

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Park Tower, 980 9th Street, Second Floor Conference Room,
Sacramento, CA, 95814 and via Zoom
January 26, 2024

Present: Member Gayle Miller, Chairperson (via Zoom)
Representative of the Director of the Department of Finance
Member David Oppenheim
Representative of the State Controller, Vice Chairperson
Member Lee Adams
County Supervisor
Member Juan Fernandez
Representative of the State Treasurer
Member Jennifer Holman
Representative of the Director of the Office of Planning and Research

Absent: Member Renee Nash
School District Board Member

Vacant: Public Member

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

CALL TO ORDER AND ROLL CALL

Chairperson Miller called the meeting to order at 10:11 a.m. Acting Executive Director Juliana Gmur stated that Member Nash notified staff that she was not available to attend this meeting and called the roll. Members Adams, Fernandez, Holman, Miller, and Oppenheim, all indicated that they were present.

ELECTION OF OFFICERS AND SUBCOMMITTEE APPOINTMENTS

Acting Executive Director Gmur presented the first portion of the first item, for the election of the chair and vice chair of the Commission.

Chairperson Miller asked for nominations for chairperson. Member Adams nominated Joe Stephenshaw, the Director of Finance, as chairperson. Chairperson Miller asked if there were any other nominations. Member Oppenheim nominated State Treasurer Fiona Ma to serve as vice chairperson. Chairperson Miller asked if they could do one at a time. Member Oppenheim agreed. Chairperson Miller asked if there were any other nominations for chairperson. There was no response. Chairperson Miller closed the nominations and asked if there was any further discussion. There was no response. Acting Executive Director Gmur called the roll. The Director of Finance was elected chairperson by a vote of 5-0 with Member Nash absent.

Chairperson Miller asked for nominations for vice chairperson. Member Oppenheim nominated State Treasurer Fiona Ma to serve as vice chairperson. Chairperson Miller asked if there were any other nominations. There was no response. Chairperson Miller closed the nominations for vice chairperson. Acting Executive Director Gmur called the roll. The State Treasurer was elected vice chairperson by a vote of 5-0 with Member Nash absent.

Acting Executive Director Gmur introduced the second portion of this item, for the nomination of members to the Personnel, Legislation, and Litigation subcommittees. Acting Executive Director Gmur stated that the membership for 2023 of the Personnel Subcommittee was Joe Stephenshaw, Director of the Department of Finance and Sarah Olsen, public member.

Chairperson Miller requested nominations for the Personnel Subcommittee. Member Adams asked for the membership of the other two committees. Acting Executive Director Gmur stated the membership for 2023 of the Legislation Subcommittee as Malia Cohen, State Controller, Lee Adams, County Supervisor, and Sarah Olsen, public member, alternate; and the Litigation Subcommittee membership as Fiona Ma, State Treasurer, Renee Nash, School District Board Member, and Malia Cohen, State Controller, alternate.

Member Fernandez made a motion for the State Treasurer, Fiona Ma to replace Member Olsen on the Personnel Subcommittee. Chairperson Miller asked if there was any discussion or questions. There was no response. Chairperson Miller closed the nominations. Acting Executive Director Gmur called the roll. The Director of the Department of Finance, Joe Stephenshaw and the State Treasurer, Fiona Ma were elected to serve on the Personnel Subcommittee by a vote of 5-0 with Member Nash absent.

Acting Executive Director Gmur stated the membership for 2023 of the Legislation Subcommittee membership as Malia Cohen, State Controller, Lee Adams, County Supervisor, and Sarah Olsen, public member, alternate. Chairperson Miller requested nominations for the Legislation subcommittee. Member Adams nominated himself to continue to serve on the Legislation subcommittee. Member Oppenheim offered to nominate the State Controller, Malia Cohen to continue to serve on the Legislation subcommittee. Chairperson Miller nominated Member Adams and the State Controller to the Legislation subcommittee and asked Member Holman if she was willing to serve as the alternate on the Legislation subcommittee and Member Holman agreed. Chief Legal Counsel Camille Shelton stated that it is the principal who is the member of the subcommittee. Chairperson Miller thanked Chief Legal Counsel Shelton and nominated Director of the Governor's Office of Planning and Research, Sam Assefa to serve as alternate on the Legislation subcommittee. Chairperson Miller asked if there was any further discussion. There was no response. Chairperson Miller closed the nominations. Acting Executive Director Gmur called the roll. Malia Cohen, State Controller and Member Adams, County Supervisor were elected to continue to serve and the Director of the Governor's Office of Planning and Research, Sam Assefa was elected to serve as the alternate on the Legislation subcommittee, by a vote of 5-0 with Member Nash absent.

Acting Executive Director Gmur stated the membership for 2023 of the Litigation Subcommittee membership as Fiona Ma, State Treasurer, Renee Nash, School District Board Member, and Malia Cohen, State Controller, alternate.

Member Adams nominated all three to be reappointed. Chairperson Miller asked if there were any other nominations. There was no response. Chairperson Miller closed the nominations. Acting Executive Director Gmur called the roll. Fiona Ma, State Treasurer and Renee Nash, School District Board Member were elected to continue to serve and Malia Cohen, State Controller was elected to continue to serve as the alternate on the Litigation subcommittee by a vote of 5-0 with Member Nash absent.

APPROVAL OF MINUTES

Chairperson Miller asked if there were any objections or corrections of the December 1, 2023 minutes. There was no response. Chairperson Miller asked if there was any public comment. There was no response. Member Adams made a motion to adopt the minutes. Chairperson Miller seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the December 1, 2023, hearing minutes by a vote of 4-0 with Member Fernandez abstaining and Member Nash absent.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Miller asked if there was any public comment. There was no response.

CONSENT CALENDAR

INFORMATIONAL HEARINGS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 8 (info/action)

ADOPTION OF RULEMAKING CALENDAR

Item 8* Proposed Rulemaking Calendar, 2024

Acting Executive Director Gmur stated that Item 8 was proposed for consent. Chairperson Miller asked if there were any objections to the proposed consent calendar. There was no response. Member Adams made a motion to adopt the consent calendar. Member Fernandez seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the consent calendar by a vote of 5-0 with Member Nash absent.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Acting Executive Director Gmur swore in the parties and witnesses participating in the Article 7 portion of the hearing.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 3 Appeal of Executive Director Decisions

Acting Executive Director Gmur presented this item, stating that Item 3 is reserved for appeals of Executive Director decisions and that there were no appeals to consider for this hearing.

TEST CLAIMS

- Item 4 *Criminal Procedure: Resentencing, 22-TC-03*
Penal Code Section 1170.03 As Added by Statutes 2021, Chapter 719, Section 3.1 (AB 1540)¹
County of Los Angeles, Claimant

Commission Counsel Anna Barich presented this item and recommended that the Commission adopt the Proposed Decision to deny this Test Claim.

Fernando Lemus and Lucia Gonzalez appeared on behalf of the claimant. Chris Hill and Kaily Yap appeared on behalf of the Department of Finance.

Following statements by Mr. Lemus, Ms. Gonzalez, Mr. Hill, Ms. Yap, Chairperson Miller asked if there was any public comment. There was no response. Chairperson Miller asked if there were any questions from board members. Following discussion between Member Adams, Commission Counsel Barich, Chief Legal Counsel Shelton, and Ms. Gonzalez, Chairperson Miller made the motion to adopt the staff recommendation. Member Holman seconded the motion. Chairperson Miller asked if there was any further discussion. There was no response. Acting Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision by a vote of 5-0 with Member Nash absent.

PARAMETERS AND GUIDELINES

- Item 5 *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2009-0002, Sections D.2.; F.1.d.7.i.; F.4.b.; G.6.; K.1.b.4.n.; K.3.a.3.c.; J.1.; J.3.; J.4.; and Attachment D, Section D-2, Adopted December 16, 2009, 10-TC-11*
Cities of Dana Point, Laguna Hills, Laguna Niguel, Lake Forest, Mission Viejo, San Juan Capistrano, the County of Orange, and the Orange County Flood Control District, Claimants

Chief Legal Counsel Shelton presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

Howard Gest appeared on behalf of the claimants. Donna Ferebee appeared on behalf of the Department of Finance.

