

**MINUTES**

**COMMISSION ON STATE MANDATES**

Department of Social Services Building  
744 P Street, First Floor, Auditorium  
Sacramento, California  
March 30, 2005

- Present:       Chairperson Anne Sheehan  
                  Representative of the Director of the Department of Finance  
                  Member Nicholas Smith  
                  Representative of the State Controller  
                  Member Francisco Lujano  
                  Representative of the State Treasurer  
                  Member Jan Boel  
                  Representative of the Director of the Office of Planning and Research
- Vacant:        Local Elected Officials (2)  
                  Public Member

**CALL TO ORDER AND ROLL CALL**

Chairperson Sheehan called the meeting to order at 9:32 a.m.

**APPROVAL OF MINUTES**

Item 1        January 27, 2005

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

**PROPOSED CONSENT CALENDAR**

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

**ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE**

Item 11       *Differential Pay and Reemployment*, 99-TC-02  
Palmdale School District, Claimant  
Education Code Sections 44977 and 44978.1  
Statutes 1998, Chapter 30 (SB 1019)

**ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING**

Item 12       Implementation of Statutes 2004, Chapter 890 (AB 2856)  
Proposed Amendments to California Code of Regulations, Title 2,  
Chapter 2.5, Article 1. General, Article 3. Test Claims, Article 4.  
Mandates Recognized by the Legislature, Article 7. Hearings, and  
Article 8.5. Forms

Member Boel moved for adoption of the consent calendar, which consisted of items 11 and 12. With a second by Member Lujano, the consent calendar was unanimously adopted.

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

Paula Higashi, Executive Director, swore in the parties and witnesses intending to testify before the Commission.

- Item 2 Executive Director's Decision that section 1188.4 of the Commission's Regulations does not apply to the reconsideration of the *Regional Housing Needs Determination: Councils of Governments* decision (Items 5-6 below). Association of Bay Area Governments, Appellant

Eric Feller, Commission Counsel, presented this item. He stated that the Association of Bay Area Governments appeals the Executive Director's decision that section 1188.4 of the Commission's regulations does not apply to the reconsideration of the decision in *Regional Housing Needs Determination: Councils of Governments*, arguing that its application is necessary to secure procedural safeguards and due process for the reconsideration.

Mr. Feller noted that staff complied with proper notice and due process procedures on the *Regional Housing Needs Determination: Councils of Governments* reconsideration. He indicated that if the Commission were to apply section 1188.4 to this matter, it could conflict with the directive in SB 1102 to reconsider the original Board of Control decision. Section 1188.4 requires five affirmative commissioner votes to overturn a prior decision. This five-vote requirement is not found in statute.

Staff found that section 1188.4 does not apply to this reconsideration because, by its own terms, it does not apply to prior decisions made before July 1998, the operative date of the regulation, or to decisions more than 30 days old. More importantly, the section only applies to reconsiderations requested by a party or a commissioner, not to court-ordered reconsiderations. Therefore, staff found the same rationale exists for not applying it to legislative reconsiderations and recommended that the Commission deny the appeal.

Parties were represented as follows: Kenneth Moy, on behalf of the appellant.

Mr. Moy disagreed with staff's conclusion, stating that it was unfair for the five-vote requirement not to be applied to legislative reconsiderations. He urged the Commission to impose the requirements of section 1188.4 in this matter.

Mr. Feller noted that while Mr. Moy urged the five-vote requirement of section 1188.4 to apply, he did not urge the other requirements. Mr. Feller stated that the regulation could not thwart the intent of the Legislature in SB 1102, which was enacted notwithstanding any other provision of law.

Member Smith and Member Boel asked clarifying questions regarding the regulation, to which Mr. Feller responded. Regarding Member Boel's question about the number of currently appointed Commission members, Paul Starkey, Chief Legal Counsel, responded that under the regulations, the number of appointed members establishes the quorum.

Member Boel made a motion to deny the appeal, which was seconded by Member Smith. The motion carried unanimously.

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

**RECONSIDERATION OF TEST CLAIM DECISIONS DIRECTED BY THE LEGISLATURE AND PROPOSED STATEMENTS OF DECISION**

- Item 3      *Regional Housing Needs Determination*, 04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04  
Statutes 1980, Chapter 1143  
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Legislature requested the reconsideration of this matter in SB 1102.

Because cities and counties have fee authority in Government Code sections 65104 and 65584.1, staff found that the test claim legislation did not impose costs mandated by the state on cities and counties within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17556. Staff recommended that the Commission adopt the staff analysis, which denies the Board of Control decisions (claim numbers 3759, 3760, and 3916) effective July 1, 2004.

Parties were represented as follows: Betsy Strauss, with the League of California Cities; Leonard Kaye, on behalf of the County of Los Angeles; Annette Chinn, with Cost Recovery Systems; and Susan Geanacou, with the Department of Finance.

Ms. Strauss argued that although Government Code sections 65104 and 65584.1 provide fee authority, they do not provide sufficient legal authority to actually impose the fees. She explained that they were general authority statutes to impose fees on developers for the work of the city's planning agencies. She clarified her concern that it was not possible in many cases to actually spread the mandate's costs, or quantify them in a way that is legally accurate to the developers. Therefore, she argued that the authority really cannot be used, and thus, should not be a valid basis for denying the matter.

Chairperson Sheehan asked what steps the cities had taken to impose the fees. Ms. Strauss responded that she did not know of a good example.

Mr. Kaye stated that counties did not have unfettered discretion to impose fees. He noted staff's reliance on the 1997 *Connell* case to support its position, which he believed implied that there is both a service provider and service user in this matter. Mr. Kaye argued, however, that in many communities, there are no builders or developers to charge, and therefore, there is insufficient fee authority.

As an example, Mr. Kaye described that in the case of the *Sudden Infant Death Syndrome* program, the court ruled that it was impractical and impossible to implement the firefighter fees. Though he acknowledged the situations were different, he maintained that they could not just impose a fee if there was no service end user to impose the fee upon.

Chairperson Sheehan asked for clarification about the *Connell* decision. Mr. Kaye responded that unlike this matter, there was clearly someone to charge in the *Connell* case.

Ms. Geanacou stated that she had nothing further to add to her written comments, which were consistent with the staff analysis.

After being sworn in by Ms. Higashi, Ms. Chinn indicated that prior to becoming a consultant, she worked in the area of developer impact fees. Because it was an area that local governments could not be reimbursed for, she stated that they were not allowed to include the costs of housing elements in developer fees. In addition, Ms. Chinn asked the Commission to consider the amount of land available for development. She noted that in cities with growth potential, the money could be recovered, but in those cities that are already overbuilt, there was no one to impose the fees upon.

Mr. Feller stated that, under the reasoning of *Connel*, local governments have legal authority to impose the fees; that controls.

Member Smith commented that the State Controller did not agree with the policy behind the legislative intent to pass along fees for a state-mandated program to developers and ultimately to homebuyers. Acknowledging that the Commission was not a policy body, he indicated that they had questions regarding the ability of local governments to pass along fees to a relatively small segment of society. Therefore, he stated his intent to abstain from the item because the Controller needed more information.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

Item 4 Proposed Statement of Decision: *Regional Housing Needs Determination*,  
04-RL-3759-02, 04-RL-3760-03, and 04-RL-3916-04  
See Above

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

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

Item 5 *Regional Housing Needs Determination: Councils of Governments*,  
04-RL-3929-05  
Statutes 1980, Chapter 1143  
Directed by Statutes 2004, Chapter 227, Sections 109-110 (SB 1102)

Eric Feller, Commission Counsel, presented this item. He stated that the Legislature requested the reconsideration of this matter in SB 1102.

Staff found that councils of governments are not eligible claimants for purposes of mandate reimbursement under article XIII B, section 6 of the California Constitution. As an alternative ground for dismissal, staff also found that the test claim legislation did not impose costs mandated by the state on councils of governments within the meaning of article XIII B, section 6 and Government Code section 17556 because Government Code section 65584.1 provides councils of governments with fee authority. Therefore, staff recommended that the Commission adopt the staff analysis, which denies Board of Control claim number 3929, effective July 1, 2004.

Parties were represented as follows: Scott Haggerty and Rose Jacobs Gibson, on behalf of the Association of Bay Area Governments; Karen Tachiki and Lynn Harris, with the Southern California Association of Governments; Rusty Selix, with the Association of Councils of Governments; and Susan Geanacou, with the Department of Finance.

Mr. Haggerty noted that the Association of Bay Area Governments was strictly a membership organization and that its revenues come directly from its membership fees, which come from proceeds of taxes. Noting Commission staff's position that councils of governments must be treated like redevelopment agencies because they do not have the power to tax, he argued that unlike redevelopment agencies, the Association of Bay Area Governments had no dedicated source of revenue to perform the housing needs mandate.

Mr. Haggerty felt it was absurd for the state to refuse to fund the Association of Bay Area Governments for the mandate because it had no power to tax. Although councils of government have the power to impose fees, he asserted that the solution was untested because of questions about the legality of the fee, and also impractical because of the obstacles to implementing the fee.

As a membership organization, Mr. Haggerty explained that a general assembly and an executive board govern the Association of Bay Area Governments. He stated that the board represents its members on issues such as the imposition of fees and would not vote to tax themselves to fund a state mandate. Moreover, he indicated that even if a majority of the membership voted to impose the fee, there would be problems in collecting the fee. Mr. Haggerty urged the Commission to affirm the prior Board of Control decision.

Ms. Gibson provided background information about the Association of Bay Area Governments and the Bay Area's local housing needs. She asserted that if the Association of Bay Area Governments were not funded for this program, local funds would not be available. She noted that without councils of government, the state would be responsible for addressing housing needs. Thus, to ensure continued success in implementing the mandate, she stated that councils of governments need state funding.

Further, Ms. Gibson noted that it was bad policy to fund housing needs with fees passed on to developers, which ultimately increases the cost of housing. She urged the Commission to uphold the prior Board of Control decision.

Ms. Tachiki provided background information about the Southern California Association of Governments. As to the issue of eligibility, she believed that staff's recommendation was based on a very strained interpretation of the definition of "local agency," and argued that there was nothing in statute that requires that all powers be common in the listing of agencies. She added that the definition of local agency includes other political subdivisions of the state, in which joint powers agencies would fit.

Regarding the ability to impose fees, Ms. Tachiki noted that councils of governments were established solely by agreement of their agencies. Thus, unless their joint powers agreements are amended, they do not have authority to levy the fees. She asserted that the authority provided in the Government Code cannot force councils of government to amend their agreements. She added that under the statute that establishes and provides the parameters for establishing a joint powers authority, the Legislature states that only those powers provided for by agreement can be exercised. Therefore, Ms. Tachiki maintained that councils of government did not have the

ability to impose fees.

Ms. Geanacou had nothing further to add to her written comments, which were consistent with the staff analysis.

Mr. Selix submitted that all councils of governments view this mandate as an unfunded mandate. He asserted that unlike local governments, there was no ability to collect a fee because no one comes before councils of governments as an applicant. He felt that the existing funding scheme was inadequate to carry out the mandate, and thus, the matter would end up in court.

As to the eligibility issue, Mr. Feller responded that based on the *Bell Community Redevelopment Agency v. Woolsey* case, staff found that the only relevant authority for eligibility is the power to tax. Because councils of governments do not have this power, he maintained that they were not eligible claimants. Furthermore, he indicated that the Legislature purposely removed redevelopment agencies and joint powers agencies from the definition of eligible claimants and the statutory scheme. Regarding the imposition of the fee, Mr. Feller maintained that it was the legal authority that was relevant rather than the practical implications.

Member Smith stated that the Controller wished to consider the two issues – overall eligibility of councils of government, versus specific eligibility for this mandate – separately. Mr. Starkey stated that a motion was necessary for the procedure.

Member Smith made a motion to take the two rationales separately and vote first on whether councils of governments are eligible claimants for purposes of mandate reimbursement under article XIII B, section 6; and second, whether the test claim legislation imposes costs mandated by the state on councils of government for the *Regional Housing Needs Determination: Councils of Governments* program.

Member Boel requested Mr. Feller's comments as to the motion. Mr. Feller responded that the Commission could take the action. However, he recommended that the proposed Statement of Decision be taken back if the votes were different so that the rationale for the bifurcation could be included.

Mr. Starkey added that it was acceptable to separate the two issues, and noted that the current staff recommendation addresses both issues as separate grounds for denial. He stated that the Commission needed to vote on the motion to separate the issues.

After some discussion about the issues, Member Lujano seconded Member Smith's motion to divide the issues. The motion failed 2-2, with Member Boel and Chairperson Sheehan voting "No."

Member Smith stated the Controller's belief that until further legislative guidance is provided, there may be instances where councils of governments are eligible claimants. They did not believe that courts had specifically addressed the issue. He stated that they disagreed with the policy and felt that there would be considerable challenges for councils of governments to comply with the legislation. Without enough facts, Member Smith stated his intent to abstain from the item.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

- Item 6 Proposed Statement of Decision: *Regional Housing Needs Determination: Councils of Governments*, 04-RL-3929-05  
See Above

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

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried 3-0. Member Smith abstained.

Chairperson Sheehan commented that this issue would resurface, and thus, she encouraged discussion with the Legislature because of all the policy issues involved.

[At this time, a short break was taken.]

#### REMAND OF TEST CLAIM DECISION DIRECTED BY THE COURT AND PROPOSED STATEMENT OF DECISION

- Item 7 *School Bus Safety II*, 97-TC-22 (Peremptory Writ of Mandamus from the Superior Court, *Department of Finance v. Commission on State Mandates* (02CS00994))  
Education Code Sections 38048 [Renumbered 39831.5], 39831.3, and 39831.5,  
Vehicle Code Section 22112  
Statutes 1994, Chapter 831 (SB 2019)  
Statutes 1996, Chapter 277 (SB 1562)  
Statutes 1997, Chapter 739 (AB 1297)

Katherine Tokarski, Commission Counsel, presented this item. She stated that the Clovis Unified School District submitted a test claim in 1997 alleging a reimbursable state mandate for school districts to perform new activities by instructing pupils and informing parents of school bus safety procedures. The Commission's Statement of Decision, adopted July 29, 1999, found that the test claim legislation imposed reimbursable state-mandated activities.

Ms. Tokarski indicated that the Department of Finance challenged the decision in the Sacramento County Superior Court. The court found that the test claim was not a reimbursable state-mandated program to the extent that the underlying school bus transportation services were discretionary, and left one issue for remand. Thus, the Commission must reconsider the limited issue of whether the federal Individuals with Disabilities Education Act, or any other federal law, requires school districts to transport any students; and if so, whether the test claim statutes mandate a new program or higher level of service beyond federal requirements for which there are reimbursable state-mandated costs.

Staff concluded that although federal law may require transportation of disabled children under certain circumstances, the law does not require school districts to provide a school bus transportation program. Therefore, pursuant to the court decision and article XIII B, section 6 of the California Constitution, staff found that the *School Bus Safety II* test claim statutes do not

impose a reimbursable state-mandate program. Staff recommended that the Commission adopt the final staff analysis, which denies the claim.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; and Susan Geanacou, with the Department of Finance.

Mr. Petersen made no further arguments.

Ms. Geanacou supported the staff analysis.

Member Boel made a motion to adopt the staff analysis, which was seconded by Member Lujano. The motion carried unanimously.

