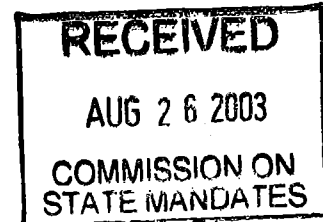


PUBLIC HEARING
COMMISSION ON STATE MANDATES



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ORIGINAL

TIME: 9:30 a.m.
DATE: Thursday, July 31, 2003
PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

---oOo---

Reported by:

STACEY L. HEFFERNAN, CSR, RPR
No. 10750

VINE, MCKINNON & HALL (916) 371-3376

A P P E A R A N C E S

COMMISSIONERS PRESENT

ROBERT MIYASHIRO, Chair,
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

DAVID ROSENBERG,
Director of Community and Intergovernmental Relations and
Senior Advisor to the Governor,
Representative for the Office of Governor Gray Davis

JOHN S. LAZAR,
~~Acting Director of Office Planning and Research~~
City Council Member, City of Turlock

WILLIAM SHERWOOD,
Representative for PHILIP ANGELIDES
State Treasurer's Office

MS. WILLIAMS,
Senior Legislative Analyst and
Representative for the Office of Governor Gray Davis
Planning and Research

WALTER BARNES,
Chief Deputy State Controller, Finance
Representative for the Office of the State Controller

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

PAUL M. STARKEY, Chief Legal Counsel

SHIRLEY OPIE, Assistant Executive Director

CAMILLE SHELTON, Staff Counsel

ERIC FELLER, Staff Counsel

NANCY PATTON, Staff Services Manager

CATHERINE M. CRUZ, Program Analyst

---oOo---

PUBLIC TESTIMONY

---oOo---

FOR ITEM 4:

LEONARD KAYE, ESQ., Certified Public Accountant
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Department of Coroner
1104 N. Mission Road
Los Angeles, CA 90033

DAVID A. CAMPBELL, P.I.O, Captain, Operations Bureau
County of Los Angeles
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Los Angeles, CA 90033

SUSAN S. GEANACOU, Senior Staff Attorney
State of California
Department of Finance
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Sacramento, CA 95814

---oOo---

FOR ITEM 5:

PAMELA A. STONE, Consultant/Representative
City of Hayward and County of San Mateo
Maximus Consulting Group
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

VERONICA LARSEN, Representative
City of Hayward

GREG EATMON, Sergeant/Representative
County of San Mateo
San Mateo County Sheriff's Office
400 County Center
Redwood City, CA 94063

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

PUBLIC TESTIMONY

---oOo---

FOR ITEM 12:

DAVID E. SCRIBNER, ESQ./Representative
Campbell Union and Grant Joint Union High School Districts
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Sacramento, CA 95825

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

PAUL WARREN, Representative
Legislative Analyst's Office
Education Unit

---oOo---

FOR ITEM 13:

CAROL A. BERG, Ph.D., Executive Vice President,
Representative for Los Angeles County Office of Education
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School Services of California, Inc.
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MICHAEL WILKENING, Pricipal Program Budget Analyst
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Department of Finance
915 L Street
Sacramento, CA 95814

BLAKE JOHNSON, Finance Budget Analyst
State of California
Department of Finance
915 L Street
Sacramento, CA 95814

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PUBLIC TESTIMONY

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FOR ITEM 13:
(Continued)

JUAN SANCHEZ, Education Fiscal Services Assistant
State of California
Department of Education
School Fiscal Services Division
Fiscal Policy Office
1430 N Street, Suite 3800
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ARTHUR M. PALKOWITZ, Legislative Mandate Specialist
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PAUL WARREN, Representative
Legislative Analyst's Office

SHAWN SILVA, Staff Counsel
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FOR ITEM 15:

BONNIE TER KEURST, Manager, Reimbursable Projects
Representative for County of San Bernardino
State of California
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PAMELA A. STONE, Consultant/Representative
County of San Bernardino
Maximus Consulting Group
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

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PUBLIC TESTIMONY

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FOR ITEM 15:
(Continued)

SUSAN S. GEANACOU, Senior Staff Attorney
State of California
Department of Finance
915 L Street
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SARAH MANGUM, Budget Analyst
State of California
Department of Finance
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SHAWN SILVA, Staff Counsel
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Office of the Controller
300 Capitol Mall, Suite 1850
Sacramento, CA 95814

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ERRATA SHEET

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Page	Line	Correction
16	2	Change "Coroner's" to "Coroner's"
25	18	Change "was opposed" to "as imposed"
38	5	Change "school-side" to "school-site"
38	12	Change "school-side" to "school-site"
55	8	Change "school-side" to "school-site"
63	20	Change "where" to "or"
89	4	Change "incurred" to "required"
108	18	Change "entrance" to "entrants"
114	4	Change "of" to "have"
128	20	Change "Catherine" to "Katherine"
128	21	Change "Takarskiy" to "Tokarski"
133	19	Change "Pesis'" to "Peace's"
137	25	Change "age" to "aye"

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1 BE IT REMEMBERED that on Thursday, the 31st day of
2 July, 2003, commencing at the hour of 9:30 a.m., thereof,
3 at the California State Capitol, Room 126, Sacramento,
4 California, before me, Stacey L. Heffernan, a Certified
5 Shorthand Reporter in and for the State of California, the
6 following proceedings were had:

7 ---oOo---

8 CHAIRPERSON MIYASHIRO: Welcome. I'd like to
9 call the meeting of the Commission on State Mandates to
10 order.

11 Paula, will you call the roll.

12 MS. HIGASHI: Mr. Barnes?

13 MR. BARNES: Here.

14 MS. HIGASHI: Mr. Lazar?

15 MR. LAZAR: Here.

16 MS. HIGASHI: Mr. Rosenberg?

17 MR. ROSENBERG: Here.

18 MS. HIGASHI: Mr. Sherwood?

19 MR. SHERWOOD: Here.

20 MS. HIGASHI: Ms. Williams?

21 MS. WILLIAMS: Here.

22 MS. HIGASHI: Mr. Miyashiro?

23 CHAIRPERSON MIYASHIRO: Here.

24 I'd like to welcome Supervisor Rosenberg here as
25 a new member of the Commission on State Mandates. We're

1 very happy to have you, and you bring a lot of experience
2 to the Commission, and we look forward to all of your
3 input.

4 And, if you'd like to say a few words, you can
5 begin --

6 MR. ROSENBERG: I've determined that, at my first
7 meeting, the less I say the better, but you'll hear more
8 from me at the second meeting.

9 CHAIRPERSON MIYASHIRO: So maybe you consider the
10 second meeting the meeting that comes after lunch?

11 MR. ROSENBERG: I hadn't viewed it quite that way,
12 but, now that you mention it, no. But thank you very much
13 for the welcome. I look forward to working with all of you
14 on the Commission, and Paula, and the staff, and with the
15 audience members, who I understand come regularly to these
16 meetings, so I look forward to seeing you all.

17 CHAIRPERSON MIYASHIRO: Before we get into the
18 rest of the meeting, I'd like to just remind all of the
19 people who will testify to please state your name for the
20 record to assist our court reporter.

21 Paula.

22 MS. HIGASHI: The first items that we have today
23 are Items 1 and 2, and these are approval of the minutes of
24 the May 29th and June 20th meetings.

25 CHAIRPERSON MIYASHIRO: Any objections or

1 corrections to the minutes?

2 (No audible response.)

3 CHAIRPERSON MIYASHIRO: I'll entertain a motion.

4 MR. SHERWOOD: Move for approval.

5 MS. WILLIAMS: Second.

6 CHAIRPERSON MIYASHIRO: A motion and a second.

7 All those in favor, please say "aye."

8 (Whereupon the Commission Members unanimously
9 replied with "aye.")

10 CHAIRPERSON MIYASHIRO: Objections? Abstentions?

11 (No audible response.)

12 CHAIRPERSON MIYASHIRO: Okay.

13 MS. HIGASHI: The next item is consideration of
14 the proposed consent calendar -- and we've prepared a list
15 of the proposed consent calendar items for you. It's on
16 yellow paper. It should be in front of you -- and I'll
17 just read the item numbers. The consent calendar consists
18 of Items 6, 7, 8, 9, 10, 11, 14, and 16.

19 CHAIRPERSON MIYASHIRO: Do we have any objections
20 to the proposed consent calendar?

21 (No audible response.)

22 CHAIRPERSON MIYASHIRO: I'll entertain a motion on
23 the consent calendar.

24 MS. WILLIAMS: So moved.

25 MR. LAZAR: Second.

1 CHAIRPERSON MIYASHIRO: A motion and a second.
2 All those in favor please say "aye."
3 (Whereupon the Commission Members unanimously
4 replied with "aye.")
5 CHAIRPERSON MIYASHIRO: Opposed?
6 (No audible response.)
7 CHAIRPERSON MIYASHIRO: The motion passes.
8 MS. HIGASHI: Item 3 is the standing agenda item.
9 No appeals have been filed, so let's move on to Item 4,
10 which is our first test claim for hearing.
11 And, as is customary, what I'd like to do at this
12 time is ask all of the witnesses and representatives who
13 will be presenting or testifying on Items 4 and 5 to please
14 stand.
15 Okay. Will you raise your right hands.
16 Do you solemnly swear or affirm that the testimony
17 which you're about to give is true and correct, based upon
18 your personal knowledge, information, or belief?
19 (Whereupon the witnesses and representatives
20 replied unanimously with "I do," thus being
21 sworn en masse.)
22 MS. HIGASHI: Thank you.
23 Item 4 will be presented by Eric Feller.
24 MR. FELLER: Good morning.
25 This is the postmortem examinations: unidentified

1 bodies: human remains test claim. After staff circulated
2 the draft staff analysis for comment on this claim,
3 claimant sought to amend it. The executive director
4 severed this amendment and consolidated it with another
5 test claim that is based on the same statutes. So before
6 you is the original, unamended test claim only.

7 Claimant seeks reimbursement for costs of
8 coroner's activities in identifying unidentified bodies, as
9 listed in the statute, and for law enforcement filing a
10 report on the death of an unidentified person within 10
11 days of discovery.

12 As to the coroner's activities, staff determined
13 that the activities are discretionary and they're not
14 subject to article XIII B, section 6. This conclusion is
15 based on the language of the statute itself and its
16 legislative history.

17 Staff also finds that the law enforcement report
18 is a reimbursable state mandate as stated in the analysis.

19 Staff recommends that the Commission adopt the
20 staff analysis, deny the claim as to the coroner's
21 activities, and approve it as to the law enforcement
22 reporting activity.

23 Will the parties and witnesses please state their
24 names for the record.

25 MR. KAYE: Leonard Kaye, County of Los Angeles.

1 MR. CAMPBELL: David Campbell, Los Angeles County
2 ~~Coroner's~~ ^{Coroner's} Office.

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

5 CHAIRPERSON MIYASHIRO: Mr. Kaye, would you like
6 to begin?

7 MR. KAYE: Thank you. Good morning.

8 For the record, I'd like to clarify something that
9 Commission staff had pointed out correctly, that we filed a
10 separate amendment to this claim which we've deemed to be
11 complete and substantially related to the original test
12 claim legislation before you this morning. And, for the
13 record, it's being severed from the original test claim,
14 00-TC-18, and it's established as a new test claim,
15 02-TC-09, and consolidated with a test claim filed by the
16 County of San Bernardino, titled "DNA Database," 00-TC-27.

17 Regarding law enforcement's role in the original
18 test claim legislation, we generally agreed with the
19 Commission staff. The Commission staff found that, through
20 Government Code Section 27521.1, it imposes a reimbursable
21 state mandate on local law enforcement within the meaning
22 of article XIII B, section 6, et cetera. The mandate is
23 for local law enforcement investigating the death of an
24 unidentified person, to report the death to the Department
25 of Justice in a Department of Justice-approved format

1 within 10 calendar days of the date the body or human
2 remains are discovered. And, with those general
3 principles, we agree with Commission staff.

4 The controversy before you might be succinctly
5 stated in staff's analysis. I don't have Bates pages in
6 front of me, but it's page 9 of the June 4th, 2002
7 analysis.

8 I'll sort of quickly recite the bottom of the page
9 that states, "Government Code Section 27521 specifies that
10 autopsies conducted at the discretion of the coroner shall
11 include collecting, identifying data on an unidentified
12 body or human remains, and reporting the data to
13 State Department of justice."

14 The issue is whether the activities, under
15 Government Code Section 27521, performed in conjunction
16 with a coroner-ordered autopsy on an unidentified body or
17 human remains are state-mandated activities and, therefore,
18 subject to article XIII B, section 6, et cetera.
19 Subdivision (a) states that "any autopsy conducted," quote,
20 "at the discretion of a coroner on an unidentified body or
21 human remains shall be subject to Section 27521."

22 Now, generally -- rather than go into very
23 detailed points of law, generally, what our position is,
24 simply stated, is that we believe the coroner has the
25 statutory authority to determine which types of postmortem

1 examinations or autopsy procedures/requirements are to be
2 followed in a specific instance, but that does not mean
3 that the coroner has the discretion to simply do nothing.

4 We believe that the coroner, if it chooses to
5 do Procedure A, must follow these new protocols in
6 Procedure A, as set forth in the test claim legislation; if
7 it follows Procedure B, it must follow the new protocols
8 set forth in Procedure B. But, just as when you walk into
9 a physicians's office, that physician is not mandated to
10 treat your cold or provide you with a certain drug, but the
11 physician is mandated to do something for you, to diagnose
12 properly and to take care of your malaise or illness as the
13 case may be.

14 So -- and, of course, we have all kinds of
15 formularies and protocols governing requirements in that
16 case. The physician is not said to have discretion to
17 simply turn away, particularly if we're insured. So I
18 think that the case is similar here. The coroner has a
19 specific mandated duty to provide what the coroner feels
20 is -- in the coroner's discretion -- is an appropriate
21 postmortem examination or procedures.

22 Further, there are new requirements regarding the
23 preservation and the storage of jaws and other procedures
24 that are completely new to this law. And, apart of whether
25 we decide to perform Procedure A or Procedure B, in a case

1 where it is completely unidentified human remains, we have
2 certain requirements in that area which are above and
3 beyond the primary issue that I mentioned before.

4 Without going into too much more of the detail, I
5 thought Captain Campbell might present some further
6 information.

7 Thank you.

8 And I'd be prepared to answer any questions you
9 may have.

10 Thank you.

11 MR. CAMPBELL: Good morning. Again, my name is
12 David Campbell. I'm a captain of the Operations Bureau of
13 the Los Angeles County Department of Coroner.

14 The important thing, I think, is to put this into
15 something of a historical perspective. Historically,
16 27491, of the California Government Code, identifies the
17 cases in which the coroner is to be involved. It did not
18 mandate an identification of decedents.

19 The responsibility of the coroner was to establish
20 the manner, mode, and cause of death. As time has passed,
21 of course, the coroner has taken on additional
22 responsibilities, which included notification of next of
23 kin and identification of the deceased. The new
24 legislation, though, has taken it positively an additional
25 step forward, requiring that the coroner perform certain

1 and specific duties.

2 While we had discretion in the past to do
3 Procedure X or Procedure Y, this legislation mandates that
4 we do specific things that were not required before; for
5 example, the collection of tissue samples, jaws, hair
6 standards, for the purposes specifically for DNA retention,
7 not for the purpose of establishing manner of death, mode
8 of death, or cause of death. So that is significantly
9 different than what we had been mandated to do in the
10 past.

11 If I may--and I don't know if this is the
12 appropriate area of concern--one of the requirements is
13 that we retain jaws for one year after the positive
14 identification of a decedent. And the legislation and the
15 interpretation of what's going on I understand perfectly
16 well, because, if there is a claim or a complaint or a
17 challenge to that identification, the jaw is the best
18 evidence. Historically, in the Coroner's Office, in
19 Los Angeles, we would return body parts to the body for
20 the sake of the family, and I have a concern that this
21 legislation may create a problem.

22 We recently had a case involving a plane crash
23 where a decedent died wearing a parachute, and that
24 parachute had become, let's say, damaged because it was
25 subjected to tissue and blood from the decedent. After the

1 decedent's body was released to the mortuary selected by
2 the family, a few months later we were contacted by the
3 family who advised that they were Orthodox Jewish and it
4 was their preference that the entire parachute be buried
5 with the decedent, because their tradition, custom, and
6 religion requires that everything be buried together, and I
7 have a concern that when we have a jaw--and think of
8 yourself as a family member now--if we successfully
9 identify a decedent and the law requires that we hold the
10 jaw for a year -- now, when we make identification, we're
11 going to notify you and say that we had a positive
12 identification in this case, and we're going to release the
13 body of your loved one to you, but how would you feel if a
14 year later we contact you, you've already been through a
15 terrible hurt, and we say, "Okay. Family, we now have
16 these jaws that we have to dispose of"? Are we going to
17 impose on the family that they recontact the mortuary and
18 additionally bury it? Are they going to want the jaws
19 disposed of as medical waste?

20 So, anyway, that is one thing that has recently
21 come to our attention as a result of this legislation that
22 I do think needs to be considered.

23 Obviously, as Mr. Kaye has pointed out, there have
24 been additional responsibilities about the storage and
25 transportation and mailings and everything like that that

1 we've been mandated to do, and we will comply with the law,
2 that's our responsibility, but we do hope that the
3 Committee or the Commission here recognizes that they have
4 imposed new mandates on the coroner's office, and we
5 believe they are reimbursable.

6 CHAIRPERSON MIYASHIRO: Any questions of this
7 witness?

8 (No audible response.)

9 CHAIRPERSON MIYASHIRO: I'll move to
10 Ms. Geanacou.

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

13 We thank the Commission staff for their thorough
14 analysis of this issue, and we are in agreement, with the
15 staff analysis as written, this morning.

16 CHAIRPERSON MIYASHIRO: Okay. Any other questions
17 or comments from the audience?

18 (No audible response.)

19 CHAIRPERSON MIYASHIRO: Members of the
20 Commission?

21 (No audible response.)

22 CHAIRPERSON MIYASHIRO: If not, I'll entertain a
23 motion.

24 MS. WILLIAMS: I would like to move that we adopt
25 the staff analysis.

1 CHAIRPERSON MIYASHIRO: Do we have a second?
2 MR. BARNES: I'll second.
3 CHAIRPERSON MIYASHIRO: I have a motion and a
4 second.
5 Paula, please call the roll.
6 MS. HIGASHI: Mr. Barnes?
7 MR. BARNES: Aye.
8 MS. HIGASHI: Mr. Lazar?
9 MR. LAZAR: Aye.
10 MS. HIGASHI: Mr. Rosenberg?
11 MR. ROSENBERG: Aye.
12 MS. HIGASHI: Mr. Sherwood?
13 MR. SHERWOOD: Aye.
14 MS. HIGASHI: Ms. Williams?
15 MS. WILLIAMS: Aye.
16 MS. HIGASHI: Mr. Miyashiro?
17 CHAIRPERSON MIYASHIRO: Aye.
18 MS. HIGASHI: The motion is carried.
19 MR. KAYE: Thank you.
20 CHAIRPERSON MIYASHIRO: Thank you.
21 MS. HIGASHI: This brings us to Item 5.
22 Camille Shelton will present this item.
23 MS. SHELTON: Good morning.
24 This is a test claim filed by a city, a county,
25 and a community college district on legislation addressing

1 the discovery of peace officer personnel records and
2 citizen complaints on peace officers. In front of you is a
3 late filing from Mr. Keith Petersen requesting a
4 postponement of the claim as it relates to the community
5 colleges due to his illness. This request was granted.

