

# MINUTES

## COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
January 27, 2005

Present: Chairperson Anne Sheehan  
Representative of the Director of the Department of Finance  
Member Walter Barnes  
Representative of the State Controller  
Member John Hiber  
Representative of the State Treasurer  
Member Jan Boel  
Acting Director of the Office of Planning and Research  
Member John Lazar<sup>1</sup>  
City Council Member

Vacant: Local Elected Official  
Public Member

### CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:30 a.m. She announced the Commission on State Mandates' 20<sup>th</sup> anniversary.

### ELECTION OF OFFICERS

Item 1 Election of Chairperson and Vice Chairperson

Paula Higashi, Executive Director, conducted the election of officers. Member Boel nominated Mr. Tom Campbell, the Director of the Department of Finance, as Chairperson. With a second by Member Barnes, Mr. Campbell was unanimously elected.

[Member Lazar entered the room.]

Member Boel nominated Mr. Steve Westly, State Controller, as Vice Chairperson. With a second by Member Lazar, Mr. Westly was unanimously elected.

### APPROVAL OF MINUTES

Item 2 December 9, 2004

Upon motion by Member Hiber and second by Member Boel, the minutes were unanimously adopted.

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<sup>1</sup> Member Lazar arrived during the election of officers.

**PROPOSED CONSENT CALENDAR**

**INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8**

**ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES (action)**

- Item 6      *Pupil Promotion and Retention, 98-TC-19*  
San Diego Unified School District, Claimant  
Education Code Sections 37252, 37252.5, 48070 and 48070.5  
Statutes 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)
  
- Item 7      *AIDS Prevention Instruction II, 99-TC-07, 00-TC-01*  
Sweetwater Union High School District, Claimant  
Education Code Sections 51201.5, 51229.8, 51553 and 51554  
Statutes 1991, Chapter 818 (AB 11), Statutes 1998, Chapter 403 (SB 1110),  
and Statutes 1999, Chapter 234 (AB 246)
  
- Item 8      *Teacher Incentive Program, 99-TC-15*  
San Diego Unified School District, Claimant  
Education Code Sections 44395 and 44396  
Statutes 1998, Chapter 331 (AB 858)

Member Lazar moved for adoption of the consent calendar, which consisted of items 6, 7, and 8. With a second by Member Boel, the consent calendar was unanimously adopted.

**APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)**

- Item 3      Staff Report on Appeals Related To Current Agenda Items (if necessary)

No appeals were filed.

**HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)**

**TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION**

- Item 4      *Missing Children Reports, 01-TC-09*  
San Jose Unified School District, Claimant  
Education Code Sections 38139, 49068.5, 49068.6, 49370  
Statutes 1986, Chapter 249, Section 14 (AB 606); Statutes 1999,  
Chapter 1013, (SB 570); Statutes 1999, Chapter 832 (AB 646);  
Statutes 1996, Chapter 277 (SB 1562); and Statutes 1994, Chapter 922  
(AB 2587)

Eric Feller, Commission Counsel, presented this item. He stated that the test claim statutes require school districts to undertake various activities with regard to missing children. Staff found the test claim to be a reimbursable state mandate for school districts to perform the following activities:

- 1) Post information regarding missing children in the appropriate areas;
- 2) If notified of a missing child, post a notice that the child has been reported missing on the front of the missing child’s school record; and

3) Notify law enforcement if the school receives a record inquiry about a missing child.

Staff recommended that the Commission approve the test claim for the specified activities.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; and Matt Aguilera, with the Department of Finance. Ms. Higashi swore in the parties participating in the hearing of items 4 and 5.

Mr. Petersen noted that several code sections in the test claim legislation urge principals and school officials to take certain actions regarding missing or apparently missing students. He argued that the Legislature used slightly different language in Education Code section 49370, which states: “The Legislature hereby declares its intent in enacting this article to require [the activity].” He disagreed with staff’s conclusion that this statement is not mandatory, and said that the plain meaning of the statement is that school district personnel are required to report missing children to a law enforcement agency.

Mr. Aguilera supported the staff recommendation. He noted that findings, declarations, and intent language generally do not constitute the force of law. He added that, in terms of policy, the latter sections of a bill provide the actual substance of an effectuated law.

Member Boel requested clarification from Mr. Aguilera, who responded that oftentimes bills include findings and declarations to provide background information as to specific intent, but it is the latter sections of bills that impose the specific requirements on state departments or local government.

Mr. Petersen asserted that nothing in the legislation indicated that school districts not call the police if a child was missing. He submitted that Mr. Aguilera was referring to descriptive language, usually from the Legislative Counsel, which precedes the actual code section. He explained that this was the code section, not background information. He reiterated that the plain meaning of the code section requires districts to call the police.

Mr. Aguilera maintained that the statement was intent language, which is background information.

Member Barnes asked staff to comment. Mr. Feller agreed that the statute was ambiguous, but maintained that the Legislature did not use the word “shall,” which indicates that it is not legally required. He added that the legislative history indicated a change from a Penal Code section titled “Mandatory Reporting of Missing Children” to an Education Code section titled “The Reporting of Missing Children.” Mr. Feller noted that such a change is legally significant according to how courts have analyzed statutes. Moreover, he stated that the Legislative Counsel’s Digest indicates that this was legislative intent language, which courts have used in the past to construe statutes.

Mr. Feller maintained that after looking through the legislative history, staff concluded that the statement was legislative intent language and not an actual legal requirement.

Member Barnes requested clarification as to whether Mr. Petersen’s arguments were limited to the activity to report missing children to law enforcement in a timely manner. Mr. Petersen affirmed.

Mr. Petersen submitted that staff was ignoring the plain language of the code section and was instead looking for the Legislature’s intent in legislative history and the Legislative Counsel’s Digest. He asserted that “require” also means “shall,” and therefore, the code section requires

the districts to call the police.

