

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: via Zoom
September 22, 2023

Present: Member Gayle Miller, Chairperson
Representative of the Director of the Department of Finance
Member Lee Adams
County Supervisor
Member Jennifer Holman
Representative of the Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Spencer Walker
Representative of the State Treasurer

Absent: Member Regina Evans
Representative of the State Controller, Vice Chairperson
Member Renee Nash
School District Board Member

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Miller called the meeting to order at 10:08 a.m. Executive Director Heather Halsey stated that Member Nash notified Commission staff that she would not be able to attend the meeting, and called the roll. Members Adams, Holman, Miller, Olsen, and Walker all indicated that they were present.

APPROVAL OF MINUTES

Chairperson Miller stated that the next item of business was the May 26, 2023 minutes. Chairperson Miller asked if there was any public comment. There was no response. Executive Director Halsey asked if there were any objections or corrections to the minutes. There was no response. Member Olsen made a motion to adopt the minutes. Member Adams seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the May 26, 2023 hearing minutes by a vote of 5-0 with Member Evans and Member Nash absent.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

Chairperson Miller asked if there was any public comment. There was no response.

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)

Executive Director Halsey swore in the parties and witnesses participating in the Article 7 portion of the hearing.

APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)

Item 2 Appeal of Executive Director Decisions

Executive Director Halsey presented this item, stating that Item 2 is reserved for appeals of Executive Director decisions and that there were no appeals to consider for this hearing.

TEST CLAIMS

Item 3 *California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, 11-TC-03*

California Regional Water Quality Control Board, San Diego Region, Order No. R9-2010-0016, Sections B.2., C., D., F.1.d.1., 2., 4., 7., F.1.f., F.1.h., F.1.i., F.2.d.3., F.2.e.6.e., F.3.a.10., F.3.b.4.a.ii., F.3.d.1.-5., F.4.d., F.4.e., G.1.-5., K.3.a.-c., Attachment E., Sections II.C. and II.E.2.-5., and Sections F., F.1., F.1.d., F.2., F.3.a.-d., and F.6., Adopted November 10, 2010

County of Riverside, Riverside County Flood Control and Water Conservation District, and Cities of Murrieta, Temecula, and Wildomar, Claimants

Senior Commission Counsel Juliana Gmur presented this item and recommended that the Commission adopt the Proposed Decision to partially approve this Test Claim.

David Burhenn appeared on behalf of the claimants. Donna Ferebee and Marilyn Munoz appeared on behalf of the Department of Finance. Catherine Hagan and Jennifer Fordyce appeared on behalf of the State Water Resources Control Board and the San Diego Regional Water Quality Control Board.

Following statements by Mr. Burhenn, Ms. Ferebee, Ms. Munoz, and Ms. Hagan, Chairperson Miller asked if there was any public comment on this item. There was no response. Chairperson Miller asked if there were any questions from board members. There was no response. Chairperson Miller stated that she would entertain a motion. Member Walker made the motion to adopt the Proposed Decision. Member Olsen seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision by a vote of 5-0 with Member Evans and Member Nash absent.

Item 4 ~~*Lead Sampling in Schools: Public Water System No. 3710020, 17-TC-03-R*~~

~~On Remand from City of San Diego v. Commission on State Mandates, Court of Appeal, Third Appellate District, Case No. C092800; Judgment and Writ of Mandate issued by the Sacramento County Superior Court, Case No. 34-2019-80003169-CU-WM-GDS; Permit Amendment No. 2017PA-SCHOOLS, City of San Diego Public Water System No. 3710020, effective January 18, 2017~~

~~City of San Diego, Claimant~~

Executive Director Halsey stated that Item 4 was postponed at the request of the claimants.

Item 5 *Sex Offenders Registration: Petitions for Termination*, 21-TC-03
Statutes 2017, Chapter 541, Section 12 (SB 384), effective
January 1, 2018, operative July 1, 2021
County of Los Angeles, Claimant

Commission Counsel Anna Barich presented this item and recommended that the Commission adopt the Proposed Decision to deny the Test Claim.

Fernando Lemus, Lucia Gonzalez, and Dylan Ford appeared on behalf of the claimant. Chris Hill appeared on behalf of the Department of Finance.

Following discussion by the parties, Commission Members, and Commission staff, Chairperson Miller made the motion to adopt the staff recommendation. Member Walker seconded the motion. Chairperson Miller asked if there was any public comment on this item. There was no response. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision by a vote of 3-2, with Member Olsen and Member Adams voting no and Member Evans and Member Nash absent.

Chairperson Miller requested that Chief Legal Counsel Shelton include supplemental information about the questions regarding what is a new crime and what crime was eliminated for the next meeting.

Item 6 *Resentencing to Remove Sentencing Enhancements*, 22-TC-02
Penal Code Sections 1171 and 1171.1 as Added by Statutes 2021,
Chapter 728, Sections 2 and 3 (SB 483); Effective Date, January 1,
2022 (Renumbered as Penal Code Section 1172.7 and 1172.75 by
Statutes 2022, Chapter 58)
County of San Diego, Claimant

Commission Counsel Anna Barich presented this item and recommended that the Commission adopt the Proposed Decision to deny this Test Claim.

Executive Director Halsey stated that only Finance was appearing on this item. Chris Hill appeared on behalf of the Department of Finance.

Following a statement by Mr. Hill, Chairperson Miller asked if there was any public comment on this item. There was no response. Chairperson Miller asked if there were any questions from board members. Member Adams stated that he had similar concerns with the previous item. Following statements by Chief Legal Counsel Shelton and Executive Director Halsey, Chairperson Miller asked if Member Adams had any additional questions. Member Adams confirmed that he did not. Member Olsen made the motion to adopt the staff recommendation. Chairperson Miller seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision by a vote of 5-0 with Member Evans and Member Nash absent.

- Item 8 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Ms. Halsey stated that no SB 1033 applications have been filed, then apologized for taking this item out of order.

Following discussion regarding the court reporter's break and the expected length of the testimony for Item 7, Chairperson Gayle Miller and Executive Director Halsey determined that the meeting would continue.

PARAMETERS AND GUIDELINES

- Item 7 *California Regional Water Quality Control Board, Santa Ana Region, Order No. R8-2009-0030, Sections XI.4, XIII.1, XIII.4, XIII.7, XVIII.B.8, and XVIII.B.9, Adopted May 22, 2009, 09-TC-03*

County of Orange, Orange County Flood Control District; and the Cities of Anaheim, Brea, Buena Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Huntington Beach, Irvine, Lake Forest, Newport Beach, Placentia, Seal Beach, and Villa Park, Claimants

Executive Director Halsey stated that the Water Boards informed the Commission that they did not intend to testify on this matter. Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

David Burhenn appeared on behalf of the claimants. Donna Ferebee appeared on behalf of the Department of Finance.

Following statements by Mr. Burhenn, Chief Legal Counsel Shelton, and Ms. Ferebee Chairperson Miller asked if there was any public comment on this item. There was no response. Chairperson Miller asked if there were any questions from board members. There was no response. Member Olsen made the motion to adopt the staff recommendation. Member Adams seconded the motion. Executive Director Halsey called the roll. The Commission voted to adopt the Proposed Decision and Parameters and Guidelines by a vote of 5-0 with Member Evans and Member Nash absent.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 2 (info/action)

REPORTS

- Item 9 Legislative Update (info)

Program Analyst Jill Magee presented this item.

- Item 10 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 11 Executive Director: Proposed 2024 Hearing Calendar, Workload

Update, and Tentative Agenda Items for the October 2023 and December 2023 Meetings (info/action)

Executive Director Halsey stated that the former Assistant Executive Director, Heidi Palchik, had left the Commission for a promotion at the Office of Emergency Services. Executive Director Halsey introduced two new Commission staff, Information Technology Specialist I, Joseph Ortiz, and announced Mr. Ortiz's experience; and Assistant Executive Director, Administrative Services, Cristina Bardasu. Chairperson Miller thanked Ms. Palchik for her service to the Commission. Executive Director Halsey announced that Ms. Bardasu would begin working with the Commission the following Monday and that everyone would have the opportunity to meet her in October.

Executive Director Halsey presented and recommended that the Commission adopt the Proposed 2024 Hearing Calendar. Member Olsen made a motion to adopt the staff recommendation. Member Lee seconded the motion. Chairperson Miller asked if there was any public comment on the calendar. There was no response. Without further discussion, the Commission voted to adopt the staff recommendation by a vote of 5-0 with Member Evans and Member Nash absent.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/action)

The Commission adjourned into closed executive session at 11:40 a.m., pursuant to Government Code section 11126(e). The Commission met in closed session 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; to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

A. 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(e):

Trial Courts:

1. *County of Los Angeles v. Commission on State Mandates, Malia M. Cohen as State Controller*
Los Angeles County Superior Court, Case No. 23STCP00036
(*Municipal Stormwater and Urban Runoff Discharges Consolidated IRC*, 19-0304-I-04, 20-0304-I-06, 20-0304-I-08, 20-0304-I-09, 20-0304-I-10, 20-0304-I-11, and 20-0304-I-13)

B. POTENTIAL LITIGATION

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(e):

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 or staff.

C. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1).

RECONVENE IN PUBLIC SESSION

At 11:50 a.m., the Commission reconvened in open session.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Miller reported that the Commission met in closed executive session pursuant to Government Code section 11126(e). The Commission conferred with and received advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and conferred with and received advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

ADJOURNMENT

Chairperson Miller stated her gratitude to Ms. Palchik for her service, as well as to the Commission on State Mandates team and also acknowledged Ms. Barich for her first hearing under challenging technological circumstances. Hearing no further business, Chairperson Miller stated that she would entertain a motion to adjourn the meeting. Member Olsen made a motion to adjourn the meeting. Member Walker seconded the motion. Executive Director Halsey called the roll. The Commission adopted the motion to adjourn the September 22, 2023 meeting by a vote of 5-0 with Member Evans and Member Nash absent at 11:51 a.m.



Heather Halsey
Executive Director

STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES

RECEIVED

SEP 29 2023

COMMISSION ON
STATE MANDATES

PUBLIC MEETING

FRIDAY, SEPTEMBER 22, 2023

10:08 A.M.

ORIGINAL

MEETING HELD

VIA ZOOM

A VIDEO COMMUNICATIONS PLATFORM

REPORTER'S TRANSCRIPT OF PROCEEDINGS

REPORTED BY:

KATHRYN S. SWANK

Certified Shorthand Reporter No. 13061

Registered Professional Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

GAYLE MILLER
Representative for JOE STEPHENSHAW
Director
Department of Finance
(Chairperson of the Commission)

SPENCER WALKER
Representative for FIONA MA
State Treasurer
(Vice Chairperson of the Commission)

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

JENNIFER HOLMAN
Representative for SAMUEL ASSEFA, Director
Office of Planning & Research

SARAH OLSEN
Public Member

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COMMISSION STAFF

HEATHER A. HALSEY
Executive Director

ANNA BARICH
Commission Counsel

JULIANA GMUR
Senior Commission Counsel

JILL MAGEE
Program Analyst

CAMILLE N. SHELTON
Chief Legal Counsel

1 **A P P E A R A N C E S C O N T I N U E D**

2 **PUBLIC PARTICIPANTS**

3 DAVID BURHENN
4 Burhenn & Gest
5 (Items 3 and 7)

6 DONNA FEREBEE
7 Department of Finance
8 (Items 3 and 7)

9 DYLAN FORD
10 County of Los Angeles
11 (Item 5)

12 JENNIFER FORDYCE
13 State Water Resources Control Board
14 and
15 San Diego Regional Water Quality Control Board
16 (Item 3)

17 LUCIA GONZALEZ
18 County of Los Angeles
19 (Item 5)

20 CATHERINE HAGAN
21 State Water Resources Control Board
22 and
23 San Diego Regional Water Quality Control Board
24 (Item 3)

25 CHRIS HILL
 Department of Finance
 (Items 5 and 6)

 FERNANDO LEMUS
 County of Los Angeles
 (Item 5)

 MARILYN MUNOZ
 Department of Finance
 (Item 3)

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<u>33</u>	<u>11</u>	<u>Luiz <u>Lucia</u></u>
<u>40</u>	<u>3</u>	<u>MS. MUNOZ <u>MS. GONZALEZ</u></u>
<u>42</u>	<u>4</u>	<u>MS. MUNOZ <u>MS. GONZALEZ</u></u>
<u>47</u>	<u>13</u>	<u>a <u>for</u> failure to register</u>
<u>49</u>	<u>17</u>	<u>MS. MUNOZ <u>MS. GONZALEZ</u></u>
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<u>58</u>	<u>18</u>	<u>MS. MUNOZ <u>MS. GONZALEZ</u></u>
<u>59</u>	<u>1</u>	<u>MS. MUNOZ <u>MS. GONZALEZ</u></u>
<u>59</u>	<u>6</u>	<u>MS. MUNOZ <u>MS. GONZALEZ</u></u>
<u>60</u>	<u>9</u>	<u>290.1(h) <u>290.018</u></u>
<u>62</u>	<u>12</u>	<u>MS. MUNOZ <u>MS. GONZALEZ</u></u>
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1 FRIDAY, SEPTEMBER 22, 2023, 10:08 A.M.

