

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:30 a.m.
DATE: Friday, September 25, 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

CYNTHIA BRYANT
Director, Office of Planning & Research

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

DAVE O'TOOLE
Representative for JOHN CHIANG
State Controller

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



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 12)

NANCY PATTON
Assistant Executive Director
(Item 10)

CAMILLE SHELTON
Chief Legal Counsel
(Item 3, 4, and 11)



A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 3 & 4:

For Claimant San Diego Unified School District:

ART PALKOWITZ
Manager, Office of Resource Development
San Diego City Schools Finance Division
4100 Normal Street, Room 3209
San Diego, California 92103-2682

For Department of Finance:

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

Appearing Re Item 12 (Future Calendar):

ART PALKOWITZ
Manager, Office of Resource Development
San Diego City Schools Finance Division

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

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ERRATA SHEET

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1 BE IT REMEMBERED that on Friday, September 25,
2 2009, commencing at the hour of 9:32 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 CHAIR SHEEHY: Please call the roll so we can
8 establish a quorum.

9 MS. HIGASHI: Mr. Glaab is absent due to family
10 illness.

11 Mr. Lujano?

12 MEMBER LUJANO: Here.

13 MS. HIGASHI: Ms. Olsen?

14 MEMBER OLSEN: Here.

15 MS. HIGASHI: Mr. O'Toole?

16 MEMBER O'TOOLE: Here.

17 MS. HIGASHI: Ms. Bryant?

18 MEMBER BRYANT: Here.

19 MS. HIGASHI: Mr. Worthley?

20 MEMBER WORTHLEY: Here.

21 MS. HIGASHI: Mr. Sheehy?

22 CHAIR SHEEHY: Here.

23 MS. HIGASHI: The first item before you today
24 is approval of the minutes of the July 31st meeting.

25 CHAIR SHEEHY: Are there any questions or

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1 comments from Board members about the minutes?

2 (No response)

3 CHAIR SHEEHY: The general public?

4 (No response)

5 CHAIR SHEEHY: Seeing none, is there a motion?

6 MEMBER O'TOOLE: I'll move approval.

7 CHAIR SHEEHY: We have a motion.

8 MEMBER WORTHLEY: Second.

9 CHAIR SHEEHY: We have a second.

10 All in favor?

11 (*Chorus of "ayes" was heard.*)

12 CHAIR SHEEHY: Any opposed?

13 (No response)

14 CHAIR SHEEHY: Hearing none, the minutes are
15 approved.

16 MEMBER OLSEN: Mr. Chair?

17 CHAIR SHEEHY: Ms. Olsen?

18 MEMBER OLSEN: I need to be abstaining because
19 I was not here.

20 CHAIR SHEEHY: Okay, let the record show
21 Ms. Olsen is abstaining.

22 Okay, Paula, what's next, our Consent Calendar?

23 MS. HIGASHI: This brings us to the Consent
24 Calendar. I'd like to read it. It's a buff-colored
25 sheet of paper before you, two-sided.

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1 The items on the Consent Calendar are:

2 Item 5. And there is just a note I wanted to
3 call your attention to, that the date on the order, if
4 this were to pass, would be dated today, because they'll
5 be signed today.

6 Item 6, *Local Agency Formation Commissions*,
7 proposed P's & G's.

8 Item 7, *California Fire Incident Reporting*
9 *System*, proposed statewide cost estimate.

10 And also *Reporting Improper Governmental*
11 *Activities*, statewide cost estimate, Item 8.

12 And those are the items on the proposed consent
13 calendar.

14 CHAIR SHEEHY: Okay, do any of the Board
15 Members have any questions about any of these items?

16 *(No response)*

17 CHAIR SHEEHY: Do any of the public?

18 *(No response)*

19 CHAIR SHEEHY: Okay, a motion would be in
20 order.

21 MEMBER BRYANT: I'll move it.

22 CHAIR SHEEHY: We have a motion by Ms. Bryant.

23 MEMBER O'TOOLE: Second.

24 CHAIR SHEEHY: Second by Mr. O'Toole.

25 All in favor?

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1 (A chorus of "ayes" was heard.)

2 CHAIR SHEEHY: Let the record show Mr. Sheehy
3 is abstaining from the Consent Calendar today.

4 MS. HIGASHI: Okay.

5 CHAIR SHEEHY: Okay, what's next?

6 MS. HIGASHI: This brings us to the hearing
7 portion of our meeting, Item 3, *Comprehensive School*
8 *Safety Plans II, Amendment.*

9 And before we begin this item, I'd like to ask
10 all the parties and witnesses and representatives who are
11 coming up on this item to please stand for swearing in
12 the witnesses.

