

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
September 27, 2013

Present: Member Eraina Ortega, Chairperson
Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Andre Rivera
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member

Absent: Member Don Saylor
County Supervisor

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 Ortega called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll. Member Saylor was absent.

APPROVAL OF MINUTES

Item 1 July 26, 2013

Member Chivaro made a motion to adopt the minutes. With a second by Member Ramirez, the July 26, 2013 hearing minutes were adopted by a vote of 6-0.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

CONSENT CALENDAR

If there are no objections to any of the following action items designated by an asterisk (), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.*

HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 6* *Habitual Truants*, 01-PGA-06 and 09-PGA-01

Education Code Section 48262 and 48264.5

Statutes 1975, Chapter 1184; Statutes 1994, Chapter 1023;
Statutes 2001, Chapter 734

Clovis Unified School District and San Jose Unified School District,
Requestors

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

STATEWIDE COST ESTIMATE

Item 7* *Tuberculosis Control, 03-TC-14*

Health and Safety Code sections 121361, 121362 and 121366

Statutes 1993, Chapter 676; Statutes 1994, Chapter 685;
Statutes 1997, Chapter 116; and Statutes 2002, Chapter 763

County of Santa Clara, Claimant

Executive Director Halsey announced that after the agenda for this hearing was released, the parties agreed to place Item 6 on the Consent Calendar. Chairperson Ortega asked if there was any objection to adding Item 6 to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment. Member Olsen made a motion to adopt the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 6-0.

**HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557,
and 17559) (action)**

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

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

Item 2 Appeal of Executive Director Decisions

There were no appeals to consider.

TEST CLAIMS

Item 3 *Accounting for Local Revenue Realignments, 05-TC-01*

Health & Safety Code Sections 33681.12, 33681.13, 33681.14, 33681.15;
Revenue & Taxation Code Sections 96.81, 97.75, 97.76, 97.77, 97.31,
98.02, 97.68, 97.70, 97.71, 97.72, 97.73

Statutes 2003, Chapter 162; Statutes 2004, Chapter 211; Statutes 2004,
Chapter 610

County of Los Angeles, Claimant

This test claim pertains to the administrative activities required to implement three revenue-shifting programs instituted by the Legislature: the Educational Revenue Augmentation Fund (ERAF III) shift; the Vehicle License Fee (VLF) Swap; and the Triple Flip.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the staff analysis and proposed statement of decision, approving reimbursement for counties for the costs of administrative activities required by the test claim statutes for two years, and approving reimbursement for the city and county of San Francisco on an ongoing basis.

Parties were represented as follows: Hasmik Yaghobyan, representing the claimant; Geoffrey Neill on behalf of the California State Association of Counties; Michael Byrne and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Chivaro made a motion to adopt the staff recommendation. With a second by Member Alex, the motion to adopt the staff recommendation partially approving the test claim was adopted by a vote of 5-0, with Member Ramirez abstaining.

Item 4 *General Health Care Services for Inmates, 07-TC-12*
Penal Code Section 4011.10
Statutes 2005, Chapter 481 (SB 159) and Statutes 2006,
Chapter 303 (SB 896)
County of Orange, Claimant

This test claim pertains to a 2005 test claim statute and 2006 amendment thereto that allows local law enforcement agencies, including county sheriffs, chiefs of police, and directors or administrators of local detention facilities, to contract with hospitals providing emergency health care services for local law enforcement patients.

Senior Commission Counsel Tyler Asmundson presented this item and recommended that the Commission adopt the staff recommendation to deny the test claim.

Parties were represented as follows: James Harman, representing the claimant; Kim Pearson, Division Director, Orange County Health Care Agency's Correctional Health Services Division; Michael Byrne and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation to deny the test claim. With a second by Member Chivaro, the motion to adopt the staff recommendation denying the test claim was adopted by a vote of 6-0.

REQUEST FOR MANDATE REDETERMINATION

Item 5 *Sexually Violent Predators (CSM-4509), 12-MR-01*
Welfare and Institutions Code Sections 6601 through 6605, and 6608
Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763
(AB 888); Statutes 1996, Chapter 4 (AB 1496)
As Alleged to be Modified by: Proposition 83,
General Election, November 7, 2006
California Department of Finance, Requestor

This redetermination request alleges that the state's liability under a previously determined test claim has been modified based on a subsequent change in law as defined in Government Code section 17570.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the new test claim decision to supersede the previously adopted test claim decision based on a subsequent change in law.

Parties and interested parties were represented as follows: Susan Geanacou and Michael Byrne, representing Requester, the Department of Finance; Hasmik Yaghobyan, on behalf of County of Los Angeles; Todd Spitzer, Orange County Supervisor; Craig Osaki, on behalf of the Los Angeles County Public Defender's Office; Timothy Barry, on behalf of the San Diego County Sheriff's Office, District Attorney's Office, and Public Defender's Office; Geoffrey Neill, on behalf of the California State Association of Counties.

Following discussion among the Commission members, staff, parties, and a member of the public, Member Ramirez made a motion to adopt the findings in the proposed statement of decision, all except for the period of reimbursement and the issue of retroactivity with respect to the County of Los Angeles or any other county that has a binding order. With a second by Member Alex, the findings in the proposed statement of decision, except for the period of reimbursement and the issue of retroactivity were adopted by a vote of 4-1, with Member Rivera abstaining and Member Olsen voting nay.

