

# Minutes

## COMMISSION ON STATE MANDATES

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
October 27, 2011

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

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

### CALL TO ORDER AND ROLL CALL

Chairperson Ducay called the meeting to order at 9:03 a.m. Executive Director Drew Bohan called the roll.

*NOTE: The Chairman chose to take items out of order to allow for the late arrival of out-of-town witnesses, so the following reflects the order of the items as they were heard by the Commission. The complete transcript of this Commission meeting is attached.*

### APPROVAL OF MINUTES

Item 1 July 28, 2011

With a motion for approval by Member Chivaro and a second by Member Olsen, the July 28, 2011 hearing minutes were adopted by a vote of 5-0.

### CONSENT CALENDAR

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

- STATEWIDE COST ESTIMATE

Item 12\* *Crime Statistic Reports for the Department of Justice and Amendment*  
02-TC-04, 02-TC-22, 07-TC-10  
Penal Code Sections 12025(h)(1) and (h)(3), 12031(m)(1)  
and (m)(3), 13014, 13023, and 13730(a)  
Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); and Statutes 2000, Chapter 626 (AB 715); and Statutes 2004, Chapter 700 (SB 1234)  
City of Newport Beach/County of Sacramento

Member Alex made a motion to adopt item 12 on the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 5-0.

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

Item 2 Staff Report (if necessary)

There were no appeals to consider.

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

Executive Director Drew Bohan swore in parties and witnesses participating in the hearing.

- **TEST CLAIMS AND STATEMENTS OF DECISION**

Item 4 *Deferred Maintenance (CCD)*  
02-TC-48  
Education Code Section 84660  
Statutes 1981, Chapter 764 (SB 841); Statutes 1990, Chapter 1372 (SB 1874)  
California Code of Regulations, Title 5, Sections 57201, 57202, 57205 Register 82, No. 28 (July 10, 1982), Pages 677-678; Register 91, No. 23 (June 7, 1991) Pages 377-378; Register 95, No. 23 (June 9, 1995) Page 379, and “Preparation Guidelines for Scheduled Maintenance and Hazardous Substances Project Funding Proposals” Chancellor’s Office, California Community Colleges  
Santa Monica Community College District, Claimant

This is a test claim filed by Santa Monica Community College District regarding a grant program to assist community colleges with deferred maintenance and special repair projects for facilities of California Community Colleges.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission deny the test claim, because the program authorizes, but does not require, districts to apply for funding. Under these circumstances, the activities are not mandated by the state.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing claimant Santa Monica Community College District, and Susan Geanacou, representing the Department of Finance.

Mr. Petersen stated he would stand on the written record and offered to answer any questions. Ms. Geanacou stated that Department of Finance agreed with the staff recommendation to deny the test claim.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Olsen, the staff recommendation to deny the test claim was adopted by a vote of 5-0.

Item 5 *Tuberculosis Control*  
03-TC-14  
Health and Safety Code Sections 121361, 121362, 121363, 121364, 121365, 121366, 121367, 121368, and 121369, as added or amended by Statutes 1993, Chapter 676 (AB 803); Statutes 1994, Chapter 685 (AB 804); Statutes 1997, Chapters 116 (SB 362) and 294 (SB 391); and Statutes 2002, Chapter 763 (SB 843)  
County of Santa Clara, Claimant

This test claim addresses the activities required of local detention facilities and local health officers relating to tuberculosis control.

Senior Commission Counsel Heather Halsey presented this item and recommended that the Commission partially approve the test claim.

Parties were represented as follows: Juliana Gmur, MAXIMUS, representing claimant County of Santa Clara, Lehoa Nguyen and Jan Young with the Department of Public Health, and Donna Ferebee and Jeff Carosone, representing Department of Finance.

Ms. Gmur stated that the claimant concurred with the staff analysis. Ms. Ferebee stated that Department of Finance agreed with the staff analysis.

Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the staff recommendation to partially approve the test claim was adopted by a vote of 5-0.

- Item 6      *Community College Construction*  
02-TC-47  
Education Code Sections 70902(b)(1), 81663, 81800, 81805, 81807, 81808, 81820, 81821, 81822, 81823, 81836, 81837, 81839  
Statutes 1980, Chapter 910 (AB 1171); Statutes 1981, Chapter 470 (AB 1726); Statutes 1981, Chapter 891 (SB 936); Statutes 1988, Chapter 973 (AB 1720); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 1038 (SB 9); Statutes 1995, Chapter 758 (AB 446)  
California Code of Regulations, Title 5, Sections 57001, 57001.5, 57001.7, 57002, 57010, 57011, 57013, 57014, 57015, 57016, 57033.1, 57050, 57051, 57052, 57053, 57054, 57055, 57060, 57061, 57062, 57063, 57150, 57152, 57154, 57156, 57158  
Register 75, No. 40 (Oct. 4, 1975) page 673; Register 77, No. 45 (Nov. 6, 1977) pages 673-674; Register 80, No. 39 (Sept. 27, 1980) page 675-676.1; Register 80, No. 44 (Nov. 1, 1980) pages 676.5-676.6; Register 81, No. 3 (Jan. 17, 1981) pages 673-676.6; Register 83, No. 18 (April 30, 1983) pages 666.27 – 666.36; Register 91, No. 23 (June 7, 1991) pages 371 – 377; Register 91, No. 43 (Oct. 25, 1991) pages 371-372; Register 94, No. 38 (Sept. 23, 1994) page 371; Register 95, No. 23 (June 9, 1995) pages 371 – 389  
Santa Monica Community College District, Claimant

This test claim addresses capital construction plans of community college districts; capital outlay projects of community college districts funded with or without the assistance of the state; and state-supported energy conservation projects of community college districts.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this test claim.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing claimant Santa Monica Community College District, and Donna Ferebee, representing Department of Finance.

Mr. Petersen stated that he would stand on the written record and would respond to questions. Ms. Ferebee stated that Department of Finance agreed with the staff recommendation.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Olsen, the staff recommendation to partially approve the test claim was adopted by a vote of 5-0.

- PARAMETERS AND GUIDELINES AND STATEMENT OF DECISION

- Item 8      *Modified Primary Election*  
01-TC-13  
Elections Code Sections 2151 and 13102(b)  
Statutes 2000, Chapter 898 (SB 28)  
County of Orange, Claimant

This program allowed decline-to-state voters who do not declare a political party affiliation to choose any political party to vote at a primary election if so authorized by that political party.

Chief Legal Counsel Camille Shelton presented this item. She stated that the claimant proposed reimbursement for redesigning the sample ballot. Staff recommended that this activity be denied. The claimant submitted a late filing urging the Commission to approve this activity. Ms. Shelton recommended that the Commission adopt the proposed parameters and guidelines, as modified by staff.

The parties were represented as follows: Juliana Gmur, MAXIMUS, representing claimant County of Orange, and Donna Ferebee and Jeff Carosone representing Department of Finance. Ms. Gmur urged the Commission to approve the activity of redesigning and republishing the sample ballots so that voters can be properly notified of the changes in law regarding primary elections. Mr. Carosone stated that Department of Finance had no significant concerns with the staff analysis.

Member Olsen stated that the voter information should be included in the sample ballot, to assist voters, particularly when there are numerous elections being held during a short period of time.

Ms. Shelton responded that the law requires new voters or voters that change parties to be notified of the Modified Primary program by including the notice on the voter registration card. The proposed parameters and guidelines include that activity. The law also requires that the application for an absentee ballot, which is sent with the sample ballots for each election, also provide notice to existing voters. The claimant, however, did not plead the statute requiring notice to existing voters in the test claim and, thus, the activity cannot be included in the parameters and guidelines. . Ms. Gmur disagreed.

Allan Burdick, CSAC-SB 90 Service, discussed the general process for implementing this legislation.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Lujano, the staff recommendation to adopt the parameters and guidelines was adopted by a vote of 4-1, with Member Olsen voting no.

- PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 9      *Peace Officer Procedural Bill of Rights*  
09-PGA-05 (CSM-4499)  
Government Code Sections 3300 through 3310  
Statutes 1976, Chapter 465 (AB 301); Statutes 1978, Chapters 775 (AB 2916), 1173 (AB 2443), 1174 (AB 2696), and 1178 (SB 1726); Statutes of 1979, Chapter 405 (AB 1807); Statutes of 1980, Chapter 1367 (AB 2977); Statutes of 1982, Chapter 994 (AB 2397); Statutes of 1983, Chapter 964 (AB 1216); Statutes of 1989, Chapter 1165 (SB 353); and Statutes of 1990, Chapter 675 (AB 389)  
City of Los Angeles, Requestor

This item addresses a request to amend the parameters and guidelines for the *Peace Officers Procedural Bill of Rights* (also known as POBOR) program to add a reasonable reimbursement

methodology (RRM) of \$452.53 per officer “to apply only and solely” to the City of Los Angeles.

Chief Legal Counsel Camille Shelton presented this item, and recommended the Commission deny this request to amend the parameters and guidelines because: (1) the RRM proposed by the City is not based on cost information from a representative sample of eligible claimants, and does not consider the variation in costs among other local agencies as required by Government Code section 17518.5(b) and (c); and (2) adopting an RRM for only one local agency contradicts the purpose of the mandates process established by the Legislature.

Parties were represented as follows: Allan Burdick, CSAC-SB 90 Service, representing Claimant City of Los Angeles, and Susan Geanacou and Jeff Carosone, representing Department of Finance.

Mr. Burdick requested that this item be postponed to the March 2012 hearing when other similar RRMs are being scheduled. Mr. Carosone stated that Department of Finance concurred with the staff analysis, and stated that no postponement was necessary.

Ms. Shelton responded that under the Commission’s regulations, postponement may be granted at the discretion of the Commission upon a showing of good cause. Member Alex asked Department of Finance if there would be any prejudice to postponement. Ms. Geanacou responded that there could be prejudice, and that it is unnecessary to postpone the item.

With a motion by Member Lujano and a second by Member Alex, the item was postponed by a vote of 4-1, with Chairperson Ducay voting no.

- **INCORRECT REDUCTION CLAIMS AND STATEMENT OF DECISION**

- Item 10 *Health Fee Elimination*  
09-4206-I-19, 09-4206-I-20, 09-4206-I-23, 09-4206-I-26, 09-4206-I-27,  
09-4206-I-28, 09-4206-I-30  
Fiscal Years 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007,  
2007-2008, 2008-2009  
Education Code Section 76355  
Statutes 1984, Chapter 1 (1983-1984 2<sup>nd</sup> Ex. Sess.) (AB 1);  
Statutes 1987, Chapter 1118 (AB 2336)  
Citrus Community College District, Cerritos Community College  
District, Los Rios Community College District, Redwoods Community  
College District, Allan Hancock Joint Community College District,  
Rancho Santiago Community College District, and Pasadena Community  
College District, Claimants

Under this program, community college districts, which previously had fee authority to provide health services, had to maintain health services provided in the 1983-1984 fiscal year without any fee authority for this purpose.

This analysis looks at seven consolidated incorrect reduction claims filed by seven community college districts (Districts) regarding reductions made by the State Controller’s Office (Controller) to reimbursement claims for costs incurred during fiscal years 2002-2003 through 2008-2009 for providing health services to all community college students under the *Health Fee Elimination* program.

Commission Counsel Kenny Louie presented this item, and recommended that the Commission partially approve these incorrect reductions claims.

The parties were represented as follows: Keith Petersen, SixTen and Associates, representing claimants, and Shawn Silva and Steve Vanzee, representing the State Controller’s Office.

Mr. Petersen stated he would stand on the written record, and Mr. Silva stated the State Controller's office concurred with the staff recommendation.

With a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Lujano, the staff recommendation to partially approve the incorrect reduction claim was adopted by a vote of 5-0.

