

# MINUTES

## COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

January 30, 2009

Present: Member Tom Sheehy, Chairperson  
Representative of the Director of the Department of Finance  
Member Richard Chivaro, Vice Chairperson  
Representative of the State Controller  
Member Francisco Lujano  
Representative of the State Treasurer  
Member Cynthia Bryant  
Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member J. Steven Worthley  
County Supervisor

Absent: Member Paul Glaab  
City Council Member

### CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 10:32 a.m. Executive Director Paula Higashi called the roll and stated that Member Glaab was absent due to illness.

### ELECTION OF OFFICERS

#### Item 1 Staff Report

Ms. Higashi stated that the annual election of officers is held in January. She noted all members are eligible for election as chairperson and vice-chairperson. Ms. Higashi asked for nominations for chairperson.

Member Bryant nominated Director of Finance Mike Genest. With a second by Member Worthley, Director of Finance Mike Genest was unanimously elected chairperson.

Chairperson Sheehy asked for nominations for vice-chairperson. Member Bryant nominated State Treasurer Bill Lockyer for vice-chairperson. Member Lujano noted that it is customary to alternate nominations between the State Treasurer and the State Controller. Member Bryant withdrew her nomination. Member Lujano nominated State Controller John Chiang for vice-chairperson. With a second by Member Olsen, State Controller John Chiang was unanimously elected vice-chairperson.

### APPROVAL OF MINUTES

Item 2a November 6, 2008

Item 2b December 29, 2008

The November 6, 2008 and the December 29, 2008 hearing minutes were unanimously adopted by a vote of 6-0.

### PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS AND STATEMENT OF DECISIONS,  
PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5,  
ARTICLE 7 (GOV. CODE, § 17551) (action)

DISMISSAL OF WITHDRAWN PORTIONS OF TEST CLAIM

- Item 8 *Stormwater Pollution Control Requirements*, 03-TC-21  
Los Angeles Regional Water Quality Control Board Order 01-182,  
Permit CAS004001: Parts 1; 2; 4.C.2.c; 4.F.5.a; 4.F.5.b; and 4.F.6.  
Cities of Bellflower, Covina, Downey, Monterey Park, and Signal Hill,  
Claimants

INFORMATIONAL HEARING ON STATEWIDE COST ESTIMATES PURSUANT TO  
CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. STATEWIDE COST ESTIMATE

- Item 10 *Fire Safety Inspections of Care Facilities*, 01-TC-16  
Health and Safety Code Section 13235, Subdivision (a)  
Statutes 1989, Chapter 993 (SB 1098)  
City of San Jose, Claimant

B. ADOPTION OF PROPOSED RULEMAKING CALENDAR

- Item 11 Proposed Rulemaking Calendar, 2009

Member Olsen made a motion to adopt items 8, 10 and 11 on the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 6-0.

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

- Item 3 Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA  
CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551  
and 17559) (action)**

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

TEST CLAIMS

- Item 4 *Surplus Property Advisory Committees*, 02-TC-36  
Education Code Sections 17387, 17388, 17389, 17390, 17391  
Statutes 1982, Chapter 689 (AB 1775), Statutes 1984, Chapter 584  
(AB 2912); Statutes 1986, Chapter 1124 (AB 3263), Statutes 1987,  
Chapter 655 (AB 2375), Statutes 1996, Chapter 277 (SB 1562)  
Clovis Unified School District, Claimant

Eric Feller, Senior Commission Counsel presented this item. Mr. Feller stated that this test claim alleges a reimbursable mandate for costs associated with appointing and supervising a school district advisory committee on surplus property. Staff finds that this is not a reimbursable program because there is no legal or practical compulsion to designate property as surplus or to transfer school district property. Therefore, neither formation of the committee nor its duties are state-mandated. As an alternative ground for denial, staff found that the statutes claimed were

not a new program or higher level of service because they predated the statutes pled in the test claim.

Mr. Feller indicated that the Department of Finance agrees with the staff analysis. The claimant, however, disagrees with the staff analysis and argues that it is practically compelled to designate property as surplus because of factors beyond its control.

Mr. Feller explained that staff addressed this argument in the analysis. The *Kern* Court stated that practical compulsion means that the state must impose substantial penalties for not complying. Staff finds no state imposed penalties in this case. Staff recommends that the test claim be denied.

Parties were represented as follows: Art Palkowitz representing San Diego Unified School District and Susan Geanacou representing the Department of Finance.

Art Palkowitz asserted that section 17388 states that a governing board, prior to the sale, lease, or rental of excess real property, shall appoint an advisory committee to advise the governing board. Section 17390 states that this advisory committee shall perform the following duties: review the projected school enrollment data; establish a priority list of surplus property; provide for hearings of the community; and forward their recommendations to the district governing board.

Mr. Palkowitz further explained that the Legislature intended that leases entered into by school districts should receive the community involvement. The community could analyze the attendance data and try to project into the future what properties will be needed and won't be needed as an attempt to help schools plan on how they should handle their property. It was meant as a way to facilitate the best judgment for the community and the school, and for school districts to offset revenue losses due to declining enrollment. It was the intent of the Legislature to make sure there is collaboration and transparency with the community so that the best practices for school districts on how they handle their property will be done in the correct manner.

Mr. Palkowitz pointed out that this is a very important process for school districts that is shown by the fact that a school board cannot sell or lease a property without a two-thirds majority vote.

Mr. Palkowitz asserted that legal compulsion is clearly indicated by the statutory language of "shall appoint an advisory committee" and "shall perform these duties." The practical compulsion is set out in the legislative intent with the legislators commenting on how the community must be involved and how they should act to offset revenue. Therefore, this qualifies as a state mandate.

Susan Geanacou, Department of Finance, stated that Finance supports the staff analysis. She also observed that the duties the claimant cites as being mandated are layered on top of the underlying discretionary choice of a district to find or declare property as surplus, and to make the discretionary decision to dispose of it or transfer it in the first place.

Ms. Geanacou stated that both the *Kern High School District* case and the *City of Merced* case illustrate that this is not a reimbursable mandate because the districts have the underlying discretionary choice that thereafter triggers the language to which Mr. Palkowitz refers.

Member Worthley asked Mr. Palkowitz to address whether or not this constitutes a new program. There were two arguments presented by staff. One was that this was discretionary; the other one was that it did not constitute a new program.

Mr. Palkowitz responded by saying that once a school district decides to take the action to sell or lease or rent surplus property, the duties and the committee are required.

Member Worthley questioned the concept of the discretionary act. For example, if a school district has a site they no longer need, they can decide to sell that property or shutter that building. Simply owning property costs the district money to maintain the building. It is poor policy and would not make sense for a district with limited resources to keep a piece of property it cannot use when it could be sold and that money could be used for other purposes, and it's limited what it can be used for, capital-type projects. If a district has extra property, they really should get rid of it because otherwise they're going to be wasting their resources, keeping that property.

Mr. Palkowitz noted that with declining enrollments, this situation is being exacerbated throughout California.

Member Worthley stated that with a declining enrollment population in the state, school districts will have excess facilities and that good public policy would say they should turn those properties over.

Mr. Palkowitz noted the tough decisions for boards and committees are sales; they are leasing properties to bring in the income and that is adding up to a lot of money that's going to affect programs.

Member Olsen questioned the idea of practical compulsion based on the words "should" instead of "must." She stated that while best business practices may mean that a school district should declare something as surplus property, it does not have to. She then questioned whether or not it was possible to recover the costs of this program through the lease because it seems there's nothing to preclude a school district from doing that.

Ms. Olsen reiterated that she was talking about the underlying issue of whether or not a school district decides to declare something surplus property. She noted the issue is they don't have to do that.

Mr. Palkowitz responded that it is not feasible to raise rents to justify the costs of the program. He also reviewed the legislative intent language.

Member Olsen reiterated the lack of compulsion imposed on a district.

Mr. Palkowitz replied that if the Commission is not going to put weight into the language of "shall" and "shall," it could put weight into the practical compulsion, there could be serious consequences for districts that do not try to offset this revenue and use it for the opening and maintaining schools and educational programs.

With a motion by Member Olsen to adopt the staff recommendation, and a second by Member Bryant, the staff recommendation to deny the test claim was adopted by a vote of 5-1, with Member Worthley voting no.

Item 5 Proposed Statement of Decision: *Surplus Property Advisory Committees*,  
02-TC-36

[Item 4 above.]

Mr. Feller also presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Surplus Property Advisory Committees* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Chivaro, the Statement of Decision was adopted by a vote of 6-0.

Item 6 *Prevailing Wage Rate, 01-TC-28*  
Labor Code Sections 1720, 1720.2, 1720.3, 1726, 1727, 1733, 1735,  
1741, 1742, 1742.1, 1743, 1750, 1770, 1771, 1771.5, 1771.6, 1771.7,  
1772, 1773, 1773.1, 1773.2, 1773.3, 1773.5, 1773.6, 1775, 1776, 1777.1,  
1777.5, 1777.6, 1777.7, 1812, 1813, 1861  
Public Contract Code Section 22002  
Statutes 2002, Chapter 868 (AB 1506); Statutes 2001, Chapter 938  
(SB 975); Statutes 2001, Chapter 804 (SB 588); Statutes 2000, Chapter  
954 (AB 1646); Statutes 2000, Chapter 920 (AB 1883); Statutes 2000,  
Chapter 881 (SB 1999); Statutes 2000, Chapter 875 (AB 2481); Statutes  
2000, Chapter 135 (AB 2539); Statutes 1999, Chapter 903 (AB 921);  
Statutes 1999, Chapter 220 (AB 302); Statutes 1999, Chapter 83  
(SB 966); Statutes 1999, Chapter 30 (SB 16); Statutes 1998, Chapter 485  
(AB 2803); Statutes 1998, Chapter 443 (AB 1569); Statutes 1997, Chapter  
757 (SB 1328); Statutes 1997, Chapter 17 (SB 947); Statutes 1993, Chapter  
589 (AB 2211); Statutes 1992, Chapter 1342 (SB 222);  
Statutes 1992, Chapter 913 (AB 1077); Statutes 1989, Chapter 1224  
(AB 114); Statutes 1989, Chapter 278 (AB 2483); Statutes 1988,  
Chapter 160 (SB 2637); Statutes 1983, Chapter 1054 (AB 1666); Statutes  
1983, Chapter 681 (AB 2037); Statutes 1981, Chapter 449  
(AB 1242); Statutes 1980, Chapter 992 (AB 3165); Statutes 1980, Chapter  
962 (BA 2557); Statutes 1979, Chapter 373 (SB 925); Statutes 1978,  
Chapter 1249 (AB 3174); Statutes 1977, Chapter 423 (SB 406);  
Statutes 1976; Chapter 1179 (AB 3676); Statutes 1976; Chapter 1174 (AB  
3365); Statutes 1976, Chapter 861 (SB 1953); Statutes 1976, Chapter 599  
(AB 1125); Statutes 1976, Chapter 538 (AB 2466); Statutes 1976, Chapter  
281 (AB 2363);  
Title 8, California Code of Regulations Sections 16000, 16001-16003,  
16100-16102, 16200-16206, 16300-16304, 16400-16403, 16410-16414,  
16425, 16426-16428, 16429-16432, 16433, 16436-16439, 16500, 16800-  
16802, 17201-17212, 17220-17229, 17230-17237, 17240-17253, 17260-  
17264  
School Facility Program Substantial Progress and Expenditure Audit  
Guide – May 2003 (Prepared by the Office of Public School Construction)  
AB 1506 Labor Compliance Program Guidebook – February 2003  
(Prepared by the Division of Labor Standards Enforcement)  
Antioch Unified School District Labor Compliance Program  
January 17, 2003  
Grossmont Union High School District, Claimant

Chief Legal Counsel Camille Shelton presented this item. Ms. Shelton stated that this test claim addresses the California Prevailing Wage Law which is designed to enforce the minimum wage standards on public works projects that exceed \$1000 and are funded in whole or in part with public funds. The prevailing wage law applies to school districts and community college districts that award contracts to private contractors for projects including the construction, alteration, repair or maintenance of school property.

The law requires school districts, as the awarding body, to perform a number of activities to ensure that the employees of the private contractor are receiving prevailing wages. Staff finds that only the activities required by Labor Code section 1776, subdivisions (g) and (h), section 16403, subdivision (a), and 16408, subdivision (b), of the Department of Industrial

Relations regulations constitute a reimbursable program within the meaning of Article XIII B, Section 6 of the California Constitution, and only when school districts and community college districts are required to contract for the repair or maintenance of school property.

Staff further finds that there is fee authority that applies to some of these activities which shall be identified in the parameters and guidelines as offsetting revenue. In addition, there may be grant funding that may apply to reduce a reimbursement claim.

Staff recommends that the Commission deny the test claim with respect to all other statutes, regulations, and other alleged executive orders that have been pled by the claimant.

Staff recommends that the Commission adopt the analysis to partially approve this test claim.

Parties were represented as follows: Keith Petersen representing claimant Grossmont Union High School District; Anthony Mischel and Gary O'Mara, Department of Industrial Relations; and Donna Ferebee, Department of Finance.

Mr. Petersen stated that this test claim deals with the administrative activities to enforce the prevailing wage law when contracting with private companies to construct, repair, and replace buildings.

He explained that there are two threshold questions to be decided. The first is whether school districts are compelled to build schools; the second is whether school districts, in building these schools, are compelled to seek state financing. When seeking state financing, there is a need to comply with state rules. In this case, a labor compliance plan.

Mr. Petersen reported that the staff analysis concluded that local public school districts and community college districts are not required to build schools because staff could not find the word "*shall*," which is the legal compulsion, in a statute connected with school districts.

Mr. Petersen stated that the issue then is whether local school districts are practically compelled to construct schools. He continued that as a matter of law, residents of a certain age in this state are required to attend public school and school districts and community colleges are required to enroll those students. With more students come more facilities. To comply with state law and regulations on class size, schools must be built to house those new and continuing students.

Mr. Petersen pointed out that, constitutionally, the Legislature is required to provide for public schools. They accomplish this by statutorily delegating most of that activity to the local school boards. School districts and community college districts are the only entities authorized by the Legislature to build public schools. Therefore, it is not a big leap in logic to conclude that public school and community college districts are required to build those schools.

Mr. Petersen continued that the second threshold issue is using state funds in the construction of schools. Although the words "you shall use state funds" were not found in the staff analysis, the Legislature pointed out that it is responsible for providing for schools and facilities and assists the districts by providing state funding.

Mr. Petersen stated that since the property tax law changes in 1977, local property tax is no longer sufficient to build new schools. He pointed out that billions of dollars of state funding is being provided for the construction of new school facilities. He also cited a study from the State Department of General Services, State Allocation Board which said there is a need for 16 new classrooms per day to be built.

Mr. Petersen concluded that the need for construction is clear. The only public entities authorized to build are the local school districts and community colleges as delegated by Legislature. Therefore, Mr. Petersen recommended that the staff analysis be rejected, and the

Commission instead find that local public school agencies are required and compelled to build new facilities and replace old facilities. And, since they are compelled to build, they are also compelled to follow the Public Contract Code and Labor Code sections adopted after 1974 for administering those contracts. In addition, because local agencies must rely on state funds, they must follow state rules including the Labor Compliance Program.