13 (Mr. Palkowitz stood.)

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

18 MR. PALKOWITZ: Yes, I do.

19 MS. HIGASHI: This item will be presented by
20 Chief Counsel Camille Shelton.

21 MS. SHELTON: Good morning.

22 This test claim addresses the amendments to
23 Education Code Section 32282, which specify that the
24 previously required disaster procedures included in the
25 comprehensive school safety plan shall also include

1 establishing an earthquake emergency procedure system in
2 every public school building having an occupant capacity
3 of 50 or more pupils or more than one classroom, and
4 establishing a procedure to allow a public agency,
5 including the American Red Cross, to use school
6 buildings, grounds, and equipment for mass care and
7 welfare shelters during disasters.

8 Staff finds that the test-claim statute
9 constitutes a reimbursable state-mandated program on
10 K-12 school districts for the increased costs of
11 performing the one-time activities listed on page 2 of
12 the executive summary.

13 Staff further finds that implementation of the
14 comprehensive school safety plan, including the drop
15 procedure practice, training on the earthquake emergency
16 procedures system, and the procedure to allow use of
17 school facilities for mass care and welfare shelters is
18 not mandated by the state and, therefore, not
19 reimbursable.

20 Finally, staff recommends that any grant funds
21 received by a school district or funds received through
22 an appropriation for this program by the Legislature,
23 including funds from the school safety block grant, shall
24 be identified as offsetting revenue in the parameters and
25 guidelines.

1 In this regard, the Department of Finance did
2 file a late comment, updating the money appropriated in
3 the school safety block grant for this program. Although
4 this money is intended to cover the cost of the
5 comprehensive school safety plan's program as a whole,
6 there is no evidence in this record that all school
7 districts in the state received money in an amount
8 sufficient to pay for the mandated program as required by
9 Government Code section 17556, subdivision (e).

10 Will the parties and witnesses please state
11 your names for the record?

12 MR. PALKOWITZ: Good morning. Art Palkowitz on
13 behalf of San Diego Unified.

14 MS. GEANACOU: Good morning. Susan Geanacou
15 for the Department of Finance.

16 CHAIR SHEEHY: Great. Good morning.

17 Mr. Palkowitz?

18 MR. PALKOWITZ: Thank you.

19 The claimants want to focus on a couple issues.
20 And as Camille mentioned, the Commission staff is
21 recommending approval of this as a reimbursable mandate.
22 And the activities that are recommended to be reimbursed
23 are referred to one-time activities. And basically, that
24 means setting up an emergency system. And in that
25 system, the statute states that a drop procedure will be

1 also in place, and that this practice shall be held at
2 least once every quarter in an elementary school and at
3 least once a semester in secondary schools.

4 The claimant feels that these are not one-time
5 activity as one could view setting up the system. This
6 language in the statute is directing schools to perform
7 that task, either quarterly or by semester, depending on
8 the configuration of the school.

9 The way the staff is interpreting it, is that
10 the system is mandated, but the implementation of the
11 system is not mandated.

12 The language they're using is that it doesn't
13 specifically say "implementation" in the code.

14 They do mention in their arguments, that when
15 looking at statutes, we must keep in mind the nature and
16 obvious purpose of the statute. To think that this
17 statute was put into place to have a system but not to
18 implement it would want to believe that that is not the
19 obvious reason to have that. How are we going to secure
20 safety in the schools if we have a system that's not
21 implemented?

22 I think this is also evident when we look at
23 another part of the system that talks about classified
24 and certificated staff -- "certificated" being teachers,
25 "classified," non-teachers -- that are to be properly

1 trained. Well, those individuals change all the time in
2 schools and, therefore, to view that as a one-time
3 activity would also mean that we're not having the
4 individuals properly trained to implement the system.

5 As a result, the claimants feel that it's the
6 intent of the Legislature for schools to not only develop
7 a system, but that system should be implemented.

8 Thank you very much.

9 CHAIR SHEEHY: Thank you, Mr. Palkowitz.

10 Ms. Geanacou?

11 MS. GEANACOU: I just have a few brief
12 comments, not necessarily in response to Mr. Palkowitz'
13 testimony.

14 The Department of Finance continues to oppose
15 the staff analysis, in that it recommends reimbursement
16 for these mandated activities. That's particularly
17 because Finance continues to assert that more than
18 sufficient funding has been appropriated in recent fiscal
19 years to completely fund these new *Comprehensive School*
20 *Safety Plan* mandated activities that are claimed here.
21 The specific amounts of those appropriations are in the
22 letter dated September 9th, 2009, that's labeled a late
23 filing.