- REQUEST TO REVIEW CLAIMING INSTRUCTIONS AND STATEMENT OF DECISION

- Item 11     *Request to Add Boilerplate Language,*  
09-RCI-01  
Five Amended Parameters and Guidelines Adopted January 29, 2010  
*Collective Bargaining, 05-PGA-48*  
*Habitual Truant, 05-PGA-51*  
*Intradistrict Attendance, 05-PGA-53*  
*Juvenile Court Notices, 05-PGA-54*  
*Health Fee Elimination, 05-PGA-69*  
And  
Twelve Amended Parameters and Guidelines Adopted March 26, 2010  
*Caregiver Affidavits, 05-PGA-46*  
*County Office of Education, Fiscal Accountability, 05-PGA-47*  
*Financial Compliance Audits, 05-PGA-49*  
*Graduation Requirements, 05-PGA-50*  
*Law Enforcement Agency Notices, 05-PGA-55*  
*Physical Education Reports, 05-PGA-60*  
*Physical Performance Tests, 05-PGA-61*  
*Pupil Health Screenings, 05-PGA-63*  
*Pupil Residency Verification and Appeal, 05-PGA-64*  
*Removal of Chemicals, 05-PGA-66*  
*School District Fiscal Accountability Reporting, 05-PGA-67*  
*Law Enforcement Jurisdiction Agreements, 05-PGA-70*  
And  
Three Amended Parameters and Guidelines Adopted May 27, 2010  
*Notification of Truancy, 05-PGA-56*  
*Notification to Teachers: Pupils Subject to Suspension or Expulsion,*  
*05-PGA-57*  
*Pupil Suspensions, Expulsions, and Expulsion Appeals, 05-PGA-65*  
Castro Valley Unified School District, Grossmont Union High School District, San Jose Unified School District, San Diego County Office of Education, Gavilan Joint Community College District, San Mateo County Community College District, State Center Community College District, Requestors

This is a request to review claiming instructions for 20 sets of parameters and guidelines that were amended by the Commission on State Mandates (Commission) in 2010.

Executive Director Drew Bohan presented this item, and recommended that the Commission continue this item to the December 1, 2011, so staff may make amendments to the staff analysis. The item was continued.

- TEST CLAIM AND STATEMENT OF DECISION

- Item 3     *Deferred Maintenance, 02-TC-44*  
Education Code Sections 17582, 17583, 17584, 17584.1, 17584.2, 17585, 17586, 17587, 17588, 17589, 17590, 17591, 17592, 49410, 49410.2, 49410.5 and 49410.7 as added or amended by Statutes 1979, Chapter 282 (AB 8); Statutes 1980, Chapters 40 (SB 88) and 1354 (AB 2196); Statutes 1981, Chapters 371 (SB 22), 649 (AB 62) and 1093 (AB 61); Statutes 1982, Chapter 525 (AB 2417); Statutes 1983, Chapters 753 (SB 1198) and 800 (AB 1931); Statutes 1984, Chapters 1234 (AB 2948) and 1751 (AB 2377); Statutes 1985, Chapter 759 (AB 1255) and 1587 (AB 2040); Statutes 1986, Chapters 886 (SB 327), 1258 (AB 3158), and 1451 (SB 2572); Statutes 1987, Chapters 917 (AB 93) and 1254 (AB 2509); Statutes 1989, Chapter 83 (AB 198) and 711 (SB 759); Statutes 1990, Chapter 1263 (AB 2875); Statutes 1996, Chapter 277 (SB 1562); Statutes 1999, Chapter 390 (AB 939); and Statutes 2002, Chapters 1075 (SB 21) and 1084 (SB 1915)  
Title 2, California Code of Regulations Sections 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5, 1866.5.1, 1866.5.2, 1866.5.3, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.7, 1866.8, 1866.9, 1866.9.1, 1866.10, 1866.12, 1866.13, 1866.14 and 1867.2 as added or amended by Registers 80-16, 80-26, 81.18, 82-31, 86-9, 86-45, 86-49, 86-52, 87-17, 87-46 and 03-03  
*Deferred Maintenance Program Handbook of 2003*  
Clovis Unified School District, Claimant

This test claim addresses activities required as a condition of participation in a state grant program: the Deferred Maintenance Program (DMP).

Senior Commission Counsel Heather Halsey presented this item, and recommended that the Commission deny this test claim.

The parties were represented as follows: Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing claimant Clovis Unified School District, and Susan Geanacou, representing Department of Finance.

Mr. Palkowitz argued that school districts are compelled to meet the requirements of the program once they decide to provide funds to the maintenance fund. Ms. Geanacou stated that Department of Finance supported the staff analysis.

With a motion by Member Olsen to adopt the staff recommendation, and a second by Member Chivaro, the Commission adopted the staff recommendation to deny the test claim by a vote of 5-0.

- PARAMETERS AND GUIDELINES, AMENDMENTS TO PARAMETERS AND GUIDELINES, AND STATEMENT OF DECISION

- Item 7     PROPOSED PARAMETERS AND GUIDELINES  
*Pupil Suspensions II, Expulsions II, Educational Services Plans for Expelled Pupils*  
96-358-03, 03A, 97-TC-09, 98-TC-22, 98-TC-23, 01-TC-18  
Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1, 48918, 48918.5, 48923, and 48926

As Amended by Statutes 1995, Chapters 972 (SB 966) and 974 (AB 922); Statutes 1996, Chapters 915 (AB 692), 937 (AB 2834), and 1052 (AB 2720); Statutes 1997, Chapter 637 (AB 412); Statutes 1998, Chapter 489 (SB 1427); Statutes 1999, Chapter 332 (AB 588); Statutes 2000, Chapter 147 (AB 1721); Statutes 2001, Chapter 116 (SB 166)

Consolidated With

*PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)*

Education Code Section 48911(b) and (e)

Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1980, Chapter 73 (SB 1247); Statutes 1983, Chapter 498 (SB 813); Statutes 1985, Chapter 856 (AB 1758); Statutes 1987, Chapter 134 (AB 439)

*PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)*

Education Code Sections 48915(a) and (b),

48915.1, 48915.2, 48916, and 48918

Statutes 1975, Chapter 1253 (AB 1770); Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1982, Chapter 318 (SB 1385); Statutes 1983, Chapter 498 (SB 813); Statutes 1984, Chapter 622 (SB 1685); Statutes 1987, Chapter 942 (AB 2590); Statutes 1990, Chapter 1231 (AB 3794); Statutes 1992, Chapter 152 (AB 3362); Statutes 1993, Chapters 1255 (AB 342), 1256 (SB 1198), and 1257 (SB 1130); Statutes 1994, Chapter 146 (AB 3601)

*PUPIL EXPULSION APPEALS (CSM-4463)*

Education Code Sections 48919, 48921, 48924

Statutes 1975, Chapter 1253 (AB 1770); Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1983, Chapter 498 (SB 813)

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

*PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)*

Education Code Section 48911(b) and (e)

Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1980, Chapter 73 (SB 1247); Statutes 1983, Chapter 498 (SB 813); Statutes 1985, Chapter 856 (AB 1758); Statutes 1987, Chapter 134 (AB 439)

*PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)*

Education Code Sections 48915(a) and (b),

48915.1, 48915.2, 48916, and 48918

Statutes 1975, Chapter 1253 (AB 1770); Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1982, Chapter 318 (SB 1385); Statutes 1983, Chapter 498 (SB 813); Statutes 1984, Chapter 622 (SB 1685); Statutes 1987, Chapter 942 (AB 2590); Statutes 1990, Chapter 1231 (AB 3794); Statutes 1992, Chapter 152 (AB 3362); Statutes 1993, Chapters 1255 (AB 342), 1256 (SB 1198), and 1257 (SB 1130); Statutes 1994, Chapter 146 (AB 3601)

*PUPIL EXPULSION APPEALS (CSM-4463)*

Education Code Sections 48919, 48921, 48924

Statutes 1975, Chapter 1253 (AB 1770); Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1983, Chapter



This item proposes the adoption of six new sets of parameters and guidelines for the reimbursement of the *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan for Expelled Pupils* programs, which require school districts to perform various activities related to suspending and expelling pupils from school who have committed specified offenses. The Commission found that the costs incurred to perform new activities mandated by the test claim statutes (enacted from 1995 to 2002) constitute a reimbursable state-mandated program beginning in fiscal year 1995-1996. The sixth, and last, set of parameters and guidelines consolidates the Commission's decision in *Pupil Expulsions II*, *Pupil Suspensions II*, and *Educational Services Plan for Expelled Pupils* with *Pupil Suspensions from School*, *Pupil Expulsion from School*, and *Pupil Expulsion Appeals* (CSM-4456, 4455, 4463) beginning in fiscal year 2012-2013.

Senior Commission Counsel Eric Feller presented this item, and recommended that the Commission adopt the five sets of new parameters and guidelines, and the sixth set that consolidates the new parameters and guidelines with the existing parameters and guidelines.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing claimants San Juan Unified School District and Kern County Office of Education, and Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing San Diego Unified School District.

Mr. Petersen stated that after 15 years, and numerous prehearings, meetings, and discussions, these parameters and guidelines are ready to go. Mr. Palkowitz concurred. Ms. Ferebee concurred with the staff analysis.

With a motion by Member Chivaro, and a second by Members Lujano and Olsen, the Commission approved the parameters and guidelines by a vote of 5-0.

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

- Item 13 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer  
*Note: This item will only be taken up if an application is filed.*

No applications were filed.

**STAFF REPORTS**

- Item 14 Legislative Update

Assistant Executive Director Nancy Patton presented this item.

- Item 15 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton presented this item.

- Item 16 Executive Director's Report

Mr. Bohan presented this item.

## **ACTION PURSUANT TO GOVERNMENT CODE SECTION 11125.3(a) (2)**

- Item 17     Action to Amend the Agenda to Add a Closed Session Item for Personnel to Appoint an Interim Executive Director, and to Discuss Process for Appointing a Permanent Executive Director

Mr. Bohan presented this item, and recommended that the Commission approve this item to go into closed session to appoint an interim executive director, and consider the process for hiring a permanent executive director.

### **PUBLIC COMMENT**

Alan Burdick, CSAC-SB 90 Service, congratulated Mr. Bohan on behalf of cities and counties, on his new appointment to the Energy Commission.

Ms. Patton presented Mr. Bohan with a resolution from the Commission and staff, and thanked him for his service to the Commission.

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

#### **A. PENDING LITIGATION**

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

1.     *State of California, Department of Finance v. Commission on State Mandates*, Sacramento, Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2.     *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et. al., Sacramento County Superior Court Case No. 34-2010-80000604 [*Discharge of Stormwater Runoff*, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g.F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3.     Cross Petition Filed: *County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region*, Sacramento County Superior Court Case No. 34-2010-80000604 [[*Discharge of Stormwater Runoff*, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g.F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
4.     *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles*, et. al., Los Angeles County Superior Court Case No. BS130730 [*Municipal Storm Water*

*and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]*

5. *California School Board Association (CSBA) v. State of California et. al., Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Redetermination Process]*
6. *Cross Petition: County of Los Angeles and Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region, Los Angeles County Superior Court, Case No. BS130730 [Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]*

#### B. PERSONNEL

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

- Appoint an Interim Executive Director
- Consider the Process for Appointing a Permanent Executive Director

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

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

At 10:27 a.m., Chairperson Ducay reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation.

Chairperson Ducay also reported that Assistant Executive Director Nancy Patton was appointed acting executive director until a permanent executive director can be appointed.

#### **ADJOURNMENT**

Hearing no further business, Chairperson Ducay adjourned the meeting at 10:28 am.



Nancy Patton  
Acting Executive Director

**PUBLIC HEARING**  
**COMMISSION ON STATE MANDATES**



**TIME:** 9:00 a.m.  
**DATE:** Thursday, October 27, 2011  
**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

KEN ALEX, Director  
Office of Planning & Research

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member



COMMISSION STAFF PRESENT

DREW BOHAN  
Executive Director  
*(Items 2, 13, 16, and 17)*

NANCY PATTON  
Assistant Executive Director  
*(Item 14)*

ERIC FELLER  
Staff Counsel  
*(Items 4, 6, and 7)*

HEATHER HALSEY  
Staff Counsel  
*(Items 3 and 5)*

KENNY LOUIE  
Staff Counsel  
*(Item 10)*

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

CAMILLE SHELTON  
Chief Legal Counsel  
(Items 8, 9, and 15)



PUBLIC TESTIMONY

**Appearing Re Item 3 (Deferred Maintenance):**

For Clovis Unified School District:

ART PALKOWITZ  
Stutz, Artiano, Shinoff & Holtz  
2488 Historic Decatur Road, Suite 200  
San Diego, California 92106

For Department of Finance:

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

**Appearing Re Item 4 (Deferred Maintenance [CCD]):**

For Santa Monica Community College District:

KEITH B. PETERSEN  
President  
SixTen and Associates  
5252 Balboa Avenue, Suite 900  
San Diego, California 92117

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5 (Tuberculosis Control):**

For County of Santa Clara:

JULIANA F. GMUR  
Manager, Financial Services  
MAXIMUS  
3130 Kilgore Road, Suite 400  
Rancho Cordova, California 95670

For California Department of Public Health:

LEHOA NGUYEN  
Staff Counsel  
California Department of Public Health  
Office of Legal Services  
1501 Capitol Avenue, Suite 71-5064  
Sacramento, California 95814

JAN YOUNG, RN, MS  
TB Control Branch  
Division of Communicable Disease Control  
Center for Infectious Diseases  
California Department of Public Health  
850 Marina Bay Parkway, Building P, 2nd Floor  
Richmond, CA 94804-6403

For Department of Finance:

