

## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
July 28, 2006

Present: Member Anne Sheehan, Chairperson  
Representative of the Director of the Department of Finance  
Member Amy Hair, Vice Chairperson  
Representative of the State Controller  
Member Francisco Lujano  
Representative of the State Treasurer  
Member Sean Walsh  
Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Paul Glaab  
City Council Member  
Member Sarah Olsen  
Public Member

#### CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:30 a.m. She welcomed Amy Hair, the new representative for the State Controller. Paula Higashi, Executive Director, introduced new Commission Counsel, Kelly Loyer.

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

##### PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) 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.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]

3. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Second District Court of Appeal, Case Number B188169, on appeal from Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
4. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]

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

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

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

#### **SPECIAL ORDER OF BUSINESS: HEARING AND DECISION PURSUANT TO REMAND OF THE COURT (Gov. Code, § 17559, subd. (b)) (action)**

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing of items 18 and 19.

- Item 19      State Controller's Reevaluation of Reimbursement Claims  
*Graduation Requirements* on Remand from the Sacramento County Superior Court, *San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Case Nos. 03CS01401 (Consolidated with Nos. 03CS01568, 03CS01569, 03CS01570, 03CS 01702, 04CS00028)

Camille Shelton, Chief Legal Counsel, presented this item. She stated that this item was a

remand from the Sacramento County Superior Court on incorrect reduction claims filed by six school districts for the cost of teacher salaries on the *Graduation Requirements* program. For purposes of this hearing, she clarified that the Commission was required to determine whether the State Controller's Office properly reevaluated the claims of the school districts pursuant to the court's ruling, in which the sole issue is whether the school districts experienced any savings pursuant to Education Code section 44955 to offset teacher salary costs as a direct result of the mandated science course.

Ms. Shelton explained that Education Code section 44955 authorizes school districts to terminate the services of permanent employees of non-mandated classes when the amendment of state law requires the modification of curriculum. The court found that a school district's use of Education Code section 44955 is solely within the discretion of the school district and cannot be used by the Controller's Office to deny or reduce a claim for teacher salary costs on the ground that a school district has not shown a reduction or an offset of costs for non-science classes or teachers.

Pursuant to the court's ruling, and based on the Controller's finding that the Grossmont Union High School District properly filed its reimbursement claim for teacher salaries, staff recommended that the Commission issue a new decision consistent with the staff analysis on the claim filed by the Grossmont Union High School District and remand the claim to the Controller's Office for payment. Staff further recommended, based on the ground that the Controller's reduction of its claims does not comply with the court's ruling, that the Commission return the evaluation of the claims filed by the remaining five school districts to the Controller for correction and resubmission to the Commission within 30 days.

Parties were represented as follows: Keith Petersen, representing five of the six districts; Art Palkowitz, on behalf of the San Diego Unified School District; Geoffrey Graybill, Deputy Attorney General for the State Controller; Jim Spano, with the State Controller's Office; and Sloan Simmons, with Lozano Smith.

Mr. Petersen stated that he was going to stand on his written submission, noting that he disagreed with many of the jurisdictional issues.

Mr. Palkowitz provided background information about the history and issues with the incorrect reduction claims for the *Graduation Requirements* program. He noted the tremendous impact on the districts of prolonging this matter further. He stated that if the Commission was going to provide another 30-day reevaluation, he wanted to hear what the Controller's Office anticipates to take place in that period of time, and requested that the item be placed on the September agenda.

Mr. Graybill noted that he was not available to the Controller's Office when all the documentation submitted to the Commission was prepared. He had additional comments that he wanted to present in writing, but stated that his request for a postponement was denied by the executive director. He indicated that if there was continuing objection to his citing of additional authority, he would renew his request for a postponement to the Commission.

Ms. Shelton responded that under Bagley-Keene, any case can be cited and brought in public testimony. However, she stated that she would not be able to respond as she had not read the cases. Ms. Shelton stated her position that the Commission was bound by the court's ruling. Regarding the continuance, she noted that everything issued by the Commission staff was issued directly to the Controller's Office and to the Attorney General's Office. She indicated that the draft staff analysis was issued in March, and the Controller's Office requested a continuance in April so that the Attorney General's Office could review the draft staff analysis. An extension

was granted until June 19, but the notice stated that no additional extensions would be granted.

Mr. Palkowitz commented that on June 19, the Department of Justice filed a four-page document analyzing the Commission's analysis, which was signed by Catherine Van Aken, Supervising Attorney General. He added that none of the cases just cited by Mr. Graybill were mentioned in that document. Mr. Palkowitz agreed with staff regarding the denial of the postponement request.

Mr. Graybill noted that he did not take part in the preparation of the June 19 response.

Chairperson Sheehan understood that there may have been personnel issues; however, she stated that the Commission had an obligation to move forward with this matter.

Mr. Graybill argued that staff incorrectly framed the issue and unduly restricted it, inconsistent with the court's decision. He disagreed with staff that Education Code section 44955 is the only factor to be considered. He stated his opinion that the failure of the districts to provide the information requested by the State Controller makes it likely that the court would uphold a Commission decision affirming the Controller's reevaluation. He contended that the Controller did the type of analysis that the court authorized when ruling on the issue of classroom remodeling costs and used data from the California Basic Educational Data System. In support of his arguments, Mr. Graybill referenced *Taye v. Coye* and *Coastal Community Hospital v. Belshé*. He added that the type of information that the districts submitted to the Controller initially was not reliable in terms of an audit.

[Member Walsh entered the room at 10:10 a.m.]

Mr. Graybill asked Mr. Spano if he prepared all the documentation submitted by the Controller's Office in this matter, and whether the information in the documents were true based on his personal knowledge, information, of belief. Mr. Spano affirmed.

Mr. Simmons stated that the court's ruling was that the Controller's Office complete a reevaluation, which was done and the process followed. He asserted that, at this time, the matter needed to move forward because the Controller's Office had numerous opportunities to get it right.

Ms. Shelton explained that according to the writ, the Commission's jurisdiction is to determine whether the Controller properly reevaluated the case with regard to the offset issue, and if the Commission finds that it did not, the Commission must send it back and the Controller has 30 days to resubmit another evaluation. She maintained that the court focused its review on the Commission's incorrect reduction claim decision and this was the only issue on remand back to the Commission.

With regard to documentation, Ms. Shelton stated that the Controller could not compare the documentation requirement for the teacher salaries issue with the claiming of the remodeling costs. The parameters and guidelines and claiming instructions for remodeling costs require specific documentation to be filed with the reimbursement claims. There is no documentation requirement in the parameters and guidelines or claiming instructions with regard to teacher salary costs. Although the court found the documentation requirement could be reasonably read into the claiming instructions pursuant to Government Code section 17561, the validity of the Controller's request for documentation turns on whether the offsetting savings requirement is substantively valid and consistent with the test claim decision, the parameters and guidelines, and the intent of Education Code sections 51225.3 and 44955. The court held that the Controller

is prevented from denying the school districts' claims for reimbursement of science teachers' salaries on the ground that the claimants have not shown a reduction in non-science classes and teachers, corresponding to the addition of the science class. The Commission, Ms. Shelton explained, already found in the test claim that they are entitled to reimbursement for teacher salary costs, and that such costs are mandated by the state. Thus, the test claim finding cannot be disturbed.

Mr. Graybill argued that there would be no purpose in requiring documentation if staff's interpretation were to prevail, which was not the court's intent.

Ms. Shelton responded that the court had no idea what documentation the school districts had. She acknowledged that the court said the Controller may properly request documentation, but quoting the court's ruling, "the Court's conclusion regarding the invalidity of the Controller's offsetting savings requirement does prevent the Controller from denying the school district's claims for reimbursement on the ground that the claimants have not shown a reduction."

Member Lujano made a motion to adopt the staff recommendation, which was seconded by Member Walsh. The motion carried 6-1, with Member Hair voting "No."

- Item 18 Proposed Orders to Set Aside Statements of Decision on Incorrect Reduction Claims on *Graduation Requirements*, CSM 4435-I-02, 14-21, 25, 27, 28, 30, 32-34, Education Code Section 51225.3, Statutes 1983, Chapter 498 (SB 813) Pursuant to Order of the Sacramento County Superior Court dated May 24, 2006, Case No. 05CS01253 (Consolidated with Case Nos. 05CS01262, 05CS01237, 05CS01256, 05CS01401):  
Claimants: Yuba City, Vallejo City, West Contra Costa, John Swett, Stockton, Novato, Center, Lake Tahoe, Ojai, Lincoln, San Juan and Linden Unified School Districts, and Placer Union, East Side Union, Anderson Union, and Woodland Joint Union High School Districts.

Camille Shelton, Chief Legal Counsel, presented this item. She stated that this item was the second consolidated litigation on the *Graduation Requirements* program filed by 16 school districts. She noted that in this case, the school districts, the Controller's Office, and the Commission signed a stipulation to dismiss the case and have the Controller reevaluate the claims in light of the *San Diego* decision. She indicated that there was a signed order from Judge Connolly, which was based on the stipulation.

Parties were represented as follows: Rogelio Ruiz, for the East Side Union High School District; Geoffrey Graybill, Deputy Attorney General for the State Controller; and Sloan Simmons, with Lozano Smith.

Mr. Simmons, Mr. Graybill, and Mr. Ruiz concurred.

Member Worthley made a motion to adopt the proposed order. With a second by Member Glaab, the motion carried unanimously.

#### **APPROVAL OF MINUTES**

Item 1 May 25, 2006

Upon motion by Member Olsen and second by Member Worthley, the minutes were unanimously adopted.

## **PROPOSED CONSENT CALENDAR**

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

### **ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS**

- Item 20    *Agency Fee Arrangements*, 00-TC-17/01-TC-14  
Statutes 1980, Chapter 816 (SB 2030); Statutes 2000, Chapter 893 (SB 1960); Statutes 2001, Chapter 805 (SB 614)  
Clovis Unified School District, Claimant
  
- Item 24    *Mandate Reimbursement Process*, 05-RL-4204-02 (CSM 4204 & 4485)  
Statutes 1975, Chapter 486 (AB 1375)  
Statutes 1984, Chapter 1459 (SB 2337)

### **PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5 (action)**

- Item 25    Adoption of Proposed Regulatory Action: Article I Cleanup  
Amendments to California Code of Regulations, Title 2, Chapter 2.5,  
Article 1. General, Section 1181.4

Member Olsen moved for adoption of items 20 and 25 on the consent calendar. With a second by Member Glaab, the items were unanimously adopted.

Member Walsh moved for adoption of item 24 on the consent calendar, which was seconded by Member Glaab. The motion carried 6-1, with Member Lujano voting "No."

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

- Item 3        Staff Report (if necessary)

No appeals were filed.

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

Ms. Higashi swore in the parties and witnesses participating in the hearing of the remaining items.

- Item 4        *Post Conviction: DNA Court Proceedings*, 00-TC21/01-TC-08  
Penal Code Sections 1405 and 1417.9  
Statutes 2000, Chapter 821 (SB 1342), Statutes 2001, Chapter 943 (SB 83)  
County of Los Angeles, Claimant

Camille Shelton, Chief Legal Counsel, presented this item. She noted that the test claim legislation requires civil court proceedings as a post-conviction remedy for convicted felons to obtain DNA testing of biological evidence in cases where identity is the issue. It also requires counties to retain biological material for felony cases for the period of time the convicted person remains incarcerated.

Staff found that the test claim legislation imposes a partial reimbursable state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution for specific activities.

Parties were represented as follows: Leonard Kaye, on behalf of the County of Los Angeles; and Susan Geanacou, with the Department of Finance.

Ms. Shelton clarified that staff recommended denial of the court hearing because of the statutory language giving discretion to the court on whether to conduct a hearing, and the activity of notifying the convicted felon that the evidence was being disposed.

Mr. Kaye raised two issues for clarification. First, he requested clarification that at this point, the Commission staff had made no finding regarding DNA testing required of the sheriff's department and transporting prisoners to and from state institutions, and that the activities would be discussed at the parameters and guidelines phase. Mr. Kaye noted that they were in partnership with the Department of Justice.

Ms. Shelton responded that all activities not specified in statute would still be discussed at the parameters and guidelines phase. She clarified that there is a finding in the proposed Statement of Decision that would not reimburse the county for the cost of the DNA test.

Mr. Kaye explained that many times, the court will require the sheriff to provide the DNA testing service. In the event that the court has insufficient funds to pay for the cost of the test, he asserted that the local agency should be reimbursed for the cost.

Ms. Shelton stated that there is no direct mandate for the county to pay for the cost of the DNA test at all, and it is within the court's discretion to decide who to charge. She maintained that according to the plain language of the statute, the cost of the test ordered shall be borne by the state or the applicant as determined by the court.

Ms. Geanacou supported the staff analysis. She emphasized that the appointment of counsel in this matter is at the court's discretion and not required by the state. Therefore, it was not a reimbursable mandate. She noted that the Department of Finance remains open to commenting on the reimbursable activities during the parameters and guidelines phase.

Ms. Shelton clarified staff's finding that the appointment of defense counsel was mandated under the earlier 2000 statute. The statute was amended in 2001, and applies only to the population of inmates that filed a motion for DNA testing during the first year of the program. If one of those inmates already filed a motion and the court already appointed defense counsel for that inmate, the court has discretion to allow the defense counsel to file another motion. Ms. Geanacou and Mr. Kaye agreed.

Member Walsh made a motion to adopt the staff recommendation. With a second by Member Glaab, the motion carried unanimously.

Item 5 Proposed Statement of Decision  
*Post Conviction: DNA Court Proceedings, 00-TC-21/01-TC-08*  
See Above

Camille Shelton, Chief Legal Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the staff recommendation. Ms. Shelton indicated that minor changes, including hearing testimony and vote count, would be reflected in the final Statement of Decision.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Worthley, the motion carried unanimously.

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

- Item 6     *Charter School Collective Bargaining, 99-TC-05*  
Education Code Sections 47605, Subdivision (b)(5)(O) and 47611.5,  
Government Code Section 3540, et seq., Statutes 1999, Chapter 828  
(AB 631)  
Western Placer Unified School District, Claimant

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the test claim was filed by a school district and the test claim legislation requires a charter school to insert in the charter a declaration as to whether the charter school will be deemed a public school employer for purposes of collective bargaining under the Educational Employment Relations Act. If the charter school does not decide to be a public school employer, the school district where the charter is located is deemed the public school employer by operation of law for purposes of collective bargaining.

Staff recommended that the Commission adopt the staff analysis to deny the test claim.

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

Mr. Scribner stated that members of the Legislature that his clients spoke with thought that the Commission would be able to resolve the charter school issue. Thus, he had no legislative directive and nothing new to bring forward. He concurred with the staff recommendation.

Ms. Geanacou supported the staff analysis, adding that the test claim should be denied because charter schools are not eligible claimants under state mandates law, and furthermore, there is no charter school claimant on the claim. She commented that new charter school employees in a school district where the charter school is not the public-school employer would likely join existing bargaining units, and thus, there would be no new activities. She maintained that more charter school employees would not increase bargaining unit activities.

Chairperson Sheehan stated that the members were sympathetic but constrained by statute.

Member Worthley made a motion to adopt the staff analysis. With a second by Member Glaab, the motion carried unanimously.

- Item 7     Proposed Statement of Decision  
*Charter School Collective Bargaining, 99-TC-05*  
See Above

Camille Shelton, Chief Legal Counsel, presented this item. She indicated that minor changes, including hearing testimony and vote count, would be reflected in the final Statement of Decision.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Olsen, the motion carried unanimously.

Item 8     *Mentally Disordered Offenders: Treatment as a Condition of Parole,*  
00-TC-28/05-TC-06  
Statutes 1985, Chapter 1419 (SB 1296); Statutes 1986, Chapter 858  
(SB 1845); Statutes 1987, Chapter 687 (SB 425); Statutes 1988,  
Chapter 658 (SB 538 ); Statutes 1989, Chapter 228 (SB 1625);  
Statutes 1994, Chapter 706 (SB 1918)  
County of San Bernardino, Claimant

Deborah Borzelleri, Commission Counsel, presented this item. She noted that the test claim legislation established continued mental health treatment and civil commitment procedures for people with severe mental disorders at the time their parole or sentence is terminating. The legislation sets forth procedures for civil court hearings that are initiated by the prisoner or parolee. The court is required to conduct the hearing, the District Attorney is required to represent the people, and the public defender is required to represent the person, if the person is indigent.

Staff found that the test claim legislation imposes a reimbursable state mandate for the civil hearings, the activities of the District Attorney representing the people, and the public defender representing indigent persons. Staff recommended that the Commission adopt the staff analysis to approve the test claim for these activities.

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

Ms. Ter Keurst had no comments.

Ms. Geanacou supported the final staff analysis and reserved the right to comment on the reimbursable activities during the parameters and guidelines phase.

Member Olsen made a motion to adopt the staff recommendation. With a second by Member Glaab, the motion carried unanimously.

Item 9     Proposed Statement of Decision  
              *Mentally Disordered Offenders: Treatment as a Condition of Parole,*  
00-TC-28/05-TC-06  
              See Above

Deborah Borzelleri, Commission Counsel, presented this item. She stated that the issue before the Commission is whether the proposed Statement of Decision accurately reflected the Commission's decision. She indicated that minor changes, including hearing testimony and vote count, would be reflected in the final Statement of Decision.

Member Hair made a motion to adopt the proposed Statement of Decision. With a second by Member Worthley, the motion carried unanimously.

[A short break was taken at this time.]

Item 10     *Binding Arbitration*, 01-TC-07  
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3  
1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9  
Statutes 2000, Chapter 906 (SB 402)  
City of Palos Verdes Estates, Claimant

Deborah Borzelleri, Commission Counsel, presented this item. She noted that the test claim legislation establishes a mandatory binding arbitration process for local governments and law enforcement officers and firefighters. The legislation requires that when an impasse in employer-employee relations is declared, the parties would be subject to binding arbitration if the employee organization so requested.

Ms. Borzelleri explained that the test claim statute became effective on January 1, 2001, but was declared unconstitutional by the California Supreme Court on April 23, 2003, in the *County of Riverside* case, as violating the home rule provisions of the California Constitution. She indicated that the Supreme Court did not address whether or not its ruling was retroactive to the original effective date of the test claim statute, and thus, staff's analysis addresses whether the statute, while it was believed to be constitutional between January 1, 2001 through April 21, 2003, created a reimbursable state-mandated program.

Staff found that applying the court's ruling of unconstitutionality retroactively to the original date of the effective legislation could have the effect of forcing programs and costs on local governments without the state paying for them, which is contrary to the stated purpose of article XIII B, section 6. Moreover, staff found that the test claim legislation did not constitute a new program or higher level of service. Ms. Borzelleri explained that cases have consistently held that additional costs for increased employee benefits and compensation in the absence of some increase in the actual level or quality of governmental services provided to the public do not constitute an enhanced service to the public, and therefore, do not impose a new program or higher level of service on local governments within the meaning of article XIII B, section 6 of the Constitution.

Ms. Borzelleri noted that because strikes by law enforcement officers and fire services personnel are prohibited by law, no successful argument can be made that the legislation affects law enforcement or firefighting services to the public. Staff recommended that the Commission adopt the staff analysis to deny the test claim.

Parties were represented as follows: John Liebert, Pamela Stone, and Daniel Dreiling, representing the City of Palos Verdes Estates; Allan Burdick, on behalf of the California State Association of Counties; and Susan Geanacou, with the Department of Finance.

Mr. Liebert disagreed with the staff conclusion that the test claim legislation did not constitute a new program or higher level of service, but agreed that case law has consistently held that legislation, where there is a cost traceable to an increase in employee benefits, would not qualify for reimbursement under the Constitution. He asserted that the test claim was not just seeking reimbursement for the costs of increased employee benefits. Mr. Liebert withdrew two activities from the original 23 seeking increased employee benefits that the claimant alleged to be reimbursable, leaving 21 other activities that he contended to be reimbursable.

Mr. Liebert also disagreed with staff's conclusion that no service to the public was involved. He referred to several cases in support of his arguments, including the *County of Los Angeles* case, the *Carmel Valley* case, and the *San Diego Unified School District* case. He argued that in reality, strikes are likely and have occurred notwithstanding that they are against the law. He contended that the claim met all the requirements of a reimbursable state-mandated program.

Given the oath she took, Chairperson Sheehan expressed the difficulty she was experiencing with the idea of ignoring the appellate court decision and statute outlawing strikes by firefighters and law enforcement.

Ms. Stone presented the Commission members with additional exhibits, which were prior Commission decisions pertaining to labor matters wherein the labor process was found to be reimbursable. She addressed a couple of the decisions, asserting that the same issue was present in this case. She conceded the issues of increase in salaries and litigation costs, clarifying that they sought reimbursement for the labor process costs that would be incurred.

In response to Mr. Liebert's reference to the *County of Los Angeles* case, Ms. Borzelleri agreed that binding arbitration is in fact a program; however, she disagreed that it was a new program or higher level of service. With regard to his reference to other cases, she maintained that those cases identified an actual public service, unlike this case. As to the argument that the Commission ruled on similar cases in the past, she stated that those decisions are not binding; rather, the Commission must rely on case law.

Ms. Shelton added that the Supreme Court repeatedly said that the whole purpose of article XIII B, section 6 is to prevent the state from shifting costs to local agencies to provide a service to the public.

Ms. Geanacou agreed with the staff analysis that there is no higher level of service to the public from binding arbitration following impasse and bargaining. She noted that recent cases confirmed at an appellate level that an alleged increased cost of providing services to the public does not equal an increased level of services to the public. She also noted that many of the activities claimed in the test claim are not required by the legislation.

Mr. Liebert contended that the definition of a program refers to services to the public, as well as a unique requirement imposed upon local government by the state. He submitted that binding arbitration was a perfect example of a law that implements state policy and imposes unique requirements on local governments that do not apply to other entities.

Ms. Stone commented that notwithstanding case law precluding strikes by peace officers illegal, there have been severe cases of "blue flu," in which various safety officers call in sick. She argued that this legislation was very clear in its intent to provide a service to the public by ensuring that there were no employer-employee disagreements that could affect the provision of both fire and police. She noted that these were found in *Carmel Valley* and other cases to be two of the most primary governmental services that local government provides to its citizens.

Ms. Shelton explained that there are several elements to finding a reimbursable state-mandated program that must be satisfied: 1) a mandated activity is imposed on the agency, 2) the activities constitute a program, 3) the program has to be a new program or higher level of service, and 4) there are increased costs mandated by the state for the activities required by statute. The fact that the program is unique to local government satisfies the test that it is in fact a program subject to article XIII B.

Mr. Liebert continued to disagree, maintaining that when a higher level of service is provided for an existing program, a new program is created, which results in services to the public. Ms. Shelton responded that the courts have defined a new program or higher level of service as providing a service to the public.

Ms. Higashi requested clarification as to which activities the claimant was officially withdrawing. Ms. Stone clarified that they were withdrawing the costs of implementing the award to the employees as a result of the test claim statute, the costs of litigation, and additional intangible costs.

Member Worthley acknowledged that increased costs do not necessarily reflect increased quality, but struggled with the concept that there is no correlation between increased costs and quality.

Ms. Shelton stated that the Supreme Court in the *San Diego* case said that the same arguments were raised in the prior cases that were reviewed, and even though there could be a higher quality of service provided to the public, the court still found that there is no higher level of service because it was just a benefit to the employee.

Member Olsen said that the issue was the directness of the correlation between increased costs and quality. She noted that everything government does ultimately affects a public outcome in some way. From her perspective, binding arbitration is provided as a way of dealing with a conflict between employees and employers. While increased benefits may result, she submitted that they were not a direct outcome of requiring binding arbitration.

Mr. Burdick commented that this was a unique program placed on local government and that the cost issue is being litigated. He maintained that local government disagreed that increased costs should not be reimbursed.