2 ---o0o---

3 CHAIRPERSON MILLER: Thank you, everyone. And our
4 apologies for starting a few minutes late.

5 The Commission on State Mandates will come to order
6 at 10:08 a.m. Welcome to the webinar.

7 The statutes of 2023, Chapter 196, amended the
8 Bagley-Keene Open Meeting Act to extend, until the end
9 of this year, December 31st, 2023, the authority to hold
10 public meetings through teleconferencing. The
11 Commission continues its commitment to ensure that its
12 public meeting are accessible to the public and that the
13 public has the opportunity to observe the meeting and to
14 participate by providing written and verbal comment on
15 Commission matters.

16 Please note that the materials for today's meeting,
17 including the notice, agenda, and witness list, are all
18 available on our website, www.csm.ca.gov -- again,
19 www.csm.ca.gov -- under the "Hearings" tab.

20 Also please note that in the event we experience
21 technical difficulties or the meeting is bumped offline,
22 we will restart and allow time for people to rejoin
23 between recommencing the meeting.

24 And please join me in welcoming -- although I don't
25 know if she's on yet -- Regina Evans will be joining us

1 from the Controller's Office. Thrilled that she's here.
2 I have gotten to work with her on a few other boards,
3 but when she comes, we will -- we will thank her for
4 joining and welcome her.

5 With that, Ms. Halsey, will you take the roll,
6 please.

7 MS. HALSEY: Sure. And I would also like to ask
8 the parties and witnesses to please turn off their
9 cameras and mute their microphones until their matter is
10 called.

11 And also, to let you know that member Nash notified
12 the Commission staff that she will not be able to attend
13 today's meeting.

14 Mr. Adams.

15 MEMBER ADAMS: Here.

16 MS. HALSEY: Ms. Cohen.

17 (No response.)

18 MS. HALSEY: Ms. Evans.

19 (No response.)

20 MS. HALSEY: Ms. Holman.

21 MEMBER HOLMAN: Here.

22 MS. HALSEY: Ms. Miller.

23 CHAIRPERSON MILLER: Here.

24 MS. HALSEY: Ms. Olsen.

25 MEMBER OLSEN: Present.

1 MS. HALSEY: Mr. Walker.

2 MEMBER WALKER: Here.

3 CHAIRPERSON MILLER: We have a quorum and will
4 update us when anyone else joins.

5 So our next item of business are the minutes from
6 May 26, 2023.

7 Is there any public comment?

8 (No response.)

9 MS. HALSEY: Are there any objections or
10 corrections to the minutes?

11 MEMBER OLSEN: Move adoption.

12 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

13 MEMBER ADAMS: Second.

14 CHAIRPERSON MILLER: Thank you, Mr. Adams.

15 It's been moved and seconded.

16 May we please call the roll.

17 MS. HALSEY: Sure.

18 Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Ms. Evans.

21 (No response.)

22 MS. HALSEY: Ms. Holman.

23 MEMBER HOLMAN: Aye.

24 MS. HALSEY: Ms. Miller.

25 CHAIRPERSON MILLER: Aye.

1 MS. HALSEY: Ms. Olsen.

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Mr. Walker.

4 MEMBER WALKER: Aye.

5 CHAIRPERSON MILLER: All right. The minutes are
6 approved, and we will hold that roll open in the event
7 that anyone wants to add on.

8 We will now move to public comment, Ms. Halsey.

9 MS. HALSEY: And now we will take up public comment
10 for matters not on the agenda. Please note that the
11 Commission may not take action on items not on the
12 agenda. However, it may schedule issues raised by the
13 public for consideration at future meetings. We invite
14 the public to comment on matters that are on the agenda
15 as they are taken up.

16 CHAIRPERSON MILLER: Thank you.

17 Is there any public comment? Feel free to raise
18 your Zoom hand.

19 (No response.)

20 CHAIRPERSON MILLER: I don't see any public
21 comment.

22 So we will move to the next item, please,
23 Ms. Halsey, for swearing in.

24 MS. HALSEY: Will the parties and witnesses for
25 Items 3, 5, 6, and 7 please turn on their videos and

1 unmute their microphones and please rise and state their
2 names for the record.

3 MR. BURHENN: David Burhenn, B-U-R-H-E-N-N. I'm
4 here to speak on Items 3 and briefly on Item 7.

5 MS. HALSEY: Thank you.

6 MR. HILL: Chris Hill, Department of Finance, for
7 Items 5 and 6.

8 MS. HALSEY: Thank you.

9 MS. FEREBEE: Donna Ferebee, Department of Finance,
10 for Items 3 and 7.

11 MS. MUNOZ: Marilyn Munoz for Department of Finance
12 for Item 3.

13 MS. HALSEY: Thank you.

14 MS. GONZALEZ: Lucia Gonzalez with the Office of
15 County Counsel, Los Angeles County, on Item 5.

16 CHAIRPERSON MILLER: Thank you.

17 MR. LEMUS: Fernando Lemus with Department of the
18 Auditor-Controller, County of Los Angeles. Item 5.

19 MR. FORD: Dylan Ford, Office of the County Counsel
20 on Item 5.

21 CHAIRPERSON MILLER: Thank you.

22 Is that everybody?

23 MS. HAGAN: Catherine Hagan for the Water Board on
24 Item 7 [sic]. And Jennifer Fordyce as well.

25 MS. FORDYCE: Hello. My name is Jennifer Fordyce.

1 We had some technical difficulties so sorry about
2 running a little late.

3 CHAIRPERSON MILLER: No worries. You are right on
4 time.

5 (Parties/witnesses stood to be sworn or
6 affirmed.)

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

11 (Affirmative responses.)

12 MS. HALSEY: Thank you. Please be seated.

13 Item 2 is reserved for appeals of Executive
14 Director decisions. And there are no appeals to
15 consider for this hearing.

16 Next is Item 3.

17 Senior Commission Counsel Juliana Gmur will please
18 turn on her video and unmute her microphone and present
19 a Proposed Decision on Order Number R9-2010-0016,
20 adopted by the San Diego Regional Water Quality Control
21 Board, 11-TC-03.

22 At this time, we invite the parties and witnesses
23 for Item 3 to please turn on their video and unmute
24 their microphones.

25 MS. GMUR: Good morning.

1 CHAIRPERSON MILLER: Good morning. How are you,
2 Ms. Gmur? Nice to see you.

3 MS. GMUR: Very nice to see you, Madam Chair, and
4 nice to see you all, Members.

5 This test claim alleges reimbursable costs mandated
6 by the State to comply with the 2010 test claim permit
7 issued by the San Diego Regional Water Quality Control
8 Board, which removes some nonstormwater discharge
9 exemptions; identifies action levels for some
10 pollutants, requires that low impact development and
11 hydromodification prevention be considered for new and
12 redevelopment projects and is part of a retrofitting
13 program; requires a database to track and inventory
14 post-construction BMPs and BMP maintenance; requires
15 implementation of active/passive sediment treatment at
16 construction sites; requires erosion and sediment
17 controls after construction and during maintenance of
18 unpaved roads; increases the scope of commercial and
19 industrial inspections; establishes the Watershed Water
20 Quality Work Plan; expands annual reporting
21 requirements; establishes special studies; and requires
22 that the claimants effectively prohibit nonstormwater
23 discharges; and prevent runoff discharges from the MS4
24 from causing or contributing to a violation of water
25 quality standards.

1 Staff finds that many activities alleged in the
2 test claim are not new, but were required by the prior
3 permit.

4 Staff further finds that the requirements
5 regarding municipal projects are not mandated by the
6 State and are not unique to government, and, therefore,
7 do not mandate a new program or a higher level of
8 service.

9 In addition, consistent with two recent Court
10 of Appeal decisions, staff finds that the claimants have
11 the authority to impose regulatory fees for all new
12 mandated activities relating to low impact development,
13 hydromodification, retrofitting, BMP maintenance
14 tracking, and active/passive sediment treatment, which
15 are sufficient, as a matter of law, to cover the costs;
16 and, thus, there are no costs mandated by the State for
17 these activities pursuant to Government Code section
18 17556(d).

19 Staff recommends that the Commission partially
20 approve the test claim for the new mandated requirements
21 identified in the proposed decision addressing
22 stormwater action levels, the Watershed Work Plan,
23 annual reporting, and special studies, from November 10,
24 2010, through December 31, 2017, only.

25 Finally, staff finds that there's no evidence

1 in the record that the Riverside County Flood and Water
2 Conservation District was forced to spend its proceeds
3 of taxes; and, therefore, does not have any costs
4 mandated by the State.

5 Staff recommends that the Commission adopt the
6 proposed decision to partially approve the test claim
7 and authorize staff to make any technical or
8 nonsubstantive changes to the decision following the
9 hearing.

10 CHAIRPERSON MILLER: Oh, my gosh. It's 2023. I
11 should know how to unmute.

12 Thank you very much, Ms. Gmur. Really appreciate
13 that. That was very helpful.

14 We're now going to move to the parties and
15 witnesses, and if you could please state your names for
16 the record. We will start with Mr. Burhenn for the
17 claimants. If you would like to begin. And please
18 correct my pronunciation of your name. And I apologize.

19 MR. BURHENN: I have lived for a long time, Chair
20 Miller, with that name being mispronounced.

21 CHAIRPERSON MILLER: Tell me how so I don't get it
22 wrong again.

23 MR. BURHENN: I used to say, it's like a cold
24 chicken: Bur-hen. It's the curse of having a German
25 name, but I have it.

1 CHAIRPERSON MILLER: I'm not going to forget that
2 again, Mr. Burhenn.

3 MR. BURHENN: I hope not.

4 Thank you, Chair Miller, and good morning, Members
5 of the Commission.

6 My name is David Burhenn. I'm with the firm of
7 Burhenn & Gest. And we are the claim representative for
8 the claimants in this matter, which are the Riverside
9 County Flood Control and Water Conservation District,
10 County of Riverside, and the Cities of Murrieta,
11 Temecula, and Wildomar.

12 I want to first thank staff for the hard work in
13 putting out a 475-page proposed decision, and we want to
14 recognize this as a massive effort. And -- and even
15 though we obviously don't agree with everything in it,
16 we certainly appreciate the hard work that went into it.

17 I would also like to indicate that we incorporate
18 all of our previous written comments and, by this
19 presentation, are not waiving any of those comments.

20 I have two main comments this morning which cover
21 several items in the proposed decision:

22 The first relates to municipal projects, which you
23 just heard Ms. Gmur mention. The proposed decision
24 would deny reimbursements where claimants must comply
25 with test claim permit requirements that apply to

1 municipal projects, on the ground that they voluntarily
2 undertook those projects, and, thus, they were not
3 mandated.

4 This applies to several items in the proposed
5 decision, including the retrofitting requirements in
6 section F.3.d.; a BMP database requirement in section
7 F.1.f.; unpaved road requirements in section F.1.i. and
8 F.3.a.10.; and reporting on municipal projects in
9 section A.3.

10 Claimants submit that when a project has been
11 constructed or accepted by a local agency, even if that
12 construction or acceptance was in some sense
13 discretionary, permit requirements which apply to those
14 projects downstream of those acts should be treated as
15 mandates. By "downstream," I mean requirements that are
16 separate in time or subject matter from the original
17 actionable local agency.

18 The proposed decision does not accept our comments
19 on this point, citing two main cases known as *Kern High*
20 *School District* and *City of Merced*. These cases,
21 however, involve direct relationships between some
22 voluntary action of a local agency and a resulting
23 nonmandated cost.

24 For example, in *Kern High School District*, the
25 district voluntarily entered into a statutory program

1 providing for state grant aid, and then the legislature
2 amended that statute to add notice and agenda
3 requirements, which involved extra cost.

4 The *City of Merced* case involved the city's
5 decision to invoke eminent domain proceedings, and then
6 having to pay more to the property owner because the
7 statutory provision required the loss of goodwill must
8 also be compensated.

9 In those cases, there was a direct link between the
10 municipality's discretionary act and the financial
11 consequences of that act.

