

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

October 30, 2009

Present: Member Tom Sheehy, 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 Anne Schmidt
Representative of the Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 10:31 a.m. Executive Director Paula Higashi called the roll.

INFORMATIONAL HEARING AND STAFF REPORT (action)

Item 1 Bureau of State Audits Report, *State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities*

Nancy Patton, Assistant Executive Director presented this report. Ms. Patton stated that the Bureau of State Audits (Bureau) released its follow-up audit report on the mandates process. The Bureau made recommendations to the Commission, the State Controller's Office, and the Department of Finance. The Commission is required to respond to the report within 60 days, six months and one year of the issuance dated and must include a work plan that shows implementation of the recommendations.

The Commission staff recommends the Commission approve the proposed plan for implementing the audit recommendations. Parties were represented as follows: Karen McKenna and Jim Sandberg-Larsen from the Bureau of State Audits; Carla Castaneda from the Department of Finance and Ginny Brummels and Jim Spano from the State Controller's Office.

Ms. McKenna, Bureau of State Audits, stated that the audit released on October 15, 2009 was a follow-up audit to reports that were issued on state mandates in 2002 and 2003. Ms. McKenna highlighted a few of the key issues that were related to the Commission. The Bureau found that although the status of work backlogs had decreased from 2003, there was still a significant backlog of test claims. There were 81 test claims in backlog as of June 2009 and 61 of those were from 2003 or earlier. Also, the average time for completing the test claim process through the adoption of a statewide cost estimate increased to more than eight years in fiscal year 2008-2009.

The backlog of incorrect reduction claims had grown from 77 in December 2003 to 146 in June 2009 for a total of \$57 million. To the extent that there are unresolved incorrect reduction claims, it creates uncertainty about what constitutes a proper claim. The Bureau recommended that the Commission work with Finance to seek additional resources to reduce its backlogs. In doing so, the staff should prioritize workload and seek efficiencies to the extent possible.

Ms. McKenna stated that the Bureau also examined recently established alternative processes, such as the joint process, where local entities and Finance come up with a reimbursement formula. The processes have the potential to relieve the Commission of some of its workload. However, these alternatives have been infrequently used. They have only been available for less than two years and the state has done little to publicize them.

The Bureau recommended that the Commission and Finance inform local entities of these processes by putting information about the alternatives readily available on their web sites. The Bureau also recommended that the Commission add additional information in its semiannual Report to the Legislature about the status of mandates being developed under alternative processes.

Additionally, the Bureau found that a recent court case had taken away the Legislature's ability to direct the Commission to reconsider its decisions in light of law changes. However, a process that allows mandate determinations to be revised when appropriate is necessary. In light of this, Assembly Budget Subcommittee No. 4 directed Finance, the Legislative Analyst's Office (LAO) and Commission staff to form a working group to come up with a reconsideration process. The Bureau recommended that those efforts continue.

Ms. McKenna stated that now is the time to take another look at various mandate reform ideas that were previously recommended by the LAO, Finance and the Center for Collaborative Policy especially in light of the fact that the liability for state mandates in June 2008 was \$2.6 billion. For example, one recommendation was the use of pilot programs which offer the chance to test programs before they are implemented statewide to get an idea of the costs.

The Bureau established a high-risk audit program where the State Auditor will issue a report listing areas that are significant to the state in terms of challenges. The Bureau has added state mandates to the high-risk audit program and will be periodically reporting to the Legislature.

Chairperson Sheehy asked Commission staff how much the backlog that was cited by the Bureau has been reduced. Ms. Patton responded that in 2003 the backlog was 103 test claims. It is now 51 test claims.

Chairperson Sheehy stated that the backlog has been reduced by over 50 percent. He expressed concern that the audit report did not recognize that the Commission had been successful in reducing the backlog by fifty percent.

Chairperson Sheehy also asked Ms. McKenna if she was aware that the state had over \$60 billion in General Fund deficits when the Bureau made the recommendation that the Commission work with Finance to get more staff.

Ms. McKenna stated that the Bureau understood the challenges and that this issue was discussed at length with Commission staff. The Bureau also understood that the Commission did not have full control over the resources and must work with Finance. The Bureau hopes to shed some visibility on the issue so the Legislature can see the importance of it.

Chairperson Sheehy added that neither Finance nor the Governor makes the final decision on resources. The Legislature appropriates money and approves new positions in the state budget.

Ms. McKenna stated that the Bureau has taken great effort to include the perspective of Commission staff that the resources are not expected from Finance. Nevertheless, the Bureau put the information in the report so the Legislature knows why the backlogs are occurring.

Member Worthley asked if the Bureau recommendation is that all legislation involving a mandate first be submitted as a pilot project before it becomes a general rule or a general law applicable to the whole state.

Ms. McKenna clarified that the recommendations on page 52 of the report are not Bureau recommendations. They are different issues that have been brought up by others that the Bureau thinks merit further discussion.

Carla Castaneda, Department of Finance, stated that the audit report does provide one recommendation for Finance which is to provide additional information on the AB 1222 processes. Finance has met with local agencies to gauge interest. Finance does have regular meetings with local agencies to discuss potential reasonable reimbursement methodologies candidates and legislatively determined mandates candidates.

Ms. Castaneda also stated that the Commission Chair made Finance's position clear that additional resources are not available for the Commission to increase staff. She clarified that while Commission staff was increased several years ago, it has been reduced in recent years due to budget reductions. Finance would look at requests for additional resources in light of budget development processes and the budget situation at the time of the request.

Chairperson Sheehy asked Ms. Castaneda if the Commission staff is subject to the three days per month furlough program and if this is affecting workload. Ms. Castaneda confirmed that they are, and explained that Finance has had discussions about the comment periods for many of the draft staff analyses and how to work around the furlough days.

Chairperson Sheehy stated that he hoped the impact of the furloughs is taken into consideration in the Bureau's follow-up reports because the furlough situation is a real challenge. It not only affects employee morale but also has an impact on the department's ability to deliver its mission at the same level.

Jim Spano, State Controller's Office, stated that the Bureau report recommended that the Controller work with Finance to obtain sufficient resources to meet its responsibility to audit mandate claims and to increase its efforts to fill vacant mandate positions. The Controller has ten vacant positions because of budget reductions. To the extent that the funding is restored, the positions will be filled.

Mr. Spano stated that the report also recommended that the Controller continue to assess the audit coverage and work with Finance to obtain sufficient resources to meet the statutory responsibility. To that extent, the Controller will comply.

Ms. Patton explained that staff has developed a plan to implement the recommendations of the Bureau.

Member Olsen stated that the Legislative Subcommittee conducted a legislative workshop earlier in the day, and one of the recommendations from that workshop was to use the term "modification" instead of "reconsideration" regarding the language pertaining to the process of revisiting mandates when there has been a change. Member Olsen recommended that we also use that term when discussing reconsiderations as part of the plan to implement the BSA audit report.

With a motion by Member Lujano to adopt the staff recommendation with changing the word "reconsideration" to "modification, and a second by Member Worthley, the staff recommendation was adopted by a vote of 7-0.

Allan Burdick, California State Association of Counties, commended the Commission staff and Finance for being proactive in working with cities and counties on the plan for implementing the audit recommendations.

APPROVAL OF MINUTES

Item 1 September 25, 2009

The September 25, 2009 hearing minutes were adopted by a vote of 7-0.

PROPOSED CONSENT CALENDAR

INFORMATIONAL HEARING ON PARAMETERS AND GUIDELINES AND
PARAMETERS AND GUIDELINES AMENDMENTS PURSUANT TO CALIFORNIA
CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 7* *Update Boilerplate Language: Child Abduction and Recovery*
05-PGA-26
Family Code Sections 3060 to 3064, 3130 TO 3134.5, 3408, 3411, and
3421; Penal Code Sections 277, 278, and 278.5 ; Welfare And
Institutions Code Section 11478.5
Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162 (AB 2650)
Statutes 1996, Chapter 988 (AB 2936)
State Controller's Office, Requestor
- Item 8* *Update Boilerplate Language: Sexually Violent Predators*
05-PGA-43
Welfare and Institutions Code Sections 6250 and 6600 through 6608
Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763
(AB 888); Statutes 1996, Chapter 4 (AB 1496)
State Controller's Office Requestor

PROPOSED STATEWIDE COST ESTIMATES

- Item 9* *Update Boilerplate Language: Domestic Violence Arrest Policies*
05-PGA-29
Penal Code Section 13701, Subdivision (b)
Statutes 1995, Chapter 246 (AB 2789)
State Controller's Office, Requestor

DISMISSAL OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

- Item 10* *Withdrawal of Proposed Amendment: Seriously Emotionally Disturbed*
(SED) Pupils: Out-of-State Mental Health Services, 05-PGA-15
Government Code Section 7576
Statutes 1996, Chapter 654
Los Angeles County, Requestor

Member Glaab made a motion to adopt items 7, 8, 9 and 10 on the consent calendar. With a second by Member Lujano, the consent calendar was adopted by a vote of 7-0.

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

Item 2 Staff Report (if necessary)

There were no appeals to consider.

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

PARAMETERS AND GUIDELINES

Item 6 *Tuition Fee Waivers*, 02-TC-21
Education Code Sections 68044, Subdivisions (a), (b), (c), 68051, 68074, 68075.5, 68076, Subdivision (d), 68077, 68078, Subdivision (b), 68082, 68083, 68084, 68121, 68130.5, and 76140

Statutes 1977, Chapter 36 (AB 447); Statutes 1980, Chapter 580 (AB 2567); Statutes 1981, Chapter 102 (AB 251); Statutes 1982, Chapter 1070 (AB 2627); Statutes 1988, Chapter 753 (AB 3958); Statutes 1989, Chapters 424, 900, and 985 (AB 1237, AB 259, and (SB 716); Statutes 1990, Chapter 1372 (SB 1854); Statutes 1991, Chapter 455 (AB 1745); Statutes 1993, Chapter 8 (AB 46); Statutes 1995, Chapter 389 (AB 723); Statutes 1997, Chapter 438 (AB 1317); Statutes 1998, Chapter 952 (AB 639); Statutes 2000, Chapters 571 and 949 (AB 1346 and AB 632); Statutes 2001, Chapter 814 (AB 540); and Statutes 2002, Chapter 450 (AB 1746)
California Code of Regulations, Title 5, Sections 54012, Subdivisions (b), (c), (d), 54024, Subdivisions (e), (f); 54030, 54032, Subdivision (a); 54041, 54045, Subdivisions (b), (c); 54045.5, subdivision (b); 54046, 54060, Subdivisions (a), (b) Register 77, No. 45 (Nov. 5, 1977); Register 82, No. 48 (Nov. 27, 1982); Register 83, No. 24 (Jun. 11, 1983) Register 86, No. 10 (Mar. 8, 1986); Register 91, No. 23 (April 5, 1991); Register 92, No. 4 (Jan. 24, 1992); Register 95, No. 19 (May 19, 1995); Register 99, No. 20 (May 14, 1999); Register 02, No. 25 (Jun. 21, 2002)
Revised Guidelines and Information, "Exemption from Nonresident Tuition" Chancellor of the California Community Colleges, May 2002
Contra Costa Community College District, Claimant

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller stated that on October 16, 2009, the Department of Finance submitted comments on the proposed parameters and guidelines for the *Tuition Fee Waivers* program. Finance wants language included in the parameters and guidelines that would limit the adoption of rules and regulations to a one-time activity. Staff disagrees because the content of the rules and regulations includes the amount of nonresident tuition, which would change from year to year.