JEFF CAROSONE  
Principal Program Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 6 (Community College Construction):**

For Santa Monica Community College District:

KEITH B. PETERSEN  
President  
SixTen and Associates

For Department of Finance:

DONNA FEREBEE  
Staff Counsel III  
Department of Finance

**Appearing Re Item 7 (Pupil Suspensions II, Expulsions II,  
Educational Services Plans for Expelled Pupils):**

For San Juan Unified School District:

KEITH B. PETERSEN  
President  
SixTen and Associates

For San Diego Unified School District:

ART PALKOWITZ  
Stutz, Artiano, Shinoff & Holtz

For Department of Finance:

DONNA FEREBEE  
Staff Counsel III  
Department of Finance



A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 8 (Modified Primary Election):**

For County of Orange:

JULIANA F. GMUR  
Manager, Financial Services  
MAXIMUS

For Department of Finance:

JEFF CAROSONE  
Principal Program Budget Analyst  
Department of Finance

DONNA FEREBEE  
Staff Counsel III  
Department of Finance

For California State Association of Counties and League  
of California Cities:

ALLAN BURDICK  
California State Association of Counties  
SB-90 Service  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

**Appearing Re Item 9 (Peace Officer Procedural  
Bill of Rights):**

For City of Los Angeles:

ALLAN BURDICK  
California State Association of Counties  
SB-90 Service

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 9 (Peace Officer Procedural Bill of Rights):** *continued*

For Department of Finance:

JEFF CAROSONE  
Principal Program Budget Analyst  
Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

**Appearing Re Item 10 (Health Fee Elimination):**

For Six Claimants:

KEITH B. PETERSEN  
President  
SixTen and Associates

For Controller's Office:

SHAWN D. SILVA  
Staff Counsel  
State Controller's Office  
300 Capitol Mall, Suite 1850  
Sacramento, California 95814

STEPHEN VAN ZEE  
Audit Manager  
State Controller's Office  
3301 C Street, Suite 700  
Sacramento, California 95816





I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call . . . . .	14
II. Approval of Minutes	
Item 1 July 28, 2011 . . . . .	15
III. Proposed Consent Calendar	
Item 12 . . . . .	16
IV. Appeal of Executive Director Decisions Pursuant to California Code of Regulations Title 2, Section 1181(c)	
Item 2 Appeal of Executive Director's Decision ( <i>None</i> ) . . . . .	17
V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Test Claims and Statements of Decision	
Item 3 <i>Deferred Maintenance,</i> 02-TC-44 Clovis Unified School District . . . . .	55
Item 4 <i>Deferred Maintenance (CCD),</i> 02-TC-48 Santa Monica Community College District . . . . .	18
Item 5 <i>Tuberculosis Control,</i> 03-TC-14 County of Santa Clara . . . . .	22

I N D E X

Proceedings

Page

V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

A. Test Claims and Statements of Decision

Item 6 *Community College Construction, 02-TC-47*  
Santa Monica Community College District . . . . . 25

B. Parameters and Guidelines and Statements of Decision

Item 7 Proposed Parameters and Guidelines  
*Pupil Suspensions II, Expulsions II, Educational Services Plans for Expelled Pupils*  
96-358-03, 03A, 97-TC-09, 98-TC-23, 01-TC-18  
San Juan Unified School District and Kern County Office of Education . . . . . 60

Item 8 Proposed Parameters and Guidelines  
*Modified Primary Election, 01-TC-13*  
County of Orange . . . . . 28

Item 9 Proposed Amendments to Parameters and Guidelines  
*Peace Officer Procedural Bill of Rights, 09-PGA-05*  
City of Los Angeles . . . . . 39

I N D E X

Proceedings

Page

V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

C. Incorrect Reduction Claim and Statement of Decision

Item 10 *Health Fee Elimination*,  
09-4206-I-19, 09-4206-I-20,  
09-4206-I-23, 09-4206-I-26,  
09-4206-I-27, 09-4206-I-30,  
Citrus Community College  
District, Cerritos Community  
College District, Los Rios  
Community College District,  
Redwoods Community College  
District, Allan Hancock  
Joint Community College  
District, Rancho Santiago  
Community College District  
and Pasadena Community  
College District . . . . . 51

D. Request to Review Claiming Instructions and Statement of Decision

Item 11 *Request to Add Boilerplate Language*  
09-RCI-01  
Castro Valley Unified School  
District, Grossmont Union  
High School, San Jose Unified  
School District, San Diego  
County Office of Education,  
Gavilan Joint Community  
College District, San Mateo  
County Community College  
District, State Center  
Community College District . . . . . 54

I N D E X

<u>Proceedings</u>	<u>Page</u>
VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8	
A. Statewide Cost Estimates	
Item 12* <i>Crime Statistic Reports for the Department of Justice and Amendment, 02-TC-04, 02-TD-22, 07-TC-10 City of Newport Beach, County of Sacramento . . . . .</i>	16
VII. Hearings on County Applications for Findings of Significant Financial Distress Pursuant to Welfare and Institutions Code Section 17000.6 and California Code of Regulations, Title 2, Article 6.5	
Item 13 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commissions or to a Hearing Officer ( <i>None</i> ) . . . . .	64
VIII. Reports	
Item 14 Legislative Update . . . . .	65
Item 15 Chief Legal Counsel: Recent Decisions, Litigation Calendar.	65
Item 16 Executive Director: Workload, Budget, New Practices, and Next Meetings/Hearings . . . . .	66

I N D E X

<u>Proceedings</u>	<u>Page</u>
IX. Action Pursuant to Government Code Section 11125.3(a)(2)	
Item 17 Action to Amend Agenda to Add a Closed Session Item for Personnel to Appoint an Interim Executive Director and to Discuss Process for Appointing a Permanent Executive Director.	72
X. Public Comment . . . . .	73
XI. Closed Executive Session . . . . .	78
XII. Report from Closed Executive Session . . . . .	78
Adjournment . . . . .	78
Reporter's Certificate . . . . .	79





**Commission on State Mandates – October 27, 2011**

1 BE IT REMEMBERED that on Thursday, October 27,  
2 2011, commencing at the hour of 9:03 a.m., thereof, at  
3 the State Capitol, Room 447, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:



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

9 Drew, will you please call the roll?

10 MR. BOHAN: Yes.

11 Mr. Alex?

12 MEMBER ALEX: Here.

13 MR. BOHAN: Mr. Chivaro?

14 MEMBER CHIVARO: Here.

15 MR. BOHAN: Mr. Lujano?

16 MEMBER LUJANO: Here.

17 MR. BOHAN: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MR. BOHAN: And Chair Ducay?

20 CHAIR DUCAY: Here.

21 Drew, the last meeting's minutes?

22 MR. BOHAN: Two quick logistical notes,  
23 Madam Chair.

24 The first is, this is our first meeting that  
25 we're pretty much paperless. We do have one copy of the

**Commission on State Mandates – October 27, 2011**

1 items without exhibits over here in hard copy, but none  
2 of you do, unless you printed them out yourselves.

3 And behind each of you is a power strip that  
4 we've put in, one on each side of the back wall there.  
5 And if you need it, if you're running low on power and  
6 you brought your power cord, you can plug in. And we're  
7 prepared to shift some of these computers around if you  
8 have a problem. We brought a few back-ups.

9 And the second thing is, we changed the minutes  
10 around in order to save the staff time so that we could  
11 focus more on reducing our backlog. Instead of very  
12 detailed minutes, we just basically have what looks like  
13 an agenda with the core vote and a little, brief  
14 description with the transcript attached. Because we've  
15 got Dan here providing us every word that's said, we've  
16 made that change.

17 So with that, this is the item on approval of  
18 the minutes.

19 CHAIR DUCAY: Okay. Do I have a motion?

20 MEMBER CHIVARO: I move approval.

21 MEMBER OLSEN: I so move -- second.

22 CHAIR DUCAY: Okay, Drew, do you want to call  
23 the roll on the minutes?

24 MR. BOHAN: Sure.

25 Mr. Alex?

**Commission on State Mandates – October 27, 2011**

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MEMBER ALEX: Aye.

MR. BOHAN: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MR. BOHAN: Mr. Lujano?

MEMBER Lujano: Aye.

MR. BOHAN: Ms. Olsen?

MEMBER OLSEN: Aye.

MR. BOHAN: And Ms. Ducay?

CHAIR DUCAY: Aye.

Okay. Move on to the Consent Calendar.

MR. BOHAN: The Consent Calendar today just has one item, it's Item 12. An earlier version of the agenda had item 8 on it, and we pulled it off, so there's only one item you'll be voting on, Item 12.

CHAIR DUCAY: Do I have a motion to adopt the Proposed Consent Calendar?

MEMBER ALEX: So moved.

MEMBER CHIVARO: Second.

CHAIR DUCAY: We have a motion and a second. Do you want to call roll?

MR. BOHAN: Sure.

Mr. Alex?

MEMBER ALEX: Aye.

MR. BOHAN: Mr. Chivaro?

MEMBER Chivaro: Yes.

**Commission on State Mandates – October 27, 2011**

1 MR. BOHAN: Mr. Lujano?

2 MEMBER LUJANO: Aye.

3 MR. BOHAN: Ms. Olsen?

4 MEMBER OLSEN: Aye.

5 MR. BOHAN: And Chair Ducay?

6 CHAIR DUCAY: Aye.

7 Item 2.

8 MR. BOHAN: Item 2, Appeals of Executive  
9 Director Decision. There aren't any.

10 CHAIR DUCAY: We'll move on to the swearing in  
11 of the witnesses.

12 MR. BOHAN: Okay, would the parties and  
13 witnesses for Items 3, 4, 5, 6, 7, 8, 9, 10, and 11 --  
14 that's 3 through 11 -- please rise.

15 *(The parties stood to be sworn.)*

16 MR. BOHAN: Do you solemnly swear or affirm  
17 that the testimony which you are about to give is true  
18 and correct based on your personal knowledge,  
19 information, or belief?

20 *(The parties responded affirmatively.)*

21 MR. BOHAN: Thank you very much.

22 CHAIR DUCAY: Okay, and Item 3, we're going to  
23 be holding until our witness arrives, correct?

24 MR. BOHAN: Right. Thank you.

25 CHAIR DUCAY: Okay, we'll move on to Item 4.

**Commission on State Mandates – October 27, 2011**

1 MR. BOHAN: Yes, Item 4, Eric Feller, across  
2 from me, one of our staff counsels, will be presenting  
3 this. It's on *Deferred Maintenance for Community College*  
4 *Districts*.

5 MR. FELLER: Good morning.

6 The test-claim statutes and regulations create  
7 a grant program to assist community colleges with the  
8 deferred maintenance projects. The statutes and  
9 regulations authorize but do not require districts to  
10 apply for funding.

11 Community college districts decide to seek  
12 state funding for proposed deferred maintenance projects  
13 which triggers the activities required by the test-claim  
14 statutes, regulations, and the manual.

15 The staff finds the test-claim statutes and  
16 executive orders do not constitute a state-mandated  
17 program.

18 Would the parties and witnesses please state  
19 your names for the record?

20 MR. PETERSEN: Keith Petersen, representing the  
21 test claimant.

22 MS. GEANACOU: Susan Geanacou for the  
23 Department of Finance.

24 Is this on?

25 *(Off record from 9:07 a.m. to 9:08 a.m.)*

**Commission on State Mandates – October 27, 2011**

1 CHAIR DUCAY: Mr. Petersen?

2 MR. PETERSEN: I'll stand on the written record  
3 and answer any questions you might have.

4 CHAIR DUCAY: Department of Finance?

5 MS. GEANACOU: Yes, Susan Geanacou, Department  
6 of Finance. It's working now.

7 Finance agrees with the staff recommendation to  
8 deny this test claim. Participation for community  
9 college districts in the *Deferred Maintenance* program is  
10 optional.

11 As staff recommended, any requirements that  
12 come with participation in the program stem from the  
13 district's underlying discretionary choice to  
14 participate.

15 There is no legal compulsion to participate in  
16 the program and there is no practical compulsion to  
17 participate, either. There are no penalties, as the  
18 staff pointed out, for non-participation in the program.

19 This program is structured, similarly, to  
20 programs that were reviewed by the Court and for which  
21 state reimbursement was denied in the *Kern* case, which  
22 was analyzed by the staff in their recommendation. And  
23 for those reasons, we urge your support of the staff  
24 recommendation.

25 CHAIR DUCAY: Okay, is there any questions from

**Commission on State Mandates – October 27, 2011**

1 the members?