12 In this claim, the consequences, which are
13 increased costs from stormwater permit requirements, are
14 considerably distanced from the decision by the
15 municipality to build or require a project.

16 For example, in the case of unpaved roads, a
17 municipality must formally accept a road for it to be
18 included within the municipality's road system, but the
19 acceptance may have occurred several decades ago.

20 The County of Riverside, for example, has been in
21 existence since 1893. The acceptance of a road may have
22 been discretionary, but we can be assured that the
23 County Board of Supervisors in 1920, 1930, or even 1980
24 had no conception of a municipal separate storm sewer
25 system permit that would, decades later, govern how the

1 County maintained those roads.

2 As another example, when a permittee is required to
3 report to the water board or include in a database
4 information on existing municipal stormwater projects,
5 those projects have been completed. There is no
6 functional difference between that completed municipal
7 project and a private project.

8 Claimants respectfully submit that when
9 requirements are imposed on permittees concerning such
10 completed municipal projects, there is no act of
11 discretion that waives subvention.

12 This was a concern of the California Supreme Court
13 in the *San Diego Unified* case that was cited in our
14 comments. The court there suggested that many existing
15 mandate cases could, in fact, be overturned at the time
16 because the local agency had made a discretionary
17 decision, which triggered the mandate.

18 And the example they gave was the famous *Carmel*
19 *Valley* case, where subvention was approved for the costs
20 of additional firefighter safety equipment. The court
21 mused whether that case, and others finding subvention,
22 could stand under very strict application of the *City of*
23 *Merced* case.

24 But even if municipality incurs costs through
25 discretionary decision to undertake some project,

1 subvention still may be required if those costs are
2 practically compelled through the -- to the municipality
3 facing certain and severe consequence if they do not
4 act.

5 This concept of practical compulsion applies
6 directly to the maintenance of unpaved roads at issue in
7 this test claim.

8 In our written comments, claimants stated state
9 law, specifically Government Code 835 and related
10 statutes, which should provide that a municipality is
11 liable for dangerous conditions on its property,
12 including roads.

13 Courts have held that municipalities which fail to
14 adequately maintain their roads are liable to injured
15 parties. Thus, to avoid these consequences, claimants
16 must maintain unpaved roads and, in doing so, are
17 subject to the requirements and increased costs set
18 forth in the test claim permit. Because of this
19 practical compulsion, subvention should not be barred.

20 My next comment, another comment, relates to the
21 notion of regulatory fees. And this was, again, alluded
22 to by Ms. Gmur.

23 Claimants agree, and it is settled law, that if a
24 local agency has the authority to recover mandated costs
25 from a private party through regulatory fees, such as

1 inspection fees, those costs are not recoverable in a
2 test claim. However, in this test claim, claimants have
3 identified specific mandates for which they lack such
4 authority.

5 An example are costs associated with inventory and
6 evaluating existing development areas for potential
7 water quality retrofitting. That's in section F.3.d. of
8 the test claim permit.

9 Claimants are required to identify and inventory
10 those existing areas of development that are candidates
11 for retrofitting. They then must evaluate and rank
12 those areas to prioritize retrofitting and incorporate
13 those findings into work plans. These requirements are
14 discussed on pages 207 to 210 of the proposed decision.

15 Is there some entity that can be charged for the
16 costs of those requirements? On page 44, the proposed
17 decision states that the fact that claimants already
18 issued the original permits on that existing
19 development, quote, "Does not defeat their authority to
20 impose a fee to cover the costs of these activities,"
21 closed quote.

22 But impose on whom? Certainly not the original
23 developers, since the projects are completed, and any
24 development permits have expired, and the properties in,
25 in fact, may have been sold to one or more new owners.

1 Is it future developers?

2 On page 455, the proposed decision states that such
3 costs of the services, quote, "provided directly to
4 developers and property owners," closed quote, in the
5 form of LID and hydromodification plans to assist in
6 their retrofitting projects.

7 With respect -- that's not correct with respect to
8 the surveying, inventorying, evaluating that I
9 discussed. Providing LID and hydromodification plans
10 clearly benefit developers of a retrofit project.
11 Inventorying and evaluating existing development for
12 retrofitting potential does not.

13 No developer benefits from such a general review.
14 No planning documents to assist a developer are
15 produced.

16 The required work does identify, for the benefit of
17 the municipality, what areas are best for retrofitting
18 and how watershed planning can proceed from that
19 knowledge. Then, if a developer decides to retrofit an
20 existing property identified in the review, courts have
21 ruled the costs that municipalities incur to develop LID
22 and hydromodification planning documents can be
23 recovered from that developer.

24 But here, the retrofit identification tasks are not
25 for that purpose. They are for the purpose of improving

1 water quality generally, by identifying areas that would
2 benefit from retrofitting. This inventory and
3 evaluation tasks do more -- do no more than identify
4 those -- identify those general areas.

5 That effort, like the placement of trash
6 receptacles in the LA County stormwater permit benefit
7 persons and water quality generally, and, thus, is a
8 property-related cost subject to the requirements in
9 218. And since there is no reasonable relationship to
10 any benefit provided to a developer from these
11 activities, any development fee imposed for those
12 services would be in violation of the constitution.

13 I would also add that the requirement in test claim
14 permit section F.1.d.4.a.iii. provides no benefit to any
15 developer, but merely requires claimants to review local
16 codes, policies, ordinances, etc., to identify and
17 remove barriers to LID implementation and to include
18 that review in a JRMP document. This is an effort
19 which, again, has nothing to do with any specific
20 project requiring LID efforts, but is an effort to
21 identify and remove obstacles, on a community-wide
22 basis, to imposition of a low impact development.

23 Thank you very much for your attention to these
24 comments, and I would be happy to answer any questions
25 the commissioners may have.

1 CHAIRPERSON MILLER: Thank you very much, Mr.
2 Burhenn.

3 Next we will go to Ms. Ferebee from the Department
4 of Finance, please.

5 MS. FEREBEE: Hi. Thank you.

6 I'm going to defer to my colleague, Marilyn Munoz,
7 who will be speaking on this item. Thank you.

8 CHAIRPERSON MILLER: Hi, Ms. Munoz. Nice to see
9 you.

10 MS. MUNOZ: Nice to see you as well, Madam Chair.

11 The Department of Finance has nothing to add beyond
12 our written comments. Finance also wishes to defer to
13 the water boards for further comments on this matter.

14 Thank you.

15 CHAIRPERSON MILLER: Great. Thank you very much.

16 We will move now to Ms. Fordyce and Ms. Hagan for
17 the State Water Resources Control Board and San Diego
18 Regional Water Control Board.

19 Do you have any comments?

20 MS. HAGAN: Yes. Thank you, Chair Miller.

21 I misspoke earlier in indicating which item we had
22 comments on.

23 My name is Catherine Hagan. I'm with the State
24 Water Board's Office of Chief Counsel. My brief
25 comments today are on behalf of the State Water Board

1 and the San Diego Water Board. As you know, Jennifer
2 Fordyce, Assistant Chief Counsel, is here with me as
3 well.

4 The water boards appreciate and want to recognize
5 the exhaustive work by the Commission staff in
6 developing the proposed decision you are considering
7 today.

8 We agree with a significant number of the
9 conclusions and recommendations in the proposed
10 decision.

11 While we continue to disagree with some of the
12 proposed conclusions, we have already expressed those
13 comment in our written comments and so don't intend to
14 reiterate those today.

15 So that -- that concludes our comments today, but
16 we're happy to answer any questions if you -- if the
17 commissioners have any.

18 CHAIRPERSON MILLER: Great. Thank you very much.

19 MS. HAGAN: Thank you.

20 CHAIRPERSON MILLER: We'll now move to public
21 comments on this item. Are there any public comments?
22 Anyone wishing to comment for any reason? You can just
23 raise your Zoom hand.

24 (No response.)

25 CHAIRPERSON MILLER: Seeing none, I will turn it

1 back to the committee and see if there's any questions
2 from members.

3 (No response.)

4 CHAIRPERSON MILLER: Seeing none, I will then --
5 any further discussion for any reason?

6 (No response.)

7 CHAIRPERSON MILLER: Nope? Okay.

8 I will then entertain a motion, please.

9 MEMBER WALKER: I move to adopt the proposed
10 decision.

11 CHAIRPERSON MILLER: Thank you, Mr. Walker.

12 Do we have a --

13 MEMBER OLSEN: Seconded.

14 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

15 The staff recommendation was moved by Mr. Walker;
16 seconded by Ms. Olsen.

17 And we will now call the roll, please.

18 MS. HALSEY: Mr. Adams.

19 MEMBER ADAMS: Aye.

20 MS. HALSEY: Ms. Evans.

21 (No response.)

22 MS. HALSEY: Ms. Holman.

23 MEMBER HOLMAN: Aye.

24 MS. HALSEY: Ms. Miller.

25 CHAIRPERSON MILLER: Aye.

1 MS. HALSEY: Ms. Olsen.

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Mr. Walker.

4 MEMBER WALKER: Aye.

5 CHAIRPERSON MILLER: Great. That -- the motion
6 carries.

7 We will now move to Item 4, Ms. Halsey.

8 MS. HALSEY: Item 4 was postponed at the request of
9 claimants.

10 Next is Item 5. Commission Counsel Anna Barich
11 will please turn on her video and unmute her microphone
12 and present her first proposed decision on Sex Offenders
13 Registration: Petitions for Termination, 21-TC-03.

14 At this time, we invite the parties and witnesses
15 for Item 5 to please turn on their video and unmute
16 their microphones.

17 CHAIRPERSON MILLER: Great. Thank you very much.

18 May we please start with Ms. Barich, please. Go
19 ahead.

20 MS. BARICH: Thank you.

21 CHAIRPERSON MILLER: Could you speak up just a
22 little? I'm having a hard time hearing you.

23 MS. BARICH: I'm sorry about that. Let me see if I
24 can do something about it.

25 CHAIRPERSON MILLER: That's great. That's perfect.

1 That's better already.

2 MS. BARICH: All right. Good morning, everyone.

3 This test claim involves a major change to how
4 California's Sex Offender Registry operates.

5 Under prior law, all convicted sex offenders living
6 in California had a duty to register with their local
7 law enforcement agency for life. Failure to register in
8 accordance with the law is a crime punishable as either
9 a misdemeanor or felony, depending on the defendant's
10 original offense.

11 The test claim statute created a three-tiered
12 system for classifying sex offenders, where each tier
13 has a minimum mandatory registration period as low as
14 ten years. After a sex offender completes their minimum
15 registration period, they may petition their local court
16 to relieve their duty to register and serve the petition
17 on the county's law enforcement agency and district
18 attorney's office. The court will hold a hearing if the
19 district attorney challenges the petition.

20 Although the test claim statute created mandatory
21 activities for law enforcement agencies and district
22 attorneys, staff finds costs mandated by the State
23 because the -- (Zoom malfunction) -- eliminated a
24 crime or infraction pursuant --

25 THE COURT REPORTER: Ms. Barich, this is the court

1 reporter.

2 At least on my end, your audio broke up a little
3 bit --

4 MS. BARICH: Oh.

5 THE COURT REPORTER: And I'm not sure if I missed
6 some words or not. So do you want to start with,
7 "Although the test claim statute created..." Can you
8 start there?

9 MS. BARICH: I would be -- I would be happy to --

10 CHAIRPERSON MILLER: Oh, I think you're -- you're
11 cutting out again, Ms. Barich. So I think when you held
12 the microphone closer to you.

13 MS. BARICH: I'm also getting a notification that
14 my connection is a little unstable so...

15 CHAIRPERSON MILLER: Okay.

16 So I think what you want to do is turn your video
17 off, actually.

18 MS. BARICH: I could do that.

19 CHAIRPERSON MILLER: Right. And then just hold the
20 microphone closer. There you go. Let's start again,
21 "Although the test claim..."

22 MS. BARICH: Although the test claim
23 statute created --

24 CHAIRPERSON MILLER: So whatever you are doing
25 right now, I think it's easier to hear.

1 "Although the test claim statute..."

2 MS. BARICH: Although the test claim statute
3 created mandated activities for law enforcement agencies
4 and district attorneys, staff finds there are no costs
5 mandated by the State because the test claim statute
6 eliminated a crime or infraction pursuant to Government
7 Code section 17556(g).

8 Once the duty to register is terminated, the
9 offender is no longer subject to the requirements of the
10 Sex Offender Registration Act, and any criminal
11 penalties for failing to register or to otherwise comply
12 for life are eliminated.

13 Accordingly, staff recommends that the Commission
14 adopt the proposed decision to deny the test claim and
15 authorize staff to make any technical, nonsubstantive
16 changes following the hearing.

