

**COMMISSION ON STATE MANDATES**

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May 21, 2008

Mr. Allan Burdick  
MAXIMUS  
4320 Auburn Blvd., Suite 2000  
Sacramento, CA 95841

Ms. Jacqueline M. Gong  
County of Napa  
1195 Third Street, Suite 301  
Napa, CA 94559

*And Affected State Agencies and Interested Parties (see enclosed mailing list)*

Re: **Draft Staff Analysis and Proposed Statewide Cost Estimate**  
*Binding Arbitration, 01-TC-07*  
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3  
1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9  
City of Palos Verdes Estates, Claimant  
County of Napa, Co-Claimant

Dear Mr. Burdick and Ms. Gong:

The draft staff analysis and proposed statewide cost estimate for the above-named program are enclosed for your review and comment.

**Written Comments**

Any party or interested person may file written comments on the draft staff analysis by Monday, **June 4, 2008**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. (Cal. Code Regs., tit. 2, § 1181.2.) If you would like to request an extension of time to file comments, please refer to section 1183.01, subdivision (c)(1), of the Commission's regulations.

**Hearing**

This matter is set for hearing on Thursday, **June 26, 2008** at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. The final staff analysis will be issued on or about June 12, 2008. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01, subdivision (c)(2), of the Commission's regulations.

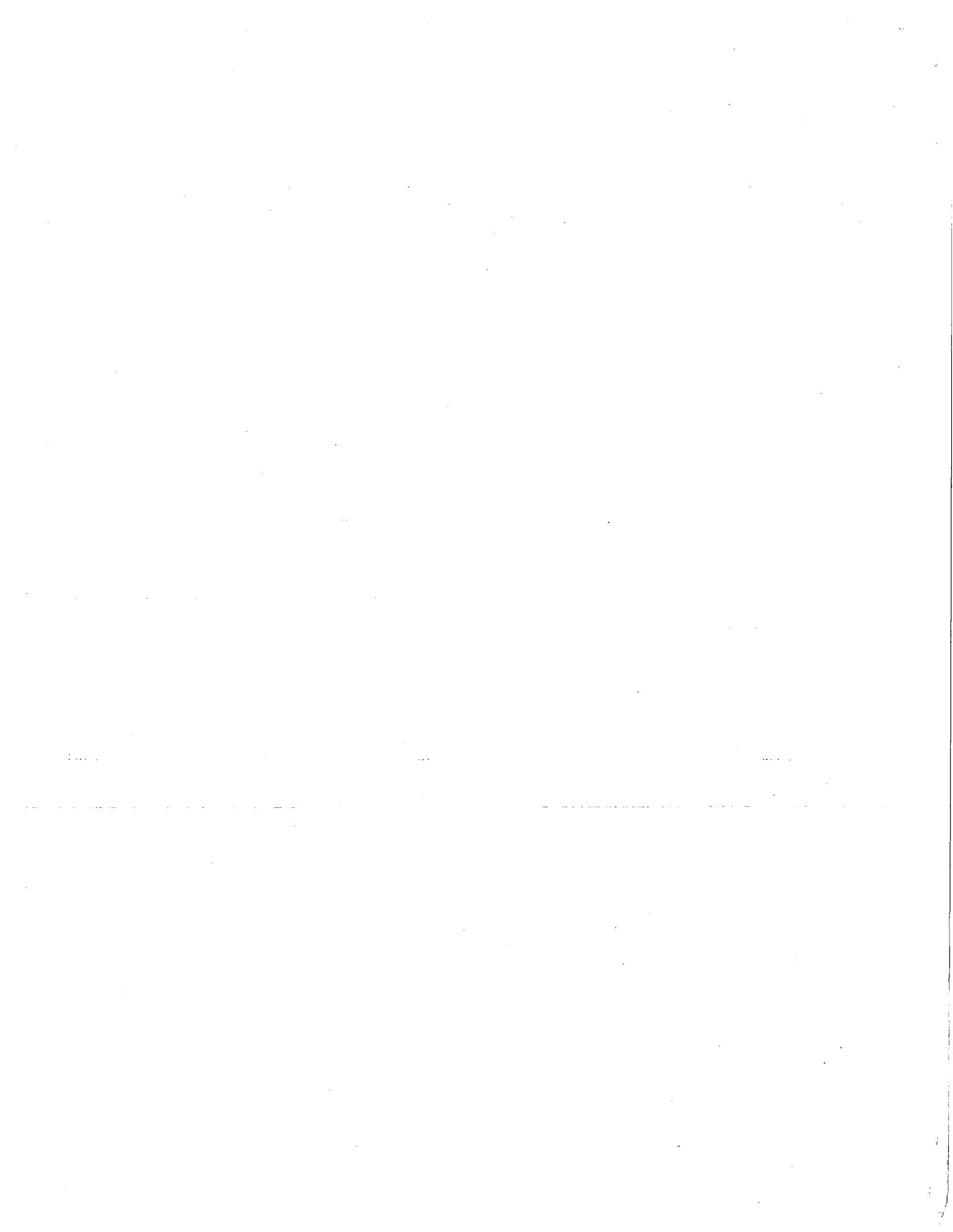
Please contact me at (916) 323-8217 if you have questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Patton".

