

MINUTES

COMMISSION ON STATE MANDATES

Department of Social Services Building
744 P Street, First Floor, Auditorium
Sacramento, California
March 30, 2005

- Present: Chairperson Anne Sheehan
Representative of the Director of the Department of Finance
Member Nicholas Smith
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Jan Boel
Representative of the Director of the Office of Planning and Research
- Vacant: Local Elected Officials (2)
Public Member

CALL TO ORDER AND ROLL CALL

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

APPROVAL OF MINUTES

Item 1 January 27, 2005

Upon motion by Member Boel and second by Member Lujano, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

Item 11 *Differential Pay and Reemployment*, 99-TC-02
Palmdale School District, Claimant
Education Code Sections 44977 and 44978.1
Statutes 1998, Chapter 30 (SB 1019)

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING

Item 12 Implementation of Statutes 2004, Chapter 890 (AB 2856)
Proposed Amendments to California Code of Regulations, Title 2,
Chapter 2.5, Article 1. General, Article 3. Test Claims, Article 4.
Mandates Recognized by the Legislature, Article 7. Hearings, and
Article 8.5. Forms

Member Boel moved for adoption of the consent calendar, which consisted of items 11 and 12. With a second by Member Lujano, the consent calendar was unanimously adopted.

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

Paula Higashi, Executive Director, swore in the parties and witnesses intending to testify before the Commission.

- Item 2 Executive Director’s Decision that section 1188.4 of the Commission’s Regulations does not apply to the reconsideration of the *Regional Housing Needs Determination: Councils of Governments* decision (Items 5-6 below). Association of Bay Area Governments, Appellant

Eric Feller, Commission Counsel, presented this item. He stated that the Association of Bay Area Governments appeals the Executive Director’s decision that section 1188.4 of the Commission’s regulations does not apply to the reconsideration of the decision in *Regional Housing Needs Determination: Councils of Governments*, arguing that its application is necessary to secure procedural safeguards and due process for the reconsideration.

Mr. Feller noted that staff complied with proper notice and due process procedures on the *Regional Housing Needs Determination: Councils of Governments* reconsideration. He indicated that if the Commission were to apply section 1188.4 to this matter, it could conflict with the directive in SB 1102 to reconsider the original Board of Control decision. Section 1188.4 requires five affirmative commissioner votes to overturn a prior decision. This five-vote requirement is not found in statute.

Staff found that section 1188.4 does not apply to this reconsideration because, by its own terms, it does not apply to prior decisions made before July 1998, the operative date of the regulation, or to decisions more than 30 days old. More importantly, the section only applies to reconsiderations requested by a party or a commissioner, not to court-ordered reconsiderations. Therefore, staff found the same rationale exists for not applying it to legislative reconsiderations and recommended that the Commission deny the appeal.

Parties were represented as follows: Kenneth Moy, on behalf of the appellant.

Mr. Moy disagreed with staff’s conclusion, stating that it was unfair for the five-vote requirement not to be applied to legislative reconsiderations. He urged the Commission to impose the requirements of section 1188.4 in this matter.

Mr. Feller noted that while Mr. Moy urged the five-vote requirement of section 1188.4 to apply, he did not urge the other requirements. Mr. Feller stated that the regulation could not thwart the intent of the Legislature in SB 1102, which was enacted notwithstanding any other provision of law.

Member Smith and Member Boel asked clarifying questions regarding the regulation, to which Mr. Feller responded. Regarding Member Boel’s question about the number of currently appointed Commission members, Paul Starkey, Chief Legal Counsel, responded that under the regulations, the number of appointed members establishes the quorum.

Member Boel made a motion to deny the appeal, which was seconded by Member Smith. The motion carried unanimously.

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

RECONSIDERATION OF TEST CLAIM DECISIONS DIRECTED BY THE LEGISLATURE AND PROPOSED STATEMENTS OF DECISION

- Item 3 *Regional Housing Needs Determination*, 04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04
Statutes 1980, Chapter 1143
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Legislature requested the reconsideration of this matter in SB 1102.

Because cities and counties have fee authority in Government Code sections 65104 and 65584.1, staff found that the test claim legislation did not impose costs mandated by the state on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556. Staff recommended that the Commission adopt the staff analysis, which denies the Board of Control decisions (claim numbers 3759, 3760, and 3916) effective July 1, 2004.

Parties were represented as follows: Betsy Strauss, with the League of California Cities; Leonard Kaye, on behalf of the County of Los Angeles; Annette Chinn, with Cost Recovery Systems; and Susan Geanacou, with the Department of Finance.

Ms. Strauss argued that although Government Code sections 65104 and 65584.1 provide fee authority, they do not provide sufficient legal authority to actually impose the fees. She explained that they were general authority statutes to impose fees on developers for the work of the city's planning agencies. She clarified her concern that it was not possible in many cases to actually spread the mandate's costs, or quantify them in a way that is legally accurate to the developers. Therefore, she argued that the authority really cannot be used, and thus, should not be a valid basis for denying the matter.

Chairperson Sheehan asked what steps the cities had taken to impose the fees. Ms. Strauss responded that she did not know of a good example.

Mr. Kaye stated that counties did not have unfettered discretion to impose fees. He noted staff's reliance on the 1997 *Connell* case to support its position, which he believed implied that there is both a service provider and service user in this matter. Mr. Kaye argued, however, that in many communities, there are no builders or developers to charge, and therefore, there is insufficient fee authority.

As an example, Mr. Kaye described that in the case of the *Sudden Infant Death Syndrome* program, the court ruled that it was impractical and impossible to implement the firefighter fees. Though he acknowledged the situations were different, he maintained that they could not just impose a fee if there was no service end user to impose the fee upon.

Chairperson Sheehan asked for clarification about the *Connell* decision. Mr. Kaye responded that unlike this matter, there was clearly someone to charge in the *Connell* case.

Ms. Geanacou stated that she had nothing further to add to her written comments, which were consistent with the staff analysis.

After being sworn in by Ms. Higashi, Ms. Chinn indicated that prior to becoming a consultant, she worked in the area of developer impact fees. Because it was an area that local governments could not be reimbursed for, she stated that they were not allowed to include the costs of housing elements in developer fees. In addition, Ms. Chinn asked the Commission to consider the amount of land available for development. She noted that in cities with growth potential, the money could be recovered, but in those cities that are already overbuilt, there was no one to impose the fees upon.

Mr. Feller stated that, under the reasoning of *Connel*, local governments have legal authority to impose the fees; that controls.

Member Smith commented that the State Controller did not agree with the policy behind the legislative intent to pass along fees for a state-mandated program to developers and ultimately to homebuyers. Acknowledging that the Commission was not a policy body, he indicated that they had questions regarding the ability of local governments to pass along fees to a relatively small segment of society. Therefore, he stated his intent to abstain from the item because the Controller needed more information.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

Item 4 Proposed Statement of Decision: *Regional Housing Needs Determination*,
04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04
See Above

Eric Feller, Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision. He also recommended that staff be allowed to make minor changes, including those to reflect the hearing testimony and vote count, before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

Item 5 *Regional Housing Needs Determination: Councils of Governments*,
04-RL-3929-05
Statutes 1980, Chapter 1143
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Legislature requested the reconsideration of this matter in SB 1102.

Staff found that councils of governments are not eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 of the California Constitution. As an alternative ground for dismissal, staff also found that the test claim legislation did not impose costs mandated by the state on councils of governments within the meaning of article XIII B, section 6 and Government Code section 17556 because Government Code section 65584.1 provides councils of governments with fee authority. Therefore, staff recommended that the Commission adopt the staff analysis, which denies Board of Control claim number 3929, effective July 1, 2004.

Parties were represented as follows: Scott Haggerty and Rose Jacobs Gibson, on behalf of the Association of Bay Area Governments; Karen Tachiki and Lynn Harris, with the Southern California Association of Governments; Rusty Selix, with the Association of Councils of Governments; and Susan Geanacou, with the Department of Finance.

Mr. Haggerty noted that the Association of Bay Area Governments was strictly a membership organization and that its revenues come directly from its membership fees, which come from proceeds of taxes. Noting Commission staff's position that councils of governments must be treated like redevelopment agencies because they do not have the power to tax, he argued that unlike redevelopment agencies, the Association of Bay Area Governments had no dedicated source of revenue to perform the housing needs mandate.

Mr. Haggerty felt it was absurd for the state to refuse to fund the Association of Bay Area Governments for the mandate because it had no power to tax. Although councils of government have the power to impose fees, he asserted that the solution was untested because of questions about the legality of the fee, and also impractical because of the obstacles to implementing the fee.

As a membership organization, Mr. Haggerty explained that a general assembly and an executive board govern the Association of Bay Area Governments. He stated that the board represents its members on issues such as the imposition of fees and would not vote to tax themselves to fund a state mandate. Moreover, he indicated that even if a majority of the membership voted to impose the fee, there would be problems in collecting the fee. Mr. Haggerty urged the Commission to affirm the prior Board of Control decision.

Ms. Gibson provided background information about the Association of Bay Area Governments and the Bay Area's local housing needs. She asserted that if the Association of Bay Area Governments were not funded for this program, local funds would not be available. She noted that without councils of government, the state would be responsible for addressing housing needs. Thus, to ensure continued success in implementing the mandate, she stated that councils of governments need state funding.

Further, Ms. Gibson noted that it was bad policy to fund housing needs with fees passed on to developers, which ultimately increases the cost of housing. She urged the Commission to uphold the prior Board of Control decision.

Ms. Tachiki provided background information about the Southern California Association of Governments. As to the issue of eligibility, she believed that staff's recommendation was based on a very strained interpretation of the definition of "local agency," and argued that there was nothing in statute that requires that all powers be common in the listing of agencies. She added that the definition of local agency includes other political subdivisions of the state, in which joint powers agencies would fit.

Regarding the ability to impose fees, Ms. Tachiki noted that councils of governments were established solely by agreement of their agencies. Thus, unless their joint powers agreements are amended, they do not have authority to levy the fees. She asserted that the authority provided in the Government Code cannot force councils of government to amend their agreements. She added that under the statute that establishes and provides the parameters for establishing a joint powers authority, the Legislature states that only those powers provided for by agreement can be exercised. Therefore, Ms. Tachiki maintained that councils of government did not have the

ability to impose fees.

Ms. Geanacou had nothing further to add to her written comments, which were consistent with the staff analysis.

Mr. Selix submitted that all councils of governments view this mandate as an unfunded mandate. He asserted that unlike local governments, there was no ability to collect a fee because no one comes before councils of governments as an applicant. He felt that the existing funding scheme was inadequate to carry out the mandate, and thus, the matter would end up in court.

As to the eligibility issue, Mr. Feller responded that based on the *Bell Community Redevelopment Agency v. Woolsey* case, staff found that the only relevant authority for eligibility is the power to tax. Because councils of governments do not have this power, he maintained that they were not eligible claimants. Furthermore, he indicated that the Legislature purposely removed redevelopment agencies and joint powers agencies from the definition of eligible claimants and the statutory scheme. Regarding the imposition of the fee, Mr. Feller maintained that it was the legal authority that was relevant rather than the practical implications.

Member Smith stated that the Controller wished to consider the two issues – overall eligibility of councils of government, versus specific eligibility for this mandate – separately. Mr. Starkey stated that a motion was necessary for the procedure.

Member Smith made a motion to take the two rationales separately and vote first on whether councils of governments are eligible claimants for purposes of mandate reimbursement under article XIII B, section 6; and second, whether the test claim legislation imposes costs mandated by the state on councils of government for the *Regional Housing Needs Determination: Councils of Governments* program.

Member Boel requested Mr. Feller's comments as to the motion. Mr. Feller responded that the Commission could take the action. However, he recommended that the proposed Statement of Decision be taken back if the votes were different so that the rationale for the bifurcation could be included.

Mr. Starkey added that it was acceptable to separate the two issues, and noted that the current staff recommendation addresses both issues as separate grounds for denial. He stated that the Commission needed to vote on the motion to separate the issues.

After some discussion about the issues, Member Lujano seconded Member Smith's motion to divide the issues. The motion failed 2-2, with Member Boel and Chairperson Sheehan voting "No."

Member Smith stated the Controller's belief that until further legislative guidance is provided, there may be instances where councils of governments are eligible claimants. They did not believe that courts had specifically addressed the issue. He stated that they disagreed with the policy and felt that there would be considerable challenges for councils of governments to comply with the legislation. Without enough facts, Member Smith stated his intent to abstain from the item.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

- Item 6 Proposed Statement of Decision: *Regional Housing Needs Determination: Councils of Governments*, 04-RL-3929-05
See Above

Eric Feller, Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision. He also recommended that staff be allowed to make minor changes, including those to reflect the hearing testimony and vote count, before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

Chairperson Sheehan commented that this issue would resurface, and thus, she encouraged discussion with the Legislature because of all the policy issues involved.

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

REMAND OF TEST CLAIM DECISION DIRECTED BY THE COURT AND PROPOSED STATEMENT OF DECISION

- Item 7 *School Bus Safety II*, 97-TC-22 (Peremptory Writ of Mandamus from the Superior Court, *Department of Finance v. Commission on State Mandates* (02CS00994))
Education Code Sections 38048 [Renumbered 39831.5], 39831.3, and 39831.5,
Vehicle Code Section 22112
Statutes 1994, Chapter 831 (SB 2019)
Statutes 1996, Chapter 277 (SB 1562)
Statutes 1997, Chapter 739 (AB 1297)

Katherine Tokarski, Commission Counsel, presented this item. She stated that the Clovis Unified School District submitted a test claim in 1997 alleging a reimbursable state mandate for school districts to perform new activities by instructing pupils and informing parents of school bus safety procedures. The Commission's Statement of Decision, adopted July 29, 1999, found that the test claim legislation imposed reimbursable state-mandated activities.

Ms. Tokarski indicated that the Department of Finance challenged the decision in the Sacramento County Superior Court. The court found that the test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary, and left one issue for remand. Thus, the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act, or any other federal law, requires school districts to transport any students; and if so, whether the test claim statutes mandate a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

Staff concluded that although federal law may require transportation of disabled children under certain circumstances, the law does not require school districts to provide a school bus transportation program. Therefore, pursuant to the court decision and article XIII B, section 6 of the California Constitution, staff found that the *School Bus Safety II* test claim statutes do not

impose a reimbursable state-mandate program. Staff recommended that the Commission adopt the final staff analysis, which denies the claim.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; and Susan Geanacou, with the Department of Finance.

Mr. Petersen made no further arguments.

Ms. Geanacou supported the staff analysis.

Member Boel made a motion to adopt the staff analysis, which was seconded by Member Lujano. The motion carried unanimously.

Item 8 Proposed Statement of Decision: *School Bus Safety II, 97-TC-22*
See above

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision to adopt the staff recommendation on the remanded test claim. She indicated that minor changes, including those to reflect the hearing testimony and vote count, would be included before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried unanimously.

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 9 *False Reports of Police Misconduct, 00-TC-26*
County of San Bernardino, Claimant
Penal Section 148.6, subdivisions (a)(2) and (a)(3)
Statutes 1995, Chapter 590 (AB 1732)
Statutes 2000, Chapter 289 (SB 2133)

Nancy Patton, Assistant Executive Director, presented this item. She stated that the Commission adopted the Statement of Decision for the *False Reports of Police Misconduct* on February 20, 2004, which found that any new law enforcement agency accepting an allegation of misconduct against a peace officer must have the complainant read and sign an information advisory informing the complainant that it is a misdemeanor to knowingly file a false complaint against a peace officer. The test claim legislation also requires the advisory to be made available in multiple languages.