2 (No response)

3 CHAIR DUCAY: Seeing none, is there a motion on  
4 this item?

5 MEMBER CHIVARO: I'll move the staff  
6 recommendation.

7 MEMBER OLSEN: Second.

8 CHAIR DUCAY: There's been a motion and a  
9 second to move the staff recommendation.

10 Drew, would you call roll?

11 MR. BOHAN: Madam Chair, one final logistical  
12 item. We've changed the process a little bit.

13 Historically, we've had two items for each of  
14 the substantive items that require a vote. One was for  
15 your adoption of our final staff analysis, and then there  
16 was a second one to then adopt the statement of decision  
17 that reflects that. We've merged the two, and we are  
18 confident that it's consistent with our statutes and  
19 regulations. So you simply vote on one because the  
20 second vote was ministerial. So there will be only one  
21 vote for each of these in contrast to past practice.

22 MEMBER OLSEN: So does that mean that our  
23 motion should be to adopt the statement of decision  
24 rather than the staff recommendation? Or does it matter?

25 MS. SHELTON: They're combined now. This is

**Commission on State Mandates – October 27, 2011**

1 taking place at the staff recommendation on an analysis  
2 and the proposed statement of decision. So the motion is  
3 made in your binders under staff recommendation. It does  
4 say to adopt the proposed statement of decision.

5 CHAIR DUCAY: So then -- let me make sure I  
6 understand. So then you need the motion to be both? Or  
7 just the motion to accept the staff recommendation is  
8 still okay?

9 MS. SHELTON: That's fine, if it's to adopt  
10 this item, so...

11 CHAIR DUCAY: Okay, so it was just clarity for  
12 everyone to understand that it's both?

13 MS. SHELTON: Yes, you are adopting a proposed  
14 statement of decision if you go with the motion.

15 CHAIR DUCAY: Okay, so Drew, call the roll.

16 MR. BOHAN: Thank you.

17 Mr. Alex?

18 MEMBER ALEX: Aye.

19 MR. BOHAN: Mr. Chivaro?

20 MEMBER CHIVARO: Aye.

21 MR. BOHAN: Mr. Lujano?

22 MR. LUJANO: Aye.

23 MR. BOHAN: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MR. BOHAN: And Chair Ducay?



**Commission on State Mandates – October 27, 2011**

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CHAIR DUCAY: Aye.

The motion is carried.

Item 5.

MR. BOHAN: Item 5 is similar -- excuse me, it's not. It's *Tuberculosis Control* program.

And Heather Halsey, another staff counsel, will present this item.

MS. HALSEY: Good morning. This test claim addresses the activities required of local detention facilities and local health officers relating to tuberculosis control.

Staff finds that the provision of counsel to non-indigent TB patients subject to an order of detention and activities specified in the proposed statement of decision related to the transfer or release of TB patients from local detention facilities imposes a new program or higher level of service on counties and specified cities.

Staff finds that the remaining requirements of the test-claim statute serve federal mandates or requirements of existing law and do not mandate a higher level of service.

Claimant has submitted a letter concurring with that analysis. And none of the other parties or interested parties have submitted comments on the draft

**Commission on State Mandates – October 27, 2011**

1 staff analysis.

2 Staff recommends that the Commission adopt the  
3 proposed statement of decision to partially approve this  
4 test claim.

5 Will the parties and witnesses please state  
6 their names for the record?

7 MS. GMUR: Juliana Gmur on behalf of the test  
8 claimant, County of Santa Clara.

9 MS. NGUYEN: Lehoa Nguyen, staff counsel for  
10 the California Department of Public Health.

11 I'm here with Jan Young from the Tuberculosis  
12 Control Program.

13 MR. CAROSONE: Jeff Carosone, Department of  
14 Finance.

15 MS. FEREBEE: Donna Ferebee, Department of  
16 Finance.

17 MS. GMUR: Good morning, Commissioners.

18 The test claimant is very pleased with the work  
19 the staff has done on this. We concur with the staff  
20 analysis, and we request that it be adopted today.

21 MS. NGUYEN: The Department of Finance also  
22 concurs with the staff analysis, and we also commend the  
23 Commission on the work that they've done.

24 CHAIR DUCAY: Department of Finance?

25 MS. FEREBEE: Yes. Finance agrees with the

**Commission on State Mandates – October 27, 2011**

1 staff analysis and the proposed statement of decision.  
2 We agree that much of the claimed activities were  
3 required under preexisting law or were federal  
4 requirements.

5 And also, it did appear that several of the  
6 activities claimed are more appropriate for -- or more  
7 appropriately addressed at the P's & G's phase. And we  
8 have no significant concerns with the remainder of the  
9 recommendations. And we urge you to adopt the staff  
10 analysis.

11 Thank you.

12 MEMBER ALEX: Well, then congratulations to the  
13 staff.

14 CHAIR DUCAY: So is there any -- everybody's in  
15 agreement. But is there any questions from the members?  
16 Any other discussion?

17 *(No response)*

18 CHAIR DUCAY: Okay. Do we have a motion?

19 MEMBER OLSEN: I'll move adoption of staff  
20 recommendation.

21 MEMBER CHIVARO: Second.

22 CHAIR DUCAY: Okay, Drew, we have a motion and  
23 a second on the adoption of the staff recommendation.

24 Can you call the roll, please?

25 MR. BOHAN: Sure.

**Commission on State Mandates – October 27, 2011**

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Mr. Alex?

MEMBER ALEX: Aye.

MR. BOHAN: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MR. BOHAN: Mr. Lujano?

MEMBER LUJANO: Aye.

MR. BOHAN: Ms. Olsen?

MEMBER Olsen: Aye.

MR. BOHAN: And Chair Ducay?

CHAIR DUCAY: Aye.

MS. GMUR: Thank you, Commissioners.

CHAIR DUCAY: Thank you.

Item 6?

MR. FELLER: This is the *Community College Construction* test claim.

This test claim addresses capital construction plans in community college districts' capital outlay projects funded with or without assistance from the State, and state-supported energy conservation projects of a community college district.

Most of the activities in the test-claim statutes or regulations are not a new program of higher level of service because they have been required since before 1975. Others are downstream to a discretionary decision to participate in a grant or a construction

1 program.

2 Thus, staff found that the test claim is  
3 reimbursable for only a few of the activities related to  
4 the expanded requirements for the five-year plan for  
5 capital construction that districts submit to the State  
6 as specified in the analysis.

7 Staff recommends the Commission adopt the  
8 attached proposed statement of decision to partially  
9 approve the test claim for those activities.

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

12 MR. PETERSEN: Keith Petersen representing the  
13 test claimant.

14 MS. FEREBEE: Donna Ferebee, Department of  
15 Finance.

16 MR. PETERSEN: I'll stand on the written  
17 submission and respond to any questions.

18 CHAIR DUCAY: Department of Finance?

19 MS. FEREBEE: Yes. Finance also agrees with  
20 the recommendations in the staff analysis. Many of the  
21 activities existed before 1975 and, therefore, are not  
22 new.

23 We also agree that discretionary decisions the  
24 districts make cannot lead to reimbursable state mandates  
25 such as the decision to seek state funding and comply

**Commission on State Mandates – October 27, 2011**

1 with the requirements associated with that the decision  
2 to submit a five-year plan for each college or  
3 educational center as opposed to one capital construction  
4 plan, and the decision to enter into energy management  
5 agreements and borrow funds as was analyzed and laid out  
6 in the staff analysis.

7 Also, we agree that there was no evidence of  
8 any practical compulsion.

9 And again, we concur with the staff  
10 recommendation.

11 CHAIR DUCAY: Okay, any questions from the  
12 members?

13 *(No response)*

14 CHAIR DUCAY: Any discussion?

15 *(No response)*

16 CHAIR DUCAY: Seeing none, do we have a motion?

17 MEMBER CHIVARO: I'll move staff  
18 recommendation.

19 MEMBER OLSEN: I'll second.

20 CHAIR DUCAY: We have a motion and a second to  
21 move the staff recommendation.

22 Drew, would you call the roll?

23 MR. BOHAN: Mr. Alex?

24 MEMBER ALEX: Aye.

25 MR. BOHAN: Mr. Chivaro?

**Commission on State Mandates – October 27, 2011**

1 MEMBER CHIVARO: Aye.

2 MR. BOHAN: Mr. Lujano?

3 MEMBER LUJANO: Aye.

4 MR. BOHAN: Ms. Olsen?

5 MEMBER OLSEN: Aye.

6 MR. BOHAN: And Ms. Ducay?

7 CHAIR DUCAY: Aye.

8 Are we holding Item 7 over as well for our  
9 witness?

10 MR. BOHAN: That's right. If we could, yes.

11 CHAIR DUCAY: Okay, Item 8?

12 MR. BOHAN: Again, this item was originally on  
13 consent. We got late comments and pulled it off.

14 And Chief Counsel Camille Shelton will present  
15 this on the *Modified Primary Elections* program.

16 MS. SHELTON: Good morning. This is the  
17 proposed adoption of the parameters and guidelines on the  
18 *Modified Primary Elections* program.

19 This program allowed decline-to-state voters  
20 who don't declare a political party affiliation to choose  
21 any political party to vote at a primary election if the  
22 political party authorizes decline-to-state voters to  
23 vote that way.

24 The Commission approved this test claim for two  
25 activities. The first one was to add information to the

**Commission on State Mandates – October 27, 2011**

1 voter registration card to let new voters and voters that  
2 transfer political parties the right to vote a partisan  
3 ballot.

4 The second activity approved by the Commission  
5 was to allow voters who decline to state a party  
6 affiliation to vote the party ballot.

7 We understand that the claimant is still  
8 recommending reimbursement for -- to refurbish and to --

9 MS. GMUR: Redesign --

10 MS. SHELTON: -- redesign the sample ballots.

11 She has a late filing, which is on yellow right  
12 here.

13 Staff continues to recommend that the  
14 Commission deny that activity because the Legislature has  
15 established a process to notify existing voters of the  
16 process by putting that information on the vote-by-mail  
17 application, which is sent with every sample ballot.  
18 That particular statute was not pled in this test claim.

19 So with the definition of what is reasonably  
20 necessary to comply with the mandate, which excludes  
21 those activities that are expressly required by statute,  
22 staff recommends that the Commission deny the request.

23 Will the parties please state your names for  
24 the record?

25 MS. GMUR: Juliana Gmur, appearing on behalf of



**Commission on State Mandates – October 27, 2011**

1 the test claimant, County of Orange.

2 MR. CAROSONE: Jeff Carosone, Department of  
3 Finance.

4 MS. FEREBEE: Donna Ferebee, Department of  
5 Finance.

6 MS. GMUR: Good morning again, Commissioners.

7 Before you, you have a late filing. I  
8 apologize for its tardiness. There was already evidence  
9 in the record regarding the one-time cost of redesigning  
10 and republishing the sample ballot.

11 In looking at this, in the draft staff  
12 analysis, the final staff analysis, staffed relied on the  
13 fact that there was nothing in statute to support this --  
14 which is correct, but is not the standard now.

15 Staff has just restated the standard, and has  
16 probably appropriately stated it this time. But we still  
17 think that it should be included. It is a one-time cost.  
18 The law had just changed. And this was an opportunity  
19 for the registrars of voters to inform those who have  
20 declined to state about the change in law.

21 One of the things that the registrar pointed to  
22 in his declaration is that the notice that's provided on  
23 the registration card, most voters do not retain copies  
24 of the registration card to know what their rights are.  
25 They rely on the sample ballot to tell them what to do,

**Commission on State Mandates – October 27, 2011**

1 and how to do it, what they can do and cannot do in an  
2 election. And with the change in law, they would be  
3 relying just on that, having registered as decline-to-  
4 state in the past. So without that notice, they would  
5 not have known.

6 Now, the statute does say and the Commission  
7 did find that there are two activities.

8 One is the notice provision. The notice  
9 provision doesn't have any way for us to get in -- it's  
10 specified in statute exactly what that notice provision  
11 is.

12 We believe this falls under the second  
13 provision, which is allow them to vote.

14 Registrars of voters provide two things: They  
15 provide materials and they provide information.

16 We believe that in allowing someone to vote,  
17 it's more than just handing them the ballot. It's  
18 allowing them to understand what they're doing by  
19 providing that information in the sample ballot.

20 CHAIR DUCAY: Department of Finance?

21 MR. CAROSONE: Jeff Carosone, Department of  
22 Finance.

23 We have no significant concerns with the final  
24 staff analysis. The analysis reflects our suggestion  
25 that the activities of modifying the vote-by-mail notice

**Commission on State Mandates – October 27, 2011**

1 and application are not reasonably necessary to allow  
2 decline-to-state voters to vote a party ballot. Voters  
3 are already currently made aware of their right to do so  
4 through information on the voter registration card.

5 In addition, we concur with the staff's  
6 analysis which denied the request to include the  
7 activities of redesigning and republishing the sample  
8 ballot. There is no requirement in law to modify the  
9 sample ballot to allow decline-to-state voters to vote a  
10 party ballot.

