

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
March 23, 2012

Present: Member Diana Ducay, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Don Saylor
County Supervisor

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Ducay called the meeting to order at 11:00 a.m. Acting Executive Director Nancy Patton introduced and welcomed new commission member, and Yolo County Supervisor Don Saylor, and then called the roll.

APPROVAL OF MINUTES

Item 1 January 27, 2012

With a motion for approval by Member Olsen and a second by Member Alex, the January 27, 2012 hearing minutes were adopted by a vote of 6-0.

CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS, AND PARAMETERS AND GUIDELINES, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

PARAMETERS AND GUIDELINES, PARAMETERS AND GUIDELINES AMENDMENTS, AND STATEMENTS OF DECISION

Item 4* *Community College Construction, 02-TC-47*
Education Code Sections 81820, 81821(a), (b), (e), and (f)
Statutes 1980, Chapter 910, Statutes 1981, Chapter 470, Statutes 1981, Chapter 891, Statutes 1995, Chapter 758
Santa Monica Community College District, Claimant

Item 7* *School Accountability Report Cards*
10-PGA-02 (97-TC-21)
Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3,
Statutes 1997, Chapter s 918 and 912; Statutes 1994, Chapter 824;

Statutes 1993, Chapter 1031, Statutes 1992, Chapter 759; Statutes 1989, Chapter 1463

State Controller's Office, Requestor

Item 8* *Physical Education Reports*
11-PGA-04 (05-PGA-60, 98-TC-08)
Education Code Section 51223.1
Statutes 1997, Chapter 640
State Controller's Office, Requestor

Item 9* AIDS Instruction (CSM 4422)
Education Code Sections 51201.5 and 51229.8
Chapter 818. Statutes 1991
And
Aids Prevention Instruction (99-TC-07, 00-TC-01)
Education Code Sections 51201.5, 51554 and 51553(b)(1)(A)
Chapter 403. Statutes 1998
State Controller's Office, Requestor

Member Olsen made a motion to adopt the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 6-0.

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

Item 2 Staff Report (if necessary)

There were no appeals to consider.

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

Acting Executive Director Nancy Patton swore in parties and witnesses participating in the hearing.

A. TEST CLAIM AND STATEMENT OF DECISION

Item 3 *Juvenile Offender Treatment Program Court Proceedings*
04-TC-02
Welfare and Institutions Code Sections 779, 1731.8, 1719, and 1720
Statutes 2003, Chapter 4
County of Los Angeles, Claimant

This item was postponed upon request of the claimant.

B. PARAMETERS AND GUIDELINES AND AMENDMENTS

Item 5 *Voter Identification Procedures*, 03-TC-23
Elections Code Section 14310
Statutes 2000, Chapter 260
County of San Bernardino, Claimant

This item proposes parameters and guidelines filed by the County of San Bernardino on the *Voter Identification Procedures* program that requires local agencies to compare the signature on

each provisional ballot envelope with the signature on the voter's affidavit of registration using the same procedures that apply to the comparison of signatures on absentee ballots. If the signature's do not compare, the ballot is rejected.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the parameters and guidelines, but deny claimant's request to adopt a reasonable reimbursement methodology in the form of a unit cost for this program. Ms. Shelton stated that there is no evidence in the record that the proposed methodology reasonably represents the costs incurred by a county to comply with the mandate during the period of reimbursement, which begins July 1, 2002, and for the fiscal years in the future. Ms. Shelton recommended that the Commission adopt the parameters and guidelines using actual costs for reimbursement.

Parties were represented as follows: Allan Burdick , California State Association of Counties and the League of California Cities Advisory Committee on State Mandates, and Donna Ferebee and Randall Ward representing the Department of Finance.

Mr. Burdick welcomed new member Saylor. He then provided background on this program. Mr. Burdick stated that this program was a good candidate for a reasonable reimbursement methodology. However, the staff analysis points out that claimant is lacking proper evidence to support its proposed methodology, and Mr. Burdick opposed the evidence requirements, indicating that the evidence requirements were overreaching.

Ms. Ferebee stated that Department of Finance has no objection to the staff's recommendation for approval of the actual cost associated with the mandate.

Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to approve the parameters and guidelines without the proposed reasonable reimbursement methodology was adopted by a vote of 6-0.

Item 6 *Peace Officer Procedural Bill of Rights (POBOR)*
09-PGA-05 [05-RL-4499-01 (4499), 06-PGA-06]
Government Code Sections 3301, 3303, 3304, 3305, 3306
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and
1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367;
Statutes 1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989,
Chapter 1165; and Statutes 1990, Chapter 675
City of Los Angeles, Requestor

This is a request by the City of Los Angeles to amend the parameters and guidelines to revise the reasonable reimbursement methodology unit cost for the *Peace Officer Procedural Bill of Rights* (POBOR) program for the City of Los Angeles only. The POBOR program provides a series of rights and procedural safeguards to peace officers employed by local agencies that are subject to investigation and discipline.

Ms. Shelton presented this item and recommended that the Commission deny the City of Los Angeles' request to amend the parameters and guidelines because the proposed unit cost does not comply with Government Code section 17518.5. It is not based on cost information from a representative sample of eligible claimants, and does not consider the variation in costs among other local agencies to comply with the program.

Parties were represented as follows: Allan Burdick, CSAC SB 90 Service, representing the Los Angeles Police Department and the City of Los Angeles; and Susan Geanacou and Randall Ward, representing the Department of Finance.

Mr. Burdick explained that the proposal would raise the unit cost for the City of Los Angeles from \$37.25 per officer to \$426.00 per officer. All other local agencies would continue to

reimbursed at the rate of \$37.25 per officer. Mr. Burdick presented a handout and discussed why he believed a variation in costs was considered, and why it was acceptable to provide a different reimbursement methodology for one entity.

Ms. Geanacou indicated that Department of Finance supported staff's recommendation to deny this matter.

Member Olsen asked if there were instances when the Commission could adopt multiple methodologies for one program based on the size of the counties or cities. Ms. Shelton responded that there is nothing to preclude the Commission from doing so.

Member Saylor added that it is acceptable to have multiple methodologies for a single mandate. Ms. Shelton agreed. There was discussion by Mr. Burdick and Ms. Shelton about another pending request to amend the POBOR parameters and guidelines filed by the California State Association of Counties. Ms. Shelton recommended that this matter not be consolidated with the other pending request.

Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Olsen, the staff recommendation to deny the request to amend the parameters and guidelines and adopt the statement of decision was adopted by a vote of 5-1, with Member Saylor voting no.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 10 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 11 Legislative Update

Ms. Patton presented this item.

- Item 12 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton presented this item.

- Item 13 Acting Executive Director's Report

Ms. Patton presented this item.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).

