ORIGINAL

PUBLIC HEARING

COMMISSION ON STATE MANDATES

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TIME: 9:30 a.m.

DATE: Friday, July 28, 2006

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported by: Daniel P. Feldhaus
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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for MICHAEL GENEST
Director
Department of Finance

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

SEAN WALSH
Director
State Office of Planning and Research

AMY HAIR
Representative for STEVE WESTLY
State Controller

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

--o0o--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 28)

CAMILLE SHELTON
Chief Legal Counsel
(Items 4, 5, 6, 7, 18, 19 & 27)

DEBORAH BORZELLERI
Commission Counsel
(Items 8, 9, 10 & 11)

NANCY PATTON
Deputy Executive Director
(Item 22, 23 & 26)

KATHERINE TOKARSKI
Commission Counsel
(Items 14, 15, 16 & 17)

--o0o--

PUBLIC TESTIMONY

Appearing Re Item 4:

For County of Los Angeles:

LEONARD KAYE
Certified Public Accountant
Office of Auditor-Controller
County of Los Angeles
500 West Temple Street, Suite 603
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY
continued

Appearing Re Item 4:

For Department of Finance:

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

Appearing Re Item 6:

For Western Placer Unified School District:

DAVID E. SCRIBNER, Esq.
President/CEO
Scribner Consulting Group, Inc.

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance

Appearing re Item 8:

For County of San Bernardino:

BONNIE TER KEURST
Manager, Reimbursable Projects
County of San Diego
Auditor/Controller-Recorder
222 W. Hospitality Lane, Fourth Floor
San Bernardino, California 92415-0018

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing re Item 10:

For City of Palos Verdes Estates:

JOHN LIEBERT
Attorney
Liebert Cassidy Whitmore
6033 West Century Boulevard, Suite 500
Los Angeles, California 90045

PAM STONE
MAXIMUS
Financial Services Division
4320 Auburn Boulevard, Suite 200
Sacramento, California 95841

DANIEL DREILING
Chief of Police
Palos Verdes Estates Police Department
340 Palos Verdes Drive West
Palos Verdes Estates, California 90274

For California State Association of Counties:

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

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing re Item 14:

For County of Orange:

PAM STONE
MAXIMUS

SUZANNE SLUPSKY
Election Services Manager
County of Orange
Registrar of Voters
1300-C S. Grand Avenue
Santa Ana, California 92705

For Department of Finance:

SUSAN S. GEANACOU, Esq.
Senior Staff Attorney
Department of Finance

Appearing re Item 16:

For County of Sacramento

PAM STONE
MAXIMUS

ALICE JARBOE
Assistant Registrar of Voters
County of Sacramento
Voter Registration and Elections
7000 - 65th Street, Suite A
Sacramento, California 95825

A P P E A R A N C E S

PUBLIC TESTIMONY
continued

Appearing re Item 18:

For East Side Union High School District

ROGELIO M. RUIZ
96 North Third Street, Suite 620
San Jose, California 95112

Appearing re Item 19:

For Various Districts:

KEITH B. PETERSEN
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, California 92117

For Various Districts

SLOAN R. SIMMONS
Attorney at Law
Lozano Smith
2000 Crow Canyon Place, Suite 200
San Ramon, California 94583

For San Diego City Schools:

ARTHUR M. PALKOWITZ
Manager, Office of Resource Development
San Diego City Schools
4100 Normal Street, Room 3209
San Diego, CA 92103-2682

A P P E A R A N C E S

PUBLIC TESTIMONY
continued

Appearing re Item 19: *continued*

For State Controller's Office:

GEOFFREY GRAYBILL
Office of the Attorney General
1300 I Street
Sacramento, California 95814

JIM L. SPANO
State Controller's Office

Appearing re Item 22:

For San Diego City Schools:

ARTHUR M. PALKOWITZ
Manager, Office of Resource Development
San Diego City Schools

For Department of Finance:

RYAN STORM
Department of Finance

Appearing re Item 23:

For San Diego City Schools:

ARTHUR M. PALKOWITZ
Manager, Office of Resource Development
San Diego City Schools

For Department of Finance:

RYAN STORM
Department of Finance

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ERRATA SHEET

Page	Line	Correction
20	23	should read "Controller's"
20	23	Cross off "as"
40	24	cross off "offset-in" and replace with "offsetting"
44	2	cross off "offset-in" and replace with "offsetting"
45	24	Cross off "signed" and replace with "based"
65	10	Cross off "herd" and replace with "heard"
76	2	Cross off "melting" and replace with "meaning"
76	8	Cross off "staff" and replace with "staff"
121	21	correct word from "enacted" to "reenacted"
121	23	cross off the "-ing" ending on the word "processing"
132	8	cross off "incorrect" and replace with "indirect"
139	18	Replace "respectively" with "prospectively"

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BE IT REMEMBERED that on Friday, July 28, 2006, commencing at the hour of 9:30 a.m., thereof, at the State Capitol, Room 126, Sacramento, California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following proceedings were held:

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CHAIR SHEEHAN: Good morning.

I would like to call the July 28th Commission on State Mandates meeting to order.

Can we call the roll?

MS. HIGASHI: Mr. Glaab?

MEMBER GLAAB: Present.

MS. HIGASHI: Mr. Lujano?

MEMBER LUJANO: Here.

MS. HIGASHI: Ms. Hair?

MEMBER HAIR: Here.

MS. HIGASHI: Ms. Olsen?

MEMBER OLSEN: Here.

MS. HIGASHI: Mr. Walsh?

He'll be arriving a little bit late this morning.

CHAIR SHEEHAN: Okay.

MS. HIGASHI: And Ms. Sheehan?

CHAIR SHEEHAN: I'm here.

MS. HIGASHI: Thank you.

CHAIR SHEEHAN: We have a quorum.

MEMBER WORTHLEY: I'm here.

MS. HIGASHI: Mr. Worthley, I'm sorry.

Since this is going to be a long day, I thought I'd move it along.

CHAIR SHEEHAN: Exactly. So we have a quorum. And I would like to welcome our newest representative from the Controller's office.

Amy, welcome.

MEMBER HAIR: Thank you.

CHAIR SHEEHAN: We'd also like to introduce a new staff member we have.

MS. HIGASHI: We have a new staff member. And I'd also like to introduce Commission Counsel Kelly Loyer. She's just joined us recently.

CHAIR SHEEHAN: Great. Welcome.

Okay, now that you've all gotten comfortable, we're going to go into closed session for a few minutes. So it shouldn't be more than 10 or 15 minutes. I guess we should have warned you before we sat down.

But for the record, the Commission will meet in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for the consideration and action, as necessary and appropriate, upon the

pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding the potential litigation and pursuant to Government Code sections 11126, subdivision (a), and 17526. The Commission will also confer on personnel matters listed in the published notice and agenda. We'll reconvene in open session at this location in approximately 15 minutes.

(Closed executive session was held from 9:36 a.m. to 9:46 a.m.)

CHAIR SHEEHAN: I'd like to reconvene in open settings July 28th meeting on the Commission on State Mandates.

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

And we are now reconvening in open session. And then we will move to the regular business.

We have a special order that will be taken up

now, and that will be Items 18 and 19 at this time.

So, Paula?

MS. HIGASHI: Will the parties for Items 19 and 18 please stand?

Parties, witnesses, representatives. We have a practice of having you take an oath or affirmation.

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

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

MS. HIGASHI: Thank you very much.

Both of these items will be presented by Commission's Chief Counsel, Camille Shelton.

CHAIR SHEEHAN: All right, so whoever wants, come on forward and have a seat. If not, just sit front row, and then we'll call you up as we have space.

And, Camille, go ahead.

MS. SHELTON: This item is on a remand from the Sacramento County Superior Court on incorrect reduction claims filed by six school districts for the cost of teachers salaries on the *Graduation Requirements* program For purposes of today's hearing, the Commission is required to determine whether the State Controller's office properly reevaluated the claims of the school

districts pursuant to the Court's ruling, which is attached as Exhibit A in your binders.

As indicated in the Court's ruling, the sole issue is whether the school districts experienced any savings pursuant to Education Code section 44955 to offset teacher's salary costs as a direct result of the mandated science course.

Education Code section 44955 authorizes school districts to terminate the services of permanent employees of non-mandated classes when the amendment of state law requires the modification of curriculum. The Court found that a school district's use of Education Code 44955 is solely within the discretion of the school district and cannot be used by the Controller's office to deny or reduce a claim for teacher's salary costs on the ground that a school district has not shown a reduction or an offset of costs for non-science classes or teachers.

Pursuant to the Court's ruling, staff recommends that the Commission issue a new decision consistent with the staff analysis on the claim filed by Grossmont Union High School District and remand the claim to the Controller as office for payment.

This recommendation is based on the Controller's finding that Grossmont properly find its reimbursement

claim for teacher's salary costs.

The proposed order adopting the final staff analysis as the decision for Grossmont is on page 35. Staff further recommends that the Commission return the reevaluation of the claims filed by the remaining five school districts to the Controller for correction and resubmission to the Commission within 30 days.

As stated in the staff analysis, this recommendation is based on the ground that the Controller's reduction of its claims does not comply with the Court's ruling and judgment.

Will the parties please state your names for the record?

Why don't you go ahead and start?

MR. PETERSEN: Keith Petersen, SixTen Associates. I represent five of the six districts.

MR. PALKOWITZ: Good morning. Art Palkowitz for San Diego City Schools.

MR. GRAYBILL: Geoffrey Graybill, Deputy Attorney General for the Controller.

MR. SPANO: Jim Spano with the State Controller's Office.

MR. SIMMONS: Good morning. Sloan Simmons for Lozano Smith. We represented the six districts in San Diego during the litigation process and 13 of the 16

districts in the West Contra Costa action.

CHAIR SHEEHAN: Right.

Keith, do you want to start?

MR. PETERSEN: Good morning.

CHAIR SHEEHAN: Who would like to go ahead?

MR. PETERSEN: Well, I'm going to go ahead and pass to others who have additional information or something else to say. I'm going to stand on our written submission. Although I disagree with a lot of the jurisdictional issues, but here we are today.

CHAIR SHEEHAN: Good morning.

MR. PALKOWITZ: Good morning. My name is Art Palkowitz on behalf of San Diego City Schools. I want to thank you for the opportunity to have this matter on the agenda to be heard.

Just as a little background, this involves a mandate that was passed over 20 years ago, which required schools to have an additional science class as part of the graduation.

During the ten years of 1986 to 1995, San Diego and other school districts filed claims asking for reimbursement for this extra science class, that meaning extra science teacher that was needed for the class. And during those years, the claims for San Diego totaled over $16 million.

Every year, those claims were denied by the State Controller because we did not show any offset. It was their interpretation that for every science teacher we hired, we should lay off another non-science teacher and, as a result, there should be no claim and there should be an offset equal to the total amount. This went on for -- back into the eighties, into the nineties, and then we --

MR. PETERSEN: Thirteen years.

MR. PALKOWITZ: Thirteen years.

And finally, it was necessary for the parties to file a lawsuit, which we filed about two and a half years ago.

And at that time, the Court made an order back in February '05 saying that it was not proper for the State Controller to deny these claims just because we didn't provide any documentation to show there was an offset.

I mean, it was our belief that we can't provide documentation that didn't exist because the offset wasn't directly related to a mandate for the science class. If we're laying off teachers, it wasn't because we had to have an extra science teacher. There is budget issues, there's instructional minutes issues.

The board of the district has the policy to

dictate which classes they're going to offer; and as a result, there has been no evidence to show that there are any direct related offsets.

I commend the staff in their thirty-something page analysis. I believe they're absolutely right on what the judge ordered, that there is no direct evidence to show that there is any set-off.

Despite that, the reevaluation by the Controller came back and disallowed 75 percent of the claim. And now they're going to be given another 30-day opportunity to reevaluate it again.

To me, after fifteen years, I don't know what new evidence they're going to have at this point to say, "Yes, there is direct evidence." But I understand the Commission staff is following the order to give them the opportunity for 30 days.

I think it's important that everyone understand this is a tremendous impact on any district. For San Diego, $16 million, in 1995 dollars, is a lot of money. And there are consequences here as far as maybe we will have to lay off other people because we don't have the money in our budget. So the thought that this could go on an indefinite period of time and not have consequences is really not correct.

I would like to add that if the Commission is

going to go forward and give another 30-day reevaluation, I would like to hear on what the State Controller or the Attorney General anticipates will take place during this 30 days, and what we can envision the need to go through this exercise, in that there will be something new here after two and a half years of litigation that would justify going forward with that.

We would also request that if the Commission is going to go forward with that, that this be placed on the September agenda, so all the parties are aware of what transpired and everyone can make room in their calendar to hear this expeditiously and so this matter could come to some resolution.

Thank you.

CHAIR SHEEHAN: Right.

Perhaps it's should be the Attorney General speaking next so they could address the question that you had, for the Controller's office.

MR. GRAYBILL: I was trying to get to that.

I'm not sure what the 30 days refers to. I know that -- my name is Jeff Graybill, Madam Chair and Commissioners. I'm a Deputy Attorney General, and I represented the Controller in the court proceedings in this matter. However, I have not been available to the Controller during the time that all the documentation

that has been submitted to this Commission was prepared. I have become available to them this week, and I had some additional comments that I wanted to present in writing. And I requested a postponement which was denied by the executive director, probably because it was so late in the game.

But there has been expressed opposition to my citing to the Commission additional authority which is not in the briefs that were submitted. Specifically, I would be citing to the Commission Taye v. Coye, 29 Cal.App.4th 1339; Modesto City Schools v. Education Audits Appeal Panel, in 2004, 123 Cal.App.4th 1365; and Coastal Community Hospital v. Belshé, in 1996, 45 Cal.App.4th 391, which bear on the analysis that has been presented by the other parties in these proceedings.

So if there's a continuing objection to my citing these authorities and a move to exclude them, I would renew my request for a postponement to the Commission itself at this time.

CHAIR SHEEHAN: Camille, did you want to -- or Paula, did you want to address --

MS. SHELTON: Yes, with regard to the cases, under Bagley-Keene, you can cite to any case that you want to cite to today and bring in public testimony. Yo know, obviously, I haven't read those in light of this

case, and wouldn't be able to respond.

My position would be that we are bound by the Court's ruling. So to the effect whatever comments come from the Deputy Attorney General, I would still be bound by Judge Connolly's ruling in this case.

On the continuance, everything that has gone out from our office, from the draft staff analysis to the final staff analysis, has been issued directly to the Controller's office and to the Deputy Attorney General's office, both to Mr. Graybill and to his supervising Attorney General. We were under the impression that they were still representing the Controller's office the whole time.

The draft staff analysis went out in March. In April, the Controller's office asked for a continuance because they were trying to get the Deputy Attorney General's office to review the draft staff analysis. We gave them an extension of time until June 19th and further stated that no additional extensions would be granted.

We did receive a request for continuance by Mr. Graybill on Wednesday evening, after the binders had already gone out; and it was denied.

MR. PALKOWITZ: May I add one comment?

MS. SHELTON: Sure.

MR. PALKOWITZ: Thank you.

On June 19th, the Department of Justice filed a four-page document that analyzed the Commission's staff analysis. It was signed by Catherine Van Aken, Supervising Attorney General.