11 CHAIR DUCAY: Ms. Ferebee, do you have anything  
12 to add?

13 MS. FEREBEE: No.

14 CHAIR DUCAY: Okay. Do we have any questions  
15 or discussion?

16 MEMBER OLSEN: Well, I'm inclined to think that  
17 it does need to be in the sample ballot. I happen to  
18 live in the district that has gone to the polls five  
19 times in the last three months. Okay, I mean, we have  
20 been just deluged with this stuff.

21 And I know that from opportunity-to-vote to  
22 opportunity-to-vote, even though some of them have been  
23 only a month apart in my district, I retain no  
24 information from one to the next. I start with a blank  
25 slate each time, not thinking about what I was told in

1 the sample ballot the time before. And I certainly don't  
2 know anything about what was on my voter registration  
3 card from umpteen years ago when I registered. So it  
4 seems to me, that if the staff's recommendation is  
5 relying solely on voter registration cards as the way of  
6 giving out this information, that that is potentially  
7 problematic.

8 MS. SHELTON: May I address that issue?

9 All the statements that you made, you know, we  
10 obviously agree with. Except the Legislature has spoken,  
11 and the Legislature did require a notice to voter  
12 registration cards and did require notice to those people  
13 that are currently voters in the vote-by-mail  
14 application, which is attached to the sample ballot.

15 The problem here is a pleading problem. They  
16 did not plead that statute. We have no jurisdiction over  
17 that statute. And the plain language that defines what  
18 is reasonably necessary to comply with a mandate says  
19 that it can't be an activity required by statute.

20 It is an activity required by statute. They  
21 did not plead it. And that's the basis of the  
22 recommendation.

23 MS. GMUR: I disagree, I'm sorry.

24 I realize that we did not plead the sample  
25 ballot itself. We're not looking for the sample ballots

1 from -- and I realize that the language we originally  
2 pled was somewhat odd.

3 But we're not looking for all sample ballots  
4 for all time. We're looking for at the time that the law  
5 changed, registrars of voters went through and had to  
6 change the sample ballot for that first election based on  
7 this particular change in law. This would be a one-time  
8 cost, back at the time that this change in law occurred.  
9 And so we did not ask for every sample ballot. That is  
10 another statute. That is not part of the *Modified*  
11 *Primary* program at all. That's a completely different  
12 horse of another color.

13 What we are looking at here is specifically  
14 just putting that information in that ballot at the time  
15 of the change in law so that voters will be educated that  
16 that change had occurred. That's all.

17 We admit that it is an entirely different  
18 statute that requires the sample ballot be published.  
19 We're not talking about that when we're talking about the  
20 fact that we had to go back and change it.

21 MS. SHELTON: I guess my only confusion with  
22 that argument is that that statute that did require that  
23 the vote-by-mail application be modified to have that  
24 information was part of the *Modified Primary* bill. It  
25 was enacted in the same bill that the *Modified Primary*

**Commission on State Mandates – October 27, 2011**

1 program was adopted.

2 And I don't understand -- I guess if you -- and  
3 that is attached to the sample ballot, so it's on the  
4 same document, it's just on the back of the sample  
5 ballot. So I'm not understanding why you would have two  
6 notices to the voter.

7 MS. GMUR: We did.

8 CHAIR DUCAY: Is there any other discussion or  
9 questions on this item?

10 MEMBER OLSEN: Yes.

11 Okay, so, Camille, would that be then that the  
12 most reasonable way would have been to have one notice  
13 to the voters from the staff's perspective and the --

14 MS. SHELTON: Clearly, the Legislature has  
15 implemented the process and has wanted notice to those  
16 new voters who are just registering to vote and those who  
17 transfer registration. So if I am going from Republican  
18 to Democrat or Democrat to Republican, I have to fill out  
19 a new registration card.

20 That card has the information, that if I'm a  
21 decline-to-state voter, you have the option of voting a  
22 primary ballot.

23 They also -- the Legislature also implemented  
24 the program by providing notice to continuing voters.  
25 That is required by law. And they didn't plead it. So

1 it's a pleading problem, not what is necessary.

2 Clearly, the Legislature thought it was  
3 necessary. It's in law. We just don't have jurisdiction  
4 over that statute.

5 MEMBER OLSEN: Okay.

6 MR. BURDICK: Madam Chair, Members, I am Allan  
7 Burdick on behalf of CSAC SB90 Service; and thank you for  
8 letting me weigh in here a little bit.

9 I was actually involved back in the early  
10 implementation of this, so I thought I would share a  
11 little bit of that after the bill was signed. The  
12 Secretary of State and the county registrars of voters,  
13 essentially -- or the county clerks, in some cases, but  
14 primarily the registrars -- were involved in a series of  
15 discussions of how to implement this. And at that time,  
16 there were a series of different voting systems out  
17 there. There still are more than one voting system. But  
18 there were even more at that time, some of which are no  
19 longer allowed.

20 There was a discussion of how do you implement  
21 this, what you do. And there was probably a three-month  
22 period, at least -- there was both discussion before this  
23 bill was adopted and then, I think -- I think this was a  
24 2000 statute, as I recall.

25 MS. GMUR: Yes.

**Commission on State Mandates – October 27, 2011**

1 MR. BURDICK: And I think Bill Lockyer carried  
2 the bill.

3 And then the first election was the 2002  
4 primary. And during that period of time, there was a lot  
5 of discussion: How do we implement this? What do we do?  
6 Some people went to different colored ballots and  
7 different kinds of measures. There were just all kinds  
8 of attempts to try to reach agreement with the Secretary  
9 of State on what to do.

10 And I would tell you, I think the election  
11 officials -- what they did was, based on their  
12 discussions and the advice of the Secretary of State, and  
13 I think what everybody felt was reasonably necessary to  
14 fully implement the intent of this legislation. And I  
15 think -- I know that, you know, sometimes attorneys will  
16 look at the statute and say, "Gee, I don't really see  
17 that." But I think clearly -- I wish the Secretary of  
18 State was here because I think that if those people were  
19 there that were involved in this process back in 2000 and  
20 2001, it could clearly show the fact that this program  
21 was implemented consistently with very close, at that  
22 time, cooperation we had between counties and the  
23 Secretary of State's office.

24 So I just want to share a little bit of  
25 actually what happened when implemented. And it seems to



**Commission on State Mandates – October 27, 2011**

1 me, it would be improper to try to narrow this down and  
2 not allow for reimbursement.

3 I doubt if the counties -- I think counties are  
4 going to have a hard time going back and documenting that  
5 and supporting it, anyway, and may not end up resulting  
6 in actual claims to the State. But I think the cost  
7 should be allowed.

8 Thank you.

9 CHAIR DUCAY: Do we have any other discussion  
10 or questions?

11 *(No response)*

12 CHAIR DUCAY: Seeing none, do we have a motion  
13 on this item?

14 MEMBER CHIVARO: I'll move staff  
15 recommendation.

16 MEMBER LUJANO: Second.

17 CHAIR DUCAY: We have a motion and a second to  
18 move the staff recommendation on this item.

19 Will you call the roll?

20 MR. BOHAN: Mr. Alex?

21 MEMBER ALEX: Aye.

22 MR. BOHAN: Mr. Chivaro?

23 MEMBER CHIVARO: Aye.

24 MR. BOHAN: Mr. Lujano?

25 MEMBER LUJANO: Aye.

**Commission on State Mandates – October 27, 2011**

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MR. BOHAN: Ms. Olsen?

MEMBER OLSEN: No.

MR. BOHAN: And Ms. Ducay?

CHAIR DUCAY: Aye.

MS. GMUR: Thank you very much.

MR. BURDICK: Thank you very much.

CHAIR DUCAY: Motion carried.

Item 9?

MS. SHELTON: Item 9 is a proposed request to amend the parameters and guidelines for the *Peace Officer Procedural Bill of Rights*. This program provides a series of rights and procedural safeguards to peace officers employed by local agencies that are subject to investigation and discipline.

The City of Los Angeles is requesting that the Commission adopt a reasonable reimbursement methodology in the form of a unit cost just for the City of Los Angeles for all activities except the activity of providing the opportunity for an administrative appeal in the amount of \$425.

Under the existing parameters and guidelines to the program, all local agencies are eligible to claim either based on actual costs or a unit cost of \$37 per officer.

Staff recommends that the Commission deny the

**Commission on State Mandates – October 27, 2011**

1 City's request for two reasons.

2 First, the request does not comply with the  
3 statute that governs the reasonable reimbursement  
4 methodology provision. The claimant has provided no cost  
5 information from a representative sample of eligible  
6 claimants, and has not considered the variation of costs  
7 among other local agencies in its request.

8 In addition, the request is not consistent with  
9 the statutory scheme for mandates. The statutory scheme  
10 envisions that test claims and parameters and guidelines  
11 be based on a class action when a statute applies equally  
12 to all like claimants.

13 And for those reasons, staff recommends that  
14 the Commission deny this request.

15 Will the parties and witnesses please state  
16 your names for the record?

17 MR. BURDICK: Allan Burdick on behalf of the  
18 City of Los Angeles.

19 MS. GEANACOU: Susan Geanacou on behalf of the  
20 Department of Finance.

21 MR. CAROSONE: Jeff Carosone, Department of  
22 Finance.

23 MR. BURDICK: The City of Los Angeles disagrees  
24 with the staff's position. However, first, it would like  
25 to request, based on good cause, a postponement of this

1 until the March hearing in March 2012.

2 The reason for that is that there are four  
3 other sets of parameters and guidelines before the  
4 Commission which deal with proposed reasonable  
5 reimbursement methodologies. The Executive Director of  
6 the Commission had postponed those hearings, some of  
7 which were scheduled originally for this hearing or other  
8 hearings to March; and has requested, those four  
9 claimants, as well as other interested parties, to  
10 comment on the RRM statutes that are subject to  
11 underlying of this particular test claim; and has asked  
12 for comments on those by December, following which we  
13 anticipate some discussion, I think, amongst not only the  
14 parties, but also amongst the statewide associations and  
15 others about the interpretation of this statute.

16 And so based upon that, the City would first  
17 like to request that you postpone this until the  
18 March hearing and give them the opportunity, first, to  
19 participate in and have those discussions, consider  
20 whether or not a reasonable reimbursement methodology  
21 formula amongst other agencies could include a single  
22 component for one agency, such as the City of  
23 Los Angeles, the County of Los Angeles, the L.A. Unified  
24 School District, or somebody else.

25 So, anyway, we request a postponement, and we

**Commission on State Mandates – October 27, 2011**

1 believe that that is good cause, and we hope you agree  
2 with that.

3 Thank you.

4 CHAIR DUCAY: Department of Finance?

5 MR. CAROSONE: Jeff Carosone, Department of  
6 Finance.

7 We concur with the staff's analysis. We don't  
8 feel like a postponement is necessary. The staff  
9 analysis rejects the City of Los Angeles' request to  
10 adopt an RRM that applies solely to that entity.

11 Clearly, the request does not meet the requirements of  
12 Government Code 17518.5 which dictates the criteria for  
13 developing an RRM. The proposal is not based on cost  
14 information from a representative sample of eligible  
15 claimants, nor does the proposal consider the variation  
16 in cost among other local agencies.

17 We feel this request goes against the very  
18 intent of developing an RRM, which is to realize  
19 efficiencies in the process in a fair cost-effective  
20 manner that, again, is representative of the entity  
21 seeking reimbursement.

22 This type of request actually sets a bad  
23 precedent by having local entities seek an  
24 individualized, customized reimbursement rate which  
25 violates the principles of developing an RRM.

**Commission on State Mandates – October 27, 2011**

1 We concur with the recommendations to deny the  
2 request.

3 CHAIR DUCAY: Any questions or discussion?

4 MS. SHELTON: Do you want me just to let you  
5 know what the regulatory authority is for the request?

6 CHAIR DUCAY: Yes.

7 MS. SHELTON: It's under section 1187.9. And  
8 any party may request that the Commission continue an  
9 item for good cause.

10 The section does give the Commission  
11 discretion, but it does say that the following policies  
12 should be taken into consideration:

13 Continuances are not favored by the Commission.

14 The parties are expected to submit for decision  
15 all matters in controversy at a single hearing and to  
16 produce at such hearing all necessary evidence.

17 I will say that Mr. Burdick is correct that  
18 we do have currently, tentatively scheduled, a number of  
19 parameters and guidelines and parameters and guidelines  
20 amendments that are requesting reimbursement based on an  
21 RRM, and discussions have been made with respect to those  
22 items about what is an RRM and what the Legislature did  
23 intend.

24 I feel like this particular request is a little  
25 bit different because it doesn't even address the

1 elements that are identified in statute as to what is  
2 required to submit to an RRM.

