

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
July 26, 2013

Present: Member Ana Matosantos, Chairperson
Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Andre Rivera
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member
Member Don Saylor
County Supervisor

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 Matosantos called the meeting to order at 10:04 a.m.

Executive Director Heather Halsey called the roll.

APPROVAL OF MINUTES

Item 1 April 19, 2013

Member Rivera made a motion to adopt the minutes. Member Ramirez noted that her name was misspelled. With a second by Member Saylor, the April 19, 2013 hearing minutes were adopted as corrected by a vote of 7-0.

Item 2 May 24, 2013

Member Rivera made a motion to adopt the minutes. With a second by Member Alex, the May 24, 2013 hearing minutes were adopted by a vote of 7-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

CONSENT CALENDAR

If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 7* *Teacher Credentialing, 03-TC-09*

California Code of Regulations, Title 5, Sections 80556(a),(c),(f) and (j) and 80556.1(e) as added and amended by Register 86, No. 40; Register 94, No. 19

San Diego County Office of Education, Claimant

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

STATEWIDE COST ESTIMATE

Item 9* *Behavioral Intervention Plans (BIPs), CSM-4464*

California Code of Regulations, Title 5, Sections 3001 and 3052

Register 93, No. 17; Register 96, No. 8; Register 96, No. 32

Butte County Office of Education, San Diego Unified School District, San Joaquin County Office of Education, Claimants

Item 10* *Public Contracts (K-14), 02-TC-35*

Public Contract Code Sections 3300, 7104, 20103.5, 20104, 20104.2, 20104.50, and 22300

Statutes 1985, Chapter 1073; Statutes 1988, Chapter 1408; Statutes 1989, Chapter 330; Statutes 1990, Chapter 1414; Statutes 1992, Chapter. 799; and Statutes 1994, Chapter 726.

Business and Professions Code Section 7028.15

Statutes 1990, Chapter 321

California Code of Regulations, Title 5, Sections 59504, 59505, 59506, and 59509; Register 1994, Number 6

Clovis Unified School District and Santa Monica Community College District, Claimants

- Item 11* *Discrimination Complaint Procedures, 02-TC-46*
 Education Code Sections 66010.2, 66010.7, and 87102, as amended by Statutes 1988, Chapter 973 and Statutes 1991, Chapter 1198;
 California Code of Regulations, Title 5, Sections 53003, 53004, 53006, 53020, 53021, 53022, 53023, 53024, 53025, 53026, and 53034, as added or amended by Register 92, Number 17; Register 96, Number 23; and Register 2002, Number 35
 (Consolidated With)
 Government Code Section 11135, as added or amended by Statutes 1992, Chapter 913; Statutes 1994, Chapter 146; Statutes 2001, Chapter 708; Statutes 2002, Chapter 1102
 California Code of Regulations, Title 5, Sections 59320, 59322, 59324, 59326, 59327, 59328, 59330, 59332, 59334, 59336, 59338, 59340, and 59342, as added or amended by Register 81, Number 16; Register 92, Number 17; Register 96, Number 23; Register 2001, Number 6; Register 2002, Number 13; and Register 2002, Number 35
 Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District, Claimants
- Item 12* *Charter Schools IV, 03-TC-03*
 Education Code Sections 1628, 42100(a), 47605, 47605.6
 Statutes 2002, Chapter 1058
 San Diego Unified School District, Claimant
- Item 13* *Local Agency Ethics (AB 1234), 07-TC-04*
 Government Code Sections 53232.2(b), 53232.3(a) and (b), 53235(f) and 53235.2(a)
 Statutes 2005, Chapter 700
 City of Newport Beach, Claimant

Member Rivera made a motion to adopt the consent calendar. With a second by Member Olsen, the consent calendar was adopted by a vote of 7-0.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

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

Item 3 Appeal of Executive Director Decisions

There were no appeals to consider.

TEST CLAIMS

- Item 4 *General Health Care Services for Inmates, 07-TC-12*
Penal Code Section 4011.10
Statutes 2005, Chapter 481 (SB 159) and
Statutes 2006, Chapter 303 (SB 896)
Orange County Health Care Agency, Claimant

This item was postponed to the September 27, 2013 hearing, at the request of the claimant.

- Item 5 *Immunization Records - Pertussis, 11-TC-02*
Health and Safety Code Sections 120325 and 120335
Statutes 2010, Chapter 434 (AB 354)
Twin Rivers Unified School District, Claimant

This test claim pertains to school district activities related to a new pertussis (whooping cough) immunization requirement for adolescent students.

Senior Commission Counsel Tyler Asmundson presented this item and recommended that the Commission adopt one of two options. Option A would completely deny the test claim, based on the plain language of Health and Safety Code section 120335(d) which contains a prohibition. Option B would partially approve the test claim for the activities associated with Health and Safety Code section 120335(d) based on an analysis of activities required to implement the prohibition consistent with the Constitutional requirement for compulsory k-12 education.

Parties were represented as follows: Arthur Palkowitz of the law offices of Stutz Artiano Shinoff & Holtz, representing the claimants; Laurie Carney and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Saylor made a motion to adopt Option B partially approving the test claim. With a second by Member Ramirez, the motion to adopt Option B partially approving the test claim was adopted by a vote of 6-1, with Chairperson Matosantos in opposition.

REQUEST FOR MANDATE REDETERMINATION

- Item 6 *Sexually Violent Predators (CSM-4509), 12-MR-01*
Welfare and Institutions Code Sections 6601 through 6605, and 6608
Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763
(AB 888); Statutes 1996, Chapter 4 (AB 1496)
As Alleged to be Modified by: Proposition 83,
General Election, November 7, 2006
California Department of Finance, Requestor

This redetermination request alleges that the state's liability under a previously determined test claim has been modified based on a subsequent change in law as defined in Government Code section 17570.

Commission Counsel Matt Jones presented this item and recommended that the Commission determine that the Department of Finance has made an adequate showing that the State's liability for the *Sexually Violent Predators* program may have been modified as a result of Proposition 83

and that the Commission direct staff to schedule a second hearing on the request.

Parties were represented as follows: Hasmik Yaghobyan, on behalf of County of Los Angeles; Craig Osaki, on behalf of the Los Angeles County Public Defender's Office; Jack Weedin, on behalf of the California Public Defenders Association; Timothy Barry, on behalf of the San Diego County Sheriff's Office, District Attorney's Office, and Public Defender's Office; Geoffrey Neill, on behalf of the California State Association of Counties; Michael Byrne and Susan Geanacou, representing Requester, the Department of Finance.

Following discussion among the Commission members, staff, parties, and a member of the public, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Alex, the staff recommendation to grant the request for redetermination and to direct staff to schedule a second hearing on the merits of the request was adopted by a vote of 7-0.

RECONSIDERATION OF STATEMENT OF DECISION AND PARAMETERS AND GUIDELINES

Item 8 *California Public Records Act*, 02-TC-10 and 02-TC-51
Government Code Sections 6253, 6253.1, 6253.9, 6254.3, and 6255
Statutes 1992, Chapters 463 (AB 1040); Statutes 2000, Chapter 982
(AB 2799); and Statutes 2001, Chapter 355 (AB 1014)
California Special Districts Association, Requestor

This is a request for reconsideration filed by the California Special Districts Association (CSDA), pursuant to section 1188.4 of the Commission's regulations. CSDA contends that the statement of decision and parameters and guidelines, adopted April 19, 2013, for the *California Public Records Act* program contain an error of law with respect to the description of eligible claimants. The decision authorized reimbursement for cities, counties, and school districts, but did not address the issue of special districts.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the corrected statement of decision and parameters and guidelines which correct the section on eligible claimants to provide that special district subject to the taxing restrictions of articles XIII A and XIII C, and the spending limits of article XIII B, of the California Constitution, whose costs for this program are paid from proceeds of taxes are eligible to claim reimbursement, and to clarify potential offsetting revenues for this program.

Parties were represented as follows: Dorothy Holzem, California Special Districts Association, representing Requester; Andy Nichols, on behalf of Nichols Consulting; Geoffrey Neill, on behalf of the California State Association of Counties.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. There was no second on this motion¹. The staff recommendation to adopt the corrected statement of decision and parameters and guidelines which correct the section on eligible claimants and clarify potential offsetting revenues for this program was adopted by a vote of 7-0.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE

¹ Robert's Rules of Order (11th ed.), p.37, ll. 12-15 states "If a motion is considered and adopted without having been seconded – even in a case where there was no reason for the chair to overlook this requirement – the absence of a second does not affect the validity of the motion's adoption."

**SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2,
ARTICLE 6.5 (info/action)**

- Item 14 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 15 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 16 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 17 Executive Director: Workload, Report to Finance and Backlog Reduction Plan and Tentative Agenda Items for Next Meeting (info)

Executive Director Heather Halsey presented this item.

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

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)(1):

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego, et al.* (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604) [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]
2. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
3. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition). Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730) [*Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality*

Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a.,
4C2b, 4E & 4Fc3]

PERSONNEL

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

The Commission adjourned into closed executive session pursuant to Government
Code section 11126(e) to confer with and receive advice from legal counsel for
consideration and action, as necessary and appropriate, upon the pending
litigation published in the notice and agenda; to confer and receive advice from
legal counsel regarding potential litigation, and to confer on personnel matters
pursuant to Government Code section 11126(a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:40 a.m., Chairperson Matosantos reconvened in open session, and reported that the
Commission met in closed executive session pursuant to Government Code section 11126(e) to
confer with and receive advice from legal counsel for consideration and action, as necessary and
appropriate, upon the pending litigation listed on the public notice and agenda, and potential
litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Matosantos adjourned the meeting at 11:41 a.m.

Heather Halsey
Executive Director

PUBLIC MEETING
COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.
DATE: Friday, July 26, 2013
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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Commission on State Mandates – July 26, 2013

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANA MATOSANTOS
(Commission Chair)
Director
State Department of Finance

KEN ALEX
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

M. CARMEN RAMIREZ
Oxnard City Council Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER HALSEY
Executive Director
(Item 17)

JASON HONE
Assistant Executive Director

CAMILLE SHELTON
Chief Legal Counsel
(Items 8 and 16)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

TYLER ASMUNDSON
Commission Counsel
(Item 5)

ERIC FELLER
Senior Commission Counsel

MATTHEW JONES
Commission Counsel
(Item 6)

KERRY ORTMAN
Program Analyst
(Item 15)



PUBLIC TESTIMONY

Appearing Re Item 5:

For Claimant San Jose Unified School District:

ARTHUR PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For Department of Finance:

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

LAURIE CARNEY
Department of Finance
915 L Street
Sacramento, California 95814

Commission on State Mandates – July 26, 2013

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6:

For Requestor Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

MICHAEL BYRNE
Department of Finance
915 L Street
Sacramento, California 95814

For County of Los Angeles:

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor Controller's Office
500 West Temple, Room 525
Los Angeles, California 90012

CRAIG OSAKI
Los Angeles Public Defender's Office
210 West Temple Street
Los Angeles, California 90012

For California Public Defenders Association:

JACK WEEDIN
California Public Defenders Association
10324 Placer Lane
Sacramento, California 95827

For San Diego County Sheriff, P.D., and D.A.:

TIMOTHY BARRY
County of San Diego
County Counsel's Office
1600 Pacific Highway, Room 355
San Diego, California 92101

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 6: *continued*

For California State Association of Counties:

GEOFFREY NEILL
Senior Legislative Analyst
Revenue & Taxation
California State Association of Counties
1100 K Street, Suite 101
Sacramento, California 95814

Individually as Member of the Public

ALLAN BURDICK
CSAC SB-90 Service
2001 P Street, Suite 200
Sacramento, California 95811

Appearing for Item 8

For California Special Districts Association:

DOROTHY HOLZEM
Legislative Representative
Advocacy & Public Affairs Department
California Special Districts Association
1112 I Street Suite 200
Sacramento, California 95814