A. 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(e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]

2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.*, Sacramento County Superior Court Case No. 34-2010-80000604 (petition and cross-petition), appealed to the Third District Court of Appeal on February 7, 2012, Case No. (unknown)
[*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]
3. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition).
Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730)
[*Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3*]

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

Hearing no further comments, Chairperson Ducay adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 12:54 p.m., Chairperson Ducay reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(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 public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Ducay adjourned the meeting at 12:55 p.m.



Nancy Patton
Acting Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 11:00 a.m.
DATE: Friday, March 23, 2012
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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A P P E A R A N C E S

COMMISSIONERS PRESENT

DIANA DUCAY
(*Commission Chair*)
Representative for ANA MATOSANTOS, Director
State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

KEN ALEX, Director
Office of Planning & Research

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

DON SAYLOR
Public Member

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PARTICIPATING COMMISSION STAFF

NANCY PATTON
Acting Executive Director

CAMILLE SHELTON
Chief Legal Counsel

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A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5:

For California State Association of Counties and the
League of California Cities Advisory Committee on State
Mandates:

ALLAN BURDICK
MGT of America, Inc.
2001 P Street, Suite 200
Sacramento, California 95811

For Department of Finance:

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

RANDALL WARD
Budget Analyst
Department of Finance
915 L Street
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Appearing Re Item 6:

For Los Angeles Police Department, City of Los Angeles:

ALLAN BURDICK
MGT of America, Inc.
2001 P Street, Suite 200
Sacramento, California 95811

For Department of Finance:

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

RANDALL WARD
Budget Analyst
Department of Finance

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1 MS. PATTON: Ms. Olsen?

2 MEMBER OLSEN: Here.

3 MS. PATTON: Mr. Saylor?

4 MEMBER SAYLOR: Present.

5 MS. PATTON: Ms. Ducay?

6 CHAIR DUCAY: Present.

7 Item No. 1 is approval of the minutes.

8 MEMBER OLSEN: I'll move adoption.

9 MEMBER ALEX: Second.

10 CHAIR DUCAY: Any discussion?

11 *(No response.)*

12 CHAIR DUCAY: All in favor?

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

14 CHAIR DUCAY: Opposed?

15 *(No response.)*

16 CHAIR DUCAY: The minutes are approved.

17 Item No. 3.

18 MS. PATTON: Item 2 is the consent calendar. It

19 is -- well, actually, our next item is the consent

20 calendar. It consists of Items 4, 7, 8 and 9.

21 CHAIR DUCAY: Are there any objections to the

22 consent calendar?

23 *(No response.)*

24 MEMBER OLSEN: I'll move it.

25 CHAIR DUCAY: Second?

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1 MEMBER CHIVARO: Second.

2 CHAIR DUCAY: All in favor?

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

4 CHAIR DUCAY: Opposed?

5 *(No response.)*

6 CHAIR DUCAY: Okay. Motion carried.

7 MS. PATTON: There are no appeals to consider
8 under Item 2, and our test claim that was scheduled for
9 hearing was postponed at the request of the Claimant.

10 That brings us to Items 5 and 6. Will the
11 parties and witnesses for Items 5 and 6 please rise?

12 *(Parties stood to be sworn in or affirmed.)*

13 MS. PATTON: Do you solemnly swear or affirm
14 that the testimony which you are about to give is true
15 and correct based on your personal knowledge, information
16 or belief?

17 *(A chorus of "I dos" was heard.)*

18 MS. PATTON: Thank you.

19 Chief Legal Counsel Camille Shelton will present
20 Item 5, Voter Identification Procedures, Parameters, and
21 Guidelines.

22 MS. SHELTON: Good morning. This item proposes
23 the adoption of parameters and guidelines for the Voter
24 ID program and is the first in a group of claims that
25 analyzes requests made to the Commission to adopt a unit

1 cost reasonable reimbursement methodology in the
2 parameters and guidelines.

3 The Voter ID program requires local agencies to
4 compare the signature on each provisional ballot envelope
5 with the signature on the voter's affidavit of
6 registration using the same procedures that apply to the
7 comparison of signatures on absentee ballots.

8 If the signature do not compare, the ballot is
9 required to be rejected.

10 The claimant has proposed the reimbursement of
11 one-time costs and has proposed an optional unit cost in
12 the amount of \$1.80 per ballot for the ongoing activity
13 to check the signatures.

14 Staff recommends that the Commission deny the
15 claimant's request to authorize reimbursement for the
16 one-time activities. There is no evidence in the record
17 showing why the one-time activities are necessary to
18 comply with the mandated activity.

19 Staff further recommends that the Commission
20 deny the claimant's unit cost proposal on the ground that
21 there is no evidence in the record that the proposed unit
22 cost reasonably represents the costs incurred by a county
23 to comply with the mandate during the period of
24 reimbursement, which begins July 1st, 2002, and for the
25 fiscal years in the future.

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1 Therefore, on this record, staff recommends that
2 the Commission adopt the parameters and guidelines
3 identifying the one reimbursable activity identified in
4 the statement of decision that can be claimed based on a
5 showing of the actual costs incurred by the claimant.

6 Will the parties and representatives please
7 state your names for the record?

8 MR. BURDICK: Yes. My name is Allan Burdick and
9 I'm representing the California State Association of
10 Counties and the League of California Cities Advisory
11 Committee on State Mandates.

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

14 MR. WARD: Randall Ward, Department of Finance.

15
16 CHAIR DUCAY: Okay. Mr. Burdick?

17 MR. BURDICK: Madam Chair and members, and I'd
18 also like to take the time to welcome your new member.

19 We're very pleased to see a member of local
20 government has been appointed. We're hoping
21 the Department of Finance will move forward and appoint
22 another one. But I'd like to welcome -- officially
23 welcome Supervisor Saylor.

24 The reason that I'm commenting on this is, it's
25 because this is the first RRM issue that is before you

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1 and it's -- of the series, and I think it kind of lays
2 the groundwork.

3 I want to just give a few comments on this to
4 kind of -- I think which will be helpful for the members
5 in terms of where we go.

6 This voter identification was one of two
7 mandates, beginning in 2008, that CSAC and the League
8 began working with the Department of Finance on in an
9 attempt to develop an RRM for those two programs.

10 So this is -- this was kind of a pilot program.

11 As you remember, the current RRM statute was adopted by
12 Assembly Bill 1222, by Mr. Laird, staffed by Mr. Reyes,
13 who promised me he'd be here today but is not, and that
14 is the current language that we're dealing with in 1222,
15 which was when it was back in, obviously, in January
16 2008. That's when we began this process.

17 This is a 2006 mandate of the Commission,
18 mandated in 2006. In 2008 we began the process and
19 continued for two years.

20 This, we -- one of the reasons we like this as a
21 candidate, and I think, and it's good for you folks to
22 look at, because it's a very simple, straightforward,
23 low-dollar mandate.