Chairperson Sheehy stated that many schools are being constructed in the state without using state funds. Mr. Petersen responded that some school districts do not rely on state funds, but he has no evidence that many school districts do not rely on state funding. Chairperson Sheehy responded that as chairperson of the State Allocation Board, he meets monthly to allocate school bond funding, and therefore, in that capacity he has knowledge that there are many school districts that do not rely on state funding to build schools.

Chairperson Sheehy asked Mr. Petersen if he was claiming that only state funds are used to build schools, and noted that the School Facilities Program requires a local funding match.

Mr. Petersen replied that he was stating some districts are compelled to use state funds.

Chairperson Sheehy reported that the largest school district, Los Angeles Unified School District, recently passed billions of dollars in new bond authority, and despite the fact that the Pooled Money Investment Board took action to stop releasing money out of the Pooled Money Investment Account, Los Angeles' construction program continues because they are using local bond money. Mr. Petersen countered that while that is good news for Los Angeles, there are 900 other districts and many cannot pass bonds. Chairperson Sheehy argued that many were successful in passing bonds.

Anthony Mischel, Department of Industrial Relations, explained that one of his functions with the Department is the lead hearing officer on all prevailing wage enforcement cases against private contractors and subcontractors for failing to pay prevailing wage, or failing to provide adequate certified payroll records. He noted that Los Angeles Unified School District is completing an enormous effort to build new schools. For 35 years the district built no new schools, and as a result, some of its schools were dangerous and in need of repair. Therefore, the voters approved new bonds, and today, there is \$23 billion of school construction being completed in Los Angeles Unified School District, with most of it being funded with local bond money.

Chairperson Sheehy stated that \$23 billion is four and a half times the amount of the state's present bond authority.

Mr. Mischel added that if the state's largest school district could wait 35 years before building new schools and no penalty was imposed on the district, then there is no practical compulsion.

Mr. Petersen reiterated the difficulty in obtaining two-thirds majority voter approval for bonds, and he noted that it has been made easier in the last few years since there are now bonds that can be approved by 55% of the voters. Still, there are districts that only have one source of funding – state funding.

Donna Ferebee, Department of Finance, stated that Finance supports the final staff analysis.

Mr. Mischel stated that he would like to comment on the portions of the analysis where staff is recommending approval.

Mr. Mischel explained that there should be no partial approval. The staff analysis misreads CCR [California Code of Regulations sections] 16400-16403. According to the Labor Commissioner's Office, the awarding body, under normal circumstances, has no obligation to ask a contractor or subcontractor for certified payroll records. These are records the contractor is

required to keep on a weekly basis of every employee with name, home address, Social Security number, classification, amount of hours worked, wages paid, fringe benefits paid, etc. The only time an awarding body is obligated to ask for certified payroll records is when a labor management compliance organization or a member of the public requests these records. Depending on whether it is a labor management organization or a member of the public, there is a certain amount of redaction that must occur because of the Information Practices Act.

Mr. Mischel continued that awarding bodies under section 16400 (c) and (d) have the ability to either redact and copy the certified payroll records itself or tell the contractor to do it and provide them to the awarding body. Therefore, an awarding body which is a school district is not mandated to do the copying and redacting, because they do have the ability to require the private contractor to do so.

Furthermore, section 16403, which states the limitation on the costs of copying is one dollar for the first page, 25¢ for the second page, and \$10 for the certification, is what the awarding body uses to tell the contractor it can charge for the copies. It is not a limit on the awarding body. The awarding body's limitation is in section 1776 (i), which says it has to comply with the Public Records Act, which back to 1968, says only direct costs can be charged.

In the Department of Industrial Relations' experience, awarding bodies never turn over the certified payroll records. They always tell the contractor, "Redact, copy. Send them to us. This is the maximum you can charge."

Ms. Shelton cited to and reviewed pages 61 and 81 of the staff analysis; then reviewed the regulations cited with Mr. Mischel. She explained that she understood his argument but staff did not read the Department's initial comments that way. She asked Mr. Mischel if he was asserting that only "redacting and copying" were not reimbursable. Mr. Mischel clarified that the only activity he is discussing is "redacting."

Ms. Shelton reviewed the activities: obtaining the payroll records from the contractor, sending the acknowledgment to the requester, including notification of the costs to be paid for preparing the records, and then making the redactions, and then providing the copies to the requester."

Mr. Mischel moved to a different issue and stated that since staff is recommending approval of only a few activities out of this massive original filing, claimants may not have \$200 worth of claim left, which means they do not meet the Commission's filing requirements. Chairperson Sheehy asked Ms. Shelton to clarify. Ms. Shelton stated that no claimant may file a test claim if they do not have \$200 in costs (today it is \$1,000). So if the Commission approves only a portion of this test claim, school districts would be unable to file a reimbursement claim unless they showed under penalty of perjury that they have incurred \$1,000 in costs. Chairperson Sheehy clarified that if the Commission partially approved the claim, they do not have to consider whether or not school districts may or may not meet the minimum threshold for filing a reimbursement claim. Ms. Shelton concurred.

Chairperson Sheehy asked Ms. Shelton if she agreed with Mr. Mischel's previous argument that the redactions should be taken out of the staff recommendation as a reimbursable activity. She concurred and also noted that the language in (d)(2)(B) of that regulation penalizes the contractor for not complying in a certain time period.

Mr. Petersen clarified that on the jurisdictional issue of \$200, \$1,000, the test claimant district alleges those costs based on the test claim as filed, not how it turns out.

Mr. Mischel then stated that the remaining activities are "de minimis" in nature and should not be reimbursable. Ms. Shelton responded that Mr. Mischel was referring to the *San Diego Unified School District* case, where the court ruled that some of the state-required activities exceeded



federal law, but were not reimbursable because they were de minimis in cost and were part and parcel of federal requirements. She added that that was the first time the court used that language and it did not refer to the \$1,000 threshold.

Mr. Mischel asked the Commission to define “de minimis.” For example, while the activity of withholding contract funds for 1776(g) violations is proposed for approval, he has never seen a single request for this activity. Therefore, this is an insignificant activity and should not be reimbursed. Ms. Shelton responded that the California Constitution requires reimbursement for “all” costs mandated by the state. In addition, the cases mentioned by Mr. Mischel are not on point. Both cases involved federal due process requirements which are not the case here.

Ms. Ferebee cited to the Department of Finance’s letter dated April 15, 2008, in which two possible offsetting revenue sources were identified: State School Deferred Maintenance Program, and the Community Colleges Facility Deferred Maintenance and Special Repair Program. She requested clarification as to whether the second funding source was not intentionally omitted from the staff analysis for some reason. Ms. Shelton stated that there is no denial of any potential offsetting revenue source and this issue can be clarified and considered at the parameters and guidelines phase.

Member Olsen requested a clarification as to the staff recommendation. Ms. Shelton recommended that the Commission make a modification after reviewing that language again and looking at that penalty provision on the contract for redacting that information. She reiterated that she could see that interpretation of that regulation. Chairperson Sheehy asked Ms. Shelton if the staff recommendation now is “what it was minus the redaction.” Ms. Shelton concurred. Member Olsen moved to adopt the staff recommendation as modified to delete the activity of redacting as reimbursable. With a second by member Lujano, the modified staff recommendation was adopted by a vote of 5-1, with Member Worthley voting no.

Item 7 Proposed Statement of Decision: *Prevailing Wage Rate*, 01-TC-28

[See Item 6 above.]

Ms. Shelton also presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission’s decision on the *Prevailing Wage Rate* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including changes to reflect the Commission's vote with regard to taking out the redaction, and to authorize staff to make those changes with regard to that finding, as well as other non-substantive changes.

Member Olsen moved to adopt the staff recommendation as modified. With a second by member Bryant, the Proposed Statement of Decision, as modified, was adopted by a vote of 6-0.

**INFORMATIONAL HEARING ON PARAMENTERS AND GUIDELINES  
AMENDMENTS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2,  
CHAPTER 2.5 ARTICLE 8 (action)**

**PARAMETERS AND GUIDELINES AMENDMENTS**

- Item 9 *Integrated Waste Management*, 05-PGA-16  
Public Resources Code Sections 40148, 40196.3, 42920-42928  
Public Contract Code Sections 12167 and 12167.1  
Statutes 1999, Chapter 764 (AB 75); Statutes 1992, Chapter 1116  
(AB 3521)  
State Agency Model Integrated Waste Management Plan (February 2000)  
Integrated Waste Management Board, Requestor

Ms. Shelton presented this item. Ms. Shelton stated that this is a request filed by the Integrated Waste Management Board pursuant to Government Code section 17557, subdivision (d), to amend the original parameters and guidelines for the Integrated Waste Management Program.

The Board requests that the parameters and guidelines be amended in Section VIII, Offsetting Cost Savings, to include language requiring community college districts to analyze avoided disposal costs and other offsetting savings related to staffing, overhead materials, and storage as a result of the test claim statutes when filing reimbursement claims.

Ms. Shelton noted that a similar request was made by the Board at the Commission's September hearing and the Commission denied that request. Staff recommends that the Commission deny this request.

Ms. Shelton added that the Board also requests that specified language be included in Section IX of the parameters and guidelines to require the Controller's claiming instructions ensure that only additional expenses related to the mandate are included in a reimbursement claim, and that any offsetting savings not be included.

Staff also recommends that the Commission deny this request. The parameters and guidelines already contain offsetting cost savings language and boilerplate language allowing reimbursement for only increased costs. Therefore, staff recommends that the Commission adopt the analysis to deny the Board's request to amend the parameters and guidelines.

The parties were represented as follows: Elliott Block, Integrated Waste Management Board and Susan Geanacou, Department of Finance.

Chairperson Sheehy asked if the Integrated Waste Management Board has the authority to issue its own regulations on this matter.

Elliott Block, Integrated Waste Management Board, responded that the Board does have the authority to issue regulations regarding the reports. As with any regulations, the Board would have to show necessity for adopting those regulations. Currently, the Board does not have any regulations or requirements for dollar amounts.

Chairperson Sheehy asked if adopting Board regulations would solve the problem. Mr. Block replied that new regulations would impose a new mandate.

Mr. Block responded to a comment in the staff analysis about information on cost savings already being available to the Board. Specifically, the Board has information about reduction in disposal tonnage at landfills but that does not include the actual costs. The Board has used such information to estimate statewide costs using average tipping fee costs but it does not have information for specific community college districts or cost information relating to other savings.

Susan Geanacou, Department of Finance, stated that Finance supports the staff analysis.

With a motion by member Worthley and a second by member Olsen, the staff recommendation to adopt the analysis and deny the Board's request to amend the parameters and guidelines was approved by a vote of 6-0.

## STAFF REPORTS

### Item 12 Chief Legal Counsel's Report (info)

Ms. Shelton stated that decisions have not yet been issued on two oral arguments from December and January. She also introduced Heather Halsey, new staff attorney. Heather is a former staff counsel with the Department of Health Services. She was a committee consultant for the Legislature, and also worked at the Office of Planning and Research. She was a member of the Commission during the Davis Administration, and has worked in private practice representing local government.

Chair Sheehy welcomed Ms. Halsey and thanked her for joining the staff.

### Item 13 Executive Director's Report (info)

Workload. Ms. Higashi reported that two new test claims and incorrect reduction claims have been filed as well as a request for review of claiming instructions for *Graduation Requirements*. All of these will be processed in the next few days.

Ms. Higashi stated she has added a new workload category to track applications for finding of significant financial distress. She introduced Nancy Patton, Assistant Executive Director, to report on possible filings.

SB 1033. Ms. Patton reported that three counties have made inquiries regarding the process for filing applications for finding of significant financial distress, also known as the SB1033 process.

Current law authorizes any county to file an application with the Commission, and requires the Commission to conduct a public hearing in the applicant county, and issue preliminary and final decisions on that application within 90 days. This is a complex and expensive process, and it requires the Commission to review the applicant county's budget and provide a thorough fiscal and legal analysis.

Ms. Patton added that current law prohibits the Commission from making a finding of significant financial distress unless the county has made a compelling case that basic county services, including public safety, cannot be maintained.

The Commission typically contracts with the Department of Finance's Office of Audits and Evaluations to conduct the fiscal portion of the analysis. The Commission is not budgeted for this process. So whenever an application is filed, the Commission must submit a request for deficiency funding with the Department of Finance under budget control section 9840.

The last application was filed by Butte County in 2005. The Commission spent approximately \$106,000 to process that application. That included \$93,000 to contract with Finance. We also hired a retired annuitant to perform other parts of the analysis and to organize the process. About 180 hours of Commission staff time was spent reviewing and analyzing the application.

Finance's audit unit estimates that today, it would cost between \$130,000 and \$150,000 to contract for performance of the fiscal analysis. That does not include travel time. Also, the commission would need to pay for public members and Commission and Finance staff travel to the applicant county.

If an application is filed, the Commission will need to decide how they want to conduct the hearing process. It can choose for the entire Commission to go to the applicant county and conduct the hearing, and approve the preliminary and final analysis; or it could decide to select a subcommittee of Commission members that would go to the applicant county, and then report to the full commission for its decision on the analysis. Ms. Patton continued that the counties are conducting a separate meeting today and will discuss this issue.

Chairperson Sheehy asked Ms. Higashi for a recommendation as to whether or not to engage in a discussion now on how to handle the situation should an actual request be filed.

Ms. Higashi responded that staff would like to have an idea whether every Commission member would like to participate in the review process or nominate a subcommittee.

Chairperson Sheehy expressed concern about the deficiency funding process in light of the bad economy and the possibility of many applications being filed.

Ms. Patton explained that the Commission's budget has language in it so that the funding could be requested using the 9840 control section and that we have 90 days once we get the funding to complete an application. Also, there is language in the governing statutes that says the Commission completes one application at a time.

Member Lujano suggested that staff be directed to use the same process that was used for past applications.

Member Olsen clarified the need for the Commission to decide on subcommittee versus full committee and expressed interest, as a public member, to participate in that subcommittee. Member Worthley also identified himself as a likely other candidate to that subcommittee. Chairperson Sheehy stated that members Olsen and Worthley will be the working subcommittee.

Ms. Higashi stated and Ms. Patton confirmed that 3 counties have made inquiries.

Allan Burdick, on behalf of CSAC SB 90 Service, stated that this process is usually a last alternative for counties. Once they make the decision to file, they are hopeful that the process will move forward quickly so the counties can reduce payments.

Mr. Burdick also pointed out that this process takes precedence over test claims so counties, cities and school districts will be negatively impacted.

Ms. Higashi responded that when the process first started, the Commission virtually stopped hearing all test claims for about a year. However, since the last couple of applications, the Commission contracted with Finance to do the entire analysis, not only looking at the dollars and the budget issues but also at the programmatic issues connected to the budget. Therefore, Commission staff did not do the first level read-through but rather worked with Finance auditors as they prepared the analysis, and reviewed, approved, and issued it to the county and the Commission. She noted that it's a much different process than it used to be. When the Butte application was filed, the Commission still heard test claims at regular Commission meetings. Ms. Higashi stated that she worked about 60 hours on the Butte application, not 100 percent of her time.

Controller's AB 3000 Report. Ms. Higashi clarified that the AB 3000 report data in Item 13 consisted of excerpted data and did not include all columns reported by the State Controller. She distributed copies of the pages from which the data was excerpted.

Governor's Furlough Order. Ms. Higashi reported that Commission staff is in compliance with the Governor's furlough order. Public notice is clearly posted on the web site and administrative procedures are in place.