ANDY NICHOLS
Nichols Consulting



Commission on State Mandates – July 26, 2013

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Call to Order and Roll Call	11
II. Approval of Minutes	
Item 1 April 19, 2013	11
Item 2 May 24, 2013	12
III. Public Comment for Matters Not on the Agenda	
IV. Proposed Consent Calendar	
Items 7, 9, 10, 11, 12, and 13	13
V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Appeal of Executive Director Decisions Pursuant to California Code of Regulations Title 2, Section 1181(c)	
Item 3 Appeal of Executive Director's Decision (<i>None</i>)	14
B. Test Claim	
Item 4 <i>General Health Care Services for Inmates</i> 07-TC-12 Orange County Health Care Agency (<i>Postponed</i>)	14
Item 5 <i>Immunization Records - Pertussis</i> 11-TC-02 Twin Rivers Unified School District	15

Commission on State Mandates – July 26, 2013

I N D E X

Proceedings

Page

V. Hearings and Decisions on Test Claims and Statements of Decision, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

C. Request for Mandate Redetermination

Item 6 *Sexually Violent Predators (CSM 4509)*
12-MR-01
Department of Finance 27

D. Parameters and Guidelines and Parameters and Guidelines Amendments

Item 7* *Teacher Credentialing*
03-TC-09
San Diego County of Office of Education
(Consent item) 13

E. Reconsideration of Statement of Decision and Parameters and Guidelines

Item 8 *California Public Records Act*
02-TC-10 and 02-TC-51
California Special Districts Association 58

VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8

A. Statewide Cost Estimate

Item 9* *Behavioral Intervention Plans (BIPs)*
CSM 4464
Butte County Office of Education, San Diego Unified School District, and San Joaquin County Office of Education
(Consent item) 13

Commission on State Mandates – July 26, 2013

I N D E X

Proceedings

Page

VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8

A. Statewide Cost Estimate

Item 10* *Public Contracts (K-14)*
02-TC-35
Clovis Unified School District and Santa Monica Community College District
(Consent item) 13

Item 11* *Discrimination Complaint Procedures*
02-TC-46
Santa Monica Community College District, Los Rios Community College District, and West Kern Community College District
(Consent item) 13

Item 12* *Charter Schools,*
03-TC-03
San Diego Unified School District
(Consent item) 13

Item 13* *Local Agency Ethics (AB 1234)*
07-TC-04
City of Newport Beach
(Consent item) 13

VII. 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 6.5

Item 14 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commissions or to a Hearing Officer *(None)* 76

Commission on State Mandates – July 26, 2013

I N D E X

<u>Proceedings</u>	<u>Page</u>
VIII. Reports	
Item 15 Legislative Update	76
Item 16 Chief Legal Counsel: Recent Decisions, Litigation Calendar	78
Item 17 Executive Director: Workload, Budget, and Tentative Agenda Items for Next Meeting	79
IX. Closed Executive Session	83
A. Pending Litigation	
B. Personnel	
X. Report from Closed Executive Session	83
Adjournment	83
Reporter's Certificate	84



Commission on State Mandates – July 26, 2013

1 BE IT REMEMBERED that on Friday, July 26, 2013,
2 commencing at the hour of 10:04 a.m., thereof, at the
3 State Capitol, Room 447, Sacramento, California, before
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
5 following proceedings were held:

6 --oOo--

7 CHAIR MATOSANTOS: The meeting of the
8 Commission on State Mandates will come to order.

9 Will you please call the roll, Heather?

10 MS. HALSEY: Mr. Alex?

11 MEMBER ALEX: Here.

12 MS. HALSEY: Mr. Chivaro?

13 MEMBER CHIVARO: Here.

14 MS. HALSEY: Ms. Matosantos?

15 CHAIR MATOSANTOS: Here.

16 MS. HALSEY: Ms. Olsen?

17 MEMBER OLSEN: Here.

18 MS. HALSEY: Ms. Ramirez?

19 MEMBER RAMIREZ: Here.

20 MS. HALSEY: Mr. Rivera?

21 MEMBER RIVERA: Here.

22 MS. HALSEY: Mr. Saylor?

23 MEMBER SAYLOR: Here.

24 CHAIR MATOSANTOS: All right, we have a quorum.

25 Are there any objections or corrections to

Commission on State Mandates – July 26, 2013

1 the minutes of April 19th?

2 MEMBER RIVERA: And I'll move approval.

3 MEMBER SAYLOR: Second.

4 MEMBER RAMIREZ: Excuse me, I see that my name
5 is misspelled. Anyway, it's Carmen Ramirez.

6 CHAIR MATOSANTOS: So we'll make that
7 correction.

8 MEMBER RAMIREZ: Thank you.

9 CHAIR MATOSANTOS: And we have a motion and a
10 second.

11 Any objections or abstentions?

12 *(No response)*

13 CHAIR MATOSANTOS: All right, so all those in
14 favor?

15 I guess we should take an official vote.

16 All those in favor, vote "aye."

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

18 CHAIR MATOSANTOS: All right, and I already
19 called for abstentions, so we're good to go.

20 So the next set of minutes, are there any
21 objections to or corrections of the May 24th, 2013,
22 minutes?

23 MEMBER RIVERA: Move approval.

24 MEMBER ALEX: Second.

25 CHAIR MATOSANTOS: Any objections?

Commission on State Mandates – July 26, 2013

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(No response)

CHAIR MATOSANTOS: All right, is it okay to substitute the prior roll call and go with all "ayes"?

All right, we'll go with that.

So with the minutes having been approved, we will take up public comment for matters not on the agenda.

Please note that the Commission cannot take action on items not on the agenda. However, it can schedule issues raised by public for consideration at future meetings.

Is there any public comment?

(No response)

CHAIR MATOSANTOS: Hearing no further public comment, we'll move to the next item, which is the Consent Calendar.

MS. HALSEY: The Consent Calendar consists of Items 7, 9, 10, 11, 12, and 13.

CHAIR MATOSANTOS: Are there any objections to the proposed Consent Calendar?

MEMBER RIVERA: Move adoption.

MEMBER OLSEN: Second.

CHAIR MATOSANTOS: So we have a motion and a second.

All those in support, please say "aye."

Commission on State Mandates – July 26, 2013

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

2 CHAIR MATOSANTOS: All those opposed, signify
3 by saying "no."

4 *(No response)*

5 CHAIR MATOSANTOS: All right, all "ayes." The
6 motion carries.

7 MS. HALSEY: Moving on to the Article 7 portion
8 of the meeting, will the parties and witnesses for
9 Items 3, 4, 5, 6, and 8 please rise?

10 *(The parties and witnesses stood to
11 be sworn.)*

12 MS. HALSEY: Do you solemnly swear or affirm
13 that the testimony which you are about to give is true
14 and correct based on your personal knowledge,
15 information, or belief?

16 *(Parties and witnesses responded
17 affirmatively.)*

18 MS. HALSEY: Thank you.

19 Item 3 is reserved for appeals of the Executive
20 Director's decisions. There are no appeals to consider
21 under Item 3.

22 Item 4 is the test claim on *General Health Care*
23 *Services for Inmates*. This item has been postponed to
24 the September 27th, 2013, hearing at the request of the
25 claimant.

Commission on State Mandates – July 26, 2013

1 Senior Commission Counsel Tyler Asmundson will
2 present Item 5, a test claim on *Immunization Records -*
3 *Pertussis*.

4 MR. ASMUNDSON: Good morning.

5 This test claim requests reimbursement for
6 costs incurred by school districts for activities
7 pertaining to a new pertussis immunization requirement
8 for adolescent students.

9 This item was originally heard by the
10 Commission on May 24th, 2013. The Commission continued
11 the hearing on the test claim to consider an alternative
12 proposed statement of decision that contains legal
13 analysis supporting a finding that Health and Safety Code
14 section 120335(d) imposes a reimbursable state-mandated
15 program.

16 Staff has prepared two proposed statements of
17 decision. Both decisions recommend that the Commission
18 deny Health and Safety Code section 120325, as amended by
19 the 2010 test-claim statute, on the ground that the
20 statute is a statement of legislative intent and does not
21 impose any state-mandated activities on school districts.

22 In addition, both decisions find that the
23 Commission does not have jurisdiction to determine
24 whether the regulations adopted by DPH to implement the
25 test-claim statute impose a reimbursable state-mandated

Commission on State Mandates – July 26, 2013

1 program on school districts because the regulations were
2 not pled or identified in the test claim.

3 The analysis in the two proposed decisions
4 departs on the issue of whether Health and Safety Code
5 section 120335(d), as amended and repealed by the 2010
6 test-claim statute, imposes a reimbursable state-mandated
7 program.

8 Option A denies the test claim, finding that
9 Health and Safety Code section 120335(d) does not impose
10 any state-mandated activities on school districts.

11 Option B approves the test claim with respect
12 to Health and Safety Code section 120335(d) based on an
13 interpretation of the statute, in light of the people's
14 constitutional right to education and the statutory
15 scheme in which section 120335 is a part.

16 Staff recommends that the Commission adopt
17 Option B, approving the test claim with respect to Health
18 and Safety Code section 120335(d).

19 Will the parties and witnesses please state
20 your names for the record?

21 MR. PALKOWITZ: Good morning. Arthur Palkowitz
22 on behalf of the claimant, Twin Rivers Unified School
23 District.

24 MS. CARNEY: Laurie Carney on behalf of the
25 Department of Finance.

Commission on State Mandates – July 26, 2013

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MS. GEANACOU: Susan Geanacou, Department of Finance.

CHAIR MATOSANTOS: Mr. Palkowitz, do you have any comments?

MR. PALKOWITZ: Yes, thank you.

Good morning, everyone, and thank you for the opportunity to address the Commission this morning.

As was mentioned, this test claim was continued from the last hearing. At the last hearing, we had evidence and testimony on the District activities as it pertains to this mandate. As was discussed at that time, the school districts are assigned the task of making sure all students are fully immunized in an attempt to comply with that. And the requirement under the Constitution that they unconditionally submit all students into the public education system, it is our contention that this mandate creates a reimbursable mandate; and we request that the activities that are listed in the regulations be approved as reimbursable activities.

As mentioned in the revised final staff analysis, the interpretation of the regulations may be considered in determining what is required by the statute.

This is supported by the *Yamaha* case, cited on page 9.

Commission on State Mandates – July 26, 2013

1 It is our belief that those activities listed
2 in the regulation should be considered a reimbursable
3 mandate. And it's also the claimant's contentions that
4 the information was included in the test claim and was
5 pled properly; and that also just judicial notice could
6 be applied in an attempt to use the regulations in
7 support of the mandate and the test claim.

8 Based on that, we urge the Commission to adopt
9 Option B, that's stated in the revised staff analysis.

10 Thank you.

11 CHAIR MATOSANTOS: Finance?

12 MS. CARNEY: Finance continues to support the
13 original statement of decision, Option A, which would
14 deny this test claim based on the fact that the statute
15 does not impose a state-mandated program on school
16 districts, and that the Commission does not have the
17 jurisdiction to consider or make findings on the
18 implementing regulations.

19 We would just note, if the Commission is
20 inclined to consider an alternative, we recommend that
21 it not adopt the alternative statement of decision,
22 Option B, as proposed today.

23 Some of the activities listed as imposing
24 mandated activities on school districts include
25 activities that we don't believe are required by statute

Commission on State Mandates – July 26, 2013

1 or regulations. For example, conditionally admitting
2 students who have not been fully immunized against
3 pertussis is permissible but not required by Health and
4 Safety Code Section 120340, as well as section 6035 of
5 Title 17 regulations.

6 Thank you.

7 CHAIR MATOSANTOS: Staff, can you speak to this
8 issue about inclusion in the decision of things that
9 Finance does not believe are actually requirements under
10 the regulations and the statute?