17 Thank you.

18 CHAIRPERSON MILLER: Great. Thank you very much.

19 I'm just checking with the court reporter. Are you
20 good now?

21 THE COURT REPORTER: Yes, that was perfect. Thank
22 you.

23 CHAIRPERSON MILLER: Great. Thank you very much.

24 And if Barich, if you want to turn your video on
25 just so we can see you. If we have questions, we'll see

1 if your internet stabilizes. Thank you.

2 Never a dull moment with technology, right?

3 So now we will move to the parties and witnesses.

4 And as you are testifying, please feel free to let us

5 know if you need anything clarified.

6 Mr. Lemus, Ms. Gonzalez, Mr. Ford for the
7 claimants. If you would like to begin, please.

8 MR. LEMUS: Sure. Good morning. My name is
9 Fernando Lemus. I am the claimant representative for
10 the County of Los Angeles.

11 I'm here to introduce Luis Gonzalez and Mr. Dylan
12 Ford from our Office of County Counsel. I'm going to
13 turn it over to Lucia, so she can begin with her
14 comments.

15 MS. GONZALEZ: Thank you, Mr. Lemus.

16 Good morning, everybody.

17 CHAIRPERSON MILLER: If you could state your name
18 one more time for our court reporter, please.

19 MS. GONZALEZ: Yes. Yes, thank you. My name is
20 Lucia Gonzalez with the Office of County Counsel.

21 The proposed decision concedes that SB 384 imposes
22 State-mandated activities on the LA County DA's Office
23 and Sheriff's Department, but not the Public Defender's
24 Office.

25 In a moment, my colleague, Dylan Ford, will

1 describe the public defender's instrumental role in this
2 program, by which the legislature's intent for passing
3 SB 384 would be thwarted without the role of a PD's
4 office in assisting petitioners.

5 But before we get to that, the big issue here is,
6 does the Government Code exempt reimbursement to the
7 County? Because the staff Commission's decision already
8 concedes that there are state-mandated activities. So
9 the question is, is there an exemption that prevents the
10 County from being reimbursed for this very involved
11 program?

12 The County urges the Commission to find that
13 Government Code section 1755(g) [sic] does not apply
14 here.

15 I will like to read into the record Government Code
16 section 1755(g).

17 Government Code section 1755(g) [sic]: "The
18 Commission shall not find costs mandated by the State,
19 in any claim where the statute created a new crime or
20 infraction, eliminated a crime or infraction, or changed
21 the penalty for a crime or infraction, but only for that
22 portion of the statute related to the enforcement of the
23 crime or infraction."

24 Staff agrees that SB 384 did not change the penalty
25 of a crime, and they agree because the U.S. Supreme

1 Court and the State Supreme Court and the lower courts
2 have all agreed that the act of registration is
3 nonpunitive. It is regulatory in nature. So,
4 therefore, SB 384 cannot be considered a change in
5 penalty of a crime.

6 So the next exemption that the staff urges this
7 Commission to adopt is, well, then a crime must have
8 been eliminated.

9 While they argue this, staff has failed to indicate
10 what crime has been eliminated. There's no crime that
11 has been eliminated here.

12 SB 384 has always been a regular -- or the sexual
13 registration requirement has always been regulatory in
14 nature. What SB 384 did was it modified the
15 registration process.

16 And my colleague, Dylan Ford, will speak about the
17 registration requirement, the legislative intent, of
18 384. Mr. Ford is currently a county counsel attorney
19 for LA County. However, he is a 17-year veteran of the
20 Public Defender's Office for LA County and previously
21 led the effort in the SB 384 program at that office.

22 So I will turn it over to Mr. Ford.

23 CHAIRPERSON MILLER: Great. Thank you.

24 Hi, Mr. Ford. If you could state your name for the
25 record as well, please.

1 MR. FORD: Good morning, Madam Chair. Dylan Ford
2 from the Office of County Counsel for Los Angeles
3 County.

4 And just by way of background with SB 384, this
5 statute, originally, I believe, sponsored by the LA
6 District Attorney, was not necessarily an effort on
7 behalf of sex offenders at the time. But, rather, the
8 intent was to actually aid law enforcement agencies who
9 were dealing, at the time, with a tremendously unwieldy
10 number of registrants.

11 The way that the criminal law expanded to cover
12 more and more offenses that required -- that triggered
13 the registration requirement led to a huge explosion in
14 the number of registrants within California. As of
15 November 2022, there were more than -- or there were
16 approximately 80,000 sex offender registrants living
17 within the community, and about 14,500 living within Los
18 Angeles County.

19 And what was happening is that the intent -- the
20 original intent of the registration requirement was
21 actually being undercut because in -- rather than allow
22 law enforcement agencies to surveil people who are at
23 high risk of reoffense, instead, they were spending all
24 of their time going through the -- basically the
25 administrative role of just, like, basically receiving

1 registrations by the people who live within the
2 community.

3 The idea was to pare down the registration list so
4 that law enforcement agencies would be empowered and
5 have more time and greater resources to surveil those
6 most at risk of committing new offenses within the
7 community.

8 Once that -- the statute was actually passed,
9 the -- at least in LA County, there was a tremendous --
10 tremendous effort to try to receive all of the requests
11 for assistance from the people who could benefit by this
12 law.

13 And what has happened, as a practical matter, is
14 that with this new law, district attorneys' offices, the
15 courts, the clerks of the court, law enforcement
16 agencies, were all completely unfamiliar with the
17 process. And their default answer, when presented with
18 a registrant who wanted to seek relief under the
19 statute, was to refer them to the Public Defender's
20 Office.

21 And we received -- and actually, at the time, I was
22 leading the effort for the LA County Public Defender's
23 Office, where I was the point person. So I would
24 receive calls from clerks of the court. We had many
25 meetings with the court, the DA, and other stakeholders,

1 and from law enforcement agencies themselves, who didn't
2 know how -- exactly how this law operated, what was the
3 proper manner of petitioning, and -- and needed
4 assistance in getting these petitions filed and filed
5 properly, including the Proof of Service that is
6 required under the statute.

7 Pro per petitioners also had difficulty. Even
8 though the petition is not difficult to complete, the
9 rules of service, where to file, etc., and particularly
10 if the -- the case actually went forward to hearing,
11 having presentation and a hearing involved a complex
12 analysis of risks to community safety that were
13 implicated by the statute.

14 All that is to say that this required a tremendous
15 amount of resources on the part of the public defender
16 to answer the calls of all these various stakeholders.
17 And it created -- the language that the staff applied to
18 the district attorney's office, while the public
19 defender was not named particularly in the statute, it
20 did, as a practical matter, constrain the public
21 defender by its duty to its other stakeholders in the
22 criminal justice system and to those pro per
23 petitioners, to have the -- to have the statute operate
24 in the way that the legislature intended.

25 And just to be clear, the -- the statute did not

1 eliminate 290.018. Basically, the penalty statute
2 within the sex offender scheme. Rather, what it did is
3 provide an avenue for people to no longer to be subject
4 to that scheme.

5 And the important thing to remember is that these
6 are folks who, the only way they could actually be
7 entitled to relief is if they, in fact, register
8 faithfully. If they register every year, if they
9 register upon any move, if they move residences, if they
10 register -- if they go to a university or and -- or
11 visit a school, they have to register with the
12 authorities there. All those -- only those people who
13 register all the time and never fail to register are
14 those who are eligible for relief from the duty to
15 register.

16 So these are not the population of people who would
17 be charged, hypothetically, with a failure to register
18 at some future point. Rather, this particular
19 population is entitled to relief precisely because they
20 always register faithfully.

21 And essentially what the legislature has provided
22 and mandated is an effort to try to relieve law
23 enforcement agencies of a duty to register these people
24 who have been registering for decades faithfully, in
25 many cases, and allow them to focus their resources

1 only and to surveil and monitor those people who are at
2 a high risk of reoffending within the community.

3 MS. MUNOZ: Thank you, Mr. Ford.

4 Mr. Ford, can you speak about whether SB 384
5 creates an affirmative -- or an automatic removal from
6 the registry? And also how this statute is
7 distinguished by the youth offender parole statute and
8 that decision?

9 MR. FORD: Yes. With regard to the youthful
10 offender parole hearing statutory scheme, as discussed
11 in the case cited by the staff, that created a situation
12 where by operating -- by operation of law, youthful
13 offenders were guaranteed an earlier eligibility date.

14 Again, this has to do with people who are serving
15 prison sentences and become eligible for parole.

16 Obviously incarceration and parole are both classic
17 punishments under the system, whereas registration is a
18 mere regulatory function that is not within the
19 continuum of state-imposed punishments.

20 That -- that, basically, operation of law is
21 critical to that decision, because it applied to the
22 entire class of youthful offenders, and no matter what
23 their case was, no matter their comportment during their
24 time incarcerated, they would be given the benefit of an
25 earlier parole eligibility date.

1 By contrast, we're talking about -- and for SB 384,
2 we're talking about a system that does not involve a
3 penalty. You know, the registration requirement is not
4 a penalty. And, furthermore, nothing is triggered by
5 operation of -- a mere operation of law. There are
6 other states that have sex offender systems where, if
7 you register for ten years, automatically you are
8 relieved of the duty to register.

9 By contrast, in California and SB 384, there is an
10 affirmative duty, not only to register faithfully and
11 avoid any new criminal conviction, but also
12 affirmatively petition the -- the superior court in
13 order to seek relief.

14 So in these -- these particular areas, you have key
15 distinctions with the youthful offender parole hearing
16 decision, and that we are not talking about penalty. We
17 are not talking about classic punishment. And we are
18 also talking about, in the SB 384 context, only those
19 who affirmatively establish their earning of their
20 relief of the duty to register, that are affected by the
21 law. Nothing happens automatically.

22 And to emphasize again, these are particularly the
23 people who would not be prosecuted, who would not,
24 basically, utilize the resources of the County
25 otherwise, precisely because they are only entitled to

1 relief because they are following the law and are not
2 committing crimes. And that is how they, effectively,
3 get any relief from the superior court.

4 MS. MUNOZ: Okay. Thank you, Mr. Ford.

5 Aside from the youth offender parole case that the
6 staff cited in their proposed opinion, which is not
7 analogous here -- youth offender parole involved the
8 elimination of penalties. We're not talking about
9 penalties here. It's clear that registration is not a
10 penalty.

11 They also cite two test claims. They also concede
12 that the findings of this Commission with former test
13 claims is not precedential. However, I would like to
14 comment on the test claims that were referenced by the
15 staff in their proposed decision:

16 The accomplice liability test claim, where the
17 Commission held that the County was exempt from
18 reimbursement because that test claim statute eliminated
19 the felony murder rule from being applied and using
20 criminal prosecutions.

21 Again, we're -- there has been no indication of any
22 type of criminal theory or rule or crime that has been
23 eliminated by 384. That test claim is not analogous to
24 the facts here.

25 They also cite to test claim 97-TC-15. That test

1 claim actually added crimes to -- added sex crimes that
2 would trigger the registration requirement. Clearly,
3 that is very different than what we have here. In that
4 test claim, crimes were added.

5 Again, no crimes have been added here. No crimes
6 have been eliminated here.

7 On page 44 of its proposed decision, the staff
8 Commission writes, "Under prior law, the requirement to
9 register annually and at any time the offender moved
10 existed for life. But the test claim statute eliminates
11 the requirement for a sex offender to register under the
12 Act once the offender successfully petitioned to
13 terminate their duty to register..."

14 We wholeheartedly agree with the staff in that
15 statement. The test claim statute eliminates the
16 requirement for a sex offender to register once they
17 successfully petition to terminate. Again, no crime has
18 been eliminated. No crime has been added. The
19 requirement to register goes away if a petitioner were
20 to -- if a sex offender were to petition. If a sex
21 offender never petitions, then they are off [sic] the
22 registry. They stay.

23 We believe that the staff Commission's broad
24 interpretation of Government Code of 5 -- 17556(g) would
25 relieve the state of its constitutional obligation to

1 reimburse the County of Los Angeles. This would be an
2 impermissible use of Government Code section 1755(g) --
3 17556(g). It would be impermissibly broad, the County
4 believes, for this Commission to apply this exemption to
5 the facts at hand.

6 And we ask that the Commission reconsider the
7 proposed decision of the staff, and find that costs have
8 been mandated here by the State, on the County.

9 There is a program in place. The public defenders
10 are actively involved in this program, although they are
11 not specifically referenced in the statute and that
12 there is no exemption here. No penalty has been
13 eliminated. And no crime has been eliminated. No crime
14 has been added.