Item 8 Proposed Statement of Decision: *School Bus Safety II, 97-TC-22*  
See above

Katherine Tokarski, Commission Counsel, 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. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision to adopt the staff recommendation on the remanded test claim. She indicated that minor changes, including those to reflect the hearing testimony and vote count, would be included before issuing the final decision.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Lujano. The motion carried unanimously.

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

**ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES**

Item 9 *False Reports of Police Misconduct, 00-TC-26*  
County of San Bernardino, Claimant  
Penal Section 148.6, subdivisions (a)(2) and (a)(3)  
Statutes 1995, Chapter 590 (AB 1732)  
Statutes 2000, Chapter 289 (SB 2133)

Nancy Patton, Assistant Executive Director, presented this item. She stated that the Commission adopted the Statement of Decision for the *False Reports of Police Misconduct* on February 20, 2004, which found that any new law enforcement agency accepting an allegation of misconduct against a peace officer must have the complainant read and sign an information advisory informing the complainant that it is a misdemeanor to knowingly file a false complaint against a peace officer. The test claim legislation also requires the advisory to be made available in multiple languages.

Ms. Patton noted that staff deleted two activities from the proposed parameters and guidelines: 1) training, and 2) interviewing the complainant and addressing questions or concerns. She explained that these activities were not identified in the Statement of Decision and were not found to be reasonably necessary to comply with the mandate. Staff also clarified the reimbursement periods and reduced the proposed uniform time allowance to reflect the deleted activities.

Staff recommended that the Commission adopt staff's proposed parameters and guidelines.

Parties were represented as follows: Bonnie Ter Keurst, on behalf of the claimant; and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst stated that at the hearing to adopt the Statement of Decision, she raised issues regarding the two activities that staff proposed for deletion. Her concern at the time was that the decision would eliminate activities that would be reasonably necessary to accomplish the intent of law because it included a statement that said, “The Commission denies any remaining alleged activities or costs.” Now at the parameters and guidelines phase, this in fact was the problem – the intent of law versus exact wording.

As to the issue of training, Ms. Ter Keurst recognized that original training already took place but she argued that there are new employees and possible changes in procedures that could involve training. She asserted that while staff believes any training costs would be minimal, it still translated into costs for counties. Thus, she recommended that the Commission approve one-time training per employee that actually performs the reimbursable activities. Further, Ms. Ter Keurst disagreed with staff’s conclusion as to the second issue of interviewing complainants and addressing questions or concerns, asserting that the counties must do what is reasonable to provide the service to the public. She suggested that the Commission include the activities in the parameters and guidelines.

Ms. Ter Keurst also disagreed with staff’s proposed uniform time allowance of two minutes because she felt that staff could not take the county’s time study and make their own assumptions. She asserted that the county cannot provide the service to complainants within two minutes. Lastly, she suggested a technical modification to the period of reimbursement section.

Ms. Patton indicated that the two activities the claimant was requesting were specifically denied in the Commission’s Statement of Decision. In fact, she noted that as the legislation went through the process, the bill was amended to specifically delete those activities. As to the issue of the uniform cost allowance, she maintained that the claimant proposed two minutes for the activity of handing the form to the complainant. She explained that staff simply reduced the minutes from the time study that corresponded with the deleted activities.

Ms. Ter Keurst responded that eliminating both ends of the time study was inappropriate. She felt that if the interaction before and after handing the form to the complainant was not going to be part of the mandate, then the time it takes to complete the actual mandate must be readdressed.

Ms. Tokarski stated that the test claim legislation did not newly allow for people to complain about peace officer misconduct. She maintained that taking the complaint itself had nothing to do with the Penal Code section 148.6 activity of providing the complainant with information about the possibility of misdemeanor charges in the event of a false complaint.

Ms. Geanacou supported the staff analysis.

Member Boel made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried unanimously.

- Item 10     *Integrated Waste Management, 00-TC-07*  
Santa Monica and Lake Tahoe Community College Districts,  
Co-Claimants  
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 1999)

Eric Feller, Commission Counsel, presented the proposed parameters and guidelines for this item. He stated that the primary issue as raised by the Integrated Waste Management Board was whether reduced disposal costs should count as offsetting savings and calculating reimbursement claims. He indicated that the Board would have these savings subtracted from each claim.

Staff found that the offsetting savings for reduced disposal costs cannot be counted against claims because there was no mandate for disposal at issue. Rather, the focus of the reimbursable activities was diversion of solid waste via activities listed in the Statement of Decision and the proposed parameters and guidelines. Therefore, because there was no mandate for diversion or disposal upon which to calculate savings before the test claim statute, Mr. Feller indicated that there could be no offsetting savings for those costs. He explained that the offsetting revenues in this program are those from the sale of recyclable materials, as directed in accordance with the Public Contract Code and a student center fee, if applicable.

Staff recommended that the Commission adopt the staff's proposed parameters and guidelines.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; Deborah Borzelleri, Trevor O'Shaughnessy, Phil Morales, and Eddie Fox, with the Integrated Waste Management Board; and Susan Geanacou, with the Department of Finance.

Ms. Borzelleri stated that at the hearing on the Statement of Decision, the Board provided information regarding significant cost savings that could be realized by implementing diversion programs as required by the test claim statutes. She also stated that the Board experienced significant cost savings through local government implementation of diversion programs. She argued that while the Commission's regulations provide that all proposed parameters and guidelines must allow for any offsetting savings realized in the same program, she felt that staff summarily dismissed the information that the Board brought forward.

Ms. Borzelleri disagreed with the staff opinion. She discussed the relationship between disposal and diversion, arguing that increased diversion directly results in disposal reduction, meaning that any diversion will directly result in reduced disposal and reduced costs. She submitted that a rough calculation of actual diversion reported by 117 community colleges and district offices in 2003 indicated an aggregate cost savings of almost \$2 million as a result of the diversion programs.

Moreover, Ms. Borzelleri noted that the Board submitted a proposed cost savings worksheet that claimants could use as a tool to identify costs and the commensurate savings realized as a result of implementing diversion programs. She clarified that the Board was not requiring the form, but offered it as a useful tool that could be adopted as part of the parameters and guidelines. Also, she suggested language for the reimbursable activities section regarding actual costs.

Mr. O'Shaughnessy provided two examples of activities to illustrate the Board's point that the activities implemented and mandated by this legislation went above and beyond what was traditionally required.

Mr. Peterson stated the Integrated Waste Management Board had a common misperception about mandate reimbursement. He explained that only increased costs are reimbursed, and therefore, doing what you used to do is not an increased cost. Additionally, he argued that the Board did not have the same understanding of the legal meaning of cost savings. He indicated that as a matter of law, cost savings require a mandate to be in effect in 1975. Because there was no mandate for waste disposal reduction or source reduction recycling in 1975, he maintained that there was no mandate to be relieved, and thus, no cost savings.

Mr. Petersen noted that claimants do not claim costs that are not incurred. Therefore, if there is no mandate, costs will not be incurred, and there will be no increased costs to claim.

Ms. Geanacou deferred to the programmatic expertise of the Board. She noted, however, a reference in the Public Resources Code section 42955, subdivision (a), which renders permissive the community colleges' obligation to direct any cost savings to implement the waste management plan. Thus, she noted that there was some amount of discretion for community colleges as to what to do with any cost savings.

Mr. Petersen responded that there is a statute to offset recycling income and the Legislature can speak to the issue if it exceeds \$2,000.

Member Boel made a motion to adopt the staff recommendation, which was seconded by Member Lujano. The motion carried unanimously.

## **STAFF REPORTS**

Item 13 Chief Legal Counsel's Report (info)  
Recent Decisions, Litigation Calendar

Mr. Starkey reported that the *Animal Adoption* cases listed in the litigation calendar were consolidated and will be heard in the Sacramento Superior Court.

Item 14 Executive Director's Report (info/action)  
Workload, SB 1033, Governor's Proposed 2005-06 Budget, Reports to  
the Legislature, Legislation, and Next Hearing

Ms. Higashi's report included the following:

- *Workload.* Chairperson Sheehan reminded the Commission members that they would be traveling to Butte County on May 12 for the hearing in Oroville. Ms. Higashi reported that the Department of Finance audit staff had been retained to review the county's application and to prepare the analysis, and that Shirley Opie, former Commission assistant executive director, was rehired to manage the process. She stated that the Commission would be adopting a Statement of Decision on June 10.
- *Budget.* Ms. Higashi reported that there have been no meetings with Budget Committee staff but hearings were coming up in the next few weeks. She stated that she would keep the Commission posted.

Member Smith noted that the Controller was concerned about the large number of pending test claims. He stated that the Controller supported the Commission's budget augmentation and offered support from his office.

## **PUBLIC COMMENT**

An unidentified woman in the audience indicated that she had a hard time hearing from the back of the room.

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

### **PENDING LITIGATION**

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
4. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
5. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
6. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
7. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
8. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
9. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]

10. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
11. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Case No. BS092146, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*]
13. *City of Newport Beach v. Commission on State Mandates, et al.*, Case No. BS095456, in the Superior Court of the State of California, County of Los Angeles, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]

#### POTENTIAL LITIGATION

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

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

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

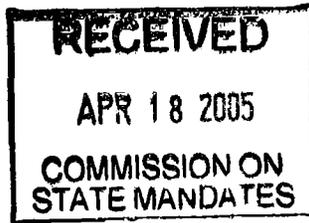
#### REPORT FROM CLOSED EXECUTIVE SESSION

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

#### ADJOURNMENT

Hearing no further business, and upon motion by Member Smith and second by Member Boel, Chairperson Sheehan adjourned the meeting at 11:34 a.m.

  
PAULA HIGASHI  
Executive Director



**ORIGINAL**

--oOo--

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

--oOo--

**TIME:** 9:32 a.m.

**DATE:** Wednesday, March 30, 2005

**PLACE:** Department of Social Services  
744 P Street, First Floor Auditorium  
Sacramento, California

--oOo--

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

--oOo--

**Daniel P. Feldhaus**

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN  
(*Commission Chair*)  
Representative for TOM CAMPBELL  
Director  
Department of Finance

JAN BOEL  
Acting Director  
State Office of Planning and Research

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

NICHOLAS SMITH  
Representative for STEVE WESTLY  
State Controller

--o0o--

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director

PAUL M. STARKEY  
Chief Legal Counsel

ERIC FELLER  
Commission Counsel

NANCY PATTON  
Assistant Executive Director

KATHERINE TOKARSKI  
Commission Counsel

--o0o--

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 2:**

For Association of Bay Area Governments:

KENNETH MOY  
Legal Counsel  
Association of Bay Area Governments  
P.O. Box 2050  
Oakland, CA 94604-2050

**Appearing Re Item 3:**

For the Department of Finance:

SUSAN S. GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, CA 95814

For the League of California Cities:

BETSY STRAUSS  
Special Counsel  
League of California Cities

For the County of Los Angeles

LEONARD KAYE, Esq.  
Certified Public Accountant  
Accounting Division  
Department of Auditor-Controller  
County of Los Angeles  
500 West Temple Street, Suite 603  
Los Angeles, CA 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 3: *continued***

For Cost Recovery Systems, Inc.

ANNETTE S. CHINN  
President  
Cost Recovery Systems, Inc.  
705-2 East Bidwell Street, Suite 294  
Folsom, CA 95630

**Appearing Re Item 5:**

For Association for Bay Area Governments

SCOTT HAGGERTY  
President  
Association for Bay Area Governments  
Hotel Claremont  
Berkeley, CA 94705

ROSE JACOBS GIBSON  
Executive Board Member  
Association for Bay Area Governments  
and  
County Supervisor  
San Mateo County

For Southern California Association of Governments  
(SCAG):

KAREN L. TACHIKI  
Chief Counsel  
Southern California Association of Governments (SCAG)  
818 West Seventh Street, 12th Floor  
Los Angeles, CA 90017-3435

LYNN HARRIS  
Southern California Association of Governments (SCAG)  
818 West Seventh Street, 12th Floor  
Los Angeles, CA 90017-3435

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5: *continued***

For Association of Councils of Governments

RUSTY SELIX  
Executive Director  
Association of Councils of Governments

For the Department of Finance:

SUSAN S. GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, CA 95814

**Appearing Re Item 7:**

For Claimant Clovis Unified School District

KEITH B. PETERSEN, MPA, JD  
President  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

For the Department of Finance:

SUSAN S. GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, CA 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing re Item 9:**

For the County of San Bernardino:

BONNIE TER KEURST  
Manager  
Reimbursable Projects  
Office of the Auditor/Controller-Recorder  
County of San Bernardino  
222 W. Hospitality Lane, Fourth Floor  
San Bernardino, CA 92415-0018

For the Department of Finance:

SUSAN S. GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, CA 95814

**Appearing re Item 10:**

DEBORAH BORZELLERI  
Staff Counsel  
California Integrated Waste Management Board  
1001 I Street  
P.O. Box 4025  
Sacramento CA 95812

TREVOR O'SHAUGHNESSY  
Section Supervisor  
State and Local Assistance Branch  
California Integrated Waste Management Board

PHIL MORALES  
Staff  
California Integrated Waste Management Board

EDDIE FOX  
Staff  
California Integrated Waste Management Board

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 10: *continued*

For Claimants Santa Monica and Lake Tahoe College  
Districts:

KEITH B. PETERSEN, MPA, JD  
President  
SixTen and Associates  
5252 Balboa Avenue, Suite 807  
San Diego, CA 92117

For the Department of Finance:

SUSAN S. GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street  
Sacramento, CA 95814

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**Commission on State Mandates - March 30, 2005**

1 BE IT REMEMBERED that on Wednesday, March 30, 2005,  
2 commencing at the hour of 9:32 a.m., thereof, at the  
3 Department of Social Services, 744 P Street, First Floor  
4 Auditorium, Sacramento, California, before me, DANIEL P.  
5 FELDHAUS, CSR #6949, RDR and CRR, the following  
6 proceedings were held:

7 --oOo--

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

10 Can you call the roll?

11 MS. HIGASHI: Ms. Boel?

12 MEMBER BOEL: Here.

13 MS. HIGASHI: Mr. Lujano?

14 MEMBER LUJANO: Here.

15 MS. HIGASHI: Mr. Smith?

16 MEMBER SMITH: Here.

17 MS. HIGASHI: Ms. Sheehan?

18 MEMBER SHEEHAN: Here.

19 MS. HIGASHI: Thank you.

20 CHAIR SHEEHAN: We have a quorum.

21 The first agenda item are the minutes.

22 MS. HIGASHI: Item 1 is approval of the minutes of  
23 January 27, 2005.

24 MEMBER BOEL: I'll move to approve the minutes.

25 I move to approve the minutes.

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: Do we have a second?

2 MEMBER LUJANO: Second.

3 CHAIR SHEEHAN: All right, we have a motion and a  
4 second.

5 Any discussion?

6 *(No audible response was heard.)*

7 CHAIR SHEEHAN: All those in favor?

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

9 CHAIR SHEEHAN: Any opposed?

10 *(No audible response was heard.)*

11 CHAIR SHEEHAN: The minutes are adopted.

12 The next item we're going to take a little bit out  
13 of order, the Consent Calendar.

14 Paula, do you want to introduce this?

15 MS. HIGASHI: Certainly. The Consent Calendar  
16 consists of two items: Item 11, Adoption of Proposed  
17 Statewide Cost Estimate on *Differential Pay and*  
18 *Reemployment*, and Item 12, Adoption of the Commission  
19 Order to Initiate Rulemaking.