Legislative Analyst's Report. She also reported that the Legislative Analyst's recent report on education mentions education mandate reform. A separate report addressed realigning criminal justice programs and proposed funding local agencies for the POBOR program at \$140 per officer. She noted that the Commission amended the parameters and guidelines with a rate of \$37.25 per officer.

Next Hearing. Lastly, Ms. Higashi pointed out the tentative agendas for the March and May hearings.

## **PUBLIC COMMENT**

There was no public comment.

## **CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)**

### **A. PENDING LITIGATION**

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

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).)

### **B. PERSONNEL**

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

Hearing no further comments, Chairperson Sheehy 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**

At 12:13 p.m., Chairperson Sheehy reconvened in open session, and 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 pursuant to 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, Chairperson Sheehy adjourned the meeting at 12:13 p.m.



PAULA HIGASHI  
Executive Director

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



TIME: 10:32 a.m.  
DATE: Friday, January 30, 2009  
PLACE: State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



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

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**Daniel P. Feldhaus, C.S.R., Inc.**  
**Certified Shorthand Reporters**  
**8414 Yermo Way, Sacramento, California 95828**  
**Telephone 916.682.9482 Fax 916.688.0723**  
**FeldhausDepo@aol.com**

A P P E A R A N C E S

COMMISSIONERS PRESENT

TOM SHEEHY  
*(Commission Chair)*  
Representative for MICHAEL GENEST  
Director, State Department of Finance

CYNTHIA BRYANT  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

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



COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
*(Item 13)*

NANCY PATTON  
Assistant Executive Director  
*(Item 13)*

ERIC FELLER  
Senior Commission Counsel  
*(Items 4 and 5)*

HEATHER HALSEY  
Commission Counsel



A P P E A R A N C E S

COMMISSION STAFF PRESENT

*continued*

CAMILLE SHELTON  
Chief Legal Counsel  
(Items 6, 7, 9, 10 & 12)



PUBLIC TESTIMONY

**Appearing Re Items 4 & 5:**

For San Diego Unified School District

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

For Department of Finance:

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

**Appearing Re Items 6 and 7:**

For Grossmont Union High School District:

KEITH B. PETERSEN, MPA, JD  
President  
SixTen and Associates  
5252 Balboa Avenue, Suite 900  
San Diego, California 92117

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Items 6 and 7:** *continued*

For Department of Industrial Relations:

ANTHONY MISCHEL  
Department of Industrial Relations  
320 W. Fourth Street  
Los Angeles, California 90013

GARY O'MARA  
Department of Industrial Relations  
2424 Arden Way  
Sacramento, California 95825

For Department of Finance

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

**Appearing Re Item 9:**

For California Integrated Waste Management Board

ELLIOT BLOCK  
Chief Counsel  
California Integrated Waste Management Board  
1001 I Street, Mailstop 23A  
Sacramento, California 95814

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing re Item 13:**

ALLAN BURDICK  
California State Association of Counties  
SB 90 Service  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
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**Commission on State Mandates – January 30, 2009**

1 BE IT REMEMBERED that on Friday, January 30,  
2 2009, commencing at the hour of 10:32 a.m., thereof, at  
3 the State Capitol, Room 447, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR SHEEHY: We will call the Commission on  
8 State Mandates to order.

9 Paula, could you help us establish a quorum?

10 MS. HIGASHI: Ms. Bryant?

11 MEMBER BRYANT: Here.

12 MS. HIGASHI: Mr. Chivaro?

13 MEMBER CHIVARO: Here.

14 MS. HIGASHI: Mr. Glaab is absent today due to  
15 personal illness.

16 Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Mr. Worthley?

21 MEMBER WORTHLEY: Present.

22 MS. HIGASHI: And Mr. Sheehy?

23 CHAIR SHEEHY: Present.

24 Okay, with the quorum present, we're ready to  
25 do business.



**Commission on State Mandates – January 30, 2009**

1           And I think the first item of business are  
2           the minutes.

3           MS. HIGASHI:   Actually, we're going to go to  
4           the election of officers, since it's a new year.  It's  
5           Item 1.

6           CHAIR SHEEHY:  I'm off to a great start today.

7           MS. HIGASHI:  That's okay.

8           CHAIR SHEEHY:  All right, strike that.  So  
9           we're going to go to election of officers.

10          MS. HIGASHI:  It's customary that at our  
11          January meeting, the Commission elects its officers.  And  
12          it's also customary that the Executive Director conduct  
13          the election of officers.

14          The Members of the Commission that are eligible  
15          to be elected as chairperson and vice-chairperson, are  
16          John Chiang, Bill Lockyer, Mike Genest, and Cynthia  
17          Bryant, Paul Glaab, Steve Worthley, or Sarah Olsen.

18          And I'd like to start with the election of  
19          chairperson.

20          Are there any nominations or motions to elect a  
21          chairperson for the Commission on State Mandates?

22          MEMBER BRYANT:  I move the Director of Finance,  
23          Michael Genest, as chair of this Commission on State  
24          Mandates.

25          MEMBER WORTHLEY:  Second.

**Commission on State Mandates – January 30, 2009**

1 CHAIR SHEEHY: Okay, we have a motion and a  
2 second.

3 MS. HIGASHI: Tom? And then I'll just do it.

4 CHAIR SHEEHY: Okay.

5 MS. HIGASHI: So there's a motion and a second,  
6 that the Director of Finance, Mike Genest, be elected  
7 chairperson of the Commission on State Mandates.

8 All those in favor of the motion, please  
9 signify by saying "aye."

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

11 MS. HIGASHI: Any opposed?

12 *(No response)*

13 MS. HIGASHI: Mike Genest is unanimously  
14 elected as chairperson.

15 Mr. Sheehy, would you like to conduct the  
16 election for vice-chair?

17 CHAIR SHEEHY: Yes, thank you, now that I've  
18 finally caught on with what's going on here.

19 So now, what is appropriate for us to do, is to  
20 elect a vice-chair.

21 And Mr. Lujano has been the vice-chair this  
22 last year, representing Treasurer Lockyer.

23 And we'd like to entertain a motion right now  
24 to elect the vice-chair of the Commission on State  
25 Mandates.

**Commission on State Mandates – January 30, 2009**

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Is there a motion?

MEMBER BRYANT: I'll move --

MEMBER LUJANO: Mr. Chair -- go ahead.

MEMBER BRYANT: I said, I'll move -- I was going to move the State Treasurer, Bill Lockyer, to be vice-chairman of the Commission.

MEMBER LUJANO: Actually, I was going to move that the State Controller serve this year. Actually, it's been customary that we go back and forth.

CHAIR SHEEHY: Ms. Bryant, do you want to withdraw your motion?

MEMBER BRYANT: I'll withdraw my motion, and I'll yield to Mr. Lujano.

CHAIR SHEEHY: So Mr. Lujano has moved that the Controller be the vice-chair of the Commission this year.

MEMBER OLSEN: I second.

CHAIR SHEEHY: We have a second by Ms. Olsen. All in favor?

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

CHAIR SHEEHY: Congratulations, Mr. Chivaro. Okay, now that our election is over --

MEMBER BRYANT: And that was not a vote of no confidence for me.

CHAIR SHEEHY: This is a pretty friendly crowd this morning. Okay.

**Commission on State Mandates – January 30, 2009**

1           So now I think we need to get to the adoption  
2 of the minutes.

3           MS. HIGASHI: That's correct.

4           There are Exhibits A and B, there are two sets  
5 of minutes that are proposed, one for the November  
6 meeting and one for the December meeting.

7           And since all of you were at both meetings, you  
8 can make a motion together, unless there are corrections  
9 to be made.

10          CHAIR SHEEHY: Are there any questions,  
11 comments, or suggested corrections from members of the  
12 Commission?

13          MEMBER WORTHLEY: Move adoption of both  
14 minutes.

15          MEMBER OLSEN: Second.

16          CHAIR SHEEHY: We have a motion on the floor.  
17 Is there any comment from the public on the  
18 matter?

19          *(No response)*

20          CHAIR SHEEHY: Seeing none, all in favor?

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

22          CHAIR SHEEHY: The minutes are adopted. Okay.

23          MS. HIGASHI: This brings us to the proposed  
24 Consent Calendar.

25          The proposed Consent Calendar is Item 8,

**Commission on State Mandates – January 30, 2009**

1 Dismissal of a Withdrawn Portion of the Test Claim,  
2 *Stormwater Pollution Control Requirements.*

3 Also, statewide cost estimate, Item 10, *Fire*  
4 *Safety Inspections of Care Facilities*, and the third item  
5 is the *Adoption of the Proposed Rulemaking Calendar* for  
6 the Commission. Items 8, 10, and 11, they're detailed on  
7 the green sheets.

8 CHAIR SHEEHY: Okay, thank you, Paula.

9 Any questions by members of the Commission with  
10 respect to the Consent Calendar today?

11 *(No response)*

12 CHAIR SHEEHY: Any question or comments from  
13 the public?

14 *(No response)*

15 CHAIR SHEEHY: Seeing none, is there a motion?

16 MEMBER OLSEN: So moved.

17 CHAIR SHEEHY: Okay, we have a motion.

18 MEMBER CHIVARO: Second.

19 CHAIR SHEEHY: We have a second.

20 All in favor?

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

22 CHAIR SHEEHY: Adopted the Consent Calendar.

23 MS. HIGASHI: This brings us to the hearing  
24 portion of our meeting.

25 We have a couple of test claims.

**Commission on State Mandates – January 30, 2009**

1 I'd like to ask those persons in the audience  
2 who plan to appear on an item before the Commission  
3 during this hearing part of our meeting, if you would  
4 please stand.

5 *(Several persons stood up to be sworn*  
6 *or affirmed)*

7 MS. HIGASHI: Do you solemnly swear or affirm  
8 that the testimony which you are about to give is based  
9 on your personal knowledge, information, or belief?

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

11 MS. HIGASHI: Thank you very much.

12 Our first item is the test claim *on Surplus*  
13 *Property Advisory Committees*. This item will be  
14 presented by senior Commission Counsel Eric Feller.

15 CHAIR SHEEHY: Mr. Feller, could you please  
16 come forward -- oh, there you are.

17 Thank you, Mr. Feller.

18 MR. FELLER: Good morning. This test claim  
19 alleges a reimbursable mandate for costs associated with  
20 appointing and supervising a school district advisory  
21 committee on surplus property.

22 As indicated in the analysis, staff finds that  
23 this is not a reimbursable program because there is no  
24 legal or practical compulsion to designate property as  
25 surplus or to transfer school district property, so

1 neither formation of the committee nor its duties are  
2 state mandated. Staff found that the Court decisions in  
3 the *Kern School District* and *City of Merced* cases are  
4 controlling.

5 As an alternative ground for denial, staff  
6 found that the statutes claimed were not a new program or  
7 higher level of service because they predated the  
8 statutes pled in the test claim.

9 The Department of Finance submitted comments  
10 agreeing with the staff analysis.

11 Claimant disagrees and argues that it is  
12 practically compelled to designate property as surplus  
13 because of the factors beyond its control. Claimant  
14 reiterated this argument in the late filing dated  
15 January 20<sup>th</sup>.

16 Staff addressed this argument in the analysis.  
17 The *Kern* Court stated that practical compulsion means  
18 that the state must impose substantial penalties for not  
19 complying, and staff finds no state-imposed penalties in  
20 this case.

21 Thus, staff recommends that the test claim be  
22 denied.

23 Would the witnesses and parties please state  
24 your names for the record?

25 MR. PALKOWITZ: Good morning. Art Palkowitz on

1       behalf of the test claimant.

2                   CHAIR SHEEHY: Thank you, Mr. Palkowitz.

3                   Is Mr. Johnson here this morning?

4                   MR. PALKOWITZ: No, he is not able to attend  
5       today.

6                   CHAIR SHEEHY: All right, please,

7       Mr. Palkowitz, continue on.

8                   MR. PALKOWITZ: Okay, thank you.

9                   As Mr. Feller pointed out, this test claim is  
10       to reimburse school districts to appoint, supervise, and  
11       consult with a surplus property committee regarding  
12       school buildings or space and buildings.

13                   Section 17388 states that a governing board,  
14       prior to the sale, lease, or rental, shall appoint an  
15       advisory committee to advise the governing board.

16       Therefore, the statute is stating that an advisory  
17       committee shall be appointed.

18                   Statute 17390 goes further to say that this  
19       advisory committee shall perform the following duties.  
20       They shall review the projected school's enrollment data.  
21       They will establish a priority list of surplus property.  
22       They will provide for hearings of the community,  
23       something that must be done before any sale or lease.  
24       They will also make a determination of the properties,  
25       and they will also forward their suggestions,



1 recommendations to the district governing board.

2 So you have two statutes that are requiring, A,  
3 that a committee be appointed; and, B, what the duties of  
4 this committee shall be.

5 If you read further of the legislative intent,  
6 the legislative intent was that leases entered into by  
7 school districts should receive the community  
8 involvement.

9 This way, the community could analyze the  
10 attendance data and try to project into the future what  
11 properties will be needed and won't be needed as an  
12 attempt to help the schools plan on how they should  
13 handle their property.

14 It was meant as a way to facilitate the best  
15 judgment for the community and the school. And also part  
16 of the legislative intent is for school districts to  
17 offset revenue losses due to declining enrollment.

18 So these tools that are in these code sections,  
19 stating that they shall be done, it was the intent of the  
20 Legislature to make sure there is collaboration and  
21 transparency with the community so that the best  
22 practices for school districts on how they handle their  
23 property will be done in the correct manner.

24 Also, I'd like to point out, as this is a very  
25 important process for school districts, and that's shown

1 by the fact that a board of a school district cannot sell  
2 or lease a property without a two-thirds majority vote.  
3 If there are other actions that require two-thirds  
4 majority vote, I don't know; but clearly, that type of  
5 requirement of a supermajority gives the impact on how  
6 important this is that the Legislature felt this would be  
7 for school boards.

8 As Mr. Feller said, he commented on the legal  
9 compulsion and the practical compulsion analysis. Legal  
10 compulsion, I believe, is clearly indicated here by the  
11 statutory language that comments on "*shall appoint an*  
12 *advisory committee*" and "*shall perform these duties.*"  
13 The practical compulsion, I think, is set out in the  
14 legislative intent, with the legislators commenting on  
15 how the community must be involved and how they should  
16 act to offset revenue.

17 Clearly, our schools in our districts, we would  
18 want them to optimize their revenue and to avoid any  
19 draconian consequences of having schools being closed or  
20 having them lose revenue by not using good practices of  
21 leasing out empty space.

22 I think as schools move forward in this  
23 difficult financial climate, these are important steps  
24 that schools must do in order to maintain the high level  
25 of education.

1           Therefore, the claimant feels that based on the  
2 requirement to perform these duties, to have an advisory  
3 committee, the two-thirds board vote that's required and  
4 the practical compulsion, that this qualifies as a state  
5 mandate.

6           Thank you.

7           CHAIR SHEEHY: Thank you, Mr. Palkowitz.

8           Finance?

9           MS. GEANACOU: Good morning. Susan Geanacou,  
10 Department of Finance.

11           The Department of Finance supports the  
12 Commission staff analysis in the matter. And I'd like to  
13 observe that the duties that the claimant cites as being  
14 mandated or required using the word "*shall*" are layered  
15 on top of the underlying discretionary choice of a  
16 district to find or declare property as surplus, and to  
17 make the discretionary decision to dispose of it  
18 or transfer it in the first place.