24 My assumption is probably statewide the cost of
25 this is less than a million dollars an election, so it's

1 not big dollars. This is -- this is rounding errors for
2 the, you know, for the budget process.

3 We looked at it. It was surveyed to death by
4 both the counties on behalf -- you know, working with
5 Finance and separately by the Department of Finance, and
6 the responses were sent in most cases by the registrar of
7 voters.

8 Now, they do not have a signature that attests
9 to the fact that the registrar, you know, these are true
10 and correct. We were not doing that. I don't think --
11 very little has ever been done that in state government.

12 When the Law Enforcement Department sends their
13 number-of-cases statistics to the Department of Justice
14 or they send them to any other state agency, I don't
15 think they ever have to attest that these are true and
16 accurate, and the state represents those as accurate and
17 true facts.

18 And I think, you know, this hearsay thing is --
19 just seems like it's an overreach, you know, as it
20 relates to RRM's, because the RRM's essentially, you know,
21 essentially were designed to say we want to find some
22 way, particularly early on, in the front end, to see if
23 we can't reach out and get an agreement on something.

24 So the other thing is, is not only was this
25 survey over a two-year period, and I think all

1 58 counties or nearly all 58 counties responded at least
2 once, if not two or three times, and as I say, in terms
3 of the costs.

4 In addition, staff from the Department of
5 Finance actually went down to three counties and watched
6 them go through the process during an election and they
7 timed it.

8 I know in Sacramento County, as an example, they
9 went down, they watched it, they timed it by the clock.
10 Two minutes and 13 seconds. So that was kind of probably
11 in the middle of where counties are.

12 There happens to be one relatively -- or the
13 largest county, Los Angeles County, in this particular
14 case, they happen to have -- be able to do it in the
15 shortest amount of time.

16 Because of their size and complexity or
17 whatever, they developed some special electronic
18 methodologies and things that allow them to do that.

19 So I just wanted to kind of look at this and say
20 this is the first RRM we're looking at. You know, the
21 whole thing is based, when we talk about, you know,
22 general allocation formulas, and I think this was all
23 developed, and as I say, I wish Pedro was here to help us
24 so I'm not putting words in his mouth, because I worked
25 with Pedro when we drafted this back with the Laird

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1 Commission, you know, Special Committee on State Mandates
2 back in I think it was 2005, 2006.

3 And, you know, I think we were looking at the
4 kind of thing we typically do when locals and school
5 districts are working with the state to come up with ways
6 to look at costs or budget estimates and things that are
7 there.

8 And it seems to me that, you know, this -- the
9 staff, I know the attorneys have looked at it, and it
10 seems to me they have overreached on this.

11 And what I'm hoping, and the reason I am is, I'm
12 hoping that you will be looking at that and considering
13 that and saying, well, you know, if the language doesn't
14 mean that, maybe it should and -- or, you know, because
15 you are a quasi-judicial body, do you feel you're, you
16 know, totally restricted by the court decisions that were
17 pointed out relative to hearsay evidence.

18 Anyway, I just wanted to -- the County of
19 San Bernardino would have preferred to have a unit cost,
20 but because this is now year four in an effort to develop
21 that, they've said we've had enough, let's just move
22 forward, file the costs.

23 And then, you know, what's going to happen is,
24 after claims are going to file, the California State
25 Association of Counties, CSAC, will be filing a request

1 to provide an RRM for this program based on the claims
2 that are filed.

3 So this is not the end of this program, but I
4 think, you know, that's not the way this program is
5 supposed to work. It's supposed to be -- the design was
6 to do it before we go through this -- this claiming
7 process and have to have people going out, spending a lot
8 of time on programs and efforts, and then the Controller
9 spending a lot of time figuring out if the claim's right
10 or auditing those claims.

11 So anyway, I wanted to kind of put this one in
12 place because, as Ms. Shelton pointed out, this is the
13 first of a series of the four that were kind of
14 identified, and there's going to be another long series,
15 I think, of these that are going to be proposed.

16 So I just thought that this was a good
17 opportunity to give you a little background and then see
18 if there's any comments or discussions and where we go
19 from here.

20 But as I say, the County of San Bernardino has
21 basically leveled its frustration at this point and the
22 county election officials to say go ahead, please, and
23 adopt the actual costs.

24 But, you know, they will be back to revisit this
25 and there will be another filing request to amend the

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1 parameters and guidelines to include an RRM.

2 Thank you.

3 CHAIR DUCAY: Any questions of Mr. Burdick
4 before listening to Finance?

5 *(No response.)*

6 CHAIR DUCAY: Ms. Ferebee? Mr. Ward?

7 MS. FEREBEE: Thank you.

8 Donna Ferebee, Department of Finance.

9 On this particular mandate, the Department
10 supports actual cost as opposed to the proposed RRM, and
11 we support the final staff analysis recommendation and
12 urge you to adopt that.

13 Thank you.

14 CHAIR DUCAY: Are there any questions from the
15 members?

16 *(No response.)*

17 CHAIR DUCAY: Any further discussion before we
18 move to a motion?

19 *(No response.)*

20 MEMBER CHIVARO: I'll move the staff
21 recommendation.

22 MEMBER OLSEN: I'll second.

23 CHAIR DUCAY: We have a motion and a second to
24 adopt the staff recommendation.

25 Nancy, can you call the roll, please?

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1 MS. PATTON: Mm-hmm.

2 Mr. Alex?

3 MEMBER ALEX: Aye.

4 MS. PATTON: Mr. Chivaro?

5 MEMBER CHIVARO: Aye.

6 MS. PATTON: Mr. Lujano?

7 MEMBER LUJANO: Aye.

8 MS. PATTON: Ms. Olsen?

9 MEMBER OLSEN: Aye.

10 MS. PATTON: Mr. Saylor?

11 MEMBER SAYLOR: Aye.

12 MS. PATTON: Ms. Ducay?

13 CHAIR DUCAY: Aye.

14 Motion is carried. Thank you.

15 MR. BURDICK: Thank you very much.

16 MS. PATTON: Ms. Shelton will present Item 6, a
17 request to amend the parameters and guidelines to revise
18 the RRM for the Peace Officer Procedural Bill of Rights
19 Program.

20 MS. SHELTON: This item addresses a request made
21 by the City of Los Angeles to amend the parameters and
22 guidelines for the POBOR program.

23 The POBOR program provides a series of rights
24 and procedural safeguards to peace officers employed by
25 local agencies that are subject to investigation and

1 discipline.

2 Under the existing parameters and guidelines,
3 local agencies may claim reimbursement based on a unit
4 cost in the amount of \$37.25 per officer or on actual
5 costs to comply with the program.

6 The City requests that the Commission change the
7 existing unit cost from \$37 to \$426 per officer for all
8 reimbursable activities except for the administrative
9 appeal and only for the City of Los Angeles.