Finance also wants the parameters and guidelines to state that any potential costs of the associated mandate activities for this test claim should be net of any costs incurred when meeting the existing baseline requirement for determining residency status and tuition fees for all students.

Staff disagrees because the Commission already determined that the activities in the Statement of Decision and the parameters and guidelines are a new program or higher level of service, and only those new activities are reimbursable.

All parameters and guidelines currently state: "The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified. Increased cost is limited to the cost of any activity that the claimant is required to incur as a result of the mandate." The staff recommends the Commission approve the parameters and guidelines without the changes recommended by Finance.

The parties were represented as follows: Keith Petersen representing the test claimant and Ed Hanson and Donna Ferebee from the Department of Finance.

Mr. Hanson stated that Finance requested that the section of the parameters and guidelines that refers to the adoption of regulations related to the method of payment and the method of refund of nonresident tuition fees be a one-time activity.

Finance agrees with staff that the actual refund will vary by year and by student. However, adopting rules and regulations for the method of payment and method of refund is a one-time process.

Mr. Hanson continued that Finance is seeking clarification regarding standard language about offsetting costs. Finance believes that community colleges have always had the requirement to determine residency for all students and nonresident fees for all students. The parameters and guidelines include some additional factors for determining residencies and some additional exemptions to nonresident fees. Therefore, Commission staff determined that it imposed a higher level of service. Finance believes that colleges need to differentiate between what they have been expected to do in determining baseline residency and nonresident fees against the additional requirements that are being imposed by the test claim.

Mr. Feller stated that the language in the Statement of Decision found in the parameters and guidelines reflects what is beyond the baseline requirement for determining residency.

Camille Shelton, Chief Legal Counsel, stated that Finance suggested splitting the activity into two activities so it is a one-time activity to adopt rules and regulations relating to the method of payment, method of nonresident tuition and method of refund for nonresident tuition and an ongoing activity to determine the amount of the refund.

Member Worthley clarified that the methodology would be a one-time expenditure. But the processing would be an ongoing expense that could vary from the numbers and complexity of the individual cases.

Ms. Shelton stated that the Education Code statute cited requires the governing board to determine the amount of the refund each year.

Mr. Feller stated that the amount of refund is based on the fee. The amount of refund of nonresident tuition is the only part that would be ongoing.

Keith Petersen, representing the claimant, stated that, for the seven year period of this test claim, there have been significant changes in the method of payment due to establishing online registration, online scheduling and online payment of fees. Mr. Petersen stated that this needs to be regarded as an application of the law rather than a concern about the activities. Mr. Petersen concurred with the staff recommendation.

With a motion by Member Olsen and a second by Member Worthley, the staff recommendation was adopted by a vote of 6-1 with Chairperson Sheehy voting no.

STAFF REPORTS

Item 12 Legislative Subcommittee Update on Proposed Language Regarding Reconsideration/Amendment of Prior Decisions

Member Olsen explained that a recent court case removed the Legislature's authority to direct the Commission to reconsider old mandate decisions. Therefore, staff from the Legislature, Legislative Analyst's Office, Department of Finance and the Commission has begun working on a new reconsideration process. This morning, the Commission's Legislative Subcommittee conducted a workshop to discuss draft language for this process.

Member Olsen reported on the workshop by stating that there was significant interest provided at the meeting. Personnel primarily from statewide associations came forward to give information.

Member Olsen stated that there is also significant interest in moving this process forward and continuing work on it. The subcommittee would ask for the whole Commission's direction to the staff to make that happen.

There are two processes related to this modification (reconsideration) of mandates. One is a cost-savings process that happens because of external circumstances. The other is a cost-making process. There are different incentives for bringing those two different kinds of cases forward.

There is a possibility of replacing the language that has already been proposed with language that would bring back the cost-savings process that the Commission used to have. It would be coupled with the current mandates process using a sort of exception or exemption to statute of limitations to allow folks to come forward with a modification. This might streamline the process and make it more understandable.

Member Olsen stated that the other issue that was discussed, in light of the audit report, was the new workload and getting staff the necessary resources. This would enable the Commission to decide on significant issues.

Chairperson Sheehy asked what the specific provisions that will generate the most workload are.

Member Olsen reported that the state has some incentive to bring forward cases for reconsideration, where, because of court decisions or because of new federal mandates, there is a potential for state savings by getting out from under the state's requirement to pay for mandates.

There could also be situations where local governments are, because of recent court decisions, performing mandated activities even though a prior decision by the Commission suggested that there was no mandate.

Member Olsen stated that the Legislative Subcommittee would like to look at a cost-recovery process so that folks bringing forward either cost-savings or new mandate cases would have to make some strategic decision whether or not it is worth it to support the process.

Chairperson Sheehy asked how a cost-recovery might work.

Member Worthley suggested a filing fee.

Ms. Higashi suggested a claim for attorney's fees.

Member Glaab stated that cost containment was an overarching concern with the Legislative Subcommittee. Therefore, the Commission needs to be mindful not to implement changes that could trigger doubling the workload by means of readdressing test claims.

Member Glaab stated that testimony from those in attendance made it a clear case to have two steps in the reconsideration process.

Member Olsen suggested that Commission staff continue to work with the interested parties as they proceed forward with language or with developing a proposal.

Chairperson Sheehy asked if a decision must be reached on the draft language.

Ms. Higashi stated that the draft language was created to have a talking point. No further decision is necessary because Item 1, the implementation plan, was adopted to direct Commission staff to continue work on this and to meet a deadline in the Governor's Office for proposed legislation.

Member Worthley suggested looking into the formation of an informal reconsideration or modification process similar to a Reasonable Reimbursement Process (RRM) where the claimant works directly with the Department of Finance to agree on the changes.

Ms. Higashi stated that certain changes can be easily identified for some people and not so easily identified for others. If, however, there are fundamental changes in the finding made by the Commission to go from "approve" to "deny" or "deny" to "partial approve," it is a major action.

Commission staff could explore whether the Legislature wants to expand the legislatively determined mandate but they currently have authority to look at any statute and fund it.

Ms. Shelton stated that when changing the state's liability under the Constitution, the Commission on State Mandates needs to issue a quasi-judicial decision.

Chairperson Sheehy called for public comment on this item.

Richard Hamilton, general counsel with CSBA, respectfully urged the Commission to examine the role it will play in developing the reconsideration or modification process in light of the contentious issues headed its way. The whole process is framed in the issue of saving the state money. It is a way to get around the Commission's duties to hear and decide if the state is creating new tasks or expanding tasks. If the state is doing neither then local government is not entitled to be reimbursed.

Mr. Hamilton stated that the discussion move away from the idea of the Commission reconsidering what it has previously done within the context of what was known at the time. There needs to be a distinction between whether it is a change in law or a change in circumstance. The idea that there could be some informal way to modify parameters and guidelines for changes of circumstances seems very applicable.

Mr. Hamilton asked, concerning the discussion about the need for Commission staffing, what priority is going to be given to the savings effort when there are local governmental entities performing services mandated by the state who are not getting reimbursed. He stated that a liability of at least one billion dollars for K-12 education has been identified.

Geoffrey Neill, California State Association of Counties, aligned himself with the comments of Mr. Hamilton. Mr. Neill pointed out that it is surprising that the staff report and some of the commissioners are referring to savings when talking about changing reimbursement for activities mandated by the state when the Commission is an independent body.

Mr. Burdick stated that the comment raised relative to cost recovery, possibly a filing fee, is troublesome to local government who already has substantial costs involved. He believes that none of the cases before the Commission were frivolous but rather very valid issues. Sometimes, however, the legal system prevents practical reality from being implemented.

Member Olsen commented on the savings issue that Mr. Hamilton raised. Member Olsen does not view this process as a state savings issue but rather an issue to take up changes in the external world that affect mandates.

Member Worthley stated that he is concerned about the idea of charging claimants if the Legislature creates the problem. The Legislature puts the burden on local government to pay for the cost of the problem the Legislature created. There is a basic inequity.

Member Olsen stated that she, too, considers the idea of cost recovery troublesome. It was a creative idea, reflecting the times and the information from staff that funding is not being considered for staffing and recognizing that there could be a significant workload.

Mr. Hamilton stated that as local government is mandated to perform an activity, local government should be paid for it. They are so far behind in getting paid that he takes issue with the idea of the state starting to save money by not paying for what it already owes.

Item 13 Chief Legal Counsel's Report (info)

Ms. Shelton stated that the *Behavioral Intervention* program court case was continued from December 2009 to December 2010 so that the real parties in interest could continue negotiations.

Item 14 Executive Director's Report (info)

Ms. Higashi stated that the Commission needed to discuss the December hearing date which was set for December 3, 2009. She stated they now have scheduling conflicts and proposed December 7, 2009. To date, only consent calendar items are proposed for this hearing. Therefore, Chairperson Sheehy recommended cancelling the December hearing and moving items to January.

Member Glaab suggested keeping the December hearing date available until Ms. Higashi can determine if cancelling the December hearing places a hardship on any party.

Member Glaab and Chairperson Sheehy commented that, relative to the audit report, the reduction in claims occurred due to hard work and planning. He commended Commission staff for the significant reduction.

PUBLIC COMMENT

There was no public comment.

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

A. PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; Sacramento County Superior Court, Case No. 06CS01335 [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]

3. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a)(1).

- Personnel Subcommittee Report

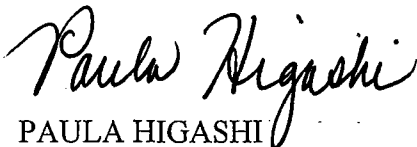
Hearing no further comments, Chairperson Sheehy adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda and to confer and receive advice from legal counsel regarding potential litigation. The Commission will also confer on personnel matters and a report from the personnel committee pursuant to Government Code section 11125, subdivision (a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:48 a.m., Chairperson Sheehy reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and also to confer on personnel matters listed on the published notice and agenda pursuant to Government Code section 11126, subdivision (a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Sheehy adjourned the meeting at 11:48 am.



PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 10:30 a.m.
DATE: Friday, October 30, 2009
PLACE: State Capitol
Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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A P P E A R A N C E S

COMMISSIONERS PRESENT

TOM SHEEHY
(*Commission Chair*)
Representative for MICHAEL GENEST
Director, State Department of Finance

ANNE SCHMIDT
Representative for CYNTHIA BRYANT
Director, Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

J. STEVEN WORTHLEY
Supervisor and Chairman of the Board
County of Tulare



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(*Item 14*)

ERIC FELLER
Senior Commission Counsel
(*Item 6*)

A P P E A R A N C E S

COMMISSION STAFF PRESENT

Continued

NANCY PATTON
Assistant Executive Director
(Item 1)

CAMILLE SHELTON
Chief Legal Counsel
(Item 13)



PUBLIC TESTIMONY

Appearing Re Item 1 (Bureau of State Audits Report):

For Bureau of State Audits:

KAREN McKENNA
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

JIM SANDBERG-LARSON
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

For Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

PUBLIC TESTIMONY

Appearing Re Item 1 (Bureau of State Audits Report):

continued

For State Controller's Office:

GINNY BRUMMELS
Manager, Local Reimbursements Section
Accounting & Reporting Division
State Controller
3301 C Street, Suite 500
Sacramento, California 95816

JIM SPANO
Chief, Compliance Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 518
Sacramento, California 95814

For California State Association of Counties:

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

Appearing Re Item 6 (Tuition Fee Waivers):

For Claimant Contra Costa Community College District:

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

PUBLIC TESTIMONY

Appearing Re Item 6 (Tuition Fee Waivers):

continued

For Department of Finance:

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

EDWARD HANSON
Education Unit
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 12 (Legislative Subcommittee Update):

RICHARD HAMILTON
General Counsel
Director, Education Legal Alliance
California School Boards Association
3100 Beacon Boulevard
West Sacramento, California 95691

GEOFFREY NEILL
California State Association of Counties
SB 90 Service
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Sacramento, California 95841

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



ERRATA SHEET

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1 BE IT REMEMBERED that on Friday, October 30,
2 2009, commencing at the hour of 10:31 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:

6 --oOo--

7 *(The following proceedings commenced with*
8 *Mr. Chivaro absent from the meeting room.)*

9 CHAIR SHEEHY: Please call the roll so we can
10 establish a quorum.

11 MS. HIGASHI: Mr. Chivaro is not here.

12 Mr. Glaab?

13 MEMBER GLAAB: Present.

14 MS. HIGASHI: Mr. Lujano?

15 MEMBER LUJANO: Here.

16 MS. HIGASHI: Ms. Olsen?

17 MEMBER OLSEN: Here.

18 MS. HIGASHI: Ms. Schmidt?

19 MEMBER SCHMIDT: Here.

20 MS. HIGASHI: Mr. Worthley?

21 MEMBER WORTHLEY: Here.

22 MS. HIGASHI: Mr. Sheehy?

23 CHAIR SHEEHY: Present.

24 I'm sorry, I realize that we are missing one
25 colleague.

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1 Do we expect Mr. Chivaro this morning, Paula?

2 MS. HIGASHI: We have not heard.

3 CHAIR SHEEHY: Okay, well, let's wait. I
4 apologize, we probably should have waited.

5 Let's wait a couple more minutes. Okay, we do
6 have a quorum. And then if Mr. Chivaro is not here,
7 we'll go ahead and start on Item Number 1.

8 So proceed as you were, please. Sorry about
9 that, folks.

10 *(Off record at 10:32 a.m.)*

11 *(Back on record at 10:34 a.m.)*

12 CHAIR SHEEHY: We will go ahead and get started
13 then.

14 The first item we have today is the Bureau of
15 State Audits.

16 MS. HIGASHI: He's on his way.

17 CHAIR SHEEHY: He's on his way?

18 Here he is, just in time.

19 *(Mr. Chivaro entered the hearing room.)*

20 CHAIR SHEEHY: Now, Mr. Chivaro, your
21 colleagues wanted to leave you just with the wrappers.
22 But I decided we'd actually go ahead and leave you with
23 some real candy, the generosity of my heart.

24 You haven't missed anything. We were just
25 going to start. Okay, so let the record show the

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1 Controller is here.

2 And our first item today is the Bureau of State
3 Audits Report.

4 Ms. Patton, can you go ahead and present that,
5 please?

6 MS. PATTON: Good morning.

7 On October 15th, 2009, the Bureau of State
8 Audits released its follow-up audit report on the
9 mandates process. And they made several recommendations.

10 The Commission is inviting the State Auditor's
11 staff this morning, as well as the staff with the State
12 Controller's Office and the Department of Finance,
13 because there were recommendations made to those agencies
14 as well, to come up and talk about the report. Then we
15 are required to respond to the report within 60 days,
16 six months, and one year of the issuance date; and we
17 must include a work plan that shows how we're
18 implementing the recommendations.

19 So our staff recommendation is for the
20 Commission to approve the proposed plan for implementing
21 the audit recommendations. But, first, we'd like the
22 Bureau of State Audits and Finance and State Controller's
23 staff to come forward.

24 And we have with us today Karen McKenna and Jim
25 Sandberg-Larson from the Bureau of State Audits. Carla

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1 Castañeda from the Department of Finance. Ginny Brummels
2 and Jim Spano from the State Controller's Office.

3 Thank you.

4 CHAIR SHEEHY: Okay, why don't we hear from
5 the Bureau of State Audits first.

6 Ms. McKenna and Mr. Sandberg.

7 MS. MCKENNA: I'm Karen McKenna, and with me
8 today is Jim Sandberg-Larson. We oversaw the audit that
9 was released on the 15th. As was mentioned, this was a
10 follow-up audit to reports that were issued on State
11 Mandates back in 2002 and 2003. And our audit involved
12 the Commission, the Controller, as well as the Department
13 of Finance.

14 I just want to highlight a few of the key
15 issues that were related to the Commission.

16 CHAIR SHEEHY: Okay.

17 MS. MCKENNA: Specifically, one of the things
18 we looked at was the status of work backlogs. And we
19 found that although it had decreased from 2003, that
20 there was still a significant backlog of test claims.
21 And what we were looking at, is that we saw that there
22 were 81 in the backlog of June 2009, and 61 of those were
23 from 2003 or earlier.

24 We also found that the average time elapsed for
25 completing a test-claim process through the adoption of a

1 statewide cost estimate increased to more than eight
2 years in fiscal year 2008-2009.

3 We also looked at another kind of work backlog,
4 and that was specifically the incorrect-reduction claims
5 which, as you know, local entities filed to contest audit
6 adjustments. That had grown to \$57 million by June 2009.
7 Specifically, over the period we looked at, it had grown
8 from 77 back in December 2003, to 146 in June 2009. And
9 to the extent that there's unresolved incorrect-reduction
10 claims, it creates uncertainty about what constitutes a
11 proper claim.

12 So we had a recommendation that was related
13 to both of those issues, and we recommended that the
14 Commission work with the Department of Finance to seek
15 additional resources to reduce its backlogs. And in
16 doing so, the staff should prioritize workload and seek
17 efficiencies to the extent possible.

18 We also looked at some recently established
19 alternative processes, such as the joint process, where
20 local entities and Department of Finance can come up with
21 a reimbursement formula. And those processes were set
22 in law and established. And they have the potential to
23 relieve the Commission of some of its workload, so you
24 wouldn't have to go through the whole mandate
25 determination process and the cost-estimate process.

1 However, we found that these alternatives have been
2 infrequently used. And they've only been available for
3 less than two years, and the State has done little to
4 publicize them.

5 We recommended that the Commission as well as
6 Finance inform local entities of these processes by
7 putting information about the alternatives readily
8 available on their Web sites. And we also recommended
9 that the Commission add additional information in the
10 semiannual report to the Legislature about the status of
11 mandates being developed under alternative processes,
12 because we found that there can be delays in those
13 processes.

14 Additionally, we found that a recent court case
15 had taken away the Legislature's ability to direct the
16 Commission to reconsider its decisions in light of law
17 changes. However, a process that allows mandate
18 determinations to be revised when appropriate is
19 necessary.

20 And in light of this, the legislative
21 subcommittee last spring directed Finance, the LAO's
22 office, and the Commission legislative staff, to form a
23 working group to come up with a reconsideration process.
24 And that's, I think, in the early stages. So we
25 recommended that those efforts continue.

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1 Finally, another key recommendation is that
2 we've seen that various parties, including the LAO,
3 Department of Finance, the Center For Collaborative
4 Policy, which the Commission contracted with, as you
5 know, have come up with various reform ideas, some of
6 which have been established, but limited, but there's
7 other promises, ideas that have not been implemented.
8 And we really think now is the time for a second look at
9 this, especially in light of the fact that the liability
10 at June 2008 for State Mandates was \$2.6 billion.

11 For example, one of the recommendations
12 involves the use of pilot programs, which would offer
13 the chance to test a program before it is implemented
14 statewide, to really get a good idea of what the costs
15 are.

16 With regard to the audit follow-up, as
17 mentioned, there is a process, as with all of our
18 auditees, that at 60 days, six months, and one year we're
19 expecting some responses back. With regard to what's
20 going on with the recommendations, that information is
21 provided to legislative subcommittees during the
22 beginning of the calendar year.

23 And additionally, under state law, there is
24 another process that at one year, if recommendations are
25 not fully implemented, then we would continue to be

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1 asking for information on those recommendations and
2 report to the Legislature.

3 And just a final comment, that we have
4 established a high-risk audit program in accordance with
5 state law. And that's what involves the State Auditor
6 issuing a report, having a list of areas that are
7 significant to the State in terms of challenges. And we
8 have now added the various state mandates to that list.
9 So that is also going to be required, and mandatorily we
10 will be periodically reporting to the Legislature on
11 that.

12 And Jim and I are available for any questions
13 if the Commission has any questions.

14 CHAIR SHEEHY: I have a question of staff.

15 Ms. Patton, how much has the backlog been
16 reduced that was cited by the auditor?

17 MS. PATTON: I believe in 2003 it was about
18 103 test claims, and we're down to 51 now.

19 CHAIR SHEEHY: So the backlog has been reduced
20 by over 50 percent?

21 MS. PATTON: Yes.

22 CHAIR SHEEHY: I would have liked to have seen
23 that noted in your report.

24 MS. McKENNA: We do talk about the backlog
25 being reduced.

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1 CHAIR SHEEHY: What do you say?