Ms. Higashi clarified that the *Collective Bargaining* decision was made before any of the cited case law appeared. Also, because there was no evidence in the record, she asked if there was any report as to how many jurisdictions actually participated in binding arbitration, and whether or not the claimant entered into binding arbitration as a result of the test claim statute.

Ms. Stone responded that she was personally aware of one county being forced into binding arbitration, which resulted in an award higher than the last best final offer. She added that other entities did the pre-stages but did not enter into the stage of binding interest arbitration, or get as far as an arbitration decision.

Ms. Higashi requested clarification as to whether Ms. Stone was suggesting there may only be one claimant. Ms. Stone clarified that there would be some claimants with regard to the initial start-up costs, but that there was only one agency that went through the entire process.

Mr. Liebert clarified that the claimant's concern related to the costs of the process.

Mr. Burdick commented that several agencies could qualify for increased costs so he cautioned against saying that there is a single agency. However, he did not believe that there will be substantial claims in this particular process.

Ms. Higashi noted that the analysis did not go into detail as to whether the claimant's allegations are mandated by statute, and if the Commission were to approve the test claim, whether the activities would still be reasonably necessary to implement the mandate.

Member Walsh made a motion to adopt the staff recommendation, which was seconded by Member Glaab. The motion carried 6-1, with Member Worthley voting "No."

- Item 11 Proposed Statement of Decision  
*Binding Arbitration, 01-TC-07*  
See Above

Deborah Borzelleri, Commission Counsel, presented this item. She stated that the issue before the Commission is whether the proposed Statement of Decision accurately reflected the Commission's decision.

Ms. Shelton added that the final Statement of Decision would reflect the hearing testimony and indicate that the claimant waived its request for certain benefits and litigation costs.

Member Olsen made a motion to adopt the proposed Statement of Decision, which was seconded by Member Walsh. The motion carried 6-1, with Member Worthley voting "No."

- Item 12 *Worker's Compensation Disability Benefits for Government Employees, 00-TC-20/02-TC-02*  
Labor Code Section 4850; Statutes 2000, Chapter 920 (AB 1883) & 929 (SB 2081); Statutes 1999, Chapters 270 (AB 224) & 970 (AB 1387); Statutes 1989, Chapter 1464 (SB 1172); Statutes 1977, Chapter 981 (SB 989)  
County of Los Angeles, Claimant  
San Diego Unified School District, Co-Claimant

- Item 13 Proposed Statement of Decision  
*Worker's Compensation Disability Benefits for Government Employees, 00-TC-20/02-TC-02*  
See Above

Items 12 and 13 were postponed.

- Item 14 *Modified Primary Election, 01-TC-13*  
Statutes 2000, Chapter 898 (SB 28)  
County of Orange, Claimant

Katherine Tokarski, Commission Counsel, presented this item. She noted that the test claim dealt with changes to the partisan primary system in California. In 1996, the voters adopted Proposition 198 of the Open Primary Act; however, Statutes 2000, chapter 898, largely repealed and reenacted the Elections Code sections that were amended by Proposition 198 following the U.S. Supreme Court decision finding that the process was unconstitutional.

Ms. Tokarski explained that by amending a few of the Elections Code sections, the test claim legislation altered the prior closed primary system to one in which voters who declined to state a political party affiliation may choose any political party's partisan primary ballot, if allowed by the political party. This created a form of open primary.

Staff concluded that the test claim legislation imposes a reimbursable state-mandated program on counties for allowing voters who decline to state a party affiliation to vote a party ballot at the primary, and for adding related information to voter registration cards. Ms. Tokarski indicated that no comments were received on the draft staff analysis. Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Pamela Stone and Suzanne Slupsky, representing the County of Orange; and Susan Geanacou, with the Department of Finance.

Ms. Stone concurred with the staff analysis. She noted that there were necessary activities to reasonably accomplish the mandate that they would raise at the parameters and guidelines phase.

Ms. Geanacou agreed with the staff analysis and reserved the right to comment on the reimbursable activities during the parameters and guidelines phase.

Ms. Stone noted that the claimant and the Department of Finance disagreed on the potential reimbursable activities.

Member Worthley made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion carried unanimously.

Item 15 Proposed Statement of Decision  
*Modified Primary Election, 01-TC-13*  
See Above

Katherine Tokarski, Commission Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the staff analysis and recommendation. Ms. Tokarski indicated that minor changes, including hearing testimony and vote count, would be reflected in the final Statement of Decision.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Worthley, the motion carried unanimously.

Item 16 *Permanent Absent Voter II, 03-TC-11*  
Elections Code Sections 3100, 3101, 3103, 3104, 3106, 3108, 3110, 3200, 3201, 3202, 3203, 3204, 3205, and 3206; Statutes 1994, Chapter 920 (SB 1547); Statutes 1996, Chapter 724 (AB 1700); Statutes 2001, Chapters 918 (AB 719) and 922 (AB 1520); Statutes 2002, Chapter 664 (AB 3034); and Statutes 2003, Chapter 347 (SB 445)  
County of Sacramento, Claimant

Katherine Tokarski, Commission Counsel, presented this item. She noted that this test claim was filed to reflect changes in the election law pertaining to the original *Permanent Absent Voters* test claim, which was decided in 1989. At the time, the Commission determined that Elections Code sections 1450 through 1456 imposed a reimbursable state-mandated program. Ms. Tokarski explained that in 2001, the Elections Code was substantively amended to allow all registered voters to apply for permanent absent voter status rather than limiting eligibility.

Staff concluded that the test claim legislation imposes a reimbursable state-mandated program, replacing the related activity from *Permanent Absent Voter I*. Ms. Tokarski stated that county election officials are newly required to include explanations of the absentee voting procedure and of Elections Code section 3206 in all absentee ballot mailings. She noted that no comments were received on the draft staff analysis. Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Pamela Stone and Alice Jarboe, representing the County of Sacramento; and Susan Geanacou, with the Department of Finance.

Ms. Stone concurred with the staff analysis. She indicated that the claimant will propose one set of parameters and guidelines covering the activities for both the *Permanent Absent Voter I* and

*Permanent Absent Voter II* programs.

Ms. Geanacou supported the staff analysis. She had a technical question about a reference to a code section in the staff analysis. Ms. Tokarski clarified the mistake.

Ms. Geanacou reserved the right to comment during the parameters and guidelines phase.

Member Worthley made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion carried unanimously.

- Item 17 Proposed Statement of Decision  
*Permanent Absent Voter II*, 03-TC-11  
See Above

Katherine Tokarski, Commission Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the staff analysis and recommendation. Ms. Tokarski indicated that minor changes, including hearing testimony and vote count, would be reflected in the final Statement of Decision.

Member Walsh made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, 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 AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS**

- Item 21 *Missing Children Reports*, 01-TC-09  
Education Code Sections 38139 and 49068.6  
Statutes 1986, Chapter 249 (AB 606); Statutes 1996, Chapter 277 (SB 1562); Statutes 1999; Chapter 832 (AB 646)  
San Jose Unified School District, Claimant  
And  
Request to Amend All Parameters and Guidelines to Include Time Study Language, 04-PGA-04  
State Controller's Office, Requestor

Item 21 was postponed.

- Item 22 *Pupil Expulsions from School: Additional Hearing Costs for Mandated Recommendations of Expulsion for Specified Offenses*  
(*San Diego Unified School District v. Commission on State Mandates* (2004) 33 Cal.4<sup>th</sup> 859, 867), 05-PGA-04 (CSM-4455)  
Education Code Section 48915, Statutes 1993, Chapters 1255 (AB 342) and 1256 (SB 1198); Education Code Section 48918, Statutes 1975, Chapter 1253 (AB 1770); Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1983, Chapters 498 (SB 813) and 1302 (AB 70) Statutes 1985, Chapter 856 (AB 1758); Statutes 1987, Chapter 134 (AB 439); Statutes 1990, Chapter 1231 (SB 2356); Statutes 1994, Chapter 146 (AB 3601)  
San Diego Unified School District, Claimant

Nancy Patton, Assistant Executive Director, presented this item. She stated that in October 1999,

the San Diego Unified School District challenged the *Pupil Expulsions from School* decision. In 2004, the Supreme Court issued its ruling, requiring the state to reimburse school districts for all resulting hearing costs, including those attributable to procedures required by federal law or mandated recommendations of expulsion for certain offenses, back to the initial reimbursement period beginning in fiscal year 1993-1994.

Ms. Patton indicated that in May 2005, the Commission amended its original Statement of Decision to conform to the Supreme Court decision. Here, a new set of parameters and guidelines are proposed so school districts can claim additional hearing costs dating back to fiscal year 1993-1994. Ms. Patton explained that the San Diego Unified School District proposed a uniform cost allowance of \$587.15 for the direct and indirect costs of expulsion hearings for each mandated recommendation of expulsion for fiscal year 2005-2006. For prior years, the amount would be adjusted back to fiscal year 1993-1994, using the implicit price deflator for the costs of goods and services to governmental agencies, as determined by the Department of Finance.

Based on a review of comparable costs and activities for state agency due process hearings, staff found that the claimant's proposal is reasonable and should be adopted. Staff recommended that the Commission adopt the proposed parameters and guidelines and authorize staff to make any necessary technical corrections.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; and Ryan Storm, with the Department of Finance.

Mr. Palkowitz concurred with the staff analysis.

Mr. Storm disagreed with the staff analysis because the uniform cost allowance should be based on actual costs audited by the State Controller's Office. He argued that some of the most expensive areas are Los Angeles and San Diego, and thus, some of the more remote areas and other regions in the state may have lower costs. The Department of Finance proposed, as an alternative, that the Controller's Office select a sample of different districts, based on size and location, and create a reimbursement rate that is based on actual costs. He stated that with staff's recommendation, the state would actually be reimbursing more than the true cost of the mandate.

Chairperson Sheehan asked what the different costs might be due to geography. Mr. Palkowitz responded that the classification of individuals that perform the work include a Deputy Attorney General, a paralegal, and an administrative law judge. He noted that the uniform cost allowance was based on uniform state rates for these classifications.

Mr. Storm contended that there may be different compensation levels for these classifications in San Diego as opposed to an area like Modoc County.

Ms. Higashi commented that the uniform state rates were used as representative costs because school districts are authorized to contract with the Office of Administrative Hearings to conduct hearings. She stated that she welcomed unit cost proposals based on audited data, however there were no such proposals before her. She noted that state law authorizes the Department of Finance or the Controller's Office to develop a proposal at a time in the future.

Chairperson Sheehan emphasized the need for data and acknowledged that matters could not just be tolled continually.

Ms. Shelton stated that the Department of Finance has the authority to come back and request that the parameters and guidelines be amended prospectively.

Chairperson Sheehan recognized the need for additional data, but stated her reluctance to continually toll the item until any data is submitted. She also reiterated the open invitation for additional data.

Member Glaab made a motion to adopt the staff recommendation. With a second by Member Walsh, the motion carried unanimously.

- Item 23     Amendment of *Pupil Suspensions, Expulsions, and Expulsion Appeals*  
05-PGA-04 (CSM-4455, 4456, and 4463)  
San Diego Unified School District, Requestor And
- Pupil Suspensions from School* - CSM-4456  
Education Code Section 48911, subdivisions (b) and (e)  
Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1980, Chapter 73 (SB 1247); Statutes 1983, Chapter 498 (SB 813); Statutes 1985, Chapter 856 (AB 1758); Statutes 1987, Chapter 134 (AB 439) And
- Pupil Expulsions from School* - CSM-4455  
Education Code Sections 48915, subdivisions (a) and (b), 48915.1, 48915.2, 48916 and 48918  
Statutes 1975, Chapter 1253 (AB 1770); Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); Statutes 1982, Chapter 318 (SB 1385); Statutes 1983, Chapter 498 (SB 813); Statutes 1984, Chapter 622 (SB 1685); Statutes 1987, Chapter 942 (AB 2590); Statutes 1990, Chapter 1231 (AB 3794); Statutes 1992, Chapter 152 (AB 3362); Statutes 1993, Chapters 1255 (AB 342), 1256 (SB 1198); 1257 (SB 1130); and, Statutes 1994, Chapter 146 (AB 3601) And
- Pupil Expulsion Appeals* - CSM-4463  
Education Code Sections 48919, 48921-48924  
Statutes 1975, Chapter 1253 (AB 1770); Statutes 1977, Chapter 965 (AB 530); Statutes 1978, Chapter 668 (AB 2191); and Statutes 1983, Chapter 498 (SB 813)

Nancy Patton, Assistant Executive Director, presented this item. She noted that the Commission adopted three related Statements of Decision on the pupil disciplinary process: *Pupil Suspensions from School*, *Pupil Expulsions from School*, and *Pupil Expulsions Appeals*. She stated that the parameters and guidelines for each program were consolidated so there would be one set of claiming instructions, but the consolidated parameters and guidelines must be amended to implement the Supreme Court decision in the *San Diego Unified School District* case.

Ms. Patton noted that the same uniform cost allowance for reimbursement of additional hearing costs from the previous item is incorporated here. Staff recommended that the Commission adopt the proposed amendments to the consolidated parameters and guidelines, effective July 1, 2006. Staff also recommended that the Commission authorize staff to make technical, non-substantive changes as necessary.

Parties were represented as follows: Art Palkowitz, representing the San Diego Unified School District; and Ryan Storm, with the Department of Finance.

Mr. Palkowitz concurred with the staff analysis and recommendation.

Mr. Storm disagreed based on his testimony from the previous item.

Member Walsh made a motion to adopt the staff recommendation. With a second by Member Glaab, the motion carried unanimously.

#### MEETING AND HEARING CALENDAR

##### Item 26 Adoption of 2007 Meeting and Hearing Calendar

Nancy Patton, Assistant Executive Director, presented this item. She stated that the Commission is required to meet at least once every two months. In addition to the six required meetings, she noted that two tentative hearing dates were proposed to accommodate additional agenda items, if necessary. Staff recommended that the Commission adopt the proposed 2007 hearing calendar.

Member Worthley made a motion to adopt the proposed hearing calendar. With a second by Member Walsh, the motion carried unanimously.

#### STAFF REPORTS

##### Item 27 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Ms. Shelton had no additional items to report.

##### Item 28 Executive Director's Report (info/action) Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Budget.* There is a new requirement for the Commission to report its workload to the Department of Finance annually. The budget detail for mandate reimbursement appropriations includes supplemental language regarding how these monies can be used for reimbursement. A new Government Code provision was added to clarify when a Commission decision triggers article XIII B, section 6, in terms of funding or suspending local agency mandates.
- *Legislation.* Assembly Bill 2652, the Commission's sponsored legislation, is on the Senate floor.
- *Next Hearing.* Because of conflicts for the scheduled September hearing, a new date will be confirmed and announced.

#### PUBLIC COMMENT

There was no public comment.

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

##### PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) 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.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Second District Court of Appeal, Case Number B188169, on appeal from Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
4. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]

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

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

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**

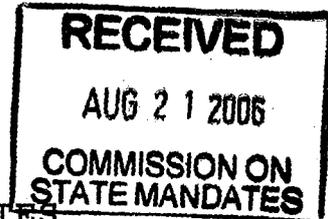
Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published 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, Member Sheehan adjourned the meeting at 12:50 p.m.

  
PAULA HIGASHI  
Executive Director

ORIGINAL



PUBLIC HEARING  
COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:30 a.m.  
DATE: Friday, July 28, 2006  
PLACE: State Capitol, Room 126  
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

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

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**Daniel P. Feldhaus, C.S.R., Inc.**  
Certified Shorthand Reporters  
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FeldhausDepo@aol.com

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN  
(Commission Chair)  
Representative for MICHAEL GENEST  
Director  
Department of Finance

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

SARAH OLSEN  
Public Member

SEAN WALSH  
Director  
State Office of Planning and Research

AMY HAIR  
Representative for STEVE WESTLY  
State Controller

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

--o0o--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
(Item 28)

CAMILLE SHELTON  
Chief Legal Counsel  
(Items 4, 5, 6, 7, 18, 19 & 27)

DEBORAH BORZELLERI  
Commission Counsel  
(Items 8, 9, 10 & 11)

NANCY PATTON  
Deputy Executive Director  
(Item 22, 23 & 26)

KATHERINE TOKARSKI  
Commission Counsel  
(Items 14, 15, 16 & 17)

--o0o--

PUBLIC TESTIMONY

**Appearing Re Item 4:**

For County of Los Angeles:

LEONARD KAYE  
Certified Public Accountant  
Office of Auditor-Controller  
County of Los Angeles  
500 West Temple Street, Suite 603  
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing Re Item 4:**

For Department of Finance:

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

**Appearing Re Item 6:**

For Western Placer Unified School District:

DAVID E. SCRIBNER, Esq.  
President/CEO  
Scribner Consulting Group, Inc.

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

**Appearing re Item 8:**

For County of San Bernardino:

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

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing re Item 10:**

For City of Palos Verdes Estates:

JOHN LIEBERT

Attorney

Liebert Cassidy Whitmore

6033 West Century Boulevard, Suite 500

Los Angeles, California 90045

PAM STONE

MAXIMUS

Financial Services Division

4320 Auburn Boulevard, Suite 200

Sacramento, California 95841

DANIEL DREILING

Chief of Police

Palos Verdes Estates Police Department

340 Palos Verdes Drive West

Palos Verdes Estates, California 90274

For California State Association of Counties:

ALLAN BURDICK

Director

California State Association of Counties

SB 90 Service

4320 Auburn Boulevard, Suite 2000

Sacramento, California 95841

For Department of Finance:

SUSAN S. GEANACOU, Esq.

Senior Staff Attorney

Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing re Item 14:**

For County of Orange:

PAM STONE  
MAXIMUS

SUZANNE SLUPSKY  
Election Services Manager  
County of Orange  
Registrar of Voters  
1300-C S. Grand Avenue  
Santa Ana, California 92705

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

**Appearing re Item 16:**

For County of Sacramento

PAM STONE  
MAXIMUS

ALICE JARBOE  
Assistant Registrar of Voters  
County of Sacramento  
Voter Registration and Elections  
7000 - 65<sup>th</sup> Street, Suite A  
Sacramento, California 95825

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing re Item 18:**

For East Side Union High School District

ROGELIO M. RUIZ  
96 North Third Street, Suite 620  
San Jose, California 95112

**Appearing re Item 19:**

For Various Districts:

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

For Various Districts

SLOAN R. SIMMONS  
Attorney at Law  
Lozano Smith  
2000 Crow Canyon Place, Suite 200  
San Ramon, California 94583

For San Diego City Schools:

ARTHUR M. PALKOWITZ  
Manager, Office of Resource Development  
San Diego City Schools  
4100 Normal Street, Room 3209  
San Diego, CA 92103-2682

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing re Item 19:** *continued*

For State Controller's Office:

GEOFFREY GRAYBILL  
Office of the Attorney General  
1300 I Street  
Sacramento, California 95814

JIM L. SPANO  
State Controller's Office

**Appearing re Item 22:**

For San Diego City Schools:

ARTHUR M. PALKOWITZ  
Manager, Office of Resource Development  
San Diego City Schools

For Department of Finance:

RYAN STORM  
Department of Finance

**Appearing re Item 23:**

For San Diego City Schools:

ARTHUR M. PALKOWITZ  
Manager, Office of Resource Development  
San Diego City Schools

For Department of Finance:

RYAN STORM  
Department of Finance

--o0o--

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>20</u>	<u>23</u>	should read "Controller's"
<u>20</u>	<u>23</u>	Cross off "as"
<u>40</u>	<u>24</u>	cross off "offset-in" and replace with "offsetting"
<u>44</u>	<u>2</u>	cross off "offset-in" and replace with "offsetting"
<u>45</u>	<u>24</u>	Cross off "signed" and replace with "based"
<u>65</u>	<u>10</u>	Cross off "herd" and replace with "heard"
<u>76</u>	<u>2</u>	cross off "meeting" and replace with "meaning"
<u>76</u>	<u>8</u>	Cross off "staff" and replace with "stuff"
<u>121</u>	<u>21</u>	correct word from "enacted" to "reenacted"
<u>121</u>	<u>23</u>	cross off the "-ing" ending on the word "processing"
<u>132</u>	<u>8</u>	cross off "incorrect" and replace with "indirect"
<u>139</u>	<u>18</u>	Replace "respectively" with "prospectively"

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**Commission on State Mandates – July 28, 2006**

1 BE IT REMEMBERED that on Friday, July 28, 2006,  
2 commencing at the hour of 9:30 a.m., thereof, at the  
3 State Capitol, Room 126, Sacramento, California, before  
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the  
5 following proceedings were held:

6 --oOo--

7 CHAIR SHEEHAN: Good morning.

8 I would like to call the July 28th Commission  
9 on State Mandates meeting to order.

10 Can we call the roll?

11 MS. HIGASHI: Mr. Glaab?

12 MEMBER GLAAB: Present.

13 MS. HIGASHI: Mr. Lujano?

14 MEMBER LUJANO: Here.

15 MS. HIGASHI: Ms. Hair?

16 MEMBER HAIR: Here.

17 MS. HIGASHI: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MS. HIGASHI: Mr. Walsh?

20 He'll be arriving a little bit late this  
21 morning.

22 CHAIR SHEEHAN: Okay.

23 MS. HIGASHI: And Ms. Sheehan?

24 CHAIR SHEEHAN: I'm here.

25 MS. HIGASHI: Thank you.

1 CHAIR SHEEHAN: We have a quorum.

2 MEMBER WORTHLEY: I'm here.

3 MS. HIGASHI: Mr. Worthley, I'm sorry.

4 Since this is going to be a long day, I thought  
5 I'd move it along.

6 CHAIR SHEEHAN: Exactly. So we have a quorum.  
7 And I would like to welcome our newest representative  
8 from the Controller's office.

9 Amy, welcome.

10 MEMBER HAIR: Thank you.

11 CHAIR SHEEHAN: We'd also like to introduce a  
12 new staff member we have.

13 MS. HIGASHI: We have a new staff member. And  
14 I'd also like to introduce Commission Counsel Kelly  
15 Loyer. She's just joined us recently.

16 CHAIR SHEEHAN: Great. Welcome.

17 Okay, now that you've all gotten comfortable,  
18 we're going to go into closed session for a few minutes.  
19 So it shouldn't be more than 10 or 15 minutes. I guess  
20 we should have warned you before we sat down.

21 But for the record, the Commission will meet in  
22 closed executive session pursuant to Government Code  
23 section 11126, subdivision (e), to confer with and  
24 receive advice from legal counsel for the consideration  
25 and action, as necessary and appropriate, upon the

**Commission on State Mandates – July 28, 2006**

1 pending litigation listed on the public notice and  
2 agenda, and to confer with and receive advice from legal  
3 counsel regarding the potential litigation and pursuant  
4 to Government Code sections 11126, subdivision (a), and  
5 17526. The Commission will also confer on personnel  
6 matters listed in the published notice and agenda.  
7 We'll reconvene in open session at this location in  
8 approximately 15 minutes.

9 *(Closed executive session was held*  
10 *from 9:36 a.m. to 9:46 a.m.)*

11 CHAIR SHEEHAN: I'd like to reconvene in open  
12 settings July 28th meeting on the Commission on State  
13 Mandates.

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

23 And we are now reconvening in open session.  
24 And then we will move to the regular business.

25 We have a special order that will be taken up

1 now, and that will be Items 18 and 19 at this time.

2 So, Paula?

3 MS. HIGASHI: Will the parties for Items 19 and  
4 18 please stand?

5 Parties, witnesses, representatives. We have a  
6 practice of having you take an oath or affirmation.

7 Do you solemnly swear or affirm that the  
8 testimony which you are about to give is true and  
9 correct, based upon your personal knowledge, information,  
10 or belief?

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

12 MS. HIGASHI: Thank you very much.

13 Both of these items will be presented by  
14 Commission's Chief Counsel, Camille Shelton.

15 CHAIR SHEEHAN: All right, so whoever wants,  
16 come on forward and have a seat. If not, just sit front  
17 row, and then we'll call you up as we have space.