Ms. Patton noted that staff deleted two activities from the proposed parameters and guidelines: 1) training, and 2) interviewing the complainant and addressing questions or concerns. She explained that these activities were not identified in the Statement of Decision and were not found to be reasonably necessary to comply with the mandate. Staff also clarified the reimbursement periods and reduced the proposed uniform time allowance to reflect the deleted activities.

Staff recommended that the Commission adopt staff's proposed parameters and guidelines.

Parties were represented as follows: Bonnie Ter Keurst, on behalf of the claimant; and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst stated that at the hearing to adopt the Statement of Decision, she raised issues regarding the two activities that staff proposed for deletion. Her concern at the time was that the decision would eliminate activities that would be reasonably necessary to accomplish the intent of law because it included a statement that said, “The Commission denies any remaining alleged activities or costs.” Now at the parameters and guidelines phase, this in fact was the problem – the intent of law versus exact wording.

As to the issue of training, Ms. Ter Keurst recognized that original training already took place but she argued that there are new employees and possible changes in procedures that could involve training. She asserted that while staff believes any training costs would be minimal, it still translated into costs for counties. Thus, she recommended that the Commission approve one-time training per employee that actually performs the reimbursable activities. Further, Ms. Ter Keurst disagreed with staff’s conclusion as to the second issue of interviewing complainants and addressing questions or concerns, asserting that the counties must do what is reasonable to provide the service to the public. She suggested that the Commission include the activities in the parameters and guidelines.

Ms. Ter Keurst also disagreed with staff’s proposed uniform time allowance of two minutes because she felt that staff could not take the county’s time study and make their own assumptions. She asserted that the county cannot provide the service to complainants within two minutes. Lastly, she suggested a technical modification to the period of reimbursement section.

Ms. Patton indicated that the two activities the claimant was requesting were specifically denied in the Commission’s Statement of Decision. In fact, she noted that as the legislation went through the process, the bill was amended to specifically delete those activities. As to the issue of the uniform cost allowance, she maintained that the claimant proposed two minutes for the activity of handing the form to the complainant. She explained that staff simply reduced the minutes from the time study that corresponded with the deleted activities.

Ms. Ter Keurst responded that eliminating both ends of the time study was inappropriate. She felt that if the interaction before and after handing the form to the complainant was not going to be part of the mandate, then the time it takes to complete the actual mandate must be readdressed.

Ms. Tokarski stated that the test claim legislation did not newly allow for people to complain about peace officer misconduct. She maintained that taking the complaint itself had nothing to do with the Penal Code section 148.6 activity of providing the complainant with information about the possibility of misdemeanor charges in the event of a false complaint.

Ms. Geanacou supported the staff analysis.

Member Boel made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried unanimously.

- Item 10 *Integrated Waste Management, 00-TC-07*
Santa Monica and Lake Tahoe Community College Districts,
Co-Claimants
Public Resources Code Sections 40148, 40196.3, 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1999, Chapter 764 (AB 75)
Statutes 1992, Chapter 1116 (AB 3521)
State Agency Model Integrated Waste Management Plan (February 1999)

Eric Feller, Commission Counsel, presented the proposed parameters and guidelines for this item. He stated that the primary issue as raised by the Integrated Waste Management Board was whether reduced disposal costs should count as offsetting savings and calculating reimbursement claims. He indicated that the Board would have these savings subtracted from each claim.

Staff found that the offsetting savings for reduced disposal costs cannot be counted against claims because there was no mandate for disposal at issue. Rather, the focus of the reimbursable activities was diversion of solid waste via activities listed in the Statement of Decision and the proposed parameters and guidelines. Therefore, because there was no mandate for diversion or disposal upon which to calculate savings before the test claim statute, Mr. Feller indicated that there could be no offsetting savings for those costs. He explained that the offsetting revenues in this program are those from the sale of recyclable materials, as directed in accordance with the Public Contract Code and a student center fee, if applicable.

Staff recommended that the Commission adopt the staff's proposed parameters and guidelines.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; Deborah Borzelleri, Trevor O'Shaughnessy, Phil Morales, and Eddie Fox, with the Integrated Waste Management Board; and Susan Geanacou, with the Department of Finance.

Ms. Borzelleri stated that at the hearing on the Statement of Decision, the Board provided information regarding significant cost savings that could be realized by implementing diversion programs as required by the test claim statutes. She also stated that the Board experienced significant cost savings through local government implementation of diversion programs. She argued that while the Commission's regulations provide that all proposed parameters and guidelines must allow for any offsetting savings realized in the same program, she felt that staff summarily dismissed the information that the Board brought forward.

Ms. Borzelleri disagreed with the staff opinion. She discussed the relationship between disposal and diversion, arguing that increased diversion directly results in disposal reduction, meaning that any diversion will directly result in reduced disposal and reduced costs. She submitted that a rough calculation of actual diversion reported by 117 community colleges and district offices in 2003 indicated an aggregate cost savings of almost \$2 million as a result of the diversion programs.

Moreover, Ms. Borzelleri noted that the Board submitted a proposed cost savings worksheet that claimants could use as a tool to identify costs and the commensurate savings realized as a result of implementing diversion programs. She clarified that the Board was not requiring the form, but offered it as a useful tool that could be adopted as part of the parameters and guidelines. Also, she suggested language for the reimbursable activities section regarding actual costs.

Mr. O'Shaughnessy provided two examples of activities to illustrate the Board's point that the activities implemented and mandated by this legislation went above and beyond what was traditionally required.

Mr. Peterson stated the Integrated Waste Management Board had a common misperception about mandate reimbursement. He explained that only increased costs are reimbursed, and therefore, doing what you used to do is not an increased cost. Additionally, he argued that the Board did not have the same understanding of the legal meaning of cost savings. He indicated that as a matter of law, cost savings require a mandate to be in effect in 1975. Because there was no mandate for waste disposal reduction or source reduction recycling in 1975, he maintained that there was no mandate to be relieved, and thus, no cost savings.

Mr. Petersen noted that claimants do not claim costs that are not incurred. Therefore, if there is no mandate, costs will not be incurred, and there will be no increased costs to claim.

Ms. Geanacou deferred to the programmatic expertise of the Board. She noted, however, a reference in the Public Resources Code section 42955, subdivision (a), which renders permissive the community colleges' obligation to direct any cost savings to implement the waste management plan. Thus, she noted that there was some amount of discretion for community colleges as to what to do with any cost savings.

Mr. Petersen responded that there is a statute to offset recycling income and the Legislature can speak to the issue if it exceeds \$2,000.

Member Boel made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried unanimously.

STAFF REPORTS

Item 13 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Mr. Starkey reported that the *Animal Adoption* cases listed in the litigation calendar were consolidated and will be heard in the Sacramento Superior Court.

Item 14 Executive Director's Report (info/action)
Workload, SB 1033, Governor's Proposed 2005-06 Budget, Reports to
the Legislature, Legislation, and Next Hearing

Ms. Higashi's report included the following:

- *Workload.* Chairperson Sheehan reminded the Commission members that they would be traveling to Butte County on May 12 for the hearing in Oroville. Ms. Higashi reported that the Department of Finance audit staff had been retained to review the county's application and to prepare the analysis, and that Shirley Opie, former Commission assistant executive director, was rehired to manage the process. She stated that the Commission would be adopting a Statement of Decision on June 10.
- *Budget.* Ms. Higashi reported that there have been no meetings with Budget Committee staff but hearings were coming up in the next few weeks. She stated that she would keep the Commission posted.

Member Smith noted that the Controller was concerned about the large number of pending test claims. He stated that the Controller supported the Commission's budget augmentation and offered support from his office.

PUBLIC COMMENT

An unidentified woman in the audience indicated that she had a hard time hearing from the back of the room.

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

PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
4. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
5. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
6. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
7. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
8. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]

10. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
11. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Case No. BS092146, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*]
13. *City of Newport Beach v. Commission on State Mandates, et al.*, Case No. BS095456, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]

POTENTIAL LITIGATION

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.


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

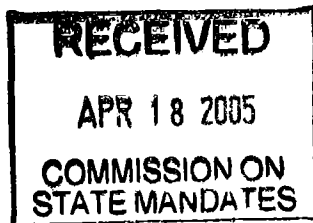
REPORT FROM CLOSED EXECUTIVE SESSION

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

ADJOURNMENT

Hearing no further business, and upon motion by Member Smith and second by Member Boel, Chairperson Sheehan adjourned the meeting at 11:34 a.m.


PAULA HIGASHI
Executive Director



ORIGINAL

--oOo--

PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:32 a.m.

DATE: Wednesday, March 30, 2005

PLACE: Department of Social Services
744 P Street, First Floor Auditorium
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Daniel P. Feldhaus

California Certified Shorthand Reporter License # 6949
Registered Diplomat Reporter ♦ Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.

8414 Yermo Way ♦ Sacramento, CA 95828
Telephone (916) 682-9482 ♦ Fax (916) 688-0723

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for TOM CAMPBELL
Director
Department of Finance

JAN BOEL
Acting Director
State Office of Planning and Research

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

NICHOLAS SMITH
Representative for STEVE WESTLY
State Controller

--o0o--

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

ERIC FELLER
Commission Counsel

NANCY PATTON
Assistant Executive Director

KATHERINE TOKARSKI
Commission Counsel

--o0o--

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 2:

For Association of Bay Area Governments:

KENNETH MOY
Legal Counsel
Association of Bay Area Governments
P.O. Box 2050
Oakland, CA 94604-2050

Appearing Re Item 3:

For the Department of Finance:

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

For the League of California Cities:

BETSY STRAUSS
Special Counsel
League of California Cities

For the County of Los Angeles

LEONARD KAYE, Esq.
Certified Public Accountant
Accounting Division
Department of Auditor-Controller
County of Los Angeles
500 West Temple Street, Suite 603
Los Angeles, CA 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3: *continued*

For Cost Recovery Systems, Inc.

ANNETTE S. CHINN
President
Cost Recovery Systems, Inc.
705-2 East Bidwell Street, Suite 294
Folsom, CA 95630

Appearing Re Item 5:

For Association for Bay Area Governments

SCOTT HAGGERTY
President
Association for Bay Area Governments
Hotel Claremont
Berkeley, CA 94705

ROSE JACOBS GIBSON
Executive Board Member
Association for Bay Area Governments
and
County Supervisor
San Mateo County

For Southern California Association of Governments
(SCAG):

KAREN L. TACHIKI
Chief Counsel
Southern California Association of Governments (SCAG)
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

LYNN HARRIS
Southern California Association of Governments (SCAG)
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5: *continued*

For Association of Councils of Governments

RUSTY SELIX
Executive Director
Association of Councils of Governments

For the Department of Finance:

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

Appearing Re Item 7:

For Claimant Clovis Unified School District

KEITH B. PETERSEN, MPA, JD
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

For the Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 9:

For the County of San Bernardino:

BONNIE TER KEURST
Manager
Reimbursable Projects
Office of the Auditor/Controller-Recorder
County of San Bernardino
222 W. Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018

For the Department of Finance:

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

Appearing re Item 10:

DEBORAH BORZELLERI
Staff Counsel
California Integrated Waste Management Board
1001 I Street
P.O. Box 4025
Sacramento CA 95812

TREVOR O'SHAUGHNESSY
Section Supervisor
State and Local Assistance Branch
California Integrated Waste Management Board

PHIL MORALES
Staff
California Integrated Waste Management Board

EDDIE FOX
Staff
California Integrated Waste Management Board

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 10: *continued*

For Claimants Santa Monica and Lake Tahoe College
Districts:

KEITH B. PETERSEN, MPA, JD
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

For the Department of Finance:

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

--o0o--

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>2</u>	<u>9</u>	Removed Acting Director, added new line. Replaced those lines with Representative For SEAN WALSH Director
<u>23</u>	<u>21</u>	changed 'the' to 'Fee'
<u>38</u>	<u>24</u>	changed 'the' to 'Fee'
<u>47</u>	<u>24</u>	changed 'Providers' to 'Provides'
<u>76</u>	<u>20</u>	changed 'claims' to 'claimant.'

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to order and roll call	13
II. Approval of Minutes	13
Item 1 January 27, 2005	13
III. Appeal of Executive Director's Actions and Decisions Pursuant to Code of Regulations, Title 2, Section 1181, subsection (c)	
Item 2 Executive Director's Decision that section 1188.4 of the Commission's Regulations does not apply to the reconsideration of the Regional Housing Needs Determination: Councils of Government decision Association of Bay Area Governments	15
IV. Proposed Consent Calendar (Item 11 and Item 12)	14
V. Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Reconsideration of Test Claim Decisions Directed by the Legislature and Proposed Statements of Decision	
Item 3 <i>Regional Housing Needs Determination</i> 04-RL-3759-02, 04-RL-3760-03 and 04-RL-3816-04	22
Item 4 Proposed Statement of Decision: <i>Regional Housing Needs Determination</i> 04-RL-3759-02, 04-RL-3760-03 and 04-RL-3816-04, see Item 3 above .	36

I N D E X
(continued)

<u>Proceedings</u>	<u>Page</u>
V. Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims and Proposed Statements of Decision	
Item 5 <i>Regional Housing Needs Determination: Councils of Governments,</i> 04-RL-3929-05	37
Item 6 Proposed Statement of Decision: <i>Regional Housing Needs Determination Councils of Governments,</i> 04-RL-3929-05, see Item 5 above	58
B. Remand of Test Claim Decision Directed by the Court and Proposed Statement of Decision	
Item 7 <i>School Bus Safety II</i> 97-TC-022	60
Item 8 Proposed Statement of Decision: <i>School Bus Safety II</i> 97-TC-022, See Item 7 above	63
VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Adoption of Amendments to Parameters and Guidelines	
Item 9 <i>False Reports of Police Misconduct</i> 00-TC-26 County of San Bernardino	64
Item 10 Integrated Waste Management 00-TC-07 Santa Monica and Lake Tahoe Community College Districts	75

I N D E X
(continued)

<u>Proceedings</u>	<u>Page</u>
VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
B. Adoption of Proposed Statewide Cost Estimates	
Item 11 <i>Differential Pay and Reemployment, 99-TC-02 Palmdale School District (Consent Item)</i>	14
C. Item 12 <i>Implementation of Statutes 2004, Chapter 890 (AB 2856) (Consent Item)</i>	14
VII. Staff Reports	
Item 13 Chief Legal Counsel's Report Recent Decisions, Litigation Calendar	91
Item 14 Executive Director's Report Budget, Workload, Legislation, Next Hearing	91
VIII. Public Comment	94
IX. Closed Executive Session Pursuant to Government Code Sections 11126 and 17526	95
A. Pending Litigation	
B. Potential Litigation	

Commission on State Mandates - March 30, 2005

I N D E X
(continued)

<u>Proceedings</u>	<u>Page</u>
X. Report from Closed Executive Session Reconvene in Public Session	95
XI. Adjournment	96
Reporter's Certificate	97

--o0o--

Commission on State Mandates - March 30, 2005

1 BE IT REMEMBERED that on Wednesday, March 30, 2005,
2 commencing at the hour of 9:32 a.m., thereof, at the
3 Department of Social Services, 744 P Street, First Floor
4 Auditorium, Sacramento, California, before me, DANIEL P.
5 FELDHAUS, CSR #6949, RDR and CRR, the following
6 proceedings were held:

7 --oOo--

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

10 Can you call the roll?

11 MS. HIGASHI: Ms. Boel?

12 MEMBER BOEL: Here.

13 MS. HIGASHI: Mr. Lujano?

14 MEMBER LUJANO: Here.

15 MS. HIGASHI: Mr. Smith?

16 MEMBER SMITH: Here.

17 MS. HIGASHI: Ms. Sheehan?

18 MEMBER SHEEHAN: Here.

19 MS. HIGASHI: Thank you.

20 CHAIR SHEEHAN: We have a quorum.

21 The first agenda item are the minutes.

22 MS. HIGASHI: Item 1 is approval of the minutes of
23 January 27, 2005.

24 MEMBER BOEL: I'll move to approve the minutes.

25 I move to approve the minutes.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Do we have a second?

2 MEMBER LUJANO: Second.

3 CHAIR SHEEHAN: All right, we have a motion and a
4 second.

5 Any discussion?

6 *(No audible response was heard.)*

7 CHAIR SHEEHAN: All those in favor?

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

9 CHAIR SHEEHAN: Any opposed?

10 *(No audible response was heard.)*

11 CHAIR SHEEHAN: The minutes are adopted.

12 The next item we're going to take a little bit out
13 of order, the Consent Calendar.

14 Paula, do you want to introduce this?

15 MS. HIGASHI: Certainly. The Consent Calendar
16 consists of two items: Item 11, Adoption of Proposed
17 Statewide Cost Estimate on *Differential Pay and*
18 *Reemployment*, and Item 12, Adoption of the Commission
19 Order to Initiate Rulemaking.

