

**PUBLIC HEARING**  
**COMMISSION ON STATE MANDATES**



TIME: 9:30 a.m.  
DATE: Friday, January 29, 2010  
PLACE: State Capitol  
Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

CYNTHIA BRYANT  
*(Commission Chair)*  
Representative for ANA MATOSANTOS  
Director, State Department of Finance

CATHLEEN COX  
Acting Director  
Director, Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

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



COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
*(Item 23)*

HEATHER HALSEY  
Commission Counsel  
*(Item 6)*

A P P E A R A N C E S

COMMISSION STAFF PRESENT

*Continued*

KENNY LOUIE  
Senior Commission Counsel  
(Items 4 and 5)

NANCY PATTON  
Assistant Executive Director  
(Items 15 and 21)

CAMILLE SHELTON  
Chief Legal Counsel  
(Items, 10, 11, and 22)



PUBLIC TESTIMONY

**Appearing Re Item 4 (Redistricting Senate and  
Congressional Districts):**

For County of Los Angeles:

LEONARD KAYE  
County of Los Angeles  
Department of Auditor-Controller  
500 West Temple Street, Suite 603  
Los Angeles, California 90012

For Department of Finance:

JEFF CAROSONE  
Principal Program Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4 (Redistricting Senate and Congressional Districts):** *continued*

For Department of Finance:

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

LORENA ROMERO  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing Re Item 6 (California Environmental Quality Act):**

For Claimant Clovis Unified School District:

ART PALKOWITZ  
Manager, Office of Resource Development  
San Diego City Schools Finance Division  
4100 Normal Street, Room 3209  
San Diego, California 92103-2682

For Department of Finance:

DONNA FEREBEE  
Staff Counsel III  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 10 (Mandate Reimbursement Process II):**

For Claimant City of Newport Beach:

GLEN EVERROAD  
Revenue Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92658-8915

JULIANA F. GMUR  
Manager, Financial Services  
MAXIMUS  
3130 Kilgore Road, Suite 400  
Rancho Cordova, California 95670

For Department of Finance:

JEFF CAROSONE  
Principal Program Budget Analyst  
Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

LORENA ROMERO  
Department of Finance

**Appearing Re Item 15 (Collective Bargaining and  
Collective Bargaining Agreement Disclosure and  
Intradistrict Attendance):**

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 15 (Collective Bargaining and  
Collective Bargaining Agreement Disclosure and  
Intradistrict Attendance): *continued*

For State Controller's Office:

JIM SPANO  
Chief, Mandated Cost Audits Bureau  
Division of Audits  
State Controller's Office  
300 Capitol Mall, Suite 518  
Sacramento, California 95814





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**Commission on State Mandates – January 29, 2010**

1 BE IT REMEMBERED that on Friday, January 29,  
2 2010, commencing at the hour of 9:36 a.m., thereof, at  
3 the State Capitol, Room 447, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

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

9 Paula, can you call the roll and take up  
10 Item 1?

11 MS. HIGASHI: Certainly.

12 Mr. Chivaro?

13 MEMBER CHIVARO: Present.

14 MS. HIGASHI: Ms. Cox?

15 MEMBER COX: I'm here.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: Present.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Present.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Here.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: And Ms. Bryant?

25 MEMBER BRYANT: Here.



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1 MS. HIGASHI: Since this is the first meeting  
2 of the year, the first order of business is the annual  
3 election of officers.

4 Are there any nominations for chairperson, or  
5 is there a motion for election of a new chairperson?

6 MEMBER OLSEN: I'd like to nominate Cynthia  
7 Bryant for chair.

8 MEMBER GLAAB: Second.

9 MS. HIGASHI: Let me just clarify.

10 So you're nominating the Director of the  
11 Department of Finance --

12 MEMBER OLSEN: Oh, yes. Yes, thank you.

13 MS. HIGASHI: -- Ana Matosantos?

14 MEMBER OLSEN: Yes, right.

15 MS. HIGASHI: And we have the second?

16 MEMBER GLAAB: *(Indicating affirmatively.)*

17 MS. HIGASHI: Mr. Glaab.

18 All those in favor of electing Ana Matosantos,  
19 Director of the Department of Finance, as chairperson of  
20 the Commission, please signify by saying "aye."

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

22 MS. HIGASHI: Any opposed?

23 *(No response)*

24 MS. HIGASHI: Congratulations, Ms. Bryant.

25 CHAIR BRYANT: I accept this honor on behalf of

**Commission on State Mandates – January 29, 2010**

1 Ana Matosantos.

2 Are there other nominations for  
3 vice-chairperson, or is there a motion?

4 MEMBER WORTHLEY: Madam Chairman, I would move  
5 that the Treasurer, the State Treasurer, as the  
6 vice-chair.

7 CHAIR BRYANT: Is there a second?

8 MEMBER GLAAB: I'll second.

9 CHAIR BRYANT: All those in favor?

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

11 CHAIR BRYANT: Congratulations to Treasurer  
12 Lockyer. You've been elected vice-chairman.

13 MEMBER LUJANO: And speaking for the Treasurer,  
14 in the tradition of the Commission, as we alternate back  
15 and forth from the Controller's office, thank you.

16 CHAIR BRYANT: All right, Item 2, are there any  
17 objections or corrections to the October 30<sup>th</sup> minutes?

18 MEMBER CHIVARO: I'll move approval.

19 CHAIR BRYANT: We have a motion.

20 Do we have a second?

21 MEMBER OLSEN: Yes.

22 MEMBER GLAAB: Second.

23 CHAIR BRYANT: A second for adoption of  
24 the minutes.

25 All those in favor?

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

2                    CHAIR BRYANT: All those opposed?

3                    (No response)

4                    CHAIR BRYANT: Any abstentions?

5                    I'm abstaining.

6                    Okay, the next item is the Consent Calendar.

7                    Paula?

8                    MS. HIGASHI: This brings us to the Consent  
9                    Calendar, which is on green paper. You should all have  
10                   it before you.

11                   I'll read through this list.

12                   It's Item 12; Item 13; Item 14; Item 16,  
13                   Parts A, B, and C; and Item 17, Parts A through U;  
14                   Item 19.

15                   CHAIR BRYANT: Are there any objections to the  
16                   proposed Consent Calendar?

17                   (No response)

18                   CHAIR BRYANT: Is there a motion to adopt it?

19                   MEMBER OLSEN: So moved.

20                   MEMBER CHIVARO: Second.

21                   CHAIR BRYANT: It's been moved by Sarah Olsen  
22                   and seconded by -- well, you. I'm sorry, I'm just --

23                   MEMBER CHIVARO: Chivaro.

24                   CHAIR BRYANT: -- Mr. Chivaro.

25                   All those in favor, signify by saying "aye."

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

2                   CHAIR BRYANT: Those opposed?

3                   *(No response)*

4                   CHAIR BRYANT: Motion carries.

5                   MS. HIGASHI: There are no matters to consider  
6 under Item 3.

7                   And this brings us to the hearing portion of  
8 our meeting.

9                   Will all of the parties and witnesses for  
10 Items 4, 5, 6, 7, 10, and 11 please rise.

11                   *(The parties and witnesses stood up.)*

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

16                   *(The parties and witnesses responded*  
17 *affirmatively.)*

18                   MS. HIGASHI: Thank you very much.

19                   This brings us to our first test claim, which  
20 is Item 4.

21                   Commission Counsel Kenny Louie will present  
22 this. It's the *Redistricting Senate and Congressional*  
23 *Districts* test claim.

24                   MR. LOUIE: Thank you, Paula.

25                   Under Article XXI of the California

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1 Constitution, the Legislature is required to adjust the  
2 boundary lines of the Senate, Assembly, Board of  
3 Equalization, and congressional districts in the year  
4 after the national decennial census is taken. The  
5 test-claim statute pled by the claimant is the  
6 Legislature's adjustment to the boundary lines of the  
7 Senate and congressional districts for the 2001  
8 redistricting plan as required by Article XXI.

9 Section 4 of the test-claim statute requires  
10 county election officials to rely on maps prepared by the  
11 Legislature to determine the Senate and congressional  
12 boundary lines if a census tract or census block is not  
13 listed, listed more than once, or is only partially  
14 accounted for, or an ambiguity or a dispute arises.

15 However, staff finds that there is no evidence  
16 in the record of costs mandated by the State. In  
17 addition, staff finds that the remainder of the  
18 test-claim statute does not impose any state-mandated  
19 activities on the claimant.

20 Staff recommends that the Commission adopt  
21 the staff analysis and deny the test claim.

22 Will the parties and witnesses state their  
23 names for the record, please?

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

25 MR. CAROSONE: Jeff Carosone, Department of

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1 Finance.

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

4 MS. ROMERO: Lorena Romero, Department of  
5 Finance.

6 CHAIR BRYANT: Mr. Kaye?

7 MR. KAYE: Thank you, and good morning.

8 Where last we left off was sort of an  
9 eleventh-hour reprieve on the midnight of our test-claim  
10 hearing, and the Commission asked that we do further  
11 analysis regarding the proposition.

12 So let me start, briefly.

13 And my remarks today are quite limited; but  
14 please understand that, I don't know, the administrative  
15 record in this matter spans over, what, seven or eight  
16 years and is, I'm sure, well in excess of perhaps a  
17 thousand pages.

18 Camille is holding it up there.

19 So I've tried to boil it down to just the  
20 salient points for your consideration this morning.  
21 But, as you know, in June of 1980, California voters  
22 approved Proposition 6, adding Article XXI to the  
23 California Constitution. This article sets forth minimum  
24 standards for redistricting and, in particular, and in  
25 pertinent part, these standards require, under

1 subsection B, "A population of all districts of a  
2 particular type shall be reasonably equal." And I ask  
3 that you remember the phrase "*reasonably equal*."

4 Prior to the 2001 redistricting, an entire  
5 census tract standard was required to achieve the  
6 "*reasonably equal population*" standard in Proposition 6,  
7 Not the split census tract or census block standard  
8 necessary to achieve the more precise strict population  
9 standard -- so that's a new phrase, new concept, higher  
10 standard, *strict population standard* -- embodied in the  
11 test-claim statute.

12 As noted in our previous pleadings, the new  
13 split census tract standard was not required or necessary  
14 prior to the test-claim legislation to implement the  
15 "*reasonably equal population*" standard in Article XXI of  
16 the California Constitution added by Prop. 6 in 1980.  
17 The population standard in Article XXI was met, and it  
18 also exceeded the prior "*reasonably equal population*"  
19 standard in Article XXI under the test-claim legislation  
20 and thereby imposed a higher standard of exactitude of  
21 population equality among like districts, as well as a  
22 new program which Commission staff and we agree is of  
23 benefit to the electorate.

24 There is case law which supports this. In  
25 *Wilson v. Eu*, 1 Cal.4th 707 on page 76, they state the

1 strict population equality standard was not required and  
2 necessary to implement Prop. 6, and it requires plans  
3 with near-zero population deviations which are based on  
4 census blocks instead of tracts.

5 This strict population equality standard is not  
6 required and necessary to implement Prop. 6, and requires  
7 formulating districts on a block basis, which is  
8 enormously expensive, as the cost of computer software  
9 and experts to deal efficiently with this greater amount  
10 of data is exponentially higher than a comparable system  
11 in which the bulk of the redistricting work is done by  
12 census tract.

13 The new mandated duties are imposed by the  
14 County under Chapter 348, Statutes of 2001, due to the  
15 order of the California Legislature mandating Los Angeles  
16 County to redistrict state Senate and U.S. congressional  
17 districts using a new split-census tract standard.

18 There is also various other case law which  
19 supports this.

20 As noted by Justice Blackburn, and quoted on  
21 page 10 of the Rose Institute of State and Local  
22 Government Report, entitled "Proposition 6 and  
23 Redistricting: A Legal Perspective," this report by the  
24 Rose Institute was attached as an exhibit to the County's  
25 June 18<sup>th</sup>, 2009, filing.



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1           They state that -- Judge Blackburn states that  
2           population equality appears to be the preeminent, if not  
3           the sole criteria on which to adjudge constitutionality.

4           I'd like to go on to briefly mention that the  
5           Attorney General has also weighed in on this. In his  
6           opinion, 80-1109, issued on July 21<sup>st</sup>, 1981, which it was  
7           attached to the County's August 19<sup>th</sup>, 2009, filing, he  
8           states on page 12 of that exhibit, that "The term  
9           '*reasonably equal*' in the context of state legislative  
10          districting refers to substantial equality of population  
11          of districts, of particular type, in light of legitimate  
12          considerations incident to the effectuation of a rational  
13          state policy, consideration of other relevant factors and  
14          interest important to and acceptable representation and  
15          apportionment arrangement; and this should not result in  
16          the deviation from ideal numerical equality except in  
17          unusual circumstances by more than 1 percent, and in no  
18          event, by more than 2 percent."

19          The Attorney General goes on to note on page 18  
20          of our exhibit: "We have, nevertheless, expressed the  
21          view that none of the California Constitution criteria  
22          are inherently inconsistent with either the state or  
23          federal parity standards we reiterate, particularly with  
24          respect to legislative districting that mathematical  
25          exactness in terms of population is not required."

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1           So it's not required under prior law, it's not  
2           required under the voter proposition, and it is new to  
3           the test-claim legislation imposing a new program.

4           We'd like to also add, finally, that we agree  
5           with Commission staff finding that section 4 of the  
6           test-claim statute, that's AB 632, Statutes of 2001,  
7           Chapter 634(a), requires county election officials to  
8           rely on detailed maps prepared by committees of the  
9           Legislature pursuant to Election Code Section 21000.001  
10          to determine the boundary line in the event that a census  
11          tract or census block is not listed, listed more than  
12          once, or is only partially accounted for, and it results  
13          in -- a dispute arises regarding the location of a  
14          boundary line.

15          But we disagree with staff -- and this is our  
16          final point for you to consider this morning. We do  
17          disagree with staff on their assertion that as a general  
18          rule, counties need not follow these detailed maps on  
19          sections 1 and 2.

20          We simply ask, why mandate the exception and  
21          not the rule?

22          Thank you.

23          CHAIR BRYANT: Department of Finance, do you  
24          have anything?

25          MR. ROMERO: Lorena Romero, for the Department

1 of Finance.

2 The Department of Finance concurs with the  
3 Commission staff draft analysis to deny the test claim.

4 CHAIR BRYANT: Are there any questions or  
5 comments from the members?

6 *(No response)*

7 CHAIR BRYANT: Is there a motion?

8 MEMBER WORTHLEY: Ms. Chairman, it seems that,  
9 in reading the staff analysis, there was quite a lot of  
10 weight put on the fact that there was no finding of those  
11 incidents where you had a block that was partially there,  
12 or something of that nature, and they had a series of  
13 things that they talked about, and in going back and  
14 finding that there was actually nothing hit that.

15 But your point, I guess, is that  
16 notwithstanding that, there is a tremendous amount of  
17 work involved in pursuing this new standard, regardless  
18 of that particular issue.

19 Is that the point?

20 MR. KAYE: Commissioner Worthley, that is  
21 exactly the point. But we go beyond that and say that --  
22 if I may give you some other examples, where you have a  
23 higher standard. It's not so much the cause or the  
24 process or the methodology that was different or required  
25 greater expense, it's the result.

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1           We achieved a higher standard of population  
2 equality as a result of the test-claim statute than  
3 previously before. It's this higher standard and just  
4 the incremental cost in meeting this higher standard that  
5 that we're asking for.

6           And so I think that when you're dealing with  
7 this, there are other -- many other examples of where  
8 this thing comes to mind. Firefighter clothing and  
9 equipment. You know, a pair of pants is a pair of pants.  
10 But a fire-retardant pair of pants is SB-90 reimbursable  
11 but only for the increased cost in meeting the higher  
12 standard. So I think there's many, many examples of  
13 where a higher standard is a valid SB-90 test claim.

14           Thank you.

15           MEMBER WORTHLEY: Thank you.

16           CHAIR BRYANT: Ms. Olsen?

17           MEMBER OLSEN: Well, I'd just like to hear  
18 staff's response.

19           MR. LOUIE: I think it's necessary to kind of  
20 reframe what we're talking about here. Staff and the  
21 Commission itself is limited by what has been pled.  
22 And what has been pled is Statutes 2001, Chapter 348.

23           And Statutes 2001, Chapter 348, the first few  
24 sections which lists the block description and tract  
25 description of the Senate districts does not mandate any

1 activities. While there might be duties outside of  
2 statutes 2001, chapter 348, the statutes that require  
3 those duties have not been pled. So we cannot make  
4 findings on those duties. They're outside of the statute,  
5 and we can only make findings on the statute that has  
6 been pled.

7 So it's been said in the analysis that we  
8 haven't made any findings that claimants are not required  
9 to do these activities, it's just that this statute does  
10 not require these activities.

11 MEMBER OLSEN: So are you saying that the  
12 claimants could come back with a new filing pleading  
13 those? Or...

14 MR. LOUIE: At this point, I believe most of  
15 those activities would be outside of the statute of  
16 limitations to plead.

17 MR. KAYE: Okay, could I comment on that?

18 In July of 2003, the Commission issued us a  
19 completeness letter. Now, in order to issue a  
20 completeness letter, we had to demonstrate the specific  
21 code sections that mandated -- purportedly mandated these  
22 new activities or higher level of service.

23 And so in receiving that letter, that it was  
24 complete, that we did plead all the statutory provisions  
25 that were required to at least get a prima facie case

1 before you, we detrimentally relied on that letter. And  
2 it wasn't until subsequent that we found out that, well,  
3 maybe you didn't submit a complete claim.

4 CHAIR BRYANT: Ms. Shelton?

5 MS. SHELTON: The completeness review is not a  
6 legal review. It's simply an administrative process to  
7 determine if they've complied with the requirements of  
8 filing a test claim.

9 At no point during the completeness review does  
10 staff even look at what has been pled and get into the  
11 substance or the merits of the claim. That's done on a  
12 legal review when the draft staff analysis is issued.

13 CHAIR BRYANT: Any -- Mr. Louie?

14 MR. LOUIE: I'd also like to note that the  
15 statement in regards to the fact that Statutes 2001 and  
16 Chapter 348, and only Statutes 2001, 348, did not mandate  
17 an activity, has been in our draft analysis beginning in  
18 '07. So it's been put on notice that this statute does  
19 not require those activities.

20 MR. KAYE: Right, four years later.

21 MR. LOUIE: Yes, yes. But even with that,  
22 there was a chance to amend after the draft staff  
23 analysis, so...

24 CHAIR BRYANT: Mr. Worthley?

25 MEMBER WORTHLEY: I was just going to say,

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1 justice delayed is justice denied. I mean, that's just  
2 part of the problems we deal with here frequently, is  
3 that our claims are so late when they come to us, that  
4 we have a lot of statute-of-limitations problems for the  
5 applicants which are, I think, unfortunate, but it's a  
6 reality.

7 CHAIR BRYANT: Okay, is there a motion on this?  
8 Any other questions or comments?

9 MEMBER LUJANO: Move approval.

10 CHAIR BRYANT: Is there a second?

11 MEMBER CHIVARO: Second.

12 CHAIR BRYANT: It's been moved and seconded.

13 Paula, can you call the roll?

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Ms. Cox?

17 MEMBER COX: Aye.

18 MS. HIGASHI: Mr. Glaab?

19 MEMBER GLAAB: No.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: No.

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1 MS. HIGASHI: Ms. Bryant?

2 MEMBER BRYANT: Aye.

3 MS. HIGASHI: The motion carries.

4 MR. KAYE: Thank you.

5 MS. HIGASHI: Mr. Louie will present Item 5,  
6 Proposed Statement of Decision.

7 MR. LOUIE: The only issue before the  
8 Commission is whether the Proposed Statement of Decision  
9 accurately reflects the Commission's decision on the  
10 *Redistricting Senate and Congressional Districts* test  
11 claim.

12 Staff will update the Final Statement of  
13 Decision, reflecting the witnesses testifying and vote  
14 count.

15 CHAIR BRYANT: Are there any comments from the  
16 parties?

17 *(No response)*

18 CHAIR BRYANT: Is there a motion?

19 MEMBER CHIVARO: Move approval.

20 MEMBER LUJANO: Second.

21 CHAIR BRYANT: It's been moved and seconded.

22 Paula, can you call the roll?

23 MS. HIGASHI: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HIGASHI: Ms. Cox?



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1 MEMBER COX: Aye.

2 MS. HIGASHI: Mr. Glaab?

3 MEMBER GLAAB: No.

4 MS. HIGASHI: Mr. Lujano?

5 MEMBER LUJANO: Aye.

6 MS. HIGASHI: Ms. Olsen?

7 MEMBER OLSEN: Aye.

8 MS. HIGASHI: Mr. Worthley?

9 MEMBER WORTHLEY: Aye.

10 MS. HIGASHI: Ms. Bryant?

11 MEMBER BRYANT: Aye.

12 MS. HIGASHI: The motion is carried.

13 MR. KAYE: Thank you.

14 MS. HIGASHI: This brings us to Item 6, the  
15 test claim on *California Environmental Quality Act*.

16 This item will be presented by Commission  
17 Counsel Heather Halsey.

18 MS. HALSEY: Good morning.

19 This test claim addresses the activities  
20 required of school districts and community-college  
21 districts pursuant to the California Environmental  
22 Quality Act, or CEQA, and related statutes and  
23 regulations. The requirement to comply with CEQA is  
24 triggered by the district's decision to acquire new  
25 school sites or build new school facilities or addition

1 to new existing school facilities.

2 What is primarily at issue in this claim is the  
3 following: Staff finds that the decisions to acquire  
4 new school sites or build new school facilities or  
5 additions to existing schools are discretionary  
6 decisions, and that based on the analysis in *Kern*, the  
7 downstream requirement to comply with CEQA is not  
8 reimbursable.

9 Claimant disagrees that school districts are  
10 not legally and practically compelled to build new  
11 schools, and asserts that they are, thus, mandated to  
12 comply with CEQA.

13 Staff recommends that the Commission adopt the  
14 staff analysis to deny the test claim.

15 Will the parties and witnesses please state  
16 your names for the record?

17 MR. PALKOWITZ: Good morning. Art Palkowitz on  
18 behalf of the claimant.

19 MS. FEREBEE: Donna Ferebee, Department of  
20 Finance.

21 CHAIR BRYANT: Mr. Palkowitz?

22 MR. PALKOWITZ: Thank you.

23 The test claim before you today, the *California*  
24 *Environmental Quality Act*, often referred to CEQA, is a  
25 process for evaluating the environmental effects on a

1 project.

2           If the initial study shows that the project may  
3 have a significant effect on the environment, the lead  
4 agency must prepare an environmental impact report.  
5 This report would include significant environmental  
6 impacts, which CEQA would then impose a substantial  
7 requirement to adopt feasible alternatives or feasible  
8 mitigation measures.

9           It's the Claimant's position that these type of  
10 requirements under CEQA are mandated. They are mandated  
11 based on numerous code sections in the Ed. Code.

12           First of all, the California Constitution  
13 requires that students be housed and educated. Ed. Code  
14 15700 clearly states that the education of the students  
15 in California is an obligation of the state and,  
16 therefore, classrooms are required to be provided for  
17 education. Children are required to attend schools.

18           Based on these Ed. Code sections, there is  
19 clearly a requirement that in order to have education,  
20 in order for students to attend schools, we must build  
21 schools.

22           Further, Ed. Code section 17576 requires  
23 sufficient restrooms. It is challenging to have  
24 restrooms without schools for students. It's also  
25 required that they be provided a warm and healthful place

1 for children to learn.

2 Clearly, all of these code sections combined  
3 indicate that schools are required for children.

4 The Commission staff has indicated in their  
5 staff analysis that there is no mandatory requirement to  
6 have schools.

7 It is difficult, if not impossible, to comply  
8 with these sections without having a school. Although  
9 one could say there is no legal requirement, as I'm not  
10 able to find a code section that says that, there is a  
11 practical compliance. And the Supreme Court of  
12 California has held that practical compliance can  
13 constitute a mandate.

14 K-12 schools do not have discretion to turn  
15 kids away when they live in their geographical area.  
16 They are compelled to accept schools. The only way we  
17 can house the students that are in our area, is to build  
18 new schools.

19 I would like to reserve some time for any  
20 questions you might have.

21 CHAIR BRYANT: Ms. Ferebee?

22 MS. FEREBEE: Thank you.

23 The Department of Finance concurs with the  
24 final staff analysis.

25 CHAIR BRYANT: Are there any questions or

1 comments from the Commission members?

2 Mr. Worthley?

3 MEMBER WORTHLEY: Madam Chairman, I recognize  
4 and understand the staff analysis. I just think it flies  
5 in the face of reality. And I know we are not a court of  
6 equity, but I do think that the point has been well made,  
7 school buildings are not discretionary in the sense that  
8 if we have education, we have school buildings; and that  
9 if you have to build a school building, you have to  
10 comply today with CEQA. And so in my mind, this is not a  
11 traditional type of discretionary act.

12 We had a case earlier where we were talking  
13 about going after additional funding; so a school could  
14 decide to elect to receive funding or not elect to  
15 receive funding. If they did, they did to comply with  
16 certain conditions. To me, that was a clearly  
17 discretionary act.

18 The building of school buildings is so  
19 fundamentally tied in to education that to call it  
20 "discretionary," in my mind is beyond reality. It's  
21 like -- it's a different kind of reality. It's not the  
22 world. The world is, we build school buildings -- and  
23 we don't build school buildings because we just want to  
24 build them; we build them because we need to build them,  
25 to house students so they can be educated.

1           So in this instance, I cannot agree with the  
2           staff analysis on the issue of discretion. And if  
3           there's not a rule to that end, and perhaps it takes  
4           judicial determination, it would seem that where  
5           something is so fundamentally tied to the mission and  
6           purpose of a governmental entity, such as building a  
7           school, much like educating a student, that is not a  
8           discretionary act; that is something which is mandated,  
9           at least in a practical sense, if not a legal sense; and,  
10          therefore, that it would effectively address the issue  
11          of discretionary act. And I think we all agree, if this  
12          was not a discretionary act, this would qualify as an  
13          unfunded mandate.

14                 And it's not the end of the world because to  
15          the extent that schools receive state funding, as I  
16          understand the analysis, they receive funding to pay  
17          towards this situation. And so we'd only begin talking  
18          about the difference. If there's a cost of CEQA  
19          compliance which exceeds that which the state pays, then  
20          that would be the unfunded portion of that would need to  
21          be made up by the state.

22                 So I disagree with the analysis. I understand  
23          it. I just think it doesn't apply to this set of facts.

24                 CHAIR BRYANT: Ms. Halsey?

25                 MS. HALSEY: Just to clarify, I think that

1 claimant is agreeing with counsel that there is no legal  
2 compulsion, but that there is -- but still argues there's  
3 practical compulsion; is that right?

4 MR. PALKOWITZ: Yes.

5 MS. HALSEY: And that may or may not be so.

6 There wasn't any evidence submitted in the  
7 record about whether there was practical compulsion.  
8 Practical compulsion requires evidence to be submitted by  
9 districts to show that there are practical compulsions.  
10 We have nothing in the record on that. And so that would  
11 need to be submitted for the Commission to even make such  
12 a finding.

13 CHAIR BRYANT: Any other questions, Mr. Glaab?

14 MEMBER GLAAB: Yes. Thank you, Madam Chair and  
15 Members.

16 First of all, I want to commend staff for doing  
17 such a tremendous job. This represents a lot of work.  
18 I know it's very complete. I had an opportunity to read  
19 it a few times. So you are to be commended.

20 But I think the testimony that is before us  
21 today certainly resonated with me. And I think  
22 Mr. Worthley's comments certainly are, in fact, a  
23 reflection of the reality. We have to build these  
24 schools. We can't have them out in tents, and they can't  
25 be sitting out in the fields and other sorts of things.

1 So there is a practical compulsion here.

2 And so as well-written as the information here  
3 is by staff, I do disagree with the conclusion that was  
4 made here. And I will be voting accordingly.

5 Thank you.

6 MEMBER OLSEN: Madam Chair?

7 CHAIR BRYANT: Ms. Olsen?

8 MEMBER OLSEN: It seems to me that one thing  
9 we're missing in the discussion, is this issue of when --  
10 the dates: When CEQA was originally put into place and  
11 the extent to which the laws that come after it are a  
12 substantial modification of CEQA or simply implement CEQA  
13 in the contemporaneous environment.

14 And I'd like staff and Mr. Palkowitz to speak  
15 to that because I think that's a very telling point here.

16 MS. HALSEY: If I could, just briefly.

17 In the analysis, I do discuss the history of  
18 CEQA, and that CEQA was enacted before 1975. And many of  
19 the provisions pled and many of the requirements imposed  
20 by CEQA would be pre-1975.

21 In the analysis, I don't really get into the  
22 discussion of new program/higher level of service, since  
23 we found that there were no required activities. So  
24 if we found that there were required activities under  
25 CEQA, we would then go on -- we would actually need to



1 revisit the analysis to do that new-program/higher-level-  
2 of-service for each required activity. And there have  
3 obviously been several amendments to CEQA, but there were  
4 several preexisting requirements that would predate 1975.

5 MEMBER WORTHLEY: Madam Chairman?

6 CHAIR BRYANT: Yes.

7 MEMBER WORTHLEY: Could that not be addressed  
8 in the parameters and guidelines, however?

9 No? This would have to be a fundamental issue  
10 in terms of determining what was the -- what predates  
11 1975 and what would be the higher level of standard  
12 that's required since then?

13 MS. SHELTON: Yes, the mandate issue, the  
14 new-program/higher-level-of-service issue and the cost  
15 mandated by the state issue all have to be determined at  
16 the test claim phase because it's a question of law.

17 CHAIR BRYANT: Any other questions or comments?  
18 Mr. Glaab?

19 MEMBER GLAAB: Thank you, Madam Chair and  
20 Members.

21 Might it be a thought, Members, that we  
22 consider putting this item over, asking the claimant to  
23 come back with information on the practical-compulsion  
24 issue at some point in time?

25 I just think that the information that was

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1 provided us certainly resonated with me. But I certainly  
2 understand staff is hesitant in this regard; but maybe  
3 we could review that and come back at a later time with  
4 some of those practical items. That's just my thinking.

5 Thank you.

6 CHAIR BRYANT: Ms. Higashi, do you have any  
7 thoughts on that?

8 MS. HIGASHI: We issued the draft at least  
9 eight weeks before the hearing, and it has been out for  
10 comment.

11 Actually, if you look at the chronology, it  
12 will give you the exact date. It's been out for quite a  
13 while.

14 CHAIR BRYANT: It's been out since  
15 October 23<sup>rd</sup>.

16 MS. HIGASHI: The 23<sup>rd</sup>. And we have not  
17 received any documentary evidence in response to that  
18 draft. So that finding has not changed since the draft.

19 MEMBER WORTHLEY: Madam Chairman, to me, there  
20 was also pleadings that -- and I refer to the statements  
21 by counsel -- that there are other statutes that are pled  
22 from which the implication is that school buildings must  
23 exist because of obligations on schools -- to house  
24 students, I believe.

25 Was that not the case?

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1 MS. HALSEY: No. No, there's no requirement to  
2 establish a school district that I know of. But if there  
3 is one established, you need to house the students in the  
4 district, it's true. But you can house them in existing  
5 schools, you can renovate existing schools, you can do  
6 joint projects with parks and rec and other governmental  
7 entities to house students. There's some other -- you  
8 can have year-round school and other kinds of alternative  
9 scheduling, so there's many ways to house schools besides  
10 building new buildings.

11 MEMBER WORTHLEY: It sounds like we can  
12 conserve our way out of our water problem.

13 MS. HALSEY: Let me just --

14 MEMBER WORTHLEY: The fact of the matter is  
15 that, oftentimes, schools have to be replaced because  
16 they are old, they don't meet seismic requirements, they  
17 don't meet the needs of the District. And again, people  
18 don't build buildings just to be building buildings, they  
19 build them in relationship to a need. The need is  
20 housing. When I need new housing, I need to build a new  
21 school. And so I struggle with that type of an analysis  
22 because, again, facts are sort of staring us in the face.  
23 And I'm wondering about our ability to have judicial  
24 notice of those kinds of things as a body.

25 MS. HALSEY: Well, there's one more point I

1 wanted to make -- and this is the hard one, really --  
2 and it's that the question before the Commission is not  
3 whether schools are needed, but it's really whether  
4 school districts are legally compelled by a state statute  
5 or regulation or practically compelled and, thus,  
6 mandated by the state to comply with CEQA. In other  
7 words, to build those new schools and comply with CEQA.  
8 And we couldn't find anything in the law, really,  
9 requiring that.

10 So we're not asserting that we don't need  
11 schools or that it wouldn't be good to build schools or  
12 that there isn't a number of publications out there  
13 talking about the need for schools; but, rather, that  
14 there's nothing in the law requiring it.

15 MEMBER WORTHLEY: I think we agreed upon the  
16 fact that there is not a requirement to build schools.  
17 The thing is, schools do have to be built. And once they  
18 have to be built, now we have to comply with CEQA.  
19 That's the mandatory portion of it.

20 And the issue is, if there is a practical  
21 compulsion because we have to house students and we have  
22 to build buildings to do that, then we get beyond this  
23 issue of being a discretionary act.

24 I understand there are all kinds of options  
25 available to people. But one -- sometimes you get to the

1 point, you don't have an option.

2 MS. HALSEY: Right. And that's what we're  
3 saying, there's been no evidence submitted in the record  
4 regarding that, to show the practical compulsion.

5 CHAIR BRYANT: Ms. Shelton?

6 MS. SHELTON: Let me just clarify a couple of  
7 things. These are issues obviously that we've been  
8 struggling with in the office. It really started with  
9 that *Department of Finance v Commission on State Mandates*  
10 POBOR case recently that came out, where we were taking  
11 along the same line. Just, obviously, there's been tons  
12 of evidence of crime on school districts, and certainly  
13 the Legislature recognized them and gave them the  
14 authority to retain and hire peace officers.

15 And so certainly -- and then based on  
16 statements made by the U.S. Supreme Court that, you know,  
17 peace officers hired by a school district are necessary,  
18 and used those facts to assert that there was a practical  
19 compulsion for them to retain their own peace officers  
20 and then comply with the downstream requirements.

21 That is what you're doing here, too; except the  
22 Court said you can't do that.

23 When you're having an issue of practical  
24 compulsion and there's an allegation that we have to  
25 build a new school -- which the law says is the school

1 district's decision of when to do that, when and if to do  
2 that. If you have that allegation, you need to have  
3 evidence in the record that that was something that they  
4 were practically compelled to do.

5 And we're not suggesting that they're not  
6 required to house the students. Certainly they are. We  
7 don't have the evidence.

8 If this case is litigated under Government  
9 Code section 17559, the Court is going to look to see if  
10 there's substantial evidence in the record. And here,  
11 just like the POBOR case, there isn't any. And that's  
12 the problem.

13 CHAIR BRYANT: Mr. Palkowitz, do you have  
14 any --

15 MR. PALKOWITZ: I guess, first of all, we  
16 submitted comments on November 12<sup>th</sup>. The claimant did.  
17 I don't see that in the list. But I just wanted to  
18 comment, there has been comments issued since their  
19 analysis.

20 MS. HALSEY: It's in there.

21 MS. SHELTON: It's the last one.

22 CHAIR BRYANT: November 12<sup>th</sup>, claimant  
23 submitted comments on the staff draft analysis.

24 MR. PALKOWITZ: I guess I don't see that in the  
25 chronology.

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1 MS. HALSEY: It should be there. We discussed  
2 the comments on page 5.

3 MS. HIGASHI: Page 5.

4 MEMBER OLSEN: It's on page 5. It's the very  
5 last one.

6 MS. SHELTON: It's right here. 11/12.

7 MS. HALSEY: Yes, 11/12 on page 5.

8 MR. PALKOWITZ: What page --

9 MS. SHELTON: You might be looking at the draft  
10 rather than the final.

11 MR. PALKOWITZ: Oh, okay. Very good.

12 I apologize.

13 Okay, the other point of the practical  
14 compulsion and evidence of what that would be, first of  
15 all, I think the code sections that I commented are there  
16 to show that there would be practical compulsion in order  
17 to have restrooms, in order to house students, in order  
18 to educate them, in order to provide a healthful, warm  
19 place for that.

20 I am very amiable to the suggestion of putting  
21 off that matter, and we will provide additional  
22 consequences that would show that I believe practical.  
23 We would show that schools could be taken over by the  
24 state for not providing for the students, that the  
25 governing board has obligations to house students that

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1 are in their geographical area.

2 So I would like to respond and get you the  
3 opportunity to respond and provide additional information  
4 that I believe will show that there is practical  
5 compulsion.

6 CHAIR BRYANT: Ms. Shelton?

7 MS. SHELTON: We have all the law in the  
8 record, and we've considered all the law. So what would  
9 be required, would be a showing of factual evidence  
10 submitted under penalty of perjury or testimony under  
11 penalty of perjury that the District was practically  
12 compelled during the period of reimbursement to build a  
13 new school building or do substantial remodeling of a  
14 building during that time period. That would be  
15 required.

16 MR. PALKOWITZ: We would like that opportunity  
17 to present that to the Commission.

18 CHAIR BRYANT: Commissioner Lujano, did you  
19 have any --

20 MEMBER LUJANO: No. It's a good idea.

21 CHAIR BRYANT: Ms. Ferebee?

22 MS. FEREBEE: Yes. Thank you.

23 I would just like to say that Finance doesn't  
24 believe that the standard for practical compulsion has  
25 been met, and that we would urge you to adopt the staff



1 recommendation as it's written. And I think it does an  
2 excellent job of going through each component and also  
3 showing how there are a number of other mechanisms for  
4 the schools to use.

5 And I don't believe that if you hold it over,  
6 that you would see any additional evidence of practical  
7 compulsion.

8 Certainly if it hasn't been submitted yet, I  
9 don't think that you would see anything more that would  
10 meet that very difficult threshold standard to meet. And  
11 so we would urge that you adopt this.

12 CHAIR BRYANT: I think that's what bothers me  
13 about all this is because, you know, obviously, this is  
14 my first day as chair of the Mandates Commission, but I  
15 have been sitting in this seat for the last three years.  
16 And, you know, there's a schedule, there's the arguments  
17 that the claimants are making. And every time we put  
18 one of these off, it just further delays it. And we  
19 get into the situation where we're considering a  
20 redistricting mandate at the same time we're about ready  
21 to do the census for the next redistricting ten years,  
22 11 years later. So I'm prepared to support the staff  
23 analysis as it's currently drafted.

24 I'm sensing I may not have that much shared  
25 view on that on this panel.

1           And I think that when staff goes back and they  
2 look, we have to have evidence on the practical mandate  
3 issue; and then I think we'd see that CEQA existed prior,  
4 and probably isn't a mandate. And we get into that  
5 argument, and we'd probably come back with the same  
6 result.

7           I don't know how you feel about that,  
8 Ms. Halsey, where you think we land.

9           MS. SHELTON: It would just take a lot longer  
10 to do that analysis, because we're talking about over a  
11 hundred code sections pled and regulations. And to do  
12 the whole leg. history on each individual section pled  
13 would take a lot longer. We wouldn't be able to bring  
14 this back in March or May. It would be a year from now  
15 to do a new-program/higher-level-of-service, which we'd  
16 be happy to do if that's the desire of the Commission.

17          CHAIR BRYANT: And one thing, too, is I was --  
18 there's the question, the OPR guidelines, and whether or  
19 not that's alive. So I'm assuming, is there any way that  
20 we can get some of this off the table today? Or is the  
21 only option in front of us to go all the way back and  
22 start at the beginning? Is there any way to divide the  
23 question a little bit to create less work, less time?

24           Yes?

25          MR. PALKOWITZ: If I may respond to that.

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1           So staff under -- there's several issues before  
2 this Commission on this.

3           What the claimant is trying to focus on, would  
4 be the issue that deals with new schools, not with the  
5 maintenance or emergency repairs or the Items A and B;  
6 rather, Item C.

7           Now, Item C includes statutes subsequent to  
8 1976, and also is what the basis of our "practical  
9 compulsion" argument is. So that would be the area we  
10 would want, and ask for additional time to submit this.

11           Although I am very cognizant of the long period  
12 of time it takes to get here; however, the law is  
13 evolving during those five, six years, too. And I think  
14 for us to take a few more months to deal with that one  
15 issue would be reasonable.

16           CHAIR BRYANT: Any thoughts from the  
17 Commission?

18           *(No response)*

19           CHAIR BRYANT: Is there a motion?

20           MS. SHELTON: Can I?

21           CHAIR BRYANT: Yes.

22           MS. SHELTON: On the issue of bifurcation, I  
23 think that could be a little troublesome because we don't  
24 know how that's going to work out when we do further  
25 analysis. I think if you're going to want to continue

1 it, you need to continue the whole thing.

2 Certainly comments that come in from  
3 Mr. Palkowitz and his clients can be limited to that  
4 issue, and further analysis can be limited to that issue.  
5 But I hesitate to recommend a bifurcation when I don't  
6 really know how that would affect the other portions.

7 MEMBER WORTHLEY: I don't think he actually  
8 indicated or said "bifurcation." I didn't hear him say  
9 that, but I think the idea that he is going to focus on a  
10 particular part of the -- a limited portion of the claim.

11 MS. SHELTON: Right.

12 MEMBER WORTHLEY: Obviously, our staff can  
13 respond to that only, and not necessarily have to do an  
14 exhaustive study of all the various statutes.

15 MS. SHELTON: Right.

16 MEMBER WORTHLEY: I would move that we continue  
17 this matter to a date uncertain, because it would take  
18 some time for this to happen, and give the opportunity  
19 for the claimant to amend their pleadings as to the issue  
20 of practical compulsion.

21 And then I suppose the staff would have to  
22 analyze the issue in terms of if we assume that they've  
23 got to the practical-compulsion claim, they would have to  
24 look at CEQA to determine to what extent the CEQA law has  
25 been amended or require a higher level of service, which

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1 would be the portion that would be subject to the  
2 reimbursement.

3 MS. SHELTON: Correct.

4 MEMBER GLAAB: And I'd like to second that.

5 And I would just also want to convey to staff  
6 that I'm extremely sensitive to workload and the fact  
7 that we have kind of drug these out for such a long  
8 period of time. So I am very sensitive to that. But  
9 on the issue, I just believe that we need to give the  
10 claimant just a little more time to make a  
11 practical-compulsion argument. So I'll be seconding  
12 that motion.

13 CHAIR BRYANT: We have a motion and a second.

14 Is there -- Paula, can you call the roll?

15 MS. HIGASHI: Certainly.

16 Ms. Cox?

17 MEMBER COX: Aye.

18 MS. HIGASHI: Mr. Glaab?

19 MEMBER GLAAB: Aye.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

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1 MS. HIGASHI: Mr. Chivaro?

2 MEMBER CHIVARO: Aye.

3 MS. HIGASHI: Ms. Bryant?

4 MEMBER BRYANT: No.

5 MS. HIGASHI: The motion is --

6 CHAIR BRYANT: Me voting, it seems to happen to

7 me a lot here --

8 MS. HIGASHI: The motion is carried.

9 MEMBER WORTHLEY: Mr. Sheehy would be proud.

10 CHAIR BRYANT: I just want to make one quick  
11 comment on that since chances are strong that I will not  
12 get to hear this matter again.

13 I thought the staff analysis was so well done,  
14 I think that you could literally lift your CEQA  
15 discussion and put it in a primer on CEQA. I thought it  
16 was really, really well done.

17 MEMBER WORTHLEY: I was going to make the same  
18 comment. It was like a great primer on CEQA analysis.  
19 And I'm dealing with CEQA all the time in local  
20 government. It was a great review for me. I appreciate  
21 it. Thank you.

22 MR. PALKOWITZ: I would echo that. It will  
23 help me when I speak to the people in my district who  
24 know this inside-out, to have a good understanding, so...

25 MS. SHELTON: Let me just say that Heather had

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1 firsthand experience with CEQA in private practice before  
2 coming to the Commission. So, thankfully, we have her on  
3 staff.

4 MS. HIGASHI: I'd like to ask the parties to  
5 this case to meet with us after the hearing so we can  
6 talk about submittal times.

7 MR. PALKOWITZ: Thank you.

8 CHAIR BRYANT: Okay, Paula, we skip Item 7, I  
9 guess.

10 MS. HIGASHI: So we skip 7.

11 Items 8 and 9 are postponed at the request of  
12 the claimant.

13 And this brings us to Item 10, which is the  
14 test claim on the *Mandate Reimbursement Process II*. And  
15 this item will be presented by Chief Legal Counsel  
16 Camille Shelton.

17 MS. SHELTON: This test claim is on remand  
18 from the Court in the *California School Board Association*  
19 *v. State of California* case, and addresses statutes and  
20 regulations which amended the test-claim process for  
21 seeking reimbursement for state-mandated costs under  
22 Article XIII B of the California Constitution.

23 Based on the Court's decision in *CSBA*, staff  
24 finds that Government Code Section 17553 and Section 1183  
25 of the Commission's regulations mandate a new program or

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1 higher level of service on school districts and local  
2 agencies for the new activities required when filing a  
3 test claim or a test-claim amendment.

4 Staff further finds that the exception to  
5 reimbursement in Government Code section 17556,  
6 subdivision (f), does not apply to deny this claim.

7 Staff recommends that the Commission adopt the  
8 staff analysis and approve the test claim for the  
9 activities listed beginning on page 23 of the executive  
10 summary.

11 Will the parties and their witnesses please  
12 state their names?

13 MR. EVERROAD: Glen Everroad, City of Newport  
14 Beach.

15 MS. GMUR: Juliana Gmur on behalf of the City  
16 of Newport Beach.

17 MR. CAROSONE: Jeff Carosone, Department of  
18 Finance.

19 MS. FEREBEE: Donna Ferebee, Department of  
20 Finance.

21 MS. ROMERO: Lorena Romero, Department of  
22 Finance.

23 CHAIR BRYANT: Ms. Gmur, Mr. Everroad?

24 MS. GMUR: Thank you. Good morning,  
25 Commissioners.



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1           Before I launch into what is going to be an  
2 extremely brief comment on the issue pending, I'd like  
3 to compliment staff on their work. Specifically,  
4 Ms. Shelton has put together a very elegant analysis that  
5 you have before you today.

6           Also before you today is comments that were a  
7 late filing by the California School Boards Association  
8 dated January 28<sup>th</sup>, 2010.

9           The City of Newport Beach concurs with the CSBA  
10 and joins with them to support staff analysis. And we  
11 urge its adoption today.

12           Thank you.

13           CHAIR BRYANT: The Department of Finance?

14           MS. ROMERO: The Department of Finance agrees  
15 with some portions of the staff analysis, that  
16 sections 17557 and 17564 of the Government Code, and  
17 sections 1183.13 of the Commission's regulations as  
18 amended by the test-claim statutes do not constitute a  
19 state reimbursable mandate.

20           However, we do not agree with the Commission  
21 staff analysis that section 17553, subdivisions (b)(1)(C)  
22 through (G) and (b)(2) impose state-mandated  
23 reimbursable activities.

24           We believe that the mandate reimbursement  
25 process is absolutely necessary to implement the

1 subvention of funds required by the voter-approved  
2 measure, Proposition 4. Without a process, the State  
3 could not identify costs and ensure that the amounts  
4 reimbursed to local agencies is accurate.

5 That being said, we also do not agree with the  
6 staff analysis that the constitutional provision should  
7 have to require activities of the local agencies to  
8 participate in the process.

9 Additionally, Finance does not believe that the  
10 amendments to Government Code section 17553, subdivision  
11 (b)(1)(C) impose new programs or higher level of service.  
12 Certain of the items within these sections were  
13 previously required under other statutes.

14 The regulations -- previous regulations had  
15 some of the requirements. Specific requirements of those  
16 were the increased cost which must be identified in the  
17 written narratives. Those were previously in the  
18 regulations and also actuary estimated annual costs which  
19 were incurred.

20 The other sections, we think, do not impose a  
21 higher level of service or a new program and are  
22 de minimis if solely the information as provided.

23 CHAIR BRYANT: Okay, thank you.

24 Does anybody else have any comments at the  
25 table?

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1 Did you have a question?

2 MEMBER CHIVARO: No.

3 CHAIR BRYANT: Any other questions or comments  
4 from the panel?

5 MEMBER WORTHLEY: I move the staff analysis  
6 recommendation.

7 MEMBER CHIVARO: I'll second.

8 CHAIR BRYANT: There's been a motion and a  
9 second.

10 Paula, can you call the roll?

11 MS. HIGASHI: Mr. Glaab?

12 MEMBER GLAAB: Aye.

13 MS. HIGASHI: Mr. Lujano?

14 MEMBER LUJANO: Aye.

15 MS. HIGASHI: Ms. Olsen?

16 MEMBER OLSEN: Aye.

17 MS. HIGASHI: Mr. Worthley?

18 MEMBER WORTHLEY: Aye.

19 MS. HIGASHI: Mr. Chivaro?

20 MEMBER CHIVARO: Aye.

21 MS. HIGASHI: Ms. Cox?

22 MEMBER COX: Aye.

23 MS. HIGASHI: Ms. Bryant?

24 MEMBER BRYANT: Aye.

25 MS. HIGASHI: The motion is carried.

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1           Item 11 is the Proposed Statement of Decision.  
2           Ms. Shelton will present this.

3           MS. SHELTON: Staff recommends that the  
4           Commission adopt the Proposed Statement of Decision that  
5           reflects the staff recommendation on this test claim.  
6           The Proposed Statement of Decision begins on page 3.

7           CHAIR BRYANT: Are there any --

8           MEMBER OLSEN: I'll make the motion.

9           CHAIR BRYANT: We have a motion.

10          Is there a second?

11          MEMBER CHIVARO: Second

12          CHAIR BRYANT: Paula, can you call the roll.

13          MS. HIGASHI: Who made the motion? I didn't --

14          MEMBER OLSEN: (*Indicating.*)

15          CHAIR BRYANT: Ms. Olsen.

16          MS. HIGASHI: Ms. Olsen? Okay.

17          Mr. Lujano?

18          MEMBER LUJANO: Aye.

19          MS. HIGASHI: Ms. Olsen?

20          MEMBER OLSEN: Aye.

21          MS. HIGASHI: Mr. Worthley?

22          MEMBER WORTHLEY: Yes.

23          MS. HIGASHI: Mr. Chivaro?

24          MEMBER CHIVARO: Aye.

25          MS. HIGASHI: Mr. Cox -- Ms. Cox?

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MEMBER COX: My dad's not here.

MS. HIGASHI: I'm sorry. I'm going to do this for a while. I'm sorry.

MEMBER COX: That's all right.

MS. HIGASHI: Ms. Cox and Mr. Glaab?

MEMBER COX: Aye.

MEMBER GLAAB: Aye.

MS. HIGASHI: And Ms. Bryant?

CHAIR BRYANT: Aye.

MS. HIGASHI: I guess I owe you lunch.

MEMBER WORTHLEY: You can call me "Mrs." if you buy lunch.

MS. FEREBEE: Thank you, Commissioners. Thank you very much.

MS. HIGASHI: This brings us to Item 15.

This item will be presented by Assistant Executive Director Nancy Patton.

There are Part A and Part B, two different programs.

MS. PATTON: Good morning.

Part A involves the parameters and guidelines for the *Collective Bargaining and Collective Bargaining Agreement Disclosure Program*.

This is one of 49 requests filed by the State Controller's Office to amend the parameters and

1 guidelines to add language regarding source documentation  
2 and record-retention requirements.

3 There was no opposition to including similar  
4 amendments to the parameters and guidelines that were  
5 adopted earlier on the Consent Calendar. However, there  
6 is opposition to amending the *Collective Bargaining*  
7 parameters and guidelines.

8 On October 14<sup>th</sup>, 2009, the petitioners in the  
9 *Clovis Unified School District v State Controller* case  
10 filed comments objecting to the SCO-requested amendments  
11 because the proposed language is unrealistic and  
12 inconsistent with the day-to-day operations of school and  
13 community-college districts.

14 The *Clovis* case involves a challenge by school  
15 districts and community-college districts on reductions  
16 made by the State Controller's Office to reimbursement  
17 claims for several mandated programs. The districts  
18 argue that reductions made on the ground that school  
19 districts do not have contemporaneous source documents  
20 are invalid.

21 In 2009, the trial court issued a judgment  
22 holding that the Controller has no authority to reduce  
23 a claim on the ground that a claimant did not maintain  
24 contemporaneous source documents absent statutory or  
25 regulatory authority to require contemporaneous source

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1 documents or language in the parameters and guidelines  
2 requiring it.

3 This case is pending in the Third District  
4 Court of Appeal.

5 Opponents recommend the Commission postpone  
6 this matter until the Court fully resolves the issue.

7 The opponents submitted a letter on  
8 January 14<sup>th</sup>, stating that they would not be appearing at  
9 this hearing; and requested that the Commission fully  
10 consider their arguments in their October 14<sup>th</sup> letter;  
11 and that it be made a part of the record.

12 Staff finds that the parameters and guidelines  
13 for the *Collective Bargaining/Collective Bargaining*  
14 *Agreement Disclosure Program* should be amended to insert  
15 the requested language because it would conform the  
16 parameters and guidelines for this program with the  
17 parameters and guidelines adopted for other programs, and  
18 is consistent with Section 1183.1 of the Commission's  
19 regulations. Therefore, staff included the language  
20 requested by the SCO.

21 Staff recommends that the Commission adopt the  
22 SCO's proposed amendments to the parameters and  
23 guidelines for this program.

24 Will the parties please state your names for  
25 the record?

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1 MS. GEANACOU: Susan Geanacou, Department of  
2 Finance.

3 MR. SPANO: Jim Spano, State Controller's  
4 Office.

5 CHAIR BRYANT: Mr. Spano, Ms. Geanacou, who  
6 would like to speak?

7 MS. GEANACOU: Susan Geanacou for Finance.

8 I just wish to echo our written comments filed,  
9 I believe, earlier this month, that we support the  
10 proposed amendments to the P's & G's.

11 CHAIR BRYANT: Mr. Spano?

12 MR. SPANO: The State Controller's Office  
13 supports the Commission's final staff analysis and  
14 related recommendation.

15 As noted by the Commission, the proposed  
16 language for source documentation and record retention  
17 is the same language as in the parameters and guidelines  
18 adopted by the Commission since 2003 for other  
19 state-mandated cost programs.

20 The Commission has properly amended many other  
21 parameters and guidelines to include the updated source  
22 documentation rule. The *Collective Bargaining* and  
23 *Intradistrict Attendance* program should be no different.

24 The requirement to maintain contemporaneous  
25 source document records to support costs claimed we



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1 believe is neither unrealistic nor inconsistent with  
2 day-to-day operation of schools and community colleges.

3           Districts are required to support its costs  
4 with sufficient competent evidential matter for its many  
5 state and federal programs. Such requirement is  
6 consistent with the guidance provided by the California  
7 Department of Education in its California School  
8 Accounting Manual, and principles and standards  
9 applicable to federal funds prescribed in a Code of  
10 Federal Regulations also known as Office of Management  
11 Budget, Circular A87 and A21.

12           And finally, we believe the litigation has  
13 no impact on the Commission in meeting the parameters  
14 and guidelines for the *Collective Bargaining* and  
15 *Intradistrict Attendance* program.

16           In fact, the Superior Court peremptory writ of  
17 mandate dated February 19<sup>th</sup>, 2009, states that many of  
18 the parameters and guidelines is one of three options to  
19 validate contemporaneous source document rules for the  
20 *Collective Bargaining* and *Intradistrict Attendance*  
21 program.

22           CHAIR BRYANT: Thank you.

23           Are there any questions or comments from the  
24 Commission?

25           MEMBER CHIVARO: Move approval of staff

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1 recommendation.

2 MEMBER OLSEN: Second.

3 CHAIR BRYANT: It's been moved and seconded.

4 Paula, can you call the roll?

5 MS. HIGASHI: Mr. Lujano?

6 MEMBER LUJANO: Aye.

7 MS. HIGASHI: Ms. Olsen?

8 MEMBER OLSEN: Aye.

9 MS. HIGASHI: Mr. Worthley?

10 MEMBER WORTHLEY: Aye.

11 MS. HIGASHI: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MS. HIGASHI: Ms. Cox?

14 MEMBER COX: Aye.

15 MS. HIGASHI: Mr. Lujano?

16 MEMBER LUJANO: Aye.

17 MS. HIGASHI: Mr. Glaab?

18 MEMBER GLAAB: Aye.

19 MS. HIGASHI: Ms. Bryant?

20 CHAIR BRYANT: Aye.

21 MS. HIGASHI: Thank you.

22 CHAIR BRYANT: The motion carries.

23 MS. HIGASHI: And then we have B.

24 MS. PATTON: The issue here is identical to the  
25 previous item on *Collective Bargaining*. This is one of

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1 49 requests filed by the State Controller's Office, in  
2 this case, to amend the parameters and guidelines for the  
3 *Intradistrict Attendance* program.

4 The petitioners in the *Clovis* case are also  
5 opposed to amending this set of parameters and  
6 guidelines. Opponents recommend the Commission postpone  
7 this matter until the Court fully resolves the issue.

8 The January 14<sup>th</sup> letter filed by opponents  
9 pertains also to this item. And staff is recommending  
10 that we amend the parameters and guidelines for the  
11 *Intradistrict Attendance* program.

12 CHAIR BRYANT: Do you have anything to add or  
13 can we assume your previous comments all flow here?

14 MR. SPANO: It would be the same response as  
15 the first one.

16 MEMBER CHIVARO: I move the staff  
17 recommendation.

18 MEMBER COX: Second.

19 CHAIR BRYANT: Okay, it's been moved and  
20 seconded.

21 Paula, can you call the roll?

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

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1 MS. HIGASHI: Mr. Chivaro?

2 MEMBER CHIVARO: Aye.

3 MS. HIGASHI: Ms. Cox?

4 MEMBER COX: Aye.

5 MS. HIGASHI: Mr. Glaab?

6 MEMBER GLAAB: Aye.

7 MS. HIGASHI: Mr. Lujano?

8 MEMBER LUJANO: Aye.

9 MS. HIGASHI: And Ms. Bryant?

10 CHAIR BRYANT: Aye.

11 MS. HIGASHI: The motion is carried.

12 CHAIR BRYANT: And, again, on this item to  
13 Ms. Patton, great work on all these and all the  
14 amendments that were in the Consent Calendar.

15 MS. PATTON: Thank you.

16 CHAIR BRYANT: I know your staff worked really  
17 hard to get that done, so thank you.

18 MS. HIGASHI: Item 18 is postponed.

19 Item 20, we have no County applications to  
20 consider.

21 And Item 21, Ms. Patton will give a leg update.

22 MS. PATTON: We have three bills so far this  
23 year. Two were introduced last year. One is new. It  
24 was introduced in January, I believe.

25 AB 349 would require the Department of Finance

1 to provide the Legislature with all proposed statutory  
2 changes necessary to repeal any local agency mandates  
3 proposed for suspension in the Governor's budget, and  
4 include each affected section of law. The bill would not  
5 go into effect until January 2012.

6 The author introduced the bill because he is  
7 concerned that there are over two dozen mandates that  
8 have been suspended for at least three years, ten of  
9 which have been suspended for at least 18 years. The  
10 bill is supported by local government and peace-officer  
11 associations.

12 There is no known opposition to the bill.  
13 However, last year, the Legislature rejected a budget  
14 trailer bill that would have repealed numerous suspended  
15 mandates because they believe that repeal of mandates  
16 should be decided in policy committee. So this bill  
17 could face the same opposition from the Legislature.  
18 It's pending in Senate budget and fiscal review  
19 committee. It's had no hearings yet.

20 The second bill is AB 548. This bill would  
21 lengthen the period in which a reimbursement claim for  
22 actual costs would be subject to an initiation of an  
23 audit by the State Controller from three to four years  
24 after the date that the actual reimbursement claim is  
25 filed or amended; and it would eliminate the State

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1 Controller's authority to extend the audit period when  
2 funds are not appropriated or no payment is made to a  
3 claimant.

4 This bill is sponsored by several school  
5 district and local agency associations and the State  
6 Controller -- or it's supported by the State Controller  
7 and it is opposed by the Department of Finance. It's  
8 pending on the Senate floor. It has been there for a  
9 while.

10 AB 917 is the new bill just introduced. The  
11 Administration and Legislature have deferred payment for  
12 school-district mandates by funding each mandate with  
13 \$1,000. And this is different than when they suspend the  
14 local government mandates.

15 School officials challenged this practice in  
16 Court, and the Court found that the California  
17 Constitution requires the State to budget full  
18 reimbursement of local governments for the cost of state  
19 mandates, and ordered the State to fully fund mandates  
20 in the future. The State has appealed this decision, and  
21 it is pending in the Fourth District Court of Appeal.

22 This bill would require the State, commencing  
23 with the '09-10 fiscal year, to either fully fund  
24 school-district mandates or suspend them, and would  
25 authorize the State to recommend mandates for years prior

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1 to the 2009-10 or over a five-year period.

2 This bill attempts to address the recent court  
3 decision. It may not be necessary. The Governor's  
4 proposed budget for 2010-11 already suspends the school  
5 district mandates. So I'm not sure that it's necessary.

6 There's no known support or opposition at this  
7 time, and it's pending in the Assembly education  
8 committee.

9 I will keep you briefed as they move along.

10 CHAIR BRYANT: Thank you.

11 MS. HIGASHI: Item 22, Chief Legal Counsel's  
12 report.

13 MS. SHELTON: As you can see, there's really  
14 nothing new to report. The only change here has been the  
15 hearing date for the *Behavior Intervention Plan* case has  
16 been moved to December 2010.

17 We have been putting on our cases of interest,  
18 the *Clovis* case. The briefing has been complete on that.

19 We did just get word this week from the Court that the  
20 California School Boards Association has applied to file  
21 an amicus brief. So if the Court accepts that, then  
22 there will be some further briefing before they set a  
23 hearing date. And we'll continue to keep you informed on  
24 that case.

25 CHAIR BRYANT: Thank you.

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1 MS. HIGASHI: Item 23, my report.

2 I just wanted to call attention to our pending  
3 workload, what it looks like. And we continue to reduce  
4 the number of test claims. And we hope to see our  
5 reduction continue very actively through this year.

6 Also note that today you've made a substantial  
7 dent in the Proposed Parameters and Guidelines  
8 amendments.

9 And I'd also like to acknowledge the work done  
10 by Nancy Patton and her team, namely Heidi Palchik, Jason  
11 Rogers, Lorenzo Duran, and Kerry Ortman. All the work  
12 that they did in pulling records, scanning records,  
13 writing amendments, and putting together everything that  
14 had to be done, as well as uploading all these items on  
15 the Web site. And so I think we need to thank all of  
16 them very much for their hard work.

17 CHAIR BRYANT: Thank you, again.

18 MS. HIGASHI: I'd also just like to introduce  
19 Jeff Carosone. He is, as some of us have said, he is the  
20 "new Carla" from the Department of Finance. He is now  
21 working on the Mandates program.

22 Jeff, would you like to --

23 MR. CAROSONE: Sure.

24 Hi, my name is Jeff Carosone; and I'm replacing  
25 Carla Castañeda as the principal on the Mandates



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1 assignment. I'd like to take this opportunity to thank  
2 Carla for her years on the Mandates assignment, and  
3 congratulate her and wish her luck on her new assignment  
4 within Finance. She has transferred to a different unit  
5 in Finance. And I realize I have big shoes to fill, but  
6 I'm up for the challenge, so it's nice to meet all of  
7 you.

8 MS. HIGASHI: Thank you.

9 CHAIR BRYANT: Thank you.

10 Jeff used to do the OPR budgets, so we have a  
11 long relationship. Anyway, so we can learn this  
12 together. Thank you.

13 MS. SHELTON: We promise we won't call you the  
14 "new Carla" very long.

15 MR. CAROSONE: Thank you.

16 CHAIR BRYANT: And I don't want to be called  
17 the "new Tom," either.

18 MS. HIGASHI: We never called you that.

19 I have only a couple things I just wanted to  
20 note. There is information from the Governor's budget  
21 that's been excerpted here. I have nothing to add to  
22 this other than to say that we continue to watch our  
23 e-mails as we receive e-mails from the Department of  
24 Finance, new budget letters. We're sorting through the  
25 meaning of all of these different budget drills and how

1 they will effect the Commission's budget because of  
2 different cuts and proposed cuts that will need to be  
3 made.

4 The Commission has filed its report to the  
5 Legislature for approved mandates. We will soon be  
6 filing one on the denied mandates from last year.

7 The tentative agendas for our next two meetings  
8 are listed on the following pages of the agenda -- I  
9 should say, on pages 3, 4, and 5.

10 As you can see, it's, again, a very ambitious  
11 agenda with a lot of items. And we'll be moving the  
12 *Clean Restrooms* test claim to the March agenda. So don't  
13 forget what you've read.

14 CHAIR BRYANT: Okay.

15 MS. HIGASHI: And we have more P's & G's  
16 amendments.

17 And also, I'd like to note that since you've  
18 approved the rulemaking calendar for this year, that in  
19 March we will be scheduling a workshop to meet with all  
20 the parties to go over staff's first draft of proposed  
21 cleanup amendments to our regulations. And we'll work  
22 with the various parties and their associations to  
23 schedule a time and place that will be compatible with  
24 their meeting schedules. But that will be happening for  
25 us in March also.

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1           If commissioners have amendments they would  
2 like to identify for us or propose to us, we're certainly  
3 open to getting those thoughts from you now.

4           CHAIR BRYANT: Okay.

5           MS. HIGASHI: Are there any questions about  
6 anything?

7           CHAIR BRYANT: Thank you.

8           Is there any public comment on anything?

9           *(No response)*

10          CHAIR BRYANT: Okay, then we're going to  
11 adjourn to closed executive session.

12          The Commission will meet in closed executive  
13 session pursuant to Government Code section 11126,  
14 subdivision (e), to confer with and receive advice from  
15 legal counsel for consideration and action, as necessary  
16 and appropriate, upon the pending litigation listed on  
17 the published notice and agenda; and to confer with and  
18 receive advice from legal counsel regarding potential  
19 litigation.

20          The Commission will also confer on personnel  
21 matters and a report from the personnel subcommittee  
22 pursuant to Government Code sections 11126,  
23 subdivision (a).

24          We will reconvene in open session in  
25 approximately 15 minutes.

**Commission on State Mandates – January 29, 2010**

1                   *(The Commission met in closed executive*  
2                   *session from 10:42 a.m. to 11:14 a.m.)*

3                   CHAIR BRYANT: Okay, the Commission met in  
4 closed executive session pursuant to Government Code  
5 section 11126, subdivision (e), to confer with and  
6 receive advice from legal counsel for consideration and  
7 action, as necessary and appropriate, upon the pending  
8 litigation listed on the published notice and agenda and  
9 potential litigation; and to confer on personnel matters  
10 and report from the Personnel Subcommittee published on  
11 the published notice and agenda pursuant to Government  
12 Code section 11126, subdivision (a)(1).

13                   The Commission will reconvene in open session.

14                   So we have no further business to discuss. I  
15 will entertain a motion to adjourn.

16                   MEMBER CHIVARO: So moved.

17                   MEMBER COX: Second.

18                   CHAIR BRYANT: All those in favor?

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

20                   CHAIR BRYANT: The meeting is adjourned.

21                   *(Gavel sounded.)*

22                   *(The meeting concluded at 11:15 a.m.)*

23   --oOo--

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25

**REPORTER'S CERTIFICATE**

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on February 16<sup>th</sup>, 2010.

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