18 And, Camille, go ahead.

19 MS. SHELTON: This item is on a remand from the  
20 Sacramento County Superior Court on incorrect reduction  
21 claims filed by six school districts for the cost of  
22 teachers salaries on the *Graduation Requirements* program  
23 For purposes of today's hearing, the Commission is  
24 required to determine whether the State Controller's  
25 office properly reevaluated the claims of the school

1 districts pursuant to the Court's ruling, which is  
2 attached as Exhibit A in your binders.

3 As indicated in the Court's ruling, the sole  
4 issue is whether the school districts experienced any  
5 savings pursuant to Education Code section 44955 to  
6 offset teacher's salary costs as a direct result of the  
7 mandated science course.

8 Education Code section 44955 authorizes school  
9 districts to terminate the services of permanent  
10 employees of non-mandated classes when the amendment of  
11 state law requires the modification of curriculum.  
12 The Court found that a school district's use of Education  
13 Code 44955 is solely within the discretion of the school  
14 district and cannot be used by the Controller's office to  
15 deny or reduce a claim for teacher's salary costs on the  
16 ground that a school district has not shown a reduction  
17 or an offset of costs for non-science classes or  
18 teachers.

19 Pursuant to the Court's ruling, staff  
20 recommends that the Commission issue a new decision  
21 consistent with the staff analysis on the claim filed by  
22 Grossmont Union High School District and remand the claim  
23 to the Controller as office for payment.

24 This recommendation is based on the Controller's  
25 finding that Grossmont properly find its reimbursement

1 claim for teacher's salary costs.

2 The proposed order adopting the final staff  
3 analysis as the decision for Grossmont is on page 35.  
4 Staff further recommends that the Commission return the  
5 reevaluation of the claims filed by the remaining five  
6 school districts to the Controller for correction and  
7 resubmission to the Commission within 30 days.

8 As stated in the staff analysis, this  
9 recommendation is based on the ground that the  
10 Controller's reduction of its claims does not comply with  
11 the Court's ruling and judgment.

12 Will the parties please state your names for  
13 the record?

14 Why don't you go ahead and start?

15 MR. PETERSEN: Keith Petersen, SixTen  
16 Associates. I represent five of the six districts.

17 MR. PALKOWITZ: Good morning. Art Palkowitz  
18 for San Diego City Schools.

19 MR. GRAYBILL: Geoffrey Graybill, Deputy  
20 Attorney General for the Controller.

21 MR. SPANO: Jim Spano with the State  
22 Controller's Office.

23 MR. SIMMONS: Good morning. Sloan Simmons for  
24 Lozano Smith. We represented the six districts in  
25 San Diego during the litigation process and 13 of the 16

1 districts in the West Contra Costa action.

2 CHAIR SHEEHAN: Right.

3 Keith, do you want to start?

4 MR. PETERSEN: Good morning.

5 CHAIR SHEEHAN: Who would like to go ahead?

6 MR. PETERSEN: Well, I'm going to go ahead and  
7 pass to others who have additional information or  
8 something else to say. I'm going to stand on our written  
9 submission. Although I disagree with a lot of the  
10 jurisdictional issues, but here we are today.

11 CHAIR SHEEHAN: Good morning.

12 MR. PALKOWITZ: Good morning. My name is Art  
13 Palkowitz on behalf of San Diego City Schools. I want to  
14 thank you for the opportunity to have this matter on the  
15 agenda to be heard.

16 Just as a little background, this involves a  
17 mandate that was passed over 20 years ago, which required  
18 schools to have an additional science class as part of  
19 the graduation.

20 During the ten years of 1986 to 1995, San Diego  
21 and other school districts filed claims asking for  
22 reimbursement for this extra science class, that meaning  
23 extra science teacher that was needed for the class. And  
24 during those years, the claims for San Diego totaled over  
25 \$16 million.

1           Every year, those claims were denied by the  
2           State Controller because we did not show any offset.  
3           It was their interpretation that for every science  
4           teacher we hired, we should lay off another non-science  
5           teacher and, as a result, there should be no claim and  
6           there should be an offset equal to the total amount.  
7           This went on for -- back into the eighties, into the  
8           nineties, and then we --

9           MR. PETERSEN: Thirteen years.

10          MR. PALKOWITZ: Thirteen years.

11          And finally, it was necessary for the parties  
12          to file a lawsuit, which we filed about two and a half  
13          years ago.

14          And at that time, the Court made an order back  
15          in February '05 saying that it was not proper for the  
16          State Controller to deny these claims just because we  
17          didn't provide any documentation to show there was an  
18          offset.

19          I mean, it was our belief that we can't provide  
20          documentation that didn't exist because the offset wasn't  
21          directly related to a mandate for the science class.  
22          If we're laying off teachers, it wasn't because we had to  
23          have an extra science teacher. There is budget issues,  
24          there's instructional minutes issues.

25          The board of the district has the policy to

1 dictate which classes they're going to offer; and as a  
2 result, there has been no evidence to show that there are  
3 any direct related offsets.

4 I commend the staff in their thirty-something  
5 page analysis. I believe they're absolutely right on  
6 what the judge ordered, that there is no direct evidence  
7 to show that there is any set-off.

8 Despite that, the reevaluation by the  
9 Controller came back and disallowed 75 percent of the  
10 claim. And now they're going to be given another 30-day  
11 opportunity to reevaluate it again.

12 To me, after fifteen years, I don't know what  
13 new evidence they're going to have at this point to say,  
14 "Yes, there is direct evidence." But I understand the  
15 Commission staff is following the order to give them the  
16 opportunity for 30 days.

17 I think it's important that everyone understand  
18 this is a tremendous impact on any district. For  
19 San Diego, \$16 million, in 1995 dollars, is a lot of  
20 money. And there are consequences here as far as maybe  
21 we will have to lay off other people because we don't  
22 have the money in our budget. So the thought that this  
23 could go on an indefinite period of time and not have  
24 consequences is really not correct.

25 I would like to add that if the Commission is

1 going to go forward and give another 30-day reevaluation,  
2 I would like to hear on what the State Controller or the  
3 Attorney General anticipates will take place during this  
4 30 days, and what we can envision the need to go through  
5 this exercise, in that there will be something new here  
6 after two and a half years of litigation that would  
7 justify going forward with that.

8 We would also request that if the Commission is  
9 going to go forward with that, that this be placed on the  
10 September agenda, so all the parties are aware of what  
11 transpired and everyone can make room in their calendar  
12 to hear this expeditiously and so this matter could come  
13 to some resolution.

14 Thank you.

15 CHAIR SHEEHAN: Right.

16 Perhaps it's should be the Attorney General  
17 speaking next so they could address the question that you  
18 had, for the Controller's office.

19 MR. GRAYBILL: I was trying to get to that.

20 I'm not sure what the 30 days refers to.

21 I know that -- my name is Jeff Graybill, Madam Chair and  
22 Commissioners. I'm a Deputy Attorney General, and I  
23 represented the Controller in the court proceedings in  
24 this matter. However, I have not been available to the  
25 Controller during the time that all the documentation

1 that has been submitted to this Commission was prepared.  
2 I have become available to them this week, and I had some  
3 additional comments that I wanted to present in writing.  
4 And I requested a postponement which was denied by the  
5 executive director, probably because it was so late in  
6 the game.

7 But there has been expressed opposition to my  
8 citing to the Commission additional authority which is  
9 not in the briefs that were submitted. Specifically,  
10 I would be citing to the Commission Taye v. Coyle,  
11 29 Cal.App.4th 1339; Modesto City Schools v. Education  
12 Audits Appeal Panel, in 2004, 123 Cal.App.4th 1365; and  
13 Coastal Community Hospital v. Belshé, in 1996,  
14 45 Cal.App.4th 391, which bear on the analysis that has  
15 been presented by the other parties in these proceedings.

16 So if there's a continuing objection to my  
17 citing these authorities and a move to exclude them, I  
18 would renew my request for a postponement to the  
19 Commission itself at this time.

20 CHAIR SHEEHAN: Camille, did you want to -- or  
21 Paula, did you want to address --

22 MS. SHELTON: Yes, with regard to the cases,  
23 under Bagley-Keene, you can cite to any case that you  
24 want to cite to today and bring in public testimony. Yo  
25 know, obviously, I haven't read those in light of this

1 case, and wouldn't be able to respond.

2 My position would be that we are bound by the  
3 Court's ruling. So to the effect whatever comments come  
4 from the Deputy Attorney General, I would still be bound  
5 by Judge Connolly's ruling in this case.

6 On the continuance, everything that has gone  
7 out from our office, from the draft staff analysis to the  
8 final staff analysis, has been issued directly to the  
9 Controller's office and to the Deputy Attorney General's  
10 office, both to Mr. Graybill and to his supervising  
11 Attorney General. We were under the impression that they  
12 were still representing the Controller's office the whole  
13 time.

14 The draft staff analysis went out in March.  
15 In April, the Controller's office asked for a continuance  
16 because they were trying to get the Deputy Attorney  
17 General's office to review the draft staff analysis. We  
18 gave them an extension of time until June 19th and  
19 further stated that no additional extensions would be  
20 granted.

21 We did receive a request for continuance by  
22 Mr. Graybill on Wednesday evening, after the binders had  
23 already gone out; and it was denied.

24 MR. PALKOWITZ: May I add one comment?

25 MS. SHELTON: Sure.

1 MR. PALKOWITZ: Thank you.

2 On June 19th, the Department of Justice filed a  
3 four-page document that analyzed the Commission's staff  
4 analysis. It was signed by Catherine Van Aken,  
5 Supervising Attorney General.

6 None of the cases that were just mentioned were  
7 cited in there. It seems their office did have time to  
8 prepare this four-page response. I don't know if  
9 Mr. Graybill was a part of that or not; but there seems  
10 to be ample opportunity to respond, just as the parties  
11 had, to these issues.

12 So I concur with the Commission staff in  
13 deciding yesterday, when they received the notice to  
14 continue, that it was appropriate, that this be denied  
15 and we move forward.

16 Thank you.

17 MR. GRAYBILL: Just for the record, I did not  
18 participate in the preparation of the document that the  
19 gentleman refers to. I think it's a very good document  
20 and very persuasive, but I think there's some things that  
21 need to be added to it.

22 That, of course, was written before the staff's  
23 final recommendation came out. And I don't know whether  
24 these cases would make any difference; but I think in  
25 light of their analysis, it should -- they should. But

1 if there's no objection to me citing and discussing those  
2 cases for the record here, without further postponement,  
3 I'm prepared to go ahead and do that.

4 CHAIR SHEEHAN: Why don't we go ahead? Because  
5 this issue, case, all of this as has been said, has been  
6 around for quite a while. I understand there may have  
7 been personnel issues, but I feel we have an obligation  
8 to move forward.

9 So if you want to go ahead and make your  
10 points, and then we'll let the Controller's office add  
11 anything that they would like to.

12 MR. GRAYBILL: Okay. Well, I'm representing  
13 the Controller; and we do have a witness, Jim Spano,  
14 here.

15 CHAIR SHEEHAN: Right.

16 MR. GRAYBILL: First of all, I'd like to point  
17 out that I don't think the staff has correctly framed the  
18 issue. They're unduly restricting it, inconsistent with  
19 the Court's decision. They're saying that Education Code  
20 section 44955, regarding layoffs, is the only factor that  
21 can be considered here. And that is definitely not what  
22 the judge said.

23 Let me quote from page 18 of the ruling on  
24 submitted matter, which authorizes the Controller to see  
25 additional documentation from the claimants, the

1 districts, which they never provided.

2 Quoting from the Court's decision: Further,  
3 the documentation requirement that he authorizes the  
4 Controller to impose on the district, reflects a  
5 reasonable expectation that savings to offset the  
6 science teachers' salaries may be generated when students  
7 taking the second science course do not increase the  
8 number of classes that they take overall. Thus, the  
9 Controller can properly require the claimant, the  
10 district, to demonstrate the second science course has  
11 not increased the number of classes provided during the  
12 school day and year, along with the number of teachers  
13 required for the classes provided. That is not  
14 restricted by, you know, layoffs pursuant to 44955.  
15 So I think that's completely off base.

16 And in my opinion, the failure of the districts  
17 to provide the information requested by the Controller --  
18 I won't say guarantees, but makes it very likely that the  
19 Court would uphold a decision by this Commission  
20 affirming the reevaluation by the Controller's office.  
21 And the reason for that is found in the ruling on  
22 submitted matter itself. The Court upheld this  
23 Commission's decision to deny reimbursement for classroom  
24 costs due to this science grad requirement because the  
25 claimant did not submit the type of documentation that

1 was required by the P's & G's, and just flat-out rejected  
2 it.

3 The Court will do that again, in this case  
4 after it specifically authorized the Controller to ask  
5 for documentation relevant to the issues that I just  
6 mentioned.

7 And so the Controller's office -- and I think  
8 there's some mention in the recommended decision that in  
9 those situations where CBEDs was not available, the staff  
10 claims that the Controller cannot zero them out for that  
11 period of time. And I think that is not a proper  
12 conclusion under the terms of the Court's ruling that  
13 I just referred to on classroom costs. And the  
14 Controller -- this is a situation, really, where no good  
15 deed goes unpunished. Because even in the absence of the  
16 district providing the documentation that was required by  
17 the Controller, and I believe the staff analysis confirms  
18 that those requests were legitimate and consistent with  
19 the Court's order; but nevertheless -- for reasons that  
20 don't bode well for state fiscal policy -- say that,  
21 "Well, if they didn't submit anything and you don't have  
22 any proof to the contrary, you have to grant their  
23 claim." I don't think that can stand analysis.

24 The Controller did the type of analysis that  
25 the Court authorized in the quote that I just gave to you

1 using CBEDS data.

2 Now, any criticism that the claimants have of  
3 the Controller using that data to, in effect, give them  
4 something that they would not otherwise have been  
5 entitled to by their own stick, won't fly, either.  
6 I think in Taye v. Coye, 29 Cal.App.4th, 1439, the Court,  
7 at page 1346, indicates that a claimant -- and this was a  
8 Medi-Cal provider audit involved in Taye v. Coye, in  
9 which the court upheld the audit, or the affirmation of  
10 their claim over the objection of the claimant. And the  
11 argument was that the DHS should have credited the  
12 claimant with improper claims that it -- or claims that  
13 it could have made that didn't have a proper basis to  
14 them.

15 Now, that obviously should fall on its face,  
16 and it did in that case.

17 And that's essentially what the districts are  
18 asking the Commission to do here, is -- and it is kind of  
19 ironic, I think, that school districts are saying to  
20 Judge Connolly, basically: This is your homework, and  
21 it's due at a certain time. And they didn't turn in  
22 their homework. And he has let them know on the  
23 classroom costs aspect of this, if that happens, you're  
24 going to get a zero for that claim.

25 And they're here, basically saying, "Well, the

1 dog ate my homework."

2 And the Controller is asking them, "Well, what  
3 dog? Do you have a dog?"

4 "No, we don't have a dog."

5 And then characterizing one of their arguments,  
6 "It's your dog that ate our homework because you didn't  
7 pay us this mandate amount that we're owed and,  
8 therefore, yeah, we didn't increase our staff because you  
9 didn't pay us," which is a tacit admission that there was  
10 an increase, as the Court has authorized the Controller's  
11 office to require the district to provide documentation.

12 Not necessarily to prove anything, but from which the  
13 Controller can analyze, to determine whether there was  
14 an increase in classes, the school day, the school year,  
15 and the accompanying number of teachers.

16 And despite the fact that the districts did not  
17 submit that data, the Controller went ahead and gave them  
18 a "C," out of the goodness of its heart, basically, not  
19 on the justification -- the type of documentation that  
20 the Court authorized them to require.

21 So if these proceedings are to be prolonged in  
22 the sense that if there's a result that is fiscally  
23 unsound, this matter will continue on, most likely.  
24 So some of the information that was provided by the  
25 district to criticize the SCO's use of CBEDS data and the

1 inferences that they drew from it are based on  
2 self-serving evidence.

3 And Coastal Community Hospital v. Belshé,  
4 45 Cal.App. 391 -- oh, I'm citing the wrong case. Back  
5 to Taye v. Coye at page 1344, records created by a  
6 claimant alone are properly excluded from analysis in an  
7 audit when they can't be independently verified, which  
8 the reports from the Controller said was the case, with  
9 the objections that the district had to the data that the  
10 Controller relied on. And that's true, even when there's  
11 no indicia that the records have been falsified.

12 So for the purposes of audits, the type of  
13 information that the districts tried to get the  
14 Controller to accept initially and are now trying to get  
15 this Commission to accept, are not reliable in terms of  
16 the audit.

17 And so in order for the Commission to overrule  
18 the Controller's reevaluation here, it would have to  
19 determine that the Controller's audit expertise on data,  
20 which was authorized by the court is discredited. And  
21 the discreditable documentation, for audit purposes,  
22 presented by the district must be given total credence.  
23 That will not stand.

24 *(Member Walsh entered the hearing room.)*

25 CHAIR SHEEHAN: You're going to have to start

1 wrapping up because we've got a lot of people.

2 MR. GRAYBILL: Okay.

3 CHAIR SHEEHAN: So if you can summarize.

4 MR. GRAYBILL: All right, let's see.

5 CHAIR SHEEHAN: I want to note for the record  
6 that Mr. Walsh has joined us at ten after 10:00.

7 Go ahead, Mr. Graybill.

8 MR. GRAYBILL: Reciting to Coastal Community  
9 Hospital, page 395.

10 CHAIR SHEEHAN: Briefly, yes.

11 MR. GRAYBILL: It stands for the principle that  
12 I've already mentioned, which is that when the district  
13 didn't present any evidence at all, it has no basis to  
14 complain when the Controller -- out of the goodness of  
15 its heart, basically -- tries to get data to help them  
16 out, and then are bitten on the hand. And it's sort of  
17 typical of how this case is going.

18 Grossmont, one of the districts here, was  
19 completely granted the amount of its claim and it has  
20 appealed to you, anyway. Go figure.

21 So I think that, in summing up here, that the  
22 Court, Judge Connolly, who will probably get this case,  
23 would uphold this Commission's affirmance of the  
24 reevaluation by the State Controller.

25 And before I sign off, I would like to ask the

1 witness from the Controller's office something very  
2 quickly. It's foundational.

3 Mr. Spano, did you prepare all the  
4 documentation that the State Controller's office  
5 submitted in this matter? Except for, obviously, what  
6 was prepared by the Controller's office.

7 MR. SPANO: Yes, I did.

8 MR. GRAYBILL: Is all the information in those  
9 documents true to your personal knowledge, except where  
10 it's based on information and belief?

11 MR. SPANO: That is correct.

12 MR. GRAYBILL: And as to those matters that are  
13 based on your information and belief, do you believe  
14 those to be true?

15 MR. SPANO: Yes, I do.

16 MR. GRAYBILL: Okay, did you have any comments?

17 MR. SPANO: No.

18 CHAIR SHEEHAN: Anything else you wanted to  
19 add?

20 *(No audible response)*

21 CHAIR SHEEHAN: Okay.

22 Questions for either the Attorney General's  
23 office or the Controller's office on this one?

24 *(No audible response)*

25 CHAIR SHEEHAN: Okay, go ahead.

1 MR. SIMMONS: Good morning, Board.  
2 I just have a couple very quick points on this. And I  
3 won't get in -- it sounds like we're going to go down the  
4 metaphor road of homework, but if we look at it that  
5 way --

6 CHAIR SHEEHAN: Yes, they did.

7 MR. SIMMONS: -- per Judge Connolly's ruling,  
8 the homework for the Controller's office was to  
9 reevaluate. They did. The Commission followed its  
10 process by issuing the draft staff analysis. The second  
11 assignment for the Controller was to submit its comments.  
12 And it did. And now we're at the end of that stage. And  
13 it sounds as if the Controller, per the comments of  
14 Mr. Graybill this morning, were continuing to turn in the  
15 homework assignment over and over until we get it right.  
16 The process has been followed, the Commission issued its  
17 final statement and decision -- or the draft -- the final  
18 draft analysis. I believe that Mr. Palkowitz and  
19 Mr. Petersen's written comments were submitted, we fully  
20 support the comments they've provided, and we support the  
21 process that the Commission has followed up to this  
22 point.

23 The school districts involved in Item 18,  
24 coming back, have a vested interest in this moving  
25 forward as well. Not only these original six districts,

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1 but there's 16 more now who are waiting for this process  
2 to be completed per the Court's order. And we're at the  
3 point now where we need to close the deal and move  
4 forward per the final staff analysis issued by the  
5 Commission.

6 The Controller's office has had numerous  
7 opportunities to get this right. According to the final  
8 staff analysis, they didn't, and now they have 30 days --  
9 or if the Commission is to follow this, to follow what  
10 the Commission staff has found to be the correct process  
11 Judge Connolly's ruling.

12 That's it.

13 CHAIR SHEEHAN: Great.

14 Anyone else want to testify on this before we  
15 let staff respond?

16 *(No audible response)*

17 CHAIR SHEEHAN: Camille, did you want to  
18 address any of the issues that Mr. Graybill raised?

19 MS. SHELTON: I did. Just real briefly.

20 You questioned where the 30 days came from.  
21 The 30 days is directly in the writ; and it says that if  
22 the Commission finds that the Controller did not properly  
23 reevaluate the case, we have to send it back and they  
24 have 30 days to resubmit another evaluation. And so that  
25 is the jurisdiction given to the Commission by the Court

1 Just touching on the issues raised by Mr. Graybill. One  
2 is, first is the jurisdictional issue; and the Court did  
3 address that. And the opinion is pretty clear that the  
4 jurisdiction of the Commission here is just only on  
5 whether the reevaluation of the offset issue was correct  
6 and proper.

7 The Court noted that the Commission did adopt  
8 a Statement of Decision that approved the test claim and  
9 found increased costs mandated by the State.

10 On page 13, in footnote 3, the Court says,  
11 "On the basis of the party's supplemental briefing, the  
12 Court has concluded that the Commission's test claim  
13 decision is final and should not be disturbed. The  
14 Court focuses its review on the Commission's IRC  
15 decision, affirming the Controller's offsetting savings  
16 requirement and interpreting the reimbursement limitation  
17 language in Section 6 of the P's & G's, which is the  
18 offset provision."

19 That was the only issue brought before the  
20 Court, and that's the only issue on remand back to the  
21 Commission.

22 With regard to documentation, the problem with  
23 the argument raised by the Controller on the  
24 documentation cannot compare the teacher's salary issue  
25 with the claiming of the remodeling costs for a couple

1 of reasons:

2 One, in the initial parameters and guidelines  
3 issued by the Commission on the remodeling costs, if the  
4 Commission required certain documentation to be filed  
5 with the reimbursement claim.

6 In 1991, the Legislature directed the  
7 Commission to add more language to the parameters and  
8 guidelines, requiring additional documentation to be  
9 filed with the reimbursement claim.

10 When you look at the claiming instructions for  
11 the *Graduation Requirements* program, no documentation has  
12 to be filed at all with the reimbursement claim for  
13 teachers' salary costs.

14 The Court did address the documentation  
15 requirement and it did say in footnote 1 that there is a  
16 requirement to produce documentation. And that  
17 requirement can be reasonably read into the claiming  
18 instructions and pursuant to Government Code section  
19 17561.

20 But the Court goes on to say that, "The  
21 validity of the Controller's request for documentation  
22 and the Commission's decision sustaining the  
23 documentation request turns on whether the Controller's  
24 offset-in-savings requirement is substantively valid,  
25 whether it is consistent with the Commission's test claim

1 decision, the parameters and guidelines, the intent of  
2 Education Code section 51225.3, which is a test claim  
3 statute, and 44955, and Article XIII B, Section 6.

4 When you read the decision further, the Court finds that  
5 assuming -- because they don't have documentation --  
6 assuming that the school day and the school year has not  
7 changed as the Controller argues, does not mean that they  
8 have to take an offset.