2 MS. MCKENNA: Let me take a look at it.

3 It was on page 16 of our report. I think we
4 distributed copies of the report. The very first
5 sentence under the headline, "Although the test claim
6 backlog dropped from 132 in December 2003." So we do
7 talk about -- in fact, the heading is, "Despite
8 progress."

9 CHAIR SHEEHY: Well, I don't know the tone.
10 I don't know why you had to start off by saying,
11 "Although." Why didn't you come out and say the
12 Commission has been successful in reducing the backlog
13 by 50 percent? It was a tone issue for me.

14 MS. MCKENNA: All right.

15 CHAIR SHEEHY: I mean, is there a reason why
16 you had to put it that way?

17 MS. MCKENNA: No. We thought it was
18 appropriate.

19 CHAIR SHEEHY: Because, you know, the thing is,
20 you're recommending that the Commission -- one of your
21 recommendations is that they work with the Department of
22 Finance to get more staff. I'm sure you're aware of
23 the fact that we had over \$60 billion in General Fund
24 deficits in the 2008-09 and the 2009-10 fiscal year.

25 Are you aware of that?

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1 MS. MCKENNA: Yes, we're aware of it. And we
2 talk about in the report that it's important to continue
3 the dialogue. We understand the challenges, and this is
4 something we've discussed at length with Commission
5 staff.

6 CHAIR SHEEHY: Because I hope that you don't
7 come back in six months or a year and give the Commission
8 staff a hard time because they weren't able to get more
9 staff at a time when we don't have any more General Fund
10 money to go around. I mean, that is unless, of course,
11 the Bureau of State Audits was looking at some of it's
12 resources that we could use for the Commission.

13 Is that a possibility, Ms. McKenna?

14 MS. MCKENNA: I'm sorry, could you repeat your
15 question?

16 CHAIR SHEEHY: Would you be willing to give up
17 some of your resources to help us do a better job on that
18 backlog that we've reduced by 50 percent?

19 MS. MCKENNA: This is a joke; right?

20 CHAIR SHEEHY: No, I'm quite serious.

21 MS. MCKENNA: Okay, well, in any way --

22 CHAIR SHEEHY: We're always looking for ways to
23 save money.

24 MS. MCKENNA: I think, let's back up a little
25 bit.

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1 In terms of the recommendation, we worked, I
2 guess, with the Commission staff in terms of forming the
3 recommendation in a way that would be workable.

4 We do understand, you know, the challenges
5 involved. We understand it's not just the
6 Commission's -- the Commission does not have full control
7 over the resources, and that is something they need to
8 work with Finance.

9 We hope to shed some visibility on the issue so
10 that, in fact, people can see the importance of it and
11 the Legislature can see the importance of it.

12 CHAIR SHEEHY: All right, well, I appreciate
13 that. And I think it's also important to note for the
14 record that the Department of Finance and the Governor
15 doesn't get to make the final call on resources.

16 You know, the Legislature is a co-equal
17 partner. In fact, they have the power -- not the
18 Administration, but they have the power -- to appropriate
19 money and to approve new positions in the state budget.
20 So we look forward to working with our legislative
21 colleagues in what's going to be probably a very
22 difficult budget year next year. But let's not forget
23 that they do have the power to appropriate, and we don't.

24 MS. MCKENNA: Absolutely. And I think we've
25 taken great effort to include the perspective of

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1 Commission staff in here as well, that the resources are
2 not expected from Finance and that that's what they've
3 been told this next year. But nevertheless, I mean, we
4 need to put the information in here so the Legislature
5 and others can see it. And if they want to know why
6 these backlogs are occurring, that this is what the
7 situation is.

8 CHAIR SHEEHY: Okay, very good, Ms. McKenna.

9 That's all the questions that I had.

10 I open it up to Mr. Worthley.

11 MEMBER WORTHLEY: Mr. Chairman, thank you.

12 On the pre-mandate process recommendations that
13 you had, I thought it was very good, the idea of trying
14 to head these things off before they become mandates is a
15 very wise approach. We have the LAO apparently who does
16 that now, but the idea of having a more concerted effort
17 perhaps amongst the Legislature and others to try to head
18 these things off before they become law.

19 But my question really had to do about the
20 pilot projects. Is it the recommendation that all
21 legislation that might involve a mandate would be first
22 submitted as a pilot project before it became a general
23 rule or a general law, applicable to the whole state?

24 MS. MCKENNA: No. First of all, I'd like to
25 clarify that I think what you're looking at is Table 3 --

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1 MEMBER WORTHLEY: Yes, I'm sorry.

2 MS. MCKENNA: -- and on page 52 of our report.

3 These are actually not our recommendations.

4 These are different issues that have been brought up by
5 others that we think merit further discussion.

6 MEMBER WORTHLEY: Oh, okay.

7 MS. MCKENNA: And so the idea of pilot projects
8 is actually one that's been brought up by different
9 parties within the state, as well as, I think, another
10 state.

11 And so, again, how that would be implemented,
12 whether it would be, you know, just trying on some.

13 But the idea of seeing how something can be
14 done on a pilot project before making a requirement that
15 that gets done statewide -- and it's certainly something
16 that would have to be done early on in terms of when,
17 like, the law is being done -- you know, before it
18 becomes a mandate.

19 MEMBER WORTHLEY: Thank you.

20 CHAIR SHEEHY: Other questions of Commission
21 members at this time?

22 *(No response)*

23 CHAIR SHEEHY: Let's hear from the Department
24 of Finance and from the State Controller's Office.

25 Finance, would you like to go first?

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1 MS. CASTAÑEDA: Sure. Carla Castañeda,
2 Department of Finance.

3 The audit report does provide one
4 recommendation for the Department of Finance, as
5 mentioned by Ms. McKenna, to provide additional
6 information on the AB 1222 processes. We've met with
7 local agencies to try to gauge interest in that, since
8 our Web site does have a lot of information on how useful
9 that would be. And we would welcome additional comments
10 at the hearing today if that is something that local
11 agencies would find useful.

12 We do have regular meetings with local agencies
13 to go over potential RRM candidates and LDM candidates,
14 the legislative-determined mandates for the reasonable
15 reimbursement methodologies.

16 I think that the Chair has already made it
17 clear Finance's position on additional resources. I
18 think that the audit report suggests additional staff
19 for the Commission.

20 Additional staff was approved several years
21 ago, and some staff has been lost due to recent budget
22 reductions. And the recommendation for the Controller
23 as well.

24 We would look at any requests for additional
25 resources in light of the budget development processes

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1 and the budget situation at the time.

2 CHAIR SHEEHY: And, Ms. Castañeda, is the
3 Commission on State Finance -- on State Mandates, excuse
4 me -- the Commission on State Mandates, is that staff
5 also subject to the three days per month furloughs?

6 MS. CASTAÑEDA: Yes, they are.

7 CHAIR SHEEHY: So I suspect that's having a
8 rather significant impact on the workload?

9 MS. CASTAÑEDA: Yes, it is. We also had
10 discussions about the comment periods for a lot of the
11 draft staff analyses and how those can be dealt with to
12 work around those furlough days.

13 CHAIR SHEEHY: I certainly hope the impact of
14 the furloughs, Ms. McKenna, is taken into consideration
15 in your follow-up reports because I know from my
16 experience with the number of different state agencies
17 that I'm working with, the furloughs is a real challenge
18 to manage around. Not only does it affect employee
19 morale, but it has a real serious impact on the
20 Department's abilities to deliver the mission at the same
21 level that they've been able to. We've all been asked to
22 contribute.

23 I'm not sure, is the Bureau of State Audits
24 taking furlough days?

25 MS. MCKENNA: We have a furlough program, yes,

1 we do.

2 CHAIR SHEEHY: So then you can absolutely
3 relate to what we're going through. I'm sure it's
4 impacting your various audit engagements. So I just hope
5 you just keep that in mind as we move forward. I know
6 the staff is working hard to continue the same level of
7 service, notwithstanding the furloughs.

8 Thank you, Ms. Castañeda.

9 Can we please hear from the State Controller's
10 Office?

11 MR. SPANO: Sure. I'm Jim Spano, the Audit
12 Bureau chief for the State Controller's Office, Division
13 of Audits.

14 The report identified -- or indicated that --
15 or recommended that the Controller work with the
16 Department of Finance to obtain sufficient resources, to
17 meet its responsibility to audit mandate claims and to
18 increase its efforts to fill vacant mandate positions.

19 Currently, the Controller has noted in the
20 report ten vacant positions right now that we'd like to
21 fill. The positions are vacant because of budget
22 reductions which apply to all funds of the Controller's
23 office, including mandate auditors' positions funded by
24 the General Fund.

25 It is our preference to fill these vacant

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1 positions. And to the extent that the funding is
2 restored, the position will be filled.

3 It also talked about -- recommended that we
4 continue to assess our audit coverage and work with
5 Finance to obtain sufficient resources to meet our
6 statutory responsibility to ensure that file claims are
7 correct and legal. And to that extent, we will do so.

8 CHAIR SHEEHY: Thank you very much, Mr. Spano.

9 At this time, do we have any other questions
10 from Commission members or our witnesses?

11 *(No response)*

12 CHAIR SHEEHY: Is there anybody from the
13 general public today that would like to comment on the
14 Bureau of State Audits report, the Commission's response?
15 This is your chance to ask the Bureau staff and Finance
16 and Controller staff that is here.

17 *(No response)*

18 CHAIR SHEEHY: Okay, seeing nobody chomping at
19 the bit for that offer, do we have a motion to approve --
20 what is the appropriate motion here, Paula? Would it be
21 to approve the staff recommendation on Item No. 1?

22 MS. HIGASHI: Yes. Ms. Patton can review it
23 with you if there are questions.

24 CHAIR SHEEHY: Ms. Patton, can you walk through
25 real quickly what the staff recommendation is?

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1 MS. PATTON: We have developed an
2 implementation plan to implement the recommendations of
3 the Bureau of State Audits. So we're asking you to
4 approve that implementation plan that allows us to go
5 forward.

6 MEMBER LUJANO: Move approval of the staff
7 recommendation on the implementation plan.

8 CHAIR SHEEHY: We have a move by the Treasurer.
9 The Treasurer moves this item.

10 MEMBER WORTHLEY: Second.

11 CHAIR SHEEHY: Mr. Worthley seconds.

12 Ms. Olsen?

13 MEMBER OLSEN: As you're aware, the Legislative
14 Subcommittee met this morning before this meeting.

15 CHAIR SHEEHY: Oh, yes, please.

16 MEMBER OLSEN: And we're actually going to be
17 reviewing that later in the agenda. But there is one
18 thing we heard this morning that I think is pertinent to
19 what's before us on the BSA recommendations from staff,
20 and that is on Recommendation 3, which is on page 6 in
21 the packet.