10 Staff finds that the City's request does not
11 comply with the requirements of Government Code section
12 17518.5. The proposal is not based on cost information
13 from a representative sample of eligible claimants and
14 does not consider the variation in costs among other
15 local agencies mandated by the state to comply with the
16 program.

17 Moreover, the City's suggestion that the
18 Commission should adopt a unit cost for each individual
19 local entity in the state contradicts the streamlined
20 class action test claim process established by the
21 Legislature to resolve disputes affecting multiple local
22 agencies.

23 Thus, staff recommends that the Commission deny
24 this request.

25 Will the parties and representatives please

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1 state your names for the record?

2 MR. BURDICK: Yes. Allan Burdick on behalf of
3 the Los Angeles Police Department and the City of
4 Los Angeles.

5 MS. GEANACOU: Good morning. Susan Geanacou,
6 G-e-a-n-a-c-o-u, for the Department of Finance.

7 MR. WARD: Randall Ward, Department of Finance.

8

9 CHAIR DUCAY: Mr. Burdick.

10 MR. BURDICK: Madam Chair, members, thank you
11 very much.

12 First, just a couple of corrections.

13 One is the State Controller's Office pointed out
14 that our calculations were really \$411 and some-odd
15 cents, and the City of Los Angeles believes that the
16 Controller's calculation is correct.

17 So the proposal is \$411 and some-odd cents for
18 the City of Los Angeles and the existing RRM would remain
19 for everybody else.

20 Secondly, you know, somehow Ms. Shelton and I
21 had somehow a misunderstanding. I have never proposed
22 that every agency or every agency should have its own
23 RRM. However, in some cases I may think that it would be
24 the best case for some counties where there are only
25 58 counties.

1 And sometimes if it was a mandate that led
2 itself to have 58 RRMs, because I think a little work at
3 the front end, as those came into the Controller's
4 Office, they would be able to say, as they index it with
5 an implicit price deflator, you know, we've got a number
6 for every county.

7 So I'm not saying I would preclude it, but I
8 think normally what I would look at is say that, you
9 know, typically as somebody at the table said to me
10 yesterday, one size does not fit all, which I would agree
11 with. I think Randy and I agree on this particular
12 matter, that most cases, you know, very often one size
13 really does not fit all.

14 I don't think that our new member would feel
15 that he and Los Angeles County very often have the same
16 costs and process for things, but I won't hold him to
17 that.

18 What I'd like to do is kind of walk through this
19 little handout here, the blue thing that talks about the
20 proposed RRM, and base my comments essentially on, you
21 know, the RRM. And I've used the current statutes.

22 And one of the things that was pointed out is
23 that LA did not consider the variations in costs. And I
24 think that that's absolutely wrong.

25 They did consider the variation of costs and

1 they took them into effect, and that is why they're
2 saying they need it. And I'll show you some figures
3 coming up that I got from the State Controller to show
4 you those variation of costs that were considered and
5 why. So I think that, you know, you've got to look at
6 them and decide whether you want to use them or not.

7 Secondly is the, you know, is the fact that, you
8 know, we're talking about general allocation formulas.
9 And, you know, I think that very often we're saying
10 that's not limited to a single number. That could be
11 multiple numbers.

12 And I think the staff agrees with that, because
13 very often in the county side -- I know CSAC had that in
14 mind -- we talk about very often we'd like to have an
15 urban, suburban and rural formula, because, you know,
16 very often there's a difference between those groupings,
17 and so that's normally kind of the minimum.

18 We look at areas and say yeah, we have three.
19 Sometimes you need to break them up differently.
20 Sometimes it may mean are they general off the charter,
21 other kind of factors to be considered. But anyway, so I
22 think, you know, the thing is that they consider it.

23 And secondly, because, you know, there are -- it
24 is two uniform allowances. It's one allowance for the --
25 for the City of Los Angeles and one allowance for

1 everything else.

2 And I think, you know, part of that is based on,
3 I think, you know, if you look at that, and I think the
4 intent of the people, you know, in looking at it and
5 dealing around the Capitol for the last 40 years is that
6 whenever we get into discussions on state and local, many
7 times the first thing people start looking for is those
8 three very large agencies in Southern California -- LA
9 County, LA City, and LA Unified School District -- to see
10 first whether or not they are different or more cost
11 related to those. I think they always get considered
12 separately.

13 Now, very often they don't get a separate cost,
14 but I think they're always looked at. I don't think -- I
15 think in the state of California, due to the cost impact
16 of that, if there's any cost sharing or relationship
17 between the state and locals, I think, you know, always
18 those three are looked at.

19 You may have other reasons to look at somebody
20 unique. I think in this particular case, I think the
21 City and County of San Francisco is unique, and I
22 could -- I may comment on that as well, because being a
23 city and county, you know, they're different than anybody
24 else. They have a very large patrol staff and they have
25 a very large jail staff and they have DA investigators

1 and others, and so they're -- as those two combined, you
2 know, I think it could be -- it could well be that if we
3 really took a look at this, that the City and County of
4 San Francisco may deserve its own separate factor as
5 well.

6 Secondly, you know, on the next page, you know,
7 as we turn, you know, the LA proposed RRM is based on
8 audited data. And in a minute we'll walk through that.

9 I brought the audited data I received from the
10 State Controller's Office, and I thank the State
11 Controller for making that available.

12 And I think the one thing about audited costs,
13 and this was the preference of the Commission when they
14 adopted the current RRM, and the Department of Finance at
15 that time, was to use audited data.

16 And I think that's a real disservice to local
17 government, because if you're using audited data, I think
18 at least you know that the data that's there and the
19 costs are there, yeah, those are good, but the other ones
20 are a lot of costs that are excluded, because the State
21 Controller would say, well, there's not sufficient
22 documentation, not this evidence and other things.

23 So once you file your claim, normally that's the
24 maximum you're going to get, and when you start getting
25 audited, it goes down.

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1 And so I think very often, you know, things may
2 not be in those costs that are really true to the actual
3 costs of carrying out that mandate.

4 So, you know, I think it does a little bit of a
5 disservice and, I mean, a significant disservice, when
6 you look at this later on and see some of the figures and
7 costs that were used and which the Commission adopted
8 this RRM.

9 I think the, you know, the other thing is that
10 the City of Los Angeles assumed, because you have another
11 request to amend your parameters and guidelines for this
12 mandate that was filed by CSAC, that that would be the
13 one to look at for a statewide program and cost.

14 The City of Los Angeles just wanted to make sure
15 that it got in there in case that happened or got
16 delayed, whatever, that theirs got considered.

17 And secondly, it's because they had such good
18 data that they were willing to accept, which I think is
19 below their actual costs, they thought this may be able
20 to move forward quicker.