19           And as the Commission staff analysis points  
20 out, both the *Kern High School District* case and the  
21 *City of Merced* case illustrate that this is not a  
22 reimbursable mandate because the districts have the  
23 underlying discretionary choice that thereafter triggers  
24 the language that Mr. Palkowitz refers to.

25           CHAIR SHEEHY: Thank you, Ms. Geanacou.

**Commission on State Mandates – January 30, 2009**

1 Are there any other members of the public here  
2 today that want to come testify or comment on this item?

3 *(No response)*

4 CHAIR SHEEHY: Seeing none, questions of the  
5 Board members? Commission members?

6 MEMBER WORTHLEY: Mr. Chairman?

7 CHAIR SHEEHY: Yes, Mr. Worthley?

8 MEMBER WORTHLEY: Mr. Palkowitz, could you  
9 address the issue about whether or not this constitutes  
10 a new project? There were two arguments presented by  
11 staff. One was that this was discretionary; the other  
12 one was that it did not constitute a new program.

13 MR. PALKOWITZ: I think that that part of it,  
14 sir, is -- I think it was like the last paragraph or two  
15 in the decision.

16 MEMBER WORTHLEY: Yes.

17 MR. PALKOWITZ: I'm sorry, I can't find it --  
18 oh, thank you.

19 MEMBER WORTHLEY: Page 13.

20 MR. PALKOWITZ: Right.

21 Well, the way I read it is that, I think, it  
22 was the fact that it was amended in 1980. And I just  
23 didn't feel that that was the basis for denying the  
24 claim. I didn't feel that part of it was an attempt to  
25 say that this is not a state mandate. So to me, that was

1 not what I felt was their strong argument, and I didn't  
2 really feel it was applicable.

3 MEMBER WORTHLEY: It obviously didn't get  
4 nearly the amount of analysis as the other portion did.

5 MR. PALKOWITZ: Right.

6 MEMBER WORTHLEY: I was curious, you didn't  
7 really address the issue of the discretionary act on the  
8 part of the -- you're using the legislative intent  
9 language.

10 Did you have anything further to say about  
11 whether or not it constituted a discretionary act, the  
12 concept of getting rid of surplus property?

13 MR. PALKOWITZ: Yeah, I mean, when you try to  
14 analyze this to say, well, a district may or may not have  
15 surplus property and, therefore, everything that flows  
16 from that is discretionary, to me, the way I read the  
17 statute, is that if you are planning to sell or rent or  
18 lease property, you now have to take an action of having  
19 an advisory committee. That part of it is clear.

20 Whether you have surplus property, that may be  
21 discretionary. But if you're going to take the act that  
22 you're going to sell or lease or rent it, you now have  
23 property that you are considering taking action on; and,  
24 therefore, the duties and the committee that need to be  
25 done are required.

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1           MEMBER WORTHLEY: My thought was that as a  
2           discretionary act, the problem that I have with that  
3           concept here is that, let's say the school district has a  
4           school, they no longer need a site, and so they can  
5           either elect the -- the question amounts to discretion or  
6           not -- to decide to sell that property, in which case you  
7           then trigger all the requirements.

8           MR. PALKOWITZ: Uh-huh.

9           MEMBER WORTHLEY: Or they could shutter that  
10          building.

11          MR. PALKOWITZ: They could what? I'm sorry?

12          MEMBER WORTHLEY: Shutter the building, so it  
13          sits there. They still have to maintain it, they still  
14          have to mow the lawn, they still have to irrigate it,  
15          they still have to keep things fixed, they have to keep  
16          their windows from breaking out, or they've got to patch  
17          it up.

18                 Certainly, it's very poor policy to think that  
19          they would not declare that. But it seems like you could  
20          make the argument that, in a sense, they are required to  
21          because it does not make sense for a district with  
22          limited resources to keep a piece of property which they  
23          cannot use and cost them money to maintain.

24                 It's not unlike the next case we're going to  
25          talk about, when we talk about there is practical

1       compulsion when it comes to repairs and maintenance. In  
2       a sense, excess property is very similar that way. It  
3       makes no sense for a district to hang on to property when  
4       they could be sold and the money could be used for other  
5       purposes, and it's limited what it can be used for,  
6       capital-type projects. And to keep the property would  
7       constitute a cost.

8               Property in and of itself -- ownership of it  
9       costs money, it costs the district money. If they can't  
10      use it, it's a waste of money. So I struggle with the  
11      idea that this is not a compulsory type of a situation.

12             If a district has got extra property, they  
13      really should get rid of it because otherwise you're  
14      going to be wasting their resources, keeping that  
15      property.

16             MR. PALKOWITZ: And I think this is being  
17      exacerbated throughout California with declining  
18      enrollment.

19             MEMBER WORTHLEY: That's a good point. And  
20      you look at, you know, certain districts, especially like  
21      the Los Angeles district, where you have schools that  
22      are situated in areas where the populations have --

23             MR. PALKOWITZ: Shifted.

24             MEMBER WORTHLEY: They've gotten older, and  
25      there was need for that school forty years ago, and now

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1 there is no need for that school. There are many  
2 situations like that.

3 Plus, overall, in the state of California, we  
4 have a declining enrollment population. I think last  
5 year, it was like 30,000 students.

6 So there are going to be situations in  
7 districts where you will have facilities that are excess.  
8 And it seems like good public policy would say they  
9 should turn those things over.

10 MR. PALKOWITZ: Yes, I would estimate that LA  
11 probably has 40 to 50 properties that they have to review  
12 regularly regarding the leases.

13 I think the tough decision for boards and  
14 committees are the sale. They're always concerned that,  
15 well, if I sell this and things change, I may not be able  
16 to get back in, with real estate being expensive. But  
17 they're leasing these properties to bring in the income,  
18 see how things progress. And that is adding up to a lot  
19 of money that's going to affect programs. And we'll have  
20 serious consequences if they don't act prudently.

21 Now, I think this Commission has showed to me  
22 how government needs to act prudently and not to think  
23 that they should not be making decisions as a business  
24 would be.

25 CHAIR SHEEHY: If only government was run like



1 a business.

2 Ms. Olsen?

3 MEMBER OLSEN: To me, this case seems to hinge  
4 on two words. And the word I keep hearing is "*should*";  
5 and the word that, it seems to me, has to be there for  
6 practical compulsion to exist is "*must*." And I don't  
7 hear that being used here.

8 Best business practices means that the school  
9 district should, but it doesn't have to. And the other  
10 part of it that I'd like some closure on is, is it  
11 possible for the school district to recover its costs of  
12 this program through the lease? If it goes this route,  
13 can it build those costs into the lease?

14 And it seems to me, there's nothing to preclude  
15 it from doing that.

16 MR. PALKOWITZ: Okay, on your first comment,  
17 there are languages or words, "*shall*." I'm not sure if  
18 you define "*shall*" as "*must*," but there are words of  
19 "*shall*" versus "*should*."

20 MEMBER OLSEN: But I'm talking about the  
21 underlying issue of whether or not a district decides to  
22 go the route of declaring something surplus property.  
23 They don't have to do that.

24 MR. PALKOWITZ: Uh-huh.

25 MEMBER OLSEN: Now, Mr. Worthley has pointed

1 out some circumstances under which they probably should  
2 do that. And, to me, that's the issue, is they don't  
3 have to.

4 And then it doesn't seem to me that there's  
5 anything in the law that precludes them from  
6 negotiating a -- having decided that they should and,  
7 therefore, deciding to do it, that they can't recover  
8 their costs through the lease agreement.

9 MR. PALKOWITZ: Well, you know, I would not  
10 say -- that's just not feasible that they could raise  
11 the rents to justify the costs. Now, maybe that will not  
12 happen in the marketplace based on that.

13 But to me, what you have here is strong  
14 language with a legislative intent that is sending a  
15 clear message that this is important, you must get the  
16 community involved, the board must vote two-thirds vote,  
17 and with the legislative intent to offset revenue, that  
18 clearly the Legislature is saying, you need -- these  
19 actions are important; you must do these things before  
20 you sell or lease the property.

21 MEMBER OLSEN: I understand your point. I  
22 just go back to the issue that there is no -- there's no  
23 compulsion for the district to go down this path.

24 MR. PALKOWITZ: I respectfully disagree. That,  
25 if anything, if you're not going to put weight into the

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1 language of "shall" and "shall," you could put weight  
2 into the practical compulsion, that there could be  
3 serious consequences for districts that don't try to  
4 offset this revenue and use it for the opening and  
5 maintaining of schools or educational programs.

6 CHAIR SHEEHY: Okay, thank you, Ms. Olsen.

7 Additional questions from Commission members?

8 *(No response)*

9 CHAIR SHEEHY: Okay, hearing none, is there a  
10 motion on this item?

11 MEMBER OLSEN: I move adoption of the staff  
12 recommendation.

13 CHAIR SHEEHY: We have a motion to adopt the  
14 staff recommendation.

15 MEMBER BRYANT: I'll second it.

16 CHAIR SHEEHY: We have a second on that motion.

17 So, Paula, can you call the roll to see if we  
18 have enough votes to adopt the staff recommendation?

19 MS. HIGASHI: Ms. Bryant?

20 MEMBER BRYANT: Aye.

21 MS. HIGASHI: Mr. Chivaro?

22 MEMBER CHIVARO: Aye.

23 MS. HIGASHI: Mr. Lujano?

24 MEMBER LUJANO: Aye.

25 MS. HIGASHI: Ms. Olsen?

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1 MEMBER OLSEN: Aye.

2 MS. HIGASHI: Mr. Worthley?

3 MEMBER WORTHLEY: No.

4 MS. HIGASHI: Mr. Sheehy?

5 CHAIR SHEEHY: Aye.

6 Okay, so that item has five votes.

7 So we've adopted the staff recommendation on  
8 Item 4.

9 Then on Item 5, Mr. Feller, could you please  
10 propose the Statement of Decision for Item 4?

11 MR. FELLER: Thank you.

12 Unless there's objection, staff recommends the  
13 Commission adopt the staff analysis to deny the test  
14 claim, and also recommends the Commission allow minor  
15 changes to be made to the decision, including reflecting  
16 the witnesses' hearing testimony and vote count that will  
17 be included in the Final Statement of Decision.

18 CHAIR SHEEHY: I'm sorry, Mr. Feller, I missed  
19 that last sentence.

20 MR. FELLER: We also recommend that the changes  
21 be made to allow us to put in the final witnesses'  
22 hearing testimony and vote count.

23 CHAIR SHEEHY: Okay, and with those changes  
24 then, is there a motion?

25 MEMBER OLSEN: Motion.

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1 CHAIR SHEEHY: Second?

2 MEMBER CHIVARO: Second.

3 CHAIR SHEEHY: Second by Mr. Chivaro.

4 Paula, could you call the roll on this? Or can  
5 you use the prior roll call?

6 MEMBER WORTHLEY: I will vote "aye" on this.

7 CHAIR SHEEHY: Okay, so all in favor?

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

9 MS. HIGASHI: Thank you for making it easy.

10 This brings us to Item 6. Item 6 is the test  
11 claim filed on *Prevailing Wage Rate* by Grossmont Union  
12 High School District, claimant; and Chief Counsel Camille  
13 Shelton, will introduce this item.

14 CHAIR SHEEHY: Thank you.

15 MS. SHELTON: Good morning.

16 This test claim addresses the California  
17 Prevailing Wage Law which is designed to enforce the  
18 minimum wage standards on public works projects that  
19 exceed \$1000 and are funded in whole or in part with  
20 public funds. The prevailing wage law applies to school  
21 districts and community college districts that award a  
22 contract to a private contractor for projects including  
23 the construction, alteration, repair or maintenance of  
24 school property.

25 The law requires school districts, as the

1     awarding body, to perform a number of activities to  
2     ensure that the employees of the private contractor are  
3     receiving prevailing wages. For the reasons stated in  
4     the analysis, staff finds that only the activities  
5     required by Labor Code section 1776, subdivisions (g) and  
6     (h), and section 16403, subdivision (a), and 16408,  
7     subdivision (b), of the Department of Industrial  
8     Relations regulations that are listed on pages 4 and 5  
9     of the executive summary constitute a reimbursable  
10    state-mandated program within the meaning of  
11    Article XIIIIB, Section 6 of the California Constitution,  
12    and only when school districts and community college  
13    districts are required to contract for the repair or  
14    maintenance of school property.

15           Staff further finds that there is fee authority  
16    that applies to some of these activities which shall be  
17    identified in the parameters and guidelines as offsetting  
18    revenue. In addition, there may be some grant funding  
19    that may apply to reduce a reimbursement claim.

20           Staff recommends that the Commission deny  
21    the test claim with respect to all other statutes,  
22    regulations, and other alleged executive orders that  
23    have been pled by the claimant.

24           Staff recommends that the Commission adopt the  
25    analysis to partially approve this test claim.

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1 Will the parties and their representatives  
2 please state your names for the record?

3 CHAIR SHEEHY: Will the witnesses please  
4 identify themselves for the record?

5 MR. PETERSEN: Keith Petersen representing the  
6 test claimant.

7 MR. O'MARA: Gary O'Mara, with the Department  
8 of Industrial Relations.

9 MR. MISCHEL: Anthony Mischel, from the  
10 Department of Industrial Relations. I may have testimony  
11 to give.

12 CHAIR SHEEHY: You're not sure?

13 MR. MISCHEL: Well, it sort of depends on where  
14 Mr. Petersen goes, to begin with.

15 CHAIR SHEEHY: Okay.

16 MR. PETERSEN: To all ends.

17 MR. MISCHEL: All right, then I'm sure to  
18 testify. I believe I have some factual comments to make  
19 for my own knowledge or my understanding of this.

20 CHAIR SHEEHY: You're, rather, indecisive this  
21 morning, aren't we, Mr. Mischel?

22 MR. MISCHEL: I am. I start off indecisive and  
23 then I sort of ramp up.

24 CHAIR SHEEHY: You kind of build momentum and  
25 you go?

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1 MR. MISCHEL: Yes.

2 CHAIR SHEEHY: Mr. Petersen, please?

3 MR. PETERSEN: This test claim deals with  
4 the --

5 CHAIR SHEEHY: I'm sorry, Finance?

6 MS. FEREBEE: Just to identify, Donna Ferebee,  
7 Department of Finance.

8 CHAIR SHEEHY: I'm sorry about that, Donna.

9 MR. PETERSEN: Okeydoke.

10 This test claim deals with the administrative  
11 activities to enforce the prevailing wage law, to  
12 contract with private companies to construct, repair, and  
13 replace buildings.

14 Before you can get to the scope of those  
15 activities, there are two threshold questions to be  
16 decided. The first is whether school districts are  
17 compelled to build schools, and the second threshold  
18 issue is whether school districts, in building these  
19 schools, are compelled to seek out state financing. And,  
20 of course, when you seek out state financing, you need to  
21 comply with state rules. In this case, a labor  
22 compliance plan.

23 The staff analysis has come to the strange  
24 conclusion that local public school districts and  
25 community college districts are not required to build



1 schools because they could not find the word "*shall*"  
2 which is the legal compulsion that you all discussed in  
3 the last case, and, of course, for months and months over  
4 the various different test claims.

5 The issue then is whether the local school  
6 districts are practically compelled to construct schools.  
7 We know, as a matter of law, that residents of a certain  
8 age in this state are required to attend public schools.  
9 We also know as a matter of law that school districts and  
10 community colleges are required to enroll those students.

11 As more students show up, you need more  
12 facilities. Someone has to build those facilities to  
13 comply with law on housing students. You can't conduct  
14 classes on the soccer field.

15 You must -- to house students, you must follow  
16 the state laws and regulations on class size, and that  
17 sort of thing. So somebody has to build the schools or  
18 replace the schools for these new and continuing  
19 students.

20 Again, the word "*shall*" was not found in a  
21 statute connected with the school districts. We know  
22 constitutionally that the Legislature is required to  
23 provide for public schools.

24 The Legislature accomplishes this by delegating  
25 most of that activity to the local school boards by

1 statute over the last hundred-plus years.

2 School districts, community college districts,  
3 are the only ones authorized by the State Legislature to  
4 build public schools. Nobody else is authorized. Nobody  
5 else does it. Therefore, if someone is compelled to  
6 build schools -- and they are because the students show  
7 up, and the Legislature is responsible and has delegated  
8 that authority to the local districts -- it would appear  
9 that -- it's not a big leap in logic to conclude that the  
10 local public school districts and colleges are required  
11 to build those schools.

12 The second threshold issue is the utilization  
13 of public state funds in the construction of the schools.

14 Again, there is no legal compulsion in the  
15 staff analysis, we could not find the words that "you  
16 shall use state funds."

17 However, as cited in at least eight or nine  
18 places in my response, the Legislature has pointed out  
19 that it is responsible for providing for schools and  
20 facilities, and it wants to assist the districts in doing  
21 that by providing state funding.

22 Now, does the local district have to go for  
23 state funding? Well, once upon a time, a long, long time  
24 ago, in happier days, local school districts had control  
25 of their property tax. That changed in 1977. The

1 Legislature has since recognized -- again, cited in our  
2 response several times -- that the local property tax is  
3 insufficient to build new schools. And since the state  
4 has a responsibility for building new schools, they're  
5 assisting the local districts by providing public  
6 funding.

7           You saw in the staff analysis and the other  
8 documents, the billions and billions of dollars of state  
9 funding being provided for the construction of these  
10 facilities. And we also cited a study from the State  
11 Department of General Services, State Allocation Board,  
12 that said they need 16 new classrooms per day built in  
13 this state.

14           So the need for construction is clear. The  
15 only public entity authorized to build local schools or  
16 local public agencies -- excuse me, local school  
17 districts and community colleges, as they are delegated  
18 by the Legislature to do so.

19           Therefore, I think the staff recommendation  
20 should be rejected. I think you should send it back and  
21 request that they find that local public school agencies  
22 are required -- are compelled to build new facilities and  
23 replace old facilities.

24           And since they are compelled to do that,  
25 they're compelled to follow the Public Contract Code and

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1 Labor Code sections adopted after 1974 for administering  
2 those contracts.

3 And second, because the Legislature has not  
4 provided sufficient taxing power to the local agencies  
5 to adequately fund the construction, local districts must  
6 rely upon state funds; and to rely upon state funds is  
7 to follow the state rules, and including the Labor  
8 Compliance Program.

9 CHAIR SHEEHY: Mr. Petersen, are you done?

10 Isn't it true that many schools are being  
11 constructed in the state without any state funds at all?

12 MR. PETERSEN: Yes.

13 CHAIR SHEEHY: So then they don't have to rely  
14 upon --

15 MR. PETERSEN: Some districts don't have to.

16 CHAIR SHEEHY: Many districts don't have to.

17 MR. PETERSEN: I don't have any evidence about  
18 "many."

19 CHAIR SHEEHY: Well, I'm the chairman of the  
20 State Allocation Board and I sit in on meetings every  
21 month where we allocate school bonds. And I would add to  
22 the record that there are many that do.

23 MR. PETERSEN: Those are the new 55 percent  
24 local prop --

25 CHAIR SHEEHY: Well, that's different sources

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1 of revenue that goes into school construction. Surely,  
2 you're not saying that it's state funds only that build  
3 schools.

4 MR. PETERSEN: No, I never said that.

5 CHAIR SHEEHY: In fact, the School Facilities  
6 Program requires a local match if there's any state  
7 dollars involved.

8 MR. PETERSEN: No, I'm saying, some districts  
9 are compelled to use state funds.

10 CHAIR SHEEHY: Right. In fact, the largest  
11 school district in the state, Los Angeles, just recently  
12 passed billions of dollars in new bond authority. And  
13 even though the Pooled Money Investment Board took action  
14 in December to slow down and, in fact, stopped -- almost  
15 completely stopped any release of money out of the Pooled  
16 Money Investment Account in the form of AB 55, LA's  
17 construction program is zipping right along because  
18 they've got so much local authority and local bond money.

19 Were you aware of that?

20 MR. PETERSEN: Yes. And I say hooray for  
21 Los Angeles Unified, but there's over 900 other  
22 districts.

23 CHAIR SHEEHY: Yes, but they're the largest;  
24 aren't they?

25 MR. PETERSEN: Yes.

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1 CHAIR SHEEHY: And there's a number of other  
2 districts that also have passed bonds.

3 In fact, I think in this last election cycle,  
4 the majority of the local bond issues that were on the  
5 ballot were successful.

6 MR. PETERSEN: Yes, probably.

7 CHAIR SHEEHY: All right, that's all I had,  
8 Mr. Petersen.

9 Mr. Mischel, do you want to respond?

10 MR. PETERSEN: Can I respond to that?

11 CHAIR SHEEHY: Sure.

12 MR. PETERSEN: My point being, some districts  
13 need to resort to state aid, not all districts. And  
14 those districts that can do it locally, hooray for them.

15 CHAIR SHEEHY: Okay, Mr. Mischel, are you  
16 revved up?

17 MR. MISCHEL: Yes, I'm revved up.

18 I think I will testify a little bit, although  
19 finding out you're chair of the State Allocation Board  
20 is going to temper some of my comments, possibly.

21 I live and work in Los Angeles --

22 MEMBER OLSEN: The rest of us aren't the chair  
23 of the State Allocation Board.

24 MR. MISCHEL: I know, I understand.

25 MEMBER OLSEN: So you can speak to the rest of

1 us.

2 MR. MISCHEL: Okay. I live and work in  
3 Los Angeles, and also one of my functions for the  
4 Department of Industrial Relations is to be the lead on  
5 all prevailing-wage enforcement cases brought into the  
6 department or by labor compliance programs against  
7 private contractors and subcontractors for failing to pay  
8 prevailing wage, or failing to provide adequate certified  
9 payroll records.

10 MR. O'MARA: Hearing officer.

11 MR. MISCHEL: I'm sorry, I'm the lead hearing  
12 officer. So all disputes come through me at some level,  
13 either for review or just for assignment and advice.

14 It is absolutely true, Los Angeles Unified  
15 School District is in just an enormous effort to build  
16 new schools. And I think it actually proves the fallacy  
17 of the test claimant's argument. Because for 35 years  
18 Los Angeles school district, the largest school district  
19 in this state, built no new schools -- not one. And as  
20 a result, it had crumbling schools, it had schools that  
21 were, in fact, dangerous and needed to be repaired, which  
22 the draft analysis said would be a mandate.

23 And this county -- the voters in the school  
24 district went through a series of bonds, the most recent  
25 of which Mr. Sheehy just referred to. There is

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1 \$23 billion of construction going on today in  
2 Los Angeles, almost all of it bond money from the county.

3 CHAIR SHEEHY: Thank you. Mr. Mischel, I just  
4 want to interrupt you for one second.

5 Now, do you know for a fact it's \$23 billion?

6 MR. MISCHEL: That's what the general counsel  
7 for the school district told me.

8 CHAIR SHEEHY: Okay, I just want to put on the  
9 record, that's four and a half times the amount of the  
10 present bond authority that exists on the books for the  
11 State of California. That's 450 percent more than the  
12 funds the State of California has available for local  
13 schools.

14 MR. MISCHEL: Wow. Okay.

15 The courts talk about practical compulsion as,  
16 there is a penalty for failing to comply with a statute  
17 that might -- that sounds as if it were discretionary.

18 The largest school district in the state could get  
19 away without building schools for 35 years. I put to  
20 you, there was no penalty attached to all of the alleged  
21 mandates the test claimant is claiming, or the LA school  
22 district would have been put in receivership.

23 Now, we can talk about this is horrendous, this  
24 is bad business, all of those things. But these are the  
25 practical realities of any budgetary cycle, any budgetary



1 situation, voter decisions. And it's not for the state  
2 to have to reimburse every time the costs go up. That's  
3 not what the state mandate statute says.

4 What the state mandate statute says is when the  
5 Legislature says "*Thou shall*" or "*Thou should, but if you*  
6 *don't, this is the problem,*" such as in unemployment --  
7 this is punishment, I mean -- that's the compulsion.

8 When the cost of living goes up, however, that  
9 doesn't become a state mandate; that becomes a reality  
10 that everybody has.

11 And I think that the problems of school  
12 financing, which are severe, which are serious -- I'm not  
13 for a moment gainsaying -- are not caused by the state  
14 requirements to house students.

15 Los Angeles got away with year-round classes,  
16 with multi-tracks in school systems. They overcrowded  
17 the schools, but they were able to survive as the largest  
18 school district. So it wasn't compelled. There was no  
19 punishment.

20 So I'm not going to argue that the repair and  
21 maintenance -- non-emergency repair and maintenance the  
22 staff refers to is not a legal mandate. We made our  
23 opposition, I think, clear in terms of the confusion.  
24 The staff has a different opinion. I won't belabor that  
25 issue.

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1           If the Commission is going to adopt the  
2           overarching idea that new construction is not a mandate,  
3           then I will go on to the more narrow points that the  
4           staff recommends finding a mandate on, because I do have  
5           some disagreements and some other comments.

6           CHAIR SHEEHY: Thank you, Mr. Mischel.

7           Mr. O'Mara, did you want to add anything to  
8           Mr. Mischel's testimony?

9           MR. O'MARA: No, not at this time.

10          CHAIR SHEEHY: Thank you.

11          Mr. Petersen, did you want to respond?

12          MR. PETERSEN: Yes. He mentioned that they  
13          haven't floated a local bond in about 35 years. That  
14          coincides nicely with Proposition 13, eliminating local  
15          sources of bonding. And everybody knows how difficult it  
16          is politically to get supermajority bonds, that sort of  
17          thing. The situation has gotten much better in the last  
18          four or five years with the 55 percent bonds.

19          Apparently, the local boards are able to  
20          generate 55 percent instead of the 66 and  
21          two-thirds percent that it took before. So things are  
22          getting better on local bonds.

23          Using local bonds, of course, is you have to  
24          use the Labor Compliance Program if you use the  
25          55 percent bond. So you're driven into that requirement,

1 even though it's not state money.

2 I was going to say hooray for LA Unified  
3 before. But since he pointed out kids were attending in  
4 dilapidated and decrepit buildings, we really can't say  
5 hooray anymore. It's a shame they weren't able to  
6 replace those.

7 For some districts, the only source of funding  
8 is the state funding, the matching -- the different  
9 programs. There's developer fees, there's all sorts of  
10 sources. In fact, if you sell surplus property, you can  
11 use that for construction. But, again, I think the focus  
12 is on the two threshold issues. Somebody has to build  
13 schools eventually, although there's no penalty for not  
14 building them other than students attending in crumbling  
15 schools or overcrowded classrooms.

16 The court cases cited don't speak to the  
17 compulsion that exists here. The court cases talk about  
18 the draconian results, like loss of money. Since that  
19 was the only thing in front of the court, that's what the  
20 court ruled on. The draconian results of not building  
21 new classrooms are overcrowding, non-compliance, and  
22 children attending in unsafe structures. That's the  
23 draconian result of not building.

24 So in short, someone has to build. The  
25 Constitution says the Legislature is in charge of public

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1 schools. The Legislature discharges their duty by  
2 delegating to the school districts as they're the only  
3 ones in statute that can build schools. So somebody has  
4 to build them sometime, it looks like the public schools  
5 are compelled to do it.

6 CHAIR SHEEHY: Thank you, Mr. Petersen.

7 Ms. Ferebee?

8 MS. FEREBEE: Donna Ferebee, Department of  
9 Finance.

10 Finance has nothing to add beyond the comments  
11 submitted on April 15<sup>th</sup>. And really, those have to do  
12 with the identification of possible offsetting revenues.  
13 So my comments are limited to that. And, actually, I  
14 just wanted to ask a point of clarification on that, but  
15 can come back around to that if this is not the  
16 appropriate time.

17 CHAIR SHEEHY: The Chair would like to know if  
18 Finance supports or opposes the Commission's staff  
19 recommendation on this item?

20 MS. FEREBEE: Finance supports the final staff  
21 analysis, yes.

22 CHAIR SHEEHY: Okay, thank you.

23 Questions of the Commissioners?

24 *(No response)*

25 CHAIR SHEEHY: Seeing none, is there additional

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1 testimony from any of the witnesses today?

2 MR. PETERSEN: No.

3 CHAIR SHEEHY: Is there anybody in the  
4 public -- yes, Mr. Mischel?

5 MR. MISCHEL: Well, I would like to address the  
6 six claimed mandates, which I avoided, not knowing where  
7 the Commission was going to go on the larger overarching  
8 issue Mr. Petersen asked for a complete rethinking of the  
9 staff analysis. And rather than -- if that were where  
10 the Commission was going to go, I was not going to want  
11 to take up your time with the specifics. If the  
12 Commission is inclined to agree with the staff's analysis  
13 on the overarching compulsion issue, then I do have some  
14 comments about the six claimed mandates.

15 CHAIR SHEEHY: The pleasure of the Commission.  
16 Should we hear from Mr. Mischel?

17 MEMBER OLSEN: Well, I would like to because  
18 there's no way of assuming where -- until we take a vote,  
19 and then it precludes the testimony.

20 CHAIR SHEEHY: I agree. I agree, Ms. Olsen.  
21 Mr. Mischel?

22 MR. MISCHEL: I apologize. I just don't come  
23 up here enough.

24 We're really dealing here with one statute,  
25 which is statute 1978, Chapter 1249, which is what

1 created Labor Code section 1776, in a regulation adopted  
2 in 1984 in response to a 1983 statute concerning the  
3 costs of copying certified payroll records.

4 I'd like to first talk about where I think the  
5 staff analysis is incorrect. And I say that with all due  
6 respect for the very hard work of taking this complicated  
7 problem apart. But I think there are some problems with  
8 the analysis.

9 And I would also like to then talk about why  
10 what is left is not really subject as a state mandate.

11 CHAIR SHEEHY: I'm sorry, I just want to  
12 understand your position.

13 So you don't think there should be any partial  
14 approval at all? You disagree with it completely?

15 MR. MISCHEL: Yes. I don't think there should  
16 be any partial approval. But it's more a nuance than  
17 just "it's all wrong." I think --

18 CHAIR SHEEHY: All right. Continue, please.

19 MR. MISCHEL: Thank you.

20 The staff analysis, I think, misreads what  
21 CCR 16400 through 16403 says. So let me try to give you  
22 a description. And this is the description that the  
23 Labor Commissioner gives to awarding bodies and members  
24 of the public. I've actually confirmed that with both  
25 staff at the Labor Commissioner's office, as well as

1 their chief counsel.

2 The awarding body, under normal circumstances,  
3 has no obligation to ask for a contractor or  
4 subcontractor for certified payroll records. These are  
5 records the contractor is required to keep on a weekly  
6 basis of every employee with name, home address, Social  
7 Security number, classification, amount of hours worked,  
8 wages paid, fringe benefits paid, and the like.

