

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
September 30, 2004

Present: Chairperson James Tilton
Representative of the Director of the Department of Finance
Member Linda McAtee
Representative of the State Treasurer
Member Walter Barnes
Representative of the State Controller
Member Jan Boel
Acting Director of the Office of Planning and Research
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Tilton called the meeting to order at 9:39 a.m.

APPROVAL OF MINUTES

Item 1 July 29, 2004

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

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

Item 2 Staff Report on Appeals Related To Current Agenda Items (if necessary)

No appeals were filed.

PROPOSED CONSENT CALENDAR

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

PROPOSED STATEMENT OF DECISION

Item 7 *DNA Database*, 00-TC-27
County of San Bernardino, Claimant
Penal Code Section 14250
Statutes 2000, Chapter 822 (SB 1818)
-and-
Amendment to *Postmortem Examinations: Unidentified Bodies*, 02-TC-39
County of Los Angeles, Claimant
Penal Code Section 14250
Statutes 2001, Chapter 467 (SB 297)

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 9 *Charter Schools II*, 99-TC-03
San Diego Unified School District and
Los Angeles County Office of Education, Claimants
Education Code Sections 47605, Subdivisions (j)(1) and (k)(3),
47605.5, 47607, and 47614
Statutes 1998, Chapters 34 and 637 (AB 544 and AB 1958)
- Item 10 *Sexual Assault Response Procedures*, 99-TC-12
Los Angeles Community College District, Claimant
Education Code Sections 67385
Statutes 1990, Chapter 423 (AB 3098)
Statutes 1995, Chapter 758 (AB 446)
- Item 11 *Criminal Background Checks II*, 00-TC-05
Napa County Office of Education, Claimant
Education Code Sections 44830.1, 44830.2, 45122.1, 45125, 45125.01,
45125.1, and 45125.2
Statutes 1998, Chapters 594 and 840 (AB 1392 and AB 2102)
- Item 12 *Absentee Ballots: Tabulation by Precinct*, 00-TC-08
County of Orange, Claimant
Elections Code Sections 15111, 15321 and 21000
Statutes 1999, Chapter 697 (AB 1530)

Member McAtee moved for adoption of the consent calendar, which consisted of items 7, 9, 10, 11, and 12. With a second by Member Lazar, the consent calendar was unanimously adopted.

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

Paula Higashi, Executive Director, swore the parties and witnesses participating in the hearing of agenda items 3 through 6.

TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

- Item 3 *California English Language Development Test*, 00-TC-16
Modesto City School District, Claimant
Education Code Sections 313, 60810, 60811, 60812
Statutes 1997, Chapter 936 (AB 748)
Statutes 1999, Chapter 78 (AB 1115)
Statutes 1999, Chapter 678 (SB 638)
Statutes 2000, Chapter 71 (SB 1667)

Eric Feller, Commission Counsel, presented this item. He noted that the test claim legislation requires the Superintendent of Public Instruction to develop the California English Language Development Test for pupils learning English. Another statute requires these pupils to be tested upon enrollment, and annually thereafter until they are designated as English-proficient.

Staff found that the test claim legislation does not impose state-mandated activities because the requirements are found in a preexisting federal statute and in federal case law. Furthermore, the English language assessment was already required by state regulations enacted after Proposition 227 of 1998. Therefore, the test claim legislation does not constitute a new program or higher level of service.

Staff recommended that the Commission adopt the staff analysis, which denies the test claim.

Parties were represented as follows: Mike Brown, with MCS Education Services, on behalf of the claimant; and Susan Geanacou and Lenin Del Castillo, with the Department of Finance.

Mr. Brown stated that the claimant disagreed with the staff analysis but had nothing further to argue.

Mr. Del Castillo concurred with the staff analysis.

Member Barnes made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

Item 4 Proposed Statement of Decision: *California English Language Development Test*, 00-TC-16, as described above in Item 3.

Eric Feller, Commission Counsel, presented this item. He indicated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the test claim decision. Staff also recommended that the Commission allow minor changes to be made, which includes adding the hearing testimony and vote count.

Member McAtee made a motion to adopt the proposed Statement of Decision. With a second by Member Lazar, the motion carried unanimously.

Item 5 *Acquisition of Agricultural Land for a School Site*, 98-TC-04
Brentwood Union School District, Claimant
Education Code Sections 17213.1, 17215.5 (former § 39006)
Statutes 1996, Chapter 509 (AB 1724)
Statutes 1999, Chapter 1002 (SB 162)
Statutes 2000, Chapters 135 and 443 (AB 2539 and AB 2644)

Eric Feller, Commission Counsel, presented this item. He noted that the claimant sought reimbursement for various activities related to selecting a school site on land zoned for agricultural use, and for assessments required under the Leroy F. Greene School Facilities Act. Staff found that the test claim legislation did not constitute a reimbursable state-mandated program for the following reasons:

- 1) As to Education Code section 17515.5, the findings a school district must make if selecting a school site on land zoned for agricultural use is not state-mandated because the decision to build a school, where to locate the school, and to acquire the agricultural land is discretionary by state law.
- 2) As to Education Code section 17213.1, the procedures that a school district must follow when seeking state funding pursuant to the Leroy F. Greene School Facilities Act are not state-mandated because the district is not required to request state funding under the Act.

Mr. Feller stated that the claimant requested the Commission find a limited exception to reimburse districts that can establish they were practically compelled to build a new school site on agricultural land due to overpopulation or expected additional development and growth within the district. For these districts, the claimant argued that the only available option was to acquire agricultural land. However, Mr. Feller indicated that the claimant failed to submit evidence to support such a finding. Therefore, staff recommended that the Commission adopt the staff analysis, which denies the test claim.

Parties were represented as follows: David Scribner, on behalf of the claimant; and Susan Geanacou, Blake Johnson, and Walt Schaff, with the Department of Finance.

Mr. Scribner related the difficulty in finding a school district to meet the exception and was unable to obtain a declaration before the hearing. He added that they would continue to seek a declaration and would request a reconsideration if they obtained one before the deadline to request a reconsideration expires.

Mr. Johnson concurred with the staff analysis.

Member Lazar made a motion to adopt the staff analysis. With a second by Member Boel, the motion carried unanimously.

Item 6 Proposed Statement of Decision: *Acquisition of Agricultural Land for a School Site*, 98-TC-04, as described above in Item 5.

Eric Feller, Commission Counsel, presented this item. He indicated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the test claim decision. Staff also recommended that the Commission allow minor changes to be made, which includes adding the hearing testimony and vote count.

Member Lazar made a motion to adopt the proposed Statement of Decision. With a second by Member McAtee, the motion carried unanimously.