11 MR. ASMUNDSON: If they could state in detail
12 what items they are talking about, I can respond.

13 MS. CARNEY: Certainly.

14 So I'm looking at the proposed statement of
15 decision, pages 25 and 26, where the analysis lists the
16 activities found to be mandated. And specifically,
17 Item Number 2, and also briefly mentioned in Item
18 Number 3, discusses the activity of conditionally
19 admitting students that have not been fully immunized.
20 I would point out again, in regulation section 6035,
21 paragraph A, it says that students may be admitted
22 conditionally but does not require it. And again,
23 statute Health and Safety Code 120340, again, says that
24 students may be admitted conditionally but does not
25 require.

Commission on State Mandates – July 26, 2013

1 MR. ASMUNDSON: Okay, pages 25 and 26 of the
2 statement of decision does list the activities that we
3 believe are required to comply with 120335(d).

4 What we tried to do is determine exactly what a
5 school would have to do to determine if they should admit
6 a student or not. The code section cited by Finance does
7 allow schools to conditionally admit students until they
8 are fully immunized. And that's why we added those
9 activities, because students have a constitutional right
10 to go to school. And if they're not fully immunized at
11 the time that they try to be admitted, they are allowed
12 to be conditionally admitted until they're fully
13 immunized.

14 MS. SHELTON: Can I also just clarify that
15 the activities here, we did -- under rules of statutory
16 construction, you can use regulations to interpret what
17 the Legislature intended to mean when they adopted a
18 program. And we took some of the language from the
19 regulations that just strictly applied to the activity of
20 the prohibition of not admitting a student who has not
21 been fully immunized.

22 What is not allowed for reimbursement here
23 would be those activities required by the regulations
24 that impose duties of reporting and record-keeping.
25 Those are not merely tailored to the prohibition in

Commission on State Mandates – July 26, 2013

1 120335(d).

2 CHAIR MATOSANTOS: Have we taken this similar
3 approach anywhere in the past, in terms of deciding that
4 something is required when the regulations are now a part
5 of the test claim?

6 MS. SHELTON: Yes, it's happened a couple of
7 times. It really depends on the interpretation of the
8 statutory scheme.

9 We did it in *POBR II*, the second one. I don't
10 remember offhand how that was written, but it was written
11 as a prohibition. And essentially, when you read the
12 surrounding statutes and the test-claim statute in light
13 of that, it did require them to do something. If they
14 didn't do something, it would have triggered a
15 constitutional problem. So it just depends on your
16 statutory interpretation.

17 CHAIR MATOSANTOS: And if you could remind me,
18 when the bill was going through the Legislature, what the
19 Legislature thought it was doing?

20 MS. SHELTON: Yes, in the Committee analysis,
21 they did believe that the statute itself did not create
22 the mandate; but that any regulations adopted would
23 create the mandate. Those regulations were adopted three
24 months before the test claim was filed.

25 CHAIR MATOSANTOS: Are there any questions from

Commission on State Mandates – July 26, 2013

1 members, or any additional discussion on this issue?

2 *(No response)*

3 CHAIR MATOSANTOS: Seeing none, do we have a
4 motion?

5 MEMBER SAYLOR: Move approval.

6 MR. PALKOWITZ: May I -- I'm sorry, may I add
7 something before the motion is heard?

8 CHAIR MATOSANTOS: Sure.

9 MR. PALKOWITZ: Thank you.

10 I also want to remind the Commission, that
11 there are previously approved mandates that involve
12 immunization; and also the reporting in the past would be
13 considered a downstream expense that would flow from
14 these activities. And they have been approved in
15 previous mandates.

16 CHAIR MATOSANTOS: Finance, can you remind me
17 of the treatment of the immunization mandates relative to
18 the education block grant?

19 MS. CARNEY: One more time, please?

20 CHAIR MATOSANTOS: The immunizations mandate
21 relative to the education block grant that was adopted as
22 an alternative to the mandate process in the Budget Act,
23 I think, last year?

24 MS. CARNEY: That is something I'm not prepared
25 to speak to. I'm sorry.

Commission on State Mandates – July 26, 2013

1 CHAIR MATOSANTOS: Staff, do you, by chance,
2 know the answer to this question?

3 MS. HALSEY: I just know that currently
4 approved mandates for immunizations were rolled into
5 that; but I don't know in terms of funding or anything
6 how that was done.

7 MS. SHELTON: Maybe going back just one step,
8 if the Commission does adopt Option B, under the
9 Commission's regulations, the Commission has the
10 authority and the discretion to include activities that
11 are reasonably necessary to comply with the mandate.
12 Those activities have to be narrowly tailored to the
13 mandate.

14 So it is not correct to say that any downstream
15 activity triggered by the mandate would be held to be
16 reimbursable. The Commission has not gone that far.
17 It has to be narrowly tailored. So even if the
18 Commission were to adopt Option B, it is likely staff
19 would recommend that the Commission not adopt activities
20 to report and record.

21 CHAIR MATOSANTOS: And if I recall correctly --
22 and correct me if I'm wrong -- the staff's initial
23 recommendation was to deny the claim.

24 MS. SHELTON: Yes.

25 CHAIR MATOSANTOS: It's a subsequent

Commission on State Mandates – July 26, 2013

1 determination that's not saying that the full test claim
2 is actually eligible, partly because it doesn't include
3 the specific regulatory requirements. It's really more
4 about those elements that staff sees as being linked to
5 the constitutional obligation for students to have access
6 to a free education?

7 MS. SHELTON: Exactly.

8 MS. HALSEY: That's correct, combined with that
9 prohibition.

10 And I did want to point out that, though it's
11 true that Mr. Palkowitz says that these reporting
12 activities have been approved in prior test claims, the
13 regs were pled in those test claims. So that's the
14 distinction here.

15 MS. GEANACOU: If I may? Susan Geanacou, from
16 the Department of Finance.

17 If the Commission is motivated to adopt an
18 alternative, perhaps Alternative B, as Commission staff
19 proposes here, I just want to make sure that you're
20 comfortable with the legal analysis that underlies any
21 such option rather than voting out of equity, because the
22 Commission is not supposed to cure perceived inequities
23 by virtue of a mandate finding.

24 CHAIR MATOSANTOS: Ms. Olsen?

25 MEMBER OLSEN: Can staff address this issue --

Commission on State Mandates – July 26, 2013

1 and I know you addressed it the last time we heard this,
2 too, but I just need to be refreshed on it -- the regs
3 were out three months before this claim was filed?

4 MS. SHELTON: Yes.

5 MEMBER OLSEN: Does that affect how the courts
6 would view this?

7 MS. SHELTON: Well, let me say this is a little
8 bit of a different scenario than what we've had in the
9 past.

10 In the past, when the Commission has approved
11 a prohibition, all you had was the statute. There was
12 nothing interpreting the statutory language. It was just
13 statutory language.

14 Here, on the other hand, you have the
15 prohibition, the acknowledgment by the Legislature that
16 they thought the mandate would come from the regulations.
17 Then the regulations were adopted and amended to
18 implement the *Pertussis* test-claim statute. And those
19 became effective, and put into Barclays three months
20 before the test claim was filed. So they were there;
21 everybody was on notice that they existed.

22 Those regulations were amended to update the
23 shots -- you know, the booster shot for pertussis, update
24 the form requirements for the physicians to fill out that
25 form, to note the Tdap vaccination, to update the

Commission on State Mandates – July 26, 2013

1 record-keeping and recording of that shot, and the notice
2 requirements to parents. So it was specifically tailored
3 to the prohibition.

4 And in that sense, yes, it's a little different
5 than what the Commission has done. But there are rules
6 of statutory construction, too. And when you look at
7 what the Legislature is saying and you look at the
8 statute in light of the whole scheme, then you have to
9 consider those other statutes, too, and interpret it that
10 way.

11 It's really a close call.

12 CHAIR MATOSANTOS: But if we go with Option A,
13 there is nothing to preclude another district or this
14 district to file a new test claim associated, right?

15 MS. SHELTON: No. They are beyond their
16 statute of limitations.

17 CHAIR MATOSANTOS: They're beyond the statute
18 of limitations. And all districts would be beyond the
19 statute of limitations? Okay.

20 MS. HALSEY: Yes, if it were not for that, then
21 I'm sure the claim would have been amended to add the
22 regs.

23 MEMBER ALEX: And let me observe, you know,
24 without knowing the answer to this, that it's an odd
25 concept that a statute would -- that the Legislature

Commission on State Mandates – July 26, 2013

1 would say that the statute does not create a mandate and
2 the regs do. Because, generally, the regs must be
3 consistent with the statute. So if there's a mandate
4 here, it at least strikes me that the mandate comes from
5 the statute, not from the regs.

6 MEMBER SAYLOR: I move Option B.

7 MEMBER RAMIREZ: Second.

8 CHAIR MATOSANTOS: All those in support of the
9 motion, "aye"?

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

11 CHAIR MATOSANTOS: I'm opposed, so no.

12 But motion carries.

13 MS. HALSEY: Moving on to Item 6, Commission
14 Counsel Matt Jones will present Item 6, a request for
15 mandate redetermination on *Sexually Violent Predators*.

16 MR. JONES: Good morning.

17 This redetermination request alleges that the
18 State's liability under a previously determined test
19 claim has been modified based on a subsequent change in
20 law as defined in Government Code section 17570.

21 A subsequent change in law is defined in the
22 code to mean a change in law that requires a finding that
23 an incurred cost is a cost mandated by the state under
24 17514, or is not a cost mandated by the State pursuant to
25 section 17556.

Commission on State Mandates – July 26, 2013

1 Proposition 83, adopted by the voters in the
2 November 2006 general election, amended and reenacted
3 several sections of the Welfare and Institutions Code
4 that are part of the *Sexually Violent Predators* program,
5 and expressly requires some of the same activities
6 previously approved by the Commission as imposing costs
7 mandated by the State.

8 The requester now alleges that Proposition 83
9 constitutes a subsequent change in law, and that local
10 government claimants no longer incur state-mandated costs
11 pursuant to Government Code section 17556(f).

12 The mandate-redetermination process under
13 section 17570 calls for a two-step hearing.

14 At this first step, the only issue before the
15 Commission is whether the requester has made an adequate
16 showing that the State's liability under Article XIII B,
17 section 6, may have been modified based on a subsequent
18 change in law.

19 If the Commission determines that the requester
20 has made this showing, then pursuant to section 17570,
21 the Commission shall notice the request for a second
22 hearing to determine if a new test-claim decision shall
23 be adopted to supersede the previously adopted test-claim
24 decision; and what, if any, effect the subsequent change
25 in law has on the test-claim statutes as approved in the

Commission on State Mandates – July 26, 2013

1 prior claim.

2 Staff recommends that the Commission determine
3 that the Department of Finance has made the adequate
4 showing that the State's liability for the *Sexually*
5 *Violent Predators* program may have been modified as a
6 result of Proposition 83; and further recommends that the
7 Commission direct staff to schedule a second hearing on
8 the request.

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

11 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of
12 County of Los Angeles.

13 MR. OSAKI: Craig Osaki with the Los Angeles
14 County Public Defender's office.

15 MR. WEEDIN: Jack Weedon, deputy public
16 defender for L.A. County, but representing California
17 Public Defenders Association, or CPDA.

18 MR. BYRNE: Michael Byrne, Department of
19 Finance.

20 MR. BARRY: Timothy Barry, Office of County
21 Counsel, on behalf of the Sheriff, D.A., and P.D. in
22 San Diego County.

23 MR. NEILL: I'm Geoffrey Neill with the
24 California State Association of Counties.

25 MS. GEANACOU: Susan Geanacou, Department of

Commission on State Mandates – July 26, 2013

1 Finance.

2 CHAIR MATOSANTOS: Finance?

3 MS. GEANACOU: Yes. Thank you.

4 We're situated a little differently than
5 sometimes we are. Here, we're the requester. Thank you
6 for considering our request this morning.

7 This is Finance's request for a new test-claim
8 decision on the *Sexually Violent Predators* mandate.

9 The Commission on State Mandates adopted this
10 statement of decision, establishing this mandate in 1998.
11 In 2006, voters approved Proposition 83.

12 The statutes comprising the *Sexually Violent*
13 *Predators* mandates were all either expressly included in
14 Proposition 83 or are necessary to implement it.