24 I would like to correct an error in that late
25 filing. It's on page 2. It's the fourth line. It

1 says -- well, it starts on the third line. It says, "We
2 believe that the funds provided in the annual Budget Act
3 for this particular grant are *insufficient* to cover the
4 assertion," which I think you can read from the context
5 was meant to be "are *sufficient* to cover the costs." So
6 I'm sure you all would have figured out that was our
7 intention, but nonetheless, I'd like to correct that.

8 CHAIR SHEEHY: Thank you.

9 Is that it?

10 MS. GEANACOU: That is, for now.

11 CHAIR SHEEHY: So, Ms. Geanacou, if I
12 understand Finance's position, has Finance been able to
13 demonstrate to the Commission staff that the actual
14 funding and appropriations that have been made have
15 actually been sufficient to cover the costs?

16 MS. GEANACOU: Well, we believe that the
17 amounts we've cited in the letter from the Budget Act
18 appropriations are more than sufficient to cover the
19 statewide costs for this particular claimed mandate as
20 suggested by the claimants. I believe they asserted a
21 \$10 million estimated cost. And the appropriations in
22 recent years are multiple times that figure.

23 CHAIR SHEEHY: I'm sorry, so you're saying that
24 the claimants have only claimed \$10 million in costs, but
25 yet we've appropriated way more than that?

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1 MS. GEANACOU: We've appropriated -- well, they
2 haven't claimed anything yet because it hasn't -- that's
3 their estimated cost, yes.

4 CHAIR SHEEHY: Well, if they haven't claimed
5 anything, how do we know what the estimated cost is?

6 MS. GEANACOU: Because it's in their test
7 claim, I believe.

8 CHAIR SHEEHY: Okay.

9 MS. SHELTON: Let me just clarify. If you turn
10 to page 30 of the staff analysis, at the very top is the
11 Budget Act language that appropriates the money. And it
12 says, "*The funds appropriated in this item shall be*
13 *considered offsetting revenues within the meaning of*
14 *subdivision (e) of section 17556 of the Government Code*
15 *for any reimbursable mandated cost claimed for*
16 *comprehensive school safety plans.*"

17 The Commission has received two prior test
18 claims on the *Comprehensive School Safety Plan* program.
19 So the whole program is much broader than the three
20 activities listed here. So this money goes for the whole
21 program and not just for the one-time activities listed
22 here.

23 And so while there is money clearly intended to
24 fund the cost of the program, there is no evidence in the
25 record that the money, which goes for the whole program,

1 would also pay for these particular activities.

2 It also says, on the very next sentence of that
3 budget language, that, "Local agencies accepting funding
4 for this item..." And the use of the word "accepting" sort
5 of implies that we don't know if all school districts
6 that have complied with this requirement have received
7 the money or how much money they have received and what
8 their costs are.

9 CHAIR SHEEHY: "...shall reduce the estimated and
10 actual mandated reimbursement claim."

11 So, Ms. Geanacou, do you take issue with what
12 Ms. Shelton is testifying to?

13 MS. GEANACOU: We haven't been able to conclude
14 that these amounts appropriated in these fiscal years
15 more than cover all three mandates.

16 CHAIR SHEEHY: Okay.

17 MS. GEANACOU: We were attempting to be able to
18 assert that today, but we have not been able to make that
19 assertion.

20 CHAIR SHEEHY: You got close, but you weren't
21 able to quite get to the line?

22 MS. GEANACOU: I don't even know what "close"
23 would mean, but...

24 CHAIR SHEEHY: Okay, Ms. Bryant?

25 MEMBER BRYANT: Can you just -- I just want to

1 ask counsel, when would there -- I mean, I agree with the
2 staff analysis. I don't think Finance's argument works
3 here.

4 But when would an argument like this work?
5 What's the legal standard?

6 MS. SHELTON: The standard is set out in
7 Government Code section 17556(e), and it just requires
8 that there's a showing that the amount appropriated is
9 sufficient to cover the cost of the whole program.