Item 8 *Administrative License Suspension – Per Se*, 98-TC-16 (Tentative)
City of Newport Beach, Claimant
Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100, 23136, 23137, 23157, 23158.2, and 23158.5
As Added or Amended by Statutes 1989, Chapter 1460 (SB 1623)
Statutes 1990, Chapter 431 (SB 1150)
Statutes 1992, Chapter 1281 (AB 3580)
Statutes 1993, Chapters 899 and 1244 (SB 689)
Statutes 1994, Chapter 938 (SB 1295)
Statutes 1997, Chapter 5 (AB 74)

Item 8 was postponed to the next hearing.

STAFF REPORTS

Item 13 California Performance Review Report¹

- Recommendation GG 32 – Reform the State Mandates Process to Make Reimbursement More Cost-Efficient, Predictable and Fair
- Proposed Governor’s Office of Management and Budget

Cathy Cruz, Program Analyst, presented this item. She stated that on August 3, 2004, the California Performance Review issued its report, which contained comprehensive recommendations to reform and revitalize California state government. The following recommendations are specific to the mandates reimbursement process:

- 1) The Governor should direct state agencies to review pending draft legislation as early in the process as possible and to focus on mandate impacts to make reimbursements more cost efficient, predictable, and fair.
- 2) The Governor should direct state agencies to actively review and provide input into the parameters and guidelines document during the Commission on State Mandates Process. This should occur whenever the Commission determines that a reimbursable mandate exists.
- 3) The Governor should direct the Department of Finance to develop standardized cost units for specific functions that claimants use in their cost submissions.

Ms. Cruz indicated that the California Performance Review asked state agencies and departments to submit analyses of these recommendations. The Commission’s analysis stated that the recommendations would provide the Administration and the Legislature with timelier information about pending legislation that could result in cost savings to the State. The Commission also stated that the recommendations would assist in the development of parameters and guidelines and statewide cost estimates.

Moreover, Ms. Cruz noted that the California Performance Review recommended a significant restructuring of state government. One recommendation is to create the Governor’s Office of Management and Budget to provide administrative and fiscal services for all areas of state government. The Commission on State Mandates would be transferred intact under this department. Ms. Cruz stated that the Commission was not requested to analyze the proposed reorganization.

Ms. Cruz said that the California Performance Review was conducting hearings around the state on the proposed reorganization and is expected to issue its final report on October 30, 2004. She informed the Commission that they would be kept apprised as further reports and recommendations are issued.

Member Lazar asked questions about the effects the recommendations would have on staffing. Ms. Higashi responded that the recommendation to transfer the Commission intact under the Office of Management and Budget would be beneficial because the disadvantages of being an independent organization include taking the full hit of a budget reduction and being left out of the communication loop. Further, she stated that staffing would be a function of the budget process, depending on the final version of the proposal following review by the Little Hoover Commission.

¹The report is available online at www.cpr.ca.gov

Item 14 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, reported that there were no updates.

Item 15 Executive Director's Report (info/action)
Workload, Budget, Legislation, Next Hearing

- *Workload.* At the last hearing, the Commission members requested an overview of the status of backlogged cases. Accordingly, Ms. Higashi reported that a number of old cases were inactive for several years and were going through the dismissal process. She explained that other test claims are on hold because they involve statutes and issues directly related to pending litigation.

Ms. Higashi noted that, as detailed in the table under section C of the report, the Legislature directed the Commission to reconsider an unprecedented number of old test claim decisions for various reasons. The statutory timeline for completion is January 1, 2006.

- *Budget and Legislation.* The Commission's budget did not change this year, and the same number of positions was maintained. The Commission did not receive funding for SB 1033, but in anticipation of an application being filed shortly, the necessary documentation was submitted to the Department of Finance to request funding. A budget change proposal was also submitted to address the additional workload and statutory changes.

Ms. Higashi described some budget trailer bills, including SB 1096 and 1102. She also described SCA 4, the local government initiative on the November ballot. Moreover, she announced that the Governor signed AB 2224, AB 2851, AB 2853, AB 2855, and AB 2856. These bills affect the Commission's workload and processes. Member Barnes asked what action was required of the Commission. Ms. Higashi explained that the Commission would have to place a cap on the reimbursement period for some of the parameters and guidelines.

Ms. Higashi mentioned other related bills such as SB 815, SB 1271, and SB 1895. She acknowledged Nancy Patton, Assistant Executive Director, for her work in managing the legislation.

- *Next Hearing Agenda.* Ms. Higashi noted that Mr. Allan Burdick, representing the California State Association of Counties, filed a request to postpone the next hearing to December. She stated that staff had no objection to the request. Chairperson Tilton, Member Lazar, and Member Barnes agreed.

Mr. Burdick explained that a number of issues were forthcoming, highlighting the importance of the CSAC annual meeting scheduled around the same time as the next Commission hearing. Thus, he requested that the hearing be postponed to December 9.

Member Lazar made a motion to move the November 18 Commission hearing to December 9. With a second by Member Barnes, the motion carried unanimously.

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

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. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
2. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]
3. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
5. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
6. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
7. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
8. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
9. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
10. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
11. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]
12. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
13. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]

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).)

PERSONNEL

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

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

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

REPORT FROM CLOSED EXECUTIVE SESSION

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

ADJOURNMENT

Hearing no further business, and upon motion by Member Lazar and second by Member McAtee, Chairperson Tilton adjourned the meeting at 10:41 a.m.


PAULA HIGASHI
Executive Director

ORIGINAL

PUBLIC HEARING

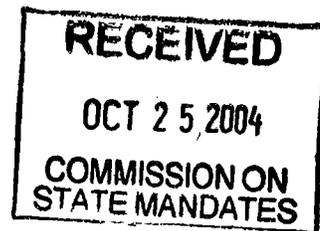
COMMISSION ON STATE MANDATES

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TIME: 9:39 a.m.