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 6.5 (info/action)

- Item 8 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 9 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 10 Chief Legal Counsel: Chief Legal Counsel: Recent Decisions, Litigation Calendar

Chief Legal Counsel Camille Shelton presented this item.

- Item 11 Executive Director: Workload, 2014 Meeting Calendar, and Tentative Agenda Items for Next Meeting (info/action)

Executive Director Heather Halsey presented this item. Member Olsen made a motion to adopt the proposed 2014 meeting calendar. With a second from Member Chivaro, the 2014 meeting calendar was unanimously adopted.

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

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)(1):

1. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San*

Diego, et al. (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604) [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g.F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]

2. *California School Board Association (CSBA) v. State of California et al., Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]*
3. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al* (petition and cross-petition).
Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730)
[*Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3*]

PERSONNEL

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

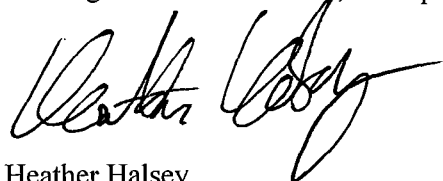
The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:52 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(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 public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:53 a.m.



Heather Halsey
Executive Director

PUBLIC MEETING
COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.
DATE: Friday, September 27, 2013
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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

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

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA
(Commission Chair)
Chief Deputy Director
Department of Finance

KEN ALEX
Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

M. CARMEN RAMIREZ
Oxnard City Council Member

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member



COMMISSION STAFF PRESENT

HEATHER HALSEY
Executive Director
(Item 11)

JASON HONE
Assistant Executive Director

CAMILLE SHELTON
Chief Legal Counsel
(Item 10)

TYLER ASMUNDSON
Commission Counsel
(Item 4)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

MATTHEW JONES
Commission Counsel
(Item 3 and Item 5)

KERRY ORTMAN
Program Analyst
(Item 9)



PUBLIC TESTIMONY

Appearing Re Item 3:

For Requestor Department of Finance:

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

MICHAEL BYRNE
Department of Finance
915 L Street
Sacramento, California 95814

For County of Los Angeles:

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor Controller's Office
500 West Temple, Room 525
Los Angeles, California 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3: *continued*

For California State Association of Counties:

GEOFFREY NEILL
Senior Legislative Analyst
Revenue & Taxation
California State Association of Counties
1100 K Street, Suite 101
Sacramento, California 95814

Appearing Re Item 4:

For the County of Orange:

JAMES C. HARMAN
Deputy County Counsel
County of Orange
P.O. Box 1379
Santa Ana, California 92702

KIM PEARSON, R.N.
Deputy Agency Director
Correctional Health Services Division
County of Orange
405 West Fifth Street
Santa Ana, California 92701

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

MICHAEL BYRNE
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5:

For Requestor Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

MICHAEL BYRNE
Department of Finance

For County of Los Angeles:

HASMIK YAGHOBYAN
SB 90 Administration
County of Los Angeles Auditor Controller's Office

CRAIG OSAKI
Los Angeles Public Defender's Office
210 West Temple Street
Los Angeles, California 90012

For San Diego County Sheriff, P.D., and D.A.:

TIMOTHY BARRY
County of San Diego
County Counsel's Office
1600 Pacific Highway, Room 355
San Diego, California 92101

For Orange County:

TODD SPITZER
Orange County Supervisor
Orange County Board of Supervisors
333 W. Santa Ana Blvd.
Santa Ana, California 92701



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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
49	25	The last word should read "infirm" not "infirmed".

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1 BE IT REMEMBERED that on Friday, September 27,
2 2013, commencing at the hour of 10:00 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 CHAIR ORTEGA: Good morning, everyone.

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

10 If you could please call the roll.

11 MS. HALSEY: Mr. Alex?

12 MEMBER ALEX: Here.

13 MS. HALSEY: Mr. Chivaro?

14 MEMBER CHIVARO: Here.

15 MS. HALSEY: Ms. Olsen?

16 MEMBER OLSEN: Here.

17 MS. HALSEY: Ms. Ortega?

18 CHAIR ORTEGA: Here.

19 MS. HALSEY: Ms. Ramirez?

20 MEMBER RAMIREZ: Here.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Here.

23 MS. HALSEY: Mr. Saylor is absent today. He
24 has a fire in his district, and was not able to come.

25 CHAIR ORTEGA: Thank you.

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1 The first item on the agenda is the minutes
2 from July 26th.

3 Are there any objections or corrections to
4 the minutes?

5 *(No response)*

6 CHAIR ORTEGA: No?

7 MEMBER CHIVARO: Move.

8 CHAIR ORTEGA: A motion.

9 MEMBER RAMIREZ: Second.

10 CHAIR ORTEGA: A second.

11 All those in favor?

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

13 CHAIR ORTEGA: Any opposed?

14 *(No response)*

15 CHAIR ORTEGA: Okay, thank you.

16 MS. HALSEY: And now we'll take public comment
17 for matters not on the agenda. Please note the
18 Commission cannot take action on items not on the agenda.
19 However, it can schedule issues raised by the public for
20 consideration at future meetings.

