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COMMISSION ON
STATE MANDATES

PUBLIC HEARING

COMMISSION ON STATE MANDATES

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ORIGINAL

TIME: 9:33 a.m.

DATE: Thursday, May 27, 2004

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

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported By:

JANETTE V. VINE
CSR #3978

A P P E A R A N C E S

COMMISSIONERS PRESENT

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

WILLIAM SHERWOOD
(*Commission Vice Chair*)
Representative for PHILIP ANGELIDES
State Treasurer

WALTER BARNES
Representative for STEVE WESTLY
State Controller

JAN BOEL
Acting Director
State Office of Planning and Research

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

CAMILLE SHELTON
Senior Commission Counsel

ERIC FELLER
Commission Counsel

NANCY PATTON
Assistant Executive Director

--o0o--

PUBLIC TESTIMONY

Appearing Re Item 3:

For City of Newport Beach:

PAMELA A. STONE
Maximus
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

DALE JOHNSON (Sergeant)
City of Newport Police Department
870 Santa Barbara Drive
Newport Beach, CA 92660

GLEN EVERROAD
City of Newport
3300 Newport Boulevard
Newport Beach, CA 92658

For the California Highway Patrol:

SCOTT HOWLAND (Captain)
Special Representative to the Legislature
California Highway Patrol

For the Department of Finance:

ELLIOTT MANDELL
Department of Finance
915 L Street
Sacramento, CA 95814

Appearing Re Item 5:

For California State Association of Counties:

ALLAN BURDICK
California State Association of Counties
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

For CSAC-EIA:

GINA C. DEAN
CSAC Excess Insurance Authority
3017 Gold Canal Drive, Suite 300
Rancho Cordova, CA 95670

PUBLIC TESTIMONY

Appearing Re Item 5: *continued*

For County of Tehama and CSAC-EIA:

JULIANA F. GMUR, Esq.
Maximus
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

For the Department of Finance:

JACI MARIE MITSCHKE
Department of Finance
915 L Street
Sacramento, CA 95814

Appearing Re Item 9:

For Denair Unified School District:

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

For the Department of Finance:

BARBARA TAYLOR
Department of Finance
915 L Street
Sacramento, CA 95814

Appearing Re Item 15:

For Education Mandated Cost Network and Los Angeles
County Office of Education:

CAROL A. BERG, Ph.D.
School Services California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

For Department of Finance:

NELSON CAYAGO
Department of Finance
915 L Street
Sacramento, CA 95814

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>17</u>	<u>24</u>	<u>CHANGE "SITE" TO "CITE"</u>
<u>24</u>	<u>10</u>	<u>DELETE "CITY OF"</u>
<u>26</u>	<u>18</u>	<u>CHANGE "SHERWOOD" TO "SHELTON"</u>
<u>120</u>	<u>25</u>	<u>CHANGE "STATUTE" TO "LAW"</u>
<u>121</u>	<u>1</u>	<u>CHANGE "LAW" TO "STATUTE"</u>

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1 BE IT REMEMBERED that on Thursday, May 27, 2004,
2 commencing at the hour of 9:33 a.m., thereof, at the
3 State Capitol, Room 126, Sacramento, California, before
4 me, JANETTE V. VINE, CSR #3978, the following proceedings
5 were held:

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7 CHAIR TILTON: Get your attention. Let's get
8 started with the Commission on State Mandates meeting.
9 It's 9:30.

10 We'll see if we can get through the agenda in a
11 reasonable time today.

12 Paula, could you call the roll call, please?

13 MS. HIGASHI: Mr. Barnes?

14 MEMBER BARNES: Here.

15 MS. HIGASHI: Ms. Boel?

16 MEMBER BOEL: Here.

17 MS. HIGASHI: Mr. Lazar is going to be absent
18 today.

19 Mr. Sherwood?

20 VICE CHAIR SHERWOOD: Here.

21 MS. HIGASHI: Mr. Tilton?

22 CHAIR TILTON: Here.

23 MS. HIGASHI: The first item on today's agenda is
24 adoption of the minutes from the previous meeting. It's
25 Item 1.

1 CHAIR TILTON: Oh, I had one minor amendment.

2 Page 9.

3 Middle of the page it quotes me there in terms of
4 when we were discussing whether this Mandate was funded
5 or not, and if I make the change, it says, "I was trying
6 to find out if Department of Finance could verify this
7 point," instead of, "I didn't expect Finance's budget to
8 cover the Mandate."

9 MS. HIGASHI: We will make that correction.

10 CHAIR TILTON: With that, then, I'm okay with the
11 minutes.

12 MEMBER BARNES: Move for approval.

13 MEMBER BOEL: Second.

14 CHAIR TILTON: We have a motion and a second. If
15 there is no objections, we'll approve the minutes as
16 amended.

17 MS. HIGASHI: Next, we have the proposed consent
18 calendar.

19 CHAIR TILTON: Is there any discussion on the
20 consent calendar? Does anyone want to pull anything off?

21 MS. HIGASHI: Let me just read the consent
22 calendar.

23 Consent calendar consists of Item 11, Differential
24 Pay and Reemployment Parameters and Guidelines, and
25 Item 14, School District of Choice: Transfers and

1 Appeals Limited to the State Controller's Office request,
2 and Item 16, Statewide Cost Estimate for Grand Jury
3 Proceedings.

4 CHAIR TILTON: Are there any objections or
5 comments on the consent calendar?

6 Do I have a motion?

7 MEMBER BARNES: Move approval.

8 VICE CHAIR SHERWOOD: Second.

9 CHAIR TILTON: The motion is seconded. Any
10 further discussion?

11 *(No audible response was heard.)*

12 CHAIR TILTON: All those in favor of the Consent
13 Calendar signal by saying "aye."

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

15 CHAIR TILTON: Opposed?

16 *(No audible response was heard.)*

17 CHAIR TILTON: Motion carries.

18 MS. HIGASHI: At this time, we would normally go
19 to the hearing portion of our meeting, and we have three
20 test claims set for hearing today.

21 The first item that would be heard is Item 3.
22 Because of some airline problems in Orange County, we are
23 going to move that item up in the agenda and take it up
24 later today.

25 So we would begin with Item 5, 6 and 9 and 10.

1 At this time, I'd like to have all of the
2 witnesses and parties for Items 5, 6, 9 and 10 please
3 stand.

4 *(Several people stood up.)*

5 MS. HIGASHI: Please raise your hand.

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

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

10 MS. HIGASHI: Thank you.

11 Item 5 is the test claim on Cancer Presumption for
12 Law Enforcement and Firefighters. This item will be
13 presented by Senior Commission Counsel, Camille Shelton.

14 MS. SHELTON: Good morning.

15 This test claim involves Labor Code section
16 3212.1, which provides an evidentiary presumption in
17 workers' compensation cases for specified law enforcement
18 officers and firefighters that develop cancer during the
19 course of employment.

20 In such cases, the employee need only show that he
21 or she was exposed to a known carcinogen during
22 employment.

23 If the employer makes the decision to dispute the
24 claim, the burden of proof shifts to the employer to
25 prove that the carcinogen is not reasonably linked to the

1 cancer and therefore, the cancer is not an industrial
2 injury.

3 The test claim was filed by the County of Tehama
4 and the California State Association of Counties-Excess
5 Insurance Authority.

6 The CSAC-Excess Insurance Authority is a joint
7 powers authority established by contracting counties for
8 insurance and risk management purposes. CSAC-Excess
9 Insurance Authority does not employ peace officers and is
10 not a party to a workers' compensation claim filed by a
11 peace officer against a local agency employer.

12 In addition, CSAC-Excess Insurance Authority does
13 not have the authority to raise tax revenue and is not
14 bound by the spending limitations of article XIII B.

15 Staff recommends that the Commission deny this
16 test claim and make the following findings:

17 One: That CSAC-Excess Insurance Authority does
18 not have standing and is not a proper claimant for this
19 test claim;

20 And two: That the Labor Code section 3212.1, as
21 amended by the test claim legislation, is not subject to
22 article XIII B, section 6 of California Constitution
23 because it does not mandate a new program or higher level
24 of service on local agencies.

25 Will the parties and witnesses please state your

1 names for the record.

2 MS. GMUR: Good morning, Mr. Chairman,
3 Commissioners.

4 Juliana Gmur on behalf of the County of Tehama and
5 CSAC-EIA.

6 MS. DEAN: Gina Dean, CSAC-Excess Insurance
7 Authority.

8 MR. BURDICK: I'm Allan Burdick on behalf of the
9 California State Association of Counties.

10 MS. NITSCHKE: Jaci Nitschke, Department of
11 Finance.

12 CHAIR TILTON: Okay. Of the witnesses, who would
13 like to begin?

14 MS. GMUR: I would like to begin. Thank you very
15 much.

16 The cancer presumption for law enforcement and
17 firefighters test claim is not a new test claim. It is a
18 revision of an existing claim based on an old claim.

19 The original claim in 1982 came before the Board
20 of Control. At that time, Labor Code section 3212.1
21 involved firefighters only and was a new addition to the
22 law. It was found to be a mandate in 1985.

23 Why? Because of the language within the statute
24 that says there shall be a presumption. There was an
25 amendment, and law enforcement was added. So a second

1 test claim came forward before this Commission in 1989 to
2 address the changes of the addition of peace officers.

3 It was also found to be a mandate in 1992.

4 Today, a new change in the statute comes before
5 you. What has happened to the statute since then is
6 leukemia has been specifically added. But more
7 importantly, it removes the requirement that an employee
8 prove the cancer was reasonably related to a carcinogen.
9 It's part of AOE/COE, which I'll discuss later, and it
10 limits the employer's defenses.

11 Commission staff recommends a finding that this be
12 deemed not a mandate. What I'd like to do is walk
13 through very slowly so we can explain to you how this
14 really is a mandate.

15 Let's look at a workers' compensation case. In a
16 workers' compensation case, an employee is injured on the
17 job, they file. The employer responds and defends, and
18 ultimately, the conflict is resolved.

19 The key issues for the employee is that there was
20 an injury, and it is what they call AOE/COE; that it
21 arose out of employment or was in the course of
22 employment. For obvious injuries, like somebody lifting
23 a box or somebody having some equipment fall over on
24 them, the injury is obvious and the fact that it happened
25 on the job is obvious. So these are very small hurdles.

1 In the case of cancer, however, proving the
2 connection, the AOE/COE portion is very difficult. And
3 it is subject to a lawsuit. And as a result, the
4 Legislature made the change in the law shifting the
5 burden of proof, basically saying to the employee, You
6 may not know what carcinogens you've been exposed to.
7 You may not know about whether the cancer is reasonably
8 related. So what we'll do is instead of having you prove
9 that element, we'll have your employer disprove it.

10 So now let's look at the language in the statute
11 itself. I quote, "The cancer so developing or
12 manifesting itself in these cases shall be presumed to
13 arise out of and in the course of employment."

14 So there is a presumption that the AOE/COE portion
15 of the employee's proof is then removed from them, and it
16 uses the mandatory language of "shall." This language
17 was recognized by the Board of Control and by this
18 Commission in the prior two test claims.

19 Commission staff focus on the next sentence.
20 Let's look at that. I quote, "This presumption is
21 disputable and may be controverted by evidence,"
22 et cetera. Sets forth how the defense may be brought
23 forward.

24 Commission staff cite the City of Merced. The
25 City of Merced is a 1984 case, and the issue, basically,

1 boils down to if something is voluntary, it's not a
2 mandate.

3 If we look at the facts briefly in the City of
4 Merced, the City of Merced wanted to acquire, purchase
5 some land. They did so by eminent domain. In so doing,
6 they had to pay a cost that they were not anticipating; a
7 cost they would not have had to pay if they had used
8 another mechanism besides eminent domain.

9 The court found that because they could have
10 avoided the statute that held the mandate, then there was
11 no mandate.

12 What we're looking at here, and the way that I've
13 explained it in the past, because it's kind of an
14 esoteric legal issue, is I always imagine two paths going
15 forward. City of Merced chose the path to the right, and
16 as such, they stumbled over a rock. They stumble over
17 that mandate rock. If they could have taken the path to
18 the left, they could have avoided the rock entirely. And
19 so that, in essence, is what City of Merced stands for.

20 In this case, when we're looking at that, the
21 opening sentence says, "Shall." It's the second sentence
22 that is says, "May." So there shall be a presumption.
23 There may be a defense.

24 For the employer, there is no way to avoid the
25 "shall" portion of that statute. It can't do something

1 else to stop the presumption from happening.

2 The second test claim that was brought forward for
3 the addition of the peace officers, there was similar
4 language in that statute at the time. That was 1992, and
5 City of Merced is a 1984 case. So City of Merced was on
6 the books and well-known law at the time that this
7 Commission looked at this same language.

8 I'll quote the language that existed when this
9 Commission made its decision in '92.

10 "This presumption is disputable and may be
11 controverted by other evidence, but unless so
12 controverted, the Appeals Board is bound to find in
13 accordance with it."

14 Very similar language to that which I quoted
15 before, "This presumption is disputable and may be
16 controverted by evidence."

17 At the time, this Commission did not apply City of
18 Merced. And the reason is because City of Merced does
19 not speak to whether this is a mandate. It speaks to
20 whether defense costs are activities within the mandate.
21 That's where the "may" language comes in.

22 So this matter is -- this is a mandate; it's been
23 found to be a mandate by the Board of Control, by this
24 Commission in the past. The areas of law that have been
25 adjusted by the recent changes do not affect this basic

1 language that has existed since this law came into its
2 existence. And therefore, the mandate should be found.

3 Before I move on to the other issue, are there any
4 questions?

5 Thank you. And on we go.

6 The first issue is CSAC-EIA's standing. And I
7 apologize, "standing" is another one of those fun but
8 esoteric areas of the law.

9 Let's first look to the plain language of the
10 statute. We're going to shift gears out of the Labor
11 Code and move into Government Code now. We're looking at
12 Section 17520, which states that "A joint powers agency
13 or entity is a special district that can file claims."

14 Now, as the staff has pointed out, a redevelopment
15 agency is also listed as a special district that can file
16 claims. It's included in statute by name, but it's been
17 excluded by Pate's Law.

18 So the question, then, is does the reasoning in
19 the case Redevelopment Agency of San Marcos exclude joint
20 powers authorities? We know it excludes a redevelopment
21 agency, but does that same reasoning apply here today?

22 Let's look. Let's look at what a redevelopment
23 agency is. They are created by ordinance; they have
24 appointed board members; they serve for particular terms;
25 they have very limited powers.

1 A joint powers authority, however, is created by
2 contract. The counties get together; they contract. Any
3 powers that they have, they can assign to this agency.
4 It is basically an administrative function. They have
5 flexible memberships because it's done by contract. And
6 the powers are delegated to them by their membership.

7 San Marcos stands for the proposition that
8 article XIII B, section 6 addresses reimbursement of tax
9 revenues, or the language that's used in the case is the
10 proceeds of taxes.

11 Redevelopment agencies have a different funding
12 source than joint powers authorities. Redevelopment
13 agencies use a tax increment financing. And this is
14 found to be not the proceeds of taxes.

15 But the joint powers authority uses the monies
16 from the counties themselves. I think we will all agree
17 that the counties can bring the test claims. The
18 question is can the JPA, who acts on behalf of the
19 county, bring a test claim for them.

20 The counties acquire their money as proceeds of
21 taxes. They assign the administration of these funds to
22 the JPA. The assignment does not change the character of
23 the funds itself. They remain the proceeds of taxes.

24 I'm going to turn this over to Ms. Gina Dean of
25 CSAC-EIA, who can explain to you the real-world operation

1 of a JPA and why it should be considered a proper party.

2 MS. DEAN: Good morning.

3 The CSAC-Excess Insurance Authority was formed in
4 1979 by a group of California counties that came together
5 for the common need and purpose of insurance and risk
6 management purposes.

7 Currently, there is 53 of the 58 counties that
8 participate in one or more of our insurance pools.

9 We have two workers' compensation programs. The
10 first program that I'm going to talk about is an excess
11 program, and what that means is we will reimburse the
12 county for claims that they have to make payments on
13 above a specified self-insured retention.

14 We have a large pool of money to do that, and we
15 fund that pool by having an actuarial analysis based on
16 our historic losses, the county's historic losses, and
17 then each county contributes their proportional share.

18 If we over-collect and don't use all of that
19 money, we return that to them. If we don't collect
20 enough, then they contribute more.

21 For cancer claims in our excess pool, the county
22 pays those claim payments and then they seek
23 reimbursement from the EIA. In the situation with the
24 state mandated cost claim, they submit the claim, they
25 receive reimbursement from the state. Then they are

1 required to reimburse the CSAC-EIA pool for any funds
2 that we have expended as well.

3 Since the CSAC-EIA is not currently eligible to
4 file the claim on the pool's behalf, we have to go
5 through this administrative process. And from a
6 logistical and practical standpoint, it just seems to
7 make more sense that the pool could make their own claim
8 to be reimbursed for those funds.

9 The second worker's compensation program that I
10 wanted to talk with you about is our primary workers'
11 comp program.

12 There are 18 counties in the state that
13 participate in this pool. We make all of the claim
14 payments on their behalf. It's funded the same way, on
15 an actuarial basis, based on each county's own historical
16 losses. And we essentially are holding those funds to
17 make those payments on their behalf.

18 Currently, since the CSAC-EIA is not eligible to
19 file a claim for reimbursement, the county does that.
20 They receive the reimbursement, and then they reimburse
21 the pool; even though they haven't directly made the
22 workers' comp payments.

23 In conclusion, to the extent that we can ease the
24 burden of the counties to make the administrative filing,
25 and do it on the pool's own behalf, we think it would

1 have a positive impact on the counties to not only reduce
2 their administrative time and costs, but also be able to
3 replenish the pool, which would ultimately reduce the
4 funding requirements on the counties.

5 Are there any questions? Thank you.

6 MS. GMUR: So in conclusion, a joint powers
7 authority is unlike a redevelopment agency. It does not
8 have a tax increment financing. It does use the proceeds
9 of taxes.

10 In that case, City of San Marcos does not apply.
11 If it does not apply, the Commission must look to the
12 plain language of the statute, which includes joint
13 powers agencies or entities as proper parties to file
14 test claims.