6 As proposed by Mr. Keith Petersen, we are
7 recommending that the hearing on this item go forward on
8 the substantive issues for county and city claimants. The
9 issues specific to community college districts will be
10 postponed for testimony and vote until the September 25
11 hearing.

12 Staff finds that Evidence Code Section 1043 and
13 Penal Code Sections 832.5 and 832.7 impose some new notice
14 and record retention requirements on city and county peace
15 officer employees -- employers, excuse me, resulting in a
16 new program or higher level of service and costs mandated
17 by the state. However, staff also finds that none of the
18 additional activities or costs claimed for receiving,
19 responding to, or defending against a discovery motion, or
20 investigating complaints against peace officers constitute
21 a new program or higher level of service within the meaning
22 of article XIII B, section 6 of the California Constitution.

23 Staff recommends that those activities be denied.

24 Will the parties and witnesses please state your
25 names for the record.

1 MS. LARSEN: Veronica Larsen.

2 MS. STONE: Pamela Stone on behalf of the City of
3 Hayward and the County of San Mateo.

4 MR. EATMON: Gregory Eatmon, Sergeant with the
5 San Mateo County Sheriff's Office.

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

8 CHAIRPERSON MIYASHIRO: Okay. Who would like to
9 go first?

10 MS. LARSEN: I just want to state Hayward's
11 position, and that is the City of Hayward --

12 CHAIRPERSON MIYASHIRO: Veronica, if you could,
13 again, state your name for the court reporter.

14 MS. LARSEN: Veronica Larsen, revenue manager for
15 the City of Hayward.

16 And Hayward's position is: The City of Hayward's
17 claim alleges a reimbursable state mandate for unfounded
18 complaints against police officers ^{as imposed} ~~was opposed~~ by
19 amendments to Penal Code Section 832.5. Hayward asserts
20 that prior law required police departments to establish
21 procedures to investigate citizen complaints and make those
22 procedures available to the public. Following the events
23 of 1978, any complaints were required to be kept for five
24 years.

25 Hayward further alleges that the 1996 statutory

1 amendment required that -- that complaints deemed to be
2 frivolous be maintained in a separate personnel file
3 subject to the Public Records Act, and that this, for the
4 first time, required citizen complaints to be
5 investigated.

6 Unfortunately, our police department attorney who
7 helped assist in -- assisted with the claim preparation
8 couldn't be here because of this new scheduled hearing date
9 because of scheduling conflicts.

10 MS. STONE: Good morning, Mr. Chairman, Members
11 of the Commission, Pamela Stone.

12 I would like to address the issue wherein the
13 Commission has not deemed it appropriate to find that
14 Evidence Code Section 1043 is a reimbursable mandate. This
15 is the procedure commonly referred to as a Pitchess motion,
16 wherein if a criminal defendant desires to have access to
17 peace officer personnel records there's a motion filed and
18 a hearing held in camera.

19 Your Commission staff has taken some dicta out of
20 a couple of cases which do not discuss the genesis of this
21 entire process, in Evidence Code Section 1043, and lifted
22 some terminology saying that the test claim legislation
23 really does nothing more than codify the Pitchess
24 procedure, and, therefore, it is not a reimbursable
25 mandate; however, that's not the case.

1 And part of the confusion may be because this
2 entire procedure, since it arose out of the case of
3 Pitchess vs. Superior Court, is now called the Pitchess
4 motion or Pitchess process, but that's not the situation
5 at all. Pitchess was the sheriff of the County of
6 Los Angeles. He was prosecuting a gentleman by the name of
7 Caesar Etcheverria (phonetic) for multiple counts of
8 battery against four deputy sheriffs. And, by the way, a
9 lot of this is contained in the rebuttal that we filed with
10 your Commission in June of this year.

11 Mr. Etcheverria wanted to go on a fishing
12 expedition and obtain information pertaining to citizen's
13 complaints against the officers to see if there was
14 officially misconduct so, possibly, he could use it in his
15 case. At that point in time, there were two Evidence Code
16 sections that were in effect:

17 One was Evidence Code Section 1040, which allowed
18 the government, i.e. the sheriff, Peter Pitchess, to
19 decline to release the personnel records if the benefit of
20 maintaining privacy of the information in the sheriff's
21 deputies' personnel files outweighed the need of the
22 criminal defendant to have access to that type of
23 information;

24 The other Evidence Code section was Evidence Code
25 Section 1042, and that one says, in essence, that except

1 where a disclosure is forbidden by an Act of Congress, if a
2 claim of privilege is sustained in a criminal proceeding,
3 the presiding officer, i.e. the judge, shall make an order
4 or finding of fact adverse to the public entity bringing
5 the proceeding as required by law as to any issue in the
6 proceeding to which the privileged information is
7 material.

8 So that was the state of the law when Peter
9 Pitchess was ordered by the court, in Mr. Etcheverria's
10 criminal action, to disclose the personnel records in their
11 entirety of the officers. So he was -- Mr. Pitchess was
12 trying to -- Sheriff Pitchess was trying to create a new
13 exception to the rule in saying that this should not be
14 applicable; however, the California Supreme Court said no,
15 that, with the codification of this privilege and the
16 methodology by which local government could actually claim
17 a privilege so that they would not have to release the
18 criminal records, that Sheriff Pitchess now is confronted
19 with a choice: He can either disclose the entire content
20 of the police officer's personnel record or, if he chooses
21 not to do that, the officer must dismiss the criminal
22 indictment.

23 So, basically, what occurred, as a result of the
24 Pitchess decision, is saying there is no other type of
25 privilege out there, so you can do less than, and, if you

1 have a criminal defendant who comes to court and has a
2 reasonable right to have access to the personnel records,
3 then the head of that department must make a determination,
4 either release the records in their entirety or, on the
5 other hand, to dismiss them.

6 This is not an appropriate type of situation, I
7 don't think, that the Legislature desired to have either
8 personal information pertaining to officers' personnel
9 records to be given to criminal defendants -- and Sergeant
10 Eatmon will talk about what is actually in these records,
11 and, when you hear about what's in these records, it's
12 really scary when you can ascertain that this type of very
13 private information could be out on the street.

14 As a result of which, this particular test claim
15 legislation enacted Evidence Code Section 1043. With this
16 particular practice now, if a criminal defendant desires to
17 have access to the peace officer personnel file, because
18 they're -- the individual is alleging that maybe the
19 officer was untruthful or, perhaps, there is an action of
20 battery against a particular criminal defendant, and he's
21 saying, "No, I was defending myself against excessive
22 force" or maybe similar complaints have been made against
23 the officer, the criminal defendant will file a motion with
24 the court.

25 There's, then, a substantial procedure which the

1 police department or sheriff's department has to go
2 through: They obtain the file; they have to advise the
3 officer that the information is being requested; they go
4 through the file, and there's a hearing in the court, and
5 the judge will take the personnel record, the entire
6 personnel file, back into chambers, and, if there is
7 anything that is really pertinent, material, or relevant to
8 the criminal defendant, that information will be released
9 but not the entire contents of the personnel file.

10 And so this is why we disagreed with the analysis
11 by your staff as to the fact that Evidence Code Section
12 1043 did not codify, at all, the case of Pitchess vs.
13 Superior Court. When we raised this issue in our rebuttal,
14 we were hoping that your staff would do a further analysis
15 of this issue, but, unfortunately, just the dicta, which is
16 not binding on any court, that, in fact, Evidence Code
17 Section 1043 nearly codified Pitchess, was reiterated.

18 So we've been trying to engage in a dialogue with
19 your attorney staff, because it is very clear that the
20 standards of the law, with regard to Pitchess, the case
21 itself, was all or nothing, and the choice was up to the
22 police department or the sheriff's department as to whether
23 or not to give each and every piece of information in the
24 officer's personnel file or dismiss the action.

25 Now we have an entire policy and procedure which,

1 basically, protects the rights of the criminal defendant,
2 yet does not allow personal information pertaining to that
3 officer out into the street.

4 I'll turn it over to Sergeant Eatmon, and I'll be
5 willing to entertain any questions you may have.

6 CHAIRPERSON MIYASHIRO: Any questions of this
7 witness at this time?

8 MR. SHERWOOD: Well, Chair, I will have questions,
9 I believe, so I would like it addressed by Camille to
10 comment at a later time. I know you got into some detail,
11 though, addressing this particular issue in 16 or 17 of the
12 report, but we would like to follow up on this issue,
13 definitely.

14 CHAIRPERSON MIYASHIRO: Very good.

15 Sergeant Eatmon.

16 MR. EATMON: Good morning.

17 Addressing the issue of police personnel records,
18 or peace officer personnel records, in the case of even a
19 brand new hire, those records are extensive in that they
20 contain psychological examinations that were done, a
21 background investigation that was done, to include comments
22 from citizens who -- and, quite frankly, a number of them
23 rely on anonymity or being able to provide information
24 about a person's background that's being -- in going
25 through the selection process for a peace office, we want

1 accurate comments from those individuals, and they provide
2 it on the condition of anonymity. That sort of information
3 is included in the background investigation file.

4 Criminal histories, as far as background
5 investigations, there are criminal history checks with the
6 federal government, the state and local government, also,
7 all their medical history for medical examinations, and,
8 along with that, any personnel complaints the individuals
9 have had, both those initiated within the organization as
10 well as those that are brought to the organization from
11 persons or entities outside of it, and, along with all
12 their identifying information, credit checks, identifying
13 information as to where they live, family, family members.
14 It's fairly exhaustive.

15 And almost all agencies in the State of California
16 comply with and follow the guidelines established by the
17 state's Commission of Peace Officers' Standards and
18 Training, and it's fairly straightforward.

19 CHAIRPERSON MIYASHIRO: Thank you.

20 MR. EATMON: Going into the Pitchess process
21 itself, it's a two-pronged test. Typically, we garner all
22 the information that's contained in the person's personnel
23 record, and it also includes training records. Those,
24 generally, are kept separately.

25 In other words, police personnel complaints are in

1 a separate file, training complaints are in a separate
2 file, background investigations are in a separate file.
3 However, those materials all are considered part of one's
4 personnel records, so they're brought forward. They're
5 taken to the court.

6 In general, the organization/police entity is
7 represented by either county counsel or their city
8 attorney. That information is given to a judge. A judge
9 has an in camera hearing and review of those materials, and
10 it's a two-pronged test:

11 He decides if any of the information in a person's
12 personnel file is relevant and material to the issue that's
13 being brought up by the plaintiff or the defendant, and
14 then he makes a determination whether or not the peace
15 officer's privacy rights outweigh the information that's
16 contained in the personnel file that's relevant to the case
17 at hand. It's an exhaustive process.

18 I found, personally, that more and more attorneys
19 are filing Pitchess motions without any information ahead
20 of time to suggest to them that this peace officer has a
21 reputation or a history of any misconduct. It's just a
22 bulleted thing that they do, and it's on the increase,
23 because there's really no downside for an attorney to do
24 so.

25 CHAIRPERSON MIYASHIRO: Any questions of Sergeant

1 Eatmon?

2 Okay. And you can stay here and questions might
3 follow.

4 Ms. Geanacou.

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

7 We agree with the staff analysis on this claim.

8 CHAIRPERSON MIYASHIRO: Okay. Camille, maybe you
9 can address the question for Bill.

10 MS. SHELTON: Sure. The claimants, in their test
11 claim filing and in their rebuttals, have requested
12 reimbursement for the activities of reviewing, responding,
13 or defending to a motion for discovery. The statute, on
14 its face -- and I'm referring to Evidence Code Section
15 1043 -- does not, on its face, mandate the employer to
16 defend the motion.

17 It's certainly the employer's decision-making
18 process, and they may feel that it's absolutely necessary
19 to defend the motion, but the courts, the California
20 Supreme Court in the County of Los Angeles and the City of
21 Sacramento cases, mandate cases, have said that activities
22 which a local agency finds to be necessary does not require
23 reimbursement. You need to have it mandated by the state,
24 and the state does not require that you respond to this
25 discovery.

1 Secondly, as expressed in the staff analysis, on
2 pages 17 and 18 primarily, the motion process codified in
3 1043 is not new. The Pitchess decision held that "a
4 defendant's motion to discover is addressed solely to the
5 sound discretion of the trial court which has inherent
6 power to order discovery when the interests of justice
7 demands."

8 So the motion process was in place. It's
9 established by the court as a proper procedure and is law
10 to discover those personnel records before these Evidence
11 Code sections were enacted or amended by the Legislature.

12 I disagree with the claimants' argument that the
13 the citation to the San Diego case, on page 18, was dicta.
14 Those cases, in a couple of places -- or that case in a
15 couple of places, specifically on Bates pages 462 and 464,
16 specifically state that the Evidence Code sections codified
17 Pitchess, and I believe that the Commission is required to
18 follow that. I don't believe that it's dicta, because the
19 court relied on those statements to get to their conclusion
20 in the case.

21 So I -- we do recommend that the activities of
22 receiving and responding to those motions be denied.

23 MR. SHERWOOD: Thank you, Camille.

24 CHAIRPERSON MIYASHIRO: Do we have any other
25 questions of members of the Commission?

1 MR. SHERWOOD: I would just like to make one other
2 comment, if I may?

3 CHAIRPERSON MIYASHIRO: Sure.

4 MR. SHERWOOD: And this really goes back to the
5 issue of Mr. Petersen not being here relative to this
6 matter. I believe -- and I'm not aware of Mr. Petersen
7 making a request of this type in the past, actually. He's
8 been very good at attending meetings and following through,
9 but this process does bother me.

10 And I don't know if, in the future, I'll be very
11 sympathetic to this type of situation, and the reason for
12 that being that we have a workload here of, approximately,
13 a hundred and some odd cases. I believe we received over
14 50 new cases in this last six months of this year, and I
15 think that it's so important that we move forward from this
16 point, and, frankly, we can't have delays, in most cases.
17 So I think it really needs to be a special situation where
18 we postpone a matter going into the future.

19 It's just my personal opinion, but I just wanted
20 to be on the record on that.

21 CHAIRPERSON MIYASHIRO: I think that's a very good
22 point.

23 Mr. Rosenberg.

24 MR. ROSENBERG: I did have one quick question.
25 Thank you.

1 I'm impressed by the sergeant's citation to the
2 fact that now these discovery motions are being routinely
3 filed in almost every case, and so it would seem to me that
4 there is a duty imposed on local jurisdictions to respond
5 to and defend those motions.

6 MS. SHELTON: Would you like me to respond?

7 MR. ROSENBERG: Please.

8 MS. SHELTON: They may feel that -- again, that it
9 is a duty, but, under mandates law, the Supreme Court has
10 stated if an agency feels that they are absolutely -- it's
11 absolutely necessary to do something, unless the state has
12 mandated by law or imposed a duty on them to do something,
13 it's not reimbursable.

14 MS. STONE: Excuse me --

15 MR. ROSENBERG: I'd like to hear your response to
16 that.

17 MS. STONE: Thank you very much, Member Rosenberg.

18 Basically, what we're talking about is the City of
19 Merced case. That particular case involved an issue
20 concerning eminent domain, and the City of Merced was
21 condemning certain property under eminent domain. And
22 because -- they would have to pay, under the eminent domain
23 law, a higher amount of business relocation. And the court
24 said, no, you do not have to exercise eminent domain. You
25 have a choice. You can choose not to do it. You can

1 choose to purchase the property outright.

2 So the issue of eminent domain is not an issue.
3 It's not a mandate. You are not required to do it.

4 There's been a recent case from the Department of
5 Finance concerning school-~~side~~^{site} councils, which your
6 attorney has discussed with you, and those particular types
7 of councils were to be established -- it was an open
8 meetings case, and you didn't have to have those particular
9 types of bodies unless you wished to receive the benefit of
10 the special school funding. So it was a voluntary choice
11 on the part of the public entity, the school district, to
12 have these school-~~side~~^{site} councils so that they could get
13 extra money from the state.

14 We're not talking, here, about a choice that is
15 really made voluntarily by a public entity. You're talking
16 about a motion that is being filed by a criminal defendant
17 to have access to personnel records. Theoretically, if
18 there is no response on behalf of the public agency, then
19 a, quote, "default" can be taken with regard to that motion
20 and it's granted, regardless of whether or not the criminal
21 defendant has met the statutory requirements of relevance
22 and materiality. That is the initial step, the initial
23 criteria.

24 So I don't think that -- notwithstanding the fact
25 that, you know, theoretically, if you take on something

1 voluntarily it's not a mandate, which we do not disagree
2 with, how voluntary is it to refuse to acknowledge and
3 respond to a motion, particularly when you're required by
4 law to notify the officer that his private personal
5 information could be released, and yet you're going to say
6 you're not going to go to court and respond to it?

7 I mean, so that's -- that's the conundrum, if you
8 take Ms. Shelton's argument to its logical conclusion.

9 MR. ROSENBERG: So could I just follow up and ask
10 you one more question?

11 MS. STONE: Please.

12 MR. ROSENBERG: The staff has indicated that this
13 discovery tool was already available.

14 What did the state do to change that?

15 MS. STONE: A motion discovery tool has been
16 around even in common law for hundreds of years. So it's
17 not -- I mean, motions are not new. What is new is that,
18 under prior law, the sheriff or the chief of police would
19 make a decision: Are we going to release the entire
20 personnel record of the officer or are we just going to
21 dismiss the criminal issue and go home? That was the
22 decision.

23 Now there is an entire process and procedure to go
24 through that, first of all, saves the officer from release
25 of his credit history, where he lives, who his kids are,

1 how much he owes, how much he owns, who his neighbors are,
2 or -- and it also precludes just the outright dismissal of
3 the criminal case. So, whereas there was a motion
4 proceeding previously, the Department would be in a
5 Hobson's choice: either disclose all of the information or
6 dismiss.

7 In order to balance that -- and I think the
8 Legislature did a wonderful job with this legislation --
9 the rights of the criminal accused versus the officer
10 that's just doing his job, they had set up this process and
11 procedure. And I -- you know, I really think this is one
12 of the best pieces of legislation that has balanced the
13 rights.

14 I mean, I remember when I was in the County
15 Counsel's Office. "Okay, Pam. It's time for you to run to
16 court. We've got a Pitchess motion this morning," and then
17 he'd give me a stack of stuff. And that was the first time
18 I saw the nature and extent of how much personal
19 information there is in there. I know that I wouldn't want
20 to know that much about anybody, and I sure as heck
21 wouldn't want anybody to know that much about me.