22 Mr. Richard Hamilton from CSBA, I think,
23 brought up a very good point, and that is that in the
24 language of talking about what to do with this new
25 process, to revisit mandates when there's been a change

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1 out in the world at large, we've been using the
2 term "reconsideration," not meaning the reconsideration
3 process we now have, which is internal to our own
4 decisions, but it does become confusing in talking about
5 it when you use the term "reconsideration." And he did
6 recommend that we use the term "modification" instead.
7 And I think that that actually, almost immediately,
8 cleared up discussion this morning.

9 So I would recommend that we make that one very
10 small change, but significant change to the language in
11 Recommendation 3, to change the word "reconsideration"
12 to "modification."

13 CHAIR SHEEHY: Okay, Mr. Lujano, are you
14 willing to amend your motion accordingly?

15 MEMBER LUJANO: Sure.

16 MEMBER WORTHLEY: Second.

17 CHAIR SHEEHY: All right, so we now have the
18 staff recommendation has been moved and seconded, as
19 amended by Ms. Olsen.

20 All in favor, say "aye."

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

22 CHAIR SHEEHY: Any opposed?

23 *(No response)*

24 CHAIR SHEEHY: Hearing none, that motion
25 carries.

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1 Thank you very much, staff of the Bureau of
2 State Audits, for coming in today and presenting your
3 report.

4 Thank you, Finance and State Controller's
5 Office.

6 Okay, now, we're going to take up our minutes
7 from the last meeting.

8 MR. BURDICK: Mr. Sheehy? Allan Burdick.

9 CHAIR SHEEHY: Yes. Is it back on Item 1, or
10 are we on the minutes?

11 MR. BURDICK: Yes, I just want to make a
12 comment that your staff, as well as the Department of
13 Finance, already met yesterday with the League of
14 California Cities, the California State Association of
15 Counties on the recommendations to implement. They've
16 been working hard. So I just thought that we should
17 officially let the Commission know that both Finance and
18 your staff has been very proactive in working with cities
19 and counties on this particular issue.

20 CHAIR SHEEHY: Mr. Burdick, we are very much
21 appreciative of you acknowledging that and putting it on
22 the public record.

23 Thank you.

24 All right, anyone else?

25 *(No response)*

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1 CHAIR SHEEHY: All right, we're going to move
2 on to the minutes now.

3 Are there any objections, corrections, or any
4 sort of amendments that anybody would like to propose to
5 the minutes, either from Commission members or anybody in
6 the general public?

7 *(No response)*

8 CHAIR SHEEHY: Okay, seeing none, is there a
9 motion?

10 MEMBER OLSEN: So moved.

11 CHAIR SHEEHY: We have a motion by Ms. Olsen.

12 MEMBER WORTHLEY: Second.

13 CHAIR SHEEHY: And a second by Mr. Worthley.

14 All in favor?

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

16 CHAIR SHEEHY: Any opposed?

17 *(No response)*

18 CHAIR SHEEHY: The minutes are approved.

19 Okay, next, we're going to take up the Consent
20 Calendar.

21 Now, today, we have Items 7, 8, 9, and 10 on
22 our agenda are all on consent.

23 Do any Commission members have any objections
24 to the proposed Consent Calendar?

25 *(No response)*

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1 CHAIR SHEEHY: Is there any public comment on
2 the proposed Consent Calendar?

3 *(No response)*

4 CHAIR SHEEHY: Seeing none, is there a motion
5 to approve it?

6 MEMBER GLAAB: So moved.

7 MEMBER LUJANO: Second.

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

9 All in favor?

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

11 CHAIR SHEEHY: Any opposed?

12 *(No response)*

13 CHAIR SHEEHY: Hearing none, that motion is
14 approved.

15 Okay, which now takes us, I believe --
16 Ms. Higashi, takes us to Item No. 6; is that correct?

17 MS. HIGASHI: That's correct.

18 CHAIR SHEEHY: Okay, Paula, can you please set
19 the table for us on this item?

20 MS. HIGASHI: Certainly.

21 Senior Commission Counsel Eric Feller will
22 present this item.

23 MR. FELLER: Good morning. On October 16th,
24 the Department of Finance submitted comments on the
25 proposed parameters and guidelines for the *Tuition Fee*

1 *Waivers* program. Finance wants language included in the
2 parameters and guidelines that would limit the adoption
3 of rules and regulations to a one-time activity. Staff
4 disagrees because the content of the rules and
5 regulations includes the amount of nonresident tuition,
6 which would change from year to year.

7 Finance also wants the parameters and
8 guidelines to state that any potential costs of the
9 associated mandate activities for this test claim should
10 be net of any costs incurred when meeting the existing
11 baseline requirement for determining residency status and
12 tuition fees for all students.

13 Staff disagrees because the Commission already
14 determined that the activities in the Statement of
15 Decision and the P's & G's are a new program or higher
16 level of service, and only those new activities are
17 reimbursable.

18 This concept is written into this in all
19 parameters and guidelines that say, "The claimant is only
20 allowed to claim and be reimbursed for increased costs
21 for reimbursable activities identified. Increased costs
22 is limited to the cost of any activity that the claimant
23 is required to incur as a result of the mandate."

24 The staff recommends the Commission approves
25 the parameters and guidelines without the changes

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1 recommended by Finance.

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

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

6 MR. HANSON: Ed Hanson, Department of Finance.

7 MS. FEREBEE: Donna Ferebee, Department of
8 Finance.

9 CHAIR SHEEHY: Great.

10 Let's hear from Finance first.

11 And, Mr. Hanson, do you want to state for the
12 record which unit you're in at Finance?

13 MR. HANSON: I'm in the Education Unit.

14 CHAIR SHEEHY: Great.

15 And we're in receipt of a letter dated
16 October 14th, signed by your program budget manager,
17 Ms. Oropeza.

18 Could you please comment on what you're
19 seeking vis-à-vis this letter and your response to the
20 supplemental analysis by the Commission staff?

21 MR. HANSON: In the letter, we requested
22 essentially that the piece of the P's & G's that refers
23 to the adoption of regulations related to the method of
24 payment and the method of refund of nonresident tuition
25 fees be a one-time activity.

1 We agree with staff that the actual refund will
2 vary by year and by student. However, adopting rules and
3 regulations for the method of payment and method of
4 refund, we believe, is a one-time process. Method of
5 payment and refund is a process that would be established
6 one time; and we would expect that to be funded on a
7 one-time payment.

8 Method of payment, we believe, would be cash, a
9 check, a credit card. We don't think that the method is
10 necessarily a variable activity that should be updated on
11 an annual basis.

12 CHAIR SHEEHY: Okay, and then there was a
13 second issue.

14 MR. HANSON: Yes. We're just seeking
15 additional clarification. We recognize that the
16 P's & G's include the standard language about offsetting
17 costs. However, we're just seeking additional
18 clarification because in this case we believe that
19 there's an extra wrinkle of community colleges have
20 always had the requirement to determine residency for all
21 students and to determine nonresident fees for all
22 students. So there's already a baseline requirement for
23 colleges to determine this information.

24 The P's & G's of the test claim included some
25 additional factors for determining residencies and some

1 additional exemptions to nonresident fees. The
2 Commission determined that that imposed a higher level
3 of service.

4 We're just seeking some additional
5 clarification that colleges need to differentiate between
6 what they've always been expected to do in determining
7 baseline residency and nonresident fees against the
8 additional requirements that are being imposed by the
9 test claim.

10 CHAIR SHEEHY: Thank you.

11 Ms. Ferebee, did you want to add anything?

12 MS. FEREBEE: No, I don't have anything to add.

13 CHAIR SHEEHY: Mr. Feller, would you like to
14 respond?

15 MR. FELLER: On the first point, with regard to
16 the rules and regulations, that would be a decision for
17 the Commission, if the Commission would like to split
18 that finding in the Statement of Decision. For purposes
19 of the parameters and guidelines, that would be a
20 Commission decision.

21 As far as additional clarification goes on the
22 determination of residency, having spent a lot of quality
23 time with this test claim in the Statement of Decision
24 phase, I can say that we meticulously tried to do that in
25 the Statement of Decision. And we picked out all the

1 pre-1975 activities and separated those. And so what we
2 have in the Statement of Decision that's been found in
3 the parameters and guidelines does reflect what's beyond
4 the baseline requirement for determining residency. So,
5 again, I don't see the necessity for the additional
6 language.

7 CHAIR SHEEHY: Is it your position, Mr. Feller,
8 that on the second point Finance raises -- it's not that
9 you're disagreeing with them, you just think that the
10 language you have already encapsulates their concern?

11 MR. FELLER: Correct.

12 CHAIR SHEEHY: And the first issue that they
13 raise about the baseline of activity, I'm not sure I
14 understood. Do you agree there may be some merit in
15 revising the recommendation for separating the question?

16 MR. FELLER: There could be. You know, again,
17 that's the decision of the Commission. The method of
18 payment and the method of refund, whether community
19 colleges need to change that, I don't know.

20 MS. SHELTON: Can I just mention something?
21 If you look on page 2 of the supplemental analysis, the
22 finding regarding the adoptions of rules and regs as an
23 activity is indented at the very top. And the activity
24 that was approved in the Statement of Decision is to
25 adopt rules and regulations related to the method of

1 payment, and the method and amount of refund of
2 nonresident tuition.

3 So what Mr. Hanson suggested was to split that
4 activity into two, so that you have a one-time activity
5 to adopt rules and regs relating to the method of payment
6 and method of nonresident tuition -- and method of the
7 refund for nonresident tuition. And then a second
8 activity, which would be ongoing, to determine the amount
9 of the refund. And that's something for your
10 consideration.

11 MEMBER WORTHLEY: And that was going to be my
12 question because we're talking -- the methodology would
13 be a one-time expenditure. But the processing would be
14 an ongoing expense, and that could vary from the numbers
15 that we're dealing with, and perhaps the complexity of
16 the individual cases.

17 So you have a processing cost, which is not a
18 one-time expense, they're an ongoing expense.

19 MS. SHELTON: Right. In fact, if you look down
20 a little bit further, there's an Education Code statute
21 that is cited, that requires the governing board to
22 determine the amount of the refund each year.