20 Staff recommends adoption.

21 CHAIR SHEEHAN: Are there any objections to the  
22 Consent Calendar or any comments?

23 *(No audible response was heard.)*

24 CHAIR SHEEHAN: All right, is there a motion to --

25 MEMBER BOEL: I move that we adopt the Consent

Commission on State Mandates - March 30, 2005

1 Calendar.

2 CHAIR SHEEHAN: Is there a second?

3 MEMBER LUJANO: Second.

4 CHAIR SHEEHAN: We have a motion and a second.

5 All those in favor?

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

7 CHAIR SHEEHAN: Any opposed?

8 All right, the motion carries, and the Consent

9 Calendar is adopted.

10 Then we move on to Item 2.

11 Paula?

12 MS. HIGASHI: We're now at the hearing portion of  
13 our meeting; and, as is customary, what I'd like to do  
14 is request that all of the parties and witnesses and  
15 representatives who intend to come before the Commission  
16 and testify, please stand and raise your right or left  
17 hands, whatever is appropriate for you.

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

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

22 MS. HIGASHI: Thank you very much.

23 *(Brief discussion off record at 9:36 a.m.)*

24 MS. HIGASHI: We're now at Item 2. The Commission  
25 counsel, Eric Feller, will present the Appeal of the

Commission on State Mandates - March 30, 2005

1 Executive Director's Decision.

2 MR. FELLER: Good morning.

3 Before you, is the Appeal of the Executive  
4 Director's Decision that section 1188.4 of the  
5 Commission's regulations does not apply to the  
6 reconsideration of the decision in *Regional Housing Needs*  
7 *Determination: Councils of Governments*, or Items 5 and 6  
8 on the agenda.

9 The Association of Bay Area Governments, or "ABAG,"  
10 appeals this decision, stating that it is necessary that  
11 1188.4 apply to secure procedural safeguards and due  
12 process for the reconsideration.

13 Staff has complied with proper notice and due  
14 process procedures on the *Regional Housing Needs*  
15 reconsideration. If the Commission were to apply section  
16 1188.4 to this matter, it could conflict with the  
17 directive and SB 1102 to consider the original Board of  
18 Control decision by avoiding the reconsideration all  
19 together or acquiring five affirmative commissioner votes  
20 to grant the reconsideration hearing or to change the  
21 prior final decision.

22 This five-vote requirement to reconsider is not  
23 found in statute.

24 Staff finds that section 1188.4 does not apply to  
25 reconsideration because, by its own terms, it does not

**Commission on State Mandates - March 30, 2005**

1 apply to reconsiderations of prior final decisions made  
2 before July 1998, the date the regulation became  
3 operative, or to decisions more than 30 days after they  
4 are mailed or delivered to the claimant.

5 Also, this section only applies to reconsiderations  
6 requested by a party or a commissioner. It states it  
7 does not apply to court-ordered reconsiderations; and  
8 staff finds the same rationale exists for not applying  
9 it to legislative reconsiderations. Therefore, staff  
10 recommends that the Commission deny this appeal.

11 Would the parties and witnesses please state their  
12 name for the record?

13 CHAIR SHEEHAN: And Mr. Moy?

14 MR. MOY: Yes.

15 CHAIR SHEEHAN: Why don't you go ahead and begin?

16 MR. MOY: Thank you very much.

17 My name is Kenneth Moy. I'm the counsel to the  
18 Association of Bay Area Governments. Good morning,  
19 Members of the Commission and staff.

20 I want to thank the staff for the work that it has  
21 done.

22 I think the discussion between myself and Mr. Feller  
23 has reached a point where lawyers have parsed the  
24 question as thoroughly as it can be parsed; and I think  
25 we have reached a position where reasonable parties can

1 agree to disagree on our conclusions.

2 I would like to have the Commission consider,  
3 however, the practical consequences of the position  
4 that's being urged on it, as compared to the practical  
5 consequences of the position that ABAG is urging be  
6 imposed -- that this Commission adopt.

7 I don't think there's any dispute that section  
8 1188.4, as adopted by this Commission, to establish a  
9 procedure that would apply to some cases where  
10 reconsideration would come up before this Commission; and  
11 that those cases include cases where parties who are  
12 involved in the original decision, such as ABAG, such as  
13 a city or county, or such as the Department of Finance,  
14 would have to come before this Commission and would have  
15 to overcome two procedural hurdles in order to have that  
16 reconsideration heard:

17 One, five affirmative votes of this Commission to  
18 even hear the reconsideration.

19 Second, five affirmative votes of this Commission in  
20 order to overturn its prior decision and go ahead and  
21 change the subvention requirements.

22 Under those circumstances, we think that a fair and  
23 due process, which this body, as a quasi-judicial body,  
24 is required to provide all the parties who come before  
25 it, would be subverted. And if that same five-vote

Commission on State Mandates - March 30, 2005

1 requirement was not applied to a request by the  
2 Legislature, which was not a party to any of the original  
3 decisions, and which would otherwise be applied to ABAG,  
4 if we were to come to you today and say that the 1981  
5 decision that your predecessor body came to should be  
6 overturned, we'd have to get two -- twice, five  
7 affirmative votes in order to have that heard and to  
8 overturn it.

9 Now, the State Legislature passes a trailer bill in  
10 the waning moments of the session. Item 109 out of 110  
11 sections, in that trailer bill, and suddenly it is given  
12 a free pass to come before this commission, forces this  
13 Commission to take up the matter on reconsideration, and  
14 then gets another free pass and requires only a majority  
15 vote in order to overturn its prior decision. I think  
16 that's unfair. I think it's patently unfair, and it  
17 should be patently unfair to each of you. And that we  
18 urge that you impose the requirements of section 1188.4,  
19 at least to the action of overturning its prior decision  
20 in this matter.

21 I'll be prepared to take any questions.

22 CHAIR SHEEHAN: Thank you.

23 Are there any questions of Mr. Moy from the  
24 Commission Members?

25 *(No audible response was heard.)*

Commission on State Mandates - March 30, 2005

1 CHAIR SHEEHAN: No?

2 Okay, thank you.

3 Before Mr. Feller makes any comments, would anyone  
4 else in the audience like to address this issue?

5 *(No audible response was heard.)*

6 CHAIR SHEEHAN: No?

7 Mr. Feller, do you want to respond, or anything you  
8 want to add on this?

9 MR. FELLER: Just, what I seem to be hearing is that  
10 ABAG is urging the five-vote requirement of 1188.4 to  
11 apply, and yet not the other provisions. Either the  
12 regulation applies or it doesn't.

13 The fact of the matter is that the regulation can't  
14 thwart the intent of the Legislature in SB 1102, which  
15 was enacted, notwithstanding any other provision of law.  
16 And so it is staff's position that SB 1102, requiring the  
17 reconsideration, trump; and that no regulation can thwart  
18 that intent.

19 CHAIR SHEEHAN: Okay, any questions for staff?

20 MEMBER SMITH: Yes, one question. Thank you, Madam  
21 Chair.

22 So if 1188.4, in its entirety, were to be invoked,  
23 this commission could not rehear this; is that right?  
24 Because of the time limit --

25 MR. FELLER: Yes, for two reasons. It's not -- by

Commission on State Mandates - March 30, 2005

1 its own terms, it can't apply to any reconsiderations  
2 before the regulation was adopted, which was in July  
3 1998. And, of course, the Board of Control decision was  
4 a 1981 decision. The other reason is, it doesn't apply  
5 to reconsiderations of decisions that are more than  
6 30 days old, subject to, I think, one extension in the  
7 regulation is all.

8 MEMBER SMITH: Thank you.

9 MEMBER BOEL: I have a question.

10 CHAIR SHEEHAN: Ms. Boel?

11 MEMBER BOEL: What is the situation on the -- if we  
12 don't have five appointees on the Commission, as we don't  
13 right now, we only have four members on the Commission,  
14 how does this -- you have to wait until you have a full  
15 complement of commissioners?

16 MR. FELLER: I believe so.

17 Mr. Starkey might have another opinion on that.

18 MR. STARKEY: Under the regulations, the quorum is  
19 established by the number of members who are appointed.

20 MEMBER BOEL: Okay.

21 MR. STARKEY: So we have a quorum. And because we  
22 find that 1188.4 does not apply, the majority vote or the  
23 quorum would constitute the necessary majority to take  
24 any action by the Commission. And that's also in the  
25 Commission regulations.

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1 CHAIR SHEEHAN: Okay, any other questions or  
2 comments?

3 *(No audible response was heard.)*

4 CHAIR SHEEHAN: Is there a motion?

5 MEMBER BOEL: I move that the Commission should deny  
6 this appeal.

7 CHAIR SHEEHAN: Is there a second on that motion?

8 MEMBER SMITH: I'll second the motion.

9 CHAIR SHEEHAN: All right. So we have a motion and  
10 a second to deny the appeal, which would thereby adopt  
11 the staff analysis and recommendations.

12 All those in favor of the motion, signify by saying  
13 "aye."

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

15 CHAIR SHEEHAN: Any opposed?

16 *(No audible response was heard.)*

17 CHAIR SHEEHAN: So the appeal is denied and the  
18 staff analysis is adopted.

19 On to Item 3.

20 Paula, would you like to introduce this item?

21 MS. HIGASHI: Mr. Feller will also present this  
22 item.

23 CHAIR SHEEHAN: All right.

24 MR. FELLER: Thank you.

25 This is the Reconsideration of the *Regional Housing*

**Commission on State Mandates - March 30, 2005**

1       *Needs Determination* Decision as applied to cities and  
2       counties. This reconsideration of the Board of Control  
3       decision on claims 3759, 3760, and 3916 was requested by  
4       the Legislature in SB 1102.

5               The League of California Cities, California State  
6       Association of Counties, and the California Building  
7       Industry Association all submitted comments. Comments on  
8       the staff draft analysis were also received from the  
9       Southern California Association of Governments, or SCAG,  
10       submitted jointly with other Councils of Governments, or  
11       COGs, all of whom argue that the activities and  
12       Parameters and Guidelines issued by the Board of Control  
13       should continue to be reimbursable.

14               Comments from Senator Ducheny and the Department of  
15       Finance took the opposite view.

16               For reasons stated in the analysis, staff finds  
17       that the test claim legislation does not impose cost  
18       mandated by the State on cities and counties within the  
19       meaning of Article XIII B, section 6, of the California  
20       Constitution, and Government Code section 17556. And the  
21       reason is that city and counties have the authority in  
22       Government Code 65104 and 65584.1. Therefore, staff  
23       recommends the Commission adopt this analysis and deny  
24       the Board of Control claim numbers 3759, 3760, and 3916  
25       effective July 1, 2004.

Commission on State Mandates - March 30, 2005

1           Would the parties and witnesses come forward and  
2 please state your name for the record?

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

5           MS. STRAUSS: Betsy Strauss with the League of  
6 California Cities.

7           MR. KAYE: Good morning. Leonard Kaye, County of  
8 Los Angeles.

9           CHAIR SHEEHAN: And, Ms. Strauss, do you want to go  
10 first?

11           And then, Susan, you're also here for Klint Johnson?

12           MS. GEANACOU: I don't know if Klint's here.

13           Yes, thank you.

14           CHAIR SHEEHAN: Okay, all right. Go ahead,  
15 Ms. Strauss.

16           MS. STRAUSS: Thank you very much.

17           Again, my name is Betsy Strauss. I'm special  
18 counsel to the League of California Cities. And I  
19 appreciate the opportunity to speak briefly to you this  
20 morning about why we think the recommended decision is  
21 misguided.

22           The reason is that although, in fact, it's certainly  
23 true that there are two different statutes in the  
24 Government Code that provide cities with the authority to  
25 impose fees for the different activities that are

**Commission on State Mandates - March 30, 2005**

1 required to comply with the Housing Lender law, neither  
2 one of these statutes provides sufficient legal authority  
3 to be, in fact, impose those fees.

4 The two statutes are Government Code section 65104  
5 and Government Code section 65584.1. Each of those  
6 statutes are general authority to plan to impose fees on  
7 developers for the work of the city's planning agencies.

8 Your recommended decision points out that the case  
9 called Connell v. the Superior Court of Sacramento County  
10 says that it's not relevant to consider whether or not a  
11 local government may choose, for economic reasons, to  
12 impose the fees; that if the legal authority is in the  
13 statutes, then that's enough to conclude that the mandate  
14 is not reimbursable.

15 But we are not arguing here that a city or county  
16 may choose not to impose the fee for economic reasons.  
17 We are arguing that it's not possible, in many cases, to  
18 actually spread the costs, to quantify the costs in a way  
19 that's legally accurate to the developers for these  
20 mandates.

21 The costs for adopting a housing element can run  
22 into the hundreds of thousands of dollars.

23 The requirement then is for a city to come up with  
24 an appropriate way, a legally appropriate way to divide  
25 those costs amongst property owners who benefit from that

1 work.

2 So then the issue is, how is it that a city  
3 determines how a property owner who comes in to build a  
4 30-unit apartment building or 400-unit subdivision, what  
5 is his fair share of the costs of adopting that housing  
6 element and complying with those statutes? And it is  
7 that concern, the concern that we're unable, in many  
8 cases, to actually carry out the authority that's given  
9 to us in the State statute, that is the basis of our  
10 argument. That the authority then is really no authority  
11 at all. And because the authority is not able to be  
12 used, in many cases, that it is not a valid basis for  
13 denying the claim.

14 Thank you very much for your attention.

15 CHAIR SHEEHAN: I have a question.

16 Can you tell me -- and maybe as counsel for the  
17 cities -- what steps have the cities taken to attempt to  
18 implement this?

19 MS. STRAUSS: To impose the fees?

20 CHAIR SHEEHAN: Yes.

21 MS. STRAUSS: I don't have an example of a  
22 particular city, to answer your question.

23 The steps would be the same type of step -- let me  
24 use a different example. This is easy.

25 If you come in to apply for a use permit, a

**Commission on State Mandates - March 30, 2005**

1 conditional-use permit to build an apartment building in  
2 the City of Sacramento, the City of Sacramento charges  
3 you, presumably, the costs of its planning agency, which  
4 is 65104 of the statute. And it keeps track of its  
5 planners and its engineers or its attorneys on your  
6 application, on an hourly basis, and it charges you for  
7 that. So there is a direct connection between the  
8 services provided, the fee charged, and your application.  
9 It's that direct connection that's difficult to derive,  
10 in many cases.

11 To try to answer your question, the attempt then  
12 would be to take the costs of developing this housing  
13 element, which, of course, runs into very large numbers,  
14 as you know; and then to try to determine out of that,  
15 what part of that then is related to this application for  
16 the apartment project.

17 I don't have an example, to answer your question  
18 directly.

19 The difficulty, of course, is that, from the City's  
20 standpoint, we are under these constitutional  
21 restrictions that don't allow us to charge fees in excess  
22 of the costs, or otherwise there's a tax which we can't  
23 charge if we vote. So then the issue is, how do I  
24 decide, as a city, how much of those costs are  
25 attributable to your project as opposed to someone's down

1 the road?

2 I appreciate that's not a specific answer to your  
3 question, but I don't have a good example.

4 CHAIR SHEEHAN: That's okay.

5 Any other questions for Ms. Strauss?

6 *(No audible response was heard.)*

7 CHAIR SHEEHAN: Okay.

8 MR. KAYE: Good morning. My name is Leonard Kaye.  
9 I'm with the County of Los Angeles. And I'm here to add  
10 support to our city colleagues and the others around the  
11 state that feel very strongly in this matter that, with  
12 all due respect to the State Legislature, that counties  
13 don't have unfettered discretion to impose fees. And I  
14 think that that is an issue.