15 Thank you.

16 CHAIRPERSON MILLER: Thank you very much. We
17 really appreciate it.

18 We'll now move to Mr. Hill, please, for the
19 Department of Finance.

20 MR. HILL: Good morning. Chris Hill with the
21 Department of Finance.

22 I can just say, the Department of Finance concurs
23 with the Commission staff's recommendation on this test
24 claim.

25 CHAIRPERSON MILLER: Great. Thank you very much.

1 Is there any public comment on this item? Anyone
2 wishing -- did someone wish to comment?

3 (No response.)

4 CHAIRPERSON MILLER: No.

5 Anyone wishing to comment for any reason, please
6 raise your Zoom hand.

7 (No response.)

8 CHAIRPERSON MILLER: Seeing none, we'll now turn it
9 back to the Commission. Are there any questions from
10 the Commission?

11 Yes, Ms. Olsen.

12 MEMBER OLSEN: I just want to say that I find the
13 arguments of LA County to be really compelling, and I
14 would like a response from our attorneys.

15 CHAIRPERSON MILLER: Great. Thank you very much.

16 I am going to see if we can -- maybe if there's
17 questions for our attorneys, from Mr. Adams -- was that
18 a similar question, Mr. Adams, just for our team to
19 respond?

20 MEMBER ADAMS: Yes. And then I have some
21 additional questions after that, or comments. Thanks.

22 CHAIRPERSON MILLER: Great. Thank you very much.

23 Ms. Holman, is this a question specifically for our
24 attorneys so that they can respond to LA County?

25 MEMBER HOLMAN: No. It was a question --

1 CHAIRPERSON MILLER: It was separate? Great.
2 Okay. So if you want to go ahead and mute then, we will
3 go to Ms. Barich and Ms. Shelton to respond to the
4 positions from LA County.

5 And if your internet is still unstable, please feel
6 free to go off camera again.

7 MS. BARICH: Please warn me if you are noticing any
8 more audio issues with me.

9 All right. So I've been taking notes on what
10 Mr. Ford had -- had to say.

11 And when he pointed out that the intent of the law
12 is to aid law enforcement agencies in paring down
13 registration, yes, the -- what they have done, in doing
14 so, by making it no longer a crime for these people to
15 stop registering as sex -- to stop registering as sex
16 offenders. That -- that is how they have pared down the
17 sex offender registration list.

18 And what -- and for the simple question of, what
19 crime has been eliminated, it's the failure to register
20 with respect to people who have terminated their duty to
21 register.

22 As for the people who have been seeking --

23 CHAIRPERSON MILLER: Ms. Barich, sorry. I don't
24 know if everyone else could hear that. It's the failure
25 to what that?

1 MS. BARICH: It's the failure to register with
2 respect to people who have successfully terminated their
3 duty to register.

4 MS. HALSEY: And -- and --

5 MS. BARICH: So previously they had a duty to
6 register for life, and so they would have been guilty of
7 a crime if they failed to register.

8 Now they are no longer guilty -- now the crime of
9 failing to register has been eliminated with respect to
10 these people.

11 MS. HALSEY: And so we're talking about Penal Code
12 section 290.018, which makes it a misdemeanor or a
13 felony, a failure to register. So just to clarify.

14 CHAIRPERSON MILLER: Thank you.

15 MS. BARICH: As for the influx of people that the
16 County has had to deal with seeking assistance -- that
17 the public defenders have had to deal with seeking
18 assistance for these petitions, it's admirable that the
19 public defenders have to -- have been doing what they
20 can to help them, but the State has not mandated that
21 they perform this activity.

22 As for -- I will concede that the point Dylan
23 raise -- that Dylan Ford raised about whether -- about
24 being practically compelled is something that we have
25 not -- that was not previously raised by the -- (Zoom

1 malfunction) -- and we have not previously analyzed it.
2 But I -- but the stance that the -- that the -- that the
3 test claim statute does not eliminate Penal Code section
4 290.0018 [sic], because the people are -- that are
5 entitled to relief have always followed their duty to
6 register, as a result of the test claim statute, they
7 are able to end that -- that obligation.

8 And the final point that I have in my notes is that
9 for the argument that youth offender parole hearings is
10 different because it guaranteed parole hearings for
11 these people, the test claim statute entitles Tier 1 and
12 Tier 2 sex offenders to hearings on their -- on whether
13 or not to terminate their duty to register.

14 CHAIRPERSON MILLER: Great. Thank you, Ms. Barich.
15 And I'm so sorry for this internet issue.

16 Did the court reporter get all of that? And then
17 I'm going to turn it to Ms. Shelton.

18 THE COURT REPORTER: Yes.

19 CHAIRPERSON MILLER: Great. Thank you.

20 Ms. Shelton.

21 And then we'll turn it back to Ms. Olsen, please.

22 MS. SHELTON: Just a couple of things.

23 One, on the issue of the public defender, we have
24 had post-conviction test claims in the past, where those
25 statutes have specifically imposed duties on public

1 defenders. Because, typically, under the law, there's
2 no guarantee to the right to counsel unless your liberty
3 is being affected.

4 So in -- you know, in this case, the legislature
5 did not specifically address the public defender. We
6 find no duty or a mandate imposed on the public defender
7 with these statutes. And so, you know, without any
8 substantial evidence in the record to show severe --
9 certain and severe consequences, the Commission cannot
10 make a finding of practical compulsion with respect to
11 the Public Defender's Office.

12 Secondly, the County of *San Diego versus Commission*
13 *on State Mandates* case dealing with the youth offender
14 parole here. The Court made some very clear statements
15 with respect to 17556(g) overall.

16 One, that the statutes -- you know, even though the
17 test claim statutes don't vacate crimes or vacant
18 sentences, they did affect the overall penalty in that
19 case for those individuals.

20 Here, the same is true: Although the test claim
21 statute does not eliminate any crime itself, you have to
22 apply the rules of statutory construction and determine
23 the effect of that particular statute.

24 In addition to the test claim statute, you had
25 two -- Penal Code section 290.5, which said you have a

1 duty to register unless you get a petition filed under
2 the test claim statute. So as Anna mentioned, that once
3 that duty to register is terminated, the offender is no
4 longer subject to the requirements of the Sex Offender
5 Registration Act. And any criminal penalties under
6 Penal Code 290.018 to -- for failing to register, are
7 otherwise complied for life, are just eliminated. So,
8 yes, we do believe 17556(g) applies.

9 CHAIRPERSON MILLER: Great. Thank you, Ms. Olsen.
10 Do you want to follow up?

11 MS. BARICH: Sorry. Could I -- I realized one more
12 thing that I wanted -- that I wanted to add, just in
13 response to Lucia's comments about the previous
14 Commission decisions, particularly the one involving the
15 sex offender -- the previous sex offender registry
16 cases.

17 She is pointing out the test claim -- that that
18 previous test claim statute added new crimes. It -- it
19 wasn't just that they added new -- the argument at that
20 time wasn't that they added new crimes. It was that
21 existing crimes, crimes that already existed, were added
22 to the list of crimes that were -- that could be
23 registered -- that could be -- that must be registered
24 as -- that require someone to be registered as a sex
25 offender.

1 And in making that change, they had created a new
2 crime with respect to Penal Code -- (Zoom
3 malfunction) -- point 0018. That was what happened with
4 the previous test claim.

5 THE COURT REPORTER: Ms. Barich, Ms. Barich, state
6 the Penal Code number again. I'm not sure I got every
7 number.

8 MS. BARICH: 290.0018.

9 THE COURT REPORTER: Okay. Go on. Thanks.

10 MS. BARICH: Yeah. So just like how that previous
11 test claim had added new crimes, this has eliminated a
12 crime by making it possible for people to no longer have
13 a duty to register.

14 CHAIRPERSON MILLER: Right.

15 And did the court reporter get the Penal Code
16 number? It cut out for me.

17 THE COURT REPORTER: Yeah. I had her restate it.
18 Thank you.

19 CHAIRPERSON MILLER: Great. Okay.

20 Great. Ms. Olsen.

21 MEMBER OLSEN: Okay. So just to follow up here.

22 I guess what I'm finding difficult here is that
23 Ms. Gonzalez and Mr. Ford's testimony, I think, makes a
24 compelling case that the elimination of the crime
25 doesn't happen, as I understand it, until a regulatory

1 process takes place.

2 And that is what I'm finding compelling about the
3 County's point of view here, is that they still have to
4 register until they do this other thing, which is a
5 regulatory process. And so the elimination of the crime
6 follows the regulation. And that -- that's what I'm
7 finding compelling.

8 MS. SHELTON: It's not a regulatory process. They
9 have to file a petition for termination, which goes to
10 court. You have criminal attorneys representing the
11 State, and you are going back to the criminal court if
12 there's a hearing. It's the function that -- of
13 regulation -- it's the function of registering a sex
14 offender that is regulatory, but there is a criminal
15 penalty for failing to do that. And it goes back to the
16 criminal court on the petition.

17 MS. BARICH: And what the --

18 CHAIRPERSON MILLER: Wait. Hold on one second.
19 Hold on one second, because we can barely hear you,
20 Ms. Barich. I know this isn't your fault.

21 But Ms. Olsen, did you want to follow up on that?
22 The distinction between a regulation -- oh, you are
23 muted, Ms. --

24 MEMBER OLSEN: I'm happy to listen.

25 CHAIRPERSON MILLER: Okay. Great.

1 Ms. Barich, if you could speak up a little bit.

2 MS. BARICH: So what this -- this is -- what they
3 have created is a procedure for determining someone's
4 duty to register, an ability that never previously
5 existed, it was -- there -- someone had to -- if someone
6 had a duty to register as a sex offender, that duty
7 existed for life. Now they have this procedure where
8 they can petition the courts, and they will hold
9 hearings, as necessary, to determine whether or not to
10 grant that petition.

11 And the Court in the *County of San Diego* case, the
12 youth offender parole hearing case, found that when that
13 procedural and administrative tasks are -- can still be
14 part of -- can still perform of eliminating a crime, of
15 changing the penalties for a crime, by guaranteeing --
16 in that case, by guaranteeing parole eligibility for all
17 qualified youth offenders, the test claim statute had
18 altered the substantive punishments, in this case, by
19 creating a procedure where the -- where the court --
20 where the petitioners are able to seek the ability to
21 terminate their duty to register. They have altered
22 the -- they have altered the duties and created -- made
23 it possible to eliminate this crime.

24 CHAIRPERSON MILLER: Great. I'm going to hold it.
25 Before we go to the -- the witnesses, I'm going to go to

1 the Commission.

2 Ms. Olsen, are you -- are you satisfied with those
3 answers? Any follow-up questions?

4 (No response.)

5 CHAIRPERSON MILLER: Great. Thank you. Thank you
6 for those questions.

7 Mr. Adams and then Ms. Holman, please.

8 MEMBER ADAMS: Thank you, Madam Chair.

9 Like Ms. Olsen, I'm having a tough time with some
10 of this. I see it as a new program, an additional level
11 of service. It appears to be mandatory on local
12 agencies. They don't have any fee recovery. I also
13 don't see it as a decreased penalty, but a regulatory
14 scheme.

15 I also don't understand the logic that eliminates a
16 crime. It doesn't eliminate section 290, but it just
17 eliminates when section 290 can be charged to a
18 defendant.

19 And, again, while the legislature doesn't
20 necessarily direct anybody to do anything, it does put
21 in a -- in motion a mandatory obligation for at least
22 the district attorney and law enforcement.

23 I will remain silent on the public defenders,
24 although it would be interesting to know if the courts
25 are requiring them to get involved.

1 So I'm having a real tough time supporting the
2 recommendation before us. I don't see it eliminating a
3 crime at all; just when a new crime be alleged against a
4 defendant who fails to register in the future.

5 So, again, I -- I see this obligating local
6 government that they cannot escape, at least for the DA
7 and the sheriff.

8 MS. BARICH: Commission staff's stance on that is
9 still that the -- that by eliminating -- by creating
10 this need to terminate their duty to register, they have
11 the -- the legislature has eliminated a crime with
12 respect to the people who successfully -- who
13 successfully terminated their duty to register.

14 MEMBER ADAMS: And, again, I understand that. But
15 in order to eliminate their duty to register, there's an
16 obligation on -- on the part of local agencies to do
17 something that is costing them.

18 So, again, I can't get through all of the logic on
19 this. But thank you.

20 CHAIRPERSON MILLER: Ms. Shelton, yes. Please go
21 ahead.

22 MS. SHELTON: I don't know if this will help,
23 Mr. Adams, or not. But on the *County of San Diego* case,
24 so that was the youth offender parole hearing. And
25 that -- those statutes themselves and the -- by

1 operation of law, the Franklin proceedings that they had
2 themselves did not change the penalties. Their
3 sentences were not changed. And the Court agreed with
4 that.