22 And so this is why it's very critical. I don't
23 think--contrary to Ms. Shelton, whom I respect quite a
24 lot--that it's an appropriate thing to say that,
25 "Government, you have a choice in not responding to these

1 things," particularly when it's become almost routine to
2 have these types of motions, and -- used by criminal
3 defense attorneys as a fishing expedition.

4 MR. LAZAR: Ms. Shelton, do you have a comment?

5 MS. SHELTON: Well, factually, I disagree with
6 Ms. Stone's statements regarding filing of a response to a
7 motion. I don't believe a judge would ever allow private
8 information to come to a criminal trial, because the judge
9 is responsible for weighing the rights of the defendant,
10 you know, to obtain those -- certain information and the
11 rights of the employer, the privacy -- you know, his
12 privacy concerns.

13 So even if a response was not filed, I don't
14 believe a judge is going to allow in personal information,
15 such as address, number of children, and things of that
16 nature. The evidence has to be relevant to their defense
17 of the case. So I don't agree with that factual statement
18 made by the claimant.

19 And just the point being: The state has not
20 required these defendants to file all of these motions, by
21 any means, and the state has not required the employer to
22 defend them. You know, mandates requires -- you know, the
23 mandates law requires, and mandated by the state, that in
24 order -- mandated by the state to impose an activity on the
25 local agencies that disturbs the balance of the spending

1 limitation on the constitution, and that -- this statute
2 doesn't do that.

3 MR. EATMON: If --

4 CHAIRPERSON MIYASHIRO: Mr. Eatmon.

5 MR. EATMON: May I make a comment?

6 CHAIRPERSON MIYASHIRO: Yes.

7 MR. EATMON: Under Evidence Code 1043, if I
8 understand it correctly, there is a mandate that the
9 officer involved, or the personnel involved, be noticed
10 that this information is being sought, and then under, I
11 believe, the government code it requires that an agency
12 represent the officer if it's within the course and scope
13 of their employment and it's a legal matter before the
14 court.

15 In other words, if the officer is being noticed by
16 the requirement, under 1043 of the Evidence Code, that
17 their privacy rights may be at issue here, that their
18 personnel file is going to, perhaps, go to a criminal
19 defendant, then it follows that, under the Government Code,
20 they can request that the agency represent them in that
21 motion.

22 What I'm trying to say is that I don't think
23 there's a lot of -- you know, I think that 1043 of the
24 Evidence Code coupled with the section of the Government
25 Code that I'm mentioning, I think it's -- you would have a

1 situation whereby all these motions, whether or not the
2 public entity chose to represent the officer, no matter
3 if -- ultimately, they would, and I think they've made that
4 recognition, that whether or not they wanted to represent
5 the officer in the Pitchess motion, under Evidence Code
6 1043, the officer, it would follow, is going to ask them
7 anyway.

8 CHAIRPERSON MIYASHIRO: Mr. Barnes.

9 MR. BARNES: Thank you.

10 And I'm not sure who this is directed at, but I'll
11 direct it at both the staff, as well as the claimant
12 representatives, and it goes back to your comment about the
13 time line, about the effect of the court action in
14 Pitchess.

15 And my impression is that, before Pitchess, that
16 police departments and sheriff's offices thought they had a
17 wide arrange of alternatives to just giving the whole file
18 or throwing the case out.

19 Am I correct about that?

20 MR. EATMON: I believe that's correct, sir.

21 MR. BARNES: So that Pitchess came through and
22 said, "No. You really only have these two
23 alternatives"; is that correct?

24 MR. EATMON: Correct.

25 MR. BARNES: And my -- my impression is that

1 the -- if I'm reading this correctly -- that the effect of
2 this law was to kind of return some of those options to the
3 sheriffs and the police officers, police departments, that
4 they thought they had before this court case; is that a
5 fair statement?

6 MS. STONE: Yes, Mr. Barnes.

7 MS. SHELTON: Well, that's what the claimants are
8 contending. I'm not sure that I necessarily agree with
9 that, because they requested reimbursement for the receipt,
10 review, or a response to a motion, and those specific
11 activities are not new.

12 MR. BARNES: I -- I understand that.

13 MS. SHELTON: Okay.

14 MR. BARNES: I guess what I'm saying is that I --
15 it sort of leads me to buy into the argument that, in fact,
16 nothing has really changed between what you were doing
17 before the court and what you're proposing to do after the
18 court. Your options are now open to you. So I guess I'd
19 have to buy into the staff conclusion that, in fact, there
20 aren't new activities associated with this.

21 CHAIRPERSON MIYASHIRO: Any other comments or
22 discussion?

23 (No audible response.)

24 CHAIRPERSON MIYASHIRO: If not, I'll entertain a
25 motion.

1 MR. BARNES: I'll move the staff recommendation.
2 MR. SHERWOOD: I'll second.
3 CHAIRPERSON MIYASHIRO: Okay. A motion and a
4 second on the staff recommendation.
5 Paula?
6 MS. HIGASHI: Mr. Lazar?
7 MR. LAZAR: Aye.
8 MS. HIGASHI: Mr. Rosenberg?
9 MR. ROSENBERG: No.
10 MS. HIGASHI: Mr. Sherwood?
11 MR. SHERWOOD: Aye.
12 MS. HIGASHI: Ms. Williams?
13 MS. WILLIAMS: Aye.
14 MS. HIGASHI: Mr. Barnes?
15 MR. BARNES: Aye.
16 MS. HIGASHI: Mr. Miyashiro?
17 CHAIRPERSON MIYASHIRO: Aye.
18 MS. STONE: Thank you very much.
19 CHAIRPERSON MIYASHIRO: Mr. Barnes.
20 MR. BARNES: Can I ask you a question about the
21 item part of this that's being postponed?
22 I understand that Mr. Petersen is talking about
23 postponing community colleges, districts only?
24 MS. HIGASHI: Yes.
25 MR. BARNES: And part of my question is related

1 to: What part of schools are covered by this kind of
2 activity?

3 MS. HIGASHI: That issue is still open, and that
4 will be set for hearing in September, when Mr. Petersen can
5 be here.

6 MR. BARNES: And I guess the question is: Is this
7 test claim supposed to cover both police officer activities
8 at community college districts and school districts?

9 MS. HIGASHI: It could, depending on how the
10 Commission decides the issue as to claimant's eligibility.

11 MR. BARNES: But I guess my question is: What are
12 they asking for?

13 MS. HIGASHI: They're asking to be included as
14 eligible claimants.

15 MR. BARNES: For both or just for school
16 districts?

17 MS. HIGASHI: For school districts and community
18 college districts. So, depending on how the Commission
19 determines that issue, this finding from today's action
20 could apply or not apply.

21 MR. BARNES: Okay. And I guess that was the
22 question I was trying to figure out was: What areas were
23 the claimants trying to cover in education? And what I'm
24 hearing you say is that they were trying to cover police
25 activities that -- through the school district and the

1 community college district; is that correct?

2 MS. HIGASHI: That's correct.

3 MR. BARNES: Okay. Thank you.

4 CHAIRPERSON MIYASHIRO: Paula, could you just
5 give us a sense of where we are on the agenda and maybe
6 give the audience a sense of how to plan today?

7 MS. HIGASHI: Certainly. We've passed all of the
8 proposed consent calendar items, and what remains right now
9 are Items 12, 13, 15, and 17, and three of these items are
10 proposed parameters and guidelines, and the last is my
11 report.

12 One thing we could do, and what had been suggested
13 at another meeting I was in, is take up Item 15 next, which
14 is the county grand jury's test claim parameters and
15 guidelines, so then if any of the county representatives
16 needed to leave, to catch planes or something, they could
17 do so after the completion of that item, and then to come
18 back and pick up the school district items, because we have
19 two of those, but it's certainly up to the Commission to
20 decide the order.

21 CHAIRPERSON MIYASHIRO: Any objection to doing
22 Item 15?

23 MR. ROSENBERG: Shouldn't we continue it to the
24 second day of our hearing and make them wait until the very
25 end?

1 MS. HIGASHI: That's what -- actually, some of
2 them had hoped for that.

3 MR. BARNES: That's pretty bold.

4 MS. HIGASHI: So, unless there's any --

5 MR. ROSENBERG: No objection.

6 MS. HIGASHI: -- objection, I would propose that
7 we bring Item 15 up next.

8 CHAIRPERSON MIYASHIRO: All right. Let's move to
9 Item 15. Give us a few minutes to get our binders in
10 place.

11 MS. PATTON: Good morning. On June 27th, 2002 --

12 CHAIRPERSON MIYASHIRO: Nancy, for the record,
13 would you --

14 MS. HIGASHI: I was going to introduce her.

15 Nancy Patton will present Item 15.

16 MS. PATTON: On June 27th, 2002, the Commission on
17 State Mandates adopted its Statement of Decision for the
18 Grand Jury Proceedings program, which revises grand jury
19 operations.

20 The Commission found the following activities
21 eligible for reimbursement:

22 Providing comments to the grand jury report,
23 including fiscal matters in the report;

24 Providing training and consultation to the grand
25 jury;

1 Meeting with a subject of an investigation;
2 Providing a meeting room and support for the grand
3 jury; and,
4 Forwarding copies of the grand jury report and
5 responses to the State Archivist.

6 Before you are the claimant's proposed parameters
7 and guidelines for the Grand Jury Proceedings program, as
8 modified by staff. There are two outstanding issues:

9 Issue No. 1, Is reimbursement for training grand
10 jurors limited to report writing, interviews, and a grand
11 jury's scope of responsibility and statutory authority?

12 The test claim statutes and Statement of Decision
13 require that grand juries be trained, at a minimum, on
14 report writing, interviews, and a grand jury's scope of
15 authority and responsibility. Therefore, reimbursement was
16 limited to training on these subjects. The claimant
17 requested that reimbursement for training be expanded to
18 include training on other statutory duties deemed necessary
19 by the courts.

20 The test claim statutes and the Statement of
21 Decision imposed the minimum requirements that are
22 necessary to train grand jurors. While counties and the
23 courts may deem additional training necessary, it is not
24 mandated by Penal Code Section 914. Therefore, staff did
25 not revise this section to expand reimbursement for

1 training beyond training for report writing, interviews,
2 and scope of responsibility and statutory authority.

3 Issue No. 2, Should updating file policies and
4 procedures and the training program be included as
5 reimbursable activities?

6 The tasks of updating policies and procedures and
7 updating training programs were removed as reimbursable
8 activities. The test claim statutes set out specific
9 duties for counties to follow when implementing the
10 mandate, including developing a training program for
11 training the grand jurors. Developing policies and
12 procedures is reasonably necessary to carry out the
13 mandate. However, any changes made to those duties,
14 including changes to the training program, would exceed the
15 mandate because they would be made at the claimants'
16 discretion. Therefore, updating the policies and
17 procedures and training programs are not reasonably
18 necessary to carry out the mandate.

19 Staff recommends that the Commission adopt the
20 parameters and guidelines as modified by staff, beginning
21 on page 9.

22 Will the parties and representatives please state
23 your names for the record.

24 MS. STONE: Good morning. Pamela Stone, here on
25 behalf of the County of San Bernardino.

1 MS. TER KEURST: Hi. Bonnie Ter Keurst, County of
2 San Bernardino.

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

5 MS. MANGUM: Sarah Mangum, Department of Finance.

6 MR. SILVA: Shawn Silva, State Controller's
7 Office.

8 MS. STONE: Good morning.

9 Actually, to start off with, I have a tiny thing
10 that I think everybody can agree with. On Item 2, eligible
11 claimants, fifth line, I believe the verb "is" should be
12 changed to "are," because we're talking about a number of
13 particular claimants, and I think that particular issue
14 would be noncontroversial.

15 CHAIRPERSON MIYASHIRO: So stated.

16 MS. STONE: All right. What I would like to do is
17 to discuss, under reimbursable components, Item (a)(2) as
18 constituted. I think, in this particular paragraph, your
19 staff has intermingled two separate activities, one of
20 which, we believe, is a one-time activity per employee, the
21 other one of which is ongoing over which local government
22 has no control.

23 Before we get into this discussion, I think we
24 should remember that grand juries are impaneled for a
25 period of a year. At the end of the year, the grand jury

1 is dissolved and a new one is established, because these
2 are bodies which do not continue in existence in
3 perpetuity. So we've got a body that, basically, is in
4 existence for a period of a year, and then you have a new
5 grand jury with new grand jurors.

6 First, in order to satisfy the mandate of training
7 the grand jurors, you have to establish a training program.
8 Well, that means that you need to have an employee to train
9 the employers -- I mean the grand jurors. How are we going
10 to be able to have an employee to train the grand jurors
11 unless that person is trained on how to train grand
12 jurors?

13 So we believe that there should be training of the
14 person who's going to train the grand jurors one time per
15 employee as a one-time activity. The reason why we're
16 saying one time per employee is everybody is aware of the
17 fact that you have staffs that retire, go on to different
18 positions, change assignments. Your Commission has seen
19 that just with your own staff. So we believe that there
20 should be one-time training for an employee to conduct the
21 training as a one-time activity.

22 Now, that brings us to the second part of the
23 phrase, which your staff has decided to have as a one-time
24 activity, "Cost to the county for the court to meet with
25 the district attorney, county counsel, and at least one

1 former grand juror to consult regarding grand jury training
2 are reimbursable," citing Penal Code Section 914(b).

3 Well, the court is the one that will request this
4 particular type of meeting. I believe the purpose of it is
5 to make sure that if the grand jury has found that the
6 prior training didn't work that this gives them an
7 opportunity to sit down and fix it and get input from the
8 grand jurors.

9 Grand jurors are not experienced, generally, in
10 the law. They're business people, members of the
11 community, who are called upon to serve. And I know that
12 probably most of you, when you came on board this
13 Commission, learned a whole new language. Well, these
14 grand jurors will be learning a whole new language, as
15 well. And I believe that this process was created in order
16 to avoid problems that had been experience before with
17 grand juries, who either felt that they did not have enough
18 information or some local governments believed they ran
19 amuck because they didn't understand their function.

20 Your Commission staff has attempted to limit this
21 consultation between the court, the D.A., the county
22 counsel, and the grand jury -- grand juror to a one-time
23 activity; however, there is no such limitation in the
24 statutory framework. The county has no control over what
25 the courts do, what the presiding judge of the superior

1 court, and who generally is the one that convenes the grand
2 jury, will do.

3 If this particular item is only reimbursed on a
4 one-time basis, there's no guarantee that deficiencies in
5 training will be rectified in the future, and there are
6 possible deficiencies that -- there's a possibility that
7 the deficiencies in training would otherwise be continuing
8 on in perpetuity.

9 Also, I think we should keep in mind that with the
10 latest in trial court funding, the courts are really now
11 seeing -- are now seen to be an arm of the state. So, in
12 essence, when the superior court presiding judge tells you,
13 "Thou shall be there to consult about training," you show
14 up. And, since this is not something which is voluntary or
15 discretionary on the part of local government, we believe
16 that this phrase should be placed in Section B with regard
17 to a continuing program.

18 The other thing is, in Section B, the Commission
19 has struck Item 1 which would allow your policies and
20 procedures concerning grand juries to be updated. And your
21 staff has struck this provision saying it's within the
22 discretion of the county. I think that there's some vision
23 that people are running around updating policies and
24 procedures just for the fun of it.

25 To the contrary, I think everybody is aware that

1 we're in a very litigious area nowadays, and there are
2 continually new cases which are interpreting the state of
3 the law, even if you had not been able to believe that it
4 would be interpreted in the future. For example, your
5 Commission received a briefing on the most recent supreme
6 court case, State of California Department of Finance vs.
7 Commission on State Mandates, which came down in May of
8 this year, pertaining to school ~~side~~^{site} councils.

9 So, too, the county should be allowed to update
10 its policies and procedures when there is new court
11 decisions which substantially affect the interpretation of
12 the scope and responsibility, process and procedures of the
13 grand jury. It makes sense; it's logical, and it's in
14 keeping with the legislation, that you are to train these
15 grand jurors in the scope of their authority and
16 processes.

17 Thank you very much.

18 CHAIRPERSON MIYASHIRO: Question of Ms. Stone?

19 (No audible response.)

20 CHAIRPERSON MIYASHIRO: Ms. Ter Keurst.

21 MS. TER KEURST: Good morning.

22 As the representative for the County of
23 San Bernardino, I would like to address our position on
24 the items for the record and for clarification. Section
25 (4) (B), ongoing county activities, update and implement

1 policies and procedures as needed, this was the first item
2 in the original proposed P and G statement.

3 In the draft staff analysis dated 6/13/03, the
4 staff found that it is reasonably necessary to update
5 policies and procedures, but, at the same time, added a
6 limit of no more than once a year as necessary. In the
7 final draft, this item was removed all together with the
8 staff comment that "once policies and procedures are
9 developed, any subsequent changes to those duties would
10 exceed the mandate because changes would be at the
11 discretion of the county." I do not agree with that
12 statement, nor do I believe that that is the intent of
13 Penal Code Section 914.

14 Section 914 directs the court, in consultation
15 with others, to ensure training. It specifies what the
16 very minimum of that training would include, but it does
17 not limit the training to specific items.

18 The directive is training, and one would assume
19 that to mean as applicable to civil matters and issues of
20 the day; that, by its very nature, means not static but
21 evolving, a process of change. The very nature of that
22 process would require updates. Likewise, we had originally
23 included training of new staff.

24 The draft staff analysis removed that item but,
25 again, included updating the training program as outlined

1 in (4) (A) above, if necessary. Reimbursement being, again,
2 limited to one time per year. In effect, to be able to
3 train implies someone's knowledge of the requirements,
4 therefore we are -- we were in support of that statement;
5 however, this item was also removed from the final draft.

6 Our position is that updating training materials
7 or using new training tools is advantageous to the learning
8 process. And with or without new material, there is still
9 the real scenario of having staff turnover. By listing
10 this item separately, there's a clearer understanding of
11 the items or, slash, detail that can be included as cost.

12 If this item is eliminated, my position is that
13 the counties will look at the P's and G's and decide where
14 it fits in as a reasonable cost and will assume that some
15 of these training program updates are a requirement in
16 order to train the grand jury; therefore, I recommend that,
17 in Section 4(b), the following two items be added back in:
18 Updating policies and procedures, if necessary, limited to
19 no more than one time per year; and, two, updating the
20 training program outlined in Section 4(a) above, if
21 necessary, reimbursement again being limited to one time
22 per year.

23 I would also disagree with the staff analysis
24 concerning the training limits of report writing,
25 interviews, and grand jury's scope of responsibility and

1 statutory authority. Penal Code Section 914, subdivision
2 (b), directs the court, in consultation with the district
3 attorney, county counsel, and a former grand juror, to
4 ensure training.