20 Staff recommends adoption.

21 CHAIR SHEEHAN: Are there any objections to the
22 Consent Calendar or any comments?

23 *(No audible response was heard.)*

24 CHAIR SHEEHAN: All right, is there a motion to --

25 MEMBER BOEL: I move that we adopt the Consent

Commission on State Mandates - March 30, 2005

1 Calendar.

2 CHAIR SHEEHAN: Is there a second?

3 MEMBER LUJANO: Second.

4 CHAIR SHEEHAN: We have a motion and a second.

5 All those in favor?

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

7 CHAIR SHEEHAN: Any opposed?

8 All right, the motion carries, and the Consent

9 Calendar is adopted.

10 Then we move on to Item 2.

11 Paula?

12 MS. HIGASHI: We're now at the hearing portion of
13 our meeting; and, as is customary, what I'd like to do
14 is request that all of the parties and witnesses and
15 representatives who intend to come before the Commission
16 and testify, please stand and raise your right or left
17 hands, whatever is appropriate for you.

18 Do you solemnly swear or affirm that the testimony
19 which you are about to give is true and correct, based
20 upon your personal knowledge, information, or belief?

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

22 MS. HIGASHI: Thank you very much.

23 *(Brief discussion off record at 9:36 a.m.)*

24 MS. HIGASHI: We're now at Item 2. The Commission
25 counsel, Eric Feller, will present the Appeal of the

1 Executive Director's Decision.

2 MR. FELLER: Good morning.

3 Before you, is the Appeal of the Executive
4 Director's Decision that section 1188.4 of the
5 Commission's regulations does not apply to the
6 reconsideration of the decision in *Regional Housing Needs*
7 *Determination: Councils of Governments*, or Items 5 and 6
8 on the agenda.

9 The Association of Bay Area Governments, or "ABAG,"
10 appeals this decision, stating that it is necessary that
11 1188.4 apply to secure procedural safeguards and due
12 process for the reconsideration.

13 Staff has complied with proper notice and due
14 process procedures on the *Regional Housing Needs*
15 reconsideration. If the Commission were to apply section
16 1188.4 to this matter, it could conflict with the
17 directive and SB 1102 to consider the original Board of
18 Control decision by avoiding the reconsideration all
19 together or acquiring five affirmative commissioner votes
20 to grant the reconsideration hearing or to change the
21 prior final decision.

22 This five-vote requirement to reconsider is not
23 found in statute.

24 Staff finds that section 1188.4 does not apply to
25 reconsideration because, by its own terms, it does not

Commission on State Mandates - March 30, 2005

1 apply to reconsiderations of prior final decisions made
2 before July 1998, the date the regulation became
3 operative, or to decisions more than 30 days after they
4 are mailed or delivered to the claimant.

5 Also, this section only applies to reconsiderations
6 requested by a party or a commissioner. It states it
7 does not apply to court-ordered reconsiderations; and
8 staff finds the same rationale exists for not applying
9 it to legislative reconsiderations. Therefore, staff
10 recommends that the Commission deny this appeal.

11 Would the parties and witnesses please state their
12 name for the record?

13 CHAIR SHEEHAN: And Mr. Moy?

14 MR. MOY: Yes.

15 CHAIR SHEEHAN: Why don't you go ahead and begin?

16 MR. MOY: Thank you very much.

17 My name is Kenneth Moy. I'm the counsel to the
18 Association of Bay Area Governments. Good morning,
19 Members of the Commission and staff.

20 I want to thank the staff for the work that it has
21 done.

22 I think the discussion between myself and Mr. Feller
23 has reached a point where lawyers have parsed the
24 question as thoroughly as it can be parsed; and I think
25 we have reached a position where reasonable parties can

1 agree to disagree on our conclusions.

2 I would like to have the Commission consider,
3 however, the practical consequences of the position
4 that's being urged on it, as compared to the practical
5 consequences of the position that ABAG is urging be
6 imposed -- that this Commission adopt.

7 I don't think there's any dispute that section
8 1188.4, as adopted by this Commission, to establish a
9 procedure that would apply to some cases where
10 reconsideration would come up before this Commission; and
11 that those cases include cases where parties who are
12 involved in the original decision, such as ABAG, such as
13 a city or county, or such as the Department of Finance,
14 would have to come before this Commission and would have
15 to overcome two procedural hurdles in order to have that
16 reconsideration heard:

17 One, five affirmative votes of this Commission to
18 even hear the reconsideration.

19 Second, five affirmative votes of this Commission in
20 order to overturn its prior decision and go ahead and
21 change the subvention requirements.

22 Under those circumstances, we think that a fair and
23 due process, which this body, as a quasi-judicial body,
24 is required to provide all the parties who come before
25 it, would be subverted. And if that same five-vote

Commission on State Mandates - March 30, 2005

1 requirement was not applied to a request by the
2 Legislature, which was not a party to any of the original
3 decisions, and which would otherwise be applied to ABAG,
4 if we were to come to you today and say that the 1981
5 decision that your predecessor body came to should be
6 overturned, we'd have to get two -- twice, five
7 affirmative votes in order to have that heard and to
8 overturn it.

9 Now, the State Legislature passes a trailer bill in
10 the waning moments of the session. Item 109 out of 110
11 sections, in that trailer bill, and suddenly it is given
12 a free pass to come before this commission, forces this
13 Commission to take up the matter on reconsideration, and
14 then gets another free pass and requires only a majority
15 vote in order to overturn its prior decision. I think
16 that's unfair. I think it's patently unfair, and it
17 should be patently unfair to each of you. And that we
18 urge that you impose the requirements of section 1188.4,
19 at least to the action of overturning its prior decision
20 in this matter.

21 I'll be prepared to take any questions.

22 CHAIR SHEEHAN: Thank you.

23 Are there any questions of Mr. Moy from the
24 Commission Members?

25 *(No audible response was heard.)*

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: No?

2 Okay, thank you.

3 Before Mr. Feller makes any comments, would anyone
4 else in the audience like to address this issue?

5 *(No audible response was heard.)*

6 CHAIR SHEEHAN: No?

7 Mr. Feller, do you want to respond, or anything you
8 want to add on this?

9 MR. FELLER: Just, what I seem to be hearing is that
10 ABAG is urging the five-vote requirement of 1188.4 to
11 apply, and yet not the other provisions. Either the
12 regulation applies or it doesn't.

13 The fact of the matter is that the regulation can't
14 thwart the intent of the Legislature in SB 1102, which
15 was enacted, notwithstanding any other provision of law.
16 And so it is staff's position that SB 1102, requiring the
17 reconsideration, trump; and that no regulation can thwart
18 that intent.

19 CHAIR SHEEHAN: Okay, any questions for staff?

20 MEMBER SMITH: Yes, one question. Thank you, Madam
21 Chair.

22 So if 1188.4, in its entirety, were to be invoked,
23 this commission could not rehear this; is that right?
24 Because of the time limit --

25 MR. FELLER: Yes, for two reasons. It's not -- by

Commission on State Mandates - March 30, 2005

1 its own terms, it can't apply to any reconsiderations
2 before the regulation was adopted, which was in July
3 1998. And, of course, the Board of Control decision was
4 a 1981 decision. The other reason is, it doesn't apply
5 to reconsiderations of decisions that are more than
6 30 days old, subject to, I think, one extension in the
7 regulation is all.

8 MEMBER SMITH: Thank you.

9 MEMBER BOEL: I have a question.

10 CHAIR SHEEHAN: Ms. Boel?

11 MEMBER BOEL: What is the situation on the -- if we
12 don't have five appointees on the Commission, as we don't
13 right now, we only have four members on the Commission,
14 how does this -- you have to wait until you have a full
15 complement of commissioners?

16 MR. FELLER: I believe so.

17 Mr. Starkey might have another opinion on that.

18 MR. STARKEY: Under the regulations, the quorum is
19 established by the number of members who are appointed.

20 MEMBER BOEL: Okay.

21 MR. STARKEY: So we have a quorum. And because we
22 find that 1188.4 does not apply, the majority vote or the
23 quorum would constitute the necessary majority to take
24 any action by the Commission. And that's also in the
25 Commission regulations.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Okay, any other questions or
2 comments?

3 *(No audible response was heard.)*

4 CHAIR SHEEHAN: Is there a motion?

5 MEMBER BOEL: I move that the Commission should deny
6 this appeal.

7 CHAIR SHEEHAN: Is there a second on that motion?

8 MEMBER SMITH: I'll second the motion.

9 CHAIR SHEEHAN: All right. So we have a motion and
10 a second to deny the appeal, which would thereby adopt
11 the staff analysis and recommendations.

12 All those in favor of the motion, signify by saying
13 "aye."

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

15 CHAIR SHEEHAN: Any opposed?

16 *(No audible response was heard.)*

17 CHAIR SHEEHAN: So the appeal is denied and the
18 staff analysis is adopted.

19 On to Item 3.

20 Paula, would you like to introduce this item?

21 MS. HIGASHI: Mr. Feller will also present this
22 item.

23 CHAIR SHEEHAN: All right.

24 MR. FELLER: Thank you.

25 This is the Reconsideration of the *Regional Housing*

Commission on State Mandates - March 30, 2005

1 *Needs Determination* Decision as applied to cities and
2 counties. This reconsideration of the Board of Control
3 decision on claims 3759, 3760, and 3916 was requested by
4 the Legislature in SB 1102.

5 The League of California Cities, California State
6 Association of Counties, and the California Building
7 Industry Association all submitted comments. Comments on
8 the staff draft analysis were also received from the
9 Southern California Association of Governments, or SCAG,
10 submitted jointly with other Councils of Governments, or
11 COGs, all of whom argue that the activities and
12 Parameters and Guidelines issued by the Board of Control
13 should continue to be reimbursable.

14 Comments from Senator Ducheny and the Department of
15 Finance took the opposite view.

16 For reasons stated in the analysis, staff finds
17 that the test claim legislation does not impose cost
18 mandated by the State on cities and counties within the
19 meaning of Article XIII B, section 6, of the California
20 Constitution, and Government Code section 17556. And the
21 reason is that city and counties have the authority in
22 Government Code 65104 and 65584.1. Therefore, staff
23 recommends the Commission adopt this analysis and deny
24 the Board of Control claim numbers 3759, 3760, and 3916
25 effective July 1, 2004.

Commission on State Mandates - March 30, 2005

1 Would the parties and witnesses come forward and
2 please state your name for the record?

3 MS. GEANACOU: Susan Geanacou, Department of
4 Finance.

5 MS. STRAUSS: Betsy Strauss with the League of
6 California Cities.

7 MR. KAYE: Good morning. Leonard Kaye, County of
8 Los Angeles.

9 CHAIR SHEEHAN: And, Ms. Strauss, do you want to go
10 first?

11 And then, Susan, you're also here for Klint Johnson?

12 MS. GEANACOU: I don't know if Klint's here.

13 Yes, thank you.

14 CHAIR SHEEHAN: Okay, all right. Go ahead,
15 Ms. Strauss.

16 MS. STRAUSS: Thank you very much.

17 Again, my name is Betsy Strauss. I'm special
18 counsel to the League of California Cities. And I
19 appreciate the opportunity to speak briefly to you this
20 morning about why we think the recommended decision is
21 misguided.

22 The reason is that although, in fact, it's certainly
23 true that there are two different statutes in the
24 Government Code that provide cities with the authority to
25 impose fees for the different activities that are

Commission on State Mandates - March 30, 2005

1 required to comply with the Housing Lender law, neither
2 one of these statutes provides sufficient legal authority
3 to be, in fact, impose those fees.

4 The two statutes are Government Code section 65104
5 and Government Code section 65584.1. Each of those
6 statutes are general authority to plan to impose fees on
7 developers for the work of the city's planning agencies.

8 Your recommended decision points out that the case
9 called Connell v. the Superior Court of Sacramento County
10 says that it's not relevant to consider whether or not a
11 local government may choose, for economic reasons, to
12 impose the fees; that if the legal authority is in the
13 statutes, then that's enough to conclude that the mandate
14 is not reimbursable.

15 But we are not arguing here that a city or county
16 may choose not to impose the fee for economic reasons.
17 We are arguing that it's not possible, in many cases, to
18 actually spread the costs, to quantify the costs in a way
19 that's legally accurate to the developers for these
20 mandates.

21 The costs for adopting a housing element can run
22 into the hundreds of thousands of dollars.

23 The requirement then is for a city to come up with
24 an appropriate way, a legally appropriate way to divide
25 those costs amongst property owners who benefit from that

1 work.

2 So then the issue is, how is it that a city
3 determines how a property owner who comes in to build a
4 30-unit apartment building or 400-unit subdivision, what
5 is his fair share of the costs of adopting that housing
6 element and complying with those statutes? And it is
7 that concern, the concern that we're unable, in many
8 cases, to actually carry out the authority that's given
9 to us in the State statute, that is the basis of our
10 argument. That the authority then is really no authority
11 at all. And because the authority is not able to be
12 used, in many cases, that it is not a valid basis for
13 denying the claim.

14 Thank you very much for your attention.

15 CHAIR SHEEHAN: I have a question.

16 Can you tell me -- and maybe as counsel for the
17 cities -- what steps have the cities taken to attempt to
18 implement this?

19 MS. STRAUSS: To impose the fees?

20 CHAIR SHEEHAN: Yes.

21 MS. STRAUSS: I don't have an example of a
22 particular city, to answer your question.

23 The steps would be the same type of step -- let me
24 use a different example. This is easy.

25 If you come in to apply for a use permit, a

Commission on State Mandates - March 30, 2005

1 conditional-use permit to build an apartment building in
2 the City of Sacramento, the City of Sacramento charges
3 you, presumably, the costs of its planning agency, which
4 is 65104 of the statute. And it keeps track of its
5 planners and its engineers or its attorneys on your
6 application, on an hourly basis, and it charges you for
7 that. So there is a direct connection between the
8 services provided, the fee charged, and your application.
9 It's that direct connection that's difficult to derive,
10 in many cases.