21 Now, the other thing I might want to point out
22 for some of the members is POBOR is one of the
23 constitutionally allowable deferred programs. Costs for
24 this program have been deferred since 2005, which means
25 the state was allowed to defer it.

1 We're in year seven now. I don't know, the
2 state has yet to tell local government what does -- how
3 long can they defer something under those provisions.
4 Does that mean forever? Is there any other plan to pay
5 these POBOR claims that have been out there for seven
6 years?

7 That's a little editorial. I got a little
8 carried away. Sorry about that.

9 Secondly, I think, moving forward on that --

10 CHAIR DUCAY: I think that was directed at
11 Finance.

12 MR. BURDICK: Yeah. I apologize, Madam Chair,
13 for taking advantage of you and your . . .

14 Secondly, I think, is that the current RRM we do
15 not believe is an RRM. The City of Los Angeles or CSAC
16 or others that testified at that hearing objected to the
17 fact that, you know, that you'd have an RRM.

18 Now, in this particular case, this is a unique
19 one, not totally unique, but relatively unique, the first
20 under the statutory provision, which allows for actual
21 costs for an RRM.

22 So if it had been only an RRM and you could not
23 file actual costs, then it would have been totally
24 opposed by CSAC and the League, by both CSAC and the
25 League and the City of Los Angeles at that hearing, which

1 was in . . .

2 MS. SHELTON: '08.

3 MR. BURDICK: '08. Yeah. March of '08.

4 Objected to it and made those comments. So it's not new
5 or different. You know, the position has not changed
6 over the last years.

7 So it is a methodology. We do not believe that
8 it is reasonable. And I think later on, as you look at
9 it, you know, you'd have to scratch your head and say
10 you'd need remove the word "reasonable."

11 Secondly, as I pointed out a little bit earlier,
12 you know, the Commission is a quasi-judicial body. And,
13 you know, I'm not sure what "quasi" means. I'm not an
14 attorney. And I should have probably done a little more
15 research on that.

16 I know you are the exclusive body that makes
17 determinations over what is or what is not a mandate.
18 But it seems to me that you should have the latitude to
19 be able to do something other than find the court case or
20 something that requires you -- or look at something that
21 says -- something that says this really isn't reasonable,
22 this is not what should be intended.

23 The other thing, you know, I'd like to do is,
24 finally, I think everybody knows, but LAPD is a very
25 unique law enforcement agency. They have 9,963 sworn

1 positions authorized this year, substantially bigger than
2 the California Highway Patrol. You know, they have 21
3 essentially separate police stations -- they call them
4 area offices -- each with over 300 sworn officers in
5 almost all cases. Each of those is probably larger than
6 the vast majority of all of the other city police
7 departments that are out there.

8 They have four-hundred-plus million people they
9 serve in a highly urbanized, very complex area, and so
10 they have, you know, a very difficult area. So not only
11 is it large and complex, they have a difficult -- a very
12 difficult population that they serve.

13 Because of their structure and size and their 21
14 area offices and everything else, they have a very
15 multi-level process to go through as they go through the
16 POBOR process to consider these allegations that could
17 lead to discipline.

18 And so I think one of the things I was thinking
19 about is, as I was coming, is that this Commission a
20 number of years ago decided that school districts had a
21 more complex and bureaucratic process to consider and
22 adopt agendas than cities and counties. And it was based
23 on information provided by the San Diego Unified School
24 District.

25 So there is a unit cost for school districts of

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1 I think it's 40 or 45 minutes, I'm not sure which, for
2 each agenda item it takes to do that and 30 minutes for
3 cities and counties.

4 And that was based on the fact that the
5 Commission was convinced, you know, I believe, that the
6 schools' process is more complicated, and it's because, I
7 think, you know, they have all the school sites down
8 there that come up to the district or whatever there are,
9 they're a more fragmented organization, and so that led
10 to, you know, the Commission concluding that they should
11 have more levels and more time.

12 And I think that is exactly where LA is.
13 They're more complex, they're more spread out, I think,
14 as a direct comparison between the San Diego Unified
15 School District and most cities and counties in terms of
16 preparing the agendas for their legislative bodies.

17 So, you know, I think if you look at Los Angeles
18 and say it is, you know, to kind of sum that up, it's
19 just their activity, the number of complaints that are
20 filed. The Department of Justice only prints statewide
21 statistics, and the last one was in 2006, where they had
22 21,630, and so they don't know how many individuals.

23 LA normally has somewhere around between 3,300
24 to 4,000, and I think they actually should have more.
25 They've been doing a better job in reducing the number of

1 complaints. Those aren't the only -- citizen complaints
2 aren't the only thing that lead to POBOR, but they're a
3 significant contributor to POBOR.

4 So let me -- I'm going to very quickly go
5 through a couple of the charts I want you to look at. I
6 want you to take a look at the audited report.

7 I think I'll just pass on the LA organization
8 charts. These are just charts of LA to show you how
9 complex and big they are. I don't think you need to do
10 that, but if you want to look at that.

11 MEMBER ALEX: We can stipulate that --

12 MR. BURDICK: But I think you can stipulate
13 they're complex.

14 MEMBER ALEX: And maybe you can kind of get to
15 the --

16 MR. BURDICK: And I'm ready to sum up on this.
17 All right, Mr. Alex.

18 This is a very important issue for the City of
19 Los Angeles. We're talking about millions of dollars
20 here, so it's, you know, a year that may get paid at some
21 point.

22 So what I've done is I've given you four charts,
23 but I only really plan to talk about the first one.

24 I've provided the others so if you say, well,
25 how did you get to that number, you can get to it, the

1 very last one actually being the spreadsheet I got from
2 the State Controller's Office that shows all of the POBOR
3 audits they have conducted for them.

4 But I think that, you know, I just wanted you to
5 see this so you could see how I got to this, if you
6 wanted to do it, but I think you really only need to look
7 at the first chart, which shows the average cost per
8 officer for both fiscal years combined.

9 And what I did is I took the two years that were
10 kind of the most recent with the most -- with the most
11 audits and then I separated them by cities and counties,
12 so the cities are obviously in the red and the counties
13 are in the blue, and then I put the City and County of
14 San Francisco down at the bottom. As I mentioned
15 earlier, I think in this particular case they may need
16 their own separate RRM.

17 And so if you look at that and look at the city
18 side, and I think that's all we really need to look at,
19 is that the City of Palo Alto had the -- for those two
20 years had the largest average cost of \$603.19 per
21 officer. And the two years that were audited for the
22 City of Los Angeles for those two years had \$401.79. So
23 that was their average for those particular two years.

24 So you can see LA is not saying, hey, we're the
25 most, we're the highest. There could be others.

1 Now, I think the thing is for the City of
2 Los Angeles -- I mean the City of Palo Alto -- they had
3 two extremes. They had one over a thousand and one under
4 a hundred. And as a result, they ended up with 1200
5 bucks for the -- for the 12 -- 1200 for the two years.
6 Half is 600.