DATE: Thursday, September 30, 2004

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California



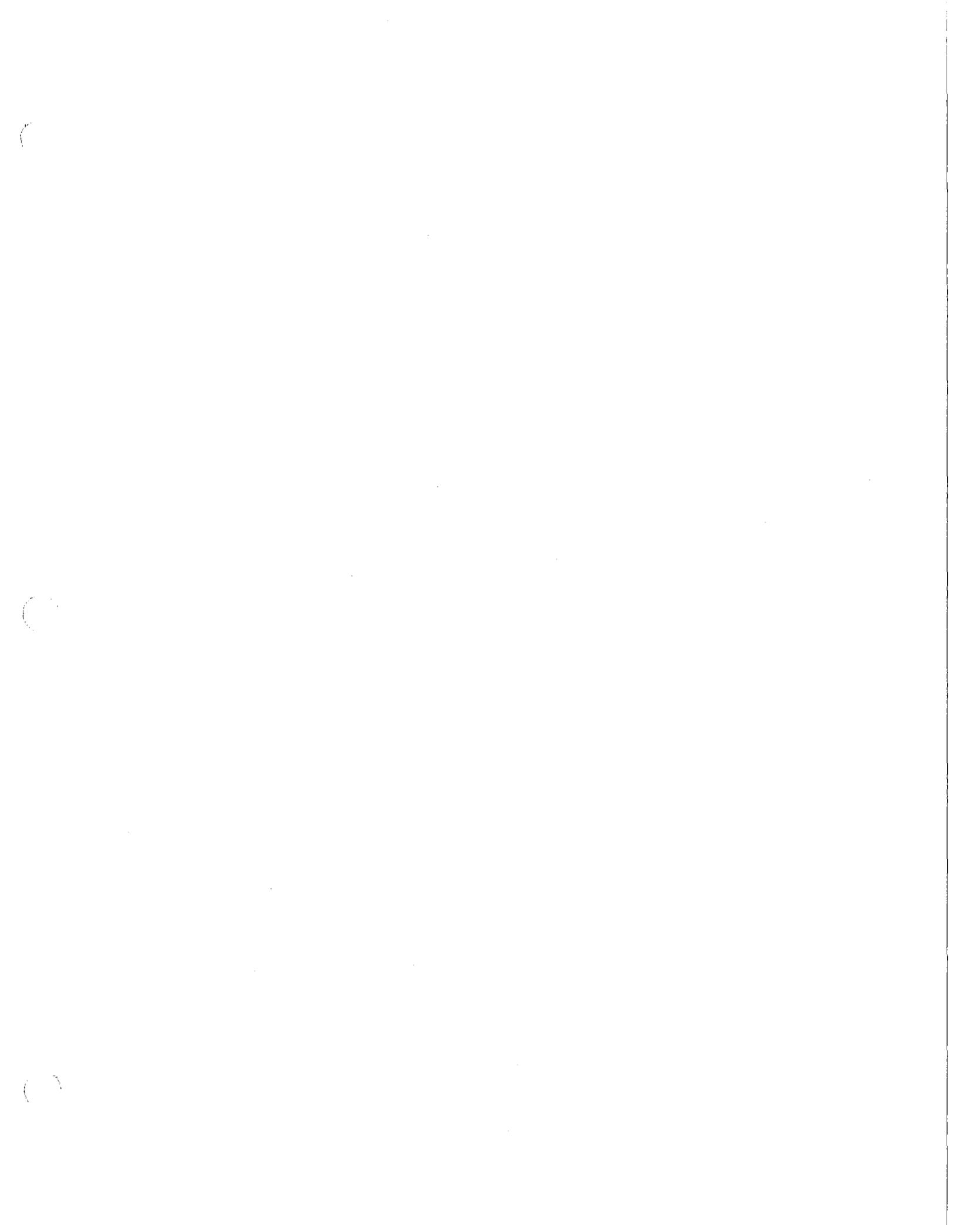
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR



A P P E A R A N C E S

COMMISSIONERS PRESENT

JAMES TILTON
(*Commission Chair*)
Representative for DONNA ARDUIN
Director
Department of Finance

LINDA K. McATEE
Representative for PHILIP ANGELIDES
State Treasurer

WALTER BARNES
Representative for STEVE WESTLY
State Controller

JAN BOEL
Acting Director
State Office of Planning and Research

JOHN S. LAZAR
City Council Member
City of Turlock

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

CATHY CRUZ
Program Analyst

ERIC FELLER
Commission Counsel

NANCY PATTON
Assistant Executive Director

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A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3:

For the Modesto City Schools:

MIKE BROWN
Mandate Manager
MCS Education Services
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

For the Department of Finance:

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

LENIN DEL CASTILLO
Finance Budget Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

Appearing Re Item 5:

For Brentwood Union School District

DAVID E. SCRIBNER
Executive Director
Schools Mandate Group
One Capitol Mall, Suite 200
Sacramento, CA 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

(continued)

Appearing Re Item 5: (continued)

For the Department of Finance:

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

BLAKE JOHNSON
Department of Finance
915 L Street
Sacramento, CA 95814

WALT SCHAFF
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

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1 BE IT REMEMBERED that on Thursday, September 30,
2 2004, commencing at the hour of 9:39 a.m., thereof, at
3 the State Capitol, Room 126, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 CHAIR TILTON: The time of 9:30 has come for
8 initiating or starting the meeting for the Commission on
9 State Mandates. If you're here for another meeting,
10 you're lost. There's familiar faces, huh?

11 Paula, would you call the roll, please?

12 MS. HIGASHI: Mr. Barnes?

13 MEMBER BARNES: Here.

14 MS. HIGASHI: Ms. Boel?

15 MEMBER BOEL: Here.

16 MS. HIGASHI: Mr. Lazar?

17 MEMBER LAZAR: Here.

18 MS. HIGASHI: Ms. McAtee?

19 MEMBER McATEE: Here.

20 MS. HIGASHI: And Mr. Tilton?

21 CHAIR TILTON: Here.

22 MS. HIGASHI: The first item on our agenda is the
23 minutes from the last meeting, July 29th, Item 1.

24 CHAIR TILTON: Do we have any objections, comments,
25 corrections to the minutes from the last meeting?

1 Can I have a motion then?

2 MEMBER LAZAR: So moved.

3 MEMBER BOEL: I second.

4 CHAIR TILTON: The motion is seconded.

5 All in favor, say "aye."

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

7 CHAIR TILTON: Opposed?

8 The minutes are approved.

9 MS. HIGASHI: Thank you.

10 There are no appeals pending on Item 2.

11 This brings us to the Proposed Consent Calendar.

12 And you should have before you a blue sheet, which
13 itemizes everything on the proposed consent calendar.

14 Quickly, Item 7, Proposed Statement of Decision *DNA*
15 *Database*; Items 9, 10, 11 and 12 are all statewide cost
16 estimates: First is *Charter Schools II*. Second is
17 *Sexual Assault Response Procedures*. Third, *Criminal*
18 *Background Checks II*. And fourth, *Absentee Ballots:*
19 *Tabulation by Precinct*.

20 We have not received any correspondence or phone
21 calls requesting that these items be taken off the
22 consent calendar.

23 CHAIR TILTON: Okay, are there any objections or
24 comments about the consent calendar? From the audience?
25 Anyone else?

1 *(No audible response was heard.)*

2 CHAIR TILTON: Can I have a motion then?

3 MEMBER McATEE: I move approval.

4 CHAIR TILTON: We've got a motion.

5 MEMBER LAZAR: Second.

6 CHAIR TILTON: And a second.

7 All in favor of approving the consent calendar,
8 signify by saying "aye."

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

10 CHAIR TILTON: Opposed?

11 *(No audible response was heard.)*

12 CHAIR TILTON: The motion passes.

13 MS. HIGASHI: Thank you.

14 This brings us to the test claim portion of our
15 meeting today. And we will be taking up Items 3, 4, 5
16 and 6.

17 At this time, I'd like to ask all of the parties,
18 witnesses and representatives who intend to testify on
19 these matters to please stand.