11 To try to answer your question, the attempt then
12 would be to take the costs of developing this housing
13 element, which, of course, runs into very large numbers,
14 as you know; and then to try to determine out of that,
15 what part of that then is related to this application for
16 the apartment project.

17 I don't have an example, to answer your question
18 directly.

19 The difficulty, of course, is that, from the City's
20 standpoint, we are under these constitutional
21 restrictions that don't allow us to charge fees in excess
22 of the costs, or otherwise there's a tax which we can't
23 charge if we vote. So then the issue is, how do I
24 decide, as a city, how much of those costs are
25 attributable to your project as opposed to someone's down

1 the road?

2 I appreciate that's not a specific answer to your
3 question, but I don't have a good example.

4 CHAIR SHEEHAN: That's okay.

5 Any other questions for Ms. Strauss?

6 *(No audible response was heard.)*

7 CHAIR SHEEHAN: Okay.

8 MR. KAYE: Good morning. My name is Leonard Kaye.
9 I'm with the County of Los Angeles. And I'm here to add
10 support to our city colleagues and the others around the
11 state that feel very strongly in this matter that, with
12 all due respect to the State Legislature, that counties
13 don't have unfettered discretion to impose fees. And I
14 think that that is an issue.

15 Commission staff concluded, in their conclusion,
16 that staff finds that the test claim legislation does not
17 impose costs mandated by the State because cities and
18 counties have fee authority to cover the costs of a
19 regional housing needs program.

20 And they cite, in support of that, the 1997 Connell
21 case, that has a slightly different wording. It says the
22 board, the Board of Control, your predecessor agency,
23 shall not find a reimbursable cost if the local agency
24 has the authority, i.e., the right of the power, to levy
25 service charges, fees, or assessments sufficient to pay

1 for the mandated program.

2 Now, I admit that this is somewhat nuanced; but
3 let's consider for a moment the specific wording that the
4 Connell decision rested upon, and that is the power to
5 levy service charges.

6 Now, service charges, in my mind, imply that there's
7 a service provider and a service user. However -- and
8 it's quite clear that we are service providers.

9 But who is the service user? Are we merely
10 accepting the fact that out there, theoretically, there
11 is some builder or developer that are going to absorb
12 these costs because perhaps there's a nexus between the
13 benefit to be received and the service that's being
14 provided?

15 And my point is that there are very, very many
16 assumptions that have underlined staff's analysis, that
17 perhaps give us pause to think that, "Well, maybe we
18 don't have unfettered discretion to impose fees."

19 We do have much broader discretion where we've got
20 an identified service user to impose service fees. That,
21 I will grant. But in many communities, perhaps builders
22 or developers are not there, and perhaps there's no one
23 to charge.

24 And so the issue becomes, is this purely a
25 theoretical argument or does it have any basis in the

1 fact or law?

2 And our position is, again, with the cities, that we
3 clearly have insufficient fee authority. And this came
4 up once before in the Commission. I apologize, I don't
5 have specific cites and so forth.

6 But in the case of the SIDS firefighter fees, where
7 I think it was the Second Appellate ruling, that even
8 where the Legislature says, "You shall charge a fee," if
9 it's impractical or impossible for us to levy the fee --
10 in this case, we would have to charge a person that has
11 undergone the tragedy of a SIDS death in their family,
12 I believe it was \$3,400; or we'd have to charge the
13 firefighters, the first responders, a fee for providing
14 this new service. So there, the Court ruled that it was
15 just impractical and impossible to implement that kind of
16 fee.

17 And I am not saying that it's precisely the same
18 kind of situation here, but I think that it is a bit of
19 a stretch to say that even where we can't identify any
20 service end user, any beneficiary that we have *ipso facto*
21 just the unfettered right to impose a fee upon -- I don't
22 know who it would be upon. That is clearly unspoken and
23 unwritten.

24 Thank you very much.

25 CHAIR SHEEHAN: I have a question for you.

1 MR. KAYE: Sure.

2 CHAIR SHEEHAN: The court decision that you referred
3 to, was that an appellate court decision or a superior
4 court?

5 MR. KAYE: It was an unpublished appellate decision,
6 I believe it was the Second Appellate, yes, yes.

7 CHAIR SHEEHAN: Okay. And in the -- the question on
8 the -- I think it was the original Connell decision, is
9 that the first case that you referred to --

10 MR. KAYE: Yes.

11 CHAIR SHEEHAN: -- where you were reading about? It
12 says, "Service charges," and then doesn't it go on to say
13 "fees"?

14 MR. KAYE: Yes. "Service charges" and "fees" and so
15 forth. But I read that "service fees." In other words,
16 there, this had to do with improving the quality of water
17 and so forth. And there, obviously, there were a number
18 of users of these water services. So there, it was quite
19 clear, in the Connell case, that there was someone to
20 charge.

21 Here, it is completely unclear. And particularly in
22 the smaller communities, where you have substantial costs
23 but you have no builder or developer present, I mean,
24 there, it's very unclear as to who to charge.

25 CHAIR SHEEHAN: Okay, thank you.

Commission on State Mandates - March 30, 2005

1 MR. KAYE: Thank you.

2 CHAIR SHEEHAN: Any more questions for the
3 witnesses?

4 *(No audible response was heard.)*

5 CHAIR SHEEHAN: Susan?

6 MS. GEANACOU: Good morning. Susan Geanacou,
7 Department of Finance.

8 The Department of Finance submitted written comments
9 on this matter in November of last year, addressing the
10 fee authority issue and the Connell decision. Unless you
11 have any questions, we would stand by those written
12 comments. And they are consistent with the proposed --
13 excuse me, the staff analysis and the proposed decision
14 in this matter.

15 CHAIR SHEEHAN: Thanks.

16 Any questions for Ms. Geanacou?

17 *(No audible response was heard.)*

18 CHAIR SHEEHAN: All right.

19 Would you like to testify also?

20 MS. CHINN: I would. I didn't swear in. I wasn't
21 expecting to come to talk.

22 CHAIR SHEEHAN: We'll swear you in, and then you can
23 testify.

24 MS. HIGASHI: Do you solemnly swear or affirm that
25 the testimony which you are about to give is true and

1 correct, based upon your personal knowledge, information
2 or belief?

3 MS. CHINN: Yes.

4 My name is Annette Chinn. I'm with Cost Recovery
5 Systems. I'm a consultant for about 15 years now. And I
6 used to work in the area of developer impact fees for the
7 Davie Group, Ben Associates. It was a consulting firm
8 about ten years ago. And when I was a consultant there,
9 we were not allowed to include the costs of housing
10 elements in those developer fees. It was our job to try
11 to include all of the costs possible to charge to
12 developers for different services that they were being
13 charged for local governments in different areas. And
14 that was one area that, specifically, local governments
15 were not allowed to receive reimbursement for. So I
16 wanted to mention that.

17 And also, you were asking questions about how many
18 cities actually recover fees currently. And I only know
19 of one out of about 40 different clients that I work
20 for, that actually is charging fees for those types of
21 services.

22 And I think that one thing you need to consider also
23 is the amount of land that is available for development.
24 Some cities are very overbuilt and there's no one to
25 charge these fees. So practically, you know, maybe a

Commission on State Mandates - March 30, 2005

1 city that has a lot of growth potential, they have a
2 better chance of recovering some of that money; but some
3 of the cities that are already built out, there's no one
4 to charge that fee. And they're still required under law
5 to have those housing elements. So that's something I
6 wanted to add for your consideration.

7 CHAIR SHEEHAN: Thanks.

8 Any questions for the witnesses?

9 *(No audible response was heard.)*

10 CHAIR SHEEHAN: Mr. Feller, do you want to respond
11 to any of the testimony?

12 MR. FELLER: Just briefly.

13 What I've heard and seen in writing, the comments
14 surround the practical difficulty of implementing these
15 fees, rather than the legal authority. And we follow the
16 reasoning of the Connell case, that the legal authority
17 is what the local governments have to charge these fees,
18 is what controls. And so staff continues to recommend
19 that the claims be denied.

20 CHAIR SHEEHAN: Okay.

21 MEMBER SMITH: Madam Chair, not a question, but more
22 of a comment before we take a vote on this item.

23 The Controller is frustrated by this item, simply
24 because he doesn't agree with the policy behind the
25 legislative intent to pass along fees for a mandated

Commission on State Mandates - March 30, 2005

1 state program to ultimately developers and then to the
2 home buyers, which is a little ironic to the cause of
3 providing affordable housing. However, that's not the
4 question before the Commission today. It's not a policy
5 body, where we can question or overrule action by the
6 Legislature.

7 However, we do have some question regarding the
8 ability of local governments to pass along a fee to a
9 relatively small segment of society, i.e., developers,
10 for a general government purpose. And whether or not
11 they're actually going to be able to do that remains to
12 be seen.

13 I think that the Controller feels that we would need
14 more information to make a positive -- to be sure that
15 they could do that, and plans to abstain from Item 3 and
16 Item 5, similarly.

17 I just wanted to make those comments before we take
18 that to a vote, to explain our abstention.

19 CHAIR SHEEHAN: All right.

20 MEMBER SMITH: Thank you, Madam Chair.

21 CHAIR SHEEHAN: Any other comments before we move?

22 *(No audible response was heard.)*

23 CHAIR SHEEHAN: Is there a motion on this item?

24 MEMBER BOEL: I move that we adopt the staff
25 analysis and deny the Board of Control claims.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Is there a second?

2 MEMBER LUJANO: Second.

3 CHAIR SHEEHAN: We have a motion and a second to
4 adopt the staff analysis and recommendation.

5 All those in favor of the motion, signify by saying
6 "aye."

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

8 CHAIR SHEEHAN: Opposed?

9 *(No audible response was heard.)*

10 CHAIR SHEEHAN: Abstentions?

11 MEMBER SMITH: I abstain.

12 CHAIR SHEEHAN: So the Controller -- let the record
13 reflect that the Controller abstained on this item. All
14 right.

15 MS. HIGASHI: Item 4 will also be presented by
16 Mr. Feller.

17 CHAIR SHEEHAN: All right, Mr. Feller, please
18 proceed.

19 MR. FELLER: Yes, unless there's objection, the
20 staff recommends that the Commission adopt the proposed
21 Statement of Decision which accurately reflects the
22 decision on this test claim.

23 Staff also recommends the Commission allow minor
24 changes to be made to the Statement of Decision,
25 including reflecting the hearing testimony and vote count

Commission on State Mandates - March 30, 2005

1 that will be included in the final Statement of Decision.

2 CHAIR SHEEHAN: All right, any discussion on this
3 matter from the Commission members?

4 *(No audible response was heard.)*

5 CHAIR SHEEHAN: Is there a motion?

6 MEMBER BOEL: I move that we adopt the
7 recommendation.

8 CHAIR SHEEHAN: And a second?

9 MEMBER LUJANO: Second.

10 CHAIR SHEEHAN: All right. All those in favor,
11 signify by saying "aye."

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

13 CHAIR SHEEHAN: Opposed?

14 MEMBER SMITH: Similarly, we will abstain from this
15 as well.

16 CHAIR SHEEHAN: Abstain?

17 So let the minutes reflect that the Controller
18 abstained on that also.

19 Thank you. That motion carries.

20 And we will move on to Item 5.

21 I assume -- this is yours again; right?

22 MR. FELLER: Yes.

23 CHAIR SHEEHAN: All right.

24 MR. FELLER: This is the reconsideration of the
25 *Regional Housing Needs Determination: Councils of*

1 *Governments.* The reconsideration of Board of Control
2 decision on Claim 3929 was requested by the Legislature
3 in SB 1102.

4 California Association of Councils of Governments
5 and other COGs, including Sacramento Area Council of
6 Governments, San Diego Association of Governments,
7 Southern California Association of Governments, and the
8 Mendocino Council of Governments, submitting comments, in
9 addition to the League of California Cities, California
10 State Association of Counties, and the California
11 Building Industry Association, all of which argue that
12 the activities in the Parameters and Guidelines issued by
13 the Board of Control should continue to be reimbursable.

14 Again, comments from Senator Ducheny and the
15 Department of Finance took the opposite view.

16 For reasons stated in the analysis, staff finds
17 that, first, Councils of Governments are not eligible
18 claimants for purposes of mandate reimbursement under
19 Article XIII B, section 6, of the California
20 Constitution. And as an alternative grounds for denial,
21 the test claim legislation does not impose costs
22 mandated by the state on COGs within the meaning of
23 Article XIII B, section 6, and Government Code 17556
24 because COGs have the authority provided in the
25 Government Code section 65584.1. Therefore, staff

Commission on State Mandates - March 30, 2005

1 recommends that the Commission adopt the analysis and
2 deny Board of Control Claim Number 3929, effective
3 July 1, 2004.

4 Staff recommends that the parties and witnesses
5 first address their testimony to the Commission to the
6 issue of COG eligibility, followed by the fee-authority
7 issue.

8 Would the parties and witnesses please come forward
9 and state your names for the record?

10 MR. HAGGERTY: Good morning. Scott Haggerty. ABAG.

11 MS. GIBSON: Good morning. Rose Jacobs Gibson,
12 representing ABAG.

13 MS. TACHIKI: Karen Tachiki, representing SCAG.

14 CHAIR SHEEHAN: All right.

15 MS. HARRIS: Lynn Harris, representing SCAG.

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

18 CHAIR SHEEHAN: Mr. Haggerty, do you want to go
19 first?

20 MR. HAGGERTY: Thank you, Madam Chair. Good morning
21 to the Commission and staff. As I stated, my name is
22 Scott Haggerty, I'm the president of the Association of
23 Bay Area Governments, which represents nine Bay Area
24 counties in 100 cities in the San Francisco Bay Area.
25 And I would like to add that that is strictly a

1 membership organization.

2 ABAG was the claimant in the 1981 decision that COGs
3 are eligible for subventions for housing needs.

4 Other than specific funding grants, ABAG's revenues
5 come directly from its membership fees, which I would
6 like to add, come from proceeds of taxes.

7 Commission staff states that because COGs do not
8 have the power to tax, COGs must be treated like
9 redevelopment agencies, which also do not have the power
10 to tax, which courts have ruled are ineligible for state
11 subventions.

12 However, unlike RDAs, ABAG has no dedicated source
13 of revenues that it can use to perform the state
14 mandates' housing needs.

15 My colleague, Rose Jacob Gibson from San Mateo
16 County, will address that in greater detail.

17 In our opinion, it would be absurd for the State to
18 refuse to fund ABAG for the housing needs because ABAG
19 cannot impose a tax to fund it. To avoid this absurd
20 result, the Legislature grants COGs the power to impose a
21 fee on the cities and counties to perform housing needs.

22 This solution is simply untested and inadequate.
23 Untested because there are legal arguments presented to
24 the Commission by attorneys of ABAG, SCAG, SANDAG, SACOG,
25 Cal COG and others which cast serious doubts on the

Commission on State Mandates - March 30, 2005

1 legality of the fee. Impractical because there are
2 serious obstacles to implementing this fee.

3 First, as a membership organization, ABAG is
4 governed by a general assembly and, therefore, also an
5 executive board, which represents our members to vote on
6 issues of importance, including the imposition of this
7 fee. ABAG member cities and counties would not tax
8 themselves to fund a state mandate.