15 Commission staff concluded, in their conclusion,  
16 that staff finds that the test claim legislation does not  
17 impose costs mandated by the State because cities and  
18 counties have fee authority to cover the costs of a  
19 regional housing needs program.

20 And they cite, in support of that, the 1997 Connell  
21 case, that has a slightly different wording. It says the  
22 board, the Board of Control, your predecessor agency,  
23 shall not find a reimbursable cost if the local agency  
24 has the authority, i.e., the right of the power, to levy  
25 service charges, fees, or assessments sufficient to pay

1 for the mandated program.

2 Now, I admit that this is somewhat nuanced; but  
3 let's consider for a moment the specific wording that the  
4 Connell decision rested upon, and that is the power to  
5 levy service charges.

6 Now, service charges, in my mind, imply that there's  
7 a service provider and a service user. However -- and  
8 it's quite clear that we are service providers.

9 But who is the service user? Are we merely  
10 accepting the fact that out there, theoretically, there  
11 is some builder or developer that are going to absorb  
12 these costs because perhaps there's a nexus between the  
13 benefit to be received and the service that's being  
14 provided?

15 And my point is that there are very, very many  
16 assumptions that have underlined staff's analysis, that  
17 perhaps give us pause to think that, "Well, maybe we  
18 don't have unfettered discretion to impose fees."

19 We do have much broader discretion where we've got  
20 an identified service user to impose service fees. That,  
21 I will grant. But in many communities, perhaps builders  
22 or developers are not there, and perhaps there's no one  
23 to charge.

24 And so the issue becomes, is this purely a  
25 theoretical argument or does it have any basis in the

1 fact or law?

2 And our position is, again, with the cities, that we  
3 clearly have insufficient fee authority. And this came  
4 up once before in the Commission. I apologize, I don't  
5 have specific cites and so forth.

6 But in the case of the SIDS firefighter fees, where  
7 I think it was the Second Appellate ruling, that even  
8 where the Legislature says, "You shall charge a fee," if  
9 it's impractical or impossible for us to levy the fee --  
10 in this case, we would have to charge a person that has  
11 undergone the tragedy of a SIDS death in their family,  
12 I believe it was \$3,400; or we'd have to charge the  
13 firefighters, the first responders, a fee for providing  
14 this new service. So there, the Court ruled that it was  
15 just impractical and impossible to implement that kind of  
16 fee.

17 And I am not saying that it's precisely the same  
18 kind of situation here, but I think that it is a bit of  
19 a stretch to say that even where we can't identify any  
20 service end user, any beneficiary that we have *ipso facto*  
21 just the unfettered right to impose a fee upon -- I don't  
22 know who it would be upon. That is clearly unspoken and  
23 unwritten.

24 Thank you very much.

25 CHAIR SHEEHAN: I have a question for you.

1 MR. KAYE: Sure.

2 CHAIR SHEEHAN: The court decision that you referred  
3 to, was that an appellate court decision or a superior  
4 court?

5 MR. KAYE: It was an unpublished appellate decision,  
6 I believe it was the Second Appellate, yes, yes.

7 CHAIR SHEEHAN: Okay. And in the -- the question on  
8 the -- I think it was the original Connell decision, is  
9 that the first case that you referred to --

10 MR. KAYE: Yes.

11 CHAIR SHEEHAN: -- where you were reading about? It  
12 says, "Service charges," and then doesn't it go on to say  
13 "fees"?

14 MR. KAYE: Yes. "Service charges" and "fees" and so  
15 forth. But I read that "service fees." In other words,  
16 there, this had to do with improving the quality of water  
17 and so forth. And there, obviously, there were a number  
18 of users of these water services. So there, it was quite  
19 clear, in the Connell case, that there was someone to  
20 charge.

21 Here, it is completely unclear. And particularly in  
22 the smaller communities, where you have substantial costs  
23 but you have no builder or developer present, I mean,  
24 there, it's very unclear as to who to charge.

25 CHAIR SHEEHAN: Okay, thank you.

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1 MR. KAYE: Thank you.

2 CHAIR SHEEHAN: Any more questions for the  
3 witnesses?

4 *(No audible response was heard.)*

5 CHAIR SHEEHAN: Susan?

6 MS. GEANACOU: Good morning. Susan Geanacou,  
7 Department of Finance.

8 The Department of Finance submitted written comments  
9 on this matter in November of last year, addressing the  
10 fee authority issue and the Connell decision. Unless you  
11 have any questions, we would stand by those written  
12 comments. And they are consistent with the proposed --  
13 excuse me, the staff analysis and the proposed decision  
14 in this matter.

15 CHAIR SHEEHAN: Thanks.

16 Any questions for Ms. Geanacou?

17 *(No audible response was heard.)*

18 CHAIR SHEEHAN: All right.

19 Would you like to testify also?

20 MS. CHINN: I would. I didn't swear in. I wasn't  
21 expecting to come to talk.

22 CHAIR SHEEHAN: We'll swear you in, and then you can  
23 testify.

24 MS. HIGASHI: Do you solemnly swear or affirm that  
25 the testimony which you are about to give is true and

1 correct, based upon your personal knowledge, information  
2 or belief?

3 MS. CHINN: Yes.

4 My name is Annette Chinn. I'm with Cost Recovery  
5 Systems. I'm a consultant for about 15 years now. And I  
6 used to work in the area of developer impact fees for the  
7 Davie Group, Ben Associates. It was a consulting firm  
8 about ten years ago. And when I was a consultant there,  
9 we were not allowed to include the costs of housing  
10 elements in those developer fees. It was our job to try  
11 to include all of the costs possible to charge to  
12 developers for different services that they were being  
13 charged for local governments in different areas. And  
14 that was one area that, specifically, local governments  
15 were not allowed to receive reimbursement for. So I  
16 wanted to mention that.

17 And also, you were asking questions about how many  
18 cities actually recover fees currently. And I only know  
19 of one out of about 40 different clients that I work  
20 for, that actually is charging fees for those types of  
21 services.

22 And I think that one thing you need to consider also  
23 is the amount of land that is available for development.  
24 Some cities are very overbuilt and there's no one to  
25 charge these fees. So practically, you know, maybe a

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1 city that has a lot of growth potential, they have a  
2 better chance of recovering some of that money; but some  
3 of the cities that are already built out, there's no one  
4 to charge that fee. And they're still required under law  
5 to have those housing elements. So that's something I  
6 wanted to add for your consideration.

7 CHAIR SHEEHAN: Thanks.

8 Any questions for the witnesses?

9 *(No audible response was heard.)*

10 CHAIR SHEEHAN: Mr. Feller, do you want to respond  
11 to any of the testimony?

12 MR. FELLER: Just briefly.

13 What I've heard and seen in writing, the comments  
14 surround the practical difficulty of implementing these  
15 fees, rather than the legal authority. And we follow the  
16 reasoning of the Connell case, that the legal authority  
17 is what the local governments have to charge these fees,  
18 is what controls. And so staff continues to recommend  
19 that the claims be denied.

20 CHAIR SHEEHAN: Okay.

21 MEMBER SMITH: Madam Chair, not a question, but more  
22 of a comment before we take a vote on this item.

23 The Controller is frustrated by this item, simply  
24 because he doesn't agree with the policy behind the  
25 legislative intent to pass along fees for a mandated

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1 state program to ultimately developers and then to the  
2 home buyers, which is a little ironic to the cause of  
3 providing affordable housing. However, that's not the  
4 question before the Commission today. It's not a policy  
5 body, where we can question or overrule action by the  
6 Legislature.

7 However, we do have some question regarding the  
8 ability of local governments to pass along a fee to a  
9 relatively small segment of society, i.e., developers,  
10 for a general government purpose. And whether or not  
11 they're actually going to be able to do that remains to  
12 be seen.

13 I think that the Controller feels that we would need  
14 more information to make a positive -- to be sure that  
15 they could do that, and plans to abstain from Item 3 and  
16 Item 5, similarly.

17 I just wanted to make those comments before we take  
18 that to a vote, to explain our abstention.

19 CHAIR SHEEHAN: All right.

20 MEMBER SMITH: Thank you, Madam Chair.

21 CHAIR SHEEHAN: Any other comments before we move?

22 *(No audible response was heard.)*

23 CHAIR SHEEHAN: Is there a motion on this item?

24 MEMBER BOEL: I move that we adopt the staff  
25 analysis and deny the Board of Control claims.

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1 CHAIR SHEEHAN: Is there a second?

2 MEMBER LUJANO: Second.

3 CHAIR SHEEHAN: We have a motion and a second to  
4 adopt the staff analysis and recommendation.

5 All those in favor of the motion, signify by saying  
6 "aye."

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

8 CHAIR SHEEHAN: Opposed?

9 *(No audible response was heard.)*

10 CHAIR SHEEHAN: Abstentions?

11 MEMBER SMITH: I abstain.

12 CHAIR SHEEHAN: So the Controller -- let the record  
13 reflect that the Controller abstained on this item. All  
14 right.

15 MS. HIGASHI: Item 4 will also be presented by  
16 Mr. Feller.

17 CHAIR SHEEHAN: All right, Mr. Feller, please  
18 proceed.

19 MR. FELLER: Yes, unless there's objection, the  
20 staff recommends that the Commission adopt the proposed  
21 Statement of Decision which accurately reflects the  
22 decision on this test claim.

23 Staff also recommends the Commission allow minor  
24 changes to be made to the Statement of Decision,  
25 including reflecting the hearing testimony and vote count

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1 that will be included in the final Statement of Decision.

2 CHAIR SHEEHAN: All right, any discussion on this  
3 matter from the Commission members?

4 *(No audible response was heard.)*

5 CHAIR SHEEHAN: Is there a motion?

6 MEMBER BOEL: I move that we adopt the  
7 recommendation.

8 CHAIR SHEEHAN: And a second?

9 MEMBER LUJANO: Second.

10 CHAIR SHEEHAN: All right. All those in favor,  
11 signify by saying "aye."

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

13 CHAIR SHEEHAN: Opposed?

14 MEMBER SMITH: Similarly, we will abstain from this  
15 as well.

16 CHAIR SHEEHAN: Abstain?

17 So let the minutes reflect that the Controller  
18 abstained on that also.

19 Thank you. That motion carries.

20 And we will move on to Item 5.

21 I assume -- this is yours again; right?

22 MR. FELLER: Yes.

23 CHAIR SHEEHAN: All right.

24 MR. FELLER: This is the reconsideration of the  
25 *Regional Housing Needs Determination: Councils of*

1        *Governments.* The reconsideration of Board of Control  
2 decision on Claim 3929 was requested by the Legislature  
3 in SB 1102.

4                California Association of Councils of Governments  
5 and other COGs, including Sacramento Area Council of  
6 Governments, San Diego Association of Governments,  
7 Southern California Association of Governments, and the  
8 Mendocino Council of Governments, submitting comments, in  
9 addition to the League of California Cities, California  
10 State Association of Counties, and the California  
11 Building Industry Association, all of which argue that  
12 the activities in the Parameters and Guidelines issued by  
13 the Board of Control should continue to be reimbursable.

14                Again, comments from Senator Ducheny and the  
15 Department of Finance took the opposite view.

16                For reasons stated in the analysis, staff finds  
17 that, first, Councils of Governments are not eligible  
18 claimants for purposes of mandate reimbursement under  
19 Article XIII B, section 6, of the California  
20 Constitution. And as an alternative grounds for denial,  
21 the test claim legislation does not impose costs  
22 mandated by the state on COGs within the meaning of  
23 Article XIII B, section 6, and Government Code 17556  
24 because COGs have the authority provided in the  
25 Government Code section 65584.1. Therefore, staff

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1 recommends that the Commission adopt the analysis and  
2 deny Board of Control Claim Number 3929, effective  
3 July 1, 2004.

4 Staff recommends that the parties and witnesses  
5 first address their testimony to the Commission to the  
6 issue of COG eligibility, followed by the fee-authority  
7 issue.

8 Would the parties and witnesses please come forward  
9 and state your names for the record?

10 MR. HAGGERTY: Good morning. Scott Haggerty. ABAG.

11 MS. GIBSON: Good morning. Rose Jacobs Gibson,  
12 representing ABAG.

13 MS. TACHIKI: Karen Tachiki, representing SCAG.

14 CHAIR SHEEHAN: All right.

15 MS. HARRIS: Lynn Harris, representing SCAG.

16 MS. GEANACOU: Susan Geanacou, Department of  
17 Finance.

18 CHAIR SHEEHAN: Mr. Haggerty, do you want to go  
19 first?

20 MR. HAGGERTY: Thank you, Madam Chair. Good morning  
21 to the Commission and staff. As I stated, my name is  
22 Scott Haggerty, I'm the president of the Association of  
23 Bay Area Governments, which represents nine Bay Area  
24 counties in 100 cities in the San Francisco Bay Area.  
25 And I would like to add that that is strictly a

1 membership organization.

2 ABAG was the claimant in the 1981 decision that COGs  
3 are eligible for subventions for housing needs.

4 Other than specific funding grants, ABAG's revenues  
5 come directly from its membership fees, which I would  
6 like to add, come from proceeds of taxes.

7 Commission staff states that because COGs do not  
8 have the power to tax, COGs must be treated like  
9 redevelopment agencies, which also do not have the power  
10 to tax, which courts have ruled are ineligible for state  
11 subventions.

12 However, unlike RDAs, ABAG has no dedicated source  
13 of revenues that it can use to perform the state  
14 mandates' housing needs.

15 My colleague, Rose Jacob Gibson from San Mateo  
16 County, will address that in greater detail.

17 In our opinion, it would be absurd for the State to  
18 refuse to fund ABAG for the housing needs because ABAG  
19 cannot impose a tax to fund it. To avoid this absurd  
20 result, the Legislature grants COGs the power to impose a  
21 fee on the cities and counties to perform housing needs.

22 This solution is simply untested and inadequate.  
23 Untested because there are legal arguments presented to  
24 the Commission by attorneys of ABAG, SCAG, SANDAG, SACOG,  
25 Cal COG and others which cast serious doubts on the

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1       legality of the fee. Impractical because there are  
2       serious obstacles to implementing this fee.

3               First, as a membership organization, ABAG is  
4       governed by a general assembly and, therefore, also an  
5       executive board, which represents our members to vote on  
6       issues of importance, including the imposition of this  
7       fee. ABAG member cities and counties would not tax  
8       themselves to fund a state mandate.

9               Second, even if the majority of the membership  
10       imposed the fee, there would be a problem in collecting  
11       these fees from those who do not want to support the fee.

12               I would just say that the specter of numerous  
13       lawsuits would multiply in the courts to collecting this  
14       fee is frightening.

15               I would also like to say, as we went through this  
16       process last time, there were a lot of cities that were  
17       very unhappy with ABAG. And, therefore, I think their  
18       unhappiness would result in holding back the fees.

19               Compare this to the RDA that receives its tax  
20       increment by right, and you will get a sense of just how  
21       inadequate the proposed fee would be.

22               In closing, ABAG respectfully urges the Commission  
23       to recognize that the legislative solution for housing  
24       needs is inadequate and it affirms its prior decisions.

25               Thank you very much, Madam Chair.

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1 CHAIR SHEEHAN: Any questions for Mr. Haggerty?