Following statements by Mr. Gest and Ms. Ferebee, Chairperson Miller asked if there was any public comment. There was no response. Chairperson Miller asked if there were any questions from board members or further discussion. There was no response. Chairperson Miller asked if there was a motion. Member Adams made the motion to adopt the staff recommendation. Member Oppenheim seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the

¹ Statutes 2022, chapter 58 (AB 200) renumbered Penal Code section 1170.03 to Penal Code section 1172.1, with no changes to the statute's contents, effective June 30, 2022. In addition, Statutes 2023, chapter 131 (AB 1754) amended section 1172.1 to remove a comma.

Proposed Decision and Parameters and Guidelines by a vote of 5-0 with Member Nash absent.

Item 6 *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, 11-TC-03*

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, Sections D.2., G.1.d., G.3.-5., K.3.c.1.-4., and Attachment E., Section II.E.2.-5.

County of Riverside, Riverside County Flood Control and Water Conservation District, and Cities of Murrieta, Temecula, and Wildomar, Claimants

Chief Legal Counsel Shelton presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

David Burhenn appeared on behalf of the claimants. Marilyn Munoz appeared on behalf of the Department of Finance. Acting Executive Director Gmur swore Ms. Munoz in.

Following statements by Mr. Burhenn and Ms. Munoz, Chairperson Miller asked if there was any public comment. There was no response. Chairperson Miller asked if there were any questions from board members. There was no response. Chairperson Miller asked if there was a motion. Member Adams made the motion to adopt the staff recommendation. Member Fernandez seconded the motion. Acting Executive Director Gmur called the roll. The Commission voted to adopt the Proposed Decision and Parameters and Guidelines by a vote of 5-0 with Member Nash absent.

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

Item 7 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Acting Executive Director Gmur presented this item, stating that Item 7 is reserved for county applications for a finding of significant financial distress, or SB 1033 applications, and that no SB 1033 applications have been filed.

INFORMATIONAL HEARINGS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 8 (info/action)

REPORTS

Item 9 Legislative Update (info)

Program Analyst Jill Magee presented this item.

Item 10 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Shelton presented this item.

Item 11 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the March 2024 and May 2024 Meetings (info)

Acting Executive Director Gmur presented this item and described the Commission's workload.

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

The Commission adjourned into closed executive session at 11:00 a.m., pursuant to Government Code section 11126(e). The Commission met in closed session 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; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. PENDING LITIGATION

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

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates*
Los Angeles County Superior Court, Case No. 23STCP04362
(*Accomplice Liability for Felony Murder*, 19-TC-02)

B. POTENTIAL LITIGATION

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(e):

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 or staff.

C. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1).

RECONVENE IN PUBLIC SESSION

At 11:20 a.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miller reported that the Commission met in closed executive session pursuant to Government Code section 11126(e). The Commission conferred with and received advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and conferred with and received advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Chairperson Miller thanked Acting Executive Director Gmur for her first hybrid meeting and asked for a motion to adjourn. Member Adams made a motion to adjourn the meeting. Chairperson Miller seconded the motion. The January 26, 2024 meeting was adjourned at 11:21 a.m., by a vote of 5-0 with Member Nash absent.

Juliana Gmur
Acting Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

RECEIVED
FEB 16 2024
COMMISSION ON
STATE MANDATES

PUBLIC MEETING

FRIDAY, JANUARY 26, 2024

10:11 A.M.

MEETING HELD

AT 980 9TH STREET

2ND FLOOR CONFERENCE ROOM

SACRAMENTO, CALIFORNIA

AND

VIA ZOOM

VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

REPORTED BY:

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Certified Shorthand Reporter No. 13061
Registered Professional Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

GAYLE MILLER
Director
Department of Finance
(Chairperson of the Commission)

JUAN FERNANDEZ
Representative for FIONA MA
State Treasurer
(Vice Chairperson of the Commission)

DAVID OPPENHEIM
Representative for MALIA COHEN
State Controller

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

JENNIFER HOLMAN
Representative for SAMUEL ASSEFA, Director
Office of Planning & Research

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COMMISSION STAFF

JULIANA GMUR
Acting Executive Director

CAMILLE N. SHELTON
Chief Legal Counsel

ANNA BARICH
Commission Counsel

JILL MAGEE
Program Analyst

JOSEPH ORTIZ
Information Specialist I

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1 **A P P E A R A N C E S C O N T I N U E D**

2 **PUBLIC PARTICIPANTS**

3 FERNANDO LEMUS
4 County of Los Angeles
5 (Item 4)

6 LUCIA GONZALEZ
7 County of Los Angeles
8 (Item 4)

9 CHRIS HILL
10 Department of Finance
11 (Item 4)

12 KAILY YAP
13 Department of Finance
14 (Item 4)

15 HOWARD GEST
16 Burhenn & Gest
17 (Item 5)

18 DONNA FEREBEE
19 Department of Finance
20 (Item 5)

21 DAVID BURHENN
22 Burhenn & Gest
23 (Item 6)

24 MARILYN MUNOZ
25 Department of Finance
 (Item 6)

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C. Parameters and Guidelines

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County of Riverside, Riverside County Flood Control and Water Conservation District, and Cities of Murrieta, Temecula, and Wildomar, Claimants

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1 FRIDAY, JANUARY 26, 2024, 10:11 A.M.

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3 CHAIRPERSON MILLER: Good morning, everyone. And
4 the meeting of the Commission on State Mandates will
5 come to order at 10:11. Welcome to our first hybrid
6 meeting, and thank you for your patience.

7 Senate Bill 544 amended the Bagley-Keene Open
8 Meeting Act to allow hybrid meetings under Government
9 Code Section 11123.2, where access to this meeting is
10 provided both remotely and at a physical teleconference
11 location. The Commission continues its commitment to
12 ensure that its public meetings are accessible to the
13 public and that the public has the opportunity to
14 observe the meeting and to participate by providing
15 written and verbal comment on Commission matters.

16 For those participating in person, I have some
17 housekeeping information. Thank you for being there
18 today.

19 On the table near the door are paper copies of the
20 meeting notice and agenda, new filings, witness list,
21 and consent calendar. The electronic public hearing
22 binder is also located there on an iPad if you want to
23 use that.

24 When called up for an item, the parties and
25 witnesses will please sit at the witness tables, and

1 Ms. Gmur is there to help you. The restrooms are
2 located out the door and down the hallway to the left.
3 The men's room is across the open atrium. The code for
4 both restrooms is 5314, which is also posted on the door
5 as you exit the conference room.

6 Finally, please take note of the emergency exits in
7 the room. For those participating remotely, the
8 material for today's meeting, including the notice,
9 agenda, and witness list, are all available on the
10 Commission's website, www.csm.ca.gov, under the
11 "Hearings" tab. csm.ca.gov, under the "Hearings" tab.

12 When called for an item, the parties and witnesses
13 will please turn on your video and unmute your
14 microphone. At the conclusion of your item, please turn
15 off your video, unmute your microphone. In the event we
16 experience technical difficulties or the meeting is
17 bumped offline, we will restart and allow people to
18 rejoin before recommencing the meeting.

19 Next we would like to announce that on
20 December 1st, 2023, the Commission members met in closed
21 session, pursuant to Government Code Section
22 11126(a)(1), and voted unanimously to appoint
23 Ms. Juliana Gmur as Acting Executive Director from
24 January 22nd, 2024, to April 15th, 2024, while Executive
25 Director Heather Halsey is out on leave.

1 And we're very grateful, Ms. Gmur, that you have
2 stepped into this role, seamlessly. And wish Heather
3 all the best on her leave.

4 And with that, we are excited to start our new
5 hybrid meeting.

6 So Ms. Gmur, will you please call the roll to
7 establish a quorum.

8 MS. GMUR: Yes, ma'am.

9 Ms. Nash contacted Commission staff and let us know
10 that she's not available to attend this meeting.

11 Mr. Adams.

12 MEMBER ADAMS: Here.

13 MS. GMUR: Mr. Fernandez.

14 MEMBER FERNANDEZ: Here.

15 MS. GMUR: Ms. Holman.

16 MEMBER HOLMAN: Here.

17 MS. GMUR: Ms. Miller.

18 CHAIRPERSON MILLER: Here.

19 MS. GMUR: Mr. Oppenheim.

20 MEMBER OPPENHEIM: Here.

21 CHAIRPERSON MILLER: Great. Thank you very much,
22 everyone. We have a quorum.

23 MS. GMUR: Next is Item 1. Election of officers.
24 At the January 27th, 2023, meeting, the Commission
25 elected Joe Stephenshaw, Director of Finance,

1 Chairperson of the Commission; and Malia Cohen, State
2 Controller, Vice Chairperson.

3 All Commission members, as defined by Government
4 Code 17525, are eligible to be officers. The
5 Commission's regulations do not describe an election
6 procedure. However, the regulations specify that
7 Robert's Rules of Order are the Commission's default
8 rules.