None of the cases that were just mentioned were cited in there. It seems their office did have time to prepare this four-page response. I don't know if Mr. Graybill was a part of that or not; but there seems to be ample opportunity to respond, just as the parties had, to these issues.

So I concur with the Commission staff in deciding yesterday, when they received the notice to continue, that it was appropriate, that this be denied and we move forward.

Thank you.

MR. GRAYBILL: Just for the record, I did not participate in the preparation of the document that the gentleman refers to. I think it's a very good document and very persuasive, but I think there's some things that need to be added to it.

That, of course, was written before the staff's final recommendation came out. And I don't know whether these cases would make any difference; but I think in light of their analysis, it should -- they should. But

if there's no objection to me citing and discussing those cases for the record here, without further postponement, I'm prepared to go ahead and do that.

CHAIR SHEEHAN: Why don't we go ahead? Because this issue, case, all of this as has been said, has been around for quite a while. I understand there may have been personnel issues, but I feel we have an obligation to move forward.

So if you want to go ahead and make your points, and then we'll let the Controller's office add anything that they would like to.

MR. GRAYBILL: Okay. Well, I'm representing the Controller; and we do have a witness, Jim Spano, here.

CHAIR SHEEHAN: Right.

MR. GRAYBILL: First of all, I'd like to point out that I don't think the staff has correctly framed the issue. They're unduly restricting it, inconsistent with the Court's decision. They're saying that Education Code section 44955, regarding layoffs, is the only factor that can be considered here. And that is definitely not what the judge said.

Let me quote from page 18 of the ruling on submitted matter, which authorizes the Controller to see additional documentation from the claimants, the

districts, which they never provided.

Quoting from the Court's decision: Further, the documentation requirement that he authorizes the Controller to impose on the district, reflects a reasonable expectation that savings to offset the science teachers' salaries may be generated when students taking the second science course do not increase the number of classes that they take overall. Thus, the Controller can properly require the claimant, the district, to demonstrate the second science course has not increased the number of classes provided during the school day and year, along with the number of teachers required for the classes provided. That is not restricted by, you know, layoffs pursuant to 44955. So I think that's completely off base.

And in my opinion, the failure of the districts to provide the information requested by the Controller -- I won't say guarantees, but makes it very likely that the Court would uphold a decision by this Commission affirming the reevaluation by the Controller's office. And the reason for that is found in the ruling on submitted matter itself. The Court upheld this Commission's decision to deny reimbursement for classroom costs due to this science grad requirement because the claimant did not submit the type of documentation that

was required by the P's & G's, and just flat-out rejected it.

The Court will do that again, in this case after it specifically authorized the Controller to ask for documentation relevant to the issues that I just mentioned.

And so the Controller's office -- and I think there's some mention in the recommended decision that in those situations where CBEDs was not available, the staff claims that the Controller cannot zero them out for that period of time. And I think that is not a proper conclusion under the terms of the Court's ruling that I just referred to on classroom costs. And the Controller -- this is a situation, really, where no good deed goes unpunished. Because even in the absence of the district providing the documentation that was required by the Controller, and I believe the staff analysis confirms that those requests were legitimate and consistent with the Court's order; but nevertheless -- for reasons that don't bode well for state fiscal policy -- say that, "Well, if they didn't submit anything and you don't have any proof to the contrary, you have to grant their claim." I don't think that can stand analysis.

The Controller did the type of analysis that the Court authorized in the quote that I just gave to you

using CBEDS data.

Now, any criticism that the claimants have of the Controller using that data to, in effect, give them something that they would not otherwise have been entitled to by their own stick, won't fly, either. I think in Taye v. Coye, 29 Cal.App.4th, 1439, the Court, at page 1346, indicates that a claimant -- and this was a Medi-Cal provider audit involved in Taye v. Coye, in which the court upheld the audit, or the affirmation of their claim over the objection of the claimant. And the argument was that the DHS should have credited the claimant with improper claims that it -- or claims that it could have made that didn't have a proper basis to them.

Now, that obviously should fall on its face, and it did in that case.

And that's essentially what the districts are asking the Commission to do here, is -- and it is kind of ironic, I think, that school districts are saying to Judge Connolly, basically: This is your homework, and it's due at a certain time. And they didn't turn in their homework. And he has let them know on the classroom costs aspect of this, if that happens, you're going to get a zero for that claim.

And they're here, basically saying, "Well, the

dog ate my homework."

And the Controller is asking them, "Well, what dog? Do you have a dog?"

"No, we don't have a dog."

And then characterizing one of their arguments, "It's your dog that ate our homework because you didn't pay us this mandate amount that we're owed and, therefore, yeah, we didn't increase our staff because you didn't pay us," which is a tacit admission that there was an increase, as the Court has authorized the Controller's office to require the district to provide documentation. Not necessarily to prove anything, but from which the Controller can analyze, to determine whether there was an increase in classes, the school day, the school year, and the accompanying number of teachers.

And despite the fact that the districts did not submit that data, the Controller went ahead and gave them a "C," out of the goodness of its heart, basically, not on the justification -- the type of documentation that the Court authorized them to require.

So if these proceedings are to be prolonged in the sense that if there's a result that is fiscally unsound, this matter will continue on, most likely. So some of the information that was provided by the district to criticize the SCO's use of CBEDS data and the

inferences that they drew from it are based on self-serving evidence.

And Coastal Community Hospital v. Belshé, 45 Cal.App. 391 -- oh, I'm citing the wrong case. Back to Taye v. Coye at page 1344, records created by a claimant alone are properly excluded from analysis in an audit when they can't be independently verified, which the reports from the Controller said was the case, with the objections that the district had to the data that the Controller relied on. And that's true, even when there's no indicia that the records have been falsified.

So for the purposes of audits, the type of information that the districts tried to get the Controller to accept initially and are now trying to get this Commission to accept, are not reliable in terms of the audit.

And so in order for the Commission to overrule the Controller's reevaluation here, it would have to determine that the Controller's audit expertise on data, which was authorized by the court is discredited. And the discreditable documentation, for audit purposes, presented by the district must be given total credence. That will not stand.

(Member Walsh entered the hearing room.)

CHAIR SHEEHAN: You're going to have to start

wrapping up because we've got a lot of people.

MR. GRAYBILL: Okay.

CHAIR SHEEHAN: So if you can summarize.

MR. GRAYBILL: All right, let's see.

CHAIR SHEEHAN: I want to note for the record that Mr. Walsh has joined us at ten after 10:00.

Go ahead, Mr. Graybill.

MR. GRAYBILL: Reciting to Coastal Community Hospital, page 395.

CHAIR SHEEHAN: Briefly, yes.

MR. GRAYBILL: It stands for the principle that I've already mentioned, which is that when the district didn't present any evidence at all, it has no basis to complain when the Controller -- out of the goodness of its heart, basically -- tries to get data to help them out, and then are bitten on the hand. And it's sort of typical of how this case is going.

Grossmont, one of the districts here, was completely granted the amount of its claim and it has appealed to you, anyway. Go figure.

So I think that, in summing up here, that the Court, Judge Connolly, who will probably get this case, would uphold this Commission's affirmance of the reevaluation by the State Controller.

And before I sign off, I would like to ask the

witness from the Controller's office something very quickly. It's foundational.

Mr. Spano, did you prepare all the documentation that the State Controller's office submitted in this matter? Except for, obviously, what was prepared by the Controller's office.

MR. SPANO: Yes, I did.

MR. GRAYBILL: Is all the information in those documents true to your personal knowledge, except where it's based on information and belief?

MR. SPANO: That is correct.

MR. GRAYBILL: And as to those matters that are based on your information and belief, do you believe those to be true?

MR. SPANO: Yes, I do.

MR. GRAYBILL: Okay, did you have any comments?

MR. SPANO: No.

CHAIR SHEEHAN: Anything else you wanted to add?

(No audible response)

CHAIR SHEEHAN: Okay.

Questions for either the Attorney General's office or the Controller's office on this one?

(No audible response)

CHAIR SHEEHAN: Okay, go ahead.

MR. SIMMONS: Good morning, Board. I just have a couple very quick points on this. And I won't get in -- it sounds like we're going to go down the metaphor road of homework, but if we look at it that way --

CHAIR SHEEHAN: Yes, they did.

MR. SIMMONS: -- per Judge Connolly's ruling, the homework for the Controller's office was to reevaluate. They did. The Commission followed its process by issuing the draft staff analysis. The second assignment for the Controller was to submit its comments. And it did. And now we're at the end of that stage. And it sounds as if the Controller, per the comments of Mr. Graybill this morning, were continuing to turn in the homework assignment over and over until we get it right. The process has been followed, the Commission issued its final statement and decision -- or the draft -- the final draft analysis. I believe that Mr. Palkowitz and Mr. Petersen's written comments were submitted, we fully support the comments they've provided, and we support the process that the Commission has followed up to this point.

The school districts involved in Item 18, coming back, have a vested interest in this moving forward as well. Not only these original six districts,

but there's 16 more now who are waiting for this process to be completed per the Court's order. And we're at the point now where we need to close the deal and move forward per the final staff analysis issued by the Commission.

The Controller's office has had numerous opportunities to get this right. According to the final staff analysis, they didn't, and now they have 30 days -- or if the Commission is to follow this, to follow what the Commission staff has found to be the correct process Judge Connolly's ruling.

That's it.

CHAIR SHEEHAN: Great.

Anyone else want to testify on this before we let staff respond?

(No audible response)

CHAIR SHEEHAN: Camille, did you want to address any of the issues that Mr. Graybill raised?

MS. SHELTON: I did. Just real briefly.

You questioned where the 30 days came from. The 30 days is directly in the writ; and it says that if the Commission finds that the Controller did not properly reevaluate the case, we have to send it back and they have 30 days to resubmit another evaluation. And so that is the jurisdiction given to the Commission by the Court

Just touching on the issues raised by Mr. Graybill. One is, first is the jurisdictional issue; and the Court did address that. And the opinion is pretty clear that the jurisdiction of the Commission here is just only on whether the reevaluation of the offset issue was correct and proper.

The Court noted that the Commission did adopt a Statement of Decision that approved the test claim and found increased costs mandated by the State.

On page 13, in footnote 3, the Court says, "On the basis of the party's supplemental briefing, the Court has concluded that the Commission's test claim decision is final and should not be disturbed. The Court focuses its review on the Commission's IRC decision, affirming the Controller's offsetting savings requirement and interpreting the reimbursement limitation language in Section 6 of the P's & G's, which is the offset provision."

That was the only issue brought before the Court, and that's the only issue on remand back to the Commission.

With regard to documentation, the problem with the argument raised by the Controller on the documentation cannot compare the teacher's salary issue with the claiming of the remodeling costs for a couple

of reasons:

One, in the initial parameters and guidelines issued by the Commission on the remodeling costs, if the Commission required certain documentation to be filed with the reimbursement claim.

In 1991, the Legislature directed the Commission to add more language to the parameters and guidelines, requiring additional documentation to be filed with the reimbursement claim.

When you look at the claiming instructions for the *Graduation Requirements* program, no documentation has to be filed at all with the reimbursement claim for teachers' salary costs.

The Court did address the documentation requirement and it did say in footnote 1 that there is a requirement to produce documentation. And that requirement can be reasonably read into the claiming instructions and pursuant to Government Code section 17561.

But the Court goes on to say that, "The validity of the Controller's request for documentation and the Commission's decision sustaining the documentation request turns on whether the Controller's offset-in-savings requirement is substantively valid, whether it is consistent with the Commission's test claim

decision, the parameters and guidelines, the intent of Education Code section 51225.3, which is a test claim statute, and 44955, and Article XIII B, Section 6. When you read the decision further, the Court finds that assuming -- because they don't have documentation -- assuming that the school day and the school year has not changed as the Controller argues, does not mean that they have to take an offset.

The Court's decision is clear -- I mean, the same arguments that the Controller is making today were made before Judge Connolly on page 14 and 15 of the decision. And there, it says, "The Controller presumes that because the Legislature has not increased the minimum school day and year or the credits required for high school graduation, the district can shift students from non-mandated classes to science classes, eliminate the non-mandated classes, and use its authority under 44955."

And the very next paragraph, it says, "As San Diego correctly points out, however, Education Code section 51225.3 mandates school districts to add the second science class without requiring the school district to replace or eliminate the existing course offerings."

So the Court has already denied that

assumption. It's already been done. Both in the judgment and in the ruling, the Court said that the Controller is prevented from denying the school districts' claims for reimbursement of science teachers' salaries on the grounds that the claimants have not shown a reduction in non-science classes and teachers, corresponding to the addition of the science class.

So it directed the Controller to find out if the school districts had any evidence to show that they exercised their discretionary authority under 44955 as a direct result of this mandate. And there's no evidence in the record that the school districts did that.

Even more compelling, you know, we have Government Code section 17565 in our sections that say the Legislature has already made the determination that there are increased costs mandated by the State, even if a school district, at its option, had been providing the second science course before the enactment of the test claim statute, they're still entitled to reimbursement. If one of these school districts did that, they wouldn't have any documentation because they were already providing that course, but they're still entitled to reimbursement.

And the Commission already found in the test claim that they are entitled to reimbursement for teacher

salary costs. And that finding cannot be disturbed.

CHAIR SHEEHAN: All right, thanks.

Any further questions for Camille?

(No audible response.)

CHAIR SHEEHAN: Okay, anyone else who wanted to testify on this, in terms of that?

If there's no further discussions, then --

MR. GRAYBILL: Could I make one final comment?

CHAIR SHEEHAN: Sure, one final comment, Mr. Graybill. A brief comment.

MR. GRAYBILL: The staff's position renders the Court's very specific language on page 18, just reads it right out of the Court's decision. That was not an idle act that the Court engaged in. There would be no purpose in requiring that documentation if staff's interpretation of this were to prevail. And that's not the Court's intent.

MS. SHELTON: Can I respond to that?

CHAIR SHEEHAN: Yes.

MS. SHELTON: The Court had no idea what documentation was even out there or what the school districts even had.

You read the first paragraph, where the Court does say, yes, the Controller may properly request documentation. But you have to read the second paragraph

that says, "However, the Court's conclusion regarding the invalidity of the Controller's offset-in-savings requirement does prevent the Controller from denying the school district's claims for reimbursement on the ground that the claimants have not shown a reduction."

So you have to read the decision as a whole.

MR. GRAYBILL: Including those two sentences.

MS. SHELTON: Right.

CHAIR SHEEHAN: Okay, no other questions from the Members?

(No audible response.)

CHAIR SHEEHAN: Any further discussion on this matter?

(No audible response.)

CHAIR SHEEHAN: Is there a motion on the --

MEMBER LUJANO: I move.

CHAIR SHEEHAN: -- of the final staff analysis?

MEMBER WALSH: Second.

MR. PETERSON: Excuse me a second. Is this 18 or 19 you're on now?

CHAIR SHEEHAN: We are doing 19.

MS. HIGASHI: Item 19.

CHAIR SHEEHAN: And then we will go -- even though you think we should do 18 first -- we're seeing if you're awake out there -- 19, and then we'll go back to

18.

MR. PETERSON: Okay.

CHAIR SHEEHAN: So it's item 19 that we have a motion and a second to approve the final staff analysis and recommendations.

Any further discussion?

(No audible response.)

CHAIR SHEEHAN: All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

MEMBER HAIR: No.

CHAIR SHEEHAN: The Controller's office is voting no. Okay, so that motion carries with the Controller's office voting the negative.