2 *(No audible response was heard.)*

3 CHAIR SHEEHAN: All right.

4 Ms. Gibson?

5 MS. GIBSON: Good morning to the Commissioners. I'm  
6 Rose Jacobs Gibson, and I'm a County Supervisor for  
7 San Mateo County and serve on the ABAG executive board as  
8 well.

9 As you know, housing supply and affordability are  
10 one of the top issues in the San Francisco Bay Area, and  
11 as well as throughout the entire state.

12 The Association of Bay Area Governments, ABAG, is  
13 committed to any program which effectively addresses this  
14 issue. ABAG completed the last round of the housing  
15 needs in 2001. This process was open and fair, and the  
16 discussion was sensible, and the allocations were adopted  
17 with only one dissenting vote by our 38-member executive  
18 board.

19 Based on the Department of Housing and Community  
20 Development statistics, 73 percent of the Bay Area's  
21 local housing elements are certified, exceeding the  
22 statewide average.

23 This year ABAG is scheduled to begin work on the  
24 housing needs' fourth revision. Housing needs is more  
25 complex due to the changes in the last legislative

1 session. We'll be having workshops so we can be sure to  
2 clarify all of those legislative initiatives.

3 These changes reflect extended discussions amongst  
4 state departments of HHCD, the cities, the counties, the  
5 COGs, to improve housing needs and make it more effective  
6 for its purpose.

7 The San Francisco Bay Area is the first region  
8 scheduled to undertake the housing needs under this new  
9 process. ABAG is already months behind due to the  
10 funding uncertainty.

11 If ABAG is not funded by the State for this mandated  
12 program, it is highly unlikely that the local funds would  
13 be available. This would be unfortunate. The State  
14 loses the opportunity to have its program implemented,  
15 and the San Francisco Bay Area loses opportunity to  
16 improve its housing supply, as well as the affordability.

17 It is ironic that in those areas without COGs, HCD  
18 currently does the housing needs. Therefore, in the real  
19 sense, without COGs, the state would be responsible for  
20 performing this function.

21 ABAG is better-suited to do the job and has achieved  
22 effective and successful results. State funding is the  
23 only way to ensure that this continues to occur.

24 And finally, it must be pointed out that funding  
25 housing needs with fees from our members depends on

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1 passing through these fees to developers. Fees that will  
2 increase the costs of housing. This is simply bad  
3 policy.

4 ABAG respectfully urges the Commission to uphold  
5 its prior decisions and allow the housing needs process  
6 to go forward. And I certainly hope that you would  
7 consider this because we certainly do not want to have to  
8 go through court proceedings and all of that. The fact  
9 that this is legal authority does not mean it's  
10 practicable for us to do the work that we need to do.

11 CHAIR SHEEHAN: Thank you.

12 Any questions for Ms. Gibson from the Commission  
13 Members?

14 *(No audible response was heard.)*

15 CHAIR SHEEHAN: Okay. Okay, go ahead.

16 MS. TACHIKI: Good morning, members of the  
17 Commission. My name is Karen Tachiki. I'm the chief  
18 counsel for the Southern California Association of  
19 Governments. And I'm here today with my colleague, Lynn  
20 Harris, who is the manager of Community and Economic  
21 Development at SCAG, and is also available to answer any  
22 of your questions or concerns.

23 SCAG, as you may know, is the largest of nearly  
24 700 Councils of Governments across the United States. It  
25 is a joint powers agency established pursuant to the

1 California Government Code requirements. We are a  
2 federally-designated metropolitan planning organization  
3 and, as such, we have certain federally-mandated duties.  
4 But we're here today to talk about state-mandated duties.

5 Under state law, as you know, there must be a state  
6 and regional housing needs assessment, which determines  
7 protected housing construction needs for the region,  
8 which is based on population figures, projections  
9 established by the Department of Finance, and the  
10 regional population projections and forecasts developed  
11 by SCAG, which we also use in the preparation of our  
12 regional transportation plan.

13 SCAG, under state law, must allocate the shares of  
14 the regional housing needs to cities and counties within  
15 its region and, in turn, in some cases, has delegated  
16 that responsibility to subregions who have agreed to  
17 accept it.

18 This process is enormously expensive to SCAG. And  
19 just to give you some idea, in the last go-around of the  
20 RHNA process, SCAG placed a reimbursement claim to your  
21 Commission in excess of \$840,000. This is a lot of  
22 money. And that should be viewed in the context of the  
23 membership dues which are paid by the cities and  
24 counties, members of SCAG. This year, the total  
25 membership dues are \$1.4 million.

1           And so if we were required to, in turn, assess our  
2 members, you're asking us to substantially raise those  
3 fees which are paid by our members.

4           And we, like ABAG, have no other source to undertake  
5 the RHNA process.

6           So this issue is of great significance to SCAG, and  
7 clearly is of great significance to the other COGs, which  
8 is demonstrated by ABAG's appearance here today; and the  
9 fact that some of our briefs, if you would note, were  
10 filed as joint briefs with other COGs, indicating its  
11 overall importance to all of us.

12           I commend you to our written briefs. We've made  
13 several written submissions to you, so I don't want to  
14 belabor the legal arguments that are made there. But I  
15 do want to highlight just a couple of issues.

16           And in deference to Mr. Feller's request, the first  
17 issue that he asked to be addressed was the question of  
18 whether or not COGs have -- since they do not have the  
19 power to tax, whether they are eligible claimants under  
20 law. We believe that the basis for the staff's  
21 recommendation is based on a very strained interpretation  
22 of the definition of "local agency."

23           The staff believes, because local -- because COGs,  
24 joint powers authorities in this case, do not have the  
25 power to tax, they are not in the same class, so to

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1 speak, as cities, counties, et cetera. But there is  
2 nothing in the statute which requires that all of the  
3 agencies which are listed, have all of the exact, same  
4 common powers. There is nothing in the statute, and the  
5 staff analysis has pointed to no case law, nor any other  
6 indication that requires that all powers be common in  
7 that listing of agencies.

8 In fact, the definition talks about "other political  
9 subdivisions of the state," a broader and more  
10 encompassing term. And there is no doubt, the joint  
11 powers agencies composed solely of public agencies,  
12 indeed, would fit within that definition.

13 Moreover, you've heard a lot of discussion today  
14 about the ability to impose the fees. The Legislature  
15 seems to have provided by statute that COGs may impose  
16 fees upon its cities and counties. But what the staff  
17 analysis does not address is, COGs are established solely  
18 by agreement of their agencies. If we do not amend our  
19 joint powers agreement, we do not have the authority to  
20 levy that fee. And the Legislature having provided this  
21 so-called authority, cannot force the COGs to change  
22 their own agreements.

23 And I would just point out to you that under the  
24 statute, which establishes and providers the parameters  
25 for how you establish a joint powers authority, the

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1       Legislature itself says that a JPA can exercise only  
2       those powers that are provided for by agreement.  
3       Therefore, COGs do not -- SCAG does not have the ability  
4       to impose the fees.

5               So we would ask you to consider those points and to  
6       reaffirm the decision that BOC made earlier.

7               CHAIR SHEEHAN: Thank you.

8               Any questions?

9               *(No audible response was heard.)*

10              CHAIR SHEEHAN: Okay, Ms. Geanacou, do you want  
11       to --

12              MS. GEANACOU: Susan Geanacou, Department of  
13       Finance.

14              As with the prior agenda item, the Department of  
15       Finance submitted written comments on this matter in  
16       November of 2004, addressing both the eligibility of COGs  
17       to be claimants in this matter, and also regarding the  
18       fee authority aspect of the staff analysis. The staff  
19       analysis that is before you today is consistent with our  
20       submission, and we stand on our submission.

21              I am available to answer any questions.

22              CHAIR SHEEHAN: Great.

23              Any questions for Ms. Geanacou?

24              *(No audible response was heard.)*

25              CHAIR SHEEHAN: Thanks.

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1           Anyone else in the audience who would like to  
2 testify?

3           Yes, please.

4           MR. SELIX: Yes, my name is Rusty Selix. I'm the  
5 Executive Director of the Association of Councils of  
6 Governments.

7           And I don't wish to add to any of the legal  
8 arguments but wish to point out that this, in the view  
9 of all the Councils of Governments, can be viewed as an  
10 unfunded mandate. There is no ability for Councils of  
11 Governments to collect a fee because there is no one that  
12 comes before Councils of Governments as an applicant.  
13 They are not like local governments, where people come  
14 to them for services, like the local governments. So it  
15 won't work, it doesn't work, and we're headed to court,  
16 if you persist in pursuing this.

17           We think a much better course of action would be to  
18 tell the Legislature and the Department of Finance that  
19 this is not a workable solution to funding this mandate,  
20 and not approve this decision, which will send it back to  
21 the Legislature and the Department of Finance to figure  
22 out something that might work.

23           This one inevitably will end up in court. We will  
24 not be able to do regional housing needs under this  
25 funding scheme.

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1 CHAIR SHEEHAN: Thank you, Mr. Selix.

2 Any questions?

3 *(No audible response was heard.)*

4 CHAIR SHEEHAN: Mr. Feller, do you want to address  
5 any of the points that were raised?

6 I would like you to address the eligibility issue  
7 and respond to the comments that were made.

8 Thanks.

9 MR. FELLER: Yes, with regards to the eligibility  
10 issue, based on the case law, the Bell Community  
11 Redevelopment Agency v. Woolsey case, interpreting  
12 Article XIII B of the Constitution, staff finds that the  
13 only relevant authority for eligibility is the power to  
14 tax. Because that's the sole consideration for  
15 eligibility, staff finds that COGs would not be eligible  
16 claimants.

17 And then with regards to the Legislature a couple  
18 years ago taking out redevelopment agencies and joint  
19 powers agencies from the definition of the "eligible  
20 claimant," and the statutory scheme with the fact that  
21 the Legislature recognized that.

22 CHAIR SHEEHAN: Any other comments you would like to  
23 respond to?

24 MR. FELLER: Most of the other comments, I believe,  
25 went to the practical problems and the cost of housing.

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1 Again, those are practical considerations. And with  
2 regards to the fee, the Connell case, we believe that it  
3 controls, that it's the legal authority that's relevant.

4 CHAIR SHEEHAN: Okay, comments from -- yes,  
5 Mr. Smith?

6 MEMBER SMITH: Thank you, Madam Chair.

7 There appears to be two questions before the  
8 Commission today, the two rationale provided by staff.

9 And I don't know the best way to do this; but the  
10 Controller would like to take the two questions  
11 separately.

12 CHAIR SHEEHAN: You mean, the issue and the  
13 eligibility versus --

14 MEMBER SMITH: The eligibility overall versus the  
15 specific eligibility for the Regional Housing Needs  
16 Assessment program.

17 CHAIR SHEEHAN: The eligibility of the COGs?

18 MEMBER SMITH: Of the COGs.

19 CHAIR SHEEHAN: Separating that issue out and take a  
20 separate --

21 MEMBER SMITH: Right. The two rationale, take it  
22 separately.

23 CHAIR SHEEHAN: Okay. I think we can accommodate  
24 that.

25 So do you want to make a motion on the first?

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1 MEMBER SMITH: I'd like to -- well, yes, I would  
2 like to make a motion --

3 CHAIR SHEEHAN: Wait.

4 Paul, did you --

5 MR. STARKEY: I just think that there probably  
6 should be a motion as to that procedure. Again, if the  
7 other Commission members agree, then we can go forward on  
8 that.

9 CHAIR SHEEHAN: All right.

10 MEMBER SMITH: In that case, I'd like to move that  
11 we take the two rationale separately and vote first, on  
12 whether or not Councils of Governments are eligible  
13 claimants for purposes of mandate reimbursement under  
14 Article XIII B, section 6. And then taking it  
15 separately, the test claim legislation that does not  
16 impose costs mandated by the state on Councils of  
17 Governments for the particular program under  
18 consideration, *Regional Housing Needs Determination*.

19 MEMBER BOEL: I have some questions about that.

20 I'd like Eric's comments on dividing them, because  
21 everything has been presented as a unit here.

22 MR. FELLER: Well, I'll defer -- I will ask for  
23 Mr. Starkey's opinion.

24 But my initial reaction is that the Commission could  
25 do that.

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1           If you do decide to do that and if the votes were  
2           different on the two questions, I would recommend that we  
3           take the Statement of Decision back and put in the  
4           rationale for making that bifurcation and bring it back  
5           at the next meeting.

6           MEMBER SMITH: Well, the other possibility that we'd  
7           be okay with, is taking the Statement of Decision --  
8           taking a vote on whether to include the first rationale  
9           as a reason for denial of the test claim.

10          MR. STARKEY: It's perfectly acceptable to separate  
11          out those two issues and vote on it. The only thing that  
12          I think as a matter of procedure, the Commission needs to  
13          vote on that motion which is on the floor. And then if  
14          they agree to do it that way, then we will just move  
15          forward from that position.

16          Currently, the way that it's been posed is as a  
17          proposed staff recommendation.

18          CHAIR SHEEHAN: The proposed staff recommendation  
19          addresses both of the issues.

20          MR. STARKEY: Correct.

21          CHAIR SHEEHAN: The eligibility issue, as well as  
22          the fee authority issue.

23          MR. STARKEY: Correct, because both are listed  
24          separately and independently, as separate grounds to deny  
25          the test claim.

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1 CHAIR SHEEHAN: So we have a -- Mr. Smith made a  
2 motion to separate the two issues.

3 Did you get your questions --

4 MEMBER BOEL: Well, no, I'm still not sure.

5 If we separate the two issues and there's different  
6 votes on the two issues, then are we -- we're voting on  
7 the whole test claim, based on one issue, and then we're  
8 voting on the whole test claim based on the other issue?

9 CHAIR SHEEHAN: Well, I think -- my interpretation  
10 would be that what staff has explained, is the  
11 recommendation on the staff analysis bases their  
12 recommendation on two issues: The eligibility, as well  
13 as do they have the taxing authority to collect this.  
14 And that if the Commission were to vote to say that the  
15 COGs are eligible, they could still vote to deny the  
16 claim based on the taxing issue, or they can say that the  
17 COGs are not eligible, and deny it based on the  
18 eligibility, as well as the tax issue, if they'd like.

19 MEMBER BOEL: Okay.

20 CHAIR SHEEHAN: I mean I don't know if you want  
21 to --

22 MR. STARKEY: Yes.

23 CHAIR SHEEHAN: In the next -- so we have a motion.  
24 Do we have a second to Mr. Smith's motion?

25 MEMBER LUJANO: I actually have another question.

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1 CHAIR SHEEHAN: Okay.

2 MEMBER LUJANO: If we do separate them, and the  
3 first motion -- or the first item is that they're not  
4 eligible, and we all vote "yes" or if the motion  
5 carries --

6 CHAIR SHEEHAN: Right.

7 MEMBER LUJANO: -- then would it matter if they have  
8 fee authority or not? I mean, I'm not sure why you'd go  
9 to the second one, if the first one -- if they're not  
10 eligible.

11 MR. STARKEY: That would be up to the Commission, if  
12 they want to deny it on both grounds. The grounds are  
13 listed as separate alternative grounds for denial. And  
14 it's stated that way in the proposed recommendation.

15 MEMBER LUJANO: Okay.

16 MR. STARKEY: So that's a possible 'nother issue.

17 CHAIR SHEEHAN: Then the eligibility is the  
18 threshold issue, and then it sort of begs the issue on  
19 the second one.