9 Under Robert's Rules, there are two ways to hold
10 the election:

11 One, nominations may be made and a vote taken. A
12 nomination does not require a second;

13 Two, a motion may be made to elect a member
14 Chairperson or Vice Chairperson. A motion requires a
15 second, and then a vote is taken.

16 Staff recommends that the current Chairperson
17 conduct the elections of Chairperson and Vice
18 Chairperson.

19 CHAIRPERSON MILLER: Great. Thank you very much.
20 And I learned something. I actually did not know that
21 distinction in Robert's Rules.

22 So with that, is there a nomination for
23 Chairperson?

24 MEMBER ADAMS: Madam Chair, I would make a motion
25 to appoint Director of Finance Joe Stephenshaw as Chair

1 for 2024.

2 CHAIRPERSON MILLER: Great. Thank you very much,
3 Mr. Adams.

4 So just to be clear, that was a nomination; so it
5 does not require a second.

6 Correct, Ms. Gmur?

7 MS. GMUR: That's correct, Madam Chair.

8 CHAIRPERSON MILLER: Great. So there is --

9 MEMBER ADAMS: I will make that a nomination.

10 CHAIRPERSON MILLER: Great. Thank you very much,
11 Mr. Adams. I appreciate it.

12 So the Director of Finance, Joe Stephenshaw, has
13 been nominated for Chairperson.

14 Are there any other nominations?

15 MEMBER OPPENHEIM: I would nominate State Treasurer
16 Fiona Ma as Vice Chair for the Commission.

17 CHAIRPERSON MILLER: As Vice Chair?

18 Mr. Oppenheim, do you mind if we do one at a time?
19 Would that work for you?

20 MEMBER OPPENHEIM: Of course. Sorry about that.

21 CHAIRPERSON MILLER: Thank you. I'm sorry.

22 So with that, are there any other nominations for
23 Chair?

24 (No response.)

25 CHAIRPERSON MILLER: Seeing none, without

1 objection, the nominations are closed.

2 Mr. Lee [sic] nominated the Chair of Finance, Joe
3 Stephenshaw, as the Chair.

4 And we will now -- any discussion?

5 (No response.)

6 CHAIRPERSON MILLER: Great. Ms. Gmur, will you
7 then call the roll on the nomination of the Director of
8 Finance as the Chairperson.

9 Mr. Adams.

10 MEMBER ADAMS: Aye.

11 MS. GMUR: Mr. Fernandez.

12 MEMBER FERNANDEZ: Aye.

13 MS. GMUR: Ms. Holman.

14 MEMBER HOLMAN: Aye.

15 MS. GMUR: Ms. Miller.

16 CHAIRPERSON MILLER: Aye.

17 MS. GMUR: Mr. Oppenheim.

18 MEMBER OPPENHEIM: Aye.

19 CHAIRPERSON MILLER: Great. The nomination
20 carries. And the Director of Finance will carry out
21 these really important duties. Thank you for the
22 confidence.

23 Next, are there nominations for the Vice
24 Chairperson?

25 MEMBER OPPENHEIM: Yes. I would nominate State

1 Treasurer Fiona Ma as the Vice Chair of the Commission
2 on State Mandates.

3 CHAIRPERSON MILLER: Great. Thank you very much,
4 Mr. Oppenheim.

5 The State Treasurer, Fiona Ma, has been nominated
6 for Vice Chairperson.

7 Are there any other nominations?

8 (No response.)

9 CHAIRPERSON MILLER: Seeing none, and without
10 objection, nominations are closed.

11 And the Treasurer has been nominated as Vice
12 Chairperson, and it has been moved -- and we do not need
13 a second.

14 So with that, if there's no discussion, Ms. Gmur,
15 will you please call the roll on the nomination of the
16 Treasurer.

17 Mr. Adams.

18 MEMBER ADAMS: Aye.

19 MS. GMUR: Mr. Fernandez.

20 MEMBER FERNANDEZ: Aye.

21 MS. GMUR: Ms. Holman.

22 MEMBER HOLMAN: Aye.

23 MS. GMUR: Ms. Miller.

24 CHAIRPERSON MILLER: Aye.

25 Great. The Treasurer is appointed as the Chair --

1 Vice Chairperson, excuse me.

2 Really appreciate, Mr. Fernandez, you taking on --

3 MS. GMUR: Excuse me, Madam Chair.

4 CHAIRPERSON MILLER: Yes.

5 MS. GMUR: Mr. Oppenheim.

6 MEMBER OPPENHEIM: Aye.

7 CHAIRPERSON MILLER: Oh. Excuse me, Mr. Oppenheim.

8 MS. GMUR: Motion carries, Madam Chair.

9 CHAIRPERSON MILLER: With that, the Treasurer is
10 the Vice Chairperson on the Commission on State
11 Mandates.

12 Thank you very much, everyone, and thank you for
13 agreeing to serve in this capacity.

14 MS. GMUR: Next we will continue with Item 1 and
15 the subcommittee appointments. Due to the departure of
16 member Sarah Olsen, public member, one position on
17 Personnel Subcommittee and one alternate position on the
18 Legislation Subcommittee of the Commission are currently
19 vacant and need to be filled. This is an opportunity to
20 members who wish to serve on the subcommittee to
21 volunteer to do so and for those who would like to
22 switch or discontinue their current roles on the
23 subcommittees to do so.

24 Any member may volunteer and nominate themselves to
25 serve, and upon a vote of the Commission, they serve on

1 a subcommittee of the Commission.

2 Nominations may be made and a vote taken. A
3 nomination does not require a second. Or a motion may
4 be made to elect a member for a subcommittee; a motion
5 requires a second.

6 Staff recommends that the members nominate
7 themselves to continue to serve or to be newly appointed
8 to the subcommittees upon approval of the Commission.
9 Staff further recommends that the Chairperson conduct
10 the elections for the positions on the Personnel,
11 Legislation, and Litigation Subcommittees.

12 The membership of the Commission's Personnel
13 Subcommittee for 2023: Joe Stephenshaw, Director of the
14 Department of Finance; and Sarah Olsen, public member.

15 CHAIRPERSON MILLER: Great. Thank you very much.

16 So we will start with each of these separately.

17 And is there a nomination or a volunteer to replace
18 Sarah Olsen on the Personnel Subcommittee?

19 And just to confirm, Ms. Gmur, this can be a
20 nomination without a second, correct?

21 MS. GMUR: That's correct, Madam Chair.

22 CHAIRPERSON MILLER: Great. Thank you.

23 Is there a nomination, then, to replace Ms. Olsen
24 on the Personnel Subcommittee?

25 (No response.)

1 CHAIRPERSON MILLER: Anyone interested in filling
2 that role, I would happily nominate you. It is -- we --
3 we meet as needed. This is not necessarily an
4 additional meeting time. And subcommittees -- my
5 understanding is subcommittees can meet remotely.

6 Am I still correct about that?

7 (No response.)

8 CHAIRPERSON MILLER: Yes. Great.

9 So the obligation is only as needed. And there is
10 opportunity to meet remotely.

11 MEMBER ADAMS: Madam Chair, just a point of order:
12 It might be an idea to know who was on the other two
13 subcommittees so that everyone can decide that they
14 don't do double, triple duty.

15 CHAIRPERSON MILLER: Oh, yes. That's a great idea.
16 Yes.

17 Could you read the members of all of the three
18 subcommittees, please, Ms. Gmur?

19 MS. GMUR: Very good.

20 The membership of the Commission's Personnel
21 Subcommittee for 2023, as stated, is Joe Stephenshaw,
22 Director of the Department of Finance; and Sarah Olsen,
23 public member.

24 The membership of the Commission's Legislation
25 Subcommittee for 2023: Malia Cohen, State Controller;

1 and Lee Adams, County Supervisor; Sarah Olsen, public
2 member, alternate.

3 And, finally, the membership of the Commission's
4 litigation subcommission for 2023: Fiona Ma, State
5 Treasurer; and Renee Nash, school district board member;
6 Malia Cohen, State Controller, alternate.

7 CHAIRPERSON MILLER: And just as a -- just as
8 background, the only subcommittee that met in 2023 was
9 the Personnel Subcommittee.

