that additional public education; aside from instructional material, specifically how to use the ballot, and its ramifications; was discretionary with regards to this mandate.

Mr. Lutzenberger noted that this mandate was filed in 1999, which was before the presidential primary of 2000. Although one county filed the test claim, this was a process all counties paid attention to, as it affects their ability to request and claim reimbursement on mandated activities. It was reasonable to expect that, knowing that the test claim was going through the process, there would be an expectation to hold onto source documentation.

Mr. Silva concurred with the staff analysis.

Member Barnes requested clarification on the bill itself. He stated his understanding that the bill was limited to activities performed in 2000. Ms. Stone clarified that the bill amended the manner in which people could vote in a presidential primary, but it was not limited to just the March 2000 primary. Ms. Stone added that the legislation had not been repealed even though there was subsequent legislation that changed how one can vote in a primary.

Mr. Starkey stated that staff viewed the bill as limited both in scope and duration. He stated that the way the statute was set up, there was language that might be read to keep a requirement. He added that it did not appear that the requirement would happen again unless the Legislature does something to resurrect it in a new bill. Mr. Starkey further stated that with respect to training, this was one case where it should remain one-time. If there is a subsequent change, an amendment could be made.

Member Van Houten asked if the county had interpreted this as one-time legislation.
Mr. Johnston stated that it became one-time because the Supreme Court ruled Proposition 198 unconstitutional. Member Van Houten asked whether it was reasonable to expect counties to maintain records. Ms. Stone responded that the county will have documentation concerning a re-programming of their system for the one vote, two count requirement, however most entities were not going to have contemporaneous time records.

Member Williams made a motion to adopt the staff recommendation. With a second by Member Van Houten, the motion carried unanimously.

Item 12 Request to Amend Parameters and Guidelines
Absentee Ballots, 02-PGA-02
Legislature, Requestor
Elections Code Sections 3003 and 3024
Statutes 1978, Chapter 77 (AB 1699)
Statutes 2002, Chapter 1032 (AB 3005)

Cathy Cruz, Program Analyst, presented this item. She noted that the Board of Control, predecessor agency to the Commission on State Mandates, adopted the Statement of Decision for the *Absentee Ballots* program on June 17, 1981. The test claim legislation required that absentee ballots be available to any registered voter.

Mr. Cruz explained that Statutes 2002, chapter 1032 (AB 3005) was enacted on September 28, 2002, and requires the Commission to amend these parameters and guidelines to delete "school districts," as defined by Government Code section 17519, from the list of eligible claimants. Rather than billing school districts when county election officials provide them with election services, the bill requires counties to claim reimbursement for those costs under the mandates process.

Staff recommended that the Commission adopt the proposed amendments, which included the changes as required by AB 3005, the documentation language adopted by the Commission for the *School Bus Safety II* program, and other technical revisions.

Parties were represented as follows: Allan Burdick, for the California State Association of Counties; Shawn Silva, for the State Controller's Office; and Tom Lutzenberger and Susan Geanacou, for the Department of Finance.

Mr. Burdick noted his opposition to the supporting documentation language. He also noted that very few mandates have been put into the State Mandates Apportionment System, and thus, efforts should be made to use the system.

Mr. Lutzenberger and Mr. Silva concurred with the staff analysis.

Member Williams made a motion to adopt the staff recommendation. With a second by Member Van Houten, the motion carried unanimously.

EXECUTIVE DIRECTOR'S REPORT

Item 14 Workload and Next Agenda

Ms. Higashi noted that the *Healthy School Act of 2000* test claim would be moved to the May agenda. Also, a prehearing conference was held on the request to amend the *Handicapped and Disabled Students* Parameters and Guidelines.

Item 15 Pending Legislation: SB 93 – Alpert (info/action)

Ms. Higashi indicated that Senate Bill 93 was a cleanup bill introduced by Senator Alpert to address necessary technical changes made by Assembly Bill 3000, a budget trailer bill. Senate Bill 93 includes provisions that specifically affect the Commission's jurisdiction over test claims, the subject matter of the Commission's reports to the Legislature, and how the State Controller's Office does interest calculations if over-payments were made. This matter was placed before the Commission to determine if the members wished to take a position on the bill or if they wished staff to communicate with the author's office regarding suggested amendments.

After some discussion, a majority of the members decided not to take a position of support or opposition since they represented other state agencies. They asked that staff communicate with the author's office to identify problems.

Allan Burdick, on behalf of the California State Association of Counties, asserted that the bill had problems and that it limited the Commission's authority.

PUBLIC COMMENT

Allan Burdick, on behalf of the California State Association of Counties, informed the Commission that a request for reconsideration on the amendment to the *School Bus Safety II* Parameters and Guidelines was filed and that staff determined that they did not have specific authority to reconsider that item. He argued that nothing precluded them from doing so.

Mr. Starkey explained that the Executive Director's decision not to put the request on the agenda was based on the form of the request to put the matter on the agenda, which was characterized as a reconsideration. Staff's response was that the Commission could not reconsider the matter. He noted that they were informed of their right to appeal the Executive Director's decision.

After further debate, Chairperson Miyashiro stated that he did not want to pursue any further discussion regarding the Commission's authority to reconsider the matter.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

The Commission did not meet in closed executive session since Mr. Starkey indicated that there were no new developments.

ADJOURNMENT

Hearing no further business and upon motion by Member Lazar, Chairperson Miyashiro adjourned the meeting at 12:20 p.m.

PAULA HIGASHI
Executive Director