3 The other claims have at least provided some  
4 type of evidence to try to meet those standards.

5 MR. BURDICK: Can I make just one comment on  
6 that?

7 I think that this does touch on one of the  
8 issues out there, I think, that would eventually have to  
9 get to this, if you looked at this discussion, you know,  
10 and that is, I think the sampling, does it have a  
11 representative sample of the agencies, is it done in a  
12 cost-efficient manner? The variation of costs, I think,  
13 is particularly key. And I know that's one of the real  
14 key issues of Drew's letter to all the claimants, is  
15 variation in costs. And I think, you know, if we go  
16 forward, I can clearly demonstrate that.

17 But I would rather just postpone this, have  
18 those discussions, and come back, and hopefully have some  
19 general agreement, or maybe the City of Los Angeles may  
20 decide to come back with an amended proposal which  
21 everybody would agree to.

22 So I'm simply -- what the City is really  
23 looking for is to see if we can develop some consensus in  
24 the next five months, and come back to do something that  
25 everybody can support.

**Commission on State Mandates – October 27, 2011**

1 MS. GEANACOU: If I could make a comment,  
2 please?

3 I think Mr. Burdick mentions a variation in  
4 cost that I think it explicitly says, or more than  
5 suggests, that there are multiple claimants to which the  
6 numbers or the variations would apply or stem from. And  
7 in this case, the costs are those only incurred by one  
8 claimant entity. And I think the members should keep  
9 that in mind as it regards this particular request and  
10 not the others that are pending for a spring  
11 determination.

12 MR. BURDICK: And I would like to just comment  
13 on that just briefly, and that is, essentially that this  
14 includes an additional -- an adjustment to the LA cost  
15 that was included in the original RRM based on an updated  
16 and reissued audit by the State Controller's Office.  
17 But it does contain all of the other samples that the  
18 Commission found to be the number of agencies to be a  
19 reasonably representative sample. None of those agencies  
20 are excluded. Every city and county is still included in  
21 this. There is nobody excluded.

22 So while there was an adjustment to the City of  
23 Los Angeles based on a reissuance of an audit report, and  
24 based on that, the costs were so significantly different  
25 than the other costs, the City proposed one for its own.



1           And I think you also have to look at the flip  
2 side, I think, as we look at reasonable reimbursement  
3 methodologies, and that is that one of these large  
4 agencies -- and typically, it's going to be either, I  
5 think, one of the three LAs, or the City and County of  
6 San Francisco, if they happen to be unique in the  
7 application -- I can't really think of anybody else,  
8 maybe the City of Vernon would be the only other that I  
9 think might be different. But that they could, in a  
10 sense, overinflate the dollar amount because of the fact  
11 that they may be -- or if they were lower, and they're  
12 just considered in the sample. And very often, it's not  
13 a weighted average. And in those cases, then other  
14 agencies would be, you know, overly reimbursed for the  
15 additional cost so it can work both ways. You know, it  
16 could either adversely affect and increase it or decrease  
17 it.

18           And I think that, you know, those agencies are  
19 so unique that that could happen in some cases.

20           And your Commission has agreed that there can  
21 be multiple factors. Currently, there's just one factor  
22 for everybody, the Commission kind of used in their  
23 analysis as an example there could be one for like,  
24 urban, suburban, or rural counties. You know, basically  
25 there could be three. You know, kind of the

**Commission on State Mandates – October 27, 2011**

1 understanding is, well, why can't there being one if  
2 somebody is particularly unique?

3 I mean, we're getting into the merits and I  
4 probably shouldn't be doing that. I'm just really  
5 requesting the postponement before we get into all the  
6 details.

7 Just commenting on my good friends from the  
8 Department of Finance.

9 CHAIR DUCAY: Any other discussion?

10 MEMBER ALEX: Can I ask staff if you have --  
11 would any of the proceedings that are referenced,  
12 that are going to come before us in March, do you think  
13 they would have any effect on your view of this  
14 particular item?

15 MR. BOHAN: I would say probably not. But I  
16 wouldn't want to say for sure. Because we've put out,  
17 as Mr. Burdick has referenced, a letter requesting  
18 feedback. And we requested a response within a time  
19 frame, and we got invited to extend until late December,  
20 and we granted that request because one of the claimants  
21 wanted to put together -- to hire a consultant to conduct  
22 a statistical analysis.

23 And we weren't sure of the relevance of it, and  
24 thought about it a little bit, and went ahead and granted  
25 it. And we figured, well, there's a lot of issues

**Commission on State Mandates – October 27, 2011**

1 swirling around here. So I would say probably not. And  
2 I wouldn't want to say that for sure.

3 MEMBER ALEX: And can I ask the Department of  
4 Finance if you feel there's any prejudice by putting it  
5 over to March?

6 MS. GEANACOU: Well, based on the comments I've  
7 heard and from the Executive Director and appear to be  
8 agreed to by the Chief Counsel, it doesn't appear that  
9 there is necessarily a tie-in between the request for a  
10 hearing today and those that are pending for the spring.  
11 So I don't think it's necessary to continue this over.

12 This is seemingly a unique request particular  
13 to one entity. And the comments we've heard about how a  
14 large urban entity in this case may have costs that are  
15 particularly higher than their counterparts, that can be  
16 addressed through a request to amend as the staff points  
17 out. The existing RRM, which is based on -- which is set  
18 at \$37.25 per officer, if the City believes that that RRM  
19 is far too low in light of their unique circumstances,  
20 they can file for a modification to that RRM, which would  
21 take into consideration their higher costs that they say  
22 they've been incurring since its adoption -- or actual --  
23 yes, they can continue to file for actual -- based on  
24 their actual costs.

25 So I do think there would be prejudice. I

**Commission on State Mandates – October 27, 2011**

1 think it is unnecessary to continue this item.

2 MR. BURDICK: If I could make just one comment  
3 on that.

4 And one of the key issues before, that your  
5 Executive Director has raised, is variation in costs, and  
6 what is a variation, what should they be?

7 In the current RRM, there are three cities, I  
8 think, that have costs in that. One of them is a dollar  
9 per RRM, one of them is \$20 per RRM, the City of LA in  
10 the current RRM was \$8 per officer. And these are  
11 approximations.

12 In addition, there was the City of Stockton;  
13 but I don't think it was included. And they had a figure  
14 at one time of about \$180. But these were, you know,  
15 based on old audited claims by the State Controller. And  
16 at that time, many of those have been gone back and  
17 redone and found that those were wrong.

18 The City of Los Angeles did not feel that at  
19 that time. I think they just wanted to say, you know, we  
20 don't want to tell the Commission what to do. They  
21 argued at the Commission hearing that the \$37 was a  
22 flawed RRM. I did not believe -- you would have to take  
23 the first "R" out of there. I don't think it's  
24 reasonable at all, as a methodology -- reimbursement  
25 methodology. I don't believe it was reasonable at all.

**Commission on State Mandates – October 27, 2011**

1 But, you know, I think it does raise the variation of  
2 costs in this particular issue, because now we have  
3 agencies that would be from a dollar to over \$400. And  
4 when you think you're going to develop one number based  
5 on those kinds of variations, to me, that's the kind of  
6 issue that needs to be addressed in the discussion by the  
7 Commission on variation of costs.

8 CHAIR DUCAY: Any other questions or  
9 discussion?

10 *(No response)*

11 CHAIR DUCAY: Do I have a motion?

12 MEMBER LUJANO: No, actually, I'm inclined to  
13 allow them to postpone it. We have done it in the past  
14 if there's some good items that need to be discussed. So  
15 I don't think there should be a problem to allow them to  
16 pull it or to postpone it until March.

17 MEMBER ALEX: I agree.

18 CHAIR DUCAY: Okay.

19 MEMBER LUJANO: So do we need a motion for  
20 that?

21 MS. SHELTON: Yes.

22 MEMBER LUJANO: Then I would make a motion to  
23 postpone the hearing of their item until March 24.

24 MEMBER ALEX: Second.

25 CHAIR DUCAY: Okay, we have a motion and a

**Commission on State Mandates – October 27, 2011**

1 second to postpone this request to the March Commission  
2 meeting.

3 Is there any other discussion on this item  
4 before we call the roll?

5 *(No response)*

6 CHAIR DUCAY: Drew, call the roll.

7 MR. BOHAN: Mr. Alex?

8 MEMBER ALEX: Aye.

9 MR. BOHAN: Mr. Chivaro?

10 MEMBER CHIVARO: Aye.

11 MR. BOHAN: Mr. Lujano?

12 MEMBER LUJANO: Aye.

13 MR. BOHAN: Ms. Olsen?

14 MEMBER OLSEN: Aye.

15 MR. BOHAN: And Ms. Ducay?

16 CHAIR DUCAY: No.

17 MR. BURDICK: And on behalf of the City of  
18 Los Angeles, thank you very much.

19 CHAIR DUCAY: Number 10?

20 MR. BOHAN: Kenny Louie, staff counsel, will  
21 present this item.

22 MR. LOUIE: Item 10 deals with seven incorrect  
23 reduction claims dealing with the *Health Fee Elimination*  
24 program, followed by community college districts under  
25 the *Health Fee Elimination* program.

**Commission on State Mandates – October 27, 2011**

1           Activities associated with the provision of  
2 health services to students were found to be  
3 reimbursable. The State Controller's Office reduced the  
4 reimbursement claims filed by the community college  
5 districts on the basis of the districts understating  
6 offsetting revenues resulting from health fees that the  
7 districts have authority to charge.

8           The districts argue that they are only required  
9 to claim -- or identify outstanding costs to the extent  
10 that they actually charged a health fee.

11           Courts have found that to the extent that  
12 community college districts do have authority to charge  
13 fees, that those costs are not reimbursable. As a  
14 result, the Court disagreed with the districts in that  
15 regard.

16           The districts also raised various substantive  
17 and jurisdictional issues. Ultimately, staff found that  
18 the State Controller correctly reduced the majority of  
19 reimbursement claims filed by the districts, except for  
20 the portions related to the provision of physicals for  
21 athletes and employees.

22           As a result, staff recommends that the  
23 Commission adopt the proposed recommendation or proposed  
24 SOD.

25           And will the witnesses and parties state their

**Commission on State Mandates – October 27, 2011**

1 names for the record, please?

2 MR. PETERSEN: Keith Petersen, representing six  
3 of the seven districts.

4 MR. SILVA: Shawn Silva with the State  
5 Controller's Office.

6 MR. VANZEE: Steve Vanzee, State Controller's  
7 Office.

8 CHAIR DUCAY: Mr. Petersen?

9 MR. PETERSEN: Stand on the written  
10 submissions.

11 CHAIR DUCAY: State Controller's?

12 MR. SILVA: We concur with the Commission  
13 staff's recommendations.

14 CHAIR DUCAY: Okay, do we have any questions or  
15 discussion from the members?

16 MEMBER CHIVARO: Move adoption of the staff  
17 recommendation.

18 MEMBER LUJANO: Second.

19 CHAIR DUCAY: We have a motion and a second to  
20 adopt the staff recommendation.

21 Seeing no other discussion, Drew, would you  
22 call the roll?

23 MR. BOHAN: Certainly.

24 Mr. Alex?

25 MEMBER ALEX: Aye.



**Commission on State Mandates – October 27, 2011**

1 MR. BOHAN: Mr. Chivaro?

2 MEMBER CHIVARO: Aye.

3 MR. BOHAN: Mr. Lujano?

4 MEMBER LUJANO: Aye.

5 MR. BOHAN: Ms. Olsen?

6 MEMBER OLSEN: Aye.

7 MR. BOHAN: Chair Ducay?

8 CHAIR DUCAY: Aye.

9 So moved on that.

10 MR. BOHAN: Madam Chair, Item 11 is a *Request*  
11 *to Add the Boilerplate Language* that -- you might as well  
12 stay here, Keith.

13 We are requesting that the members pull this  
14 item, and we'll bring it back next time.

15 We believe our conclusion is accurate. It was  
16 accurate in the first draft. We did a second draft. We  
17 think it was still accurate.

18 However, we recently reviewed this item, and  
19 feel that some of the language that we've put into our  
20 staff analysis is superfluous. And we're concerned that  
21 folks might view that as some sort of an advisory opinion  
22 by the Commission, and it wasn't intended to be that. It  
23 was simply intended to address and refute the arguments  
24 that were put forth by the State Controller's Office.  
25 But we think that we'd all do better if we took it back,

**Commission on State Mandates – October 27, 2011**

1 shorten it, clean it up, and just got to the point.