10 MEMBER FERNANDEZ: Madam Chair --

11 CHAIRPERSON MILLER: Any -- please,
12 yes, Mr. Fernandez.

13 MEMBER FERNANDEZ: I understand that we can
14 nominate ourselves or volunteer for these positions?

15 CHAIRPERSON MILLER: Please. Yes.

16 MEMBER FERNANDEZ: So I would like to volunteer the
17 State Treasurer to serve this committee.

18 CHAIRPERSON MILLER: Great. Thank you very much.

19 We have a nomination for the State Treasurer to
20 replace Ms. Olsen on the Personnel Subcommittee.

21 Is -- are there any -- is there any discussions or
22 questions?

23 (No response.)

24 CHAIRPERSON MILLER: Without objection, nominations
25 are closed. And Mr. Fernandez nominates the State

1 Treasurer to the Personnel Subcommittee.

2 May we take the roll, please.

3 MS. GMUR: Mr. Adams.

4 MEMBER ADAMS: Aye.

5 MS. GMUR: Mr. Fernandez.

6 MEMBER FERNANDEZ: Aye.

7 MS. GMUR: Ms. Holman.

8 MEMBER HOLMAN: Aye.

9 MS. GMUR: Ms. Miller.

10 CHAIRPERSON MILLER: Aye.

11 MS. GMUR: Mr. Oppenheim.

12 MEMBER OPPENHEIM: Aye.

13 CHAIRPERSON MILLER: Great. Thank you very much.

14 That motion carries, and the Treasurer and the Director
15 of Finance will serve on the Personnel Subcommittee.

16 And who was the alternate on that committee?

17 MS. GMUR: Madam Chair --

18 MS. SHELTON: Traditionally there hasn't been an
19 alternate --

20 CHAIRPERSON MILLER: Okay.

21 MS. SHELTON: -- but you can certainly appoint one
22 if you want.

23 CHAIRPERSON MILLER: Great.

24 Why don't we leave it as the Director of Finance
25 and the Treasurer.

1 Without objection.

2 (No response.)

3 CHAIRPERSON MILLER: Thank you.

4 So now we will move to the Legislation

5 Subcommittee.

6 MS. GMUR: Madam Chair, shall I restate the 2023
7 subcommittee members for the record?

8 CHAIRPERSON MILLER: Sure. Please. Thank you.

9 MS. GMUR: The membership of the Commission's
10 Legislation Subcommittee for 2023: Malia Cohen, State
11 Controller; and Lee Adams, County Supervisor; Sarah
12 Olsen, public member, alternate.

13 CHAIRPERSON MILLER: Great.

14 So is there a -- if -- if you are both willing to
15 stay on the subcommittee, do we need to -- do we need to
16 vote or it? Or if they agree to stay, does that work?

17 MS. SHELTON: I will chime in on that. Yes, we do
18 need to take a vote.

19 CHAIRPERSON MILLER: Okay.

20 MS. SHELTON: We require an election every January.

21 MEMBER ADAMS: Madam Chair, I'm happy to continue
22 to serve on the Legislation Subcommittee.

23 CHAIRPERSON MILLER: Thank you.

24 Mr. Oppenheim.

25 MEMBER OPPENHEIM: If there's another who would

1 like to serve on it, we would be happy to entertain
2 that; otherwise, we would be happy to continue to serve.

3 CHAIRPERSON MILLER: Great. Thank you very much.

4 With that, I nominate the State Treasurer -- the --
5 excuse me -- Mr. Adams to the Legislation Subcommittee
6 and the State Controller to the Legislation
7 Subcommittee.

8 Is there a member interested in being the
9 alternate?

10 Ms. Holman, would you be willing to be the
11 alternate?

12 MEMBER HOLMAN: I was about to -- I was about to
13 nominate Sam Assefa, but sure. I'm happy to --

14 CHAIRPERSON MILLER: Thank you very much.

15 So we have the -- Mr. Adams, the State Controller;
16 and Ms. Holman as the alternate.

17 MS. SHELTON: Madam Chair, may I just clarify.

18 CHAIRPERSON MILLER: Yeah.

19 MS. SHELTON: It would be Sam Assefa because it is
20 the principal who is the member of the subcommittee.

21 There was some --

22 CHAIRPERSON MILLER: Oh, great.

23 MS. SHELTON: There was some confusion last year,
24 but the principal is the member. And then they can
25 designate whoever one of their employees they want to

1 send.

2 CHAIRPERSON MILLER: Oh. Thank you very much for
3 clarifying that. Thank you, Ms. Shelton.

4 So let me then clarify that it would be Mr. Adams,
5 the public member; the State Controller; and the
6 Director of the Office of Planning and Research as the
7 alternate member.

8 So with that --

9 MEMBER ADAMS: Madam Chair --

10 CHAIRPERSON MILLER: -- are there any other
11 nominations?

12 MEMBER ADAMS: Madam Chair, just --

13 CHAIRPERSON MILLER: Without objection, the
14 nominations are closed --

15 MEMBER ADAMS: Madam Chair --

16 CHAIRPERSON MILLER: -- and we --

17 MEMBER ADAMS: -- just for the -- just for the
18 record, I'm not the --

19 CHAIRPERSON MILLER: Yes.

20 MEMBER ADAMS: -- public -- I am not the public
21 member. I am the county member.

22 CHAIRPERSON MILLER: Oh, I'm doing not very well
23 today. Okay.

24 MEMBER ADAMS: Sorry.

25 CHAIRPERSON MILLER: The County member. Sorry,

1 Mr. Adams. Thank you.

2 So let me clarify again: Mr. Adams, the county
3 member; the State Controller; and the Director of Office
4 and Planning and Research as the alternate.

5 So with that, is there any further discussion?

6 (No response.)

7 CHAIRPERSON MILLER: Seeing none, Ms. Gmur, will
8 you take the roll, please.

9 MS. GMUR: Mr. Adams.

10 MEMBER ADAMS: Aye.

11 MS. GMUR: Mr. Fernandez.

12 MEMBER FERNANDEZ: Aye.

13 MS. GMUR: Ms. Holman.

14 MEMBER HOLMAN: Aye.

15 MS. GMUR: Ms. Miller.

16 CHAIRPERSON MILLER: Aye.

17 MS. GMUR: Mr. Oppenheim.

18 MEMBER OPPENHEIM: Aye.

19 CHAIRPERSON MILLER: Great. So the Legislation
20 Subcommittee is, therefore, constituted.

21 And, finally, Ms. Gmur.

22 MS. GMUR: Yes, Madam Chair.

23 The membership of the Commission's Litigation
24 Subcommittee for 2023: Fiona Ma, State Treasurer; and
25 Renee Nash, school district board member; Malia Cohen,

1 State Controller, alternate.

2 MEMBER ADAMS: Madam Chair, I would nominate all
3 three to be reappointed.

4 CHAIRPERSON MILLER: Great. Thank you very much.

5 We have a nomination for the Litigation
6 Subcommittee.

7 Is -- are there any other nominations?

8 (No response.)

9 CHAIRPERSON MILLER: Without objection, the
10 nominations are closed.

11 And, Ms. Gmur, will you please call the roll.

12 MS. GMUR: Mr. Adams.

13 MEMBER ADAMS: Aye.

14 MS. GMUR: Mr. Fernandez.

15 MEMBER FERNANDEZ: Aye.

16 MS. GMUR: Ms. Holman.

17 MEMBER HOLMAN: Aye.

18 MS. GMUR: Ms. Miller.

19 CHAIRPERSON MILLER: Aye.

20 MS. GMUR: Mr. Oppenheim.

21 MEMBER OPPENHEIM: Aye.

22 CHAIRPERSON MILLER: Great. That motion carries.

23 And we have a Litigation Subcommittee.

24 Next is Item 2.

25 Are there any objections to or additional

1 corrections of the December 1st, 2023, minutes?

2 (No response.)

3 CHAIRPERSON MILLER: Seeing none, is there any
4 public comment on this item?

5 (No response.)

6 CHAIRPERSON MILLER: Any public comment in the
7 room?

8 (No response.)

9 CHAIRPERSON MILLER: If you have public comment and
10 you are on the Zoom link, please use the "Raise Hand"
11 feature.