5 But you have to look at this overall. And even
6 though this is an administrative process, ultimately the
7 effect of this was to reduce their sentence and grant
8 them parole, early parole. So that it -- you are not
9 just looking at the statute themselves. You have to
10 look at the effect of the whole thing. And here, we
11 have looked at the effect of the whole thing. And so
12 for them, it does take away and eliminate the crime of
13 failing to register because it's been terminated.

14 And that's the only point.

15 CHAIRPERSON MILLER: I mean, that's what I find
16 compelling is that -- is the point you just made, that
17 the change is to terminate the lifetime enrollment and
18 then you eliminate the crime. I mean, I do think that
19 is where I disagree that it's a higher level of service.

20 But Ms. Holman, did you have a question here as
21 well?

22 MEMBER HOLMAN: I think it was -- I think it was
23 answered.

24 But my -- I was just trying to figure out, like
25 sort of the -- two questions. One, go to the higher

1 level of service and elimination of the crime.

2 I mean, I know this is San Diego and LA is the one
3 that asked for it. But didn't Mr. Ford, I believe, say,
4 like, it was asked for, to try to reduce criminal
5 nonreporting and the burden? Like, to focus on, like,
6 the more egregious criminal nonreporting?

7 And then the second question was, it seemed like
8 most of the costs that were described is incurred were
9 associated with the enactment of a new law and confusion
10 of the court, and not necessarily anything that was
11 mandated by the law. And I was hoping they could speak
12 to that.

13 CHAIRPERSON MILLER: Yeah. I mean, I think if we
14 just want to cover that one more time, that would be
15 great.

16 And just to be clear, you want the -- our team, the
17 Commission on State Mandates team, to speak to that, or
18 the LA County?

19 MEMBER HOLMAN: I was -- I was wondering about LA
20 County but I would happy to hear from --

21 CHAIRPERSON MILLER: Okay. Why don't we go ahead
22 and have LA County go ahead and answer that briefly.
23 And then we will turn it back to Ms. Barich and Ms.
24 Shelton. I don't know who for LA County wants to answer
25 that. And you are muted.

1 MS. MUNOZ: Okay. Yes. So the question is, are
2 there activities imposed on these agencies, the DA's
3 Office, and the law enforcement from the passage of this
4 384? Is it just -- does 384 actually create a new
5 program that imposes state-mandated activities? Is that
6 the question?

7 MEMBER HOLMAN: When Mr. Ford was talking about the
8 costs that were -- that was the huge burden that they
9 were experiencing, it sounded more like as a result of
10 the confusion associated with the new law, rather than
11 the costs of the program that was mandated by the State.

12 MS. MUNOZ: Okay. So yeah, and that was with
13 regard to the public defender's role.

14 Is there any -- do you have any disputes as to
15 whether there were costs mandated on the DAs or law
16 enforcement by this statute?

17 MEMBER HOLMAN: You mean questions?

18 MS. MUNOZ: Or I guess I just want to be sure. Is
19 it that you would like us to speak about the public
20 defender's role or --

21 MEMBER HOLMAN: Well, that was the main thing that
22 you spoke to in terms of, like, the significant cost. I
23 heard you saying was, the public defender's significant
24 costs associated with explaining to the court what the
25 role -- new change in law was, or to --

1 MS. MUNOZ: Okay.

2 MEMBER HOLMAN: And then as well, like, I was
3 trying to understand, like -- I thought he had -- he had
4 suggested that this was asked for to reduce costs. And
5 I was trying to understand that.

6 MS. MUNOZ: Okay. Sure. I will let Mr. Ford go
7 ahead and handle that then. Thank you, Ms. Holman.

8 MR. FORD: Thank you.

9 I would emphasize that it is true that adjusting to
10 the new law did include some, you know, basically -- on
11 the part on all the stakeholders, getting used to it and
12 learning how to do it.

13 But I -- in preparation for this -- for this
14 hearing, I spoke with current members of the Public
15 Defender's Office, who are still representing these
16 clients and filing petitions and conducting hearings.
17 And it wasn't only the initial confusion and everybody
18 kind of learning how the law operates, but the same
19 pressures from the entire system to give -- to
20 effectuate the legislature's intent. It's still the
21 case that courts will refer pro per petitioners to the
22 public defender. Law enforcement agencies will send all
23 of their registrants who they think might be eligible to
24 the Public Defender's Office. District attorneys who
25 receive a nonconforming pro per petition will refer that

1 person to the Public Defender's Office.

2 So, again, even though the law now has had some
3 time to sort of, like, you know, basically, like, become
4 part of the system, it remains the case that the public
5 defender is still sort of, like, the point person to
6 effectuate the legislature's intent.

7 And just, if -- if I might expand a little bit, I
8 think maybe it -- I think this might address the second
9 part of your question, which is that 290.01(h), the
10 penalty statute, that is being prosecuted in LA County
11 courts all the time. That -- that crime has not gone
12 anywhere. The district attorney, many city attorneys,
13 are filing prosecutions throughout this county and I'm
14 sure every -- every county in California.

15 The difference is, is that the people who are
16 eligible for the relief under the statute, the crime is
17 not being eliminated for them. What's happening is that
18 they are showing, by years of consistent registration,
19 that they are eligible for the relief that the
20 legislature intended for the purpose of opening up law
21 enforcement agency resources to focus, monitor, and
22 surveil those at high risk of reoffense, rather than
23 spending their time doing the paperwork for someone who
24 has registered since the 1960s faithfully.

25 This group of people who will be -- get -- who

1 actually earn relief under the statute, they would never
2 be prosecuted anyway, because they are the ones who
3 register all the time. If they didn't register all the
4 time, they would not get relief. So there is a gap
5 between this idea that you no longer are subject to the
6 registration scheme and that, therefore, eliminates a
7 crime. That crime is being prosecuted constantly in LA
8 County, for those who fail to register.

9 All that's happened is that the County actors here
10 have affected the legislature's intent so that those
11 people who the legislature has determined do not need to
12 register would no longer have that regulatory
13 obligation. It is not that the crime is eliminated.
14 It's that they have been shown to the people who -- for
15 whom the crime was never applicable anyway, because they
16 always register and they all -- and they do not
17 re-affect.

18 CHAIRPERSON MILLER: And I think the distinction
19 here -- and I am going to, kind of, call the question in
20 just a minute.

21 I would say two things:

22 One, it is very difficult for commissioners to
23 understand intent, so that is just a big distinction
24 here.

25 And then, two, this is -- we're creating a tiered

1 system, like in other states. So it's -- it's -- we
2 used to have everyone register for life. And then if
3 they moved or failed to reregister, then it resulted in
4 a misdemeanor or a felony. And so I do think the
5 potential for the crime, that is for the registration,
6 is what our Commission is saying has been eliminated.

7 But with that, any other questions for board
8 members? Any comments for Ms. Barich or Ms. Shelton
9 that you would like to add?

10 (No response.)

11 CHAIRPERSON MILLER: No? Okay.

12 MS. MUNOZ: May I just emphasize one last thing?

13 CHAIRPERSON MILLER: Very, very, very briefly,
14 yeah.

15 MS. MUNOZ: Okay. And that is just to, again,
16 distinguish that -- between the youth offender parole
17 decision, which involved the changing of a penalty,
18 that's not what we're dealing with here. There's a --
19 there's a -- the staff is urging that this be deemed
20 elimination of a crime.

21 And also, that in that case, it involved an
22 automatic termination of parole or early parole,
23 whereas, here, there's nothing automatic. There is a
24 petition process. And so I think those are two
25 distinctions that I think are important to highlight.

1 CHAIRPERSON MILLER: Great. Thank you very much.
2 So I think we have a couple options here. We are a
3 small board.

4 I'm happy to move it if there's a second. And I
5 would move the staff's recommendation.

6 Is there a second?

7 MEMBER WALKER: Second.

8 CHAIRPERSON MILLER: Great. So I think we have a
9 motion and a second. I know that there's some
10 hesitation here.

11 And another option -- Ms. Shelton, I'm going to
12 turn to you here. We can obviously -- we have a motion
13 and a second so we will dispense with this. And then
14 after we take the role, I think we will -- we will kind
15 of come back to you for some guidance.

16 So the staff recommendation has been moved and
17 seconded.

18 Making sure there's no additional public comment.
19 Anyone wishing to comment for any reason?

20 (No response.)

21 CHAIRPERSON MILLER: Seeing none, Ms. Halsey, if
22 you could please take the roll on the staff
23 recommendation.

24 MS. HALSEY: Sure. I was just checking for comment
25 and I see none.

1 Mr. Adams.

2 MEMBER ADAMS: No.

3 MS. HALSEY: Ms. Evans.

4 (No response.)

5 MS. HALSEY: Ms. Holman.

6 MEMBER HOLMAN: Aye.

7 MS. HALSEY: Ms. Miller.

8 CHAIRPERSON MILLER: Aye.

9 MS. HALSEY: Ms. Olsen.

10 MEMBER OLSEN: No.

11 MS. HALSEY: Mr. Walker.

12 MEMBER WALKER: Aye.

13 CHAIRPERSON MILLER: So the staff recommendation,
14 it carries 3 to 2.

15 I do think what I would -- I would encourage, just
16 because there were some outstanding questions,
17 Ms. Shelton, if it's okay with you, especially to the
18 questions that Mr. Adams and Ms. Olsen were asking, at
19 our next meeting, I think just a little bit of
20 supplemental information about the -- the questions
21 around, you know, what -- what is a new crime and what
22 crime was eliminated, I think will be really helpful
23 just so we have full information for all the Commission
24 members, if that's okay with you.

25 MS. SHELTON: Sure.

1 CHAIRPERSON MILLER: Great.

2 And then if there are any other requests from any
3 other board members, just so we have some additional
4 background, just so I think we can provide a little more
5 clarity in that regard, for our Commission members.

6 Anything else the Commission members would like to
7 see ahead of the next meeting?

8 (No response.)

9 CHAIRPERSON MILLER: Seeing none, thank you for
10 that. Thank you to LA County. Sincerely appreciate the
11 robust debate and you being here and the compelling
12 arguments you made.

13 Next we will turn to Item 6.

14 MS. HALSEY: And Item 6 is, once again, Commission
15 Counsel Anna Barich, and she will present a proposed
16 decision on Resentencing to Remove Sentencing
17 Enhancements, 22-TC-02.

18 At this time, we invite the parties and witnesses
19 for Item 6 to turn on their video and unmute their
20 microphones.

21 CHAIRPERSON MILLER: Welcome back, Ms. Barich.

22 MS. BARICH: Seems like I was just here.

23 All right then. Good morning, everyone. This --

24 CHAIRPERSON MILLER: So I'm going to -- oh, my
25 goodness. You poor thing. I can't imagine how

1 frustrating this is for you.

2 I'm just going to make sure our court reporter can
3 hear you. You're very slight.

4 THE COURT REPORTER: I can. I think when she first
5 starts talking, the first five seconds are quiet, and
6 then it just seems to fix itself.

7 CHAIRPERSON MILLER: Oh, good. For me, it only
8 gets, like, 70 percent better, but great. If you -- I
9 will just wait and ask you -- are all other
10 commissioners able to hear Ms. Barich?

11 (No response.)

12 CHAIRPERSON MILLER: Great. Okay. Go ahead, Ms.
13 Barich, then.

14 MS. BARICH: I must speak from the diaphragm.

15 Good morning, everyone. This test claim involves
16 two newly added Penal Code sections that gave
17 retroactive effect to two prior laws that eliminated
18 certain sentence enhancements. The test claim statute
19 requires courts to resentence people whose sentences
20 included the now invalid sentence enhancements by --
21 (Zoom malfunction) --

22 THE COURT REPORTER: So Ms. Barich, your audio is
23 breaking up now. It's not just quiet, but it is
24 breaking up. So --

25 MS. BARICH: I'm getting another unstable

1 connection, so I will stop my video.

2 THE COURT REPORTER: If you want to back up a
3 little bit. "The test claim statute requires courts to
4 resentence people...." Start from there, please.

5 MS. BARICH: Yes. I can start from there.

6 The test claim statute requires courts to
7 resentence people whose sentences included the now
8 invalid sentence enhancements by set deadlines. Staff
9 finds that the test claim statute imposes state-mandated
10 programs on county correctional administrators, county
11 public defenders, and district attorneys.

12 However, staff cannot find that there are costs
13 mandated by the State, because the test claim statute
14 changes the penalty for a crime pursuant to Government
15 Code section 17556(g). The test claim statute's purpose
16 is to reduce the sentences of currently incarcerated
17 people, clearly changing the penalty for their crimes.