15 Government Code section 17556(f) says, "The
16 Commission shall find no costs mandated by the State if
17 the statute or executive order imposes duties that are
18 necessary to implement or are expressly included in a
19 ballot measure approved by the voters in the statewide or
20 local election."

21 Four years after the voters adopted
22 Proposition 83 in 2010, the Legislature enacted a process
23 which we are utilizing now to allow for a new test-claim
24 decision following a subsequent change in law affecting
25 the State liability for mandate reimbursement.

Commission on State Mandates – July 26, 2013

1 Here, that subsequent change in law is
2 Proposition 83, which was approved by the voters. Based
3 on that voters' approval of Proposition 83, Finance
4 asserts in its request for a new test-claim decision that
5 the *Sexually Violent Predators* mandate is no longer
6 reimbursable in its entirety based on Government Code
7 section 17556(f).

8 Finance has considered the comments filed in
9 response to our request. These have been addressed by
10 the staff in the final staff analysis.

11 We believe we have made the adequate showing
12 necessary to proceed to a second hearing on our request
13 for a new test-claim decision. Accordingly, we request
14 the Commission members adopt the staff analysis
15 recommending this next step on the merits of our request.

16 Thank you.

17 CHAIR MATOSANTOS: Whoever is first on the
18 public comment.

19 MS. YAGHOBYAN: Good morning. Thank you.

20 Well, as we showed it in our comments filed
21 with the Commission, we disagree with the Department of
22 Finance's contention that Prop. 83 changed the SVP law.
23 We don't believe that the Proposition 83 has changed SVP
24 law, because just the recitation or the repetition of the
25 code section in the proposition doesn't mean a change in

Commission on State Mandates – July 26, 2013

1 law.

2 And secondly, with the Commission's comment
3 that because the Department of Finance waited six and a
4 half years after the passage of Prop. 83 to come forward
5 and initiate this redetermination process, there was no
6 mechanism to do that.

7 But like I said, we respectfully disagree with
8 the Commission staff's analysis because there were
9 mechanisms, at least in 2010, as you mentioned and still,
10 the Department of Finance didn't come forward or didn't
11 initiate any redetermination process.

12 Because in the case of the claimants, local
13 agencies after enactment of a statute, we only have
14 twelve months from the date of enactment or incurring of
15 a cost to file a test claim with the Commission on State
16 Mandates in order to get reimbursement. And also, when
17 we file our test claim, we specifically have to file the
18 changes, the new sections of a code, or Penal Code or the
19 statute. That is, we only have to plead those new
20 changes. We can't just say because the entire code
21 section was repeated in the statute, therefore,
22 everything is reimbursable.

23 So we believe that the same terminology should
24 be applied to the Department of Finance also, even though
25 we don't think they have any standing, and also because

Commission on State Mandates – July 26, 2013

1 their action has been barred because they stayed too
2 long.

3 And secondly, the Proposition 83 law is the
4 mirror image of SB 1128 which was passed two months
5 before Proposition 83 was put on the ballot.

6 So, therefore, we disagree with the
7 Commission's findings; and we don't think this was a
8 change in law to trigger the redetermination process.
9 And also even if it does, we can't go back and change the
10 sentencing of the offenders who were sentenced prior to
11 the Prop. 83.

12 If we do that, we are going to be overriding
13 the judge's sentencing decision, which we can't do that.
14 Therefore, we don't think that this statement of decision
15 should be adopted.

16 Thank you.

17 MR. OSAKI: Good morning, Members of the
18 Commission. I'm the deputy in charge of the SVP Branch
19 in L.A. County.

20 I have personally handled cases pre-Prop. 83
21 and post-Prop. 83. And I'm in a position to explain to
22 the Commission what effect, if any, the proposition had
23 before and after the passage of Prop. 83.

24 And specifically, I'd like to address the eight
25 mandated activities that were approved for reimbursement

Commission on State Mandates – July 26, 2013

1 back in 1998, because the question is whether or not they
2 were affected by the passage of Prop. 83.

3 With respect to the eight activities -- if the
4 Commission will note, they're numbered 1 through 8.

5 With respect to Items 1 through 3, we are just
6 simply dealing with who is in charge of prosecuting the
7 case, who is in charge of filing the case and reading the
8 material. Both pre- and post-Prop. 83, the prosecutors
9 or the District Attorney's office in our county were
10 responsible for that. There was absolutely no change.

11 With respect to Activities 4 through 7 --
12 which is really the bulk of the SVP program -- we're
13 talking about the attendance and preparation at the
14 probable-cause hearings, at the trials, and at the
15 subsequent hearings as well, and also the retention of
16 experts and other professionals. Those activities still
17 existed both pre- and post-Prop. 83.

18 And finally, with respect to Activity 8
19 regarding transportation, that was not addressed by the
20 Department of Finance, so I won't address that.

21 But as the Commission can see, there really was
22 no impact, especially as to these mandated activities.

23 And I'm here to raise my concern over an
24 interpretation of a statute indicating a change in the
25 law, or a subsequent change in the law to include a

Commission on State Mandates – July 26, 2013

1 passage -- a subsequent passage of an initiative that
2 really didn't change the mandated activities.

3 So thank you very much.

4 MR. WEEDIN: To quote a verse from a song by
5 The Who -- maybe some of you were around when the song
6 came out -- is: What was parking on the left is now
7 parking on the right. In other words, it's our position
8 that Prop. 83 did not initiate a subsequent change in the
9 law as envisioned by the Government Code section.

10 There are a couple cases cited in our
11 materials, *Hubbard* and *Lukas* -- one is pre-Prop. 83 and
12 one post-Prop. 83 -- that compares the purpose, effect,
13 and focus of the Sexually Violent Predator Act.

14 And the Supreme Court of our State's conclusion
15 was: It's the same. It's identical.

16 The representative, Hasmik, from LA County
17 touched on it initially. In August of 2006, before the
18 passage of Proposition 83, the Legislature passed
19 SB 1128, which made sustentative changes to the SVP Act
20 that Proposition 83 sought to do, including the primary
21 one, create from a two-year term of commitment, to an
22 indeterminate commitment. So that was legislatively
23 enacted prior to Prop. 83.

24 Prop. 83 only amended seven of the 22
25 provisions in the SVP Act. The key sections, as

Commission on State Mandates – July 26, 2013

1 Mr. Osaki said, providing counsel, experts, hearings,
2 trials, the mandated reimbursable activities under
3 Welfare and Institutions Code 6602 and 6603 remain
4 unchanged.

5 Staff, in their analysis, deems this to be
6 irrelevant. I beg to differ. I think subsequent change
7 of law means more than putting a comma in a proposition.
8 It means that there has to be something substantive in
9 the mandated reimbursable activity.

10 The other area in our letters that I would
11 like to touch on is the concepts of misrepresentation,
12 estoppel, and unclean hands by the Legislative Analyst's
13 Office and the Department of Finance, which synergizes
14 the effect that there is no substantive change by
15 Proposition 83.

16 First of all, the voters materials in
17 Proposition 83 failed to mention any possibility of
18 redetermination; instead, it said there would be -- it
19 could be a cost saving to states and local governments.
20 If the test claim is undone, there would not be a cost
21 saving.

22 Also, the proponents of Prop. 83 failed to
23 inform -- or tried to inform the electorate of the
24 changes that SB 1128 made to their proposition. In
25 September of 2005, the LAO and DOF issued a letter under

Commission on State Mandates – July 26, 2013

1 Elections Code section 9005, stating no less than four
2 times that, notwithstanding Prop. 83, the local
3 government costs would be reimbursed in full, including
4 those changes made by Prop. 83 to the SVP program. And
5 that letter was issued by the director of DOF and the
6 director of LAO. And interesting enough, the DOF
7 initiated the current redetermination request.

8 Staff minimizes this by saying initially that
9 there was no mechanism for redetermination present in
10 2005-2006. That's not true. Government Code 17570 was
11 enacted in 1986 and amended in 1990, which was in effect
12 at the time of Proposition 83.

13 And under the code at that time, the LAO had
14 the power to reinitiate.

15 And the final staff analysis said, "Well, that
16 doesn't matter because it's different parties." Well,
17 I beg to differ. That begs the question, and who can
18 request a redetermination is inconsequential. The fact
19 was, redetermination was legally possible in 2005 and
20 2006.

21 And the LAO, who had the power to initiate
22 redetermination, once again, was one of the signatories
23 in that September 2005 letter.

24 And also in the *California School Board*
25 *Association* decision, Government Code 17556(f), which was

Commission on State Mandates – July 26, 2013

1 enacted in 2005, gave the Legislature the power to grant
2 redeterminations, albeit a different party than the
3 current Government Code section; part of the
4 redetermination was still there.

5 In conclusion, there's a lot at issue here,
6 including the integrity and transparency of state
7 government, as well as the viability to prosecute and
8 defend cases brought into the Sexually Violent Predator
9 Act, an issue that's really important to the electorate.

10 CPDA respectfully requests the Commission to
11 deny the Department of Finance request, finding there
12 wasn't a subsequent change in the law.

13 Thank you.

14 CHAIR MATOSANTOS: For subsequent folks who
15 have public comment on this issue, can you just make sure
16 that you don't repeat other folks?

17 So we've heard clearly on the issue that folks
18 coming under public comment think that the mandated
19 activities were there beforehand.

20 We've heard on this issue about, you know, that
21 Finance, based on what was said and the voter pamphlet in
22 2006, does that have an effect on the issue before us.

23 And so I just want to make sure we don't get
24 repetition in subsequent witnesses, please.

25 Go ahead.

Commission on State Mandates – July 26, 2013

1 MR. BARRY: Good morning, Madam Chair, Members,
2 Commissioners. My name is Timothy Barry. I'm a Senior
3 Deputy County Counsel with the County of San Diego. I'm
4 here on behalf of the San Diego Office of Public
5 Defenders, the San Diego District Attorney's office, and
6 the San Diego County Sheriff.

7 As has been discussed previously, and again
8 I won't repeat myself, but the statute requires a
9 subsequent change in the law. There has not been a
10 subsequent change in the substance of the law as it
11 pertains to the mandates. The only change that has
12 occurred is as to the form of the law.

13 As staff had mentioned, the focus of Jessica's
14 Law was to make changes in the Penal Code to increase
15 criminal penalties, to increase the scope of who was
16 included in the "sexually violent predator" definition.
17 And arguably, the changes that were made to the Welfare
18 and Institutions Code sections that contain the mandated
19 activities were only required in order to comply with
20 Article IV, Section 9 of the Constitution, which requires
21 that where any amendment is made to a statute, the entire
22 statute has to be considered to be amended and reenacted.

23 So in order for the language that is contained
24 in the Welfare and Institutions Code sections that
25 contain the mandates to be updated to conform to the

Commission on State Mandates – July 26, 2013

1 other provisions in the Penal Code, it was required that
2 the entire text of these provisions be included in
3 Jessica's Law.

4 Arguably, that's the only reason that they were
5 included, and that there was no intent by the Legislature
6 or the proponents of Jessica's Law to include or to
7 change the fact that the State would be obligated to pay
8 for those obligations.

9 The summary, I've put forth the summary in our
10 papers that we filed with the Commission. It appears at
11 pages 204 through 207. I'm not going to go through
12 those, but I've detailed each of the different code
13 sections that contain the mandated activities and whether
14 or not there were changes; and if there were changes,
15 whether, in fact, they had any effect on the mandated
16 activities. And I would submit to you that they don't.

17 The only way that the staff findings can get to
18 where they are with respect to the definition of
19 "subsequent change in the law" is through the application
20 of the exception contained in 17556(f).

21 And where I specifically have a problem with
22 the language is, as amended in 2005, the Legislature
23 added language that said, "This subdivision applies,
24 regardless of whether the statute or executive order was
25 enacted or adopted before or after the date on which the

Commission on State Mandates – July 26, 2013

1 ballot measure was approved by the voters."

