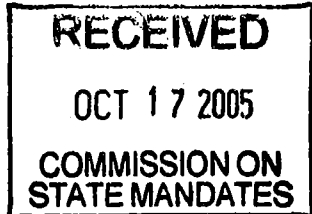


PUBLIC HEARING  
COMMISSION ON STATE MANDATES



--o0o--

**ORIGINAL**

TIME: 9:34 a.m.  
DATE: September 27, 2005  
PLACE: State Capitol, Room 126  
Sacramento, California

--o0o--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

**Yvonne K. Fenner & Associates**  
CERTIFIED SHORTHAND REPORTERS

(916) 531-3422  
Fax (916) 457-8369 yfennercsr@aol.com  
2256 Murieta Way, Sacramento, California 95822

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

COMMISSION MEMBERS

ANNE SHEEHAN, Chairperson  
Representative of Tom Campbell, Director  
State Department of Finance

NICHOLAS SMITH  
Representative of Steve Westly  
State Controller

JAN BOEL  
Deputy Director, Office of Planning and Research

PAUL GLAAB  
City Council Member  
Laguna Niguel City Council

FRANCISCO LUJANO  
Representative of Philip Angelides  
State Treasurer

COMMISSION STAFF

PAULA HIGASHI, Executive Director

CATHERINE M. CRUZ, Program Analyst

ERIC FELLER, Commission Counsel

NANCY PATTON, Assistant Executive Director

CAMILLE SHELTON, Senior Commission Counsel

KATHERINE TOKARSKI, Commission Counsel

--o0o--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PUBLIC PRESENTATIONS

ALAN BURDICK  
California Association of Counties

JULIANA F. GMUR, ESQ., Manager Cost Services  
Maximus

LEONARD KAYE  
County of Los Angeles

NICHOLAS SCHWEIZER  
State of California, Department of Finance

--o0o--

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AGENDA INDEX

AGENDA ITEM	PAGE
I Call to Order and Roll Call	8
II Closed Executive Session	9
III Report from Closed Executive Session	9
IV Approval of Minutes	
1 July 28, 2005	10
August 23, 2005	11
V.2 Proposed Consent Calendar	12
VI Appeal of Executive Director Decisions	
3 Staff Report	13
VII Reconsideration of Prior Statements of Decision	
4 Sex Offenders: Disclosure by Law Enforcement Officers	13
5 Proposed Statement of Decision, Sex Offenders: Disclosure by Law Enforcement Officers	18
VIII Set Aside of Prior Statements of Decision and Dismissal of Reconsideration	
6 Brown Act Reform and Open Meetings Act	19
IX Informational Hearing, Adoption of Proposed Parameters and Guidelines and Amendments to Parameters and Guidelines.	
A	
7 The Stull Act	12
8 Mandates Reimbursement Process	12
B Set Aside Parameters and Guidelines	
9 Brown Act Reform and Open Meetings Act	12

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AGENDA INDEX, continued

AGENDA ITEM		PAGE
10	Redevelopment Agencies - Tax Disbursement Reporting	12
C	Set Aside Parameters and Guidelines	
11	Residential Care Services (continued)	12
D	Set Aside or Amend Parameters and Guidelines	
12	Involuntary Lien Notices	12
13	Property Tax: Family Transfers	12
14	County Treasury Oversight Committees	12
15	Investment Reports	12
16	Two-Way Traffic Signal Communications	12
17	Misdemeanors: Booking and Fingerprinting	24
E	Set Aside or Amend Parameters and Guidelines	
18	Pupil Exclusions (continued)	12
F	Set Aside or Amend Parameters and Guidelines	
19	Senior Citizens' Mobile Home Property Tax Deferral Program	12
G	Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5	
20	Adoption of Proposed Regulatory Action: Appeal of Executive Director Decisions	32
H	Meeting and Hearing Calendar	
21	Adoption of 2006 Meeting and Hearing Calendar	34

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

AGENDA INDEX, continued

AGENDA ITEM		PAGE
XI	Staff Reports	
22	Chief Legal Counsel's Report	38
23	Executive Director's Report	39
XII	Public Comment	58
XIII	Adjournment	61

--o0o--



1 BE IT REMEMBERED that on Tuesday, the 27th  
2 day of September 2005, commencing at the hour of  
3 9:34 a.m., thereof, at the State Capitol, Room 126,  
4 Sacramento, California, before me, Yvonne K. Fenner,  
5 a Certified Shorthand Reporter in the State of  
6 California, the following proceedings were had:

7 --o0o--

8 CHAIRPERSON SHEEHAN: The Commission on State  
9 Mandates meeting of September 27th, 2005, is called to  
10 order. Paula, will you please call the roll.

11 MS. HIGASHI: Ms. Boel.

12 MS. BOEL: Here.

13 MS. HIGASHI: Mr. Glaab.

14 MR. GLAAB: Here.

15 MS. HIGASHI: Mr. Lujano.

16 MR. LUJANO: Here.

17 MS. HIGASHI: Mr. Smith.

18 MR. SMITH: Here.

19 MS. HIGASHI: Ms. Sheehan.

20 CHAIRPERSON SHEEHAN: Thank you. We have a  
21 quorum.

22 And now we are going to recess into executive  
23 session, but before we do, I want to let the members know  
24 that shortly it's my hope that we will have a full  
25 contingent of members. We are expecting a couple of more



1 appointments, a public member and another elected --  
2 local elected official. So hopefully that will be in  
3 time for our next meeting. So that will make our life a  
4 little easier.

5           Anyway, so the Commission will now go into closed  
6 executive session pursuant to Government Code section  
7 11126 subdivision E to confer with and receive advice  
8 from legal counsel for consideration and action as  
9 necessary and appropriate upon the pending litigation  
10 listed on the published notice and agenda and to confer  
11 with and receive advice from legal counsel regarding  
12 potential litigation and pursuant to Government Code  
13 section 11126 subdivision A and 17526. The Commission  
14 will also confer on personnel matters listed on the  
15 published notice and agenda, and we will reconvene in  
16 open session at this location in approximately 30  
17 minutes. Thank you.

18           (Whereupon the Commission met in closed executive  
19 session.)

20           CHAIRPERSON SHEEHAN: We'd like to call the  
21 September 27th meeting of the Commission on State  
22 Mandates to order. We're back in open session. The  
23 Commission met in closed executive session pursuant to  
24 Government Code section 11126 subdivision E to confer  
25 with and receive advice from legal counsel for

1 consideration and action as necessary and appropriate  
2 upon the pending litigation listed on the published  
3 notice and agenda and any potential litigation and  
4 Government Code section 11126 subdivision A and 17526 to  
5 confer on personnel matters listed on the published  
6 notice and agenda.

7           Since this is Chief Counsel Paul Starkey's last  
8 hearing, effective October 1st, 2005, the Commission has  
9 appointed Senior Commission Counsel Camille Shelton as  
10 acting chief legal counsel until appointment of the next  
11 legal counsel.

12           Item 1, Paula, first item of business is approval  
13 of the minutes.

14           MS. HIGASHI: The first item is adoption of the  
15 minutes. Item 1A, the minutes of July 28th.

16           MS. BOEL: I move that we adopt the minutes.

17           MR. SMITH: Second.

18           CHAIRPERSON SHEEHAN: We have a motion and a  
19 second.

20           MR. SMITH: Oh, wait a second, I can't -- I don't  
21 think I was there.

22           MS. HIGASHI: The January meeting --

23           MR. SMITH: I'll move approval.

24           MS. HIGASHI: -- you were present.

25           MR. GLAAB: Second.

1 MS. HIGASHI: I mean the July meeting.

2 CHAIRPERSON SHEEHAN: We have a motion and a  
3 second. The Treasurer's Office seconded and the  
4 Controller's Office made the motion on the adoption of  
5 the August minutes.

6 MS. HIGASHI: The July.

7 CHAIRPERSON SHEEHAN: Oh, the July minutes.

8 MS. HIGASHI: Ms. Boel was at the July meeting.

9 MS. BOEL: I was at the July meeting.

10 CHAIRPERSON SHEEHAN: So you'll move the July  
11 minutes.

12 MS. BOEL: I move the July minutes.

13 CHAIRPERSON SHEEHAN: And the Controller's Office  
14 seconded those. All those in favor of approving the July  
15 minutes say "aye."

16 MULTIPLE SPEAKERS: Aye.

17 CHAIRPERSON SHEEHAN: Any opposed?

18 (No audible response.)

19 CHAIRPERSON SHEEHAN: Those are approved.

20 MS. HIGASHI: Thank you.

21 CHAIRPERSON SHEEHAN: And now we have a motion  
22 from the Controller's Office --

23 MS. HIGASHI: Item 1B.

24 CHAIRPERSON SHEEHAN: -- on the August minutes  
25 seconded by the Treasurer's Office for adoption of the

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

August minutes. All those in favor say "aye."

MULTIPLE SPEAKERS: Aye.

CHAIRPERSON SHEEHAN: Any opposed?

(No audible response.)

CHAIRPERSON SHEEHAN: Those are adopted  
unanimously.

MS. HIGASHI: And Ms. Boel I'll list as  
abstention.

MS. BOEL: Yes, I abstain.

CHAIRPERSON SHEEHAN: Okay. Next item, the  
consent calendar. Any changes to the calendar?

MS. HIGASHI: We have no changes to the proposed  
consent calendar. You should have it before you. It is  
the blue sheet.

CHAIRPERSON SHEEHAN: It is changed, though, from  
what had gone out earlier.

MS. HIGASHI: It's changed from the original  
agenda. Let me read the items just so it's clear.  
Item 7, item 8, item 9, item 10, item 12, 13, 14, 15, 16,  
and 19.

CHAIRPERSON SHEEHAN: Yeah. And items 11 and 18  
are continued to our next meeting.

MS. HIGASHI: Yes.

CHAIRPERSON SHEEHAN: Is that correct?

MS. HIGASHI: Those are not in your binders.

1 CHAIRPERSON SHEEHAN: Okay. All right. Are  
2 there any objections to the proposed consent calendar?  
3 (No audible response.)  
4 CHAIRPERSON SHEEHAN: No? If not, we'll  
5 entertain a motion.  
6 MR. GLAAB: So moved.  
7 CHAIRPERSON SHEEHAN: Mr. Glaab moves the consent  
8 calendar.  
9 MS. BOEL: I second.  
10 CHAIRPERSON SHEEHAN: Ms. Boel seconds. All  
11 those in favor say "aye."  
12 MULTIPLE SPEAKERS: Aye.  
13 CHAIRPERSON SHEEHAN: Any opposed?  
14 (No audible response.)  
15 CHAIRPERSON SHEEHAN: That is adopted  
16 unanimously.  
17 MS. HIGASHI: Thank you.  
18 CHAIRPERSON SHEEHAN: Item No. 3, Paula.  
19 MS. HIGASHI: There are no appeals under item  
20 No. 3.  
21 CHAIRPERSON SHEEHAN: Okay.  
22 MS. HIGASHI: This brings us to item No. 4, which  
23 is our reconsideration, Sex Offenders: Disclosure by Law  
24 Enforcement Officers. This item will be presented by  
25 Commission Counsel Eric Feller.

1 CHAIRPERSON SHEEHAN: All right. Do we need to  
2 swear in --

3 MS. HIGASHI: When they come up.

4 CHAIRPERSON SHEEHAN: All right.

5 MR. FELLER: Good morning.

6 CHAIRPERSON SHEEHAN: Good morning.

7 MR. FELLER: The Sex Offenders or Megan's Law  
8 test claim consists of 16 amendments to Penal Code  
9 section 290 and 290.4, which were originally found by the  
10 Commission to impose various requirements on local law  
11 enforcement pertaining to registering sex offenders.

12 Staff analyzed the Commission's prior decision in  
13 light of the 2004 California Supreme Court case San Diego  
14 Unified School District versus Commission on State  
15 Mandates. The San Diego Unified case ruled that if a  
16 state law was intended to implement a federal law and  
17 imposed costs that are, in context, de minimus, then the  
18 provision was not reimbursable.

19 In applying this rule to the various activities  
20 found reimbursable in the original test claim, staff  
21 found that three activities are no longer reimbursable:  
22 First, submitting sex offender registrations from the  
23 local jurisdictions to the Department of Justice Violent  
24 Crime Information Network; second, ensuring that the  
25 signed statement an offender fills out upon registration

1 contains the name and address of the offender's employer  
2 and the address of the place of employment if different  
3 than the employer's main address; and third, ensuring  
4 that the convicted offender has adequate proof of  
5 residence as specified.

6 As to a fourth activity regarding notifying  
7 offenders of a reduction in the time to register, staff  
8 finds that this is a one-time activity that has already  
9 been performed. Therefore, staff recommends that the  
10 Commission adopt the analysis that partially approves the  
11 test claim as outlined.

12 Would the parties and witnesses please state  
13 their names for the record.

14 CHAIRPERSON SHEEHAN: Do we have anyone who would  
15 like to testify on this matter?

16 MS. HIGASHI: At this time let me just note we're  
17 also going to call item 6, which is the Brown Act Reform  
18 item, and so could all of the other witnesses that are in  
19 the audience who may testify on item 6 all stand as well.

20 MR. SCHWEIZER: Item 6?

21 MS. HIGASHI: All the witnesses.

22 MR. SCHWEIZER: Okay.

23 MS. HIGASHI: Do you solemnly swear or affirm  
24 that the testimony which you are about to give is true  
25 and correct based upon your personal knowledge,

1 information, or belief?

2 MULTIPLE SPEAKERS: Yes.

3 MS. HIGASHI: Thank you.

4 MR. SCHWEIZER: Nicholas Schweizer, Department of  
5 Finance. On the mandate in question, we had sent a  
6 letter a little while ago requesting that the Ps and Gs  
7 be modified on this mandate because they allow community  
8 college districts to claim reimbursement. From  
9 discussion with your staff, we understand that -- that  
10 the Ps and Gs -- that the issue with the Ps and Gs will  
11 be addressed at a later hearing, but I just wanted to  
12 state for the record that we do not believe that  
13 community college districts should be eligible to claim  
14 reimbursement for this mandate because they have --  
15 establishing a police force is an option for them, it's  
16 not a required activity.

17 CHAIRPERSON SHEEHAN: And the staff had said that  
18 they will address those issues during the Ps and Gs --

19 MR. SCHWEIZER: Phase. Yes, that's -- that's  
20 what they informed me.

21 CHAIRPERSON SHEEHAN: All right. Any questions?  
22 Any other questions from Commission members?

23 MR. SMITH: Yeah, just a quick question for  
24 Mr. Feller.

25 Did this court provide -- or any court provide



1 any guidance on the definition of de minimus, out of  
2 curiosity?

3 MR. FELLER: No.

4 MR. SMITH: I know we've had this issue before,  
5 what is de minimus.

6 MR. FELLER: Yeah, it seemed to be a qualitative  
7 assessment. They didn't define it in terms of dollars in  
8 the case, so we didn't, likewise, define it that way in  
9 this analysis.

10 One of the things that the court did seem to rely  
11 on was the fact that in a prior case they would have had  
12 to do these things anyway under the federal law. And  
13 those are largely true in this analysis as well. These  
14 are things that they would have had to have done to  
15 comply with the federal Megan's Law anyway. And when we  
16 looked at the activities, they appeared to be de minimus.

17 MR. SMITH: Thank you.

18 CHAIRPERSON SHEEHAN: Okay. Seeing that there  
19 are no other witnesses to testify, what is the will of  
20 the Commission?

21 MR. GLAAB: Move the item.

22 CHAIRPERSON SHEEHAN: Move to adopt the staff  
23 recommendation, Mr. Glaab moves the staff recommendation.

24 MS. BOEL: I second.

25 CHAIRPERSON SHEEHAN: Ms. Boel seconds. Any

1 further discussion?

2 (No audible response.)

3 CHAIRPERSON SHEEHAN: If not, all those in favor  
4 signify by saying "aye."

5 MULTIPLE SPEAKERS: Aye.

6 CHAIRPERSON SHEEHAN: Any opposed?

7 (No audible response.)

8 CHAIRPERSON SHEEHAN: That passes.

9 Item --

10 MS. HIGASHI: Item 5.

11 CHAIRPERSON SHEEHAN: -- 5. Mr. Feller.

12 MR. FELLER: Right. Unless there's objection,  
13 staff recommends that the Commission adopt the proposed  
14 statement of decision, which accurately reflects the  
15 decision on the test claim.

16 Staff also recommends the Commission allow minor  
17 changes to be made to the SOD, including reflecting the  
18 hearing testimony and vote count will be included in the  
19 final statement of decision.

20 CHAIRPERSON SHEEHAN: Okay. Any questions for  
21 Mr. Feller?

22 (No audible response.)

23 CHAIRPERSON SHEEHAN: If not, the chair will  
24 entertain a motion.

25 MR. GLAAB: So moved.

1 CHAIRPERSON SHEEHAN: Will move the statement of  
2 decision. There's a motion. Is there --  
3 MS. BOEL: I second.  
4 CHAIRPERSON SHEEHAN: And a second by Ms. Boel.  
5 All those in favor say "aye."  
6 MULTIPLE SPEAKERS: Aye.  
7 CHAIRPERSON SHEEHAN: Any opposed?  
8 (No audible response.)  
9 CHAIRPERSON SHEEHAN: That is adopted. Thank  
10 you.  
11 Next item.  
12 MS. HIGASHI: Item 6, Senior Commission -- I  
13 should say Senior Commission Counsel Camille Shelton --  
14 CHAIRPERSON SHEEHAN: Soon she'll be acting.  
15 MS. HIGASHI: -- soon to be acting counsel, will  
16 introduce item 6.  
17 CHAIRPERSON SHEEHAN: Thanks. Ms. Shelton.  
18 MS. SHELTON: This item relates to two prior test  
19 claim decisions addressing the Brown Act, and the test  
20 claims were Open Meetings Act test claim and the Brown  
21 Act Reform test claim. Recent urgency legislation  
22 enacted by Assembly Bill 138 requires the Commission to  
23 set aside these test claim decisions. The proposed  
24 orders to set aside the two statements of decision are in  
25 Exhibits A and B.

1           Staff further finds that AB 138 requires the  
2 Commission to dismiss the pending reconsideration  
3 directed by the legislature in 2004 of the Brown Act  
4 Reform decision. The proposed order to dismiss the  
5 reconsideration is in Exhibit C.

6           Will the parties and their representatives please  
7 state your names for the record.

8           MR. BURDICK: Alan Burdick on behalf of the  
9 California State Association of Counties.

10          CHAIRPERSON SHEEHAN: I'm sorry, what was the  
11 name again, sir?

12          MR. BURDICK: Alan Burdick.

13          CHAIRPERSON SHEEHAN: Thanks.

14          MS. GMUR: Juliana Gmur on behalf of the  
15 California State Association of Counties as well.

16          CHAIRPERSON SHEEHAN: Okay. Go ahead.

17          MS. GMUR: I just wanted to make a general  
18 comment, not specifically with regard to this case, but  
19 with regard to the ability of the legislature to command  
20 set-asides. I understand the position of this Commission  
21 and that they must act as directed; however, we wanted to  
22 make the record.

23                 It is one thing for the legislature to say that  
24 you need to reconsider a prior decision in light of new  
25 law; however, it is an entirely different situation for

1 the legislature to tell this, a quasi-judicial body, that  
2 it must decide a case in a particular manner. This  
3 action by the legislature is ultra vires. It is outside  
4 their scope of jurisdiction, beyond their purview. It  
5 raises constitutional issues of separation of powers and  
6 checks and balances. And we just wanted to point that  
7 out and make the record.

8 CHAIRPERSON SHEEHAN: Thank you.

9 MR. BURDICK: Thank you, yes, Alan Burdick on  
10 behalf of the California State Associations. Madame  
11 Chair and Members of Commission, giving the layman's  
12 version, if you will, and that's essentially --

13 CHAIRPERSON SHEEHAN: We got the procedural  
14 viewpoint in terms of what they thought of it.

15 MR. BURDICK: The whole purpose that we have the  
16 Commission is because its job is to arbitrate between  
17 local government and state agencies, one of those being  
18 the legislature as well. One of the real concerns or  
19 probably the primary concern of the authors of Prop 4 was  
20 that the legislature would continue to make statements in  
21 legislation which was not true and correct. You know,  
22 they would define anything they wanted and say that's not  
23 a reimbursable mandate, or they'd say some state program  
24 they created was a federal program and many of these have  
25 been litigated and in favor of local government.

1           And so we see the whole purpose is to look at the  
2 decisions that are made by the legislature and the  
3 decisions that you made are to be considered by this  
4 Commission, and the legislature does not have authority  
5 to tell you what to do. So we take objection to, I  
6 think, the whole process that the -- the legislature  
7 having the right to set aside decisions that were made.

8           Thank you.

9           CHAIRPERSON SHEEHAN: Thank you. Questions?  
10 Mr. Smith.

11          MR. SMITH: Thank you.

12          Thanks for coming today. I appreciate the  
13 comments.

14          I was wondering if we could have staff just  
15 respond to some of the questions that were raised there  
16 about the legislature having the legal issues.

17          MR. STARKEY: Let me jump in. We really, really  
18 can't because what they're -- what they're raising are  
19 issues that are for potential litigation, legal arguments  
20 that at some time may or may not be addressed in the  
21 courts or may or may not come before this Commission in  
22 some type of legal proceeding format.

23          So to the extent that there are legal issues  
24 raised, I really don't think we can comment because staff  
25 might have to later come back and render an opinion to

1 the Commission on that, and we certainly can't do that  
2 today.

3 MS. SHELTON: Let me just mention I agree with  
4 Mr. Starkey with respect to a general response to a  
5 general argument, but with respect to this case, you  
6 know, of course, the Commission is prohibited from  
7 determining whether a statute is invalid or  
8 unconstitutional. You don't have the authority to do  
9 that.

10 But in this case, it's not just a straight  
11 set-aside. This bill did several things. First, it  
12 changed the definition of 17556(F), which says the  
13 Commission shall not find costs mandated by the State at  
14 any time -- let's see -- when the statute imposes duties  
15 that are necessary to implement reasonably within the  
16 scope of or expressly included in a ballot measure  
17 approved by the voters in a statewide election, and the  
18 ballot measure could be approved either before or after  
19 the statute.

20 Secondly, this bill added language to the Brown  
21 Act statutes which said that these statutes are necessary  
22 to interpret and are reasonably within the scope of the  
23 ballot measure which was adopted by the voters in 2004,  
24 which is Proposition 59.

25 So this is not just a straight set-aside in this

1 particular case. It is supported by the law that was  
2 enacted by the legislature this last year.

3 MR. SMITH: Thank you.

4 I just -- thanks for coming today. I can see how  
5 it's a frustrating process, and so we'll stay tuned.

6 CHAIRPERSON SHEEHAN: I'm sure they're looking at  
7 other options they have on this issue.

8 All right. Any other discussions or anyone else  
9 who would like to testify on this?

10 (No audible response.)

11 CHAIRPERSON SHEEHAN: All right. If not, what is  
12 the will of the Commission?

13 MR. GLAAB: Move the item.

14 CHAIRPERSON SHEEHAN: All right.

15 MS. BOEL: Second.

16 CHAIRPERSON SHEEHAN: We have a motion and a  
17 second to move the staff analysis and recommendation.

18 All those in favor signify by saying "aye."

19 MULTIPLE SPEAKERS: Aye.

20 CHAIRPERSON SHEEHAN: Any opposed?

21 (No audible response.)

22 CHAIRPERSON SHEEHAN: That motion carries.

23 MS. HIGASHI: Thank you.

24 CHAIRPERSON SHEEHAN: All right.

25 MS. HIGASHI: This brings us to item 17, which is



1 way towards the back of your binder. These are  
2 proposed -- this a proposed parameters and guidelines  
3 amendment to Misdemeanors: Booking and Fingerprinting.  
4 Nancy Patton, assistant executive director, will  
5 introduce this item.

6 CHAIRPERSON SHEEHAN: Ms. Patton.

7 MS. PATTON: Good morning.

8 On February 24th, 1994, the Commission on State  
9 Mandates adopted its statement of decision finding a  
10 reimbursable state mandate for the Misdemeanors: Booking  
11 and Fingerprinting program. On November 17th, 1994, the  
12 Commission adopted parameters and guidelines for this  
13 program.

14 In 2004, AB 2853 amended the test claim statute  
15 to narrow the mandated activities, and the State  
16 Controller's Office requested the parameters and  
17 guidelines be amended to conform to AB 2853. Therefore,  
18 staff modified the parameters and guidelines as follows:  
19 The period of reimbursement was amended to cap  
20 reimbursement for the activity deleted by AB 2853  
21 effective September 29th, 2004. The reimbursable  
22 activities section was amended to remove the activity  
23 deleted by AB 2853.

24 The remaining sections were updated to make these  
25 parameters and guidelines consistent with the language in

1 other recently adopted Ps and Gs and to conform to  
2 statutes enacted since the Ps and Gs were adopted in  
3 1994.

4 Staff recommends the Commission adopt the  
5 proposed amendments to the Ps and Gs for the  
6 Misdemeanors: Booking and Fingerprinting program  
7 beginning on page 5. Staff also recommends that the  
8 Commission authorize staff to make any nonsubstantive,  
9 technical corrections to the parameters and guidelines  
10 following the hearing.

11 CHAIRPERSON SHEEHAN: Do we have any individuals  
12 who would like to testify? Department of Finance?  
13 Welcome back, Nick.

14 MR. SCHWEIZER: Thank you. Nicholas Schweizer,  
15 Department of Finance.

16 And, we sent a letter on this one as well to  
17 request that the Ps and Gs be clarified for a similar  
18 issue to exclude K-12 schools and community college  
19 districts from claiming reimbursement. We understand --  
20 we've had some discussion with Commission staff since  
21 that time, and we understand that the language under  
22 eligible claimants is interpreted to exclude them and has  
23 been by the Controller's Office and others.

24 However, under section 3, period of  
25 reimbursement, subparagraph 1, it says a local agency or

1 school district may file. We request that it -- the Ps  
2 and Gs just be clarified and cleaned up in that, "or  
3 school district" be stricken just to be clear that they  
4 are not eligible to claim.

5 CHAIRPERSON SHEEHAN: Tell me again which  
6 section.

7 MR. SCHWEIZER: It's under period of  
8 reimbursement. Sorry, I don't have the page numbers --

9 MS. HIGASHI: Page 6.

10 MR. SCHWEIZER: -- for you.

11 CHAIRPERSON SHEEHAN: Oh, here. Okay. Oh, I  
12 see.

13 And Ms. Patton, did you have those discussions?

14 MS. PATTON: I talked to Nick yesterday. The  
15 Commission did not make a finding for school districts on  
16 this program. It is limited to local agencies. And, you  
17 know, just to be safe, we contacted the State  
18 Controllers' Office yesterday, and they verified that no  
19 school district has ever filed a claim on this program,  
20 so therefore, I don't think it's necessary that we use  
21 the language he's proposing under eligible claimants to  
22 exclude school districts because they were never  
23 included.

24 But I would agree that we could remove this  
25 general school district language under his second change

1 that he's proposing.

2 CHAIRPERSON SHEEHAN: Okay. All right. So your  
3 feeling is under the definition of eligible claimants --

4 MS. PATTON: There never was a finding for school  
5 districts. The Commission never made a school district  
6 finding, that they were an eligible claimant, so it's not  
7 necessary to exclude them here.

8 CHAIRPERSON SHEEHAN: Well, why would you include  
9 them?

10 MR. LUJANO: Why wouldn't we?

11 CHAIRPERSON SHEEHAN: Well, no, he's saying --

12 MS. PATTON: He's asking us to add language that  
13 excludes school districts.

14 CHAIRPERSON SHEEHAN: Yeah. Two suggestions.  
15 She's saying this one is fine, to take that one out.

16 MS. BOEL: Oh, okay. I thought she was saying --

17 CHAIRPERSON SHEEHAN: But that first one --

18 MS. PATTON: Is unnecessary.

19 CHAIRPERSON SHEEHAN: Yeah. The issue would be  
20 do you have to list people who clearly are not eligible?

21 MS. BOEL: Okay.

22 MS. PATTON: But the second change that they're  
23 proposing, it's general boilerplate language, but, you  
24 know, it's fine to take school districts out of that.

25 CHAIRPERSON SHEEHAN: All right. Because the one

1 issue would be on the first one. If we went about  
2 listing everybody who is not eligible --

3 MS. BOEL: We'd have to say everything.

4 MR. SCHWEIZER: We're okay with that.

5 CHAIRPERSON SHEEHAN: That could be a very  
6 exhaustive list on any given claim. It could be a  
7 problem.

8 MR. SMITH: Just to clarify, the Commission made  
9 a finding that this is a local agency --

10 CHAIRPERSON SHEEHAN: Yes.

11 MR. SMITH: -- mandate only?

12 CHAIRPERSON SHEEHAN: Only. It never included  
13 school districts.

14 MR. SMITH: So there's no way a school district  
15 could even submit.

16 CHAIRPERSON SHEEHAN: They're not -- right. And  
17 the Controller, it's outside your office --

18 MS. PATTON: Verified no school district --

19 CHAIRPERSON SHEEHAN: -- confirmed they never --

20 MS. PATTON: -- filed a claim --

21 CHAIRPERSON SHEEHAN: -- filed a claim.

22 MS. PATTON: -- ever.

23 CHAIRPERSON SHEEHAN: Okay. 50 percent, Nick.

24 MR. SCHWEIZER: That's fine. That's good.

25 CHAIRPERSON SHEEHAN: Okay. So it takes out

1 that. But as I say, the other one just would concern me  
2 because then, you know, the precedent could be not great.

3 Okay. All right. Any other questions?

4 (No audible response.)

5 CHAIRPERSON SHEEHAN: So with that change,  
6 striking school --

7 MR. SMITH: So we have to move to strike that?

8 MR. SCHWEIZER: Strike that and there's also very  
9 similar language under one and two.

10 MS. PATTON: Right. I'm saying we'd make all  
11 your No. 2 changes.

12 MR. SCHWEIZER: Right.

13 CHAIRPERSON SHEEHAN: Where the --

14 MR. SCHWEIZER: Okay.

15 CHAIRPERSON SHEEHAN: Where it had school  
16 district.

17 MR. SCHWEIZER: Right.

18 CHAIRPERSON SHEEHAN: All right. And those,  
19 paragraph one and two on page 6, I think is what -- is  
20 that it?

21 MR. SCHWEIZER: Yes.

22 MS. PATTON: And three.

23 CHAIRPERSON SHEEHAN: One, two, and three.

24 MR. SCHWEIZER: And three also, sorry. We must  
25 have missed three.

1 CHAIRPERSON SHEEHAN: Oh, right there. Yes.

2 Yes, okay.

3 All right. So that would be the suggestion. All  
4 right.

5 MS. BOEL: Well, as -- now we're dealing with  
6 this --

7 CHAIRPERSON SHEEHAN: As amended.

8 MS. BOEL: As amended, okay.

9 CHAIRPERSON SHEEHAN: Proposed to be amended,  
10 yes.

11 MS. BOEL: I'd move that we -- as amended, we  
12 adopt the staff analysis.

13 MR. GLAAB: Second.

14 CHAIRPERSON SHEEHAN: And the amendment being the  
15 deletion of "school district" in those three paragraphs,  
16 the term "or school district."

17 Okay. All right. So we have a motion from  
18 Ms. Boel and a second from Mr. Glaab. Any further  
19 discussion on this issue?

20 (No audible response.)

21 CHAIRPERSON SHEEHAN: If not, all those in favor  
22 say "aye."

23 MULTIPLE SPEAKERS: Aye.

24 CHAIRPERSON SHEEHAN: Any opposed?

25 (No audible response.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CHAIRPERSON SHEEHAN: That's adopted.

Okay. Thank you. Okay.

MS. HIGASHI: This --

CHAIRPERSON SHEEHAN: Item 20, is that --

MS. HIGASHI: Item 20. We're now at our proposed rulemaking.

CHAIRPERSON SHEEHAN: Regulation, okay.

MS. HIGASHI: And this will be presented by Cathy Cruz.

MS. CRUZ: Good morning.

CHAIRPERSON SHEEHAN: Good morning.

MS. CRUZ: The purpose of this rulemaking is to implement Government Code section 17530 and establish procedures for appeal of executive director decisions. The notice of proposed rulemaking was mailed on July 1, 2005. The proposed text was made available to the public from July 1 through August 15, 2005. The County of Los Angeles and the City of Newport Beach submitted written comments.

On July 29th, the County of Los Angeles requested a public hearing, and the hearing was held on August 24th at the offices of the Commission on State Mandates. Representatives of the City of Newport Beach and the County of Los Angeles provided oral testimony. Staff responded to the oral and written comments in the final



1 statement of reasons, which is Exhibit F in front of us.

2 Staff finds that no alternative would be more  
3 effective in carrying out the purpose for which the  
4 regulation is proposed or would be as effective and less  
5 burdensome to affected private persons than the proposed  
6 regulations.

7 Therefore, staff recommends that the Commission  
8 find that no alternative would be more effective in  
9 carrying out the purpose for which the regulation is  
10 proposed or would be as effective and less burdensome to  
11 affected private persons than the proposed regulation.

12 Also, staff recommends that the Commission adopt  
13 the proposed amendments to section 1181 of the California  
14 Code of Regulations, title 2, division 2, chapter 2.5, as  
15 originally proposed, and also to authorize staff to make  
16 any nonsubstantive technical corrections requested by the  
17 Office of Administrative Law or Barclays Official  
18 California Code of Regulations prior to publication.

19 CHAIRPERSON SHEEHAN: Thanks.

20 Are there any members of the public who would  
21 like to testify on this?

22 (No audible response.)

23 CHAIRPERSON SHEEHAN: Okay. What's the will of  
24 the Commission?

25 MR. GLAAB: Move the item.

1 CHAIRPERSON SHEEHAN: We have a motion from  
2 Mr. Glaab.

3 MS. BOEL: I second.

4 CHAIRPERSON SHEEHAN: And a second from Ms. Boel  
5 to move the item and adopt the proposed regulatory action  
6 regarding the appeal of the executive director's  
7 decisions. Any further discussion or questions?

8 (No audible response.)

9 CHAIRPERSON SHEEHAN: If not, all those in favor  
10 signify by saying "aye."

11 MULTIPLE SPEAKERS: Aye.

12 CHAIRPERSON SHEEHAN: Any opposed?

13 (No audible response.)

14 CHAIRPERSON SHEEHAN: That passes unanimously.  
15 All right.

16 MS. HIGASHI: Thank you very much.

17 Now, this brings us to a very difficult item.  
18 This is our proposed 2006 meeting and hearing calendar.  
19 This is item 21.

20 CHAIRPERSON SHEEHAN: We all have to get our  
21 schedules out?

22 MS. HIGASHI: As you may know, the Commission is  
23 required to meet at least every two months. However, in  
24 this year's budget, we did receive additional funding to  
25 authorize a couple of extra meetings if necessary. And

1 assuming we have a full complement of staff in a short  
2 time, we expect that there will end up being more agenda  
3 items produced and having a long, one-day hearing may not  
4 necessarily be desirable to you if you're having three  
5 boxes of documents delivered.

6 So we have added as a contingency a couple of  
7 tentative dates here. And generally speaking, the  
8 Commission has tried to issue its hearing calendar early  
9 to notify all the parties. As people build their  
10 budgets, they need to know when they might have to come  
11 to Sacramento. And the other is just because we're  
12 trying to get ahead of all those other boards and  
13 commissions that some of you sit on.

14 And we always --

15 CHAIRPERSON SHEEHAN: That was for me.

16 MS. HIGASHI: Yes.

17 And we're generally trying for Thursdays and at  
18 the end of the month. The only deviations are for  
19 December. And typically we've met either the first or  
20 second week in December, depending on when various annual  
21 meetings are scheduled. So whatever feedback --

22 CHAIRPERSON SHEEHAN: Well, I think it's helpful  
23 to put them on. If we find we don't need one of the  
24 scheduled ones, we can pull it off depending on the  
25 workload. But I know at least speaking for myself I

1 think it's helpful to have a few more. I think it will  
2 make the workload flow on a more even basis than having  
3 some terribly long meetings.

4 Mr. Smith.

5 MR. SMITH: Thank you, Madame Chair.

6 I just want to state for the record that the  
7 Controller, you know, is concerned about the backlog of  
8 cases and the workload that we get every month, so we  
9 agree with putting more meetings for the Commission on  
10 the calendar, and it may even need more. Just as fast as  
11 staff can produce agenda items and give us the analysis,  
12 we would be fine meeting every couple weeks if we could  
13 turn out the work, just to get these --

14 MS. BOEL: Paula just fainted.

15 MR. SMITH: -- these going as soon as we --

16 MS. HIGASHI: Don't scare Camille.

17 CHAIRPERSON SHEEHAN: Well, and filling the  
18 positions, the new positions in the office, will help in  
19 terms of the workload.

20 MS. HIGASHI: Right.

21 CHAIRPERSON SHEEHAN: And you can --

22 MS. HIGASHI: And I think once we release all of  
23 the test claim analyses eight to ten weeks in advance,  
24 we're factoring in when would new people start, how long  
25 would it take them to produce their first analysis. So

1 we're thinking we're not going to really see the  
2 increased workflow probably until spring.

3 CHAIRPERSON SHEEHAN: All right. Any other  
4 comments from the members? So I think there is general  
5 consensus that the schedule is good to go ahead.

6 Do you need us to formally adopt this?

7 MS. HIGASHI: I do need you to formally adopt it  
8 and then also whether -- to make a choice for December.

9 MS. BOEL: That's a long ways away.

10 CHAIRPERSON SHEEHAN: Pearl Harbor Day is always  
11 a nice day to meet.

12 MS. BOEL: Yes.

13 CHAIRPERSON SHEEHAN: Yeah, I would say the  
14 7th --

15 MS. HIGASHI: Okay.

16 CHAIRPERSON SHEEHAN: -- would be my preference  
17 in terms of versus the fourth Thursday, which would be,  
18 what, the 29th or something.

19 MR. GLAAB: That would be a lonely meeting.

20 CHAIRPERSON SHEEHAN: Exactly.

21 All right. So do we have a motion on the  
22 proposed meeting calendar for 2006?

23 MR. GLAAB: Move staff recommendation.

24 CHAIRPERSON SHEEHAN: All right.

25 MR. SMITH: Second that.

1 CHAIRPERSON SHEEHAN: And that would have  
2 December 7th. So we have Mr. Glaab made a motion,  
3 seconded by Mr. Smith. All those in favor say "aye."

4 MULTIPLE SPEAKERS: Aye.

5 CHAIRPERSON SHEEHAN: Any opposed?

6 (No audible response.)

7 CHAIRPERSON SHEEHAN: All right. We've got our  
8 schedule for next year.

9 MS. HIGASHI: Great.

10 CHAIRPERSON SHEEHAN: Okay. Item --

11 MS. HIGASHI: Item 22. This is Mr. Starkey's  
12 report.

13 MR. STARKEY: Good morning. Just one --

14 CHAIRPERSON SHEEHAN: Mr. Starkey's last report,  
15 for the record.

16 MR. STARKEY: The final report.

17 CHAIRPERSON SHEEHAN: Exactly.

18 MR. STARKEY: And nothing good to report.

19 Another case has been filed. There is a case that was  
20 filed after this report was provided. Again, this report  
21 is provided for public information. This case is East  
22 Side Union High School District versus Commission on  
23 State Mandates. It's in Sacramento, case No. 05CS01256.  
24 Our number is CSM No. 05L04. And that will appear on the  
25 next report.

1           And there are no other updates.

2           CHAIRPERSON SHEEHAN: All right. Questions for  
3 Mr. Starkey?

4           (No audible response.)

5           CHAIRPERSON SHEEHAN: No? Okay.

6           MS. HIGASHI: This brings us to item 23, which is  
7 my report. And I just wanted to note that I've provided  
8 you with an overview of what the Commission's  
9 decision-making has looked like over the last several  
10 fiscal years by types of items adopted and given you some  
11 detailed information as to staffing at those points in  
12 time and -- just to give you a rough idea of what it  
13 looks like.

14           On the second page of my report, I've displayed  
15 the pending workload. And as most of you recall, the  
16 last year we've done a lot of reconsiderations. And  
17 because of that, it seems as if the test claim workload  
18 never really seems to change, unfortunately, but we are  
19 making progress. We've done a lot more decision-making  
20 than we originally thought before I started to compile  
21 the numbers.

22           And I just wanted to acknowledge the tremendous  
23 effort put forth by all of Commission staff and including  
24 Mr. Starkey, who also has to review every single item in  
25 the office, as does Ms. Sheldon and as does Ms. Patton

1 and I before they make it to the agenda.

2 And this past year has been very productive. We  
3 have had tremendous issues before the Commission. The  
4 work has been difficult. We've had to look at records  
5 going back to the Board of Control. And I just wanted to  
6 acknowledge the work done by all of the Commission staff.

7 CHAIRPERSON SHEEHAN: Thank you.

8 MS. HIGASHI: Thank you.

9 CHAIRPERSON SHEEHAN: Absolutely.

10 MS. HIGASHI: And I'd like to report that our  
11 first rulemaking that we started this year is now in  
12 effect, and the regulations were filed with the Secretary  
13 of State. We are now waiting for Barclays to actually  
14 publish the regulations, but we have mailed the  
15 amendments out to all of the parties so that we would all  
16 be on the same page in terms of the amended sections.

17 We have a major prehearing conference tomorrow  
18 related to the handicapped and disabled students  
19 programs, and that will be at our offices tomorrow  
20 afternoon.

21 I wanted to report that during the end of session  
22 that we had a number of legislative contacts that were  
23 being made. Primarily it was necessary for us to report  
24 to Leg. staff as to the impact of the litigation on the  
25 Graduation Requirements incorrect reduction claims.



1           During our budget hearings, we had had some  
2 preliminary discussions during the public hearings about  
3 what we perceived to be an increased workload coming  
4 based on either litigation or the increased number of  
5 auditors being hired by the State Controller's Office.  
6 And we had been asked to keep them updated, so it seemed  
7 an appropriate time.

8           Although consideration was given to trying to  
9 come up with a legislative solution that would, I should  
10 say, make our workload a little easier, as well as the  
11 positions of the parties and all the pending Graduation  
12 Requirements cases easier in terms of how the Commission  
13 could potentially assist them in resolving the cases  
14 rather than to have everything through court, we weren't  
15 really able to proceed with legislation because all of  
16 this happened just way too late at the end of session in  
17 terms of the court orders and the final rulings.

18           So we would like to continue pursuing discussions  
19 and issues, and Ms. Patton will talk about that a little  
20 bit later in my report.

21           I also wanted to just update you. There are two  
22 bills pending on the Governor's desk. One of them is the  
23 reports to the legislature bill, and that's one where for  
24 future reports, if this bill is signed, I would be  
25 signing a statement --

1 CHAIRPERSON SHEEHAN: Under penalty of perjury.

2 MS. HIGASHI: -- under penalty of perjury  
3 regarding the report we're submitting.

4 The second bill that's pending is an education  
5 bill that's one of those huge consolidated bills that has  
6 a number of issues in it. One of the issues in that bill  
7 is language directing -- that amends the 2004  
8 reconsideration statute on School Accountability Report  
9 Cards, and it directs the Commission to reconsider its  
10 reconsideration. So just --

11 CHAIRPERSON SHEEHAN: Those bills have not been  
12 acted on as of today.

13 MS. HIGASHI: As of today they are -- according  
14 to Leg. Info. I have not checked today's press releases.

15 And at this point I'd like to turn it over to  
16 Nancy Patton who is responsible for development of leg.  
17 proposals in our office and monitoring legislation --

18 CHAIRPERSON SHEEHAN: Great. Thanks.

19 MS. HIGASHI: -- to lead the discussion.

20 MS. PATTON: Any legislative proposals that we  
21 might want to go forward with need to be in the  
22 Governor's Office for approval by November 10th, I  
23 believe. And so it was thought maybe we could have a  
24 discussion about a couple of ideas that we've been  
25 talking about.

1           The first one is our incorrect reduction claim  
2 process. We currently have over 90 IRCs on file. And  
3 with the budget this year, it gave the State Controller  
4 additional staff to do audits, so it's likely that we  
5 will see an increase in that workload in the next year or  
6 more. And we haven't really looked at the IRC process  
7 for years about changing it. So one of the things we'd  
8 like to talk about is possibly changing the process so  
9 it's more like a test claim.

10           So rather than under the current process where  
11 each claimant files an individual IRC and we have to  
12 analyze them separately and issue separate statements of  
13 decision, maybe changing it to a process where we could  
14 file a test IRC, you know. The issues would have to be  
15 the same for claimants to share, but we thought that that  
16 might step up the process, reduce some of the work.

17           Also, we thought about reducing the statute of  
18 limitations for filing an IRC. Currently they have three  
19 years to file them from the date they are notified that  
20 their claim has been adjusted. And we were thinking  
21 maybe a one-year statute of limitations could reduce the  
22 amount of time it takes to complete IRCs.

23           So those are the two proposals for incorrect  
24 reduction claims that we haven't developed. We just  
25 wanted to talk to you about.

1 CHAIRPERSON SHEEHAN: Okay.

2 MS. PATTON: The second proposal we were looking  
3 at is possibly eliminating the SB 1033 process. I know  
4 that's controversial.

5 CHAIRPERSON SHEEHAN: We don't want to go back to  
6 Butte next fall?

7 MS. PATTON: On this last go-round we filed, it  
8 cost the Commission almost \$120,000. And it's a lot of  
9 work and a lot of money for -- and we were only able to  
10 get to a one-year determination. I mean, it's getting to  
11 the point where it's costing the Commission more than the  
12 savings that the County realizes, so --

13 CHAIRPERSON SHEEHAN: Yes.

14 MS. PATTON: -- we're raising the issue of --  
15 about maybe proposing that we eliminate it.

16 CHAIRPERSON SHEEHAN: Yeah, or some other  
17 alternative. That has been discussed. Maybe bringing  
18 together some of the parties, having a discussion with  
19 CSAC and some of the interested folks from upstairs who  
20 have been involved in this process to see -- now that  
21 we've been -- we've had it for ten, 12 -- how long? --  
22 '92?

23 MS. HIGASHI: I think ten years.

24 MS. PATTON: Twelve years.

25 CHAIRPERSON SHEEHAN: You know --

1 MR. KAYE: Could I?

2 CHAIRPERSON SHEEHAN: Absolutely.

3 MR. KAYE: Leonard Kaye, with the County of Los  
4 Angeles, and I just want to add a comment to the record.

5 CHAIRPERSON SHEEHAN: Absolutely.

6 MR. KAYE: When you indicated the SB 1033  
7 hearings so that the cost and the benefit and so forth.  
8 In the case of Los Angeles County, I believe we did have  
9 a hearing many years ago. And if memory serves me  
10 correct, I think the cost of the hearing was probably  
11 somewhere along the lines that you were suggesting, but  
12 the savings was far greater than the cost. So I'd just  
13 like to add that for the record.

14 CHAIRPERSON SHEEHAN: And that would be --  
15 depending on the county that was at issue, absolutely it  
16 would be.

17 MR. KAYE: Yes.

18 CHAIRPERSON SHEEHAN: And I know L.A. was one of  
19 the first counties --

20 MR. KAYE: Yes, we were.

21 CHAIRPERSON SHEEHAN: -- that had gone through  
22 this. And I think the issue that at least we confronted  
23 as Commission members is, you know, is this the best way  
24 to go about addressing that? Is the one size fits all --  
25 does it make sense? Are there some other alternatives

1 that we could look at for some of this?

2 But, yes, we certainly understand in the case of  
3 Los Angeles the impact would be very different than it  
4 was in the smaller counties.

5 MR. KAYE: Thank you.

6 MR. SMITH: The savings shouldn't be less than  
7 the staff time it took to produce the stuff to get the  
8 savings.

9 MS. HIGASHI: Well, there's a -- if I may just  
10 add?

11 CHAIRPERSON SHEEHAN: Uh-huh.

12 MS. HIGASHI: There's also another concern that  
13 certainly surfaces in the Capitol whenever we start  
14 talking about SB 1033, and that is the concern of the  
15 organizations that represent the welfare rights groups.  
16 And the concern is that, one, everyone acknowledges the  
17 counties could be in fiscal distress, but, two, I think  
18 the concern is that why should we focus on the option of  
19 allowing them to reduce general assistance? Why isn't it  
20 another program or why isn't it a special bill that helps  
21 the county and puts in the kinds of controls that might  
22 be necessary if there are controls that are necessary for  
23 that particular situation.

24 But by having the Commission proceed with the  
25 current process, we're not necessarily doing anything to

1 help the situation, and so there have to be other options  
2 that could be perceived.

3 CHAIRPERSON SHEEHAN: Yeah. And I think that's  
4 really the issue, is having the discussion with the  
5 interested parties what else could be done, you know. It  
6 has been in existence, I think a little over ten years.  
7 It's been -- you know, we've had large counties, we've  
8 had small counties, you know, rural counties have used  
9 it. Just having gone through it, you know, not having  
10 been involved in the L.A. or I think Sacramento has gone  
11 through it --

12 MS. HIGASHI: Sacramento has been through it.

13 CHAIRPERSON SHEEHAN: It just seemed there has to  
14 be a better way to address these issues where counties  
15 are having problems. So, you know, at least speaking for  
16 myself, I think it's helpful to have this discussion, you  
17 know, begin to draft some legislation, pull together the  
18 interested parties and see what else could be done.

19 I think this process was the result of somewhat  
20 of a compromise back, you know, from way back when. But  
21 I think maybe we have learned some stuff over the past  
22 ten or 12 years, figured out some ways, maybe, to do some  
23 other things.

24 Special legislation is one option. As I recall  
25 from talking to some of the people who have been around,

1 I mean, that was one of the problems -- they always got  
2 confronted with pressure on special legislation -- so  
3 they wanted to figure out some alternative.

4 But nonetheless, I think it's time to have the  
5 discussion again, get all the parties together, put our  
6 heads together, and see if there is another way or  
7 another option or some other ideas that may emerge from  
8 that, so at least --

9 MR. SMITH: I absolutely agree with the Chair on  
10 that item.

11 MS. BOEL: How would we proceed in that? Would  
12 you -- would it be up to us, to you, to gather the  
13 parties together or would the --

14 MS. PATTON: We could --

15 MS. BOEL: -- Governor's Office do that?

16 MS. PATTON: We can hold meetings --

17 MS. BOEL: You could hold a meeting in the --

18 MS. PATTON: -- talk to everyone and come up with  
19 a proposal.

20 MS. BOEL: As far as a proposal on -- I was  
21 interested in what Paula said and why it's just the  
22 assistance that is -- would that be something that we  
23 would look at too --

24 MS. PATTON: Right.

25 MS. BOEL: -- whether that's the --



1 MS. PATTON: Right. Not necessarily eliminated,  
2 but come up with an alternative.

3 MS. BOEL: Other alternatives. That always  
4 bothered me as well.

5 MS. HIGASHI: Because when we examined other  
6 states' statutes, you know, some of the other states had  
7 very, very specific criteria as to what constituted  
8 significant financial distress and more akin to a  
9 bankruptcy-type situation and not just what we've been --  
10 what we're faced with in SB 1033, which is a little gray,  
11 I would say.

12 So there are other models out there that we want  
13 to look at, but I think, you know, there are some major  
14 policy considerations that need to be addressed. But we  
15 just need to find out, in order for us to proceed to meet  
16 the administration's deadlines and due dates for  
17 proposals being submitted, whether or not the Commission  
18 membership is amenable to having us proceed with the --

19 MS. BOEL: Would you need a subcommittee to work  
20 with you or would we just -- because we couldn't -- there  
21 wouldn't be enough time to come back. What's our next  
22 meeting?

23 CHAIRPERSON SHEEHAN: December.

24 MS. BOEL: So we need -- we really couldn't get  
25 us to --

1 MS. HIGASHI: At this point there is not a  
2 subcommittee. That's certainly an option that the  
3 Commission could --

4 CHAIRPERSON SHEEHAN: If we could do that.

5 MS. HIGASHI: If you want it done that way, we  
6 can do it that way.

7 CHAIRPERSON SHEEHAN: I guess one of the things  
8 in terms of -- I mean a couple of options on bills. We  
9 can appeal the SB 1033 or, you know, direct the staff to  
10 come back with some suggestions for improving that  
11 process.

12 So it may be that as you have some preliminary  
13 discussions, you know, come back with this. Do a spot  
14 bill to say we would like to address -- you know, just a  
15 holding place. We would like to address this issue, have  
16 discussions. We don't know if we're going to completely  
17 repeal it, but we'd like to at least have discussions and  
18 see what other options are out there. Because I think --  
19 I don't want to lock us into only that without something  
20 substituting for the SB 1033.

21 MR. SMITH: Yeah, I would just say on behalf of  
22 the Controller that we're not necessarily -- I mean,  
23 there's no doubt that by and large every county in the  
24 state could probably claim financial distress, and they  
25 are. It's more looking at alternatives. Is cutting

1 general assistance the best way?

2 From the beginning of the process with Butte  
3 County, we said at the beginning we questioned the  
4 savings when you're cutting a significant portion of what  
5 those on general assistance are getting each month, it's  
6 sort of silly to me to assume that they're not going to  
7 resurface somewhere else in public assistance and skew  
8 the savings. So I think just looking at alternatives  
9 would be what we'd be most interested in, not necessarily  
10 repealing options for counties.

11 MS. PATTON: Okay.

12 CHAIRPERSON SHEEHAN: Okay. Does that --

13 MS. HIGASHI: That -- that helps us. Does the  
14 Commission wish to form a legislative subcommittee?

15 CHAIRPERSON SHEEHAN: What's the -- how do you  
16 feel?

17 MS. BOEL: I personally would like to be involved  
18 in these discussions and work with you. If anyone else  
19 would like to be involved, I think it would be --

20 CHAIRPERSON SHEEHAN: You've got at least the  
21 three. And then you can keep us, you know --

22 MS. HIGASHI: Okay.

23 CHAIRPERSON SHEEHAN: If you have meetings and  
24 all, with three you'd have to have public notice.

25 MS. HIGASHI: Right. If three members were to

1       come to a meeting, we'd need to have it noticed as a  
2       Commission meeting.

3               CHAIRPERSON SHEEHAN:  As a Commission meeting for  
4       the legislative subcommittee.  But as long as you're  
5       doing it in advance and pull together, and it may be  
6       that -- very beneficial for the Commission members to be  
7       there and hear from --

8               MS. BOEL:  To hear the interested parties --

9               CHAIRPERSON SHEEHAN:  -- the interested parties.

10              MS. BOEL:  -- particularly from the public.

11              CHAIRPERSON SHEEHAN:  Very helpful.

12              MS. HIGASHI:  Is there any other feedback on the  
13       incorrect reduction claims process?

14              CHAIRPERSON SHEEHAN:  I mean I think that --

15              MS. BOEL:  We could do the same thing --

16              CHAIRPERSON SHEEHAN:  Exactly.

17              MS. BOEL:  -- look at it.

18              CHAIRPERSON SHEEHAN:  The same thing.

19              MS. BOEL:  Come up with a proposal.

20              CHAIRPERSON SHEEHAN:  There is an issue.  How can  
21       you make it -- you know, sort of vet the statute of  
22       limitations issue.  There again, work with the interested  
23       parties in terms of how we can make this process go  
24       better from their perspective and our perspective.  I  
25       mean I think all the way around making it more efficient

1 would be beneficial.

2 So I think the same type of approach would be  
3 good. And certainly if you, you know, want to do the two  
4 issues together in meetings, you know, first part talk  
5 about one issue and the second part talk about the other  
6 and then open it up and see if they have any other ideas  
7 that they may want to bring forward, other than stopping  
8 the legislature from redirecting us. That may be outside  
9 of our purview.

10 MR. SMITH: And just to bring up, it's my  
11 understanding the Department of Finance is actually  
12 reviewing the entire mandate reimbursement process. Am I  
13 correct in that?

14 CHAIRPERSON SHEEHAN: Well, they -- they are  
15 looking at that. Some of the staff, you know, from each  
16 of the divisions are looking at that process and how --  
17 but we're constantly looking at this process within  
18 Finance.

19 MR. SMITH: I just was looking at other  
20 opportunities. If we're going to form a legislative  
21 committee, we ought to really widen the scope and look at  
22 things that -- I think that in many cases we have  
23 stakeholders, important stakeholders, who have interests  
24 aligned with ours to make the process as simple as  
25 possible and to speed it up. And I would say that, you

1 know, we should really listen to any suggestions that the  
2 stakeholders, local governments, community colleges and  
3 school districts, have that the legislative subcommittee  
4 may want to take into consideration too.

5 I'm, you know, just pretty new on the Commission  
6 and I don't know if we've ever had sort of a strategic  
7 plan on how we'd like to make this work. You know,  
8 there's tons of reports and studies across the board from  
9 almost every department.

10 CHAIRPERSON SHEEHAN: Yeah, the sense -- because  
11 I've had this discussion with the staff in terms of sort  
12 of convening just general, you know -- a meeting north  
13 and south in terms of the process, how does it work, how  
14 can it be improved upon. The sense I get, as a fairly  
15 newcomer to this process, is we have so much -- there's  
16 so much workload that's churning through and so many  
17 cases that are backlogged and issues that we have to deal  
18 with, sometimes we don't have the opportunity to take a  
19 step back and look at the entire process, you know,  
20 because we are so busy both with the members as well as  
21 the staff in terms of the work that's involved to take a  
22 step back and convene some discussions about the whole  
23 process. And I think possibly this will give us the  
24 opportunity to do that.

25 MS. HIGASHI: The last time we were involved in a

1 process was during the Assembly Special Committee on  
2 State Mandates when Mr. Laird chaired the committee and  
3 all of the stakeholders and parties, many of whom are  
4 here today, we had regular meetings before hearings,  
5 during hearings, after hearings, to talk about various  
6 ways of looking at the mandate reimbursement process.

7 And that committee made some modest changes, and  
8 those are the ones that were evidenced in AB 2856.

9 Mr. Laird continues to be very interested in mandate  
10 reform issues. This year, as you know, he assumed the  
11 chairmanship of the Assembly budget committee, so his  
12 time is limited. But there were various mandate reform  
13 working groups convened in the Capitol, some of which we  
14 participated in, some of which we did not, depending on  
15 the topics.

16 So they do continue on a much more of an ad hoc  
17 basis. And I think the budget language directing the  
18 Department of Finance to do this study and  
19 recommendations was the one step that was taken this  
20 year.

21 CHAIRPERSON SHEEHAN: Correct. To begin to look  
22 at that.

23 MS. HIGASHI: I believe there were also some  
24 steps taken regarding the Controller's new auditor  
25 positions that reports back to the legislature required

1 from the Controller's Office on the outcome of those  
2 audits.

3 CHAIRPERSON SHEEHAN: But I think we can also  
4 work with the staff of Finance, who is looking at this  
5 process as part of the overall process. And some of the  
6 issues that we're looking at I think would be very  
7 beneficial to have those discussions.

8 MR. SMITH: That was my suggestion, Madame Chair,  
9 that if -- instead of having, you know --

10 CHAIRPERSON SHEEHAN: Two different --

11 MR. SMITH: -- everybody look independently, I  
12 know the legislature is doing their own thing. I don't  
13 want to create more work for the stakeholders, who are  
14 already convening and advising the legislature that they  
15 have CSAC and the schools already have things they put  
16 together to sort of sift through the work they've already  
17 done and not create a whole new process, but just --

18 CHAIRPERSON SHEEHAN: And to the extent that we  
19 can consolidated some of those efforts, I think you're  
20 exactly right. Yeah.

21 MS. HIGASHI: Is there a person in the Department  
22 of Finance who's been assigned responsibility for the  
23 project?

24 CHAIRPERSON SHEEHAN: Well, I know Mr. Tilton's  
25 unit has been working on this, so I will get back to you



1 in terms of who is helping to oversee the whole. He was  
2 very much involved during some of the budget process  
3 stuff.

4 Okay. Does that --

5 MS. PATTON: Thank you.

6 CHAIRPERSON SHEEHAN: Okay. All right.

7 MS. HIGASHI: And I'd like to go over on page 4  
8 the next hearing agenda. The next meeting is scheduled  
9 for December 8th. And there's a proposed agenda there  
10 that's tentative, subject to changes. We have some  
11 litigation dates that may be coming up as well. And with  
12 Mr. Starkey's departure, it will -- it could have an  
13 impact on the agenda for December.

14 CHAIRPERSON SHEEHAN: Okay. All right. So looks  
15 like three test claims.

16 MS. HIGASHI: Are there any questions regarding  
17 the next agenda?

18 CHAIRPERSON SHEEHAN: I do not have any.

19 Any questions from the members?

20 (No audible response.)

21 CHAIRPERSON SHEEHAN: Okay.

22 MS. HIGASHI: That's pretty much all that I have  
23 to report.

24 CHAIRPERSON SHEEHAN: Okay.

25 MS. HIGASHI: Unless there are any other member

1 questions.

2 CHAIRPERSON SHEEHAN: Questions for Paula on  
3 this?

4 (No audible response.)

5 CHAIRPERSON SHEEHAN: No?

6 Next we will go to public comment. If there --  
7 are there any public comments on issues that were not on  
8 the agenda?

9 (No audible response.)

10 CHAIRPERSON SHEEHAN: No?

11 Then before we adjourn, what I'd like to do is,  
12 since this is Mr. Starkey's final meeting of the -- in  
13 his role as the chief counsel, I would like to present  
14 you with a resolution from the members. I can read this  
15 as I present it.

16 Whereas Mr. Starkey -- can you all hear me?  
17 Okay.

18 Whereas Paul Starkey has distinguished himself as  
19 chief legal counsel of the Commission of State Mandates;

20 Whereas he has advised, counseled and represented  
21 the Commission in determining if cities, counties and  
22 school districts should be reimbursed pursuant to  
23 section 6, article XIII B of the California Constitution  
24 and section 17514 of the Government Code;

25 Whereas he has successfully and effectively

1 managed the legal staff and established the clinical  
2 program with McGeorge School of Law;

3           Whereas he has effectively organized and managed  
4 Commission litigation and argued before the trial courts,  
5 courts of appeal, and the California Supreme Court;

6           Whereas Paul Starkey is being honored by the  
7 members and staff of the Commission on State Mandates in  
8 appreciation of his outstanding dedication, leadership  
9 and service to the State of California;

10           Now therefore be it resolved that the Commission  
11 on State Mandates formally congratulates Paul Starkey  
12 upon his new position as Labor Relations Counsel IV with  
13 the Department of Personnel Administration, and done this  
14 27th day of September 2005.

15           So thank you.

16           (Applause.)

17           MR. STARKEY: Well, the staff knows that I'm a  
18 toastmaster, so I couldn't let the opportunity go.

19           I want to say that it has been my privilege to  
20 work with the Commission on State Mandates staff. They  
21 are dedicated professionals, and we have had a  
22 roller-coaster ride of budget cuts and staff reductions,  
23 and we still have produced great quality work, which the  
24 people in black robes have said were pretty darn close.  
25 So that's been great.

1           It is a special honor for an attorney to have a  
2 statute that say you go to work in the morning. I have a  
3 statute that appoints me to represent the Commission, and  
4 it has been an absolute privilege and honor to have that  
5 statutory role.

6           And all of the Commission members have just been  
7 fantastic. They have executed their duties in such a way  
8 that frankly makes my job easy. And so thank you all  
9 very much.

10           Thank you.

11           CHAIRPERSON SHEEHAN: Thank you.

12           (Applause.)

13           CHAIRPERSON SHEEHAN: All right.

14           MR. GLAAB: Madame Chairman and Members, as the  
15 new Commissioner, the newest Commissioner on board, I  
16 just want to commend staff for all the fine work they've  
17 done in getting the new kid on the block up to speed.  
18 And certainly they've done a great job. I know staff  
19 would probably respond saying, "Well, we were just doing  
20 our job."

21           But all of us come from previous lives, and I've  
22 been very, very impressed with not only the completeness  
23 of the work, but the availability at a moment's notice  
24 for questions and some of the new kid on the block  
25 questions. So I just wanted to commend staff for all the

1 fine work they've done in getting me up to speed. So  
2 thank you very much.

3 CHAIRPERSON SHEEHAN: Thank you.

4 All right. Is there any other business before  
5 the Commission?

6 (No audible response)

7 CHAIRPERSON SHEEHAN: If not, we are adjourned.

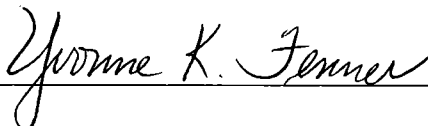
8 (Whereupon the hearing concluded at 11:07 a.m.)

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 REPORTER'S CERTIFICATE

2  
3 I hereby certify the foregoing hearing was held  
4 at the time and place therein named; that the proceedings  
5 were reported by me, a duly certified shorthand reporter  
6 and a disinterested person, and was thereafter  
7 transcribed into typewriting.

8 In witness whereof, I have hereunto set my hand  
9 this 17th day of October, 2005.

10  
11  
12 

13 Yvonne K. Fenner  
14 Certified Shorthand Reporter  
15 License No. 10909  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25