7 So, you know, in some cases, looking at that and
8 looking at it this way may not lend itself if the costs
9 are not, you know, kind of consistent over periods of
10 time, and so I think there needs to look at it.

11 But I think, as you can see in looking at this,
12 and many of these, and I should have noted them, but I
13 would imagine the majority of the two, both the counties
14 and the cities, were included as the figures used when
15 the RRM was developed, the current RRM.

16 And as you can see, with the spread of those
17 costs in there, to come up and say you should have one
18 RRM for all agencies, I don't think that ever was the
19 intent of people and I don't think that makes any sense
20 at all.

21 So with that I will -- I will end and be
22 available for comments after my good friends from the
23 Department of Finance let you know how I'm so misguided.

24 CHAIR DUCAY: Thank you, Mr. Burdick.

25 Ms. Geanacou? Mr. Ward?

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1 MS. GEANACOU: Good morning.

2 Susan Geanacou, Department of Finance.

3 This matter was continued from, I believe, the
4 October 2011 agenda at the request of the claimants.

5 To my knowledge, the Commission's
6 recommendation -- Commission staff's recommendation to
7 deny the analysis has not changed since that time period,
8 nor has the Department of Finance's opposition to the
9 recommendation to deny -- or excuse me -- we support the
10 recommendation to deny.

11 I know that wasn't clear. My apologies.

12 The reason why we continue to oppose the
13 proposed RRM that would be unique to Los Angeles is for
14 reasons very similar to those set forth by the Commission
15 staff.

16 The RRM would be unique to one claimant. For
17 that reason, we do not believe it meets the statutory
18 criteria for approval by the Commission.

19 The test claim process, as Camille commented, I
20 believe, in her introduction, is akin to a class action
21 process to be representative among claimants and not to
22 produce an individualized formula for each claimant. And
23 Finance does not believe the statute says their writ can
24 currently authorize the Commission to approve such a
25 methodology.

1 And lastly, as the analysis also points out, the
2 claimant, such as the City of Los Angeles, who perhaps
3 believed the current RRM significantly under-reimburses
4 them for their costs, has multiple options.

5 One is to continue to file using actual costs --
6 they're not precluded from doing that currently -- or
7 they can revisit and possibly amend the current
8 parameters and guidelines, particularly the RRM
9 component, if the data -- recent data reflects that the
10 current formula is no longer appropriate or adequate for
11 the claimants.

12 CHAIR DUCAY: Thank you.

13 MR. BURDICK: Can I make a brief comment?

14 Just a couple of quick things is that it is true
15 in this case, for this RRM, you can't do actual cost.
16 The City of Los Angeles has not been using an RRM,
17 obviously. They have been filing based on actual costs
18 and costs that they have incurred.

19 But I think, you know, the intent of this is to
20 have an RRM that would be used for everybody so that the
21 Controller doesn't have to go out, audit and we spend all
22 the time.

23 And these are not simple audits when they're
24 done and they take a lot of time. And I -- if you look
25 at that list of audits the Controller did, there are

1 about 40 of them, you know, I would bet there's
2 multi years of staff time spent on it, several multiple
3 years of staff time completing all of those audits, so --
4 and it's very expensive.

5 So I want to make it clear in this case that
6 yeah, they could, and they could still continue to do
7 that. What they would really like to do is to have us
8 say, okay, if -- you know, because we really haven't
9 gotten the merits of the details. I mean, I think I
10 have, but, you know, in this discussion, most of it's
11 been it doesn't qualify, so just kind of, you know, it's,
12 you know, it's not properly before you, in a sense,
13 because it isn't there.

14 But I think it's in everybody's best interest,
15 the state and the locals, to come up with a single one.

16 And the City of Los Angeles is -- would not
17 object to continuing this or combining it with the CSAC
18 one and having those both considered at the same time.

19 In this case, it got you before the CSAC one,
20 which they're happy to -- they're pleased that it was,
21 because it was -- which was one of their goals.

22 And I would think that this is a good issue for
23 you to consider, because it's going to be coming back to
24 you. And maybe the most appropriate thing might be is to
25 -- is to combine it with the CSAC one and look at it.

1 You know, I would hope you would look at that
2 and say that there's -- that there appears to be at least
3 some merit here to take a harder look at this.

4 And also particularly I would like you to just
5 focus on that question of, you know, if you are truly
6 unique, you know, is it -- can you have a separate
7 allocation formula.

8 MEMBER ALEX: Can I ask if, you know, there
9 obviously are times when the size of Los Angeles
10 increases costs, would you come here if it were the case
11 that your uniqueness and the size of Los Angeles resulted
12 in reduced cost?

13 MR. BURDICK: As I mentioned to you in the last
14 issue, the County of Los Angeles estimated cost for doing
15 the ID election was one dollar.

16 And if I was -- if this was a big-dollar mandate
17 instead of a little-dollar mandate, if we sat down to do
18 an RRM, I would doubt that the people from the Department
19 of Finance, looking at that number and saying, with the
20 number of the influence that had -- would have statewide,
21 whether they needed to have a separate RRM for the County
22 of Los Angeles.

23 I don't represent them and, you know, I mean, I
24 represent all counties, and so I'm not commenting
25 individually, but I think that was one of the issues that

1 was discussed going on as we went through and looking at
2 this is to have multiple ones.

3 At that time, the Finance staff -- and none of
4 them are here, so I -- you know, my feeling was they
5 wanted a single number, you know.

6 And I, you know, always felt we have another
7 election mandate that has to do with voter registration,
8 and there are about five or six factors, and most of
9 them -- and they're dollar amounts that get indexed. And
10 they're pretty much tied to the size of the jurisdiction.

11
12 So the County of Alpine, the County of Sierra
13 and Trinity, whatever, they get, like, \$3. Counties like
14 Yolo, Napa, they get, like, \$2. Counties like LA and
15 Sacramento and others get \$1.

16 So there is -- you know, we have done this, and
17 I'm not saying -- and that's my point, I think, is there
18 are cases where sometimes the larger agency -- and I
19 think there are cases -- probably some cases, the City of
20 Los Angeles may do things cheaper than others.

21 In this case, with the police department, with
22 21 separate police departments going through and going
23 all the way up -- the disciplinary all the way up to the
24 chief of police, in this particular case, it's more
25 costly.

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1 CHAIR DUCAY: Questions?

2 MEMBER OLSEN: This is a question, I think, for
3 Ms. Shelton.

4 Do we have a situation in the law or in the
5 regs, RRM's, where we could do a multiple RRM for a
6 program based on classes of counties or classes of cities
7 or classes of school districts or whatever it would be,
8 or does the RRM have to drive to only one number?