9 The Court's decision is clear -- I mean, the  
10 same arguments that the Controller is making today were  
11 made before Judge Connolly on page 14 and 15 of the  
12 decision. And there, it says, "The Controller presumes  
13 that because the Legislature has not increased the  
14 minimum school day and year or the credits required for  
15 high school graduation, the district can shift students  
16 from non-mandated classes to science classes, eliminate  
17 the non-mandated classes, and use its authority under  
18 44955."

19 And the very next paragraph, it says, "As  
20 San Diego correctly points out, however, Education Code  
21 section 51225.3 mandates school districts to add the  
22 second science class without requiring the school  
23 district to replace or eliminate the existing course  
24 offerings."

25 So the Court has already denied that

1 assumption. It's already been done. Both in the  
2 judgment and in the ruling, the Court said that the  
3 Controller is prevented from denying the school  
4 districts' claims for reimbursement of science teachers'  
5 salaries on the grounds that the claimants have not shown  
6 a reduction in non-science classes and teachers,  
7 corresponding to the addition of the science class.

8 So it directed the Controller to find out if  
9 the school districts had any evidence to show that they  
10 exercised their discretionary authority under 44955 as a  
11 direct result of this mandate. And there's no evidence  
12 in the record that the school districts did that.

13 Even more compelling, you know, we have  
14 Government Code section 17565 in our sections that say  
15 the Legislature has already made the determination that  
16 there are increased costs mandated by the State, even if  
17 a school district, at its option, had been providing the  
18 second science course before the enactment of the test  
19 claim statute, they're still entitled to reimbursement.  
20 If one of these school districts did that, they wouldn't  
21 have any documentation because they were already  
22 providing that course, but they're still entitled to  
23 reimbursement.

24 And the Commission already found in the test  
25 claim that they are entitled to reimbursement for teacher

1 salary costs. And that finding cannot be disturbed.

2 CHAIR SHEEHAN: All right, thanks.

3 Any further questions for Camille?

4 *(No audible response.)*

5 CHAIR SHEEHAN: Okay, anyone else who wanted to  
6 testify on this, in terms of that?

7 If there's no further discussions, then --

8 MR. GRAYBILL: Could I make one final comment?

9 CHAIR SHEEHAN: Sure, one final comment,  
10 Mr. Graybill. A brief comment.

11 MR. GRAYBILL: The staff's position renders the  
12 Court's very specific language on page 18, just reads it  
13 right out of the Court's decision. That was not an idle  
14 act that the Court engaged in. There would be no purpose  
15 in requiring that documentation if staff's interpretation  
16 of this were to prevail. And that's not the Court's  
17 intent.

18 MS. SHELTON: Can I respond to that?

19 CHAIR SHEEHAN: Yes.

20 MS. SHELTON: The Court had no idea what  
21 documentation was even out there or what the school  
22 districts even had.

23 You read the first paragraph, where the Court  
24 does say, yes, the Controller may properly request  
25 documentation. But you have to read the second paragraph

1 that says, "However, the Court's conclusion regarding the  
2 invalidity of the Controller's offset-in-savings  
3 requirement does prevent the Controller from denying the  
4 school district's claims for reimbursement on the ground  
5 that the claimants have not shown a reduction."

6 So you have to read the decision as a whole.

7 MR. GRAYBILL: Including those two sentences.

8 MS. SHELTON: Right.

9 CHAIR SHEEHAN: Okay, no other questions from  
10 the Members?

11 *(No audible response.)*

12 CHAIR SHEEHAN: Any further discussion on this  
13 matter?

14 *(No audible response.)*

15 CHAIR SHEEHAN: Is there a motion on the --

16 MEMBER LUJANO: I move.

17 CHAIR SHEEHAN: -- of the final staff analysis?

18 MEMBER WALSH: Second.

19 MR. PETERSON: Excuse me a second. Is this 18  
20 or 19 you're on now?

21 CHAIR SHEEHAN: We are doing 19.

22 MS. HIGASHI: Item 19.

23 CHAIR SHEEHAN: And then we will go -- even  
24 though you think we should do 18 first -- we're seeing if  
25 you're awake out there -- 19, and then we'll go back to

1 18.

2 MR. PETERSON: Okay.

3 CHAIR SHEEHAN: So it's item 19 that we have a  
4 motion and a second to approve the final staff analysis  
5 and recommendations.

6 Any further discussion?

7 *(No audible response.)*

8 CHAIR SHEEHAN: All those in favor, say "aye."

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

10 CHAIR SHEEHAN: Opposed?

11 MEMBER HAIR: No.

12 CHAIR SHEEHAN: The Controller's office is  
13 voting no. Okay, so that motion carries with the  
14 Controller's office voting the negative.

15 All right, and then we will move on to Item 18.

16 MS. SHELTON: Item 18 is the second  
17 consolidated litigation on the *Graduation Requirement*  
18 program filed by 16 school districts. In this case the  
19 Controller's office, the school districts, and the  
20 Commission signed a stipulation to set this -- to dismiss  
21 the case and to have the Controller reevaluate the claims  
22 in light of the San Diego decision.

23 We do have a signed order from Judge Connolly  
24 that's signed on the stipulation. And I did give you a  
25 yellow copy of the actual signed order in the record that

1 was inadvertently omitted. So that is there.

2 Will the parties please state your names for  
3 the record?

4 CHAIR SHEEHAN: For those who would like to --  
5 do you want to start?

6 And anyone else who would like to come forward.

7 Did you also get sworn in the first time?

8 MR. RUIZ: I did, yes.

9 CHAIR SHEEHAN: All right, do you want to  
10 start?

11 MR. SIMMONS: Sure. And the only reason we are  
12 even here to make comments is, it was moved off of the  
13 consent calendar. So our only comments would be to the  
14 extent it's the court order, and it is what it is, and  
15 requires it being setting aside, then that's our  
16 position.

17 CHAIR SHEEHAN: Did you guys want to comment on  
18 that?

19 MR. GRAYBILL: I concur with that.

20 MR. RUIZ: Concur. Thank you.

21 CHAIR SHEEHAN: Oh, that makes it easy.

22 All right, any --

23 MEMBER WORTHLEY: Move approval.

24 MEMBER GLAAB: Second.

25 CHAIR SHEEHAN: All right, so we have a motion

1 and a second to adopt the proposed order to set aside the  
2 Statement of Decision in the *Grad Requirements*.

3 All those in favor, say "aye."

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

5 CHAIR SHEEHAN: Any opposed?

6 (*No audible response.*)

7 CHAIR SHEEHAN: The motion carries.

8 All right, thank you, gentlemen.

9 All right, now, we're going to go back to the  
10 normal order of business --

11 MS. HIGASHI: That's correct.

12 CHAIR SHEEHAN: -- starting with number one.  
13 Number two.

14 Thank you all.

15 So we have the minutes from our --

16 MS. HIGASHI: We'll start with the minutes.

17 CHAIR SHEEHAN: Okay, all right, hold on. If  
18 we could go back and --

19 MS. HIGASHI: Does everyone have the right --

20 CHAIR SHEEHAN: I have to go back and get my  
21 other binder.

22 MS. HIGASHI: Okay.

23 Item 1 is adoption of the proposed minutes for  
24 May 25th.

25 CHAIR SHEEHAN: All right, were there any

1 changes, edits to the minutes before we entertain a  
2 motion?

3 (No audible response.)

4 CHAIR SHEEHAN: Any comments from the public on  
5 the minutes?

6 (No audible response.)

7 CHAIR SHEEHAN: All right, if not, we will  
8 entertain a motion to approve the minutes.

9 MEMBER OLSEN: So moved.

10 MEMBER WORTHLEY: Second.

11 CHAIR SHEEHAN: We have a motion and a second.  
12 All those in favor, say "aye."

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

14 CHAIR SHEEHAN: Opposed?

15 (No audible response.)

16 CHAIR SHEEHAN: All right, the minutes are  
17 approved.

18 MS. HIGASHI: Item 2, *Proposed Consent*  
19 *Calendar*.

20 We're going to vote on this with two motions.

21 CHAIR SHEEHAN: Correct. We'll do Items 20  
22 and 25.

23 MS. HIGASHI: We'll do Items 20 and 25.

24 CHAIR SHEEHAN: Okay, so the *Consent*  
25 *Calendar* -- we're going to have, like, two brief consent

1 calendars. So Items 20 and 25 are on the consent  
2 calendar.

3 Any comments or discussion on that?

4 *(No audible response.)*

5 CHAIR SHEEHAN: If not, we will entertain a  
6 motion.

7 MEMBER OLSEN: So moved.

8 MEMBER GLAAB: Second.

9 CHAIR SHEEHAN: We have a motion and a second  
10 on the first consent, consisting of items 20 and 25.

11 All those in favor, say "aye."

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

13 CHAIR SHEEHAN: Any opposed?

14 *(No audible response.)*

15 CHAIR SHEEHAN: That passes.

16 And now we will move on to the other item on  
17 consent, Item 24.

18 Any discussion on this?

19 *(No audible response.)*

20 CHAIR SHEEHAN: If not, we'll entertain a  
21 motion.

22 MEMBER WALSH: So moved.

23 MEMBER GLAAB: Second.

24 CHAIR SHEEHAN: We have a motion and a second  
25 on Item 24.

1 All those in favor, say "aye."

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

3 CHAIR SHEEHAN: Opposed?

4 MEMBER LUJANO: No.

5 CHAIR SHEEHAN: All right, the Treasurer's  
6 office should be reflected as voting "no."

7 That motion carries.

8 MS. HIGASHI: Thank you.

9 I'd like to note also for the record that  
10 Items 12 and 13 have been postponed until there's a final  
11 decision in CSAC EIA and City of Newport Beach  
12 litigation, and Item 21 has also been postponed from this  
13 agenda.

14 CHAIR SHEEHAN: Okay.

15 MS. HIGASHI: At this time, we will go to  
16 Item 4.

17 And before we begin this, I'd like to ask all  
18 of the parties and witnesses who will be testifying on  
19 the remaining items on the hearing calendar to please  
20 stand for the swearing in of parties and witnesses,  
21 representatives.

22 Do you solemnly swear or affirm that the  
23 testimony which you are about to give is true and correct  
24 based on your personal knowledge, information, or belief?

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

1 MS. HIGASHI: Thank you very much.

2 CHAIR SHEEHAN: All right.

3 MS. HIGASHI: Item 4 will be presented by Chief  
4 Counsel Camille Shelton.

5 CHAIR SHEEHAN: Great.

6 MS. SHELTON: This test claim addresses  
7 legislation that requires civil court proceedings as a  
8 post-conviction remedy for convicted felons to obtain  
9 DNA testing of biological evidence in cases where  
10 identity is the issue.

11 The test claim legislation also requires  
12 counties to retain biological material for felony cases  
13 for the period of time the convicted person remains  
14 incarcerated.

15 Staff finds that the test claim legislation  
16 imposes a partial reimbursable state-mandated program on  
17 local agencies within the meaning of Article XIII B,  
18 section 6, of the California Constitution for the  
19 activities listed in the executive summary.

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

22 MR. KAYE: Leonard Kaye, Los Angeles County.

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

25 CHAIR SHEEHAN: Mr. Kaye, do you want to

1 proceed?

2 MR. KAYE: Yes.

3 Typically, I think the Commission staff gives  
4 their overview, or did you want to do it that way at this  
5 time?

6 MS. SHELTON: If the Commission wants me to, I  
7 can.

8 MR. KAYE: Oh, okay. I know time is of the  
9 essence. I'm prepared to be very brief. But it's  
10 whatever the pleasure of the Commission is. It's just  
11 that normally you present first.

12 MS. SHELTON: Staff is recommending that the  
13 Commission reimburse all the activities that are listed  
14 in the executive summary. There are a couple of  
15 activities that we do recommend that the Commission deny,  
16 one of them being the court hearing because of the  
17 statutory language which gives the discretion to have the  
18 hearing with the court, and the other activity of  
19 notifying the felon, the convicted felon, that you're  
20 disposing of the evidence.

21 MR. KAYE: Okay, well, let me elaborate just a  
22 brief amount so the commissioners know basically what  
23 this is of about. Because it's really the result of a  
24 landmark piece of legislation, where the State  
25 Legislature is providing state prisoners that have been

1 convicted of felonies -- at one time it was thought  
2 felonies and misdemeanors, but now it's felonies -- with  
3 a post-conviction remedy.

4 That is specifically where identity was or  
5 could have been an important issue in their underlying  
6 criminal trial, they are now entitled to a DNA -- a valid  
7 DNA test if a number of conditions are met. And, of  
8 course, they have to file a petition with the court, and  
9 there are a number of responsibilities that are mandated  
10 upon local government.

11 But one of the key conditions is, of course,  
12 that there has to be a biological sample to DNA-test; and  
13 the statutory provisions and the amendments thereto go on  
14 in very, very great detail as to what the requirements  
15 are on local government.

16 Commission staff have exercised great legal  
17 scholarship in parsing the reimbursable from the  
18 non-reimbursable parts. We are almost in complete  
19 agreement. However, there are two issues that I wish to  
20 clarify before this is discussed further.

21 And the reason I grabbed this -- the  
22 administrative record is not to read from it, but to cite  
23 from it, so that you needn't be frightened that I am  
24 going to --

25 CHAIR SHEEHAN: Start on page 1?

1 MR. KAYE: Yes -- start on page 1, and stop,  
2 and so forth.

3 The first area that I think needs  
4 clarification -- and I'm citing to the Commission staff  
5 analysis, and I believe it's the page number on the  
6 bottom. It's page number 23, and it's footnote 69.  
7 And the reason why this is important is, we understand  
8 the modern trend of the Commission is to not allow major  
9 categories of reimbursable activities that aren't  
10 discussed or mentioned or alleged in this hearing right  
11 now, the test claim decision phase. And so I just want  
12 to clarify two points and then we'll be done.

13 Okay, 69, on Bates page 23, at the bottom,  
14 says, "Claimants also request reimbursement for preparing  
15 and tracking biologic evidence sent to the lab for DNA  
16 testing and for DNA testing required of the sheriff's  
17 department that is not reimbursed by the court."  
18 Since these activities are not expressly mentioned in  
19 statute as local government requirements, the Commission  
20 may, if it approves this test claim, consider them during  
21 the parameters and guidelines phase to determine whether  
22 they are the most reasonable methods of complying with  
23 the mandate.

24 And let me just take a moment and explain  
25 specifically what we have in mind. Our director -- our

1 assistant director of our criminal laboratory, in a  
2 declaration sent in to the Commission, said that one of  
3 the costs that the Sheriff may incur is DNA-testing  
4 required of the Los Angeles County Sheriff's Department  
5 subject to the pursuant law which is not reimbursed --  
6 not reimbursed by the superior court due to insufficient  
7 funding.

8 And this relates to a provision in the law  
9 which says that the court is to charge a specific fund  
10 that the Legislature appropriates from. So if the  
11 Legislature hasn't appropriated monies from that, then  
12 the county would be out-of-pocket.

13 So, again, this really gets into the parameters  
14 and guidelines phase, which you'll be hearing this  
15 discussion again. But I just want to clarify that this  
16 is really -- at this point, the Commission staff has made  
17 no finding concerning this matter. We'll discuss this at  
18 the parameters and guidelines phase.

19 There is a second item, and that relates to  
20 transporting prisoners to and from state institutions.  
21 And this goes to -- let's see, the following page --  
22 this goes to page 21, footnote 61. And, again, staff  
23 notes, and we agree, that staff makes no finding on  
24 whether transporting inmates to or from state prison  
25 would be reimbursable under Penal Code section 4750.

1 And this, as we've alleged -- and I have various  
2 citations, should the Commissioners want -- is we've  
3 alleged previously it's not only the transportation of  
4 prisoners from state institutions and back during the  
5 pendency of the proceeding, but it's the housing of those  
6 proceedings as required by the state, for the state  
7 proceedings.

8 So with that, I think we agree on every other  
9 thing. And I would just note for the record that we are,  
10 in essence, in partnership with the State Department of  
11 Justice. The State Department of Justice has convened a  
12 very, very large task force to consider standards for  
13 storing and retention of biologic standards. And that  
14 we believe during the parameters and guidelines phase,  
15 to involve them in making sure that not only is it  
16 reimbursable or not, in assisting us in that area, but  
17 also in determining exactly what those standards are,  
18 whether the sample needs to be refrigerated or  
19 desiccated, and so forth and so on.

20 And this is an urgent manner, mainly because  
21 we filed the test claim five years and one month ago.  
22 And as you know, samples have a way of degrading and so  
23 forth. So we're very, very anxious to move this forward.  
24 We really appreciate, Commission, your hearing it this  
25 morning. And hopefully, we can go on to the next phase,

1 which is parameters and guidelines.

2 Thank you.

3 CHAIR SHEEHAN: All right, any questions of  
4 Mr. Kaye?

5 MEMBER WORTHLEY: Just real quickly.

6 Is it your position that what we talked about  
7 this last time will also be something handled in the  
8 parameters and guidelines? You didn't say that, but --

9 MR. KAYE: Yes, thank you for that  
10 clarification. Yes.

11 MS. SHELTON: Could I just address that?

12 CHAIR SHEEHAN: Yes.

13 MS. SHELTON: All the activities that are not  
14 specifically listed in the statute are -- you know, still  
15 can be discussed at parameters and guidelines.

16 But you mentioned funding for the actual DNA  
17 test or the cost of the actual DNA test. We didn't read  
18 those comments in the record to mean that you're asking  
19 for reimbursement for the cost of the actual DNA test,  
20 because on page 28 we have Penal Code section 41405, and  
21 it says as to the DNA testing, there's no local entity  
22 expenditure because the test -- the statute requires that  
23 the cost of the test be borne by the state or the  
24 applicant, not by the county. So there is a finding in  
25 this decision that would not reimburse the county for the

1 cost of the DNA test.

2 MR. KAYE: Okay. I think if you go back to the  
3 statutory provisions, it is part of the original statute,  
4 where you're talking about reading things together.  
5 Okay, in the original test claim legislation,  
6 it says, under (g)(1), "The cost of the DNA testing  
7 ordered under this section shall be borne by the state or  
8 the applicant, as the court may order in the interest of  
9 justice, if it is shown that the applicant is not  
10 indigent and possesses the ability to pay. However, the  
11 cost of any additional testing to be conducted by the  
12 District Attorney or Attorney General shall not be borne  
13 by the convicted person." So there, it's unclear as to  
14 who pays.

15 But that's not what we're really after. What  
16 we're really after is the practice which we've observed  
17 and Mr. Dean Giolamos has stated under sworn declaration  
18 is under the second provision, (g)(2), "In order to pay  
19 the state's share of any testing costs, the laboratory  
20 designated in subdivision (e) shall present its bill for  
21 services to the superior court for approval and payment.  
22 It is the intent of the Legislature to appropriate funds  
23 for this purpose in the 2001 Budget Act."

24 So what we're saying is many times the court  
25 will present our sheriff with the requirement to provide

1 this testing service. The sheriff turns in the bill.  
2 The court stamps it, "Insufficient funds." We, for want  
3 of a better term, bear the costs.

4 And so what we're saying, during the parameters  
5 and guidelines phase, if this actually occurred, then  
6 I think it is required that we be reimbursed for those  
7 costs.

8 MS. SHELTON: The problem I'm having is that  
9 there is no direct mandate for the county to pay for the  
10 cost of the DNA test at all. I mean, the mandate is here  
11 on the state or the applicant.

12 MR. KAYE: Yes.

13 MS. SHELTON: And it's within the court's  
14 discretion to decide with who to charge.

15 So this finding is, in this analysis, if it's  
16 adopted by the Commission, it would be the decision and  
17 we can't alter that at the P's & G's phase.

18 MR. KAYE: Okay, so that we, as a vendor then  
19 can say to the judge, "Since there's no money in the  
20 state to reimburse us, that we won't perform the  
21 service," is that how I understand you're saying?

22 MS. SHELTON: No, I'm not saying that.

23 CHAIR SHEEHAN: I'm not sure you'd be very  
24 successful.

25 MR. KAYE: Okay.

1 MS. SHELTON: I don't know that -- I don't know  
2 how that would be handled.

3 I'm reading the plain language of the statute,  
4 and the plain language says that the test is ordered --  
5 the cost of the test ordered under the section shall be  
6 borne by the state or the applicant as determined by the  
7 court. It doesn't say the "state, applicant, or county."

8 MR. KAYE: Okay, so I guess we just need to  
9 read that to the judge, huh?

10 CHAIR SHEEHAN: Yes, I think that would be  
11 correct, because I want to make sure -- and I think what  
12 Camille is saying is that if we adopt this, you  
13 understand what it is we are adopting, and we don't  
14 then --

15 MR. KAYE: And that's why I'm verifying it.  
16 Because these are the only two -- there are many, many  
17 aspects to this, and those are the two that I think need  
18 clarification.

19 CHAIR SHEEHAN: But potentially, in terms of  
20 your solution, to point that section out to the judge --  
21 I mean, I think I'd point the section out before I told  
22 him you're not going to do it. But it's certainly up to  
23 you to decide how you want to proceed on that.

24 Camille, was there anything else you wanted to  
25 address on that?

1 MS. SHELTON: No.

2 CHAIR SHEEHAN: Any other questions for  
3 Mr. Kaye?

4 Ms. Geanacou?

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

7 The Department of Finance supports the  
8 Commission's staff analysis on this matter. I just  
9 wanted to make a few comments.

10 We wanted to emphasize that the appointment of  
11 counsel in this matter is at the court's discretion and  
12 as such, is not required by the state and is, therefore,  
13 not a reimbursable state mandate.

14 As to the points made by Mr. Kaye this morning  
15 in footnotes 69 and 61, I wanted to affirm that those  
16 are not being found to be reimbursable activities today;  
17 and the Department of Finance remains open to commenting  
18 on those if they are included in the proposed parameters  
19 and guidelines, if this mandate is adopted today.

20 CHAIR SHEEHAN: Okay, I think that right is  
21 reserved on the --

22 MS. GEANACOU: Yes, it's a reservation of  
23 right.

24 CHAIR SHEEHAN: Exactly.

25 Did you want to address the first issue?

1 MS. SHELTON: Just the first issue.

2 We did find that the appointment of defense  
3 counsel was mandated because the plain language of the  
4 statute says under the earlier 2000 statute, it says,  
5 "The court shall appoint counsel for the convicted person  
6 who brings the motion under this section, if that person  
7 is indigent." The court doesn't have a choice.

8 And then in 2001, the statute was changed  
9 because the earlier statute allowed the convicted inmate  
10 to file the motion for DNA test. And if you can imagine  
11 what those papers looked like, I'm sure it was very  
12 confusing for the court.

13 So in 2001, they amended the legislation, and  
14 they amended it to say that if the court finds that the  
15 person is indigent and that the counsel has previously  
16 been appointed under this section, the court may in its  
17 discretion appoint counsel to investigate and if  
18 appropriate, file a motion.

19 In that case, if -- all we're doing is talking  
20 about the population of inmates that file a motion during  
21 that first year that the legislation was enacted -- if  
22 that person had already filed a motion and the court had  
23 already appointed defense counsel for that person, it's  
24 within the court's discretion to appoint the defense  
25 counsel to file another motion, maybe to clear up any

1 confusion.

2 CHAIR SHEEHAN: Right.

3 MS. SHELTON: That, we're saying is  
4 discretionary.

5 MR. KAYE: Right.

6 MS. SHELTON: But the actual appointment of  
7 counsel is mandatory by the statute.

8 CHAIR SHEEHAN: Are we on the same wavelength?

9 MS. GEANACOU: I agree with Ms. Shelton's  
10 comment. Yes, we are on the same page.

11 MR. KAYE: And I agree with that also, yes.

12 CHAIR SHEEHAN: All right, would anyone else  
13 like to comment on this item?

14 (No audible response.)