2 Now, the *California School Board* case, which
3 is referenced in the papers, dealt with whether or not
4 the reasonably-within-the-scope language, or
5 necessary-to-implement language. And it expressly
6 excluded from its consideration, a determination of the
7 validity of the last sentence of 17556(f). And I think
8 ultimately, that may be where this case is going.

9 I can understand that if there is a proposition
10 or an initiative that is enacted and that there is
11 subsequent legislation that is enacted to implement that,
12 or regulations that are enacted to implement that, or if
13 there is existing legislation and there is a proposition
14 or initiative passed by the voters that changes the scope
15 of what the mandates were, then those would not
16 necessarily be reimbursable.

17 But what we have here is a situation where your
18 Commission previously found that the Constitution
19 required that these activities be reimbursed by the
20 State. So you've made a constitutional finding that
21 under Article XIII B, section 6, that these activities
22 are required to be reimbursed.

23 The substance of those activities has not
24 changed. The Legislature, through the last sentence of
25 17556(f), is now attempting to usurp the Commission's

Commission on State Mandates – July 26, 2013

1 authority by saying it doesn't matter when this
2 proposition or initiative was enacted; and, therefore,
3 we can dictate to you that this is no longer a
4 constitutionally mandated activity.

5 So I know that's not -- it's probably beyond
6 the scope of what this hearing is today. But, again, I
7 wanted to reiterate the comments of the other witnesses,
8 that there has been no change in the substance of the
9 law. The mandated activities remain the same both before
10 and after the adoption of Jessica's Law. And the only
11 way you get to this exception, is through the application
12 of 17556(f); specifically, the language as amended by
13 2005.

14 CHAIR MATOSANTOS: The CSAC witness.

15 MR. NEILL: Good morning. Geoffrey Neill with
16 the California State Association of Counties.

17 I first want to point out, the Constitution is
18 unequivocal. If the Legislature or State agency mandates
19 a program, as they have in this case, they established
20 the program, then the State must provide funds to
21 reimburse. That's the only test for reimbursement, is
22 whether the Legislature or a State agency established a
23 program.

24 There are four exceptions, none of which anyone
25 is arguing are relevant in this case. The program

Commission on State Mandates – July 26, 2013

1 remains as established by the Legislature. There is no
2 exception for, if later in the Constitution, for later,
3 if the voters happened to include some of the sections
4 that are included in the program, adding a comma here or
5 there, or changing one element of the program, that that
6 later gets the State out of its burden from under the
7 onus of reimbursing locals for these programs.

8 As you heard, of the 14 sections or subsections
9 that established -- that form the basis for the original
10 statement of decision, only three were actually amended
11 by Prop. 83. And those were largely technical.

12 But the Department of Finance goes on to argue
13 that the rest of the *Sexually Violent Predator* Program,
14 the reimbursable parts, are necessary to implement.
15 However, the only effect of the voters' actions were to
16 enhance penalties. And to do this, you need to identify
17 who is a sexually violent predator under the program.

18 CHAIR MATOSANTOS: If I may, I find that really
19 misleading, given the fact that Proposition 83
20 substantially changed the process through which folks
21 were to identify who were SVPs and substantially increase
22 the number of people who had to be evaluated as SVPs to
23 kind of -- the fact that, you know -- in some ways, I
24 feel like your testimony suggests that Proposition 83
25 hardly made any changes, and that the law, before it

Commission on State Mandates – July 26, 2013

1 passed, was very similar. And I would think that the
2 caseload in L.A. County substantially increased following
3 Jessica's Law, given the fact that the number of people
4 in state hospitals considered SVPs substantially
5 increased.

6 MR. NEILL: Well, in fact, there was the
7 *Sexually Violent Predators* Program that was found to be,
8 by the statement of decision. But two months before
9 voters enacted Proposition 83, it was --

10 CHAIR MATOSANTOS: I'm quite familiar with
11 1128.

12 MR. NEILL: I know that you are -- which is
13 substantially similar to the ballot measure. So it was
14 established by the Legislature. And then the changes in
15 Prop. 83 were, compared to 1128, significantly more minor
16 than they would have been if 1128 had not been passed by
17 the Legislature.

18 So the fact that Prop. 83 did not make all of
19 the changes that it appeared to make based on, you know,
20 the line that it's in Proposition 83 itself.

21 In any case, I think that what was necessary to
22 implement was far less than the legislative scheme that
23 still exists. There were many less onerous ways of
24 implementing Prop. 83 than the current process. So I
25 don't think that the current legislative -- legislatively

Commission on State Mandates – July 26, 2013

1 enacted -- the current statutory process is necessary to
2 implement Prop. 83, because it requires necessity. And
3 as I said, many less onerous schemes were available to
4 the Legislature to implement Prop. 83.

5 Instead, what stands is what was already
6 enacted beforehand. That doesn't make it less onerous
7 than other possibilities, it only makes it what happened
8 to exist before.

9 CHAIR MATOSANTOS: So part of your issue, on
10 the issue you're speaking to now, really is about Step 2,
11 which isn't before us today. Okay.

12 Staff, could you address some of the issues
13 that have been raised by the witnesses?

14 MR. JONES: We have one more witness. I'm
15 sorry.

16 CHAIR MATOSANTOS: Oh, sorry. Do we have one
17 more witness?

18 I think we're good.

19 MR. JONES: Okay, fair enough.

20 CHAIR MATOSANTOS: Yes, I thought we had; but
21 thanks for double-checking.

22 MR. JONES: Thank you. Good morning.

23 Yes, I'd love to respond to as many of those as
24 the members have questions about.

25 CHAIR MATOSANTOS: Just for me, the pieces that

Commission on State Mandates – July 26, 2013

1 I'd be interested in just having you remind us of is
2 this question of when the statutory authority for the
3 Commission came in, relative to reviewing whether a
4 prior claim had been affected by subsequent, as well as
5 reminding us of the constitutional reimbursement
6 requirements, or lack thereof, associated with
7 voter-approved...

8 MR. JONES: Certainly, yes.

9 Well, first, as an aside, you're correct in
10 noting that "necessary to implement," with respect to the
11 activities of Sections, I believe, 6602, 6603, I think
12 it's Activities 4, 5, and 7, that's not before the
13 Commission today.

14 The only issue before the Commission today, as
15 I said at the outset, is whether the State's liability
16 may have been modified based on a subsequent change in
17 law. And the subsequent change in law, which has been
18 the subject of substantial testimony this morning, is
19 defined in the statute. We're not talking about a
20 subsequent change in the test-claim statutes themselves.
21 Whether the test-claim statutes themselves were amended
22 with a comma or with more than that, matters very little
23 with respect to the definition of "subsequent change in
24 law" in the Government Code.

25 A "subsequent change in law" in the Government

Commission on State Mandates – July 26, 2013

1 Code is defined as a change that requires a finding that
2 a test-claim statute either -- or that a statute either
3 does impose state-mandated costs under 17514, or does not
4 impose state-mandated costs under 17556.

5 And 17556(f), as we all know, prevents the
6 Commission -- it states that, "The Commission shall not
7 find costs mandated by the State for a voter-enacted
8 ballot measure."

9 So the subsequent change in law in this case
10 has very little to do with the substantive changes to the
11 test-claim statutes or -- and for that matter, SB 1128
12 is going to be irrelevant for the same reason. It has
13 very little to do with the substantive changes to the
14 test-claim statutes; it has to do with the changes that
15 have happened in the mandates scheme, if you like;
16 something that affects how the mandate is viewed under
17 section 17556 and whether the mandate is constitutionally
18 reimbursable after that.

19 But to speak to, in particular, the issue that
20 you asked about. Section 17570 was amended to include a
21 redetermination process in 2010.

22 I think Camille might know what the statute
23 said as of 2005.

24 MS. SHELTON: It was added in 2010. The
25 history of this goes way back. But originally, the

Commission on State Mandates – July 26, 2013

1 Department of Finance or the State could bring a
2 cost-savings claim to the Commission. That process was
3 repealed. And for many years, there was no process to
4 allow that type of a request at all.

5 Immediately before the enactment of the
6 redetermination statute in 2010, there is a statutory
7 process and a regulatory process that allows for a quick
8 reconsideration for an error of law. But that must be
9 done within a quick 30-day, and it has nothing to do with
10 any changes in the law, it's just that the Commission
11 made a mistake. So this is a new statutory process as of
12 2010.

13 MR. JONES: To the extent that my analysis
14 states that there was no mechanism or process to
15 redetermine a test claim or to reconsider a test claim
16 prior to 2010, all of the reconsiderations of test claims
17 that I've been able to locate -- and, obviously, there
18 are persons here today who have been with the Commission
19 quite a bit longer -- were based on a legislative
20 directive. The Legislature directed the Commission to
21 reconsider a particular test claim. And I wouldn't
22 consider that to be a mechanism or process that exists in
23 law. That's something that the Legislature proactively
24 requested from the Commission.

25 And, moreover, each of those, I think, would

Commission on State Mandates – July 26, 2013

1 be considered a separation-of-powers violation after
2 CSBA, the 2009 case, where I think three or four
3 reconsiderations were struck down on separation-of-powers
4 principles.

5 So I think it's fair to say and I think it's
6 true to say, that there was no mechanism or process for a
7 redetermination or reconsideration of a test claim prior
8 to 2010. And for that reason, the six years of waiting,
9 I suppose, that many of the claimants and many of the
10 interested parties are accusing the Department of Finance
11 of, I don't see how you can say that the Department of
12 Finance was sitting on its hands for six years, when
13 their procedure that we're doing today, the procedure
14 that we're dealing with, didn't exist until 2010.

15 CHAIR MATOSANTOS: Any questions from Members?

16 MEMBER SAYLOR: Matt, that's actually the -- if
17 I could?

18 CHAIR MATOSANTOS: Yes.

19 MEMBER SAYLOR: Matt, that's the question that
20 I'm puzzling with, is at what point do we -- are there
21 other issues out there that go back in time, that at any
22 point in time Finance could bring forward as a
23 redetermination? And it does seem to me to be a
24 substantial passage of time to this point.

25 MR. JONES: Yes, sir. Well, you're right, that

Commission on State Mandates – July 26, 2013

1 it's been, you could say, two and a half, three years.

2 In this case, I don't remember exactly, I think
3 the 2010 statute was in October of 2010 or something like
4 that.

5 So you could say that, yes, it's been a few
6 years that Finance waited to file this particular claim.
7 But the claimants benefit from that because -- or excuse
8 me, not this claim, but this redetermination request,
9 excuse me. But the claimants all benefit from that
10 because the redetermination request, if you were to grant
11 it, only goes back one fiscal year.

12 The claimants have argued -- or at least
13 implied -- that the statute of limitations should go both
14 ways; and that whatever subsequent change in law, you
15 know, that triggers the authority, the ability to bring
16 a redetermination request, maybe that Finance or the
17 Controller should only have, you know, 12 months or one
18 fiscal year to bring that claim.

19 But that's simply not the way the law is
20 written. And even if it were, it still benefits the
21 claimants, the longer Finance waits to bring these
22 redetermination requests.

23 So, yes, it's very possible that we could see
24 some pretty old laws being redetermined, some pretty old
25 test claims being redetermined, but they're only going to

Commission on State Mandates – July 26, 2013

1 go back one fiscal year.

2 MS. SHELTON: And can I clarify, too?

3 The redetermination process works both ways.
4 It doesn't work just for the State. It also works for
5 the claimant community. It was written not to provide a
6 statute of limitations based on a subsequent change in
7 the law. Instead, they limited the period of
8 reimbursement of the effect of a new-test claim decision.
9 And it works equally both ways.

10 MEMBER SAYLOR: The second question. Some of
11 the witnesses referred to documents that were provided
12 to the voters at the time they were considering
13 Proposition 83, and documents that stated something about
14 the status of the local government costs.

15 What does that -- that would be for the merits
16 of the discussion that we have probably in the future.
17 But what weight does that have in determining whether we
18 should redetermine the case of a mandate and mandated
19 costs?