NANCY PATTON  
Assistant Executive Director

Enc. draft staff analysis and proposed statewide cost estimate



**ITEM \_\_**  
**DRAFT STAFF ANALYSIS**  
**PROPOSED STATEWIDE COST ESTIMATE**

Code of Civil Procedure  
Sections 1299.2, 1299.3, 1299.4, subd. (b),  
1299.5, subdivision (a), 1299.6, subdivision (a),  
1299.8 and 1299.9, subdivision (b)  
Statutes 2000, Chapter 906

*Binding Arbitration*  
01-TC-07

County of Napa, Claimant

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**EXECUTIVE SUMMARY**

The test claim statutes in their entirety were declared unconstitutional by the California Supreme Court on April 21, 2003, as violating portions of article XI of the California Constitution. The basis for the decision is that the statutes (1) deprived the county of its authority to provide for the compensation of its employees as guaranteed in article XI, section 1, subdivision (b); and (2) delegate to a private body the power to interfere with local agency financial affairs and to perform a municipal function, as prohibited in article XI, section 11, subdivision (a). However, before this decision, only one county implemented the new program.

**Commission's Decision**

On March 29, 2007, the Commission on State Mandates (Commission) reconsidered the Statement of Decision on the *Binding Arbitration* test claim, finding that the prior Statement of Decision adopted on July 28, 2006, was contrary to law. The Commission adopted a new decision and approved reimbursement for the following state-mandated activities pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514.

1. Selecting an arbitration panel member (Code Civ. Proc. § 1299.4, subd. (b)).
2. Submitting the last best final offer of settlement to the arbitration panel (Code Civ. Proc. § 1299.6, subd. (a)).
3. Once arbitration is triggered under Code of Civil Procedure section 1299.4, the following activities required by the arbitration panel or to participate in the arbitration process:
  - a. Meet with the arbitration panel (Code Civ. Proc. § 1299.5, subd. (a)).
  - b. Participate in inquiries or investigations (Code Civ. Proc. § 1299.5, subd. (a)).
  - c. Participate in mediation (Code Civ. Proc. § 1299.5, subd. (a)).
  - d. Participate in hearings (Code Civ. Proc. § 1299.5, subd. (a)).

- e. Respond to subpoenas and subpoenas duces tecum (Code Civ. Proc. § 1299.5, subd. (b)).
- f. Respond to or make demands for witness lists and/or documents (Code Civ. Proc., § 1299.8).<sup>1</sup>
- g. Make application and respond to deposition requests (Code Civ. Proc., § 1299.8).<sup>2</sup>
- h. Conduct discovery or respond to discovery requests (Code Civ. Proc., § 1299.8).<sup>3</sup>

### **Proposed Parameters and Guidelines**

The proposed parameters and guidelines for this program are also on this agenda. If adopted, the State Controller's Office will issue claiming instructions within 60 days; and one eligible claimant may file reimbursement claims. The original claimant, City of Palos Verdes did not incur actual costs but filed the test claim based on estimated costs. The County of Napa joined the claim as a co-claimant and alleged increased actual costs incurred during period of reimbursement, January 1, 2001 through April 20, 2003. (Throughout this test claim proceeding, we have identified only one county that is an eligible claimant.)