10 So here, if this were the only test claim on
11 *Comprehensive School Safety Plans* that was before you,
12 then clearly we could say, "Well, look, you've got --
13 what was it -- \$80 million in whatever last fiscal year."
14 It's a large amount of money. \$80 million. It was
15 intended to cover the cost.

16 You look at the estimated costs that are
17 identified by the test claimant. And if it's under that
18 amount, then you have evidence in the record to show that
19 there are no costs mandated here.

20 MEMBER BRYANT: And so then the Commission
21 could make a finding that there's no mandate because
22 there's a covered cost?

23 MS. SHELTON: Correct.

24 Now, keep in mind that if the Commission were
25 to adopt the staff analysis and approve the test claim,

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1 they still have to show a thousand dollars' worth of
2 costs when they file the reimbursement claim with the
3 State Controller's Office. And then they're subject to
4 audit at that point, and they will -- you know, we are --

5 MEMBER BRYANT: And they would have to prove
6 that the other two mandates, the previously approved ones
7 plus this new one, that they are getting insufficient
8 reimbursement?

9 MS. SHELTON: Right. And if the Commission
10 were to adopt this, we could also do a little bit more
11 homework when we're adopting parameters and guidelines,
12 maybe get a list from the Department of Education to see
13 how much money has been appropriated to each school
14 district in the state, and have those identified for the
15 record. That's a possibility.

16 We haven't received any evidence like that at
17 this point.

18 MEMBER BRYANT: Thanks.

19 CHAIR SHEEHY: Okay, I have Mr. Worthley and
20 then Ms. Olsen.

21 MEMBER WORTHLEY: Mr. Chairman, a question I
22 had also is that -- and this is sort of a policy issue --
23 assuming that you have sufficient money appropriated this
24 year, what happens in future years? Because if you're
25 relying upon appropriated -- it seems to me the staff

1 analysis is the way to go because in the event that
2 there's insufficient money, then the claim would work.
3 If there's adequate funds, then they don't get any money
4 because they had adequate funds. But since it's an
5 annual appropriation, there is no guarantee going forward
6 that the schools would, in fact, be receiving adequate
7 funding.

8 MS. SHELTON: And you raise a good point. The
9 activities recommended for approval here are one-time
10 activities, but the program activities that have been
11 approved in the past are ongoing. And so, yes, these are
12 yearly appropriations. You don't know what's going to
13 happen in the future.

14 MEMBER WORTHLEY: And I would like to follow
15 up with a comment made by the claimant, and that is -- I
16 struggle with that same argument, that, yes, you're
17 required to create but not to implement. And I thought,
18 how do we come to that conclusion?

19 I mean, I realize it was decided back in 2003.
20 But, you know, to say that the fair reading of the
21 statute is, you've got to put together -- you've got to
22 build these prisons but you don't have to put anybody in
23 them. It just doesn't make any sense. I mean, why would
24 you go through the process of creating all of this and
25 say, "But you don't have to implement it"?

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1 MS. SHELTON: I think you're raising good
2 arguments, and they are good legal issues to discuss,
3 they're good equitable arguments as well.

4 MEMBER WORTHLEY: I don't think it's equity.
5 I think it's a fair reading of the statute, because I
6 don't think anybody in their right mind would propose a
7 legislation that would require anybody to go through all
8 this process to end up with nothing. Although I
9 shouldn't probably say that.

10 MS. SHELTON: I'm relying on the plain language
11 of the statute. And it requires that they develop a
12 system, and on leg. intent, which was to cooperate with
13 others to develop a system. And that's the language that
14 the Commission relied on in the past when they determined
15 that implementation was not reimbursable.

16 CHAIR SHEEHY: I would only add, Mr. Worthley,
17 if only our Legislature would actually pass statutes that
18 were clear and straightforward, easy to interpret and
19 implement, we'd be in great shape.

20 MEMBER WORTHLEY: We probably wouldn't be here.

21 CHAIR SHEEHY: Absolutely.

22 Ms. Olsen?

23 MEMBER OLSEN: Mr. Worthley actually addressed
24 my question.

25 CHAIR SHEEHY: Okay, so Finance, we appreciate

1 your testimony.

2 I think it's important to note that any money
3 that is actually appropriated will, in fact, offset the
4 costs of any mandate that was found. So, therefore, your
5 arguments are still germane. I just don't know that
6 they're still strong enough to deny a test claim today.