12 I see no public comment.

13 Any further discussion?

14 MEMBER ADAMS: I would move approval.

15 CHAIRPERSON MILLER: Seeing none, may we have a
16 motion for adoption of the minutes, please?

17 MEMBER ADAMS: I would so move.

18 CHAIRPERSON MILLER: Was that Mr. Adams? Thank
19 you, Mr. Adams.

20 Is there a second?

21 I will second.

22 Ms. Gmur, will you call the roll on the minutes,
23 please.

24 MS. GMUR: Mr. Adams.

25 MEMBER ADAMS: Aye.

1 MS. GMUR: Mr. Fernandez.

2 MEMBER FERNANDEZ: Abstain.

3 MS. GMUR: Ms. Holman.

4 MEMBER HOLMAN: Aye.

5 MS. GMUR: Ms. Miller.

6 CHAIRPERSON MILLER: Aye.

7 MS. GMUR: Mr. Oppenheim.

8 MEMBER OPPENHEIM: Aye.

9 CHAIRPERSON MILLER: Great. The minutes are
10 adopted.

11 MS. GMUR: And now --

12 CHAIRPERSON MILLER: And now we will move to public
13 comment, Ms. Gmur.

14 MS. GMUR: And now we will take up public comment
15 for matters not on the agenda. Please note that the
16 Commission may not take action on items not on the
17 agenda. However, it may schedule issues raised by the
18 public for consideration at future meetings.

19 We invite the public to comment on matters that are
20 on the agenda as they are taken up.

21 CHAIRPERSON MILLER: Great. Thank you very much.

22 Is there any public comment?

23 (No response.)

24 CHAIRPERSON MILLER: Again, if you are on Zoom, and
25 you would like to make a public comment, please use the

1 "Raise Hand" feature.

2 And then I may need the host of Zoom to help me to
3 make sure no one is raising their hand; is that correct?

4 I'm not seeing all the attendees listed on my --
5 correct? We don't see it?

6 MS. GMUR: That is correct, Madam Chair.

7 But it is being monitored here in the room.

8 CHAIRPERSON MILLER: Great. Thank you very much.

9 And there's no public comment in the room either,
10 correct?

11 MS. GMUR: That's correct, Madam Chair.

12 CHAIRPERSON MILLER: Great. Thank you very much.

13 Hearing no public comment, then, we will move to
14 the next item.

15 MS. GMUR: Next is the proposed consent calendar.
16 Item 8 is proposed for consent.

17 CHAIRPERSON MILLER: Great. Thank you very much.

18 Are there any objections to the proposed consent
19 calendar for members or members of the public?

20 (No response.)

21 CHAIRPERSON MILLER: Seeing none, may we have a
22 motion to adopt the proposed consent calendar, please?

23 MEMBER ADAMS: Madam Chair, I would so move.

24 CHAIRPERSON MILLER: Thank you, Mr. Adams.

25 MEMBER FERNANDEZ: I would second.

1 CHAIRPERSON MILLER: Thank you, Mr. Fernandez.
2 It's been moved and seconded.
3 Ms. Gmur, please call the roll.
4 MS. GMUR: Mr. Adams.
5 MEMBER ADAMS: Aye.
6 MS. GMUR: Mr. Fernandez.
7 MEMBER FERNANDEZ: Aye.
8 MS. GMUR: Ms. Holman.
9 MEMBER HOLMAN: Aye.
10 MS. GMUR: Ms. Miller.
11 CHAIRPERSON MILLER: Aye.
12 MS. GMUR: Mr. Oppenheim.
13 MEMBER OPPENHEIM: Aye.
14 CHAIRPERSON MILLER: Great. The consent calendar
15 is approved.

16 Next we'll move to swearing in, Ms. Gmur.

17 MS. GMUR: Will the parties and witnesses for Items
18 4, 5, and 6, participating remotely, please turn on your
19 video and unmute your microphone. And all parties rise
20 and state your name for the record.

21 MR. BURHENN: David Burhenn, Burhenn & Gest, on
22 Item 6.

23 MR. GEST: Howard Gest of Burhenn & Gest on Item 5.

24 MR. LEMUS: Fernando Lemus, County of Los Angeles,
25 Item 4.

1 MS. GONZALEZ: Lucia Gonzalez, County Counsel with
2 County of Los Angeles, for Item 4.

3 MR. HILL: Chris Hill, Department of Finance, for
4 Item 4.

5 MS. YAP: Kaily Yap, Department of Finance, Item 4.

6 MS. FEREBEE: And Donna Ferebee, Department of
7 Finance, Item 5.

8 MS. GMUR: I believe you are on mute.

9 CHAIRPERSON MILLER: Ms. Munoz, we still can't hear
10 you.

11 While Ms. Munoz is fixing her audio, is there
12 anyone else that needs to state their name for the
13 record? Has everyone else stated their name?

14 (No response.)

15 CHAIRPERSON MILLER: Yes. Ms. Munoz, can you try
16 one more time?

17 (No response.)

18 CHAIRPERSON MILLER: Still no. Yeah.

19 Why don't you log off and log back on, Ms. Munoz,
20 and we will swear you in during your item.

21 Does that work, Ms. Gmur?

22 MS. GMUR: Yes, Madam Chair. Very good.

23 CHAIRPERSON MILLER: Great. Thank you very much.

24 MS. GMUR: Will the parties raise their hands.

25 //

1 (Parties/witnesses stood to be sworn or
2 affirmed.)

3 MS. GMUR: Do you solemnly swear or affirm that the
4 testimony which you are about to give is true and
5 correct, based on your personal knowledge, information,
6 or belief?

7 (Affirmative responses.)

8 MS. GMUR: Thank you. Please be seated.

9 Item 3 is reserved for appeals of the Executive
10 Director decisions. There are no appeals to consider
11 for this hearing.

12 Next is Item 4. Commission Counsel Anna Barich
13 will please present a proposed decision on Criminal
14 Procedure: Resentencing, 22-TC-03.

15 At this time, we invite the parties and witnesses
16 for Item 4, participating remotely, to please turn on
17 your video and unmute your microphone.

18 MS. BARICH: Good morning, everyone.

19 This test claim involves a newly added Penal Code
20 section which establishes a hearing procedure for the
21 recall of an original sentence imposed following the
22 conviction of a crime and the resentencing of a
23 defendant upon receipt of a resentencing recommendation
24 from the State or County. If the Court grants the
25 resentencing, the original sentence and the commitment

1 previously ordered is recalled, and the defendant is
2 resentenced consistent with current sentencing rules and
3 any changes in law that reduce sentences or allow
4 judicial discretion, provided the new sentence is no
5 greater than the initial sentence.

6 The claimant seeks reimbursement for the District
7 Attorney and Public Defenders' Offices to participate in
8 the resentencing hearings.

9 Consistent with the Court's recent decision in
10 County of San Diego v. Commission on State Mandates, in
11 which the County sought reimbursement for hearing
12 procedures established to preserve evidence of
13 youth-related factors for future Parole Board hearings,
14 staff finds that there are no costs mandated by the
15 State here because the test claim statute changes the
16 penalty for a crime pursuant to Government Code Section
17 17556(g).

18 As a direct result of the test claim statute,
19 defendants who receive a resentencing recommendation are
20 guaranteed the chance to have their previous penalty for
21 a crime or infraction set aside, changed, and in most
22 cases reduced. Being guaranteed this hearing procedure
23 changes the penalty for defendants' crimes, just as in
24 the County of San Diego case. In addition, the
25 activities relate directly to enforcing the crime

1 because they play an indispensable role in the
2 legislature's scheme for how it went about changing the
3 penalty for a crime.

4 Accordingly, staff recommends that the Commission
5 adopt the proposed decision to deny the test claim, and
6 authorize staff to make any technical, nonsubstantive
7 changes following the hearing.

8 Thank you.

9 CHAIRPERSON MILLER: Great. Thank you very much.
10 I apologize. We are being plagued by tech issues today.

11 Thank you for that very helpful presentation.

12 Next we will move to -- I apologize. We have the
13 witnesses stating their name for the record.

14 MS. GONZALEZ: Lucia Gonzalez with the County of
15 Los Angeles.

16 CHAIRPERSON MILLER: Great. Thank you very much.

17 MR. LEMUS: Fernando Lemus, County of Los Angeles.

18 CHAIRPERSON MILLER: Great.

19 Ms. Gonzalez and Mr. Lemus, would you like to
20 begin, please.

21 MR. LEMUS: Lucia, I will turn it over to you.

22 MS. GONZALEZ: Yes. Thank you.

23 In addition to the -- or just to reiterate the
24 comments that we, claimants, provided in our response to
25 the Commission, the proposed decision, we ask the

1 Commission adhere to Article Section XIII B, Section
2 6(b), which states that the legislature may, but need
3 not, provide a subvention of funds for legislative
4 mandates that define a new crime or change an existing
5 definition of a crime.