9 MS. SHELTON: I didn't catch the last phrase.

10 MEMBER OLSEN: Does the RRM have to drive to one
11 reimbursement number?

12 MS. SHELTON: No. In fact, there's nothing
13 precluding the Commission from adopting different RRM's
14 for one program. In fact, the Commission's done that
15 before this particular statute.

16 When the Commission had authority just to
17 include a unit cost in the parameters and guidelines
18 under the old law, there are programs where different
19 numbers were approved. And Mr. Burdick did mention one
20 of them where schools were given one number and counties
21 were given another number. So that's not precluded.

22 But the adoption of a number for one entity is
23 not consistent with the plain language of this process.

24 If you want one number, then you need to go to
25 the Controller's Office, work with the Controller's

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1 Office either through a time study, which was done on the
2 audit for the City of Los Angeles, you can do it that way
3 or have documentation or whatever works out in the
4 auditing process for one entity.

5 MR. BURDICK: Could I comment on that?

6 CHAIR DUCAY: Mm-hmm.

7 MR. BURDICK: For the City of Los Angeles, they
8 did a time study, it was approved and the cost by;
9 however, a time study needs to be done every three years.
10 An RRM is good for ten years and it's indexed. So
11 that's one of the things.

12 And secondly is when they come back out to
13 audit, the Controller can reopen that and look at that
14 and decide whether or not that is still there.

15 So it still leaves the City of Los Angeles, you
16 know, subject to scrutiny, and it also -- I mean, and
17 it's a no-win process, because if Los Angeles picks that
18 number and says -- all right, let's just say it's \$100
19 and make it easy, so it's \$100, and so you come out and
20 look at it and the Controller audits it, and they come
21 back and say, oh, it turns out it was really \$2, you
22 know, since you did the original time study, you know,
23 three years later it's \$2, your costs have doubled.

24 So LA is out of luck, because you can't increase
25 the amount claimed. It's stuck at the \$1. The audit

1 only drives it down.

2 On the other hand, you know, if they came out
3 and they looked at it and said, oh, your costs are
4 80 cents for the claims that were filed, okay, then they
5 can go back in and say, all right, we're going to reduce
6 those by 20 percent.

7 So it's one of the reasons why the RRM is so --
8 and, you know, why the local agencies support it so much.

9 It doesn't have to be ten years. That's the general
10 rule. It can be more than ten years. It could be less
11 than ten years.

12 But it also prevents, you know, you can go in,
13 you can do it and say, hey, that's what we're going to
14 get, we agree to it, you know, and we feel comfortable
15 with it.

16 It could be win or lose either way. Hopefully
17 it's going to be a very accurate number, the costs will
18 not vary significantly. And typically you wouldn't
19 develop an RRM for programs that the costs are going to
20 vary significantly.

21 CHAIR DUCAY: Mr. Saylor?

22 MEMBER SAYLOR: So it is reasonable for us to
23 have multiple RRMs in a single mandate?

24 MS. SHELTON: It can be done. Yeah.

25 MEMBER SAYLOR: It can be done. So that part of

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1 the argument, if we approve the recommendation that we
2 have from our staff today, we're not making a decision
3 that there would never be more than one RRM?

4 MS. SHELTON: No. In fact, that's in the
5 analysis. So if you adopt the analysis, that language is
6 a recognition in there that it's been done and that it
7 can still be done.

8 MEMBER SAYLOR: Okay. So I'm struck by the wide
9 array of costs that have been reported from the various
10 jurisdictions in this case.

11 One part of the conundrum for me is the
12 procedural requirement that a jurisdiction imposes upon
13 itself, that resulting cost when a mandate hits them. It
14 may not be reasonable for reimbursement. Do you follow
15 what I'm saying?

16 If LA County -- if the City of LA has multiple
17 procedural steps that they have adopted themselves, then
18 the state may not find it reasonable to reimburse them --

19 MS. SHELTON: Right.

20 MEMBER SAYLOR: -- for each aspect of that
21 procedure.

22 MS. SHELTON: And that's correct. And if --
23 this is -- this program has a lot of history. I'm not
24 sure that that RRM adopted by the Commission in 2008
25 reasonably represents the costs incurred by counties and

1 cities in the case.

2 In fact, you can make the argument that this
3 particular program is not even suitable for an RRM
4 because it's really driven by investigations.

5 I mean, you can certainly have a rampart-type
6 situation --

7 MEMBER SAYLOR: Right.

8 MS. SHELTON: -- which is going to, you know,
9 drive costs up.

10 MEMBER SAYLOR: A single incident could drive
11 Alpine County out of business.

12 MS. SHELTON: Right.

13 The other issue, too, when the Commission adopts
14 parameters and guidelines originally, then at that point
15 the claimant community can come forward and identify
16 activities that may not be expressed in a statute but
17 they believe are reasonably necessary to include for
18 reimbursement.

19 Offhand, I don't remember what this particular
20 set of parameters and guidelines did. I think we had a
21 lot of discussion. There were many hearings, a lot of
22 evidence produced at that point. It went through a
23 reconsideration, it came back, so that discussion is
24 already had.

25 The Commission on its own doesn't have the

1 motion -- have the authority on its own motion to change
2 parameters and guidelines. It really is driven by
3 parties. And so they are what they are until somebody
4 requests that they be changed.

5 So this is what Mr. Burdick is suggesting with
6 the City of Los Angeles or wanting to change that
7 \$37 number.

8 I was going to ask, though, you know, your
9 proposal to consolidate this particular item with the one
10 that is pending, I have not looked at the request that is
11 pending that's made by CSAC.

12 And correct me if I'm wrong, is it a proposal
13 for one RRM for the entire state?

14 MR. BURDICK: Yeah. All I did in that one --
15 and I filed that, and -- but I filed it for discussion
16 purposes and mainly to get it filed.

17 I just took the same agencies that the
18 Commission adopted and based on audit agencies, and
19 again, which I don't necessarily support using audited
20 reports, and I updated those to reflect the audits
21 that -- some of those were redone by the State
22 Controller's Office, which, once again, local government
23 is very pleased that the Controller did.

24 And so that number went from about \$40 to \$180
25 just on the fact that the Controller was going back and

1 took a second look and said, oops, you know, we were a
2 little too harsh.

3 And so that number -- so if it had been using --
4 adopting the same agency, same methodology back in March
5 of 2008, then that number would have been \$180.

6 So CSAC filed on the basis that hopefully that
7 would start the discussion and we'd have something and
8 then we could figure out what the methodology is.

9 I think what the preference for local government
10 is, is to say let's sit down and figure out what's the
11 best methodology, how do we approach this, how do we want
12 to do that, what do we survey, what costs and things, and
13 then do that.

14 We don't want to predispose necessarily that
15 this is, you know, we have the answer as to methodology.

16 This was to get it on the table and to preserve the
17 fiscal years in which we can go back and file the claims.

18

19 Now, in the City of Los Angeles case, as an
20 example, this RRM, originally the City of Los Angeles,
21 the years audited, filed about \$15 million for these
22 multiple years. The State Controller allowed \$500,000.