9 Second, even if the majority of the membership
10 imposed the fee, there would be a problem in collecting
11 these fees from those who do not want to support the fee.

12 I would just say that the specter of numerous
13 lawsuits would multiply in the courts to collecting this
14 fee is frightening.

15 I would also like to say, as we went through this
16 process last time, there were a lot of cities that were
17 very unhappy with ABAG. And, therefore, I think their
18 unhappiness would result in holding back the fees.

19 Compare this to the RDA that receives its tax
20 increment by right, and you will get a sense of just how
21 inadequate the proposed fee would be.

22 In closing, ABAG respectfully urges the Commission
23 to recognize that the legislative solution for housing
24 needs is inadequate and it affirms its prior decisions.

25 Thank you very much, Madam Chair.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Any questions for Mr. Haggerty?

2 *(No audible response was heard.)*

3 CHAIR SHEEHAN: All right.

4 Ms. Gibson?

5 MS. GIBSON: Good morning to the Commissioners. I'm
6 Rose Jacobs Gibson, and I'm a County Supervisor for
7 San Mateo County and serve on the ABAG executive board as
8 well.

9 As you know, housing supply and affordability are
10 one of the top issues in the San Francisco Bay Area, and
11 as well as throughout the entire state.

12 The Association of Bay Area Governments, ABAG, is
13 committed to any program which effectively addresses this
14 issue. ABAG completed the last round of the housing
15 needs in 2001. This process was open and fair, and the
16 discussion was sensible, and the allocations were adopted
17 with only one dissenting vote by our 38-member executive
18 board.

19 Based on the Department of Housing and Community
20 Development statistics, 73 percent of the Bay Area's
21 local housing elements are certified, exceeding the
22 statewide average.

23 This year ABAG is scheduled to begin work on the
24 housing needs' fourth revision. Housing needs is more
25 complex due to the changes in the last legislative

1 session. We'll be having workshops so we can be sure to
2 clarify all of those legislative initiatives.

3 These changes reflect extended discussions amongst
4 state departments of HHCD, the cities, the counties, the
5 COGs, to improve housing needs and make it more effective
6 for its purpose.

7 The San Francisco Bay Area is the first region
8 scheduled to undertake the housing needs under this new
9 process. ABAG is already months behind due to the
10 funding uncertainty.

11 If ABAG is not funded by the State for this mandated
12 program, it is highly unlikely that the local funds would
13 be available. This would be unfortunate. The State
14 loses the opportunity to have its program implemented,
15 and the San Francisco Bay Area loses opportunity to
16 improve its housing supply, as well as the affordability.

17 It is ironic that in those areas without COGs, HCD
18 currently does the housing needs. Therefore, in the real
19 sense, without COGs, the state would be responsible for
20 performing this function.

21 ABAG is better-suited to do the job and has achieved
22 effective and successful results. State funding is the
23 only way to ensure that this continues to occur.

24 And finally, it must be pointed out that funding
25 housing needs with fees from our members depends on

Commission on State Mandates - March 30, 2005

1 passing through these fees to developers. Fees that will
2 increase the costs of housing. This is simply bad
3 policy.

4 ABAG respectfully urges the Commission to uphold
5 its prior decisions and allow the housing needs process
6 to go forward. And I certainly hope that you would
7 consider this because we certainly do not want to have to
8 go through court proceedings and all of that. The fact
9 that this is legal authority does not mean it's
10 practicable for us to do the work that we need to do.

11 CHAIR SHEEHAN: Thank you.

12 Any questions for Ms. Gibson from the Commission
13 Members?

14 *(No audible response was heard.)*

15 CHAIR SHEEHAN: Okay. Okay, go ahead.

16 MS. TACHIKI: Good morning, members of the
17 Commission. My name is Karen Tachiki. I'm the chief
18 counsel for the Southern California Association of
19 Governments. And I'm here today with my colleague, Lynn
20 Harris, who is the manager of Community and Economic
21 Development at SCAG, and is also available to answer any
22 of your questions or concerns.

23 SCAG, as you may know, is the largest of nearly
24 700 Councils of Governments across the United States. It
25 is a joint powers agency established pursuant to the

Commission on State Mandates - March 30, 2005

1 California Government Code requirements. We are a
2 federally-designated metropolitan planning organization
3 and, as such, we have certain federally-mandated duties.
4 But we're here today to talk about state-mandated duties.

5 Under state law, as you know, there must be a state
6 and regional housing needs assessment, which determines
7 protected housing construction needs for the region,
8 which is based on population figures, projections
9 established by the Department of Finance, and the
10 regional population projections and forecasts developed
11 by SCAG, which we also use in the preparation of our
12 regional transportation plan.

13 SCAG, under state law, must allocate the shares of
14 the regional housing needs to cities and counties within
15 its region and, in turn, in some cases, has delegated
16 that responsibility to subregions who have agreed to
17 accept it.

18 This process is enormously expensive to SCAG. And
19 just to give you some idea, in the last go-around of the
20 RHNA process, SCAG placed a reimbursement claim to your
21 Commission in excess of \$840,000. This is a lot of
22 money. And that should be viewed in the context of the
23 membership dues which are paid by the cities and
24 counties, members of SCAG. This year, the total
25 membership dues are \$1.4 million.

1 And so if we were required to, in turn, assess our
2 members, you're asking us to substantially raise those
3 fees which are paid by our members.

4 And we, like ABAG, have no other source to undertake
5 the RHNA process.

6 So this issue is of great significance to SCAG, and
7 clearly is of great significance to the other COGs, which
8 is demonstrated by ABAG's appearance here today; and the
9 fact that some of our briefs, if you would note, were
10 filed as joint briefs with other COGs, indicating its
11 overall importance to all of us.

12 I commend you to our written briefs. We've made
13 several written submissions to you, so I don't want to
14 belabor the legal arguments that are made there. But I
15 do want to highlight just a couple of issues.

16 And in deference to Mr. Feller's request, the first
17 issue that he asked to be addressed was the question of
18 whether or not COGs have -- since they do not have the
19 power to tax, whether they are eligible claimants under
20 law. We believe that the basis for the staff's
21 recommendation is based on a very strained interpretation
22 of the definition of "local agency."

23 The staff believes, because local -- because COGs,
24 joint powers authorities in this case, do not have the
25 power to tax, they are not in the same class, so to

Commission on State Mandates - March 30, 2005

1 speak, as cities, counties, et cetera. But there is
2 nothing in the statute which requires that all of the
3 agencies which are listed, have all of the exact, same
4 common powers. There is nothing in the statute, and the
5 staff analysis has pointed to no case law, nor any other
6 indication that requires that all powers be common in
7 that listing of agencies.

8 In fact, the definition talks about "other political
9 subdivisions of the state," a broader and more
10 encompassing term. And there is no doubt, the joint
11 powers agencies composed solely of public agencies,
12 indeed, would fit within that definition.

13 Moreover, you've heard a lot of discussion today
14 about the ability to impose the fees. The Legislature
15 seems to have provided by statute that COGs may impose
16 fees upon its cities and counties. But what the staff
17 analysis does not address is, COGs are established solely
18 by agreement of their agencies. If we do not amend our
19 joint powers agreement, we do not have the authority to
20 levy that fee. And the Legislature having provided this
21 so-called authority, cannot force the COGs to change
22 their own agreements.

23 And I would just point out to you that under the
24 statute, which establishes and providers the parameters
25 for how you establish a joint powers authority, the

Commission on State Mandates - March 30, 2005

1 Legislature itself says that a JPA can exercise only
2 those powers that are provided for by agreement.
3 Therefore, COGs do not -- SCAG does not have the ability
4 to impose the fees.

5 So we would ask you to consider those points and to
6 reaffirm the decision that BOC made earlier.

7 CHAIR SHEEHAN: Thank you.

8 Any questions?

9 *(No audible response was heard.)*

10 CHAIR SHEEHAN: Okay, Ms. Geanacou, do you want
11 to --

12 MS. GEANACOU: Susan Geanacou, Department of
13 Finance.

14 As with the prior agenda item, the Department of
15 Finance submitted written comments on this matter in
16 November of 2004, addressing both the eligibility of COGs
17 to be claimants in this matter, and also regarding the
18 fee authority aspect of the staff analysis. The staff
19 analysis that is before you today is consistent with our
20 submission, and we stand on our submission.

21 I am available to answer any questions.

22 CHAIR SHEEHAN: Great.

23 Any questions for Ms. Geanacou?

24 *(No audible response was heard.)*

25 CHAIR SHEEHAN: Thanks.

Commission on State Mandates - March 30, 2005

1 Anyone else in the audience who would like to
2 testify?

3 Yes, please.

4 MR. SELIX: Yes, my name is Rusty Selix. I'm the
5 Executive Director of the Association of Councils of
6 Governments.

7 And I don't wish to add to any of the legal
8 arguments but wish to point out that this, in the view
9 of all the Councils of Governments, can be viewed as an
10 unfunded mandate. There is no ability for Councils of
11 Governments to collect a fee because there is no one that
12 comes before Councils of Governments as an applicant.
13 They are not like local governments, where people come
14 to them for services, like the local governments. So it
15 won't work, it doesn't work, and we're headed to court,
16 if you persist in pursuing this.

17 We think a much better course of action would be to
18 tell the Legislature and the Department of Finance that
19 this is not a workable solution to funding this mandate,
20 and not approve this decision, which will send it back to
21 the Legislature and the Department of Finance to figure
22 out something that might work.

23 This one inevitably will end up in court. We will
24 not be able to do regional housing needs under this
25 funding scheme.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Thank you, Mr. Selix.

2 Any questions?

3 *(No audible response was heard.)*

4 CHAIR SHEEHAN: Mr. Feller, do you want to address
5 any of the points that were raised?

6 I would like you to address the eligibility issue
7 and respond to the comments that were made.

8 Thanks.

9 MR. FELLER: Yes, with regards to the eligibility
10 issue, based on the case law, the Bell Community
11 Redevelopment Agency v. Woolsey case, interpreting
12 Article XIII B of the Constitution, staff finds that the
13 only relevant authority for eligibility is the power to
14 tax. Because that's the sole consideration for
15 eligibility, staff finds that COGs would not be eligible
16 claimants.

17 And then with regards to the Legislature a couple
18 years ago taking out redevelopment agencies and joint
19 powers agencies from the definition of the "eligible
20 claimant," and the statutory scheme with the fact that
21 the Legislature recognized that.

22 CHAIR SHEEHAN: Any other comments you would like to
23 respond to?

24 MR. FELLER: Most of the other comments, I believe,
25 went to the practical problems and the cost of housing.

Commission on State Mandates - March 30, 2005

1 Again, those are practical considerations. And with
2 regards to the fee, the Connell case, we believe that it
3 controls, that it's the legal authority that's relevant.

4 CHAIR SHEEHAN: Okay, comments from -- yes,
5 Mr. Smith?

6 MEMBER SMITH: Thank you, Madam Chair.

7 There appears to be two questions before the
8 Commission today, the two rationale provided by staff.

9 And I don't know the best way to do this; but the
10 Controller would like to take the two questions
11 separately.

12 CHAIR SHEEHAN: You mean, the issue and the
13 eligibility versus --

14 MEMBER SMITH: The eligibility overall versus the
15 specific eligibility for the Regional Housing Needs
16 Assessment program.

17 CHAIR SHEEHAN: The eligibility of the COGs?

18 MEMBER SMITH: Of the COGs.

19 CHAIR SHEEHAN: Separating that issue out and take a
20 separate --

21 MEMBER SMITH: Right. The two rationale, take it
22 separately.

23 CHAIR SHEEHAN: Okay. I think we can accommodate
24 that.

25 So do you want to make a motion on the first?

Commission on State Mandates - March 30, 2005

1 MEMBER SMITH: I'd like to -- well, yes, I would
2 like to make a motion --

3 CHAIR SHEEHAN: Wait.

4 Paul, did you --

5 MR. STARKEY: I just think that there probably
6 should be a motion as to that procedure. Again, if the
7 other Commission members agree, then we can go forward on
8 that.

9 CHAIR SHEEHAN: All right.

10 MEMBER SMITH: In that case, I'd like to move that
11 we take the two rationale separately and vote first, on
12 whether or not Councils of Governments are eligible
13 claimants for purposes of mandate reimbursement under
14 Article XIII B, section 6. And then taking it
15 separately, the test claim legislation that does not
16 impose costs mandated by the state on Councils of
17 Governments for the particular program under
18 consideration, *Regional Housing Needs Determination*.

19 MEMBER BOEL: I have some questions about that.

20 I'd like Eric's comments on dividing them, because
21 everything has been presented as a unit here.

22 MR. FELLER: Well, I'll defer -- I will ask for
23 Mr. Starkey's opinion.

24 But my initial reaction is that the Commission could
25 do that.

Commission on State Mandates - March 30, 2005

1 If you do decide to do that and if the votes were
2 different on the two questions, I would recommend that we
3 take the Statement of Decision back and put in the
4 rationale for making that bifurcation and bring it back
5 at the next meeting.

6 MEMBER SMITH: Well, the other possibility that we'd
7 be okay with, is taking the Statement of Decision --
8 taking a vote on whether to include the first rationale
9 as a reason for denial of the test claim.

10 MR. STARKEY: It's perfectly acceptable to separate
11 out those two issues and vote on it. The only thing that
12 I think as a matter of procedure, the Commission needs to
13 vote on that motion which is on the floor. And then if
14 they agree to do it that way, then we will just move
15 forward from that position.

16 Currently, the way that it's been posed is as a
17 proposed staff recommendation.

18 CHAIR SHEEHAN: The proposed staff recommendation
19 addresses both of the issues.

20 MR. STARKEY: Correct.

21 CHAIR SHEEHAN: The eligibility issue, as well as
22 the fee authority issue.

23 MR. STARKEY: Correct, because both are listed
24 separately and independently, as separate grounds to deny
25 the test claim.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: So we have a -- Mr. Smith made a
2 motion to separate the two issues.

3 Did you get your questions --

4 MEMBER BOEL: Well, no, I'm still not sure.

5 If we separate the two issues and there's different
6 votes on the two issues, then are we -- we're voting on
7 the whole test claim, based on one issue, and then we're
8 voting on the whole test claim based on the other issue?

9 CHAIR SHEEHAN: Well, I think -- my interpretation
10 would be that what staff has explained, is the
11 recommendation on the staff analysis bases their
12 recommendation on two issues: The eligibility, as well
13 as do they have the taxing authority to collect this.
14 And that if the Commission were to vote to say that the
15 COGs are eligible, they could still vote to deny the
16 claim based on the taxing issue, or they can say that the
17 COGs are not eligible, and deny it based on the
18 eligibility, as well as the tax issue, if they'd like.

19 MEMBER BOEL: Okay.

20 CHAIR SHEEHAN: I mean I don't know if you want
21 to --

22 MR. STARKEY: Yes.

23 CHAIR SHEEHAN: In the next -- so we have a motion.
24 Do we have a second to Mr. Smith's motion?

25 MEMBER LUJANO: I actually have another question.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Okay.

2 MEMBER LUJANO: If we do separate them, and the
3 first motion -- or the first item is that they're not
4 eligible, and we all vote "yes" or if the motion
5 carries --

6 CHAIR SHEEHAN: Right.

7 MEMBER LUJANO: -- then would it matter if they have
8 fee authority or not? I mean, I'm not sure why you'd go
9 to the second one, if the first one -- if they're not
10 eligible.