7 Are there other questions or comments from
8 Board members?

9 *(No response)*

10 CHAIR SHEEHY: Is there a motion?

11 MEMBER BRYANT: I'll move the staff analysis.

12 CHAIR SHEEHY: We have a motion by Ms. Bryant
13 to move the staff analysis.

14 MEMBER O'TOOLE: I second.

15 CHAIR SHEEHY: We have a second by Mr. O'Toole.
16 Mr. Palkowitz?

17 MR. PALKOWITZ: Would it be possible to make a
18 comment?

19 CHAIR SHEEHY: Absolutely.

20 MR. PALKOWITZ: Okay. You mentioned, well, how
21 do they know the estimate, they haven't incurred these
22 costs? Just to clarify, the statutes that we're here for
23 today, these requirements were contained in a previous
24 statute that was repealed. While those statutes were in
25 effect, schools were making claims based on those

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1 activities, which gave us a basis to estimate for the
2 new statute what those costs would be.

3 I just wanted to make sure that was clear.

4 CHAIR SHEEHY: Okay, that's good to know,
5 Mr. Palkowitz. Thank you.

6 We have a motion and a second on the floor.

7 All in favor?

8 MEMBER WORTHLEY: I think we should poll the
9 members, please.

10 CHAIR SHEEHY: We're going to have a roll-call
11 vote on this item.

12 Please call the roll.

13 MS. HIGASHI: I just want to clarify. Motion
14 by Ms. Bryant, second by Mr. O'Toole?

15 CHAIR SHEEHY: For the recommendation on the
16 staff analysis.

17 MS. HIGASHI: Ms. Bryant?

18 MS. BRYANT: Aye.

19 MS. HIGASHI: Mr. Lujano?

20 MEMBER LUJANO: Aye.

21 MS. HIGASHI: Mr. O'Toole?

22 MEMBER O'TOOLE: Aye.

23 MS. HIGASHI: Mr. Worthley?

24 MEMBER WORTHLEY: No.

25 MS. HIGASHI: Mr. Sheehy?

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1 MEMBER SHEEHY: Aye.

2 MS. HIGASHI: And, Ms. Olsen?

3 MEMBER OLSEN: Aye.

4 MS. HIGASHI: I dropped your name. I'm sorry.

5 The motion is carried.

6 CHAIR SHEEHY: Okay, that motion carries. Very

7 good.

8 Then the next item is the -- I'm sorry, where

9 are we?

10 MS. HIGASHI: The Proposed Statement of

11 Decision.

12 CHAIR SHEEHY: The Proposed Statement of

13 Decision.

14 Is there a motion on the Proposed Statement of

15 Decision?

16 MEMBER OLSEN: So moved.

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

18 MEMBER BRYANT: Second.

19 CHAIR SHEEHY: Second by Ms. Bryant.

20 All in favor?

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

22 MS. HIGASHI: Any opposed?

23 *(No response)*

24 MS. HIGASHI: No?

25 The motion is adopted.

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1 So that brings us to Item 10. We have the
2 report on legislation.

3 MS. PATTON: Good morning. This will be a
4 really short report.

5 There are no bills before the Governor that
6 have anything to do with the mandates process.

7 That's it.

8 MR. BURDICK: Thanks, Nancy.

9 CHAIR SHEEHY: Ms. Patton, you're going to have
10 to work on ways to be more succinct.

11 Okay.

12 MS. HIGASHI: Item 11, Chief Counsel's report.

13 CHAIR SHEEHY: Ms. Shelton?

14 MS. SHELTON: Yes, just to go over the report,
15 on December 11th, the Court has set a hearing date for
16 the *Behavioral Intervention* program. The bill that was
17 trying to appropriate money for the settlement agreement
18 has died. So I anticipate that to go forward.

19 Also, just listed, another case of interest
20 where the Commission is not a party. In the *Clovis*
21 lawsuit, briefs have been filed with the Court of Appeal.
22 And a hearing date has not been set.

23 CHAIR SHEEHY: Very good.

24 At this time I'm going to ask if there are any
25 more public comment on any item that has been before us

1 today?

2 MS. HIGASHI: Mr. Sheehy, I just want to
3 briefly cover Item 12.

4 CHAIR SHEEHY: Certainly.

5 MS. HIGASHI: As is traditional, we gave you a
6 summary of our pending Commission caseload. In addition,
7 we've also given members, as well as the public, and
8 posted on our Web site, the report that we filed with the
9 Department of Finance on our pending workload.

10 So if you have any questions on the detail, the
11 underlying detail for this workload, you will have that
12 other report that can be consulted. And it's also
13 available on the Commission's Web site.