15 Any questions?

16 CHAIR TILTON: Members?

17 MEMBER BARNES: I'd be curious to have the staff
18 respond to the two issues.

19 MS. SHELTON: Would you like me to take them in
20 any particular order?

21 MEMBER BARNES: The first one that she talked
22 about.

23 MS. SHELTON: On the substantive merits of the
24 claim?

25 First, the claimants are relying on two prior

1 Commission decisions. Let me first state that prior
2 Commission decisions are not precedential. You're not
3 bound by those decisions. They were adopted in the '80's
4 and the early '90's.

5 They dealt with a cancer presumption initially
6 given to fire fighters and then given to peace officers.
7 And this test claim was subsequent amendments expanding
8 that presumption and changing the burden of proof.

9 The case law is clear that it's not arbitrary or
10 capricious for -- in a quasi-judicial agency to not rely
11 on older decisions if they find that the law supports
12 their conclusion in the current case.

13 Here, we have a recent Supreme Court decision on
14 the Department of Finance case that clearly says you
15 either need to be legally compelled by the state or
16 practically compelled to comply with the statute in order
17 for reimbursement to be required.

18 If you look on Page 11 of the staff analysis,
19 there is the quote of the statute in question, and the
20 claimants are relying on the first sentence, and the
21 first sentence says, "The cancer developing or
22 manifesting itself in these cases shall be presumed to
23 arise out of or in the course of employment."

24 That is a presumption given to the employee. That
25 first sentence doesn't have anything to do or impose any

1 activities on the employer. It's the second sentence
2 which says, "This presumption is disputable and may be
3 controverted," and those are the activities that are
4 within the discretion of the local agency to decide
5 whether or not they want to dispute the claim. They
6 don't have to dispute the claim; they can settle if they
7 want to.

8 The point is the state is not forcing them to
9 engage in litigation and defend that case.

10 So we are not really relying on the City of
11 Merced. We certainly have quoted the City of Merced
12 because the Supreme Court affirmed that finding in the
13 City of Merced case.

14 VICE CHAIR SHERWOOD: Camille, are you relying on
15 the Department of Finance case --

16 MS. SHELTON: Yes.

17 VICE CHAIR SHERWOOD: -- here also, am I right?

18 MS. SHERWOOD: And the case -- the analysis relies
19 on the Department of Finance, and the Department of
20 Finance is quoting from the City of Merced case.

21 VICE CHAIR SHERWOOD: And then that brings you
22 back to the substantial penalty possibility that it was
23 held out in the Supreme Court decision?

24 MS. SHELTON: Right. And how the Supreme Court
25 defines the substantial penalty was that you needed

1 severe and certain Draconian consequences.

2 And here, you know, there may be a situation where
3 their insurance premiums are going to go up, but there is
4 no evidence that that has occurred, and there is no
5 evidence of any severe or certain consequences attaching
6 to this.

7 VICE CHAIR SHERWOOD: And that's an issue that
8 becomes a difficult issue for members, at times, in
9 trying to define Draconian and is somewhat subjective;
10 although, I guess the decision did make it clear to
11 substantial Draconian-type action.

12 MS. SHELTON: And the court did say it is not just
13 a loss of funding for an entity. So for the county's
14 purposes, you know, maybe increased premiums and,
15 therefore, a loss of, maybe, funding that they have
16 received, that alone is not certain and severe or
17 Draconian.

18 VICE CHAIR SHERWOOD: It's an important issue,
19 obviously, because since this has occurred, we've seen it
20 come up in many of the analysis that we've seen just
21 since the decision was made.

22 MS. SHELTON: Right. And before that time, I'll
23 just say that there was a question about the City of
24 Merced case. It originally dealt with the old SB90
25 Revenue and Taxation Code sections. And so there was a

1 question among all parties whether or not it was still
2 valid.

3 And here we have a 2003 Supreme Court decision
4 affirming the decision as valid under article XIII B,
5 section 6.

6 Just moving to the second issue, there are two
7 important factors for our recommendation on the fact that
8 we believe that CSAC-EIA does not have standing as an
9 eligible claimant here.

10 One very important fact is that they are not
11 directly affected by this legislation. They may be
12 indirectly affected, certainly, by the payment of the
13 insurance proceeds, but they are not directly affected.
14 They are not a party to the litigation in the
15 workers' comp case. They do not employ peace officers.
16 So they are not directly affected by this legislation.

17 And we have a Supreme Court ruling in the Kinlaw
18 case saying you have to be a direct party directly
19 affected by the legislation in order to have standing.

20 Secondly, we have the redevelopment agency case
21 which staff believes strongly applies here for a couple
22 of reasons. And I'll read from the court's holding in
23 the redevelopment agency case. The court relied on the
24 Supreme Court's ruling and interpretation of
25 article XIII B, section 6 in the County of San Diego

1 case.

2 In there, they said the Supreme Court explained
3 that section 6 represents a recognition that together
4 articles XIII A and XIII B severely restrict the taxing
5 and spending powers of local agencies. The purpose of
6 the this section is to preclude the State from shifting
7 financial responsibility for governmental functions to
8 local agencies, which are ill-equipped to undertake
9 increased financial responsibilities because they are
10 subject to the taxing and spending limitations under
11 articles XIII A and XIII B. And here the 3rd District
12 Court of Appeals ruled that redevelopment agencies have
13 no independent powers of taxation.

14 And in our record, we have admissions from
15 CSAC-EIA that they do not have an independent power to
16 tax and are not subject to the spending limitations.

17 And, therefore, the ruling and the court's
18 interpretation of article XIII B, section 6 is the law,
19 and the Commission is required to follow that.

20 CHAIR TILTON: Go ahead.

21 MS. GMUR: Juliana Gmur again.

22 In looking at the case, the Department of Finance,
23 the most recent case, because I've already established
24 that City of Merced was the law in 1984, and this
25 Commission made its decision in 1992 that there was still

1 a mandate.

2 So the emphasis is now on the Department of
3 Finance case, most recent case. That case did not change
4 City of Merced; in fact, it upheld City of Merced. And
5 the question is, properly stated, legal compulsion.

6 In this case, we really don't have something
7 that's on the borderline. The borderline cases are those
8 cases that were brought up in Department of Finance.
9 When there is not a law out there that tells you what to
10 do, but there is a moral or social responsibility, is
11 that enough compulsion so that it's really not voluntary
12 when the gun is to your head and nobody's making you do
13 it, so to speak, there is no statute on the books.
14 That's when you start getting the wobblers. That's the
15 cases that are hard to decide. When is something really
16 and truly voluntary?

17 In this case, we actually don't have to go that
18 far because the statute itself uses the "shall" language
19 to create the presumption.

20 Now, the focus is on the second sentence, the
21 sentence that uses the word "may," with regard to the
22 defense costs. But again, that is the activities under
23 the mandate; not the existence of the mandate itself.
24 The opening sentence creates a mandate; it adjusts the
25 burden of proof, just as it did in 1982, just as it did

1 in 1992. It adjusts that burden of proof.

2 It is something that the employer must apply. It
3 is like a gift to the employee in the legal setting, in
4 that the employer, a cancer claim is filed and the
5 employer's hands are tied. The presumption moves in
6 favor of the employee. That is something that the
7 employee does not have to prove. As we said, the
8 employee has to prove two things, injury and AOE/COE.

9 Proving that you have cancer is not going to be
10 difficult. Proving how the cancer rose out of your work
11 would be; except in this case, you don't have to. That's
12 all you have to prove is injury; not difficult. And you
13 have a very easy win. It adjusts the burden of proof in
14 favor of the employee.

15 There is a cost involved when the burden of proof
16 shifts and somebody wins automatically upon proof of
17 injury without having to jump that AOE/COE hurdle, which
18 any workers' compensation attorney can tell you can be
19 quite difficult depending upon the case. And in the case
20 of cancer, nearly impossible.

21 So it was a social policy decision to make that
22 shift. And that is a "shall" mandate.

23 Now, the "may" part comes into the question of
24 once the mandate is found, are the defense costs
25 voluntary or not. And there is the question. There is

1 where Department of Finance, there's where City of Merced
2 comes into play.

3 But as to the establishment of the initial
4 mandate, those cases do not come into play.

5 Finally on the second issue, the San Marcos case
6 talks about redevelopment agencies. So we must look at
7 the language of the case as well as the facts. Are
8 redevelopment agencies like joint powers associations?
9 They are not. True, JPA's do not tax. They don't. They
10 are a mere association. They are established by
11 contract.

12 A group of counties get together, they say, We
13 have to do blank. We need to track child inoculations.
14 And instead of one county doing it, why don't the five of
15 us get together by contract, somebody can chip in the
16 administration funds. Somebody can buy the computer.
17 And we will do this together, because it's better for all
18 of us to have it that way. It's going to save us money;
19 it's going to be easier to do.

20 And at the end of the project, they, by agreement,
21 just simply dissolve the JPA. It ceases to exist. They
22 don't want it to exist; it doesn't exist. If they want
23 to change how it works or what it does, they do so simply
24 by agreement. It's a mere association of the counties.

25 The character of the money remains the counties.

1 The counties can tax. They do work with the proceeds of
2 taxes.

3 Because you hand it to a group of counties to act
4 on your behalf does not change the character of the
5 money. Reliance on San Marcos is not going to be
6 supportive.

7 MEMBER BOEL: I have a question about the --
8 whether this issue about whether or not CSAC is a proper
9 claimant.

10 It's not unusual for associations of all different
11 kinds, associations of the League of Cities, or different
12 types of associations, to have some kind of insurance
13 arrangements where they have a pooling arrangement.

14 So what makes CSAC unique that you should be
15 considered in this case the claimant; whereas many of
16 these other associations, would not? Or else maybe
17 you're saying that a lot of associations should be
18 considered.

19 MS. GMUR: Actually, we're back to the Government
20 Code, which is, because San Marcos really doesn't apply,
21 where we must remain.

22 Government code 17520 specifically includes joint
23 power agencies and entities as special districts that can
24 file test claims. So they have the statutory authority
25 to proceed while others do not.

1 MEMBER BOEL: I'd like to have a comment from
2 Camille about that.

3 MS. SHELTON: Let me try to clarify some rules of
4 interpretation and maybe that might help.

5 In Government Code section 17500, the Legislature
6 has interpreted the Constitution. The court, when they
7 are interpreting article XII B, section 6, will look how
8 the Legislature has interpreted and give it great weight.
9 But they are not required to rely on it.

10 Here, we do have a statute, but since the statute
11 has been enacted, we have subsequent case law and
12 interpretations by the Supreme Court, which we are
13 required to follow, and the Courts of Appeal, which we're
14 also required to follow. And it has been made very clear
15 from multiple jurisdictions and multiple courts that the
16 only entities that have standing in these cases are those
17 that have the ability to tax directly to the taxpayer,
18 and are subject to the spending limitations. And here,
19 we have admissions in the record that they do not have
20 that capability.

21 We also have, you know, testimony in the record
22 that this was a voluntary decision on the part of the
23 counties to join this association to, you know, cover
24 workers' compensation in this particular manner. There
25 is no requirement that they are there. And they can

1 certainly have other methods of paying for their workers'
2 compensation claims and covering their insurance
3 necessities.

4 MEMBER BOEL: Thank you.

5 VICE CHAIR SHERWOOD: Mr. Chair, could I hear from
6 Department of Finance? Because I know early on in
7 reading the material that evidently they concluded that
8 the legislation may create a reimbursable state-mandated
9 program. And then on April 14th, they filed comments
10 basically reversing that position.

11 I'd just like to here the thinking behind that.

12 CHAIR TILTON: Sure. Department of Finance?

13 MS. NITSCHKE: We support the staff analysis at
14 this time.

15 VICE CHAIR SHERWOOD: You did at the time?

16 MS. NITSCHKE: At this point, we do. We support
17 the staff analysis.

18 VICE CHAIR SHERWOOD: Okay. But originally, there
19 was some indication you didn't.

20 MS. NITSCHKE: There was new information provided
21 in the draft staff analysis. And we now support --

22 VICE CHAIR SHERWOOD: And that information was
23 what?

24 MS. NITSCHKE: Well, there is information provided
25 that this case information that was presented, and we

1 were able to change our analysis at that point and
2 support the staff analysis.

3 VICE CHAIR SHERWOOD: Was it somewhat based on the
4 recent Supreme Court decision, Department of Finance
5 case?

6 MS. NITSCHKE: Yes.

7 MR. BURDICK: Chairman, and other members of the
8 Commission, Allan Burdick on behalf of the California
9 State Association of Counties.

10 And just a couple of brief comments. First, on
11 the standing issue, the CSAC-Excess Insurance Authority
12 is a special district under law. They do report to the
13 State Controller as a special district.

14 CSAC, as an example, is an association of counties
15 and does not fall under those provisions and reports. So
16 there is a difference between the association and the
17 authority.

18 The authority is clearly, under law, a special
19 district, and it's one of the special districts that
20 reports to the State Controller, and they conclude that
21 in their special district reports. And so there is a
22 distinction between those, and I wanted to make sure it
23 was clear. Sometimes we're referring to the authority as
24 an association. It is an authority, which is really a
25 joint powers authority, which clearly is a special

1 district under law.

2 I wanted to just kind of see if I could put this
3 in a little more perspective for the lay persons, and
4 getting away a little bit from the legal analysis. I
5 know we need to consider that, but I think we need to
6 look at the law.

7 I was one that happened to be involved with all
8 the legislation that created both of the original cancer
9 presumptions, and I also participated in the original
10 test claim with the City of Sacramento and all of the
11 involvement in the parameters and guidelines and
12 discussion on that.

13 So let me just kind of let the folks know the
14 current situation is is that there are two existing
15 reimbursable state mandated programs; one, for police
16 officers, one for fire fighters.

17 They are identical except they are based on
18 separate statutes. Other than that, the situations and
19 the process and the claiming and so forth is all the
20 same.

21 In those particular cases, what happens is that
22 when a local agency incurs costs for a workers'
23 compensation cancer case related to a police officer or
24 firefighter, depending on which case and which claim, in
25 that particular case, the costs are shared equally

1 between the state and the local government.

2 The decision, originally, of the Board of Control
3 on the firefighter claim, subsequently on the police
4 officer claim, by this Commission, made a determination
5 they were going to continue to say that, in this case, it
6 increased the likelihood that a case would be found
7 against the local agency because of the establishment of
8 the presumption, and therefore, there was a sharing of, a
9 50-50 sharing of costs.

10 In this particular case, what happens is that
11 along came legislation and changed the ground rules and
12 made it much more difficult for local agencies to be able
13 to prevail. So what local agencies are doing in this
14 case, what their preference was, originally, was to seek
15 an amendment to the parameters and guidelines of those
16 two existing test claims, but were instructed, no, they
17 needed to file a test claim because it was on a statute
18 and could not do that. Even though there is no change,
19 otherwise, in the elements of what is being sought for
20 reimbursement.

21 What local agencies are really looking for is
22 saying, Well, we had a 50/50 sharing. You've made things
23 a little more difficult. Now it seems like we should
24 change that sharing. Maybe it should be 55/45, maybe it
25 should be 60/40, or whatever, but clearly what you've

1 done is you've established, by adding -- placing the
2 burden of proof on the employer and shifting it from the
3 employee, you've made it more difficult for the employer
4 to prevail in these cases.

5 And as was pointed out by Ms. Gmur, that is
6 because you're dealing with a cumulative injury, an
7 injury that takes place over a period of time, very
8 difficult to determine one way or the other as to was
9 that related to the job or not.

10 And so they have to kind of go back and show that
11 at some point, the way the law is written, there was some
12 exposure to a carcinogen that's on the international list
13 of known carcinogens.

14 And in this case, in the past, the burden of
15 proof, the presumption was there, but the employee had
16 the burden of proof to prove that. This shifted it to
17 the employer. So that's all we're really looking at.

18 The change has shifted the ground rules. It's
19 just like from your standpoint, if you went from a
20 regular majority to a super majority, obviously, it makes
21 it more difficult to get a super majority, much more on
22 this Commission, than a majority, and that's all that we
23 really did.

24 And so all local agency is really looking at is
25 saying, Okay, let's go back to those two existing test

1 claims, not change any language relative to reimbursable
2 components or anything else. The only thing you look at
3 is should local agencies be getting more than 50 percent,
4 because now they have a new burden. And I think clearly,
5 the Workers' Comp Appeals Board, the Department of
6 Industrial Relations, any attorney that deals in this
7 area would tell you that there will be more cases found
8 in favor of the employee now that we have this change in
9 law.

10 So that's kind of a simple lay person's
11 description of what we're looking for. And, you know,
12 instead of getting involved with all of this discussion
13 on legal issues, as clearly as Ms. Gmur is pointing out,
14 the issues in most cases being raised were there before.
15 There is some discussion about the Department of Finance
16 and the cost.

17 And one of the things I may point out is a number
18 of public agencies are self-insured. And so when they
19 incur a cost for one of these cases, they could incur the
20 full cost. And in a small agency -- and this also
21 extends to volunteers. You could have a volunteer
22 firefighter in a small local government agency, or
23 anyplace else, they could have a case that was now found
24 in this particular case, because the county wasn't able
25 to establish with a burden of proof on it, win that case,

1 and they could incur literally hundreds of thousands or
2 possibly even a million dollars because they would be
3 involved in paying for all of the legal costs in those
4 particular cases, they would be involved in paying for
5 any death benefits, any ongoing benefits to the
6 dependents and so forth.

7 So there can be a substantial cost impact on some
8 local agencies that are involved in this. Whether that
9 cost is incurred initially at one time because they are
10 self-insured, or in an insurance case, those costs are
11 really spread amongst a lot of people, but they are still
12 incurring -- local agencies, collectively, are still
13 incurring that same dollar amount. So somebody might
14 say, Well, your premium didn't go. But in the
15 CSAC-Excess Insurance case, their members, if they have
16 40 members, and the case is a million dollars, those 40
17 members are going to share that cost. So there is still
18 a million-dollar hit on those 40 agencies. Obviously,
19 it's only 1/40th, not the full amount if they were solely
20 self-insured. But there is still a hit on those agencies
21 on a county-wide basis.

22 So anyway, I'd be happy to answer any questions.
23 As I say, I've been involved in this from the beginning
24 of the legislation when Senator Art Torres introduced it
25 a long time ago, and all the way through the process, and

1 the test claims that have participated since that time.

2 Thank you.

3 CHAIR TILTON: Any other comments or questions?

4 MEMBER BARNES: I move the staff recommendation.

5 MEMBER BOEL: I'll second that.

6 CHAIR TILTON: I have a motion and a second to
7 accept staff's recommendation.

8 Paula, do you want to call the roll?

9 MS. HIGASHI: Mr. Barnes?

10 MEMBER BARNES: Aye.

11 MS. HIGASHI: Ms. Boel?

12 MEMBER BOEL: Aye.

13 MS. HIGASHI: Mr. Sherwood?

14 VICE CHAIR SHERWOOD: Aye.

15 MS. HIGASHI: Mr. Tilton?

16 CHAIR TILTON: Aye.

17 MS. HIGASHI: Thank you.

18 MEMBER BARNES: Thank you, very much.

19 MS. HIGASHI: Item 6 will also be presented by
20 Ms. Shelton.

21 MS. SHELTON: Item 6 is the Proposed Statement of
22 Decision on the test claim that you just heard.

23 The sole issue before the Commission is whether
24 the Proposed Statement of Decision accurately reflects
25 your decision today. Unless the parties object, staff

1 recommends that the Commission adopt the Proposed
2 Statement of Decision beginning on page 2.

3 And any minor changes to reflect the vote count
4 will be included on the final decision that will be
5 issued.

6 CHAIR TILTON: Any questions or comments?

7 MR. BURDICK: Well, Mr. Chairman and members, I
8 guess in order to be consistent, I should make a comment,
9 because I raised the same comment with the Assembly
10 Special Committee on State Mandates, and that is, that in
11 the current process with the Commission is they have a
12 draft statement of their decision and they adopt it.

13 But in that particular case, this statement does
14 not include any of the discussions or comments that were
15 necessarily made here today.

16 Now, I'm not sure there were a lot of things that
17 were said in the last half-hour, or whatever, discussion
18 that needed to be in there, but it seems to me there is a
19 concern when you're adopting something that does not
20 include the comments or discussions or the kind of
21 opinions that were related here today.

22 Now, I know that, as example, Member Sherwood
23 raised the issue relative to the Department of Finance.
24 I don't know if there was any comments or changes that
25 may need to be in there, but I just think as a general

1 matter, very often, having a decision that is prepared
2 before the discussion seems to me to be, you know -- is
3 one that is a little troublesome in a sense that it says,
4 This is to reflect our discussion and our decision, when
5 essentially, you're taking something and adopting
6 something that was prepared before you.

7 I don't necessarily expect you to make any changes
8 today. I just wanted to be consistent. I did make those
9 comments to the Assembly Special Committee on State
10 Mandates.

11 Thank you very much.

12 VICE CHAIR SHERWOOD: I think some of those
13 comments are warranted, and it's a little bit of concern
14 to me, also.

15 Now, I don't know if today we said anything that
16 really changes anything that wasn't already put in print,
17 but it seems like the possibility might be there on
18 occasion for something like that to occur.

19 I guess -- I don't know what the -- what we're
20 doing right now is relatively a new process, also. I
21 think what? We've been doing it for several meetings.

22 MS. SHELTON: Right. Under the Commission's
23 regulations, there is no requirement that we send the
24 Proposed Statement of Decision out for comment at all.

25 In the past, what we did was just include it in

1 the binders and that was issued ten days before the
2 hearing. It's certainly within your discretion, and you
3 have the choice of adopting this today or waiting until
4 the next hearing in a couple of months.

5 For this particular claim, I would not have
6 changed any of the language in this proposed decision
7 because there is nothing -- there is no new evidence or
8 no -- there aren't any different legal arguments that
9 were presented orally today that are not already in the
10 written comments.

11 VICE CHAIR SHERWOOD: I'd have a tendency to agree
12 with you, but I also think that it's something that needs
13 to be monitored as we go down the road; that there may be
14 occurrences where we need to put off the vote on this
15 particular issue because of something that occurred
16 during that meeting possibly.

17 MS. SHELTON: We have decided that if new -- you
18 know, sitting here, if we hear evidence that really needs
19 to be in the decision, or the Commission does not adopt
20 the staff recommendation on any particular issue, we
21 would recommend that you not adopt the proposed decision
22 on the same date.

23 We would certainly need a chance to go back and
24 either add testimony or a new legal argument to support
25 whatever the Commission's decision is.

1 CHAIR TILTON: Walter?

2 MEMBER BARNES: Yeah, I guess to a certain extent
3 my presumption is that if there is something new put on
4 the table that you don't have reflected in here, we're
5 voting on this in terms of its wording as well as
6 augmentation that needs to be done to reflect any new
7 things that have taken place here.

8 MS. SHELTON: That's correct.

9 MEMBER BARNES: And I know in some cases, we have
10 changed the actual recommended decision in some cases,
11 you know, to either add something or delete something or
12 to refine something, and we've still adopted the same
13 proposed decision, you know, with the expectation that
14 those changes will be reflected in here.

15 So I would guess to a certain extent, if you feel
16 that there is a need to have something more placed in
17 this, I would encourage you to send the staff, you know,
18 some suggestions so that they can incorporate that within
19 there.

20 MR. BURDICK: Yeah, I just think the comments are
21 that with the process of adopting it right afterwards,
22 really don't -- there is not time, in a sense, to reflect
23 and look at that and say, Is there something that we want
24 to add in there?

25 And I think there have been cases in the past, as

1 I commented, I don't think this one probably is one that
2 does meet that, but I think there has been some in the
3 past that where some of the comments were not in there.
4 And I think even in some of the court decisions, there
5 was some references to the staff decision may not have
6 reflected some of the comments. But I don't want to get
7 into that because then we'll open Pandora's Box.

8 CHAIR TILTON: Thank you for your comments.

9 I think it's a good comment that we as a
10 Commission need to be aware of, that if we do believe
11 that this does not reflect the action, that we should
12 caution ourselves to take steps to back off at least one
13 meeting.

14 So I think it's a good caution. I appreciate you
15 bringing up the point.

16 MS. HIGASHI: I'd just like to assure the
17 Commission that that was always our intent. And that's
18 why we have changed the agenda where we have moved the
19 Proposed Statement of Decision immediately following
20 instead of having it in a separate portion of the agenda.

21 But also, this a change that we implemented one
22 year ago when our budget was cut and we were reduced to
23 bimonthly hearings. And that was in an effort to speed
24 along decision-making; otherwise, that would be an
25 additional two months added to the decision-making

1 process.

2 So in those cases where staff feels it's
3 warranted, we have -- we would obviously recommend that
4 the decision be postponed to the next meeting.

5 CHAIR TILTON: That's good, Paula. Thank you.

6 MS. BOEL: I move that we adopt the staff -- the
7 Proposed Statement of Decision.

8 VICE CHAIR SHERWOOD: Second.

9 CHAIR TILTON: Motion to second. Call the roll,
10 Paula.

11 MS. HIGASHI: Ms. Boel?

12 MEMBER BOEL: Aye.

13 MS. HIGASHI: Mr. Sherwood?

14 VICE CHAIR SHERWOOD: Aye.

15 MS. HIGASHI: Mr. Barnes?

16 MEMBER BARNES: Aye.

17 MS. HIGASHI: Mr. Tilton?

18 CHAIR TILTON: Aye.

19 MS. HIGASHI: Thank you.

20 CHAIR TILTON: Motion carries.

21 MS. GMUR: Thank you, Commission.

22 CHAIR TILTON: Thank you for your testimony.

23 MS. HIGASHI: Item 7 and 8 have been postponed.

24 They will be heard at the July hearing at the request of
25 the claimants.

1 And this brings us to Item 9, The Stull Act, which
2 will also be presented by Senior Commission Counsel,
3 Camille Shelton.

4 *(A discussion was held off the record.)*

5 MS. SHELTON: Item 9 involves the test claim on
6 The Stull Act.

7 The Stull Act was originally enacted in 1971 to
8 establish a uniform system of evaluation and assessment
9 of the performance of certificated personnel within each
10 school district.

11 The test claim legislation, enacted between 1975
12 and 1999 amended The Stull Act. The claimant alleges
13 that the amendments constitute a reimbursable
14 state-mandated program within the meaning of article XIII
15 B, section 6 of the California Constitution.

16 For the reasons provided in the analysis, staff
17 finds that the test claim legislation constitutes a
18 partial reimbursable state-mandated program.

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

21 MR. SCRIBNER: Good morning. David Scribner for
22 the claimant.

23 MS. TAYLOR: Barbara Taylor, Department of
24 Finance.

25 CHAIR TILTON: Mr. Scribner.

1 MR. SCRIBNER: Good morning. Thank you.

2 Good news. I can spare everyone my standard
3 rambling diatribe against staff analysis this morning. I
4 know, Walter, I'm sorry.

5 We support the staff's analysis as drafted, and
6 would urge your adoption of the analysis and the
7 Statement of Decision as currently drafted.

8 CHAIR TILTON: Department of Finance?

9 MS. TAYLOR: We also support the staff's analysis.

10 MEMBER BOEL: Surprise. We are stunned.

11 CHAIR TILTON: Do you have a concern, Bill?

12 MEMBER BARNES: Since this is your last meeting,
13 I'd offer you the opportunity to --

14 VICE CHAIR SHERWOOD: I'm in shock.

15 Do we need to have any comments from staff?

16 MS. SHELTON: No. I did just want to say that
17 there is, you know, we did send out a request for
18 additional briefing on issues, and we didn't get any
19 responses.

20 And so if the Commission does agree with this
21 recommendation, I think there is more work that needs to
22 be done to identify all of the mandated educational
23 programs.

24 We did go through and found several that we found
25 were mandated and used the court's opinion in the

1 Department of Finance case to show the programs that were
2 local discretionary programs. But I don't know, at this
3 point, if that's an exhaustive list and would encourage
4 the parties to participate in the P&G's to be more
5 specific.

6 VICE CHAIR SHERWOOD: I think you brought that up
7 in your write-up and the offsets addressing it in the
8 P&G's.

9 MS. SHELTON: We did. It is in there.

10 VICE CHAIR SHERWOOD: Well, I would move for
11 approval of this particular item, then, with staff's
12 recommendation.

13 MEMBER BARNES: I'll second.

14 CHAIR TILTON: Motion to second. Call the roll.

15 MS. HIGASHI: Mr. Sherwood?

16 VICE CHAIR SHERWOOD: Aye.

17 MS. HIGASHI: Mr. Barnes?

18 MEMBER BARNES: Aye.

19 MS. HIGASHI: Ms. Boel?

20 MEMBER BOEL: Aye.

21 MS. HIGASHI: Mr. Tilton?

22 CHAIR TILTON: Aye.

23 Motion carries.

24 MS. HIGASHI: And then can we have a motion for
25 Item 10, which is the Proposed Statement of Decision?

1 MEMBER BARNES: I move the staff recommendation.
2 MEMBER BOEL: I second it.
3 CHAIR TILTON: Motion seconded.
4 Call the roll.
5 MS. HIGASHI: Mr. Barnes?
6 MEMBER BARNES: Aye.
7 MS. HIGASHI: Ms. Boel?
8 MEMBER BOEL: Aye.
9 MS. HIGASHI: Mr. Sherwood?
10 VICE CHAIR SHERWOOD: Aye.
11 MS. HIGASHI: Mr. Tilton?
12 CHAIR TILTON: Aye. Thank you very much.
13 MR. SCRIBNER: You're welcome. Thank you.
14 MS. HIGASHI: I'd just like to ask, are the
15 parties or the witnesses for Item 3 here yet?
16 UNIDENTIFIED SPEAKER: Not yet. The flight
17 arrives in five minutes.
18 MS. HIGASHI: All right. Then we'll move to a
19 different item at this time.
20 We'll move to the second binder. And we'll go to
21 Item 15.
22 This item will be presented by Assistant Executive
23 Director Nancy Patton.
24 MS. PATTON: Good morning.
25 The test claim legislation for Immunization

1 Records: Hepatitis B added mumps, rubella and hepatitis
2 B to the list of diseases an entering student must be
3 immunized against prior to first admission into a school.
4 Hepatitis B immunizations were also required for students
5 entering the 7th grade.

6 In addition, the test claim legislation amended
7 statutes that required the Department of Health Services
8 to amend regulations relating to the monitoring, record
9 keeping, reporting and parent notification requirements
10 relative to the enforcement of the pupil immunization
11 requirements.

12 Reimbursement for this program is based on the
13 uniform cost allowances. Staff reviewed actual
14 reimbursement claims to develop the proposed statewide
15 cost estimate.

16 The estimate for fiscal years 1997/98 through
17 2002/03 is based on 2,694 unaudited actual reimbursement
18 claims. The cost for fiscal years 2003/04 and 2004/05
19 were estimated by multiplying projected enrollment
20 figures for kindergartners and 7th graders by the uniform
21 cost allowance adopted by the Commission and adjusted by
22 the Implicit Price Deflator.

23 The proposed statewide cost estimate includes
24 eight fiscal years for a total of \$29,629,000.00. This
25 averages to \$3,703,600.00 in annual costs to the state.

1 Staff recommends that the Commission adopt the
2 proposed statewide cost estimate.

3 Will the parties and representatives please state
4 their names for the record?

5 DR. BERG: Dr. Carol Berg, Education Mandated Cost
6 Network.

7 MR. CAYAGO: Nelson Cayago, Department of Finance.

8 CHAIR TILTON: Dr. Berg, if you'd like to start.

9 DR. BERG: Yes, good morning.

10 I am appearing before you this morning a little
11 crabby. And the reason I'm crabby is because the
12 Department of Finance waited until yesterday to pull from
13 the Consent Calendar this item which we have spent three
14 years trying to get resolution on.

15 And so with all due respect, I'm sure that the
16 overall dollar amount is what caused their hearts to stop
17 one more time. And we all have that concern. That is
18 not the issue before you today.

19 But I would point out that part of the problem
20 that we're facing is the length of time that this process
21 is taking. And if you'll look at the number of years
22 that that 29 million dollars represents, it's eight full
23 years of reimbursement.

24 So I'd like to put that in the context of, again,
25 getting to a unit-cost rate, which we struggled with for

1 three full years, with not full cooperation, I'm sorry to
2 report, from the Department of Finance in reaching a
3 solution.

4 And this Commission finally did approve the
5 methodology. And I urge you today to please support the
6 staff recommendation.

7 CHAIR TILTON: Department of Finance?

8 MR. CAYAGO: Finance concurs with the proposed
9 statewide costs -- the proposed statewide cost estimate
10 is consistent with the actions by the Commission.

11 However, we just want to note for the record our
12 concerns with the underlying basis for the statewide cost
13 estimate. We feel that the costs should be based on
14 audited claims rather than unaudited claims. And that
15 some of the activities identified were very similar, and
16 so not all of them would have to be performed.

17 As a result, we feel that the statewide cost
18 estimate overstates the appropriate amount of the valid
19 costs.

20 CHAIR TILTON: Comment from staff?

21 MS. PATTON: Well, we based the statewide cost
22 estimate on the adopted uniform cost allowance. We
23 assumed in our analysis that the cost could exceed the
24 statewide cost estimate if amended or late claims are
25 filed. And we also assumed that the costs could be less

1 if the State Controller audited this program and
2 determined that the claims were excessive or
3 unreasonable.

4 MEMBER BOEL: What happens in that case? If the
5 state --

6 MS. PATTON: Well, you have a statewide cost
7 estimate. If the Legislature appropriates that money in
8 the budget and the claims are subsequently reduced, then
9 all of that money would not be appropriated

10 CHAIR TILTON: Go ahead.

11 VICE CHAIR SHERWOOD: Would you address the issue
12 of the audited -- of the claims not being audited? I
13 know the answer, but I'd like to see it put on record.

14 MS. PATTON: We're basing our statewide cost
15 estimate on the data that we have available. We have a
16 statutory timeline to meet to complete the test claim
17 process.

18 And so we have tried other ways to develop a
19 statewide cost estimate in the past, surveying the
20 claimants. We usually get less than 15 percent response.
21 And so this is the best data that we have when we're, at
22 the time, we're developing the statewide cost estimate.

23 CHAIR TILTON: Is it fair for me to describe that
24 this is basically a budget methodology; that you're
25 estimating potential cost?

1 MS. PATTON: Yes.

2 CHAIR TILTON: And then when the claims come in
3 and are audited by the Controller, that the actual
4 expenditures would be controlled at that point?

5 MS. PATTON: Yes.

6 MS. HIGASHI: Let me clarify then.

7 DR. BERG: No.

8 MS. HIGASHI: What needs to be understood is that
9 this statewide cost estimate is based on the actual
10 claims that are currently on file with the State
11 Controller's Office on the date that we got the printout.

12 What they are based upon are the pupil enrollment
13 figures that were then multiplied by the uniform cost
14 allowances that were in the adopted parameters and
15 guidelines.

16 And when Dr. Berg talks about that three-year
17 process of coming up with the uniform allowance, that's
18 what she's talking about.

19 So based on the underlying documentation that the
20 claims are based upon, no changes really can be made to
21 that uniform allowance at this point in time, unless and
22 until an amendment is filed, and an amendment is adopted
23 to change those numbers.

24 CHAIR TILTON: So the variable is the enrollment,
25 not the --

1 DR. BERG: Exactly. The only thing that would be
2 audited is the number of pupils.

3 CHAIR TILTON: Any other questions of the members?

4 MS. HIGASHI: And the mathematics.

5 CHAIR TILTON: Yes. Do I have a motion or
6 reaction to --

7 VICE CHAIR SHERWOOD: I move for approval.

8 MEMBER BOEL: I second.

9 CHAIR TILTON: The motion and the second to
10 approve staff recommendation.

11 MS. HIGASHI: Ms. Boel?

12 MEMBER BOEL: Aye.

13 MS. HIGASHI: Mr. Sherwood?

14 VICE CHAIR SHERWOOD: Aye.

15 MS. HIGASHI: Mr. Barnes?

16 MEMBER BARNES: Aye.

17 MS. HIGASHI: Mr. Tilton?

18 CHAIR TILTON: Aye.

19 DR. BERG: Thank you very much.

20 MS. HIGASHI: This brings us now to Item 17. This
21 item will also be presented by Ms. Patton.

22 MS. PATTON: The County of Butte has notified the
23 Commission on State Mandates of its intent to file an
24 SB 1033 application on or about September 1, 2004.
25 SB 1033 requires the Commission to review county

1 applications for findings of significant financial
2 distress. The Commission is required to review county
3 applications that include program and financial reports,
4 conduct at least two public hearings on the matter and
5 determine if applicant county is facing significant
6 financial distress within 90 days of receiving the
7 application.

8 County applications are complex because they
9 include budgets, budget forecasts, descriptions of county
10 efforts to constrain expenditures, information on
11 flexibility and spending and resources, debt and cash
12 flow, and unmet budget needs.

13 Commission regulations authorize the Commission to
14 assign this application to a hearing panel consisting of
15 one or more members of the Commission, which shall act on
16 behalf of the Commission, or to a hearing officer for
17 hearing and preparation of a preliminary decision.

18 If assignment is not made, then the application
19 will be set for hearing before the Commission itself.

20 In 1999, the Commission spent \$70,000.00 to
21 contract the Department of Finance to provide the budget
22 and program analysis for Butte County's previous
23 application. This amount did not include the cost for
24 time Commission staff spent in processing the application
25 and reviewing the Department of Finance's draft staff

1 analysis.

2 Staff proposes to continue this practice if
3 Finance staff are available for this assignment.

4 The Commission's budget contains no funding for
5 current year or budget year for the SB 1033 program. If
6 a county application is filed, the Commission is
7 authorized to request augmentation of its budget to fund
8 the cost of completing the application.

9 Once the Commission decides how it wishes to hear
10 the Butte application, a section 27.00 request under the
11 Budget Act can be prepared to request the funding from
12 Department of Finance.

13 Since the last application was completed in 1999,
14 the Commission staff has been reduced by approximately
15 40 percent. There is currently a backlog of test claims
16 on file with the Commission that must also be completed
17 within statutory time frames. The Commission does not
18 have adequate staffing to complete test claim work and
19 SB 1033 applications.

20 Before you today are options for determining how
21 you will hear and determine the Butte County application
22 that will be filed later this year.

23 Option 1: Hearing before the Commission. All
24 Commission members would travel to Oroville for one
25 hearing. There would be salary and travel per diem costs

1 for public members that travel to the hearing. The
2 public member and the two locally elected officials.
3 State agency members could file travel claims with their
4 own agencies for costs. And we would have costs to
5 contract with the Department of Finance for review of the
6 application.

7 Option 2: Hearing Panel. A limited number of
8 Commission members would travel to Oroville for this
9 hearing. Depending on who is on the panel, the costs
10 will vary. And we would also have costs to contract with
11 Department of Finance for preparation of the application
12 and staff analysis.

13 Hearing Officer: You could assign the application
14 to the Office of Administrative Hearings to provide a
15 hearing officer to review the application, conduct the
16 hearing, consider the evidence and prepare a proposed
17 statement of decision that would then be presented to you
18 for determination.

19 And finally, Hearing Officer: Appoint a person
20 with expertise in county fiscal program matters to be the
21 hearing officer and present findings and any recommended
22 Statement of Decision to the Commission. Implementation
23 of this option may require an exemption from Department
24 of Finance. And depending on the expertise of the
25 hearing officer, we would have to assess whether it would

1 still be necessary to contract with Department of Finance
2 for review of the application and preparation of the
3 staff analysis.

4 Staff recommends that the chairperson assign the
5 Butte SB 1033 application to a hearing officer with
6 expertise in county budgets and programs.

7 CHAIR TILTON: You have raised the question about
8 whether Finance would be required to review that finding.

9 Have you had any dialog with them about their
10 willingness to do that?

11 MS. PATTON: Not yet.

12 CHAIR TILTON: Walter?

13 MEMBER BARNES: I had a couple of questions.

14 I was a little confused about the timeline with
15 regard to Butte County. I read the attachment, which
16 basically, I guess, gave Butte County an exemption to
17 reduce its general fund costs from, I think it was,
18 December of '99, December 28th of '99, through another
19 three years, which would have been December 28th of, I
20 guess, 2002.

21 So have they gotten an extension of that?

22 MS. PATTON: No. They are just now deciding they
23 are going to reapply.

24 MEMBER BARNES: And they are reapplying on a
25 prospective basis?

1 MS. PATTON: Correct.

2 MEMBER BARNES: Does anyone know whether or not
3 they returned their general fund benefits to the higher
4 level?

5 MS. PATTON: I don't know for sure. Haven't had
6 that dialog with them.

7 MEMBER BARNES: And in the 1999 process, did the
8 full Commission actually go up and do the hearing?

9 MS. PATTON: Yes.

10 MEMBER BARNES: And I guess one of the questions,
11 I heard that there were two hearings?

12 MS. PATTON: SB 1033 requires a minimum of two
13 hearings, and one of the hearings has to be held in the
14 applicant county. Then -- so you go up and you hear
15 their evidence, and then you have a final hearing here in
16 Sacramento where you make your final determination.

17 MEMBER BARNES: Which I assume would be a regular
18 meeting.

19 MS. PATTON: It can be.

20 MS. HIGASHI: It can be a regular meeting.
21 Sometimes because of scheduling issues and timeline
22 issues, it ends up being a special meeting solely for
23 that purpose.

24 MEMBER BARNES: This is a fairly sensitive issue
25 because you're dealing with, you know, the potential to

1 cut benefits to people.

2 And I understand the desire to try to deal with
3 reduced staff in terms of contracting out the review and
4 the analysis and that kind of stuff.

5 But I raise the question of is this important
6 enough, you know, from the sensitivity of it to have the
7 Commission itself, you know, hold the hearing as opposed
8 to a hearing officer? And I bring that up just as a
9 discussion item for us. I'm not necessarily advocating
10 for it.

11 But I think there is certainly some emotional, if
12 not, you know, even moral reasons for us to at least be
13 there and hear what people have to say.

14 MEMBER BOEL: I have a clarification.

15 If we have the hearing officer go up, then does
16 the second hearing come back to us?

17 MS. PATTON: Right. They would present a Proposed
18 Statement of Decision to the full Commission.

19 VICE CHAIR SHERWOOD: Might I add, as you know,
20 this will be my last meeting, but I was here through the
21 meetings; I think we've probably have seven, eight cases.
22 And I think you're right, Walter.

23 First of all, it's a very significant undertaking
24 for the Board and for the staff. And that has to be
25 recognized. But it is in the law.

1 Secondly, you know, our job is to find a
2 significant financial distress. It's really up to the
3 Board of Supervisors to determine whether or not they
4 want to take the next step and actually implement the
5 cuts.

6 And then, thirdly, of course, we're looking at a
7 group of people that are on general assistance. And I
8 think it's an extremely sensitive and important issue to
9 these people, because even though the cuts in dollars is
10 small, it's a significant percentage of what these
11 individuals have to live on.

12 So I think it's a type of issue that when we
13 looked at this, in prior years, understanding, also, I
14 think, that our budget was in better shape and we had a
15 larger staff, and I think Department of Finance was able
16 to provide assistance, that we felt it was very important
17 for us to go to these meetings and actually listen to the
18 various input from the -- from both sides of the
19 particular issue.

20 There will be a tremendous amount of financial
21 data. And I think that's what we have to zero in on, is
22 that financial data, because we're looking at the
23 finances of local government. But you almost have to be
24 there to listen to the principals involved, and also
25 listen to the individuals that come from the community

1 that are going to be affected by this.

2 So my thinking would be to, as difficult as it
3 might be, I think the importance of the issue is to be
4 there for the meeting. I think, quite frankly, if you
5 turn it over to a hearing officer, you're going to have
6 to have a meeting anyway; a follow-up meeting with the
7 Commission.

8 The meetings do take -- normally, they take all
9 day. They seem -- I remember we went to Los Angeles.
10 That was an all day. Almost went into the next day.

11 So it's a lengthy proceeding. And it's
12 interesting to say the least. That's my viewpoint on it.

13 MEMBER BARNES: I guess the only other thing I
14 would offer is that my impression is that the Department
15 of Finance has done the review, you know, by tradition,
16 and I would offer up that the State Controller also has
17 an audit program, which does audits very much like this.

18 We've done reviews of LAFCO proposals involving
19 the creation of new cities and special districts and that
20 kind of thing, which revolves around a top/bottom look at
21 income as well as potential expenditures as well.

22 So we have that expertise and would be interested
23 in offering ourselves as an alternative as well, the
24 Controller's Office would.

25 CHAIR TILTON: Is that based on reimbursement or

1 just --

2 MEMBER BARNES: It's always based on
3 reimbursement.

4 MS. HIGASHI: The Department of Finance is also
5 based on reimbursement, might I add.

6 MEMBER BARNES: I guess that raises another
7 question here, which is to the extent that there is
8 travel costs associated with having the Commission go to,
9 I assume this hearing would be in Oroville, that that,
10 too, can be reimbursed through the section 27.00 process
11 as well.

12 I'm not adverse to having a hearing officer, you
13 know, take over the responsibility of taking the hearing,
14 but I do kind of share Bill's comments that in some ways,
15 this is a really, you know, personal life issue, I think,
16 for many of the people that are going to be affected.
17 And I'm not sure that we do it proper justice to wait
18 until everything's all done to not hear it personally.

19 I mean, obviously, they can come to this meeting
20 here in Sacramento and talk, but that's a fairly large
21 inconvenience for many of them to do so.

22 MEMBER BOEL: I'd practically like to ask Paula or
23 Nancy how difficult this would be for the staff to
24 handle? I mean, we've got a backlog still of what? A
25 120 cases.

1 So does this mean -- how many more cases are going
2 to be delayed? I mean, if we ask you, if we say to staff
3 that we will go up to Butte County, how difficult will
4 that be for you?

5 MS. HIGASHI: We would still need to contract with
6 an outside organization to do the program and fiscal
7 review.

8 We are currently not staffed up and budgeted to do
9 any of that, nor to do any of the copying and just all of
10 the work associated with the hearing.

11 We're talking about -- was it three volumes, four
12 volumes? Huge documents that are included in the record,
13 because it will be all the fiscal data for the past three
14 years, plus projections of revenue for the next couple of
15 years as well.

16 If it's the full Commission, the only staff would
17 be basically Paul and I would need to be there at that
18 hearing. Other staff would not absolutely have to be
19 there.

20 If it were a hearing officer that was an ALJ, none
21 of us would have to go. If it were to be a hearing
22 officer with the expertise, that would lift the burden
23 off of us from a staff perspective, because it would be
24 someone with that knowledge that we wouldn't have to
25 spend time tutoring. And frankly, we were thinking of

1 someone like former Commission member Al Beltrami as the
2 type of person we were thinking of, who is a retired
3 county official that would have a handle on all the
4 issues that would be before the body and who's actually
5 sat on SB 1033 hearing panels before.

6 We are faced with incredible pressure right now to
7 deal with the test claim backlog. We have very limited
8 staff. There are proposals that are pending that are
9 part of the May revision that would place the Commission
10 in a position of having to complete and determine all of
11 the local agency test claims within two years.

12 We still have more test claims filed by school
13 districts, and we have statutory timelines for all of
14 those test claims under current law of 12 to 18 months;
15 yet we have not been fully funded in order to address
16 that backlog and to process those claims under those time
17 lines.

18 So it's a competing burden on us, and the
19 Commission needs to help us to decide. If the Commission
20 wants to do it, then we would, you know, obviously do
21 what we have to do to make it happen.

22 CHAIR TILTON: Well, let me make a suggestion,
23 because I think we're clouding what is the bigger issue,
24 which is your workload with this. And what I'm hearing
25 here is that this has an impact, but really it's the cost

1 to bring someone in who can analyze the books and that's
2 an additional cost we're going to have anyway.

3 I would suggest that we kind of table the issue of
4 workload that's coming down, give us an opportunity to
5 talk with my other hat on to deal with that issue. And
6 I'm sympathetic to the issue of the members that we ought
7 to take this seriously, and I think we shouldn't hear
8 things secondhand or read things.

9 I think we need to go up and do both of these
10 hearings as a Board. At least that's my sense,
11 personally, as well as I'm hearing the rest of the
12 members. And I know from staff's point of view, you're
13 trying to find ways to minimize your workload, but it
14 seems to me from what I'm hearing, this is some relief,
15 but it's not going to help the bigger issue.

16 MS. HIGASHI: No. Because Paul and I --

17 CHAIR TILTON: If can make the bigger issue go
18 away, I'd be arguing on behalf of --

19 MS. HIGASHI: Paul and I and Nancy will still be
20 reading everything else that we have to do as well, as
21 well all of you.

22 CHAIR TILTON: Right.

23 MS. HIGASHI: Because we have an October -- we
24 have a September hearing for test claims, regular
25 business, but, Nancy, SB 1033 would be October.

1 MS. PATTON: Right.

2 MS. HIGASHI: If Butte follows the schedule they
3 have given us.

4 CHAIR TILTON: Walter?

5 MEMBER BARNES: Yes. I would agree with you. I
6 think we want to do no harm at all to the normal business
7 of the Commission.

8 And it just seems to me that, you know, the idea
9 of contracting out for the review and also contracting
10 out for somebody who would actually massage the review,
11 and, you know, hear and take the testimony and stuff
12 which we hear at a meeting and merge it together and
13 actually take the responsibility off of the staff to
14 actually write the recommendations and the analysis for
15 us, I think is the way to go.

16 Basically, it's almost like having a
17 mini-Executive Director and staff specifically for this
18 for a temporary period of time that frees you up so that
19 you can continue to do what you do, and, you know,
20 basically, gives us the information we need to hear this.

21 So I mean, that's kind of the way I think we
22 should be kind of thinking about. Obviously, if you're
23 interested in this when put your other hat on, I'm sure
24 the Controller's Officer would love to sit down and talk
25 to you about it.

1 MS. HIGASHI: We'll proceed accordingly.

2 CHAIR TILTON: Okay. Do you need a motion on
3 that?

4 MS. HIGASHI: No, because if you don't make the
5 assignment, then it means it's the full Commission.

6 I would like to suggest we take a short break and
7 then come back and hopefully, we'll have our other
8 witnesses.

9 CHAIR TILTON: Okay. Get back by 11:00 o'clock.

10 *(Whereupon a recess was taken.)*

11 CHAIR TILTON: Thank you for the break.

12 Paula, do we need -- the people from number 3, can
13 we go back there?

14 MS. HIGASHI: Yes, we're at Item 3 now.

15 And before we begin, I'd like to administer the
16 oath for witnesses.

17 Would you please raise your right hands?

18 Do you solemnly swear or affirm that the testimony
19 that you're about to give is true and correct based upon
20 your personal knowledge, information, or belief?

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

22 MS. HIGASHI: Thank you.

23 Item 3 is the test claim on distracted drivers.

24 This item will be presented by Commission Counsel

25 Eric Feller.

1 MR. FELLER: Good morning.

2 The test claim statute requires traffic collision
3 reports prepared by the CHP or any other peace officer to
4 include information as to whether a cellular telephone or
5 other driver distraction or inattention is a known or
6 suspected associated factor in the cause of the
7 collision. The statute requires that the information be
8 collected and transmitted to the CHP from January to July
9 2002.

10 As stated in the analysis, staff finds that the
11 test claim statute does not impose a reimbursable
12 state-mandated program within the meaning of article
13 XIII B, section 6 of the California Constitution and
14 Government Code Section 17514.

15 State law does not require local agency peace
16 officers, except county coroners, to prepare traffic
17 collision reports, so they are not mandated by the state
18 to include in a traffic collision report information
19 about the use of a cellular telephone or other
20 distraction.

21 The test claim is subject to article XIII B,
22 section 6 with respect to county coroners by requiring
23 them to include in the report required by Vehicle Code
24 section 20011 information as to whether a cellular
25 telephone or other driver distraction or inattention is a

1 known or suspected associated factor to the cause of the
2 traffic collision that results in death, and to collect
3 and transmit the information to CHP.

4 However, without evidence in the record regarding
5 increased costs as a result of the test claim statute,
6 the record does not support a finding of costs mandated
7 by the state on county coroners.

8 You'll note that I distributed a blue errata sheet
9 to page 13, but it does not change the analysis or the
10 conclusion on this item.

11 Therefore, staff recommends that the Commission
12 deny the test claim.

13 Would the parties and witnesses please state their
14 names for the record?

15 MS. STONE: Good morning, Mr. Chairman, members of
16 Commission. Pam Stone on behalf of the City of
17 Newport Beach.

18 MR. EVERROAD: Glen Everroad with the City of
19 Newport Beach.

20 SGT. JOHNSON: Sergeant Dale Johnson, City of
21 Newport Beach.

22 CAPT. HOWLAND: Captain Scott Howland with the
23 California Highway Patrol.

24 MR. MANDELL: Elliott Mandell, Department of
25 Finance.

1 CHAIR TILTON: Who would like to start?

2 MS. STONE: Good morning, Mr. Chairman and members
3 of the Commission.

4 First of all, we would like to express our
5 appreciation for delaying this hearing, given the
6 problems that Sgt. Johnson had with Southwest Airlines
7 this morning. And we appreciate being able to have this
8 matter heard today rather than being placed over.

9 First of all, we would like to reiterate with
10 staff that we have no dispute that the test claim statute
11 reports -- test claim statute requires that any traffic
12 collision report prepared by the CHP or any other peace
13 officer for a period of one year only, and that was from
14 January 1 of 2002 through December 31st of 2002, because
15 the statute automatically expired as of January 1, 2003.

16 And that such collision report include information
17 as to whether a cellular telephone or other driver
18 distraction or inattention was a known or suspected
19 factor in the causation of that traffic collision.

20 We will agree that property damage-only reports
21 are voluntary except for the fact that one who was
22 involved in such an accident must make a report to DMV if
23 there is property damage in excess of \$750.00.

24 And we also agree, and there is no disagreement, I
25 believe, the cities and counties are required by the

1 California Constitution to maintain a police force or a
2 sheriff's department. These are clear unambiguous
3 issues.

4 What is in disagreement is whether this particular
5 statute constitutes a reimbursable mandate.

6 The basic issue I think we can get into is that I
7 think we all agree that there is no specific legislation
8 which requires an accident report to be prepared by a
9 peace officer or sheriff, except in one circumstances
10 I'll discuss in a minute; however, the difference is that
11 the claimant believes that there is an underlying common
12 law constitutional obligation to enforce the law, which
13 also includes the enforcement of the Vehicle Code, which
14 results in traffic collision reports.

15 The Commission on State Mandates believes that
16 this type of activity is purely voluntary and thus is not
17 reimbursable.

18 The Commission takes a look at the fact that,
19 whereas -- the fact that peace officer are not required
20 to make a traffic collision report. Sort of axiomatic,
21 when I was taking my masters in public administration,
22 that nowhere will you find a mandate, for example, that a
23 peace officer investigate all of any particular type of
24 crime or prepare traffic collision reports for every
25 collision which occurs within its jurisdiction.

1 And that's for a simple reason. To have some sort
2 of a statute like that would obviously mandate a specific
3 level of police force within a given jurisdiction. You
4 would have to be able to project how many of this type of
5 incident you would be having during a particular given
6 period of time.

7 You would also have to figure out how many other
8 calls for service there would be, and have additional
9 room in the event that there was some sort of a public
10 safety emergency. So, in fact, there were studies that
11 were done that would demonstrate that you could have
12 somebody on every corner, and theoretically, you would
13 not have adequate police staff.

14 So there are real issues with regard to any sort
15 of a mandate with regard to total staffing so that you
16 could have an adequate peace officers.

17 So it shouldn't be a surprise that there is
18 nothing that requires all traffic collisions, for
19 example, to result in a report by the police department.

20 Now, the Commission points out that the peace
21 officers are required to take a collision report under
22 Vehicle Code Section 20003 by an individual. But an
23 individual only has to give out six things in any kind of
24 a report of an accident. And that's his or her name,
25 their current residence address, the name and current

1 residence address of any occupant that's injured in the
2 accident. The registration number of the vehicle he or
3 she is driving. The name and current residence address
4 of the owner of the car to the person struck or to the
5 driver or occupant of any vehicle they collide with. And
6 that information shall be given to any traffic officer or
7 peace officer at the scene.

8 If there is no one at the scene, then 20004
9 requires that individual to report the accident to the
10 nearest CHP or police department.

11 That is a far cry from the type of information
12 that you will note that is required by the CHP to be
13 completed in a traffic collision report. And obviously,
14 if that were the only type of information needed, the
15 entire guidebook by the CHP to appropriately complete a
16 traffic collision report would not be necessary. You
17 would just wait until somebody had an accident and they
18 come down and tell you that somebody was injured or died.
19 And you would not have the information requisite to be
20 able to do any investigation.

21 You will note, for example, that this type of
22 information doesn't even require one to provide the site
23 of the accident. So, I mean, the accident could have
24 been anywhere. Or what day. There is no requirement
25 that the date, the time or the location be specified.

1 We would like to point out that Vehicle Code
2 Section 20017 does require police departments to report
3 pesticides spills.

4 The Commission on State Mandates emphasizes that
5 this information that's supposed to be reported by the
6 individual in an accident is to be forwarded to the
7 jurisdiction with jurisdiction over the investigation of
8 the accident. So, therefore, what are you going to do?
9 Wait for somebody to refer it to you and then tell
10 yourself to go investigate? It's putting another step in
11 there that really doesn't happen in the real world.

12 Commission on State Mandates claims it is a
13 discretionary local decision to prepare accident reports.
14 Yet, the information provided in these accident reports
15 is used by the CHP for data. There is a plethora of data
16 collected and reported by the CHP at the back of your
17 materials showing the types of accidents, number of
18 fatalities and injuries as a result of the data which is
19 collected from these accident reports.

20 Additionally, these accident reports serve as an
21 assistance to the recollection of the officers when
22 testifying in matters pertaining to the enforcement of
23 the Vehicle Code. Because without that, the officer
24 might not remember or recall what happened when there is
25 an infraction or criminal matter which occurs at a

1 substantially later time, because the officer will have
2 had intervening duties.

3 So without that accident report, query as to the
4 efficaciousness of having any type of proceeding for
5 enforcement of violations of the Vehicle Code.

6 Now, also, the Legislature, we believe, assumed
7 that law enforcement investigates traffic collisions and
8 files reports, because, otherwise, there would not have
9 been this requirement that the information with regard to
10 whether or not a driver was talking on a cell phone,
11 applying mascara, reading the Wall Street Journal, I
12 don't know, having breakfast, would need to be reported
13 to the CHP in order to obtain the information as to
14 whether or not there should be laws pertaining to
15 self-utilization.

16 So I believe that the Legislature did not think
17 that the activity of compiling, preparing traffic
18 collision reports is purely voluntary.

19 Now, the claimant found an Attorney General
20 opinion that states, and I quote, "The obligation to
21 investigate vehicular accidents resulting in injury/death
22 is not a voluntary act, but rather is an obligation
23 imposed by virtue of the office created. It is the
24 obligation of police departments and sheriff's
25 departments to investigate and arrest those who have

1 committed crimes or public offenses within their
2 respective jurisdictions."

3 And the Commission staff claims that opinions of
4 the Attorney General are advisory, not mandatory, and we
5 will concur; although, probably the Attorney General
6 would not necessarily.

7 However, the Commission on State Mandates has gone
8 off and found a plethora of cases dealing with the
9 exercise of discretion for the purposes of third-party
10 liability to demonstrate that there is no obligation
11 whatsoever to take those reports.

12 The purpose of the liability cases, and their
13 discussion, deals with the issue of discretionary
14 immunity and whether or not there is an obligation by a
15 statute to perform a duty in any particular manner.

16 And the cases are uniform that, yes, local law
17 enforcement has the obligation to investigate crime and
18 to enforce the laws; maybe not with respect to a
19 particular individual or a particular individual in a
20 given manner, but yes, it does have that obligation.

21 So the Commission is taking the fact that there is
22 discretionary immunity, and going one step further, and
23 saying that this is voluntary. However, the staff in its
24 plethora of case law does include the case of Leger
25 versus Stockton Unified School District, which is a 1988

1 Cal. App. case, Cal. App. 3rd case, which states that it
2 is axiomatic that cases are not authority for
3 propositions not considered.

4 None of these cases considered, for the purpose of
5 a public program, whether or not traffic collisions and
6 accident reports must be investigated and reported for
7 the purposes of whether or not they constituted a
8 reimbursable program. That is a new issue before your
9 Commission. And we assert that those cases are not
10 analogous because the purpose, therefore, was not
11 analogous.

12 Additionally, if there were no accident reports,
13 there would be no statistics forwarded to the CHP to
14 discharge its mandatory duty to prepare a report of these
15 accidents. Thus, the CHP would be completely without
16 data from any organizations save and except for itself.
17 And as you will see in the back, I mean, it goes on for
18 pages, starting around 570, something, 540 something, it
19 goes on for 30 pages with regard to how many people died
20 on what type of road and what jurisdiction. This type of
21 information would not exist.

22 I think we really need to take a look at the
23 logical consequence of the rationale behind the
24 Commission and the logical consequence of the rationale
25 behind the claimant.

1 The logical rationale behind the claimant is if
2 you have a traffic collision report involving injury or
3 death during that one-year period, the increment that it
4 took to complete the information and find out whether a
5 driver was eating, drinking, smoking, playing with
6 animals, disciplining children, talking on the phone,
7 that small increment of time for that very brief period
8 would be reimbursable.

9 If you take a look at the logical extension of the
10 Commission's analysis, that's where we have something
11 that's really interesting. If a traffic accident report
12 is not mandatory, it's purely voluntary because there is
13 nothing that says you have to do it, then, obviously,
14 with regard to the enforcement of traffic laws, nothing
15 says you have to do this specifically, it says you shall
16 enforce all laws. Well, therefore, you really don't have
17 to investigate traffic accidents.

18 And then from there on, the logical conclusion is
19 that by and large, the enforcement of the Vehicle Code is
20 voluntary. So whereas, you're required to have a police
21 department, along the analysis of the Commission of State
22 Mandates, that police department does haven't to do
23 anything. It can just sit there, and so you have
24 accidents and it's very nice.

25 We're concerned that the logical extension of this

1 analysis by the Commission would have that, unless there
2 is a specific underlying statutory requirement, that
3 there really is no obligation to do anything.

4 And therefore, we respectfully disagree with the
5 conclusion of Commission's staff. Thank you.

6 MS. HIGASHI: Mr. Chairman, I just want to make
7 one clarifying comment to place in the record is that
8 during Ms. Stone's testimony, she referred to the staff
9 analysis as being the Commission's analysis or the
10 Commission's conclusions, and I just wanted to remind
11 everyone that it's the final staff analysis.

12 CHAIR TILTON: I appreciate it, Paula.

13 SGT. JOHNSON: Hi. My name is Dale Johnson. I'm
14 a sergeant with the City of Newport Beach. I'm currently
15 assigned as a supervisor for our traffic division. As
16 part of my duties, I directly supervise our traffic
17 investigators, our accident investigators, as well as our
18 motor officers that are responsible for, in our city, for
19 taking traffic collision reports and doing Vehicle Code
20 enforcement.

21 I think I've been asked to come and discuss today
22 some of the practical matters that the decision in the
23 staff report referred to in terms of our view on our
24 obligation to take traffic accident collision reports as
25 well as enforce the Vehicle Code in general.

1 I think the first thing to point out when we're
2 talking about the police department, our response to
3 traffic collisions, is that almost all the time, those
4 come as a result of a call for service; meaning that a
5 citizen, someone in the community, calls us with either a
6 property collision or a collision involving injury or,
7 unfortunately, sometimes death, and requests the police
8 department come out and assist them.

9 I think it's rather obvious that the police
10 department is in no position at that time to refuse to
11 provide a service of that nature to our citizens. In
12 fact, that's the reason we exist.

13 When we respond to a call for service,
14 particularly specifically a traffic collision, we do so
15 for many different reasons. One of them has to do with
16 public safety concerns. Obviously, vehicles which are
17 crashed in the roadway, sometimes multiple vehicles,
18 sometimes objects, those create a danger not just to the
19 unfortunate people who have just been involved in the
20 collision, but other traffic as it tries to move around
21 it.

22 There are traffic delays associated with traffic
23 collisions that have to be dealt with, that have to be
24 addressed by the responding officer.

25 There are injuries that occur. There is an

1 assessment of those injuries that have to be made by the
2 officers on the scene. They then have to allocate
3 additional assets from their departments, whether it be
4 fire, medics. Sometimes engineers. Sometimes people to
5 come out and pick up traffic lights and poles that have
6 been knocked over.

7 There are a variety of things that we have to do,
8 chief among them assisting the motorists, that this is a
9 very traumatic event for them, and they look to local law
10 enforcement to assist them with this highly unusual point
11 in their lives.

12 But from the police department's standpoint, our
13 primary reason for responding to traffic collisions,
14 aside from the public safety concerns, is to enforce the
15 law. We are there to conduct an investigation, as with
16 all other criminal investigations, to determine what
17 provisions of the Vehicle Code have been violated and to
18 take appropriate action, whether it be citations or a
19 summons, or whether it be a physical arrest of that
20 person for the violation of that law.

21 To suggest that that is not a mandated function of
22 a local police agency to conduct criminal investigations,
23 I think it's rather clear that it is. Again, that is the
24 reason we exist.

25 While we are on scene at a traffic collision,

1 there are other laws outside of the infractions relating
2 to the specific driving which we also investigate.

3 Primary among those, most would be aware, would be
4 driving under the influence of alcohol. We assess the
5 possible impairment of the drivers involved.

6 There are also other crimes, whether they be
7 driving under the influence of drugs; whether they be
8 violations of driver's licenses, insurance obligations;
9 and then finally, the actual Vehicle Code violations
10 which may have led to the accident itself.

11 These are all things that we have to do in order
12 to serve our communities. And we do believe that we are
13 mandated to do that; certainly by our community, but we
14 believe by statute, also. That is, again, the function
15 of law enforcement is to conduct criminal investigations
16 and to see to the public safety of the community we
17 serve.

18 Once again, to suggest that we are not mandated to
19 do that and we have an option or we do so only at our own
20 discretion, I think, from a realistic standpoint, is
21 inaccurate.

22 There are other mechanisms built into the traffic
23 collision format, I think, that speak to this obligation
24 and explain that it is. The California Highway Patrol,
25 most agencies that the California Highway Patrol provides

1 the standard collision investigation form, the CHP 555
2 form. And on it is a great deal of information, as was
3 discussed earlier, outside of the five minor pieces of
4 information that legislatively have been discussed.

5 That form is a very technical form, in fact. It
6 requires our officers to attend a minimum of 40 hours of
7 POST-certifiable training in order to learn how to fill
8 out the document. There are a lot of codes, there are a
9 lot of symbols. There is even, unfortunately, some math
10 that has to be done, and it gets rather technical.

11 Lay people, meaning people involved in those
12 collisions, would have no ability to accurately complete
13 that form without the assistance of local law enforcement
14 or the CHP. They would not be able to submit the form as
15 required by the CHP and to meet the provisions of
16 2000 -- I'm sorry, 20009, subsection A, or 20002,
17 subsection A2, without the assistance of the police
18 department to fill out that particular form.

19 SWITRS, which is the clearing house that collects
20 the data for those forms, is very specific as to the
21 format that the forms must be completed. In fact, we
22 receive regularly returns from SWITRS telling us that we
23 have to -- that we made an error in the format, and it's
24 returned for a correction.

25 So to expect the public to be able to meet with

1 the provisions of the Vehicle Code in their reporting
2 responsibilities, without specific direction and
3 assistance from the police department or CHP or local
4 sheriff's departments, is unrealistic; they would be
5 unable to meet those provisions.

6 So on one hand, you require reporting of traffic
7 collisions in a certain format, in a certain manner, a
8 very technical manner, and on the other hand, suggest
9 that that is only done at the discretion of the police
10 department. And again, that's a point we would disagree
11 with.

12 The California Highway Patrol would not be a
13 resource for this type of report either in terms of
14 taking the reported information to the California Highway
15 Patrol and asking them to complete the form, because as
16 previously stated, the CHP would refer them back to the
17 jurisdiction with which the collision occurred; meaning
18 that, in my case, the City of Newport Beach and the local
19 police agency.

20 After having reviewed the staff report, it is my
21 opinion as a 20-year member of the law enforcement
22 community, and someone considered an expert in
23 traffic-related fields, that there is a mandate and an
24 obligation both to the community and to the legislative
25 process for local police agencies to complete the forms.

1 Decisions as to whether or not the additional mandate
2 concerning distracted drivers falls under the purview of
3 reimbursement, I will leave to those of you who are much
4 more educated in that area than I am.

5 Thank you very much.

6 CHAIR TILTON: Thank you.

7 VICE CHAIR SHERWOOD: Chair. Lieutenant -- am I
8 right?

9 SGT. JOHNSON: No, it's Sergeant.

10 VICE CHAIR SHERWOOD: Sergeant.

11 SGT. JOHNSON: Sergeant Johnson, yes.

12 MS. STONE: I'm sorry. I gave him a promotion.

13 VICE CHAIR SHERWOOD: Lieutenant here. Okay.

14 My nephew works for the city police department
15 here in Sacramento, and he just became a sergeant
16 yesterday.

17 SGT. JOHNSON: Congratulations.

18 VICE CHAIR SHERWOOD: So he's very pleased to be
19 one. So good for you.

20 You know, this moral obligation versus legal,
21 constitutional; I'm wondering in your experience, 20
22 years I think you indicated, do you feel that -- have you
23 ever seen a case where a call came in and your agency
24 turned down the request to come to the accident scene or
25 to be involved?

1 I'm just wondering if that's occurred; if you're
2 aware of that situation.

3 SGT. JOHNSON: It is the policy of the City of
4 Newport Beach, and many different cities and
5 jurisdictions have different policies, I can speak to
6 that which I'm most familiar, which is the City of
7 Newport Beach, we do not respond to collisions on private
8 property. Which, again, speaks to the reasons why we
9 respond to collisions.

10 The only -- there is only a few exceptions in the
11 Vehicle Code that allow Vehicle Code enforcement on
12 private property. That would be driving under the
13 influence, reckless driving, and a couple of other
14 violations that can occur off of state highways.

15 We would not respond to collisions on private
16 property because we cannot enforce the Vehicle Code
17 there. Again, that speaks to the reason why we respond
18 to collisions to begin with, is to investigate that
19 collision and to determine from a criminal standpoint who
20 is responsible for it.

21 We, being the City of Newport Beach, respond to
22 every collision, whether it be property damage, minor
23 collision, minor property damage or not.

24 VICE CHAIR SHERWOOD: And would you feel that
25 that's a policy, and this may be a tough question to ask,

1 but that's driven by a constitutional issue? Or it's a
2 moral obligation? Or a legal obligation, do you feel on
3 your part?

4 SGT. JOHNSON: My personal belief would be that
5 it's both. I think that particularly within the City of
6 Newport Beach, our constituents, our community, have a
7 high expectation of the service that we provide.

8 I understand fully that that service differs from
9 jurisdiction to jurisdiction, particularly when manpower
10 is used. I also believe that from a moral standpoint
11 that, you know, "To protect and serve," means that when
12 people are in need of the police department, particularly
13 for the information we talked about earlier, public
14 safety issues which occur certainly at every collision,
15 vehicles in the roadway, injury assessment, that there is
16 a moral obligation that we took, without being overly
17 dramatic about it, we took an oath to respond and to
18 assist people who are in those positions when they need
19 us.

20 And I believe that is a moral obligation as well
21 as a legal one.

22 VICE CHAIR SHERWOOD: Thank you.

23 CHAIR TILTON: Get staff response to the issues
24 brought up.

25 MR. FELLER: Sure. Regarding the general common

1 law duty to enforce the law, staff doesn't make a finding
2 on that. That's not what this is about.

3 This is about vehicle collision reports. Just
4 accident reports.

5 And our reading of all the state statutes and
6 cases in this area indicates that it's not a mandatory
7 duty that comes from the state. It may be pursuant to a
8 local ordinance or a local policy to provide these kind
9 of reports, but we could not find a mandate in law that
10 the state imposes.

11 The Vehicle Code 20003 -- excuse me, 20008,
12 imposes a duty on the driver to report accidents to the
13 CHP, or if they are in an unincorporated area, to the
14 local police, and the duty's on the police to forward
15 those reports to the CHP. But we could not find a duty
16 on the police themselves to prepare accident reports.

17 So that is why the staff's position is as it is.

18 This is something that the Legislature easily
19 could have done. Ms. Stone noted that the Vehicle
20 Code 20017 requires them to notify the CHP regarding
21 pesticide spills. They could have easily done that the
22 same way with regard to accident reports, but they have
23 not.

24 With regard to the argument that there would be
25 nothing to report to the CHP pursuant to Vehicle Code

1 2407 or 2408, we disagree with that on the page 13 of the
2 analysis. We feel things that would be reported would be
3 mostly -- and that's at the top of the page -- CHP
4 reports, driver reports, pursuant to Vehicle Code 20008,
5 as well as coroner reports pursuant to Vehicle Code
6 20011, and reports that peace officers in their
7 discretion or the discretion of the local agency,
8 voluntarily report.

9 So there would be data there for the CHP to meet
10 its other requirements under the Vehicle Code to
11 statistically compile accident information.

12 CHAIR TILTON: Can we hear from the Department of
13 Finance, then?

14 MR. MANDELL: Yes. Elliott Mandell, Department of
15 Finance.

16 I want to say that we agree that we don't believe
17 that Chapter 710 establishes a reimbursable mandate, and
18 agree with the comments of your staff on that.

19 But we'd like to make one point that comes from
20 the testimony of the claimant, and it's the issue that we
21 don't believe that if a reimbursable mandate is found,
22 that it would be for a year period.

23 It's true that the statute was enacted on
24 January 1, 2002, and it's true that it would, according
25 to that same statute, be sunsetted on January 1, 2003.

1 However, the statute makes it clear that the CHP is
2 supposed to collect the information up through July 1,
3 2002. That's a six-month period.

4 It does not seem reasonable to us that a local
5 agency would need to comply, would feel it needs to
6 comply beyond the July 1 timeframe.

7 So, again, we don't support that there is a
8 reasonable mandate here, but should one be identified by
9 the Commission, we believe that there is a six-month
10 limit on the activity.

11 CHAIR TILTON: CHP?

12 CAPT. HOWLAND: Scott Howland with the California
13 Highway Patrol.

14 I just wanted to add a couple things. Under
15 2407.5, it specified one data element to be provided, and
16 that was distracted driving, referred to cell phones, and
17 if you look at a traffic collision report, it's coded as
18 "Inattention." That field existed on the CHP 555 prior
19 to this section being enacted.

20 As a matter of fact, several years before this
21 section, what was required, or what we asked, I should
22 say, on the back of a 555 to be submitted was any driver
23 that was inattentive and was found at fault or
24 contributing to an accident, that box be checked, and
25 then an explanation of the inattention be written; such

1 as eating, cell phone, et cetera.

2 In December of 2000, we requested that agencies
3 use codes rather than a description so that as we put our
4 data into our computer, that it would become meaningful;
5 so that there is consistency within what data we were
6 gathering and what data that we were able to output and
7 provide in our research.

8 So when 2407.5 became effective, it didn't require
9 any additional reports and didn't require any change in
10 reporting for law enforcement agencies to us. And it
11 enabled us to complete the report that we were mandated
12 to report.

13 CHAIR TILTON: Any comments from members? Or
14 would someone else like to talk?

15 MR. EVERROAD: Yes, thank you, Chairman Tilton.

16 Glenn Everroad, City of Newport Beach. I also
17 would like to thank you for allowing us the time to bring
18 our expert witness in to offer some reality in terms of
19 what happens in local government in the investigation and
20 response to traffic collisions.

21 I would restate what Ms. Stone has stated, that
22 this is not a test claim seeking recovery of costs for
23 investigating traffic collision reports. We do that;
24 we've assumed that responsibility. We'll continue to do
25 so.

1 We're only speaking reimbursement for that
2 incremental increase that was statutorily required by the
3 Legislature and the test claim legislation to
4 investigate, record and report to the CHP those incidents
5 that have a drivers distraction.

6 There are not significant costs associated with
7 this test claim. This is a very limited period of time.
8 We're not arguing that whether or not the legislation
9 imposes huge costs on local government; it does not. But
10 we believe that it's the intent of XIII B to provide a
11 mechanism for local government to recover the costs that
12 are statutorily imposed by the Legislature. We're only
13 exercising our rights afforded us by XIII B.

14 Staff's analysis admonishes the Commission that it
15 shall not use XIII B as an equitable remedy to cure the
16 perceived unfairness resulting from political decisions
17 on funding priorities. Our test claim doesn't seek a
18 cure for any unfairness. Our test claim merely seeks
19 what article XIII B was intended to provide,
20 reimbursements for the costs that local government
21 realizes when the Legislature directs us to act on their
22 behalf.

23 Staff would have you find that cities aren't
24 responsible for investigating traffic collisions and
25 cites 20008 as the basis for their position. 20008 does

1 not require local government to report accidents. The
2 reporting requirement is that of the drivers. But it
3 does in 20008 state that if the agency which receives a
4 report is not responsible for investigating the accident,
5 it shall immediately forward the report to the law
6 enforcement agency which is responsible for investigating
7 the accident. Staff would have us believe that that
8 responsibility does not exist in any agency. Where,
9 then, would we refer that report?

10 So if the underlying requirement does not exist to
11 investigate an accident, how could we ever satisfy
12 20008's requirement to refer it to the appropriate
13 agency.

14 I think the Sgt. Johnson's testimony this morning
15 suggests that we do have a responsibility, and because
16 the city has not found a specific statutory requirement
17 to investigate this, and to infer that the Legislature
18 didn't intend for local government to investigate traffic
19 collisions, because had they intended that to occur, they
20 would have included it in the test claim legislation,
21 doesn't recognize the requirements of 20008 to forward it
22 to someone.

23 So we would argue that we think we do have a
24 responsibility and we think that the Commission is in the
25 position of recognizing reality in the context of the

1 test claim legislation, and we would urge you to find
2 that there is a mandate in the test claim legislation.

3 Thank you.

4 MS. STONE: Mr. Chairman, just one more minor
5 thing.

6 The test claim legislation is mandatory; that when
7 you do the traffic collision report, you shall report
8 whether or not the driver was distracted. That is clear.
9 That in and of itself is a mandate.

10 What your staff is saying is because there is no
11 statutory requirement for the underlying traffic
12 collision report, there is no mandate because that
13 activity is voluntary.

14 I am concerned that this particular type of
15 analysis will be applied to a greater extent. For
16 example, if you have a new program that requires a given
17 department to do "X," but there is no requirement to have
18 that department, then is that particular legislation
19 totally voluntary as well if you don't have the
20 underlying requirement?

21 And that is what I'm concerned with here. There
22 may be no requirement to fill out a traffic collision
23 report, but when you do, this particular activity is
24 mandated.

25 How far back are we going to have to go to find an

1 underlying requirement before any of the legislative
2 add-ons constitute a mandate?

3 And with that I submit it. Thank you.

4 CHAIR TILTON: Walter?

5 MEMBER BARNES: I guess I'm a little troubled by
6 the write-up and how its being characterized.

7 Is it your belief, Eric, that you're concluding
8 that they have no obligation to investigate traffic
9 accidents?

10 MR. FELLER: That is what the research on the law
11 indicates to us. And granted, we looked at -- there
12 aren't any Mandates cases on the duties of law
13 enforcement, but we looked at tort cases on the duty of
14 law enforcement, as Ms. Stone noted, and those seem to
15 indicate that there was not a duty to investigate traffic
16 accidents.

17 And that's where we found the source of that
18 conclusion. That's from the State Supreme Court in the
19 Williams case. In fact, if you look on Page 473,
20 Justice Mosk dissented in that case. And Justice Mosk
21 wrote the Attorney General opinion on which the claimants
22 rely to find that duty.

23 Justice Mosk was in the dissent on this case. The
24 court didn't accept his assessment of officer duties. It
25 goes from 473 to 474. The Supreme Court basically

1 disagreed with him and found that there was, in this
2 case, not a duty to investigate.

3 This is an analysis that we take from the City of
4 Merced and the Department of Finance cases, where
5 Ms. Stone's correct, where if the underlying program is
6 voluntary, then there is no mandate. And because we
7 couldn't find a duty in law for peace officers, except
8 for coroners, to prepare vehicle accident reports, that
9 that was the basis for the conclusion that the underlying
10 program was voluntary.

11 MEMBER BARNES: I guess my impression is that,
12 maybe I'm -- well, my impression is that, in effect, they
13 do have an obligation.

14 I mean, it seems like they are responsible for
15 enforcing, you know, violations of law, including
16 Vehicle Code at the local level.

17 So how do we get from that kind of general
18 obligation on them to a specific decision that says they
19 have no obligation to respond to or to, you know, do any
20 kind of investigation?

21 And I'm not necessarily disagreeing with the
22 conclusion that there may not be a mandate related to the
23 specific information that's being asked for here, but I
24 guess it seems to me that they have an obligation to
25 respond, number 1, and as a continual part of their

1 obligation as a law enforcement officer, to take whatever
2 information is available related to a violation of law,
3 which then, basically, if that is correct, seems like it
4 only becomes a question of how much information and what
5 is that information, and what format it is.

6 I mean, I guess, you know, to a certain extent, I
7 guess I'm questioning this underlying assumption that
8 there is, in fact, no obligation on them. Are you saying
9 that if there are automobile accidents, that they have no
10 obligation to respond?

11 MR. FELLER: We couldn't find one in the law. I
12 will say that.

13 And so if there were an obligation, it could be
14 pursuant to local ordinance. And this is only with
15 regards to local agencies. I'm going to defer to the CHP
16 on their duties of law.

17 But in many cases, I would assume the CHP would be
18 the party that the report would be forwarded to, would be
19 responsible for investigating the accident, but we could
20 not find a duty in law for vehicle collision reports or
21 to investigate traffic accidents.

22 MEMBER BOEL: And I would think, practically, I
23 mean, maybe Newport Beach, it's a very nice community,
24 and maybe that's something that they do have an
25 obligation to do from their community's point of view,

1 but there is very many communities in our state that,
2 with resources tight, they might not respond to a vehicle
3 accident report because of other more pressing duties.

4 I mean, downtown parts of L.A. or something, you
5 know. I know when we've called sometimes about a little
6 accident even in our neighborhood in El Dorado Hills, it
7 doesn't always get responded to because of other pressing
8 duties.

9 MEMBER BARNES: And I guess what that says is that
10 there is a presumption that, you know, there is a wide
11 range of enforcement activities that are out there, and
12 that you have to make a decision about which ones you're
13 going to take care of, because you obviously can't deal
14 with everything. And, in fact, I kind of get the sense
15 that you're saying that as well; that you only, in fact,
16 respond to those where there is a specific request on the
17 table. Or that you happen upon in the course of your
18 normal obligation.

19 SGT. JOHNSON: We, at times, I think going to the
20 point of your question there, there is also what's
21 referred to as counter reports where people will come to
22 the police station usually as a result of a collision
23 that had not been reported to the police department, and
24 later, their insurance carriers would refuse to provide
25 recovery for their costs absent a police report. And we

1 will then take what's called a counter report, one which
2 is not investigated at the scene.

3 An important difference between a counter report
4 and a regular traffic collision report, although they are
5 done on the same form, is that there is no finding of
6 fault. There is no finding of which party is most at
7 fault, and there is no enforcement done to these type of
8 collisions.

9 And as you indicated, Ma'am, we also do have to
10 prioritize at times the use of our resources. And again,
11 the City of Newport Beach is the only one which I would
12 consider myself very familiar, but we will respond; it
13 might be an hour later; it might be more than that
14 depending on what activities are going on in the city at
15 the same time.

16 But we do respond and have an obligation, we
17 believe, to investigate every traffic collision.

18 The insurance component is one which wasn't raised
19 before. The insurance industry depends heavily upon the
20 reports taken by the various law enforcement agencies in
21 order to do their due diligence in determining fault and
22 how they settle their claims. That's another area upon
23 which the public certainly feels that the police
24 department has an obligation; otherwise, who is the
25 determiner of fault.

1 MEMBER BARNES: I have another question.

2 Captain, I'd like to ask you, with regard to the
3 reporting that goes on, are there any cities, you know,
4 or counties that do not report?

5 CAPT. HOWLAND: As far as the requirements of
6 20008, I believe all cities and counties report. I think
7 there is a varying degree of service that they provide,
8 though, that was hinted upon here.

9 Some departments have a policy, like the CHP, that
10 we will respond to all traffic collisions regardless
11 whether it's property damage, injury or fatal accident.
12 There is some jurisdictions due to staffing and other
13 issues such as, I believe, the City of Los Angeles that
14 decide we're not going to respond to property-damage only
15 reports because they don't have the resources to respond
16 to those. Not to say they don't occasionally, but that's
17 a decision they make.

18 And there are departments that, at times, because
19 of workload and other things going on, are unable to
20 respond to some of those accidents. So as far as
21 statute, there is no specific statute that says an agency
22 shall respond to all of those accidents, but 20008 is
23 clear that the reports they do receive regarding injuries
24 and fatals have to be reported. We receive those
25 reports.

1 Property-damage only collisions are not required
2 to be reported to us, but many jurisdictions do report
3 those to us. As a matter of fact, we encourage them to
4 report them to us because that gives us a broader data in
5 order to do analysis, and so we get a big picture of all
6 accidents as opposed to just certain categories.

7 MR. MANDELL: And if I may -- I was going to say,
8 Elliott Mandell, Department of Finance.

9 If I may, I just want to make a point that
10 irrespective of the potential broader application of the
11 Commission staff analysis and review, that the Department
12 of Finance review was at the more narrowed scope of this
13 particular test claim.

14 And on the basis of that more narrowed scope, we
15 determined that there was not reimbursable state mandate.
16 So I wanted to reiterate that point.

17 MEMBER BARNES: By narrower, what do you mean?

18 MR. MANDELL: You're getting into issues with
19 regard to the Commission on State Mandate staff findings
20 about the broad responsibilities of a local enforcement
21 agency.

22 And we believe that that's not necessarily an area
23 that needs to go to be able to determine that this
24 particular requirement from Chapter 710 does not in and
25 of itself require a reimbursement of costs by the state

1 for requirements of that chapter; irrespective of that
2 broader question.

3 MEMBER BARNES: Okay. Getting back to the
4 reporting, the other question is are there police
5 departments or counties that just don't respond at all?
6 That don't provide you with information?

7 CAPT. HOWLAND: None that I'm aware of.

8 MEMBER BARNES: Okay. So you get what you get, in
9 effect.

10 CAPT. HOWLAND: Correct.

11 MEMBER BARNES: You use data.

12 Is there some benefit to the local agencies
13 themselves, the police officers and sheriff's offices, by
14 the collection of that data?

15 CAPT. HOWLAND: Oh, most definitely. We do
16 regularly publish specific reports that provide overviews
17 by jurisdiction, and also on a statewide issue, of that
18 data. And then we also have the ability to analyze
19 specific data and respond to specific requests.

20 So if they wanted to see if there was a trend in
21 driver age, or a trend in certain primary collision
22 factors within their jurisdiction, we have the ability to
23 run that and do a report to give an idea of how many
24 accidents are in certain categories.

25 MEMBER BARNES: And Sergeant, I saw you kind of

1 nodding your head. Would you generally agree with that?

2 SGT. JOHNSON: There are certainly benefits on the
3 local level to our ability to analyze our own traffic
4 trends within our city; specifically, so that we can
5 target enforcement to intersections of high accidents.

6 If we're seeing that speed is a primarily
7 collision factor on a specific roadway, we're able to
8 target enforcement and take steps to try to impact that
9 driving.

10 So there are benefits to the local level for the
11 data that we're able to determine from our own
12 investigations, yes, sir.

13 MEMBER BARNES: Thank you.

14 My last question has to do with the specific
15 information that the Legislature wanted you to gather.

16 It was unclear to me whether or not the
17 information you gathered required a modification of the
18 normal form, or whether it was gathered outside of the
19 normal form.

20 CAPT. HOWLAND: The information was gathered on
21 the normal form. On page 2 of the CHP 555, there is a
22 column that talks about other associated factors.

23 In there, there is a multiple of other associated
24 factors. As a matter of fact, those -- let me pull out a
25 report here -- those factors include the option to

1 include a specific Vehicle Code section, vision
2 obscurement, inattention, which would be the category
3 this specific issue falls under, stop-and-go traffic,
4 entering and leaving a ramp, previous collision,
5 unfamiliar with road, defective vehicle, uninvolved
6 vehicle, other or non-apparent run-away vehicle.

7 And so when gathering the specific data for this
8 section, inattention is a single box that would be
9 checked, and then after that box, it would be an
10 inattention category.

11 We broke the categories down into cellular phone,
12 electronic equipment, radio/CD, smoking, eating,
13 children, animals, personal hygiene, reading and other.

14 MS. STONE: I believe you'll find that information
15 bulletin at page 129 of your record.

16 MEMBER BARNES: Which?

17 MS. STONE: Page 129. The cover memo is at
18 page 128. And the form itself, in sort of small print,
19 is on page 131.

20 MEMBER BARNES: So in other words, this
21 information bulletin was the thing that was used to
22 gather the specific information that you need.

23 CAPT. HOWLAND: Actually, this information
24 bulletin was sent out prior to the enactment of the
25 statute. It was sent out in December of 2000.

1 And what it did was it helped to standardize and
2 simplify the collection of data. Obviously, there are
3 inattention categories that don't fall within these codes
4 and those investigating collisions on this form can still
5 write in something that doesn't fall in those categories,
6 but as far as narrowing it down and figuring out what
7 categories we're looking for, and that gave us the
8 ability as we analyzed the data to be able to get an
9 exact number that fell under cell phone, because some
10 people refer to them as cell phones or wireless phones,
11 or, you know, there is a large number, and that way we
12 were standardized.

13 It also made it easier for our data-entry folks,
14 when they actually enter the data, because the process
15 that we go through in order to take this data and make it
16 meaningful is the agencies that investigate the collision
17 send us a physical copy of the report itself.

18 We then have data-entry people who then enter the
19 data we need into our computer, and then we're able to
20 analyze and make it meaningful.

21 MR. MANDELL: I think it's also important to note
22 that the simplification was not just for the CHP, but for
23 the local agencies, too. They could take less effort to
24 fill out the form.

25 MEMBER BARNES: And I guess what I'm trying to get

1 to is the information that you gathered to respond to the
2 Legislature's request for information was from a form
3 that had been amended to provide that information, in
4 effect, before the legislation was passed?

5 CAPT. HOWLAND: Correct. Actually, the collision
6 report itself didn't require amending. We just changed
7 how we requested the information prior to that, so when
8 the code actually was implemented, we didn't have to
9 request any change in reporting from anybody.

10 CHAIR TILTON: Eric, can I make two comments just
11 to have you confirm my sense of your position or
12 recommendation is two things; one is that the requirement
13 to actually fill out an incident report is a discretion
14 at the local level? And second, it sounds like that the
15 requirement to report to CHP is also discretionary, but
16 if you do report, here's the format for that reporting?

17 So those are the two points that you're trying to
18 bring to our attention?

19 MR. FELLER: That's correct.

20 MEMBER BARNES: I guess after listening to all of
21 this, I have to agree with the recommendation that this
22 probably is not a mandate. But I'm a little troubled by
23 the legal justification associated with it, because it
24 seems to come from an area that says there is no
25 obligation to investigate or look at or whatever, when,

1 in fact, it seems to me, and maybe they are the same
2 thing, so I'm probably asking you, Paul, to weigh in on
3 this, but it seems to me that what we're concluding is
4 that, in fact, there is discretion on the part of the
5 local agencies to decide which things they do
6 investigate, which things they do not, and that, in
7 effect, there is some discretionary decision-making that
8 goes on to decide how extensive these things get into.
9 Which seems to be, to my lay brain -- that's lay brain,
10 not lame brain -- that there is a little bit of a
11 difference in terms of our basis.

12 So do you have any help for us?

13 MR. STARKEY: Well, I think the staff decision is
14 correct, and the staff decision is based upon a statutory
15 analysis combined with the Department of Finance case.

16 And the Department of Finance case indicates, as
17 Eric has said, is that you look to the nature of the
18 underlying activity and to the participation of the
19 underlying activity.

20 So with respect to the statute at issue, it
21 is -- there is discretion in the mandate sense about
22 whether or not that report has to be prepared. And
23 what's critical, I think, and helpful for the staff
24 recommendation and the decision, is that we have shown
25 the Commission, and ultimately the court if it were

1 challenged, that in one case, the Legislature has shown
2 that it's quite able to say that it is requiring a local
3 entity to do something, on page 10 where the language of
4 the coroner, just looking at the language of that
5 statute, its plain meaning, it imposes -- it says, "The
6 coroner shall prepare the writing."

7 So in that case, we drew the conclusion that that
8 would be the one instance where we could find where the
9 Legislature had said that there would be a requirement to
10 make a writing. That wasn't the case with the other
11 statute.

12 So the analysis, as Eric, again, mentioned, this
13 is not about the generalized duty or the moral duty of
14 officers to respond to situations, and we all know that
15 and appreciate that. What we do in our analysis is to
16 look at the test claim statute and analyze that to say to
17 the Commission, Here is what the Legislature required at
18 this point in time, or did not require.

19 And just to kind of stand back, this test claim
20 legislation, when you look at the history that was put
21 out in the analysis and in the background materials, the
22 Legislature, in fact, this is one of those types of bills
23 where they're saying, We think there is a problem with
24 accidents happening. We think that it has something to
25 do with cell phones. We think we eventually want to act

1 in that direction.

2 So they put out this language that they wanted to
3 have this information collected. But from the plain
4 meaning of that statute, they did not say the local peace
5 officers shall collect this information. They said,
6 Based upon the current situation, when this report is
7 being done, you shall do this. And it's a huge
8 difference in the mandate world.

9 In the world of the lay person, please rest
10 assured that Commission staff spent a great amount of
11 time going over this. We greatly appreciated the
12 representation by Ms. Stone by providing information, and
13 the Highway Patrol providing information, looking at how
14 this program works; looking at the manual and saying what
15 is, for Mandates purposes, required.

16 So suffice to say, we looked at all of it, and the
17 way we do the Mandates analysis, we think the analysis is
18 correct. And it doesn't hinge on the finding about the
19 duty or no duty for investigating in general. We don't
20 look at a generalized duty. We look at the specific test
21 claim statute and say, Is there a requirement imposed by
22 the state? And here we didn't find it. And I believe
23 the analysis is there, and Eric, I think, pointed it out.

24 MS. STONE: Mr. Chairman, what the claimant is
25 most concerned about is -- I mean, obviously, there is an

1 issue that, you know, is this incremental increase
2 sufficient to rise to the level of a reimbursable
3 mandate? I think that's what the Department of Finance
4 and CHP are saying is that, you know, the block is there;
5 it doesn't take more than a couple seconds; it's
6 negligible at best.

7 But what the claimant is most concerned about is
8 starting down this slippery slope of unless there is a
9 specific statutory requirement that something be
10 performed, any requirement imposed upon that is not a
11 mandate. And that there is no -- the whole concept of
12 government does not necessarily rest upon statute, but
13 rests upon the Constitution and authorizing legislation.

14 And it will not often state that one is to do a
15 specific task. It may say you can't do a specific task
16 in a certain way. But oftentimes, there is no specific
17 legislation directing something. Does it mean, then,
18 that any requirement imposed upon that, which is a
19 mandatory requirement, then is optional because there is
20 no statutory foundation absent the Constitution and/or
21 authorization given to local government? I mean, that is
22 the concern here.

23 And I'm concerned, also, that this may not
24 necessarily be the case with which that particular issue
25 should be reached, if it can be done on an alternate

1 basis. And I think that's what Member Barnes was
2 stating.

3 MEMBER BARNES: I guess in rereading, you know,
4 some of the parts of this thing, I guess I have to say
5 that I think you've taken it -- you've narrowed it down
6 with regard to the findings that deal with, basically,
7 the preparation of the report itself.

8 In going back through this, I guess I don't see a
9 particular conclusion that, in fact, there is no
10 obligation or duty or whatever to deal with accidents as
11 a whole. Or collisions or whatever as a whole.

12 So I guess that was kind of the underlying premise
13 that I was a little worried about. But in rereading the
14 specific recommendations, I guess I think that it's
15 probably okay the way it is.

16 CHAIR TILTON: Any other discussion or questions?

17 MEMBER BOEL: I'd like to make a motion that we
18 move to approve the staff recommendation.

19 VICE CHAIR SHERWOOD: I'll second that.

20 CHAIR TILTON: Got a motion and a second. Call
21 the roll please, Paula.

22 MS. HIGASHI: Mr. Barnes?

23 MEMBER BARNES: Aye.

24 MS. HIGASHI: Ms. Boel?

25 MEMBER BOEL: Aye.

1 MS. HIGASHI: Mr. Sherwood?

2 VICE CHAIR SHERWOOD: Aye.

3 MS. HIGASHI: Mr. Tilton?

4 CHAIR TILTON: Aye.

5 MS. HIGASHI: Item 4.

6 MR. FELLER: This regards the Statement of
7 Decision.

8 Unless the parties object, staff recommends that
9 the Commission adopt the Proposed Statement of Decision,
10 beginning on page 2, which accurately reflects the
11 decision on the test claim.

12 Staff also requests that the Commission allow
13 minor changes be made to the SOD, including the errata on
14 page 13, as well as reflecting the hearing testimony and
15 vote count that will be included in the final statement
16 of decision.

17 MS. STONE: On behalf of the claimant, I would
18 like to reiterate those comments made by Mr. Burdick this
19 morning on the cancer presumption; that it does cause
20 claimants some concern when the Proposed Statement of
21 Decision is prepared and submitted to your Commission
22 prior to the time that there has been any hearing
23 whatsoever, or evidence proffered, either by the
24 claimants, state agency or Department of Finance.

25 Furthermore, we've had an extensive discussion

1 this morning with regard to the concept of duty and the
2 underpinnings which seem to arise from this particular
3 Mandate. And to have a Statement of Decision prepared in
4 advance of the hearing would seem to imply that the
5 ultimate decision has been made before any presentation
6 of evidence or testimony at the hearing, which is
7 extremely problematic to claimants, given the fact that I
8 would say probably in excess of 90 percent of the
9 situations, the staff analysis is what is adopted by your
10 Commission. And generally, any modifications to your
11 Statement of Decisions are with regard to typographical
12 errors only.

13 And I think there is nothing within the Statement
14 of Decision to reflect the underlying concern that this
15 does not directly address the underlying responsibility
16 of police departments to enforce the law.

17 And if your Commission is specifically not making
18 any determination that your Statement of Decision does
19 not reach the issue of whether or not there is an
20 underlying obligation to enforce the law, then I would
21 request that the Statement of Decision so reflect.

22 CHAIR TILTON: Ms. Stone, you may not have been
23 here when we had this discussion this morning, and what
24 we were talking about is that what we have asked staff to
25 do is prepare the Record of Decision.

1 MS. STONE: I was here for that discussion.

2 CHAIR TILTON: Okay. So I think the issue for us
3 now, as a board member, is that if we believe that there
4 is anything that's been discussed or testimony that would
5 require changes to this, then that's the time for us to
6 consider that. And so it's not an automatic that we just
7 accept it as is; it's just more procedural if we can
8 approve it and it's informed, and the issues have been
9 raised already, and there aren't any new issues, then
10 that's why we're doing that. Rather than having a delay
11 of two months.

12 So we're very conscious of the issue to make sure
13 that this is not just a pro forma and doesn't indicate
14 that the Commission is automatically accepting staff's
15 recommendation when they propose both items.

16 VICE CHAIR SHERWOOD: Mr. Chair, Ma'am, I would
17 like to indicate that there is no absolutely no way that
18 this statement effects my decision-making through the
19 process.

20 MS. STONE: This is the impression that is given,
21 I mean, when one has a Statement of Decision issued
22 contemporaneously with a staff analysis.

23 VICE CHAIR SHERWOOD: I guess an option would be
24 to have two different, to have a yes and a no, or some
25 other option here before us. But when this comes before

1 us, we look at the case, at least I look at the case.

2 MS. STONE: No, I know you do, Mr. Sherwood. But
3 the issue is the overall impression.

4 VICE CHAIR SHERWOOD: I understand. And I think
5 earlier I expressed some concern about this process of
6 putting the two together and that we have to be extremely
7 careful as we proceed with our decision-making on step A
8 and B.

9 I think that's up to us as Commission members to
10 make sure that we understand the importance of decisions
11 we're making here, and I think we've all expressed that
12 we are concerned and aware of your concerns, frankly.

13 MS. STONE: And it is for that reason that I would
14 have requested that the Statement of Decision reflect the
15 very narrow fact that you are basing your decision on the
16 fact that there is no statute which requires that peace
17 officers prepare a traffic collision report.

18 And I mean, that is the basically the crux of it
19 from what the discussion is. And the Statement of
20 Decision is a little bit more vague than that.

21 VICE CHAIR SHERWOOD: Let's hear from staff.

22 CHAIR TILTON: Sure. Eric?

23 MR. FELLER: That would be within your discretion.
24 My recommendation would be that it's based on no
25 requirement in statute, rather than no requirement in

1 law.

2 CHAIR TILTON: That's an amendment you think would
3 be appropriate, Ms. Stone's request?

4 MR. FELLER: I think that would be appropriate.

5 MS. HIGASHI: It seems to be consistent with what
6 Mr. Feller's, his recommendation indicated that the
7 decision would be updated to reflect the testimony here
8 today. And that was certainly a significant part of the
9 testimony that was heard and the discussion. So it could
10 easily be reflected.

11 We would need to wait until the transcript is
12 issued, and once that is issued, then the Statement of
13 Decision would be completed. It would be up to the
14 Commission as to whether or not the motion, if you wanted
15 to add conditions to the motions such that we would
16 prepare it as a revised proposed SOD, send it out to the
17 parties, ask for comment. If we don't hear back from
18 anyone within ten days or something, then it's issued.
19 Including the members, obviously. That would be another
20 way of doing it.

21 But my only concern is that since Mr. Sherwood is
22 not at our next meeting.

23 CHAIR TILTON: Well, I think Ms. Stone has
24 basically summarized my conclusion in terms of the
25 rationale for my motion or my vote on this. And so I

1 believe it's appropriate for us, at least from my point
2 of view, to instruct staff to make that modification.
3 And whatever process you want to put in place to make
4 sure that finding gets described that way. I think I'd
5 rather do that than come back and put it over. But I do
6 agree with the comment Ms. Stone made in terms of that
7 point.

8 MS. STONE: Then my suggestion, as a procedural
9 matter, might be that the Commission staff prepare a
10 Statement of Decision reflecting the narrow basis upon
11 which this particular claim was denied, and provide us
12 with a copy, and if we have no objections, it would just
13 go in. And that were we to have objections, then we
14 would request that it be set on the July hearing;
15 otherwise; it would just go through. If that would be
16 suitable as a procedure for your Commission.

17 CHAIR TILTON: Fine with me. Do any of the other
18 members have a problem with that?

19 MEMBER BARNES: Yeah. I mean, to a certain extent
20 I think that, you know, the proposed decision is
21 reflective of the discussion that we've had and the
22 conclusion that we've made. To the extent that you need
23 to, you know, technically, change that, I think there is
24 the opportunity to do that.

25 And I would suggest that we do what we've said in

1 the previous one, which is that if you have some
2 suggestions, get them into the Commission staff. And,
3 obviously, I would encourage you to read it and take a
4 look at it and see how that can be incorporated.

5 MR. STARKEY: I just want to say something for the
6 record in case this turns into a dispute down the road.

7 The reason that -- the Commission's findings are
8 contained in the conclusion, and I concur with
9 Mr. Barnes; I think it is all here. And I think you can
10 only read this decision to be an interpretation of what
11 was before the Commission and the test claim statute, and
12 not read the Commission's decision for something broader
13 than that.

14 But I want to point out that, in responding to the
15 arguments of the claimants, they are the ones that
16 brought up a generalized duty that therefore made -- that
17 because of some generalized duty, that we had to read the
18 statute differently.

19 So it's -- to say that we would limit it to say
20 that only the statute is not correct because by virtue of
21 the way the case was presented and pled and rebuttal
22 presented, we were forced to look at all of California
23 law to find out if there was any law in statute, case
24 authority, the Constitution, anything that the state was
25 imposing a mandate.

1 So I just wanted to state that now in case this
2 becomes a dispute later on.

3 MEMBER BARNES: I mean, I guess I would also say
4 that, you know, in looking at it, you know, we would all
5 probably suggest word-smithing associated with this, you
6 know, if we were so inclined. But by and large, it seems
7 to me that the document and the resulting final
8 recommendations incorporate, you know, the rationale and
9 the decision correctly.

10 So again, to the extent that you feel that there
11 is something that needs to be in here, I would encourage
12 you to let the staff know, and we'll see what we can do.

13 CHAIR TILTON: Seeing no one else wants to discuss
14 that, a motion?

15 Did you make a motion already? Did I miss it?

16 MEMBER BOEL: I'm not sure what the motion is
17 right now. Is the motion that we redo this? That the
18 staff has to redo this?

19 MEMBER BARNES: No.

20 MS. HIGASHI: Eric made a recommendation which I
21 believe is the motion, and it's basically that staff is
22 authorized to update the decision to reflect the vote,
23 the witnesses, and any hearing testimony that was not
24 previously in the record.

25 MEMBER BOEL: That's fine. I so move.

1 CHAIR TILTON: I have a motion.

2 VICE CHAIR SHERWOOD: Second.

3 CHAIR TILTON: And a second. Call for the roll.

4 MS. HIGASHI: Mr. Barnes?

5 MEMBER BARNES: Aye.

6 MS. HIGASHI: Ms. Boel?

7 MEMBER BOEL: Aye.

8 MS. HIGASHI: Mr. Sherwood?

9 VICE CHAIR SHERWOOD: Aye.

10 MS. HIGASHI: Mr. Tilton?

11 CHAIR TILTON: Aye.

12 MS. HIGASHI: Thank you.

13 MS. STONE: Thank you very much.

14 VICE CHAIR SHERWOOD: Can I just make one more
15 comment, Mr. Chair?

16 CHAIR TILTON: Sure.

17 VICE CHAIR SHERWOOD: This is something Pam said,
18 you said about us voting 90 percent, I think, with the
19 staff.

20 I think we need to note, though, that often staff
21 does vote -- or not vote, but recommend in favor.

22 MS. STONE: No, no, I understand that. I guess
23 the concern is that, oftentimes, it doesn't matter what
24 the testimony is; that whatever your staff recommends,
25 good, bad or indifferent with regard to any particular

1 party, that the Commission just walks along behind it.

2 And that's one of my concerns. You know, because
3 you do have -- both state agencies and claimants have the
4 right to present evidence.

5 VICE CHAIR SHERWOOD: I think over the years that
6 I've seen -- I know, Pam, you've been involved for
7 several years.

8 MS. STONE: Way too long. Way too long,
9 Mr. Sherwood.

10 VICE CHAIR SHERWOOD: I think I might go along
11 with you on that, Pam. In my case; not yours.

12 MS. HIGASHI: We have --

13 VICE CHAIR SHERWOOD: It seems to me that over the
14 years, working and seeing the staff's work, that quite
15 frankly, the work that's being provided right now is
16 excellent.

17 And I think the work provided by your staff and
18 other staffs has been awfully good also over the years.
19 I've seen it come and go. And I think on occasion, the
20 Board has, through the years, voted against staff
21 possibly more often in some years, prior years.

22 So it's a cycle. And I think a part of it depends
23 upon the quality of the work that's being done by the
24 staff and by the claimants. So it does come and go, I
25 think.

1 I think in recent times, my experience has been is
2 that you're right; I think the Board has had a tendency
3 to vote along with staff. Which may be the relationship
4 to the quality of work that's being received from either
5 side. I just want to point that out.

6 MS. STONE: No, no, I understand. I've been doing
7 this on and off for 20 years.

8 VICE CHAIR SHERWOOD: Twenty? Very good.
9 Congratulations.

10 MS. STONE: I think I'm nuts.

11 CHAIR TILTON: Thank you for your testimony, Pam.

12 MS. HIGASHI: We have a couple more items, and
13 then we have public comment, and then we will need a
14 quick closed session.

15 So Item 18 is Mr. Starkey's.

16 MR. STARKEY: For the public report for the
17 litigation, there is nothing further to add at this time.
18 There will be updates for the next Commission hearing.

19 I did want to take the opportunity, though, to
20 introduce to the Commission our summer law clerks. And
21 gentleman, if you would stand.

22 Micah Martin, to the right, is returning with us
23 for the summer. He is a second-year student at McGeorge.
24 Todd Ratshin, in the middle, has joined us for a special
25 project for a month for the summer to help us out. He's

1 also second year at McGeorge doing great work. And
2 William Tunick has just joined us for the summer from
3 UC Davis. And then he will leave us and move on to the
4 Attorney General's office where he's already accepted an
5 offer, unfortunately.

6 But I want to commend them for their work so far
7 and to introduce them to Commission.

8 CHAIR TILTON: Right. Nice meeting you. Thanks
9 for the help.

10 MS. HIGASHI: Item 19 is my report. And there is,
11 embedded in this report, is one item that requires your
12 discussion and consideration. That's on Page 2, and I've
13 asked Assistant Executive Director Nancy Patton to
14 present this item since she is most familiar with the
15 issues.

16 MS. PATTON: The Governor's office has requested
17 that all boards and commissions prepare bill analysis and
18 recommend positions on pending legislation.

19 During previous administrations, the Governor's
20 office did not make this request, nor did the Commission
21 routinely prepare analysis and recommend positions on
22 pending legislation.

23 When the Governor's office requests a bill
24 analysis, we may have a very short turnaround time of
25 three to five days, it could be shorter than that, to

1 submit a completed bill analysis. Because of these short
2 timelines, staff recommends that the Commission authorize
3 the Executive Director to submit bill analysis with
4 positions on bills that impact the Commission's statutory
5 authority and workload. Each bill analysis will include
6 the following statement: "This analysis was prepared by
7 Commission staff. It has not been reviewed by the
8 Commission members, and it is not intended to reflect the
9 position of any individual member or the Commission
10 itself."

11 This process would not preclude the Commission
12 from voting to take positions on bills; staff would
13 continue to present bills to the Commission for their
14 action.

15 MEMBER BOEL: Well, coming from Governor's office,
16 and this is the kind of thing my department, the Office
17 of Planning and Research does all the time, and really,
18 before this mandate came out, I was coming to Paula and
19 Nancy to say, I think you should get involved in taking
20 positions on legislation much more actively, because
21 there has been a lot of legislation that affects the
22 Mandates Commission.

23 And I was concerned because I would watch them on
24 the hearings -- in fact, Paula has done an excellent job
25 in the hearings, I want to commend you, I think she's

1 done outstanding work -- but it seems like I was saying,
2 "Help, we need to be out there giving our position." And
3 we wouldn't have a meeting for six weeks.

4 So I really would urge us to give them the
5 authority to do this. I think it's very much needed to
6 continue the high quality of staff work we've been
7 getting.

8 CHAIR TILTON: My reaction, I think it is very
9 important, especially, Paula, in terms of the processes
10 of the mandates. You folks are the experts. And I think
11 in many ways, there's a conflict of interest for us as
12 board members taking positions on legislation, on the
13 policy issues, because our own agencies are doing those
14 kinds of issues.

15 So I think this is a good compromise, that with
16 that disclaimer, we can always object and have a
17 different opinion when we need to. But I think it's
18 important for the staff to be involved in the processes
19 of mandates in all those discussions. So I think this is
20 a good recommendation.

21 VICE CHAIR SHERWOOD: I feel the same way.

22 CHAIR TILTON: Do we have a motion, then, to
23 authorize the Executive Director to do the legislative
24 positions and report those to the Governor's office?

25 VICE CHAIR SHERWOOD: So moved.

1 MEMBER BOEL: I second.

2 CHAIR TILTON: All in favor, say "aye."

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

4 CHAIR TILTON: Opposed?

5 *(No audible response was heard.)*

6 CHAIR TILTON: Motion passes.

7 MS. HIGASHI: Thank you.

8 MS. PATTON: Thank you.

9 MS. HIGASHI: I have just a couple minor updates.

10 One is that the Assembly Special Committee on State
11 Mandates will resume its hearings beginning a week from
12 Monday. So we'll find out at that time what they intend
13 to do.

14 And they have a number of proposals before them,
15 and they'll start discussing the testimony, as well as
16 the written submittals they've received.

17 I've given you copies of the documentation that
18 I've provided to the Committee at their last hearing.
19 And I've also given you copies of pending test claims.
20 Nancy has provided an update on legislation which is
21 already out of date, but if you go to the Commission's
22 website, all of the bills that we have been following are
23 all noted there and you can go directly to them, Leg.
24 Info Updates.

25 We also have a very brief list of agenda items for

1 the July hearing. We are still in the process of
2 finalizing some of the analyses, and some of them may
3 drop off, and others may take their places. So we'll
4 keep you updated on that as soon as I have a closer
5 perspective on that agenda.

6 Are there any other questions?

7 VICE CHAIR SHERWOOD: I'll just make a couple,
8 Paula. It's a minor item, but on page 3, under State
9 Controller's Report to the Director of Finance, I think
10 there is a typo there under -- and the reason I mention
11 it is because we're talking about a million seven. I
12 think the million dollars two hundred four thousand, it's
13 the third line down, talking about additional funds in
14 the amount of 1.7 million -- billion. And you have one
15 billion seven hundred million for local agencies; six
16 hundred eighty-two million for schools. I think the one
17 billion seven should be one billion two hundred four.

18 MS. HIGASHI: Oh, okay.

19 VICE CHAIR SHERWOOD: Which will cross over, then,
20 to the one seven three one.

21 MS. HIGASHI: I guess that's why I don't work at
22 Finance.

23 MEMBER BOEL: What's a billion here.

24 VICE CHAIR SHERWOOD: Things like that jump out at
25 me for some reason.

1 MS. HIGASHI: And we did proof it, I thought.

2 MEMBER BOEL: I would have one other question on
3 dates and agenda items.

4 We talked earlier today about the Butte County
5 having a special hearing up there. Do we have any idea
6 what kind of timeframe that would be in? Is that within
7 the next quarter?

8 MS. HIGASHI: It would be October.

9 MS. PATTON: If they file the end of August,
10 beginning of September, which is what they are
11 indicating, we would have to hold the first hearing
12 within 60 days of them filing applications so that would
13 be sometime in October.

14 MEMBER BOEL: So it would not be the same.

15 MS. HIGASHI: So we would have the July hearing,
16 then we would have a September hearing.

17 MEMBER BARNES: Can I just clarify? We'd have to
18 have it in 60 days, even though the analysis is not done
19 or anything like that?

20 MS. PATTON: No. The analysis has to be done
21 before we have the hearing within 60 days.

22 MEMBER BARNES: But my understanding is that the
23 analysis does not have to be performed until there is
24 money to pay for it.

25 MS. PATTON: Correct. The 90-day time line is

1 tolled until we have the funding.

2 MEMBER BARNES: That's what I wanted to make sure.

3 MS. PATTON: But now that you've indicated your
4 preference, we can go forward and request the funding.

5 MEMBER BARNES: Okay.

6 MS. HIGASHI: We have one other -- I should say,
7 we should move on to public comment, unless there are
8 questions.

9 *(No audible response was heard.)*

10 CHAIR TILTON: I'm going to stand up for this,
11 Bill.

12 And we have a Resolution for Mr. Sherwood. And I
13 want to comment two things: One, I've been serving on
14 the Commission here just a few -- seems like a lifetime,
15 but it's been about three or four meetings, but I've
16 known Bill for over twenty years. Worked with him back
17 in 1980 with the Treasurer's Office. And always have
18 known Bill, as I've seen here, as both professional, the
19 highest esteem in terms of public servants, Bill, and has
20 a reputation around government for one of those folks who
21 does the public work in high value and high esteem.

22 And we're going to miss you in your retirement,
23 and maybe we'll keep our hooks in you somehow. But I
24 have a resolution to read you from the Commission. And I
25 think this reflects all of our esteem in terms of your

1 good work of 34 years, I think, you said.

2 "Whereas, Bill Sherwood, Director of Investments
3 and Deputy State Treasurer, has distinguished himself as
4 a Member of the Commission on State Mandates,
5 representing the State Treasurers Tom Hayes, Kathleen
6 Brown, Matt Fong, and Phil Angelides, from December 1990
7 through June 30th, 2004." That's a long time.

8 "Whereas, as the longest tenured Commission
9 member, Bill Sherwood has participated in 113 meetings
10 and hearings of the Commission on State Mandates;

11 "Whereas, he has advised and influenced the
12 Commission in determining test claims, including Special
13 Education, Investment Reports, County Treasury Oversight
14 Committees, Peace Officer's Bill of Rights, ERAF, Three
15 Strikes, Animal Adoption, School Site Councils,
16 Expulsions, Sexually Violent Predators, High School Exit
17 Exam, Medically Indigent Adults, Open Meetings and
18 Graduation Requirements, Incorrect Reduction Claims,
19 pursuant to article XIII B, section 6 of the California
20 Constitution and section 17551 of the Government Code;

21 "Whereas, he is the only member to participate in
22 hearing and determining the Applications for Findings of
23 Significant Financial Distress," as we've talked about
24 today, "filed by the Counties of Sacramento, Alameda,
25 Lassen, Los Angeles, Shasta, Solano and Butte; and,

1 "Now, therefore, be it resolved upon his
2 retirement, the Members and Staff of the Commission on
3 State Mandates are honoring Bill Sherwood in appreciation
4 of his 34 years of outstanding dedication, leadership and
5 service to the State of California.

6 "Done this day, May 27th, 2004."

7 Thank you, Bill.

8 *(Chorus of applause.)*

9 VICE CHAIR SHERWOOD: Well, just quickly, I'll
10 make a few comments.

11 I got into this position because Fred Buenrostro
12 was over at the State Treasurer's office, and Fred called
13 me up one morning and said, Bill, I sit on this little
14 obscure Commission. And I'd like you to, and he gave me
15 about ten minutes' notice, I'd like you to come over and
16 sit in for me because I can't make it today.

17 So I didn't think anything about it. I said,
18 Fine. That's great. So I jumped over here, and I found
19 out that this was really one involved, difficult
20 Commission to deal with because of the type of
21 information we're dealing with and the requests being
22 made.

23 And after that one meeting, somehow, Fred decided
24 to leave us and go to the State Controller's Office, and
25 it became my job. And as Treasurers came along, I can

1 honestly -- I should honestly say, I kind of made an
2 effort to kind of move away from the Commission, and it
3 never quite worked out that way.

4 But I've been so fortunate to have worked for
5 three great Treasurers. I've worked for seven over the
6 years. And they are all very good people. But as a
7 Commissioner on this Board, with Phil Angelides and
8 Tom Hayes and Kathleen Brown, and with Matt Fong, I was
9 just always able to do and work the way I wanted to, and
10 they treated this whole Commission with integrity. And
11 I'm just very lucky to have worked with those people.

12 And it's been a very educational and rewarding
13 experience for me. I've learned so much by being
14 involved in working with local governments, and the
15 people that have come forward, I have a lot of respect
16 for what you do, and I think it's an extremely important
17 Commission. And I think the job itself that you do out
18 there is so worthwhile and so needed, and I just
19 compliment you on the efforts you make to come before us.

20 And, of course, the Commissioners, I look back to
21 Joann Steinmeier, and Al Beltrami, John Lazar; these
22 people volunteer their time. I sit here because I work
23 at the Treasurer's Office, but I also get paid by the
24 Treasurer. These people that are here, public members,
25 do a tremendous job, and I respect them very much. Over

1 the years, Joann, educational background. Al, I think,
2 came from Cal, and he had a tremendous background. And
3 John, an elected official from down in Turlock.

4 So it's just been a tremendous experience for me.
5 And I'd just like to close by saying how much I respect
6 the job that this staff does. They are understaffed,
7 underfunded; they are looking at 100 some odd cases right
8 now, 120 some odd.

9 And I just respect how you keep your nose to the
10 grindstone; keep knocking out the work. Good job. Good
11 work. And I think it speaks so well to state service and
12 the type of people that we have here working for us. So
13 it's just been a pleasure, Paula, Paul, Camille, Nancy;
14 everyone. Just what a great job you do, and keep up the
15 good work.

16 And I got to believe that down the road, there
17 will be some light at the end of the tunnel, and I think
18 we're, as a state, moving in the right direction, and
19 we're going to be in a much better situation.

20 So stay with it, because you're not quite as old
21 as I am. You need to stay with it before you can retire
22 probably.

23 Thank you very much.

24 *(Chorus of applause.)*

25 CHAIR TILTON: I guess we'll now move into closed

1 session.

2 MS. HIGASHI: We have two other comments.

3 DR. BERG: With your indulgence, Carol Berg,
4 Education Mandated Cost Network.

5 We can't let you get away, Mr. Sherwood, without
6 expressing our gratitude to you. Very few people on this
7 Commission have persevered through the 20-year Special
8 Education --

9 VICE CHAIR SHERWOOD: I remember that well.

10 DR. BERG: Right. And you've been there through
11 all of it. The great loss, really and truly, for the
12 whole process is the loss of the institutional memory
13 that you will take with you. And we appreciate so much
14 the fact that you've done your homework; it's obvious
15 that you have done that. And that is a huge
16 responsibility for somebody who also has a day job.

17 So we, on behalf of the Education folks, we
18 represent over 800 of the thousand school districts, we
19 have a little token here for you to put on a wall or in a
20 box, depending on what you do with all the treasurers.

21 VICE CHAIR SHERWOOD: We'll put it on a wall.

22 DR. BERG: And this says, "We present to you,
23 Mr. Sherwood, in appreciate for your faithful service and
24 dedication to the work of the Commission on State
25 Mandates," which is no longer an obscure, small

1 Commission, "with gratitude for your service."

2 We thank you.

3 VICE CHAIR SHERWOOD: Thank you.

4 *(Chorus of applause.)*

5 VICE CHAIR SHERWOOD: Okay. Great. Thank you
6 very much.

7 MR. BURDICK: Mr. Chairman and members,
8 Allan Burdick on behalf of a group called the
9 City/County, or the CSAC League of Cities Advisory
10 Committee on State Mandates.

11 And with me today I have our co-chairs,
12 Leonard Kaye, from the County of Los Angeles, who is our
13 county chair, and Glenn Everroad, who chairs on behalf of
14 the cities from the City of Newport Beach.

15 And we would like to join in, and I think the
16 first thing I'll do is ask Leonard to make a couple
17 comments relative to the work with Commissioner Sherwood.

18 MR. KAYE: Yes. Thank you.

19 It's a real pleasure to be here today and to wish
20 you the very, very best. And to let you know over the
21 years, as I appeared before you, while we did have our
22 slight disagreements, you did offer some very deep and
23 reflective thought as to what we were trying to do.

24 And I just want to wish you the very best and
25 appreciate your long and very dedicated service. And it

1 was encouraging to all of us, I think, in the field to,
2 because we never quite knew what questions you would ask,
3 you sort of kept us on our toes, and to let you know, by
4 the way, if you want to stop by in Los Angeles County,
5 you're always welcome.

6 And, you know, to wish you the best. Thank you.

7 VICE CHAIR SHERWOOD: Thank you very much. It's
8 been great working with you, also.

9 MR. EVERROAD: Member Sherwood, we'd like to also
10 thank you from the city's perspective. You not only, as
11 Leonard indicated, are obviously familiar with the
12 process and have prepared whenever you've presented
13 yourself here on the Commission, you've also offered us a
14 great deal of insight about your understanding when you
15 actually reached the decision.

16 It was helpful for us in preparation of our claims
17 to know where you were coming from. I'd like to thank
18 you for that as well. And restate the best wishes for
19 you in your future.

20 VICE CHAIR SHERWOOD: Thank you very much.

21 MR. BURDICK: And Bill, if I may be so bold, we
22 had the opportunity, obviously, to work with you from day
23 one. I remember when Fred left and you showed up and
24 have been ever since.

25 And as Vice-Chairman of the Commission, I think I

1 echo the comments of everybody else that while we didn't
2 always agree with your vote, and a couple times today,
3 possibly, but on the other hand, we knew that you came,
4 you were well prepared, you asked very penetrating
5 questions.

6 It's great to see somebody -- we were very pleased
7 when you were able to represent, when you came back in
8 after, I think it was originally, I think that was
9 Tom Hayes, if my recollection is right, and then came on,
10 and changed stripes, and we had different partisan
11 members who were elected to that particular office, but
12 it didn't seem to make any difference; they continued to
13 allow you to come.

14 So what I'd like to do is because I'm recovering
15 from a hip injury, is I'd like to have Glenn Everroad
16 take this up to you as a token of our appreciation from
17 the Joint CSAC League of Cities Advisory Committee on
18 State Mandates in our appreciation for your dedication
19 and hard work all these years.

20 It is a bittersweet day; one of those days that --
21 we know the reason you're leaving is you're going on to
22 retire and have wonderful times. On the other hand,
23 we're going to miss you.

24 I did comment to Leonard that his Investment
25 Report Incorrect Reduction Claim has not yet been

1 settled. And now as you leave state service, that maybe
2 Leonard should look to seeing if he couldn't enter into a
3 relationship to have you come on and help defend that.

4 VICE CHAIR SHERWOOD: Be careful here.

5 MR. BURDICK: My guess is Paula will not schedule
6 that within the next year.

7 Thank you very much.

8 VICE CHAIR SHERWOOD: Thank you very much.

9 *(Chorus of applause.)*

10 MS. HIGASHI: Mr. Chair, Mr. Starkey wishes to
11 make a comment.

12 MR. STARKEY: Just for closed session -- actually,
13 before we do that, I just want to say Bill, thank you.
14 It's been a pleasure.

15 I'm somewhat nervous because Bill is the last
16 remaining member of the Commission who hired me, I think,
17 August or July.

18 VICE CHAIR SHERWOOD: I feel really good about
19 that decision.

20 MR. STARKEY: Thank you. Thank you.

21 But on that, for closed session, things are sort
22 of on hold, so we can suspend with that, and I can
23 provide anything in writing as decisions develop.

24 So if the members have no questions, we can
25 suspend with that.

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CHAIR TILTON: Great. We're done with our
business?

MS. HIGASHI: We can go to lunch.

CHAIR TILTON: With that, the Commission on State
Mandates is adjourned.

Thank you for your testimony.

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(The proceedings concluded at 12:46 p.m.)

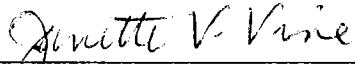
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REPORTER'S CERTIFICATE

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

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

In witness whereof, I have hereunto set my hand this 16th day of June 2004.



Janette V. Vine, CSR #3978