20 At this point, would you please raise your right
21 hand?

22 *(Several persons stood and raised their right hands.)*

23 MS. HIGASHI: Do you solemnly swear or affirm that
24 the testimony, which you are about to give, is true and
25 correct, based upon your personal knowledge, information

1 or belief?

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

3 MS. HIGASHI: Thank you very much.

4 This brings us to Item 3. Commission Counsel Eric
5 Feller will present this test claim on *English Language*
6 *Development Test*.

7 MR. FELLER: Good morning. The test claim statutes
8 require the Superintendent of Public Instruction to
9 develop an examination for English-learner pupils, now
10 known as the California English Language Development
11 Test. A separate test claim statute requires
12 English-learner pupils to be tested upon enrollment
13 and annually, until they're redesignated as
14 English-proficient.

15 Staff finds that the test claim legislation does
16 not impose state-mandated activities because the
17 requirements are in preexisting federal statute and
18 federal case law. In addition, the English Language
19 assessment is not a new program or higher level of
20 service because it was already required by state
21 regulations enacted after Proposition 227 of 1998.

22 The staff recommends the commission adopt this
23 analysis and deny the test claim.

24 Would the parties and witnesses please state their
25 names for the record?

1 MR. BROWN: Mike Brown with MCS Education Services,
2 representing the claimant, Modesto City Schools.

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

5 MR. DEL CASTILLO: Lenin Del Castillo with the
6 Department of Finance.

7 CHAIR TILTON: Mr. Brown, do you want to go ahead
8 and start your testimony?

9 MR. BROWN: All right. Mr. Chairman, the claimant
10 wishes to state that they disagree with the final staff
11 analysis recommending denial of this test claim, and also
12 that the claimant has nothing further to argue at this
13 time.

14 CHAIR TILTON: Thank you.
15 Department of Finance?

16 MS. GEANACOU: Go ahead.

17 MR. DEL CASTILLO: We submitted a letter, indicating
18 that we concur with the staff analysis.

19 CHAIR TILTON: Very good.
20 Any questions from Members or --

21 MEMBER McATEE: No.

22 CHAIR TILTON: What's the pleasure?

23 MEMBER BARNES: I'll move the staff recommendation.

24 MEMBER BOEL: Second.

25 CHAIR TILTON: Okay, we have a motion and a second

1 to approve staff recommendations.

2 Paula, call the roll, please.

3 MS. HIGASHI: Mr. Barnes?

4 MEMBER BARNES: Aye.

5 MS. HIGASHI: Ms. Boel?

6 MEMBER BOEL: Aye.

7 MS. HIGASHI: Mr. Lazar?

8 MEMBER LAZAR: Aye.

9 MS. HIGASHI: Ms. McAtee?

10 MEMBER McATEE: Aye.

11 MS. HIGASHI: Mr. Tilton?

12 CHAIR TILTON: Aye.

13 MS. HIGASHI: The motion is carried.

14 This brings us next to the Proposed Statement of
15 Decision on Item 3.

16 Mr. Feller?

17 MR. FELLER: Unless there are objections, staff
18 recommends that the Commission adopt the Proposed
19 Statement of Decision which accurately reflects the
20 decision on the test claim.

21 Staff also recommends that the Commission allow
22 minor changes to be made to the SOD, including reflecting
23 the hearing testimony and vote count that will be
24 included in the final statement of decision.

25 CHAIR TILTON: Mr. Brown, do you have any further

1 testimony?

2 MR. BROWN: No, sir.

3 CHAIR TILTON: Any questions or comments from the
4 Members?

5 MEMBER McATEE: Move approval.

6 MEMBER LAZAR: Second.

7 CHAIR TILTON: We have got a motion and a second to
8 approve the staff recommendation.

9 Paula, call the roll.

10 MS. HIGASHI: Ms. Boel?

11 MEMBER BOEL: Aye.

12 MS. HIGASHI: Mr. Lazar?

13 MEMBER LAZAR: Aye.

14 MS. HIGASHI: Ms. McAtee?

15 MEMBER McATEE: Aye.

16 MS. HIGASHI: Mr. Barnes?

17 MEMBER BARNES: Aye.

18 MS. HIGASHI: Mr. Tilton?

19 CHAIR TILTON: Aye.

20 MS. HIGASHI: The motion is carried.

21 This brings us to Item 5.

22 MR. FELLER: Good morning again.

23 This is the *Acquisition of Agricultural Land for a*
24 *School Site* test claim. Claimant seeks reimbursement for
25 various activities related to selecting a school site on

1 land zoned for agricultural use and for assessments
2 required under the Leroy F. Green School Facilities Act.
3 Staff finds that the test claim does not constitute a
4 reimbursable state mandate.

5 As to section 17515.5, the findings the school
6 district must make if the proposed school site is on land
7 zoned for agricultural use is not state-mandated because
8 the decision to build a school, as well as where to
9 locate it, including the acquisition of agricultural
10 land, is a discretionary decision left to the school
11 district by state law.

12 As to section 17213.1, the procedures a school
13 district must follow when it seeks state funding pursuant
14 to the Leroy F. Green School Facilities Act of 1998 are
15 not state-mandated because the school district is not
16 required to request state funding under the Act.

17 Claimant requests that the Commission find a limited
18 exception to reimbursement in those districts that can
19 establish they are practically compelled to build a new
20 school site due to overpopulation or expected additional
21 development and growth within the district, and that the
22 only available option is to acquire agricultural land.
23 However, claimant has submitted no evidence on the
24 scenario, so the record does not support a finding that
25 this would be a mandated program.

1 Thus, staff recommends the Commission adopt this
2 analysis and deny the test claim.

3 Again, would the parties and witnesses please state
4 your names for the record?

5 MR. SCRIBNER: Good morning. David Scribner for the
6 Claimants.

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

9 MR. JOHNSON: Blake Johnson, Department of Finance.

10 MR. SCHAFF: Walt Schaff, Department of Finance.

11 CHAIR TILTON: Mr. Scribner, are you going to start
12 your testimony?

13 MR. SCRIBNER: Thank you.

14 The claimant agrees with staff that we have been
15 unable to provide substantial evidence in the record to
16 support the exception that we were seeking. We have been
17 looking for a district to meet this exception, and we
18 were right in our initial call that this is limited, so
19 we were having a difficult time doing so. We believe
20 that we may have a district or two that may meet these
21 requirements. At this time, we were unable to get a
22 declaration before this hearing. We will continue to
23 seek a declaration, citing that they can meet the
24 exceptions, as we outlined in our comments and staff has
25 put forward in the final staff analysis for you this

1 morning.