5 With the following as being almost an addendum, it
6 adds, at a minimum, that training must include report
7 writing, interviews, and the scope of grand jury
8 responsibility and statutory authority. But "ensure," I
9 think, is the key word in this thing. I do not believe
10 that is written in 4(a)(2), that the intent -- that that
11 intent is clear.

12 I would recommend 4(a)(2) to read, "Develop a
13 training program for grand jurors that consider or take
14 action on civil matters; reimbursement will be allowed for
15 training and report writing, interviews, grand jury scope
16 of responsibility and statutory authority, as well as other
17 duties deemed necessary by the court in consultation with
18 the district attorney, county counsel, and at least one
19 former grand juror." Then I recommend a second item, costs
20 for the court, district attorney, county counsel, and grand
21 jurors to consult regarding grand jury training be -- are
22 reimbursable.

23 While I understand the need to identify the
24 specific costs and to put controls into the spending
25 process, I do not feel this has been accomplished with the

1 rewrite of 4(a)(2) or 4(b)(1) of the final draft as
2 written. I also think it's a dangerous process to give
3 authority to the court and then try and split hairs over to
4 what that responsibility is or control the process so
5 tightly that it impairs the intent of the legislation,
6 which, in this case, I think is to provide tools for the
7 grand jury.

8 Thank you.

9 CHAIRPERSON MIYASHIRO: Thank you.

10 Questions of Ms. Ter Keurst?

11 (No audible response.)

12 CHAIRPERSON MIYASHIRO: Ms. Geanacou.

13 MS. GEANACOU: Susan Geanacou, Department of
14 Finance.

15 We concur with the staff's analysis regarding
16 these P's and G's.

17 CHAIRPERSON MIYASHIRO: Mr. Silva.

18 MR. SILVA: Shawn Silva with the State
19 Controller's Office.

20 We, as well, concur with the staff's analysis as
21 to the items identified.

22 CHAIRPERSON MIYASHIRO: Any questions from members
23 of the Commission on this item?

24 Mr. Rosenberg.

25 MR. ROSENBERG: I don't know if I'd characterize

1 this as a question as much as a comment or a concern.

2 As I look at the -- I'm looking at page 11 of the
3 parameters and guidelines draft. As I look at that, under
4 (a) (2), I would agree that that is an ongoing and not a
5 one-time cost, and I think it's in the wrong place. I
6 think it should be listed under (b) as an ongoing cost.

7 And, as I look at (b), the staff has stricken the
8 provision regarding updating and implementing policies and
9 procedures as needed. I don't think that's reasonable. I
10 think it is reasonable to allow an update at certain
11 intervals, perhaps every five years. There's a lot of
12 other things that counties do or are expected to do that
13 are updated, such as general plans, and to think that they
14 would never be updated is unreasonable.

15 In terms of training new staff, I don't think
16 that's necessary as an ongoing county activity. For one
17 thing, although grand juries serve for only a year, the law
18 provides that a number of grand jurors continue, five or
19 six of them, I believe, can continue into the next year, so
20 there's always a carryover. And, certainly, those grand
21 jurors can be relied upon to engage in training. And
22 the -- so they are sort of seniors and the others are sort
23 of freshmen.

24 And, finally, staff has stricken the -- overseeing
25 the grand juror response process. This activity includes

1 disseminating the grand jury report, following up on
2 responses, organizing reporting and transmitting. It seems
3 to me that that should be added back in, and I'd like to
4 hear staff's reasoning on why they struck that. Certainly,
5 the county is going to be involved in disseminating,
6 following up, organizing, et cetera, the grand jury report.

7 Why was that stricken, Ms. Patton?

8 MS. PATTON: Two reasons: One, it's not in the
9 test claim legislation or the Statement of Decision, and,
10 number two, under prior law, they were required -- you
11 know, there was a grand jury process, so we felt that was
12 covered under prior law.

13 CHAIRPERSON MIYASHIRO: Okay. Thank you.

14 Other questions or comments?

15 Mr. Lazar.

16 MR. LAZAR: I just wanted Nancy to comment on
17 Mr. Rosenberg's suggestion on Item (b)(1) including --

18 MS. PATTON: I'm sorry? I can't hear what you --

19 MR. LAZAR: Just comment with respect to the item
20 that you deleted, or recommend deleting, Item (b)(1) on
21 page 11.

22 MS. PATTON: Of updating?

23 MR. LAZAR: Yeah, updating, please.

24 MS. PATTON: I think when we took another look
25 at -- after the draft was issued, when you look at the

1 statute -- and, for this particular program, it is very
2 specific -- it has a lot of language in it that directs
3 counties what to do, so that's why we felt updating was not
4 necessary.

5 MR. ROSENBERG: Is the issue of reasonableness
6 part of the equation? Is that something we can consider,
7 what is reasonable or what isn't?

8 MS. PATTON: Um-hum. Yes.

9 MR. ROSENBERG: Okay. In my opinion, it is
10 unreasonable to conclude that updates are not necessary or
11 mandated.

12 CHAIRPERSON MIYASHIRO: Mr. Sherwood.

13 MR. SHERWOOD: I'll have to agree with
14 Mr. Rosenberg on this issue, on (b) (1). I'm trying to --
15 maybe you can, once again, review that, take me back to
16 where, originally, we had a one-year review issue, and
17 Mr. Rosenberg talked about a five-year situation.

18 MS. PATTON: Um-hum.

19 MR. SHERWOOD: It just seems to make sense, to me,
20 that there would be changes. There's changes every day
21 around here, and maybe we need to recognize that, and it's
22 within our purview to be able to recognize that. I believe
23 it is.

24 MS. PATTON: Um-hum. And I think, in this
25 instance, because we thought the language in the test claim

1 legislation was so specific, that that's why we thought
2 that any updates to these policies and procedures may go
3 beyond what the test claim legislation is directing.

4 MR. SHERWOOD: Originally, we felt it could be
5 included.

6 MS. PATTON: Right.

7 MR. SHERWOOD: So that puts us in this area that
8 we thought, at one time, some individuals did, some staff,
9 that it could be included?

10 MS. PATTON: Um-hum. It's just taking another
11 look at it.

12 MR. STARKEY: Mr. Sherwood, if I could
13 interject --

14 CHAIRPERSON MIYASHIRO: Paul, if you can state
15 your name for the record.

16 MR. STARKEY: Paul Starkey, chief legal counsel.

17 One of the things that the staff is looking at is
18 the -- what is the Legislature directing? And one of the
19 rules of interpretation is that the Legislature can solve a
20 whole problem at one time, ^{or} ~~where~~ it can solve a problem on
21 a piecemeal basis, or they can make recommendations that
22 certain things be done, and then they can come back and
23 visit it again.

24 This is one of those statutes where the --
25 certainly, as the claimants have pointed out, there is an

1 intent in the statute that there be better training of a
2 grand jury; that's not disputed. But what the Legislature
3 did was said: Here is -- we want to have training at a
4 minimum that will include these types of activities. So,
5 when the Legislature makes that kind of statement, we would
6 read it to be that that minimum is what is being required.

7 And, on the issue of training, we approach it in
8 the same manner, is that if the statute, on its face -- if
9 the Legislature is giving direction, then the need for
10 training -- the reasonableness question, Is it reasonable
11 to implement the mandate? What is the mandate? the
12 Legislature will say, you know, you shall have complete
13 training. Or what did they say? And do they say how often
14 you should have the training?

15 So we look at the mandate itself, and then say,
16 under the regulation, what is reasonable to implement what
17 the Legislature wanted to accomplish? And we are very
18 cautious in our recommendations, at least at this present
19 moment, when I'm making some of these decisions.

20 MR. SHERWOOD: Well, you always have been.

21 MR. STARKEY: Thank you.

22 I'm going to take a conservative approach to say,
23 we're going to try to follow the strict direction from the
24 Legislature as much as possible, but then you will get into
25 those areas, and this, certainly, is one of those, where

1 staff may come up with an initial view of what would be
2 reasonable, and then, on reflection, looking at the
3 comments, change their mind. Ultimately, that question is
4 for the Commission.

5 MR. ROSENBERG: Let me, if I may, just say that I
6 think that is absolutely appropriate. I think staff should
7 take the most conservative view on these matters. As a
8 commissioner, I will take -- I will always take what I
9 think is the most reasonable approach.

10 MR. FELLER: If I could add one thing to the
11 staff's thought process on --

12 CHAIRPERSON MIYASHIRO: Mr. Feller, can you --

13 MR. FELLER: I'm sorry. Eric Feller, staff,
14 Commission staff.

15 As Mr. Sherwood recognized, there are -- with
16 regards to updating the policies and procedures, there are
17 always changes that occur, the one constant thing in life,
18 but I think it's important to recognize changes that occur
19 as a result of something that the state is mandating, that
20 the Legislature has put in place, versus changes that occur
21 at the local level that are as a result of their discretion
22 to make changes.

23 And the -- what the staff felt the mandate was was
24 what the law required, and that initial policies and
25 procedures were reasonable to implement that, but that any

1 changes to those policies and procedures would be as a
2 result of decisions made at the local level.

3 CHAIRPERSON MIYASHIRO: Mr. Barnes.

4 MR. BARNES: Well, I guess that's, actually -- you
5 know, you probably said what I was trying to say, or I was
6 going to say, is that it appears to be what we're talking
7 about doing is providing training in policies and
8 procedures that are unique to this particular piece of
9 legislation, so that the idea of updating those policies
10 and procedures wouldn't have to take place until either
11 some new legislation took place. And, in that case, to the
12 extent that that required training, then there's the
13 process versus any new test claim for that, as well.

14 So I guess, you know, the idea of developing this
15 training program, you know, it seems to me that it is
16 uniquely a one-time deal related to the specific
17 requirements of this activity. We do provide for ongoing
18 training as each new grand jury comes in to give the same
19 training that was developed relating to this particular
20 piece of legislation.

21 Again, I think that, to the extent that a change
22 in policies and procedures would be needed, it would seem
23 to me that it would have to be related to a change in the
24 specific content of the training itself, which would, to
25 me, indicate that a new piece of legislation has been

1 passed.

2 So I know what you're saying, is that, to the
3 extent that there was something that might change, that was
4 built into this law. I could support your idea that you
5 should be reviewing it and taking a look at it on an
6 ongoing basis, but this is really only asking that they be
7 trained in this particular stuff on an ongoing basis, so I
8 think the staff came up with the right conclusion on this.

9 CHAIRPERSON MIYASHIRO: Ms. Stone.

10 MS. STONE: Thank you very much, Mr. Chairman.

11 Members of the Commission, we've had this
12 discussion, with regard to updating, for as long as I can
13 remember, in recent memory, which, probably, to me, is a
14 couple of months.

15 The problem has been that your Commission staff
16 examines legislation in a snapshot and takes a look at the
17 status of the law at the present time and says, "That is
18 what we are training on," and that assumes that if there
19 are other further changes in legislation, even if it's
20 minuscule, that will result necessarily in a new test
21 claim, new analysis, another four years of waiting to go
22 through the process, and it does not take into account any
23 possible litigation which may affect the interpretation.

24 I, unfortunately, have been around long enough to
25 realize that the law is not static. We cannot look at it

1 as a snapshot. And would it not be nicer to be able to
2 update policies and procedures every "X" number of years
3 rather than coming back with another test claim that says,
4 oh, by the way, we've got this external piece, so we're
5 going to go through the four-year process to get a test
6 claim to be able to get this little piece, when, otherwise,
7 we could do a review every two, three, five years and just
8 update it and just get it over with without having to go
9 through this bureaucracy?

10 I know that this is an ideal issue. It's an issue
11 of concept that we've been dealing with with your
12 Commission staff that has only wanted to have everything on
13 a one-time basis because, "We're going to take a snapshot
14 of the law as it is now, and, even if there is a major case
15 that comes down next week reinterpreting it, we're terribly
16 sorry. You can't update on it." It's as it is, as it's
17 going to the Commission.

18 And I think we really need to take a look at
19 whether or not it would be more rational and a lot cheaper
20 for the State of California to say, "Yes. You can go
21 through and update your policies every 'X' years," and so,
22 this way, we're not necessarily back in front of you for
23 another test claim to update the policies and procedures
24 and training because something's happened in the interim.

25 MR. SHERWOOD: Mr. Chair?

1 CHAIRPERSON MIYASHIRO: Mr. Sherwood.

2 MR. SHERWOOD: I really don't want to indicate
3 that I want to make a broad brush change of that nature,
4 because I really don't have a significant problem with
5 staff in the way that they've analyzed many of the claims
6 over the year. I, specifically, am just talking on this
7 one particular issue.

8 And I still believe that -- I have no problem with
9 staff's recommendation here, but I do believe that, even in
10 this snapshot view that we just spoke to, that the (b)(1)
11 could be added into your particular recommendation.

12 So I would move that, if this is the proper time
13 to do that. It may not be, if the chair doesn't feel we've
14 had enough discussion on this issue.

15 CHAIRPERSON MIYASHIRO: Well, I'd like to just
16 make a comment before we entertain motions.

17 While I don't view it as unreasonable, that
18 training would be updated over the course of time to
19 reflect changes in the laws and so forth, I think that the
20 legislation leaves that decision to the local agencies,
21 and, had the Legislature wanted updates to be undertaken on
22 a periodic basis, on an annual basis, on an as-necessary
23 basis, the legislation could have stated, specifically,
24 that training shall be updated and policies, implementation
25 of policies, reviewed on whatever particular calendar the

1 Legislature might have directed, and so I would view that
2 the absence of the Legislature speaking to that left that
3 decision to the locals, and I believe that the staff
4 analysis is correct.

5 Mr. Rosenberg.

6 MR. ROSENBERG: I think these parameters and
7 guidelines are pretty good. I would, however, support two
8 changes to them. We've already determined, or you've
9 determined, at prior meetings that there is a mandate here,
10 and I certainly concur with that. So the question, now, on
11 these parameters and guidelines is to determine what is
12 reasonable, in terms of the level of reimbursement? What
13 is the imposition on local government?

14 And, in this case, I'm not dealing, again, as you
15 say, with a broad brush, but, in this case, we're dealing
16 with grand jurors. Grand jurors are citizens; they're not
17 county employees. They serve as part of their citizen's
18 duty and they serve for one year. A few of them, a
19 handful, get to serve for two years, but they, basically,
20 come in and they go out.

21 And so I think it is reasonable to assume that the
22 Legislature expected that there would be an ongoing
23 training of these people and that there would be an
24 updating of the training materials to assist the grand
25 jurors in doing their function.

1 So I would support two changes to this, these
2 parameters and guidelines: One would be to add back in,
3 under (b), update and implement policies and procedures as
4 needed, put in a time line, such as one-time update every
5 five years, and then the second thing I would support is
6 moving the development of the training program from the
7 one-time activity into ongoing activities.

8 CHAIRPERSON MIYASHIRO: Is that a motion?

9 MR. ROSENBERG: Do you want me to separate those
10 two or do you want me to put them together? Would it be
11 best if I separated them?

12 CHAIRPERSON MIYASHIRO: Um, do you have a sense if
13 we need to separate that?

14 MR. ROSENBERG: I'd be happy to separate that.

15 CHAIRPERSON MIYASHIRO: Okay. Separate that.

16 MR. ROSENBERG: I would move that Item (a)(2),
17 that is development of the training program, be moved from
18 one-time county activities into ongoing county activities.

19 CHAIRPERSON MIYASHIRO: How about a second on that
20 motion?

21 MR. LAZAR: I'll provide him with a second.

22 CHAIRPERSON MIYASHIRO: A motion and a second.

23 Any further discussion?

24 (No audible response.)

25 CHAIRPERSON MIYASHIRO: Paula, please call the

1 roll.

2 MS. HIGASHI: Mr. Lazar?

3 MR. LAZAR: No.

4 MS. HIGASHI: Mr. Rosenberg?

5 MR. ROSENBERG: Aye.

6 MS. HIGASHI: Mr. Sherwood?

7 MR. SHERWOOD: No.

8 MS. HIGASHI: Ms. Williams?

9 MS. WILLIAMS: No.

10 MS. HIGASHI: Mr. Barnes?

11 MR. BARNES: No.

12 MS. HIGASHI: Mr. Miyashiro?

13 CHAIRPERSON MIYASHIRO: No.

14 MS. HIGASHI: Motion fails.

15 MR. ROSENBERG: I'm glad I separated that.

16 The second motion would be to add an item under

17 (b), that is, ongoing county activities, to update and

18 implement policies and procedures one time every five

19 years.

20 MR. SHERWOOD: I'll second that.

21 CHAIRPERSON MIYASHIRO: A motion and a second.

22 Any further discussion?

23 MR. BARNES: Yes.

24 CHAIRPERSON MIYASHIRO: Mr. Barnes.

25 MR. BARNES: I have a concern about putting this

1 in because of the wording "policies and procedures." You
2 know, that's a fairly open-ended comment or phrase, and,
3 you know, one person's policies and procedures is another
4 person's, you know, program and expansion. And since we
5 are going to -- the state is then going to end up paying
6 for those decisions that are made at, you know, the local
7 level, I have a concern about the wording associated with
8 this.

9 And, again, even if I was inclined to go ahead
10 with this and try to clarify it, again, to a certain
11 extent, it goes back to the discussion that we had
12 previously, which is that the activity is to develop a
13 training program for the specific requirements that are in
14 this legislation.

15 And, again, to the extent that we leave this in
16 here, we're kind of opening -- we're kind of leaving an
17 open area in a mandate that, basically -- I mean, I'm not
18 trying to attribute anything to anybody, but, basically, it
19 allows a lot of stuff to be put through the door. So I
20 would just say that if -- I don't see that there's anything
21 in the legislation that would indicate that an update would
22 be necessary, unless there's some added legislation,
23 so that's why I have a concern about it.

24 MR. ROSENBERG: Mr. Chairman, if I may?

25 CHAIRPERSON MIYASHIRO: Mr. Rosenberg.

1 MR. ROSENBERG: Your point is well-taken, and we
2 should make it very clear that the policies and procedures
3 refers to the same policies and procedures referred to
4 earlier. So it probably should read, "Update and implement
5 policies and procedures for the activities listed in
6 Section 4 of these parameters and guidelines one time every
7 five years."

8 In other words, we're not opening the door to any
9 policy and procedure; we're limiting it to the same
10 policies and procedures that were originally developed.
11 We're just talking about updating those policies and
12 procedures within those parameters.

13 MR. STARKEY: Can I ask a point of clarification?

14 Paul Starkey.

15 There hasn't been -- because this has been struck,
16 I'm not sure there was a staff analysis on the term to
17 "update and implement," and, in the discussion, I'm hearing
18 the activity of revising the policies. And, because of the
19 use of the word "implement," I just wanted to make sure
20 that we understand what it is that is meant by that.

21 Does it mean just to revise the policies
22 themselves?

23 MR. ROSENBERG: So --

24 MR. STARKEY: For example, substitute a word to
25 "update and promulgate."

1 MR. ROSENBERG: Do your parameters and guidelines
2 explain the use -- your use of the word "developing"? If
3 not --

4 MR. STARKEY: I'm not sure that they do.

5 MR. ROSENBERG: If not, why are you hung up on the
6 word "update and implement"?

7 MR. STARKEY: Because that's one that I think is
8 capable of ambiguity, of whether you mean -- you know, just
9 listening to the discussion of the Commission, if you mean
10 the activity of revising and then making those policies
11 available. Well, if you're actually talking about
12 implementing by paying for programs, it might be necessary
13 for those policies --

14 MR. ROSENBERG: Let me make it real easy for you
15 by simply striking the word "implement," so it will read,
16 "update the policies and procedures for the activities
17 listed in Section 4 of these parameters and guidelines one
18 time every five years," and that is the motion.

19 MR. STARKEY: Thank you.

20 CHAIRPERSON MIYASHIRO: I have a motion.

21 MR. SHERWOOD: I'll second that motion.

22 CHAIRPERSON MIYASHIRO: And a second.

23 Any further discussion?

24 (No audible response.)

25 CHAIRPERSON MIYASHIRO: Paula, please call the

1 roll.

2 MS. HIGASHI: Mr. Rosenberg?

3 MR. ROSENBERG: Aye.

4 MS. HIGASHI: Mr. Sherwood?

5 MR. SHERWOOD: Aye.

6 MS. HIGASHI: Ms. Williams?

7 MS. WILLIAMS: No.

8 MS. HIGASHI: Mr. Barnes?

9 MR. BARNES: No.

10 MS. HIGASHI: Mr. Lazar?

11 MR. LAZAR: Aye.

12 MS. HIGASHI: And Mr. Miyashiro?

13 CHAIRPERSON MIYASHIRO: No.

14 The motion fails.

15 MR. ROSENBERG: We could, perhaps, wait an hour

16 and get another member --

17 CHAIRPERSON MIYASHIRO: I would entertain a motion

18 on the staff's recommendation.

19 MS. WILLIAMS: So moved. Move the staff

20 recommendation.

21 MR. BARNES: Second.

22 CHAIRPERSON MIYASHIRO: A motion and a second.

23 Any further discussion on the staff

24 recommendation?

25 Paula?

1 MS. HIGASHI: I just want to say as it's --
2 MS. WILLIAMS: As currently recommended.
3 MS. HIGASHI: Okay.
4 CHAIRPERSON MIYASHIRO: Okay.
5 Paula, please call the roll.
6 MS. HIGASHI: Mr. Sherwood?
7 MR. SHERWOOD: Aye.
8 MS. HIGASHI: Ms. Williams?
9 MS. WILLIAMS: Aye.
10 MS. HIGASHI: Mr. Barnes?
11 MR. BARNES: Aye.
12 MS. HIGASHI: Mr. Lazar?
13 MR. LAZAR: Aye.
14 MS. HIGASHI: Mr. Rosenberg?
15 MR. ROSENBERG: Aye.
16 MS. HIGASHI: Mr. Miyashiro?
17 CHAIRPERSON MIYASHIRO: Aye.
18 MS. HIGASHI: Thank you. Motion carries.
19 MS. STONE: Thank you very much for taking this
20 item prior to the school district items. It's very much
21 appreciated.
22 CHAIRPERSON MIYASHIRO: Maybe now we can take a
23 10-minute break for the court reporter, and then, when we
24 return, we'll do another item.
25 (Whereupon a brief break was taken.)

1 CHAIRPERSON MIYASHIRO: Let's reconvene the
2 Commission on State Mandates.

3 MS. HIGASHI: This brings us to Item 12, and that
4 item will be presented by Shirley Opie.

5 MS. OPIE: Good morning.

6 The test claim on Attendance Accounting and Audit
7 Procedures arose from changes to the Education Code that
8 added new student attendance reporting requirements for
9 school districts and county offices of education. The
10 Commission found that there were costs mandated by the
11 state for the one-time activity for school districts and
12 county offices of education to complete and return a
13 "Worksheet for Determining the Adjusted 1998-99 Base
14 Revenue Limit in Accordance with SB 727" to the
15 Superintendent of Public Instruction. The only report
16 required by the state for this program was for the
17 1996-1997 school year.

18 The parameters and guidelines before you limit
19 reimbursement to writing the required information on the
20 worksheet and returning it.

21 Staff issued the draft staff analysis on June 11,
22 2003. In a letter dated June 23, 2003, Spector, Middleton,
23 Young & Minney, representing the co-claimants, agreed that
24 the changes staff made to the co-claimants' proposed
25 parameters and guidelines were consistent with the

1 Statement of Decision.

2 No other comments were received.

3 Will the parties please state your names for the
4 record?

5 MR. SCRIBNER: Good morning. David Scribner
6 representing the claimants.

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

9 CHAIRPERSON MIYASHIRO: Mr. Scribner, if you would
10 begin.

11 MR. SCRIBNER: Uh, sure. I'm not sure why we're
12 here this morning. I understand someone wants to put
13 forward a proposed unit cost, so it seems like it's someone
14 else's show, this one.

15 CHAIRPERSON MIYASHIRO: Well, it's probably my
16 show.

17 MR. SCRIBNER: Okay.

18 CHAIRPERSON MIYASHIRO: I asked that this come off
19 consent. If you have looked at your back-up materials, you
20 may see that some of that background material references a
21 memo that I had issued in my prior job as the division
22 director of Education -- Finance Division of the Department
23 of Education. That division is responsible for developing
24 the various forms that the school districts and county
25 office of education use to glean state funding.

1 I guess I would first ask a question of counsel,
2 and that is: Can our decision to find a reimbursable
3 mandate be revisited and reconsidered? And then, if not,
4 I'll follow up with my thoughts.

5 MR. STARKEY: The short answer is no. Once the
6 period of time for reconsideration has passed, the
7 Commission does not have jurisdiction, and the only
8 challenge is allowed by the writ process by the court.

9 CHAIRPERSON MIYASHIRO: So our responsibility here
10 today, then, is to establish a method of reimbursement,
11 either P's and G's or being a cost rate, that that's what
12 faces us today; is that correct, Mr. Starkey?

13 MR. STARKEY: That's correct.

14 CHAIRPERSON MIYASHIRO: Okay. I'd just like to
15 offer a few of my thoughts on this, and I was not a member
16 of the Commission at the time the decision was made, but my
17 view of this particular claim is that it does not meet the
18 test for a reimbursable mandate. And I know that's beyond
19 us, but I'd still like to place my views into the record.

20 I don't believe that this does constitute a new
21 program or higher level of service. I think what the
22 claimants have submitted a claim here for is reimbursement
23 for a procedural act to receive state funding. It is not a
24 program, in a sense that it provides services to students;
25 it's a requirement to receive those funds, as are in place

1 for all, a number of state categorical programs and general
2 purpose revenue limits that preceded the enactment of
3 SB 727. So, on the issue of whether this is a program or
4 not, my view is that it is not a new program or higher
5 level of service; it's simply a procedural act that is
6 required as a condition of receiving funds.

7 And, as to cost, my view is that there are no net
8 new cost in taking this one-time activity. In fact, the
9 school districts experienced significant administrative
10 savings in that they are no longer required to collect and
11 verify excused absences for purposes of receiving state
12 funding.

13 One of the strongest arguments that's advanced,
14 when this bill was being heard in the Legislature, was that
15 the act of accounting for student attendance was
16 administratively burdensome. And one of the persuasive
17 arguments about this measure was that school districts will
18 receive funding for revenue limits with an adjustment to
19 that revenue limit accounting for their past historical
20 record of excused absences. Going forward, those excused
21 absences would no longer need to be collected and verified,
22 and that was argued to the Legislature as a significant
23 savings.

24 So my view is that the reimbursable activity here,
25 given that this Commission has found or mandated to exist,

1 is one time, very minor, and I would move that we reimburse
2 this activity on a one-time basis, on a unit cost rate at
3 \$1 per claimant, covering both direct and indirect costs.

4 MR. ROSENBERG: You want to hold that in abeyance
5 for a little while?

6 CHAIRPERSON MIYASHIRO: I'll hold it in abeyance.
7 I can certainly entertain some discussion, sure.

8 Any comments from members of the Commission or
9 Mr. Warren who just stepped up?

10 MR. WARREN: Sure. My name is I'm Paul Warren.
11 I'm with the Legislative Analyst's Office. I work in the
12 Education Unit.

13 We share Mr. Miyashiro's prospective, in terms of
14 offsetting savings that far exceed the cost of the limited
15 mandates that have been recognized by the Commission.

16 Prior to the passage of the bill, school districts
17 were required to literally get a piece of paper from
18 parents. If you're parents, you know what this is about.
19 It's an excuse from the parent that says: My son or
20 daughter was absent because they were sick, or whatever,
21 and there was certain categories of absences that if the
22 district had documentation they would still receive state
23 funding for it. They had to collect these, they had to
24 record them, and store these pieces of paper for a certain
25 period of time, you know, in case there were audits of

1 school districts.

2 All of this effort was very significant. Many
3 times school districts would even call parents and say,
4 "Gee, you haven't submitted any excused absence for your
5 child for these dates, please do so." So they made a great
6 effort in making sure that this documentation existed
7 because funding was dependent on it.

8 So we view the size of the savings in this
9 particular -- from this particular legislation as being
10 very significant. And I think -- I can't speak to the
11 chairman's motion, but I think we would say that there's
12 really no reimbursable state costs from these mandates
13 because of the offsetting savings.

14 CHAIRPERSON MIYASHIRO: Mr. Scribner.

15 MR. SCRIBNER: David Scribner.

16 I've got a lot of thoughts, so I'm trying to put
17 them in order. First, I agree with Paul Starkey, chief
18 legal counsel, that the underlying substantive portions
19 that go to whether there's an overall savings, it's not
20 relevant here today. We're only talking about whether or
21 not the parameters and guidelines here sufficiently
22 addressed what was outlined in the Statement of Decision.

23 It's the claimant's position that they do. If
24 Finance would like to put forth a more firm proposal based
25 on particular findings, the claimants would have no problem

1 reviewing that documentation, doing its own survey to
2 determine whether or not that's actually an accurate
3 number, that would reflect small, medium, and large
4 districts across the state, and come back with a
5 counterproposal, because I could say, almost unequivocally,
6 that \$1 is a little low, but, at this time, I don't think
7 that the Commission can move on a motion to do \$1.

8 We have not been noticed of that unit cost rate.
9 We have not had the ability to comment or review it, and we
10 would like that time to do so. Beyond that, it's a little
11 upsetting that we get this notice two days before the
12 hearing, that a unit cost rate is now going to be proposed,
13 and this item is now going to shift gears and be pulled off
14 of consent.

15 We made our comments that we wanted to put it on
16 consent June 11th, over a month later. We're now told that
17 it's being pulled. I would get lambasted if I sat here and
18 did something like that. Actually, I have been in the
19 past. So those are our concerns.

20 If that is something that Finance wants to put
21 forward, we'll be more than happy to take a look at it and
22 run our own numbers, but, in our position, we think that
23 there are other procedural safeguards in place that will
24 address the Chair's concern. A thousand-dollar --

25 CHAIRPERSON MIYASHIRO: Just one clarification.

1 It is not the proposal of Department of Finance;
2 it's a proposal of the chair.

3 MR. SCRIBNER: Okay. Well, then, I'll direct them
4 to the chair.

5 I was surprised, two days before, to get your
6 proposal. I had wished that we had gotten it sooner.
7 Maybe we could have discussed it in some detail.

8 You have a thousand-dollar minimum in place that
9 could protect the state's interest, if districts cannot
10 show that they have a thousand dollars in cost. And, quite
11 frankly, we haven't even looked at this from a cost point,
12 at this stage, because it's one of those low, under the
13 radar, kind of claims at this point.

14 A lot of the activities were removed at the
15 analysis and Statement of Decision portion and other things
16 have come up, like our very nasty budget, that have taken
17 other things and put this kind of in the back door, but, if
18 the chair would like to put forth a written proposal, we'd
19 be more than happy to review it and run our own figures and
20 suggest even a cost rate of our own.

21 CHAIRPERSON MIYASHIRO: Mr. Barnes.

22 MR. BARNES: Yeah. I'm a little confused about
23 where we are right now.

24 Are you making a motion?

25 CHAIRPERSON MIYASHIRO: Yeah. I'm actually --

1 MR. BARNES: If you are, I need to know what the
2 motion is, because I'm not sure I understand.

3 I hear you talk about a unit cost, but I hear you
4 saying it would be a dollar, period, not a dollar per some
5 unit.

6 CHAIRPERSON MIYASHIRO: Um --

7 MR. BARNES: Maybe I need to just have you clarify
8 what it is you're proposing and put it in the form of a
9 motion, then we can all have something we can focus our
10 discussion on.

11 CHAIRPERSON MIYASHIRO: As I understand the staff
12 recommendation, it was to issue or put before us parameters
13 and guidelines that would reimburse the cost of filling out
14 the form. I mean, I think that's, essentially, what the
15 staff is recommending.

16 MR. BARNES: Right.

17 CHAIRPERSON MIYASHIRO: I am, instead,
18 recommending that the Commission adopt a unit cost of \$1 to
19 fill out that form rather than have claims come in to us
20 that certify that how much it costs them to do it. I'm
21 just saying that I would, instead, offer up a \$1 per unit
22 reimbursement rate for claimants in recognition of the
23 mandate that this Commission found.

24 MR. BARNES: My --

25 MR. ROSENBERG: Mr. Chair?

1 CHAIRPERSON MIYASHIRO: Mr. Barnes.

2 MR. BARNES: My impression is that, you know,
3 based on the fact that we're talking about one worksheet,
4 you're talking about \$1, period?

5 CHAIRPERSON MIYASHIRO: Yes.

6 MR. BARNES: So that's the thrust of your motion?

7 CHAIRPERSON MIYASHIRO: Yes.

8 MR. BARNES: And I guess, before we get into a
9 discussion, I think, procedurally, we ought to have
10 somebody second it.

11 CHAIRPERSON MIYASHIRO: Right. And I think it
12 would be worth having Mr. Starkey comment on whether this
13 Commission could act in accordance with what I've
14 suggested.

15 MR. ROSENBERG: Mr. Chair, I don't think there's a
16 motion on the floor right now. You held it in abeyance.
17 And, before any motions are put on the floor, I think -- I
18 don't feel comfortable dealing with the substance of any
19 motion, frankly, at this point, based on your comments,
20 and I'd like to reflect them on.

21 And I think the issue we should address is the
22 procedural issue, of how we should proceed from this point,
23 in fairness to staff, Department of Finance, to the
24 claimant, in terms of being able to respond to the issues
25 that you've raised. And that procedure will, obviously,

1 bring us back on another day, and then motions will be in
2 order.

3 MR. SHERWOOD: I think I'll have to agree with
4 that, because I just don't think I'd be in a position to
5 form a decision on a \$1 issue without some analysis from
6 all the parties involved, and from our own staff, but I
7 would feel comfortable, once again, to talk about the
8 procedural side of this issue.

9 CHAIRPERSON MIYASHIRO: Okay. Paul, can you kind
10 of enlighten us on the procedures?

11 MR. STARKEY: Well, my view of it is is that the
12 item has been properly noticed and the matter has been put
13 out before the Commission. There is a recommendation from
14 the staff; that is only a recommendation. This is the time
15 and place for a hearing.

16 And so if the Commission is comfortable about
17 developing a record and feels that it has developed a
18 record and wants to move on an item they can. If there's a
19 hesitancy and they feel they do not want to move because
20 they want more development or more discussion, that's also
21 appropriate.

22 I think that what is being proposed is something
23 novel but not unheard of. Basically, the chair is putting
24 forth the proposition that while, under Government Code
25 17557, which is the section on parameters and guidelines,

1 the Commission is charged with the obligation to determine
2 the amount to be subvned, the chairperson's argument is,
3 essentially, the de minimus argument, that this -- what
4 ultimately came out to be costs ~~incurred~~^{required} by the state.

5 It would be -- his position, as I understand it,
6 is that this is, basically, a trifle, and so he cannot
7 assign zero to it, because the Commission has already made
8 a determination that there are costs incurred. So with
9 respect to the notion, again, simply that this is a trifle,
10 the assignment of a dollar is in recognition of that.

11 It is not unlike what happens, for example by
12 analogy, when a jury will give a monetary award and it will
13 be in the amount of \$1, because, while it's a technical
14 requirement of the law, we've had -- the jury finds that,
15 in fact, no compensation should be awarded, but that's in
16 the purview of the jury to do that.

17 MR. ROSENBERG: Excuse me. But the effect of
18 that -- and, again, I don't want to get into the substance
19 of it. I just want to understand that part of it -- the
20 effect of that would be to, essentially, deny every claim
21 because they're under a thousand dollars?

22 MR. SCRIBNER: Correct.

23 MR. ROSENBERG: Okay. I personally feel
24 comfortable continuing this and setting up some process by
25 which all the parties would provide input on the proposal.

1 You know, I don't want to accept it or reject it. I just
2 want to consider it, but I want to get some input on it.

3 MR. STARKEY: And, again, procedurally, I think
4 that if that's the way the Commission wants to go then that
5 is perfectly fine, too.

6 CHAIRPERSON MIYASHIRO: So would we then postpone
7 action on this and set it for calendar for our next
8 meeting?

9 What would be the -- is there a motion that we can
10 take to do that?

11 MR. STARKEY: Currently, there is -- I think the
12 Commission can agree to do that by motion.

13 CHAIRPERSON MIYASHIRO: Okay. Maybe we can just
14 defer this item to our next meeting without taking formal
15 action on it.

16 MS. HIGASHI: What we need to do next, then, is in
17 light of your comments that you made today, is that we will
18 put the proposal forward and invite all of the parties that
19 are on the mailing list for this item to file comments on
20 it, then we will proceed to bring this item back to you in
21 the September hearing, including their comments into the
22 record, and then adding a supplemental analysis just based
23 on the \$1 issue.

24 CHAIRPERSON MIYASHIRO: Okay.

25 Mr. Barnes.

1 MR. BARNES: I guess I have a bit of a problem
2 with this, because, from what I understand, your issue is
3 not whether or not the parameters and guidelines accurately
4 reflect the decision that was made, but it's your
5 contention that that decision, that original decision, was
6 incorrect.

7 So I guess I don't -- it seems like the direction
8 that we would give to staff, you know, is to ask them to go
9 beyond the statement of the parameters and guidelines to
10 determine whether or not the estimate associated with these
11 parameters and guidelines is worth a dollar per worksheet
12 versus, you know, what they might claim in actual cost.

13 And I guess what my feeling is is that the issue
14 of the estimate, you know, what this thing is worth, is
15 another process that comes after we approve the parameters
16 and guidelines. Since we can't go back and change the
17 original decision, the decision stands, so the guidelines
18 are either correct or not correct.

19 And then it seems to me that the next step in the
20 process, which is to determine the costs associated with it
21 through the estimating process, is the issue that we can
22 deal with, but it seems to me that -- I, also, have to say
23 that I think this is a fairly minor mandate that's probably
24 not going to cost very much anyway. And, given our
25 workload, I'd just as soon move the thing along and get

1 this thing out of here so that we can spend our time
2 dealing with things that are a lot more significant and a
3 lot more important to us in the long run.

4 So I would prefer not to push it off, and, in
5 going that way, what I will do is: I'll just make a motion
6 that we adopt the staff's recommendation.

7 MR. SHERWOOD: Chair, may I?

8 CHAIRPERSON MIYASHIRO: I have a motion.

9 Can I get a second on the motion?

10 MR. SHERWOOD: Yeah.

11 CHAIRPERSON MIYASHIRO: Are you seconding the
12 motion?

13 MR. SHERWOOD: No.

14 MR. LAZAR: I'll second it.

15 CHAIRPERSON MIYASHIRO: Okay. The motion is
16 seconded.

17 Further discussion, Mr. Sherwood?

18 MR. SHERWOOD: I'd like to ask staff -- I read the
19 P's and G's, and I agree with Walter, that we can't change
20 this decision. We've declared or voted this is a mandate,
21 and I don't think that's what I'm hearing here. I don't
22 think you really wanted to reverse that decision.

23 CHAIRPERSON MIYASHIRO: No. I accept that.

24 MR. SHERWOOD: So what we're trying to do is look
25 at the costing method here, and your feeling is it's very

1 minor in nature, and I guess, from my standpoint, I need to
2 know whether that makes sense or not, whether we're going
3 to go to a unit cost type of mechanism.

4 If we vote on this today and move it forward,
5 where, then, will we address whether it's a unit cost
6 issue, or can we do that in the P's and G's? I guess
7 that's my question.

8 MS. HIGASHI: If the Commission wants to adopt a
9 unit cost, the unit cost is in the P's and G's. It would
10 be in the P's and G's. And we have done this before, where
11 the entire mandate, all of the reimbursable activities,
12 have been represented by one unit cost, or, sometimes, only
13 certain components of the reimbursable activities have a
14 unit cost associated with it.

15 MR. SHERWOOD: That would be my recollection.

16 Therefore, if we were to defer this or if we hear
17 this case at a later date, you could come back to us with a
18 proposal on a unit cost basis to be in this, in the P's and
19 G's?

20 Let's say staff repeats P's and G's on this day,
21 is it too late to address the unit cost issue?

22 MS. HIGASHI: No, it would not be.

23 The only other matter that I just want to note
24 for the record is just the testimony that I heard from
25 Mr. Warren and the introductory comments that I heard from

1 Mr. Miyashiro, that indicated that the cost savings that
2 were attributed to this program were so significant that
3 even if an actual cost claim for actual costs were put
4 forward, that there would be such significant cost savings
5 associated with the program that there should not be
6 significant costs. The costs should be de minimus, and
7 that's what I was hearing from both Mr. Miyashiro and
8 Mr. Warren.

9 So I think that was what I sensed. The reason
10 being is because it could end up being that we spend more
11 time on this matter than the actual costs incurred. I
12 don't know that, but we don't have any cost data in the
13 record. But, as you can see from looking at the
14 reimbursable activities here, there are very few activities
15 that remain.

16 The claimants' original test claim was much
17 broader in scope, and the majority, if not ninety-five
18 percent, of the activities were denied. So all that
19 remains are these simple functions of writing information
20 onto the forms that you see attached to the proposed
21 parameters and guidelines, that are attached to the memo
22 from Mr. Miyashiro.

23 MR. SHERWOOD: And, when these claims go to the
24 Controller's Office, the offsetting savings would have to
25 be recognized, hopefully, and, therefore, we're saying the

1 cost would be very minimal, possibly minimal, from -- at
2 this point in time.

3 MS. HIGASHI: Correct. And the only other
4 activity is the activity of mailing out copies,
5 distributing copies of Mr. Miyashiro's memo with the forms
6 to the school districts in that county so that those costs
7 would be simple to calculate, because the most it's going
8 to be --

9 MR. SHERWOOD: My problem is: While I agree with
10 most of that, it still doesn't address this unit cost issue
11 of \$1, or, possibly, a very minor amount, and whether we
12 actually need to take another step and address that issue
13 in more detail. And I know that Walter is saying that we
14 have a huge agenda, and is it worth, in my mind, uh --

15 MS. GEANACOU: May I ask a clarifying question?
16 Normally, we see in the --

17 This is Susan Geanacou, Department of Finance.

18 -- boilerplate the requirement to include any
19 revenue or any offsetting savings. And I just wanted to
20 clarify to see if I was missing that language in these P --

21 MS. HIGASHI: It's on page 12.

22 MS. GEANACOU: I realize that my copy does not
23 have a page 12. I go from 11 to 13. I only have
24 odd-numbered pages.

25 MS. OPIE: Here you go, Susan.

1 MS. GEANACOU: Okay. Thank you.

2 MR. SCRIBNER: Can I comment briefly?

3 CHAIRPERSON MIYASHIRO: Well, let's let

4 Ms. Geanacou finish her thought and then --

5 MR. SCRIBNER: They're in there.

6 David Scribner.

7 MS. GEANACOU: My concern was that the language
8 was there to at least address the concern of whether or not
9 that offset would be required. Okay.

10 CHAIRPERSON MIYASHIRO: Mr. Scribner.

11 MR. SCRIBNER: I just wanted to clarify one thing:
12 I think that there's a misconception, as far as the
13 offsetting cost here. This was a redo. The activities
14 were done, as far as the count, and then they, the state,
15 came back and said, "Fill out these forms. Give us this
16 data." This was a redo on top of data that was already
17 presented.

18 Now, yes, it is cheaper to do it now than it was
19 prior, but this is a completely new process that's not
20 linked to what happens after. So this discussion of the
21 fact that it's less expensive to do it now than it was
22 before is accurate but that has no bearing on the actual
23 activities associated with completing the form and the
24 things that the districts had to do to complete those
25 forms.

1 It's -- you're comparing apples and oranges.
2 Those should not even be discussed in the same sentence,
3 because there's no correlation between the two. We would
4 not have any offsetting savings because we went and redid a
5 whole new process, which is now the process that we engaged
6 in, after we had done the more expensive process before
7 that. And I think it was getting a little -- they were
8 twisting the present and the past.

9 As far as what the -- Chairman Barnes' comments,
10 the claimant would second that. This is a minimal claim,
11 and you are talking about increasing the mandate
12 reimbursement process costs for this claim exponentially.
13 We will have to go out -- if the Commission decides to put
14 this off and produce a survey -- to get a head count of a
15 significant number of small, medium, and large districts,
16 as this Commission has required in the past, to get a good
17 cross-section to come up with a proper unit cost to refute
18 the unit cost that the chair has proposed. That will be a
19 very expensive and time-consuming process on a claim that,
20 quite frankly, many districts won't even meet the
21 thousand-dollar threshold anyway. You won't even see a
22 claim.

23 So the claimants think that postponing it is
24 actually -- while we understand the chair's position, it
25 actually does more harm than good. We incur many more

1 hours and they incur many more legal fees to produce the
2 survey, to review it, to make sure it's accurate, to file
3 comments, staff has to take the time to do it. On a claim
4 this small, you're not going to see many claims in the
5 first place.

6 I would suggest that you move staff's rec. and let
7 the process take care of itself. You now have a
8 thousand-dollar threshold. That is a very high threshold
9 for many districts to overcome with such minor activities
10 here.

11 Now, had we gotten the claim as we requested, we'd
12 easily be over the thousand-dollar threshold, but what we
13 have before you is extremely minimal. And we would just
14 ask -- let's move it forward. Let's get this through the
15 process. And, as Chairman Barnes said, let's move onto the
16 harder issues.

17 Thank you.

18 MR. SHERWOOD: Mr. Chair, I have a comment for the
19 Department of Finance.

20 Evidently, you are not aware of the offsetting
21 savings and reimbursement item being in the P's and G's.

22 Does that -- where do you stand? Are you more
23 comfortable with that being in there?

24 MS. GEANACOU: I wanted to, number one, be clear
25 that that language was in here. I expected that it was. I

1 realize my copy of the document didn't have the
2 even-numbered pages.

3 As to the proposal for unit cost or unit cost of a
4 particular dollar amount, the Department of Finance staff
5 has not had a chance to assess the potential merits of a
6 unit-cost approach or a particular unit cost as proposed.

7 So, if the Commission were to want to go in that
8 direction, we would want an opportunity to take a closer
9 look at it before we took a position on it. We were
10 prepared to support the staff analysis as written today.

11 MR. SHERWOOD: Thank you.

12 CHAIRPERSON MIYASHIRO: Mr. Barnes.

13 MR. BARNES: Just to clarify the offsetting
14 savings and reimbursement issue, because I don't want
15 people to go away thinking one thing when, in fact,
16 something else will happen, this offsetting savings is
17 supposed to be linked to the specificities of the mandate.

18 So the fact that the change in attendance
19 reporting process produced savings along the lines, at one
20 point, and then this requirement comes through later on, it
21 doesn't necessarily mean that any excess savings, if you
22 want to call it that, from the original change will
23 necessarily accrue and be offset against these particular
24 costs.

25 So the way in which the offset savings and

1 reimbursement works is that if the statute talks about, you
2 know, this is a mandate, and, by the way, you can collect
3 this fee, then those fees are supposed to be used to offset
4 it. So you can't necessarily use savings that were
5 incurred previously to overcome a new activity, no matter
6 whether it's a big activity or a small activity. So I just
7 wanted to clarify that.

8 MS. GEANACOU: If I may, Susan Geanacou,
9 Department of Finance.

10 My understanding was that if that was going to be
11 an issue it would have been an issue decided on the test
12 claim itself as a basis for potentially barring costs
13 mandated by the state, so I trust that's not the issue
14 before us today.

15 Please clarify, if I'm incorrect.

16 MS. SHELTON: That's correct. It would be an
17 issue at the test claim phase.

18 CHAIRPERSON MIYASHIRO: Any further discussion?

19 MR. ROSENBERG: Well, it's an interesting
20 discussion because the chair has kind of thrown a
21 bombshell in the middle of this item. And my initial
22 reaction is, out of fairness, we ought to continue it for
23 everyone concerned, so they have an opportunity to comment
24 on it, but, on reflection, if it is truly a de minimus
25 claim, it will be dealt with with a thousand-dollar

1 threshold, and we ought to just adopt the parameters and
2 guidelines and move on.

3 CHAIRPERSON MIYASHIRO: Motion?

4 MS. HIGASHI: There is a motion and a second.

5 CHAIRPERSON MIYASHIRO: Okay. Just as a -- kind
6 of a follow-up, I know that I came to this late, so I think
7 a lot of the discussion that would have been pertinent,
8 that I'm trying to raise here, is too late, and the only
9 way to address it, I felt, would be to propose a dollar
10 reimbursement rate at some de minimus -- as Mr. Starkey has
11 put it -- reimbursement rate to raise what, I think, were
12 some of the issues that may have not been addressed at that
13 time.

14 I'm certainly willing to support staff
15 recommendation on this.

16 MR. ROSENBERG: Had you asked for a penny, it
17 might have been a different story.

18 CHAIRPERSON MIYASHIRO: Oh, okay.

19 Any other discussion?

20 (No audible response.)

21 CHAIRPERSON MIYASHIRO: Paula, please call the
22 roll.

23 MS. HIGASHI: Mr. Sherwood?

24 MR. SHERWOOD: Aye.

25 MS. HIGASHI: Ms. Williams?

1 MS. WILLIAMS: Aye.

2 MS. HIGASHI: Mr. Barnes?

3 MR. BARNES: Aye.

4 MS. HIGASHI: Mr. Lazar?

5 MR. LAZAR: Aye.

6 MS. HIGASHI: Mr. Rosenberg?

7 MR. ROSENBERG: Aye.

8 MS. HIGASHI: Mr. Miyashiro?

9 CHAIRPERSON MIYASHIRO: Aye.

10 MS. HIGASHI: Motion adopted.

11 CHAIRPERSON MIYASHIRO: All right. I think we

12 might now take a lunch break, if that works for everyone.

13 And --

14 MR. BARNES: I have to leave by 1:00 o'clock. You

15 still have a majority here.

16 MR. ROSENBERG: I have to leave at 3:00 for a

17 4:00 o'clock meeting out of town, so I don't mind, if we

18 have an hour's worth of work, we probably should continue.

19 CHAIRPERSON MIYASHIRO: If the Commission is

20 willing to move ahead, we will proceed to the next item.

21 Okay. Thank you very much.

22 MS. HIGASHI: Item 13 will be presented by

23 Cathy Cruz.

24 CHAIRPERSON MIYASHIRO: Ms. Cruz.

25 MS. CRUZ: Good morning.

1 In 1979, the Board of Control, predecessor to the
2 Commission on State Mandates, found the Immunization
3 Records test claim to be a reimbursable state mandate.
4 Under this mandate, school districts must require,
5 maintain, and report on immunization records for DPT,
6 polio, and measles. Costs incurred for compliance with
7 Immunization Records are reimbursed through the State
8 Mandates Apportionment System, or SMAS. In fiscal year
9 2001-2002, the unit rate was \$5.11 per new entrant.

10 On August 24, 2000, the Commission adopted the
11 Statement of Decision for the Immunization Records:
12 Hepatitis B test claim, the subject of these parameters and
13 guidelines. The test claim legislation added mumps,
14 rubella, and hepatitis B to the list of diseases an
15 entering student must be immunized against prior to first
16 admission into a school, and amended statutes and
17 regulations relating to the monitoring, recordkeeping,
18 reporting, and parent notification requirements. Hepatitis
19 B immunizations were also required for students entering
20 the seventh grade.

21 The Immunization Records: Hepatitis B program
22 requires, for new entrants, 10 new activities for hepatitis
23 B immunizations in addition to three new pupil exclusion
24 and parent notification requirements for DPT, polio, and
25 MMR. In addition, the program requires 10 new activities

1 for hepatitis B immunizations for seventh grade pupils.
2 Table 1 on page 15 of the staff analysis summarizes the
3 requirements of both programs and illustrates that the
4 number of reimbursable activities substantially increased
5 from the original mandate.

6 Staff issued a draft staff analysis on June 6,
7 2003, that included proposed unit cost rates for new
8 entrants and seventh grade pupils. Staff developed a unit
9 cost rate for this program using the SMAS rate for
10 Immunization Records as the basis. Staff determined the
11 unit costs by dividing the SMAS rate by the number of
12 activities included in the Immunization Records program and
13 then multiplied that result by the number of activities
14 found to be reimbursable under the Immunization Records:
15 Hepatitis B program. For fiscal year 2001-2002, the
16 proposed unit rate for new entrants is \$6.48, and the unit
17 rate, the proposed unit rate, for seventh grade pupils is
18 \$3.41.

19 The claimant supported the staff analysis and
20 proposed unit costs. The Controller's Office did not
21 object to the unit costs. The California Department of
22 Education and the Department of Finance opposed the
23 proposal and disagreed with the methodology used to
24 calculate the unit costs.

25 The Department of Finance proposed an alternate

1 methodology that relies on the number of boxes to be
2 checked on the form PM 286B, or the "California School
3 Immunization Record." Finance proposes increasing the
4 amount that is currently in SMAS for Immunization Records
5 by 25 percent. While the function of recordkeeping is one
6 of the new activities for hepatitis B immunizations,
7 Finance's proposed methodology does not allow for the other
8 nine reimbursable activities or the three new requirements
9 related to pupil exclusion and parent notifications for
10 each of the three immunizations required in the original
11 program.

12 Education and Finance also noted that the
13 requirement that seventh grade pupils be checked for
14 hepatitis B immunization be eliminated after the 2004-2005
15 school year. Staff agrees that the immunization records of
16 kindergartners beginning in the 1997-1998 school
17 year would have already been reviewed for hepatitis B
18 immunizations by the time they reach the seventh grade in
19 2004-2005. But as long as these activities are required by
20 statute, they cannot be completely eliminated from the
21 parameters and guidelines.

22 Until the Legislature amends or repeals the
23 statute, schools would continue to request and review proof
24 of hepatitis B immunizations for students entering the
25 seventh grade, as well as perform specified documentation

1 and reporting requirements. Thus, record review and
2 reporting activities will continue to be reimbursable.
3 To address the concerns, however, staff included, as an
4 assumption, that beginning with the 2004-2005 school year,
5 only five of the ten activities are necessary, thereby
6 reducing the proposed unit costs by half.

7 Staff recommends that the Commission adopt the
8 proposed parameters and guidelines, beginning on page 23.

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

11 MS. BERG: Carol Berg, Education Mandated Cost
12 Network.

13 MR. PALKOWITZ: Good afternoon. Art Palkowitz on
14 behalf of the San Diego Unified School District.

15 MR. WILKENING: Mike Wilkening with the Department
16 of Finance.

17 MR. JOHNSON: Blake Johnson, Department of
18 Finance.

19 MR. SANCHEZ: And Juan Sanchez, California
20 Department of Education.

21 CHAIRPERSON MIYASHIRO: Ms. Berg.

22 MS. BERG: Yes. Thank you, Mr. Chairman.

23 We would like to begin by thanking the staff.
24 They did an incredible job working with a lot of activities
25 that are different from the basic immunization.

1 The State Controller's Office also participated
2 and set forth recommendations in their letter, and we have
3 no problems, whatsoever, with either the staff
4 recommendation nor the State Controller's recommendation to
5 move this claim forward.

6 But I have to comment, particularly to you,
7 Mr. Miyashiro, that the process is broken, and the reason
8 it's broken is because the Department of Finance does come
9 to the meetings initially, and they did present a
10 methodology that was based upon counting the number of
11 boxes on a form, and they appeared before this Commission
12 and taken shots at the surveys and documentation that the
13 claimants had brought forward claiming every single time
14 that they are not a valid, statistically solvent,
15 methodology, and the numbers, therefore, are not valid,
16 and, yet, they came forward with a counting of boxes and
17 claim it's valid.

18 In their rebuttal to the staff's recommendation,
19 they further go on to indicate that they know and can, I
20 assume, validate whether or not the workload is 25 percent
21 or not of a particular workload that exists.

22 Now, we are not aware of them ever having
23 performed these activities. The methodologies that they
24 set forward are based not upon actual activities or work
25 performed, nor on the salaries and benefits of the people

1 performing those duties. And we would hope that, in the
2 future, when unit costs are discussed--and we believe they
3 should be--that the Department of Finance at least come
4 forward and not be disingenuous, in terms of their
5 proposals.

6 We believe that when we left, on March the 27th,
7 that the Department was going to go back and take a look at
8 what was discussed during that meeting and that a follow-up
9 meeting would occur. We heard nothing from the Department
10 of Finance until we received, in the mail, their response
11 to the Commission moving this item forward.

12 Now, that doesn't make the system work. But my
13 whining session is over, and we would ask that you support
14 the staff recommendation.

15 CHAIRPERSON MIYASHIRO: Mr. Palkowitz.

16 MR. PALKOWITZ: I wanted to take an opportunity to
17 review our district's analysis, the second largest district
18 in the state. Under the new ~~entrance~~^{entrants} activities, where
19 there's an estimate of \$6.48 and \$6.59, our estimate is
20 \$12.49, almost double.

21 I think what's happening in this analysis is that
22 these activities are really taken as a whole and looked at
23 equally. What's new to this activity, from this mandate,
24 is the parent notification. We're obligated to notify the
25 parent and to follow up with a phone call.

1 There's another mandate that many of you might be
2 familiar with, what's called a notification of truancy,
3 where recordkeeping must kept, and then a letter was sent
4 out to the parent when the pupil is classified as a truant,
5 and then there is further follow-up, too. In that mandate,
6 a unit rate of \$13 has been established, which is similar
7 to what we've come up with, the \$12 analysis.

8 So the point is that we're willing to support the
9 staff analysis of the \$6. We believe it greatly exceeds
10 that, but, in unit rate resolutions, we feel it's
11 beneficial to both parties as it'll take less recordkeeping
12 on our part, and, obviously, it would involve less auditing
13 and involvement from the State Controller. So, even though
14 we believe it is substantially less, we feel that the staff
15 analysis is something that we could agree with.

16 Thank you.

17 CHAIRPERSON MIYASHIRO: Mr. Wilkening.

18 MR. WILKENING: Michael Wilkening with the
19 Department of Finance.

20 I'd like to, first off, say that our participation
21 in the conferences and our proposal are not disingenuous,
22 that we actually did participate in good faith in those,
23 and that the proposal that you have in front of you from
24 the Department of Finance is one that we do support.

25 We looked at the workload that's associated with

1 doing the current mandate, and what's being added here is a
2 single shot. What you have in the staff analysis, and what
3 the claimants are supporting, is a more than one hundred
4 percent increase in the rate. We think that that's simply
5 too high. We think, looking at that workload, that the
6 25-percent increase is accurate and at least supportable.

7 MR. SANCHEZ: Juan Sanchez, Department of
8 Education.

9 We don't really have any additional comments,
10 other than those that we submitted in writing. Again, when
11 we submitted our comments, the main contention there was
12 that the cost -- the unit or the marginal cost to add on to
13 the existing mandate seemed excessive. And we pointed out
14 that you're looking at about 126-percent increase over and
15 above what you do now, acknowledging that there's a couple
16 of extra requirements, but just -- I think the cost seemed
17 excessive.

18 CHAIRPERSON MIYASHIRO: Comments or questions from
19 members of the Commission?

20 MR. ROSENBERG: We have quite a range of costs
21 here, and, frankly, I'm amazed that if you think the costs
22 are 12 to \$13 that \$6 is hunky-dory.

23 MR. PALKOWITZ: Well, I think as a first
24 observer -- I believe a first observer, as yourself, would
25 think that. You haven't been involved in California

1 Supreme Court cases, appeals, and a lot of other issues
2 that -- and audits from the State Controller's office.
3 It's extremely time consuming to go back years and years,
4 and the time that's involved is -- and I think, as my years
5 as a litigator, I would agree with you, that it's quite a
6 hit to take, but I think for this process, and with the
7 claimant's support, that this is something we can live
8 with.

9 MR. ROSENBERG: Just so you know, I've been
10 involved with local government for twenty years, and, as a
11 chairman of the lottery, we get so many audits that we have
12 designated offices for the State Controller at the lottery,
13 because they're auditing us all the time, so I'm very well
14 aware and wise.

15 Thank you.

16 CHAIRPERSON MIYASHIRO: I would ask if the State
17 Controller's Office or the Legislative Analyst's Office
18 would care to comment on these numbers being put forth?

19 MR. WARREN: Paul Warren, again, from the
20 Legislative Analyst's Office.

21 I think we tend to view the cost of this more
22 similarly to the Department of Finance, in that it really
23 is an added cost to the existing mandate for immunization
24 records. You can make a case that there's actually very
25 little cost here on the basis that you're adding one more

1 shot, essentially, to three existing shots and that the
2 process that you go through will be the same, that, for the
3 most part, most parents will either get the shots or they
4 won't have them. And, um -- so that you'll be identifying
5 the same children as not having the appropriate
6 immunizations.

7 I think that's kind of speculative, however, for
8 your purposes, and I think if I were to make a
9 recommendation to you I would say that, in going from three
10 to four shots, that's a 33-percent increase. If you said a
11 33-percent increase in the existing immunization rate, it
12 would be \$1.75. Now, there are some new activities that
13 aren't currently done and where we don't really have a good
14 cost information on.

15 And so I think -- you know, one thing you could do
16 would be to make a decision on those activities that are
17 just expanded, because we've added a new shot to the list
18 of shots that are required, and then to say that we would
19 accept actual cost claims for those new activities where we
20 don't really have good information on, and, in that way,
21 maybe we could roll that, in the future, into one cost
22 rate, once we have a better understanding of what those
23 costs actually are.

24 I would be hesitant to recommend to you today to
25 develop any kind of a per unit cost on activities that we

1 don't have any track record for, in terms of actual claims.

2 MR. ROSENBERG: I need to understand something
3 that's driving me crazy.

4 The Department of Finance is saying there's a
5 25-percent increase in the number of shots and the
6 Controller is saying there's a 33-percent increase in the
7 shots.

8 MR. WARREN: Legislative Analyst.

9 MR. ROSENBERG: Legislative Analyst.

10 So which one is correct?

11 MR. WILKENING: And, actually, it's both.

12 This is Michael Wilkening with Finance.

13 MR. ROSENBERG: Well, that explains a lot.

14 MR. WILKENING: It's -- the number of shots has
15 increased by 33 percent. The number of boxes that you're
16 checking off and putting dates in has increased by 25
17 percent. So you aren't -- you aren't checking them for
18 every grade. Some of them only require it for a couple of
19 grades, so it's a change there.

20 MR. ROSENBERG: Now I understand how the
21 Department of Finance and the Legislative Analyst can have
22 different figures and yet both be correct.

23 Thank you.

24 MR. SHERWOOD: Mr. Chair?

25 CHAIRPERSON MIYASHIRO: Yes.

1 MR. SHERWOOD: When I look at Finance and figures
2 from the Legislative Analyst, am I missing something here?

3 Have either of you taken into consideration --
4 both of you ^{have} ~~of~~ mentioned additional services,
5 responsibilities.

6 Are those taken into consideration in either of
7 your numbers? And I understand the Legislative Analyst is
8 really kind of being put on the spot here.

9 MR. WARREN: No. I think what we're suggesting is
10 the new activities, such as notifying parents and excluding
11 the child from the classroom. If they don't have either an
12 exemption or the immunization, that is outside of the \$1.75
13 figure that I suggested might be a reasonable place, and
14 it's outside because we don't really know what the costs
15 are, at this point. We don't have claims to really --
16 audited claims that we can say, yes, these are really the
17 costs and here's how much it is on a per-child basis.

18 So what I'm suggesting is kind of a dual way of
19 approaching it: One is that you say, "We'll give you 'X'
20 amount for the cost of the existing -- the cost of the
21 existing activities, understanding there's additional
22 immunizations required, and then we'll" -- districts would
23 submit claims for those new activities, and that would be a
24 separate reimbursement stream.

25 MR. SHERWOOD: Which, obviously, is not addressed

1 by anything that was brought before us today, the
2 additional activities and the resources that would be made
3 available to pay for those.

4 MS. HIGASHI: In a sense, it's a compromise
5 proposal, and it's new to us hearing it today.

6 MR. SHERWOOD: Yeah. When I look at Finance's
7 figures, I understand, I believe, now that we've got the
8 33 and the 25-percent matter straightened out, but then I
9 look at what staff has done through the analysis and
10 process and I can see where you came to your number, but,
11 frankly, I don't think Finance addresses those services,
12 those additional services, and that's what bothers me here.

13 Not that they're -- they're, basically, going to
14 be correct, and the way -- maybe the way they got there may
15 not be exactly what everybody appreciated, but it could be
16 in the ballpark. But these additional services, that part
17 of the analysis, does bother me.

18 CHAIRPERSON MIYASHIRO: Mr. Silva, would like to
19 comment?

20 MR. SILVA: Shawn Silva with the State
21 Controller's Office

22 We are in concurrence with the staff's analysis,
23 which is why we didn't come forward. We had really nothing
24 to add. We believe that the numbers they had come up with
25 were reasonable.

1 And, at some level, there always has to be an
2 approximation. Absent scrupulous auditing of numerous
3 claims, there's really no way to know, with a hundred
4 percent accuracy, and, at some point, you've got to come
5 down and just say whether it seems reasonable on its face,
6 and our position is, yes, that it is, and we support the
7 Commission's staff's analysis.

8 CHAIRPERSON MIYASHIRO: Thank you.

9 Any further discussion on this item?

10 (No audible response.)

11 CHAIRPERSON MIYASHIRO: I would entertain a
12 motion.

13 MR. BARNES: I just wanted to add one thing that I
14 didn't mention. I wanted to thank the staff for taking the
15 time, because I know it was a lot of work.

16 And, Carol, we did appreciate it, and there was a
17 lot of work into it, and we did appreciate participating in
18 the process.

19 MR. WILKENING: And we would concur with that,
20 that we understand this is quite a process to undertake and
21 getting all the parties together and trying to reach a
22 resolution. That's all.

23 MR. SHERWOOD: Mr. Chair, I just want to get one
24 thing straight.

25 So now we -- and I guess the question is: The

1 Controller feels comfortable with these numbers?

2 MR. SILVA: Yes, we do.

3 MR. SHERWOOD: And the staff feels comfortable
4 with these numbers, and the claimant feels comfortable with
5 the numbers --

6 MS. BERG: Right.

7 MR. SHERWOOD: -- but we still have the Department
8 of Finance and the Legislative Analyst that is not --

9 MR. SANCHEZ: Department of Education.

10 MR. SHERWOOD: Department of Education, I'm sorry.
11 -- that does not.

12 MR. SANCHEZ: Yeah. I think that would be -- and,
13 again, just acknowledging that -- you know, really, when we
14 looked at it, we acknowledged that there was some
15 additional tasks, acknowledging that there was some notice
16 requirements with the past immunization mandate, so
17 acknowledging that the -- strictly the activity of looking
18 at a box, et cetera, you know, wasn't, necessarily, the
19 full extent of the new requirements.

20 Then, from there, looking at what it would
21 actually, you know, reasonably, in our estimation, cost to
22 add those activities when you have, basically, an existing
23 mandate that has over twenty years of data there, and
24 there's been an established unit cost rate, then to add on
25 to that what amounted to over -- you know, doubling of

1 that, just seemed excessive to us.

2 MS. BERG: But I would like to remind the
3 Commissioners that the Department of Education did not
4 submit a proposal. We did not discuss anything that they
5 brought forward, and they had an opportunity to do that.

6 CHAIRPERSON MIYASHIRO: Mr. Barnes, then
7 Mr. Sherwood.

8 MR. BARNES: Well, Mr. Sherwood, did you make
9 your --

10 MR. SHERWOOD: Well, I think I did. I just wanted
11 to finish it off, because my problem, when I look at these
12 costs, is: We're looking at a significant difference here
13 between a dollar, for instance, and \$6.59 per unit. I
14 don't know. I feel uncomfortable about this. I would
15 almost feel like I'd like to see some more analysis. This
16 is not a small ticket item.

17 MS. BERG: But it is, Mr. Sherwood. This is a
18 self-contained mandate that eliminates itself almost to the
19 de minimus level by 2007.

20 MR. SHERWOOD: By 2007?

21 MS. BERG: Right. The majority of this work
22 occurred the very first year that the districts had to do
23 this. Right now, you really need to catch up. So it's
24 probably three years of seventh grade immunization records,
25 but the first year we had to put people out of school. It

1 was a big deal that has now become a lot more routine than
2 it was in those early years. So, as I say, this reduces
3 itself on the natural within a few years.

4 CHAIRPERSON MIYASHIRO: I would like to ask, just
5 to double-check: Department of Finance did raise this
6 issue about the seventh grade cost going to de minimus in
7 '04-'05.

8 Does the staff recommendation here reflect that?

9 MS. CRUZ: Yes. We added, as an assumption in our
10 methodology, that only 5 of the 10 activities required of
11 the seventh graders would be -- continue to be performed,
12 so it cut the unit rate in half, beginning in '04-'05 for
13 seventh graders.

14 CHAIRPERSON MIYASHIRO: Mr. Wilkening, do you have
15 a comment?

16 MR. WILKENING: Yeah. Mike Wilkening of the
17 Department of Finance.

18 The problem here is that if you adopt a unit cost
19 in excess of \$6 the unit that you're working on are new
20 entrants, which is still going to be -- every new entrant
21 is still going to be charged \$6 to this mandate. So, while
22 Ms. Berg says it becomes de minimus in 2007, we would agree
23 that the activities become de minimus, but I'm not sure
24 that the costs actually do.

25 MS. BERG: Well, you can't -- if it goes into a

1 unit cost, you can't claim for anybody that you didn't
2 examine, so fewer students that are new, because that's
3 what it would be, new entrants, and at the seventh grade
4 level only, at that point, um -- one times two is two; it's
5 not 200.

6 CHAIRPERSON MIYASHIRO: Mr. Palkowitz?

7 MR. PALKOWITZ: Yes. Thank you.

8 Art Palkowitz, San Diego Unified.

9 Mr. Sherwood, when you're commenting on the
10 changes from this mandate from previous -- on page 14 of
11 the staff analysis, it says there's, essentially, 10 new
12 required activities. So there is quite a bit of new
13 activity.

14 And, as I mentioned earlier, a big part of that is
15 the notification. And I think there is some precedent with
16 the notification of truancy that has a unit rate of \$13
17 involving recordkeeping, sending out a letter, a follow-up
18 phone call. For us to agree at \$6 here, approximately,
19 seems within reason of the activities that have to be
20 performed.

21 CHAIRPERSON MIYASHIRO: Mr. Barnes, did you have a
22 question or a comment?

23 MR. BARNES: Yeah. I think that if we --
24 examining the history on this might be helpful here. And,
25 if you recall, we were actually set to approve the

1 parameters and guidelines previously, which would have
2 required the actual cost claims. And I believe that, at
3 the request of the Commission, we asked that members, and
4 the interested parties, go back and see if you could come
5 up with a unit cost.

6 And I -- what I'm kind of getting the sense of,
7 and I think you went through this, is that there are three
8 for this cost and three against this cost, and that
9 doesn't, to me, suggest that there's any real agreement
10 about what the unit cost could be. And I keep hearing
11 that, well, it's because somebody knows how much cost has
12 really been achieved or not.

13 So I guess the issue for us is whether or not
14 we're prepared to accept the staff's recommendation
15 associated with -- for cutting the baby, as far as all the
16 information that people have given to them, or should we go
17 back to our original recommendation on the P's and G's
18 which was to -- which had the layout of the specific
19 activities and tell the people to submit actual costs and
20 wait until we have more data? So I guess that's, to me,
21 the question.

22 I take it the staff has done a very good job of
23 trying to weigh the various pieces of information that come
24 in on here, and, unless we have some particular reason to
25 suspect that they have misjudged it, either one way or the

1 other, that it should be either higher or a little lower,
2 then maybe we haven't finished this process.

3 And so I guess the question is: Will we be able
4 to finish this process, since we kind of have the
5 Department of Finance and the L.A.O. saying, "This is the
6 way we've got to go," and, you know, the school districts
7 and ourselves saying, "No. This looks okay to us"? If it
8 isn't possible to achieve consensus, then maybe we ought to
9 just go back to what we had before and say, "Adopt the
10 original parameters and guidelines," and go from there.

11 So I feel uncomfortable in trying to move away
12 from the staff recommendation on this, if we're going to
13 continue to have unit cost, because, in effect, we're
14 basically trying to engage in staff work, that we've
15 delegated to our staff, and to all of the people here, and,
16 if they can't come to agreement on what this issue should
17 be, then -- unless you're willing to accept our staff's
18 recommendation, then either we need to put this over and
19 tell them to go back and crack their heads more on this
20 issue or we should adopt it the way it is or we should go
21 back to what we had before.

22 Now, I will say, in saying that, wrapping it up,
23 I'll ask the staff:

24 Do you have any thoughts about what has been put
25 on the table here, with regard to your staff -- with regard

1 to your recommendation?

2 MS. OPIE: Sure. There's a couple of things I'd
3 just like to say. I think, in the staff analysis, we
4 addressed staff's concerns about the proposal from
5 Department of Finance, which, basically, just relied on the
6 form, and, from what we're seeing as described in Table 1
7 on page 15 on the staff analysis, there's a lot of
8 activities that aren't addressed in just developing or
9 using that methodology.

10 With respect to the comments from the legislative
11 analyst, you know, I think that they -- where they were in
12 seeing the incremental increase in the number of shots and
13 then recognizing that there were those activities that were
14 outside of the dollar amount that they suggested for just
15 the shots.

16 So, you know, again, just based on our analysis,
17 weighing the factors all the same, you know, this is just
18 the best that we have, based on the information that we
19 have, and, from my perspective, I think it was somewhat
20 confirmed, actually, by the legislature analyst, just
21 hearing what they said, about the incremental cost of the
22 shots but then recognizing that there were activities
23 outside of that.

24 MR. BARNES: Given that, I'm going to put forth a
25 motion that we accept the staff's recommendation.

1 MR. ROSENBERG: I'll second that motion.

2 CHAIRPERSON MIYASHIRO: Okay. We have a motion
3 and a second.

4 I would like to make a few comments before we --

5 As Mr. Barnes points out, we did have this before
6 us as adopted in the P's and G's. As you may recall, it
7 was at my suggestion that we have staff try to get together
8 and come up with a unit cost to not only provide a fair
9 reimbursement rate but, in my view, to expedite and
10 streamline the process that, I think, is becoming
11 increasingly burdensome for the claimants as well as the
12 state agencies involved, and involving audits and so
13 forth. And I do respect the right of the various agencies
14 to maintain their own point of view and their own
15 methodologies.

16 I very much appreciate the parties coming together
17 and doing their best to come up with a unit cost that all
18 can agree on. And I suspect that that might not ever be
19 possible. I think what we, as members of this Commission,
20 are faced with is a decision to evaluate the strength and
21 merits of the methodologies put forward, since there are
22 competing methodologies here.

23 In my view, the staff analysis was the more
24 comprehensive one, and it, in fact, did recognize not only
25 new diseases that need to be immunized against but

1 additional activities that were not encompassed in the
2 original set of immunizations.

3 I feel that all parties did try to do a good job,
4 tried to come together. My view, though, is the staff's
5 analysis was the strongest. I intend to support the staff
6 recommendation.

7 Any other comments?

8 MR. ROSENBERG: I would only add that when I
9 looked at the requirements, and there were a number of
10 them, the unit cost established here is not unreasonable at
11 all, and I think it can be viewed, frankly, as on the low
12 side, in terms of all the things that have to be done, so
13 I'll support it, as well.

14 CHAIRPERSON MIYASHIRO: Paula?

15 MS. HIGASHI: I'll call the roll.

16 Ms. Williams?

17 MS. WILLIAMS: Aye.

18 MS. HIGASHI: Mr. Barnes?

19 MR. BARNES: Aye.

20 MS. HIGASHI: Mr. Lazar?

21 MR. LAZAR: Aye.

22 MS. HIGASHI: Mr. Rosenberg?

23 MR. ROSENBERG: Aye.

24 MS. HIGASHI: Mr. Sherwood?

25 MR. SHERWOOD: Aye.

1 MS. HIGASHI: Mr. Miyashiro?

2 CHAIRPERSON MIYASHIRO: Aye.

3 MS. HIGASHI: The motion is carried.

4 MS. BERG: Thank you very much. Thank you.

5 MR. BARNES: Thanks to all of you, too.

6 CHAIRPERSON MIYASHIRO: Yes. Thank you. This is
7 the first shot at it in a long time, and I hope we can
8 develop a cooperative relationship in coming together.

9 MR. PALKOWITZ: Thank you.

10 MR. BARNES: I'd also like to commend the chairman
11 on the suggestion in the first place, that I agree with
12 moving forward on this, and I really think that it was a
13 good effort from all of us, so thank you very much. On
14 behalf of my staff, especially, thank you very much.

15 MS. HIGASHI: This brings us to Item 17. It's
16 the very last tab of your binder.

17 As is customary, I've given you an overview of
18 what was accomplished during the last fiscal year, and I've
19 noted that the Commission met 12 times, and, in the course
20 of those meetings, adopted decisions addressing 19 test
21 claims and 78 incorrect reduction claims, 8 parameters and
22 guidelines and amendments were adopted, and that
23 encompassed major revisions that were made to the
24 boilerplate portion of the parameters and guidelines that
25 provides support and documentation in the claiming process,

1 and those changes were changes that were made to implement
2 the School Bus Safety II audits, as many of you may
3 recall. We also adopted 14 statewide cost estimates and
4 completed one and initiated one new regulatory action.

5 What I provided, on the very last page of my
6 report, is just an overview of what the Commission's
7 decision making has looked like over the past few years,
8 and we have our ups and downs, in terms of how much can
9 actually be accomplished. There is certainly considerable
10 variation in the issues that come to the Commission, the
11 changes that occur in case law, the complexity of the test
12 claims, in terms of the number of statutes that are being
13 addressed in each one, and so I just give this information
14 to you for information.

15 I'd like to shift and just talk, briefly, about
16 what transpired during the month of June. As you may
17 recall, last year AB 3000 established a statute of
18 limitations requiring that all test claims on statutes that
19 had been enacted, going all the way back to the beginning
20 of the mandates reimbursement eligibility period, would
21 have to be claimed by the end of September of this year.

22 So we have started to receive a flood of new test
23 claims based on statutes that go back several years. And
24 you can see from the agenda, though, the blue pages that
25 follow it, the documentation of just what those test claim

1 filings look like. And we ended the fiscal year with
2 having received 51 test claim filings.

3 And, when you look at that detail, you see that
4 they're not simple, with just one chapter of a bill being
5 alleged, with one or two code sections, but they are
6 incredibly comprehensive, going back to '75, '76, '77
7 enactments, of very basic governmental programs. So we
8 have an incredible amount of work ahead of us.

9 What I'd like to note is that it brings our
10 current workload, in terms of test claims that we have in
11 our offices that need to be heard and determined, up to
12 116. Of that 116, about 30 percent of the records are
13 still open, so they're not even ready for us to pick up the
14 files. We've got twenty of our staff starting to work on
15 them, so those records are open.

16 We also have pending a number of incorrect
17 reduction claims, but, this past year, we've had incredible
18 progress in completing incorrect reduction claims, because
19 of the efforts of our staff, coordinated efforts of our
20 team, Cathy Cruz, Shirley Opie, Camille Shelton, ~~K~~atherine
21 ~~Takarsky~~ ^{ToKarski} (phonetic), Nancy Patton, Paul Starkey, Eric
22 Feller, virtually everybody in the office being involved
23 in those analyses, in some shape or form and at some point.
24 We have had a record number of incorrect reduction claim
25 files closed and completed.

1 Of the cases that we have pending there, only five
2 of them have closed records in which we could immediately
3 assign and begin work on, and we have a number of records
4 that are still open. The bulk of those incorrect reduction
5 claims are based on the investment reports mandate, which
6 some of you may be familiar with and recall from our P's
7 and G's amendment process, and so we will be picking up
8 those cases again. We have continued the services of our
9 expert consultant, Connie Jamison, to assist us in
10 evaluating those cases, so we will have that expertise
11 available.

12 The other point of note that I want to make is
13 that the Assembly Special Committee on State Mandates has
14 almost completed its work in evaluating all of the existing
15 programs that have been approved, that had previously been
16 in the budget, had previously been funded, and they have a
17 couple of other issues to consider on mandates, and then
18 they will be putting together a report.

19 The Legislative Analyst's Office and the
20 Department of Finance staff are keeping the score sheets on
21 what their recommendations will be, and, in some cases,
22 they are recommending that legislation be sponsored, maybe
23 even by the committee, to change particular mandates.

24 For example, they are going to recommend that the
25 investment reports mandate and the county treasury

1 oversight committee mandate be reexamined and if there's a
2 way to make them optional, and it's just an example of the
3 kind of work that they're doing. They're just getting
4 ready to move into the next stage, and it's still not clear
5 if this will be a process that will pick up in August and
6 continue into the fall or if it will begin next year, and
7 that is one way of examining the mandate reimbursement
8 process and evaluating proposals for structural reform and
9 change.

10 In order to be ready for that stage in the
11 process, Commission staff has been in meetings with
12 Department of Finance staff, Legislative Analyst staff,
13 committee consultants, representatives from claimant
14 organizations, as well as budget and fiscal committee
15 consultants at various points during the last couple of
16 weeks where the entire mandate process is being examined
17 from the perspective of --

18 The question has come up: Should the Commission's
19 jurisdiction over test claim decisions continue through the
20 parameters and guidelines in the statewide cost estimating
21 process or could there even be an alternate process where
22 the Commission makes its decisions, ending it at the
23 Statement of Decision phase, reporting that decision to the
24 Legislature, Department of Finance, and State Controller,
25 and, somehow, all of those other entities, including the

1 claimants, will work it out and figure out what the amount
2 to be subvned should be, and then that amount would be
3 then reported out through the Governor's proposed budget or
4 through a claims bill process.

5 We've also talked about just what should happen
6 with the claims bill in the future, because I think
7 everyone realizes that the next claims bill is going to be
8 the claims bill that could potentially be over a billion
9 dollars, if not significantly higher, as to who should have
10 responsibility for carrying the claims bill.

11 And we've started to talk about different ways of
12 engaging more members of the Legislature in the mandates
13 process, so, perhaps, the various mandates should be
14 reported back to the policy committees or the specific
15 budget subcommittees that are responsible for having the
16 jurisdiction over that policy area, or that budget area.

17 And it would be up to that committee, then, to
18 author the claims bill for their policy area of bills, or
19 to recommend that those -- and to actually modify those
20 statutes and changing the shells back to being a certain --
21 or recommending that it be suspended through the budget
22 process. And then, also, there's been discussion in
23 proposals about adding subsets to laws that have been
24 deemed to be reimbursable state-mandated programs.

25 So the whole process is potentially going to be

1 coming under the microscope of this committee, this
2 assembly committee. Members of the committee are very
3 interested in getting to this next step in the process.
4 They are very much hopeful that all of these state agency
5 participants will continue to be involved and will either
6 have recommendations to suggest that -- to improve the
7 efficiency of current processes or even to make suggestions
8 about major structural reforms.

9 So I just bring this to your attention. If any of
10 you have any specific proposals that you want to bring
11 forward, that issues that we should add to the table for
12 dialogue, now is the time to do it. I think during this
13 brief recess we can at least get more issues added to the
14 list of issues for discussion.

15 And what -- the biggest concern that is coming up
16 is just that the process, obviously, takes so long, one;
17 two, the record evidence often isn't as perfect as we'd
18 like it to be, in order for the decisions to be made,
19 especially like on parameters and guidelines, on statewide
20 cost estimates; three, when the State Controller's Office
21 has the resources to do an audit, the audit process
22 typically does not begin until the end of the process
23 instead of before the statewide cost estimating process;
24 and, you know, lastly, that, by the time we report to the
25 Legislature what a statewide cost estimate is, that there's

1 nobody remaining in the Legislature to members of the
2 mandates when they were being enacted. So it's very easy
3 for them to look at the new mandates that we're reporting
4 and to say, gee, maybe we should change those laws.

5 There's just so many new issues coming up, but
6 they are issues that, you know, I think all of us,
7 certainly from the staff level, have seen the problems that
8 we encountered in the process that was created in the
9 statute, basically in 1984, that has only had minor
10 technical changes made to it. And, certainly, the
11 Commission has not been a proponent of major change, and
12 I'm not sure that the State Controller's Office or the
13 Department of Finance has either.

14 I think the changes have largely been derived from
15 the efforts of local agencies and school districts working
16 in coalition to make changes to the process. So this is
17 probably the first, or I should say maybe the second,
18 examination of the statutory scheme. Again, it started
19 last year with Senator ^{Peace's} ~~Pesis'~~ (phonetic) efforts, when he
20 chaired the Budget Conference Committee, and AB 3000 was
21 the result.

22 But I expect, at a minimum, the Commission will
23 end up with additional reporting requirements, more
24 frequent reporting requirements, because the realization
25 is really getting new members to -- that it's too long to

1 wait until the statewide cost estimate to find out that a
2 mandate has been approved by the Commission. By the time
3 they're finding out, the statute of limitations of three
4 years is expired, and they're finding that their options
5 are very limited.

6 So if any of you any have any questions about
7 that process -- for the last several weeks, they met every
8 Monday, at 10:00 a.m., and the hearings will continue, I
9 expect, when the Legislature reconvenes in August, but it's
10 been a very interesting process. It's a bipartisan
11 committee, and some of the dialogues are very interesting,
12 and the members are all very much engaged in understanding
13 and learning about the process.

14 CHAIRPERSON MIYASHIRO: Any other questions for
15 Paula?

16 (No audible response.)

17 CHAIRPERSON MIYASHIRO: Okay.

18 MR. BARNES: Just a moment.

19 CHAIRPERSON MIYASHIRO: Mr. Barnes.

20 MR. BARNES: Paula, I wanted to compliment you on
21 Item C here, or the workload report. You and I talked
22 about some changes, and it really gives me a much better
23 idea where we are and where we need to concentrate our
24 efforts, so thank you very much.

25 MS. HIGASHI: Thank you.

1 Lastly, on my report, I cover what we think will
2 be the agenda items for the September agenda, and we are
3 still at a point where much of this is not gelled yet. And
4 I just wanted to note that we are scheduling the
5 standardized account code structures as claimed for hearing
6 for sure in September, and, the other three test claims
7 that are listed here, we don't expect to have them for
8 September at this point in time, but the work on all of the
9 parameters and guidelines is proceeding and should be on
10 that agenda, as well as a rule adoption, a written
11 procedure, that we have not had any comments filed on that.

12 CHAIRPERSON MIYASHIRO: Okay.

13 MR. BARNES: Did you say that the three test
14 claims would not be held?

15 MS. HIGASHI: We don't expect them to go forward.
16 We will have the standardized account codes and we have a
17 reconsideration of another test claim, and then we have
18 several parameters and guidelines.

19 MR. BARNES: Is there some reason why these aren't
20 moving along?

21 MS. HIGASHI: There's different reasons for each
22 of them, and it wouldn't be appropriate of me to state
23 those reasons until the parties themselves are notified.

24 MR. BARNES: Okay.

25 CHAIRPERSON MIYASHIRO: Any other questions for

1 Ms. Higashi?

2 (No audible response.)

3 CHAIRPERSON MIYASHIRO: All right. Any comments
4 from the public, if you'd like to step forward?

5 (No audible response.)

6 MS. HIGASHI: Just one thing, my last chance to
7 do this: I wanted to introduce two of our student
8 assistants for the summer, one of them is almost at the end
9 of her term with us, unless we can persuade her to stay,
10 and that is Sigrid Asmundsen. She is a law student at
11 U.C. Davis Law School and is familiar with local
12 government.

13 MR. ROSENBERG: A constituent of mine, actually.
14 Good to see you.

15 MS. HIGASHI: And also Kan Cheung.

16 Kan, do you want to stand up? Kan assists
17 Jason Rogers of our staff on all of our I.T. functions, and
18 he's really been a delight to have in the office and has
19 more projects on his list of projects than any of you could
20 imagine.

21 CHAIRPERSON MIYASHIRO: On behalf of the
22 Commission, thank you very much for your contributions to
23 the work that we do here, and the very best of luck to you
24 you.

25 If we have no other comments from members of the

1 public, we will move to closed session.

2 And we will probably reconvene --

3 Paula, how long does this take?

4 MS. HIGASHI: As long as you want to make it.

5 CHAIRPERSON MIYASHIRO: Oh, let's say we'll aim to
6 reconvene at 1:15.

7 (Whereupon the Commission Members met in closed
8 executive session.)

9 CHAIRPERSON MIYASHIRO: Okay. The Commission met
10 in closed executive session pursuant to Government Code
11 Section 11126, subdivision (e), to confer with and receive
12 advice from legal counsel in consideration and action as
13 necessary and appropriate upon the pending litigation
14 listed on the published notice and agenda and potential
15 litigation, and Government Code Section 11126, subdivision
16 (a), and 17526 to confer on personnel matters listed
17 on the published notice and agenda.

18 All required reports of the closed session having
19 been made, and with no further business to discuss, I'll
20 now entertain a motion to adjourn.

21 MS. WILLIAMS: So move.

22 MR. SHERWOOD: Second.

23 CHAIRPERSON MIYASHIRO: All those in favor?

24 (Whereupon the Commission Member replied
25 unanimously with ^{aye} "aye.")

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CHAIRPERSON MIYASHIRO: Motion carries.

Thank you very much.

(Whereupon the meeting concluded at 2:00 p.m.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
)
) SS.
COUNTY OF SACRAMENTO)

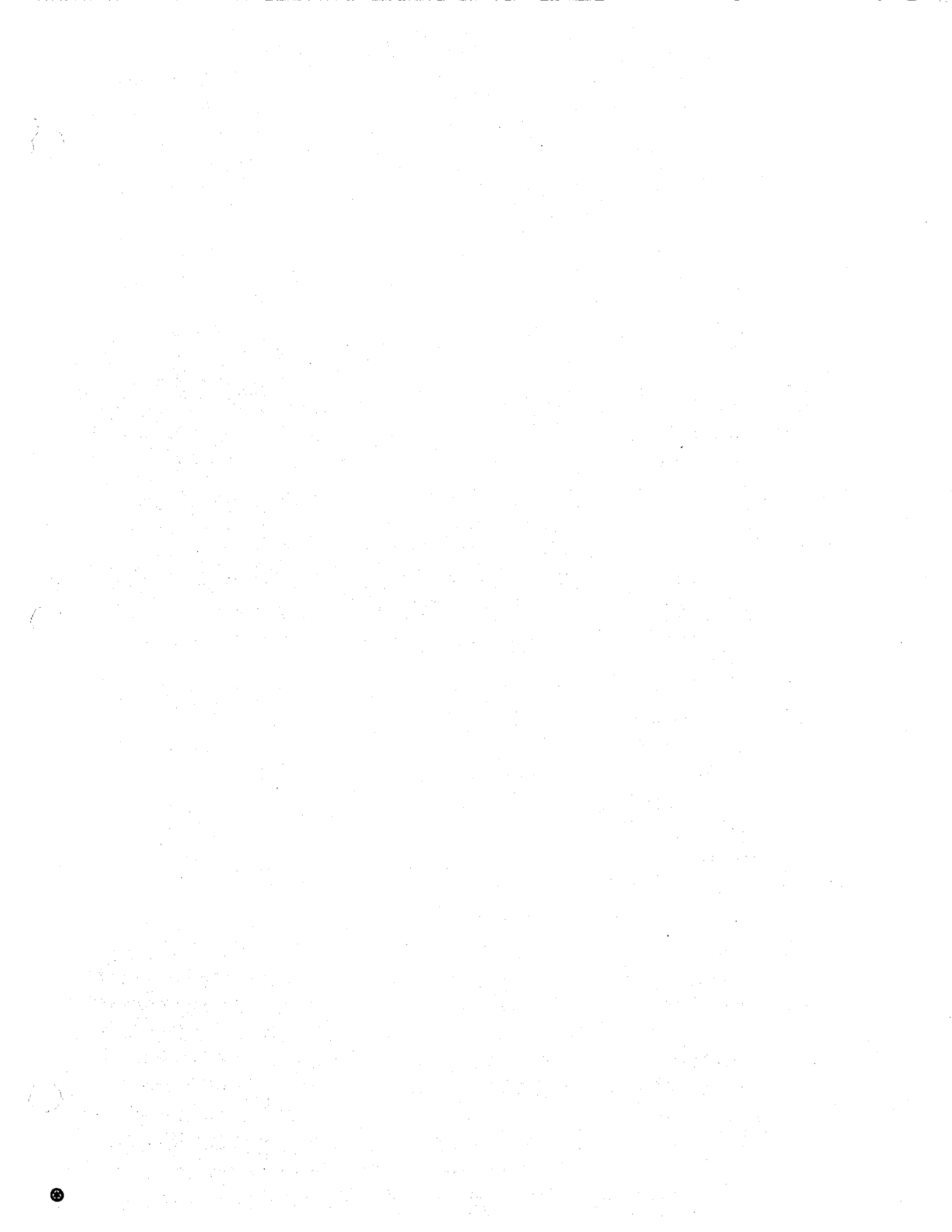
I, STACEY L. HEFFERNAN, certify that I was the Official Court Reporter, pro tempore, and that I reported to the best of my ability in shorthand writing the foregoing proceedings; that I thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 139, inclusive, constitute a complete, true, and correct record of said proceedings.

I further certify that I am not of counsel nor related to any of the parties involved herein, nor am I interested in the outcome of the cause.

JURISDICTION: Commission on State Mandates
CHAIRPERSON: Robert Miyashiro, Chairperson
CAUSE: Public Meeting
DATE: Thursday, July 31, 2003

IN WITNESS WHEREOF, I subscribe this certificate at Sacramento, California, on this 25th day of August, 2003.


STACEY L. HEFFERNAN, CSR & RPR
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