18 Mandated activities relate directly to a crime or
19 infraction when they play an indispensable role in the
20 scheme the legislature used to change the penalty for a
21 crime. The mandated activities are all indispensable to
22 the scheme the local agency created for removing the
23 invalid sentence enhancements and resentencing people.
24 The test claim statute, therefore, reduces the penalty
25 for a crime, and the mandated activities relate directly

1 to the crime.

2 Accordingly, staff recommends that the Commission
3 adopt the proposed decision to deny this test claim and
4 authorize staff to make any technical, nonsubstantive
5 changes following the hearing.

6 Thank you.

7 CHAIRPERSON MILLER: Thank you very much.

8 The parties and witnesses, if you could please
9 state your name for the record.

10 MS. HALSEY: I believe only Finance is appearing on
11 this item.

12 CHAIRPERSON MILLER: Great.

13 Mr. Hill, do you have any comments?

14 MR. HILL: Chris Hill, Department of Finance.

15 Department of Finance concurs with the Commission
16 staff's recommendation.

17 CHAIRPERSON MILLER: Great.

18 Is there any public comment on this item?

19 (No response.)

20 CHAIRPERSON MILLER: Seeing none, any questions
21 from commissioners?

22 (No response.)

23 CHAIRPERSON MILLER: Yes, Mr. Adams.

24 MEMBER ADAMS: Yeah. I have similar concerns with
25 our previous item.

1 Again, this is requiring the local government to do
2 things. It's upping their costs. It's not forever. It
3 is just for these resentenced folks. And, again, we're
4 talking about penalties versus enhancements, and this
5 did not change their penalty at all, but it changed an
6 enhancement. So, again, I'm having a tough time
7 supporting this as written.

8 CHAIRPERSON MILLER: Ms. Shelton?

9 MS. SHELTON: Actually, it does change their
10 penalty. The test -- the statute itself says that after
11 the recall and the resentence, it has to result in a
12 reduced sentence. So it is directly attacking and
13 reducing their sentence and changing the penalty for a
14 crime.

15 MS. HALSEY: And, actually, distinguished from the
16 prior matter that we just heard, this matter is very
17 analogous to youth -- to the youth offender parole
18 hearings, which just was resolved in the courts, which
19 is, I believe, why we are not having testimony from the
20 claimants on this particular matter.

21 CHAIRPERSON MILLER: Any other comments?

22 (No response.)

23 CHAIRPERSON MILLER: Mr. Adams?

24 MEMBER ADAMS: No. I'm good.

25 CHAIRPERSON MILLER: Okay.

1 Just making sure there's no additional public
2 comment.

3 (No response.)

4 CHAIRPERSON MILLER: Seeing none, what is the --

5 MEMBER OLSEN: I will move adoption of the staff
6 recommendation.

7 CHAIRPERSON MILLER: All right. Moved by
8 Ms. Olsen.

9 I will second.

10 May we please take the roll, Ms. Halsey.

11 MS. HALSEY: Sure.

12 Mr. Adams.

13 MEMBER ADAMS: Aye.

14 MS. HALSEY: Ms. Evans.

15 (No response.)

16 MS. HALSEY: Ms. Holman.

17 MEMBER HOLMAN: Aye.

18 MS. HALSEY: Ms. Miller.

19 CHAIRPERSON MILLER: Aye.

20 MS. HALSEY: Ms. Olsen.

21 MEMBER OLSEN: Aye.

22 MS. HALSEY: Mr. Walker.

23 MEMBER WALKER: Aye.

24 CHAIRPERSON MILLER: That motion carries.

25 We would now -- sorry. Go ahead, Ms. Halsey.

1 MS. HALSEY: We will now ask presenters for Item 7
2 to please turn off their video and mute their
3 microphones.

4 Item 8 is reserved for county applications for a
5 finding of significant financial distress, or SB 1033
6 applications. No SB 1033 applications have been filed.

7 Next, Program Analyst Jill Magee will please turn
8 on her video.

9 MS. SHELTON: Heather, Item 7 needs to be called,
10 please.

11 MS. HALSEY: Oh, sorry. I jumped ahead.

12 CHAIRPERSON MILLER: Sorry. No worries. I was
13 about to say the same thing, Ms. Shelton. Thank you.

14 MS. HALSEY: Oh, you know what? That was
15 accidental. But maybe -- I do know the court reporter
16 is going to need a break in about ten minutes. I don't
17 know if we should do the reports and then take the break
18 and then hear Item 7 last. Just an idea.

19 CHAIRPERSON MILLER: Sure. Is that okay with
20 everyone?

21 MS. HALSEY: For the flow -- for the flow of the
22 meeting, I think it might help.

23 CHAIRPERSON MILLER: Sure. Is that okay with
24 everyone? I apologize.

25 Mr. Burhenn, we're going to go ahead and ask you to

1 turn off your video. We are going to do the last
2 pieces, the reporting pieces, of the agenda and then we
3 will come back to Item 7. I apologize for the
4 inconvenience.

5 MR. BURHENN: That's fine, Chair Miller. I would
6 say, I have about a 38-second statement to make, but I'm
7 happy to go --

8 CHAIRPERSON MILLER: Oh, really? Okay.

9 MS. HALSEY: In that case --

10 CHAIRPERSON MILLER: If that's the case, why don't
11 we go to Item 7, then, just so Mr. Burhenn can have his
12 afternoon.

13 MS. HALSEY: Sure. I thought there might be
14 lengthy testimony on it, but if that is the case --

15 MR. BURHENN: No, ma'am.

16 MS. HALSEY: -- we'll go forward.

17 Okay. Then we now ask the -- next is Item 7.

18 Chief Legal Counsel Camille Shelton will please turn on
19 her video and unmute her microphone and present a
20 proposed decision and parameters and guidelines on Order
21 Number R8-2009-0030, adopted by the Santa Ana Regional
22 Water Quality Control Board, 09-TC-03.

23 The water boards have informed the Commission that
24 they do not intend to testify on this matter. And at
25 this time, we invite the parties and witnesses for

1 Item 7 to please turn on their video and unmute their
2 microphones.

3 CHAIRPERSON MILLER: Great. Thank you.

4 Go ahead, Ms. Shelton. Thank you. Sorry.

5 MS. SHELTON: Yes. Real quickly. That's okay.

6 These parameters and guidelines address
7 state-mandated activities arising from a stormwater
8 permit adopted by the Santa Ana Regional Water Control
9 Board on May 22nd, 2009. The proposed parameters and
10 guidelines identify the activities that the Commission
11 already approved in the test claim decision, with a
12 period of reimbursement from June 1st, 2009, through
13 December 31st, 2017.

14 The proposed parameters and guidelines further
15 provide that any funds used that are not the claimant's
16 proceeds of taxes shall be identified and deducted from
17 the reimbursement claim as offsetting revenues.

18 Staff recommends that the staff adopt the proposed
19 decision and parameters and guidelines, and authorize
20 staff to make any technical, nonsubstantive changes to
21 the proposed decision following the hearing.

22 CHAIRPERSON MILLER: Thank you very much.

23 Mr. Burhenn.

24 MR. BURHENN: Thank you, Chair Miller.

25 I have only one, very brief comment to make on

1 behalf of claimants. Again, those claimants are
2 identified in the parameters and guidelines. The Ps and
3 Gs include, in sections I and VII, the requirement that
4 reimbursement is disallowed for funds that, quote, "are
5 not the claimant's proceeds of taxes."

6 As the Commission is aware, there has been
7 litigation regarding an incorrect reduction claim
8 involving a Los Angeles County stormwater permit test
9 claim and whether it is appropriate, under the
10 California Constitution, to prohibit a subvention of
11 funds that may not be subject to a claimant's
12 appropriation limit. That litigation asserted that such
13 a limitation is contrary to the language of the
14 Constitution and the intent of the voters in adopting
15 Proposition 4.

16 I am not aware, at this stage, whether a similar
17 issue exists for claimants in this test claim. But in
18 light of these issues, I respectfully request deletion
19 of the phrase, quote, "and any other funds that are not
20 the claimant's proceeds of taxes," closed quote, from
21 sections I and VII of the Ps and Gs; and a reference to,
22 quote, "local proceeds of taxes," closed quote, in
23 section II. The other limitations on reimbursable
24 funding services are, of course, appropriate.

25 Thank you.

1 CHAIRPERSON MILLER: Thank you.

2 Ms. Shelton, I'm going to have you comment on that.
3 And then I will turn it to public comment.

4 MS. SHELTON: Yes. That matter that Mr. Burhenn
5 was just raising has gone to court, and LA County
6 Superior Court issued a lengthy decision agreeing with
7 the Commission's decision.

8 The whole point of reimbursement under Article XIII
9 B, section 6, is to reimburse local agencies for the
10 expenditure of their proceeds of taxes that are subject
11 to the tax and spend limitations of the constitution.

12 To the extent local government receives fees,
13 assessments, or funds from other local jurisdiction --
14 jurisdictions that are not their proceeds of taxes, have
15 not been levied by that particular claimant, they are
16 not entitled to reimbursement.

17 I would not recommend making that change. In fact,
18 it's a boilerplate language that we now contain in all
19 parameters and guidelines.

20 CHAIRPERSON MILLER: Thank you for that.

21 Are there any -- Mr. Hill for the Department of
22 Finance.

23 MS. FEREBEE: Actually, I think it's me. Hi.

24 CHAIRPERSON MILLER: Oh, I'm sorry, Ms. Ferebee.

25 MS. FEREBEE: That's okay.

1 CHAIRPERSON MILLER: Thank you.

2 MS. FEREBEE: Yes. Donna Ferebee, Department of
3 Finance.

4 Finance believes that the proposed Ps and Gs are
5 consistent with the test claim, and we would also object
6 to the changes that have been suggested to be made to
7 the boilerplate language.

8 Thank you.

9 CHAIRPERSON MILLER: Thank you.

10 Any public comment?

11 (No response.)

12 CHAIRPERSON MILLER: Seeing none, again, please
13 raise your Zoom hand if you would like to make a public
14 comment for any reason.

15 Seeing none, I will turn it to the commissioners.

16 Any questions?

17 MEMBER OLSEN: I move the staff recommendation.

18 CHAIRPERSON MILLER: Thank you, Ms. Olsen.

19 MEMBER ADAMS: I would second.

20 CHAIRPERSON MILLER: Great. Moved by Ms. Olsen;
21 seconded by Mr. Adams.

22 May we have a roll, please.

23 MS. HALSEY: Mr. Adams.

24 MEMBER ADAMS: Aye.

25 MS. HALSEY: Ms. Evans.

1 (No response.)

2 MS. HALSEY: Ms. Holman.

3 MEMBER HOLMAN: Aye.

4 MS. HALSEY: Ms. Miller.

5 CHAIRPERSON MILLER: Aye.

6 MS. HALSEY: Ms. Olsen.

7 MEMBER OLSEN: (No response.)

8 THE COURT REPORTER: Ms. Olsen, you are on mute.

9 MEMBER OLSEN: Sorry. Aye.

10 MS. HALSEY: Mr. Walker.

11 MEMBER WALKER: Aye.

12 CHAIRPERSON MILLER: Great. That motion carries.

13 We -- so we'll have -- I just want to reiterate.

14 I'm hoping that the court reporter can stay. Perhaps we
15 just have probably five more minutes, maybe seven.

16 THE COURT REPORTER: Yeah. I was thinking if the
17 remaining reports are of average length, as they usually
18 are, I'm fine for another 15 minutes, and I'll just take
19 my break during the closed session.

20 CHAIRPERSON MILLER: Great. Thank you. And we do
21 not have a closed session today. I appreciate that.

22 MS. HALSEY: We do have a closed session.

23 CHAIRPERSON MILLER: We do have a closed session.

24 Sorry.

25 MS. HALSEY: That's okay.

1 CHAIRPERSON MILLER: We're all going to -- we're
2 all going to get it together today. I apologize for
3 that.

4 Okay. So we -- Ms. Halsey let us know that we do
5 not have any SB 1033 applications.

6 And so, Ms. Halsey, if you want to turn it over to
7 Ms. Magee again, please.

8 MS. HALSEY: Sure.

9 Program Analyst Jill Magee will please turn on her
10 video and microphone and present Item 9, the Legislative
11 Update.

12 MS. MAGEE: Good morning.

13 The following are the legislative updates since the
14 last time the Commission met:

15 September 14th, 2023, was the last day for the
16 legislature to pass bills, and the Governor has until
17 October 14th, 2023, to either sign or veto legislation.

18 First, AB 961, State mandates: claims. This
19 substantive spot bill would have changed the minimum
20 mandate reimbursement claim amount from \$1,000 to \$800,
21 but never received a committee hearing before the house
22 of origin deadline.