15 CHAIR SHEEHAN: No?

16 If not, then we'll entertain a motion.

17 MEMBER WALSH: So moved.

18 MEMBER GLAAB: Second.

19 CHAIR SHEEHAN: The motion to approve the staff  
20 analysis and the recommendation, without any further  
21 discussion, all those in favor, say "aye."

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

23 CHAIR SHEEHAN: Opposed?

24 (No audible response.)

25 CHAIR SHEEHAN: All right, that is adopted.

1 MR. KAYE: Thank you.

2 CHAIR SHEEHAN: Thank you.

3 MS. HIGASHI: Item 5 is the proposed Statement  
4 of Decision.

5 MS. SHELTON: This is the proposed decision on  
6 the *DNA Court Proceedings* test claim. Staff recommends  
7 that the Commission adopt the decision that accurately  
8 reflects the staff recommendation in this case, and minor  
9 changes including that that reflect the hearing testimony  
10 and vote count will be included when issuing the final  
11 Statement of Decision.

12 MEMBER OLSEN: So moved.

13 MEMBER WORTHLEY: Second.

14 CHAIR SHEEHAN: We have a motion and a second.  
15 Any further discussion?

16 *(No audible response.)*

17 CHAIR SHEEHAN: All in favor, say "aye."

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

19 CHAIR SHEEHAN: Opposed?

20 *(No audible response.)*

21 CHAIR SHEEHAN: It passes unanimously.

22 MS. HIGASHI: Thank you very much.

23 CHAIR SHEEHAN: Now, we are moving on.

24 MS. HIGASHI: We now get to shift gears. We  
25 now have a charter school issue.

1 CHAIR SHEEHAN: Oh, yes. We couldn't have a  
2 meeting without having a charter school issue in the last  
3 four months.

4 MS. HIGASHI: Item 6, *Charter School Collective*  
5 *Bargaining*. And Ms. Shelton will also present this item.

6 MS. SHELTON: Would you like me to start?

7 CHAIR SHEEHAN: Absolutely, just refresh  
8 everyone's memory because we've had this discussion, but  
9 why don't you go ahead because it's been a few weeks.

10 MS. SHELTON: This item was heard by the  
11 Commissioner at the last hearing and was continued by the  
12 Commission at the request of the claimants. No changes  
13 have been made to the analysis.

14 As you recall, the test claim has been filed by  
15 a school district and the test claim legislation requires  
16 a charter school to insert in the charter a declaration  
17 as to whether the charter school will be deemed a public  
18 school employer for purposes of collective bargaining  
19 under the Educational Employment Relations Act.

20 If the charter school does not decide to be a public  
21 school employer, the school district where the charter is  
22 located is deemed the public school employer by operation  
23 of law for purposes of collective bargaining. Staff  
24 recommends that the Commission deny this test claim.

25 Will the parties please state your names, for

1 the record?

2 MR. SCRIBNER: David Scribner, representing the  
3 school district.

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

6 CHAIR SHEEHAN: Okay, Mr. Scribner, go ahead.

7 MR. SCRIBNER: I will make it real brief.

8 I wish I could come in here with a silver  
9 bullet that we were looking for at the last hearing.  
10 Unfortunately, we got bulldozed by a much larger issue,  
11 the budget. And we're told again that the Legislature,  
12 or some of the members we spoke with, thought that the  
13 Commission would handle this for us and it would fix this  
14 issue for us down here. When they said "fix," my mind  
15 came "neuter." They thought that it would be resolved.  
16 But, unfortunately, we have nothing to bring forward at  
17 this time. We have no legislative directive, nor do we  
18 have a fix to the definitional issue that we can't  
19 overcome for either *Charter Schools III* and *Collective*  
20 *Bargaining*. So, unfortunately, I, at this time, have to  
21 concur with staff's recommendation.

22 CHAIR SHEEHAN: Ms. Geanacou?

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

25 The Department of Finance also supports the

1 staff analysis.

2 We want to emphasize that we believe the claim  
3 should be denied because as the Commission previously  
4 voted, charter schools are not eligible claimants under  
5 state mandate law and, furthermore, there is no charter  
6 school claimant on this claim.

7 I wanted to make one comment that falls on some  
8 earlier written comments submitted by the Department of  
9 Finance in June 2000 that are reflected on page 7 of the  
10 final staff analysis as to school districts, classically  
11 defined school districts.

12 If new charter school employees in a school  
13 district where the charter school is not the  
14 public-school employer, they would likely join existing  
15 bargaining units and there would be no new bargaining  
16 activities for the school districts. I want to simply  
17 point out that more charter school employees would not  
18 increase bargaining activities, as the Commission staff  
19 analysis concludes, that there's no evidence to the  
20 contrary in the record.

21 CHAIR SHEEHAN: Okay, thanks.

22 Did you want to add anything?

23 MS. SHELTON: No. That statement is consistent  
24 with the staff analysis.

25 CHAIR SHEEHAN: Mr. Scribner, I think you

1 summed it up properly.

2 MR. SCRIBNER: Unfortunately, yes.

3 CHAIR SHEEHAN: Yes. Yes, I think you probably  
4 have some sympathetic ears up here in terms of this  
5 issue; but, unfortunately, we are constrained by the  
6 statute. While some people would like to make some  
7 changes, this would not be the appropriate body to make  
8 those changes. But you're in the right building.

9 MR. SCRIBNER: You know, I've been in the wrong  
10 building before, so I'm glad I am at least getting  
11 closer.

12 CHAIR SHEEHAN: Exactly.

13 So having said that, do we have a motion on  
14 that?

15 MR. WORTHLEY: So moved.

16 MEMBER GLAAB: Second.

17 CHAIR SHEEHAN: All right, a motion and a  
18 second to adopt the staff analysis recommendations.

19 All those in favor?

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

21 CHAIR SHEEHAN: Any opposed?

22 *(No audible response.)*

23 CHAIR SHEEHAN: All right, the motion carries.  
24 Thank you.

25 MR. SCRIBNER: Thanks.

1 MS. HIGASHI: Item 7, the Statement of  
2 Decision.

3 MS. SHELTON: This is the Statement of Decision  
4 on the *Collective Bargaining* test claim and minor  
5 modifications, including the vote count will be included  
6 for the final decision issued by the Commission.

7 MEMBER WORTHLEY: Move approval.

8 MEMBER OLSEN: Second.

9 CHAIR SHEEHAN: We have a motion & a second.  
10 All this in favor, say "aye."

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

12 CHAIR SHEEHAN: Any opposed?

13 (*No audible response.*)

14 CHAIR SHEEHAN: It passes unanimously.

15 Thank you.

16 MR. SCRIBNER: Thank you.

17 CHAIR SHEEHAN: Okay, Item 8.

18 MS. HIGASHI: This brings us to Item 8. This  
19 item will be presented by Commission Counsel, Deborah  
20 Borzelleri.

21 MS. BORZELLERI: This test claim deals with the  
22 *Mentally Disordered Offender* law. That law established  
23 continued mental health treatment and civil commitment  
24 procedures for people with severe mental disorders at the  
25 time their parole is terminating or their sentence is

1 terminating.

2 The test claim statute sets forth procedures  
3 for civil court hearings that are initiated by the  
4 prisoner or parolee who wishes or contest that he or she  
5 has a severe mental disorder.

6 If the prisoner or parolee so requests, the  
7 court is required to conduct the hearing where the  
8 District Attorney is required to represent the people,  
9 and the public defender is required to represent the  
10 person, if the person is indigent.

11 The staff finds the test claim legislation  
12 imposes a reimbursable state mandate for local program  
13 for these civil hearings; and that the activities of the  
14 District Attorney representing the people and the Public  
15 Defender representing indigent persons are reimbursable.

16 Staff recommends that the Commission adopt the  
17 staff analysis and approve the test claim for the  
18 activities noted.

19 Would the parties please state your name for  
20 the record?

21 CHAIR SHEEHAN: If you could introduce  
22 yourself.

23 MS. TER KEURST: Hi, I'm Bonnie Ter Keurst. I  
24 am representing the county of San Bernardino.

25 And at this time we have no comments. We

1 support the analysis that was done by the staff.

2 Thank you.

3 CHAIR SHEEHAN: Great.

4 Ms. Geanacou?

5 MS. GEANACOU: Susan Geanacou, Department of  
6 Finance.

7 The Department also supports the final staff  
8 analysis of the Commission staff.

9 We would note a limitation on the reimbursable  
10 activities that are claimed -- that are referred to on  
11 page 12, the first full paragraph of the final staff  
12 analysis. There are several claimed activities which the  
13 Commission's final staff analysis are not finding to be  
14 reimbursable at this phase. And once again, we would  
15 reserve the right to comment on the reimbursability of  
16 those activities, should they appear in the proposed  
17 parameters and guidelines.

18 CHAIR SHEEHAN: In the P's & G's?

19 MS. GEANACOU: Yes, during the parameters and  
20 guidelines.

21 CHAIR SHEEHAN: Which reserves her right to  
22 come back on that one. Understood. Okay.

23 Any questions for any of the witnesses or the  
24 staff on this one?

25 (No audible response.)

1 CHAIR SHEEHAN: No?  
2 If not, we'll entertain a motion.  
3 MEMBER OLSEN: So moved.  
4 MEMBER GLAAB: Move approval.  
5 CHAIR SHEEHAN: We have a motion and a second  
6 to adopt the staff recommendation.  
7 All those in favor, say "aye."  
8 *(A chorus of "ayes" was heard.)*  
9 CHAIR SHEEHAN: Opposed?  
10 *(No audible response.)*  
11 CHAIR SHEEHAN: The recommendation is approved  
12 unanimously.  
13 All right, Statement of Decision.  
14 MS. HIGASHI: Item 9.  
15 MS. BORZELLERI: The only issue before the  
16 Commission is whether the Statement of Decision  
17 accurately reflects the Commission's decision on the  
18 previous item, but staff will make minor changes to the  
19 Statement of Decision to reflect the vote and other  
20 information.  
21 MEMBER HAIR: So moved.  
22 CHAIR SHEEHAN: So we have a motion on the  
23 Statement of Decision.  
24 Second?  
25 MEMBER WORTHLEY: Second.

1 CHAIR SHEEHAN: And a second.

2 All those in favor, say aye.

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

4 CHAIR SHEEHAN: Opposed?

5 *(No audible response.)*

6 CHAIR SHEEHAN: The motion passes unanimously.

7 Thank you.

8 Okay, now we all have to get our other books.

9 MS. HIGASHI: I was going to suggest that we  
10 take a five-minute break at this time, especially for our  
11 reporter.

12 *(A recess was taken from 10:53 a.m.*

13 *to 11:04 a.m.)*

14 CHAIR SHEEHAN: We would like to reconvene the  
15 meeting of the Commission on State Mandates.

16 And we are on Item --

17 MS. HIGASHI: Number 10.

18 CHAIR SHEEHAN: Item 10, all right. *Binding*  
19 *Arbitration* test claim.

20 MS. HIGASHI: That's correct. And Commission  
21 Counsel Deborah Borzelleri will present this test claim.

22 MS. BORZELLERI: Thank you.

23 This test claim deals with legislation that  
24 establishes a mandatory binding arbitration process for  
25 local governments and their law enforcement officers and

1 firefighters.

2 Under that legislation, when an impasse in  
3 employer/employee relations was declared, the parties  
4 would be subject to binding arbitration if the employee  
5 organization so requested.

6 The test claim statute became effective on  
7 January 1, 2001, but was declared unconstitutional by the  
8 California Supreme Court on April 21st, 2003, in the  
9 County of Riverside case which was filed in early 2001,  
10 as violating the home rule provisions of the California  
11 Constitution.

12 Because the Supreme Court did not address  
13 whether or not its ruling was retroactive to the original  
14 effective date of the test claim statute, staff's  
15 analysis addresses whether the statute, while it was  
16 believed to be constitutional, created a reimbursable  
17 state-mandated local program. This is an issue of first  
18 impression for the Commission.

19 Staff finds that applying the Court's ruling of  
20 unconstitutionality retroactively to the original date of  
21 the effective legislation could have the effect of  
22 forcing programs and costs on local governments without  
23 the state paying for them, which is contrary to the  
24 stated purpose of Article XIII B, Section 6, of the  
25 Constitution. So because binding rights or obligations

1 in the form of reimbursable mandates could have been  
2 created while the test claim legislation was presumed to  
3 be constitutional -- and we're talking about between  
4 January 1, 2001, and April 21st, 2003 -- staff finds that  
5 a full mandates analysis on the merits needs to proceed  
6 to determine whether the test claim legislation did, in  
7 fact, mandate a new program or higher level of service  
8 and impose costs mandated by the state during that period  
9 of time.

10 Therefore, staff finds that based on the  
11 purpose of Article XIII B, Section 6, legislation deemed  
12 unconstitutional, in this case by the Court, could create  
13 a reimbursable state-mandated program during the time the  
14 legislation was presumed to be constitutional.

15 However, staff finds that the test claim  
16 statute at issue here did not constitute a new program or  
17 higher level of service. This statute required the local  
18 agency to engage in a process that the claimant contends  
19 resulted in increased costs for employee compensation or  
20 benefits. The cases have consistently held that  
21 additional costs for increased employee benefits and  
22 compensation in the absence of some increase in the  
23 actual level or quality of governmental services provided  
24 to the public do not constitute an enhanced service to  
25 the public and, therefore, do not impose a new program or

1 higher level of service on local governments within the  
2 meeting of Article XIII B, Section 6, of the  
3 Constitution. And since strikes by law enforcement  
4 officers and fire services personnel are prohibited by  
5 law, no, successful argument can be made that this test  
6 claim statute affects law enforcement or firefighting  
7 service to the public.

8 Staff recommends the Commission adopt the staff  
9 analysis and deny the test claim.

10 Will the parties please come forward and state  
11 your name?

12 MR. LIEBERT: My name is John Liebert. I'm an  
13 attorney with the law firm of Liebert Cassidy Whitmore,  
14 representing the claimant.

15 MS. STONE: Pamela Stone on behalf of the City  
16 of Palos Verdes Estates.

17 Mr. DREILING: Daniel Dreiling, Chief of Police  
18 for the City of Palos Verdes Estates.

19 MS. GEANACOU: Susan Geanacou, Department of  
20 Finance.

21 CHAIR SHEEHAN: All right, do you want to  
22 start, Mr. Liebert?

23 MR. LIEBERT: Please.

24 This claim is, as indicated, pursuant to Code  
25 of Civil Procedure sections 2099 through 2099.9. And

1 that was a section, while it was in effect, that provided  
2 for binding interest arbitration, a procedure that had  
3 been found to be in violation of the preexisting  
4 California law.

5 In order to put this in context, let me say  
6 just a few words in terms of how this fits in with other  
7 law.

8 In the Government Code, as distinguished from  
9 the Code of Civil Procedure, there are sections which are  
10 generally referred to as the Meyers-Milias-Brown Act,  
11 which spells out the labor relations, or the  
12 employer-employee relations system for local agencies.  
13 And that is the part of the labor relations system that  
14 has been in effect and remains in effect in California.

15 The CCP section -- that is, the Code of Civil  
16 Procedure section -- that was added in a different code,  
17 provided a unique and new program which was indicated was  
18 binding interest arbitration. Now, binding interest  
19 arbitration is a form of arbitration that only comes into  
20 play when there is a deadlock or an impasse in  
21 negotiations between an employee organization and the  
22 employer. The section refers to, as indicated, law  
23 enforcement or fire service -- or did indicate -- or did  
24 at that time; and provided that in that kind of an  
25 arbitration, known as "interest arbitration" -- that is,

1 an arbitration where there's a disagreement in  
2 negotiations -- that an outside labor arbitrator, in  
3 essence, would make the final decision as to how that  
4 impasse would be resolved. The code section referred to  
5 economic items.

6 We will -- or I will address myself only to  
7 that portion, obviously, of the staff analysis where we  
8 disagree, and that is that last portion.

9 The issue, of course, therefore, is, did the  
10 state mandate onto local agencies a new program or a  
11 higher level of service in an existing program onto the  
12 local agencies that requires reimbursement.

13 The staff analysis in this area has concluded  
14 no, in the negative. And I think they're doing that for  
15 two reasons, and I think that's just been confirmed in  
16 the presentation.

17 The first reason is that cases have  
18 consistently held where there is a cost that is traceable  
19 to an increase in employee benefits, that that type of a  
20 piece of legislation would not qualify for reimbursement  
21 under the constitutional language.

22 We don't take exception to that part; but we  
23 point out that this claim is simply not a claim that is  
24 seeking to be reimbursed for the costs of increased  
25 employee benefits.

1           The staff analysis has a list of 23 items that  
2           are being claimed. Of those, two could be seen as  
3           seeking that kind of an increase. And I am here,  
4           stipulating that those two we are prepared to withdraw at  
5           this time.

6           The other 21 do not relate to that kind of a  
7           reimbursement that is the cost of increased benefits;  
8           and, therefore, to that extent, our position is that that  
9           contention is simply not relevant.

10          Incidentally, the listing of the items of claim  
11          that have been made appears on pages 6 and 7 of the staff  
12          analysis.

13          The other basis that is being asserted that  
14          would prevent reimbursement is, in essence, as we  
15          understand it, all claims must somehow involve service  
16          to the public. We respectfully disagree with the staff  
17          in that regard. We don't not believe that that is  
18          correct.

19          Our reading of the law is as follows: The law  
20          interpreting that constitutional language was addressed  
21          in a case that is cited in the staff analysis called  
22          County of Los Angeles v. State of California. The  
23          citation on it is 43 Cal.3d, 46. That case spelled out  
24          the approach of determining whether or not a claim is  
25          subject to reimbursement. And they did so, essentially

1 in a two-step process. It disappears on page 56 of that  
2 case.

3 Step 1 is, the court held that the intent of  
4 that constitutional provision was to reimburse the local  
5 agency for any new program or any higher level of  
6 existing program.

7 The next stage of the analysis that the Court  
8 went into was to recognize that there is no definition of  
9 the word "program." So they address the issue of, "What  
10 do we mean by 'program'?" And what they held was, in  
11 order to qualify for reimbursement, one of two standards  
12 or findings have to be established:

13 Number one, programs that carry out the  
14 governmental function -- the governmental function of  
15 providing services to the public. That's one.

16 Or alternatively, number two, laws which  
17 implement a state policy impose unique requirements on  
18 local governments that do not apply generally to all  
19 residents and entities in the state.

20 So those were the two that, either one of which  
21 would entitle to reimbursement if other standards are  
22 met.

23 Now, in the Los Angeles case that I've referred  
24 to, the Court held that neither one was met, because that  
25 involved an increase in workers' compensation benefits.

1 And the court held that, number one, workers'  
2 compensation is not a governmental function and, number  
3 two, it is not unique to government because, after all,  
4 workers' compensation applies generally.

5 In any event, that was the approach that was  
6 spelled out in the case that has been cited in subsequent  
7 cases.

8 Very important is the fact that the law also  
9 is, as I've indicated, only one of these two findings  
10 have to be met in order to qualify for the reimbursement.  
11 And that is provided for in a case -- first of all, in a  
12 case called Carmel Valley Fire Protection District v the  
13 State. The cite is 190 Cal.App.3d, 521. And the  
14 language appears at pages 537 and 538. So either one of  
15 those standards.

16 Another case that has been cited quite a bit in  
17 the staff analysis, that is San Diego Unified School  
18 District versus your Commission, that is, the Commission  
19 on State Mandates. That case in a number of places  
20 refers to these as alternative findings. And that  
21 appears in that case.

22 The Carmel Valley case, as a matter of  
23 interest, involved the question of whether there could be  
24 reimbursement for safety protective clothing and certain  
25 safety equipment, and the holding was yes.

1           And the San Diego Unified School District case,  
2           which is somewhat analogous to our situation, there, the  
3           issue was where there was a mandate in connection with  
4           hearings to be conducted involving student expulsions  
5           where there was the issue of the student having  
6           possession of a firearm, where there were various hearing  
7           requirements and items in connection with the hearings,  
8           there again, the Court found that there was a  
9           reimbursable mandate.

10           Another case that also holds that same  
11           proposition, and one that is a great deal more timely, is  
12           the one that, in fact, is referred to in your Item  
13           Number 20 today, and that is Commission decision case  
14           number 00-TC-17/01-TC-14. And that is a case that  
15           involves an agency fee situation; and there, the  
16           Commission held that the item was reimbursable.

17           Now, in that case, the issues involved, or the *Agency*  
18           *Shop*, and specifically the costs of fee deductions --  
19           that is, agency fee deductions, the cost of preparing a  
20           list of home addresses for the union, the costs of making  
21           up a list for union elections, all of those were held by  
22           your Commission to be reimbursable.

23           Now, clearly, those were properly, I think,  
24           reimbursable under that second finding, just as I think  
25           it is quite clear that the claim that is before you now

1 is similarly entitled to reimbursement under that second  
2 finding that I referred to.

3 I think there will be some additional  
4 references made in that regard by Pam Stone in just a  
5 moment.

6 The only other thing that I would add -- and  
7 here, what I would ask you to do is, if you would open  
8 the staff analysis to page number -- let me see here --  
9 to page number four. And on page number four you will  
10 find the certain legislative intent language.

11 What that language stands for is, there is  
12 absolutely no doubt that if we, here today, say, for the  
13 sake of argument -- let us say for the sake of argument  
14 that the position is correct that all claims must have --  
15 must involve a service to the public, if we just  
16 acknowledge that for the sake of argument, there's no  
17 question that the claim here involves a service to the  
18 public.

19 And the reason I say that is, of course, all  
20 you need to do is read the intent language of the  
21 Legislature itself, when they adopted this law.

22 Let me read just the first part of it to emphasize it:

23 "The Legislature hereby finds and declares that  
24 strikes taken by firefighters and law enforcement  
25 officers against public employers are a matter of

1 statewide concern, are a predictable consequence of labor  
2 strife and poor morale that is often the outgrowth of  
3 substandard wages and benefits, and are not in the public  
4 interest.

5 "The Legislature further finds and declares  
6 that the dispute resolution procedures contained in this  
7 title provide the appropriate method for resolving  
8 public-sector labor disputes that could otherwise lead  
9 to strikes by firefighters or law enforcement officers.

10 "It is the intent of the Legislature to protect  
11 the health and welfare of the public," et cetera.

12 Clearly, this is language that makes quite  
13 clear that we are talking about a claim that does,  
14 indeed, involve service to the public.

15 Now, the staff analysis says, "Well, yeah, but  
16 they're against the law. Firefighters and law  
17 enforcement officers are not allowed to strike."

18 Well, one aspect of this is, there's a law that  
19 says you can't strike, and the other reality is, do you  
20 have strikes, nonetheless?

21 And I can tell you from personal experience  
22 that in the case of firefighters, for example, where  
23 there is a Labor Code section 1962, which has been on the  
24 books for decades, there have been a number of strikes by  
25 firefighters, notwithstanding the fact that it is against

1 the law. One involving the City of Sacramento.

2 In the case of law enforcement, as was pointed  
3 out in the staff analysis, ever since 1989 and in an  
4 appellate court decision out of Santa Ana, that made it  
5 against the law for law enforcement officers, in essence,  
6 to go on strike. And yet, clearly, there have been  
7 strike-type activities since that time.

8 So the reality is that there can be strikes  
9 notwithstanding that it's against the law. And, indeed,  
10 the admission is right in the legislative intent language  
11 itself. It says, "We are adopting this law to avoid  
12 those types of strikes." And that law was enacted, of  
13 course, long after they became illegal.

14 Therefore, I will wind up by saying that we  
15 respectfully submit that the claim, other than those two  
16 items we have agreed should be withdrawn, that the claim  
17 does meet all of the requirements of the constitutional  
18 mandate for a new program that does entitle -- that is  
19 entitled to a mandate.