20 MR. STARKEY: I will point out, however, that as a  
21 hypothetical, if it were found that the motion -- if it's  
22 decided that they are not eligible claimants and the  
23 Commission stops there, and that decision was then  
24 challenged in the court, that would be the sole issue  
25 before the court. And if things go the way I would hope

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1 they would go in the court, we would request that the  
2 court remand it back to the Commission for further  
3 consideration, because the Commission never reached the  
4 underlying merits of that case.

5 CHAIR SHEEHAN: Well, and if the court said they  
6 were eligible, we'd still have to then come back, as you  
7 say, on the underlying merits of the case.

8 MR. STARKEY: It would be my hope that the court  
9 would send it back.

10 CHAIR SHEEHAN: Yes, that could be a possibility.

11 So, all right, any other -- well, we have a motion  
12 on the table.

13 Is there a second?

14 MEMBER LUJANO: I'll second.

15 CHAIR SHEEHAN: Okay, so we have a motion and a  
16 second.

17 And the motion is to divide the issues before us in  
18 the staff recommendation on the eligibility. So the vote  
19 that we're taking now is on the motion to divide the two  
20 issues.

21 All those in favor of the motion, signify by saying  
22 "aye."

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

24 CHAIR SHEEHAN: Opposed?

25 MEMBER BOEL: Opposed.

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1 CHAIR SHEEHAN: And I will oppose also.

2 MEMBER BOEL: So what happens now?

3 MR. STARKEY: The motion fails.

4 CHAIR SHEEHAN: It has to pass by a vote of three.

5 MEMBER SMITH: In that case, Madam Chair, may I make  
6 a couple comments about that?

7 CHAIR SHEEHAN: Yes.

8 MEMBER SMITH: The Controller believes that until it  
9 has further legislative guidance, that the Councils of  
10 Governments are eligible claimants, there may be  
11 instances where they are, in the future; we don't believe  
12 that the courts have specifically addressed Councils of  
13 Governments as an eligible claimant.

14 Like I said before, in Item 3, we disagree with the  
15 policy; but that's not our job up here to vote on whether  
16 or not we think the policy is a good idea. We think that  
17 there are going to be considerable challenges for  
18 Councils of Governments to comply with this legislation,  
19 and that there may be a fee authority -- whether it's  
20 sufficient fee authority is the question -- and we don't  
21 believe we have enough facts before us today to vote on  
22 it. And so we'll abstain from this item.

23 CHAIR SHEEHAN: Thank you.

24 So then do we have a motion on the staff  
25 recommendation?

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1 MEMBER BOEL: Yes. I move that we adopt this  
2 analysis and deny the Board of Control claim.

3 CHAIR SHEEHAN: Is there a second?

4 MEMBER LUJANO: Second.

5 CHAIR SHEEHAN: All right, so we have a motion and a  
6 second.

7 Any further discussion?

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

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

10 CHAIR SHEEHAN: Opposed?

11 *(No audible response was heard.)*

12 CHAIR SHEEHAN: Abstain?

13 MEMBER SMITH: Abstain.

14 CHAIR SHEEHAN: All right. The minutes will  
15 reflect that the Controller abstains on that vote.

16 MS. HIGASHI: This brings us to Item 6. Mr. Feller  
17 will presently Item 6.

18 CHAIR SHEEHAN: Mr. Feller, do you want to present?

19 MR. FELLER: Sure. Unless there's objections, staff  
20 recommends that the Commission adopt the proposed  
21 Statement of Decision, which accurately reflects the  
22 decision on this test claim. Staff also recommends the  
23 Commission allow minor changes to be made to the  
24 Statement of Decision, including reflecting the hearing  
25 testimony and the vote count that will be included in the

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1 final Statement of Decision.

2 CHAIR SHEEHAN: All right, so do we have a motion on  
3 the staff analysis recommendation?

4 MEMBER BOEL: I move that we adopt the staff  
5 analysis and recommendation.

6 MEMBER LUJANO: Second.

7 CHAIR SHEEHAN: We have a motion and a second.

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

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

10 CHAIR SHEEHAN: Opposed?

11 *(No audible response was heard.)*

12 CHAIR SHEEHAN: Abstain?

13 MEMBER SMITH: Abstain.

14 CHAIR SHEEHAN: The Controller's office is  
15 abstaining.

16 And that motion carries.

17 I guess the only thing I would like to say to some  
18 of the Members is, I have a feeling it's not going to be  
19 the end of this issue for us. I would encourage  
20 discussion with the Legislature on this issue because I  
21 think, as the Controller's office represented, there are  
22 a lot of policy issues involved in this. And my guess  
23 is, we will see this again at some point.

24 All right, Item 7. Paula?

25 MS. HIGASHI: Could we take just a brief break?

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1 Because I just need to bring people up.

2 CHAIR SHEEHAN: Okay. We'll take a five-minute  
3 break.

4 (A recess was taken from 10:31 a.m. to  
5 10:38 a.m.)

6 CHAIR SHEEHAN: All right, the Commission on State  
7 Mandates will reconvene.

8 Let's see, Item Number 7, Remand of a Test Claim  
9 Decision Directed by the Court.

10 Paula, do you want to introduce this issue?

11 MS. HIGASHI: This would be presented by Commission  
12 counsel, Katherine Tokarski.

13 CHAIR SHEEHAN: Okay, Ms. Tokarski?

14 MS. TOKARSKI: In 1997, Claimant, Clovis Unified  
15 School District, submitted a test claim alleging a  
16 reimbursable state mandate for school districts to  
17 perform new activities by instructing pupils and  
18 informing parents of school bus safety procedures.

19 In the original *School Bus Safety II* Statement of  
20 Decision adopted July 29th, 1999, the Commission  
21 concluded that the test claim legislation imposed  
22 reimbursable state-mandated activities.

23 This decision was challenged in Sacramento County  
24 Superior Court by the Department of Finance. By granting  
25 the Department of Finance's position, the Court found

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1       that the *School Bus Safety II* test claim was not a  
2       reimbursable state-mandated program, to the extent that  
3       the underlying school bus transportation services were  
4       discretionary. However, the Court left one issue for  
5       remand. The Commission must now reconsider the limited  
6       issue of whether the federal Individuals with  
7       Disabilities Education Act, or any other federal law,  
8       requires school districts to transport any other  
9       students; and if so, whether the test claim statutes  
10      mandate a new program or higher level of service beyond  
11      federal requirements for which they are reimbursable  
12      state-mandated costs.

13             Staff concludes that although federal law may  
14      require transportation of disabled children under certain  
15      circumstances, the law does not require school districts  
16      to provide a school bus transportation program.  
17      Therefore, pursuant to the Court's decision and  
18      Article XIII B, section 6, of the California  
19      Constitution, the *School Bus Safety II* test claim  
20      statutes do not impose a reimbursable state-mandated  
21      program.

22             Staff recommends that the Commission adopt the final  
23      staff analysis which denies this claim.

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

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1 MR. PETERSEN: Keith Petersen with SixTen  
2 Associates.

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

5 MR. PETERSEN: Do you want me to bring that down?

6 MS. GEANACOU: That's okay.

7 MR. PETERSEN: The staff conclusion represents a  
8 line of reasoning they started three years ago, regarding  
9 mandates with optional methods of implementation. And  
10 the case before us doesn't provide any new legal  
11 arguments.

12 And we've all lost this argument for three years, so  
13 I don't think I'll belabor it.

14 CHAIR SHEEHAN: Oh, give it a try.

15 MR. PETERSEN: What's that?

16 CHAIR SHEEHAN: I said, don't you want to give it a  
17 try?

18 MR. PETERSEN: No. Been there, done that.

19 CHAIR SHEEHAN: All right.

20 Susan, do you have anything to add?

21 MS. GEANACOU: We don't have any further comments to  
22 add. We've reviewed the staff analysis, and we support  
23 it.

24 CHAIR SHEEHAN: Okay. Any questions or comments  
25 from the Commission members on this?

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1           *(No audible response was heard.)*

2           CHAIR SHEEHAN: Is there a motion?

3           MEMBER BOEL: I move that the Commission adopt the  
4 final staff analysis that denies this claim.

5           CHAIR SHEEHAN: Is there a second?

6           MEMBER LUJANO: Yes, second.

7           CHAIR SHEEHAN: So we have a motion and a second to  
8 adopt the staff analysis and the recommendation.

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

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

11          CHAIR SHEEHAN: Any opposed?

12          *(No audible response was heard.)*

13          CHAIR SHEEHAN: That is adopted. The motion  
14 carries.

15          Go ahead, Katherine.

16          MS. TOKARSKI: Item 8 is the proposed Statement of  
17 Decision for the item you just voted on. The sole issue  
18 before the Commission is whether the proposed Statement  
19 of Decision accurately reflects the decision made on  
20 Item 7. Staff recommends that the Commission adopt the  
21 proposed Statement of Decision beginning on page 3, which  
22 accurately reflects the staff recommendation on the  
23 remanded test claim.

24          Minor changes to reflect the hearing testimony and  
25 the vote count will be included, when issuing the final

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1 Statement of Decision.

2 CHAIR SHEEHAN: Okay. So is there a motion on the  
3 final Statement of Decision?

4 MEMBER BOEL: I move that we adopt the proposed  
5 Statement of Decision.

6 CHAIR SHEEHAN: Is there a second?

7 MEMBER LUJANO: Second.

8 CHAIR SHEEHAN: We have a motion and a second.

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

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

11 CHAIR SHEEHAN: Any opposed?

12 *(No audible response was heard.)*

13 CHAIR SHEEHAN: The motion carries.

14 All right, Item 9.

15 MS. HIGASHI: Nancy Patton will present Item 9.

16 CHAIR SHEEHAN: Great. Ms. Patton?

17 MS. PATTON: Good morning.

18 CHAIR SHEEHAN: Good morning.

19 MS. PATTON: On February 20th, 2004, the Commission  
20 on State Mandates adopted the Statement of Decision for  
21 the *False Reports of Police Misconduct* program. The test  
22 claim legislation requires any law enforcement agency  
23 accepting an allegation of misconduct against a peace  
24 officer, to have the complainant read and sign an  
25 information advisory informing the complainant that it is

1 a misdemeanor to knowingly file a false complaint against  
2 a peace officer. The test claim legislation also  
3 required the advisory to be available in multiple  
4 languages.

5 Before you, are the claimant's Proposed Parameters  
6 and Guidelines for the *False Reports of Police Misconduct*  
7 program, as modified by staff. Staff modified the  
8 proposed P's & G's. We deleted training, establishing  
9 and updating an intranet site, interviewing the  
10 complainant and addressing questions or concerns by the  
11 complainant, as these activities were not identified in  
12 the Statement of Decision, nor found to be reasonably  
13 necessary to comply with the mandate.

14 We clarified the reimbursement periods for each of  
15 the reimbursable activities, and we reduced the uniform  
16 time allowance to reflect that activities were deleted.

17 Staff recommends that the Commission adopt the  
18 Parameters and Guidelines, as modified by staff,  
19 beginning on page 9.

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

22 MS. TER KEURST: Good morning. I'm Bonnie Ter  
23 Keurst, representing the county of San Bernardino.

24 MS. GEANACOU: Susan Geanacou, Department of  
25 Finance.

1 CHAIR SHEEHAN: Go ahead.

2 MS. TER KEURST: Good morning. Thank you for the  
3 opportunity to address you.

4 The Statement of Decision was presented at the  
5 January 29, 2004, meeting.

6 At that time, I raised two issues: Training and an  
7 explanation or communication with the complainant. My  
8 remarks were in response to the staff's final statement  
9 and their conclusion which began: *"The Commission denies*  
10 *any remaining alleged activities or costs."*

11 At that time, my concern was that this statement  
12 would eliminate activities that would be reasonably  
13 necessary to accomplish the intent of the law.

14 Now we're back, one year later, looking at exactly  
15 that: The intent of the law versus exact wording.

16 In section 4 of the staff analysis, the statement is  
17 made, "Staff deleted training because it is not  
18 identified in the Statement of Decision." They go on to  
19 explain that it isn't necessary because the legislation  
20 was enacted prior to the eligible reimbursement period.  
21 So original training would have already occurred.

22 I would reiterate, however, that their basic opening  
23 argument is, it is not in the Statement of Decision.

24 The staff remarks are then directed at the  
25 claimant's rebuttal, our rebuttal. Recognizing that

1 original training did already take place, our position a  
2 year ago and today is that there are new employees, new  
3 people in the Department, possible changes in procedures  
4 that could, in fact, involve training. This training is  
5 eliminated from the P's & G's by staff because it is a  
6 minimal cost.

7 The staff cited a court case, County of  
8 Los Angeles v. the Commission on State Mandates. And it  
9 was dated in 2003, suggesting that because it is a  
10 minimal reallocation of resources, it should just not be  
11 part of the claim. However, for the counties, that  
12 still, in fact, translates to costs for us.

13 The County recommends that Item 1 be added back to  
14 the one-time activities, Item 1 being, train those  
15 employees that actually perform the reimbursable  
16 activities listed in section 4(a), (b), (c) and (d),  
17 added, of the Parameters and Guidelines, with one-time  
18 activity per employee.

19 The second issue is the interaction with the  
20 complainant. We cited two elements as part of the  
21 process, interviewing, the individual to determine the  
22 language and addressing questions and concerns. Both  
23 of these items were deleted by staff, citing the  
24 Statement of Decision that the mandate only requires law  
25 enforcement agencies to have the complainant read and

1 sign the advisory.

2 However, in the Statement of Decision, under issue  
3 one, the staff remarks are as follows:

4 *"The Commission finds that the test claim*  
5 *satisfies the other tests that triggers Article*  
6 *XIII B, section 6, carrying out the*  
7 *governmental function of providing a service to*  
8 *the public, to the extent that the test claim*  
9 *legislation requires law enforcement agencies*  
10 *to provide complainants with information*  
11 *concerning the right to file a complaint*  
12 *against a police officer, including an advisory*  
13 *of a misdemeanor charge that may be filed if*  
14 *the individual knowingly makes a false*  
15 *complaint."*

16 I wanted to highlighted the word "including." The  
17 staff remarks were *"provide a service, to provide*  
18 *information, including the advisory."* The County must do  
19 what is reasonable to provide that service.

20 In completing a time study for this legislation, our  
21 Sheriff's Department took the whole process, as it was,  
22 separated it into what we consider to be identifiable  
23 components. The staff took those components, eliminated  
24 two of the three of them, and took a whole process time  
25 of 22 minutes that we had established, and cut it down to

1 two minutes for the component of handing over that piece  
2 of paper.

3 The County feels strongly that the staff cannot take  
4 the County time study and make their own time assumptions  
5 from that. If they are not going to accept our time  
6 study elements in their entirety, they should provide  
7 their own research and time elements based on another  
8 county, maybe, or our county, if they want to come back  
9 and work with us.

10 The County position is that you cannot provide  
11 service to the complainant in a matter of two minutes, as  
12 suggested by the staff in section 5, "Claim Preparation  
13 and Submission."

14 Probably my biggest concern in this process is the  
15 mixed signals. We talk about training being a cost. It  
16 is not a big-enough cost, even though there is a mandate  
17 out there for the cost. We have 22 minutes as really too  
18 much time to service the constituency. But spending the  
19 time to identify and divide all of these 22 minutes up  
20 and come up with two minutes, doesn't seem to be a good  
21 use of our time or our efforts as well.