11 MR. STARKEY: That would be up to the Commission, if
12 they want to deny it on both grounds. The grounds are
13 listed as separate alternative grounds for denial. And
14 it's stated that way in the proposed recommendation.

15 MEMBER LUJANO: Okay.

16 MR. STARKEY: So that's a possible 'nother issue.

17 CHAIR SHEEHAN: Then the eligibility is the
18 threshold issue, and then it sort of begs the issue on
19 the second one.

20 MR. STARKEY: I will point out, however, that as a
21 hypothetical, if it were found that the motion -- if it's
22 decided that they are not eligible claimants and the
23 Commission stops there, and that decision was then
24 challenged in the court, that would be the sole issue
25 before the court. And if things go the way I would hope

Commission on State Mandates - March 30, 2005

1 they would go in the court, we would request that the
2 court remand it back to the Commission for further
3 consideration, because the Commission never reached the
4 underlying merits of that case.

5 CHAIR SHEEHAN: Well, and if the court said they
6 were eligible, we'd still have to then come back, as you
7 say, on the underlying merits of the case.

8 MR. STARKEY: It would be my hope that the court
9 would send it back.

10 CHAIR SHEEHAN: Yes, that could be a possibility.

11 So, all right, any other -- well, we have a motion
12 on the table.

13 Is there a second?

14 MEMBER LUJANO: I'll second.

15 CHAIR SHEEHAN: Okay, so we have a motion and a
16 second.

17 And the motion is to divide the issues before us in
18 the staff recommendation on the eligibility. So the vote
19 that we're taking now is on the motion to divide the two
20 issues.

21 All those in favor of the motion, signify by saying
22 "aye."

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

24 CHAIR SHEEHAN: Opposed?

25 MEMBER BOEL: Opposed.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: And I will oppose also.

2 MEMBER BOEL: So what happens now?

3 MR. STARKEY: The motion fails.

4 CHAIR SHEEHAN: It has to pass by a vote of three.

5 MEMBER SMITH: In that case, Madam Chair, may I make
6 a couple comments about that?

7 CHAIR SHEEHAN: Yes.

8 MEMBER SMITH: The Controller believes that until it
9 has further legislative guidance, that the Councils of
10 Governments are eligible claimants, there may be
11 instances where they are, in the future; we don't believe
12 that the courts have specifically addressed Councils of
13 Governments as an eligible claimant.

14 Like I said before, in Item 3, we disagree with the
15 policy; but that's not our job up here to vote on whether
16 or not we think the policy is a good idea. We think that
17 there are going to be considerable challenges for
18 Councils of Governments to comply with this legislation,
19 and that there may be a fee authority -- whether it's
20 sufficient fee authority is the question -- and we don't
21 believe we have enough facts before us today to vote on
22 it. And so we'll abstain from this item.

23 CHAIR SHEEHAN: Thank you.

24 So then do we have a motion on the staff
25 recommendation?

Commission on State Mandates - March 30, 2005

1 MEMBER BOEL: Yes. I move that we adopt this
2 analysis and deny the Board of Control claim.

3 CHAIR SHEEHAN: Is there a second?

4 MEMBER LUJANO: Second.

5 CHAIR SHEEHAN: All right, so we have a motion and a
6 second.

7 Any further discussion?

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

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

10 CHAIR SHEEHAN: Opposed?

11 *(No audible response was heard.)*

12 CHAIR SHEEHAN: Abstain?

13 MEMBER SMITH: Abstain.

14 CHAIR SHEEHAN: All right. The minutes will
15 reflect that the Controller abstains on that vote.

16 MS. HIGASHI: This brings us to Item 6. Mr. Feller
17 will presently Item 6.

18 CHAIR SHEEHAN: Mr. Feller, do you want to present?

19 MR. FELLER: Sure. Unless there's objections, staff
20 recommends that the Commission adopt the proposed
21 Statement of Decision, which accurately reflects the
22 decision on this test claim. Staff also recommends the
23 Commission allow minor changes to be made to the
24 Statement of Decision, including reflecting the hearing
25 testimony and the vote count that will be included in the

Commission on State Mandates - March 30, 2005

1 final Statement of Decision.

2 CHAIR SHEEHAN: All right, so do we have a motion on
3 the staff analysis recommendation?

4 MEMBER BOEL: I move that we adopt the staff
5 analysis and recommendation.

6 MEMBER LUJANO: Second.

7 CHAIR SHEEHAN: We have a motion and a second.

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

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

10 CHAIR SHEEHAN: Opposed?

11 *(No audible response was heard.)*

12 CHAIR SHEEHAN: Abstain?

13 MEMBER SMITH: Abstain.

14 CHAIR SHEEHAN: The Controller's office is
15 abstaining.

16 And that motion carries.

17 I guess the only thing I would like to say to some
18 of the Members is, I have a feeling it's not going to be
19 the end of this issue for us. I would encourage
20 discussion with the Legislature on this issue because I
21 think, as the Controller's office represented, there are
22 a lot of policy issues involved in this. And my guess
23 is, we will see this again at some point.

24 All right, Item 7. Paula?

25 MS. HIGASHI: Could we take just a brief break?

Commission on State Mandates - March 30, 2005

1 Because I just need to bring people up.

2 CHAIR SHEEHAN: Okay. We'll take a five-minute
3 break.

4 (A recess was taken from 10:31 a.m. to
5 10:38 a.m.)

6 CHAIR SHEEHAN: All right, the Commission on State
7 Mandates will reconvene.

8 Let's see, Item Number 7, Remand of a Test Claim
9 Decision Directed by the Court.

10 Paula, do you want to introduce this issue?

11 MS. HIGASHI: This would be presented by Commission
12 counsel, Katherine Tokarski.

13 CHAIR SHEEHAN: Okay, Ms. Tokarski?

14 MS. TOKARSKI: In 1997, Claimant, Clovis Unified
15 School District, submitted a test claim alleging a
16 reimbursable state mandate for school districts to
17 perform new activities by instructing pupils and
18 informing parents of school bus safety procedures.

19 In the original *School Bus Safety II* Statement of
20 Decision adopted July 29th, 1999, the Commission
21 concluded that the test claim legislation imposed
22 reimbursable state-mandated activities.

23 This decision was challenged in Sacramento County
24 Superior Court by the Department of Finance. By granting
25 the Department of Finance's position, the Court found

Commission on State Mandates - March 30, 2005

1 that the *School Bus Safety II* test claim was not a
2 reimbursable state-mandated program, to the extent that
3 the underlying school bus transportation services were
4 discretionary. However, the Court left one issue for
5 remand. The Commission must now reconsider the limited
6 issue of whether the federal Individuals with
7 Disabilities Education Act, or any other federal law,
8 requires school districts to transport any other
9 students; and if so, whether the test claim statutes
10 mandate a new program or higher level of service beyond
11 federal requirements for which they are reimbursable
12 state-mandated costs.

13 Staff concludes that although federal law may
14 require transportation of disabled children under certain
15 circumstances, the law does not require school districts
16 to provide a school bus transportation program.
17 Therefore, pursuant to the Court's decision and
18 Article XIII B, section 6, of the California
19 Constitution, the *School Bus Safety II* test claim
20 statutes do not impose a reimbursable state-mandated
21 program.

22 Staff recommends that the Commission adopt the final
23 staff analysis which denies this claim.

24 Will the parties and witnesses please state your
25 names for the record?

Commission on State Mandates - March 30, 2005

1 MR. PETERSEN: Keith Petersen with SixTen
2 Associates.

3 MS. GEANACOU: Susan Geanacou, Department of
4 Finance.

5 MR. PETERSEN: Do you want me to bring that down?

6 MS. GEANACOU: That's okay.

7 MR. PETERSEN: The staff conclusion represents a
8 line of reasoning they started three years ago, regarding
9 mandates with optional methods of implementation. And
10 the case before us doesn't provide any new legal
11 arguments.

12 And we've all lost this argument for three years, so
13 I don't think I'll belabor it.

14 CHAIR SHEEHAN: Oh, give it a try.

15 MR. PETERSEN: What's that?

16 CHAIR SHEEHAN: I said, don't you want to give it a
17 try?

18 MR. PETERSEN: No. Been there, done that.

19 CHAIR SHEEHAN: All right.

20 Susan, do you have anything to add?

21 MS. GEANACOU: We don't have any further comments to
22 add. We've reviewed the staff analysis, and we support
23 it.

24 CHAIR SHEEHAN: Okay. Any questions or comments
25 from the Commission members on this?

Commission on State Mandates - March 30, 2005

1 *(No audible response was heard.)*

2 CHAIR SHEEHAN: Is there a motion?

3 MEMBER BOEL: I move that the Commission adopt the
4 final staff analysis that denies this claim.

5 CHAIR SHEEHAN: Is there a second?

6 MEMBER LUJANO: Yes, second.

7 CHAIR SHEEHAN: So we have a motion and a second to
8 adopt the staff analysis and the recommendation.

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

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

11 CHAIR SHEEHAN: Any opposed?

12 *(No audible response was heard.)*

13 CHAIR SHEEHAN: That is adopted. The motion
14 carries.

15 Go ahead, Katherine.

16 MS. TOKARSKI: Item 8 is the proposed Statement of
17 Decision for the item you just voted on. The sole issue
18 before the Commission is whether the proposed Statement
19 of Decision accurately reflects the decision made on
20 Item 7. Staff recommends that the Commission adopt the
21 proposed Statement of Decision beginning on page 3, which
22 accurately reflects the staff recommendation on the
23 remanded test claim.

24 Minor changes to reflect the hearing testimony and
25 the vote count will be included, when issuing the final

Commission on State Mandates - March 30, 2005

1 Statement of Decision.

2 CHAIR SHEEHAN: Okay. So is there a motion on the
3 final Statement of Decision?

4 MEMBER BOEL: I move that we adopt the proposed
5 Statement of Decision.

6 CHAIR SHEEHAN: Is there a second?

7 MEMBER LUJANO: Second.

8 CHAIR SHEEHAN: We have a motion and a second.

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

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

11 CHAIR SHEEHAN: Any opposed?

12 *(No audible response was heard.)*

13 CHAIR SHEEHAN: The motion carries.

14 All right, Item 9.

15 MS. HIGASHI: Nancy Patton will present Item 9.

16 CHAIR SHEEHAN: Great. Ms. Patton?

17 MS. PATTON: Good morning.

18 CHAIR SHEEHAN: Good morning.

19 MS. PATTON: On February 20th, 2004, the Commission
20 on State Mandates adopted the Statement of Decision for
21 the *False Reports of Police Misconduct* program. The test
22 claim legislation requires any law enforcement agency
23 accepting an allegation of misconduct against a peace
24 officer, to have the complainant read and sign an
25 information advisory informing the complainant that it is

1 a misdemeanor to knowingly file a false complaint against
2 a peace officer. The test claim legislation also
3 required the advisory to be available in multiple
4 languages.

5 Before you, are the claimant's Proposed Parameters
6 and Guidelines for the *False Reports of Police Misconduct*
7 program, as modified by staff. Staff modified the
8 proposed P's & G's. We deleted training, establishing
9 and updating an intranet site, interviewing the
10 complainant and addressing questions or concerns by the
11 complainant, as these activities were not identified in
12 the Statement of Decision, nor found to be reasonably
13 necessary to comply with the mandate.

14 We clarified the reimbursement periods for each of
15 the reimbursable activities, and we reduced the uniform
16 time allowance to reflect that activities were deleted.

17 Staff recommends that the Commission adopt the
18 Parameters and Guidelines, as modified by staff,
19 beginning on page 9.

20 Will the parties and representatives please state
21 your names for the record?

22 MS. TER KEURST: Good morning. I'm Bonnie Ter
23 Keurst, representing the county of San Bernardino.

24 MS. GEANACOU: Susan Geanacou, Department of
25 Finance.

1 CHAIR SHEEHAN: Go ahead.

2 MS. TER KEURST: Good morning. Thank you for the
3 opportunity to address you.

4 The Statement of Decision was presented at the
5 January 29, 2004, meeting.

6 At that time, I raised two issues: Training and an
7 explanation or communication with the complainant. My
8 remarks were in response to the staff's final statement
9 and their conclusion which began: *"The Commission denies*
10 *any remaining alleged activities or costs."*

11 At that time, my concern was that this statement
12 would eliminate activities that would be reasonably
13 necessary to accomplish the intent of the law.

14 Now we're back, one year later, looking at exactly
15 that: The intent of the law versus exact wording.

16 In section 4 of the staff analysis, the statement is
17 made, "Staff deleted training because it is not
18 identified in the Statement of Decision." They go on to
19 explain that it isn't necessary because the legislation
20 was enacted prior to the eligible reimbursement period.
21 So original training would have already occurred.

22 I would reiterate, however, that their basic opening
23 argument is, it is not in the Statement of Decision.

24 The staff remarks are then directed at the
25 claimant's rebuttal, our rebuttal. Recognizing that

1 original training did already take place, our position a
2 year ago and today is that there are new employees, new
3 people in the Department, possible changes in procedures
4 that could, in fact, involve training. This training is
5 eliminated from the P's & G's by staff because it is a
6 minimal cost.

7 The staff cited a court case, County of
8 Los Angeles v. the Commission on State Mandates. And it
9 was dated in 2003, suggesting that because it is a
10 minimal reallocation of resources, it should just not be
11 part of the claim. However, for the counties, that
12 still, in fact, translates to costs for us.

13 The County recommends that Item 1 be added back to
14 the one-time activities, Item 1 being, train those
15 employees that actually perform the reimbursable
16 activities listed in section 4(a), (b), (c) and (d),
17 added, of the Parameters and Guidelines, with one-time
18 activity per employee.

19 The second issue is the interaction with the
20 complainant. We cited two elements as part of the
21 process, interviewing, the individual to determine the
22 language and addressing questions and concerns. Both
23 of these items were deleted by staff, citing the
24 Statement of Decision that the mandate only requires law
25 enforcement agencies to have the complainant read and

1 sign the advisory.

2 However, in the Statement of Decision, under issue
3 one, the staff remarks are as follows:

4 *"The Commission finds that the test claim*
5 *satisfies the other tests that triggers Article*
6 *XIII B, section 6, carrying out the*
7 *governmental function of providing a service to*
8 *the public, to the extent that the test claim*
9 *legislation requires law enforcement agencies*
10 *to provide complainants with information*
11 *concerning the right to file a complaint*
12 *against a police officer, including an advisory*
13 *of a misdemeanor charge that may be filed if*
14 *the individual knowingly makes a false*
15 *complaint."*

16 I wanted to highlighted the word "including." The
17 staff remarks were *"provide a service, to provide*
18 *information, including the advisory."* The County must do
19 what is reasonable to provide that service.

20 In completing a time study for this legislation, our
21 Sheriff's Department took the whole process, as it was,
22 separated it into what we consider to be identifiable
23 components. The staff took those components, eliminated
24 two of the three of them, and took a whole process time
25 of 22 minutes that we had established, and cut it down to

1 two minutes for the component of handing over that piece
2 of paper.

3 The County feels strongly that the staff cannot take
4 the County time study and make their own time assumptions
5 from that. If they are not going to accept our time
6 study elements in their entirety, they should provide
7 their own research and time elements based on another
8 county, maybe, or our county, if they want to come back
9 and work with us.