9 And the awarding body has no obligation to ask  
10 for copies.

11 It can, in its own independent monitoring, if  
12 it's a labor compliance program, which is really not  
13 subject to -- the staff thinks is not a mandate -- it  
14 would as an enforcer but not as an awarding body.

15 The only time it is obligated to ask for  
16 certified payroll records is when a member of the  
17 public -- which could be a labor compliance organization,  
18 a labor management compliance organization, or just a  
19 member of the public -- asks for these records.

20 And depending on whether or not it's a labor  
21 management organization or a member of the public, there  
22 is a certain amount of redaction that must occur because  
23 of the Information Practices Act. So home addresses must  
24 be redacted, Social Security numbers have to be redacted  
25 and all personal identifiers. And this is an independent

1 requirement any local or state agency has. That goes way  
2 back.

3 What 16400 does and where the staff makes the  
4 mistake is, it gives awarding bodies, when they give a  
5 request -- I'm sorry, I'm addressing the points in the  
6 staff analysis that recommends finding copying of  
7 certified payroll records to be a mandate. I should have  
8 been more clear on that, and I apologize.

9 Awarding bodies under 16400(c) and (d) have the  
10 ability to either redact and produce copies of certified  
11 payroll records or tell the contractor to redact and copy  
12 certified payroll records and produce them to the  
13 awarding body. It's an either/or.

14 And so if an awarding body, which is the school  
15 district, chooses to do it itself, because it has the  
16 records or something, it's not at that point a mandate,  
17 because they do have the ability to require the private  
18 contractor to do the copying and the redaction.

19 This is borne out not only in 16400; but if you  
20 look at 16403, which is the limitation on copying costs  
21 of a dollar for the first page, 25¢ for the second page,  
22 and \$10 for the certification, it is what the awarding  
23 body tells the contractor it can charge. It is not a  
24 limit on the awarding body.

25 The awarding body's limitation is in 1776(i),



1 which says it has to comply with the Public Records Act,  
2 which back to 1968, says you could only charge direct  
3 costs.

4 And in 1984, the Department estimated those  
5 kinds of direct costs -- and so the purpose of making the  
6 contractor limited to these copying costs is to ensure  
7 the contractor doesn't make a profit over producing the  
8 CPRs and redacting them. That's how this works.

9 So awarding bodies never turn over CPRs, in  
10 the Department's experience. They always tell the  
11 contractor, "Redact, copy. Send them to us. This is the  
12 maximum you can charge."

13 And that's the bulk of this mandate as the  
14 staff analysis -- in terms of money, certainly, and in  
15 terms of what the staff recommends approving. And it's  
16 a misreading of the regulation. It's a misreading of the  
17 regulation. It is a misreading of how it actually works.

18 CHAIR SHEEHY: Ms. Shelton, would you like to  
19 respond to Mr. Mischel's comments regarding the staff  
20 analysis?

21 MS. SHELTON: Sure. I believe he's looking on  
22 pages 61, where we're discussing the mandate issue on  
23 section 16400 of the regulations. And then there's also  
24 a discussion on page 81 with regard to whether those  
25 activities constitute a new program or higher level of

1 service.

2 And as I read subdivision (c) of 16400, there  
3 definitely is a "shall" in that language. It says,  
4 *"The public entity receiving the request for the payroll*  
5 *records shall acknowledge receipt of the records and*  
6 *indicate the cost of providing the payroll records based*  
7 *on an estimate of the contractor or subcontractor or the*  
8 *public entity."*

9 I'm not sure what language you were pointing  
10 to where it says that either they shall redact or the  
11 contractor shall redact. And I'll let you point that out  
12 to us.

13 CHAIR SHEEHY: Please.

14 MR. MISCHEL: If you keep going in that  
15 section, it says -- because I was not addressing the  
16 acknowledgment of receipt.

17 MS. SHELTON: Okay.

18 MR. MISCHEL: I was going to come back to that.  
19 *"The acknowledgment of receipt may be accomplished by the*  
20 *public entities furnishing a copy of its written*  
21 *correspondence requesting certified payroll records sent*  
22 *to the specified contractor pursuant to 16400(d) below."*

23 So in other words, the acknowledgment is when  
24 the awarding body sends the contractor notice that it  
25 must redact, and if you looked at 16403, it says -- I'm

1       sorry, 16402, I misspoke -- "*The cost of preparation to*  
2       *each contractor, subcontractor, or public entity when*  
3       *request is made shall be...*"

4               So the contractor is in this with a limitation  
5       of the cost. And the district can comply with the  
6       obligation to provide certified payroll records by  
7       demanding it of the contractor.

8               I'm sorry?

9               MR. O'MARA: Notice is just a cc.

10              MR. MISCHEL: Yes, and the acknowledgment of  
11       this notice is simply a cc, which is making one photocopy  
12       and whatever postage is.

13              And I would like to point -- and I would like  
14       to point out once again -- maybe I don't need to again --  
15       but the costs at 16402 were as of 1984. And, again, I  
16       think that you have to think about --

17              CHAIR SHEEHY: I'm sorry, what do you mean by  
18       that the costs were as of 1984?

19              MR. MISCHEL: Because this regulation was  
20       issued in 1984, and has continued in this very form.

21              CHAIR SHEEHY: All right.

22              MR. MISCHEL: And so in judging -- we had  
23       raised that the -- it was the District -- it was the test  
24       claimant's obligation to prove these costs were not  
25       adequate. And somehow, it's supposed to be on us to

1 prove it.

2 But I put it to you at 1984, it's pretty  
3 obvious that a dollar for the first page, at 25¢ for  
4 every page thereafter, was more than a reasonable cost  
5 under the Public Records Act.

6 And so it's met by just pointing out that  
7 whatever increase in costs there are for copying, it is  
8 not because of a new mandate or a higher level of service  
9 required. It was offset at the time. It is, that the  
10 cost of living has gone up.

11 So I don't know if that answers your -- if that  
12 was responsive. I hope it was.

13 CHAIR SHEEHY: Ms. Shelton?

14 MS. SHELTON: I'm just trying to get clear what  
15 activities you're saying are not mandated. I understand  
16 your argument, and we weren't understanding it that way  
17 when we did review your comments.

18 There is going to be some activity for the  
19 local -- the school district to receive the request from  
20 the public. Certainly that's going to be a mandated  
21 activity.

22 And I'm not sure which activities you're  
23 suggesting are not mandated other than the redaction  
24 portion you're suggesting is discretionary on the part  
25 of the --

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1 CHAIR SHEEHY: He is also suggesting that the  
2 copies are not mandated; right?

3 MR. MISCHEL: Yes, the copying costs for the  
4 district.

5 MS. SHELTON: Sending the copies.

6 MR. MISCHEL: The copying costs to the  
7 district.

8 CHAIR SHEEHY: The copying costs?

9 MR. MISCHEL: Yes. So, yes, I agree -- my  
10 comments did not go to acknowledging receipt of the  
11 request.

12 MS. SHELTON: Okay.

13 MR. MISCHEL: And forwarding it on if it goes  
14 to the district -- I think it actually has to go to the  
15 awarding body, that they then have to physically send it  
16 or provide it. So those would not be covered by my  
17 comments.

18 MS. SHELTON: So the only activity you're  
19 suggesting to be deleted would be making the redactions?

20 CHAIR SHEEHY: And the cost of the copying.

21 MS. SHELTON: We don't have that on here.

22 The activities are obtaining the payroll  
23 records from the contractor, sending the acknowledgment  
24 to the requester, including notification of the costs to  
25 be paid for preparing the records, and then making the

1 redactions, and then providing the copies to the  
2 requester.

3 MR. MISCHEL: You know, I think that I was --  
4 I misled myself. Because in the staff's analysis,  
5 getting to that point, we had said there was an offset  
6 for the cost of copying. And the staff rejected that,  
7 saying it was for us to prove there was an offset. But  
8 that was at -- but I see, in looking at this, that the  
9 cost of copying is not in there.

10 CHAIR SHEEHY: Okay.

11 MR. MISCHEL: It's just getting and receiving.

12 That being the case, I would like to address  
13 an argument we've made in our comments, we've made  
14 repeatedly, that when this huge claim as it was  
15 originally filed is now whittled down to six things --  
16 or five things, whatever -- I mean, however you define  
17 them -- there isn't much left. And I don't think -- and  
18 I was hoping there would be somebody from Grossmont to  
19 ask questions about -- but this is not \$200 worth, let  
20 alone a thousand. And it doesn't meet -- if this were  
21 filed as this claim, it would not meet your filing  
22 requirements.

23 CHAIR SHEEHY: Excuse me, Ms. Shelton, could  
24 you clarify for my benefit the programmatic consequences  
25 of that? Isn't that for the Controller to determine

1 whether they meet the cost threshold? That's not for  
2 this body to, or is it?

3 MS. SHELTON: Well, the Government Code  
4 statutes say no claimant can file either a test claim or  
5 a reimbursement claim if they don't have -- today, it's a  
6 thousand dollars.

7 So if the Commission were to approve any  
8 portion of this test claim, no school district would be  
9 able to file a reimbursement claim with the Controller's  
10 office unless they showed under penalty of perjury that  
11 they have incurred a thousand dollars in costs.

12 At the time this test claim was filed, school  
13 districts and community-college districts were not  
14 required to provide their statewide cost estimate for  
15 specific activities. They only had to allege \$200 of  
16 costs. And so that was the law that was provided during  
17 the time they filed their test claim.

18 So at this point, there's no evidence in the  
19 record either way. And the Commission is not required to  
20 make findings with respect to specific costs to each  
21 individual claimant.

22 CHAIR SHEEHY: So notwithstanding -- if we  
23 just, for purposes of argument, stipulate for a moment  
24 that Mr. Mischel's right -- I'm not saying you are -- but  
25 just for a moment, he's right -- there's nothing that

1 would prevent this body from adopting the staff  
2 recommendation or some version thereof because it somehow  
3 may not add up to the minimum threshold; is that correct?

4 MS. SHELTON: That's correct. I think  
5 Mr. Mischel is talking about some language in the last  
6 Supreme Court decision in *San Diego Unified School*  
7 *District*; right?

8 MR. MISCHEL: Yes.

9 MS. SHELTON: And there, the Court was dueling  
10 with due-process requirements that followed an expulsion  
11 recommendation. A student had to have certain  
12 due-process requirements. And the Court acknowledged  
13 that some of the state due-process activities -- and  
14 there were a few notice requirements -- exceeded federal  
15 law.

16 And the Court said, "Well, those are just  
17 de minimis in cost, and they're part and parcel of  
18 federal due-process requirements."

19 That is the first time that the Court has used  
20 that language. The Court did not analyze the \$1,000  
21 threshold in statute at the time. And to this point, the  
22 Commission has never adopted a test-claim decision  
23 regarding a de minimis amount.

24 I really, at this point, don't know exactly  
25 what that means, when the threshold and statute is very



1 slow.

2 Typically, for the activities that are  
3 recommended in the conclusion, we do recommend them to be  
4 mandated activities that do constitute a new program or  
5 higher level of service. And at the time they filed  
6 their test claim, all they had to show was \$200 in costs,  
7 which at that point did constitute costs mandated by the  
8 state. So those do reach a level of an approved test  
9 claim.

10 CHAIR SHEEHY: Okay, Mr. Petersen, I'll get to  
11 you in a minute.

12 But, Camille, do you agree with Mr. Mischel  
13 that the exception in the staff recommendation to make  
14 the redactions, that that could be taken out as a  
15 reimbursable item? And would you be comfortable with  
16 that?

17 MS. SHELTON: I am comfortable with that. I  
18 see the logic in that.

19 Based on that language, then the other language  
20 in -- where is that -- in "B" -- in (d)(2)(B) of that  
21 regulation, that does put the penalty on the contractor  
22 for not complying in a certain time period.

23 I can get to that conclusion.

24 CHAIR SHEEHY: Okay, thank you, Ms. Shelton.

25 Mr. Petersen?

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1 MR. PETERSEN: On the jurisdictional issue of  
2 \$200, \$1,000, the test claimant district alleges those  
3 costs based on if you adopted the test claim as filed,  
4 not how it turns out.

5 MS. SHELTON: Right.

6 CHAIR SHEEHY: Right. Okay.

7 MR. PETERSEN: So you can, indeed -- it's going  
8 to be more than \$200 if you adopt it as filed.

9 CHAIR SHEEHY: Okay, thank you for clarifying  
10 that for the record.

11 I think we're okay, Mr. Mischel, unless you  
12 have a burning desire to say something.

13 MR. MISCHEL: Well, I would like to say  
14 something about the Commission maybe wanting to take a  
15 stab --

16 CHAIR SHEEHY: Apparently you do, so go ahead.

17 MR. MISCHEL: I do, thank you -- of how to  
18 define "de minimis." Because it is both -- in *San Diego*,  
19 it's also in the *County of Los Angeles* two cases, that  
20 actually San Diego School District refers to.

21 And generally -- and I would be willing to  
22 supply authority for this -- but there are regulations --  
23 there are a lot of statutes in California that talk about  
24 de minimis activities. And it's generally defined as  
25 something insignificant, something that doesn't make a

1 difference.

2 In Kern, the Kern School District, it was not  
3 addressing de minimis, but it referred to the one  
4 activity that might have been a mandate as a relatively  
5 minor reallocation of programmatic funds.

6 All of these indicate that there should be a --  
7 I don't know -- yes, of course, Mr. Petersen filed an  
8 adequate claim -- an estimate based on his claim. But  
9 I have been unable to find -- and I've never seen, in my  
10 experience, a single request to withhold contract funds  
11 for 1776(g) violations, which is one of the mandates  
12 here. I've never, ever seen it in eight years. No one in  
13 the Labor Commissioner's office can tell me that they  
14 have ever requested contract funds being withheld.

15 Most of the time, when the Labor Commissioner  
16 requests contract funds to be withheld -- when they issue  
17 a citation, the job is over and all the money has been  
18 spent. There's nothing to withhold.

19 And I put it to you -- you're down to send a  
20 carbon copy of a letter, put in a clause in a form  
21 contract that you use over and over and over again, and  
22 have had to since 1984. This is a test claim that goes  
23 back to 2000 -- or, yes, 2000. That these are -- these  
24 are insignificant. They are mere add-ons to what is not  
25 a mandate. And the Commission shouldn't now put

1 everybody through -- it's going to cost more for the  
2 Commission and the Department of Finance and the  
3 Controller's office to figure out whether anybody gets  
4 anything out of this. And it should just be stopped now.

5 Thank you.

6 CHAIR SHEEHY: Ms. Shelton?

7 MS. SHELTON: Just a couple of comments.

8 One, Article XIIIIB, Section 6 does require  
9 reimbursement for all costs mandated by the state. So  
10 the State Constitution requires the State to  
11 reimbursement for all those costs.

12 When you talk about the de minimis standard  
13 that the courts have talked about in the *San Diego* case  
14 and the *County of Los Angeles* case, in both situations,  
15 there was already existing due-process requirements, and  
16 in the *County of LA* case, requirements when somebody was  
17 charged with a crime, the crime of murder, and what was  
18 required to provide them adequate counsel.

19 In both circumstances, there was federal law  
20 that already was triggered and already had to be complied  
21 with. And the State implemented that federal law and did  
22 a little bit of tinkering by adding just a few more  
23 things to it. But those holdings were made only in the  
24 situation when you had an existing federal due-process  
25 requirement, and then the State comes and implements

1 here.