2 CHAIR DUCAY: Do we need a motion, or can we  
3 just hold that over?

4 MR. PETERSEN: Can I do that next time?

5 MS. SHELTON: Except that the regs allow the  
6 Executive Director to set the hearing. So you can pull  
7 it.

8 CHAIR DUCAY: We can just pull it?

9 MS. SHELTON: You don't need to have a motion  
10 on that.

11 MR. PETERSEN: Give me another shot at cleaning  
12 up my stuff.

13 Can I do that next time?

14 CHAIR DUCAY: Okay, then that will be held over  
15 until the next meeting.

16 Thank you.

17 MR. BOHAN: And, Madam Chair, I notice that the  
18 witness that had a flight issue is here. If you'd like,  
19 we could go back to the items that we skipped over.

20 CHAIR DUCAY: So that is Item 3, is the first  
21 item that was held over.

22 MR. BOHAN: That's right.

23 CHAIR DUCAY: Okay.

24 MR. BOHAN: Heather, are you ready? We're  
25 moving back to 3.

**Commission on State Mandates – October 27, 2011**

1 Heather Halsey is our staff counsel on this  
2 matter. It's the second of the two *Deferred Maintenance*  
3 programs test claims.

4 MS. HALSEY: This test claim addresses  
5 activities required as a condition of participation in a  
6 state grant program, the *Deferred Maintenance* program.  
7 It's fairly similar to the earlier *Deferred Maintenance*  
8 program. We addressed that test claim earlier this  
9 morning, except for this one applies to K-12 instead of  
10 community colleges.

11 Staff finds that this is a voluntary program  
12 and does not impose a state-mandated program on school  
13 districts. None of the parties have commented on the  
14 draft staff analysis for this test claim.

15 Staff recommends that the Commission adopt the  
16 proposed statement of decision to deny the test claim.

17 Will the parties and witnesses please state  
18 their names for the record?

19 MR. PALKOWITZ: Good morning. Art Palkowitz on  
20 behalf of San Diego -- of Clovis Unified School District.

21 MS. GEANACOU: Susan Geanacou for the  
22 Department of Finance.

23 CHAIR DUCAU: Mr. Palkowitz?

24 MR. PALKOWITZ: Yes, thank you.

25 Thank you for accommodating my scheduling

1 issue.

2 The matter that I want to address on this test  
3 claim is not regarding the handbook. I understand the  
4 staff's analysis, and I agree with that.

5 Regarding the statutes, I wanted to comment  
6 that this is one of the issues we've dealt with on  
7 numerous occasions, and this deals with the analysis of  
8 whether you have an initial discretionary decision and  
9 then a subsequent decision.

10 So in this test claim, the school districts  
11 are put in a position where they provide funds to the  
12 maintenance fund. And then once that maintenance fund is  
13 established, they are required to do certain tasks that  
14 shall be done according to the code section.

15 It's our feeling that that is a type of  
16 mandatory activity that they have to do. That once the  
17 decision to establish the fund is taken upon the  
18 District, they're forced to follow Ed. Code. And we  
19 believe that's a downstream expense that should be  
20 considered a mandate and reimbursed.

21 The analysis refers to the *Kern* case. And in  
22 the *Kern* case, that dealt with educational programs where  
23 it was determined that a school district had the option  
24 whether to participate in those programs. And the  
25 districts asked for reimbursement for posting brown

1 agendas if they didn't participate. And the Court felt  
2 that was not appropriate nor required.

3 This is building educational facilities. This  
4 is a decision that is really, one could say, districts  
5 don't have much option, when they have got to build  
6 facilities to house their students.

7 So we feel the *Kern* case is not an applicable  
8 application here. And we believe that once that decision  
9 is made to participate in a maintenance fund, that the  
10 district should get reimbursed for the activities under  
11 the Ed. Code that require them to take specific acts.

12 Thank you.

13 CHAIR DUCAY: All right, Finance?

14 MS. GEANACOU: Yes, thank you. Susan Geanacou,  
15 Department of Finance.

16 My comments will be very similar to those which  
17 I set forth on the community college similar test claim.

18 I will say that I don't think we're in a  
19 position at Finance to weigh the competing importance of  
20 the programs at issue here versus those that were  
21 discussed in the *Kern* case. However, we do think that  
22 the *Kern* case analysis, as applied by the staff here, is  
23 squarely on point and should drive the outcome here.

24 So fundamentally, I'll say, we support the  
25 staff analysis to deny the test claim. We agree that

**Commission on State Mandates – October 27, 2011**

1 participation in the *Deferred Maintenance* program is  
2 optional; therefore, any requirements that come from  
3 participation in the program stem from the District's  
4 underlying choice to participate in the program in the  
5 first place.

6 They have no legal compulsion to participate,  
7 and they have no practical compulsion to participate,  
8 either, as there are no penalties for non-participation  
9 other than simply losing the funding -- the state funding  
10 that accompanies their choice to participate.

11 The *Deferred Maintenance* program, as I said  
12 before, is structured similar to programs that were  
13 reviewed by the Court and for which state reimbursement  
14 was denied in the *Kern* case that was analyzed by the  
15 staff.

16 And, again, in response to Mr. Palkowitz's  
17 comments about the importance of the program here, we are  
18 not disputing the importance of the program, nor are we  
19 assessing it as compared to those that were discussed by  
20 the Court in the *Kern* case.

21 CHAIR DUCAY: Thank you.

22 Do we have any questions or discussion?

23 MEMBER OLSEN: No.

24 CHAIR DUCAY: No? Okay.

25 Do we have a motion on this item?

**Commission on State Mandates – October 27, 2011**

1 MEMBER OLSEN: I'll move the staff  
2 recommendation.

3 MEMBER CHIVARO: Second.

4 CHAIR DUCAY: All right, we have a motion and a  
5 second.

6 Any other discussion?

7 *(No response)*

8 CHAIR DUCAY: Drew, will you call the roll?

9 MR. BOHAN: Mr. Alex?

10 MEMBER ALEX: Aye.

11 MR. BOHAN: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MR. BOHAN: Mr. Lujano?

14 MEMBER LUJANO: Aye.

15 MR. BOHAN: Ms. Olsen?

16 MEMBER OLSEN: Aye.

17 MR. BOHAN: Ms. Ducay?

18 CHAIR DUCAY: Aye.

19 The motion carried on that item.

20 Now, we are going on to 7?

21 MR. BOHAN: Item 7.

22 Mr. Feller will present this one. It is a very  
23 large and long and complicated set of parameters and  
24 guidelines.

25 MR. FELLER: You flatter me.

**Commission on State Mandates – October 27, 2011**

1           This item proposes the adoption of six new sets  
2 of parameters and guidelines for the reimbursement of the  
3 *Pupil Expulsions II, Pupil Suspensions II, and*  
4 *Educational Service Plans for Expelled Pupils* programs  
5 which requires school districts to perform various  
6 activities related to suspending and expelling pupils  
7 from school who commit specified offenses.

8           The Commission found that the costs incurred  
9 to perform new activities mandated by the test-claim  
10 statutes constitute a reimbursable state-mandated program  
11 beginning fiscal year 1995-96.

12           Staff recommends the Commission adopt this  
13 analysis and this decision along with the six attached  
14 proposed parameters and guidelines for the program.

15           Staff also recommends the Commission adopt the  
16 proposed amendments to the preexisting parameters and  
17 guidelines to cap reimbursement that was set on June 30,  
18 2012, because costs for those activities may be claimed  
19 under the consolidated six set of parameters and  
20 guidelines that are effective beginning July 1, 2012.

21           The only recommended change to the parameters  
22 and guidelines document before you is to update the unit  
23 cost numbers in their reasonable reimbursement  
24 methodology to reflect more recent State Controller's  
25 claiming instructions. That would be for the final set



**Commission on State Mandates – October 27, 2011**

1 of parameters and guidelines that we issue.

2 Would the parties and witnesses please state  
3 your names for the record?

4 MR. PETERSEN: Keith Petersen representing the  
5 test claimant, San Juan Unified.

6 MR. PALKOWITZ: Art Palkowitz on behalf of  
7 San Diego Unified School District.

8 MS. FEREBEE: Donna Ferebee on behalf of the  
9 Department of Finance.

10 CHAIR DUCAY: Okay, Mr. Petersen, are you going  
11 to go first?

12 MR. PETERSEN: Well, after 15 years -- this  
13 test claim was filed in 1996 -- I think we got it worked  
14 out.

15 We've done a lot of -- over the last few years,  
16 there's been several prehearings, meetings, discussions,  
17 exchanges of technical information. This horse is pretty  
18 well flogged, so I'm ready to go.

19 CHAIR DUCAY: Okay. Mr. Palkowitz?

20 MR. PALKOWITZ: Yes, thank you.

21 I would like to thank staff for working with  
22 Keith on this and coming to a conclusion.

23 And I think it's good for all of us to realize  
24 this is a unit rate that we've agreed on. And I think  
25 claimants feel really hopeful that this could be used in

**Commission on State Mandates – October 27, 2011**

1 further test claims to get unit rates which we would feel  
2 would be beneficial for all parties.

3 CHAIR DUCAY: Ms. Ferebee?

4 MS. FEREBEE: Yes, Donna Ferebee, Department of  
5 Finance.

6 We agreed with the assessment of "long and  
7 complicated," that's for sure.

8 We concurred with the final staff analysis. We  
9 agreed with the staff's findings as to the three bulleted  
10 changes sought by the claimant summarized on pages 5 and  
11 6 of the analysis. And we thought the remainder of the  
12 recommendations appeared to us to be appropriate.

13 Thank you.

14 CHAIR DUCAY: Okay. Members?

15 MEMBER ALEX: Well, having missed the previous  
16 15 years, but having had some analogous experiences, I  
17 just want to congratulate the staff and the parties for  
18 getting it taken care of.

19 CHAIR DUCAY: Any other questions or comments?

20 Do we have a --

21 MEMBER CHIVARO: I'll move staff  
22 recommendation.

23 MEMBER LUJANO: Second.

24 MEMBER OLSEN: Second.

25 CHAIR DUCAY: Okay, we have a motion and two

**Commission on State Mandates – October 27, 2011**

1 seconds.

2 So if there's no other discussion, Drew, would  
3 you call the roll, please?

4 MR. BOHAN: Certainly.

5 Mr. Alex?

6 MEMBER ALEX: Aye.

7 MR. BOHAN: Mr. Chivaro?

8 MEMBER CHIVARO: Aye.

9 MR. BOHAN: Mr. Lujano?

10 MEMBER LUJANO: Aye.

11 MR. BOHAN: Ms. Olsen?

12 MEMBER OLSEN: Aye.

13 MR. BOHAN: And Ms. Ducay?

14 CHAIR DUCAY: Aye.

15 The motion carried on that item.

16 Item 12 was on the Consent Calendar.

17 MR. BOHAN: That's right.

18 CHAIR DUCAY: So we're going on to Item 13.

19 MR. BOHAN: That's right, Item 13 there were no  
20 SB 1033 applications filed, so nothing to entertain  
21 there.

22 CHAIR DUCAY: Okay. I was trying to catch up.

23 MR. BOHAN: No, no worries.

24 So 12 and 13 --

25 CHAIR DUCAY: Our first technical difficulty

**Commission on State Mandates – October 27, 2011**

1 with this new process.

2 MR. BOHAN: Once we got the microphones licked.

3 Items 12 and 13, there is not anything to --

4 any order of business.

5 Item 14 is our Legislative Update from Nancy

6 Patton.

7 CHAIR DUCAY: Okay.

8 MS. PATTON: Good morning.

9 We had two bills this year: SB 112 the

10 Governor signed. This provided some technical

11 clarification for P's & G's amendments, and gave the

12 State Controller 30 additional days to file their

13 claiming instructions.

14 AB 202 was vetoed by the Governor. It would

15 have required parties, claimants to go into binding

16 arbitration with the Department of Finance over joint

17 reasonable reimbursement methodologies. And the Governor

18 stated in his veto message that "This bill creates a new

19 avenue for deciding the cost of mandates which may prove

20 to be more complicated and costly than the existing

21 process," if that's possible.

22 And those were the only two bills for this

23 year.

24 CHAIR DUCAY: Item 15.

25 MR. BOHAN: Chief Counsel's report.

**Commission on State Mandates – October 27, 2011**

1 MS. SHELTON: Just a couple of things to  
2 report.

3 The Court has set the hearing on the *San Diego*  
4 *Water Permit* case for November 4<sup>th</sup>. That should be  
5 interesting, and come down next week.

6 Also, the challenge to the Commission's  
7 adoption of parameters and guidelines amendments in the  
8 *Grad Requirements* case, which is also dealing with a  
9 formula RRM, is set for a hearing on March 9<sup>th</sup>.

10 I did not include in this report the Court's  
11 ruling in the *LA Water Permit* case, which I have made  
12 you aware of. I'm not sure if the public is aware of.