6 Claimant asserts that the resentencing test claim
7 at issue here does not define a new crime or change the
8 existing definition of a crime.

9 Furthermore, we find that the Commission staff is
10 interpreting Government Code Section 17556(g)
11 overbroadly in that this test claim did not create a new
12 crime. And if this Commission were to find that a new
13 crime was created or that a -- I'm sorry -- that a
14 penalty was changed, that it also must find that it was
15 directly related to the enforcement of the crime. And I
16 don't believe that the Commission has set forth that
17 analysis.

18 Submitted.

19 CHAIRPERSON MILLER: Thank you, Ms. Gonzalez.

20 Mr. Lemus, would you like to add to that?

21 MR. LEMUS: No. I have nothing to add.

22 CHAIRPERSON MILLER: Thank you very much.

23 Mr. Hill and Ms. Yap with the Department of
24 Finance. Do you have any comments, and if you could
25 state your names, please.

1 MR. HILL: Good morning. Chris Hill, Department of
2 Finance.

3 The Department of Finance concurs with the
4 Commission staff's recommendation.

5 CHAIRPERSON MILLER: Thank you very much.
6 Ms. Yap, do you have anything to add?

7 MS. YAP: No, nothing to add. Thank you.

8 CHAIRPERSON MILLER: Thank you very much. Thank
9 you.

10 Is there any public comment on this item?

11 (No response.)

12 CHAIRPERSON MILLER: I don't see any public comment
13 on Zoom.

14 Could someone correct me if I'm wrong about that?

15 MR. ORTIZ: There's no public comment.

16 CHAIRPERSON MILLER: Great. Thank you.

17 Any public comment in the room?

18 MS. GMUR: No comment in the room, Madam Chair.

19 CHAIRPERSON MILLER: Thank you very much, Ms. Gmur.

20 Questions from the members, please.

21 MEMBER ADAMS: Madam Chair -- Madam Chair --

22 CHAIRPERSON MILLER: Yes, Mr. Adams.

23 Do you -- do you mind speaking up just a little bit
24 into the microphone, Mr. Adams.

25 MEMBER ADAMS: Sure. Just a --

1 CHAIRPERSON MILLER: Thank you. That's much
2 better.

3 MEMBER ADAMS: Just a question for anyone. I
4 realize this is, once again, a penalty change case, and
5 I realize that the procedure guarantees a hearing. But
6 I'm not sure that I see that it guarantees a change in
7 penalty. So local government could go through the
8 process and rebut the presumption of a change, and I
9 believe what has to be overcome is an unreasonable risk
10 to public safety.

11 If that happens, then the penalty doesn't change;
12 so now you have a process to where a penalty is not
13 changed and why shouldn't local government then get
14 reimbursed.

15 And again, my --

16 MS. SHELTON: Anna, do you want to try for that?
17 Or I can answer it as well.

18 MS. BARICH: I would be happy, Mr. Adams.

19 So it's true that the -- that the procedure doesn't
20 guarantee that a defendant's penalty will be changed.
21 The Court could go through the entire process of holding
22 the hearing to determine whether or not it should
23 resentence a person; and then, even if they grant the
24 resentencing, just decide to grant a sentence that is no
25 different than what was originally imposed.

1 However, what has changed here is that it is --
2 that the defendant is guaranteed this process of getting
3 a hearing and getting a -- and a high likelihood of
4 getting resentenced -- actually resentenced.

5 And consistent with youth offender parole hearings,
6 which found that guaranteeing the -- that people were
7 eligible for parole hearings, that they would give these
8 parole hearings, changed their penalties for the crime.
9 It wasn't actually being granted in parole. It was
10 being guaranteed the penalty -- being guaranteed the
11 parole hearings.

12 MEMBER ADAMS: Just as a follow-up, again, if we're
13 going to go through this whole process and there's not a
14 penalty change, then how do we say this is exempt from a
15 mandates claim because it's a penalty change, when, at
16 the end of the day, it's not? And local government has
17 been saddled with the cost of this process?

18 MS. BARICH: Well --

19 CHAIRPERSON MILLER: Ms. Shelton, do you -- oh,
20 excuse me. Ms. Shelton has her hand raised. Please,
21 Anna, and then we will go to Ms. Shelton.

22 MS. SHELTON: Oh. I -- do you want me to go first?

23 That was the whole point in the Fourth District
24 Court of Appeal case, the Youth Offender Parole Hearing.
25 There, there was absolutely no guarantee. All that it

1 did was establish a system where the Board of Parole
2 Hearings could determine whether or not to reduce the
3 parole, but it was not guaranteed. And there -- or that
4 the parole would actually be reduced.

5 And the Court said it didn't matter, because all
6 that matters is that the statutes guarantee parole
7 eligibility to all qualified youth offenders. It
8 doesn't have -- actually have to turn out that way.
9 And, therefore, 17556(g) does apply.

10 And the Commission is required to comply with that
11 decision unless you are finding some distinguishing
12 factor between this case and that one. And we find it
13 to be very much the same.

14 CHAIRPERSON MILLER: Mr. Adams, does that answer
15 your question?

16 MEMBER ADAMS: Yes. Wondering if there's any other
17 comments, but yes. Thank you.

18 CHAIRPERSON MILLER: Thank you very much.

19 Ms. Gonzalez, yes, please.

20 MS. GONZALEZ: Claimant -- the claimant believes
21 that the case can be distinguished, in that, in that
22 case, it dealt with parole. And in this case, which --
23 parole, which is part of the penalties. If you are
24 given parole, clearly that is boon to a defendant to be
25 able to be eligible for parole and to get out into

1 society sooner.

2 In this situation we're not discussing parole;
3 we're discussing a resentencing process. We are
4 discussing a procedure, a new program that has been
5 imposed on the County.

6 And it is true, Commissioner Adams, that it is not
7 guaranteed that a defendant can go through this process
8 and receive a lighter sentence or be released sooner
9 from their incarceration. But, yet, the claimant would
10 still have to go through the process, having to --
11 having a District Attorney present a case, Public
12 Defender represent a defendant in the case, and all the
13 costs involved. So we do believe that these cases can
14 been distinguished.

15 MS. SHELTON: May I respond to that, please.

16 CHAIRPERSON MILLER: Please, Ms. Shelton.

17 MS. SHELTON: If you turn to page -- PDF page 31 of
18 the decision where we lay out all of the factors from
19 the County of San Diego Youth Offender Parole Hearing
20 case, the County there tried to distinguish that case
21 from a case that would deal with resentencing
22 proceedings. And find that if this was dealing with a
23 resentencing proceeding, then they would have agreed
24 that 17556(g) applied. This set of statutes is the
25 resentencing statutes. We are now talking about

1 resentencing.

2 The County of San Diego Youth Offender Parole
3 Hearing also argued that 17556(g) should not apply
4 because it was dealing with an administrative or
5 procedural process, a hearing process, and the Court did
6 not agree with that.

7 And so this case is -- you know, exactly the same
8 as the County of San Diego Youth Offender Parole Hearing
9 case. Both cases, the claimants were seeking
10 reimbursement for the hearing process. And in both
11 cases, 17556(g) applies for the change in penalty.

12 CHAIRPERSON MILLER: Thank you very much.

13 Any final comments from the board or the claimants?

14 (No response.)

15 CHAIRPERSON MILLER: Any other questions from the
16 Board?

17 MEMBER ADAMS: Just a comment --

18 CHAIRPERSON MILLER: Please.

19 MEMBER ADAMS: -- where this case, I'm being told,
20 is exactly like the San Diego case, I will acquiesce to
21 the belief of how the law reads. But, boy, I will tell
22 you, I sure don't like it. I think the legislature
23 really needs to do something. To impose this kind of
24 procedure and then to be able to deny the cost coverage
25 is just really, really frustrating.

1 Thanks.

2 CHAIRPERSON MILLER: Thank you, Mr. Adams.

3 Yes. I think we would all be well served if
4 legislation were clearer. Certainly.

5 Is there -- with that -- I couldn't agree more.

6 With that, is there a motion? What is the will of
7 the committee?

8 I will move adoption of the staff recommendation.

9 Is there a second?

10 MEMBER HOLMAN: I will second that.

11 CHAIRPERSON MILLER: Great. Moved by Miller.

12 Seconded by Holman.

13 Any further discussion?

14 (No response.)