2 And it's not the case here. You don't have --  
3 I don't feel comfortable extending that holding to  
4 something beyond the circumstances in *San Diego* and  
5 *County of Los Angeles*.

6 I agree that the costs are small and that the  
7 burden would be on the school districts to show that  
8 they have at least a thousand dollars worth of costs for  
9 the activities as the Commission may approve. But I  
10 still think those activities at this phase being a  
11 question of law do constitute a reimbursable  
12 state-mandated program.

13 CHAIR SHEEHY: Thank you, Ms. Shelton.

14 Questions of the Commissioners?

15 *(No response)*

16 CHAIR SHEEHY: Is there any further testimony?

17 *(No response)*

18 CHAIR SHEEHY: Ms. Ferebee, do you have  
19 anything more to add?

20 MS. FEREBEE: Yes. But, again, it goes to the  
21 identification of possible offsetting revenue.

22 Is this an appropriate time?

23 CHAIR SHEEHY: Sure, this would be an  
24 appropriate time.

25 MS. FEREBEE: This is a slightly different

1 subject. In our letter of April 15<sup>th</sup>, 2008, the  
2 Department of Finance identified two possible offsetting  
3 revenue sources. One was the State School Deferred  
4 Maintenance Program, and the other, the Community  
5 Colleges Facility Deferred Maintenance and Special Repair  
6 Program. And it looked as though the staff analysis only  
7 called out the first one, the State School Deferred  
8 Maintenance Program, but not the second.

9 And although I do see it says, "...and any other  
10 eligible funding," would be identified at the parameters  
11 and guidelines phase, but I just wanted to ask a point  
12 of clarification, that the second funding source was not  
13 intentionally omitted for some reason, that it was found  
14 not to be a source.

15 MS. SHELTON: I have to be honest, the staff  
16 attorney that did write this analysis has retired, and  
17 I did not go back and look at those specific funding  
18 sources because we do have it there as any other eligible  
19 grant program as a possible offsetting revenue. And  
20 those can be clarified during parameters and guidelines.

21 CHAIR SHEEHY: Okay, so are you okay with that,  
22 Donna?

23 MS. FEREBEE: So long as there is nothing to  
24 prevent us from coming forward at that stage and --

25 CHAIR SHEEHY: With the Ps & Gs?

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1 MS. FEREBEE: -- and asserting that each of  
2 those programs is an offset.

3 CHAIR SHEEHY: Ms. Shelton, is there anything  
4 that would prevent Finance from coming forward when the  
5 Ps & Gs are being worked on with that additional  
6 offsetting revenue?

7 MS. SHELTON: No, there's no denial of any  
8 potential offsetting revenue source.

9 MS. FEREBEE: Thank you.

10 CHAIR SHEEHY: Anything else?

11 *(No response)*

12 CHAIR SHEEHY: Seeing none, is there a motion  
13 on this item?

14 *(No response)*

15 CHAIR SHEEHY: I would be prepared to make a  
16 motion, but since I'm chair, I prefer not to.

17 Ms. Olsen?

18 MEMBER OLSEN: I need to ask a question.

19 CHAIR SHEEHY: Please.

20 MEMBER OLSEN: Ms. Shelton, is it your position  
21 then, that I think I just heard you say, is that you  
22 would recommend that we adopt the staff recommendation  
23 as it came to us, irrespective of Mr. Mischel's comments?  
24 Or are you suggesting that we make a modification to it?

25 MS. SHELTON: My recommendation is that you do

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1 make a modification after reviewing that language again  
2 and looking at that penalty provision on the contract for  
3 redacting that information. That certainly -- I can see  
4 that interpretation of that regulation, yes.

5 CHAIR SHEEHY: So would it be fair to say then  
6 that the staff recommendation now is what it was, minus  
7 the redaction?

8 MS. SHELTON: Correct.

9 MEMBER OLSEN: So moved.

10 MEMBER LUJANO: Second.

11 CHAIR SHEEHY: We have a motion by Ms. Olsen, a  
12 second by Mr. Lujano.

13 Further discussion by the Commission members?

14 *(No response)*

15 CHAIR SHEEHY: Seeing none, all in favor?

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

17 CHAIR SHEEHY: Okay, so we've adopted the staff  
18 recommendation as modified.

19 MEMBER WORTHLEY: There's one "no." That's all  
20 right.

21 CHAIR SHEEHY: I'm sorry.

22 MEMBER WORTHLEY: That's okay.

23 CHAIR SHEEHY: I apologize.

24 MEMBER WORTHLEY: A small minority.

25 CHAIR SHEEHY: I'm sorry. Let the record show



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1 that Mr. Worthley is a "no" on this item.

2 MS. HIGASHI: Ms. Shelton will present Item 7.

3 MS. SHELTON: Item 7 is the Proposed Statement  
4 of Decision. And this decision, obviously, would need to  
5 be changed to reflect the Commission's vote with regard  
6 to taking out the redaction, and to authorize staff to  
7 make those changes with regard to that finding, as well  
8 as other non-substantive changes.

9 In that respect, that the staff recommends that  
10 the Commission adopt a proposed decision.

11 CHAIR SHEEHY: Is there such a proposed motion?

12 MEMBER OLSEN: So moved.

13 CHAIR SHEEHY: We have a motion.

14 MEMBER BRYANT: Second.

15 CHAIR SHEEHY: A second.

16 Mr. Worthley?

17 MEMBER WORTHLEY: I'll vote "aye."

18 CHAIR SHEEHY: All in favor?

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

20 CHAIR SHEEHY: Okay.

21 MS. HIGASHI: This brings us to Item 9.

22 This item will also be presented by

23 Ms. Shelton.

24 MS. SHELTON: Item 9 is a request filed by the  
25 Integrated Waste Management Board pursuant to Government

1 Code section 17557, subdivision (d), to amend the  
2 original parameters and guidelines for the Integrated  
3 Waste Management Program.

4 The Board requests that the parameters and  
5 guidelines be amended in Section VIII, Offsetting Cost  
6 Savings, to include language requiring community-college  
7 districts to analyze avoided disposal costs and other  
8 offsetting and savings related to staffing, overhead  
9 materials, and storage as a result of the test-claim  
10 statutes when filing reimbursement claims.

11 A similar request was made by the Board at the  
12 Commission's September hearing and the Commission denied  
13 that request.

14 For the reasons stated in the analysis, staff  
15 recommends that the Commission deny this request today.

16 The Board also requests that specified language  
17 be included in Section IX of the parameters and  
18 guidelines to require the Controller's claiming  
19 instructions to ensure that only additional expenses  
20 related to the mandate are included in a reimbursement  
21 claim, and that any offsetting savings not be included.

22 Staff recommends that the Commission deny this  
23 request as well. The parameters and guidelines already  
24 contain offsetting cost savings language and boilerplate  
25 language allowing reimbursement for only increased costs.

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1       Therefore, staff recommends that the Commission adopt  
2       the analysis and deny the Board's request to amend the  
3       parameters and guidelines.

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

6               MR. BLOCK:   Elliott Block for the Waste  
7       Management Board.

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

10              CHAIR SHEEHY:   Thank you.

11              Ms. Shelton, does the Integrated Waste  
12       Management Board have the authority to issue their own  
13       regulations on this matter?

14              MS. SHELTON:   I believe they do.   But Mr. Block  
15       would be able to answer that.

16              CHAIR SHEEHY:   Mr. Block, does the Integrated  
17       Waste Management Board have the authority to issue its  
18       own regulations on this matter?

19              MR. BLOCK:   We have the authority to issue  
20       regulations regarding the reports.   As with any  
21       regulations, we would have to show necessity for adopting  
22       those regulations.   At this point in time, we do not have  
23       any regulations or requirements for dollar amounts.

24              CHAIR SHEEHY:   Wouldn't that sort of solve your  
25       problem, though, if you adopted regs?   I mean, I almost

1 feel like --

2 MR. BLOCK: Actually, no, because it would be  
3 an additional mandate.

4 CHAIR SHEEHY: It almost seems like you're  
5 asking this body to adopt some sort of underground  
6 regulation or something to the action that you're  
7 seeking.

8 MR. BLOCK: Well, I guess with all due respect,  
9 I would think that since what you're all in the business  
10 of doing is determining what, if any, that mandate is,  
11 that that's within your purview to deal with. The Board  
12 is not tasked with determining what those costs are, and  
13 I think we would have some difficulty adopting  
14 regulations along those lines.

15 CHAIR SHEEHY: The reason why I open up by  
16 asking those questions rather than going through all the  
17 testimony is, this is not the first time that this item  
18 has come before this body. I think we're all familiar  
19 with this matter.

20 MR. BLOCK: And just so you know, I was not  
21 planning on making a presentation today. We submitted  
22 written comments. We wanted the record to reflect,  
23 again, the comments we had made previously.

24 The only thing I was going to say was actually  
25 along the lines you've just asked me, which is there is

1 a comment in the staff analysis about this information on  
2 cost savings is already available to the Board. And I  
3 wanted the record to be clear that that is not the case.  
4 That what the Board has in-house at this point is some  
5 information about reduction in disposal tonnage at  
6 landfills.

7 We do not require -- the information we have  
8 does not include the actual costs associated with that.  
9 We've used that information to come up with a statewide  
10 estimate in the past using average tipping-fee costs,  
11 but we do not have information for specific  
12 community-college districts. And that will vary around  
13 the state. Likewise, we do not have any cost information  
14 relating to other savings that might result. For  
15 instance, if a community-college district goes to  
16 two-sided copies instead of one-sided copy, presumably  
17 they would be buying less paper. That's information, a  
18 level of detail that we do not require, and most likely  
19 will not require.

20 I wasn't raising that to argue the point. I  
21 think that the Commission's position is pretty clear on  
22 this matter. I just wanted the record to be clear.

23 CHAIR SHEEHY: Thank you, Mr. Block.

24 Ms. Geanacou, would you want to comment?

25 MS. GEANACOU: Susan Geanacou, Department of

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1 Finance.

2 Finance supports the staff analysis as we did  
3 in, I believe, it was the September 2008 hearing to  
4 oppose the amendments as requested by the Board for the  
5 reasons stated in the Commission's staff analysis.

6 CHAIR SHEEHY: Thank you, Ms. Geanacou.

7 Questions or comments by the Board -- by  
8 Commission members?

9 *(No response)*

10 CHAIR SHEEHY: Seeing none, is there anybody in  
11 the public that would like to comment on this item?

12 *(No response)*

13 CHAIR SHEEHY: Seeing no requests there, is  
14 there a motion on this item?

15 MEMBER WORTHLEY: Move staff analysis -- or the  
16 recommendation, rather.

17 MEMBER OLSEN: Second.

18 CHAIR SHEEHY: We have a motion and a second.

19 All in favor?

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

21 CHAIR SHEEHY: Okay, that item is done.

22 Thank you, Mr. Block.

23 MS. HIGASHI: This brings us to Item 12.

24 Ms. Shelton?

25 MS. SHELTON: I don't have any updates.

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1           The two oral arguments that we had in  
2           December and one this January, we have not yet received  
3           any issued decisions yet. So as soon as we do, we'll let  
4           everybody know.

5           I did want to take this time to introduce our  
6           new staff attorney that has been with our office since  
7           December, Heather Halsey, if you want to stand.

8           She is a former staff counsel with the  
9           Department of Health Services. She has been a committee  
10          consultant for the Legislature, and also worked at OPR.  
11          She has sat as a member of the Commission during the  
12          Davis Administration, and has worked in private practice  
13          representing local government. So she's got broad  
14          experience.

15          CHAIR SHEEHY: Welcome. And thanks for joining  
16          the staff at the Commission on State Mandates.

17          MR. HALSEY: Thank you.

18          *(Applause)*

19          CHAIR SHEEHY: Okay, Paula?

20          MS. HIGASHI: Item 13, my report.

21          The first item on our report is workload as  
22          usual. I'd just like to note for the record that this  
23          week, we have received a couple of new test-claim filings  
24          as well as a new incorrect-reduction claim. So we'll be  
25          doing completeness review on those. And we also received

1 a filing on review of claiming instructions for  
2 *Graduation Requirements*. All of those will be processed  
3 in the next few days.

4 We have added a new category of workload, which  
5 has been around in the past. And that is applications  
6 for findings of significant financial distress.

7 We wanted to give you a heads-up that they  
8 might be back. And I've asked Ms. Patton to do a little  
9 bit of research and to report to us on just what is  
10 happening out in county land, and what would the costs be  
11 and what are our options.

12 And so, Ms. Patton?

13 MS. PATTON: Good morning. As Paula reported  
14 in the ED report, three counties have made inquiries  
15 regarding the process for filing applications for finding  
16 of significant financial distress. This is also known as  
17 the "SB 1033 process."

18 Current law authorizes any county to file an  
19 application with the Commission, and it requires the  
20 Commission to conduct a public hearing in the applicant  
21 county, and issue preliminary and final decisions on that  
22 application all within 90 days. This is a complex and  
23 expensive process, and it requires the Commission to  
24 review the applicant county's budgets and provide  
25 thorough and fiscal and legal analysis.



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1           Current law prohibits the Commission from  
2 making a finding of significant financial distress unless  
3 the County has made a compelling case that basic county  
4 services, including public safety, cannot be maintained.

5           The Commission typically contracts with  
6 Department of Finance's Office of Audits and Evaluations  
7 to conduct the fiscal portion of the analysis when we  
8 get these applications. And we're not budgeted for this  
9 process. So whenever we get an application, we must  
10 submit a request for deficiency funding with the  
11 Department of Finance under budget control section 9840.

12           The last application was Butte County in 2005.  
13 And we spent approximately \$106,000 to process that  
14 application.

15           CHAIR SHEEHY: I'm sorry, how much?

16           MS. PATTON: \$106,000.

17           That included 93,000 to contract with Finance.  
18 And we also hired a retired annuitant to perform other  
19 parts of the analysis and to organize the process.

20           And on top of that, we spent probably about  
21 180 hours of Commission staff time reviewing, and also  
22 doing some further analysis.

23           I called Finance's audit unit this week, and  
24 they did a really rough estimate, and they said today,  
25 if an application was filed, it would probably cost

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1 between \$130,000 and \$150,000 to contract with them to  
2 perform the fiscal analysis. That's not including the  
3 travel time that -- you know, travel costs we would need  
4 to pay for our public members to go to the applicant  
5 county, and staff, and the staff of Finance's audit unit.

6 If an application is filed, the Commission will  
7 need to decide how they want to conduct the hearing  
8 process. They can choose for the entire Commission to go  
9 to the applicant county and conduct the hearing, and  
10 approve the preliminary and final analysis; or you could  
11 decide to select the subcommittee of Commission members  
12 that would go to the applicant county, and then report to  
13 the full commission for your decision on the analysis.

14 Again, I want to tell you, we have no  
15 applications yet, but we've had some inquiries. We'll  
16 keep you apprised as we get more inquiries.

17 Also, I want to let you know that the County  
18 folks are meeting this afternoon following our hearing.  
19 And that is one of the issues that they're going to  
20 discuss, what they hear out there about possible filings.

21 CHAIR SHEEHY: Ms. Patton, since we don't have  
22 any actual requests or filings yet, I guess this is just  
23 sort of an early notification for us to think about? Or  
24 should we engage in a discussion now about how to handle  
25 it if it happens?

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1 Paula, do you have a recommendation?