2 If we do so before the time for reconsideration
3 tolls, we'll request reconsideration based on that
4 declaration. But at this time, we have nothing further.

5 CHAIR TILTON: I appreciate that.

6 Department of Finance?

7 MR. JOHNSON: Yes, Blake Johnson. We concur with
8 the staff analysis.

9 CHAIR TILTON: Any comments or questions from the
10 Board?

11 MEMBER LAZAR: No.

12 CHAIR TILTON: Do I have a motion?

13 MEMBER LAZAR: I'd like to adopt the staff analysis,
14 please.

15 MEMBER BOEL: I second.

16 CHAIR TILTON: A motion and a second to accept staff
17 recommendations and adopt the analysis.

18 Paula, call the roll.

19 MS. HIGASHI: Ms. McAtee?

20 MEMBER McATEE: Aye.

21 MS. HIGASHI: Mr. Barnes?

22 MEMBER BARNES: Aye.

23 MS. HIGASHI: Ms. Boel?

24 MEMBER BOEL: Aye.

25 MS. HIGASHI: Mr. Lazar?

1 MEMBER LAZAR: Aye.

2 MS. HIGASHI: Mr. Tilton?

3 CHAIR TILTON: Aye.

4 MS. HIGASHI: Thank you.

5 MS. HIGASHI: This brings us to Item 6, the Proposed
6 Statement of Decision.

7 MR. FELLER: Unless there is objection, staff
8 recommends the Commission again adopt the Proposed
9 Statement of Decision, accurately reflecting the decision
10 on the test claim. Staff also recommends the Commission
11 allow minor changes to be made to the Statement of
12 Decision, including reflecting the hearing testimony and
13 vote count that will be included in the final SOD.

14 CHAIR TILTON: Mr. Scribner, any further testimony?

15 MR. SCRIBNER: None. Thank you.

16 CHAIR TILTON: Any questions or comments from
17 Commission members?

18 *(No audible response was heard.)*

19 CHAIR TILTON: Do we have a motion?

20 MEMBER LAZAR: I'll make the motion to adopt it.

21 CHAIR TILTON: We have a motion.

22 MEMBER McATEE: Second.

23 CHAIR TILTON: A motion and second to accept staff
24 recommendations.

25 Paula, call roll.

1 MS. HIGASHI: Ms. McAtee?
2 MEMBER McATEE: Aye.
3 MS. HIGASHI: Mr. Barnes?
4 MEMBER BARNES: Aye.
5 MS. HIGASHI: Ms. Boel?
6 MEMBER BOEL: Aye.
7 MS. HIGASHI: Mr. Lazar?
8 MEMBER LAZAR: Aye.
9 MS. HIGASHI: Mr. Tilton?
10 CHAIR TILTON: Aye.
11 MS. HIGASHI: Thank you.
12 MR. SCRIBNER: Thank you.
13 MS. HIGASHI: Item 7 has already been adopted.
14 Item 8 has been postponed. Items 9, 10, 11 and 12
15 have been adopted.
16 This brings us to item 13. And this is a staff
17 report on the California Performance Review.
18 Ms. Cruz will present it for us.
19 MS. CRUZ: Good morning. On August 3, 2004, the
20 California Performance Review issued its report entitled,
21 "Report of the California Performance Review, Government
22 for the People for a Change." The report contains
23 comprehensive recommendations to reform and revitalize
24 California state government.
25 The report makes the following recommendations

1 regarding the mandates reimbursement process:

2 First, the Governor should direct state agencies to
3 review pending draft legislation as early in the process
4 as possible and to focus on mandate impacts to make
5 reimbursements more cost efficient, predictable and fair.

6 Second, the Governor should direct state agencies
7 to actively review and provide input into the parameters
8 and guidelines document during the Commission on State
9 Mandates process. This should occur whenever the
10 Commission determines that a reimbursable mandate exists.

11 Third, the Governor should direct the Department of
12 Finance to develop standardized cost units for specific
13 functions that claimants use in their cost submissions.

14 State agencies and departments were asked to submit
15 analyses of these recommendations to CPR. Commission
16 staff submitted its analysis, indicating that the above
17 recommendations will provide the Administration and the
18 Legislature with timelier information about pending
19 legislation that could result in cost savings to the
20 State. The recommendations would also assist the
21 Commission when it makes mandate determinations and
22 develops and adopts parameters and guidelines and
23 statewide cost estimates.

24 The report also recommends that state government be
25 significantly restructured. One of the recommendations

1 would create the Governor's Office of Management and
2 Budget to provide administrative and fiscal services for
3 all areas of state government. The report recommends
4 that the Commission on State Mandates be transferred
5 intact to OMB.

6 According to the Governor's office, CPR is
7 requesting state agency secretaries to analyze the
8 proposed reorganization, but is not requesting that we
9 analyze a proposed reorganization at this time.

10 The Governor's CPR Commissioner has been conducting
11 hearings around the state on the proposed reorganization
12 and is expected to issue its final report on
13 October 30th. Commission staff will keep you apprised as
14 further reports and recommendations are issued.

15 CHAIR TILTON: Thank you, Cathy.

16 Any questions of members?

17 MEMBER LAZAR: I'm just curious. What does that
18 mean in terms of our staff and who you report to and that
19 sort of thing?

20 MS. HIGASHI: As near as we can tell from looking at
21 the report, it would place the Commission on State
22 Mandates within this agency, which would be called "OMB."
23 It says that the move would be intact.

24 What is not necessarily clear is how all of the
25 staffing ends up because of the fact that the proposed

1 statutory proposal that's included in the report, in the
2 appendices, has sentences basically transferring all the
3 staff to the agency. And so I suspect that once we get
4 closer, if this recommendation were to go forward, that a
5 bill would be introduced, and there would be time to
6 review the legislation in terms of exactly what it means
7 because there are two types of transfers: The intact and
8 the other, which is more of -- what can I say -- an
9 absorption process of an agency -- an agency's functions
10 being merged into the larger office of OMB.

11 MEMBER LAZAR: In your opinion, is this a good move?

12 MS. HIGASHI: Well, there are many instances where
13 we are at a significant disadvantage because we are an
14 independent organization. And one example that is most
15 recent is during the budget process, that when all of the
16 budget letters were issued over the last two and three
17 years, requesting that departments take budget
18 reductions, there were also guidelines that departments
19 that were in agencies, the agency secretaries had the
20 authority to basically come up with the total amount of
21 a hit, and decide how it should be spread among all of
22 the departments.

23 Well, we had no agency to be part of, to share our
24 budget reductions with. So we had to take most of the
25 reductions almost -- I should say, almost 100 percent

1 every time, not every instance. Certainly, this last
2 year it slowed down considerably, we kept our positions
3 that we started the fiscal year with.