21 CHAIR ORTEGA: Any public comment?

22 *(No response)*

23 CHAIR ORTEGA: No?

24 Thank you.

25 MS. HALSEY: Next, we have a proposal to add

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1 another item to the Consent Calendar.

2 After the agenda for this hearing was released,
3 the parties agreed to place Item 6, consolidated
4 parameters and guidelines amendments on *Habitual Truants*,
5 on consent.

6 CHAIR ORTEGA: Any objections to adding Item
7 Number 6 to the Consent Calendar?

8 *(No response)*

9 CHAIR ORTEGA: Any comments from the public?

10 *(No response)*

11 CHAIR ORTEGA: Okay, are there any questions,
12 generally, about the Consent Calendar?

13 *(No response)*

14 CHAIR ORTEGA: If not, do we have a motion?

15 MEMBER OLSEN: So moved.

16 CHAIR ORTEGA: It's moved.

17 MEMBER CHIVARO: Second.

18 CHAIR ORTEGA: Second.

19 MS. HALSEY: The Consent Calendar consists of
20 Items 6 and 7.

21 CHAIR ORTEGA: All those in favor?

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

23 CHAIR ORTEGA: Any objections?

24 *(No response)*

25 CHAIR ORTEGA: Abstentions?

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(No response)

CHAIR ORTEGA: Thank you.

MS. HALSEY: Let's move to the Article 7 portion of the hearing.

Will the parties and witnesses for Items 2, 3, 4, and 5 please rise?

(Parties and witness stood.)

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

(Chorus of "I dos" was heard.)

MS. HALSEY: Thank you.

Item 2 is reserved for appeals of the Executive Director decisions. There are no appeals to consider under Item 2.

Item 3, Commission Counsel Matt Jones will present a test claim on *Accounting for Local Revenue Realignment*s.

MR. JONES: Good morning.

This test claim alleges reimbursable state-mandated increased costs incurred by counties as a result of the administrative activities required to implement three revenue-shifting programs instituted by the Legislature: The educational revenue augmentation

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1 fund shift, the vehicle license fee swap, and the triple
2 flip.

3 The proposed statement of decision approves
4 reimbursement for administrative functions of county
5 auditor/controller offices to create new accounts and
6 shift funds between school districts and local agencies
7 as directed by statute.

8 Some of the revenue-shifting activities state
9 that they're only meant to occur during fiscal years
10 2004-05 and 2005-06, while some are ongoing.

11 In addition, the statutes provide authority
12 for counties to charge cities for the costs of the
13 ongoing mandated activities after the first two years.
14 Therefore, for all counties except the City and County of
15 San Francisco, which has no subordinate city against
16 which to levy the fees, reimbursement is capped in the
17 2006-2007 fiscal year.

18 Staff recommends that the Commission adopt the
19 staff analysis and proposed statement of decision as its
20 test-claim statement of decision, approving reimbursement
21 for counties for the costs of administrative activities
22 required by the test-claim statutes for two years, and
23 approving reimbursement for the City and County of
24 San Francisco on an ongoing basis.

25 Staff further recommends that the Commission

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1 authorize staff to make any non-substantive technical
2 changes to the proposed statement of decision following
3 the hearing.

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

6 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of
7 County of Los Angeles.

8 MR. NEILL: Geoffrey Neill on behalf of the
9 California State Association of Counties.

10 MR. BYRNE: Michael Byrne, Department of
11 Finance.

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

14 CHAIR ORTEGA: Ms. Yaghobyan?

15 MS. HALSEY: Excuse me, Mr. Neill, is your
16 microphone working?

17 MR. NEILL: I don't know.

18 CHAIR ORTEGA: It is.

19 MS. YAGHOBYAN: I just would like to thank the
20 staff, and we concur with their recommendation.

21 MR. NEILL: I actually -- we filed late
22 comments, and we knew they wouldn't be entered into the
23 analysis. But the proposal before the Commission says
24 that because there's fee authorities, it's not a mandate
25 except in the City and County of San Francisco; but

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1 allowing one level of government to charge another level
2 of local government for a charge doesn't mean it's not a
3 mandate, it just shifts the costs onto different local
4 agency. So cities ought to be able to claim their costs
5 under this mandate.

6 Furthermore, the counties still retains a share
7 of the mandated costs because counties can only bill out
8 to cities the portion that benefits those cities.
9 Because a portion of the benefit remains with the county
10 for these tax allocations, the county still retains a
11 share of the cost. So counties ought to be able to claim
12 that share of the cost. Since they only have partial fee
13 authority, they still have to pay for some of the
14 administrative actions. Even the fee authority that they
15 do have is just on cities, so the cities ought to be able
16 to claim those costs.

17 MR. BYRNE: Michael Byrne, Department of
18 Finance.

19 Finance concurs with the Commission's draft
20 analysis recommendation.

21 CHAIR ORTEGA: Okay, thank you.

22 Are there any questions from the Members?

23 MEMBER OLSEN: I'd like to hear staff's
24 response to CSAC.

25 MR. JONES: Well, if I understand CSAC's

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1 comment and their comments today correctly, they
2 are essentially arguing that the fee authority that is
3 written into the statute in this case, which allows
4 county auditors to charge the cities -- the subordinate
5 cities within their county for the costs of the
6 revenue-shifting activities, which are the entire scope
7 of this mandate.