20 MR. JONES: Yes, sir. Well, there are a few
21 issues there.

22 One is that, yes, there was some evidence
23 submitted into the record that at the time that
24 Proposition 83 was being considered by the voters, being
25 put before the voters, there was some analysis from the

Commission on State Mandates – July 26, 2013

1 LAO, I think, sent to -- from the LAO and the Department
2 of Finance, sent to then Attorney General Bill Lockyer,
3 that suggested that there would be no fiscal impact on
4 local government. And as I stated in the staff analysis,
5 that at the time was true because, again, there was no
6 mechanism for reconsidering a test claim absent
7 legislative directive to do so.

8 So to the extent that the interested parties
9 and claimants are now asking the Commission to apply a
10 promissory estoppel -- not a promissory estoppel -- but
11 equitable estoppel or an "unclean hands" defense or any
12 of those equitable defenses that have been raised, none
13 of those really apply unless there has been some kind of
14 misrepresentation at the outset, which there hasn't here.

15 The other issue that you suggest, which is...

16 I'm sorry, I lost my train of thought for a
17 moment.

18 Forgive me. Reframe your question one more
19 time, and I think I'll get there.

20 CHAIR MATOSANTOS: And just one more piece on
21 this. When the letter that goes to the Attorney Generals
22 is what goes to -- and is available to people when
23 they're gathering signatures, it's not what goes to the
24 voter in the voter pamphlet. The voter pamphlet is just
25 written by LAO; right? I'm just making sure we got that

Commission on State Mandates – July 26, 2013

1 right, in terms of who saw what, when.

2 MR. JONES: I apologize. I remember where I
3 was going now.

4 The other piece I was going to speak to was, to
5 the extent that the intent of the voters may have not
6 been cognizant of any fiscal impact on local government,
7 the intent of the voters I don't believe has any place in
8 the Commission's consideration of what the Constitution
9 now requires.

10 One of the commenters -- and I'm sorry, there
11 were too many of you, I lost track of whom it was.

12 MEMBER SAYLOR: I'd like to have that one
13 quoted and framed someplace.

14 MR. JONES: Well, I think it's true, one of the
15 commenters stated that the Constitution is unequivocal
16 with respect to what is reimbursable. And I think that's
17 true.

18 And here, we have decades of precedent that say
19 that only state-mandated programs are reimbursable. And
20 here, we have a program that has now clearly been adopted
21 by the voters.

22 Whether or not it was their intent to effect
23 mandate reimbursement, it was their intent to adopt the
24 program and to stiffen penalties for the program, and to,
25 you know, broaden the scope of the program.

Commission on State Mandates – July 26, 2013

1 And whatever effect that has on mandate
2 redetermination I don't think is relevant.

3 MEMBER SAYLOR: One more question, if I could.

4 MS. SHELTON: There is one point on that that
5 is pretty key, and it's just the plain language of
6 Proposition 83. When the whole purpose of mandates and
7 the thought of mandates is that the State, in its
8 discretion and its policy-making decisions, are enforcing
9 school districts or local agencies to perform an
10 activity, here you've got an initiative adopted by the
11 voters. And the plain language of that initiative
12 prohibits the Legislature from repealing this program
13 unless, by a two-thirds majority vote, a supermajority
14 vote.

15 So it's taking away the full discretion of the
16 Legislature when you do adopt the same thing as an
17 initiative. So it is a substantive change.

18 MEMBER SAYLOR: If I could ask one further
19 question. This 2010 action that establishes this
20 redetermination process, was it silent on retroactively
21 applying those provisions to --

22 MS. SHELTON: Yes, there is no statute of
23 limitations at all. So you could go back --

24 MEMBER SAYLOR: Well, and it also was silent on
25 retroactively addressing prior actions?

Commission on State Mandates – July 26, 2013

1 MS. SHELTON: The intent is that it does
2 retroactively address current mandated programs or
3 programs that the Commission has denied in the past.
4 That's the whole intent.

5 MEMBER SAYLOR: Prior to the adoption of the
6 measure itself?

7 MS. SHELTON: Right, yes.

8 I will say that the whole redetermination
9 statutory process is being challenged in a separate
10 lawsuit by the *California School Boards Association* case.
11 That case has not been briefed yet. It has not been set
12 for trial.

13 The Commission is required by the Constitution
14 to presume those statutes are constitutional and to
15 follow the law. And we don't have an injunction or a
16 stay from following that process.

17 CHAIR MATOSANTOS: Any other questions?

18 MR. BURDICK: Madam Chair?

19 CHAIR MATOSANTOS: I'm sorry, we have another
20 question, I think.

21 No? Oh, we're good.

22 All right, go ahead.

23 MR. BURDICK: Madam Chair, I wasn't sworn in,
24 and I just wanted to make a comment. It seemed like
25 there was a little confusion. I know that --

Commission on State Mandates – July 26, 2013

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CHAIR MATOSANTOS: Hold on a second.

Somebody was not sworn in.

MR. BURDICK: Do I need to get sworn in, or...

CHAIR MATOSANTOS: Yes.

MS. HALSEY: Please raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give is true and correct based on your personal knowledge, information, and belief?

MR. BURDICK: I do.

My name is Allan Burdick, and today I'm just here as a member of the public.

And I just wanted to kind of clear -- because there was a lot of discussion about the determination process. And I think that Commissioner Chivaro was the only one here before they were actually involved in the process. I know you were Department of Finance at the time, but it was in the mandate issues prior to October 2010, when the redetermination process was passed in a trailer bill which was opposed by local government.

But prior to that, we have had a lot of cases, and several have gone to court, about where the Legislature stepped in and directed the Commission to do something. And the prior executive director, a couple back, her position was that we were created by the Legislature, therefore, if the Legislature tells us to do

Commission on State Mandates – July 26, 2013

1 something, then we have to do it.

2 And so the Legislature would come in and say,
3 "Please rehear your decision, relook at this." And then
4 very often it would go to court.

5 The locals always said that's not the case,
6 but that was the position that the Commission Executive
7 Director, at least, was taking in prior years.

8 We had a lawsuit -- and we call it the AB 138
9 lawsuit -- which at that time -- which the courts came
10 in, or the final decision, I believe it was in April of
11 2010 --

12 CHAIR MATOSANTOS: I think counsel has spoken
13 to the separation-of-powers issue, and I think counsel
14 has also spoken to the litigation regarding this process;
15 and counsel has also advised us that we have to follow
16 the law.

17 So is there any other piece that you need to
18 chat with us about that's not on the agenda?

19 MR. BURDICK: No, I do not. Thank you very
20 much.

21 CHAIR MATOSANTOS: Okay, thank you very much.
22 Any other questions, comments?

23 *(No response)*

24 CHAIR MATOSANTOS: All right, do I have a
25 motion?

Commission on State Mandates – July 26, 2013

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MEMBER OLSEN: So moved, the staff recommendation.

CHAIR MATOSANTOS: Do we have a second?

MEMBER ALEX: Second.

CHAIR MATOSANTOS: All members in support, vote "aye."

(A chorus of "ayes" was heard.)

MEMBER SAYLOR: I say "aye" as well, but I regret having to say "aye." It's just simply, this is our structure that we must act on, the redetermination request appears appropriate given the legal framework that we're dealing with. It's not right, but it is legally required.

MEMBER RAMIREZ: I'll agree with that.

CHAIR MATOSANTOS: Any opposed?

(No response)

CHAIR MATOSANTOS: All right, the motion carries.

MS. HALSEY: Item 7 was on the Consent Calendar.

Item 8 is next.

Chief Legal Counsel Camille Shelton will present Item 8, a request for reconsideration of statement of decision and parameters and guidelines on the *California Public Records Act*.

Commission on State Mandates – July 26, 2013

1 MS. SHELTON: Good morning. This is the second
2 hearing on a request for reconsideration filed by the
3 California Special Districts Association on the
4 *California Public Records Act* program.

5 The Association contends that the decision and
6 the parameters and guidelines contain an error of law
7 with respect to the description of eligible claimants
8 which omits special districts required to comply with the
9 CPRA. The Association also contends that all special
10 districts, including those that receive revenues solely
11 from fees, are legible to claim reimbursement under
12 Article XIII B, section 6.

13 Staff finds that the description of eligible
14 claimants in the parameters and guidelines for this
15 program is incorrect, as a matter of law, except for
16 certain provisions relating only to school districts, the
17 activities mandated by the CPRA apply equally to all
18 levels of government including special districts, and the
19 test-claim statement of decision did acknowledge that
20 fact.

21 Not all special districts, however, are
22 eligible to claim reimbursement under the Constitution
23 as asserted by the Association. As the courts have
24 determined, only those local agencies that are subject
25 to the tax-and-spend limitations of the California

Commission on State Mandates – July 26, 2013

1 Constitution and whose costs for the program are paid
2 from proceeds of taxes are eligible to claim
3 reimbursement under Article XIII B, section 6. Thus,
4 special districts that receive their revenue from fees or
5 pay for this program with fee revenue are not entitled to
6 reimbursement under Article XIII B, section 6.

7 Staff recommends that the Commission adopt the
8 corrected statement of decision and parameters and
9 guidelines which correct the section on eligible
10 claimants and clarify potential offsetting revenues for
11 this program.

12 Five affirmative votes are required to correct
13 the statement of decision and parameters and guidelines.

14 Will the parties please state your names for
15 the record?

16 MS. HOLZEM: Good morning. Dorothy Holzem with
17 the California Special Districts Association.

18 MR. NICHOLS: Andy Nichols, Nichols Consulting.

19 MR. NEILL: And Geoffrey Neill with the
20 California State Association of Counties.

21 CHAIR MATOSANTOS: Ms. Holzem?

22 MS. HOLZEM: Thank you.

23 Let me start by thanking the Commission for
24 granting reconsideration on this item, and also that we
25 do appreciate the Commission's -- or the staff's effort

Commission on State Mandates – July 26, 2013

1 to rectify the omission of special districts from
2 eligible claimants.

3 Unfortunately, though, we must express our
4 serious concerns with the staff recommendation that would
5 only provide for non-enterprise special districts to be
6 able to claim reimbursement for the specified activities.

7 In addition, we believe the Court's decision
8 in the *County of Fresno v State of California* is
9 inappropriately applied here to the question. And this
10 is for two reasons as outlined in our July 1st letter to
11 the Commission.

12 First, it's the characteristics of the
13 *Hazardous Waste Abatement* mandate in the case of *Fresno*,
14 when you compare it to the *Public Records Act*
15 requirements.

16 And second, the staffs analysis gives really
17 no consideration to the historical context of the 1991
18 decision in light of the three major changes to local
19 tax-and-revenue authority.

20 As you heard, the staff recommendation really
21 from a 30,000-foot level concludes that if an agency has
22 fee authority, they can use those fees directly to cover
23 the costs of a state-mandated program. But I urge you to
24 consider how that can really be the case when you look at
25 the differences between the Fresno state-mandated program

Commission on State Mandates – July 26, 2013

1 and, again, the *Public Records Act* mandates before you.

2 First, the *Hazardous Material Abatement* program
3 in the Fresno case included express fee authority. The
4 local agency was expressly authorized to levy a new fee
5 to cover the direct costs of mitigating the hazardous
6 waste for the ratepayers in that area.

7 Contrasting that, the *Public Records Act* only
8 allows for a fee specific to the duplication of records.
9 There is no direct fee authority for any of the other
10 listed mandated activities that have previously been
11 deemed a reimbursable mandate.

12 Even earlier this year, the California Supreme
13 Court further limited the ability for local agencies to
14 charge a fee for duplication of records. And I have to
15 state that that cost duplication doesn't include staff
16 time, it doesn't include the process of duplicating.
17 It's purely for the copies made.