4 And the other instances are when we end up out of
5 the communications loop because it's not clear whether
6 the Commission is part of the Administration. So if
7 there are memos, directives, policies, procedures
8 promulgated from the Governor's office or, I should say
9 certain other agencies, we may not get them. We'll hear
10 about them, and then we'll get copies of them from
11 friends in other state agencies. But we're not part of
12 a normal distribution process because -- and it's
13 probably because of the makeup of the Commission because
14 we do have constitutional officers in the mix.

15 MEMBER LAZAR: But will we be maintaining the
16 current staff level?

17 MS. HIGASHI: I think that would end up being a
18 function of the budget process; that depending on how the
19 proposal ends up being shaped and, as I understand it, it
20 would also have to go to the Little Hoover Commission,
21 and how Little Hoover responds to it.

22 MEMBER LAZAR: Okay, thank you.

23 MS. HIGASHI: Good questions.

24 MEMBER LAZAR: Thank you.

25 MS. HIGASHI: And since we at this time are not

1 being directed to respond to that memo, if we are
2 directed to, we will file the response and certainly
3 share with the Commission members.

4 MEMBER LAZAR: Thank you.

5 CHAIR TILTON: Any other questions or comments?

6 Thank you.

7 Thank you, Cathy.

8 MS. HIGASHI: This brings us to Item 14,
9 Mr. Starkey's report.

10 MR. STARKEY: Good morning. Mercifully, no updates,
11 so the report stands.

12 CHAIR TILTON: Thanks, Paul.

13 We're moving right along today; aren't we?

14 MS. HIGASHI: Okay, Item 15, in contrast, in
15 Item 14, we have lots of updates.

16 First, I wanted to note that in adding all of the
17 caseload and historical detail about our workload, I was
18 trying to respond to some of the questions that came up
19 at our last Commission meeting. And I had been asked the
20 question about how old are our test claims that are in
21 our pending caseload. And we have given you that
22 information.

23 Some of the cases that are very old, are very old
24 because, one, they were inactive for a number of years,
25 where a claimant, in the sense, abandoned the claim. And

1 then when we started to go through a process of trying to
2 dismiss what we perceived to be abandoned claims, other
3 claimants wished to come in and take them over. So we
4 had to go through a process of allowing another entity to
5 come in and be amended in to substitute for the original
6 claimant.

7 We have other cases here where the test claim issues
8 and statutes relate directly to the cases that are
9 pending. And one example is, on the expulsions decision
10 that was recently decided by the Supreme Court, there are
11 a number of education test claims that can now be decided
12 and scheduled because we have that decision. And rather
13 than going through the process of deciding those cases
14 and to have other changes in the future, we chose to hold
15 back on those and to wait, so then they can all be
16 decided within the same time lines.

17 Are there any questions about this?

18 Ideally, we would love to be able to say that the
19 first in, first out. But what ends up happening,
20 realistically, is that records don't close on time,
21 records remain open, parties change, representatives
22 change, our staffing has changed. Also, what we have are
23 situations where, when we're able to find test claims
24 that might be within the similar subject area, we might
25 group them for hearing. Also, we might have amendments

1 filed for other test claims filed at a future date that
2 are then consolidated with an older test claim for
3 efficiency of effort. So that's why, you know, as you
4 look at these numbers, you'll note that some of the newer
5 claims appear to have already been decided. But those
6 are most likely the amendments that were filed or
7 consolidations that occurred; and that's when it's
8 statutes that amend test claims that have previously been
9 filed.

10 And also what we do is, when we have law clerks and
11 we are training new staff, we try to find test claims
12 that are shorter test claims, that can be handled as
13 teaching test claims, in a sense. And so sometimes a
14 newer test claim may have to come out of line in order to
15 help us through that process.

16 The interesting thing that happened this year is,
17 we have an unprecedented number of old test claim
18 decisions that the Legislature has directed the
19 Commission to reconsider for various reasons. And
20 basically, the table under "C," on page 2 there, details
21 what all of those claims are. Everything that was
22 pending on the Governor's desk has been signed, on that
23 list. So we have all of these claims.

24 We have actually started our meetings and
25 discussions. We had a workshop yesterday with

1 representatives from the local agencies that filed these
2 test claims originally, to start talking about how we
3 would set up the briefing schedule and how we would
4 schedule these claims, because all of these have a
5 statutory time line of January 1, 2006, for completion.
6 And so these will need to be moved up in terms of
7 prioritization for the workload.

8 As you know, the Commission's budget didn't change
9 this year. And we maintained the same level of
10 positions. We also did not receive any funding for
11 SB 1033; and yet we know we have an application that is
12 pending and is expected to be filed very shortly.

13 We have responded to the pending SB 1033, by putting
14 in all the necessary documentation with the Department of
15 Finance, so that once that application is received, we
16 have a funding request, so that we will have the funds to
17 actually process here and determine that application.

18 In terms of the additional workload and the
19 statutory changes that have occurred, we have also
20 submitted a BCP to address that. And, obviously, we
21 won't know what will occur until the Governor's budget is
22 issued in January.

23 I have some notes also on mandate reimbursements.
24 The fact that there were only a few appropriations made
25 this year for reimbursements, one being the *Animal*

1 *Adoption* mandate, 13.9 million dollars, and the other
2 being the *Handicapped and Disabled Students* mandate.

3 Also, there were appropriations made for school district
4 mandates for prior claims.

5 The budget trailer bills are interesting this year,
6 too. The one that is probably the most significant for
7 local government is SB 1096. And that's the budget
8 trailer bill where the State actually codified its
9 promise and commitment to begin payments to local
10 agencies for the costs of all of the back claims that had
11 been accumulating.

12 SB 1102 was a general government trailer bill. And
13 this trailer bill addressed a CSM reconsideration of a
14 very old Board of Control decision regarding regional
15 housing needs determinations. And this is a case in
16 which the Commission adopted parameters and guidelines
17 but did not exist at the time that the decision was made.
18 So this will be a reconsideration under a different
19 standard and by a different body. So it will be
20 interesting.

21 We have also an education budget trailer bill, which
22 continued some suspensions and added some suspensions,
23 but also directed reconsideration of the STAR testing
24 mandate.

25 And then, obviously, we have SCA 4, the proposition,

1 which is the local government initiative that the
2 administration and the Legislature agreed on at the very
3 end of the budget process. And that will be on the
4 November ballot.

5 There was another proposition on this ballot, which
6 is Proposition 65. And we've included in your agendas
7 informational material prepared by the Leg. Analyst's
8 Office regarding those two propositions, for your
9 information, since the ballot pamphlet hasn't been issued
10 yet. But both propositions amend XIII B, section 6,
11 which is our basis for all of the Commission's
12 decision-making. So if either passes, the law will
13 change. And you may have some questions about that
14 later. I will not attempt to answer them.