15 CHAIRPERSON MILLER: Seeing none, Ms. Gmur, will
16 you please call the roll.

17 MS. GMUR: Mr. Adams.

18 MEMBER ADAMS: Aye.

19 MS. GMUR: Mr. Fernandez.

20 MEMBER FERNANDEZ: Aye.

21 MS. GMUR: Ms. Holman.

22 MEMBER HOLMAN: Aye.

23 MS. GMUR: Ms. Miller.

24 CHAIRPERSON MILLER: Aye.

25 MS. GMUR: Mr. Oppenheim.

1 MEMBER OPPENHEIM: Aye.

2 CHAIRPERSON MILLER: That motion carries.

3 MS. GMUR: We now ask the presenters participating
4 remotely for Item 4 to please turn off their video and
5 mute their microphones.

6 Next is Item 5.

7 Chief Legal Counsel Camille Shelton will please
8 present a proposed decision and parameters and
9 guidelines on California Regional Water Quality Control
10 Board, San Diego Region, Order Number R9-2009-0002,
11 10-TC-11.

12 At this time we invite the parties and the
13 witnesses for Item 5, participating remotely, to please
14 turn on your video and unmute your microphone.

15 MS. SHELTON: Good morning. These parameters and
16 guidelines address State-mandated activities arising
17 from the stormwater permit issued for the County of
18 Orange and the cities within the County by the San Diego
19 Regional Water Quality Control Board on December 16th,
20 2019.

21 Draft expedited parameters and guidelines were
22 issued to the parties which identified the activities
23 approved by the Commission for reimbursement until
24 December 31st, 2017, and the potential offsetting
25 revenue.

1 No comments were filed on the draft expedited
2 parameters and guidelines.

3 Staff recommends that the Commission adopt the
4 proposed decision and parameters and guidelines and
5 authorize staff to make any technical, nonsubstantive
6 changes to the proposed decision following the hearing.

7 CHAIRPERSON MILLER: Thank you very much,
8 Ms. Shelton.

9 If -- parties and witnesses, if you could please
10 state your name for the record.

11 And, Mr. Gest, if you want to start for the
12 claimants.

13 MR. GEST: Good morning, Chair, and members of the
14 Commission. Howard --

15 CHAIRPERSON MILLER: Good morning.

16 MR. GEST: Okay. What --

17 CHAIRPERSON MILLER: Oh, sorry. I just said, "Good
18 morning."

19 MR. GEST: Good morning. Howard Gest on behalf of
20 the claimants.

21 We have no comments. I'm just here to answer any
22 questions if any should arise or if there are comments
23 by any other parties.

24 CHAIRPERSON MILLER: Great. Thank you very much.
25 Ms. Ferebee for the Department of Finance.

1 MS. FEREBEE: Yes. Donna Ferebee, Department of
2 Finance. Finance has no comments on the Ps and Gs for
3 this test claim.

4 Thank you.

5 CHAIRPERSON MILLER: Thank you very much.

6 With that, is there any public comment on this
7 item?

8 (No response.)

9 CHAIRPERSON MILLER: Confirming there's no public
10 comment on Zoom or in the room, Ms. Gmur.

11 MS. GMUR: There's no public comment in the room,
12 Madam Chair.

13 MR. ORTIZ: There's no public comment.

14 CHAIRPERSON MILLER: Thank you.

15 And thank you, Mr. Ortiz.

16 Are there any questions from members or further
17 discussion?

18 (No response.)

19 CHAIRPERSON MILLER: Seeing none, is there a
20 motion?

21 MEMBER ADAMS: Madam Chair, I would move the
22 proposed decision.

23 CHAIRPERSON MILLER: Thank you, Mr. Adams.

24 Is there a second?

25 MEMBER OPPENHEIM: I would second the item.

1 CHAIRPERSON MILLER: Great. Thank you,
2 Mr. Oppenheim. It's been moved by Mr. Adams. Seconded
3 by Mr. Oppenheim.

4 CHAIRPERSON MILLER: Ms. Gmur, will you call the
5 roll, please.

6 MS. GMUR: Mr. Adams.

7 MEMBER ADAMS: Aye.

8 MS. GMUR: Mr. Fernandez.

9 MEMBER FERNANDEZ: Aye.

10 MS. GMUR: Ms. Holman.

11 MEMBER HOLMAN: Aye.

12 MS. GMUR: Ms. Miller.

13 CHAIRPERSON MILLER: Aye.

14 MS. GMUR: Mr. Oppenheim.

15 MEMBER OPPENHEIM: Aye.

16 CHAIRPERSON MILLER: The motion carries.

17 Thank you very much.

18 MS. GMUR: We now ask the presenters participating
19 remotely for Item 5 to please turn off their video and
20 mute their microphones.

21 Next is Item 6.

22 Chief Legal Counsel Camille Shelton will please
23 present a proposed decision and parameters and
24 guidelines on California Regional Water Quality Control
25 Board, San Diego Region, Order Number R9-2010-0016,

1 11-TC-03.

2 At this time, we invite parties and witnesses for
3 Item 6, participating remotely, to please turn on your
4 video and unmute your microphone.

5 CHAIRPERSON MILLER: Thank you very much.

6 Ms. Shelton, I wonder, should we swear in
7 Ms. Munoz?

8 Ms. Munoz, I do have audio now. Wait. Pick up.
9 Try again.

10 MS. MUNOZ: Can you hear me now?

11 CHAIRPERSON MILLER: Yes, we can hear you now.

12 Thank you. We're going to go ahead and swear you in and
13 then have Ms. Shelton begin. Thank you very much.

14 MS. GMUR: I apologize, Madam Chair. Give me a
15 moment while I --

16 CHAIRPERSON MILLER: No worries at all.

17 (Party/witness stood to be sworn or
18 affirmed.)

19 MS. GMUR: Ms. Munoz, do you solemnly swear or
20 affirm that the testimony which you are about to give is
21 true and correct, based on your personal knowledge,
22 information, or belief?

23 MS. MUNOZ: I do.

24 MS. GMUR: Thank you.

25 CHAIRPERSON MILLER: Thank you very much.

1 Okay. Now, Ms. Shelton, if you don't mind. Thank
2 you for the...

3 MS. SHELTON: Sure.

4 The parameters and guidelines in Item 6 address
5 State-mandated activities arising from the stormwater
6 permit issued for the County of Riverside and the cities
7 within the county by the San Diego Regional Water
8 Quality Control Board on November 10th, 2010. Draft
9 expedited parameters and guidelines were issued to the
10 parties which identified the activities approved by the
11 Commission for reimbursement until December 31st, 2017,
12 and the potential offsetting revenue.

13 No comments were filed on the draft expedited
14 parameters and guidelines.

15 Staff recommends that the Commission adopt the
16 proposed decision and parameters and guidelines and
17 authorize staff to make any technical, nonsubstantive
18 changes to the proposed decision following the hearing.

19 CHAIRPERSON MILLER: Thank you, Ms. Shelton.

20 Mr. Burhenn. Did I get it right this time?

21 MR. BURHENN: You did, Madam Chair.

22 CHAIRPERSON MILLER: Great.

23 MR. BURHENN: Good morning.

24 CHAIRPERSON MILLER: Thank you. Good morning.

25 MR. BURHENN: Good morning, members of the

1 Commission. I will echo my partner, Mr. Gest, to say
2 I'm not here to make comments but to answer any
3 questions that the parties or Commission members may
4 have.

5 Thank you.

6 CHAIRPERSON MILLER: Thank you. Thank you for
7 being here.

8 Ms. Munoz for the Department of Finance.

9 MS. MUNOZ: Marilyn Munoz for the Department of
10 Finance. Finance has no comments on the proposed
11 decision or parameters and guidelines.

12 Thank you.

13 CHAIRPERSON MILLER: Great. Thank you, Ms. Munoz.
14 Are there -- is there any public comment on this
15 item?

16 (No response.)

17 CHAIRPERSON MILLER: Confirming there's no one on
18 the Zoom interface, Mr. Ortiz.

19 MR. ORTIZ: Yes. There's no public comment at this
20 time.

21 CHAIRPERSON MILLER: Great. Thank you.

22 And no one in the room, Ms. Gmur?

23 MS. GMUR: None at this time, Madam Chair.

24 CHAIRPERSON MILLER: Great. Thank you very much.

25 Questions from members?

1 (No response.)