18 And the second point I need to make,
19 distinguishing the Fresno County *Hazardous Waste* mandate
20 from the *Public Records* mandates, is who is the
21 beneficiary of the Act. In the *Hazardous Waste* mandate,
22 it is the residents. It is the people within the
23 jurisdiction who have a direct benefit conferred upon
24 them. And so it's rightly so that they should have a new
25 fee levied. However, when the *Public Records Act* was

Commission on State Mandates – July 26, 2013

1 considered, all members of the public benefit from having
2 access to records of a local legislative body, regardless
3 if they're a ratepayer, regardless if they're in that
4 district, that city, that county, that state. It's
5 really a benefit for all.

6 And so what ends up happening if you're going
7 to apply the staff recommendation is that that enterprise
8 district will be subsidizing -- the ratepayers in that
9 enterprise district will be subsidizing the cost for all
10 the other members of the public, changing the definition
11 really, I think, from a fee to a tax, when you look at
12 who is receiving the benefit and who is paying for that
13 service.

14 And it's also important to note the broad
15 application of the Fresno decision that the staff
16 analysis mentions in the cases of the *RDA of San Marcos*,
17 *City of San Marcos versus the Commission on State*
18 *Mandates*.

19 The *San Marcos* case expressly describes the
20 *Fresno County* case as the Supreme Court upholding the
21 facial constitutionality of Government Code section
22 17556(d), which disallows state subventions of funds
23 where the local government is expressly authorized to
24 collect service charges or fees in connection with the
25 mandate program.

Commission on State Mandates – July 26, 2013

1 Again, we don't have that direct fee authority
2 for the Public Records Act.

3 And also as I mentioned in our July 1st letter,
4 and I will briefly summarize, is the lens at which we are
5 looking at this mandate has changed completely. And I
6 think most notably because of the passage of Prop. 218,
7 and how locals may levy or seek new fee or revenue for
8 their services.

9 Prior to the passage of 218, Article XIII B was
10 interpreted to say that, yes, if a public agency has the
11 authority to levy a fee, then they should not be owed
12 reimbursement for services. But since the passage of
13 Prop. 218, it's now clear that both enterprise and
14 non-enterprise districts are limited in their ability
15 based on voter approval for new property -- for both
16 property owners or voter approval before moving forward.

17 In addition, all special districts, enterprise
18 and non-enterprise, are authorized to levy special taxes
19 if approved by the voters that are subject to the
20 tax-and-spend limitations of Article XIII A and B of the
21 Constitution.

22 In other words, no special district is
23 categorically exempt from the tax-and-spend limitations
24 and, therefore, they should not be exempt from the
25 protections under Article XIII, Section 6 for mandate

Commission on State Mandates – July 26, 2013

1 reimbursement.

2 I'll close by saying, you know, a major part of
3 the Court's reasoning in the *Fresno County* case was the
4 fact that Article XIII B was meant to prevent a situation
5 where the states' shift of responsibility to local
6 governments creates a situation where the local
7 government is ill-equipped to handle the new costs by
8 those programs.

9 And I would say that nothing has changed. And,
10 if anything, that's more true today because of Prop. 218
11 and the other restrictions on local fee authority.

12 So with that, I'll close and urge the
13 Commission to respectfully consider rejecting the staff
14 recommendation.

15 Thank you.

16 MR. NEILL: Good morning -- or early afternoon.
17 Geoffrey Neill with CSAC.

18 We have comments that I'm told didn't quite
19 make it into your binder. So I'll distribute them, but
20 you don't have to read them right away because I'll
21 summarize them for you nicely.

22 *(Distribution of CSAC comments)*

23 MR. NEILL: Now, for the commissioners and any
24 members of the public that have a hard time sleeping, as
25 Dorothy noted, the County of Fresno case is not directly

Commission on State Mandates – July 26, 2013

1 applicable. The Commission -- the staff analysis urges
2 a -- it seems the broadest possible use of that to say
3 that any district that has fee authority who doesn't have
4 tax-and-spend authority isn't eligible for reimbursement.
5 But the courts themselves have told us the scope of the
6 *Fresno* case, and that scope is where a government is
7 authorized to collect service charges or fees in
8 connection with a mandated program.

9 The courts themselves in *San Marcos* said that
10 it is not broad; it is that narrow. And that's clearly
11 not the case in this instance.

12 But I want to spend more time on the fact
13 that -- the point of the *Fresno* case -- of course, it
14 said that the County of Fresno, you know, wasn't eligible
15 because of that. But the reasoning that it used is
16 instructive, I think, for us in this case -- or for you.
17 Because the reasoning was -- because the Constitution
18 isn't clear, the plain language of the Constitution does
19 not say, "Only if you have tax-and-spend authority."
20 The Court inferred that based on the historical context
21 of Section 6.

22 But the historical context did not end
23 in 1991, which is when the *Fresno* case came down. The
24 historical context of Section 6 continues. And it
25 continues as my colleague said, with Proposition 218.

Commission on State Mandates – July 26, 2013

1 And so while Proposition 13, as the *Fresno* case noted,
2 limited taxes, and then Section 6 comes in and says,
3 "According to the Court, because you can't use taxes,
4 those of you that have used taxes now get reimbursed by
5 the State for mandates," Proposition 218 came in just a
6 few years after the court case and said any fees,
7 charges, assessments, those are all limited now, in
8 various ways, depending on what they are; but all of
9 them are limited. There is no local agency where the
10 governing board can, just on their own, without any
11 restriction by either the property owners or the voters,
12 can implement these kinds of charges. So that's a major
13 thing.

14 And, in fact, we have a reenactment which, of
15 course, came up in the last instance before this
16 Commission, we have a reenactment of Section 6 after
17 Proposition 218.

18 So the historical context of Section 6 in
19 Article XIII B has changed considerably from only, as the
20 staff analysis notes, because of tax restriction, it was
21 reenacted after there were also restrictions on fees,
22 charges, and assessments.

23 So we think that while the Court couldn't
24 deliberate on that because it was five years before
25 Proposition 218 passed, the Court, in that 1991 court

Commission on State Mandates – July 26, 2013

1 decision, said the reason is because of the historical
2 context. So there's new historical context.

3 So not only do we have Prop. 218 in 1986,
4 we have Proposition 1A, which is when Section 6 was
5 reenacted by the voters. And then just a couple of years
6 ago, we have Proposition 26. Of course, Proposition 26,
7 for the first time, defined "taxes" specifically.

8 And among other things, what it says is that
9 the fee -- it's only a fee if it is in direct proportion
10 to the benefit conferred on the fee payer; otherwise,
11 it's a tax.

12 CHAIR MATOSANTOS: Isn't it also very clear
13 about the fact that administrative costs can be covered
14 by a fee? Because it seems to me that one of the logical
15 extensions of your argument would substantially narrow
16 the use of fees beyond how it has been interpreted and
17 how it's been used.

18 MR. NEILL: And perhaps we await those court
19 cases.

20 Yes, but I think that -- I think that --

21 CHAIR MATOSANTOS: It is clear that it can be
22 used for administrative costs, where --

23 MR. NEILL: Yes, it's absolutely true, it can
24 be used for administrative costs.

25 For state mandates, can fees be used -- can

Commission on State Mandates – July 26, 2013

1 general fees be used to pay for state mandates where a
2 specific benefit is conferred on somebody outside of the
3 fee payers, though?

4 In this case, you know, conceivably --

5 CHAIR MATOSANTOS: Do the fee payers benefit
6 from open government?

7 MR. NEILL: Are they the only ones that benefit
8 from open government? Because they do, but they're not
9 the only ones; and, in fact, they may not be the
10 requester. And I think it's instructive that there is
11 fee authority in the Public Records Act, but that it is
12 severely constrained. So the Legislature has
13 acknowledged that this is a program that requires
14 additional -- you might say fee authority, and they
15 specifically declined to extend that fee authority to
16 these new mandated programs.

17 CHAIR MATOSANTOS: Any questions from members?
18 Comments?

19 *(No response)*

20 CHAIR MATOSANTOS: Are we prepared to make a
21 motion to move staff recommendation?

22 MEMBER CHIVARO: I'll move staff
23 recommendation.

24 MEMBER ALEX: We've got another speaker.

25 CHAIR MATOSANTOS: I thought we were skipping

Commission on State Mandates – July 26, 2013

1 you. I didn't realize we just changed -- I thought we
2 skipped you, not changed the order.

3 My apologies. Go ahead.

4 MR. NICHOLS: I wanted home-team advantage and
5 go last.

6 Thank you. Andy Nichols, Nichols Consulting.
7 Actually, I, too, have a handout. It is just a
8 one-pager. In fact, the information that I do have to
9 distribute is from the Commission on State Mandates'
10 Web site. So I think a number of folks in the room are
11 familiar with much of the information I'm handing out
12 here.

13 But you'll note on the heading of this
14 document, as it comes to you, I have identified
15 post-1991 -- and, obviously, I'm pointing to that data as
16 a result of the *County of Fresno v. California* that's
17 what's been mentioned throughout here. And it identifies
18 special district programs -- I've listed them on the
19 left-hand side for you -- that do not contain any
20 reference to tax-and-spend provisions of XIII A, XIII B.

21 As you'll notice, 15 of those are the adopted
22 parameters and guidelines; 23 include changes, amendments
23 to the parameters and guidelines. And I've also listed
24 the dates, with the exception of the *Mandate*
25 *Reimbursement Process I*, which was amended 12 times, and

Commission on State Mandates – July 26, 2013

1 *Mandate Reimbursement Process I and II*, which was amended
2 last time this Commission got together.

3 I think what is relevant in many of these
4 cases, the only instance that special districts are
5 limited to file reimbursement claims is they may not be
6 eligible because the service they provide is ineligible.
7 In other words, if you do not have a sworn peace officer,
8 you would not be eligible for Cancer Presumption of Peace
9 Officers; and, obviously, with the *Firefighter* programs,
10 the same criteria would hold. And that is the only time
11 there is a limitation under eligible claimants for
12 special districts.

13 I am in agreement -- I obviously am supporting
14 what CSDA has asked, which is the rejection of the
15 limitation here for XIII A, XIII B. We're looking at the
16 possibility of eliminating 2,700 special districts from
17 the opportunity to file reimbursement claims when, in the
18 past, this Commission has not had an issue with that.

19 Additionally, since one of the areas that
20 provides reimbursement is the fact that when the State
21 decides to shift costs, that burden is sent to local
22 government. Those 2,700 special districts will have to
23 bear the costs, as will their ratepayers.

24 As Ms. Holzem stated earlier, there is no
25 opportunity to limit costs in that situation where the

Commission on State Mandates – July 26, 2013

1 Legislature can go ahead and make that shift without
2 concern.

3 With that in mind and just quickly closing
4 here, I would like to see the Commission on State
5 Mandates -- as they did at their last meeting, when local
6 agencies are eligible to file claim, as they are under
7 *Mandate Reimbursement Process I and II* on those amended
8 parameters and guidelines, all special districts should
9 be eligible to file for *California Public Records Act*.

10 Thank you very much.

11 MS. SHELTON: A couple of things.

12 First, this is not a new issue. It's not a new
13 analysis. It's consistent with what the Commission has
14 adopted in the past, and on several occasions, when we've
15 had test claims filed by certain special districts that
16 were not eligible to claim reimbursement, one notably a
17 couple of years ago on a *Local Agency Ethics* claim, where
18 it was denied the sanitation district because they were
19 fully fee-based.

20 Two, when you're looking at the plain language
21 of the Constitution, yes, there's been subsequent
22 amendments to the Constitution; and, now, special
23 districts have restrictions on fee authority. They added
24 Article XIII C and XIII D to impose those restrictions;
25 but at no time did they amend Article XIII B to change

Commission on State Mandates – July 26, 2013

1 what the purpose of Article XIII B was. And that is a
2 spending limit. And Section 6 was designed to help local
3 government from paying for a state-mandated programs from
4 their restricted tax revenues that are subject to the
5 spending limit. There is no spending limit for fees at
6 all. And, in fact, the plain-language definition in
7 Article XIII B, section 8, defines "proceeds of taxes" to
8 not include fees.