15 In terms of our other legislation, the CSM sponsored
16 a bill this year, AB 2224, and that was the bill to
17 implement the recommendations from the Bureau of State
18 Audits report on animal adoption and ^{POBOR}~~POBR~~. And that bill
19 was enacted and will take effect on January 1.

20 AB 2851, which was the first of the Assembly Special
21 Committee on State Mandates-sponsored legislation was
22 also signed by the Governor. And that is another bill
23 that requires reconsiderations and also declares some of
24 the older mandates as being repealed and also has
25 suspensions in it.

1 AB 2853 was signed yesterday. And this bill makes
2 a number of mandates optional, including *County Treasury*
3 *Oversight Committees, Investment Reports, Two-Way Traffic*
4 *Signal Communications*. And it narrows another mandate,
5 *Misdemeanors Booking and Fingerprinting*.

6 AB 2854 was signed, and that was on *Local Elections*
7 *Consolidation Programs*, making the reporting activities,
8 the cost effectiveness evaluations optional. And then
9 also yesterday, AB 2855 was signed. And this bill
10 addresses a number of education mandates; and it also
11 requires the Commission to reconsider the *School*
12 *Accountability Report Cards* mandate and makes various
13 changes in the ed. mandates programs.

14 There are also some provisions in AB 2855 that
15 affect our statutory provisions. And one is that
16 there's an amendment to 17556, which clarifies the
17 provision that addresses funding and whether or not
18 funding is provided actually in a test claim statute or a
19 budget act or other appropriations bill. And that's in
20 Government Code 17556.

21 AB 2856 is also a bill that was signed yesterday.
22 And this is the one that makes the most significant
23 changes to the Commission's procedures. The first major
24 change is that it places in statute what the contents of
25 a test claim should be. And let me add -- I forgot to

1 mention that we passed out the Governor's signing message
2 on the bill package, so I think all of you have that.
3 That particular change will require that we develop a
4 test claim filing form that is very detailed and
5 different from the kinds of test claims that have been
6 filed to date. So that will be something that we'll be
7 working with all of the parties in developing, before we
8 bring a product before you, so that it can be reviewed
9 and approved.

10 There are a number of other provisions: One which
11 is significant, another one which is significant, is the
12 change to the statute of limitations. The current
13 statute of limitations is three years. This bill changed
14 it to one year.

15 There are other provisions in this bill which are
16 identical to the provisions that are in AB 2224. And
17 those relate to the sections on the Parameters and
18 Guidelines amendments and also on the -- some of the
19 provisions that relate to the State Controller's auditing
20 time lines and claiming instructions.

21 There is a provision in this bill which creates a
22 new definition for a reasonable reimbursement
23 methodology. And it's a definition that encapsulates
24 everything that everybody thinks we should be doing, we
25 would like to be doing, but hasn't been done for

1 determining how mandates should be reimbursed. And
2 basically it's a definition which covers unit costs, cost
3 allocations, formulas, whatever, that can be established
4 through the context of Parameters and Guidelines to
5 simplify claiming practices. And this bill has a
6 definition, and the definition clarifies that a
7 reasonable reimbursement methodology may be proposed by
8 claimants, Department of Finance, State Controller's
9 Office. Basically anybody. And that the Commission must
10 consider it as part of parameters and guidelines. And so
11 this could be very significant. And we look forward to
12 seeing how this develops.

13 The other issues that are addressed in this bill,
14 are the state mandates claims fund which some of us
15 recall was created to be used as a source for funding and
16 appropriating funds for mandates that were less than a
17 million dollars in cost. The balance of that fund had
18 been significantly less than a million dollars in the
19 past several years. And what has happened, as many of
20 you may recall, is during the last budget process, the
21 balance of that fund was swept back into the general
22 fund, which basically ended up with a fund with a zero
23 balance. So all of the statutory provisions relating to
24 this fund were repealed as part of this bill, since there
25 is not a need for it.

1 And then I think there's another provision that is a
2 17556-related provision, and that is, there's a change to
3 the definition of costs mandated by the federal
4 government. And that is actually an amendment that's
5 made to the definition in Government Code 17513.

6 Are there any questions on this part of it?

7 *(No audible response was heard.)*

8 MS. HIGASHI: All of these bills can be linked from
9 our Web site. We have a leg. portion, and all of these
10 bills are identified by number. And you can click on the
11 numbers and it will take you directly to the leg. info
12 Web site.

13 MEMBER BARNES: My question is, what kind of action
14 is the Board supposed to take in those cases where a
15 mandate is now optional; and/or does it require an action
16 by the Board?

17 MS. HIGASHI: We talked about this yesterday. We
18 had a local agency workshop and State Controller's Office
19 staff were present in that meeting. And we have a
20 variety of situations. The most common situation seems
21 to be the mandate that has been suspended in the
22 Governor's budget for a number of years. There's also
23 the situation where the statutes have continued to be in
24 the codes.

25 The next situation is the one where the mandate has

1 been funded forever and ever, and now it's being made
2 optional. And so for all of those situations, it seems
3 that if all of the reimbursable activities have, indeed,
4 become optional at this time or just the statute is
5 repealed, that what we would need to do is look at the
6 P's and G's and put a cap on the reimbursement period
7 based on the date that the statute is effective. And so
8 that for some mandates, it might mean a mandate that has
9 not been funded. Maybe we don't need to do anything.
10 I'm not sure yet. But for those mandates that have
11 thousand-dollar appropriations, we would need to put a
12 cap.

13 MEMBER BARNES: So the Board will have to do
14 something?

15 MS. HIGASHI: So the Board will have actions to
16 amend the P's & G's.

17 And we think at this time that the moving party will
18 probably, if the State Controller's Office agrees, would
19 be the State Controller's staff because of the direct
20 impact on the claiming instructions, that they might be
21 in the best place to identify those and to file the
22 proposed amendments. And then we could bring them
23 forward as packaged, as based on the legislation, because
24 they would all have different dates.

25 CHAIR TILTON: But I assume, Paula, you can group

1 those, so our discussion will be based on the theory?

2 MS. HIGASHI: Right, it would be the same theory.

3 And it might be that one would be an urgency bill package
4 that was on September 30th, and another one might be a
5 January 1 package.

6 Are there any other questions on these?

7 *(No audible response was heard.)*

8 MS. HIGASHI: And then there are others where the
9 P's & G's actually would need to have a couple of
10 activities deleted from reimbursable activities.

11 CHAIR TILTON: So it would just add to the workload
12 that you have been tracking for us?

13 MS. HIGASHI: Yes, a major addition to the workload.

14 There are a couple of other related bills that I
15 wanted to note:

16 SB 815 was approved by the Governor. And that bill
17 appropriated 3.66 million dollars to the Attorney General
18 to pay for one of our cases. The judgment in the County
19 of San Diego vs. the Commission on State Mandates case.