22 Serving the constituency is the intent of the  
23 legislation, but only if it's confined to those actual  
24 words that say, you know, "Hand them a piece of paper."  
25 That, to me, is a mixed signal.

1           Therefore, the County would suggest that the  
2 following two items be added back: Interview the  
3 complainant and determine in what language the advisory  
4 form should be made available to him or her for reading  
5 and signing as prescribed by Penal Code section 148.6,  
6 and then Item 7, address any questions or concerns that  
7 the complainant may have regarding reading and signing  
8 PC 148.6, advisory form.

9           Finally, I just have one housekeeping item. In the  
10 period of reimbursement section, the last sentence, I  
11 would like to suggest that we take out "through  
12 December 31, 2000," because I think it's kind of  
13 misleading. Leave the opening date.

14           That's all I have.

15           Thank you.

16           CHAIR SHEEHAN: Do you want to respond to the  
17 comments? And then we'll have Ms. Geanacou.

18           MS. PATTON: Basically, we believe that the items  
19 that they proposed as activities, two of those items were  
20 specifically denied in the test claim SOD. They were  
21 heard at the test claim hearing, there was discussion  
22 about the legislative intent. And, in fact, that while  
23 the bill was -- the test claim legislation was going  
24 through the process, the bill was amended, we believe  
25 specifically to delete those activities. So we did not

1 put those activities back in because they were  
2 specifically denied at the test claim hearing.

3 Based on that, there is nothing in the SOD about  
4 training. And we stand on our argument that most of the  
5 training should have occurred a long time ago. And the  
6 only activity that you have left is handing the  
7 complainant a form. We're not reimbursing them for  
8 discussing it or answering questions. So we thought the  
9 training was minimal, if any.

10 As far as cutting their Uniform Cost Allowance,  
11 on page 127, you can see their breakdown. We are not  
12 making up our own minutes. That was the -- two minutes  
13 is the number of minutes that they proposed for the  
14 activity of handing the form to the complainant. So all  
15 we did was delete the minutes that corresponded with the  
16 activities that we deleted.

17 CHAIR SHEEHAN: Any questions for staff?

18 Paula, did you want to add something?

19 MS. HIGASHI: No.

20 CHAIR SHEEHAN: Oh, okay.

21 Other witnesses?

22 Any questions?

23 MS. TER KEURST: I would just like to respond real  
24 quickly to the time study.

25 CHAIR SHEEHAN: Sure.

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1 MS. TER KEURST: When you take a time study and you  
2 go out to a department and you say, okay, we take what we  
3 can do -- so somebody comes in irritated and you're  
4 trying to work with them, so take that time block and  
5 figure out exactly which of that was this piece and which  
6 of that was this piece, and here's your final piece. So  
7 we took what we thought was a component that would break  
8 down fairly easily on that, to then say, "Okay, well,  
9 we don't agree that this is reimbursable; and we don't  
10 agree -- we don't agree the front-end piece is  
11 reimbursable, and we don't agree that the back-end piece  
12 is reimbursable. Therefore, there's only two minutes of  
13 time that it takes for you to deal with the complainant  
14 person, get him whatever form there is, get him to sign  
15 it, get him out the door.

16 I don't even think anyone here can address -- I  
17 mean, when I think about addressing someone who comes  
18 into the office, I don't think you can do that in two  
19 minutes, especially somebody in a situation like this.  
20 So to take our time study and just eliminate both ends of  
21 it, I don't think is appropriate at this time.

22 I think if, in fact, none of that interaction that  
23 happens beforehand or after the fact is going to be  
24 considered part of the claim, then I think we at least  
25 need to readdress how much time it's going to take just

1 to get them in and out of the door. Because the fact is,  
2 the whole mandate has to be looked at in its entirety.  
3 And I don't think you can take and say, "Here's a piece  
4 of paper. Okay, that's two minutes," and say,  
5 everything else that's involved with logging it, getting  
6 it, finding it, saying "Hello" to the guy, at least -- or  
7 her, whichever -- I don't think you can take that and  
8 block that into a two-minute time segment.

9 CHAIR SHEEHAN: Nancy, did you want to add anything  
10 else? Or Katherine?

11 MS. TOKARSKI: Yes. Just to be clear, this  
12 particular statute that was addressed in *False Reports of*  
13 *Police Misconduct* does not newly allow people to come in  
14 and complain about peace officer misconduct. That is the  
15 activity that this is a piece of. And the piece of this  
16 is under Penal Code section 148.6, there's language, of  
17 approximately a paragraph, directed to the complainant,  
18 saying, "Read this and sign, acknowledging that you've  
19 read this." And the outside activities of dealing with  
20 somebody who may be irate and angry about an incident  
21 that may or may not have occurred, that has to do with  
22 the complaint itself and not the issue of giving them  
23 information that, if they do make a false complaint,  
24 there are misdemeanor charges available.

25 CHAIR SHEEHAN: Okay. Any other comments or

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1 questions for this witness? Or staff?

2 *(No audible response was heard.)*

3 CHAIR SHEEHAN: All right, Susan?

4 MS. GEANACOU: The Department of Finance believes  
5 that the Parameters and Guidelines and the staff analysis  
6 addressing them, that you're seeing today, are consistent  
7 with the Statement of Decision; and we would urge that  
8 you support them today.

9 CHAIR SHEEHAN: Okay. Is there anyone else who  
10 would like to testify on this item?

11 *(No audible response was heard.)*

12 CHAIR SHEEHAN: If not, is there a motion on this  
13 matter?

14 MEMBER BOEL: I move that we adopt the staff  
15 recommendations.

16 CHAIR SHEEHAN: Is there a second?

17 MEMBER LUJANO: Yes.

18 CHAIR SHEEHAN: We have a motion and a second to  
19 adopt the staff recommendations on the proposed  
20 parameters and guidelines for false reports and police  
21 misconduct.

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

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

24 CHAIR SHEEHAN: Any opposed?

25 *(No audible response was heard.)*

1 CHAIR SHEEHAN: That motion carries.

2 All right, is this yours again, Eric? Item 10,  
3 *Integrated Waste Management*?

4 MR. FELLER: Yes. Good morning, again.

5 CHAIR SHEEHAN: Good morning.

6 MR. FELLER: This is, as mentioned in the Parameters  
7 and Guidelines -- or "P's & G's," as we call them --  
8 before the *Integrated Waste Management* Statement of  
9 Decision, adopted 2004. Comments on the P's & G's were  
10 filed by the Integrated Waste Management Board and the  
11 State Controller's Office, as well as the claimant.

12 The primary issue as raised by the Waste Board is  
13 whether reduced disposal costs should count as offsetting  
14 savings and calculating reimbursement claims. The Board  
15 would have these savings subtracted from each claim.

16 The staff finds that the offsetting savings for  
17 reduced disposal costs cannot be counted against claims  
18 because there wasn't -- there was no mandate for  
19 disposal, so there's not the quote, unquote, "program" at  
20 issue. The focus of the reimbursable activities is  
21 diversion of solid waste via activities listed in the  
22 Statement of Decision and P's & G's.

23 Because before the test claim statute, there was no  
24 mandate for diversion or disposal upon which to calculate  
25 savings, there can be no offsetting savings for those

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1 costs. Rather, as stated in the P's & G's and the  
2 analysis, the offsetting revenues in this program are  
3 those from the sale of recyclable materials, as directed  
4 in accordance with the Public Contract Code, and a  
5 student center fee, if applicable.

6 So staff's recommendation is that the Commission  
7 adopt the Parameters and Guidelines, as modified by  
8 staff, starting on page 15.

9 Would the parties and witnesses please state their  
10 names for the record?

11 MS. BORZELLERI: Deborah Borzelleri, staff counsel  
12 for the Board.

13 MR. O'SHAUGHNESSY: Trevor O'Shaughnessy, staff for  
14 the Integrated Waste Management board.

15 MR. MORALES: Phil Morales, staff at Integrated  
16 Waste Management Board.

17 MR. FOX: Eddie Fox, staff, Integrated Waste  
18 Management Board.

19 MR. PETERSEN: Keith Petersen, representing the test  
20 claims.

21 MS. GEANACOU: Susan Geanacou, Department of  
22 Finance.

23 CHAIR SHEEHAN: Okay, who would like to start for  
24 the -- Mr. Petersen, go ahead.

25 MR. PETERSEN: No, go ahead. They can go first. I

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1 have nothing.

2 CHAIR SHEEHAN: Who from the Waste Board would like  
3 to speak?

4 MS. BORZELLERI: I'll start.

5 CHAIR SHEEHAN: Okay.

6 MS. BORZELLERI: Debra Borzelleri. Good morning,  
7 Members.

8 CHAIR SHEEHAN: Good morning.

9 MS. BORZELLERI: At the hearing on the Statement of  
10 Decision, the Board provided information to the  
11 Commission regarding significant cost savings that could  
12 be realized by implementing diversion programs, programs  
13 that are required in AB 75, this test claim statute.  
14 We've also experienced through local government  
15 implementation of diversion programs significant cost  
16 savings in these types of programs.

17 At that hearing, several of the Commission Members  
18 were very interested in getting more information  
19 regarding the cost savings. And the Board has continued  
20 to provide comments and information about that throughout  
21 this process, in developing the Parameters and  
22 Guidelines.

23 In the final staff analysis, as Mr. Feller mentioned  
24 for the Parameters and Guidelines, these offsetting  
25 savings that we are talking about -- not the revenues

1 that are obtained from recyclable materials -- have been  
2 proposed to be disallowed.

3 I want to reiterate -- I'm sure the Commission is  
4 aware of this -- but just read the regulation, that is  
5 the Commission's regulation, section 1183.1(a)(9), in  
6 Title 2, California Code of Regulations, states,  
7 *"All proposed parameters and guidelines must allow for*  
8 *any offsetting savings in the same program, experienced*  
9 *as a result of the same statutes or executive orders*  
10 *found to contain the mandate."*

11 This statement is also in your boilerplate  
12 Parameters and Guidelines.

13 And now at this stage, it seems to be pretty much  
14 ignored by the staff analysis, and summarily dismisses  
15 the Board's information that we've brought forward.

16 Rather than repeat Mr. Feller's arguments, I will  
17 not do that.

18 Of course, we disagree with the staff's opinion. In  
19 the interest of clarifying, I would like to walk through  
20 how these offsetting savings really should be considered  
21 as part of the Parameters and Guidelines. And we'll look  
22 at the relationship between disposal and diversion, as  
23 set forth in the Board's statutory and regulatory scheme.  
24 Then our program manager, Trevor O'Shaughnessy, will give  
25 you some real-world examples to help you understand what

1 we're talking about.

2 First, the mandate requires that state entities in  
3 large state facilities, which community colleges are, to  
4 implement programs to divert solid waste, and actually  
5 realize diversion of solid waste, which is expressed as  
6 a percentage of diversion.

7 Within the Board's statutory and regulatory scheme,  
8 all waste that's generated by an entity is either  
9 considered disposed or diverted.

10 Our statute defines "diversion" as activities which  
11 reduce or eliminate the amount of solid waste from solid  
12 waste disposal.

13 It defines solid waste disposal as the management of  
14 solid waste through landfill disposal at a permitted  
15 solid-waste facility.

16 And then the statute further states that diversion  
17 is expressed as disposal reduction.

18 We have to conclude -- we're having trouble  
19 understanding how disposal reduction would not be  
20 considered part of this -- of this issue, and  
21 inextricably intertwined with the mandate. Increased  
22 diversion directly results in disposal reduction, which  
23 means that any diversion will directly result in reduced  
24 disposal and the reduced costs associated with reduced  
25 disposal.

1 Further, had these entities not engaged in the  
2 mandated activities, they wouldn't have realized the cost  
3 savings from the reduced disposal. We're having trouble  
4 imagining a closer cost relationship between a mandate  
5 and offsetting cost savings that a claimant would  
6 experience.

7 And as noted in the Board's comment letter of  
8 February 28th, we've done a rough calculation of actual  
9 diversion that's been realized as reported by  
10 117 community colleges and district offices for the  
11 calendar year 2003. These entities reported diversion  
12 of more than 66,000 tons, at an estimated average cost  
13 of \$30 per ton for solid waste disposal at a landfill.  
14 This translates to an aggregate of almost \$2 million in  
15 avoided disposal costs alone, or a cost savings as a  
16 result of those diversion programs.

17 Now, avoided disposal costs are only one aspect of  
18 offsetting cost savings that had been realized as a  
19 result of the mandate. And, again, these have been  
20 dismissed by the staff analysis.

21 The Integrated Waste Management Board submitted a  
22 proposed cost savings work sheet that could be used as a  
23 tool by claimants to identify costs and the commensurate  
24 savings realized as a result of implementing diversion  
25 programs.

1           The work sheet was offered in the spirit of  
2           assisting claimants, assisting the State Controller's  
3           Office in wending their way through this complicated  
4           area. Not as a required form, but simply something that  
5           could be adopted as part of the Parameters and  
6           Guidelines. Much of the information that's on it is  
7           already part of the report that's required by the Waste  
8           Board, the annual report that is required, that is a  
9           reimbursable activity. And we think that any entity  
10          making a claim under this, would find this work sheet  
11          useful. But we're not suggesting that it become a form.  
12          That is required and a new mandate.

13           It would also be help to use the work sheet in  
14          sorting out actual costs of the mandate. Because of the  
15          structure of this mandate, programs that are chosen to be  
16          implemented almost transmute into mandated programs. And  
17          the Board is very concerned about that potential.

18           Diversion programs often look at an existing program  
19          in a new way. For instance, mowing the lawn, okay, that  
20          is currently an existing activity that a community  
21          college is going to be doing or registering students.  
22          But when you implement a new diversion program, you would  
23          still have that activity, but you would do it a new way.  
24          And I think it would be very difficult for the  
25          Controller's office, who does not understand how these

1 programs work, or anyone else who is looking at this, to  
2 be able to sort through what is actually part of that  
3 mandate or not part of the mandate because of an existing  
4 program that's in place. So we are asking that the  
5 Commission consider that issue.

6 The Board has submitted this comment on page 15,  
7 section 4, "Reimbursable Activities," and added some  
8 language that the staff analysis suggested was too broad.  
9 We'd like to reiterate that we think that this comment  
10 should be put into the Parameters and Guidelines; and  
11 hopefully my testimony today has explained it so that it  
12 is not as broad.

13 We'd like to suggest that that second sentence in  
14 that section reads, "*Actual costs are those actually*  
15 *incurred to implement the mandated activities after the*  
16 *test*" -- this is the new language -- "*after the test*  
17 *claim statute was enacted, and that would not otherwise*  
18 *occur if the mandate was not in place.*"

19 So the Board recommends that.

20 I'd like to turn this over to Trevor O'Shaughnessy  
21 to actually walk you through some real-world examples.

22 Thanks.

23 CHAIR SHEEHAN: Thanks.

24 Go ahead.

25 MR. O'SHAUGHNESSY: Good morning, Madam Chair and

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1 Members of the Commission. My name is Trevor  
2 O'Shaughnessy from the California Integrated Waste  
3 Management Board, program manager of the overall effort  
4 of implementing AB 75.

5 Two examples of activities that were presented  
6 briefly by Debra, legal counsel, I would like to expand  
7 on a little bit, if I may.