8 The fee authority that is granted to counties,
9 they're essentially arguing it's just a revenue shift --
10 it's just a cost shift to the cities and that the cities
11 should then be reimbursed.

12 There are a couple problems with that.

13 One is that the cities have not filed any test
14 claim on these statutes. The counties were the only
15 claimant.

16 And then the other problem is that the cities
17 don't have any activities under these statutes. The
18 cities only are, you can say, subject to or burdened by
19 the costs, and it's the counties that are the ones
20 performing the activities.

21 You know, we've got case law that's pretty
22 clear on that point, that costs alone are not a mandate.
23 And, in fact, you can look, for example, at, I believe,
24 Redevelopment Agency of San Marcos, which shifted money
25 away from school districts in the first *ERAF*. And that's

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1 related to this because this is *ERAF* Number 3. This is
2 the third time we've taken money from school districts
3 and moved it somewhere else.

4 And in that case -- or, actually, excuse me, in
5 that case it was from the redevelopment agencies to the
6 school districts. And the redevelopment agencies were
7 held not to be reimbursable claimants -- or eligible
8 claimants for reimbursement there, in part, because there
9 wasn't any activity. It was just basically pulling funds
10 away from them.

11 And so in the same vein here, you've got cities
12 that are, yes, losing some revenue, arguably, but it's
13 been done by the county. Number one, it's not forced but
14 it's authorized for the county to charge the cities. And
15 then secondly, the cities do not have any activities.
16 And then finally, as I said, the cities haven't filed a
17 test claim. This is a county test claim.

18 MEMBER OLSEN: Correct me if I'm wrong, but I
19 think there is one other issue; and that is that counties
20 are only able to charge the cities in their jurisdiction
21 proportionately for the amount of the shift that affected
22 the cities themselves, and that there's a residual
23 portion that continues to affect the counties; is that
24 correct?

25 MS. HALSEY: I do want to -- I'm sorry for

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1 interrupting. I just want to point out this is the first
2 time this argument is being raised. It wasn't even
3 raised in the late comments.

4 MR. NEILL: It was.

5 MS. HALSEY: I have them.

6 MEMBER OLSEN: Yes, it's in the late comments.

7 MS. HALSEY: Was it?

8 The part about it being a burden on the
9 counties?

10 MEMBER OLSEN: Yes.

11 MR. NEILL: Yes.

12 MS. HALSEY: I'm sorry then.

13 MR. JONES: The statute isn't that specific.

14 The statute merely says that the counties can
15 charge the cities with the costs of the administrative
16 activities -- or the costs of the services provided, or
17 something along those lines. I don't remember the exact
18 language.

19 But in any case, it's pretty clear that the
20 plain language of the statute allows the counties to
21 charge cities for the costs incurred by the county
22 auditor/controller's office to move this money around as
23 directed by the statute.

24 We have, you know, more case law on fee
25 authority -- *Connell*, for example, and *Clovis*, both of

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1 which suggest that whatever practical limitations there
2 are to exercising that fee authority, are not relevant to
3 the question under section 17556(d), of whether there is
4 fee authority and whether there should be costs mandated
5 by the state.

6 So it may be that the cities are not able to
7 pay the costs of this program. It may be that the
8 counties can ask for that money and they're not going to
9 get it, and they're not going to get blood from a stone.
10 But the point is that the case law doesn't really permit
11 us to consider those factors; it's just a question of
12 whether there is authority in the statute. And, as a
13 matter of law, there is in this case.

14 MR. NEILL: Can I ask a clarifying question?

15 So if the state imposed a mandate on counties
16 and said that we could charge -- say, it was a -- say,
17 it was a big public-safety mandate, large dollars, and
18 it said that we could charge each offender \$1 for this
19 big mandate. Say, the mandate costs tens of thousands
20 of dollars per offender.

21 You're saying that because there's fee
22 authority for the \$1, we couldn't claim the rest of the
23 costs? Because you're saying that --

24 MR. JONES: Not at all.

25 MR. NEILL: -- the partial fee authority that

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1 we have to charge cities, it would be illegal for us to
2 charge the cities more than their proportionate share?
3 And because -- even though the fee authority doesn't
4 grant us the authority to charge the full cost of the
5 program, we still can't claim the remainder of the costs?

6 MR. JONES: First of all, the statute in this
7 case isn't limited to a dollar amount. And I'm not sure
8 where you're getting the idea that it's proportionate to
9 anything other than the services actually provided to the
10 city. And then the language of this --

11 MR. NEILL: Because a fee -- the specific --
12 a fee is defined in the Constitution as only being the
13 charge. You can only charge a fee in proportion to the
14 benefit received.

15 MS. SHELTON: Could I? Let me clarify the
16 general rules on fee authority under 17556(e).

17 Basically, if there's a fee established that
18 is sufficient to pay for the cost of the state-mandated
19 activities, there are no costs mandated by the state.
20 It is a question of law, and it depends on the language
21 of the fee authority authorized by the statute.

22 Here, the fee authority applies to all services
23 that we have found to be mandated and to be a new program
24 or higher level of service. So by law, they're allowed
25 to charge a fee for all costs incurred for those

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1 services.

2 If there was a statute that you suggested that
3 had a cap, then certainly there is an argument to be made
4 that our costs are higher than the cap. And here,
5 there's no cap.

6 If there were a cap, you would need to file
7 evidence in the record to show that your costs exceed the
8 amount that you're able to charge. But that's not the
9 situation here. There is no cap. By law, the authority
10 allows you to charge fees for all services performed.

11 MEMBER OLSEN: So if I could be indulged here.

12 CHAIR ORTEGA: Yes, and then I'd like to hear
13 from Mr. Byrne who also wants to make a comment.

14 MEMBER OLSEN: Okay, I'm going to go to the
15 CSAC late filing here, and under point one, the second
16 main paragraph -- and I just want somebody to tell me if
17 this is -- you know, if the Commission has a different
18 point of view, if Commission staff has a different point
19 of view.

20 "However, counties are only authorized to
21 charge fees on a city in proportion to that city's share
22 of increased revenue. This leaves a portion of the
23 increased costs still imposed on the county, since the
24 county also receives a share of the increased revenue.
25 In many counties, if not every county, the county

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1 receives more property taxes than any single city within
2 its jurisdiction. This leaves the largest portion of the
3 administrative costs still a burden to the county."

4 MS. SHELTON: I'm going to let Matt respond to
5 that. Because it sounds like what the CSAC letter is
6 doing, is interpreting the plain language of the
7 fee-authority statute here. And it sounds like there
8 may be a difference of opinion on that, on that
9 interpretation.

10 CHAIR ORTEGA: Can I go to Mr. Byrne, please?

11 MR. BYRNE: Yes. The actual language of
12 Rev. and Tax Code 9775 states, "For the 2006-07 fiscal
13 year, and each fiscal year thereafter, a county may
14 impose a fee, charge, or other levy on a city for these
15 services, but the fee, charge, or other levy shall not
16 exceed the actual cost of providing these services."

17 MS. SHELTON: And that is typical language of
18 17556(e), fee authority, that by law, it means there are
19 no costs mandated by the state.

20 CHAIR ORTEGA: Mr. Jones?

21 MR. JONES: It sounds to me, actually, like
22 Mr. Neill is suggesting that the definition of "fee" and
23 "assessment" and "tax" that we have recently added to
24 Article XIIID might be coming into play.

25 But I wonder if there's anything to the idea

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1 that this all happened in 2004-2005, 2005-2006, which is
2 prior to Prop. 218 and Prop. 26.

3 So the definitions of "fee," "assessment," and
4 "tax" that are currently in XIIIID I'm not certain would
5 apply in this case to the fee authority that we have in
6 Revenue and Tax 9775.

7 And maybe Camille can speak to that.

8 MS. SHELTON: I think that's a little bit of a
9 red herring, only because Prop. 218 and Article XIIIIC and
10 D really defined more things -- more fees to be taxes.
11 And here, it is truly a fee. And no court has come out
12 and said it was a tax. So until you have a court
13 decision on that ruling, it's the plain language we have
14 is controlling. And it's a fee.

15 CHAIR ORTEGA: Ms. Yaghobyan?

16 MS. YAGHOBYAN: Actually, what Mr. Geoffrey
17 Neill is suggesting -- he had already spoke with me --
18 it's not that the fee be charged to the cities for the
19 services we do, because there is other costs that we have
20 to endure for our portion.

21 He is talking about that portion of the costs.
22 But after I spoke with our people, that costs is not
23 material, we decided not to claim that or to not include
24 that in our test claim. But that doesn't mean no other
25 local agencies or counties would not have costs.

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1 So the costs he is referring is not the fee
2 that is charged to the others. It's the cost for
3 ourselves, for our portion. But we just didn't want to
4 do.

5 MR. NEILL: If we're going with the specific
6 language of the statute, it actually only authorizes --
7 if we're just reading it as plainly as possible, it only
8 authorizes us to charge a city. It only allows each
9 county to charge one city the fee.

10 I mean, as long as -- if we're going to be this
11 strict about it, it says that we can charge a city the
12 costs -- our costs.

13 MR. JONES: That's a pretty strained
14 interpretation, I think.

15 MR. NEILL: I think yours is, too. I think
16 saying that -- I mean, it's long established that taxing
17 agencies, whether it's the Board of Equalization, whether
18 it's counties -- whoever it is -- they can only charge
19 the fees to the people who get the benefit, in proportion
20 to that benefit.

21 MR. JONES: We need to be careful about using
22 the word "benefit" there.

23 We're talking services provided by the county
24 which -- let's be honest, these are services that -- the
25 county is taking money from the cities. The cities

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1 aren't going to consider it a benefit under any
2 circumstances under this statute. So the word "benefit"
3 is also a red herring there.

4 But you're talking about -- the statute that
5 Mr. Byrne just read says specifically that counties can
6 charge the subordinate cities the fee for the cost of the
7 services administered to the cities. And the services
8 administered under section 97.68, and I think 97.70 is
9 the other one, which are the VLF swap and the triple-flip
10 swap, both of those statutes discuss creating these
11 accounts for shifting money. They talk about shifting
12 money from one place to another, and then back to a third
13 place. And clearly, there are some activities on the
14 county.

15 But if you're suggesting that the fee authority
16 is somehow going to fall short of that, you're going to
17 have to submit some evidence in the record -- which there
18 isn't any, up to this point -- that there are other
19 reimbursable activities that aren't covered by that fee
20 authority.

21 And so far, there has been nothing submitted
22 that suggests that.

23 CHAIR ORTEGA: Ms. Olsen?

24 MS. SHELTON: Just one more point to add: That
25 what -- what CSAC is suggesting that there is going to be

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1 other ancillary activities that are tied to these
2 mandated activities, and they are suggesting that the fee
3 does not attach to that.

4 Mandates law is very strictly legal. You have
5 to apply the fees strictly to those activities that are
6 mandated. And if that applies, then there are no costs
7 mandated by the State.

8 So by the plain -- you have to interpret the
9 plain language of the statute and pull the activities
10 from the plain language of the statute.

11 And our interpretation of the fee authority for
12 those services means the fee applies to those activities
13 that are required.

14 MEMBER OLSEN: I get that.

15 I don't think I've heard anybody address really
16 specifically this issue of this residual cost that cannot
17 be shifted through fees to the local governments that
18 receive a benefit from this activity; that there is some
19 residual cost to at least some counties, if not all
20 counties, because they, too, were affected by these
21 shifts.

22 MS. SHELTON: But the point I was trying to
23 make, when you say a "residual cost," that's not how the
24 fee authority in 17556(e) works. There's no -- you have
25 to point, you have to tag the fee authority to the

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1 mandated activity. Those are the only activities that
2 we're talking about.

3 Any residual activity that's not required by
4 the plain language of the statute is not relevant for
5 this issue.

6 MEMBER OLSEN: So you're saying that for this
7 issue, the counties have -- all the counties, with the
8 exception of the City and County of San Francisco -- have
9 the ability to charge fee authority for their full costs
10 of administering this program, even --

11 MS. SHELTON: For administering the required
12 activities, yes.

13 MEMBER OLSEN: And they could charge cities in
14 their jurisdiction, fees that would cover the full cost,
15 even though there is a portion of the program that
16 benefits counties as opposed to cities?

17 MR. JONES: As a matter of law, yes, that's
18 correct.

19 MEMBER OLSEN: Okay.

20 CHAIR ORTEGA: Any other comments from the
21 commissioners?

22 *(No response)*

23 CHAIR ORTEGA: From the public?

24 *(No response)*

25 CHAIR ORTEGA: Do we have a motion on this

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1 item?

2 MEMBER CHIVARO: Move staff recommendation.

3 MEMBER RAMIREZ: May I just add this? I am
4 going to abstain from this because my city is dealing
5 with it now. So I'll be abstaining.

6 CHAIR ORTEGA: Thank you.

7 We have a motion.

8 Do we have a second?

9 MEMBER ALEX: Second.

10 CHAIR ORTEGA: Okay, please call the roll.

11 MS. HALSEY: Mr. Alex?

12 MEMBER ALEX: Aye.

13 MS. HALSEY: Mr. Chivaro?

14 MEMBER CHIVARO: Aye.

15 MS. HALSEY: Ms. Olsen?

16 MEMBER OLSEN: Aye.

17 MS. HALSEY: Ms. Ortega?

18 CHAIR ORTEGA: Aye.

19 MS. HALSEY: Ms. Ramirez is abstaining.

20 MEMBER RAMIREZ: Abstain.

21 MS. HALSEY: And Mr. Rivera?

22 MEMBER RIVERA: Aye.

23 MS. HALSEY: The motion carries.

24 Moving on to Item 4, Senior Commission Counsel

25 Tyler Asmundson will present a claim on *General Health*

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1 *Care Services for Inmates.*

2 This item was postponed from the July 26th
3 hearing at the request of claimant.

4 MR. ASMUNDSON: Good morning.

5 This test claim requests reimbursement for
6 costs incurred by local law-enforcement agencies for
7 treatment of law-enforcement patients receiving emergency
8 medical care. Staff recommends that the Commission deny
9 this test claim.

10 As amended by the test-claim statute, Penal
11 Code section 4011.10 authorizes local agencies, including
12 county sheriffs, police chiefs, and directors or
13 administrators of local detention facilities to contract
14 with hospitals, providing emergency health-care services
15 for law-enforcement patients.

16 It also sets statutory limits on the amount
17 that hospitals that do not contract with local agencies
18 may charge for emergency health-care services at a rate
19 equal to 110 percent of the hospital's actual cost, or
20 10 percent above their actual costs.

21 The test-claim statutes were enacted to save
22 taxpayer dollars by enabling county sheriffs and police
23 chiefs reasonable control over medical costs for inmates,
24 suspects, and victims of crime.

25 Although the claimant has filed a declaration

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1 showing that it has incurred increased costs as a result
2 of the test-claim statutes, they do not impose any
3 mandated activities on the claimant or mandate the county
4 to increase its level of service provided to the public.

5 A statute that simply results in increased
6 costs without mandating local agencies to perform new
7 activities or a higher level of services does not require
8 reimbursement under the Constitution.

9 Staff recommends that the Commission adopt the
10 proposed decision to deny the test claim.

11 Will the parties and witnesses please state
12 your names for the record?

13 MR. HARMAN: Good morning, Members of the
14 Commission. James Harman, Deputy County Counsel, County
15 of Orange.

16 And I'm joined by Kim Pearson, registered
17 nurse, who is the division director for the Orange County
18 Health Care Agency's Correctional Health Services
19 Division.

20 Members of the Commission, thank you very much
21 for the opportunity to speak this morning, and thank you
22 for allowing the continuance, for my father to have his
23 surgery and have me there for him. I do appreciate your
24 indulgence.

25 We're presenting our case this morning because

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1 4011.10 of the Penal Code provides a new program for the
2 County of Orange to pay for emergency medical services
3 for its inmates that didn't exist before its enactment.

4 The Orange County Health Care Agency provides
5 health-care services for inmates booked into Orange
6 County jails. That hasn't changed from before Penal Code
7 section 4011.10 was enacted or after. We provide that
8 care.

9 But before the Penal Code provision was
10 enacted, the County had the power to negotiate rates for
11 emergency medical services with its providers.

12 We negotiated and paid for those services at
13 what we call our "MSI rates," our medical services for
14 indigents rates. And the providers agreed to those.
15 They provided the service; we paid for it. And that was
16 the system we had in place in Orange County. That was
17 the program we had.

18 But once the Penal Code provision that's the
19 subject of this hearing was passed, Orange County now had
20 to have a new program. And that new program requires the
21 County to pay for those medical services at 110 percent
22 of the claimed costs that those providers have. So
23 Orange County can no longer have, at our previous
24 arrangement, our previous program of MSI rates. Now,
25 we're under a new program mandated by the State to pay at

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1 110 percent of those costs.

2 Now, the statute does say in its plain
3 language, the counties have the power to negotiate rates
4 with their providers. But it's an illusory power. It's
5 an illusory promise that the Legislature gives to the
6 County of Orange. Because essentially that's the least
7 that the providers can get, is 110 percent. What
8 incentive do the providers have to contract for anything
9 less than that? For instance,
10 MSI rates, or something in between MSI rates and
11 110 percent.

12 Now, this test claim was filed in 2008 before
13 Ms. Pearson's time and mine. But in that year alone, it
14 was calculated that these costs, these mandated costs
15 were \$1.8 million.

16 Our estimate at this point is, the County of
17 Orange has lost \$15 million out of its general fund,
18 keeping in mind the County of Orange is a "donor county,"
19 who receives less property-tax revenue out of the
20 property-tax dollar than any other county in the state.
21 So when it hits us, it hits us hard.

22 Without this financial incentive -- or without
23 the incentive to contract with providers, the County is
24 left powerless to be able to negotiate a lower rate for
25 providing emergency inmate medical care. If we had

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1 those dollars and we could negotiate those rates, and if
2 the state were to reimburse us of those funds, imagine
3 what we could do for correctional medical care. We
4 wouldn't necessarily have a Cadillac program for our
5 inmates, but Ms. Pearson's team would be able to provide
6 enhanced services for things like diabetes control or HIV
7 care. Those kinds of things that would not only help the
8 public fisc in providing medical services for inmates
9 while they're in jail, but would also enhance their
10 health benefits, so that once they're released, they're
11 less of a burden on the public health system.

12 This is part of a larger context of mandates
13 that are going back and forth between Sacramento and
14 counties, along with AB 109 and some of the other things
15 that local entities are suffering from. And, for
16 instance, with AB 109 and PC 4011.10, there is like a
17 multiplier effect now for the County of Orange, because
18 now with more inmates, more emergency medical care, being
19 forced to pay at 110 percent, it really squeezes the
20 County when it come to our general fund in providing
21 these inmate medical services.

22 Members of the Commission, we have detailed our
23 position clearly here. I would note one distinction in
24 this mandate, and to demonstrate how it's a new and
25 different program for the County versus the State itself.

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1 As the Commission pointed out, when the State
2 has on its books providing medical care for its inmates,
3 it allows the State, or requires that the State pay at
4 Medicare rates. So it's essentially a floor, which would
5 provide an incentive for providers to maybe negotiate
6 something better with the State.

7 For us, it's exactly the opposite. The State
8 has imposed a minimum that the providers will get. That
9 they're going to get, at a minimum, 110 of costs. And so
10 they have no reason to negotiate for anything less from
11 us, for emergency medical care services; keeping in mind
12 that maybe not all providers want inmates and providing
13 medical care. So we're already starting, you know, at a
14 step behind.

15 So this is the position, that 4011.10, which
16 has many good public policy benefits behind it. And we
17 certainly don't dispute that; and we don't dispute the
18 wisdom of the Legislature in passing this. But the
19 Legislature also said that if this Commission finds that
20 it's a state mandate, then those mandates should be
21 reimbursed. And that's what the County is asking for.

22 And what we're also asking for is that the
23 Commission review our position in light of the proposed
24 statement of decision that staff has written up. And
25 we'd ask you to exercise your independent judgment and

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1 sustain the County's test claim and direct that a new
2 proposed judgment be drafted for this Commission.