All right, and then we will move on to Item 18.

MS. SHELTON: Item 18 is the second consolidated litigation on the *Graduation Requirement* program filed by 16 school districts. In this case the Controller's office, the school districts, and the Commission signed a stipulation to set this -- to dismiss the case and to have the Controller reevaluate the claims in light of the San Diego decision.

We do have a signed order from Judge Connolly that's signed on the stipulation. And I did give you a yellow copy of the actual signed order in the record that

was inadvertently omitted. So that is there.

Will the parties please state your names for the record?

CHAIR SHEEHAN: For those who would like to -- do you want to start?

And anyone else who would like to come forward.

Did you also get sworn in the first time?

MR. RUIZ: I did, yes.

CHAIR SHEEHAN: All right, do you want to start?

MR. SIMMONS: Sure. And the only reason we are even here to make comments is, it was moved off of the consent calendar. So our only comments would be to the extent it's the court order, and it is what it is, and requires it being setting aside, then that's our position.

CHAIR SHEEHAN: Did you guys want to comment on that?

MR. GRAYBILL: I concur with that.

MR. RUIZ: Concur. Thank you.

CHAIR SHEEHAN: Oh, that makes it easy.

All right, any --

MEMBER WORTHLEY: Move approval.

MEMBER GLAAB: Second.

CHAIR SHEEHAN: All right, so we have a motion

and a second to adopt the proposed order to set aside the Statement of Decision in the *Grad Requirements*.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: The motion carries.

All right, thank you, gentlemen.

All right, now, we're going to go back to the normal order of business --

MS. HIGASHI: That's correct.

CHAIR SHEEHAN: -- starting with number one. Number two.

Thank you all.

So we have the minutes from our --

MS. HIGASHI: We'll start with the minutes.

CHAIR SHEEHAN: Okay, all right, hold on. If we could go back and --

MS. HIGASHI: Does everyone have the right --

CHAIR SHEEHAN: I have to go back and get my other binder.

MS. HIGASHI: Okay.

Item 1 is adoption of the proposed minutes for May 25th.

CHAIR SHEEHAN: All right, were there any

changes, edits to the minutes before we entertain a motion?

(No audible response.)

CHAIR SHEEHAN: Any comments from the public on the minutes?

(No audible response.)

CHAIR SHEEHAN: All right, if not, we will entertain a motion to approve the minutes.

MEMBER OLSEN: So moved.

MEMBER WORTHLEY: Second.

CHAIR SHEEHAN: We have a motion and a second. All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: All right, the minutes are approved.

MS. HIGASHI: Item 2, *Proposed Consent Calendar*.

We're going to vote on this with two motions.

CHAIR SHEEHAN: Correct. We'll do Items 20 and 25.

MS. HIGASHI: We'll do Items 20 and 25.

CHAIR SHEEHAN: Okay, so the *Consent Calendar* -- we're going to have, like, two brief consent

calendars. So Items 20 and 25 are on the consent calendar.

Any comments or discussion on that?

(No audible response.)

CHAIR SHEEHAN: If not, we will entertain a motion.

MEMBER OLSEN: So moved.

MEMBER GLAAB: Second.

CHAIR SHEEHAN: We have a motion and a second on the first consent, consisting of items 20 and 25.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: That passes.

And now we will move on to the other item on consent, Item 24.

Any discussion on this?

(No audible response.)

CHAIR SHEEHAN: If not, we'll entertain a motion.

MEMBER WALSH: So moved.

MEMBER GLAAB: Second.

CHAIR SHEEHAN: We have a motion and a second on Item 24.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

MEMBER LUJANO: No.

CHAIR SHEEHAN: All right, the Treasurer's office should be reflected as voting "no."

That motion carries.

MS. HIGASHI: Thank you.

I'd like to note also for the record that Items 12 and 13 have been postponed until there's a final decision in CSAC EIA and City of Newport Beach litigation, and Item 21 has also been postponed from this agenda.

CHAIR SHEEHAN: Okay.

MS. HIGASHI: At this time, we will go to Item 4.

And before we begin this, I'd like to ask all of the parties and witnesses who will be testifying on the remaining items on the hearing calendar to please stand for the swearing in of parties and witnesses, representatives.

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

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

MS. HIGASHI: Thank you very much.

CHAIR SHEEHAN: All right.

MS. HIGASHI: Item 4 will be presented by Chief Counsel Camille Shelton.

CHAIR SHEEHAN: Great.

MS. SHELTON: This test claim addresses legislation that requires civil court proceedings as a post-conviction remedy for convicted felons to obtain DNA testing of biological evidence in cases where identity is the issue.

The test claim legislation also requires counties to retain biological material for felony cases for the period of time the convicted person remains incarcerated.

Staff finds that the test claim legislation imposes a partial reimbursable state-mandated program on local agencies within the meaning of Article XIII B, section 6, of the California Constitution for the activities listed in the executive summary.

Will the parties please state your names for the record?

MR. KAYE: Leonard Kaye, Los Angeles County.

MS. GEANACOU: Susan Geanacou, Department of Finance.

CHAIR SHEEHAN: Mr. Kaye, do you want to

proceed?

MR. KAYE: Yes.

Typically, I think the Commission staff gives their overview, or did you want to do it that way at this time?

MS. SHELTON: If the Commission wants me to, I can.

MR. KAYE: Oh, okay. I know time is of the essence. I'm prepared to be very brief. But it's whatever the pleasure of the Commission is. It's just that normally you present first.

MS. SHELTON: Staff is recommending that the Commission reimburse all the activities that are listed in the executive summary. There are a couple of activities that we do recommend that the Commission deny, one of them being the court hearing because of the statutory language which gives the discretion to have the hearing with the court, and the other activity of notifying the felon, the convicted felon, that you're disposing of the evidence.

MR. KAYE: Okay, well, let me elaborate just a brief amount so the commissioners know basically what this is of about. Because it's really the result of a landmark piece of legislation, where the State Legislature is providing state prisoners that have been

convicted of felonies -- at one time it was thought felonies and misdemeanors, but now it's felonies -- with a post-conviction remedy.

That is specifically where identity was or could have been an important issue in their underlying criminal trial, they are now entitled to a DNA -- a valid DNA test if a number of conditions are met. And, of course, they have to file a petition with the court, and there are a number of responsibilities that are mandated upon local government.

But one of the key conditions is, of course, that there has to be a biological sample to DNA-test; and the statutory provisions and the amendments thereto go on in very, very great detail as to what the requirements are on local government.

Commission staff have exercised great legal scholarship in parsing the reimbursable from the non-reimbursable parts. We are almost in complete agreement. However, there are two issues that I wish to clarify before this is discussed further.

And the reason I grabbed this -- the administrative record is not to read from it, but to cite from it, so that you needn't be frightened that I am going to --

CHAIR SHEEHAN: Start on page 1?

MR. KAYE: Yes -- start on page 1, and stop, and so forth.

The first area that I think needs clarification -- and I'm citing to the Commission staff analysis, and I believe it's the page number on the bottom. It's page number 23, and it's footnote 69. And the reason why this is important is, we understand the modern trend of the Commission is to not allow major categories of reimbursable activities that aren't discussed or mentioned or alleged in this hearing right now, the test claim decision phase. And so I just want to clarify two points and then we'll be done.

Okay, 69, on Bates page 23, at the bottom, says, "Claimants also request reimbursement for preparing and tracking biologic evidence sent to the lab for DNA testing and for DNA testing required of the sheriff's department that is not reimbursed by the court." Since these activities are not expressly mentioned in statute as local government requirements, the Commission may, if it approves this test claim, consider them during the parameters and guidelines phase to determine whether they are the most reasonable methods of complying with the mandate.

And let me just take a moment and explain specifically what we have in mind. Our director -- our

assistant director of our criminal laboratory, in a declaration sent in to the Commission, said that one of the costs that the Sheriff may incur is DNA-testing required of the Los Angeles County Sheriff's Department subject to the pursuant law which is not reimbursed -- not reimbursed by the superior court due to insufficient funding.

And this relates to a provision in the law which says that the court is to charge a specific fund that the Legislature appropriates from. So if the Legislature hasn't appropriated monies from that, then the county would be out-of-pocket.

So, again, this really gets into the parameters and guidelines phase, which you'll be hearing this discussion again. But I just want to clarify that this is really -- at this point, the Commission staff has made no finding concerning this matter. We'll discuss this at the parameters and guidelines phase.

There is a second item, and that relates to transporting prisoners to and from state institutions. And this goes to -- let's see, the following page -- this goes to page 21, footnote 61. And, again, staff notes, and we agree, that staff makes no finding on whether transporting inmates to or from state prison would be reimbursable under Penal Code section 4750.

And this, as we've alleged -- and I have various citations, should the Commissioners want -- is we've alleged previously it's not only the transportation of prisoners from state institutions and back during the pendency of the proceeding, but it's the housing of those proceedings as required by the state, for the state proceedings.

So with that, I think we agree on every other thing. And I would just note for the record that we are, in essence, in partnership with the State Department of Justice. The State Department of Justice has convened a very, very large task force to consider standards for storing and retention of biologic standards. And that we believe during the parameters and guidelines phase, to involve them in making sure that not only is it reimbursable or not, in assisting us in that area, but also in determining exactly what those standards are, whether the sample needs to be refrigerated or desiccated, and so forth and so on.

And this is an urgent manner, mainly because we filed the test claim five years and one month ago. And as you know, samples have a way of degrading and so forth. So we're very, very anxious to move this forward. We really appreciate, Commission, your hearing it this morning. And hopefully, we can go on to the next phase,

which is parameters and guidelines.

Thank you.

CHAIR SHEEHAN: All right, any questions of Mr. Kaye?

MEMBER WORTHLEY: Just real quickly.

Is it your position that what we talked about this last time will also be something handled in the parameters and guidelines? You didn't say that, but --

MR. KAYE: Yes, thank you for that clarification. Yes.

MS. SHELTON: Could I just address that?

CHAIR SHEEHAN: Yes.

MS. SHELTON: All the activities that are not specifically listed in the statute are -- you know, still can be discussed at parameters and guidelines.

But you mentioned funding for the actual DNA test or the cost of the actual DNA test. We didn't read those comments in the record to mean that you're asking for reimbursement for the cost of the actual DNA test, because on page 28 we have Penal Code section 41405, and it says as to the DNA testing, there's no local entity expenditure because the test -- the statute requires that the cost of the test be borne by the state or the applicant, not by the county. So there is a finding in this decision that would not reimburse the county for the

cost of the DNA test.

MR. KAYE: Okay. I think if you go back to the statutory provisions, it is part of the original statute, where you're talking about reading things together. Okay, in the original test claim legislation, it says, under (g)(1), "The cost of the DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interest of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any additional testing to be conducted by the District Attorney or Attorney General shall not be borne by the convicted person." So there, it's unclear as to who pays.

But that's not what we're really after. What we're really after is the practice which we've observed and Mr. Dean Giolamos has stated under sworn declaration is under the second provision, (g)(2), "In order to pay the state's share of any testing costs, the laboratory designated in subdivision (e) shall present its bill for services to the superior court for approval and payment. It is the intent of the Legislature to appropriate funds for this purpose in the 2001 Budget Act."

So what we're saying is many times the court will present our sheriff with the requirement to provide

this testing service. The sheriff turns in the bill. The court stamps it, "Insufficient funds." We, for wont of a better term, bear the costs.

And so what we're saying, during the parameters and guidelines phase, if this actually occurred, then I think it is required that we be reimbursed for those costs.

MS. SHELTON: The problem I'm having is that there is no direct mandate for the county to pay for the cost of the DNA test at all. I mean, the mandate is here on the state or the applicant.

MR. KAYE: Yes.

MS. SHELTON: And it's within the court's discretion to decide with who to charge.

So this finding is, in this analysis, if it's adopted by the Commission, it would be the decision and we can't alter that at the P's & G's phase.

MR. KAYE: Okay, so that we, as a vendor then can say to the judge, "Since there's no money in the state to reimburse us, that we won't perform the service," is that how I understand you're saying?

MS. SHELTON: No, I'm not saying that.

CHAIR SHEEHAN: I'm not sure you'd be very successful.

MR. KAYE: Okay.

MS. SHELTON: I don't know that -- I don't know how that would be handled.

I'm reading the plain language of the statute, and the plain language says that the test is ordered -- the cost of the test ordered under the section shall be borne by the state or the applicant as determined by the court. It doesn't say the "state, applicant, or county."

MR. KAYE: Okay, so I guess we just need to read that to the judge, huh?

CHAIR SHEEHAN: Yes, I think that would be correct, because I want to make sure -- and I think what Camille is saying is that if we adopt this, you understand what it is we are adopting, and we don't then --

MR. KAYE: And that's why I'm verifying it. Because these are the only two -- there are many, many aspects to this, and those are the two that I think need clarification.

CHAIR SHEEHAN: But potentially, in terms of your solution, to point that section out to the judge -- I mean, I think I'd point the section out before I told him you're not going to do it. But it's certainly up to you to decide how you want to proceed on that.

Camille, was there anything else you wanted to address on that?

MS. SHELTON: No.

CHAIR SHEEHAN: Any other questions for Mr. Kaye?

Ms. Geanacou?

MS. GEANACOU: Good morning. Susan Geanacou, Department of Finance.

The Department of Finance supports the Commission's staff analysis on this matter. I just wanted to make a few comments.

We wanted to emphasize that the appointment of counsel in this matter is at the court's discretion and as such, is not required by the state and is, therefore, not a reimbursable state mandate.

As to the points made by Mr. Kaye this morning in footnotes 69 and 61, I wanted to affirm that those are not being found to be reimbursable activities today; and the Department of Finance remains open to commenting on those if they are included in the proposed parameters and guidelines, if this mandate is adopted today.

CHAIR SHEEHAN: Okay, I think that right is reserved on the --

MS. GEANACOU: Yes, it's a reservation of right.

CHAIR SHEEHAN: Exactly.

Did you want to address the first issue?

MS. SHELTON: Just the first issue.

We did find that the appointment of defense counsel was mandated because the plain language of the statute says under the earlier 2000 statute, it says, "The court shall appoint counsel for the convicted person who brings the motion under this section, if that person is indigent." The court doesn't have a choice.

And then in 2001, the statute was changed because the earlier statute allowed the convicted inmate to file the motion for DNA test. And if you can imagine what those papers looked like, I'm sure it was very confusing for the court.

So in 2001, they amended the legislation, and they amended it to say that if the court finds that the person is indigent and that the counsel has previously been appointed under this section, the court may in its discretion appoint counsel to investigate and if appropriate, file a motion.

In that case, if -- all we're doing is talking about the population of inmates that file a motion during that first year that the legislation was enacted -- if that person had already filed a motion and the court had already appointed defense counsel for that person, it's within the court's discretion to appoint the defense counsel to file another motion, maybe to clear up any

confusion.

CHAIR SHEEHAN: Right.

MS. SHELTON: That, we're saying is discretionary.

MR. KAYE: Right.

MS. SHELTON: But the actual appointment of counsel is mandatory by the statute.

CHAIR SHEEHAN: Are we on the same wavelength?

MS. GEANACOU: I agree with Ms. Shelton's comment. Yes, we are on the same page.

MR. KAYE: And I agree with that also, yes.

CHAIR SHEEHAN: All right, would anyone else like to comment on this item?