23 CHAIR SHEEHY: Okay, so if we were so inclined,
24 then we could incorporate in Finance's suggestion to
25 clarify that adopting the rules and regs related to the

1 method of payment would be a one-time reimbursable
2 activity, and the actual process of making those refunds
3 is an ongoing one; is that right?

4 MS. SHELTON: Well, adopting the rules and regs
5 regarding the amount of refund of nonresident tuition
6 would be an ongoing activity by law.

7 CHAIR SHEEHY: Why is adopting rules and regs
8 ongoing?

9 MS. SHELTON: Because the amount of the refund
10 has to be readopted by the governing board every year.

11 CHAIR SHEEHY: I'm sorry, Ms. Shelton, are you
12 suggesting that every year they're going to adopt a new
13 set of rules and regulations?

14 MS. SHELTON: The Education Code states: "The
15 nonresident tuition fee shall be set by the governing
16 board of each community college district not later than
17 February 1st of each year for the succeeding fiscal
18 year."

19 CHAIR SHEEHY: That's the fee.

20 MS. SHELTON: So you have to establish the
21 amount of refund as part of that.

22 Am I correct, Eric?

23 MR. FELLER: Yes, it's based on the fee. The
24 amount of refund, it's going to be based on the fee. So
25 that's the only part that, you know, arguably, would be

1 ongoing, would be the amount of refund of nonresident
2 tuition. But, yes, the mandate is to adopt rules and
3 regulations regarding all of that.

4 In fact, when we adopted the Statement of
5 Decision, Finance submitted comments from the Community
6 College Chancellor's office that said they issued
7 memoranda every year to the community colleges regarding
8 the method of calculation of the nonresident tuition. So
9 that was actually taken out of this finding, the method
10 of calculation. And what was left in was the method and
11 amount of refund and method of payment.

12 CHAIR SHEEHY: I see.

13 MS. SHELTON: The other issue that we did
14 discuss in our office also was -- you may want to get
15 testimony from Mr. Peterson because there may be
16 situations where the community college does need to
17 change the method every year.

18 CHAIR SHEEHY: Mr. Petersen?

19 MR. PETERSEN: Yes. For the period of this
20 test claim, which is the seven years retroactively,
21 there's been significant changes in the method of payment
22 due to establishing online registration and online
23 payment.

24 So I agree that the change in the fee amount
25 will affect the local governing board activity each year

1 that it changes. And another example is, changing
2 methods such as moving from face-to-face payment to
3 online scheduling and payment of the fees.

4 So there are several reasons why things change
5 over time. And when they change, you have to have a
6 separate adoption.

7 I don't think anybody should consider this a
8 significant expense. I think they should consider it an
9 application of the law rather than concern about the
10 numerous -- there aren't going to be numerous activities.
11 We just have to follow the law here.

12 I agree with the supplemental statement as
13 written, and I don't see any reason why you have to
14 bifurcate that section at all.

15 If it goes "as is," as recommended by staff,
16 you will allow for those situations when methods do
17 change. And it doesn't occur that often and it's not
18 that significant.

19 CHAIR SHEEHY: Thank you, Mr. Petersen.

20 MR. PETERSEN: Yes.

21 CHAIR SHEEHY: The pleasure of the --
22 Ms. Olsen?

23 MEMBER OLSEN: I'd like to move the staff
24 recommendation.

25 MEMBER WORTHLEY: Second.

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1 MR. PETERSEN: I had comments on the other
2 part, too. I'm sorry.

3 CHAIR SHEEHY: One of the rules I learned,
4 Mr. Petersen, is when you have the votes...

5 We have a motion and a second on the floor.
6 Why don't we take the vote? And then if you'd like to
7 add on, that would be great.

8 MR. PETERSEN: Sure.

9 CHAIR SHEEHY: Could we have a roll-call vote,
10 please?

11 MS. HIGASHI: Mr. Chivaro?

12 MEMBER CHIVARO: Yes.

13 MS. HIGASHI: Mr. Glaab?

14 MEMBER GLAAB: Aye.

15 MS. HIGASHI: Mr. Lujano?

16 MEMBER LUJANO: Aye.

17 MS. HIGASHI: Ms. Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HIGASHI: Ms. Schmidt?

20 MEMBER SCHMIDT: Aye.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Aye.

23 MS. HIGASHI: Mr. Sheehy?

24 CHAIR SHEEHY: No.

25 Okay, so that motion carries.

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1 Mr. Petersen, did you want to add on? Did you
2 have some additional comments?

3 You're in safe territory now that the motion --

4 MR. PETERSEN: I think the ball has been
5 pitched, so I didn't want to swing too late on that one.

6 CHAIR SHEEHY: All right, very good. So that
7 is Item No. 6.

8 Now, we're going to move on --

9 MS. HIGASHI: Item 12.

10 CHAIR SHEEHY: Yes, because Item 11, there's
11 nothing to report.

12 MS. HIGASHI: Correct.

13 Item 12 will be the Legislative Subcommittee
14 report.

15 And Ms. Olsen and Mr. Glaab will contribute to
16 that report.

17 MEMBER OLSEN: Mr. Chair and Members, as I
18 mentioned earlier under Item 1, we did meet this morning.
19 There was a significant interest, and a number of folks
20 primarily from statewide associations came forward to
21 give us some information.

22 Has this been passed out to our members as
23 well? Do they all have copies of it?

24 CHAIR SHEEHY: I'm sorry, Sarah, is that this
25 document?

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1 MEMBER OLSEN: I just want for the record --
2 yes. Yes.

3 MS. HIGASHI: It's a different document.

4 CHAIR SHEEHY: Oh, it's different?

5 MEMBER OLSEN: It's a different document. But
6 we worked off of it this morning.

7 I just wanted you all to have it, so you all
8 know.

9 I think that there were two things that came
10 out of the meeting this morning.

11 First is that there is significant interest in
12 moving this process forward and continuing work on it.
13 And I think that Mr. Glaab and I -- I don't want to put
14 words in your mouth, Mr. Glaab -- but would ask for the
15 whole Commission's direction to the staff to make that
16 happen; that they would continue to work on it.

17 The other thing is that -- that it came out
18 in our meeting, that really there are two processes
19 related to this whole modification of mandates.

20 One is sort of the cost-savings process that
21 happens because of things happening out in the external
22 world. And the other is that there may be things that
23 weren't considered to be mandates before but now are
24 mandates. So that's cost-makings process out in the
25 world; and that there are, of course, different

1 incentives for bringing those two different kinds of
2 cases forward. We were talking about the possibility of
3 maybe, instead of the language that has already been
4 proposed, possibly looking at that language, but also
5 looking at language that would bring back the
6 cost-savings process that the Commission used to have.
7 And then -- and coupling that then with the current
8 mandates process that we have, using some sort of
9 exception or exemption to statute of limitations to allow
10 folks to come forward with a new mandate process. And
11 that might extremely streamline the whole thing, making
12 it much easier for people to know exactly what the whole
13 process was going to be.

14 And then the other thing that came out, as we
15 talked about also under the audits report, is this whole
16 issue of, this is the new workload, and getting the staff
17 necessary and the resources necessary for staff to do
18 what they need to do on it, and then for the Commission
19 to be able to sit and decide these issues are potentially
20 significant. We don't really know how much workload is
21 out there and what it's going to cost.

22 I did --

23 CHAIR SHEEHY: Ms. Olsen, what are the specific
24 provisions that you think will generate the most
25 workload?

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1 MEMBER OLSEN: Well, I think this is one where
2 you stand depends on where you sit.

3 Clearly, the State has some incentive to bring
4 forward cases where either, because of court decisions or
5 because of new federal mandates or whatever, there's a
6 serious potential for state savings by getting out from
7 under the State's requirement to pay for mandates.

8 There are also potentially issues out there
9 where local governments, because of court decisions,
10 there could be new mandates that they're really having to
11 cover, even though a prior decision by the Commission
12 suggested that there was no mandate there.

13 So it's on both sides.

14 And I'm probably the least able member of the
15 Commission to make a decision given that, you know,
16 360 days of the year or 358 days of the year or
17 something, I really am not dealing with these issues very
18 much.

19 Probably where you all sit, you have a better
20 sense of whether cost savings are likely to come forward
21 or new mandates are likely to come forward.

22 In any respect, what Mr. Glaab and I are very
23 concerned about, is this whole issue of staffing. And,
24 you know, we don't think that it's a very useful process
25 to expand the workload without expanding a way of taking

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1 care of the workload. So one of the things that we would
2 like to see -- and we hope that the Commission will agree
3 with us -- to see the Commission staff look at is a
4 cost-recovery process. So that folks bringing forward,
5 whether they are a cost-savings case or a new mandate
6 case is, would have to make some strategic decision
7 whether it is worth their while to support the process
8 to review that mandate or that process.

9 CHAIR SHEEHY: How might that cost recovery
10 work?

11 MEMBER OLSEN: I don't have the foggiest idea
12 at this point.

13 MEMBER WORTHLEY: Filing fee?

14 MEMBER OLSEN: It could be a filing fee. It
15 could be --

16 MS. HIGASHI: It could be a claim for
17 attorney's fees at the end.

18 MEMBER OLSEN: That's right.

19 But I think it is worth staff looking at other
20 processes that are out there to see what might work.

21 CHAIR SHEEHY: Now, staffing is an important
22 issue.

23 I try to get a cure to the staffing issue
24 earlier in this meeting, but I was unsuccessful. So
25 we're going to have to continue to think outside of the

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1 box and scratch that one off the list.

2 Mr. Glaab?

3 MEMBER GLAAB: Yes, thank you, Mr. Chairman and
4 Members.

5 I think you'd be pleased to know that cost
6 containment was an overarching concern with the
7 Legislative Subcommittee today. And we are very
8 sensitive to that.

9 And my comment from the dais this morning was
10 that I think the Commission would be loathe to implement
11 changes that could trigger a revisit of many, many test
12 claims in the past, and make it retroactive, where all
13 of a sudden you could be doubling the load in some form
14 or fashion. So I believe that we should be mindful of
15 that.

16 We also discussed, under procedures, whether
17 we have a one-step or two-step process. I came into the
18 meeting as thinking it a one-step. And when we heard
19 testimony from those in attendance, they made the case
20 that if it's a two-step process, the first step is,
21 should the Commission reconsider. But then if we adopted
22 a one-step process and we vote to do it, then we have to
23 proceed; and the claimants would have to prepare for
24 something that may not occur.

25 So I think that that resonated with me, and it

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1 was a point that was well made, that if the Commission
2 then says, "Okay, we are going to reconsider," then the
3 claimants can go and gather the information. Because,
4 as you know, it's staff time and expense.