2 MS. HIGASHI: I think it would be helpful to  
3 staff to have an idea of how you would like to proceed  
4 if one does come in, because we would have to wait then  
5 for the next meeting to bring it back up on the agenda  
6 before we could even finalize our budget request.

7 CHAIR SHEEHY: Okay.

8 MS. HIGASHI: So if we have an idea,  
9 generally -- and in the past, I would say I think every  
10 single application, everyone on the Commission did  
11 participate in the hearing.

12 CHAIR SHEEHY: Say that again, that last part?

13 MS. HIGASHI: All of the past, all of the other  
14 applications that have been processed, every Commission  
15 member participated in the review process and in the  
16 hearing, in the applicant county. There has not been an  
17 exception to that.

18 And so we --

19 CHAIR SHEEHY: So there's not been an exception  
20 to that; but we could, if we chose --

21 MS. HIGASHI: But regulations -

22 CHAIR SHEEHY: -- have the authority to do  
23 something with it.

24 MS. HIGASHI: Exactly. The regulations provide  
25 for it to be another way.

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1 CHAIR SHEEHY: Okay, and then as far as budget  
2 goes, if this were to happen, I'm guessing we're in  
3 January -- for all intents and purposes, we're in  
4 February now. How long is the process from when there's  
5 a filing until -- what is our requirement once there's a  
6 filing in terms of the timing before we have to have a  
7 hearing?

8 MS. HIGASHI: Well, what would happen is the  
9 process -- the clock would stop until we received the  
10 funding from the filing report.

11 CHAIR SHEEHY: Let me put it another way. So  
12 let's say Butte County --

13 MS. HIGASHI: So it should be 90 days, but --

14 CHAIR SHEEHY: 90 days?

15 MS. HIGASHI: But if we don't have the funding  
16 in which to start the processing, then the clock would  
17 stop.

18 CHAIR SHEEHY: Let me just tell what my concern  
19 is. I think Ms. Olsen could probably relate to this,  
20 probably Ms. Bryant, and any others who have worked in  
21 the Legislature. My guess is, if we sent a spring  
22 letter -- if the Department of Finance were to send a  
23 spring letter up to the Legislature for this matter, they  
24 would reject it and say this is contingency budgeting.  
25 You don't know how much you need.

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1 MS. HIGASHI: We would not put in the letter  
2 unless an application is filed.

3 CHAIR SHEEHY: Okay, so let's say one  
4 application is filed, you put in a letter, and then three  
5 weeks later, two more applications get filed. And  
6 then -- I mean, with the way our economy is going, it's  
7 not inconceivable that we could have nine, ten, 11, 12  
8 counties -- well, that's not inconceivable. I mean,  
9 local revenues are just dropping, unfortunately, like a  
10 bad elevator. And, you know, sales-tax revenues,  
11 property-tax revenues, and so on.

12 So I just think there needs to be some further  
13 discussion. Perhaps we can do it offline on how to  
14 handle this from a budget standpoint, but I don't think  
15 the Legislature's going to be real anxious to appropriate  
16 more general-fund money to the Commission on State  
17 Mandates unless it has a pretty good grasp on what you're  
18 going to need. That's -- I'm just thinking out loud  
19 here. I think it's important. I'd like to hear what  
20 other Commission members think.

21 And so one option would be to do a spring  
22 letter, if we really knew what you needed.

23 And the second option would be to just wait,  
24 and then run a 9840 request as a deficiency. But that  
25 would be probably more appropriate to do -- you can't run

1 the deficiency until -- I mean, really -- the problem is  
2 that until you know what it is, you really can't make the  
3 request.

4 MS. HIGASHI: No, I'm not suggesting that we  
5 would file a request before an application is filed.  
6 But I'm just suggesting that if we have an idea of what  
7 the Commission members would like to do, we can at least  
8 have all of our numbers ready to roll if an application  
9 does come in. And then we have the authorization from  
10 the Commission to proceed. But it's just planning and  
11 estimating that we're trying to do at this stage.

12 MS. PATTON: Mr. Sheehy, can I just tell you a  
13 couple things?

14 Our budget actually has language in it so that  
15 we would ask for the money using the 9840 control  
16 section. We would not ask for the money prior to an  
17 application being filed. And also, there is language in  
18 the governing statutes that if we get multiple claims,  
19 they wait.

20 So it says we have 90 days once we get the  
21 funding, to complete an application once we get the  
22 funding. And if more than one claim comes in, they have  
23 to wait their turn so we're not doing six claims at a  
24 time.

25 CHAIR SHEEHY: Does the definition -- I'm

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1       sorry, go ahead.

2                   MS. PATTON:   So that we don't do them  
3 simultaneously.

4                   CHAIR SHEEHY:   Does the definition of "getting  
5 the funding," does that therefore mean that once the  
6 Joint Legislative Budget Committee blesses the 9840  
7 request, is that the definition of getting the funding?  
8       Or does it mean when an actual appropriations bill is  
9 passed up in the Legislature?

10                  MS. HIGASHI:   It's when Finance is comfortable  
11 to start working on the contract.

12                  CHAIR SHEEHY:   Okay, all right.

13                  MEMBER LUJANO:   Mr. Chair?

14                  CHAIR SHEEHY:   Yes, Mr. Lujano?

15                  MEMBER LUJANO:   Can I suggest that we direct  
16 staff to use the same process that we used for Butte  
17 County? And then if we do get an application, then  
18 you'll let us know ahead of time.

19                  MS. HIGASHI:   Absolutely.

20                  CHAIR SHEEHY:   Okay, that's a good suggestion.

21                  MS. HIGASHI:   No, we're comfortable with that.  
22 We just needed to bring it up because times are  
23 different.

24                  MEMBER OLSEN:   And I also may be misreading  
25 between the lines, but I'm getting the sense that you're

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1 trying to get some sense of subcommittee versus full  
2 committee.

3 MS. HIGASHI: And whether or not there's any  
4 interest in that.

5 MEMBER OLSEN: Right. Because personally, from  
6 my point of view as the public member, when I look at the  
7 rest of the committee, everybody is coming from either a  
8 local government or a state perspective. I'm the only  
9 one who isn't. So I personally feel like I have to be at  
10 all of the hearings because I'm the only one that doesn't  
11 come from one of those two perspectives. So I'm  
12 volunteering for the subcommittee or I'm volunteering all  
13 of us to be there in full committee.

14 CHAIR SHEEHY: Well, we need at least two  
15 people on the subcommittee.

16 Is there a second volunteer?

17 MS. HIGASHI: Mr. Worthley?

18 MEMBER WORTHLEY: I would be the likely  
19 candidate. But there again, we run into the problem of  
20 probably the reason why the whole Commission in the past  
21 has participated, is because my tendency might be  
22 contrary to other commissioners given the fact I am a  
23 county supervisor.

24 But I would certainly want to be on it -- if we  
25 were going to go with a smaller subcommittee, I'd want to



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1 be a member of that.

2 CHAIR SHEEHY: So that's good to know,  
3 Mr. Worthley and Ms. Olsen, but we don't need to decide  
4 that now.

5 MS. HIGASHI: No. But from a staff  
6 perspective, I'd just like to ask if Mr. Worthley and  
7 Ms. Olsen would feel comfortable acting as kind of a  
8 policy subcommittee that, if we have questions, we just  
9 need to talk them through with other commission --  
10 between the meetings --

11 CHAIR SHEEHY: You mean, formal action by us  
12 today in order to establish that?

13 MS. HIGASHI: No, just kind of a working  
14 subcommittee, that's fine.

15 CHAIR SHEEHY: So that Mr. Worthley and  
16 Ms. Olsen will be that working subcommittee now, just for  
17 policy.

18 MS. HIGASHI: Okay.

19 CHAIR SHEEHY: How many entities have stirred  
20 the pot with you a little bit?

21 MS. HIGASHI: Nancy has actually heard from --

22 MS. PATTON: Three.

23 MS. HIGASHI: -- three.

24 CHAIR SHEEHY: Okay.

25 MEMBER WORTHLEY: Including some unusual ones.

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1 MS. HIGASHI: Large, too.

2 MS. PATTON: Large counties.

3 CHAIR SHEEHY: Yes, if you could identify  
4 yourself?

5 MR. BURDICK: If I could just comment. Allan  
6 Burdick on behalf of CSAC SB 90 Service. And I  
7 appreciate the Commission considering at this time.

8 A couple things I just wanted to point out in  
9 your considerations because they may end up being  
10 executive-session items. I'm not sure exactly how you  
11 will handle them. But as was pointed out, that, you  
12 know, the consideration has just been taken place  
13 recently amongst counties. And today, there's going to  
14 be some meetings and some additional consideration. And  
15 the CSAC staff is going to be working with Nancy on  
16 trying to alert that.

17 And this is always kind of a last alternative  
18 for counties usually to do, but once they do it and make  
19 that decision, it's critical that hopefully it will move  
20 forward.

21 And the only thing I just wanted to comment  
22 primarily on was, you know, let's put them in line, you  
23 know, one at a time-type thing. And I think if people --  
24 if a county gets to this point and needs the Commission  
25 to go to that and authorize that so they can make the

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1 reduction in their GA payments, they need that to be done  
2 as quickly as possible.

3 And so hopefully the Commission will not say,  
4 "Well, first in gets to go and then the next one has got  
5 to wait." They'll look at some process to consider  
6 timely consideration of all the counties that may have  
7 to apply if that, in fact, does take place.

8 I would also like to point out -- and Camille  
9 could probably -- and Paula could clarify this -- that  
10 this provision takes precedence over test claims. And,  
11 therefore, you know, to the extent that these do happen,  
12 then the other test claimants, both counties, cities, and  
13 school districts, will be negatively impacted by this  
14 process. So I just want to make sure that the Commission  
15 understands that the way this was set up is that it  
16 becomes the priority of the Commission.

17 So I just wanted to do that.

18 And also, as Nancy mentioned, CSAC staff will  
19 be reporting to her on a regular basis as it relates to  
20 people are considering this.

21 And I think some of this may not happen until  
22 after we have a state budget, and then counties will know  
23 much more what their fiscal situation is.

24 So we also have a little bit of a delay in the  
25 sense of waiting to see -- you know, for the other shoe

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1 to drop from the state and its impact on counties.

2 Thank you very much.

3 MS. HIGASHI: Let me just add for  
4 clarification. When the process first started, virtually  
5 the Commission did stop hearing test claims for probably  
6 about a year, and only heard applications.

7 What we've done since the Butte County  
8 applications have been filed, the last couple, is we have  
9 contracted with Finance to do the entire analysis, not  
10 just looking at the dollars and the budget issues, but  
11 also looking at the programmatic issues connected to the  
12 budget.

13 So Commission staff has not done the  
14 first-level analysis and read-through, but has worked  
15 with Finance staff as they have prepared that analysis,  
16 reviewed it, approved it, before it's finally issued to  
17 the County and to the Commission.

18 And so it's a much different process than it  
19 used to be. Because when we did the Butte application,  
20 we were still having test claims heard at regular  
21 Commission meetings. And I think Nancy found our old  
22 work sheets, and noted that I had spent about 60 hours  
23 on the last Butte application. So it was not 100 percent  
24 of my time, for instance.

25 Other issues that I've reported are just that

1 we have the typical reports going into the Legislature.  
2 One of those reports is the AB 3000 report sent to the  
3 Legislature by the Controller.

4 And I had excerpted some columns, some dollar  
5 amounts from that report on the cost of mandates. And  
6 I had a question from one of the members, because you  
7 could not add or subtract and come to a number.

8 CHAIR SHEEHY: Right.

9 MS. HIGASHI: And the reason for that is  
10 because I excerpted data. And so I'm giving you copies  
11 of the pages in which the data was excerpted, so you can  
12 see that there were other columns of data reported. But  
13 because it's on legal-sized paper and the type font is  
14 so small, I just happened to pull the numbers from three  
15 columns.

16 CHAIR SHEEHY: Okay, thank you, Paula.

17 MS. HIGASHI: And so what I've given you are  
18 the actual pages where the data was excerpted from.

19 And if you want to look at the entire report,  
20 of course, it is online on the State Controller's Web  
21 site.

22 The only other -- the main issue of note  
23 regarding our budget, of course, is that the issue of  
24 state furloughs was heard in Court yesterday. And we  
25 all know what the judge decided. And I'm sure there are

1 entities out there, employee organizations that are  
2 contemplating what next steps would be taken.

3 At this point, according to the press reports,  
4 we've all been advised that DPA will give us further  
5 guidance. And as of this morning, we hadn't heard any  
6 further details.

7 But in the meantime, from a staff perspective,  
8 we are working through what we would need to do from a  
9 public-notice perspective, to be sure that our  
10 constituents in the mandates community know what's  
11 happening, that we have information on our Web site; and  
12 that, internally, we have administrative procedures for  
13 handling mail, phone calls, e-mail, et cetera, on those  
14 days that are coming up.

15 Are there any questions, or do any of the  
16 members have further information they wish to share?

17 CHAIR SHEEHY: But as you make those decisions  
18 on how you're going to handle that, just keep us  
19 informed.

20 MS. HIGASHI: Okay, we will.

21 CHAIR SHEEHY: Thank you, Paula.

22 Do you have anything else?

23 MS. HIGASHI: We've given you an alert, as to  
24 the Leg. Analyst report issued. And on the education  
25 part of the budget, and there are mentions of education

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1 mandate reform, we're all waiting to hear what that might  
2 entail. We understand that there are analysts looking  
3 at all of the education mandates, contemplating if any  
4 of them could be changed or suspended.

5 And also, earlier this week, a separate report  
6 was issued on realignment in criminal justice programs.  
7 Mentioned in that proposal was POBOR and a proposal to  
8 fund it at, I think it was, \$140 per officer. The  
9 Commission last adopted Ps & Gs with a rate of \$37.25 per  
10 officer. And so folks may want to take a look at that.  
11 We'll be following it.

12 And then just the tentative agendas for the  
13 March hearing and for the May hearing.

14 Are there any questions?

15 *(No response)*

16 MS. HIGASHI: Public comment?

17 *(No response)*

18 CHAIR SHEEHY: Is there any further public  
19 comment at this point in our hearing?

20 *(No response)*

21 CHAIR SHEEHY: Seeing none, we're going to go  
22 into closed session.

23 The Commission on State Mandates will meet in  
24 closed executive session pursuant to Government Code  
25 section 11126, subdivision (e), to confer with and

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1 receive advice from legal counsel for consideration and  
2 action, as necessary and appropriate, upon the pending  
3 litigation listed on the published notice and agenda, and  
4 to confer with and receive advice from legal counsel  
5 regarding potential litigation. The Commission will also  
6 confer on personal matters listed on the published notice  
7 and agenda.

8 We will reconvene in open session in  
9 approximately 15 minutes.

10 Thank you very much for your cooperation as you  
11 leave the room.

12 *(The Commission met in executive closed*  
13 *session from 12:04 p.m. to 12:13 p.m.)*

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

24 The Commission will now reconvene in open  
25 session.



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Is there any further business today to come before the Commission on State Mandates?

*(No response)*

CHAIR SHEEHY: In that case, seeing none, a motion to adjourn would be in order.

MEMBER WORTHLEY: So moved.

MEMBER BRYANT: Second.

CHAIR SHEEHY: All in favor?

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

CHAIR SHEEHY: This meeting is adjourned.

MS. HIGASHI: Thank you.

*(The meeting concluded at 12:13 p.m.)*

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**REPORTER'S CERTIFICATE**

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on February 18, 2009.



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