10 The County position is that you cannot provide
11 service to the complainant in a matter of two minutes, as
12 suggested by the staff in section 5, "Claim Preparation
13 and Submission."

14 Probably my biggest concern in this process is the
15 mixed signals. We talk about training being a cost. It
16 is not a big-enough cost, even though there is a mandate
17 out there for the cost. We have 22 minutes as really too
18 much time to service the constituency. But spending the
19 time to identify and divide all of these 22 minutes up
20 and come up with two minutes, doesn't seem to be a good
21 use of our time or our efforts as well.

22 Serving the constituency is the intent of the
23 legislation, but only if it's confined to those actual
24 words that say, you know, "Hand them a piece of paper."
25 That, to me, is a mixed signal.

1 Therefore, the County would suggest that the
2 following two items be added back: Interview the
3 complainant and determine in what language the advisory
4 form should be made available to him or her for reading
5 and signing as prescribed by Penal Code section 148.6,
6 and then Item 7, address any questions or concerns that
7 the complainant may have regarding reading and signing
8 PC 148.6, advisory form.

9 Finally, I just have one housekeeping item. In the
10 period of reimbursement section, the last sentence, I
11 would like to suggest that we take out "through
12 December 31, 2000," because I think it's kind of
13 misleading. Leave the opening date.

14 That's all I have.

15 Thank you.

16 CHAIR SHEEHAN: Do you want to respond to the
17 comments? And then we'll have Ms. Geanacou.

18 MS. PATTON: Basically, we believe that the items
19 that they proposed as activities, two of those items were
20 specifically denied in the test claim SOD. They were
21 heard at the test claim hearing, there was discussion
22 about the legislative intent. And, in fact, that while
23 the bill was -- the test claim legislation was going
24 through the process, the bill was amended, we believe
25 specifically to delete those activities. So we did not

1 put those activities back in because they were
2 specifically denied at the test claim hearing.

3 Based on that, there is nothing in the SOD about
4 training. And we stand on our argument that most of the
5 training should have occurred a long time ago. And the
6 only activity that you have left is handing the
7 complainant a form. We're not reimbursing them for
8 discussing it or answering questions. So we thought the
9 training was minimal, if any.

10 As far as cutting their Uniform Cost Allowance,
11 on page 127, you can see their breakdown. We are not
12 making up our own minutes. That was the -- two minutes
13 is the number of minutes that they proposed for the
14 activity of handing the form to the complainant. So all
15 we did was delete the minutes that corresponded with the
16 activities that we deleted.

17 CHAIR SHEEHAN: Any questions for staff?

18 Paula, did you want to add something?

19 MS. HIGASHI: No.

20 CHAIR SHEEHAN: Oh, okay.

21 Other witnesses?

22 Any questions?

23 MS. TER KEURST: I would just like to respond real
24 quickly to the time study.

25 CHAIR SHEEHAN: Sure.

Commission on State Mandates - March 30, 2005

1 MS. TER KEURST: When you take a time study and you
2 go out to a department and you say, okay, we take what we
3 can do -- so somebody comes in irritated and you're
4 trying to work with them, so take that time block and
5 figure out exactly which of that was this piece and which
6 of that was this piece, and here's your final piece. So
7 we took what we thought was a component that would break
8 down fairly easily on that, to then say, "Okay, well,
9 we don't agree that this is reimbursable; and we don't
10 agree -- we don't agree the front-end piece is
11 reimbursable, and we don't agree that the back-end piece
12 is reimbursable. Therefore, there's only two minutes of
13 time that it takes for you to deal with the complainant
14 person, get him whatever form there is, get him to sign
15 it, get him out the door.

16 I don't even think anyone here can address -- I
17 mean, when I think about addressing someone who comes
18 into the office, I don't think you can do that in two
19 minutes, especially somebody in a situation like this.
20 So to take our time study and just eliminate both ends of
21 it, I don't think is appropriate at this time.

22 I think if, in fact, none of that interaction that
23 happens beforehand or after the fact is going to be
24 considered part of the claim, then I think we at least
25 need to readdress how much time it's going to take just

1 to get them in and out of the door. Because the fact is,
2 the whole mandate has to be looked at in its entirety.
3 And I don't think you can take and say, "Here's a piece
4 of paper. Okay, that's two minutes," and say,
5 everything else that's involved with logging it, getting
6 it, finding it, saying "Hello" to the guy, at least -- or
7 her, whichever -- I don't think you can take that and
8 block that into a two-minute time segment.

9 CHAIR SHEEHAN: Nancy, did you want to add anything
10 else? Or Katherine?

11 MS. TOKARSKI: Yes. Just to be clear, this
12 particular statute that was addressed in *False Reports of*
13 *Police Misconduct* does not newly allow people to come in
14 and complain about peace officer misconduct. That is the
15 activity that this is a piece of. And the piece of this
16 is under Penal Code section 148.6, there's language, of
17 approximately a paragraph, directed to the complainant,
18 saying, "Read this and sign, acknowledging that you've
19 read this." And the outside activities of dealing with
20 somebody who may be irate and angry about an incident
21 that may or may not have occurred, that has to do with
22 the complaint itself and not the issue of giving them
23 information that, if they do make a false complaint,
24 there are misdemeanor charges available.

25 CHAIR SHEEHAN: Okay. Any other comments or

Commission on State Mandates - March 30, 2005

1 questions for this witness? Or staff?

2 *(No audible response was heard.)*

3 CHAIR SHEEHAN: All right, Susan?

4 MS. GEANACOU: The Department of Finance believes
5 that the Parameters and Guidelines and the staff analysis
6 addressing them, that you're seeing today, are consistent
7 with the Statement of Decision; and we would urge that
8 you support them today.

9 CHAIR SHEEHAN: Okay. Is there anyone else who
10 would like to testify on this item?

11 *(No audible response was heard.)*

12 CHAIR SHEEHAN: If not, is there a motion on this
13 matter?

14 MEMBER BOEL: I move that we adopt the staff
15 recommendations.

16 CHAIR SHEEHAN: Is there a second?

17 MEMBER LUJANO: Yes.

18 CHAIR SHEEHAN: We have a motion and a second to
19 adopt the staff recommendations on the proposed
20 parameters and guidelines for false reports and police
21 misconduct.

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

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

24 CHAIR SHEEHAN: Any opposed?

25 *(No audible response was heard.)*

1 CHAIR SHEEHAN: That motion carries.

2 All right, is this yours again, Eric? Item 10,
3 *Integrated Waste Management*?

4 MR. FELLER: Yes. Good morning, again.

5 CHAIR SHEEHAN: Good morning.

6 MR. FELLER: This is, as mentioned in the Parameters
7 and Guidelines -- or "P's & G's," as we call them --
8 before the *Integrated Waste Management* Statement of
9 Decision, adopted 2004. Comments on the P's & G's were
10 filed by the Integrated Waste Management Board and the
11 State Controller's Office, as well as the claimant.

12 The primary issue as raised by the Waste Board is
13 whether reduced disposal costs should count as offsetting
14 savings and calculating reimbursement claims. The Board
15 would have these savings subtracted from each claim.

16 The staff finds that the offsetting savings for
17 reduced disposal costs cannot be counted against claims
18 because there wasn't -- there was no mandate for
19 disposal, so there's not the quote, unquote, "program" at
20 issue. The focus of the reimbursable activities is
21 diversion of solid waste via activities listed in the
22 Statement of Decision and P's & G's.

23 Because before the test claim statute, there was no
24 mandate for diversion or disposal upon which to calculate
25 savings, there can be no offsetting savings for those

Commission on State Mandates - March 30, 2005

1 costs. Rather, as stated in the P's & G's and the
2 analysis, the offsetting revenues in this program are
3 those from the sale of recyclable materials, as directed
4 in accordance with the Public Contract Code, and a
5 student center fee, if applicable.

6 So staff's recommendation is that the Commission
7 adopt the Parameters and Guidelines, as modified by
8 staff, starting on page 15.

9 Would the parties and witnesses please state their
10 names for the record?

11 MS. BORZELLERI: Deborah Borzelleri, staff counsel
12 for the Board.

13 MR. O'SHAUGHNESSY: Trevor O'Shaughnessy, staff for
14 the Integrated Waste Management board.

15 MR. MORALES: Phil Morales, staff at Integrated
16 Waste Management Board.

17 MR. FOX: Eddie Fox, staff, Integrated Waste
18 Management Board.

19 MR. PETERSEN: Keith Petersen, representing the test
20 claims.

21 MS. GEANACOU: Susan Geanacou, Department of
22 Finance.

23 CHAIR SHEEHAN: Okay, who would like to start for
24 the -- Mr. Petersen, go ahead.

25 MR. PETERSEN: No, go ahead. They can go first. I

Commission on State Mandates - March 30, 2005

1 have nothing.

2 CHAIR SHEEHAN: Who from the Waste Board would like
3 to speak?

4 MS. BORZELLERI: I'll start.

5 CHAIR SHEEHAN: Okay.

6 MS. BORZELLERI: Debra Borzelleri. Good morning,
7 Members.

8 CHAIR SHEEHAN: Good morning.

9 MS. BORZELLERI: At the hearing on the Statement of
10 Decision, the Board provided information to the
11 Commission regarding significant cost savings that could
12 be realized by implementing diversion programs, programs
13 that are required in AB 75, this test claim statute.
14 We've also experienced through local government
15 implementation of diversion programs significant cost
16 savings in these types of programs.

17 At that hearing, several of the Commission Members
18 were very interested in getting more information
19 regarding the cost savings. And the Board has continued
20 to provide comments and information about that throughout
21 this process, in developing the Parameters and
22 Guidelines.

23 In the final staff analysis, as Mr. Feller mentioned
24 for the Parameters and Guidelines, these offsetting
25 savings that we are talking about -- not the revenues

1 that are obtained from recyclable materials -- have been
2 proposed to be disallowed.

3 I want to reiterate -- I'm sure the Commission is
4 aware of this -- but just read the regulation, that is
5 the Commission's regulation, section 1183.1(a)(9), in
6 Title 2, California Code of Regulations, states,
7 *"All proposed parameters and guidelines must allow for*
8 *any offsetting savings in the same program, experienced*
9 *as a result of the same statutes or executive orders*
10 *found to contain the mandate."*

11 This statement is also in your boilerplate
12 Parameters and Guidelines.

13 And now at this stage, it seems to be pretty much
14 ignored by the staff analysis, and summarily dismisses
15 the Board's information that we've brought forward.

16 Rather than repeat Mr. Feller's arguments, I will
17 not do that.

18 Of course, we disagree with the staff's opinion. In
19 the interest of clarifying, I would like to walk through
20 how these offsetting savings really should be considered
21 as part of the Parameters and Guidelines. And we'll look
22 at the relationship between disposal and diversion, as
23 set forth in the Board's statutory and regulatory scheme.
24 Then our program manager, Trevor O'Shaughnessy, will give
25 you some real-world examples to help you understand what

1 we're talking about.

2 First, the mandate requires that state entities in
3 large state facilities, which community colleges are, to
4 implement programs to divert solid waste, and actually
5 realize diversion of solid waste, which is expressed as
6 a percentage of diversion.

7 Within the Board's statutory and regulatory scheme,
8 all waste that's generated by an entity is either
9 considered disposed or diverted.

10 Our statute defines "diversion" as activities which
11 reduce or eliminate the amount of solid waste from solid
12 waste disposal.

13 It defines solid waste disposal as the management of
14 solid waste through landfill disposal at a permitted
15 solid-waste facility.

16 And then the statute further states that diversion
17 is expressed as disposal reduction.

18 We have to conclude -- we're having trouble
19 understanding how disposal reduction would not be
20 considered part of this -- of this issue, and
21 inextricably intertwined with the mandate. Increased
22 diversion directly results in disposal reduction, which
23 means that any diversion will directly result in reduced
24 disposal and the reduced costs associated with reduced
25 disposal.

1 Further, had these entities not engaged in the
2 mandated activities, they wouldn't have realized the cost
3 savings from the reduced disposal. We're having trouble
4 imagining a closer cost relationship between a mandate
5 and offsetting cost savings that a claimant would
6 experience.

7 And as noted in the Board's comment letter of
8 February 28th, we've done a rough calculation of actual
9 diversion that's been realized as reported by
10 117 community colleges and district offices for the
11 calendar year 2003. These entities reported diversion
12 of more than 66,000 tons, at an estimated average cost
13 of \$30 per ton for solid waste disposal at a landfill.
14 This translates to an aggregate of almost \$2 million in
15 avoided disposal costs alone, or a cost savings as a
16 result of those diversion programs.

17 Now, avoided disposal costs are only one aspect of
18 offsetting cost savings that had been realized as a
19 result of the mandate. And, again, these have been
20 dismissed by the staff analysis.

21 The Integrated Waste Management Board submitted a
22 proposed cost savings work sheet that could be used as a
23 tool by claimants to identify costs and the commensurate
24 savings realized as a result of implementing diversion
25 programs.

1 The work sheet was offered in the spirit of
2 assisting claimants, assisting the State Controller's
3 Office in wending their way through this complicated
4 area. Not as a required form, but simply something that
5 could be adopted as part of the Parameters and
6 Guidelines. Much of the information that's on it is
7 already part of the report that's required by the Waste
8 Board, the annual report that is required, that is a
9 reimbursable activity. And we think that any entity
10 making a claim under this, would find this work sheet
11 useful. But we're not suggesting that it become a form.
12 That is required and a new mandate.

13 It would also be help to use the work sheet in
14 sorting out actual costs of the mandate. Because of the
15 structure of this mandate, programs that are chosen to be
16 implemented almost transmute into mandated programs. And
17 the Board is very concerned about that potential.

18 Diversion programs often look at an existing program
19 in a new way. For instance, mowing the lawn, okay, that
20 is currently an existing activity that a community
21 college is going to be doing or registering students.
22 But when you implement a new diversion program, you would
23 still have that activity, but you would do it a new way.
24 And I think it would be very difficult for the
25 Controller's office, who does not understand how these

1 programs work, or anyone else who is looking at this, to
2 be able to sort through what is actually part of that
3 mandate or not part of the mandate because of an existing
4 program that's in place. So we are asking that the
5 Commission consider that issue.

6 The Board has submitted this comment on page 15,
7 section 4, "Reimbursable Activities," and added some
8 language that the staff analysis suggested was too broad.
9 We'd like to reiterate that we think that this comment
10 should be put into the Parameters and Guidelines; and
11 hopefully my testimony today has explained it so that it
12 is not as broad.

13 We'd like to suggest that that second sentence in
14 that section reads, "*Actual costs are those actually*
15 *incurred to implement the mandated activities after the*
16 *test*" -- this is the new language -- "*after the test*
17 *claim statute was enacted, and that would not otherwise*
18 *occur if the mandate was not in place.*"

19 So the Board recommends that.

20 I'd like to turn this over to Trevor O'Shaughnessy
21 to actually walk you through some real-world examples.

22 Thanks.

23 CHAIR SHEEHAN: Thanks.

24 Go ahead.

25 MR. O'SHAUGHNESSY: Good morning, Madam Chair and

Commission on State Mandates - March 30, 2005

1 Members of the Commission. My name is Trevor
2 O'Shaughnessy from the California Integrated Waste
3 Management Board, program manager of the overall effort
4 of implementing AB 75.

5 Two examples of activities that were presented
6 briefly by Debra, legal counsel, I would like to expand
7 on a little bit, if I may.