Member Barnes asked Paul Starkey, Chief Legal Counsel, if the whole intent of the bill would be undermined if the Commission were to find that this is not a reimbursable mandate.

Mr. Starkey responded that in construing statutes, staff looks for a clear statement from the Legislature that an activity is required. He explained that for purposes of mandate analysis, staff looks at everything surrounding the statute, including legislative history, for further meaning if there is any kind of ambiguity in the language. In this case, he maintained that staff disagreed with Mr. Petersen regarding the plain meaning of the statute.

Mr. Starkey further explained that if in fact the Legislature determined that its intent was not being carried out, it could come back and specifically say that the activity is mandatory. He also stated that the Commission's role is to discover the Legislature's expressed intent using the tools of statutory construction that the courts would use to review this matter.

Mr. Petersen reiterated his argument that the Commission was not looking at the plain language of the statute. He asserted that the language is sufficient on its own for the Commission to decide that "intent to require" also means "shall."

Mr. Starkey stated that in his judgment, for purposes of mandates analysis, the statement "intent to require" is not a clear statement of the Legislature ordering or requiring the activity.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Hiber. The motion carried 4-1, with Member Lazar voting "No."

Mr. Petersen requested clarification, as a matter of law, whether districts had to call the police when a child is missing. Chairperson Sheehan responded that the Commission determined that the Legislature did not provide clear direction that districts were mandated to call.

Mr. Starkey agreed, and noted that it was inappropriate at this point for the representative to say what the Commission had declared as to the duties with respect to local entities.

Item 5 Proposed Statement of Decision: *Missing Children Reports*, 01-TC-09  
See Above

Eric Feller, Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision. He also recommended that staff be allowed to make minor changes, including those to reflect the hearing testimony and vote count, before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Hiber. The motion carried 4-1, with Member Lazar voting "No."

**INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)**

**PROPOSED 2005 RULEMAKING CALENDAR**

Item 9 Staff Report

Nancy Patton, Assistant Executive Director, presented this item. She stated that Government Code section 11017.6 requires state agencies to prepare annual rulemaking calendars for publication in the *California Regulatory Notice Register*. Accordingly, staff proposed two rulemakings for 2005. The first amends the current regulations to implement statutory changes

required by Assembly Bill 2856. The second amends the current regulations to specify procedures for the appeal of an Executive Director's decision.

Staff recommended that the Commission adopt the proposed 2005 rulemaking calendar for transmittal to the Office of Administrative Law.

Member Boel made a motion to adopt the proposed rulemaking calendar for 2005. With a second by Member Lazar, the motion carried unanimously.

#### ADOPTION OF NEW TEST CLAIM FORM

##### Item 10 Staff Report

Nancy Patton, Assistant Executive Director, presented this item. She reported that Governor Schwarzenegger signed Assembly Bill 2856 on September 29, 2004. This bill made significant reforms to the process for filing test claims, and the changes to Government Code section 17553 required the Commission to adopt a new test claim form.

Ms. Patton noted that staff conducted a workshop and issued a draft test claim form in December 2004 for public comment. No comments were filed. Therefore, staff recommended that the Commission approve the proposed test claim form. Ms. Patton stated that if approved, the executive director will immediately disseminate the form, which will become effective on February 7, 2005.

Member Lazar asked if it was standard policy for the Commission to get involved in the detail of staff's work. Ms. Higashi responded that the Commission had not adopted a new test claim form in years, and because of the nature of the changes, staff felt it was necessary to bring it before the Commission.

Chairperson Sheehan noted that it was not uncommon for regulatory bodies to go through the process of adopting applications or forms.

Member Boel made a motion to adopt the new test claim form. With a second by Member Hiber, the motion carried unanimously.

#### STAFF REPORTS

##### Item 11 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, had nothing to add to his report.

##### Item 12 Executive Director's Report (info/action) Workload, SB 1033, Governor's Proposed 2005-06 Budget, Implementation of AB 2856, 2005 Hearing Calendar, and Next Hearing

Ms. Higashi reported the following:

- *Workload.* Butte County confirmed that their application for a finding of significant financial distress was sent to the printer. The Commission should expect to see the application around February 10. Staff needs to work with the Department of Finance to obtain the additional funding, and once it is received, there is a 90-day timeline to process the application.
- *2005 Hearing Calendar.* There are two changes to the 2005 hearing calendar. First, the March hearing was moved up one day because of a state holiday. Second, the November hearing was moved to early December because of the Thanksgiving holiday.

Member Boel made a motion to adopt the revised 2005 hearing calendar. With a second by Member Barnes, the motion carried unanimously.

## **PUBLIC COMMENT**

On behalf of the Commission, Chairperson Sheehan presented a resolution to Member Lazar in honor of his five years of service on the Commission on State Mandates.

Allan Burdick, on behalf of the California League of Cities and the California State Association of Counties, presented Member Lazar with a token of appreciation to thank him for his contributions to the Commission. He noted that the Commission would have no local representation with Member Lazar's departure.

Chairperson Sheehan responded that the Governor's Office is working on filling the positions of vacant local government representatives.

Member Lazar thanked the Commission staff and members for the courtesy extended to him over the past five years. He also thanked former Governor Davis for the appointment and opportunity to participate in state government.

## **CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.**

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
4. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
5. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
6. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
7. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]

8. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]
10. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
11. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Case No. BS092146, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

## PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

## REPORT FROM CLOSED EXECUTIVE SESSION

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

**ADJOURNMENT**

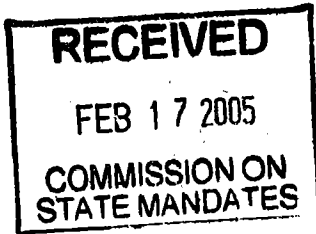
Hearing no further business, and upon motion by Member Boel and second by Member Barnes, Chairperson Sheehan adjourned the meeting at 10:21 a.m.

  
PAULA HIGASHI  
Executive Director



PUBLIC HEARING

COMMISSION ON STATE MANDATES



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**ORIGINAL**

TIME: 9:30 a.m.

DATE: January 27, 2005

PLACE: State Capitol, Room 126  
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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

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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

WALTER BARNES

Representative of Steve Westly  
State Controller

JAN BOEL

Interim Director of the Office of Planning & Research

JOHN S. LAZAR

City Council Member  
Turlock City Council

JOHN HIBER

Representative of Philip Angelides  
State Treasurer

COMMISSION STAFF

PAULA HIGASHI, Executive Director

PAUL M. STARKEY, Staff Counsel

ERIC FELLER, Staff Counsel

NANCY PATTON, Assistant Executive Director

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PUBLIC PRESENTATIONS

MATT AGUILERA  
State of California, Department of Finance

ALLAN BURDICK, Director  
California State Association of Counties

KEITH PETERSEN, MPA, JD, President  
SixTen and Associates

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1 BE IT REMEMBERED that on Thursday, the 27th  
2 day of January 2005, commencing at the hour of  
3 9:30 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 is called to order for January 27th,  
10 2005. Paula, will you please call the roll.

11 MS. HIGASHI: Mr. Barnes.

12 MR. BARNES: Here.

13 MS. HIGASHI: Ms. Boel.

14 MS. BOEL: Here.

15 MS. HIGASHI: Mr. Hiber.

16 MR. HIBER: Here.

17 MS. HIGASHI: Mr. Lazar is not here yet.

18 Ms. Sheehan.

19 CHAIRPERSON SHEEHAN: Here.

20 We note the presence of a quorum.

21 And one thing I'd like to announce is this is the  
22 20th anniversary of the Commission on State Mandates this  
23 year, so I do want to at least note that for the record.  
24 In terms of the --

25 MS. BOEL: Do we get a birthday cake?

1           CHAIRPERSON SHEEHAN: Right. So congratulations  
2 to the staff in terms of all the work that you've done in  
3 the past 20 years.

4           MS. HIGASHI: Thank you very much.

5           CHAIRPERSON SHEEHAN: Go ahead, Paula.

6           MS. HIGASHI: Our first item of business is the  
7 election of officers for 2005. It's customary for me to  
8 conduct the elections so that all of the members can  
9 participate in the election process. So are there any  
10 nominations for chairperson, or is there a motion to  
11 elect a new chairperson?

12           MS. BOEL: I'd like to make a motion to elect Tom  
13 Campbell chairperson.

14           MR. BARNES: I'll second.

15           MS. HIGASHI: There is a motion and a second to  
16 elect Tom Campbell, Director of Finance, as chairperson.  
17 All those in favor of the motion, please signify by  
18 saying, "aye."

19           MULTIPLE SPEAKERS: Aye.

20           MS. HIGASHI: Congratulations --

21           CHAIRPERSON SHEEHAN: Thank you.

22           MS. HIGASHI: -- Ms. Sheehan.

23           CHAIRPERSON SHEEHAN: Thank you.

24           And then we will move on to nominations for the  
25 vice chair. We will entertain --

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(Mr. Lazar enters room.)

CHAIRPERSON SHEEHAN: I have a tight schedule today, so sorry.

MR. LAZAR: There's a lot of traffic today.

CHAIRPERSON SHEEHAN: I'm sure.

MS. BOEL: Are you entertaining a motion?

CHAIRPERSON SHEEHAN: Yeah.

I want to make sure that the roll reflects that Mr. Lazar is here also today.

The only thing you missed is the Director of Finance was elected chair again for the year. And we are moving on to the vice chair nominations. So we will entertain nominations for vice chair at this time.

MS. BOEL: I would like to nominate Steve Westly as vice chairperson.

CHAIRPERSON SHEEHAN: Do we have a second on that?

MR. LAZAR: I'll second it.

CHAIRPERSON SHEEHAN: Okay. Any other nominations?

Paula, will you want to --

MS. HIGASHI: Certainly.

All those in favor of the nomination of the election of Steve Westly, State Controller, as vice chairperson, please signify by saying "aye."



1           MULTIPLE SPEAKERS:  Aye.

2           MS. HIGASHI:  Any opposed?

3           (No audible response.)

4           MS. HIGASHI:  Mr. Westley is the vice chair.

5           Congratulations, Mr. Barnes.

6           MR. BARNES:  Thank you.

7           CHAIRPERSON SHEEHAN:  Paula.

8           MS. HIGASHI:  The next order of business is

9  item 2, the minutes of the last meeting, December 9th.

10          CHAIRPERSON SHEEHAN:  Are there any additions,

11  subtractions, corrections, to the minutes?

12          MR. HIBER:  Move approval.

13          CHAIRPERSON SHEEHAN:  We have a motion.  Do I

14  have a second --

15          MS. BOEL:  Second.

16          CHAIRPERSON SHEEHAN:  -- for approval of the

17  minutes?

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:  All right.  The minutes are

23  approved.

24          MS. HIGASHI:  The next item is the proposed

25  consent calendar, and that is before you.  It's on the

1 blue paper. The consent calendar consists of three  
2 statewide cost estimates: Items 6, 7, and 8. We have  
3 received no communications about taking them off the  
4 consent calendar.

5 CHAIRPERSON SHEEHAN: Okay. So there are no  
6 objections to the consent calendar. Is there a motion to  
7 adopt the proposed consent calendar?

8 MR. LAZAR: So moved.

9 MS. BOEL: I second.

10 CHAIRPERSON SHEEHAN: We have a motion and a  
11 second. All those in favor, signify by saying, "aye."

12 MULTIPLE SPEAKERS: Aye.

13 CHAIRPERSON SHEEHAN: Any opposed?

14 (No audible response.)

15 CHAIRPERSON SHEEHAN: The consent calendar is  
16 approved.

17 MS. HIGASHI: The next item we come to is the  
18 test claim set for hearing. It's item 4. It is on the  
19 Missing Children Reports. This item will be presented by  
20 Commission counsel Eric Feller.

21 And if there are any parties and witnesses on  
22 this item, I'll do the swearing in of witnesses after  
23 Mr. Feller does his introduction.

24 MR. FELLER: Good morning. As Paula mentioned,  
25 this is the Missing Children Reports test claim. The

1 test claim statutes urge and require various activities  
2 school districts must undertake with regard to missing  
3 children. As indicated in the analysis, staff found the  
4 test claim to be a reimbursable state mandate on schools  
5 to perform the following activities: First, to post  
6 information regarding missing children in the appropriate  
7 areas; second, if notified of a missing child, to post a  
8 notice that the child has been reported missing on the  
9 front of the missing child's school record; and third, to  
10 notify law enforcement if the school receives a record  
11 inquiry about a missing child.

12 Therefore, staff recommends approving the test  
13 claim for these activities.

14 Would the parties and witnesses please state your  
15 name for the record.

16 MR. PETERSEN: Keith Petersen for the test  
17 claimant.

18 MR. AGUILERA: Matt Aguilera, Department of  
19 Finance.

20 MS. HIGASHI: Will the witnesses and  
21 representative please raise their hand, right hand. Do  
22 you solemnly swear or affirm that the testimony which  
23 you're about to give is true and correct based upon your  
24 personal knowledge, information, or belief?

25 MR. PETERSEN: I do.

1 MR. AGUILERA: Yes.

2 MS. HIGASHI: Thank you.

3 CHAIRPERSON SHEEHAN: All right. Mr. Petersen,  
4 would you like to proceed?

5 MR. PETERSEN: Certainly. Thank you and good  
6 morning.

7 This test claim is a good example of the  
8 importance of construing statutory language to find out  
9 its plain meaning. There are several code sections in  
10 the test claim wherein the legislature urges -- and I  
11 think in one case strongly urges -- principals and school  
12 officials to take certain actions regarding missing or  
13 apparently missing students. This may be an example of a  
14 free ride by the legislature doing something important  
15 but not being responsible for the work it engenders.

16 But there's another instance where the  
17 legislature used slightly different language. I'd like  
18 to direct you to page 10 of the analysis. This will be  
19 very brief. Towards the top in bold letters it says,  
20 "Report Missing Children, Education Code 49370." The  
21 Commission staff concluded that the following language is  
22 not mandatory: "The legislature hereby declares its  
23 intent in enacting this article to require." The  
24 language is in italics because that's the subject of the  
25 dispute. I'm putting it before you as the trier of fact

1 in law to decide whether that looks like it's mandatory  
2 or whether that's just something nice to do.

3 Comparing that to all other language, the total  
4 scope, the entirety of the article, the legislature did  
5 not strongly urge. The legislature said it was its  
6 intent to require.

7 The next paragraph: "The Commission ascertains  
8 the legislative intent to give effect to the statute's  
9 purpose being careful to give the statute's words their  
10 plain meaning."

11 I'm suggesting to you that the plain meaning is  
12 that school district personnel are required to do this  
13 important task, which is to report missing children to a  
14 law enforcement agency. I would be -- I would hate to  
15 defend a principal who was sued for negligence for  
16 failure to do this and have this statute on the books  
17 stating it was the legislators' intent that the principal  
18 call the police when a child is missing. I think the  
19 totality of the administrative -- of the legislation is  
20 such that this was definitely a requirement, to report  
21 missing school children. It is the basis, the core, of  
22 the legislation. The sloppy wording, I don't think,  
23 mitigates against that outcome, but that's certainly a  
24 decision for you folks.

25 CHAIRPERSON SHEEHAN: All right. Finance?

1 MR. AGUILERA: We support the staff  
2 recommendation, and we would note that findings and  
3 declarations and intent language generally do not  
4 constitute the force of law. Generally in a lot of these  
5 statutes, the sections that come later actually are the  
6 meat of the particular laws that are gone into effect in  
7 terms of the policy.

8 CHAIRPERSON SHEEHAN: Okay. Are there any  
9 questions from the members?

10 MS. BOEL: Yeah, I have a question. When you say  
11 the things that come later is what is the policy, could  
12 you give us -- what do you mean by that, the later?  
13 Later than what this particular section says?

14 MR. AGUILERA: I think -- what I'm trying to say  
15 there is that, you know, oftentimes bills will have a  
16 finding or -- findings declarations where they might talk  
17 about a particular problem that the measure is trying to  
18 address. So it's more -- oftentimes it's background  
19 information. And it does kind of clarify, you know, the  
20 intent of the legislature and the Governor in terms of  
21 the later sections of the bill that have specific  
22 requirements on state departments or local government or  
23 public or private entities.

24 MS. BOEL: Okay.

25 CHAIRPERSON SHEEHAN: Yes.

1 MR. PETERSEN: I would challenge anybody to find  
2 in this legislation any language that indicates it is the  
3 intent of the legislature that we do not call the police  
4 when a child is missing. There's nothing in the  
5 legislation that says there was no intent for us not to  
6 call the police if a child is missing.

7 The -- what the Department of Finance  
8 representative is speaking of is -- is descriptive  
9 language, usually Leg. Counsel, which precedes the actual  
10 code section. This is a code section. This is not  
11 background information. The plain meaning of the code  
12 section is to require that we call the police. Otherwise  
13 you'd be deciding that we're not required to call the  
14 police when a child is missing.

15 CHAIRPERSON SHEEHAN: Do you want to respond?

16 MR. AGUILERA: I think the fact that it says it's  
17 the intent kind of puts it into the category that I was  
18 describing as opposed to what Mr. Petersen is suggesting.

19 CHAIRPERSON SHEEHAN: Okay. Any other -- yes,  
20 Mr. Barnes.

21 MR. BARNES: Could we have the staff comment on  
22 this?

23 MR. FELLER: Sure. I agree with Mr. Petersen in  
24 that the -- as the analysis indicates, the statute is  
25 somewhat ambiguous in what it purports to require, but

1 the fact is -- is that they did not use "shall" in the  
2 statute, which is an indication of intent. If they had,  
3 it would have read something like all these school  
4 personnel shall report missing children to law  
5 enforcement in a timely manner. That's an indication  
6 that it's not legally required.

7 In addition, as indicated in the analysis, the  
8 legislative history went from a Penal Code revision with  
9 a title that said, "Mandatory Reporting of Missing  
10 Children" to an Education Code revision that just read,  
11 "The Reporting of Missing Children." That change is  
12 legally significant as other courts have analyzed  
13 statutes.

14 And finally, the Leg. Counsel's Digest indicating  
15 that it's legislative intent language, that has been used  
16 by courts in the past to construe statutes.

17 So after going through the legislative history  
18 and including the author's own statement on his intent  
19 for the bill, there in the middle of page 11 where he  
20 said that "we want to make it clear to school personnel  
21 the best way to locate a missing child is to notify law  
22 enforcement in a timely manner." After looking through  
23 the history, we -- we concluded that it was merely  
24 legislative intent language and not actually a legal  
25 requirement.



1           CHAIRPERSON SHEEHAN: Okay.

2           MR. BARNES: Are you -- are you bringing this up  
3 specifically and limited to the one item regarding  
4 reporting missing children to law enforcement in a timely  
5 manner?

6           MR. PETERSEN: Yeah. I think we all agree that  
7 the language is poorly written. I'm limiting my comments  
8 to this code section.

9           MR. BARNES: And I guess there are a couple of  
10 activities that in your test claim you propose be  
11 included in the mandate, and I think there were like  
12 seven. Three of them are proposed to be approved. Four  
13 of them are not proposed to be approved, one of which was  
14 the reporting of missing children to a law enforcement  
15 agency in a timely manner. I guess my question is is  
16 your argument with regard to this intent only dealing  
17 with that one?

18          MR. PETERSEN: Oh. Yes. The other -- the other  
19 code sections use the words "urge" and "strongly urge,"  
20 and I think that falls short of clear intent, whereas  
21 this section is constructed differently.

22          The Commission staff alludes to legislative  
23 history and the Legislative Counsel Digest clearly  
24 showing the intent. Well, that's interesting. They're  
25 ignoring the plain language of this code section to find

1 a different intent in something that's not the law. The  
2 other code section is not the law. The Legislative  
3 Counsel's Digest is not a law, but they look to it to  
4 find the result they want.

5 We don't need to go beyond the legislative  
6 language. The legislature intends to require. I think  
7 you know that the word "require" also means "shall" in  
8 other statutes. There's no reason why it does not mean  
9 "shall" in this one. So I'm limiting it to just this  
10 code section. This code section tells us to call the  
11 police.

12 MR. BARNES: And I guess -- I'm asking our legal  
13 counsel here. I guess, you know, this -- the fact that  
14 it is in code and that it basically expresses an intent  
15 of the legislature of what they want, I mean, that's one  
16 argument, but I guess the other question is that it seems  
17 like the totality of the bill and the intent of the bill,  
18 you know, it has to have some -- some place in this  
19 discussion as well. And I guess my question is that if  
20 we find this is not a mandate, doesn't that sort of  
21 undermine the whole intent of the bill in the first  
22 place?

23 MR. STARKEY: Well, I think that in construing  
24 these statutes, we're construing the notion that we're  
25 looking for a clear statement from the legislature that

1 an activity is required. And we know from experience and  
2 from other code sections in this group of laws that the  
3 legislature knows how to say that you shall report.

4 And, in fact, when we look at this language, we  
5 share the concern that you could focus on the word  
6 "require" or you could focus on the whole phrase. And it  
7 seems that -- as the Department of Finance has urged,  
8 that this is a prefatory type of statement to say that  
9 the legislature is indicating what it wants done in this  
10 area.

11 But for purposes of mandates analysis, because we  
12 look beyond that phrase to get further meaning, it looks  
13 from all of the materials that surround the statute and  
14 the phrase that it didn't have that plain meaning that's  
15 urged by Mr. Petersen.

16 And again, in terms of our analysis, we are not  
17 looking to enlarge upon what the legislature has approved  
18 or to detract from that. We simply have to take it as it  
19 is. And when there is any kind of ambiguity, which we  
20 think that there is the potential there, we look at that  
21 legislative history to try to find out what the  
22 legislative intent was.

23 And so in that sense, the question that you  
24 raised, does this effectuate the intent of the  
25 legislature, this kind of language respects the

1 relationship between the State and the local entity. To  
2 say that this is what we, the State, want to have happen,  
3 this is the problem we're trying to solve, and then they  
4 specify what they want done and what they urge to have  
5 done and what may be done and all those different  
6 permutations of the legislative will.

7           So the bottom line for us is that we're looking  
8 at that language and really putting upon the legislature  
9 sort of the onus, if you will, to say if you want this  
10 done, say that you want it done. And if you don't, and  
11 there's any ambiguity, we're going to look at everything  
12 else that was said about this and then try to make a  
13 determination about that.

14           And finally, we also have a consideration that in  
15 this type of a situation, if the legislature -- the  
16 legislature can act in part. It can solve a problem in  
17 part. So it can enact this missing children's act in  
18 reference to the federal law and those goals and aims,  
19 and if, in fact, it determines that this intent is not  
20 being carried out the way they said it should be carried  
21 out, they can come back and they can specifically say,  
22 "These are mandatory reporters."

23           So that's basically the way we're looking at it.  
24 And the key for us is that we believe the Commission is  
25 looking not to do what seems to be best -- that decision

1 is left to the legislature -- but simply to divine what  
2 the legislature has expressed as its intent, using not an  
3 outcome that we want, but the tools of statutory  
4 construction that the courts have used and would use on  
5 review of this matter.

6 MR. BARNES: Thank you.

7 CHAIRPERSON SHEEHAN: Did that answer it?

8 Any other questions?

9 Oh, yes. Go ahead.

10 MR. PETERSEN: A short rebuttal. Mr. Starkey  
11 restates the two weaknesses of their position. They look  
12 everywhere else to find out the intent of that language  
13 except what the language says. Further, you may have  
14 noticed that he used the word "require" and "shall"  
15 interchangeably in his response. The word "require" is  
16 in that statute. The intent of the legislature is in  
17 that code section. They don't have to look anywhere else  
18 unless they want a different outcome, right or wrong.  
19 The language is sufficient on its own for you to decide  
20 that intent to require means "shall." You don't have to  
21 look anywhere else.

22 MR. STARKEY: Again, without going into the law  
23 and legal dissertation, we believe that we can take that  
24 phrase and focus on the word "intend" or we can focus on  
25 the word "require." But the bottom line is in looking at

1 the legislative intent, we know that the legislature is  
2 capable of specifically saying we require something. So  
3 if they couch it in language which is an intent to  
4 require, for purposes of mandates analysis that does not  
5 clear -- does not seem to be, in my judgment, a clear  
6 statement of their ordering or requiring in the sense of  
7 mandates.

8 CHAIRPERSON SHEEHAN: Any other comments from the  
9 witnesses before we proceed?

10 Any other questions?

11 Is there a motion from --

12 MS. BOEL: I move we adopt the staff analysis.

13 CHAIRPERSON SHEEHAN: Is there a second?

14 MR. HIBER: Second.

15 CHAIRPERSON SHEEHAN: All right. All those in  
16 favor of adopting the staff analysis, signify by saying  
17 "aye."

18 MULTIPLE SPEAKERS: Aye.

19 CHAIRPERSON SHEEHAN: Opposed?

20 MR. LAZAR: No.

21 CHAIRPERSON SHEEHAN: Mr. Lazar is recorded as  
22 opposed.

23 MR. PETERSEN: So we don't have to call the  
24 police when a child is missing, as a matter of law?

25 CHAIRPERSON SHEEHAN: No, but I'm not quite

1       sure -- I think the issue is --

2               MR. STARKEY: Let me interject.

3               MR. PETERSEN: No, wait. You are  
4 a quasi-judicial body required to make findings of fact  
5 in law. You've just said that we're not required to call  
6 the police --

7               CHAIRPERSON SHEEHAN: No, I think --

8               MR. PETERSEN: -- when a child is potentially  
9 kidnapped.

10              CHAIRPERSON SHEEHAN: -- what we ruled on is that  
11 the legislature did not give us clear direction that it  
12 is a mandate that you call. That is what has been --  
13 Mr. Starkey, do you want to address the issue?

14              MR. STARKEY: That's correct. That's absolutely  
15 correct. And I believe it's inappropriate for the  
16 representative at this point to say what the Commission  
17 has declared as to the duties with respect to the local  
18 entities, so I don't think it really requires an answer.

19              MS. HIGASHI: Item 5.

20              MR. FELLER: Unless there is objection, staff  
21 recommends that the Commission adopt the proposed  
22 statement of decision which accurately reflects the  
23 decision on this test claim. Staff also recommends the  
24 Commission allow minor changes to be made to this SOD,  
25 including reflecting the hearing testimony and vote count

1 to be included in the final statement of decision.

2 CHAIRPERSON SHEEHAN: Are there any comments from  
3 the parties on this?

4 (No audible response.)

5 CHAIRPERSON SHEEHAN: No?

6 Is there a motion?

7 MS. BOEL: I move we adopt the staff  
8 recommendation on the proposed statement of decision.

9 MR. HIBER: Second.

10 CHAIRPERSON SHEEHAN: We have a motion and a  
11 second. All those in favor, signify by saying "aye."

12 MULTIPLE SPEAKERS: Aye.

13 CHAIRPERSON SHEEHAN: Opposed?

14 MR. LAZAR: No.

15 CHAIRPERSON SHEEHAN: Mr. Lazar is recorded he's  
16 opposed to the motion.

17 MS. HIGASHI: This brings us to items 9 and 10,  
18 and Ms. Patton will present these.

19 MS. PATTON: Good morning. Government Code  
20 section 11017.6 requires state agencies to prepare annual  
21 rulemaking calendars for publication in the California  
22 Regulatory Notice Register.

23 The staff is proposing two rulemakings for 2005.  
24 The first rulemaking would amend current regulations to  
25 implement the statutory changes made by AB 2856. And the



1 second rulemaking would amend current regulations to  
2 specify procedures for the appeal of an Executive  
3 Director decision.

4 Staff is recommending that the Commission adopt  
5 the proposed 2005 rulemaking calendar for transmittal to  
6 the Office of Administrative Law.

7 CHAIRPERSON SHEEHAN: Do I have any questions  
8 from members on this rulemaking calendar?

9 (No audible response.)

10 CHAIRPERSON SHEEHAN: Is there a motion?

11 MR. HIBER: Move approval.

12 MR. LAZAR: Second.

13 CHAIRPERSON SHEEHAN: We have a motion and a  
14 second. All those in favor, signify by saying "aye."

15 MULTIPLE SPEAKERS: Aye.

16 CHAIRPERSON SHEEHAN: Any opposed?

17 (No audible response.)

18 MS. HIGASHI: Item 10.

19 MS. PATTON: On September 29th, 2004, the  
20 Governor signed AB 2856, which makes significant reforms  
21 to the process for filing test claims. The changes made  
22 by AB 2856 to Government Code section 17553 require that  
23 the Commission adopt a new test claim form.

24 In December 2004, the Commission staff issued a  
25 draft test claim form for comment and conducted a

1 workshop on December 8th, 2004. No comments were filed.

2 Staff recommends that the Commission approve the  
3 attached draft test claim form. If approved, the  
4 Executive Director will immediately disseminate the form,  
5 and it will become effective on February 7th, 2005.

6 CHAIRPERSON SHEEHAN: All right. Thank you.

7 Any comments from --

8 MR. LAZAR: I just wanted to ask --

9 CHAIRPERSON SHEEHAN: Go ahead.

10 MR. LAZAR: -- is it standard policy for the  
11 Commission to get this involved in what the staff does?

12 CHAIRPERSON SHEEHAN: In the detail?

13 MR. LAZAR: The detail, exactly.

14 MS. HIGASHI: We have not adopted a new test  
15 claim form for years. And because of the changes here  
16 and because of the way the statute was constructed, we  
17 felt it necessary to move this forward, as well as  
18 regulations provided for the Commission to adopt claims.

19 MR. LAZAR: Thank you.

20 CHAIRPERSON SHEEHAN: What I can say is that  
21 there have been other regulatory bodies that do go  
22 through the process of adopting an application or a form.  
23 It's not uncommon, but many times it is up to staff to  
24 come up with it. But sometimes they are included in  
25 proposed regulations.

1 MS. HIGASHI: The good news is it's not a  
2 regulation.

3 CHAIRPERSON SHEEHAN: Right. You don't go  
4 through the OAL process. I've been on ones that you do  
5 have to for applications, so.

6 Okay. And no comments from the public on the  
7 form? It sounded like you didn't get anything at your  
8 hearing.

9 All right. So is there a motion?

10 MS. BOEL: I move we adopt the new form.

11 CHAIRPERSON SHEEHAN: All right. Is there a  
12 second?

13 MR. HIBER: Second.

14 CHAIRPERSON SHEEHAN: All those in favor, signify  
15 by saying "aye."

16 MULTIPLE SPEAKERS: Aye.

17 CHAIRPERSON SHEEHAN: Any opposed?

18 (No audible response.)

19 CHAIRPERSON SHEEHAN: Okay.

20 MS. HIGASHI: Item 11. Mr. Starkey.

21 MR. STARKEY: I have nothing to report.

22 MS. HIGASHI: Item 12 is my report. And --

23 CHAIRPERSON SHEEHAN: Okay.

24 MS. HIGASHI: -- I have one -- I just wanted to  
25 update you that we did speak with Butte County yesterday

1 and today, and they did confirm that they have taken  
2 their application to the printer. They will be placing  
3 it before their board of supervisors in early February,  
4 and we expect to see their application about  
5 February 10th.

6 CHAIRPERSON SHEEHAN: And this is the general  
7 assistance application?

8 MS. HIGASHI: Yes. This is the SB 33, the  
9 application for finding of significant financial  
10 distress.

11 CHAIRPERSON SHEEHAN: All right. So tell me  
12 again when we expect to see it. March?

13 MS. HIGASHI: It will be filed with us in  
14 February. We need to go through the process with the  
15 Department of Finance to obtain the additional funding in  
16 order to process it. And then we will have a 90-day time  
17 line. Until we've received the funding, our time lines  
18 are tied. So we'll be in touch with you as soon as we  
19 have the approval, because then we'll work to set a  
20 hearing date.

21 CHAIRPERSON SHEEHAN: Okay.

22 MS. HIGASHI: The hearing will have to be done in  
23 Butte County, so it's a trip to Oroville

24 CHAIRPERSON SHEEHAN: Oh, a road trip to Butte  
25 County.

1 MS. HIGASHI: There is --

2 MS. BOEL: Where is it?

3 CHAIRPERSON SHEEHAN: Far away.

4 MS. HIGASHI: The only update I wanted to make to  
5 my report or I should say the only action item that we  
6 have is approval of the changes to the 2005 hearing  
7 calendar. At the last meeting in December, we spoke  
8 about possible changes. One is that we had set the March  
9 hearing on a state holiday, so we moved it up one day.  
10 And the other change is we -- instead of having a  
11 November hearing, because of Thanksgiving, instead we'll  
12 have an early December hearing as we did this past year.

13 CHAIRPERSON SHEEHAN: Okay.

14 MS. HIGASHI: And we checked it against the other  
15 conference dates, and it looks like we picked a good  
16 date.

17 CHAIRPERSON SHEEHAN: All right. So you need us  
18 to approve the new schedule for the year; right?

19 MS. HIGASHI: Yes.

20 CHAIRPERSON SHEEHAN: Okay. So at the -- it's  
21 the very last page in the book, in terms of the --

22 MS. HIGASHI: Exhibit C.

23 CHAIRPERSON SHEEHAN: -- the hearing calendar.  
24 Yes, Exhibit C. Literally it's the last page. So make  
25 sure our offices -- your offices know in terms of the

1 changes in the schedule.

2 So do I have a motion to adopt the new hearing  
3 schedule for 2005 year?

4 MS. BOEL: I move that we adopt the calendar.

5 MR. BARNES: Second.

6 CHAIRPERSON SHEEHAN: Okay. We have a motion and  
7 a second. All those in favor, signify by saying "aye."

8 MULTIPLE SPEAKERS: Aye.

9 CHAIRPERSON SHEEHAN: Any opposed?

10 (No audible response.)

11 CHAIRPERSON SHEEHAN: Okay. I think that --  
12 let's see. Public comment. Do we have any comment?

13 (No audible response.)

14 CHAIRPERSON SHEEHAN: No.

15 Then before we go into closed session, since this  
16 will be Mr. Lazar's last meeting of the State Mandates,  
17 we have a resolution on your attendance and membership on  
18 that that I want to present on behalf of the Mandates.  
19 And I will read this to you.

20 Before the Commission On State Mandates, in honor  
21 of John Lazar, member Commission on State Mandates, 2000  
22 to 2005, whereas since March 7th, 2000, John Lazar,  
23 Turlock City Council member, distinguished himself as a  
24 member on the Commission on State Mandates representing  
25 local elected officials and;

1           Whereas his extensive knowledge of the  
2 legislative process and experience in local government  
3 programs has been invaluable in assisting the Commission  
4 in determining if cities, counties, special districts,  
5 and school districts shall be reimbursed pursuant to  
6 section 6, article XIII B, of the California Constitution  
7 and section 17514 of the Government Code and;

8           Whereas he has participated in hearing and  
9 determining numerous test claims, incorrect reduction  
10 claims, and parameters and guidelines, including test  
11 claims on Animal Adoption, Health Benefits for Survivors  
12 of Peace Officers and Firefighters, Seriously Emotionally  
13 Disturbed Students, Out of State Mental Health Services,  
14 Comprehensive School Safety Plans, and Brown Act Reform  
15 Programs, and the incorrect reduction claim on the Open  
16 Meetings Act Program;

17           Now therefore be it resolved that the members and  
18 staff of the Commission on State Mandates are honoring  
19 John Lazar in appreciation of his five years of  
20 outstanding dedication and service to the State of  
21 California, done this 27th day of January 2005, the  
22 County of Sacramento, the State of California, witnessed  
23 by the Commission on State Mandates.

24           So thank you.

25           MR. LAZAR: Thank you.

1 (Applause.)

2 CHAIRPERSON SHEEHAN: Very good. We will miss  
3 you.

4 MS. HIGASHI: Mr. Burdick wanted to say a few  
5 words.

6 CHAIRPERSON SHEEHAN: Great.  
7 Go ahead. Please identify yourself.

8 MR. BURDICK: Thank you very much. Yes. Allan  
9 Burdick, today on behalf of the League of California  
10 Cities and California State Association of Counties  
11 Advisory Committee on State Mandates.

12 And we'd like to recognize John for his  
13 outstanding contributions to the Commission. I don't  
14 think John missed more than about one meeting in the four  
15 years having to drive up here from Turlock, and it's  
16 really appreciated to have somebody, a local member, who  
17 comes up and asks incisive questions and tries to  
18 convince the state members to see locals' perspective.

19 And, you know, I think there was some effort  
20 today, and we appreciate John going out with a vote for  
21 local government.

22 But, you know, we just brought a little token of  
23 our appreciation that we'd like to give John for his  
24 outstanding contribution to this Commission, and we're  
25 going to sincerely miss him as now we have no local



1 representatives.

2 MR. LAZAR: Thank you, Allan.

3 CHAIRPERSON SHEEHAN: Thank you.

4 MR. LAZAR: Thank you very much. Oh, that's very  
5 nice, thank you. Thank you very much.

6 Thank the Commission very much.

7 CHAIRPERSON SHEEHAN: Thank you.

8 And we will miss John.

9 I can tell you I know the Governor's Office is  
10 working on the replacements in terms of the local  
11 government and hopefully a full contingent, I know  
12 they're working on. So we'll have a full Commission at  
13 the next meeting.

14 MR. LAZAR: Could I just say --

15 CHAIRPERSON SHEEHAN: Absolutely.

16 MR. LAZAR: -- one sentence here?

17 I just wanted to take the opportunity to thank  
18 everyone, particularly the Commission staff and  
19 Commission members, for the courtesy extended to me over  
20 the past five years. I appreciate the opportunity to  
21 participate in state government to this degree. And I  
22 particularly wanted to thank the former governor, Gray  
23 Davis, for the appointment. Thank you very much.

24 CHAIRPERSON SHEEHAN: Okay. The Commission will  
25 now meet in closed executive session pursuant to

1 Government Code section 11126, subdivision (e), to confer  
2 with and receive advice from legal counsel for  
3 consideration and action, as necessary and appropriate  
4 upon the pending litigation listed in the published  
5 notice and agenda; and confer with and receive advice  
6 from legal counsel regarding potential litigation; and  
7 pursuant to Government Codes -- the appropriate  
8 Government Code sections.

9 We will reconvene in open session in  
10 approximately ten, 15 minutes. It shouldn't be --  
11 hopefully it won't be too long.

12 (The Commission met in closed session.)

13 CHAIRPERSON SHEEHAN: The Commission met in  
14 closed executive session pursuant to Government Code  
15 section 11126, subdivision (e), to confer with and  
16 receive advice from legal counsel, for consideration and  
17 action, as necessary and appropriate upon the pending  
18 litigation listed on the published notice and agenda and  
19 potential, and Government Code section 112126,  
20 subdivision (a) and 17526 to confer on personnel matters  
21 listed on the published notice and agenda.

22 All required reports from the closed session  
23 having been made and with no further business to discuss,  
24 I will entertain a motion to adjourn.

25 MS. BOEL: I move that we adjourn.

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MR. BARNES: Second.

CHAIRPERSON SHEEHAN: All those in favor?

MULTIPLE SPEAKERS: Aye.

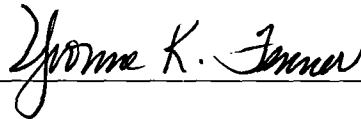
CHAIRPERSON SHEEHAN: We are adjourned. Thank  
you, John.

(Whereupon the hearing concluded at 10:21 a.m.)

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 February, 2005.

10  
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13 Yvonne K. Fenner  
14 Certified Shorthand Reporter  
15 License No. 10909  
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