(No audible response.)

CHAIR SHEEHAN: No?

If not, then we'll entertain a motion.

MEMBER WALSH: So moved.

MEMBER GLAAB: Second.

CHAIR SHEEHAN: The motion to approve the staff analysis and the recommendation, without any further discussion, all those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: All right, that is adopted.

MR. KAYE: Thank you.

CHAIR SHEEHAN: Thank you.

MS. HIGASHI: Item 5 is the proposed Statement of Decision.

MS. SHELTON: This is the proposed decision on the *DNA Court Proceedings* test claim. Staff recommends that the Commission adopt the decision that accurately reflects the staff recommendation in this case, and minor changes including that that reflect the hearing testimony and vote count will be included when issuing the final Statement of Decision.

MEMBER OLSEN: So moved.

MEMBER WORTHLEY: Second.

CHAIR SHEEHAN: We have a motion and a second. Any further discussion?

(No audible response.)

CHAIR SHEEHAN: All in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: It passes unanimously.

MS. HIGASHI: Thank you very much.

CHAIR SHEEHAN: Now, we are moving on.

MS. HIGASHI: We now get to shift gears. We now have a charter school issue.

CHAIR SHEEHAN: Oh, yes. We couldn't have a meeting without having a charter school issue in the last four months.

MS. HIGASHI: Item 6, *Charter School Collective Bargaining*. And Ms. Shelton will also present this item.

MS. SHELTON: Would you like me to start?

CHAIR SHEEHAN: Absolutely, just refresh everyone's memory because we've had this discussion, but why don't you go ahead because it's been a few weeks.

MS. SHELTON: This item was herd by the Commissioner at the last hearing and was continued by the Commission at the request of the claimants. No changes have been made to the analysis.

As you recall, the test claim has been filed by a school district and the test claim legislation requires a charter school to insert in the charter a declaration as to whether the charter school will be deemed a public school employer for purposes of collective bargaining under the Educational Employment Relations Act.

If the charter school does not decide to be a public school employer, the school district where the charter is located is deemed the public school employer by operation of law for purposes of collective bargaining. Staff recommends that the Commission deny this test claim.

Will the parties please state your names, for

the record?

MR. SCRIBNER: David Scribner, representing the school district.

MS. GEANACOU: Susan Geanacou, Department of Finance.

CHAIR SHEEHAN: Okay, Mr. Scribner, go ahead.

MR. SCRIBNER: I will make it real brief.

I wish I could come in here with a silver bullet that we were looking for at the last hearing. Unfortunately, we got bulldozed by a much larger issue, the budget. And we're told again that the Legislature, or some of the members we spoke with, thought that the Commission would handle this for us and it would fix this issue for us down here. When they said "fix," my mind came "neuter." They thought that it would be resolved. But, unfortunately, we have nothing to bring forward at this time. We have no legislative directive, nor do we have a fix to the definitional issue that we can't overcome for either *Charter Schools III* and *Collective Bargaining*. So, unfortunately, I, at this time, have to concur with staff's recommendation.

CHAIR SHEEHAN: Ms. Geanacou?

MS. GEANACOU: Susan Geanacou, Department of Finance.

The Department of Finance also supports the

staff analysis.

We want to emphasize that we believe the claim should be denied because as the Commission previously voted, charter schools are not eligible claimants under state mandate law and, furthermore, there is no charter school claimant on this claim.

I wanted to make one comment that falls on some earlier written comments submitted by the Department of Finance in June 2000 that are reflected on page 7 of the final staff analysis as to school districts, classically defined school districts.

If new charter school employees in a school district where the charter school is not the public-school employer, they would likely join existing bargaining units and there would be no new bargaining activities for the school districts. I want to simply point out that more charter school employees would not increase bargaining activities, as the Commission staff analysis concludes, that there's no evidence to the contrary in the record.

CHAIR SHEEHAN: Okay, thanks.

Did you want to add anything?

MS. SHELTON: No. That statement is consistent with the staff analysis.

CHAIR SHEEHAN: Mr. Scribner, I think you

summed it up properly.

MR. SCRIBNER: Unfortunately, yes.

CHAIR SHEEHAN: Yes. Yes, I think you probably have some sympathetic ears up here in terms of this issue; but, unfortunately, we are constrained by the statute. While some people would like to make some changes, this would not be the appropriate body to make those changes. But you're in the right building.

MR. SCRIBNER: You know, I've been in the wrong building before, so I'm glad I am at least getting closer.

CHAIR SHEEHAN: Exactly.

So having said that, do we have a motion on that?

MR. WORTHLEY: So moved.

MEMBER GLAAB: Second.

CHAIR SHEEHAN: All right, a motion and a second to adopt the staff analysis recommendations.

All those in favor?

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: All right, the motion carries. Thank you.

MR. SCRIBNER: Thanks.

MS. HIGASHI: Item 7, the Statement of Decision.

MS. SHELTON: This is the Statement of Decision on the *Collective Bargaining* test claim and minor modifications, including the vote count will be included for the final decision issued by the Commission.

MEMBER WORTHLEY: Move approval.

MEMBER OLSEN: Second.

CHAIR SHEEHAN: We have a motion & a second. All this in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: It passes unanimously. Thank you.

MR. SCRIBNER: Thank you.

CHAIR SHEEHAN: Okay, Item 8.

MS. HIGASHI: This brings us to Item 8. This item will be presented by Commission Counsel, Deborah Borzelleri.

MS. BORZELLERI: This test claim deals with the *Mentally Disordered Offender* law. That law established continued mental health treatment and civil commitment procedures for people with severe mental disorders at the time their parole is terminating or their sentence is

terminating.

The test claim statute sets forth procedures for civil court hearings that are initiated by the prisoner or parolee who wishes or contest that he or she has a severe mental disorder.

If the prisoner or parolee so requests, the court is required to conduct the hearing where the District Attorney is required to represent the people, and the public defender is required to represent the person, if the person is indigent.

The staff finds the test claim legislation imposes a reimbursable state mandate for local program for these civil hearings; and that the activities of the District Attorney representing the people and the Public Defender representing indigent persons are reimbursable.

Staff recommends that the Commission adopt the staff analysis and approve the test claim for the activities noted.

Would the parties please state your name for the record?

CHAIR SHEEHAN: If you could introduce yourself.

MS. TER KEURST: Hi, I'm Bonnie Ter Keurst. I am representing the county of San Bernardino.

And at this time we have no comments. We

support the analysis that was done by the staff.

Thank you.

CHAIR SHEEHAN: Great.

Ms. Geanacou?

MS. GEANACOU: Susan Geanacou, Department of Finance.

The Department also supports the final staff analysis of the Commission staff.

We would note a limitation on the reimbursable activities that are claimed -- that are referred to on page 12, the first full paragraph of the final staff analysis. There are several claimed activities which the Commission's final staff analysis are not finding to be reimbursable at this phase. And once again, we would reserve the right to comment on the reimbursability of those activities, should they appear in the proposed parameters and guidelines.

CHAIR SHEEHAN: In the P's & G's?

MS. GEANACOU: Yes, during the parameters and guidelines.

CHAIR SHEEHAN: Which reserves her right to come back on that one. Understood. Okay.

Any questions for any of the witnesses or the staff on this one?

(No audible response.)

CHAIR SHEEHAN: No?

If not, we'll entertain a motion.

MEMBER OLSEN: So moved.

MEMBER GLAAB: Move approval.

CHAIR SHEEHAN: We have a motion and a second to adopt the staff recommendation.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: The recommendation is approved unanimously.

All right, Statement of Decision.

MS. HIGASHI: Item 9.

MS. BORZELLERI: The only issue before the Commission is whether the Statement of Decision accurately reflects the Commission's decision on the previous item, but staff will make minor changes to the Statement of Decision to reflect the vote and other information.

MEMBER HAIR: So moved.

CHAIR SHEEHAN: So we have a motion on the Statement of Decision.

Second?

MEMBER WORTHLEY: Second.

CHAIR SHEEHAN: And a second.

All those in favor, say aye.

(A chorus of ayes was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: The motion passes unanimously. Thank you.

Okay, now we all have to get our other books.

MS. HIGASHI: I was going to suggest that we take a five-minute break at this time, especially for our reporter.

(A recess was taken from 10:53 a.m. to 11:04 a.m.)

CHAIR SHEEHAN: We would like to reconvene the meeting of the Commission on State Mandates.

And we are on Item --

MS. HIGASHI: Number 10.

CHAIR SHEEHAN: Item 10, all right. *Binding Arbitration* test claim.

MS. HIGASHI: That's correct. And Commission Counsel Deborah Borzelleri will present this test claim.

MS. BORZELLERI: Thank you.

This test claim deals with legislation that establishes a mandatory binding arbitration process for local governments and their law enforcement officers and

firefighters.

Under that legislation, when an impasse in employer/employee relations was declared, the parties would be subject to binding arbitration if the employee organization so requested.

The test claim statute became effective on January 1, 2001, but was declared unconstitutional by the California Supreme Court on April 21st, 2003, in the County of Riverside case which was filed in early 2001, as violating the home rule provisions of the California Constitution.

Because the Supreme Court did not address whether or not its ruling was retroactive to the original effective date of the test claim statute, staff's analysis addresses whether the statute, while it was believed to be constitutional, created a reimbursable state-mandated local program. This is an issue of first impression for the Commission.

Staff finds that applying the Court's ruling of unconstitutionality retroactively to the original date of the effective legislation could have the effect of forcing programs and costs on local governments without the state paying for them, which is contrary to the stated purpose of Article XIII B, Section 6, of the Constitution. So because binding rights or obligations

in the form of reimbursable mandates could have been created while the test claim legislation was presumed to be constitutional -- and we're talking about between January 1, 2001, and April 21st, 2003 -- staff finds that a full mandates analysis on the merits needs to proceed to determine whether the test claim legislation did, in fact, mandate a new program or higher level of service and impose costs mandated by the state during that period of time.

Therefore, staff finds that based on the purpose of Article XIII B, Section 6, legislation deemed unconstitutional, in this case by the Court, could create a reimbursable state-mandated program during the time the legislation was presumed to be constitutional.

However, staff finds that the test claim statute at issue here did not constitute a new program or higher level of service. This statute required the local agency to engage in a process that the claimant contends resulted in increased costs for employee compensation or benefits. The cases have consistently held that additional costs for increased employee benefits and compensation in the absence of some increase in the actual level or quality of governmental services provided to the public do not constitute an enhanced service to the public and, therefore, do not impose a new program or

higher level of service on local governments within the meeting of Article XIII B, Section 6, of the Constitution. And since strikes by law enforcement officers and fire services personnel are prohibited by law, no, successful argument can be made that this test claim statute affects law enforcement or firefighting service to the public.

Staff recommends the Commission adopt the 2taff analysis and deny the test claim.

Will the parties please come forward and state your name?

MR. LIEBERT: My name is John Liebert. I'm an attorney with the law firm of Liebert Cassidy Whitmore, representing the claimant.

MS. STONE: Pamela Stone on behalf of the City of Palos Verdes Estates.

Mr. DREILING: Daniel Dreiling, Chief of Police for the City of Palos Verdes Estates.

MS. GEANACOU: Susan Geanacou, Department of Finance.

CHAIR SHEEHAN: All right, do you want to start, Mr. Liebert?

MR. LIEBERT: Please.

This claim is, as indicated, pursuant to Code of Civil Procedure sections 2099 through 2099.9. And

that was a section, while it was in effect, that provided for binding interest arbitration, a procedure that had been found to be in violation of the preexisting California law.

In order to put this in context, let me say just a few words in terms of how this fits in with other law.

In the Government Code, as distinguished from the Code of Civil Procedure, there are sections which are generally referred to as the Meyers-Milias-Brown Act, which spells out the labor relations, or the employer-employee relations system for local agencies. And that is the part of the labor relations system that has been in effect and remains in effect in California.

The CCP section -- that is, the Code of Civil Procedure section -- that was added in a different code, provided a unique and new program which was indicated was binding interest arbitration. Now, binding interest arbitration is a form of arbitration that only comes into play when there is a deadlock or an impasse in negotiations between an employee organization and the employer. The section refers to, as indicated, law enforcement or fire service -- or did indicate -- or did at that time; and provided that in that kind of an arbitration, known as "interest arbitration" -- that is,

an arbitration where there's a disagreement in negotiations -- that an outside labor arbitrator, in essence, would make the final decision as to how that impasse would be resolved. The code section referred to economic items.

We will -- or I will address myself only to that portion, obviously, of the staff analysis where we disagree, and that is that last portion.

The issue, of course, therefore, is, did the state mandate onto local agencies a new program or a higher level of service in an existing program onto the local agencies that requires reimbursement.

The staff analysis in this area has concluded no, in the negative. And I think they're doing that for two reasons, and I think that's just been confirmed in the presentation.

The first reason is that cases have consistently held where there is a cost that is traceable to an increase in employee benefits, that that type of a piece of legislation would not qualify for reimbursement under the constitutional language.

We don't take exception to that part; but we point out that this claim is simply not a claim that is seeking to be reimbursed for the costs of increased employee benefits.

The staff analysis has a list of 23 items that are being claimed. Of those, two could be seen as seeking that kind of an increase. And I am here, stipulating that those two we are prepared to withdraw at this time.

The other 21 do not relate to that kind of a reimbursement that is the cost of increased benefits; and, therefore, to that extent, our position is that that contention is simply not relevant.

Incidentally, the listing of the items of claim that have been made appears on pages 6 and 7 of the staff analysis.

The other basis that is being asserted that would prevent reimbursement is, in essence, as we understand it, all claims must somehow involve service to the public. We respectfully disagree with the staff in that regard. We don't not believe that that is correct.

Our reading of the law is as follows: The law interpreting that constitutional language was addressed in a case that is cited in the staff analysis called County of Los Angeles v. State of California. The citation on it is 43 Cal.3d, 46. That case spelled out the approach of determining whether or not a claim is subject to reimbursement. And they did so, essentially

in a two-step process. It disappears on page 56 of that case.

Step 1 is, the court held that the intent of that constitutional provision was to reimburse the local agency for any new program or any higher level of existing program.

The next stage of the analysis that the Court went into was to recognize that there is no definition of the word "program." So they address the issue of, "What do we mean by 'program'?" And what they held was, in order to qualify for reimbursement, one of two standards or findings have to be established:

Number one, programs that carry out the governmental function -- the governmental function of providing services to the public. That's one.

Or alternatively, number two, laws which implement a state policy impose unique requirements on local governments that do not apply generally to all residents and entities in the state.

So those were the two that, either one of which would entitle to reimbursement if other standards are met.

Now, in the Los Angeles case that I've referred to, the Court held that neither one was met, because that involved an increase in workers' compensation benefits.

And the court held that, number one, workers' compensation is not a governmental function and, number two, it is not unique to government because, after all, workers' compensation applies generally.

In any event, that was the approach that was spelled out in the case that has been cited in subsequent cases.

Very important is the fact that the law also is, as I've indicated, only one of these two findings have to be met in order to qualify for the reimbursement. And that is provided for in a case -- first of all, in a case called Carmel Valley Fire Protection District v the State. The cite is 190 Cal.App.3d, 521. And the language appears at pages 537 and 538. So either one of those standards.

Another case that has been cited quite a bit in the staff analysis, that is San Diego Unified School District versus your Commission, that is, the Commission on State Mandates. That case in a number of places refers to these as alternative findings. And that appears in that case.

The Carmel Valley case, as a matter of interest, involved the question of whether there could be reimbursement for safety protective clothing and certain safety equipment, and the holding was yes.

And the San Diego Unified School District case, which is somewhat analogous to our situation, there, the issue was where there was a mandate in connection with hearings to be conducted involving student expulsions where there was the issue of the student having possession of a firearm, where there were various hearing requirements and items in connection with the hearings, there again, the Court found that there was a reimbursable mandate.

Another case that also holds that same proposition, and one that is a great deal more timely, is the one that, in fact, is referred to in your Item Number 20 today, and that is Commission decision case number 00-TC-17/01-TC-14. And that is a case that involves an agency fee situation; and there, the Commission held that the item was reimbursable. Now, in that case, the issues involved, or the *Agency Shop*, and specifically the costs of fee deductions -- that is, agency fee deductions, the cost of preparing a list of home addresses for the union, the costs of making up a list for union elections, all of those were held by your Commission to be reimbursable.

Now, clearly, those were properly, I think, reimbursable under that second finding, just as I think it is quite clear that the claim that is before you now

is similarly entitled to reimbursement under that second finding that I referred to.

I think there will be some additional references made in that regard by Pam Stone in just a moment.

The only other thing that I would add -- and here, what I would ask you to do is, if you would open the staff analysis to page number -- let me see here -- to page number four. And on page number four you will find the certain legislative intent language.

What that language stands for is, there is absolutely no doubt that if we, here today, say, for the sake of argument -- let us say for the sake of argument that the position is correct that all claims must have -- must involve a service to the public, if we just acknowledge that for the sake of argument, there's no question that the claim here involves a service to the public.

And the reason I say that is, of course, all you need to do is read the intent language of the Legislature itself, when they adopted this law. Let me read just the first part of it to emphasize it:

"The Legislature hereby finds and declares that strikes taken by firefighters and law enforcement officers against public employers are a matter of

statewide concern, are a predictable consequence of labor strife and poor morale that is often the outgrowth of substandard wages and benefits, and are not in the public interest.

"The Legislature further finds and declares that the dispute resolution procedures contained in this title provide the appropriate method for resolving public-sector labor disputes that could otherwise lead to strikes by firefighters or law enforcement officers.

"It is the intent of the Legislature to protect the health and welfare of the public," et cetera.

Clearly, this is language that makes quite clear that we are talking about a claim that does, indeed, involve service to the public.

Now, the staff analysis says, "Well, yeah, but they're against the law. Firefighters and law enforcement officers are not allowed to strike."

Well, one aspect of this is, there's a law that says you can't strike, and the other reality is, do you have strikes, nonetheless?

And I can tell you from personal experience that in the case of firefighters, for example, where there is a Labor Code section 1962, which has been on the books for decades, there have been a number of strikes by firefighters, notwithstanding the fact that it is against

the law. One involving the City of Sacramento.

In the case of law enforcement, as was pointed out in the staff analysis, ever since 1989 and in an appellate court decision out of Santa Ana, that made it against the law for law enforcement officers, in essence, to go on strike. And yet, clearly, there have been strike-type activities since that time.

So the reality is that there can be strikes notwithstanding that it's against the law. And, indeed, the admission is right in the legislative intent language itself. It says, "We are adopting this law to avoid those types of strikes." And that law was enacted, of course, long after they became illegal.

Therefore, I will wind up by saying that we respectfully submit that the claim, other than those two items we have agreed should be withdrawn, that the claim does meet all of the requirements of the constitutional mandate for a new program that does entitle -- that is entitled to a mandate.

CHAIR SHEEHAN: Right.

I have one question.

MR. LIEBERT: Please.

CHAIR SHEEHAN: Are you recommending that we ignore that appellate court decision and the statute that outlaws strikes by firefighters and public safety and in

making our decision?

MR. LIEBERT: No, because tongue in cheek a little bit, you're not firefighters or law enforcement. In other words, what I'm asking you to do --

CHAIR SHEEHAN: But we have a claim before us that affects them.

MR. LIEBERT: Right. What I'm requesting is that you recognize the reality that notwithstanding that -- as recognized by the Legislature also -- that you recognize the reality that there can and have been strikes, notwithstanding that it is against the law for them to do that.

CHAIR SHEEHAN: I appreciate that.

I'm having a hard time reconciling the oath I take when I sit in various entities to uphold the statutes and the laws and the Constitution of the State in making the decision. So that's why I ask that question.

Ms. Stone?

MR. LIEBERT: I would add that every member of the Legislature took the same oath, I suspect, as you did. And they, in the language that I have quoted --

CHAIR SHEEHAN: I cannot speak for their intent in voting for that. I can only address my actions taken today.

MR. LIEBERT: Right, okay.

CHAIR SHEEHAN: Ms. Stone?

MS. STONE: Thank you very much.

At this time, I am presenting some exhibits to the Commission, of which I would like administrative notice taken. I'd also want to make sure that your counsel and the Department of Finance has copies of these.

These are all decisions that have been rendered by your commission pertaining to labor matters wherein the labor process has been found to be reimbursable. And trust me, I am not going to read from all of these, but if you'll give me one moment so that these may be passed out. There are some provisions I would like to stress with regard to these.

CHAIR SHEEHAN: I'm sure staff would help to pass those out while you testify.

MS. STONE: Yes. I want to make sure that your counsel and the Department of Finance have a copy, as soon as everybody else does as well, as a matter of courtesy.

I gave out everything. I think I was missing one Exhibit 2.

CHAIR SHEEHAN: We can share. Don't worry. Go ahead.

MS. STONE: Okay, I'm only going to refer directly to three exhibits. But as you will note, that these are all either Statements of Decision, parameters and guidelines, or statewide cost estimates on various labor matters which you have approved in the past. And I would like to address just a couple of them very briefly, because you have the same consideration here. And you're also now dealing with employees -- you're now dealing with employee matters.

I would like to direct your attention to Exhibit 2. These are the parameters and guidelines for *Agency Shop* on page 2. Actually, this particular test claim was presented by my esteemed colleague, Mr. John Liebert, some 19 years ago, in 1987.

And you found that the reimbursable activities they were to review recognized employee organizations' proposal to establish agency shop, as well as meeting and conferring with recognized employee organizations on the issue of agency shop and current bargaining agreement. The second exhibit I would like you to look at just very briefly -- and trust me, I am not going to read this one because we would be here for the afternoon. And I don't know about -- I believe your Commission would like lunch today -- and that is Exhibit 6. These are the consolidated parameters and guidelines adopted by the

Commission which have been amended over the years pertaining to *Collective Bargaining* and *Collective Bargaining Agreement Disclosure*. *Collective Bargaining* was originally adopted by the Board of Control. Your Commission has amended the Parameters and Guidelines and consolidated them with *Collective Bargaining Disclosure* for any number of occasions over the years.

This, again, provides reimbursement for labor negotiations and collective bargaining with regard to teachers.

And lastly, I'm going to refer to *Agency Fee Arrangements*, which Mr. Liebert referred to. And I'm referring to Exhibit 1, which was the Statement of Decision which, again, on page -- I have the conclusion -- it's the last page. My copy was not numbered. I pulled this off your website. And, again, it has specific employee representational issues which your Commission has found to be reimbursable.

When Mr. Liebert previously discussed -- and I'm just thrilled to be here with the labor guru of the state of California, beyond all belief -- that we are conceding two particular points with regard to the activities, we are conceding the issue of increase in salaries that would be warranted by this legislation to the actual employees, as well as the litigation costs. What we are

seeking here for reimbursement are the labor process costs that must be incurred.

My copy has a little different pagination, but it is pages 6 and 7. Basically, you're talking about the time of agency negotiators, staff, and counsel.

Very similar to those costs which you have allowed in *Collective Bargaining* for schools. And we believe that the decision is without a difference with regard to this particular mandate. Although I would like to insert parenthetically that your Commission should be relieved on a cost basis that this particular legislation was declared unconstitutional only a couple of years after its passage.

And thank you very much for your time.

CHAIR SHEEHAN: Thanks.

Any questions for Ms. Stone?

Mr. DREILING: I have nothing. I'm here to answer questions, if you have some.

CHAIR SHEEHAN: Right. Thanks.

Ms. Geanacou?

MS. GEANACOU: I think I'd like to hear the Commission staff respond to some of the points of the claimants before we respond, if that's appropriate.

CHAIR SHEEHAN: Sure. Go ahead.

MS. BORZELLERI: Thank you.

First of all, Mr. Liebert cites to the case of County of Los Angeles. That case actually stands for -- in the tests that he was laying out, it stands for whether a test claim statute is a program. And we have agreed with them that it is, in fact, a program. What we disagree with is that it is a new program or higher level of service, which is the second prong of the test, I'm sure you're aware.

And just to read from the San Diego Unified School District case, which is a 2004 case, several cases are summarized in that case, and I think we need to rely heavily on this case for making this determination. And I will read to you from pages 876 to 877 from the San Diego Unified School District case.

MS. STONE: If you'd like to, we have copies for everybody of the San Diego --

MS. HIGASHI: Let me just say, there's a copy already in your binder under Item 22, under tab A.

MS. STONE: Oh, okay. We were concerned about that, so we made copies.

Susan, would you like a copy?

MS. GEANACOU: Sure.

MS. BORZELLERI: The case is rather long, so I don't know what your pagination is.

Do you have a cross-reference there, so they

can read with me?

MS. STONE: What page are you reading from?

MS. BORZELLERI: It's page 876 to 877.

MR. LIEBERT: Eight? Did you say 8?

MS. BORZELLERI: 876 to 877.

In this, they're citing to the City of Richmond case following the County of Los Angeles case, which concluded that requiring local governments to provide death benefits to local safety officers under both the Public Employees' Retirement System and the Workers' Compensation system did not constitute a higher level of service to the public.

The Court of Appeal arrived at that determination even though, as might have been argued in County of Los Angeles and City of Sacramento, such benefits may generate a higher quality of local safety officers and thereby, in general and indirect sense, provide the public with a higher level of service by its employees.

The next paragraph: "Viewed together, these cases" -- and they're citing the County of Los Angeles, City of Sacramento, City of Richmond, and they also cite to the City of Anaheim - "illustrate the circumstance that simply because the state law or order may increase the costs borne by local government in providing

services, this does not necessarily establish that the law or order constitutes an increased or higher level of the resulting service to the public under Article XIII B, Section 6."

And then it goes on to cite what does constitute a higher level of service. And they use the example of Carmel Valley Fire Protection, which Mr. Liebert cited, where the executive order he required the county firefighters to be provided with protective clothing and safety equipment because this increased safety equipment apparently was designed to result in more effective fire protection. The mandate evidently was intended to produce a higher level of service to the public, thereby satisfying the first alternative set out in the County of Los Angeles.

Similarly, Long Beach, in an executive order, required school districts to take specific steps to measure and address racial segregation in local public schools. The Appellate Court held that this constituted a higher level of service to the extent the order's requirements exceeded federal constitutional and case law requirements by mandating school districts to undertake defined remedial opinions and measures that were merely advisory under prior law.

Those later cases really do identify an actual

public service; and I think in this instance we do not have that. That's what we based our analysis on. Secondly, because the Commission has in the past ruled on some similar cases, those are not binding, as the Commission well knows, on cases going forward. We do need to rely on the case law. We do look at those previous cases in making our analysis. But in this case I think we do need to rely on the San Diego case, which is a Supreme Court case.

And as far as the other Commission decisions, Camille, did you want to add anything about those?

MS. SHELTON: No, not on that, other than the Supreme Court has repeatedly said that the whole purpose of Article XIII B, Section 6, was to prevent the state from shifting costs to local agencies to provide a service to the public. That's been the purpose since the earliest Supreme Court case in 1987, in County of Los Angeles.

CHAIR SHEEHAN: I want to ask Ms. Geanacou if she wants to make any comments first, and then we can go back and hear from some of the comments you may have.

MS. GEANACOU: Yes, Susan Geanacou, Department of Finance. Thank you.

The Department of Finance agrees with the final staff analysis as to this mandate for a couple of

reasons, one of which was just highlighted by the Commission staff counsel.

In this case, there is no higher level of service to the public from binding arbitration following impasse and bargaining.

In some of the cases just cited that I will not repeat, those recent cases within the last couple of years have confirmed at an appellate level that an alleged increased cost of providing services to the public does not equal an increased level of services to the public. Those are two entirely different things in the mandates world. That's confirmed in the most recent San Diego Unified School District case and the somewhat older City of Richmond case.

I'd also like to point out that many of the activities claimed in the test claim are not required by the legislation. I'm mindful, though, that the claimants agreed that they would waive or stipulate to waive withdrawal of some of those claimed activities. So nonetheless, I'd like to be on the record of saying many of those activities are not required by the test claim legislation.

And also, finally, the Commission staff analysis on page 15 points out importantly that strikes by fire and police personnel are illegal under California

law; and that should be taken into consideration significantly by the Commission members in determining whether there could even be a higher level of service to the public here from the claimed activities.

CHAIR SHEEHAN: Thanks.

Okay, questions -- were there questions of the witnesses?

(No audible response.)

CHAIR SHEEHAN: No?

All right, did you want to address a couple of things?

MR. LIEBERT: Yes. Let me just very briefly reference the Richmond case. The Richmond case stands for the proposition that if you have an increase in benefits that results in cost, that is not reimbursable. We've stipulated to that. That is what the Richmond case involved.

The Carmel case -- it's interesting that the opinion in the Carmel decision itself never makes reference to the assumption or presumption that there could have been the assumption that this was an increase in a level of service. And, indeed, probably the facts suggest that that is otherwise.

But the main point I think that I want to make is, the constitutional language talks about a new program

or a higher level of service. I think the arguments that we hear is the only relevant standard is the higher level of service. I think that is belied in a fair reading of the cases by the definition of "program." And you will note that the first element of the definition of "program" does refer to services to the public. That is, governmental functions of providing services to the public.

But then it provides the alternative, which does not pertain -- does not, in its terms, mention anything about service to the public. What it refers to is a unique requirement that the state imposes based on its policy, a unique requirement onto the local government.

We are submitting that this is a perfect example, this Code of Civil Procedure section series is a perfect example of the second element that is a law which implements a state policy and imposes unique requirements on local governments that do not apply to anybody other than local governments.

And in our opinion, that does not address the issue of a higher level of service.

Most of the cases, indeed, involve a higher level of service. That is, for example, in the case of San Diego Unified School District there was in existence a hearing

procedure that was utilized in the case of *Student Expulsions*. And the mandate was in addition to that policy in the case of the situation where you had student expulsions involving possession of firearms. And in the other case, and, indeed, in the Carmel case you might argue, as apparently that case did, that providing safety equipment is an additional -- a higher level of service because the service is fire protection, and now we can better protect the public against fire protection.

So the point, though, I'm trying to make is, those are two distinct elements. And the higher level of service element is not the one that we're relying on. We're relying on the second prong of the test, and that is, where the state mandates a unique policy onto local government.

MS. STONE: And, Madam Chairman, I'd just like to add a prior comment.

In my prior incarnation, I was a chief deputy county counsel, and part of that, a deputy county counsel to the County of Fresno. As a result of which, notwithstanding the Santa Ana case, which precludes and makes strikes by peace officers illegal, we were exposed to a severe case of "blue flu." Blue flu is when you have various and sundry representatives of your safety officers call in sick. Basically, you have a work

disruption, because these are unplanned absences. And it's sometimes difficult to prove you have the blue flu until it's been continuing for a while. But you have a major disruption to the organization of your -- in this case, it was the Sheriff's Department -- you have issues with regard to providing adequate services to the public because of the fact that you have to make arrangements to cover for these unplanned absences.

And this particular tactic, I have read, and it's in the materials, is utilized because peace officers are not allowed to strike.

So when you're talking about strike-type activities, even though strikes, per se, are illegal for both firefighters and peace officers, good employer-employee relations are incumbent in order to be able to protect the health and safety of the populace. And I think what we're trying to say through this is that it was the Legislature's intent that by creating this particular legislation, which was declared unconstitutional, it was to avoid some of the employee problems in the past which had put the public safety at risk.

So, therefore, whereas I totally agree with Mr. Liebert, that this has satisfied the prong of basically being unique to government, to discharge a legislative policy,

I also believe that this legislation was very clear in its intent to provide a service to the public which is clearly making sure that there were no employee disagreements that could affect the provision of both fire and police, which have been found in Carmel Valley and other cases to be two of the most primary governmental services which local government provides to its citizens.

Thank you.

CHAIR SHEEHAN: All right.

Did staff want to address any of those final issues? Specifically, the --

MEMBER WORTHLEY: The second prong.

CHAIR SHEEHAN: Yes, the second prong in terms of the general requirements.

MS. SHELTON: There are several elements to finding a reimbursable state-mandated program. And you have to satisfy each element to get reimbursed. And the first is that there has to be a mandated activity imposed on the agency. Second, those activities have to constitute a program. And Mr. Liebert correctly has defined what the program means.

Third, you have to have a new program or higher level of service. And there, repeatedly the courts have said it has to provide a service to the public, to make

that finding.

And then fourth, there has to be increased costs mandated by the state for the activities that are required by statute.

CHAIR SHEEHAN: What about --

MEMBER OLSEN: The assumptions.

CHAIR SHEEHAN: Exactly, the requirement -- or the issue that the mandate is not required across the board? They referred back to the workers' comp case. I don't know which one of you made that --

MS. SHELTON: I would need clarification of that.

MS. BORZELLERI: Could you repeat the comment? I didn't hear what you said.

CHAIR SHEEHAN: They keep talking about that it's not a requirement across the board -- you know, not unique to government.

MEMBER WORTHLEY: It is unique.

CHAIR SHEEHAN: I mean, it is unique to government.

MS. SHELTON: No, it is unique to government, and that satisfies the test that it's a program subject to Article XIII B.

CHAIR SHEEHAN: Right, because you get to the part of the local government or essentially the school

district.

MS. SHELTON: Right. You get to the next element, that it's a new program or higher level of service. And for that element, you need to show a service to the public.

CHAIR SHEEHAN: Right.

MR. LIEBERT: If I may say so, our disagreement on the law in this regard is that the higher level of service is one aspect of it. In other words, when you are providing a higher level of service to an existing program, the other element is that you are creating a new program. And when you create a new program, we respectfully disagree that in every case you have to have that new program provide services to the public. I don't think that the cases stand for that proposition.

The San Diego case, which has some language which arguably could be interpreted that way, is a case that involved a higher level of service to an existing program. It did not involve a new program. And so I think we have a bit of a legal disagreement on that.

CHAIR SHEEHAN: Okay, Camille?

MS. SHELTON: The courts have defined a new program or higher level of service the same. They both have to provide a service to the public. And when you're looking at that, you're just looking to see if that

activity that is newly required provides a service to the public.

CHAIR SHEEHAN: Okay. Did you have a question?

MEMBER WORTHLEY: No. I have a comment. I'm just holding my comment.

CHAIR SHEEHAN: Oh, okay.

Did you have a question?

MEMBER WALSH: I have a comment.

CHAIR SHEEHAN: Okay, does that clarify? Yes, because that was the one that I think some of the Members were getting. And maybe it was just the jargon or the wording that was being used in terms of that.

Did you want to address anything else?

(No audible response.)

CHAIR SHEEHAN: Okay, any other questions from the Commission members on this one?

But I think it helped clarify the issue that is made, thanks, in terms of higher level of service. I understand your comments on the strike issue. As I say, nonetheless, strikes are illegal, regardless of what may actually happen out there, I guess is the way I'm looking at the statute in that regard.

Ms. Higashi?

MS. HIGASHI: I'd like to get a clarification from the claimants' representatives, turning to page 7

of the staff analysis, the page that has the continuation of the bulleted activities that are sought for reimbursement.

CHAIR SHEEHAN: Right.

MS. HIGASHI: I just want you to clarify for us and designate exactly which bulleted activities that you are withdrawing officially today?

MR. LIEBERT: Let's see, the second, on page 7, the second one from the top, the last one on page 7, and Pam Stone also --

MS. STONE: Wait, it's this one.

MR. LIEBERT: That's last one.

MS. STONE: Yes, the last one.

MS. SHELTON: The second one says time of the agency negotiators to negotiate --

MR. LIEBERT: Are we talking about -- I'm talking about page 7. Do we have a different --

MS. HIGASHI: I'm on page 7.

MEMBER WORTHLEY: The third bulleted point.

MS. STONE: This is why we have different paginated copies.

MS. HIGASHI: So why don't you read it to us?

MS. STONE: The last paragraph that says, "Additional intangible cost element at the last best offer phase of negotiations involving enhancements to

compensation packages that may be added when the local agency perceives possible vulnerabilities," et cetera. "We are also" --

MEMBER WORTHLEY: Costs of implementing the award.

MS. STONE: -- "costs of implementing the award above and the cost of inevitable litigation" --

CHAIR SHEEHAN: So the last three bullets?

MS. STONE: No, I take that back. Just "the costs of implementing the award," above those and "any additional -- and additional intangible costs." Those two.

MS. GEANACOU: Leaving in "costs of inevitable litigation"?

MS. STONE: Yes.

MS. SHELTON: Can I just ask a clarification, too?

Are you still seeking reimbursement for the litigation costs?

MS. STONE: Pardon?

MS. SHELTON: Are you still seeking reimbursement for the litigation costs to deem that statute unconstitutional?

MS. STONE: Yes.

MS. SHELTON: I'll just state for the record

that that activity is not mandated by the state.

MS. STONE: Right. We will concede that it is not mandated by the state --

MR. LIEBERT: So apparently we are withdrawing it.

MS. STONE: We are? Okay.

MS. SHELTON: You are?

MS. STONE: Sorry. Yes.

MR. LIEBERT: So we're withdrawing three of the elements.

MS. HIGASHI: Okay, so it's the last three.

CHAIR SHEEHAN: The last three.

MR. LIEBERT: Not the last three.

MEMBER WORTHLEY: The litigation costs, the first bullet point.

MS. STONE: The first one.

CHAIR SHEEHAN: The very first litigation costs?

MS. HIGASHI: Right. Yes, sorry.

CHAIR SHEEHAN: So that is the amended claim.

MS. HIGASHI: On page 6.

MS. STONE: Now, we've got clarification. I apologize to the Commission.

CHAIR SHEEHAN: Just so that we understand in terms of those.

Are there any other questions from -- or comments?

MEMBER WORTHLEY: I'd like to make a comment.

CHAIR SHEEHAN: Reflections on the discussion?

MEMBER WORTHLEY: We focused on the increase and the actual level, but the other language there says "or quality of governmental services provided to the public." And I understand that, in a citation that was read, that increased costs do not necessarily reflect increased quality.

Now, I would submit to anybody if the state passed a law that says every agency has to pay their law enforcement officers a beginning salary of $100,000 apiece, we would be hard pressed to say that that wouldn't increase the quality of the people that would apply for the work.

Where do you draw this line? I'm afraid -- I mean, how can you disassociate increased costs with no affect on quality?

Another affect is that if by increased costs, you affect quality the other way. Because now all of a sudden, you've got X-number of dollars for the governmental entity to spend on law enforcement or any other kind of requirement, and now you impose additional costs on that county, there's no additional money coming

in so, therefore, you have to cut, and you actually have a reduction in services.

I just really struggle with this concept that there is not a correlation between increased costs and that especially when it benefits the employee. In this case we're talking about arbitration. What's the whole point of binding arbitration? Well, certainly the employees are trying to increase their income or their benefits. And what does that do? It means a higher quality person applies for the work.

If you go back -- I also looked at that language from the State Legislature, and it talked about as a -- you could refer to that as being, the existing situation is that people are unhappy in their work. So you have an issue of quality about how they're affecting their job, how they're doing their job because they're unhappy about their pay.

So as we increase their compensation, then hopefully we're fixing that problem. That's an enhancement. That's a qualitative issue; and I really struggle with the idea that we somehow divorce that. And I don't care about court decisions because I think the courts haven't had the right kind of case to decide when do you make that decision.

It seems to me compensation is right on the

mark, in terms of quality and affecting quality of service.

MS. BORZELLERI: Well, I think with binding arbitration you could end up either way. I mean, you may end up with enhanced salary or not.

MEMBER WORTHLEY: Well, may I say to that, the counties are the ones who oppose binding -- and the state agencies oppose binding arbitration, not the employee groups. That should tell you something right there. If it were the other way around, then the governmental agency wouldn't care.

MS. BORZELLERI: Right. Except we don't really have any direct facts on the record about that. It's a difficult issue, I agree with you.

MS. SHELTON: I just need to state that the Supreme Court in the San Diego case said that those same arguments were raised in the prior cases that they reviewed. And they said even though there could be a higher quality of service provided to the public, there is still no higher level of service because it's just a benefit to the employee.

MEMBER WORTHLEY: What's the purpose of saying that word then, "quality"? I don't understand --

MS. SHELTON: I'm on page 876 of the decision, and I can read it.

MEMBER WORTHLEY: Well, I'm reading your analysis that just says that cases have consistently held that additional costs, blah, blah, blah, in the absence of some increase in the actual level or quality of governmental services.

MS. SHELTON: Right, and then go on with the decision on page 876 where the Court is reviewing the Richmond case, and it says that the Court there -- or the legislation there did not constitute a higher level of service to the public. The Court of Appeal arrived at the determination even though this might have also been argued in the County of Los Angeles and City of Sacramento that the benefits may generate a higher quality of local safety officers and thereby in a general and indirect sense provide the public with a higher level of service by its employees. And it was rejected. It was not approved as a reimbursable state-mandated program.

MEMBER WORTHLEY: Which case was that again?

MS. SHELTON: It was summarized by the Supreme Court in the San Diego Unified School District case.

MS. HIGASHI: It's in your record, Item 22, Tab A, page 111, the top right-hand corner.

CHAIR SHEEHAN: All right.

MEMBER OLSEN: Madam Chair?

CHAIR SHEEHAN: Ms. Olsen?

MEMBER OLSEN: It seems to me that the issue here is the directness of the correlation between the things, and I think we're faced with this constantly here. In some way, everything government does ultimately affects a public outcome.

So from my perspective, binding arbitration -- you don't require binding arbitration to directly increase benefits to employees. You provide binding arbitration to provide a way of dealing with a conflict between employees and employers.

Now, ultimately, that may result in higher benefits, but that's not a direct outcome of requiring binding arbitration. I think for me the issue is the directness of this construct here.

CHAIR SHEEHAN: Okay, did you want to comment, Mr. Walsh?

MEMBER WALSH: I'm ready to vote.

CHAIR SHEEHAN: Did you want to add something now?

Why don't you introduce yourself?

MR. BURDICK: Allan Burdick on behalf of CSAC SB 90 Service.

You just wanted to make a couple of comments related to this and some clarifications, because this

test claim was actually filed at the request of the California State Association of Counties and the League of California Cities as they were proceeding with their lawsuit, and felt that in the event that they had not been successful in that lawsuit, they wanted to make sure they were then protected for their reimbursement of these particular costs from going on, which included -- as everybody knows, an extremely major piece of legislation and public policy issue, one in which the state government has chosen not to apply to itself but only uniquely to local government.

So this is clearly a unique program that was placed on local government.

I think at this point I just wanted to comment on the cost issues, because I think we're saying this is the process issues that are being claimed in here, as it is an expansion and a complication, if you will, of the collective bargaining process by adding binding interest arbitration. This makes a major difference in that bargaining process.

And so like the Meyers-Milias-Brown Act which Mr. Liebert referred to, which was adopted in 1979, I think would have been a reimbursable state mandate had it been after 1975. And I think every time Commission members talk and cite about increased costs, in this case

of a benefit or not a public service, then that cost shouldn't be reimbursed. But I think Paul Gant turns over in his grave every time he hears that particular comment because, obviously, that was the intent if you're placing a cost on local government that they should be reimbursed.

I think I just wanted to point out that the cost issue right now is one that is being litigated. You continue to test claim on the basis that that's the primary issue of the litigation before you on a CSAC Excess Insurance Authority that is being challenged. I know you may have discussed that today in your public session. So I just kind of wanted it to clarify that, we're looking at areas that I don't think it's not a position that costs -- and would agree with Commissioner Worthley, that if you increase the cost and a benefit to somebody, obviously, that's a benefit, as well as an increased cost that was intended under here.

So I just wanted to kind of clarify that as to why that is and the importance of this as you go back and look and say, "Well, you know, this is just a couple years of time between when the law was enacted until the court case." But this is very critical because of the precedential nature.

And I might say that the Attorney General, as

this legislation was going through the process, issued opinions which indicated that had, you know, binding interest arbitration for their perspective, that not only the process would have been reimbursable; but if the finding was greater than the final last, best offer of the local agency, that that increased cost would have been reimbursable.

So, you know, I'm not an attorney and I know there's a lot of discussion going on out there; but I wanted to remind you that this issue is before you, that you did continue a test claim on that particular basis, and that local government does not agree that an increased cost is not a -- should not be reimbursed if you're basing it simply on the costs.

Thank you.

CHAIR SHEEHAN: Thanks.

MS. GEANACOU: I have a question. There's no request to continue this matter pending this matter; is there?

MR. BURDICK: No, no, this was a matter today, the County of Los Angeles, and the issue was simply on the basis of the increased cost in that particular case.

MS. SHELTON: Well, that case dealt with workers' compensation. So it was more aligned to the program that's pending on appeal.

MR. BURDICK: But the issue there is increased costs.

MS. SHELTON: Right, it's the same issue.

MS. HIGASHI: I just had a couple of comments that I wanted to offer, and then just a question I wanted to ask the claimants' representatives.

First, I just wanted to point out for the record that the *Collective Bargaining* decision that has been discussed, the test claim decision on the Rodda Act, that was actually a decision made before any of this case law that's being cited to today had appeared. And the substance of that decision is basically one or two sentences saying that it was approved. And the Commission has never revisited any of those issues. They have certainly added to it by adding one additional test claim that was related to that program.

CHAIR SHEEHAN: Okay.

MS. HIGASHI: I'd also like to ask the claimants the question, since this test claim was filed relatively early, after the law was enacted, I wanted to find out if there was any report as to how many jurisdictions actually did participate in binding arbitration, and whether or not the claimant had actually entered into binding arbitration as a result of this statute, just because there's no evidence in the record

as to that issue.

MS. STONE: There is evidence that I am personally aware of, of one county being forced into binding interest arbitration, which resulted in an award higher than the last, best, final offer.

Other entities had other negotiations leading up to it but did not enter. They did the pre-stages but did not enter into the stage of binding interest. They didn't get as far as an arbitration decision.

MS. HIGASHI: So if your position were approved, are you suggesting that there might only be one claimant?

MS. STONE: There would be some claimants -- it's my understanding that there would be some claimants with regard to the initial start-up cost, but there was only one agency that went the whole way.

I'm sorry, I don't know if I broke it *(pointing to microphone)*.

Thank you.

CHAIR SHEEHAN: Did that clarify?

MS. HIGASHI: That's all.

CHAIR SHEEHAN: Okay.

MR. LIEBERT: I guess just one.

CHAIR SHEEHAN: Sure.

MR. LIEBERT: Just to clarify. Our primary

concern are the costs related to the process.

CHAIR SHEEHAN: Preparing for it, right. And on your bullets, as you go through that, at least it's clear to this member, and I'm sure to the other members, that it lays out those issues, yes. Not what may result at the end, but the preparation, training, those issues, yes.

MR. LIEBERT: Right.

MR. BURDICK: If I could just make one comment to clarify on Paula's point.

If this is approved and we get to parameters and guidelines and go through that process and these activities are there, there may be a number of agencies that qualify for increased costs related to that process in the event that binding interest arbitration may have been raised by the labor unions or other things they were doing dealing with this. So I don't think we want to say that it is a single agency may be the only one.

I do not think there will be substantial claims in this particular process. But, obviously, there are going to be some one-time costs going through -- of the law, and preparing the people, what happens, you know, the change in the law and what this program does. And I think, you know, actually we have a gentleman sitting at the table who initiated this, who provided

some substantial training to local agencies so they would be able to comply with this.

CHAIR SHEEHAN: If I understood what Paula said, it was that there was -- the clarification that there was actually one entity that resulted in an arbitration decision -- or that had an arbitration decision that resulted in increased costs, regardless of the prep cost and all of that. I think people --

MS. STONE: Right, right, that's correct. But there are a lot of agencies that had the initial prep costs, and it looked like they were starting to go into the process, who started the process.

CHAIR SHEEHAN: And then it got --

MS. STONE: And then for whatever reason, it evaporated, yes.

But there's only one entity that I'm aware of that went through the whole way.

CHAIR SHEEHAN: Right, and got the --

MS. STONE: The final arbitration decision.

CHAIR SHEEHAN: Right. I think we understood what she was saying.

Paula, did you want to add anything?

MS. HIGASHI: Well, I just wanted to note that this analysis really doesn't go into a detailed analysis of whether the allegations raised by claimant are, in

fact, mandated by the statute or if the Commission were to approve a test claim on their behalf, whether they would, in fact, still be reasonably necessary to implement the mandate.

CHAIR SHEEHAN: Right, right. A different issue.

All right, any other discussion on this?

(No audible response.)

CHAIR SHEEHAN: If not, then the Chair would entertain a motion.

MEMBER WALSH: So moved.

CHAIR SHEEHAN: Okay, so Mr. Walsh moved the staff recommendation.

Is there a second?

MEMBER GLAAB: Second.

CHAIR SHEEHAN: All right, we have a motion and a second to adopt the staff recommendation.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

MEMBER WORTHLEY: No.

CHAIR SHEEHAN: Mr. Worthley -- I think that was it -- is voting no.

So the motion carries.

Thank you all.

MS. STONE: Thank you very much.

MS. HIGASHI: This brings us to Item 11.

CHAIR SHEEHAN: The Proposed Statement of Decision. Go ahead.

MS. BORZELLERI: Yes, the only issue before the Commission is whether the Statement of Decision reflects the Commission's decision.

We will reflect issues that have been dealt with here in the -- Camille, help me out here.

MS. SHELTON: Just to indicate that the claimant here today waived their request for the certain costs for litigation and the benefit costs. We will note the testimony in the Statement of Decision.

CHAIR SHEEHAN: That it will be amended to reflect that.

So with that --

MEMBER OLSEN: So moved.

CHAIR SHEEHAN: -- noted, we have a motion by Ms. Olsen --

MEMBER WALSH: Second.

CHAIR SHEEHAN: -- and a second by Mr. Walsh.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

MEMBER WORTHLEY: No.

CHAIR SHEEHAN: Mr. Worthley is reflected as voting no.

So Item 12 and 13 have been postponed.

MS. HIGASHI: Yes. This brings us to Item 14.

CHAIR SHEEHAN: The *Modified Primary Election* test claim.

MS. HIGASHI: Correct. And this item will be presented by Commission Counsel Katherine Tokarski.

MS. STONE: I'm still here.

CHAIR SHEEHAN: Right.

MS. STONE: And I'm going to be here again.

CHAIR SHEEHAN: The timing is good on these.

Okay. And, Katherine, you're doing this one?

MS. TOKARSKI: Yes.

CHAIR SHEEHAN: Great.

MS. TOKARSKI: Good afternoon. This test claim filed by Orange County deals with changes to the partisan primary system in California. In 1996, the voters adopted Proposition 198 of the Open Primary Act.

Statutes of 2000, Chapter 898, largely repealed and enacted the Elections Code sections that had been amended by Prop. 198 following the U.S. Supreme Court decision finding that that processing was unconstitutional.

However, by amending a few of the Elections

Code sections, the test claim legislation altered the prior closed primary system to one in which those voters who declined to state a political party affiliation may choose any political party's partisan primary ballot, if that political party allows it. This created a form of open primary.

Staff concludes that statutes 2000, 898 as amended in Elections Code section 2151 and 13102, subdivision (b), imposes a reimbursable state-mandated program on counties for allowing voters who decline to state a party affiliation to vote a party ballot at the primary, and for adding related information to voter register cards.

No written comments were received on the draft staff analysis.

Staff recommends that the Commission adopt this analysis and partially approve the test claim as described in the conclusion at page 14 of the final staff analysis.

Will the parties please state your names for the record?

MS. STONE: Good afternoon. My name is Pamela Stone. I'm here on behalf of the County of Orange.

MS. SLUPSKY: Suzanne Slupsky, County of Orange.

MS. GEANACOU: Susan Geanacou, Department of Finance.

MS. STONE: Very briefly, Madam Chair, Members of the Commission, we are in concurrence with the draft staff analysis. We would note there are activities that we will be bringing up that were necessary to be performed in order to reasonably accomplish the mandated activities at the time of the parameters and guidelines.

CHAIR SHEEHAN: Okay.

MS. STONE: And Ms. Slupsky is here for any questions you may have with regard to the process.

CHAIR SHEEHAN: Okay.

Ms. Geanacou?

MS. GEANACOU: Yes, Susan Geanacou, Department of Finance.

We, too, agree with the final staff analysis; and, again, reiterate the same comment as to any activities that may be claimed as --

CHAIR SHEEHAN: Everybody's reserving their right.

MS. GEANACOU: -- basically necessary to implement the activity, if you should approve the analysis today, yes.

CHAIR SHEEHAN: We'll have to just stipulate to that.

MS. GEANACOU: I say that in this matter in particular, because on page 10 of the final staff analysis, reference is made to the 2002 comments that Finance filed in this matter, where we identified numerous activities that we questioned the reimbursability of or the frequency of reimbursability of, that are particularly relevant here.

CHAIR SHEEHAN: Okay.

MS. STONE: And we acknowledge that we disagree on the potential reimbursable activities.

CHAIR SHEEHAN: Yes, but I think the P's & G's -- okay.

MS. STONE: Right.

CHAIR SHEEHAN: Questions from the Members on this one?

MEMBER WORTHLEY: Move approval.

CHAIR SHEEHAN: No?

Okay, we have a motion from Mr. Worthley.

MEMBER OLSEN: Second.

CHAIR SHEEHAN: A second from Ms. Olsen to approve the staff recommendation.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: It passes unanimously.

All right, and now we'll go on to Item 15.

MS. TOKARSKI: Item 15 is the Proposed Statement of Decision on the item you just voted on. And staff recommends that the Commission adopt the proposed decision beginning on page 3, which accurately reflects the staff analysis and recommendation. Minor changes including those that reflect the hearing testimony and vote count will be included when issuing the final Statement of Decision.

MEMBER OLSEN: So moved.

CHAIR SHEEHAN: Motion by Ms. Olsen.

MEMBER WORTHLEY: Second.

CHAIR SHEEHAN: Second by Mr. Walsh.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: Motion carries.

Okay, now, we go on to Item 16, *Permanent Absent Voter*. But anyway --

MS. HIGASHI: This will also be presented by Ms. Tokarski.

MS. TOKARSKI: *Permanent Absent Voters II* was filed to reflect changes in the election law pertaining

to the original *Permanent Absent Voters* test claim, which was decided in 1989. At that time, the Commission determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program.

Prior to the enactment of the current test claim legislation, the Elections Code provided that only voters with specified disabilities or conditions could apply for permanent absent voter status.

In 2001, the Elections Code was substantively amended to allow all registered voters to apply for permanent absent voter status rather than limiting eligibility.

Staff concludes that this imposes a reimbursable state-mandated program replacing the related activity from *Permanent Absent Voter I*.

In addition, county elections officials are newly required to include explanations of the absentee voting procedure and of Elections Code section 3206 in all absentee ballot mailings.

No written comments were received on the draft staff analysis.

Staff recommends that the Commission adopt this analysis and partially approve the test claim as described in the conclusion at page 15.

Will the parties please state your names?

CHAIR SHEEHAN: Ms. Stone?

MS. STONE: Good afternoon, Madam Chair, my name is Pamela Stone. I'm here on behalf of the County of Sacramento.

MS. JARBOE: I'm Alice Jarboe. I'm here from Sacramento County.

MS. GEANACOU: Susan Geanacou, Department of Finance.

CHAIR SHEEHAN: Great. Go ahead.

MS. STONE: Again, Madam Chair, Members of the Commission, we concur with the draft staff analysis. We will be proposing that rather than have two sets of parameters and guidelines, since this is picked up from *Permanent Absentee Voters*, to have one set of parameters and guidelines covering both so that it would make it clear going forward. And, again, as Ms. Geanacou will probably state, we respectfully request that we agree to disagree concerning what is necessary in order to implement this particular mandate.

And we would request your Commission's approval.

CHAIR SHEEHAN: Nothing to add?

MS. JARBOE: Nothing to add.

CHAIR SHEEHAN: Susan?

MS. GEANACOU: Yes, Susan Geanacou, Department

of Finance. We support the staff analysis on this mandate.

I did have a question for staff in reading their final staff analysis and also the proposed Statement of Decision. I'm picking it up now. On page 12 of the proposed Statement of Decision --

MS. TOKARSKI: Can we take it on Item 16?

MS. GEANACOU: I'm sorry, I can take it on the next item then.

CHAIR SHEEHAN: Okay.

MS. GEANACOU: It's just a question about a reference to a code section, whether it's the one you intended to or whether I'm reading it wrong.

MS. TOKARSKI: Okay, then I'd like to address it now.

CHAIR SHEEHAN: Go ahead, Susan. It's on the final --

MS. GEANACOU: It's on the final staff analysis, and also carries through to the proposed Statement of Decision. I just wanted to make sure -- it's on page 11 of the final staff analysis. It's the very -- it's right after the bullet at the top of the page on my version. You're analyzing Elections Code 3203. And the reference is made in that last full sentence to section 3206. I wanted to make sure you

weren't intending to refer to 3203.

MS. TOKARSKI: Section 3206 is mentioned in a couple places.

MS. GEANACOU: Right. I recognize that.

MS. TOKARSKI: I just want to make sure that none of the other ones are in error also.

MS. GEANACOU: Sure.

MS. TOKARSKI: Since that does appear to be a mistake.

Yes, that should read "3203," immediately -- after the bullet. The one that says "3206" in the bullet, that is correct. But the one after, it should say "3203."

CHAIR SHEEHAN: Gotcha.

MS. TOKARSKI: And so the same should be made in the Statement of Decision.

CHAIR SHEEHAN: All right, with that change -- all right.

So any further -- was that it, Susan?

MS. GEANACOU: That's it. And then we will comment as we see fit on the proposed parameters and guidelines.

CHAIR SHEEHAN: Okay, so if there are no further discussions, we'll entertain a motion for the staff analysis and recommendation.

MEMBER WORTHLEY: Move approval.

MEMBER OLSEN: Second.

CHAIR SHEEHAN: We have a motion by Mr. Worthley and a second by Mrs. Olsen.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: So now we will go on to the proposed Statement of Decision, with the change -- the same change that was made in the previous final staff analysis.

MS. TOKARSKI: Yes.

CHAIR SHEEHAN: Okay, did you want to read your statement for the record?

MS. TOKARSKI: Sure.

Staff recommends that the Commission adopt the proposed Statement of Decision on *Permanent Absent Voter II*, beginning on page 3, which accurately reflects the staff analysis and recommendation. Minor changes, including that just mentioned, and the hearing testimony and vote count will be included when issuing the final Statement of Decision.

CHAIR SHEEHAN: Great. Okay.

So with that, do I have a motion?

MEMBER WALSH: So moved.

MEMBER GLAAB: So moved.

CHAIR SHEEHAN: Motion by Mr. Walsh, second by Mr. Glaab.

All those in favor?

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: The motion carries.

Now, that should take us, if I'm following correctly, to Item 22.

MS. HIGASHI: That's correct.

Assistant Executive Director Nancy Patton will introduce this item.

MS. PATTON: Good afternoon.

In October 1999, San Diego Unified School District challenged the *Pupil Expulsions from School* decision. Five years later, the Supreme Court issued its ruling on the San Diego challenge. The 2004 Supreme Court decision requires the State to reimburse school districts for all resulting hearing costs, even those costs attributable to procedures required by federal law or mandated recommendations of expulsion for certain offenses back to the initial 1993-94 reimbursement period for the *Expulsions* test claim.

In May 2005 the Commission amended its original Statement of Decision to conform to the Supreme Court decision.

Here, Item 22 proposes adoption of a new set of parameters and guidelines so school districts can claim additional hearing costs back to '93-94.

San Diego proposes a uniform cost allowance of $587.16 for the direct and incorrect costs of expulsion hearings for each mandated recommendation of expulsion. That cost is for 2005-2006 -- that amount is for fiscal year 2005-2006.

For prior years, this cost allowance would be adjusted back to fiscal year '93-94, using the implicit price deflator for the costs of goods and services to governmental agencies, as determined by the Department of Finance. So for 1993-94, the amount would be $411.16. Staff reviewed San Diego's proposal and compared the proposed uniform allowances with state rates for due process hearings conducted by state agencies. A comparison to state agency cost is relevant because Education Code section 48918, subdivision (d), authorizes governing boards to contract with the county hearing officer or with the State Office of Administrative Hearings for a hearing officer to conduct expulsion hearings.

Based on this review of comparable costs and activities for state agencies due process hearings, staff finds that claimant's proposed uniform cost allowance for the additional hearing activities for a mandated recommendation of expulsions are reasonable and should be adopted.

Therefore, staff recommends that the Commission adopt the proposed parameters and guidelines for the *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*, beginning on page 11, and authorize staff to make any necessary technical changes or corrections. Paula will be answering any questions on this item.

Will the parties please state your name for the record?

MR. PALKOWITZ: Good afternoon. Art Palkowitz for San Diego City Schools.

MR. STORM: Ryan Storm with the Department of Finance.

CHAIR SHEEHAN: Go ahead, Mr. Palkowitz.

MR. PALKOWITZ: Thank you.

Basically, we concur with the staff analysis. What we did is we got together with L.A. Unified School District, as unfortunately they probably do the most expulsions and suspensions throughout the state, and we

came up with the amount of time spent on each item, the hearing, getting prepared for the hearing, actually having the hearing. And we analyzed which classifications do the work, and we came up with a rate of $587. And the staff looked at something else held throughout the state, I guess it is, of due process hearing. And they came out with $594. So it was a difference of about $7. And even though ours is lower, we are willing to agree with that.

And I understand the Department of Finance --

CHAIR SHEEHAN: Well, you could amend it lower, right?

MR. PALKOWITZ: That's a more than reasonable request.

And the Department of Finance makes some points about San Diego and LA being the most expensive places in the state, and that might be true. But I think we're very efficient because we do so many of these. That's something that --

CHAIR SHEEHAN: Aha. Maybe you can contract with the other districts to do their --

MR. PALKOWITZ: Right. We have a whole department.

CHAIR SHEEHAN: You have a whole department?

MR. PALKOWITZ: Yes.

CHAIR SHEEHAN: Okay.

MR. PALKOWITZ: Maybe we can work something out.

CHAIR SHEEHAN: Yes, there you go.

MR. PALKOWITZ: Otherwise, we're fine with the analysis.

Thank you.

CHAIR SHEEHAN: Since you raised your issue already.

MR. STORM: Well, the Department of Finance disagrees with the final staff analysis. Basically, our main point is that we think that the cost reimbursement should be based on actual costs audited by the Controller's office. Like my counterpart here said, you know, that some of the most expensive areas are Los Angeles and San Diego, so we feel like in some of the more remote areas or perhaps some of the other regions of the state you might actually have lower costs.

And so what we are proposing, actually, is an alternative methodology that basically requests that the Controller go out, you know, select a sample of different districts, depending on size, location, those sorts of issues, create a reimbursement rate that is based on actual costs, and then apply -- and then allow for the mandate at that level.

We think that establishing a reimbursement rate based on the costs that have come in based on San Diego and LA's estimates has a few pitfalls, one being simply that a lot of the mandates in the past have -- or a lot of the findings of the Controller's audits has found that costs are actually lower than what have been claimed. So we're afraid that the State would be actually reimbursing more than what the actual true costs of the mandate work would be.

CHAIR SHEEHAN: Who would like to address this?

(No audible response.)

CHAIR SHEEHAN: I guess I have some different views on this. I can certainly understand in terms of making sure we're not overpaying. Some of these things I see as sort of process costs that may not change, depending on the geography. And so if somebody could address what you think would be those costs that would differ because of the geography, and also what other costs have we received or looked at from other school districts, to see that they are approximately the same. So I don't -- whoever would like to address that issue.

MR. PALKOWITZ: Well, when you look at the comparison between what we proposed and what the staff did, the classification of individuals that do this type of work regarding this, is the Deputy Attorney General,

paralegal, administrative law judge. And I presume those are taken from the Sacramento area; is that fair to say?

MS. HIGASHI: These are the statewide rates that are published by the State Department of Finance.

CHAIR SHEEHAN: Right, they are uniform, those costs, okay.

MR. PALKOWITZ: And so I think now you're getting back -- if that is taking a uniform state rate for these classifications, you're now responding to their concern that some places in California, these classifications might be at a lower rate than some other places. It seems to me if this is statewide, then that has taken that into effect, and you now are having a type of hybrid, considering everybody. So I don't know if that specifically answers your question.

CHAIR SHEEHAN: Yes, that does help, because I'm trying to figure out what cost Finance is suggesting would be different in Modoc or Fresno or Alameda, or wherever it may be.

MR. STORM: I think our major point would just be that there might be different compensation levels of these types of individuals in San Diego versus up in Modoc County.

CHAIR SHEEHAN: But I think if the AG is doing the cases --

MS. HIGASHI: These amounts are used as representative costs because of the fact that school districts are authorized to contract with the Office of Administrative Hearings to conduct these hearings.

I think what I'd like to note for the record is that when I looked at the times that could be charged based on the amounts of the units that were proposed, that they appeared to be reasonable to me.

I would imagine that there are many, many cases that would require hearings that would take much longer than the estimated amounts that would be paid based on San Diego and LA's proposal.

While I would certainly welcome receiving unit cost proposals that are based on audited data, there are none before me that have been presented by the State Controller's Office or the Department of Finance. I don't believe that the State wishes to continue holding this item up forever.

But, on the other hand, State law authorizes the Department of Finance or the State Controller's Office to come up with the proposal at a time in the future. And those audits could certainly be done, if that's what was so desired.

CHAIR SHEEHAN: Right.

MS. HIGASHI: The Commission does not have to

bless that process, but the Commission does have a duty, based on the court decision that we are under, to finally implement the Supreme Court decision.

CHAIR SHEEHAN: And that -- because I certainly understand. It's like, okay, if it's too much. But we need data -- and I hate to just toll this continually until we get that. That's a concern that I have.

And as Ms. Higashi said, if the Controller's office, you know, through audits or Finance feels that there's more information, they can provide that to the Commission and take it into account in terms of modifications.

MS. SHELTON: The other thing I was going to mention is that if the concerns do come to rise after claims are audited in the future, you know, certainly the Department of Finance has the authority to come back and request that the parameters and guidelines be amended respectively.

CHAIR SHEEHAN: Yes. So that may be the best way, once we get some of that. But I think the point was made in terms of just continually holding this up without -- if we had hard data that showed you had information that it was 50 percent less, then possibly it would be something that, okay, we could take a look at. But in the absence of that, I'm reluctant not to move

forward on these, with the open invitation that's more information, absolutely -- or the Controller's office.

MR. STORM: And I believe that's a fair argument. So we can definitely revisit that when we get actual hard data.

CHAIR SHEEHAN: All right, so any further discussion on -- oh, did you want to add something else?

MS. HIGASHI: I just have one last thing.

One of the documents referenced in the analysis was inadvertently omitted from your binders. I guess we didn't want to give you another exhibit.

CHAIR SHEEHAN: Is this a test?

We all knew that, Paula.

MEMBER WORTHLEY: I've been looking for that.

CHAIR SHEEHAN: Yes, we were wondering where that was, because we didn't get enough paper on this one.

Okay, so with this -- unless you'd all like to take a minute to read this, we will entertain a motion.

MEMBER GLAAB: So moved.

MEMBER WALSH: Second.

CHAIR SHEEHAN: So we move the staff recommendation.

All those in favor, say "aye."

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Any opposed?

(No audible response.)

CHAIR SHEEHAN: That motion carries.

All right, and --

MS. HIGASHI: Item 23, Ms. Patton will introduce.

CHAIR SHEEHAN: She's doing this one also? Okay.

MS. PATTON: The Commission on State Mandates adopted three related Statements of Decisions on the pupil disciplinary process: *Pupil Suspensions from School, Pupil Expulsions from School*, and *Pupil Expulsions Appeals*. The parameters and guidelines for each program were consolidated so there would be one set of claiming instructions for the three decisions. These consolidated parameters and guidelines must be amended to implement the Supreme Court decision in the San Diego Unified School District school case.

In the previous agenda item, the Commission considered proposed parameters and guidelines to reimburse school districts for their additional hearing costs for fiscal years '93-94 through '05-06 based on a reasonable reimbursement methodology. The same uniform cost allowance for reimbursement of the additional hearing costs is also incorporated into Item 23. Since school districts have already filed reimbursement

claims under the consolidated parameters and guidelines for estimated '05-06 costs, staff recommends that claimant's proposed amendments to the consolidated parameters and guidelines be effective for the reimbursement period beginning on July 1, 2006.

Staff recommends that the Commission adopt claimant's proposed amendment of consolidated parameters and guidelines as modified by staff effective July 1, 2006, beginning on page 7, and authorize staff to make technical non-substantive changes as may be necessary.

Will the parties please state your names for the record?

MR. PALKOWITZ: Art Palkowitz, San Diego City Schools.

MR. STORM: And Ryan Storm with the Department of Finance.

MR. PALKOWITZ: We concur with the staff recommendation and analysis.

CHAIR SHEEHAN: Okay.

MR. STORM: And we disagree based on the prior comments and concerns.

CHAIR SHEEHAN: Okay, but the same offers of additional information, bring it back to staff, the Controller's office, so the process is there and available to you?

MR. STORM: Right.

CHAIR SHEEHAN: Okay, any comments by Commission Members?

(No audible response.)

CHAIR SHEEHAN: If not, we'll entertain a motion.

MEMBER WALSH: So moved.

MEMBER GLAAB: Second.

CHAIR SHEEHAN: Mr. Walsh moves, and Mr. Glaab seconds.

All those in favor?

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: Staff recommendation is adopted. Great.

That takes us to Item --

MEMBER WALSH: 26.

CHAIR SHEEHAN: -- 26. Item 26. Who gets to --

MS. HIGASHI: Ms. Patton.

MS. PATTON: This is the proposed 2007 hearing calendar for the Commission. The Commission is required to meet at least once every two months. The time and place of the meetings may be set by resolution of the

Commission, by written petition or a majority of the members, or written call of the chairperson.

The chairperson may, for good cause, change the starting time or place, reschedule, or cancel any meeting.

In addition to the six required bimonthly meetings, two tentative hearing dates are also proposed to accommodate additional agenda items, if necessary. So staff recommends that you adopt the proposed 2007 meeting hearing calendar.

CHAIR SHEEHAN: Okay, any comments on this?

You need formal action from us on this, okay.

MS. PATTON: Yes.

MEMBER WORTHLEY: Move approval.

MEMBER WALSH: Second.

CHAIR SHEEHAN: We have a motion by Mr. Worthley and a second by Mr. Walsh to approve the 2007 meeting calendar.

All those in favor?

(A chorus of "ayes" was heard.)

CHAIR SHEEHAN: Opposed?

(No audible response.)

CHAIR SHEEHAN: That is adopted.

MS. HIGASHI: Item 27, *Chief Counsel's Report.*

MS. SHELTON: I don't have anything additional

to add.

CHAIR SHEEHAN: Okay. Paula then, Executive Director?

MS. HIGASHI: Item 28, my report.

Are there any questions on the workload or the pending caseload?

I would say these numbers are going to change --

CHAIR SHEEHAN: Good luck.

MS. HIGASHI: -- dramatically after this hearing.

And we appreciate it and thank you.

CHAIR SHEEHAN: Yes.

MS. HIGASHI: I'd also like to note that this past Budget Act included in a budget trailer bill the requirement of the Commission to begin annually reporting its workload to the Department of Finance. So in mid-September, we will be filing our first report with the Department of Finance. It will be a variation of what's always been reported to you, with some additional detail as to what claims are pending. And I will also send copies of that to all of you, as it goes out to Finance.

CHAIR SHEEHAN: Great. Thanks.

MS. HIGASHI: There is some detail in here

regarding all of the mandated provisions that we found this year's Budget Act and the related budget trailer bills.

CHAIR SHEEHAN: Quite a lot.

MS. HIGASHI: And there's quite a lot of detail, a lot of money has been appropriated, and there are just a number of different items and provision numbers and supplemental and control language regarding how these monies can be used for reimbursement.

Are there any questions here?

CHAIR SHEEHAN: Any questions from the Members on this?

But Paula's right, there was a lot in the budget, trailer bills also.

MS. HIGASHI: There was a lot of detail. And the last piece of it became effective on July 18th, we had an urgency clause on the local government trailer bill. And an amendment was made to one of the Government Code provisions that relates back to the definitions that are included now in Article XIII B, Section 6. And this basically clarifies when a Commission decision is actually a trigger for Article XIII B, Section 6, in terms of the funding or the suspending provisions for local agencies. So we will be getting copies, revisions to your Government Code sections, just so you have that

current law.

CHAIR SHEEHAN: Perfect.

MS. HIGASHI: Regarding legislation, we have our sponsored legislation, AB 2652 is on the Senate floor.

Nancy?

MS. PATTON: The Senate floor, and our understanding is it's on the special consent calendar for August. So it should go to the Governor next week.

CHAIR SHEEHAN: Okay.

MS. HIGASHI: Are there any other questions about legislation?

There is SB 328, a bill that is newly in print since our last hearing, and that addresses the POBR mandate.

CHAIR SHEEHAN: Right. I think we talked briefly about -- I've seen that floating around.

MS. HIGASHI: And that's also set for hearing the first week back, August 9th.

CHAIR SHEEHAN: In Appropriations, I assume?

MS. HIGASHI: Yes, yes.

Our tentative agenda for the next hearing, as we came into the meeting today, we heard that there might be some conflicts for the date. And so we will be trying to figure out what date we can have a hearing for these

particular agenda items here. It might be that the dates ends up in October.

CHAIR SHEEHAN: We have a late October date.

MS. HIGASHI: We have a late October date.

CHAIR SHEEHAN: Right.

MS. HIGASHI: But depending on how many items we have, we might also, you know, end up having to have two dates and move October to November. But what I will be doing is communicating with all of you by e-mail to go over your calendars so we can figure that out.

And for all of the claimants that have agenda items, we will be in touch with you also as this detail is changed.

Regarding the items we've listed, there is only one change -- two changes I'd like to make on the test claims for the next hearing, whenever that is. Item 4, *Racial Profiling: Law Enforcement Training*. We're not certain if we'll have the *Community College District* claim completed in time for that hearing. We have two different test claims on almost identical statutes.

CHAIR SHEEHAN: Okay.

MS. HIGASHI: Also, we think we might be able to have a test claim hearing on *In-Home Supportive Services I*, that was not previously listed.

And other than that, I think we're pretty good

on our schedule, other than -- yes, I think we're pretty good.

CHAIR SHEEHAN: Okay.

MS. HIGASHI: And the question is just is it -- it can't be an earlier September hearing. That doesn't work for us because of the timelines. But early October, or it might be at the end of October.

CHAIR SHEEHAN: Right.

MS. HIGASHI: Are there any questions?

CHAIR SHEEHAN: Questions for Paula?

(No audible response.)

CHAIR SHEEHAN: All right, that concludes our agenda items.

Is there any public comment? Anyone from the public who would like to address any items before the Commission that were not on the agenda?

(No audible response.)

CHAIR SHEEHAN: Then if not, we are going to recess briefly again into closed session, if I can indulge my Commission Members. And then we will reopen and adjourn the meeting.

So thank you.

Do you want me to read this again?

MS. HIGASHI: Yes.

CHAIR SHEEHAN: Okay. Can I read only the part

on personnel?

The Commission will meet in closed-session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon pending litigation listed on the public notice and agenda, and to confer with and receive advice from legal counsel regarding potential litigation; and pursuant to Government Code section 11126, subdivision (a), and 17526, the Commission will also confer on personnel matters listed on the published notice and agenda.

We'll reconvene in open session at this location -- I don't even think it will take 15 minutes -- briefly. Thanks.

(Closed executive session was held from 12:36 p.m. to 12:50 p.m.)

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

listed on the published notice and agenda.

We are now reconvening in open session. And if there is no further business before the Commission, we are adjourned for today.

Thank you.

(Proceedings concluded at 12:50 p.m.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

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

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

In witness whereof, I have hereunto set my hand on August 21, 2006.

Daniel P. Feldhaus

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