20 SB 1271, I'm not sure of the status of it yet.

21 SB 1895 was signed by the Governor. That is the one
22 that addresses the *Handicapped and Disabled Students*
23 mandate.

24 And then also there is another bill that we are
25 still exploring the relationship it will have to some of

1 our work, and that's one of the education bills that was
2 signed yesterday. I don't have it noted here, but it was
3 part of the Governor's signing package yesterday for the
4 education reform bills, and it's the one on the
5 categorical funding. And a couple of programs that are
6 identified in that bill are programs which we have
7 statewide cost estimates pending for the next agenda.
8 So we'll have to look into that as well.

9 Are there any questions about this?

10 At this time, I'd like to acknowledge all of the
11 work that Nancy Patton has put in to managing our
12 legislative program, and just acknowledge her for her
13 excellent work in coordinating all of this and making
14 sure that we always knew what was happening; and if
15 anyone needed information, that she took care of all of
16 the requests, including questions we were getting as of
17 yesterday, in terms of what the impact might be, in terms
18 of signing orders and whatnot.

19 Nancy?

20 CHAIR TILTON: Thank you, Nancy.

21 MS. HIGASHI: The last page of my report has the
22 next hearing agenda for November 18; and I'd like to just
23 start by noting that I have received a request from
24 Mr. Allan Burdick, representing CSAC, requesting that we
25 change the date of our next hearing because the hearing

1 falls within two days of CSAC's annual meeting. And
2 because of some of the issues on this year's ballot and
3 the attendance of some of the parties who would normally
4 be at our hearing, he's filed a request to postpone the
5 hearing and move it to December.

6 Staff has no objection to this request; and it's up
7 to the Commission to decide if you wish to change the
8 hearing date.

9 CHAIR TILTON: Any comments?

10 In reaction, when I heard this, my response is, as
11 you know, I've been on and off again in terms of a chair;
12 and this postponement would help my calendar also.

13 MEMBER LAZAR: It would help mine as well.

14 MEMBER BARNES: And mine as well.

15 CHAIR TILTON: So thank you for bringing the issue
16 to our attention.

17 MR. BURDICK: Mr. Chairman and Members, Allan
18 Burdick on both behalf the California State of
19 Association of Counties and the League of California
20 Cities. We have an advisory committee on state mandates.
21 And there are a number of issues that are coming up that
22 will affect that date. Obviously, the first and most
23 significant, probably, is the election; and hopefully the
24 strong probability that Proposition 1-A will pass.
25 There's also Proposition 65, both which would have a

1 significant impact on the operation of the Commission
2 if one or both of those -- well, both of those -- they
3 could both pass, but only one would become law,
4 obviously.

5 Secondly, as was reported just recently by Paula
6 last night, when the Governor signed Assembly Bill 2856,
7 that that's going to have another significant impact on
8 how we do business and file test claims in January. And
9 I think there's going to be a need to have some
10 discussions with Committee staff on how we meet the test
11 claim process come January, and prepare for that.

12 There are two significant mental health bills. One
13 was AB 2781 of the 2002 legislative session, which made
14 changes to one of your existing mandates. That's the
15 handicap and disabled program. That was -- there's a
16 second bill that you reported on today, Senate bill 1895.
17 And in combination, those two make very significant
18 impacts on that mandate. And we would like to see that
19 mandate handled as soon as possible and the discussions
20 moved forward on that.

21 Our concern is that we would be able to do something
22 before the next hearing.

23 As was mentioned, CSAC does have its annual
24 conference at the same time as the hearing; and we had
25 hoped that possibly some Members of the Commission, as

1 well as some County staff that are involved, would be at
2 that meeting, which conflicts with this.

3 So we think there's a series of reasons to postpone
4 that meeting. We just suggested a date of December 9th,
5 which is the date we just felt should be sometime in
6 December. So something probably earlier, so you don't
7 get close to the Christmas holiday.

8 But I would also like to apologize for the lateness
9 of the request and also to our colleagues in the school
10 community. We didn't coordinate with them. But I'm sure
11 if they have any concerns, that we would be able to hear
12 from them.

13 Thank you very much.

14 CHAIR TILTON: Any questions or comments of members?

15 Any other comments from the audience, in terms of
16 the motion to move the date from November 18th to
17 December 9th?

18 *(No audible response was heard.)*

19 CHAIR TILTON: Do we have a motion then?

20 MEMBER LAZAR: I'll make those motion.

21 MEMBER BARNES: I'll second.

22 CHAIR TILTON: Motion and a second. All in favor,
23 say "aye."

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

25 CHAIR TILTON: Opposed?

1 (No audible response was heard.)

2 CHAIR TILTON: The motion carries.

3 MR. BURDICK: Thank you very much.

4 CHAIR TILTON: Is there any other public comment?
5 Does anyone want to talk on anything we have before us
6 today?

7 (No audible response was heard.)

8 CHAIR TILTON: With that then, the Commission will
9 adjourn to its closed session. We will now meet in
10 closed executive session pursuant to Government
11 Code 11126(e), to confer with and receive advice from
12 legal counsel, for consideration and action as necessary
13 and appropriate upon the pending litigation listed on the
14 public notice and agenda; and to confer with and receive
15 advice from legal counsel regarding potential litigation
16 and pursuant to Government Code section 11126(a) and
17 17526, the Commission will also confer on personnel
18 matters listed on the published noticed agenda.

19 We'll reconvene in probably about ten or 15 minutes.

20 *(The Commission met in closed executive session from*
21 *10:20 a.m. to 10:40 a.m.)*

22 CHAIR TILTON: The Commission met in closed
23 executive session pursuant to Government Code 11126(e),
24 to confer with and receive advice from legal counsel for
25 consideration and action, as necessary and appropriate,

1 on the pending litigation listed on the public notice and
2 agenda, and Government Code section 11126(a), 17526, to
3 confer on personnel matters listed on the published
4 agenda.

5 All required reports from the closed session have
6 been made; and with no further business to discussion,
7 I'd entertain a motion for adjournment.

8 MEMBER LAZAR: So moved.

9 CHAIR TILTON: Moved.

10 MEMBER McATEE: Second.

11 CHAIR TILTON: Second.

12 All in favor, "aye."

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

14 MS. HIGASHI: Thank you.

15 MR. STARKEY: Thank you.

16 *(Proceedings concluded at 10:41 a.m.)*

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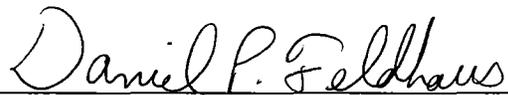
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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

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

In witness whereof, I have hereunto set my hand this 25th day of October 2004.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR