

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

September 26, 2008

- Present: Member Tom Sheehy, Chairperson
 Representative of the Director of the Department of Finance
 Member Francisco Lujano, Vice Chairperson
 Representative of the State Treasurer
 Member Richard Chivaro
 Representative of the State Controller
 Member Anne Schmidt
 Representative of the Director of the Office of Planning and Research
 Member J. Steven Worthley
 County Supervisor
 Member Sarah Olsen
 Public Member
- Absent: Member Paul Glaab
 City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 9:38 a.m.

APPROVAL OF MINUTES

Item 1 August 1, 2008

The August 1, 2008 hearing minutes were adopted by a vote of 5-0. Ms. Schmidt abstained.

PROPOSED CONSENT CALENDAR

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

A. PROPOSED PARAMETERS AND GUIDELINES

Item 7 *Reporting Improper Governmental Activities*, 02-TC-24
 Education Code Section 87164
 Statutes 2001, Chapter 416, Statutes 2002, Chapter 81
 Santa Monica Community College District, Claimant

B. STATEWIDE COST ESTIMATES

- Item 9 *Missing Children Reports, (01-TC-09)*
Education Code Sections 38139, Subdivisions (a) and (b) and 49068.6, Subdivisions (b) and (d), Statutes of 1986, Chapter 249, Statutes of 1999, Chapter 832
San Jose Unified School District, Claimant
- Item 10 *Charter Schools III, (99-TC-14)*
Education Code Sections 47605, subdivision (b), and 47635, Statutes 1998, Chapter 34, Statutes 1999, Chapter 78, California Department of Education Memo (May 22, 2000)
Western Placer Unified School District and Fenton Ave. Charter School, Claimants
- Item 11 *Pupil Safety Notices, (02-TC-13)*
Education Code Sections 32242, 32243, 32245, 46010.1, 48904, 48904.3, 48987, Welfare and Institutions Code Section 18285, Statutes 1983, Chapter 498 (SB 813), Statutes 1984, Chapter 482 (AB 3757), Statutes 1984, Chapter 948, (AB 2549), Statutes 1986, Chapter 196 (AB 1541), Statutes 1986, Chapter 332 (AB 2824), Statutes 1992, Chapter 445 (AB 3257), Statutes 1992, Chapter 1317 AB 1659), Statutes 1993, Chapter 589 (AB 2211), Statutes 1994, Chapter 1172 (AB 2971), Statutes 1996, Chapter 1023 (SB 1497), Statutes 2002, Chapter 492 (AB 1859), California Code of Regulations, Title 5, Section 11523
San Jose Unified School District, Claimant

Member Worthley made a motion to adopt items 7, 9, 10 and 11 on the consent calendar. With a second by Member Olsen, the motion carried by a vote of 6-0.

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

- Item 2 Staff Report (if necessary)

There were no appeals to consider.

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

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

A. TEST CLAIMS

- Item 3 *Disabled Student Programs and Services, (02-TC-22)*
Education Code Sections 67300, 67301, 67302, 67310, 67311, 67312, and 84850, Statutes 1977, Chapter 36 (AB 447), Statutes 1978, Chapter 1403 (AB 2670), Statutes 1979, Chapters 282 (AB 8) and 1035 (SB 186), Statutes 1981, Chapter 796 (SB 1053), Statutes 1982, Chapter 251 (AB 1729), Statutes 1983, Chapter 323 (AB 223), Statutes 1985, Chapter

903 (SB 1160), Statutes 1986, Chapter 248 (SB 2451), Statutes 1987, Chapters 829 (AB 746) and 998 (SB 252), Statutes 1990, Chapters 1066 (AB 2625) and 1206 (AB 3929), Statutes 1991, Chapter 626 (AB 1021) Statutes 1992, Chapter 1243 (AB 3090), Statutes 1995, Chapter 758 (AB 446), Statutes 1999, Chapter 379 (AB 422), Statutes 2001, Chapter 745 (SB 1191), and California Code of Regulations, Title 5, Sections 54100, 56000, 56002, 56004, 56005, 56006, 56008, 56010, 56020, 56022, 56026, 56027, 56028, 56029, 56030, 56032, 56034, 56036, 56038, 56040, 56042, 56044, 56046, 56048, 56050, 56052, 56054, 56060, 56062, 56064, 56066, 56068, 56070, 56072, 56074, 56076 (As Added or Amended by Register 76, No. 51, Register 77, Nos. 12 & 45, Register 79, No. 46, Register 83, No. 18, Register 88, No. 16, Register 91, No. 31, Register 92, No. 12, and Register 93, No. 6), Implementing Guidelines for Title 5 Regulations, *Disabled Student Programs and Services*, Issued by the Chancellor's Office, California Community Colleges, January 2, 1997
San Juan Unified School District, Claimant

Chief Legal Counsel Camille Shelton presented this item. She stated that this the Disabled Student Programs and Services (DSPS) test claim addresses the provisions of services which include academic adjustments and auxiliary aids, instructional materials in electronic format and accessible parking to disabled students within the California community colleges system.

Staff recommended that the Commission deny this test claim because community colleges are mandated by federal law, through the Rehabilitation Act of 1973 and the Americans with Disabilities Act, to perform these activities. Although some activities go beyond the requirements of federal law, they are not mandated by the state pursuant to the California Supreme Court's decision in *Kern High School District*, because community colleges perform those activities as a condition of receiving state funding.

Parties were represented as follows: Keith Petersen representing the claimant and Susan Geanacou representing the Department of Finance.

Mr. Petersen indicated that the test claim was filed to obtain reimbursement for the portion of activities that are not federally mandated. He requested the Commission to deny staff's position that because the DSPS program is voluntary it is not reimbursable. The issue is whether the colleges are practically compelled to take that money and to implement the program. He stated that the state currently provides approximately \$115 million in DSPS funding to colleges that provide both federally and state-mandated special education services. Mr. Petersen stated that staff is contending that the colleges can willingly give up that money if they do not want to participate in DSPS. He argues however, that to receive any of their money, colleges must implement the entire DSPS program. Mr. Petersen explained the history of how community colleges received DSPS funding and, and stated that they do not receive adequate money to implement the program. If they do not take the money and do not perform the state portion of the DSPS program, they are still compelled to perform the federal mandate, which was historically supported by state funding prior to the DSPS program.

Ms. Geanacou stated that Finance supports the final staff analysis. She also responded to Mr. Petersen's comments, stating that the only consequence of not complying with these requirements that are in excess of the federal mandate is that they will not receive the funding, and this is not practical compulsion under the *Kern High School District* case.

Mr. Petersen responded that the Commission has the authority to decide what is and is not practical compulsion

Member Worthley asked Mr. Petersen to cite, in the record, the difference between the amount of money paid to the colleges and the actual cost.

Mr. Petersen responded that claims for the actual costs have not yet been filed. Staff would determine at the parameters and guidelines phase which activities are federally driven and subtract those costs. The balance would be the cost. He added that staff has listed those services that appear to be state-driven.

Chairperson Sheehy asked Mr. Petersen if the claimant had figured those costs. Mr. Petersen stated that the claimant must only allege a threshold amount of \$200 in costs in order to file a test claim.

Ms. Shelton clarified that although parties are discussing practical compulsion, it is still a question of law and not a question of equity. She noted that under the *Kern* case, the program was voluntary and there was \$394 million at stake. And, the court ruled that in order for practical compulsion to be found, there must be certain and severe penalties for not complying, independent of the funding. In the matter before you today, if you take away the funding, colleges must still comply with federal law. The intent of the DSPS legislation is to pay for actual costs. The money can be used for salaries, benefits and professional development costs of DSPS certificated and classified personnel and for supplies and materials necessary for the operation of the DSPS program. It cannot be used for indirect costs for the building, lighting heating or legal or audit matters. It does however pay for one-time costs and ongoing costs to provide services to the student.

Mr. Petersen discerned the difference between the issues in the *Kern* case and the matter here, stating that in *Kern*, if the money goes away, the program also goes away. In contrast, under DSPS, the program does not go away. He also responded to Ms. Shelton's comment that certain indirect costs are not covered, stating that because they are not funded, colleges are losing 35 percent of their indirect cost rates because DSPS won't fund the costs.

Member Worthley asked Mr. Petersen if he was saying that because historically the state has reimbursed the districts for some of the federal requirement, that the state is mandated to continue doing that. In other words, if they just pulled all the money away for the federal portion, there would be no compensable claim against the state because the colleges are federally required to perform the services.

Mr. Petersen responded that it's possible. The state could withdraw its funding and local districts would be compelled to continue the federal activities.

Ms. Shelton also stated that under federal law, the state is not required to reimburse any of the community colleges for complying with the federal mandate.

Mr. Petersen responded by saying that, because of the funding structure by the state, the only way to get any significant funds to do any federal or state mandated services is to take on DSPS.

Member Olsen asked Mr. Petersen if he was contending that it's coercion because even if a college district decided to terminate the DSPS program, they would be compelled to do it because parents of the served students would go to court.

Mr. Petersen responded that they would not be compelled to do the state portion if they were not in the DSPS program. Ms. Olsen then asked where is the practical compulsion. Mr. Petersen responded that they still have to continue performing the federal mandate which has always been funded by the state.

Ms. Shelton added that it was funded by the state under the state's vocational rehabilitation program, and before enactment of DSPS, students were receiving overlapping services. Therefore, the Department of Rehabilitation and the Chancellor's Office s came to agreement that the colleges would perform the services and vocational rehabilitation would not. There was no funding in that agreement.

Member Olsen stated that she was trying to clarify the practical compulsion allegation and whether it was based on the parents of DSPS students going to court if a district did not comply with DSPS. Mr. Petersen clarified that the practical compulsion is that school districts still have to continue the federal mandate, which was previously funded by the state. If a district stops participating in the state DSPS program, there would be no funding for providing any service.

Chairperson Sheehy asked Mr. Petersen if he wished to discuss the next issue on instructional materials. Mr. Petersen stated that he would not, because the Commission must decide the threshold issue first.

Member Chivaro moved to adopt the staff recommendations. With a second by Member Lujano, the Commission adopted the staff recommendation to deny the test claim by a vote of 6-0.

B. PROPOSED STATEMENT OF DECISION

- Item 4 *Disabled Student Programs and Services, (02-TC-22)*
 See Item 3

Ms. Shelton also presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Disabled Student Programs and Services* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes.

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

Ms. Higashi noted that Items 5 and 6 were postponed at the request of the claimant.

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

PROPOSED PARAMENTERS AND GUIDELINES

- Item 8 *Integrated Waste Management Board, (00-TC-07)*
 Public Resources Code Sections 40148, 40196.3, 42920-42928, Public Contract Code Sections 12167 and 12167.1, Statutes 1999, Chapter 764, Statutes 1992, Chapter 1116, Manuals of the California Integrated Waste Management Board
 Santa Monica and South Lake Tahoe Community College Districts,
 Co-Claimants

Camille Shelton, Chief Legal Counsel, presented this item. Ms. Shelton explained that this item is on remand from the Sacramento County Superior Court on a judgment and writ. The *Integrated Waste Management Board* program requires community college districts to develop and adopt waste management plans to divert solid waste from landfills and to submit annual

reports to the Integrated Waste Management Board. The writ issued by the court requires the Commission to amend the parameters and guidelines for this program in two respects: It requires the Commission to amend the offsetting revenue section to require claimants to identify and offset from their reimbursement claims, all revenue generated as a result of implementing their waste plans, without regard to the limitations described in the Public Contract Code.

The second amendment requires that the Commission add an offsetting cost savings section to the parameters and guidelines to require claimants to identify and offset from their reimbursement claims cost savings realized as a result of implementing their plans, consistent with the limitations provided in the Public Contract Code.

Ms. Shelton continued that under the Public Contract Code provisions, community colleges are required to deposit all cost savings that result from implementing their waste plans in the Integrated Waste Management account. Upon appropriation by the Legislature, the funds may be expended by the Integrated Waste Management Board for the purpose of offsetting plan costs. Subject to Board approval, cost savings by a community college that do not exceed \$2,000 annually, are appropriated for expenditure by the community college for the purpose of offsetting their costs. Cost savings exceeding \$2,000 annually may be available for expenditure by the community college only when appropriated by the Legislature. The proposed amendments contain these changes required by the court.

Ms. Shelton added that the Integrated Waste Management Board is requesting that the Commission add more language to the offsetting cost-savings section to require community college districts to: (1) provide information with their reimbursement claims identifying all cost savings resulting from the plans, including costs savings that exceed \$2,000; and (2) to analyze categories of potential cost savings to determine what to include in their claims.

Staff finds that the Board's request for additional language goes beyond the scope of the court's judgment and writ. Therefore, staff recommends that the Commission deny the Board's request and adopt the proposed amendments to the parameters and guidelines as recommended by staff.

Parties were represented as follows: Keith Petersen, an interested party having represented the claimant many years ago; Elliot Block representing the California Integrated Waste Management Board, and Susan Geanacou representing the Department of Finance.

Mr. Block stated that he disagreed with the staff analysis. The Board argues that staff is viewing the court's decision more narrowly than is necessary. The reimbursement claims are difficult to review. The Board is requesting the language to provide additional guidance to help the claims be formulated in a way that they are actually reviewable and usable. He noted that the Board has a pending request to amend the parameters and guidelines to add these additional reporting requirements, and that the staff analysis suggests that the additional reporting requirements could be added prospectively, but not retroactively. He stated that if the parameters and guidelines could have been originally drafted to include this requirement, why can't the parameters and guidelines be amended now to include this guidance.

Chairperson Sheehy asked Mr. Block to clarify the comment that the claims that are being submitted are difficult to review.

Mr. Block reiterated that the claims were incomplete and difficult to review, and pointed out that even Commission staff sought help from the Board when they initially reviewed the claims because there were portions of the claims filed that did not make sense and did not seem to align with the original parameter and guidelines.

Ms. Higashi noted that when the Commission adopted the statewide cost estimate, it requested a summary compilation of the amounts claimed by the community college districts filing timely reimbursement claims with the State Controller's Office. The State Controller's Office report identified the claimant by name, amount claimed and amounts offset and was the basis for the Commission's preparation of the statewide cost estimate.

Ms. Geanacou stated that the Department of Finance, as a co-petitioner before the court, has followed this matter closely. She observed that the cost savings information required in the claims will clearly appear as an offset for reimbursement and is already available in two sources of information if the test claim statutes are complied with.

Ms. Shelton stated that the Commission's jurisdiction in this matter is really limited to the court's writ and the writ directed two specific changes to the parameters and guidelines. She noted that the court found that the information to support cost savings was already provided to the Board in their existing annual report. The court did not indicate that the Board needed additional information. She added that every year, the Board receives a report that describes the calculations of annual disposal reduction and information on changes in waste generated or disposed. Also, this issue can be addressed in the Board's pending request to amend the parameters and guidelines.

Member Worthley moved to adopt the staff recommendations. With a second by member Olsen, the staff recommendation to approve the proposed amendments to the parameters and guidelines was adopted by a vote of 6-0.

STAFF REPORTS

Item 12 Chief Legal Counsel's Report (info)

No report was made.

Item 13 Executive Director's Report (info)

Ms. Higashi introduced our newest analyst Heidi Palchik.

Ms. Higashi also recognized staff member Lorenzo Duran who recently participated in a state agency sponsored fundraiser for the California State Employees Charitable Campaign. He successfully dunked our Commission Chair, Mr. Genest, in the dunk tank.

Ms. Higashi reported the adopted State Budget did not make any new changes to the Commission's budget. Also, the Commission filed the annual workload report with the Director of Finance.

Ms. Higashi proposed changing the November 6th hearing to an alternate date in December. It was decided to find an agreeable date and report it back to the Commission. She also noted that work is continuing on the proposal for delivery of agenda materials.

Ms. Higashi reported that Anne Sheehan, Chief Deputy Director of the Department of Finance, was appointed Director of Corporate Governance, CALSTRS.

Ms. Higashi also noted that the Commission will probably be exploring a hiring freeze exemption.

PUBLIC COMMENT

Chairperson Sheehy introduced Deborah Borzelleri and acknowledged her upcoming retirement. On behalf of the Commission, Chairperson Sheehy presented Ms. Borzelleri with a Resolution recognizing her retirement as a state employee for 35 years and her many accomplishments.

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

A. PENDING LITIGATION

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, [Emergency Procedures: Earthquake Procedures and Disasters]
5. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

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

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

B. PERSONNEL

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

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

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:48 a.m., Chairperson Sheehy reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, Chairperson Sheehy adjourned the meeting at 10:50a.m.

A handwritten signature in cursive script that reads "Paula Higashi". The signature is written in black ink and is positioned above the printed name and title.

PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:38 a.m.
DATE: Thursday, September 26, 2008
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
Debra P. Codiga
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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

ANNE SCHMIDT
Representative for CYNTHIA BRYANT
Director, Office of Planning & Research

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

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



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 13)

CAMILLE SHELTON
Chief Legal Counsel
(Items 3, 4, 8, and 12)



PUBLIC TESTIMONY

Appearing Re Item 3 and Item 4:

For Claimant:

KEITH B. PETERSEN, MPA, JD
President
SixTen and Associates
Mandate Reimbursement Services
Sacramento, California 95834

For Department of Finance:

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

Appearing Re Item 8:

For Claimant:

KEITH B. PETERSEN, MPA, JD
President
SixTen and Associates

For California Integrated Waste Management Board:

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

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

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V. Hearings and Decisions on Claims Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

A. Test Claims:

Item 5 *Surplus Property Advisory Committees, 02-TC-36 Clovis Unified School District postponed*

Item 6 Proposed Statement of Decision *Surplus Property Advisory Committees (See Item 5 above) . . . postponed*

VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8

A. Proposed Parameters and Guidelines

Item 7* *Reporting Improper Governmental Activities, 02-TC-24 Santa Monica Community College District (Consent calendar item) 10*

B. On Remand from Sacramento County Superior Court Pursuant to Government Code Section 17559

Item 8 Integrated Waste Management Board, 00-TC-07 Santa Monica and Lake Tahoe Community College Districts *(Consent calendar item) 36*

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Commission on State Mandates – September 26, 2008

1 BE IT REMEMBERED that on September 26, 2008,
2 commencing at the hour of at 9:38 a.m. thereof, at the
3 State Capitol, Room 447, Sacramento, California, before
4 me, Debra P. Codiga, CSR #5647, the follow proceedings
5 were held:

6 —o0o—

7 CHAIR SHEEHY: I'd like to call the Commission on
8 State Mandates meeting to order.

9 Paula, could you please call the roll?

10 MS. HIGASHI: Mr. Chivaro?

11 MEMBER CHIVARO: Present.

12 MS. HIGASHI: Mr. Glaab is absent today, but he is
13 attending the League of California Cities meeting on
14 behalf of the city.

15 Mr. Lujano?

16 MEMBER LUJANO: Here.

17 MS. HIGASHI: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MS. HIGASHI: Ms. Schmidt?

20 MEMBER SCHMIDT: Here.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: And Mr. Sheehy?

24 CHAIR SHEEHY: Present.

25 MS. HIGASHI: We have a quorum established.

Commission on State Mandates – September 26, 2008

1 The first item is approval of the minutes of
2 August 1st, 2008.

3 CHAIR SHEEHY: Do any members of the committee have
4 any objections or corrections to the minutes as presented
5 in our agenda?

6 MEMBER OLSEN: I move adoption.

7 MEMBER CHIVARO: Second.

8 CHAIR SHEEHY: Paula, could you please call the
9 roll?

10 MS. HIGASHI: Mr. Chivaro?

11 MEMBER CHIVARO: Aye.

12 MS. HIGASHI: Mr. Lujano?

13 MEMBER LUJANO: Aye.

14 MS. HIGASHI: Ms. Olsen?

15 MEMBER OLSEN: Aye.

16 MS. HIGASHI: Ms. Schmidt?

17 CHAIR SHEEHY: Ms. Schmidt?

18 Let the record show that Ms. Schmidt was not
19 at the last meeting. She's going to abstain on this
20 vote.

21 MS. HIGASHI: Abstain? Okay.

22 Mr. Worthley?

23 MEMBER WORTHLEY: Aye.

24 MS. HIGASHI: And Mr. Sheehy?

25 CHAIR SHEEHY: Aye.

Commission on State Mandates – September 26, 2008

1 MS. HIGASHI: Thank you.

2 There are no appeals to consider under Item 2, and
3 we have a Proposed Consent Calendar.

4 CHAIR SHEEHY: Are there any corrections — well,
5 strike "corrections."

6 Are there any objections to the items that we have
7 on this morning's Consent Calendar from any members
8 of the committee?

9 MS. HIGASHI: It's a green sheet. You picked it up,
10 or, Members, you have it before you.

11 CHAIR SHEEHY: If there are no objections to the
12 Proposed Consent Calendar, the Chair would entertain a
13 motion.

14 MEMBER WORTHLEY: So moved.

15 MEMBER OLSEN: Seconded.

16 CHAIR SHEEHY: Thank you. Please call the roll.

17 Oh, it's a Consent Calendar. Can we do this by
18 unanimous consent?

19 MS. HIGASHI: You could, but let me just — for the
20 record, I'd like to read the item numbers.

21 CHAIR SHEEHY: Please.

22 MS. HIGASHI: Item 7, Item 9, Item 10 and Item 11
23 are on the Consent Calendar.

24 CHAIR SHEEHY: If there's no objection from the
25 committee, we'll record this as unanimous consent to the

1 Consent Calendar.

2 (No response)

3 MS. HIGASHI: Thank you very much.

4 This brings us to the hearing portion of our
5 meeting, and I'd like to ask the parties and witnesses
6 for Items 3 and 4 to please rise.

7 (Parties and witnesses were sworn.)

8 MS. HIGASHI: Thank you very much.

9 Chief Legal Counsel Camille Shelton will present
10 Item 3.

11 MS. SHELTON: Good morning.

12 This test claim addresses the provision of services
13 to disabled students within the California community
14 colleges system. These services include the provision of
15 academic adjustments and auxiliary aids, instructional
16 materials provided in electronic format, and accessible
17 parking for disabled students.

18 Staff recommends that the Commission deny this test
19 claim. Community colleges are mandated by federal law,
20 through the Rehabilitation Act of 1973 and the Americans
21 with Disabilities Act, to perform many of the activities
22 required by the state's program, and thus these
23 activities do not impose a state-mandated program.

24 Although there are accounting, reporting and
25 administrative activities required by the state that go

1 beyond the requirements of federal law, the activities
2 are not mandated by the state pursuant to the California
3 Supreme Court's decision in Kern High School District
4 because community colleges perform the activities as a
5 condition of receiving state funding. Other activities
6 are denied on other grounds.

7 Will the parties please state your names for the
8 record?

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

11 MR. PETERSEN: Keith Petersen representing the
12 test claimants.

13 CHAIR SHEEHY: Thank you.

14 Mr. Petersen, do you have comments for the
15 committee's consideration this morning?

16 MR. PETERSEN: Yes, I do. Just a couple, thank
17 you.

18 This test claim was filed to obtain reimbursement of
19 that portion of the DSPS program which is not federally
20 mandated. Commission counsel's already indicated that
21 some of those services are not federally mandated; they
22 are state mandates in excess of federal mandates.

23 However, staff position is that's not reimbursable
24 because the DSPS program is voluntary, and since it's
25 voluntary, it's not reimbursable.

1 What I'm asking you to do today on that critical
2 threshold issue is to overrule your staff on its factual
3 determination — mostly factual determination.

4 The issue is whether the colleges are practically
5 compelled to take that money and to take that program and
6 to run it and perform those services.

7 Obviously, the way the statute is cynically
8 designed, it's a voluntary program, but the case law —
9 the mandate case law makes provisions for that under the
10 practical compulsion theory. And I think there's
11 practical compulsion for at least three reasons, and
12 I'll just summarize those briefly because they are
13 discussed at a greater extent in the briefings.

14 Currently, the state provides about \$115 million in
15 DSPS funding to colleges. I've provided a schedule of
16 appropriation from 2007–2008, which added up to about
17 111 million, as part of our filings.

18 And those dollars, for some of the community
19 colleges, are specifically — Coast College is
20 \$2.8 million; Contra Costa, down near the Bay Area,
21 \$2.8 million — I'm looking at the schedule provided in
22 the package — Los Angeles Community College District,
23 \$6.4 million; Los Rios here in Sacramento, \$5 million.

24 This is a one-year appropriation. These funds
25 are used to provide both federally and state-mandated

1 special education services. The staff's contention is
2 that the colleges can willingly give up that money if
3 they don't want to participate in DSPS.

4 The reality, of course, is DSPS is a combination of
5 federal and state mandates, and in order to get any money
6 to implement these mandates, they have to buy into —
7 into the entire DSPS program.

8 Once upon a time many years ago, community colleges
9 were part of the K-12 system. In 1977, the community
10 colleges split off. It took several years, but
11 essentially starting in 1976-1977, the community
12 colleges split off with their own budgets and their own
13 operations and their own leadership.

14 At that time, the Legislature continued its
15 historic funding of special education services to the
16 colleges in a separate appropriation, upon which the
17 community colleges have relied ever since.

18 That funding is based on a formula, not on actual
19 costs. That process worked, I guess, sufficiently well
20 for most parties until the Legislature ordered the
21 community college — the Board of Governors of the
22 community college system to create the DSPS system.

23 This DSPS system was created mostly in Title 5
24 regulations, not — not legislation. Those regulations
25 are drafted by the Chancellor's Office staff. They are

1 submitted for voting by the Board of Governors, who are
2 political appointees, and they are not passed until they
3 are vetted by the executive branch. Title 5 is subject
4 to veto by the executive branch, so the DSPS program is
5 very much a creature of the executive branch process.

6 So where are we now? We have historic
7 funding. Somewhere along the lines, the DSPS program
8 was created with additional state mandates, and all the
9 funding became captured in that program. So if you
10 wanted to continue historical support for the program,
11 you had to buy into the DSPS program.

12 The *Sacramento II* court case says you're
13 practically compelled if a there's coercive effect or
14 some catastrophic penalty for not taking the money.
15 Your community colleges are definitely coerced. They
16 have to have that money to provide the mandated
17 services. It's not enough money, but that's how they
18 get the — that's their sole significant source of
19 funding, so they have to buy into the entire DSPS
20 program.

21 If they do not take the money and they do not
22 perform the state portion of the DSPS program, they're
23 still compelled to perform the federal mandate, which
24 was historically supported by state funding prior to the
25 DSPS program. We're locked into the DSPS program.

1 Now, one of the distinctions in the Kern case
2 cited by staff is it's voluntary. And in that Kern case,
3 it dealt with certain small committees and school sites
4 that, if you wanted to continue with federal support, you
5 had to put together an agenda package.

6 And if you didn't want to do that, you could give up
7 the committees and give up the money. Very small dollar
8 amounts, very small activities, and the school districts
9 were able to give up those programs without a significant
10 impact to their budget. The work went away; the money
11 went away, and essentially they would have been even.

12 In this case, if you give up the DSPS money, the
13 work doesn't go away. You still have that federal-
14 mandated activity that was historically funded by the
15 state.

16 So essentially over a period of 20, 25 years,
17 the state has locked the colleges into it as a sole
18 source of funding for this program, and the \$115 million
19 is just too much to let go. I mean if you're a college
20 district, you can't give up \$5 million and expect to
21 continue those services out of your other funds.

22 We all know what the budget process looks like in
23 the last ten years. You just don't give up \$5 million.

24 Okay. Any questions?

25 CHAIR SHEEHY: Excuse me. Before we get to

1 questions of Mr. Petersen, may we hear from the
2 Department of Finance?

3 Ms. Geanacou, do you have comments on this item?

4 MS. GEANACOU: Good morning. Susan Geanacou,
5 Department of Finance. We just have a few brief
6 comments.

7 The Department supports the final staff analysis on
8 this matter. And then, very briefly in response to some
9 of the comments of Mr. Petersen, I'll echo written
10 filings we already provided that are integrated into the
11 final staff analysis, that the portions of the DSPS
12 program that exceed the federal mandate are optional in
13 that they are simply conditions of receiving the state
14 funding that Mr. Petersen speaks to this morning.

15 The only consequence of not complying with these
16 requirements that are in excess of the federal mandate is
17 that they will not receive the funding.

18 MR. PETERSEN: Any funding.

19 MS. GEANACOU: The funding that's provided for the
20 DSPS program. And this is not practical compulsion
21 according to the Kern High School District case, as is
22 outlined in the greater detail in the final staff
23 analysis.

24 CHAIR SHEEHY: Questions of the committee?

25 *(No response)*

1 CHAIR SHEEHY: Mr. Petersen.

2 MR. PETERSEN: Well, to rebut briefly,
3 practical compulsion is what you say it is. It's mostly
4 a question of fact. You're the triers of fact. It's in
5 your hands. If you decide that Los Rios Community
6 College District losing \$5 million is catastrophic when
7 they have to continue providing the services, then it is
8 practical compulsion.

9 The funding should be clear. It's — if you don't
10 take the DSPS funding, you still have to do most of the
11 activities, and you don't get to slice off pieces. You
12 can't say, "I don't want to do that, so here's \$10,000
13 back." If you don't buy into the whole thing, you get
14 nothing.

15 And ironically, of course, this is what the —
16 the State of California and every other state in the
17 union claims about the federal government. It's the
18 cynical carrot-and-stick — I think the court case calls
19 it "cooperative federalism."

20 Well, they've created cooperative statism, I
21 guess, by doing the same thing to its subordinate local
22 agencies. What the state rails against, it has turned
23 upon its own local agencies.

24 MEMBER WORTHLEY: Mr. —

25 CHAIR SHEEHY: Mr. Worthley.

1 MEMBER WORTHLEY: — Mr. Petersen, can you cite
2 to us in the record — can you cite to us in the
3 record — my — I would take from your argument that the
4 issue really would be the difference in terms of the
5 money that is paid to the special — to the community
6 colleges and the difference between that amount of money
7 and the actual cost.

8 MR. PETERSEN: Yes.

9 MEMBER WORTHLEY: And is that — I'm sorry.
10 Can you cite to us in the record what those costs
11 are?

12 MR. PETERSEN: Well, I can't tell you what the
13 costs are because the claims have never been filed, but
14 what the mechanics would be is the entire DSPS program
15 has a cost to each college.

16 The staff would have to determine, by parameters and
17 guidelines, which portion of those activities are
18 federally driven. That would drop off. Okay. Then
19 you'd have to subtract out the DSPS funding, and
20 whatever's left over is the cost.

21 The staff has done a wonderful job of listing
22 those services that appear state-driven only. There's
23 about two pages of them. There are a significant amount
24 of expenses.

25 One of the problems is that the funding is based on

1 a formula, a capitation formula, not actual costs. And
2 you probably saw that some of the Title 5 sections
3 specifically say these will not be reimbursed.

4 So there is a significant portion that will —
5 was not intended to be funded by the DSPS — excuse me,
6 reimbursed or funded by the DSPS program, so it would be
7 that chunk plus whatever's not federal, and I have no
8 idea what that cost is.

9 CHAIR SHEEHY: Mr. Petersen —

10 May I, Mr. Worthley, follow up —

11 MEMBER WORTHLEY: Yes.

12 CHAIR SHEEHY: — on your question?

13 Has the — has the West Kern Community College
14 District done that analysis?

15 MR. PETERSEN: No. The test claim process only
16 requires the test claim to allege a threshold amount:
17 either \$200, depending on when it was filed, or a
18 thousand dollars.

19 I think you could all be comfortable in the
20 thought that it's a big number. Or uncomfortable.

21 CHAIR SHEEHY: Mr. Worthley?

22 MEMBER WORTHLEY: Yes. Ms. Shelton indicates
23 she would like to respond, I believe.

24 MS. SHELTON: There's a couple of issues that need
25 to be clarified.

1 One, although we are discussing some facts
2 dealing with practice compulsion, it still is a question
3 of law and not a question of equity. So that's No. 1.

4 No. 2, the *Kern* case did deal with substantial
5 funding, and I can read directly from page 732 where
6 they were talking about one of the programs, that the
7 participation in that program was voluntary and there
8 was \$394 million at stake.

9 So it wasn't just something they had to — to
10 think about. They were dealing with substantial funding
11 in that case as well.

12 The court said, though, in order for practical
13 compulsion to be found, you have to find certain and
14 severe penalties for not complying, independent of the
15 funding.

16 Here we don't have — the only stick is the
17 funding. You take away the — the stick, the funding,
18 that's all they have left is, you know, nothing, and
19 they still have to comply with federal law, and that's
20 true.

21 The way the program is set up, you can see on
22 page 16 and 17, the intent of the legislation is to pay
23 for actual costs. The — what it does pay for — it can
24 be used for the salaries, benefits and professional
25 development costs of DSPS certificated and classified

1 personnel and for supplies and materials necessary for
2 operation of the DSPS program.

3 The only thing it can't be used for are indirect
4 costs for the building. For lighting, heating,
5 janitorial service for the facilities or for legal
6 matters or audit expense costs. But it pays for all of
7 the variable costs, all of the one-time costs and
8 ongoing costs to provide services to the student.

9 CHAIR SHEEHY: Thank you, Ms. Shelton.

10 Yes, Mr. Petersen.

11 MR. PETERSEN: Well, back to the Kern case.
12 Substantial dollars were involved, but again, the
13 distinction is, in that case, if the dollars went away,
14 the work and the cost went away.

15 The distinction here is that dollars go away, the
16 work is still there. Okay. And apparently that work is
17 at least worth \$115 million because that's the amount
18 that's being funded by DSPS. I know it's worth a great
19 deal more than that, the cost, because of the things not
20 covered.

21 She mentioned some indirect costs that are not
22 covered. Currently, we do an indirect, and the state
23 auditors do, an indirect-cost-rate calculation for
24 college districts as part of annual claims for the
25 programs, and it's running about 30 to 35 percent of

1 direct costs.

2 So we know, right off the top, that colleges are
3 losing 35 percent of their indirect cost rates because
4 the DSPS program won't fund it. That's, you know,
5 another 35 percent on top of \$115 million. That's
6 significant money. So there is significant penalty
7 involved.

8 Again, *Kern* is distinguishable. I don't think
9 *Kern* is controlling here, and I think it's not — the
10 commission counsel seems to indicate I'm stressing
11 equity. No. Fairness would be an outcome, but I'm
12 stressing this is the factual side of compulsion.

13 It — you have to determine as a matter of fact
14 whether the penalty to the districts, the economic
15 disaster, is sufficient to say they're compelled, and it
16 must be. Nearly all the districts, I believe, are in
17 the program. I personally don't know one — of a
18 district that's not in the program.

19 CHAIR SHEEHY: Any more comments?

20 MEMBER WORTHLEY: One other comment, and a
21 question too.

22 You're not saying that just because historically the
23 State of California has picked up some of the federal
24 requirement, in other words, reimbursed the districts,
25 that they're mandated to continue doing that?

1 In other words, if they just pulled all that money
2 away for the federal mandates, as I understand the law,
3 there would be no obligation — there would be no
4 compensable claim against the State of California
5 because it is federally required to do those things.

6 Is that not correct?

7 MR. PETERSEN: That's possible. There wouldn't
8 be any claim from the district against the state. The
9 reason I brought up the historical context is if
10 financing is structured over a 30-year period and the
11 state has structured financing to provide the local
12 districts that funding, that's what it's built upon.

13 That raises the potential issue of the — the
14 shift — another court case, the shift of state cost to
15 local cost. I haven't — we haven't gone into that
16 because that's a subsidiary issue.

17 But, yes, the state could withdraw its funding.
18 The local districts would be compelled to continue the
19 federal thing. Same thing in the K-12 districts. The
20 state could withdraw its funding, but you should know
21 that nobody can stop doing those services because — and
22 I think it's covered in the staff position paper
23 recommendation — that they'll go to — the parents of
24 the students will go to court, and they'll win. And then
25 you'll have to pay lawyer fees and do it anyway.

1 CHAIR SHEEHY: Ms. Shelton.

2 MS. SHELTON: Under federal law, the state is
3 not required to reimburse any of the community colleges
4 or other postsecondary institutions for complying with
5 the federal mandate.

6 When they were drafting the federal regulations,
7 that was a concern of postsecondary institutions because
8 there was funding provided under separate chapters of the
9 Rehabilitation Act for state vocational rehab agencies.

10 And so postsecondary institutions felt like it
11 was, you know, quite unfair for them now to be required
12 independently to perform the same services and not be
13 reimbursed.

14 And the comments to the regulations just indicated
15 that, you know — you know, we understand your concern,
16 but that's your responsibility to go try and work out a
17 deal with your state, with your voc rehab and other
18 independent grant funding for disabled students.

19 And so there was a recognition that postsecondary
20 institutions are not getting reimbursed. There is no
21 federal funding to the community colleges, and the
22 states, under federal law, are not required to provide
23 any funding.

24 And if there's any question about what activities
25 are required under federal law and what's required under

1 state law, on page 28 and 29 of the analysis in the box
2 is basically — those are the requirements under federal
3 law, and it's basically just the provision of services to
4 the student and performing an individual analysis of each
5 student's disability.

6 The services under state law really aren't —
7 you know, they have to designate a separate coordinator
8 which may be performing administrative and accounting
9 and financial functions. And everything else is
10 policies and procedures, accounting back to the state on
11 the funding, performing administrative responsibilities,
12 and those are just as a condition of receiving that
13 state money.

14 And under Kern, it's still the law dealing with
15 these types of mandate cases. It does establish a legal
16 standard that has to be met, and it can't be ignored.

17 CHAIR SHEEHY: Yes, Mr. Petersen.

18 MR. PETERSEN: Well, she's raised the bar again.

19 Let's look at page 30. This is the commission
20 staff's enumeration of those services that are not
21 required by federal law. Designated DSPS coordinator.
22 That's not reimbursed.

23 MS. SHELTON: A portion of that.

24 MR. PETERSEN: Okay. The student educational
25 contract, which is very much like the IEP at the K-12

1 level. That's a personal contract with the student
2 regarding the services provided, and it's appealable.

3 And it goes on. It's not just policies and
4 procedures. I do not wish to diminish the portion
5 that's not federal and — nor the portion that's not
6 reimbursed.

7 I agree that there's no federal requirement for
8 the — upon the state to reimburse local governments. I
9 think, as part of the collection of coercion, you've got
10 to remember the state funded these programs at some
11 level historically; they continue to do so, but what's
12 changed significantly is the DSPS program in Title 5,
13 which was created by the executive branch, which added
14 on new duties knowing they would not be reimbursed or
15 funded.

16 And again, that's their cynical mechanism to handle
17 the state funding. It's not anything the local agency
18 asked for. It's just something they have to comply
19 with.

20 And again, she cites the background. The federal
21 government has no control of that. Well, again, the
22 state government's done the same thing that the federal
23 government does to the state government. And, of course,
24 that has to stop somewhere, and it stops at the local
25 agencies because they can't do this to anybody else.

1 It's being done to them by the state; it's being
2 done to the state by the federal government, but the
3 local agencies — the college in this case — can't do it
4 to anybody else. It's stuck at their level. That's why
5 it's coercive.

6 CHAIR SHEEHY: Ms. Olsen.

7 MEMBER OLSEN: I want to explore this coercion
8 thing for a minute, Mr. Petersen.

9 Is it your contention that it's coercion because if
10 you — if a community college district decided not to do
11 the DSPS program anymore, I think what I heard you say is
12 that they would be compelled to do it because parents of
13 the — of the DSPS-served students would go to court.

14 MR. PETERSEN: Well, two thoughts. They're
15 compelled to continue at least the federal portion —

16 MEMBER OLSEN: Right.

17 MR. PETERSEN: — because —

18 MEMBER OLSEN: But I'm talking about just the state
19 portion.

20 MR. PETERSEN: They would not be compelled to do
21 the state excess if they weren't in the DSPS program.

22 MEMBER OLSEN: So they can stop doing that?

23 MR. PETERSEN: Yes.

24 MEMBER OLSEN: And — but — so then what is the
25 practical compulsion?

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1 MR. PETERSEN: The practical compulsion is they
2 still have to continue doing the federal mandate, which
3 has always been funded by the state, and at that point,
4 there'd be no funds for any of it.

5 MEMBER OLSEN: For any of it.

6 MR. PETERSEN: Yes.

7 MEMBER OLSEN: Okay.

8 MS. SHELTON: It was funded by the state because it
9 was funded under the state's voc rehab program. And what
10 was happening, you had — before the enactment of DSPS,
11 you had students that overlapped between — they were
12 students at a community college and also receiving
13 services through the state's voc rehab department, and so
14 there was a lot of overlap.

15 And so, you know, knowing that federal law existed,
16 and the Chancellor's Office agreed, that community
17 colleges have independent responsibility to provide the
18 same services that voc rehab was already providing, they
19 came to an agreement — which was — which is in the
20 analysis — that, you know, basically acknowledged,
21 "We'll take" — you know, "We'll perform all these
22 services for these students and voc rehab will not." And
23 there was no funding guarantee in that agreement either.

24 MS. GEANACOU: Susan Geanacou, Finance.

25 If I may just add on to what Ms. Olsen said, is — a

1 good portion of what we're talking here is federally
2 required under federal law, both the ADA and the Rehab
3 Act, just to kind of echo what I think you were getting
4 at, Ms. Olsen.

5 CHAIR SHEEHY: Ms. Olsen, you — you have additional
6 comments?

7 MEMBER OLSEN: Well, Mr. Petersen did say that,
8 at one point — and what I'm trying to get to is — if a
9 state — if a community college — part of what his
10 argument on practical compulsion that I heard — and I'm
11 just trying to clarify this portion — is that part of
12 the practical compulsion is that parents of these served
13 students, if the services — if the DSPS portion of the
14 services were pulled, would go to court.

15 That — now, I did hear you say something about
16 parents going to court, and I'm just trying to get back
17 to that point.

18 MR. PETERSEN: That would be federal —

19 MEMBER OLSEN: Why don't you clarify that?

20 MR. PETERSEN: That would be more of the
21 federal issues.

22 MEMBER OLSEN: Okay.

23 MS. SHELTON: And let me just clarify.

24 Under one of the published cases, *Hayes vs.*

25 *Commission on State Mandates*, that was — you know, that

1 case, the court there was analyzing the Rehabilitation
2 Act at — as of that time, as it applied to K-14, so
3 K-12 and — and community colleges, but the case was
4 dealing with K-12.

5 And they said one of the reasons which did support
6 a practical-compulsion finding was that there were
7 equal-protection lawsuits filed — being filed all over
8 the state — all over the country, excuse me, and the
9 majority of them winning substantial, you know, damages —
10 — you know, damage awards.

11 So they — you know, certainly in that case there
12 was practical compulsion to comply with federal law.
13 And in this case, we found that, therefore, the
14 rehabilitation Act is a federal mandate, and in this
15 case, on the community college.

16 It's different how it applied to K-12 and how
17 special ed law applies to K-12. It's a little bit of a
18 different analysis.

19 CHAIR SHEEHY: Yes, Mr. Petersen.

20 MR. PETERSEN: Well, we have to go back to a new —
21 somewhat new issue.

22 The deal cut with the Department of Rehabilitation
23 in the '70s, I guess, was probably wonderful for
24 everybody involved.

25 The — the issue I'm presenting here is, because

1 of the funding structure by the state, the only way to
2 get any significant funds to do any federal- or state-
3 mandated services is to take on DSPS.

4 When you take on DSPS, you're, quote, unquote,
5 voluntarily taking on these additional activities that
6 the state wants you to do the federal never specified.
7 There's some cross-over, and that's subject to
8 argument.

9 But the districts are at the point now where they
10 have to continue doing the federal mandate because of
11 the court coercion, and the only place to get money
12 is from the DSPS program, and the only way to get DSPS
13 money is to do state-mandated activities —

14 CHAIR SHEEHY: Okay.

15 MR. PETERSEN: — the portion we're requiring.

16 So —

17 CHAIR SHEEHY: All right.

18 MR. PETERSEN: — you can't just stop doing federal.

19 CHAIR SHEEHY: I think — unless the members of
20 the committee feel otherwise, I think that the point
21 that you've just made, Mr. Petersen, you've made very
22 clear. You've been very articulate. I think that issue
23 has been pretty well vetted here in the last 30
24 minutes.

25 Are there any members on the committee who would

1 like to continue discussing this particular issue?

2 Because there are a couple other issues here,
3 and I was wondering, Mr. Petersen, if you wanted to talk
4 about instructional materials in an electronic format or
5 some of the other aspects of this, or did you —

6 MR. PETERSEN: No. This — the only legs this test
7 claim has is the issue we just discussed.

8 CHAIR SHEEHY: Okay.

9 MR. PETERSEN: I'm not saying I agree, but I think
10 the threshold issue has to be decided before we worry
11 about those issues.

12 CHAIR SHEEHY: All right. I understand.

13 Further comments or questions from the members
14 of the committee?

15 *(No response)*

16 CHAIR SHEEHY: In that case, Finance, did you
17 have any further comments?

18 MS. GEANACOU: No.

19 CHAIR SHEEHY: Okay. Thank you, Ms. Geanacou.

20 At this point, then, I would — the Chair would be
21 happy to entertain a motion on this item.

22 MEMBER CHIVARO: I'll move staff
23 recommendation.

24 MEMBER LUJANO: I'll second it.

25 CHAIR SHEEHY: Thank you.

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1 Paula, could you please call the roll on —
2 actually, let me repeat the motion.

3 The motion is to approve the staff recommendation on
4 item No. 3.

5 Could you please call the roll?

6 MS. HIGASHI: Mr. Chivaro?

7 MEMBER CHIVARO: Aye.

8 MS. HIGASHI: Mr. Lujano?

9 MEMBER LUJANO: Aye.

10 MS. HIGASHI: Ms. Olsen?

11 MEMBER OLSEN: Aye.

12 MS. HIGASHI: Ms. Schmidt?

13 MEMBER SCHMIDT: Aye.

14 MS. HIGASHI: Mr. Worthley?

15 MEMBER WORTHLEY: Aye.

16 MS. HIGASHI: Mr. Sheehy?

17 CHAIR SHEEHY: Aye.

18 MS. HIGASHI: Motion is carried.

19 This brings us to Item 4.

20 MS. SHELTON: This is the Proposed Statement of
21 Decision on the Disabled Student Programs and Services
22 test claim.

23 Staff recommends that the Commission adopt the
24 Proposed Statement of Decision that accurately reflects
25 the staff recommendations to deny the testing.

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1 CHAIR SHEEHY: I'm sorry, Ms. Shelton. I just
2 missed the last part of your statement there.

3 MS. SHELTON: Oh, I'm sorry. That the Commission —
4 staff recommends that the Commission adopt the Proposed
5 Statement of Decision which accurately
6 reflects the staff recommendation.

7 CHAIR SHEEHY: Thank you. Are there any
8 questions or comments from the public or members of the
9 Commission on this item?

10 *(No response)*

11 CHAIR SHEEHY: In that case, is there a motion
12 on this item?

13 MEMBER CHIVARO: I move the recommendation.

14 MEMBER LUJANO: Second.

15 CHAIR SHEEHY: Please call the roll.

16 MS. HIGASHI: Mr. Chivaro?

17 MEMBER CHIVARO: Aye.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HIGASHI: Ms. Schmidt?

23 MEMBER SCHMIDT: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

1 MS. HIGASHI: Mr. Sheehy?

2 CHAIR SHEEHY: Aye.

3 MS. HIGASHI: Motion is carried.

4 The next two items in your binder are for a test
5 claim that was postponed at the request of claimant,
6 Items 5 and 6. Item 7 was already adopted, and this
7 brings us to Item 8.

8 Item 8 will also be presented by Chief Counsel
9 Camille Shelton.

10 MS. SHELTON: This item is on remand from the
11 Sacramento County Superior Court on a judgment and writ
12 dealing with the Integrated Waste Management Program.
13 The program requires community college districts to
14 develop and adopt an integrated waste management plan,
15 to divert a specified percentage of solid waste from
16 landfills, and to prepare and submit an annual report to
17 the Integrated Waste Management Board summarizing the
18 progress in reducing solid waste.

19 The writ issued by the court requires the
20 Commission to amend the parameters and guidelines in two
21 respects.

22 First, the writ requires the Commission to amend the
23 offsetting revenue section of the parameters and
24 guidelines to require claimants to identify and offset
25 from their claims all revenue generated as a result of

1 implementing their plans, without regard to the
2 limitations described in the Public Contract Code.

3 The second amendment requires that the Commission
4 add an offsetting-cost-savings section to the parameters
5 and guidelines to require claimants to identify and
6 offset from their claims cost savings realized as a
7 result of implementing their plans, consistent with the
8 limitations provided in the Public Contract Code.

9 Under the Public Contract Code provisions, community
10 colleges are required to deposit all cost savings
11 resulting from their plans in the Integrated Waste
12 Management account. The funds deposited in the account,
13 upon appropriation by the Legislature, may be expended by
14 the Integrated Waste Management Board for the purpose of
15 offsetting integrated waste management plan costs.

16 Subject to the approval of the Board, cost savings
17 by a community college that do not exceed \$2,000 annually
18 are continuously appropriated for expenditure by the
19 community college for the purpose of offsetting
20 their costs. Cost savings exceeding \$2,000 annually may
21 be available for expenditure by the community college
22 only when appropriated by the Legislature.

23 The proposed amendments to the parameters and
24 guidelines beginning — beginning on page 11 contain
25 these changes required by the court.

1 The Integrated Waste Management Board is requesting
2 that the Commission add more language to the offsetting
3 cost-savings section. The Board wants the Commission to
4 require community college districts to provide
5 information with their claims identifying all cost
6 savings resulting from the plans, including cost savings
7 that exceed \$2,000.

8 The Board also wants the Commission to require
9 community college districts to analyze categories of
10 potential cost savings in determining what to include in
11 their claims. The Board's proposed language is in
12 Exhibit D on page 143.

13 Staff finds that the Board's request for additional
14 language goes beyond the scope of the court's judgment
15 and writ and the statute at issue in this case. The
16 Commission's jurisdiction in this case is limited to the
17 court's judgment and writ.

18 Therefore, staff recommends that the Commission
19 deny the Board's request and adopt the proposed
20 amendments to the parameters and guidelines beginning on
21 page 11.

22 Will the parties state your names for the record?

23 MR. BLOCK: Elliot Block, Chief Counsel for the
24 California Integrated Waste Management Board.

25 MR. PETERSEN: Keith Petersen. I represented

1 the test claimant many years ago.

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

4 CHAIR SHEEHY: Well, Mr. Petersen, since you're
5 on a roll, let's start with you first.

6 MR. PETERSEN: No, sir. I've been rolled over.

7 I can here procedurally agree that the scope of
8 the amendment's limited to the court order and that the
9 issues interesting the state Board will probably be
10 before us in another request to amend at a future date.

11 CHAIR SHEEHY: Okay. Very good.

12 Mr. Block, did you like to — would you like to
13 address the Commission this morning?

14 MR. BLOCK: Yes, I would. Thank you.

15 And I wanted to thank the Commission for acting
16 promptly after the order from the court. As — as
17 noted, this matter's been going on for quite a few
18 years. We'd love to see this resolved sooner — as soon
19 as we could.

20 In looking at the analysis by staff and the
21 suggestions that the Board made, the two different
22 era — areas, we just believe that your staff is viewing
23 its jurisdiction in the scope of the court's decision
24 narrow — more narrowly than is necessary.

25 That litigation was about — and this is as

1 noted in the analysis — interpretation of the law that
2 applies in this case. And it appears that, in viewing
3 the requests that we have made, your staff is really
4 just looking at: What exactly did the court say? Did
5 they specifically identify a particular change? As
6 opposed to what we believe is the appropriate analysis,
7 which is, given the court's determination as to how the
8 law should be applied in this case, how would these
9 parameters and guidelines have been written originally?

10 So, for instance, in talking about the
11 additional information that we're looking at for cost
12 savings, the staff analysis does appear to indicate that
13 those additions could be made prospectively based on a
14 request for reconsideration that we've made, but is not
15 agreeing that they can be made retroactively.

16 However, really, the question, again, is if, when
17 the parameters and guidelines were originally written
18 three or four years ago — I forget the exact date — and
19 if the Commission had been applying the law as the court
20 has now said it should have been applied, would it have
21 been appropriate to add the additional guidance?

22 And I should note, in terms of the cost
23 savings, that's really what it is. We're talking about
24 providing additional guidance to help those claims be
25 formulated in a way that they're actually reviewable

1 and — and usable, if you will.

2 From our point of view, not providing some
3 additional guidance just means we're — this process is
4 going to continue to go on and on.

5 If you look back in the record of this matter,
6 you'll see the original claims that came in, which came
7 in without any of that sort of guidance, were, for lack
8 of a better word, a mess. They were hard to review.
9 They were — contained things that, on their face, were
10 inappropriate.

11 And your staff, in fact, in their analysis —
12 initial analysis of those, requested the Board help
13 figure out how to review those claims. Well, the problem
14 is, as we noted back then — and I think will be the case
15 again — we can't if the information isn't provided in
16 the first place. You're leaving this up to being an
17 audit down the road.