14 I'd like to note that we have provided
15 information on the tentative agenda items for the next
16 few hearings. We have a hearing set for October 30th.
17 There are a number of parameters and guidelines
18 amendments.

19 And our hearing after that will be Thursday,
20 December 3rd.

21 And I need to make one correction. I forgot
22 *Expulsions and Suspensions II*, which should be listed on
23 the parameters and guidelines for the December meeting.
24 And there's also a long list of parameters and guidelines
25 amendments.

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1 And the January hearing as well.

2 Lastly, the Commission left open the issue of
3 the 2010 calendar. And I've provided you with
4 information on the dates, the possible dates that the
5 Commission could meet.

6 Based on our discussion at the last meeting,
7 there did not seem to be any discussion about the
8 January date, the March date, the May date, the tentative
9 June date, or the tentative October date, or the
10 tentative and possible December dates. But there was
11 discussion about whether the Commission should schedule a
12 July meeting or an August meeting. And so we left the
13 issue of adoption of the calendar open because Ms. Olsen
14 was absent from the last meeting.

15 And so I just wanted to give this back to the
16 Commission to decide what date you would like to meet
17 next year during the summer.

18 CHAIR SHEEHY: Traditionally, we've met in
19 July; haven't we?

20 MS. HIGASHI: Yes are.

21 CHAIR SHEEHY: I'd rather meet in August. But
22 I'll defer to the majority of my colleagues.

23 MEMBER OLSEN: Mr. Chair?

24 CHAIR SHEEHY: Yes, Ms. Olsen?

25 MEMBER OLSEN: I have a couple of -- you're

1 going to put me on; aren't you?

2 I've got a couple of issues.

3 First of all -- and they're both speculative.

4 I have no idea whether these will come to pass or not at
5 this point. But Friday, June 25th, may be graduation

6 date for my daughter. I don't have that calendar yet.

7 So I would just simply be absent for that meeting.

8 And then the July versus August: I have,
9 unfortunately, a strong preference for July this year.

10 I normally wouldn't care. But, again, I will have a

11 child going off to college. And, you know, that Friday,

12 August 27th, is likely to be in transit to college. It

13 depends on what college she goes to. But there's a

14 pretty strong likelihood -- I mean, that's when most

15 colleges are starting.

16 CHAIR SHEEHY: Okay, Ms. Bryant?

17 MEMBER BRYANT: I definitely think we should

18 do July. I think our obligation is to the stakeholders.

19 And if that last weekend in August is a bad time for all

20 the school districts, it just seems respectful to have it

21 in July.

22 CHAIR SHEEHY: Is there anybody else for

23 August besides me?

24 *(No response)*

25 CHAIR SHEEHY: This is a rough crowd this

1 morning.

2 MEMBER WORTHLEY: Either one works for me.

3 CHAIR SHEEHY: What's that?

4 MEMBER WORTHLEY: Either one works for me.

5 CHAIR SHEEHY: All right, and I suppose the

6 Controller and Treasurer's office don't have any

7 preference; right?

8 That's fine.

9 Since Ms. Bryant and Ms. Olsen feel July would
10 be better, then why don't we just stick with July?

11 MEMBER WORTHLEY: Just a comment, however, that
12 other than the exception here because of going off to
13 college, most schools these days start so much earlier.
14 It used to be with school not beginning until after
15 Labor Day, August was kind of the month people were
16 incommunicado. But these days, schools start in the
17 second week in August in public schools. So under normal
18 circumstances, I would say August would perhaps even be
19 preferable to July because people are probably taking
20 their vacations now in July rather than August because
21 of --

22 CHAIR SHEEHY: Which is exactly why I had
23 suggested that.

24 MEMBER WORTHLEY: Right.

25 CHAIR SHEEHY: That was exactly why. But, hey,

1 it is what it is.

2 MS. HIGASHI: Can I have a motion on this?

3 CHAIR SHEEHY: Make it roll call.

4 MS. HIGASHI: If you'd like a roll call.

5 CHAIR SHEEHY: No, no, no, no. That's fine.

6 Do we really need a motion?

7 MS. HIGASHI: Yes.

8 CHAIR SHEEHY: Is there anybody that objects,
9 besides me, to the July date?

10 *(No response)*

11 CHAIR SHEEHY: Hearing none, such will be

12 the --

13 MR. PALKOWITZ: I object.

14 CHAIR SHEEHY: Oh, Mr. Palkowitz, you object?

15 MR. PALKOWITZ: Yes, sir.

16 CHAIR SHEEHY: But you don't get a vote. But
17 I'm glad you were paying attention and you responded.

18 Is there anybody on the Board, the Commission?

19 MEMBER OLSEN: Well, could we let

20 Mr. Palkowitz --

21 CHAIR SHEEHY: Absolutely.

22 MR. PALKOWITZ: The Commission said

23 "stakeholders."