5 So other than that, I agree with everything
6 that Ms. Olsen reported.

7 CHAIR SHEEHY: Okay.

8 MEMBER OLSEN: Then one last thing, and I think
9 this goes along with the Bureau of State Audits and what
10 Mr. Burdick said before, which is that, you know, our
11 staff is really good at working with the interested
12 parties and proceeding forward. And so I think the other
13 thing that we would want and that they might want to have
14 from us, is some direction that, as they proceed forward
15 with language or with developing a proposal, that they
16 work with the folks who were here today giving testimony.

17 CHAIR SHEEHY: Okay, so we have this draft
18 language in front of us. And it's our decision today,
19 Ms. Higashi, whether or not we're going to adopt this
20 draft language; is that right? Or not?

21 MS. HIGASHI: No. The draft language is here
22 so we have a talking point.

23 What I'm hearing from Ms. Olsen's report is,
24 she has somewhat changed the direction based on what we
25 heard in the meeting this morning, so that staff would

1 then try to come up with a different approach, maybe, but
2 to accomplish the same purpose.

3 CHAIR SHEEHY: Oh, I see. So there's no
4 purpose in adopting this language today if we are going
5 to revise it?

6 MS. HIGASHI: Correct.

7 MEMBER OLSEN: No, I think what we would look
8 for as a subcommittee, is direction to staff that we want
9 them to continue down the road creatively thinking about
10 this and putting together a proposal in light of the
11 discussion they've heard this morning.

12 CHAIR SHEEHY: Okay. So, therefore, we don't
13 need a motion for that staff direction?

14 MS. HIGASHI: No. Because in Item 1, you did
15 adopt the implementation plan which directed us to
16 continue working on this. And we do need to meet a
17 certain deadline in the Governor's office for proposed
18 legislation.

19 CHAIR SHEEHY: Sure.

20 MS. HIGASHI: And so we would continue to try
21 to work to meet that deadline and to continue to improve
22 the text of what the leg. proposal would be.

23 CHAIR SHEEHY: Sure.

24 Mr. Worthley?

25 MEMBER WORTHLEY: Just a comment.

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1 I think -- I will just throw this out there as
2 something to consider. When we went from the term
3 of "reconsideration" to "modification," it strikes me
4 that perhaps we might look at an informal process, much
5 like we now allow for claiming between -- is it the
6 Controller's office and the applicants, or is it the
7 Controller's and the Department of Finance that meets,
8 and try to come up with P's & G's and so forth?

9 That process. In other words, the idea of the
10 process might be one that's carried outside of the
11 Commission. They would file their request, perhaps, with
12 us for a modification. But then it would be then put
13 back out to an informal process and then it might come
14 back to us simply as a consent calendar item.

15 If you make some changes, they're going to be
16 very obvious legislative changes and so forth, that will
17 change something.

18 Why would we bring that burden back on the
19 Commission when perhaps the parties could agree what
20 those changes are and what that does to the P's & G's,
21 and then they can make a recommendation back to us and
22 then we just adopt them?

23 MS. HIGASHI: There are some changes that can
24 easily be identified -- I should say, for some people and
25 not so easily for other people --

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1 MEMBER WORTHLEY: Right.

2 MS. HIGASHI: -- that would be just P's & G's
3 issues. They would not be worthy or necessary to go back
4 and change what's actually in the Statement of Decision.

5 But if we're looking at a fundamental change in
6 the findings made by the Commission, whether it's to go
7 from "approve" to a "deny" or a "deny" to "partial
8 approve" or "full approve," then it's a major action.

9 Now, it's true, we could certainly explore
10 whether the Legislature wants to expand the legislatively
11 determined mandate, but I think they already have that
12 authority now to look at any statute that they want to
13 and to fund it.

14 MS. SHELTON: I was just going to add that when
15 you're changing the State's liability under the
16 Constitution, this body needs to issue a quasi-judicial
17 decision. So if you're changing the State's liability
18 fundamentally, it does still need to come before the
19 Commission and have a hearing on that.

20 MEMBER WORTHLEY: I agree with that.

21 The point is, it could come before us as a
22 consent calendar item, which, of course, anybody could
23 address at a public forum. But in terms of actual staff
24 time and Commission time, it might be reduced. Just a
25 thought.

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1 MS. HIGASHI: We suspect there may be many
2 contentious items out there waiting, lurking.

3 CHAIR SHEEHY: Do we have any public comment at
4 this time?

5 Please come forward and identify yourself for
6 the record.

7 MR. HAMILTON: Good morning. Mr. Richard
8 Hamilton. I'm the general counsel with the California
9 School Boards Association. In that capacity, I serve as
10 a director of our Education Legal Alliance.

11 There's been several comments by members and by
12 staff that I think need to be highlighted here. And
13 please understand my comments are being respectfully
14 submitted.

15 Once again, you're reacting to the Legislature
16 telling, you need to get into this mix on what we're
17 going to do as reconsideration.

18 I find it interesting that all of this is going
19 to come back to you in your quasi-judicial capacity.
20 And I would urge you to examine what role you're going to
21 play in the process to develop, whether it's
22 reconsideration, modification, or what have you, in light
23 of the fact that you could be seen as actually being a
24 part of some very creative and inventive -- I think Paula
25 used the word "contentious" issues that no doubt are

1 headed your way.

2 This whole thing is framed in the issue of
3 saving the State money. And so what we're trying to do
4 from that perspective, I think, is, is there a way to get
5 around what the Mandate Commission is supposed to be
6 doing? And that is to determine if the State is creating
7 new tasks, expanding tasks, and if not, local government
8 isn't entitled to be reimbursed.

9 I did suggest that maybe we move away from a
10 discussion of consideration because, to me, that's very
11 narrow. You're reconsidering what you've previously done
12 within the context of what was then known, modification
13 or something else. I think there needs to be a
14 distinction between whether it's a change in law or it's
15 a change of circumstance in the idea that there could be
16 some informal way to modify parameters and guidelines and
17 so forth for changes of circumstances seems very
18 applicable.

19 Finally, you've highlighted the need for staff
20 for the Commission. What's the priority that's going to
21 be given to this savings effort when we have local
22 governmental entities that are performing services that
23 are being dictated by the state, mandated by the state,
24 and we're not getting paid for it? And even as to those
25 where there's identified liability, it's at least

1 a billion dollars for K-12 education.

2 Thank you.

3 MR. NEILL: I'd like to align myself with the
4 comments of my colleague over here.

5 CHAIR SHEEHY: I'm sorry, sir, could you please
6 identify yourself for the record?

7 MR. NEILL: Geoffrey Neill with the California
8 State Association of Counties.

9 CHAIR SHEEHY: Great. Thank you, Mr. Neill.
10 Please continue.

11 MR. NEILL: Like I said, I want to align myself
12 with the comments of my colleague, as he did point out
13 the fact that it's surprising that the staff report and
14 some of the commissioners here are referring to savings
15 when we're talking about changing reimbursement for
16 activities mandated by the State, when this is an
17 independent body.

18 MR. BURDICK: Yes, Allan Burdick on behalf of
19 the CSAC and California Cities SB-90 Service.

20 First, I'd just like to commend your
21 Legislative Committee hearing. I think that for most of
22 the local government, the opportunity for the dialogue
23 and discussion and process, I think, and the members were
24 particularly outstanding, I think, for that particular
25 process.

1 I just did want to point out while we're
2 commenting independently, that the representatives from
3 the League of Cities, the California School Boards, and
4 the California State Association of Counties and the
5 three legislative bodies representing those local
6 agencies have been together on this and working. And so
7 I think the comments of one are pretty much shared by
8 all.

9 All of my points, I think, were pretty much
10 covered by both Geoffrey and Richard.

11 I think the one comment that Member Olsen
12 raised relative to cost recovery of some kind, a possible
13 paying fee, I think is a little troublesome to local
14 government. That was raised today. I think they already
15 have a substantial cost involved.

16 The only time that this -- whether this would
17 be handled like a test-claim process, where under the
18 mandate reimbursement process you only get reimbursed for
19 your costs if you're successful; if you're unsuccessful,
20 then obviously there's no reimbursement.

21 And, as you know, in many of these cases, I
22 don't think that any of the cases before you are what you
23 would call frivolous cases or things that should not have
24 been brought up and probably discussed as test claims.
25 I think they were all very valid issues that sometimes,

1 as a non-attorney, I feel that the legal system sometimes
2 prevents practical reality from being implemented.

3 So, again, I'd like to commend the Committee on
4 that. I think that maybe adding all the comments
5 together and point out that I think the cost-recovery
6 process is a little troublesome to local government.

7 CHAIR SHEEHY: Well, I certainly appreciate
8 your point of view, Mr. Burdick. That's exactly what I
9 would have expected you to say. Although, I must say for
10 the record, I thought it was a rather novel idea.

11 Ms. Olsen?

12 MEMBER OLSEN: I have two comments.

13 First of all, I want to talk about the savings
14 that Mr. Hamilton raised.

15 I'll speak just for myself. I don't see this
16 as a state savings issue. I know that it was initially
17 raised as a state savings issue. I see this as an issue
18 of taking up changes in the external world that affect
19 mandates. And those could go in either direction.

20 So I don't know, I'm not going to speak for my
21 colleagues. I would assume that there are at least two
22 other colleagues here who also don't see the need to
23 proceed on this basically as a state savings issue. But
24 I'll just leave it at that.

25 The second comment I have is having to do with

1 cost recovery. I also consider it a troubling idea. I
2 do believe that we ought to be able to go to the State,
3 to the Department of Finance and to the Legislature, and
4 get the staffing necessary to do this and fund it
5 directly. It was a creative idea, reflecting the times
6 we are in, and reflecting the information that we have
7 from our staff that basically BCPs are not being
8 considered for staffing, and also recognizing that this
9 could be a significant workload.

10 CHAIR SHEEHY: Mr. Worthley?

11 MEMBER WORTHLEY: Just one of the concerns I
12 would have about charging the claimants is that if the
13 Legislature creates the problem and then they put the
14 burden on local government then to pay for the cost or
15 the problem they created, there is a basic inequity, I
16 think, in that situation.

17 MEMBER GLAAB: Good point.

18 CHAIR SHEEHY: Okay. Other comments?

19 MR. NEILL: Can I ask -- Commission Worthley,
20 can I ask, did you mean the Legislature created the
21 problem by establishing the original mandate that is now
22 trying to be amended?

23 MEMBER WORTHLEY: Or continuing. In other
24 words, I think when they opened this door, first, we're
25 applying it now just to this particular place. But then

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1 I can see it sort of looking at, "Aha, here's another way
2 for the cost of running the Mandates Commission to be
3 addressed from an external source of revenue." And the
4 point is that if the bad actors create the problem and
5 then put the burden on the applicants to also fund the
6 process, I think that's a very poor dynamic.