8 Many of you may have homes that have lawns in front
9 of them. And either yourselves or you have someone
10 maintain that lawn. In doing that, you have a choice.
11 You can either leave the clippings on the lawn, or they
12 can be taken off to a landfill. If they go to a
13 landfill, there is increased costs. We maintain our
14 lawns for the simple purpose of maintaining the aesthetic
15 value and pleasantness of the properties.

16 I'm now going to take that over to the colleges.
17 The colleges have been maintaining their lawns and turfs
18 for as long as the campuses have been open. I don't
19 think anyone could deny that. But through the language,
20 as it is stated literally in the P's & G's, as I read
21 them, this would now be a mandated program of mowing the
22 lawn. And that mandated activity would start where the
23 legislation went into place.

24 As a mandated program, all fees and costs associated
25 to that could be claimable, including the equipment, the

1 staffing, the maintenance of the turf and the equipment,
2 as needed, and any other costs that are associated to
3 that. That's as I read the P's & G's, literally as
4 they're laid out.

5 Another example, and I'm not going into much detail
6 on this, but it's something we're seeing more and more,
7 would be electronic registration of the students
8 attending the campuses. Typically, and in the past,
9 registration has been done on paper forms. Forms were
10 filled out, handed in, processed, and now moved on. We
11 now have electronic registration systems.

12 Through an electronic registration system, you've
13 eliminated all of the paperwork and the processing, the
14 purchasing of that paper. All of that is considered a
15 program of implementation under this legislation, and is
16 now, therefore, a mandated program, if they so choose
17 to go to electronic reporting.

18 Through the electronic reporting systems, they would
19 need to purchase computers, programs to run their
20 registration activities, as well as Internet-based
21 connections, and any other necessary services to
22 implement that particular program.

23 Those are just two examples. But in both of those
24 examples, everyone always has a choice or a decision to
25 make.

1 If I take the grass again, I can put it in a trash
2 can where it goes to a landfill. If I don't do that, I'm
3 not going to pay that fee to dispose of it. Plus,
4 there's other benefits of doing that activity.

5 The secondary area is the electronic registration
6 for classes or a single class, where before I may have
7 used a paper form that was in single or multiple,
8 triplicate format because everyone got their copy, I am
9 no longer generating those forms, I no longer store them
10 in my warehouse, where I probably had access, not knowing
11 if someone was going to have many mistakes. I've
12 completely eliminated that, so now I have the cost
13 savings of a form no longer being printed. But then I
14 also have the decision that the individual using the form
15 now undertakes, which is, do I throw it in my trash can,
16 or do I put it in a recycle bin that may or may not be
17 convenient for me while I'm doing registration?

18 If you threw it in the trash can, it would increase
19 the disposal costs. If they recycle it, it has that
20 benefit as well.

21 So in both of these cases, we are trying to present
22 to you that the activities implemented and mandated under
23 this legislation go above and beyond what we
24 traditionally or otherwise would see on a regular basis.

25 There's other examples that could be presented to

Commission on State Mandates - March 30, 2005

1 you, if you so wish. But that does conclude my comments.

2 Thank you.

3 CHAIR SHEEHAN: Any questions for the Waste Board
4 before we move on?

5 *(No audible response was heard.)*

6 CHAIR SHEEHAN: Okay.

7 Would either of you gentlemen like to add anything?

8 MR. FOX: Only if you have questions.

9 CHAIR SHEEHAN: All right.

10 Mr. Petersen?

11 MR. PETERSEN: Okay, thank you.

12 The staff of the Integrated Waste Management Board
13 shares a common misperception about mandated
14 reimbursement that prevails with a lot of state agencies.

15 I think the mowing the lawn is a good example. I've
16 interviewed many operations directors of several of my
17 college clients, and the lawn mowing is a good example.
18 They're not claiming as staff -- the Board may suggest
19 the cost of mowing the lawn. They've always done that.
20 It's not an increased cost. And what the Parameters and
21 Guidelines reimburse, are increased costs. Doing what
22 you used to do is not an increased cost, unless you have
23 to start doing it because of source reduction.

24 The other misperception is, Commission staff is
25 stuck with the Government Code regarding cost savings.

1 The Integrated Waste Management board staff doesn't have
2 the same understanding of the legal meaning of cost
3 savings.

4 As a matter of law, cost savings require a mandate
5 to be in effect in 1975. Commission staff correctly
6 understands the Government Code. There was no mandate
7 regarding waste disposal reduction, source reduction or
8 recycling in 1975. So there is no mandate to be
9 relieved, and there are no cost savings. Commission
10 staff has that correct.

11 And in short, claimants will not be claiming costs
12 they do not incur. What Integrated Waste Management
13 Board staff calls cost savings, such as not having to pay
14 disposal charges, you can't claim costs that you're not
15 going to pay anymore, so there's no cost savings there.
16 In other words, if there was no mandate there, they will
17 not be incurring -- if they're saving on disposal fees,
18 they will not be incurring those costs, so there are no
19 costs to claim.

20 The state is not here at risk at all. But the
21 underlying issue is, only increased costs are claimed,
22 not what you usually do, on a regular basis to do.

23 If there is some incremental new costs between
24 mulching and mowing, that incremental new cost would be
25 claimable, but we're not claiming routine maintenance.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Okay.

2 Did you want to add anything before we move?

3 MS. BORZELLERI: No.

4 CHAIR SHEEHAN: Okay. Did you want to respond to
5 either of the comments?

6 MR. FELLER: Just a brief comment, in addition to
7 what's been stated.

8 The regulation that Ms. Borzelleri pointed out,
9 *"All proposed Parameters and Guidelines must allow for*
10 *offsetting savings in the same program experienced as a*
11 *result of the same statutes or executive orders found to*
12 *contain a mandate."*

13 We focused on the phrase, *"in the same program."*
14 The way Commission staff saw this program -- well, let me
15 first say, before and after AB 75 was enacted, there was
16 disposal before and there was disposal after. What
17 changed with AB 75 was, now diversion was mandated
18 after -- and some of the methods that the plan that
19 community colleges are required to have, that include
20 elements of reduce for use and recycle and so forth.
21 That's how the Commission sees the mandate. Not
22 necessarily doing less of what they always did before
23 AB 75, but the actual activities of reducing, reusing or
24 recycling. And undoubtedly, those do result in waste
25 disposal, but that wasn't the program that staff focused

Commission on State Mandates - March 30, 2005

1 on in looking at the offsetting savings; it was the
2 diversion activities.

3 CHAIR SHEEHAN: Okay. Susan, did you have -- your
4 last time.

5 MS. GEANACOU: My last time. You're right,
6 actually, for a while.

7 CHAIR SHEEHAN: Really?

8 MS. GEANACOU: Susan Geanacou, Department of
9 Finance.

10 I've talked with our staff about this. And I think
11 we would, obviously, defer to the programmatic expertise
12 of the Waste Management Board, given that this is not an
13 area that Finance has in-depth knowledge about.

14 I would, however, note that in the staff analysis,
15 on page 13, there is a specific reference to a code
16 section in the Public Resources Code, 42955, subdivision
17 (a), which renders permissive the community colleges'
18 obligation to direct any cost savings to implement the
19 waste management plan. It's only required if it's
20 feasible. So there is some amount of discretion in the
21 community colleges' hands as to what to do with any cost
22 savings. And the staff analysis also tries to explain
23 the difference between the use of language "cost
24 savings," as used in the codes, and "cost savings" as
25 it's used in the Government Code.

Commission on State Mandates - March 30, 2005

1 So, again, we essentially defer to the waste
2 management board; but I did want to point out that Public
3 Resources Code section there.

4 CHAIR SHEEHAN: Did you want to address that?

5 MR. PETERSEN: Not that issue.

6 CHAIR SHEEHAN: Okay. Any other comments,
7 Mr. Feller, on this one?

8 MR. FELLER: No, nothing further.

9 CHAIR SHEEHAN: Okay. Any questions from the
10 Commission Members on this one?

11 *(No audible response was heard.)*

12 CHAIR SHEEHAN: I guess what I would say is, in
13 response to Ms. Geanacou's last comment, I'm sure it
14 would be up to the community colleges not to -- or to use
15 those cost savings where feasible and pass them on to the
16 state as a reimbursable cost under this.

17 MR. PETERSEN: There is a statute to offset the
18 recycling income. And if it's in excess of \$2,000, the
19 State Legislature has a chance to speak to that issue.

20 CHAIR SHEEHAN: Did you have a question?

21 MEMBER SMITH: No.

22 CHAIR SHEEHAN: Okay. No further discussion.

23 Do we have a motion on the staff recommendations?

24 MEMBER BOEL: I move that we adopt the staff
25 recommendations on the Parameters and Guidelines.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: And do we have a second?

2 MEMBER LUJANO: I'll second it.

3 CHAIR SHEEHAN: All right, so we have a motion to
4 adopt the staff recommendations on the P's & G's with the
5 Integrated Waste Management.

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

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

8 CHAIR SHEEHAN: Any opposed?

9 *(No audible response was heard.)*

10 CHAIR SHEEHAN: That passes.

11 Thank you. Thank you for your testimony.

12 I think we already dispensed with the Consent
13 Calendar. So we move on to the Legal Counsel Report.

14 Do you have anything for the public session,
15 Mr. Starkey?

16 MR. STARKEY: For public session, just one item on
17 the *Animal Adoption* case, which is listed under the
18 litigation calendar. In fact, those cases were
19 consolidated and will be heard in Sacramento Superior
20 Court.

21 CHAIR SHEEHAN: All right, and Item 14.

22 Paula, the Executive Director's Report?

23 MS. HIGASHI: I have nothing further to add.

24 Do any of the Members have questions?

25 CHAIR SHEEHAN: No. And her report was in the

Commission on State Mandates - March 30, 2005

1 binder. I think everyone knows, we will be traveling
2 to Butte County in May for -- I think the 12th of May for
3 the hearing up in Oroville on that. So I want to make
4 sure everyone is aware of that for our schedule.

5 And then the Budget Committee -- the update on the
6 budget committee.

7 MS. HIGASHI: The Budget Committee hearings are
8 coming up in the next few weeks as well. We have not had
9 any meetings yet with Budget Committee staff, but we'll
10 find out next week if we have an update.

11 CHAIR SHEEHAN: You'll let us know?

12 MS. HIGASHI: And we'll keep you posted.

13 CHAIR SHEEHAN: Right.

14 MS. HIGASHI: We plan to shift out the Butte County
15 application which goes to you next week. So you'll have
16 ample time to --

17 CHAIR SHEEHAN: I was going to say, are we expecting
18 them to be rather large?

19 MS. HIGASHI: They're larger than this agenda.

20 CHAIR SHEEHAN: Oh, okay.

21 MS. HIGASHI: I will say that. And we have retained
22 the Department of Finance's audit staff to --

23 CHAIR SHEEHAN: To assist us?

24 MS. HIGASHI: -- to review the application, to
25 prepare the analysis. And we've also rehired Shirley

Commission on State Mandates - March 30, 2005

1 Opie, our former assistant executive director, to manage
2 this process. So we will give you the application
3 materials, bring you up to date; and by the end of April,
4 we will be giving you the staff analysis of that
5 application.

6 CHAIR SHEEHAN: Great.

7 MEMBER BOEL: Will the entire Commission be going?

8 MS. HIGASHI: Everyone who is sitting up here has
9 agreed to participate on May 12th.

10 CHAIR SHEEHAN: I didn't know that.

11 MEMBER BOEL: It's on your calendar. You didn't
12 know that.

13 CHAIR SHEEHAN: I knew I was going.

14 Because I know you want to go to Oroville; right?

15 MS. HIGASHI: Everyone has agreed. And the plan is
16 that then the Commission would make its preliminary
17 decision on the same day as the May hearing, and it would
18 be agendaed for the afternoon at 1:30 for a time certain.

19 And then the last date that I got an agreement from
20 everyone on is June 10th, for the Commission to actually
21 adopt the Statement of Decision. And we'll be back in
22 touch with you regarding the exact time.

23 CHAIR SHEEHAN: Okay.

24 MEMBER SMITH: And just one comment.

25 CHAIR SHEEHAN: Yes.

Commission on State Mandates - March 30, 2005

1 MEMBER SMITH: On the pending case, like most, the
2 Controller is concerned about the large number of test
3 claims pending, and supports the budget documentation and
4 just offers any support that our office may give.

5 CHAIR SHEEHAN: That would be great, if you'd like
6 to do that. Send a letter or something, that would be
7 wonderful.

8 MEMBER SMITH: Yes, we'll do that then.

9 MS. HIGASHI: Thank you very much.

10 CHAIR SHEEHAN: Okay, so that concludes the public
11 session for now. And we will recess into closed session
12 pursuant to --

13 MS. HIGASHI: Is there any Public Comment?

14 CHAIR SHEEHAN: I'm sorry, yes, Public Comment
15 before we go, and then you don't have to wait.

16 Any other public comment from individuals?

17 MR. PETERSEN: I just couldn't hear you.

18 CHAIR SHEEHAN: Public comment?

19 UNIDENTIFIED LADY: Yes, just one thing. I come
20 here for a couple years, but we oftentimes have a hard
21 time hearing you, if you're not speaking into the
22 microphones. I know it's a little funny request. But I
23 come here to get the reports for whatever entity we're
24 with, and I'd really appreciate it.

25 CHAIR SHEEHAN: Thank you.

1 UNIDENTIFIED LADY: Because we didn't hear Paula at
2 all.

3 MR. PETERSEN: Do you want to do that again, Paula?

4 CHAIR SHEEHAN: Paula? From the very beginning;
5 right?

6 Okay.

7 MS. HIGASHI: The whole hearing.

8 I'll sit closer.

9 CHAIR SHEEHAN: Right. And in the future, if you
10 cannot hear us, please feel free, you know, in the
11 hearing to let us know, instead of waiting to the end,
12 because we do not want you to miss anything.

13 All right. So having no public comment, then we
14 will recess into closed session pursuant to Government
15 Code section 11126(e) to confer and meet with legal
16 counsel.

17 We will reconvene in a few minutes to open session.

18 Five minutes.

19 *(The Members of the Commission met in closed*
20 *executive session from 11:21 a.m. to 11:33 a.m.)*

21 CHAIR SHEEHAN: All right. The Commission on State
22 Mandates met in closed session pursuant to Government
23 Code section 11126(e) to confer with and receive advice
24 from legal counsel for consideration and action, as
25 necessary and appropriate, upon the pending litigation

Commission on State Mandates - March 30, 2005

1 listed in the published notice and agenda and any
2 potential litigation; and pursuant to Government Code
3 section 11126, subdivision (a), and 17526, to confer on
4 personnel matters listed on the published agenda.

5 All required reports of closed session having been
6 made and with no further business to discuss, I will
7 entertain a motion to adjourn.

8 MEMBER SMITH: So moved.

9 MEMBER BOEL: I second.

10 CHAIR SHEEHAN: Without any further business, we
11 stand adjourned.

12 Thank you.

13 *(Proceedings concluded at 11:34 a.m.)*

14 --oOo--

15

16

17

18

19

20

21

22

23

24

25

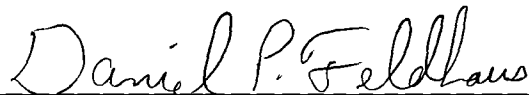
REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the testimony of said witnesses was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on 18th of April 2005.



DANIEL P. FELDHAUS
California CSR #6949
Registered Diplomate Reporter
Certified Realtime Reporter