20 CHAIR SHEEHAN: Right.

21 I have one question.

22 MR. LIEBERT: Please.

23 CHAIR SHEEHAN: Are you recommending that we  
24 ignore that appellate court decision and the statute that  
25 outlaws strikes by firefighters and public safety and in

1 making our decision?

2 MR. LIEBERT: No, because tongue in cheek a  
3 little bit, you're not firefighters or law enforcement.  
4 In other words, what I'm asking you to do --

5 CHAIR SHEEHAN: But we have a claim before us  
6 that affects them.

7 MR. LIEBERT: Right. What I'm requesting is  
8 that you recognize the reality that notwithstanding  
9 that -- as recognized by the Legislature also -- that you  
10 recognize the reality that there can and have been  
11 strikes, notwithstanding that it is against the law for  
12 them to do that.

13 CHAIR SHEEHAN: I appreciate that.

14 I'm having a hard time reconciling the oath I  
15 take when I sit in various entities to uphold the  
16 statutes and the laws and the Constitution of the State  
17 in making the decision. So that's why I ask that  
18 question.

19 Ms. Stone?

20 MR. LIEBERT: I would add that every member of  
21 the Legislature took the same oath, I suspect, as you  
22 did. And they, in the language that I have quoted --

23 CHAIR SHEEHAN: I cannot speak for their intent  
24 in voting for that. I can only address my actions taken  
25 today.

1 MR. LIEBERT: Right, okay.

2 CHAIR SHEEHAN: Ms. Stone?

3 MS. STONE: Thank you very much.

4 At this time, I am presenting some exhibits to  
5 the Commission, of which I would like administrative  
6 notice taken. I'd also want to make sure that your  
7 counsel and the Department of Finance has copies of  
8 these.

9 These are all decisions that have been rendered  
10 by your commission pertaining to labor matters wherein  
11 the labor process has been found to be reimbursable. And  
12 trust me, I am not going to read from all of these, but  
13 if you'll give me one moment so that these may be passed  
14 out. There are some provisions I would like to stress  
15 with regard to these.

16 CHAIR SHEEHAN: I'm sure staff would help to  
17 pass those out while you testify.

18 MS. STONE: Yes. I want to make sure that your  
19 counsel and the Department of Finance have a copy, as  
20 soon as everybody else does as well, as a matter of  
21 courtesy.

22 I gave out everything. I think I was missing  
23 one Exhibit 2.

24 CHAIR SHEEHAN: We can share. Don't worry. Go  
25 ahead.

1 MS. STONE: Okay, I'm only going to refer  
2 directly to three exhibits. But as you will note, that  
3 these are all either Statements of Decision, parameters  
4 and guidelines, or statewide cost estimates on various  
5 labor matters which you have approved in the past.  
6 And I would like to address just a couple of them very  
7 briefly, because you have the same consideration here.  
8 And you're also now dealing with employees -- you're now  
9 dealing with employee matters.

10 I would like to direct your attention to  
11 Exhibit 2. These are the parameters and guidelines for  
12 *Agency Shop* on page 2. Actually, this particular test  
13 claim was presented by my esteemed colleague, Mr. John  
14 Liebert, some 19 years ago, in 1987.

15 And you found that the reimbursable activities  
16 they were to review recognized employee organizations'  
17 proposal to establish agency shop, as well as meeting and  
18 conferring with recognized employee organizations on the  
19 issue of agency shop and current bargaining agreement.  
20 The second exhibit I would like you to look at just very  
21 briefly -- and trust me, I am not going to read this one  
22 because we would be here for the afternoon. And I don't  
23 know about -- I believe your Commission would like lunch  
24 today -- and that is Exhibit 6. These are the  
25 consolidated parameters and guidelines adopted by the

1 Commission which have been amended over the years  
2 pertaining to *Collective Bargaining* and *Collective*  
3 *Bargaining Agreement Disclosure*. *Collective Bargaining*  
4 was originally adopted by the Board of Control. Your  
5 Commission has amended the Parameters and Guidelines and  
6 consolidated them with *Collective Bargaining Disclosure*  
7 for any number of occasions over the years.

8 This, again, provides reimbursement for labor  
9 negotiations and collective bargaining with regard to  
10 teachers.

11 And lastly, I'm going to refer to *Agency Fee*  
12 *Arrangements*, which Mr. Liebert referred to. And I'm  
13 referring to Exhibit 1, which was the Statement of  
14 Decision which, again, on page -- I have the  
15 conclusion -- it's the last page. My copy was not  
16 numbered. I pulled this off your website. And, again,  
17 it has specific employee representational issues which  
18 your Commission has found to be reimbursable.

19 When Mr. Liebert previously discussed -- and I'm just  
20 thrilled to be here with the labor guru of the state of  
21 California, beyond all belief -- that we are conceding  
22 two particular points with regard to the activities, we  
23 are conceding the issue of increase in salaries that  
24 would be warranted by this legislation to the actual  
25 employees, as well as the litigation costs. What we are

1 seeking here for reimbursement are the labor process  
2 costs that must be incurred.

3 My copy has a little different pagination, but  
4 it is pages 6 and 7. Basically, you're talking about the  
5 time of agency negotiators, staff, and counsel.

6 Very similar to those costs which you have  
7 allowed in *Collective Bargaining* for schools. And we  
8 believe that the decision is without a difference with  
9 regard to this particular mandate. Although I would like  
10 to insert parenthetically that your Commission should be  
11 relieved on a cost basis that this particular legislation  
12 was declared unconstitutional only a couple of years  
13 after its passage.

14 And thank you very much for your time.

15 CHAIR SHEEHAN: Thanks.

16 Any questions for Ms. Stone?

17 Mr. DREILING: I have nothing. I'm here to  
18 answer questions, if you have some.

19 CHAIR SHEEHAN: Right. Thanks.

20 Ms. Geanacou?

21 MS. GEANACOU: I think I'd like to hear the  
22 Commission staff respond to some of the points of the  
23 claimants before we respond, if that's appropriate.

24 CHAIR SHEEHAN: Sure. Go ahead.

25 MS. BORZELLERI: Thank you.

1 First of all, Mr. Liebert cites to the case of  
2 County of Los Angeles. That case actually stands for --  
3 in the tests that he was laying out, it stands for  
4 whether a test claim statute is a program. And we have  
5 agreed with them that it is, in fact, a program.  
6 What we disagree with is that it is a new program or  
7 higher level of service, which is the second prong of the  
8 test, I'm sure you're aware.

9 And just to read from the San Diego Unified  
10 School District case, which is a 2004 case, several cases  
11 are summarized in that case, and I think we need to rely  
12 heavily on this case for making this determination. And  
13 I will read to you from pages 876 to 877 from the  
14 San Diego Unified School District case.

15 MS. STONE: If you'd like to, we have copies  
16 for everybody of the San Diego --

17 MS. HIGASHI: Let me just say, there's a copy  
18 already in your binder under Item 22, under tab A.

19 MS. STONE: Oh, okay. We were concerned about  
20 that, so we made copies.

21 Susan, would you like a copy?

22 MS. GEANACOU: Sure.

23 MS. BORZELLERI: The case is rather long, so I  
24 don't know what your pagination is.

25 Do you have a cross-reference there, so they

1 can read with me?

2 MS. STONE: What page are you reading from?

3 MS. BORZELLERI: It's page 876 to 877.

4 MR. LIEBERT: Eight? Did you say 8?

5 MS. BORZELLERI: 876 to 877.

6 In this, they're citing to the City of Richmond  
7 case following the County of Los Angeles case, which  
8 concluded that requiring local governments to provide  
9 death benefits to local safety officers under both the  
10 Public Employees' Retirement System and the Workers'  
11 Compensation system did not constitute a higher level of  
12 service to the public.

13 The Court of Appeal arrived at that  
14 determination even though, as might have been argued in  
15 County of Los Angeles and City of Sacramento, such  
16 benefits may generate a higher quality of local safety  
17 officers and thereby, in general and indirect sense,  
18 provide the public with a higher level of service by its  
19 employees.

20 The next paragraph: "Viewed together, these  
21 cases" -- and they're citing the County of Los Angeles,  
22 City of Sacramento, City of Richmond, and they also cite  
23 to the City of Anaheim - "illustrate the circumstance  
24 that simply because the state law or order may increase  
25 the costs borne by local government in providing

1 services, this does not necessarily establish that the  
2 law or order constitutes an increased or higher level of  
3 the resulting service to the public under Article XIII B,  
4 Section 6.”

5 And then it goes on to cite what does  
6 constitute a higher level of service. And they use the  
7 example of Carmel Valley Fire Protection, which  
8 Mr. Liebert cited, where the executive order he required  
9 the county firefighters to be provided with protective  
10 clothing and safety equipment because this increased  
11 safety equipment apparently was designed to result in  
12 more effective fire protection. The mandate evidently  
13 was intended to produce a higher level of service to the  
14 public, thereby satisfying the first alternative set out  
15 in the County of Los Angeles.

16 Similarly, Long Beach, in an executive order,  
17 required school districts to take specific steps to  
18 measure and address racial segregation in local public  
19 schools. The Appellate Court held that this constituted  
20 a higher level of service to the extent the order's  
21 requirements exceeded federal constitutional and case law  
22 requirements by mandating school districts to undertake  
23 defined remedial opinions and measures that were merely  
24 advisory under prior law.

25 Those later cases really do identify an actual

1 public service; and I think in this instance we do not  
2 have that. That's what we based our analysis on.  
3 Secondly, because the Commission has in the past ruled on  
4 some similar cases, those are not binding, as the  
5 Commission well knows, on cases going forward. We do  
6 need to rely on the case law. We do look at those  
7 previous cases in making our analysis. But in this case  
8 I think we do need to rely on the San Diego case, which  
9 is a Supreme Court case.

10 And as far as the other Commission decisions,  
11 Camille, did you want to add anything about those?

12 MS. SHELTON: No, not on that, other than the  
13 Supreme Court has repeatedly said that the whole purpose  
14 of Article XIII B, Section 6, was to prevent the state  
15 from shifting costs to local agencies to provide a  
16 service to the public. That's been the purpose since the  
17 earliest Supreme Court case in 1987, in County of  
18 Los Angeles.

19 CHAIR SHEEHAN: I want to ask Ms. Geanacou if  
20 she wants to make any comments first, and then we can go  
21 back and hear from some of the comments you may have.

22 MS. GEANACOU: Yes, Susan Geanacou, Department  
23 of Finance. Thank you.

24 The Department of Finance agrees with the final  
25 staff analysis as to this mandate for a couple of

1 reasons, one of which was just highlighted by the  
2 Commission staff counsel.

3 In this case, there is no higher level of  
4 service to the public from binding arbitration following  
5 impasse and bargaining.

6 In some of the cases just cited that I will not  
7 repeat, those recent cases within the last couple of  
8 years have confirmed at an appellate level that an  
9 alleged increased cost of providing services to the  
10 public does not equal an increased level of services to  
11 the public. Those are two entirely different things in  
12 the mandates world. That's confirmed in the most recent  
13 San Diego Unified School District case and the somewhat  
14 older City of Richmond case.

15 I'd also like to point out that many of the  
16 activities claimed in the test claim are not required by  
17 the legislation. I'm mindful, though, that the claimants  
18 agreed that they would waive or stipulate to waive  
19 withdrawal of some of those claimed activities.

20 So nonetheless, I'd like to be on the record of saying  
21 many of those activities are not required by the test  
22 claim legislation.

23 And also, finally, the Commission staff  
24 analysis on page 15 points out importantly that strikes  
25 by fire and police personnel are illegal under California

1 law; and that should be taken into consideration  
2 significantly by the Commission members in determining  
3 whether there could even be a higher level of service to  
4 the public here from the claimed activities.

5 CHAIR SHEEHAN: Thanks.

6 Okay, questions -- were there questions of the  
7 witnesses?

8 *(No audible response.)*

9 CHAIR SHEEHAN: No?

10 All right, did you want to address a couple of  
11 things?

12 MR. LIEBERT: Yes. Let me just very briefly  
13 reference the Richmond case. The Richmond case stands  
14 for the proposition that if you have an increase in  
15 benefits that results in cost, that is not reimbursable.

16 We've stipulated to that. That is what the Richmond  
17 case involved.

18 The Carmel case -- it's interesting that the  
19 opinion in the Carmel decision itself never makes  
20 reference to the assumption or presumption that there  
21 could have been the assumption that this was an increase  
22 in a level of service. And, indeed, probably the facts  
23 suggest that that is otherwise.

24 But the main point I think that I want to make  
25 is, the constitutional language talks about a new program

1 or a higher level of service. I think the arguments that  
2 we hear is the only relevant standard is the higher level  
3 of service. I think that is belied in a fair reading of  
4 the cases by the definition of "program." And you will  
5 note that the first element of the definition of  
6 "program" does refer to services to the public. That is,  
7 governmental functions of providing services to the  
8 public.

9 But then it provides the alternative, which  
10 does not pertain -- does not, in its terms, mention  
11 anything about service to the public. What it refers to  
12 is a unique requirement that the state imposes based on  
13 its policy, a unique requirement onto the local  
14 government.

15 We are submitting that this is a perfect  
16 example, this Code of Civil Procedure section series is a  
17 perfect example of the second element that is a law which  
18 implements a state policy and imposes unique requirements  
19 on local governments that do not apply to anybody other  
20 than local governments.

21 And in our opinion, that does not address the  
22 issue of a higher level of service.

23 Most of the cases, indeed, involve a higher level of  
24 service. That is, for example, in the case of San Diego  
25 Unified School District there was in existence a hearing

1 procedure that was utilized in the case of *Student*  
2 *Expulsions*. And the mandate was in addition to that  
3 policy in the case of the situation where you had student  
4 expulsions involving possession of firearms. And in the  
5 other case, and, indeed, in the Carmel case you might  
6 argue, as apparently that case did, that providing safety  
7 equipment is an additional -- a higher level of service  
8 because the service is fire protection, and now we can  
9 better protect the public against fire protection.

10 So the point, though, I'm trying to make is, those  
11 are two distinct elements. And the higher level of  
12 service element is not the one that we're relying on.  
13 We're relying on the second prong of the test, and that  
14 is, where the state mandates a unique policy onto local  
15 government.

16 MS. STONE: And, Madam Chairman, I'd just like  
17 to add a prior comment.

18 In my prior incarnation, I was a chief deputy  
19 county counsel, and part of that, a deputy county counsel  
20 to the County of Fresno. As a result of which,  
21 notwithstanding the Santa Ana case, which precludes and  
22 makes strikes by peace officers illegal, we were exposed  
23 to a severe case of "blue flu." Blue flu is when you  
24 have various and sundry representatives of your safety  
25 officers call in sick. Basically, you have a work

1 disruption, because these are unplanned absences. And  
2 it's sometimes difficult to prove you have the blue flu  
3 until it's been continuing for a while. But you have a  
4 major disruption to the organization of your -- in this  
5 case, it was the Sheriff's Department -- you have issues  
6 with regard to providing adequate services to the public  
7 because of the fact that you have to make arrangements to  
8 cover for these unplanned absences.

9 And this particular tactic, I have read, and  
10 it's in the materials, is utilized because peace officers  
11 are not allowed to strike.

12 So when you're talking about strike-type  
13 activities, even though strikes, per se, are illegal for  
14 both firefighters and peace officers, good  
15 employer-employee relations are incumbent in order to be  
16 able to protect the health and safety of the populace.  
17 And I think what we're trying to say through this is that  
18 it was the Legislature's intent that by creating this  
19 particular legislation, which was declared  
20 unconstitutional, it was to avoid some of the employee  
21 problems in the past which had put the public safety at  
22 risk.

23 So, therefore, whereas I totally agree with Mr. Liebert,  
24 that this has satisfied the prong of basically being  
25 unique to government, to discharge a legislative policy,

1 I also believe that this legislation was very clear in  
2 its intent to provide a service to the public which is  
3 clearly making sure that there were no employee  
4 disagreements that could affect the provision of both  
5 fire and police, which have been found in Carmel Valley  
6 and other cases to be two of the most primary  
7 governmental services which local government provides to  
8 its citizens.

9 Thank you.

10 CHAIR SHEEHAN: All right.

11 Did staff want to address any of those final  
12 issues? Specifically, the --

13 MEMBER WORTHLEY: The second prong.

14 CHAIR SHEEHAN: Yes, the second prong in terms  
15 of the general requirements.

16 MS. SHELTON: There are several elements to  
17 finding a reimbursable state-mandated program. And you  
18 have to satisfy each element to get reimbursed. And the  
19 first is that there has to be a mandated activity imposed  
20 on the agency. Second, those activities have to  
21 constitute a program. And Mr. Liebert correctly has  
22 defined what the program means.

23 Third, you have to have a new program or higher  
24 level of service. And there, repeatedly the courts have  
25 said it has to provide a service to the public, to make

1 that finding.

2 And then fourth, there has to be increased  
3 costs mandated by the state for the activities that are  
4 required by statute.

5 CHAIR SHEEHAN: What about --

6 MEMBER OLSEN: The assumptions.

7 CHAIR SHEEHAN: Exactly, the requirement -- or  
8 the issue that the mandate is not required across the  
9 board? They referred back to the workers' comp case. I  
10 don't know which one of you made that --

11 MS. SHELTON: I would need clarification of  
12 that.

13 MS. BORZELLERI: Could you repeat the comment?  
14 I didn't hear what you said.

15 CHAIR SHEEHAN: They keep talking about that  
16 it's not a requirement across the board -- you know, not  
17 unique to government.

18 MEMBER WORTHLEY: It is unique.

19 CHAIR SHEEHAN: I mean, it is unique to  
20 government.

21 MS. SHELTON: No, it is unique to government,  
22 and that satisfies the test that it's a program subject  
23 to Article XIII B.

24 CHAIR SHEEHAN: Right, because you get to the  
25 part of the local government or essentially the school

1 district.

2 MS. SHELTON: Right. You get to the next  
3 element, that it's a new program or higher level of  
4 service. And for that element, you need to show a  
5 service to the public.

6 CHAIR SHEEHAN: Right.

7 MR. LIEBERT: If I may say so, our disagreement  
8 on the law in this regard is that the higher level of  
9 service is one aspect of it. In other words, when you  
10 are providing a higher level of service to an existing  
11 program, the other element is that you are creating a  
12 new program. And when you create a new program, we  
13 respectfully disagree that in every case you have to have  
14 that new program provide services to the public. I don't  
15 think that the cases stand for that proposition.

16 The San Diego case, which has some language  
17 which arguably could be interpreted that way, is a case  
18 that involved a higher level of service to an existing  
19 program. It did not involve a new program. And so I  
20 think we have a bit of a legal disagreement on that.

21 CHAIR SHEEHAN: Okay, Camille?

22 MS. SHELTON: The courts have defined a new  
23 program or higher level of service the same. They both  
24 have to provide a service to the public. And when you're  
25 looking at that, you're just looking to see if that

1 activity that is newly required provides a service to the  
2 public.

3 CHAIR SHEEHAN: Okay. Did you have a question?

4 MEMBER WORTHLEY: No. I have a comment. I'm  
5 just holding my comment.

6 CHAIR SHEEHAN: Oh, okay.

7 Did you have a question?

8 MEMBER WALSH: I have a comment.

9 CHAIR SHEEHAN: Okay, does that clarify?  
10 Yes, because that was the one that I think some of the  
11 Members were getting. And maybe it was just the jargon  
12 or the wording that was being used in terms of that.

13 Did you want to address anything else?

14 *(No audible response.)*

15 CHAIR SHEEHAN: Okay, any other questions from  
16 the Commission members on this one?

17 But I think it helped clarify the issue that is  
18 made, thanks, in terms of higher level of service.

19 I understand your comments on the strike issue. As I  
20 say, nonetheless, strikes are illegal, regardless  
21 of what may actually happen out there, I guess is the way  
22 I'm looking at the statute in that regard.

23 Ms. Higashi?

24 MS. HIGASHI: I'd like to get a clarification  
25 from the claimants' representatives, turning to page 7

1 of the staff analysis, the page that has the continuation  
2 of the bulleted activities that are sought for  
3 reimbursement.

4 CHAIR SHEEHAN: Right.

5 MS. HIGASHI: I just want you to clarify for us  
6 and designate exactly which bulleted activities that you  
7 are withdrawing officially today?

8 MR. LIEBERT: Let's see, the second, on page 7,  
9 the second one from the top, the last one on page 7,  
10 and Pam Stone also --

11 MS. STONE: Wait, it's this one.

12 MR. LIEBERT: That's last one.

13 MS. STONE: Yes, the last one.

14 MS. SHELTON: The second one says time of the  
15 agency negotiators to negotiate --

16 MR. LIEBERT: Are we talking about -- I'm  
17 talking about page 7. Do we have a different --

18 MS. HIGASHI: I'm on page 7.

19 MEMBER WORTHLEY: The third bulleted point.

20 MS. STONE: This is why we have different  
21 paginated copies.

22 MS. HIGASHI: So why don't you read it to us?

23 MS. STONE: The last paragraph that says,  
24 "Additional intangible cost element at the last best  
25 offer phase of negotiations involving enhancements to

1 compensation packages that may be added when the local  
2 agency perceives possible vulnerabilities," et cetera.

3 "We are also" --

4 MEMBER WORTHLEY: Costs of implementing the  
5 award.

6 MS. STONE: -- "costs of implementing the award  
7 above and the cost of inevitable litigation" --

8 CHAIR SHEEHAN: So the last three bullets?

9 MS. STONE: No, I take that back. Just "the  
10 costs of implementing the award," above those and "any  
11 additional -- and additional intangible costs." Those  
12 two.

13 MS. GEANACOU: Leaving in "costs of inevitable  
14 litigation"?

15 MS. STONE: Yes.

16 MS. SHELTON: Can I just ask a clarification,  
17 too?

18 Are you still seeking reimbursement for the  
19 litigation costs?

20 MS. STONE: Pardon?

21 MS. SHELTON: Are you still seeking  
22 reimbursement for the litigation costs to deem that  
23 statute unconstitutional?

24 MS. STONE: Yes.

25 MS. SHELTON: I'll just state for the record

1 that that activity is not mandated by the state.

2 MS. STONE: Right. We will concede that it is  
3 not mandated by the state --

4 MR. LIEBERT: So apparently we are withdrawing  
5 it.

6 MS. STONE: We are? Okay.

7 MS. SHELTON: You are?

8 MS. STONE: Sorry. Yes.

9 MR. LIEBERT: So we're withdrawing three of the  
10 elements.

11 MS. HIGASHI: Okay, so it's the last three.

12 CHAIR SHEEHAN: The last three.

13 MR. LIEBERT: Not the last three.

14 MEMBER WORTHLEY: The litigation costs, the  
15 first bullet point.

16 MS. STONE: The first one.

17 CHAIR SHEEHAN: The very first litigation  
18 costs?

19 MS. HIGASHI: Right. Yes, sorry.

20 CHAIR SHEEHAN: So that is the amended claim.

21 MS. HIGASHI: On page 6.

22 MS. STONE: Now, we've got clarification. I  
23 apologize to the Commission.

24 CHAIR SHEEHAN: Just so that we understand in  
25 terms of those.

1           Are there any other questions from -- or  
2           comments?

3           MEMBER WORTHLEY: I'd like to make a comment.

4           CHAIR SHEEHAN: Reflections on the discussion?

5           MEMBER WORTHLEY: We focused on the increase  
6           and the actual level, but the other language there says  
7           "or quality of governmental services provided to the  
8           public." And I understand that, in a citation that was  
9           read, that increased costs do not necessarily reflect  
10          increased quality.

11          Now, I would submit to anybody if the state  
12          passed a law that says every agency has to pay their law  
13          enforcement officers a beginning salary of \$100,000  
14          apiece, we would be hard pressed to say that that  
15          wouldn't increase the quality of the people that would  
16          apply for the work.

17          Where do you draw this line? I'm afraid -- I  
18          mean, how can you disassociate increased costs with no  
19          affect on quality?