### **Proposed Statewide Cost Estimate**

In a declaration filed with the Commission on January 24, 2007, Deputy County Counsel Jacqueline M. Gong declared under penalty of perjury, that:

The full cost of this interest arbitration process to the County is yet to be fully determined, but exceeds \$10,000 based alone on legal fees and expenses incurred. In the course of participating in the arbitration process, the County's Human Resources Director served on the arbitration panel. Responses to discovery requests involved extensive staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. The County also incurred costs for legal counsel, both in-house and retained outside counsel. Expenses were further incurred for a number of expert witnesses in the arbitration hearing.<sup>4</sup>

### **Assumptions**

Staff makes the following assumptions regarding the statewide cost estimate for this program:

- There will be only one eligible claimant, County of Napa.
- Napa's actual claim will exceed \$10,000; however, there is no declaration to support a higher statewide estimate.

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<sup>1</sup> Incorporating by reference Code of Civil Procedure section 1282.2, subdivision (a)(2).

<sup>2</sup> Incorporating by reference Code of Civil Procedure sections 1283 and 1283.05.

<sup>3</sup> Incorporating by reference Code of Civil Procedure section 1283.05.

<sup>4</sup> Exhibit A, Request to Join as Co-Test Claimant by County of Napa, filed on January 24, 2007, Declaration of Jacqueline M. Gong, Paragraph 6.

**Conclusion**

Staff recommends that the Commission adopt a statewide cost estimate of \$10,000 for the costs incurred by the County of Napa to implement the state-mandated program from January 1, 2001 through April 20, 2003.

## Attachment 1

### Chronology: Collective Bargaining Process, Mediation, and Binding Arbitration

July 2000	Napa County begins collective bargaining process with Deputy Sheriff's Association.
November, December, January, February	Mediation – four occasions
Jan. 1, 2001 Jan. 16, 2001	PERIOD OF REIMBURSEMENT BEGINS During mediation, the DSA requested economic issues be submitted to binding arbitration.
	County consulted with other agencies; the County's Human Resources Director met with legal counsel.
Feb. 20, 2001	Last day of mediation ... County designated its Human Resources Director as its partisan panel member; DSA designated its panel member.
	Discussions between the County's Human Resources Director and legal counsel, the County planned its approach in participating in the joint selection of the neutral arbitrator.
March 2001	County and DSA jointly designated impartial chairperson.
April 17, 2001	Parties met with arbitration panel. <ul style="list-style-type: none"> <li>• Identified the disputed economic issues.</li> <li>• Established hearing timetable for exchange of requested information, exhibits, witness lists.</li> <li>• Agreed on hearing dates.</li> </ul> Parties settled on two economic proposals on retirement and dental benefits.
April 17 – May 22	Parties conducted discovery and exchanged documents as agreed to with the arbitration panel:  Responses to discovery requests involved staff time and resources from the Human Resources Division, County Executive Office and Auditor-Controller's Department. County also incurred costs for legal counsel, both in-house and retained outside counsel.  County searched for and retained expert witnesses to analyze the fiscal impact of proposed economic issues on the County and its ability to pay, as well as to study the comparability of the County's economic proposals to similarly

	<p>situated agencies.</p> <p>Expert witnesses developed analytical studies and prepared for testifying at the arbitration hearing with the assistance of legal counsel.</p> <p>General witnesses were also identified and prepared for testifying about County budgets, revenue and financial commitments.</p> <p>Legal counsel drafted county's last best final offer for submission after consulting with the Board of Supervisors.</p>
May 17, 2001	(5 days before hearing) Parties submitted last best final offer from negotiations.
May 22, 2001	<p>Parties participated in hearing – 3-days.</p> <p>Legal counsel, staff, expert and general witnesses.</p>
	At the direction of the arbitration panel, County through its staff and legal counsel prepared the submission of additional written evidence and closing briefs.
	Panel selects the party's last best offer on each disputed economic issue that most nearly adheres to specified factors under CCP 1299.6.
September 2001	<p>Panel issued its decision.</p> <p>5 Days later, binding decision was made public by the county.</p>

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