18 So that's where we're coming from in terms of that
19 issue. And it seems to me if it's appropriate, looking
20 prospectively, to include that sort of guidance, it
21 should have been appropriate originally as well. And
22 I should say, for the record, we did in fact request
23 that guidance be added when the parameters and
24 guidelines were originally done.

25 Likewise, in terms of the revenue question, your

1 staff has indicated that they don't feel that you have
2 the authority to request information on revenues above
3 the \$2,000 limit, but doesn't seem to have a problem
4 saying that that money has to be deposited into the
5 Board's — the Waste Board's account.

6 So clearly those community college districts are
7 going to have the information; otherwise, they wouldn't
8 know how much to put into that account. All we're simply
9 suggesting is let's put that information into the claims
10 up front. It's actually to the benefit of the claimants
11 as well. It's going to make the review of those claims
12 easier down the road.

13 So with that, I would just respectfully request that
14 the additions that we have requested be also included in
15 the parameters and guidelines.

16 CHAIR SHEEHY: One moment, Ms. Shelton, please.

17 I'd like to understand.

18 MR. BLOCK: Sure.

19 CHAIR SHEEHY: So your contention, Mr. Block, is
20 that the claims that are being submitted are difficult to
21 review and they're not usable because they're messy and
22 they have incomplete information?

23 MR. BLOCK: Perhaps I shouldn't have used the
24 word "messy."

25 They — they — on their face, if you go back and

1 look at the analysis of the claims that were filed —
2 that would be in your files; that wasn't something that I
3 sent you the additional papers — your staff almost
4 literally pleaded with the Board to help them review and
5 understand those claims because, on their face, there
6 were things that didn't make sense and didn't seem to
7 accord with the original parameter or guidelines as
8 well.

9 And our response at that point in time was, we
10 can't do it because you — the parameters and guidelines
11 didn't request any sort of detailed information in a way
12 to enable that review — any kind of review of those
13 claims without doing an audit.

14 So that's — that's the point — that's where we're
15 coming from on this, asking for some more information
16 in — in advance.

17 CHAIR SHEEHY: Ms. Shelton?

18 MS. SHELTON: I think Paula had something.

19 CHAIR SHEEHY: Okay.

20 MS. HIGASHI: I just wanted to respond.

21 I think what Mr. Block is talking about — some
22 of you may recall this if you were at the hearing — but
23 the Commission adopted the statewide cost estimate for
24 this program.

25 When it did so, it requested a summary compilation

1 of the amounts claimed by all the community
2 college districts filing timely reimbursement claims.

3 The State Controller's Office prepared a report
4 for us, and it was basically a summary report which
5 identified each claimant by name, the amount claimed and
6 the amounts that were offset. And it was not a detailed
7 review, as Mr. Elliot — Mr. Block seems to think we
8 did, of actually looking at all the claims data. But it
9 was a summary report, which is typically the basis for
10 our preparation of statewide cost estimates.

11 And so the issues that he's commenting on and
12 raising at this point in time are really not necessarily
13 germane to this issue, because now, with the
14 Commission's consideration of this agenda item, those
15 claims would have to be refiled and offsets would have
16 to be taken as had been directed by the court.

17 So it's, you know, two different scenarios here
18 that he's talking about, and they're getting mixed up.
19 And so I just wanted to clarify that because the period
20 of reimbursement for this P's & G's amendment goes all
21 the way back to the beginning, so all those claims would
22 have to be refiled.

23 CHAIR SHEEHY: Questions or comments of the
24 committee?

25 Ms. Geanacou.

1 MS. GEANACOU: Yes. Thank you. Susan Geanacou,
2 Department of Finance.

3 We've — we were a petitioner — co-petitioner
4 with the Waste Board in the matter before the court, so
5 we have followed this closely, obviously, and
6 participated.

7 I would just observe, from reviewing the test
8 claims statutes and certainly the final staff analysis,
9 that it would appear that the — the cost savings from
10 implementing the test claims statutes that might or
11 should very well appear as an offset in the ultimate
12 claims for reimbursement might appear in two sources of
13 information that are arguably already available if the
14 test claims statutes are complied with.

15 That would be, first, that the amount is deposited
16 with the Board per the test claims statutes, and also
17 provided in the annual report by the community college
18 districts to the — to the Board. So ostensibly those
19 would provide the cost-savings information that is
20 being — being sought or requested here by the Board.

21 If there are no such cost savings deposited or
22 reported per compliance with the statutes, or there are
23 no offsets appearing in mandate reimbursement claims
24 ultimately filed, that can be dealt with as appropriate
25 at the time apart from this court-remand issue.

1 I think that's all I have to say.

2 CHAIR SHEEHY: Ms. Shelton.

3 MS. SHELTON: The commission's jurisdiction in this
4 case is really limited to the writ, and the writ directed
5 two specific changes to the parameters and guidelines.

6 In the court's ruling, it found that the
7 information to support cost savings was already provided
8 to the Board in their existing annual report — the
9 community colleges' annual report to the Board. That is
10 what the court based its finding on. The court, in
11 fact, on the ruling on page 7, you know, didn't indicate
12 that they needed additional information.

13 As Ms. Geanacou indicated, the money goes into the
14 Board's account. They, every year, get a report that
15 describes the calculations of annual disposal reduction
16 and information on the changes in waste generated or
17 disposed of due to increases or decreases in employees,
18 economics or other factors.

19 So their authority is there. The information should
20 be there. If they want to still, you know, pursue their
21 request to amend the P's & G's which is on file and is
22 still pending, they may do that, but that is subject to a
23 different period of reimbursement pursuant to Government
24 Code section 17557.

25 This writ covers the entire period of reimbursement

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1 going back to the initial date.

2 CHAIR SHEEHY: Are there any further questions
3 or comments from the committee?

4 MEMBER WORTHLEY: Mr. Chairman, I would, at this
5 time, move the staff recommendation.

6 MEMBER OLSEN: I'll second that.

7 CHAIR SHEEHY: We have a motion and a second to
8 approve the staff recommendation on Item No. 8.

9 Paula, could you please call the roll?

10 MS. HIGASHI: Mr. Lujano?

11 MEMBER LUJANO: Aye.

12 MS. HIGASHI: Ms. Olsen?

13 MEMBER OLSEN: Aye.

14 MS. HIGASHI: Ms. Schmidt?

15 MEMBER SCHMIDT: Aye.

16 MS. HIGASHI: Mr. Worthley?

17 MEMBER WORTHLEY: Aye.

18 MS. HIGASHI: Mr. Chivaro?

19 MEMBER CHIVARO: Aye.

20 MS. HIGASHI: Mr. Sheehy?

21 CHAIR SHEEHY: Aye.

22 MS. HIGASHI: Motion is adopted.

23 MR. PETERSEN: Thank you. I have to go back and do
24 a hundred misleading claims again.

25 CHAIR SHEEHY: Okay. That motion carries.

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1 MS. HIGASHI: Yes. This brings us to Item 12, the
2 Chief Counsel's Report.

3 MS. SHELTON: It's been a couple of months. I
4 don't have anything new for public session to report.

5 CHAIR SHEEHY: Wish I could say the same,
6 Ms. Shelton.

7 MS. HIGASHI: We'll move on to my report,
8 Item 13.

9 And first I'd like to make a — to acknowledge
10 a couple of our staff. First I'd like to introduce
11 Heidi Palchik, one of our new staff hired in June, and
12 she just hasn't been able to come to a commission
13 hearing, but she's working on minutes and learning about
14 parameters and guidelines and statewide cost estimates.
15 But we're really happy to welcome her and have her on
16 board.

17 CHAIR SHEEHY: Welcome.

18 MS. HIGASHI: And secondly, I'd like to introduce
19 another member of our staff who many of you see but you
20 probably don't know. And that is Lorenzo Duran.

21 Lorenzo, would you please stand?

22 A couple of days ago, there was an event held in
23 Roosevelt Park where one of the state agencies was
24 sponsoring a fundraising effort for the state employees'
25 United Way campaign.

1 And we received word that our commission chair,
2 Mr. Genest, was going to be sitting on a dunk tank.
3 And what we decided to do — what I decided to do
4 unilaterally was sponsor one of our staff to go over
5 there and take a chance on the dunk tank.

6 And Lorenzo was the first person in line when Mike
7 was seated on the bench, and I have to report he was very
8 successful in dunking Mr. Genest, and there was a picture
9 of him in the papers yesterday, I believe.

10 So thank you, Lorenzo.

11 *(Applause)*

12 MEMBER WORTHLEY: Mr. Chairman, I think — I had a
13 conversation with him also, and just in defense of
14 our staff — because it could have been a whole lot
15 worse — he — he actually had ten tickets for ten tries
16 but managed to dunk him on the third try and then gave
17 away the rest of the tickets.