9 So there is no mechanism for reimbursing an
10 entity for expenditure of their fees. And, in fact, all
11 of our P's & G's say that at any point in time that you
12 use fee revenue to pay for the mandated program, you have
13 to identify that and deduct that from the claim. You are
14 not an eligible claimant if you use fee authority. And
15 that's been consistent throughout all of these P's & G's
16 that have been brought forth before the Commission. All
17 of these test claims were filed by a city and county.
18 All the P's & G's say that they are entitled to the
19 reimbursement only for the eligible local agencies. The
20 State Controller has the authority to reduce any claim
21 filed by a special district that is not subject to the
22 tax-and-spend provisions of the Constitution.

23 And, therefore, we recommend that the
24 Commission adopt the staff analysis.

25 CHAIR MATOSANTOS: Thank you.

Commission on State Mandates – July 26, 2013

1 And we had the motion and a second.

2 Does that hold?

3 MR. NICHOLS: Actually, may I respond to
4 Legal's comments?

5 CHAIR MATOSANTOS: I think the issues have been
6 discussed.

7 MR. NICHOLS: Okay.

8 CHAIR MATOSANTOS: Are there -- do we have any
9 additional questions from Commissioners?

10 MEMBER OLSEN: I'm actually interested in
11 hearing his response.

12 CHAIR MATOSANTOS: All right, go ahead.

13 MR. NICHOLS: Regarding the previous claims
14 that involve special districts, I believe one was local
15 agency formation commissions, LAFCo. The other was, as
16 mentioned before, the ethics, AB 1234, which special
17 districts were identified. I think in those two
18 instances -- I may be wrong -- but I believe those fell
19 off the radar. And I think if you look at Item Number 13
20 on your Consent Calendar regarding *Local Agency Ethics*,
21 you'll notice that there were zero filings for that
22 program, despite the fact that there could be potentially
23 over
24 700 eligible claimants.

25 Similarly, with the LAFCo claim, even though

Commission on State Mandates – July 26, 2013

1 there would have been conceivably over 600 claimants,
2 less than 25 filed. And both of those had multiple-year
3 opportunities to recover costs.

4 So I would say that both of those flew under
5 the radar as far as the California Special -- I don't
6 mean to speak for them -- but as far as California
7 Special Districts Association is concerned.

8 Once again, this is the first time in the
9 claimant language that has shown up, this tax-and-spend
10 of XIII A, XIII B.

11 Thank you.

12 CHAIR MATOSANTOS: Staff?

13 MS. HALSEY: I just did want to clarify one
14 thing. I think Mr. Nichols misspoke when he said he
15 pulled this, he got this off of our web site. I think
16 what he means is, he compiled it off of data he might
17 have gleaned from our web site. We don't have a document
18 like this.

19 MR. NICHOLS: I apologize. That is correct.

20 MS. SHELTON: Just to mention, at any time the
21 State Controller has the authority and control on their
22 own to reduce any reimbursement claim. And, again, the
23 plain language of all parameters and guidelines say
24 "eligible local claimant," and do require an
25 identification of fee authority. So it's nothing new.

Commission on State Mandates – July 26, 2013

1 This is not a new analysis. I have written it many
2 times.

3 CHAIR MATOSANTOS: So we have a motion and a
4 second.

5 All those in support, please say "aye."

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

7 CHAIR MATOSANTOS: Anyone opposed?

8 *(No response)*

9 CHAIR MATOSANTOS: No?

10 The motion carries.

11 Thank you.

12 MS. HALSEY: Items 9, 10, 11, 12, and 13 were
13 on the Consent Calendar.

14 Item 14 is reserved for County applications for
15 a finding of significant financial distress or 1033
16 applications. No SB 1033 applications have been filed.

17 Item 15, Commission staff member Kerry Ortman
18 will present Item 15, the Legislative Update.

19 MS. ORTMAN: Good morning.

20 The following bills related to the mandates
21 process were introduced this year.

22 AB 392 requires the Controller to determine the
23 most cost effective allocation method if \$1,000 or less
24 is appropriated for a program. The bill was enrolled and
25 sent to the Governor on July 10th, 2013.

Commission on State Mandates – July 26, 2013

1 AB 1292 would make a technical, non-substantive
2 change to Government Code section 17560(b). This is a
3 spot bill. And as of July 10th, 2013, the bill has not
4 been referred to a committee nor has it been amended.
5 Staff will continue to monitor this legislation.

6 The Budget Act of 2013 was signed on June 27th,
7 2013. The Commission's budget, as adopted, includes a
8 baseline augmentation over prior year to fund two
9 additional positions: an attorney III and a senior legal
10 analyst. These two new positions will hasten the
11 reduction of the Commission's backlog and facilitate
12 timely hearing of current and future matters.

13 Mandates originally proposed for suspension in
14 the Governor's budget included nine new programs. At
15 the time, five of those did not yet have a statewide cost
16 estimate. The Legislature did not, in the end, suspend
17 any of the mandates that did not yet have an SCE.

18 There was considerable public and media
19 interest in the proposed suspension of the California
20 Public Records Act reimbursable mandate. Ultimately, the
21 Legislature passed a budget that did not suspend this
22 mandate.

23 On July 3rd, 2013, the Senate unanimously
24 approved the constitutional amendment intended to include
25 the reimbursable mandated activities associated with the

Commission on State Mandates – July 26, 2013

1 *California Public Records Act* in the State Constitution.
2 If passed by a two-thirds majority in the Assembly, the
3 amendment will be included in the June 2014 election.

4 Finally, Budget Trailer Bill SB 71 was signed
5 on June 27th, 2013. This trailer bill amended several
6 code sections with the stated intent of relieving local
7 entities of the duty to perform reimbursable activities
8 as determined by the Commission on State Mandates or
9 other authorized entity.

10 Included in the following state mandated local
11 programs: *Deaf Teletype Equipment, Adult Felony*
12 *Restitution, Pocket Masks, Domestic Violence Information,*
13 *and the Victims Statements - Minors.*

14 CHAIR MATOSANTOS: Any questions about the leg.
15 update?

16 *(No response)*

17 CHAIR MATOSANTOS: All right, thank you.

18 MS. HALSEY: Thank you, Kerry.

19 Item 16, Chief Legal Counsel Camille Shelton
20 will present the Chief Legal Counsel's report.

21 MS. SHELTON: Thank you.

22 Since our last hearing, there have been no new
23 filings, no new decisions.

24 Wednesday, on the case of *Department of Finance*
25 *and State Water Resources Control Board versus the*

Commission on State Mandates – July 26, 2013

1 *Commission on State Mandates on Stormwater Permit*, that
2 case was heard before the Second District Court of
3 Appeal. They have 90 days to issue their decision.

4 CHAIR MATOSANTOS: Any questions on that
5 report?

6 *(No response)*

7 MS. HALSEY: Item 17 is Executive Director's
8 report; and that's our Report on Workload, and also our
9 Report to Finance and Backlog Reduction Plan for 2013,
10 as well as the tentative agenda items for the next
11 meeting.

12 The written report to Finance contains an
13 summary of work completed in 2012-13 and a summary of
14 pending matters, including items filed in the 2012-13
15 fiscal year.

16 For the 2012-13 fiscal year, the Commission had
17 only 10.5 staff positions; and posing an additional
18 challenge, staff in three of these positions, including
19 half of our Commission's attorneys, just began work with
20 the Commission this fiscal year.

21 Nonetheless, the Commission completed 11 test
22 claims, 12 parameters and guidelines, including four
23 with RRM's, eight statewide cost estimates, and three
24 parameters and guidelines amendments, and 42 incorrect
25 reduction claims.

Commission on State Mandates – July 26, 2013

1 As of July 1st, 2013, the Commission has a
2 pending caseload of 26 test claims, four parameters and
3 guidelines, 12 statewide cost estimates, twelve proposed
4 parameters and guidelines amendments, two requests for
5 mandate redetermination, and 87 incorrect reduction
6 claims.

7 The report to Finance lays out a plan for
8 hearing. All test claims filed through 2012-13, except
9 for the ten *Stormwater* test claims that are pending
10 outcome of litigation, and also all of the pending
11 P's & G's, SCEs, PGAs, and mandate redetermination
12 requests within the 2013-2014 fiscal year.

13 And the plan also includes hearing several IRCs
14 in this fiscal year as well.

15 It's anticipated that upon resolution of the
16 *Stormwater* cases, it should take about another year to
17 complete those ten test claims. But the actual time
18 required to complete those claims may be affected by many
19 variables that are discussed at length in the plan.

20 Also, the plan continues to promote the
21 continued informal resolution of IRCs with the SCO and
22 claimants by strategically hearing those claims with the
23 most cost-cutting issues first, and then facilitating
24 meetings with the parties. And you'll see, some of those
25 claims are coming forward shortly. I think we have some

Commission on State Mandates – July 26, 2013

1 in the next hearing.

2 And in the event that that is effective, we may
3 be able to resolve these more quickly. But in the event
4 that it doesn't work that way, we have to hear each one
5 of them. It may take up to two years to hear all those
6 IRCs that we have pending.

7 At the end of the report, I have tentative
8 agenda items for September and December meetings.

9 If you represent a party in these matters,
10 please review the claim and comments on file. Some of
11 the claims are old and maybe they don't have the comments
12 you would want them to have. So this is the time to
13 update those.

14 The comments are all posted on the Web site,
15 so you can go take a look. And please submit any
16 additional comments and documentation you wish to add for
17 consideration in the staff analysis as soon as possible
18 and before issuance of the draft, so we can consider
19 them. This will speed the Commission's process and
20 enable all the pending matters to receive a timely
21 hearing.

22 And also be aware that the draft staff analysis
23 generally issues between the middle to end of the month
24 prior to the hearing date. So you can sort of --
25 especially I know we have a lot of newer people to the

Commission on State Mandates – July 26, 2013

1 mandates process, but that's sort of the time you can
2 expect your draft to review and comment on it.

3 Failing to review and comment within a
4 three-week period is not in itself good cause for
5 extensions of time and postponements of hearings. So
6 please consider that time-line and schedule it into
7 our workload.

8 And does anyone have any questions?

9 CHAIR MATOSANTOS: Should we assume Item 4 gets
10 added to the September and December?

11 MS. HALSEY: Yes, it is postponed to the
12 September hearing.

13 CHAIR MATOSANTOS: Great.

14 Any questions on the report?

15 *(No response)*

16 CHAIR MATOSANTOS: All right, thank you.

17 MS. HALSEY: Thank you.

18 CHAIR MATOSANTOS: So the Commission is going
19 to meet in closed executive session pursuant to
20 Government Code section 11126, to confer with and receive
21 advice from legal counsel for consideration and action,
22 as necessary and appropriate, upon the pending litigation
23 listed in the published notice and agenda; and to confer
24 with and receive advice from legal counsel regarding
25 potential litigation. The Commission will also confer

Commission on State Mandates – July 26, 2013

1 on personnel matters pursuant to the same code section.
2 And we'll reconvene in open session in approximately
3 15 minutes.

4 *(The Commission met in closed session*
5 *from 11:32 a.m. to 11:40 a.m.)*

6 CHAIR MATOSANTOS: The Commission met in closed
7 executive session pursuant to Government Code section
8 11126 to confer with and receive advice from legal
9 counsel for consideration and action, as necessary and
10 appropriate, upon the pending litigation listed on the
11 published notice and agenda; and to confer with and
12 receive advice from legal counsel regarding potential
13 litigation; and pursuant to Government Code section
14 11126(a) to confer on personnel matters.

15 With no further business to discuss, I will
16 entertain a motion to adjourn.

17 MEMBER OLSEN: So moved.

18 MEMBER SAYLOR: Second.

19 CHAIR MATOSANTOS: All those in favor, say
20 "aye."

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

22 CHAIR MATOSANTOS: All those opposed, say "no."

23 *(No response)*

24 CHAIR MATOSANTOS: The meeting is adjourned.

25 *(The meeting concluded at 11:41 a.m.)*

REPORTER'S CERTIFICATE

I hereby certify:

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

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer-aided transcription.

In witness whereof, I have hereunto set my hand on the 22nd of August 2012.



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