2 CHAIRPERSON MILLER: Seeing none, is there a motion
3 to...

4 MEMBER ADAMS: Madam Chair, I, again, would move
5 the proposed decision.

6 CHAIRPERSON MILLER: Thank you, Mr. Adams.
7 Is there a second?

8 MEMBER FERNANDEZ: I will second that motion.

9 CHAIRPERSON MILLER: Thank you, Mr. Fernandez.

10 Moved by Mr. Adams. Second by Mr. Fernandez.

11 Ms. Gmur, will you please call the roll.

12 MS. GMUR: Mr. Adams.

13 MEMBER ADAMS: Aye.

14 MS. GMUR: Mr. Fernandez.

15 MEMBER FERNANDEZ: Aye.

16 MS. GMUR: Ms. Holman.

17 MEMBER HOLMAN: Aye.

18 MS. GMUR: Ms. Miller.

19 CHAIRPERSON MILLER: Aye.

20 MS. GMUR: Mr. Oppenheim.

21 MEMBER OPPENHEIM: Aye.

22 CHAIRPERSON MILLER: The motion carries.

23 MS. GMUR: We now ask the presenters participating
24 remotely for Item 6 to please turn off their video and
25 mute their microphone.

1 Item 7 is reserved for county applications for a
2 finding of significant financial distress, or SB 1033
3 applications. No SB 1033 applications have been filed.

4 Next, Program Analyst Jill Magee will please turn
5 on her video and microphone and present Item 9, the
6 Legislative Update.

7 CHAIRPERSON MILLER: Good morning, Ms. Magee.
8 Thank you.

9 MS. MAGEE: The following are the legislative
10 updates since the last time the Commission met.

11 First, AB 1781, State mandates: claims. This
12 substantive spot bill would change the minimum mandate
13 reimbursement claim amount from \$1,000 to \$800. On
14 January 3rd, 2024, this bill was read for the first time
15 and may be heard in committee on February 3rd, 2024.

16 Staff will continue to monitor legislation for
17 bills that impact the mandates process.

18 Thank you.

19 MS. GMUR: Thank you, Jill.

20 Next, Chief Legal Counsel Camille Shelton will
21 please present Item 10, the Chief Legal Counsel Report.

22 MS. SHELTON: Good morning. We do have one new
23 filing, County of Los Angeles vs. Commission on State
24 Mandates and the Department of Finance.

25 This is challenging the Commission's decision on

1 accomplice liability for felony murder. We do have a
2 trial setting conference scheduled for March 7th in that
3 case.

4 Thank you.

5 CHAIRPERSON MILLER: Thank you.

6 Any questions on the Legislative Report or the
7 Chief Counsel's Report?

8 (No response.)

9 CHAIRPERSON MILLER: Great. Sorry.

10 Ms. Gmur, go ahead.

11 MS. GMUR: Not at all, Madam Chair.

12 That brings us to Item 11, the Executive Director
13 Report.

14 I have three information items.

15 First, the Commission's 2024/2025 budget. The
16 Governor introduced his proposed 2024/2025 budget on
17 January 10, 2024, which includes the Commission's
18 operating budget of \$3.399 million. This is a decrease
19 of \$116,000 from last budget after adjustments for
20 salaries and benefits. The Governor's budget also
21 includes 1.29 -- I'm sorry -- \$129.997 million for local
22 assistance or local agency mandated programs. This is a
23 decrease of \$39.51 million.

24 Second, workload. After this hearing, there are 39
25 pending test claims, 35 of which are regarding

1 stormwater NPDES permits. There's one parameters and
2 guidelines regarding stormwater with a lengthy comment
3 period pursuant to the stipulation of the parties.

4 There are four statewide cost estimates and one IRC
5 pending.

6 Commission staff expects to complete all currently
7 pending test claims and IRCs by approximately
8 September 2026 Commission meeting, depending on staffing
9 and other workload. However, some of the test claims
10 may be heard and decided earlier than currently
11 indicated if they are consolidated for hearing.

12 And last, tentative agenda items. Please check the
13 tentative agenda items on my Executive Director's Report
14 to see if an item you are interested in is coming up.
15 You can also use the pending caseload documents on the
16 Commission's website, which are updated at least
17 bimonthly, to see when something is tentatively set for
18 hearing.

19 Please expect to receive draft proposed decisions
20 on all test claim and IRC matters for review and comment
21 at least eight weeks prior to the hearing date and a
22 proposed decision approximately two weeks before the
23 hearing.

24 Finally, a reminder to please notify Commission
25 staff not later than the Wednesday prior to a hearing

1 that you or a witness you are bringing plan to testify.

2 Please include the names of individuals who will be
3 speaking for inclusion on the witness list. And also
4 include email addresses for remote participants so that
5 they might receive their panelist links.

6 And that's all I have, Madam Chair.

7 CHAIRPERSON MILLER: Great. Thank you. Great job
8 again. I'm really, really grateful for your service,
9 Ms. Gmur.

10 Any questions on the Executive Officer's Report?

11 (No response.)

12 CHAIRPERSON MILLER: Any public comment on any of
13 the reports?

14 (No response.)

15 CHAIRPERSON MILLER: Confirming no public comment,
16 Mr. Ortiz.

17 MR. ORTIZ: No public comment at this time, Madam
18 Chair.

19 CHAIRPERSON MILLER: Thank you very much.

20 Ms. Gmur.

21 MS. GMUR: No public comment, Madam Chair.

22 CHAIRPERSON MILLER: Thank you.

23 The Commission will now meet in Closed Executive
24 Session pursuant to Government Code Section 11126(e) to
25 confer with and receive advice from legal counsel for

1 consideration and action, as necessary and appropriate,
2 upon the pending litigation listed on the published
3 notice and agenda; and to confer with and receive advice
4 from legal counsel regarding potential litigation.

5 The Commission will also confer on personnel
6 matters pursuant to Government Code Section 11126(a)(1),
7 and we will reconvene in Open Session in approximately
8 15 minutes or less.

9 Ms. Gmur, could you do me a huge favor and bump up
10 my link for the closed session -- or Ms. Shelton, is
11 that possible?

12 MS. SHELTON: I can resend it. Yes.

13 CHAIRPERSON MILLER: Thank you very much. I
14 appreciate it.

15 And with that, we will reconvene shortly. Thank
16 you very much, everyone, and great job on our first
17 hybrid meeting. Thank you again.

18 (Closed session was held from
19 11:00 a.m. to 11:20 a.m.)

20 CHAIRPERSON MILLER: Thank you, everyone, for your
21 patience.

22 And the Commission met in Closed Executive Session
23 pursuant to Government Code Section 11126(e) to confer
24 with and receive advice from legal counsel for
25 consideration and action, as necessary and appropriate,

1 upon the pending litigation listed on the published
2 notice and agenda; and to confer with and receive advice
3 from legal counsel regarding potential litigation.

4 The Commission also conferred on personnel matters
5 pursuant to Government Code Section 11126(a)(1).

6 With no further business to discuss and with huge
7 gratitude to Ms. Gmur for her first hybrid meeting and
8 doing an incredible job, we will -- I will entertain a
9 motion to adjourn.

10 MEMBER ADAMS: Madam Chair, I would so move.

11 CHAIRPERSON MILLER: Great. Thank you. It has
12 been moved by Mr. Lee [sic] to adjourn the meeting. And
13 I will second.

14 And I believe we have to call the roll to adjourn
15 the meeting.

16 Ms. Gmur, please.

17 MS. GMUR: Very good, Madam Chair.

18 Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. GMUR: Mr. Fernandez.

21 MEMBER FERNANDEZ: Aye.

22 MS. GMUR: Ms. Holman.

23 MEMBER HOLMAN: Aye.

24 MS. GMUR: Ms. Miller.

25 CHAIRPERSON MILLER: Aye.

1 MS. GMUR: Mr. Oppenheim.

2 MEMBER OPPENHEIM: Aye.

3 CHAIRPERSON MILLER: Great. Thank you. The motion
4 carries, and the meeting is adjourned. Thank you very
5 much, everyone. Thank you to our support for the hybrid
6 meeting, and we will see you in February. Take care,
7 everyone.

8 (Proceedings concluded at 11:21 a.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

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 said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of February 2024.



KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061

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