8 Many of you may have homes that have lawns in front  
9 of them. And either yourselves or you have someone  
10 maintain that lawn. In doing that, you have a choice.  
11 You can either leave the clippings on the lawn, or they  
12 can be taken off to a landfill. If they go to a  
13 landfill, there is increased costs. We maintain our  
14 lawns for the simple purpose of maintaining the aesthetic  
15 value and pleasantness of the properties.

16 I'm now going to take that over to the colleges.  
17 The colleges have been maintaining their lawns and turfs  
18 for as long as the campuses have been open. I don't  
19 think anyone could deny that. But through the language,  
20 as it is stated literally in the P's & G's, as I read  
21 them, this would now be a mandated program of mowing the  
22 lawn. And that mandated activity would start where the  
23 legislation went into place.

24 As a mandated program, all fees and costs associated  
25 to that could be claimable, including the equipment, the

1 staffing, the maintenance of the turf and the equipment,  
2 as needed, and any other costs that are associated to  
3 that. That's as I read the P's & G's, literally as  
4 they're laid out.

5 Another example, and I'm not going into much detail  
6 on this, but it's something we're seeing more and more,  
7 would be electronic registration of the students  
8 attending the campuses. Typically, and in the past,  
9 registration has been done on paper forms. Forms were  
10 filled out, handed in, processed, and now moved on. We  
11 now have electronic registration systems.

12 Through an electronic registration system, you've  
13 eliminated all of the paperwork and the processing, the  
14 purchasing of that paper. All of that is considered a  
15 program of implementation under this legislation, and is  
16 now, therefore, a mandated program, if they so choose  
17 to go to electronic reporting.

18 Through the electronic reporting systems, they would  
19 need to purchase computers, programs to run their  
20 registration activities, as well as Internet-based  
21 connections, and any other necessary services to  
22 implement that particular program.

23 Those are just two examples. But in both of those  
24 examples, everyone always has a choice or a decision to  
25 make.

1           If I take the grass again, I can put it in a trash  
2 can where it goes to a landfill. If I don't do that, I'm  
3 not going to pay that fee to dispose of it. Plus,  
4 there's other benefits of doing that activity.

5           The secondary area is the electronic registration  
6 for classes or a single class, where before I may have  
7 used a paper form that was in single or multiple,  
8 triplicate format because everyone got their copy, I am  
9 no longer generating those forms, I no longer store them  
10 in my warehouse, where I probably had access, not knowing  
11 if someone was going to have many mistakes. I've  
12 completely eliminated that, so now I have the cost  
13 savings of a form no longer being printed. But then I  
14 also have the decision that the individual using the form  
15 now undertakes, which is, do I throw it in my trash can,  
16 or do I put it in a recycle bin that may or may not be  
17 convenient for me while I'm doing registration?

18           If you threw it in the trash can, it would increase  
19 the disposal costs. If they recycle it, it has that  
20 benefit as well.

21           So in both of these cases, we are trying to present  
22 to you that the activities implemented and mandated under  
23 this legislation go above and beyond what we  
24 traditionally or otherwise would see on a regular basis.

25           There's other examples that could be presented to

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1 you, if you so wish. But that does conclude my comments.

2 Thank you.

3 CHAIR SHEEHAN: Any questions for the Waste Board  
4 before we move on?

5 *(No audible response was heard.)*

6 CHAIR SHEEHAN: Okay.

7 Would either of you gentlemen like to add anything?

8 MR. FOX: Only if you have questions.

9 CHAIR SHEEHAN: All right.

10 Mr. Petersen?

11 MR. PETERSEN: Okay, thank you.

12 The staff of the Integrated Waste Management Board  
13 shares a common misperception about mandated  
14 reimbursement that prevails with a lot of state agencies.

15 I think the mowing the lawn is a good example. I've  
16 interviewed many operations directors of several of my  
17 college clients, and the lawn mowing is a good example.  
18 They're not claiming as staff -- the Board may suggest  
19 the cost of mowing the lawn. They've always done that.  
20 It's not an increased cost. And what the Parameters and  
21 Guidelines reimburse, are increased costs. Doing what  
22 you used to do is not an increased cost, unless you have  
23 to start doing it because of source reduction.

24 The other misperception is, Commission staff is  
25 stuck with the Government Code regarding cost savings.

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1 The Integrated Waste Management board staff doesn't have  
2 the same understanding of the legal meaning of cost  
3 savings.

4 As a matter of law, cost savings require a mandate  
5 to be in effect in 1975. Commission staff correctly  
6 understands the Government Code. There was no mandate  
7 regarding waste disposal reduction, source reduction or  
8 recycling in 1975. So there is no mandate to be  
9 relieved, and there are no cost savings. Commission  
10 staff has that correct.

11 And in short, claimants will not be claiming costs  
12 they do not incur. What Integrated Waste Management  
13 Board staff calls cost savings, such as not having to pay  
14 disposal charges, you can't claim costs that you're not  
15 going to pay anymore, so there's no cost savings there.  
16 In other words, if there was no mandate there, they will  
17 not be incurring -- if they're saving on disposal fees,  
18 they will not be incurring those costs, so there are no  
19 costs to claim.

20 The state is not here at risk at all. But the  
21 underlying issue is, only increased costs are claimed,  
22 not what you usually do, on a regular basis to do.

23 If there is some incremental new costs between  
24 mulching and mowing, that incremental new cost would be  
25 claimable, but we're not claiming routine maintenance.

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1 CHAIR SHEEHAN: Okay.

2 Did you want to add anything before we move?

3 MS. BORZELLERI: No.

4 CHAIR SHEEHAN: Okay. Did you want to respond to  
5 either of the comments?

6 MR. FELLER: Just a brief comment, in addition to  
7 what's been stated.

8 The regulation that Ms. Borzelleri pointed out,  
9 *"All proposed Parameters and Guidelines must allow for*  
10 *offsetting savings in the same program experienced as a*  
11 *result of the same statutes or executive orders found to*  
12 *contain a mandate."*

13 We focused on the phrase, *"in the same program."*  
14 The way Commission staff saw this program -- well, let me  
15 first say, before and after AB 75 was enacted, there was  
16 disposal before and there was disposal after. What  
17 changed with AB 75 was, now diversion was mandated  
18 after -- and some of the methods that the plan that  
19 community colleges are required to have, that include  
20 elements of reduce for use and recycle and so forth.  
21 That's how the Commission sees the mandate. Not  
22 necessarily doing less of what they always did before  
23 AB 75, but the actual activities of reducing, reusing or  
24 recycling. And undoubtedly, those do result in waste  
25 disposal, but that wasn't the program that staff focused

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1 on in looking at the offsetting savings; it was the  
2 diversion activities.

3 CHAIR SHEEHAN: Okay. Susan, did you have -- your  
4 last time.

5 MS. GEANACOU: My last time. You're right,  
6 actually, for a while.

7 CHAIR SHEEHAN: Really?

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

10 I've talked with our staff about this. And I think  
11 we would, obviously, defer to the programmatic expertise  
12 of the Waste Management Board, given that this is not an  
13 area that Finance has in-depth knowledge about.

14 I would, however, note that in the staff analysis,  
15 on page 13, there is a specific reference to a code  
16 section in the Public Resources Code, 42955, subdivision  
17 (a), which renders permissive the community colleges'  
18 obligation to direct any cost savings to implement the  
19 waste management plan. It's only required if it's  
20 feasible. So there is some amount of discretion in the  
21 community colleges' hands as to what to do with any cost  
22 savings. And the staff analysis also tries to explain  
23 the difference between the use of language "cost  
24 savings," as used in the codes, and "cost savings" as  
25 it's used in the Government Code.

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1           So, again, we essentially defer to the waste  
2 management board; but I did want to point out that Public  
3 Resources Code section there.

4           CHAIR SHEEHAN: Did you want to address that?

5           MR. PETERSEN: Not that issue.

6           CHAIR SHEEHAN: Okay. Any other comments,  
7 Mr. Feller, on this one?

8           MR. FELLER: No, nothing further.

9           CHAIR SHEEHAN: Okay. Any questions from the  
10 Commission Members on this one?

11           *(No audible response was heard.)*

12           CHAIR SHEEHAN: I guess what I would say is, in  
13 response to Ms. Geanacou's last comment, I'm sure it  
14 would be up to the community colleges not to -- or to use  
15 those cost savings where feasible and pass them on to the  
16 state as a reimbursable cost under this.

17           MR. PETERSEN: There is a statute to offset the  
18 recycling income. And if it's in excess of \$2,000, the  
19 State Legislature has a chance to speak to that issue.

20           CHAIR SHEEHAN: Did you have a question?

21           MEMBER SMITH: No.

22           CHAIR SHEEHAN: Okay. No further discussion.

23           Do we have a motion on the staff recommendations?

24           MEMBER BOEL: I move that we adopt the staff  
25 recommendations on the Parameters and Guidelines.

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1 CHAIR SHEEHAN: And do we have a second?

2 MEMBER LUJANO: I'll second it.

3 CHAIR SHEEHAN: All right, so we have a motion to  
4 adopt the staff recommendations on the P's & G's with the  
5 Integrated Waste Management.

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

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

8 CHAIR SHEEHAN: Any opposed?

9 *(No audible response was heard.)*

10 CHAIR SHEEHAN: That passes.

11 Thank you. Thank you for your testimony.

12 I think we already dispensed with the Consent  
13 Calendar. So we move on to the Legal Counsel Report.

14 Do you have anything for the public session,  
15 Mr. Starkey?

16 MR. STARKEY: For public session, just one item on  
17 the *Animal Adoption* case, which is listed under the  
18 litigation calendar. In fact, those cases were  
19 consolidated and will be heard in Sacramento Superior  
20 Court.

21 CHAIR SHEEHAN: All right, and Item 14.

22 Paula, the Executive Director's Report?

23 MS. HIGASHI: I have nothing further to add.

24 Do any of the Members have questions?

25 CHAIR SHEEHAN: No. And her report was in the

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1 binder. I think everyone knows, we will be traveling  
2 to Butte County in May for -- I think the 12th of May for  
3 the hearing up in Oroville on that. So I want to make  
4 sure everyone is aware of that for our schedule.

5 And then the Budget Committee -- the update on the  
6 budget committee.

7 MS. HIGASHI: The Budget Committee hearings are  
8 coming up in the next few weeks as well. We have not had  
9 any meetings yet with Budget Committee staff, but we'll  
10 find out next week if we have an update.

11 CHAIR SHEEHAN: You'll let us know?

12 MS. HIGASHI: And we'll keep you posted.

13 CHAIR SHEEHAN: Right.

14 MS. HIGASHI: We plan to shift out the Butte County  
15 application which goes to you next week. So you'll have  
16 ample time to --

17 CHAIR SHEEHAN: I was going to say, are we expecting  
18 them to be rather large?

19 MS. HIGASHI: They're larger than this agenda.

20 CHAIR SHEEHAN: Oh, okay.

21 MS. HIGASHI: I will say that. And we have retained  
22 the Department of Finance's audit staff to --

23 CHAIR SHEEHAN: To assist us?

24 MS. HIGASHI: -- to review the application, to  
25 prepare the analysis. And we've also rehired Shirley

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1 Opie, our former assistant executive director, to manage  
2 this process. So we will give you the application  
3 materials, bring you up to date; and by the end of April,  
4 we will be giving you the staff analysis of that  
5 application.

6 CHAIR SHEEHAN: Great.

7 MEMBER BOEL: Will the entire Commission be going?

8 MS. HIGASHI: Everyone who is sitting up here has  
9 agreed to participate on May 12th.

10 CHAIR SHEEHAN: I didn't know that.

11 MEMBER BOEL: It's on your calendar. You didn't  
12 know that.

13 CHAIR SHEEHAN: I knew I was going.

14 Because I know you want to go to Oroville; right?

15 MS. HIGASHI: Everyone has agreed. And the plan is  
16 that then the Commission would make its preliminary  
17 decision on the same day as the May hearing, and it would  
18 be agendaed for the afternoon at 1:30 for a time certain.

19 And then the last date that I got an agreement from  
20 everyone on is June 10th, for the Commission to actually  
21 adopt the Statement of Decision. And we'll be back in  
22 touch with you regarding the exact time.

23 CHAIR SHEEHAN: Okay.

24 MEMBER SMITH: And just one comment.

25 CHAIR SHEEHAN: Yes.

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1 MEMBER SMITH: On the pending case, like most, the  
2 Controller is concerned about the large number of test  
3 claims pending, and supports the budget documentation and  
4 just offers any support that our office may give.

5 CHAIR SHEEHAN: That would be great, if you'd like  
6 to do that. Send a letter or something, that would be  
7 wonderful.

8 MEMBER SMITH: Yes, we'll do that then.

9 MS. HIGASHI: Thank you very much.

10 CHAIR SHEEHAN: Okay, so that concludes the public  
11 session for now. And we will recess into closed session  
12 pursuant to --

13 MS. HIGASHI: Is there any Public Comment?

14 CHAIR SHEEHAN: I'm sorry, yes, Public Comment  
15 before we go, and then you don't have to wait.

16 Any other public comment from individuals?

17 MR. PETERSEN: I just couldn't hear you.

18 CHAIR SHEEHAN: Public comment?

19 UNIDENTIFIED LADY: Yes, just one thing. I come  
20 here for a couple years, but we oftentimes have a hard  
21 time hearing you, if you're not speaking into the  
22 microphones. I know it's a little funny request. But I  
23 come here to get the reports for whatever entity we're  
24 with, and I'd really appreciate it.

25 CHAIR SHEEHAN: Thank you.

1 UNIDENTIFIED LADY: Because we didn't hear Paula at  
2 all.

3 MR. PETERSEN: Do you want to do that again, Paula?

4 CHAIR SHEEHAN: Paula? From the very beginning;  
5 right?

6 Okay.

7 MS. HIGASHI: The whole hearing.

8 I'll sit closer.

9 CHAIR SHEEHAN: Right. And in the future, if you  
10 cannot hear us, please feel free, you know, in the  
11 hearing to let us know, instead of waiting to the end,  
12 because we do not want you to miss anything.

13 All right. So having no public comment, then we  
14 will recess into closed session pursuant to Government  
15 Code section 11126(e) to confer and meet with legal  
16 counsel.

17 We will reconvene in a few minutes to open session.

18 Five minutes.

19 *(The Members of the Commission met in closed*  
20 *executive session from 11:21 a.m. to 11:33 a.m.)*

21 CHAIR SHEEHAN: All right. The Commission on State  
22 Mandates met in closed session pursuant to Government  
23 Code section 11126(e) to confer with and receive advice  
24 from legal counsel for consideration and action, as  
25 necessary and appropriate, upon the pending litigation

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1 listed in the published notice and agenda and any  
2 potential litigation; and pursuant to Government Code  
3 section 11126, subdivision (a), and 17526, to confer on  
4 personnel matters listed on the published agenda.

5 All required reports of closed session having been  
6 made and with no further business to discuss, I will  
7 entertain a motion to adjourn.

8 MEMBER SMITH: So moved.

9 MEMBER BOEL: I second.

10 CHAIR SHEEHAN: Without any further business, we  
11 stand adjourned.

12 Thank you.

13 *(Proceedings concluded at 11:34 a.m.)*

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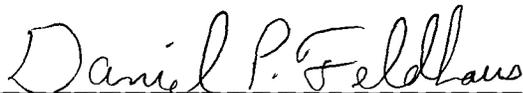
REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the testimony of said witnesses was reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on 18th of April 2005.



DANIEL P. FELDHAUS  
California CSR #6949  
Registered Diplomate Reporter  
Certified Realtime Reporter