7 CHAIR SHEEHY: Mr. Hamilton, did you want to
8 comment?

9 MR. HAMILTON: Could I respond --

10 CHAIR SHEEHY: Please.

11 MR. HAMILTON: -- please, to Ms. Olsen's
12 comment?

13 My comment is about savings. I come from the
14 position of, if we're required to perform it, we should
15 be paid to perform it. If, down the road, that
16 requirement stops, then we shouldn't be paid for it.

17 We're so far behind in getting paid for what
18 we do, it just is a little offensive to think that, "Oh,
19 here's a new, fantastic way. Maybe we can start saving
20 money for the State without having paid for what we've
21 already required in the first place."

22 But I appreciate the comment. And please
23 understand where I was coming from. Thank you.

24 MEMBER OLSEN: Yes.

25 CHAIR SHEEHY: Okay, do we have additional

1 comment?

2 (No response)

3 CHAIR SHEEHY: Well, if there's no further
4 action to take on this item, is it time for Ms. Shelton's
5 report or for your report, Paula?

6 MS. HIGASHI: For Ms. Shelton's report,
7 Item 13.

8 CHAIR SHEEHY: Okay.

9 MS. SHELTON: I just have one new piece of
10 information since our last meeting. That the *Department*
11 *of Finance vs Commission on State Mandates* case dealing
12 with the *Behavioral Interventions Plan*, the hearing was
13 continued from December '09 to December '10. That
14 stipulation was signed by the judge, so that the real
15 parties in interest could continue negotiations on this.

16 And that's all that I've got.

17 CHAIR SHEEHY: Is that it?

18 MS. SHELTON: Yes.

19 CHAIR SHEEHY: Okay, Ms. Higashi?

20 MS. HIGASHI: Item 14. You got me just when
21 I put a mint in my mouth.

22 CHAIR SHEEHY: I apologize for that. Please
23 take your time.

24 MS. HIGASHI: Okay. We've already discussed
25 pending workload, so I won't dwell on it.

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1 We do need to decide what we're going to do
2 regarding our next meeting date.

3 The Commission had previously set the date on
4 December 3rd, which is a Thursday, so we could avoid the
5 Furlough Friday problem. And since that date, we've
6 learned that we have some scheduling conflicts. And so
7 we checked with members, and discovered that an alternate
8 date that might be available is Monday, December 7th, at
9 11:00 a.m.

10 CHAIR SHEEHY: Ms. Higashi, what is going to be
11 on our agenda for the proposed December meeting?

12 MS. HIGASHI: Well, if you look at page 2,
13 going all the way down, of my report, you'll see a list
14 of parameters and guidelines. There are two new
15 parameters and guidelines, and the rest are all updating
16 boilerplate language in local agency parameters and
17 guidelines. So essentially, there's a possibility that
18 everything could be a consent item.

19 CHAIR SHEEHY: Are you telling me that our
20 entire meeting in December could, in fact, be handled as
21 a consent calendar?

22 MS. HIGASHI: It's possible, but we don't --
23 I'm not sure that the comment periods have closed yet on
24 the *Prevailing Wage Rates* or *Cal Grants P's & G's*.

25 CHAIR SHEEHY: I see.

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1 MS. HIGASHI: I could not confirm that. But
2 essentially, it's a major consent calendar.

3 CHAIR SHEEHY: Well, I'd like to open up
4 discussion for the board and public. I realize we don't
5 know for sure because the public-comment period has not
6 closed; but if it looks like we're heading towards a
7 consent calendar meeting on the 7th of December, unless
8 there were some other real pressing or urgent matter,
9 maybe we could save everybody some time and save the
10 State some money by moving that consent calendar to
11 January.

12 I don't know how the members feel.

13 I will be of -- I'm not available on
14 December 3rd, so I was part of the scheduling conflict.
15 But I'm available on other dates in December, and I'd be
16 happy to have the meeting. But it does seem to me to
17 have members fly in and drive in, at least for the
18 out-of-towners, just to do a consent calendar, you know,
19 it might be asking a little bit much at that time of the
20 year. I don't know. I don't know how other board
21 members feel.

22 Ms. Olsen?

23 MEMBER OLSEN: Well, I guess I'd want some
24 input from staff as to whether or not there's a pressing
25 need to process that consent calendar in December. I can

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1 come on the 7th, that's not a problem.

2 MS. HIGASHI: The only issue would be, there's
3 a slight deviation from our scheduling and our work plan
4 that we just approved. But you could ask us to modify
5 that.

6 CHAIR SHEEHY: Is there anything pressing,
7 though? We want to make sure nobody would be harmed in
8 any way or there would be any damage in any way by
9 delaying action on any of these.

10 Ms. Higashi, that answer is no or you're not
11 sure or --

12 MS. HIGASHI: I would defer to -- if anyone is
13 here representing Grossmont or Long Beach Community
14 College District.

15 CHAIR SHEEHY: Is anybody here?

16 *(No response)*

17 CHAIR SHEEHY: Could you reach out to them,
18 Paula, and let us know?

19 MS. HIGASHI: Sure.

20 CHAIR SHEEHY: Mr. Glaab?

21 MEMBER GLAAB: Yes. Thank you, Mr. Chairman
22 and Members.

23 I think probably it would be good just to keep
24 the date ready to go in the event that as a result of
25 your suggestion, Mr. Chairman, that they reach out to

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1 those claimants. And if something develops between now
2 and then, that we could certainly go forward with it.
3 That gives us the practical application of not only your
4 comments, but certainly the outreach opportunity that
5 we're going to have. So let's keep it on there. And
6 then when we get closer to it, we can put it over to
7 January. And I would be supportive of that.

8 CHAIR SHEEHY: Okay, so we're going to leave
9 the December 7th meeting date calendared.

10 There is a possibility, depending upon whether
11 either Grossmont or Long Beach Community College
12 District, Grossmont High School District, or if some
13 other pressing matter that comes up --

14 MS. HIGASHI: Or the State Controller's Office
15 wants this.

16 CHAIR SHEEHY: Or if the State Controller's
17 Office -- if it's necessary from the State Controller's
18 standpoint, we'll go ahead and meet on the 7th. If not,
19 in plenty of advanced notice, we will let the public know
20 via our Web site.

21 MS. HIGASHI: And our normal, our routine
22 distribution.

23 CHAIR SHEEHY: In our routine distribution
24 list.

25 Is that satisfactory for members?

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1 (No response)

2 CHAIR SHEEHY: Okay, Paula, what else do you
3 have?

4 MS. HIGASHI: Before you do that --

5 CHAIR SHEEHY: We'll give you a chance in just
6 a minute (*speaking to Allan Burdick*).

7 MS. HIGASHI: -- what I want to establish first
8 is, we are canceling December 3rd for sure. And if we
9 meet at all in December, it would be Monday,
10 December 7th. And I just want to clarify that --

11 MEMBER OLSEN: Can't.

12 MS. HIGASHI: -- and have an option on that.

13 CHAIR SHEEHY: Is there any problem for the
14 Board members?

15 Ms. Olsen?

16 MEMBER OLSEN: Only that it needs to be later
17 rather than earlier. I cannot get here by 9:30 that day.

18 MS. HIGASHI: Oh, it's 11:00 a.m., we have --

19 MEMBER OLSEN: 11:00 a.m., that's fine.

20 MS. HIGASHI: -- based on your flight
21 schedules, we had suggested 11:00 a.m.

22 CHAIR SHEEHY: Mr. Burdick, did you want to --

23 MR. BURDICK: My question was time.

24 CHAIR SHEEHY: Timing?

25 MR. BURDICK: Yes. And Sarah answered it for

1 me.

2 CHAIR SHEEHY: Paula, do we have other items on
3 the executive director's report?

4 MS. HIGASHI: No, we do not, unless there are
5 questions.

6 CHAIR SHEEHY: Mr. Glaab?

7 MEMBER GLAAB: Thank you, Mr. Chairman and
8 Members.

9 I commend you for making your comments relative
10 to the audit report. I think that unless I am corrected
11 by staff and Ms. Higashi, I'd like to mention that that
12 reduction in claims didn't just happen. It occurred
13 because there was a lot of hard work and planning that
14 resulted in that. And I do agree with the tone comment
15 that you made. We did reduce it, it was a significant
16 amount, and I think staff should be commended.

17 Thank you.

18 CHAIR SHEEHY: Thank you, Mr. Glaab.

19 And I realize for some, that my comments might
20 have seemed a bit abrupt. But I notice sometimes with
21 auditors, they want to make headlines, and so they're
22 always talking about what you need to do better. And I
23 just think to have a fair and balanced report, not just
24 in matters that involve this body but other state bodies,
25 I think it's appropriate to recognize when, in fact,

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1 progress -- and significant progress -- has been made.

2 And I felt, as I said, and I'll say again,
3 that there was a bit of a tone there that troubled me
4 because I think this staff has worked very hard and made
5 significant reductions in the backlog. And I just would
6 have appreciated seeing that in the report.

7 So I thank you, Mr. Glaab, for mentioning that.

8 Do we have other comments?

9 *(No response)*

10 CHAIR SHEEHY: Okay, the Commission on State
11 Mandates will meet next in closed executive session
12 pursuant to Government Code 11126, subdivision (e), to
13 confer with and receive advice from legal counsel for
14 consideration and action, as necessary and appropriate,
15 upon the pending litigation listed on the public notice
16 and agenda, and also to confer with and receive advice
17 from legal counsel regarding potential litigation. The
18 Commission will also confer on personnel matters, and a
19 report from the personnel subcommittee pursuant to
20 Government Code section 11126, subdivision (a).

21 We will reconvene in open session in
22 approximately 15 minutes.

23 Thank you very much.

24 And if you're not staff or a board member,
25 please exit the room.

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(The Commission met in closed executive session from 11:35 a.m. to 11:48 a.m.)

CHAIR SHEEHY: The Commission on State Mandates met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon pending litigation which was listed on the public notice and on the agenda, and also on potential litigation to confer on personnel matters listed on the published notice and agenda. And that was pursuant to Government Code section 11126, subdivision (a)(1).

The Commission will now reconvene in open session.

Any further public comments by Board members?

(No response)

CHAIR SHEEHY: Anybody from the public wishing to make a comment?

(No response)

CHAIR SHEEHY: Seeing none, the Commission on State Mandates is adjourned.

(Gavel sounded.)

(The meeting concluded at 11:48 a.m.)

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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 November 23rd, 2009.



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