18 So it's possible he might have been dunked several
19 more times by our staff. So we're hoping he doesn't hold
20 that against the staff when he reappears in front of
21 the —

22 CHAIR SHEEHY: We give you additional points for
23 compassion on my boss.

24 Thank you, Paula. Do you have anything else?

25 MS. HIGASHI: On a more serious note, we all know

1 the budget was adopted, and I think everyone here is
2 pretty much aware of what the impact is on mandates, so
3 I'm not going to cover it again. There were no further
4 changes to the Commission's actual budget from those that
5 were last reported.

6 We had — our next hearing is set for November 6th.
7 At the time that we scheduled that hearing, we were
8 looking at a variety of calendars and schedules, and what
9 we wanted to find out from you today is if we could
10 consider changing that hearing date to December in light
11 of the fact that, because of my absence over the last
12 month, we have not put together all the agenda items that
13 we wanted to do for November.

14 And so if I can get a consensus from members as
15 to an alternate date in December, that would be very
16 productive for staff if we could — and parties.

17 CHAIR SHEEHY: I will be unavailable — we could
18 have somebody stand in for me, but I will be unavailable
19 on Friday, December 5th.

20 MS. HIGASHI: Okay.

21 MEMBER SCHMIDT: And I can't speak for Cynthia
22 Bryant as to whether or not she will be able to attend
23 on that date. And this is — this is technically the
24 only time I'm filling in for her, to the best of my
25 knowledge.

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1 MS. HIGASHI: Okay. And what we would do,
2 obviously, is we would survey all the members and the
3 parties that have agenda items pending and see if there's
4 a date we can agree to in the future. If there is not,
5 we would keep the November date because we have actually
6 released items for that hearing.

7 CHAIR SHEEHY: Would it be possible, then, Paula,
8 for staff to follow up with the members of the Commission
9 to see if we can find an agreeable —

10 MS. HIGASHI: We will work on it immediately —

11 CHAIR SHEEHY: Great. Thank you.

12 MS. HIGASHI: — after this hearing.

13 We are continuing our efforts to put together a
14 proposal and also to survey the members on how we intend
15 to deliver agenda materials and to cover the agenda
16 binders during the Commission hearings.

17 Now that the budget has been adopted, we have a
18 better sense of what we'll be working with, and as we
19 wait for the guidelines to come out on further
20 restrictions on spending. So that will be coming soon
21 as well.

22 We did file our annual workload report with the
23 Director of Finance, and this is the report Mike filed
24 to himself. It's posted on our website, and all of you
25 did receive a hard copy of that report. So if anyone

1 has not seen it, it's on the Commission's website.

2 The tentative agendas that are identified here are
3 very tentative. As I've indicated, some of the drafts
4 have issued; others have not.

5 We've actually had a postponement of one, Pesticide
6 Use Report's Parameters and Guidelines Amendment. That
7 postponement was requested by the requester, the
8 Department of Pesticide Regulation, and that matter won't
9 be set for hearing until next March.

10 And all the other items are items that we're working
11 on and hoping to get drafts out in the next couple of
12 months.

13 Are there any other questions?

14 *(No response)*

15 CHAIR SHEEHY: Thank you, Paula.

16 MS. HIGASHI: At this time, we have public
17 comment.

18 And before we go to public comment, just one last
19 thing I wanted to note. For those who may not be
20 aware of the fact, Anne Sheehan is no longer with the
21 Department of Finance. She has accepted a position at
22 CalPERS as the Director of Corporate Governance.

23 MEMBER LUJANO: CalSTRS.

24 MS. HIGASHI: CalSTRS; I'm sorry. CalSTRS.

25 And she'll be there effective next week.

1 CHAIR SHEEHY: Okay. I have the privilege and
2 distinct honor of presenting a resolution here
3 recognizing many years of hard work and service to the
4 State of California. And this is on behalf of Deborah
5 Borzelleri, who is the senior commission —

6 MS. HIGASHI: Borzelleri.

7 CHAIR SHEEHY: — counsel.

8 I'm sorry?

9 MS. HIGASHI: Borzelleri.

10 CHAIR SHEEHY: Borzelleri. Excuse me. I
11 apologize.

12 Whereas Ms. Borzelleri has distinguished herself as
13 a state employee for 35 years, including three years as
14 the Senior Commission Counsel with the Commission on
15 State Mandates; and whereas she has advised and counseled
16 the Commission in determining if cities and counties and
17 special districts and school districts should be
18 reimbursed pursuant to section 6, article XIII B of the
19 California Constitution, and section 17514 of the
20 Government Code; whereas she has completed complex legal
21 analyses and made recommendations to the Commission on
22 over 12 test claims, including the following programs on
23 the mentally disordered offenders binding arbitration,
24 local agency formation commissions, local government
25 employment relations, prevailing wages, comprehensive

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1 school safety plans, California Youth Authority sliding
2 scale, and workers' compensation disability benefits;
3 whereas she has completed trial court briefs and
4 successfully represented the commission before the
5 San Diego Superior Court in litigation on the *San Diego*
6 *Unified School District versus Commission on State*
7 *Mandates* Emergency Procedures Act case; and whereas she
8 is being honored by the Commission on State Mandates in
9 appreciation of her outstanding dedication and service to
10 the State of California and her exemplary service to the
11 Commission on State Mandates.

12 Now therefore be it resolved that the Commission on
13 State Mandates and staff warmly congratulate Deborah
14 Borzer —

15 MS. HIGASHI: Borzelleri.

16 CHAIR SHEEHY: — Borzelleri, excuse me.

17 Warmly congratulate Deborah Borzerrel — warmly
18 congratulate Deborah upon her retirement from the
19 state — I apologize. Warmly congratulate Deborah upon
20 her requirement from state service on September 3rd,
21 2008, done this 1st day of August, 2008, County of
22 Sacramento, State of California, witnessed thereof by
23 members of the Commission.

24 And we have — Deborah, I apologize. My — I didn't
25 get a chance to finish my coffee, so I'm not operating on

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1 all eight cylinders, but we have a nice plaque here, and
2 I'd like — was wondering if you could come and accept
3 this on behalf of the Commission.

4 MS. BORZELLERI: Sure.

5 *(Applause)*

6 CHAIR SHEEHY: Thank you so much for your
7 service to the State of California.

8 MS. BORZELLERI: Thank you.

9 CHAIR SHEEHY: It's dedicated folks like you that
10 really make things — make all the wheels turn in state
11 government, and we sure appreciate the many years of your
12 great service.

13 MS. BORZELLERI: Thank you so much. It's been an
14 honor to work with the Commission and with the staff.
15 They're excellent staff. It's been a great job.

16 Thank you very much.

17 CHAIR SHEEHY: Thank you so much.

18 *(Applause)*

19 MS. HIGASHI: So with Deborah's retirement, I'd
20 just like to note we'll will probably be exploring a
21 freeze exemption so that we can hire behind her, but we
22 will be down one attorney.

23 CHAIR SHEEHY: Okay. At this time, the
24 Commission on State Mandates, if there — is there any
25 further public comment on any of the items that we've

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1 discussed today?

2 (No response)

3 CHAIR SHEEHY: Seeing none, at this time, the
4 Commission is going to adjourn to closed session, and so
5 therefore members of the public and others will have to
6 leave the room.

7 The Commission on State Mandates will now meet in
8 closed executive session pursuant to Government Code
9 section 11126, subdivision (e), in order to confer with
10 and receive advice from our legal counsel for
11 consideration and action, as necessary and appropriate,
12 upon pending litigation listed on the published notice
13 and also listed on the agenda in order to confer with
14 and receive advice from our legal counsel regarding
15 potential litigation.

16 The commission will also confer on personnel
17 matters listed on the published notice and agenda, and
18 we will reconvene in open session in approximately ten
19 to 15 minutes.

20 (Closed executive session commenced at
21 10:33 a.m.)

22 (Open session resumed at 10:48 a.m.)

23 CHAIR SHEEHY: The Commission on State Mandates
24 met in closed executive session pursuant to Government
25 Code section 11126, subdivision (e), in order to confer

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1 with and receive advice from legal counsel, for
2 consideration and action, as necessary and appropriate,
3 upon pending litigation listed on the published notice
4 and agenda and also potential litigation, and pursuant
5 to Government Code section 11126, subdivision (a), and
6 17526, to confer on personnel matters listed on the
7 published notice and agenda.

8 The Commission on State Mandates will now reconvene
9 in open session.

10 Is there a motion to adjourn?

11 MEMBER OLSEN: So moved.

12 MEMBER CHIVARO: Seconded.

13 CHAIR SHEEHY: May we adjourn by unanimous consent?

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

15 CHAIR SHEEHY: Thank you. The Commission on
16 State Mandates is adjourned.

17 *(Proceedings concluded at 10:50 a.m.)*

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1 REPORTER'S CERTIFICATE

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

5 That the proceedings were reported by me, a
6 duly certified shorthand reporter and a disinterested
7 person, and was thereafter transcribed into
8 typewriting.

9 In witness whereof, I have hereunto set my hand
10 on October 13, 2008.

11 

12 DEBRA P. CODIGA
13 California CSR #5647
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