23 The State Controller went back, re-examined it,
24 came back; they then approved nearly \$20 million. So the
25 State Controller had agreed that the Los Angeles costs

1 were about 40 percent of what they had claimed.

2 Now, the 60 percent that was not supported is --
3 the majority of those are costs which there is a legal
4 dispute about whether those activities are eligible or
5 not.

6 And the City of Los Angeles will be filing an
7 incorrect reduction claim saying that's wrong so they can
8 get through the administrative process to go to court,
9 because we know this Commission is going to deny it.

10 But unfortunately, in order for it to get to the
11 court and say how do you interpret this, we have to go
12 through filing an incorrect reduction claim. So that's
13 the situation.

14 The City of Los Angeles did have probably
15 \$5 million or so, or 10 percent of those costs, which,
16 you know, probably weren't documented well enough, or
17 they may have slightly overreached and said, you know, we
18 do this and we think this is mandated, and the Controller
19 came in and said, well, that's consistent with it, but
20 it's not really necessary -- absolutely necessary or
21 mandated; it's an extra step that you do.

22 It's kind of like sometimes we have election
23 mandates where they send stuff out to voters and the cost
24 of certain activities they're doing and the Registrar
25 puts an extra page in there to help the voter out, and

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1 then the Controller will come in and say, well, you
2 didn't have to do that, and that, you know, you know,
3 it's consistent and everything, but it wasn't mandated.
4 And so, you know, you overreach and so they deduct it.
5 So it wasn't somebody trying to cheat or anything; it was
6 just the way you performed it.

7 And the Controller went in and said -- and they
8 were right. I mean, most of those cases, the locals
9 don't dispute the Controller wasn't right or not; it's
10 just normally when somebody does something, like an
11 election official or a police officer or whatever, they
12 have a process and a methodology, they adopted that to
13 comply with the mandate.

14 In some cases, if you look at it, you say, well,
15 you didn't actually have to add that step in there. You
16 added an extra step, and that's not really reimbursable.

17 It was nice you did it, but the state doesn't have to
18 pay for that, because what we're telling you to do is to
19 do it really totally to the mandate and in a
20 cost-efficient manner.

21 CHAIR DUCAY: Thank you.

22 Any other questions?

23 Camille?

24 MS. SHELTON: I would not recommend that we
25 consolidate this particular item with the other ones

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1 because the proposals are very different. They're going
2 to raise different issues of law. And I would recommend
3 that the Commission rule on the analysis that's before
4 you.

5 CHAIR DUCAY: Thank you.

6 Any other questions?

7 *(No response.)*

8 CHAIR DUCAY: Do we have a motion on this
9 Item No. 6?

10 MEMBER CHIVARO: I'll move to accept the staff
11 recommendation.

12 CHAIR DUCAY: I have a motion to accept staff
13 recommendation. Do I have a second?

14 MEMBER OLSEN: I'll second.

15 MEMBER LUJANO: Second.

16 CHAIR DUCAY: We have a motion and a second.
17 Nancy, will you call the roll?

18 MS. PATTON: Mr. Alex?

19 MEMBER ALEX: Aye.

20 MS. PATTON: Mr. Chivaro?

21 MEMBER CHIVARO: Aye.

22 MS. PATTON: Mr. Lujano?

23 MEMBER LUJANO: Aye.

24 MS. PATTON: Ms. Olsen?

25 MEMBER OLSEN: Aye.

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1 MS. PATTON: Mr. Saylor?

2 MEMBER SAYLOR: No.

3 MS. PATTON: Ms. Ducay?

4 CHAIR DUCAY: Aye.

5 Motion carried. Thank you.

6 MR. BURDICK: Thank you very much.

7 And I'd also like to particularly thank
8 Member Lujano for allowing this to be continued or moving
9 to continue it and the other members that supported that.
10 Thank you very much.

11 CHAIR DUCAY: Thank you.

12 Moving on to Item 10? Is that right?

13 MS. PATTON: That's right.

14 CHAIR DUCAY: Item 10, we have no SB 1033
15 applications.

16 Item 11 is our legislative update. And I do
17 have one update to report that we issued a couple weeks
18 ago.

19 AB 2028 was amended yesterday and it removed all
20 the provisions that had anything to do with mandates, so
21 it no longer affects us.

22 And the next item is the Chief Legal Counsel
23 report.

24 MS. SHELTON: Just an update from our last
25 hearing. The water permit case from San Diego has been

1 appealed to the Third District Court of Appeal, and
2 that's a new filing with no hearing date scheduled at
3 this point.

4 And then, as I reflected on this chart, we do
5 have a hearing on June 1st for the graduation
6 requirements litigation.

7 CHAIR DUCAY: Okay.

8 MS. PATTON: Our final item is the Acting
9 Executive Director report.

10 I have two updates.

11 We've had a couple additional test claims
12 withdrawn, so we now have 40 pending test claims.

13 And I wanted to let you know that on March 13th
14 the Assembly Budget Subcommittee No. 4 approved our
15 budget on consent, but they have quite a few things to
16 say about the mandate process.

17 CHAIR DUCAY: Don't they always?

18 MS. PATTON: We'll be talking with them further.

19 CHAIR DUCAY: Okay. Is there any public comment
20 before we go into closed session?

21 *(No response.)*

22 CHAIR DUCAY: Seeing none, we will recess into
23 closed executive session.

24 The Commission will meet in closed executive
25 session pursuant to Government Code section 11126(e) to

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1 confer and receive advice from legal counsel for
2 consideration and action, as necessary and appropriate,
3 upon the pending litigation listed on the published
4 notice and agenda, and to confer and receive advice from
5 legal counsel regarding potential litigation.

6 The Commission will also confer on personnel
7 matters pursuant to Government Code section 11126,
8 subdivision (a)(1).

9 We will reconvene in open session in
10 approximately one hour. Thank you.

11 *(The Commission met in closed executive session*
12 *from 11:49 a.m. to 12:54 p.m.)*

13 CHAIR DUCAY: The Commission on State Mandates
14 meeting for March the 23rd, 2012, coming back from closed
15 session.

16 The Commission met in closed executive session
17 pursuant to Government Code section 11126(e)(2) to
18 confer with and receive advice from legal counsel for
19 consideration and action, as necessary and appropriate,
20 upon the pending litigation listed on the published
21 notice and agenda, and to confer with and receive advice
22 from legal counsel regarding potential litigation.

23 The Commission also met in closed session
24 pursuant to Government Code section 11126,
25 subdivision (a)(1), to confer on personnel matters.

REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 2nd day of April, 2012.

Carole W. Browne
California CSR #7351
Registered Professional Reporter