24 MEMBER OLSEN: I think the stakeholders are
25 extremely important.

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1 CHAIR SHEEHY: Okay, so let's hear from the
2 stakeholders.

3 Mr. Palkowitz, could you come forward, please?

4 And are you representing the San Diego Unified
5 School District in these comments?

6 MR. PALKOWITZ: Yes, I am -- well, some of
7 them. I don't know what all the comments will be.

8 But I agree with Mr. Worthley that, for our
9 school district, we don't start until the end -- we start
10 after Labor Day for attendance reasons. I may have also
11 a child attending school. And July is really a time
12 where I usually get to go away, and especially the last
13 week. So if I have any comment, my comment is August
14 versus July.

15 CHAIR SHEEHY: You're a fine man,
16 Mr. Palkowitz.

17 MR. PALKOWITZ: Just remember that.

18 CHAIR SHEEHY: Ms. Olsen?

19 MEMBER OLSEN: Is this one of those issues,
20 could we leave the issue of July versus August open or
21 revisit it? I mean, again, my issues with it are highly
22 speculative.

23 MS. HIGASHI: It affects our planning for staff
24 as well in terms of when they take their vacations. And
25 because we do plan out at least six or seven months in

1 terms of which items our attorneys and staff are working
2 on --

3 CHAIR SHEEHY: Six or seven months, so we can
4 wait until January to decide.

5 MS. HIGASHI: But we approve vacations.

6 I mean, for me, personally, July is a great
7 month for vacation, but...

8 CHAIR SHEEHY: Mr. Burdick, right?

9 MR. BURDICK: Yes, since you asked for
10 stakeholders, cities and counties.

11 CHAIR SHEEHY: Cities and counties.

12 MR. BURDICK: On behalf of CSAC and the League
13 of Cities and the advisory committee on state mandates, I
14 think from our standpoint, either will work.

15 July has always worked very well. August
16 sometimes does present vacation problems for people
17 vacationing in August.

18 I think July, if we go back over and look at
19 the history, those have been some of the most significant
20 hearings that we've had.

21 One option might be to schedule one as actual
22 and one as tentative, or make them both tentative. And
23 then you could comment on these maybe at the
24 January meeting or so, when you're six months out.

25 I think our schedule tends to move a little bit

1 from a month-to-month meeting.

2 I don't know whether that helps or hurts
3 Ms. Higashi and their staff planning.

4 MS. HIGASHI: We're just trying to comply with
5 state law that says that we're supposed to meet at least
6 every two months. What we can do, certainly, is propose
7 a change to that law that just specifies how many times
8 we meet a year, and just leave it at that. But we've
9 also been very flexible in terms of scheduling items to
10 accommodate parties' vacations. So that's the other
11 issue I just want to remind folks of.

12 CHAIR SHEEHY: Sarah, did you have additional
13 comments?

14 MEMBER OLSEN: Well, again, I do think that
15 stakeholder viewpoints are important here, and not just
16 because it seems -- most of them seem to correspond with
17 mine.

18 But from my own personal point of view, I will
19 know by April. So, you know, if it's one of those things
20 where we schedule for July -- it seems to me that if we
21 have to schedule for one or the other, it makes sense to
22 schedule for July because it could be delayed as opposed
23 to pushing it forward is always problematic; right?

24 CHAIR SHEEHY: Why is June tentative?

25 MR. BURDICK: It's an extra meeting.

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1 MS. HIGASHI: It's an extra meeting. We're not
2 budgeted.

3 CHAIR SHEEHY: Why don't we meet in June and
4 make July tentative?

5 MS. HIGASHI: I mean, we could make them all
6 tentative if you'd like.

7 MR. PALKOWITZ: That's true.

8 MEMBER OLSEN: But Mr. Sheehy is right in the
9 sense that that still would comply with the
10 every-two-months. If we did June to September as our two
11 months and making July or August tentative, we are still
12 complying.