20          Another affect is that if by increased costs,  
21          you affect quality the other way. Because now all of a  
22          sudden, you've got X-number of dollars for the  
23          governmental entity to spend on law enforcement or any  
24          other kind of requirement, and now you impose additional  
25          costs on that county, there's no additional money coming

1 in so, therefore, you have to cut, and you actually have  
2 a reduction in services.

3 I just really struggle with this concept that  
4 there is not a correlation between increased costs and  
5 that especially when it benefits the employee. In this  
6 case we're talking about arbitration. What's the whole  
7 point of binding arbitration? Well, certainly the  
8 employees are trying to increase their income or their  
9 benefits. And what does that do? It means a higher  
10 quality person applies for the work.

11 If you go back -- I also looked at that  
12 language from the State Legislature, and it talked about  
13 as a -- you could refer to that as being, the existing  
14 situation is that people are unhappy in their work. So  
15 you have an issue of quality about how they're affecting  
16 their job, how they're doing their job because they're  
17 unhappy about their pay.

18 So as we increase their compensation, then  
19 hopefully we're fixing that problem. That's an  
20 enhancement. That's a qualitative issue; and I really  
21 struggle with the idea that we somehow divorce that. And  
22 I don't care about court decisions because I think the  
23 courts haven't had the right kind of case to decide when  
24 do you make that decision.

25 It seems to me compensation is right on the

1 mark, in terms of quality and affecting quality of  
2 service.

3 MS. BORZELLERI: Well, I think with binding  
4 arbitration you could end up either way. I mean, you may  
5 end up with enhanced salary or not.

6 MEMBER WORTHLEY: Well, may I say to that, the  
7 counties are the ones who oppose binding -- and the state  
8 agencies oppose binding arbitration, not the employee  
9 groups. That should tell you something right there. If  
10 it were the other way around, then the governmental  
11 agency wouldn't care.

12 MS. BORZELLERI: Right. Except we don't really  
13 have any direct facts on the record about that. It's a  
14 difficult issue, I agree with you.

15 MS. SHELTON: I just need to state that the  
16 Supreme Court in the San Diego case said that those same  
17 arguments were raised in the prior cases that they  
18 reviewed. And they said even though there could be a  
19 higher quality of service provided to the public, there  
20 is still no higher level of service because it's just a  
21 benefit to the employee.

22 MEMBER WORTHLEY: What's the purpose of saying  
23 that word then, "quality"? I don't understand --

24 MS. SHELTON: I'm on page 876 of the decision,  
25 and I can read it.

1 MEMBER WORTHLEY: Well, I'm reading your  
2 analysis that just says that cases have consistently held  
3 that additional costs, blah, blah, blah, in the absence  
4 of some increase in the actual level or quality of  
5 governmental services.

6 MS. SHELTON: Right, and then go on with the  
7 decision on page 876 where the Court is reviewing the  
8 Richmond case, and it says that the Court there -- or the  
9 legislation there did not constitute a higher level of  
10 service to the public. The Court of Appeal arrived at  
11 the determination even though this might have also been  
12 argued in the County of Los Angeles and City of  
13 Sacramento that the benefits may generate a higher  
14 quality of local safety officers and thereby in a general  
15 and indirect sense provide the public with a higher level  
16 of service by its employees. And it was rejected. It  
17 was not approved as a reimbursable state-mandated  
18 program.

19 MEMBER WORTHLEY: Which case was that again?

20 MS. SHELTON: It was summarized by the Supreme  
21 Court in the San Diego Unified School District case.

22 MS. HIGASHI: It's in your record, Item 22,  
23 Tab A, page 111, the top right-hand corner.

24 CHAIR SHEEHAN: All right.

25 MEMBER OLSEN: Madam Chair?

1 CHAIR SHEEHAN: Ms. Olsen?

2 MEMBER OLSEN: It seems to me that the issue  
3 here is the directness of the correlation between the  
4 things, and I think we're faced with this constantly  
5 here. In some way, everything government does ultimately  
6 affects a public outcome.

7 So from my perspective, binding arbitration --  
8 you don't require binding arbitration to directly  
9 increase benefits to employees. You provide binding  
10 arbitration to provide a way of dealing with a conflict  
11 between employees and employers.

12 Now, ultimately, that may result in higher  
13 benefits, but that's not a direct outcome of requiring  
14 binding arbitration. I think for me the issue is the  
15 directness of this construct here.

16 CHAIR SHEEHAN: Okay, did you want to comment,  
17 Mr. Walsh?

18 MEMBER WALSH: I'm ready to vote.

19 CHAIR SHEEHAN: Did you want to add something  
20 now?

21 Why don't you introduce yourself?

22 MR. BURDICK: Allan Burdick on behalf of CSAC  
23 SB 90 Service.

24 You just wanted to make a couple of comments  
25 related to this and some clarifications, because this

1 test claim was actually filed at the request of the  
2 California State Association of Counties and the League  
3 of California Cities as they were proceeding with their  
4 lawsuit, and felt that in the event that they had not  
5 been successful in that lawsuit, they wanted to make sure  
6 they were then protected for their reimbursement of these  
7 particular costs from going on, which included -- as  
8 everybody knows, an extremely major piece of legislation  
9 and public policy issue, one in which the state  
10 government has chosen not to apply to itself but only  
11 uniquely to local government.

12 So this is clearly a unique program that was  
13 placed on local government.

14 I think at this point I just wanted to comment on the  
15 cost issues, because I think we're saying this is the  
16 process issues that are being claimed in here, as it is  
17 an expansion and a complication, if you will, of the  
18 collective bargaining process by adding binding interest  
19 arbitration. This makes a major difference in that  
20 bargaining process.

21 And so like the Meyers-Milias-Brown Act which  
22 Mr. Liebert referred to, which was adopted in 1979, I  
23 think would have been a reimbursable state mandate had it  
24 been after 1975. And I think every time Commission  
25 members talk and cite about increased costs, in this case

1 of a benefit or not a public service, then that cost  
2 shouldn't be reimbursed. But I think Paul Gant turns  
3 over in his grave every time he hears that particular  
4 comment because, obviously, that was the intent if you're  
5 placing a cost on local government that they should be  
6 reimbursed.

7 I think I just wanted to point out that the  
8 cost issue right now is one that is being litigated. You  
9 continue to test claim on the basis that that's the  
10 primary issue of the litigation before you on a CSAC  
11 Excess Insurance Authority that is being challenged. I  
12 know you may have discussed that today in your public  
13 session. So I just kind of wanted it to clarify that,  
14 we're looking at areas that I don't think it's not a  
15 position that costs -- and would agree with Commissioner  
16 Worthley, that if you increase the cost and a benefit to  
17 somebody, obviously, that's a benefit, as well as an  
18 increased cost that was intended under here.

19 So I just wanted to kind of clarify that as to  
20 why that is and the importance of this as you go back and  
21 look and say, "Well, you know, this is just a couple  
22 years of time between when the law was enacted until the  
23 court case." But this is very critical because of the  
24 precedential nature.

25 And I might say that the Attorney General, as

1 this legislation was going through the process, issued  
2 opinions which indicated that had, you know, binding  
3 interest arbitration for their perspective, that not only  
4 the process would have been reimbursable; but if the  
5 finding was greater than the final last, best offer of  
6 the local agency, that that increased cost would have  
7 been reimbursable.

8 So, you know, I'm not an attorney and I know  
9 there's a lot of discussion going on out there; but I  
10 wanted to remind you that this issue is before you, that  
11 you did continue a test claim on that particular basis,  
12 and that local government does not agree that an  
13 increased cost is not a -- should not be reimbursed if  
14 you're basing it simply on the costs.

15 Thank you.

16 CHAIR SHEEHAN: Thanks.

17 MS. GEANACOU: I have a question. There's no  
18 request to continue this matter pending this matter; is  
19 there?

20 MR. BURDICK: No, no, this was a matter today,  
21 the County of Los Angeles, and the issue was simply on  
22 the basis of the increased cost in that particular case.

23 MS. SHELTON: Well, that case dealt with  
24 workers' compensation. So it was more aligned to the  
25 program that's pending on appeal.

1 MR. BURDICK: But the issue there is increased  
2 costs.

3 MS. SHELTON: Right, it's the same issue.

4 MS. HIGASHI: I just had a couple of comments  
5 that I wanted to offer, and then just a question I wanted  
6 to ask the claimants' representatives.

7 First, I just wanted to point out for the  
8 record that the *Collective Bargaining* decision that has  
9 been discussed, the test claim decision on the Rodda Act,  
10 that was actually a decision made before any of this case  
11 law that's being cited to today had appeared. And the  
12 substance of that decision is basically one or two  
13 sentences saying that it was approved. And the  
14 Commission has never revisited any of those issues. They  
15 have certainly added to it by adding one additional test  
16 claim that was related to that program.

17 CHAIR SHEEHAN: Okay.

18 MS. HIGASHI: I'd also like to ask the  
19 claimants the question, since this test claim was filed  
20 relatively early, after the law was enacted, I wanted to  
21 find out if there was any report as to how many  
22 jurisdictions actually did participate in binding  
23 arbitration, and whether or not the claimant had actually  
24 entered into binding arbitration as a result of this  
25 statute, just because there's no evidence in the record

1 as to that issue.

2 MS. STONE: There is evidence that I am  
3 personally aware of, of one county being forced into  
4 binding interest arbitration, which resulted in an award  
5 higher than the last, best, final offer.

6 Other entities had other negotiations leading  
7 up to it but did not enter. They did the pre-stages but  
8 did not enter into the stage of binding interest. They  
9 didn't get as far as an arbitration decision.

10 MS. HIGASHI: So if your position were  
11 approved, are you suggesting that there might only be one  
12 claimant?

13 MS. STONE: There would be some claimants --  
14 it's my understanding that there would be some claimants  
15 with regard to the initial start-up cost, but there was  
16 only one agency that went the whole way.

17 I'm sorry, I don't know if I broke it (*pointing*  
18 *to microphone*).

19 Thank you.

20 CHAIR SHEEHAN: Did that clarify?

21 MS. HIGASHI: That's all.

22 CHAIR SHEEHAN: Okay.

23 MR. LIEBERT: I guess just one.

24 CHAIR SHEEHAN: Sure.

25 MR. LIEBERT: Just to clarify. Our primary

1 concern are the costs related to the process.

2 CHAIR SHEEHAN: Preparing for it, right. And  
3 on your bullets, as you go through that, at least it's  
4 clear to this member, and I'm sure to the other members,  
5 that it lays out those issues, yes. Not what may result  
6 at the end, but the preparation, training, those issues,  
7 yes.

8 MR. LIEBERT: Right.

9 MR. BURDICK: If I could just make one comment  
10 to clarify on Paula's point.

11 If this is approved and we get to parameters  
12 and guidelines and go through that process and these  
13 activities are there, there may be a number of agencies  
14 that qualify for increased costs related to that process  
15 in the event that binding interest arbitration may have  
16 been raised by the labor unions or other things they were  
17 doing dealing with this. So I don't think we want to say  
18 that it is a single agency may be the only one.

19 I do not think there will be substantial claims  
20 in this particular process. But, obviously, there are  
21 going to be some one-time costs going through -- of the  
22 law, and preparing the people, what happens, you know,  
23 the change in the law and what this program does.  
24 And I think, you know, actually we have a gentleman  
25 sitting at the table who initiated this, who provided

1 some substantial training to local agencies so they would  
2 be able to comply with this.

3 CHAIR SHEEHAN: If I understood what Paula  
4 said, it was that there was -- the clarification that  
5 there was actually one entity that resulted in an  
6 arbitration decision -- or that had an arbitration  
7 decision that resulted in increased costs, regardless of  
8 the prep cost and all of that. I think people --

9 MS. STONE: Right, right, that's correct. But there are  
10 a lot of agencies that had the initial prep costs, and it  
11 looked like they were starting to go into the process,  
12 who started the process.

13 CHAIR SHEEHAN: And then it got --

14 MS. STONE: And then for whatever reason, it  
15 evaporated, yes.

16 But there's only one entity that I'm aware of  
17 that went through the whole way.

18 CHAIR SHEEHAN: Right, and got the --

19 MS. STONE: The final arbitration decision.

20 CHAIR SHEEHAN: Right. I think we understood  
21 what she was saying.

22 Paula, did you want to add anything?

23 MS. HIGASHI: Well, I just wanted to note that  
24 this analysis really doesn't go into a detailed analysis  
25 of whether the allegations raised by claimant are, in

1 fact, mandated by the statute or if the Commission were  
2 to approve a test claim on their behalf, whether they  
3 would, in fact, still be reasonably necessary to  
4 implement the mandate.

5 CHAIR SHEEHAN: Right, right. A different  
6 issue.

7 All right, any other discussion on this?

8 (No audible response.)

9 CHAIR SHEEHAN: If not, then the Chair would  
10 entertain a motion.

11 MEMBER WALSH: So moved.

12 CHAIR SHEEHAN: Okay, so Mr. Walsh moved the  
13 staff recommendation.

14 Is there a second?

15 MEMBER GLAAB: Second.

16 CHAIR SHEEHAN: All right, we have a motion and  
17 a second to adopt the staff recommendation.

18 All those in favor, say "aye."

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

20 CHAIR SHEEHAN: Opposed?

21 MEMBER WORTHLEY: No.

22 CHAIR SHEEHAN: Mr. Worthley -- I think that  
23 was it -- is voting no.

24 So the motion carries.

25 Thank you all.

1 MS. STONE: Thank you very much.

2 MS. HIGASHI: This brings us to Item 11.

3 CHAIR SHEEHAN: The Proposed Statement of  
4 Decision. Go ahead.

5 MS. BORZELLERI: Yes, the only issue before the  
6 Commission is whether the Statement of Decision reflects  
7 the Commission's decision.

8 We will reflect issues that have been dealt  
9 with here in the -- Camille, help me out here.

10 MS. SHELTON: Just to indicate that the  
11 claimant here today waived their request for the certain  
12 costs for litigation and the benefit costs. We will note  
13 the testimony in the Statement of Decision.

14 CHAIR SHEEHAN: That it will be amended to  
15 reflect that.

16 So with that --

17 MEMBER OLSEN: So moved.

18 CHAIR SHEEHAN: -- noted, we have a motion by  
19 Ms. Olsen --

20 MEMBER WALSH: Second.

21 CHAIR SHEEHAN: -- and a second by Mr. Walsh.

22 All those in favor, say "aye."

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

24 CHAIR SHEEHAN: Opposed?

25 MEMBER WORTHLEY: No.

1 CHAIR SHEEHAN: Mr. Worthley is reflected as  
2 voting no.

3 So Item 12 and 13 have been postponed.

4 MS. HIGASHI: Yes. This brings us to Item 14.

5 CHAIR SHEEHAN: The *Modified Primary Election*  
6 test claim.

7 MS. HIGASHI: Correct. And this item will be  
8 presented by Commission Counsel Katherine Tokarski.

9 MS. STONE: I'm still here.

10 CHAIR SHEEHAN: Right.

11 MS. STONE: And I'm going to be here again.

12 CHAIR SHEEHAN: The timing is good on these.  
13 Okay. And, Katherine, you're doing this one?

14 MS. TOKARSKI: Yes.

15 CHAIR SHEEHAN: Great.

16 MS. TOKARSKI: Good afternoon. This test claim  
17 filed by Orange County deals with changes to the partisan  
18 primary system in California. In 1996, the voters  
19 adopted Proposition 198 of the Open Primary Act.

20 Statutes of 2000, Chapter 898, largely repealed  
21 and enacted the Elections Code sections that had been  
22 amended by Prop. 198 following the U.S. Supreme Court  
23 decision finding that that processing was  
24 unconstitutional.

25 However, by amending a few of the Elections

1 Code sections, the test claim legislation altered the  
2 prior closed primary system to one in which those voters  
3 who declined to state a political party affiliation may  
4 choose any political party's partisan primary ballot, if  
5 that political party allows it. This created a form of  
6 open primary.

7 Staff concludes that statutes 2000, 898 as  
8 amended in Elections Code section 2151 and 13102,  
9 subdivision (b), imposes a reimbursable state-mandated  
10 program on counties for allowing voters who decline to  
11 state a party affiliation to vote a party ballot at the  
12 primary, and for adding related information to voter  
13 register cards.

14 No written comments were received on the draft  
15 staff analysis.

16 Staff recommends that the Commission adopt this  
17 analysis and partially approve the test claim as  
18 described in the conclusion at page 14 of the final staff  
19 analysis.

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

22 MS. STONE: Good afternoon. My name is Pamela  
23 Stone. I'm here on behalf of the County of Orange.

24 MS. SLUPSKY: Suzanne Slupsky, County of  
25 Orange.

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

3 MS. STONE: Very briefly, Madam Chair, Members  
4 of the Commission, we are in concurrence with the draft  
5 staff analysis. We would note there are activities that  
6 we will be bringing up that were necessary to be  
7 performed in order to reasonably accomplish the mandated  
8 activities at the time of the parameters and guidelines.

9 CHAIR SHEEHAN: Okay.

10 MS. STONE: And Ms. Slupsky is here for any  
11 questions you may have with regard to the process.

12 CHAIR SHEEHAN: Okay.

13 Ms. Geanacou?

14 MS. GEANACOU: Yes, Susan Geanacou, Department  
15 of Finance.

16 We, too, agree with the final staff analysis;  
17 and, again, reiterate the same comment as to any  
18 activities that may be claimed as --

19 CHAIR SHEEHAN: Everybody's reserving their  
20 right.

21 MS. GEANACOU: -- basically necessary to  
22 implement the activity, if you should approve the  
23 analysis today, yes.

24 CHAIR SHEEHAN: We'll have to just stipulate to  
25 that.

1 MS. GEANACOU: I say that in this matter in  
2 particular, because on page 10 of the final staff  
3 analysis, reference is made to the 2002 comments that  
4 Finance filed in this matter, where we identified  
5 numerous activities that we questioned the  
6 reimbursability of or the frequency of reimbursability  
7 of, that are particularly relevant here.

8 CHAIR SHEEHAN: Okay.

9 MS. STONE: And we acknowledge that we disagree  
10 on the potential reimbursable activities.

11 CHAIR SHEEHAN: Yes, but I think the  
12 P's & G's -- okay.

13 MS. STONE: Right.

14 CHAIR SHEEHAN: Questions from the Members on  
15 this one?

16 MEMBER WORTHLEY: Move approval.

17 CHAIR SHEEHAN: No?

18 Okay, we have a motion from Mr. Worthley.

19 MEMBER OLSEN: Second.

20 CHAIR SHEEHAN: A second from Ms. Olsen to  
21 approve the staff recommendation.

22 All those in favor, say "aye."

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

24 CHAIR SHEEHAN: Any opposed?

25 *(No audible response.)*

1 CHAIR SHEEHAN: It passes unanimously.  
2 All right, and now we'll go on to Item 15.  
3 MS. TOKARSKI: Item 15 is the Proposed  
4 Statement of Decision on the item you just voted on.  
5 And staff recommends that the Commission adopt the  
6 proposed decision beginning on page 3, which accurately  
7 reflects the staff analysis and recommendation. Minor  
8 changes including those that reflect the hearing  
9 testimony and vote count will be included when issuing  
10 the final Statement of Decision.  
11 MEMBER OLSEN: So moved.  
12 CHAIR SHEEHAN: Motion by Ms. Olsen.  
13 MEMBER WORTHLEY: Second.  
14 CHAIR SHEEHAN: Second by Mr. Walsh.  
15 All those in favor, say "aye."  
16 *(A chorus of "ayes" was heard.)*  
17 CHAIR SHEEHAN: Any opposed?  
18 *(No audible response.)*  
19 CHAIR SHEEHAN: Motion carries.  
20 Okay, now, we go on to Item 16, *Permanent*  
21 *Absent Voter*. But anyway --  
22 MS. HIGASHI: This will also be presented by  
23 Ms. Tokarski.  
24 MS. TOKARSKI: *Permanent Absent Voters II* was  
25 filed to reflect changes in the election law pertaining

1 to the original *Permanent Absent Voters* test claim, which  
2 was decided in 1989. At that time, the Commission  
3 determined that Elections Code sections 1450 through 1456  
4 imposed a reimbursable state-mandated program.

5 Prior to the enactment of the current test  
6 claim legislation, the Elections Code provided that only  
7 voters with specified disabilities or conditions could  
8 apply for permanent absent voter status.

9 In 2001, the Elections Code was substantively  
10 amended to allow all registered voters to apply for  
11 permanent absent voter status rather than limiting  
12 eligibility.

13 Staff concludes that this imposes a  
14 reimbursable state-mandated program replacing the related  
15 activity from *Permanent Absent Voter I*.

16 In addition, county elections officials are  
17 newly required to include explanations of the absentee  
18 voting procedure and of Elections Code section 3206 in  
19 all absentee ballot mailings.

20 No written comments were received on the draft  
21 staff analysis.

22 Staff recommends that the Commission adopt this  
23 analysis and partially approve the test claim as  
24 described in the conclusion at page 15.

25 Will the parties please state your names?

1 CHAIR SHEEHAN: Ms. Stone?

2 MS. STONE: Good afternoon, Madam Chair, my  
3 name is Pamela Stone. I'm here on behalf of the County  
4 of Sacramento.

5 MS. JARBOE: I'm Alice Jarboe. I'm here from  
6 Sacramento County.

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

9 CHAIR SHEEHAN: Great. Go ahead.

10 MS. STONE: Again, Madam Chair, Members of the  
11 Commission, we concur with the draft staff analysis. We  
12 will be proposing that rather than have two sets of  
13 parameters and guidelines, since this is picked up from  
14 *Permanent Absentee Voters*, to have one set of parameters  
15 and guidelines covering both so that it would make it  
16 clear going forward. And, again, as Ms. Geanacou will  
17 probably state, we respectfully request that we agree to  
18 disagree concerning what is necessary in order to  
19 implement this particular mandate.

20 And we would request your Commission's  
21 approval.

22 CHAIR SHEEHAN: Nothing to add?

23 MS. JARBOE: Nothing to add.

24 CHAIR SHEEHAN: Susan?

25 MS. GEANACOU: Yes, Susan Geanacou, Department

1 of Finance. We support the staff analysis on this  
2 mandate.

3 I did have a question for staff in reading  
4 their final staff analysis and also the proposed  
5 Statement of Decision. I'm picking it up now.  
6 On page 12 of the proposed Statement of Decision --

7 MS. TOKARSKI: Can we take it on Item 16?

8 MS. GEANACOU: I'm sorry, I can take it on the  
9 next item then.

10 CHAIR SHEEHAN: Okay.

11 MS. GEANACOU: It's just a question about a  
12 reference to a code section, whether it's the one you  
13 intended to or whether I'm reading it wrong.

14 MS. TOKARSKI: Okay, then I'd like to address  
15 it now.

16 CHAIR SHEEHAN: Go ahead, Susan. It's on the  
17 final --

18 MS. GEANACOU: It's on the final staff  
19 analysis, and also carries through to the proposed  
20 Statement of Decision. I just wanted to make sure --  
21 it's on page 11 of the final staff analysis. It's the  
22 very -- it's right after the bullet at the top of the  
23 page on my version. You're analyzing Elections Code  
24 3203. And the reference is made in that last full  
25 sentence to section 3206. I wanted to make sure you

1 weren't intending to refer to 3203.

2 MS. TOKARSKI: Section 3206 is mentioned in a  
3 couple places.

4 MS. GEANACOU: Right. I recognize that.

5 MS. TOKARSKI: I just want to make sure that  
6 none of the other ones are in error also.

7 MS. GEANACOU: Sure.

8 MS. TOKARSKI: Since that does appear to be a  
9 mistake.

10 Yes, that should read "3203," immediately --  
11 after the bullet. The one that says "3206" in the  
12 bullet, that is correct. But the one after, it should  
13 say "3203."