13 The Court has found that to be federally  
14 mandated. No word yet whether the counties and cities  
15 are going to file an appeal.

16 If an appeal is not filed, then those matters  
17 will be brought back before the Commission on  
18 December 1<sup>st</sup> to set aside the statement of decision and  
19 the parameters and guidelines. So watch for our agenda.

20 CHAIR DUCAY: Okay, Item 16?

21 MR. BOHAN: Item 16 is the ED report. Just a  
22 couple items.

23 First, I wanted to report on the action plan  
24 we set forth in May. We are ahead of schedule.

25 With the conclusion of today's meeting, we will

**Commission on State Mandates – October 27, 2011**

1 have two 2002 test claims left to be decided. These are  
2 the monsters, the great, big claims that have statutes  
3 cited all the way back to 1975.

4 We also have seven 2003 test claims. And we  
5 expect all nine of those -- the '02 and the '03 test  
6 claims -- to be presented to you by the March-next-year  
7 hearing. So we're very pleased to say that we're on  
8 track with those.

9 With regards to IRCs, with your vote on the  
10 *Health Fee Elimination* program set of IRCs, seven have  
11 been disposed of, which has dropped us down considerably  
12 there.

13 We are conducting a couple informal conferences  
14 where we're hoping to, by virtue of that decision, move  
15 more quickly on some of the additional ones that are on  
16 the exact, same program and expect to move swiftly ahead.

17 You'll recall the BSA report was critical of  
18 the Commission's speed with which we are bringing IRCs  
19 forth. And we're really hoping to address that, and I  
20 think we are.

21 Second, I wanted to point out that on pending  
22 claims, all of them are now up on the computer. So  
23 everybody can see those. And they're fully complete,  
24 with a handful of small exceptions we expect to have  
25 completed by the of end of next week. Just a few little

**Commission on State Mandates – October 27, 2011**

1 pieces. But the critical ones, the test claims and all  
2 the most important documents are all up.

3 And I'm just going to embarrass Heidi Palchik  
4 and ask her to stand up, please.

5 Heidi and everybody on the staff has worked on  
6 this, it's been a team effort. But, really, Heidi has  
7 been the glue that was --

8 MR. BURDICK: We're going to applaud you.

9 She's going to stand up, so we can applaud.

10 MR. BOHAN: Yes.

11 Her sanity seems to be intact as of this  
12 morning. But it's really been a tremendously complicated  
13 and difficult task. It doesn't seem like much if you're  
14 not seeing it; but sharing a wall with her, I know it's  
15 really a big job.

16 And really, it's not to take away from Nancy  
17 and Jason and everybody else who has been working on it,  
18 but she's really been the glue.

19 *(Applause)*

20 MR. BOHAN: A couple other quick notes.

21 We're also -- this is, we think, an exciting  
22 thing, creating a PHP, which to those of you that are  
23 more knowledgeable than I am about computer matters, it  
24 stands for "personal homepage."

25 Essentially, what it will be is, it will not

**Commission on State Mandates – October 27, 2011**

1 only have these pending claims, it will link them all  
2 together. So if you currently want to find a particular  
3 test claim and if there's an IRC filed on it and there  
4 are parameters and guidelines and they were done ten  
5 years apart, it's very difficult to do. Everything will  
6 all be in one searchable place, and that will be done  
7 hopefully very soon.

8 And Jason -- I don't think he's here anymore  
9 but --

10 MS. PATTON: He's in the back.

11 MR. BOHAN: He's in the back -- there's Jason.  
12 He has been our tech guy. One of the best in the  
13 business at this, and so we're excited to have that ready  
14 to roll out very soon.

15 Finally, I just wanted to say -- well, two more  
16 things.

17 One, this is my last meeting. And I wanted to  
18 thank all of you up at the dais and my staff for the  
19 great support we've gotten.

20 This has been a tremendous opportunity but an  
21 unanticipated one came up. And after consulting my  
22 two- and three-year-olds, we took a vote and decided to  
23 make a very difficult decision to move on.

24 But it really -- it's common to say this sort  
25 of thing when one parts, but this is truly the finest



**Commission on State Mandates – October 27, 2011**

1 bunch of folks I've ever worked with.

2 I just want to call out quickly two people.

3 One is Nancy who is our do-everything person in  
4 the office with a smile on her face and a great sense of  
5 humor, one of the more reliable people I've ever met.

6 And Camille, who -- it is said nobody is  
7 irreplaceable. After all, we elect a new president every  
8 four or eight years. But if there's anybody  
9 irreplaceable in any institution I've been in, she's  
10 sitting right here. This is complicated stuff, and she's  
11 always there to sort it out when we get in a jam.

12 And with that, I just wanted to say we have one  
13 action item, and that is to adopt the tentative hearing  
14 calendar for next year. And the dates are all spelled  
15 out in the report.

16 We would suggest, with the Chair's concurrence,  
17 that the -- there's a proposal to move each day that's  
18 stated there one day forward, because our Chair asked  
19 that the meetings occur on Fridays rather than Thursdays.  
20 So each day spelled out there is a Thursday. If you  
21 move January 26<sup>th</sup> to the 27<sup>th</sup>, March 22<sup>nd</sup> to the 23<sup>rd</sup>,  
22 et cetera, that would be the requested motion, to adopt  
23 this proposed calendar.

24 CHAIR DUCAY: Do we have any discussion on the  
25 date change to Friday?

**Commission on State Mandates – October 27, 2011**

1 MEMBER OLSEN: It's fine with me.

2 CHAIR DUCAY: Everybody -- okay.

3 And then the time will be discussed later?

4 MR. BOHAN: Right. This is -- typically, the  
5 meetings are at 9:30, but there's discussion about  
6 different time frames. We can post them at a different  
7 time.

8 CHAIR DUCAY: Okay, so do we have a motion to  
9 adopt the hearing calendar for next year, with the only  
10 exception of it being one day later, to Friday?

11 MEMBER OLSEN: Move.

12 MEMBER CHIVARO: Second.

13 CHAIR DUCAY: If there's no other discussion,  
14 Drew, will you call the roll on that?

15 MR. BOHAN: Certainly.

16 Mr. Alex?

17 MEMBER ALEX: Aye.

18 MR. BOHAN: Mr. Chivaro?

19 MEMBER CHIVARO: Aye.

20 MR. BOHAN: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MR. BOHAN: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MR. BOHAN: And Ms. Ducay?

25 CHAIR DUCAY: Aye.

**Commission on State Mandates – October 27, 2011**

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Thank you.

And then we have the late addition of Item 17 to amend our closed session.

MR. BOHAN: That's right. This is the final item. It requires a two-thirds vote, which given that there are five of you here, it would be four of you. And this is simply to amend the agenda. Bagley-Keene requires that you make this vote if you want to amend the agenda. It would be to add a discussion during closed session about the appointment of an interim executive director.

MEMBER ALEX: So moved.

MEMBER OLSEN: Second.

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

MR. BOHAN: Yes.

Mr. Alex?

MEMBER ALEX: Aye.

MR. BOHAN: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MR. BOHAN: Mr. Lujano?

MEMBER LUJANO: Aye.

MR. BOHAN: Ms. Olsen?

MEMBER OLSEN: Aye.

MR. BOHAN: And Chair Ducay?

**Commission on State Mandates – October 27, 2011**

1 CHAIR DUCAY: Aye.

2 The last item on our public agenda is for  
3 *Public Comment*.

4 MR. BURDICK: Madam Chair and Members, a couple  
5 of items.

6 The first is, this is really on behalf of my  
7 role as staff to both the League of California Cities and  
8 California State Association of Counties Advisory  
9 Committee on State Mandates. We're saddened with the  
10 leaving of Drew.

11 We have found, since he's been here, we have  
12 been very pleased with his plans, his action, his  
13 leadership. And hopefully, as you discuss this in your  
14 executive session today, you will look at some of the  
15 fine things he brought to this role, and hopefully find a  
16 replacement that has those very same attributes.

17 And I think just really on behalf of the two  
18 associations, although we don't have anything really  
19 official, we have been exceptionally pleased with his  
20 performance.

21 And, you know, we would also like to second,  
22 you know, his comments on Nancy and Camille. While we  
23 don't always agree, you're very blessed to have them, as  
24 well as the rest of the staff.

25 And I think Drew will say, probably he

**Commission on State Mandates – October 27, 2011**

1 inherited, you know, just an ideal staff. You know, and  
2 you guys, you're very fortunate.

3 So I would like to do that since -- I'd like to  
4 share with you, I think, based on all my discussions with  
5 local people, they have been very, very pleased with  
6 Drew's performance, leadership, and your staff.

7 MR. BOHAN: The check is in the mail.

8 MR. BURDICK: The other thing I want to is to  
9 comment on, is the fact that I notice that we have two  
10 empty seats there today. And locals are very saddened by  
11 the removal of the two locally elected members from the  
12 Commission.

13 I think that particularly Members Lujano,  
14 Chivaro, and Olsen have shared over the last several  
15 years the input and comments from Mr. Glaab and  
16 Mr. Worthley. And I thought they were very valuable  
17 members.

18 And I don't know what the role of the  
19 Commission can be; but I would like to request, if there  
20 was any way they can be thanked, and something for their  
21 participation, I would like to request that.

22 The second thing I'd like to do is, I'd like  
23 to urge the Commission to request the Governor to replace  
24 those members as soon as possible, so that we could have  
25 representatives from local government who could share

**Commission on State Mandates – October 27, 2011**

1 their input with you.

2 So with that, I'll shut up and get out of here.  
3 I've taken too much of your time already today. But  
4 those are two issues.

5 And again, you know, I'd like to personally  
6 thank Drew for many of the changes that have been brought  
7 and the leadership he has shown.

8 Thank you very much.

9 CHAIR DUCAV: Thank you.

10 Nancy?

11 MS. PATTON: Drew, the Commission and the staff  
12 has a resolution for you that I would like to read.

13 *"Whereas Drew Bohan has*  
14 *distinguished himself as Executive*  
15 *Director of the Commission on State*  
16 *Mandates; and*

17 *"Whereas he has advised and*  
18 *assisted the Commission in*  
19 *determining if cities, counties, and*  
20 *school districts should be reimbursed*  
21 *pursuant to section 6, Articles XII B*  
22 *of the California Constitution and*  
23 *section 17514 of the Government Code;*

24 *"Whereas he implemented an*  
25 *efficient plan to eliminate the*

**Commission on State Mandates – October 27, 2011**

1           *Commission's long-standing caseload*  
2           *backlog;*

3                   *"Whereas he has successfully and*  
4           *effectively directed and assisted*  
5           *staff in significantly reducing the*  
6           *Commission's caseload;*

7                   *"Whereas he has directed staff*  
8           *in completing a complex process to*  
9           *shift to electronic filing of all*  
10          *mandate-related documents and conduct*  
11          *Commission hearings electronically,*  
12          *thereby saving the state and local*  
13          *governments money and reducing the*  
14          *effects on the environment;*

15                  *"Whereas Drew Bohan is being*  
16          *honored by the Members and staff on*  
17          *the Commission on State Mandates in*  
18          *appreciation of his outstanding*  
19          *dedication, leadership, and service*  
20          *to the state of California;*

21                  *"Now, therefore, be it resolved*  
22          *that the Commission on State Mandates*  
23          *formally congratulates Drew upon his*  
24          *new position as chief deputy director*  
25          *with the California Energy*

**Commission on State Mandates – October 27, 2011**

1                   *Commission.*"

2                   *(Applause)*

3                   MS. PATTON: I just wanted to say on behalf of  
4 our staff that we have really enjoyed working with you  
5 and we're really going to miss you. And we wish you the  
6 best in your new job.

7                   CHAIR DUCAY: Thank you.

8                   No other public comment?

9                   *(No response)*

10                  CHAIR DUCAY: We will move to closed session.

11                  The Commission will meet in closed executive  
12 assessing pursuant to Government Code section 11126(e)  
13 to confer and receive advice from legal counsel for  
14 consideration and action, as necessary and appropriate,  
15 upon the pending litigation listed on the published  
16 notice and agenda, to confer with and receive advice from  
17 legal counsel regarding potential litigation. And the  
18 Commission will also confer on personnel matters. And  
19 pursuant to Government Code sections 11126, subdivision  
20 (a)(1), to appoint an interim executive director and to  
21 consider the process for appointing a permanent executive  
22 director.

23                  We will reconvene in open session in  
24 approximately 30 minutes.

25                  Thank you.





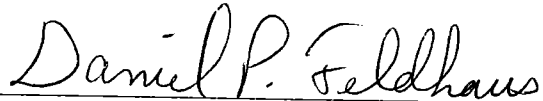
**REPORTER'S CERTIFICATE**

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 17<sup>th</sup> of November 2011.



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