23 Second, SB 544, Bagley-Keene Open Meeting Act:
24 Teleconferencing, was amended after the legislative
25 report issued on September 8th, 2023, to define the

1 terms "remote location" and "teleconference," and create
2 alternative provisions for public meetings beginning
3 January 1st, 2024. This bill was enrolled on
4 September 15th, 2023, and is awaiting the Governor's
5 action.

6 Specifically, the bill was amended to allow
7 meetings by teleconference, as newly defined, and would
8 require at least one member of the state body to be
9 physically present at each teleconference location,
10 defined for these purposes as a physical location that
11 is accessible to the public and from which members of
12 the public may participate in the meeting.

13 The bill would, under specified circumstances,
14 authorize a member of the state body to participate from
15 a remote location, which would not be required to be
16 accessible to the public and which the bill would
17 prohibit the notice and agenda from disclosing.

18 Specifically, the bill would authorize a member's remote
19 participation if the other members who are physically
20 present at the same teleconference location constitute a
21 majority of the state body.

22 The bill would also authorize a member's remote
23 participation if the member has a need related to a
24 disability and notifies the state body as specified.
25 Under the provisions of the bill, that member would be

1 counted toward the majority of members required to be
2 physically present at the same teleconference location.

3 The bill would require a member who participates
4 from a remote location to disclose whether any other
5 individuals 18 years of age or older are present in the
6 room at the remote location with the member, and the
7 general nature of the member's relationship with those
8 individuals.

9 This bill would require the members of the state
10 body to visibly appear on camera during the open portion
11 of a meeting that is publicly accessible via the
12 internet or other online platform, unless the appearance
13 would be technologically impracticable as specified.

14 The bill would require a member who does not appear
15 on camera, due to challenges with internet connectivity,
16 to announce the reason for their nonappearance when they
17 turn off their camera.

18 This bill would also require the state body to
19 provide a means by which the public may remotely hear
20 audio of the meeting, remotely observe the meeting,
21 remotely address the state body, or attend the meeting
22 by providing, on the posted agenda, a
23 teleconference/telephone number, an internet website, or
24 other online platform, and a physical address for each
25 teleconference location.

1 The bill would require the telephonic or online
2 means provided to the public to access the meeting to be
3 equivalent to the telephonic or online means provided to
4 a member of the state body participating remotely.

5 The bill would require any notice required by the
6 act to specify the applicable teleconference/telephone
7 number, internet website, or other online platform, and
8 physical address of each teleconference location, as
9 well as any other information indicating how the public
10 can access the meeting remotely and in person.

11 If the state body allows members of the public to
12 observe and address the meeting telephonically or
13 otherwise electronically, the bill would require the
14 state body to implement and advertise, as prescribed, a
15 procedure for receiving and swiftly resolving requests
16 for reasonable modification or accommodation from
17 individuals with disabilities as specified.

18 The bill would impose requirements consistent with
19 the above-described existing law provisions, including a
20 requirement that the agenda provide an opportunities --
21 an opportunity for members of the public to address the
22 state body directly as specified.

23 The bill would entitle members of the public to
24 exercise their right to directly address the state body
25 during the teleconferenced meeting without being

1 required to submit public comments before the meeting or
2 in writing.

3 This bill would also remove the roll call vote
4 requirement and the requirement for a quorum in
5 attendance at the primary physical meeting location.
6 The bill instead would require at least one staff member
7 of the state body to be present at the primary physical
8 meeting location.

9 These provisions would sunset on January 1st, 2026.

10 Third, AB 143, State government, did not pass by
11 the last day of the session.

12 And, fourth, SB 143, State government, was signed
13 by the Governor and chaptered on September 13th, 2023.
14 Among other things, this budget trailer bill reinstated
15 the prior authorization, subject to specified notice and
16 accessibility requirements, for a state body to hold
17 public meetings through teleconferencing, such as via
18 Zoom, and suspended certain requirements of the act, and
19 would sunset on December 31st, 2023.

20 Staff will continue to monitor for the Governor's
21 actions.

22 Thank you.

23 CHAIRPERSON MILLER: Great. Thank you very much,
24 Ms. Magee. Is that the end of your report?

25 MS. MAGEE: (Nods head.)

1 CHAIRPERSON MILLER: Great. Thank you very much.
2 Ms. Halsey, we just lost you, so I'm going to go
3 ahead and turn to Ms. Shelton now.

4 Please, for the legal -- the Chief Legal Counsel
5 Report, please.

6 MS. SHELTON: Yes. Real quickly, we have no new
7 filings, and our litigation calendar is currently empty.

8 So we do just have one recent decision, which is
9 the decision that was discussed in Item 7. It was a
10 decision by the Los Angeles County Superior Court
11 affirming the Commission's decision on incorrect
12 reduction claims dealing with a municipal stormwater
13 case. There, the claimants challenged the Controller's
14 finding that the use of Proposition A and Proposition C,
15 local return program funds, for the program are not the
16 claimant's proceeds of taxes and were required to be
17 identified as offsetting revenues and are not eligible
18 for reimbursement.

19 The trial court affirmed the Commission's decision,
20 fully agreeing with the findings of the Commission, and
21 denied the petition for writ of mandate.

22 And that's all I have got.

23 CHAIRPERSON MILLER: Great. Thank you very much.

24 We have just a couple more for the court reporter,
25 for Kathryn. We're going to go to the Executive

1 Director Report briefly. And then we will move to the
2 2024 Hearing Calendar before recessing into closed
3 session, just so you know what's next.

4 Ms. Halsey, on the Executive Director Report,
5 please.

6 MS. HALSEY: Hi. Yes.

7 Since our last Commission meeting, our former
8 Assistant Executive Director, Heidi Palchik, has left
9 the Commission for a promotion at the Office of
10 Emergency Services.

11 And we have hired two new staff members in the
12 Commission. Joseph Ortiz, please turn on your camera
13 and unmute your microphone. Joe is our Information
14 Technology Specialist I. He graduated Magna Cum Laude
15 from Arizona State University, earning a BA in
16 Interdisciplinary Studies a minor in IT. And in
17 addition to his degree, he's obtained several IT
18 certifications.

19 Mr. Ortiz has worked in IT for state and local
20 government agencies since 2017, including the State's
21 Office of Systems Integration, Nevada County, and, most
22 recently, the City of Roseville.

23 CHAIRPERSON MILLER: Congratulations. We're
24 thrilled to have you join us.

25 MS. HALSEY: Thank you. And he just -- he just

1 started with us a little over a month ago, and we are
2 delighted to have him.

3 CHAIRPERSON MILLER: Great. Thank you very much.
4 Welcome.

5 And I just want to thank Ms. Palchik for her
6 service to Commission. Wish her well at OES. And
7 please, please, please -- I don't imagine she's on
8 camera, but it would be wonderful just to get to honor
9 her and acknowledge her service for all these years at
10 the Commission. So thank you. And all the very best to
11 Ms. Palchik.

12 Anything else, Ms. Halsey?

13 MS. HALSEY: Also, just to announce, our new
14 Assistant Executive Director, Administrative Services,
15 Cristina Bardasu, who will begin working with the
16 Commission on Monday, so everyone will get an
17 opportunity to meet her in October.

18 CHAIRPERSON MILLER: Great. Thank you very much.
19 That's great news. And, again, all the best to
20 Ms. Palchik.

21 MS. HALSEY: Okay. I do have an action item on --

22 CHAIRPERSON MILLER: Yes.

23 MS. HALSEY: So we will get to that. And this is
24 the proposed 2024 Hearing Calendar.

25 The Commission meetings are usually held on the

1 fourth Fridays of odd months, unless they conflict with
2 a holiday. In 2024, there are no holiday conflicts with
3 the Commission's regular hearing dates, though the May
4 hearing is proposed for the Friday of Memorial Day
5 weekend, as is usual. Therefore, all 2024 regular
6 meetings are proposed for the fourth Fridays of odd
7 months. In addition, tentative hearing dates are
8 proposed for April 26, 2024, and October 25th, 2024.

9 Staff recommends that the Commission adopt the
10 proposed 2024 Hearing Calendar.

11 CHAIRPERSON MILLER: Great. Thank you.

12 Any questions on the calendar?

13 MEMBER OLSEN: So moved.

14 MEMBER LEE: I would second.

15 CHAIRPERSON MILLER: Moved by Ms. Olsen; seconded
16 by Mr. Adams.

17 Any public comment on the calendar?

18 (No response.)

19 CHAIRPERSON MILLER: Seeing none, may we take a
20 roll call on the calendar, please.

21 MS. HALSEY: Mr. Adams.

22 MEMBER ADAMS: Aye.

23 MS. HALSEY: Ms. Holman.

24 MEMBER HOLMAN: Aye.

25 MS. HALSEY: Ms. Miller.

1 CHAIRPERSON MILLER: Aye.

2 MS. HALSEY: Ms. Olsen.

3 MEMBER OLSEN: Aye.

4 MS. HALSEY: Mr. Walker.

5 MEMBER WALKER: Aye.

6 CHAIRPERSON MILLER: Great. Thank you. The 2024
7 calendar is approved.

8 And now we will move into closed executive session,
9 pursuant to Government Code 11126(e), to confer with and
10 receive advice from legal counsel for consideration and
11 action, as necessary and appropriate, upon the pending
12 litigation listed on the published notice and agenda;
13 and to confer with and receive advice from legal counsel
14 regarding potential litigation.

15 The Commission will also confer on personnel
16 matters, pursuant to Government Code section
17 11126(a)(1).

18 And we will reconvene in open session on this link
19 in approximately 15 minutes or less.

20 So please be ready to come back.

21 And then if the commissioners are also, like I,
22 having a hard time finding the closed session Zoom
23 hearing, it was sent by Ms. Halsey.

24 MS. HALSEY: And I just -- and I just resent it to
25 everybody.

1 CHAIRPERSON MILLER: And she just resent it. So if
2 anyone is having a difficult time, like I was, please
3 just refer to the email that Ms. Halsey just sent.

4 And with that, we will adjourn into closed session
5 and be back in less than 15 minutes.

6 Thank you.

7 (Closed session was held from
8 11:40 a.m. to 11:50 a.m.)

9 CHAIRPERSON MILLER: Great. Thank you, everyone,
10 and thank you for your patience this morning.

11 The Commission met in closed session -- closed
12 executive session pursuant to Government Code section
13 11126(e) to confer with and receive advice from legal
14 counsel for consideration and action, as necessary and
15 appropriate, upon the pending litigation listed on the
16 published notice and agenda; and to confer with and
17 receive advice from legal counsel regarding potential
18 litigation.

19 The Commission also conferred on personnel matters
20 pursuant to Government Code section 11126(a)(1).

21 With huge gratitude for Ms. Palchik for her service
22 and, as always, the Commission on State Mandates team.

23 I do just want to acknowledge Ms. Barich, as this
24 was her first testifying, under challenging
25 technological circumstances, and you did a fantastic

1 job. So just grateful to have you on the team, and
2 thank you for sticking through those issues.

3 And with that, unless anyone has any further kudos,
4 I will entertain a motion to adjourn.

5 MEMBER OLSEN: So moved.

6 CHAIRPERSON MILLER: Moved by Ms. Olsen.

7 MEMBER WALKER: Second.

8 CHAIRPERSON MILLER: Seconded by Mr. Walker.

9 And I think we have to call the roll to adjourn
10 here.

11 MS. HALSEY: Sure.

12 CHAIRPERSON MILLER: Every board is different.
13 Thank you.

14 MS. HALSEY: Mr. Adams.

15 MEMBER ADAMS: Aye.

16 MS. HALSEY: Ms. Evans.

17 (No response.)

18 MS. HALSEY: Ms. Holman.

19 MEMBER HOLMAN: Aye.

20 MS. HALSEY: Ms. Miller.

21 CHAIRPERSON MILLER: Aye.

22 MS. HALSEY: Ms. Olsen.

23 MEMBER OLSEN: Aye.

24 MS. HALSEY: Mr. Walker.

25 MEMBER WALKER: Aye.

1 CHAIRPERSON MILLER: Great. Commission on State
2 Mandates is adjourned. Thank you, thank you, thank you,
3 again, everyone. Have a great weekend everyone. Take
4 care. Bye-bye.

5 (Proceedings concluded at 11:51 a.m.)

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CERTIFICATE OF REPORTER

I, KATHRYN S. SWANK, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings, heard via Zoom, were reported in shorthand by me, Kathryn S. Swank, a Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of September 2023.



KATHRYN S. SWANK, CSR
Certified Shorthand Reporter
License No. 13061

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