14 CHAIR SHEEHAN: Gotcha.

15 MS. TOKARSKI: And so the same should be made  
16 in the Statement of Decision.

17 CHAIR SHEEHAN: All right, with that change --  
18 all right.

19 So any further -- was that it, Susan?

20 MS. GEANACOU: That's it. And then we will  
21 comment as we see fit on the proposed parameters and  
22 guidelines.

23 CHAIR SHEEHAN: Okay, so if there are no  
24 further discussions, we'll entertain a motion for the  
25 staff analysis and recommendation.

1 MEMBER WORTHLEY: Move approval.

2 MEMBER OLSEN: Second.

3 CHAIR SHEEHAN: We have a motion by  
4 Mr. Worthley and a second by Mrs. Olsen.

5 All those in favor, say "aye."

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

7 CHAIR SHEEHAN: Any opposed?

8 *(No audible response.)*

9 CHAIR SHEEHAN: So now we will go on to the  
10 proposed Statement of Decision, with the change -- the  
11 same change that was made in the previous final staff  
12 analysis.

13 MS. TOKARSKI: Yes.

14 CHAIR SHEEHAN: Okay, did you want to read your  
15 statement for the record?

16 MS. TOKARSKI: Sure.

17 Staff recommends that the Commission adopt the  
18 proposed Statement of Decision on *Permanent Absent*  
19 *Voter II*, beginning on page 3, which accurately reflects  
20 the staff analysis and recommendation. Minor changes,  
21 including that just mentioned, and the hearing testimony  
22 and vote count will be included when issuing the final  
23 Statement of Decision.

24 CHAIR SHEEHAN: Great. Okay.

25 So with that, do I have a motion?

1 MEMBER WALSH: So moved.

2 MEMBER GLAAB: So moved.

3 CHAIR SHEEHAN: Motion by Mr. Walsh, second by  
4 Mr. Glaab.

5 All those in favor?

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

7 CHAIR SHEEHAN: Any opposed?

8 *(No audible response.)*

9 CHAIR SHEEHAN: The motion carries.

10 Now, that should take us, if I'm following  
11 correctly, to Item 22.

12 MS. HIGASHI: That's correct.

13 Assistant Executive Director Nancy Patton will  
14 introduce this item.

15 MS. PATTON: Good afternoon.

16 In October 1999, San Diego Unified School  
17 District challenged the *Pupil Expulsions from School*  
18 decision. Five years later, the Supreme Court issued its  
19 ruling on the San Diego challenge. The 2004 Supreme  
20 Court decision requires the State to reimburse school  
21 districts for all resulting hearing costs, even those  
22 costs attributable to procedures required by federal law  
23 or mandated recommendations of expulsion for certain  
24 offenses back to the initial 1993-94 reimbursement period  
25 for the *Expulsions* test claim.

1           In May 2005 the Commission amended its original  
2 Statement of Decision to conform to the Supreme Court  
3 decision.

4           Here, Item 22 proposes adoption of a new set of  
5 parameters and guidelines so school districts can claim  
6 additional hearing costs back to '93-94.

7           San Diego proposes a uniform cost allowance of  
8 \$587.16 for the direct and incorrect costs of expulsion  
9 hearings for each mandated recommendation of expulsion.  
10 That cost is for 2005-2006 -- that amount is for fiscal  
11 year 2005-2006.

12           For prior years, this cost allowance would be  
13 adjusted back to fiscal year '93-94, using the implicit  
14 price deflator for the costs of goods and services to  
15 governmental agencies, as determined by the Department of  
16 Finance. So for 1993-94, the amount would be \$411.16.  
17 Staff reviewed San Diego's proposal and compared the  
18 proposed uniform allowances with state rates for due  
19 process hearings conducted by state agencies. A  
20 comparison to state agency cost is relevant because  
21 Education Code section 48918, subdivision (d), authorizes  
22 governing boards to contract with the county hearing  
23 officer or with the State Office of Administrative  
24 Hearings for a hearing officer to conduct expulsion  
25 hearings.

1           Based on this review of comparable costs and  
2 activities for state agencies due process hearings, staff  
3 finds that claimant's proposed uniform cost allowance for  
4 the additional hearing activities for a mandated  
5 recommendation of expulsions are reasonable and should be  
6 adopted.

7           Therefore, staff recommends that the Commission  
8 adopt the proposed parameters and guidelines for the  
9 *Pupil Expulsions from School: Additional Hearing Costs*  
10 *for Mandated Recommendations of Expulsion for Specified*  
11 *Offenses*, beginning on page 11, and authorize staff to  
12 make any necessary technical changes or corrections.  
13 Paula will be answering any questions on this item.

14           Will the parties please state your name for the  
15 record?

16           MR. PALKOWITZ: Good afternoon. Art Palkowitz  
17 for San Diego City Schools.

18           MR. STORM: Ryan Storm with the Department of  
19 Finance.

20           CHAIR SHEEHAN: Go ahead, Mr. Palkowitz.

21           MR. PALKOWITZ: Thank you.

22           Basically, we concur with the staff analysis.  
23 What we did is we got together with L.A. Unified School  
24 District, as unfortunately they probably do the most  
25 expulsions and suspensions throughout the state, and we

1 came up with the amount of time spent on each item, the  
2 hearing, getting prepared for the hearing, actually  
3 having the hearing. And we analyzed which  
4 classifications do the work, and we came up with a rate  
5 of \$587. And the staff looked at something else held  
6 throughout the state, I guess it is, of due process  
7 hearing. And they came out with \$594. So it was a  
8 difference of about \$7. And even though ours is lower,  
9 we are willing to agree with that.

10 And I understand the Department of Finance --

11 CHAIR SHEEHAN: Well, you could amend it lower,  
12 right?

13 MR. PALKOWITZ: That's a more than reasonable  
14 request.

15 And the Department of Finance makes some points  
16 about San Diego and LA being the most expensive places in  
17 the state, and that might be true. But I think we're  
18 very efficient because we do so many of these. That's  
19 something that --

20 CHAIR SHEEHAN: Aha. Maybe you can contract  
21 with the other districts to do their --

22 MR. PALKOWITZ: Right. We have a whole  
23 department.

24 CHAIR SHEEHAN: You have a whole department?

25 MR. PALKOWITZ: Yes.

1 CHAIR SHEEHAN: Okay.

2 MR. PALKOWITZ: Maybe we can work something  
3 out.

4 CHAIR SHEEHAN: Yes, there you go.

5 MR. PALKOWITZ: Otherwise, we're fine with the  
6 analysis.

7 Thank you.

8 CHAIR SHEEHAN: Since you raised your issue  
9 already.

10 MR. STORM: Well, the Department of Finance  
11 disagrees with the final staff analysis. Basically, our  
12 main point is that we think that the cost reimbursement  
13 should be based on actual costs audited by the  
14 Controller's office. Like my counterpart here said, you  
15 know, that some of the most expensive areas are  
16 Los Angeles and San Diego, so we feel like in some of the  
17 more remote areas or perhaps some of the other regions of  
18 the state you might actually have lower costs.

19 And so what we are proposing, actually, is an  
20 alternative methodology that basically requests that the  
21 Controller go out, you know, select a sample of different  
22 districts, depending on size, location, those sorts of  
23 issues, create a reimbursement rate that is based on  
24 actual costs, and then apply -- and then allow for the  
25 mandate at that level.

1           We think that establishing a reimbursement rate  
2 based on the costs that have come in based on San Diego  
3 and LA's estimates has a few pitfalls, one being simply  
4 that a lot of the mandates in the past have -- or a lot  
5 of the findings of the Controller's audits has found that  
6 costs are actually lower than what have been claimed. So  
7 we're afraid that the State would be actually reimbursing  
8 more than what the actual true costs of the mandate work  
9 would be.

10           CHAIR SHEEHAN: Who would like to address this?

11           *(No audible response.)*

12           CHAIR SHEEHAN: I guess I have some different  
13 views on this. I can certainly understand in terms of  
14 making sure we're not overpaying. Some of these things I  
15 see as sort of process costs that may not change,  
16 depending on the geography. And so if somebody could  
17 address what you think would be those costs that would  
18 differ because of the geography, and also what other  
19 costs have we received or looked at from other school  
20 districts, to see that they are approximately the same.  
21 So I don't -- whoever would like to address that issue.

22           MR. PALKOWITZ: Well, when you look at the  
23 comparison between what we proposed and what the staff  
24 did, the classification of individuals that do this type  
25 of work regarding this, is the Deputy Attorney General,

1 paralegal, administrative law judge. And I presume those  
2 are taken from the Sacramento area; is that fair to say?

3 MS. HIGASHI: These are the statewide rates  
4 that are published by the State Department of Finance.

5 CHAIR SHEEHAN: Right, they are uniform, those  
6 costs, okay.

7 MR. PALKOWITZ: And so I think now you're  
8 getting back -- if that is taking a uniform state rate  
9 for these classifications, you're now responding to their  
10 concern that some places in California, these  
11 classifications might be at a lower rate than some other  
12 places. It seems to me if this is statewide, then that  
13 has taken that into effect, and you now are having a type  
14 of hybrid, considering everybody. So I don't know if  
15 that specifically answers your question.

16 CHAIR SHEEHAN: Yes, that does help, because  
17 I'm trying to figure out what cost Finance is suggesting  
18 would be different in Modoc or Fresno or Alameda, or  
19 wherever it may be.

20 MR. STORM: I think our major point would just  
21 be that there might be different compensation levels of  
22 these types of individuals in San Diego versus up in  
23 Modoc County.

24 CHAIR SHEEHAN: But I think if the AG is doing  
25 the cases --

1 MS. HIGASHI: These amounts are used as  
2 representative costs because of the fact that school  
3 districts are authorized to contract with the Office of  
4 Administrative Hearings to conduct these hearings.

5 I think what I'd like to note for the record is  
6 that when I looked at the times that could be charged  
7 based on the amounts of the units that were proposed,  
8 that they appeared to be reasonable to me.

9 I would imagine that there are many, many cases  
10 that would require hearings that would take much longer  
11 than the estimated amounts that would be paid based on  
12 San Diego and LA's proposal.

13 While I would certainly welcome receiving unit  
14 cost proposals that are based on audited data, there are  
15 none before me that have been presented by the State  
16 Controller's Office or the Department of Finance. I  
17 don't believe that the State wishes to continue holding  
18 this item up forever.

19 But, on the other hand, State law authorizes  
20 the Department of Finance or the State Controller's  
21 Office to come up with the proposal at a time in the  
22 future. And those audits could certainly be done, if  
23 that's what was so desired.

24 CHAIR SHEEHAN: Right.

25 MS. HIGASHI: The Commission does not have to

1       bless that process, but the Commission does have a duty,  
2       based on the court decision that we are under, to finally  
3       implement the Supreme Court decision.

4               CHAIR SHEEHAN:  And that -- because I certainly  
5       understand.  It's like, okay, if it's too much.  But we  
6       need data -- and I hate to just toll this continually  
7       until we get that.  That's a concern that I have.

8               And as Ms. Higashi said, if the Controller's  
9       office, you know, through audits or Finance feels that  
10      there's more information, they can provide that to the  
11      Commission and take it into account in terms of  
12      modifications.

13              MS. SHELTON:  The other thing I was going to  
14      mention is that if the concerns do come to rise after  
15      claims are audited in the future, you know, certainly the  
16      Department of Finance has the authority to come back and  
17      request that the parameters and guidelines be amended  
18      respectively.

19              CHAIR SHEEHAN:  Yes.  So that may be the best  
20      way, once we get some of that.  But I think the point was  
21      made in terms of just continually holding this up  
22      without -- if we had hard data that showed you had  
23      information that it was 50 percent less, then possibly it  
24      would be something that, okay, we could take a look at.  
25      But in the absence of that, I'm reluctant not to move

1 forward on these, with the open invitation that's more  
2 information, absolutely -- or the Controller's office.

3 MR. STORM: And I believe that's a fair  
4 argument. So we can definitely revisit that when we get  
5 actual hard data.

6 CHAIR SHEEHAN: All right, so any further  
7 discussion on -- oh, did you want to add something else?

8 MS. HIGASHI: I just have one last thing.

9 One of the documents referenced in the analysis  
10 was inadvertently omitted from your binders. I guess we  
11 didn't want to give you another exhibit.

12 CHAIR SHEEHAN: Is this a test?

13 We all knew that, Paula.

14 MEMBER WORTHLEY: I've been looking for that.

15 CHAIR SHEEHAN: Yes, we were wondering where  
16 that was, because we didn't get enough paper on this one.

17 Okay, so with this -- unless you'd all like to  
18 take a minute to read this, we will entertain a motion.

19 MEMBER GLAAB: So moved.

20 MEMBER WALSH: Second.

21 CHAIR SHEEHAN: So we move the staff  
22 recommendation.

23 All those in favor, say "aye."

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

25 CHAIR SHEEHAN: Any opposed?

1 (No audible response.)

2 CHAIR SHEEHAN: That motion carries.

3 All right, and --

4 MS. HIGASHI: Item 23, Ms. Patton will  
5 introduce.

6 CHAIR SHEEHAN: She's doing this one also?  
7 Okay.

8 MS. PATTON: The Commission on State Mandates  
9 adopted three related Statements of Decisions on the  
10 pupil disciplinary process: *Pupil Suspensions from*  
11 *School, Pupil Expulsions from School, and Pupil*  
12 *Expulsions Appeals*. The parameters and guidelines for  
13 each program were consolidated so there would be one set  
14 of claiming instructions for the three decisions. These  
15 consolidated parameters and guidelines must be amended to  
16 implement the Supreme Court decision in the San Diego  
17 Unified School District school case.

18 In the previous agenda item, the Commission  
19 considered proposed parameters and guidelines to  
20 reimburse school districts for their additional hearing  
21 costs for fiscal years '93-94 through '05-06 based on a  
22 reasonable reimbursement methodology. The same uniform  
23 cost allowance for reimbursement of the additional  
24 hearing costs is also incorporated into Item 23.  
25 Since school districts have already filed reimbursement

1 claims under the consolidated parameters and guidelines  
2 for estimated '05-06 costs, staff recommends that  
3 claimant's proposed amendments to the consolidated  
4 parameters and guidelines be effective for the  
5 reimbursement period beginning on July 1, 2006.

6 Staff recommends that the Commission adopt  
7 claimant's proposed amendment of consolidated parameters  
8 and guidelines as modified by staff effective July 1,  
9 2006, beginning on page 7, and authorize staff to make  
10 technical non-substantive changes as may be necessary.

11 Will the parties please state your names for  
12 the record?

13 MR. PALKOWITZ: Art Palkowitz, San Diego City  
14 Schools.

15 MR. STORM: And Ryan Storm with the Department  
16 of Finance.

17 MR. PALKOWITZ: We concur with the staff  
18 recommendation and analysis.

19 CHAIR SHEEHAN: Okay.

20 MR. STORM: And we disagree based on the prior  
21 comments and concerns.

22 CHAIR SHEEHAN: Okay, but the same offers of  
23 additional information, bring it back to staff, the  
24 Controller's office, so the process is there and  
25 available to you?

1 MR. STORM: Right.

2 CHAIR SHEEHAN: Okay, any comments by  
3 Commission Members?

4 *(No audible response.)*

5 CHAIR SHEEHAN: If not, we'll entertain a  
6 motion.

7 MEMBER WALSH: So moved.

8 MEMBER GLAAB: Second.

9 CHAIR SHEEHAN: Mr. Walsh moves, and  
10 Mr. Glaab seconds.

11 All those in favor?

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

13 CHAIR SHEEHAN: Opposed?

14 *(No audible response.)*

15 CHAIR SHEEHAN: Staff recommendation is  
16 adopted. Great.

17 That takes us to Item --

18 MEMBER WALSH: 26.

19 CHAIR SHEEHAN: -- 26. Item 26.

20 Who gets to --

21 MS. HIGASHI: Ms. Patton.

22 MS. PATTON: This is the proposed 2007 hearing  
23 calendar for the Commission. The Commission is required  
24 to meet at least once every two months. The time and  
25 place of the meetings may be set by resolution of the

1 Commission, by written petition or a majority of the  
2 members, or written call of the chairperson.

3 The chairperson may, for good cause, change the  
4 starting time or place, reschedule, or cancel any  
5 meeting.

6 In addition to the six required bimonthly  
7 meetings, two tentative hearing dates are also proposed  
8 to accommodate additional agenda items, if necessary.  
9 So staff recommends that you adopt the proposed 2007  
10 meeting hearing calendar.

11 CHAIR SHEEHAN: Okay, any comments on this?

12 You need formal action from us on this, okay.

13 MS. PATTON: Yes.

14 MEMBER WORTHLEY: Move approval.

15 MEMBER WALSH: Second.

16 CHAIR SHEEHAN: We have a motion by  
17 Mr. Worthley and a second by Mr. Walsh to approve the  
18 2007 meeting calendar.

19 All those in favor?

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

21 CHAIR SHEEHAN: Opposed?

22 *(No audible response.)*

23 CHAIR SHEEHAN: That is adopted.

24 MS. HIGASHI: Item 27, *Chief Counsel's Report*.

25 MS. SHELTON: I don't have anything additional

1 to add.

2 CHAIR SHEEHAN: Okay. Paula then, Executive  
3 Director?

4 MS. HIGASHI: Item 28, my report.

5 Are there any questions on the workload or the  
6 pending caseload?

7 I would say these numbers are going to  
8 change --

9 CHAIR SHEEHAN: Good luck.

10 MS. HIGASHI: -- dramatically after this  
11 hearing.

12 And we appreciate it and thank you.

13 CHAIR SHEEHAN: Yes.

14 MS. HIGASHI: I'd also like to note that this  
15 past Budget Act included in a budget trailer bill the  
16 requirement of the Commission to begin annually reporting  
17 its workload to the Department of Finance. So in  
18 mid-September, we will be filing our first report with  
19 the Department of Finance. It will be a variation of  
20 what's always been reported to you, with some additional  
21 detail as to what claims are pending. And I will also  
22 send copies of that to all of you, as it goes out to  
23 Finance.

24 CHAIR SHEEHAN: Great. Thanks.

25 MS. HIGASHI: There is some detail in here

1 regarding all of the mandated provisions that we found  
2 this year's Budget Act and the related budget trailer  
3 bills.

4 CHAIR SHEEHAN: Quite a lot.

5 MS. HIGASHI: And there's quite a lot of  
6 detail, a lot of money has been appropriated, and there  
7 are just a number of different items and provision  
8 numbers and supplemental and control language regarding  
9 how these monies can be used for reimbursement.

10 Are there any questions here?

11 CHAIR SHEEHAN: Any questions from the Members  
12 on this?

13 But Paula's right, there was a lot in the  
14 budget, trailer bills also.

15 MS. HIGASHI: There was a lot of detail. And  
16 the last piece of it became effective on July 18th, we  
17 had an urgency clause on the local government trailer  
18 bill. And an amendment was made to one of the Government  
19 Code provisions that relates back to the definitions that  
20 are included now in Article XIII B, Section 6. And this  
21 basically clarifies when a Commission decision is  
22 actually a trigger for Article XIII B, Section 6, in  
23 terms of the funding or the suspending provisions for  
24 local agencies. So we will be getting copies, revisions  
25 to your Government Code sections, just so you have that

1 current law.

2 CHAIR SHEEHAN: Perfect.

3 MS. HIGASHI: Regarding legislation, we have  
4 our sponsored legislation, AB 2652 is on the Senate  
5 floor.

6 Nancy?

7 MS. PATTON: The Senate floor, and our  
8 understanding is it's on the special consent calendar for  
9 August. So it should go to the Governor next week.

10 CHAIR SHEEHAN: Okay.

11 MS. HIGASHI: Are there any other questions  
12 about legislation?

13 There is SB 328, a bill that is newly in print  
14 since our last hearing, and that addresses the POBR  
15 mandate.

16 CHAIR SHEEHAN: Right. I think we talked  
17 briefly about -- I've seen that floating around.

18 MS. HIGASHI: And that's also set for hearing  
19 the first week back, August 9th.

20 CHAIR SHEEHAN: In Appropriations, I assume?

21 MS. HIGASHI: Yes, yes.

22 Our tentative agenda for the next hearing, as we came  
23 into the meeting today, we heard that there might be some  
24 conflicts for the date. And so we will be trying to  
25 figure out what date we can have a hearing for these

1 particular agenda items here. It might be that the dates  
2 ends up in October.

3 CHAIR SHEEHAN: We have a late October date.

4 MS. HIGASHI: We have a late October date.

5 CHAIR SHEEHAN: Right.

6 MS. HIGASHI: But depending on how many items  
7 we have, we might also, you know, end up having to have  
8 two dates and move October to November. But what I will  
9 be doing is communicating with all of you by e-mail to go  
10 over your calendars so we can figure that out.

11 And for all of the claimants that have agenda  
12 items, we will be in touch with you also as this detail  
13 is changed.

14 Regarding the items we've listed, there is only  
15 one change -- two changes I'd like to make on the test  
16 claims for the next hearing, whenever that is. Item 4,  
17 *Racial Profiling: Law Enforcement Training*. We're not  
18 certain if we'll have the *Community College District*  
19 claim completed in time for that hearing. We have two  
20 different test claims on almost identical statutes.

21 CHAIR SHEEHAN: Okay.

22 MS. HIGASHI: Also, we think we might be able  
23 to have a test claim hearing on *In-Home Supportive*  
24 *Services I*, that was not previously listed.

25 And other than that, I think we're pretty good

1 on our schedule, other than -- yes, I think we're pretty  
2 good.

3 CHAIR SHEEHAN: Okay.

4 MS. HIGASHI: And the question is just is it --  
5 it can't be an earlier September hearing. That doesn't  
6 work for us because of the timelines. But early October,  
7 or it might be at the end of October.

8 CHAIR SHEEHAN: Right.

9 MS. HIGASHI: Are there any questions?

10 CHAIR SHEEHAN: Questions for Paula?

11 *(No audible response.)*

12 CHAIR SHEEHAN: All right, that concludes our  
13 agenda items.

14 Is there any public comment? Anyone from the  
15 public who would like to address any items before the  
16 Commission that were not on the agenda?

17 *(No audible response.)*

18 CHAIR SHEEHAN: Then if not, we are going to  
19 recess briefly again into closed session, if I can  
20 indulge my Commission Members. And then we will reopen  
21 and adjourn the meeting.

22 So thank you.

23 Do you want me to read this again?

24 MS. HIGASHI: Yes.

25 CHAIR SHEEHAN: Okay. Can I read only the part

1 on personnel?

2 The Commission will meet in closed-session  
3 pursuant to Government Code section 11126, subdivision  
4 (e), to confer with and receive advice from legal counsel  
5 for consideration and action, as necessary and  
6 appropriate, upon pending litigation listed on the public  
7 notice and agenda, and to confer with and receive  
8 advice from legal counsel regarding potential litigation;  
9 and pursuant to Government Code section 11126,  
10 subdivision (a), and 17526, the Commission will also  
11 confer on personnel matters listed on the published  
12 notice and agenda.

13 We'll reconvene in open session at this  
14 location -- I don't even think it will take 15 minutes --  
15 briefly. Thanks.

16 *(Closed executive session was held*  
17 *from 12:36 p.m. to 12:50 p.m.)*

18 CHAIR SHEEHAN: Okay, the Commission met in  
19 closed executive session pursuant to Government Code  
20 section 11126 , subdivision(e), to confer with and  
21 receive advice from legal counsel for consideration and  
22 action, as necessary and appropriate, upon pending  
23 litigation listed on the published notice and agenda and  
24 potential litigation; and Government Code section 11126  
25 subdivision(a), and 17526, to confer on personnel matters

1 listed on the published notice and agenda.

2 We are now reconvening in open session. And if there is  
3 no further business before the Commission, we are  
4 adjourned for today.

5 Thank you.

6 (Proceedings concluded at 12:50 p.m.)

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**REPORTER'S CERTIFICATE**

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

That the proceedings were 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 August 21, 2006.



---

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