13 MS. HIGASHI: Then we go from March to June.

14 MEMBER OLSEN: No. You'd still have May.

15 MS. HIGASHI: Oh, you're leaving May? Okay.

16 CHAIR SHEEHY: What does the law require, how
17 many meetings?

18 MS. HIGASHI: The difficulty for us in having
19 back-to-back meetings is the production of the agenda
20 items. Because the same due date for putting out the
21 binders for the next hearing is the due date for two
22 hearings of the drafts.

23 MEMBER OLSEN: Right.

24 MS. HIGASHI: And so that's why the two months'
25 schedule has -- every-other-month hearings has helped us,

1 actually.

2 MR. WORTHLEY: Which would support your
3 position, Mr. Sheehy.

4 MS. HIGASHI: But what happens for us as staff,
5 is that we end up having staff vacations also during this
6 period of time, so then the number of agenda items starts
7 to diminish.

8 So we can put both dates as tentative and just
9 resolve it that way.

10 CHAIR SHEEHY: Why don't we put --

11 MS. HIGASHI: June, July --

12 CHAIR SHEEHY: Why don't we resolve this for
13 now by leaving both dates tentative, and let's have this
14 discussion one more time at our next meeting in January.
15 And we'll just decide it then one way or another. And I
16 can assure my colleagues I'll be flexible.

17 MEMBER OLSEN: I will try to be, yes.

18 CHAIR SHEEHY: So if it still looks like
19 July is the best fit for most of us, then we'll do it in
20 July.

21 Is that okay with you, Paula? Since I know you
22 have to --

23 MS. HIGASHI: Right. Why don't we put the
24 schedule on our Web site and list July as tentative?

25 CHAIR SHEEHY: Okay, all right.

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1 MS. HIGASHI: And have that as the only change
2 we make to the schedule.

3 CHAIR SHEEHY: All right.

4 MS. HIGASHI: And that will give us the
5 flexibility.

6 CHAIR SHEEHY: And I don't think there's any
7 need for proposed legislation.

8 The law requires every other month?

9 MS. HIGASHI: Yes, it used to be more frequent.

10 CHAIR SHEEHY: Yes, okay. All right, very
11 good.

12 MS. HIGASHI: Thank you very much.

13 CHAIR SHEEHY: Is there anything more on
14 Item 12, Paula?

15 MS. HIGASHI: No, that's it.

16 And you can take public comment on any issue.

17 CHAIR SHEEHY: Okay, is there any more public
18 comment?

19 *(No response)*

20 CHAIR SHEEHY: Okay, seeing none, the
21 Commission on State Mandates will meet in closed
22 executive session now pursuant to Government Code section
23 11126, subdivision (e), to confer with and receive advice
24 from legal counsel for consideration and action as
25 necessary and appropriate upon the pending litigation

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1 published in the notice and agenda and to confer and
2 receive advice from legal counsel regarding potential
3 litigation.

4 The Commission will also confer on the
5 Commission's response to the confidential final draft
6 audit report in the Bureau of State Audits pursuant to
7 Government Code section 11126.2, subdivision (a).

8 Finally, the Commission will confer on
9 personnel matters, and report from the personnel
10 subcommittee pursuant to Government Code section 11126,
11 subdivision (a).

12 We will reconvene in open session in about
13 45 minutes.

14 Thank you.

15 *(The Commission on State Mandates met in*
16 *closed executive session from 10:03 a.m.*
17 *to 10:59 a.m.)*

18 CHAIR SHEEHY: So the Commission on State
19 Mandates met in closed executive session pursuant to
20 Government Code section 11126, subdivision (e), to confer
21 with and receive advice from our legal counsel for
22 consideration and action as necessary and appropriate
23 upon pending litigation listed on the public notice and
24 agenda, and also potential litigation, as well as to
25 confer on the Commission's response to the confidential

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1 draft audit report from the Bureau of State Audits,
2 pursuant to Government Code section 11126.2, subdivision
3 (a). And also to confer on personnel matters listed on
4 the published notice and agenda pursuant to Government
5 Code section 11126, subdivision (a).

6 The Commission will reconvene now in open
7 session.

8 Okay, so we are in open session.

9 Is there any further public comment?

10 *(No response)*

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

13 *(Gavel sounded.)*

14 *(The meeting concluded at 11:00 a.m.)*

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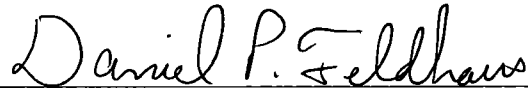
REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified;
10and

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 October 6th, 2009.



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