3 Thank you.

4 MR. BYRNE: Michael Byrne, Department of
5 Finance.

6 Finance concurs with the staff recommendation
7 that the claim be denied.

8 MEMBER RIVERA: A question. The providers,
9 have they refused to negotiate with you since this
10 provision has been in place?

11 MR. HARMAN: I'm not aware that they've refused
12 to negotiate, but they certainly have no incentive to
13 negotiate at this point.

14 MEMBER RIVERA: I understand. Yes, I
15 understand they have no incentive. But have you reached
16 out to them and asked them if they're willing to have a
17 different contract with you?

18 MR. HARMAN: Under the statute, we have to pay
19 them at that rate.

20 MEMBER ALEX: So I'm looking at the statute --
21 and, obviously, you have more specific experience with
22 it; but, there are situations where emergency services
23 could be provided by a particular hospital or trauma
24 center or whatever. And you could conceivably have a
25 contract for those services, that you will take inmates

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1 from "X" or "Y" facility to that particular center. And
2 it does strike me that that does create some ability to
3 negotiate.

4 Have you explored that at all?

5 MR. HARMON: Well, I think when it comes to --
6 and I'll ask Ms. Pearson to explain better the idea of
7 what really are the realities of being able to transport
8 inmates to one particular facility, keeping in mind that
9 Orange County has five different facilities, one of which
10 is -- or, actually, two of which are geographically
11 distinct. And so you couldn't just simply say: there is
12 one central hospital for the County of Orange. And also
13 keeping in mind the County of Orange does not have a
14 county hospital.

15 But I would leave it to Ms. Pearson to describe
16 how inmate emergency medical care is provided in the
17 County.

18 MS. PEARSON: So in terms of the emergency
19 department, there are various hospitals with different
20 levels of care, as trauma center Level 1, Level 2,
21 et cetera. So depending on what the nature of the injury
22 is or the nature of the condition, that helps mandate
23 which hospital that they go to.

24 Particularly in the jail situation, we end up
25 frequently with inmate-upon-inmate assaults, and there

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1 are head and neck injuries. Well, those individuals must
2 go to a trauma center that has a neurosurgeon. So it's
3 not an issue of, do we have a contract with them or not.
4 They are possibly the closest facility, as well as the
5 facility that has the level of service that's needed.
6 And based on EMTALA, they take those patients and they do
7 stabilize them because they have to do that. It has
8 nothing to do with the contract with us or not. They
9 just charge us 110 percent at that point.

10 And as to the other question, we have put out
11 an RFP for services, and we do not get responses.

12 CHAIR ORTEGA: Are there any other questions?
13 Yes?

14 MS. GEANACOU: If I may.

15 Susan Geanacou, Department of Finance.

16 I just want to stress here that the test-claim
17 statute does not require the counties to perform any new
18 program or higher level of service. To the extent the
19 test-claim statute has had a cost or revenue alone impact
20 on the counties, that is cost or revenue alone is the
21 sole impact, to the extent there's been a loss of
22 negotiating advantage here, which may or may not have
23 happened. It will reflect in costs or revenue loss
24 alone, and no new program or higher level of service
25 required -- is not required.

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1 CHAIR ORTEGA: Thank you.

2 Anything else from the Members?

3 Ms. Olsen?

4 MEMBER OLSEN: Well, it seems to me that this
5 is a real issue, but it's not a real issue for the
6 Commission. It seems to me, from what I've heard, it's
7 an issue for the Legislature, and that the issue before
8 the Commission today is fairly clear, which is that there
9 is no new program, no higher level of service. And
10 that's really what we have to make our judgment on.

11 I'm really sympathetic to the problems it's
12 caused for you, but I don't see that this is the right
13 venue for solving that problem.

14 CHAIR ORTEGA: Any additional comments?

15 *(No response)*

16 CHAIR ORTEGA: Anything from the public?

17 *(No response)*

18 CHAIR ORTEGA: Do we have a motion?

19 MEMBER OLSEN: I'll move the staff
20 recommendation.

21 CHAIR ORTEGA: Thank you.

22 MEMBER CHIVARO: Second.

23 CHAIR ORTEGA: We have a motion and a second to
24 approve the staff recommendation.

25 Please call the roll.

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1 MS. HALSEY: Mr. Alex?

2 MEMBER ALEX: Aye.

3 MS. HALSEY: Mr. Chivaro?

4 MEMBER CHIVARO: Aye.

5 MS. HALSEY: Ms. Olsen?

6 MEMBER OLSEN: Aye.

7 MS. HALSEY: Ms. Ortega?

8 CHAIR ORTEGA: Aye.

9 MS. HALSEY: Ms. Ramirez?

10 MEMBER RAMIREZ: Aye.

11 MS. HALSEY: Mr. Rivera?

12 MEMBER RIVERA: Aye.

13 MS. HALSEY: The motion carries.

14 Item 5, Matt Jones, Commission Counsel, will
15 present this item. It's a request for mandate
16 redetermination on *Sexually Violent Predators*.

17 MR. JONES: Item 5. The Commission conducted
18 the first hearing of the two-step hearing process on the
19 redetermination request on July 26th, 2013. It found
20 that the requester, the Department of Finance, had made
21 an adequate showing that the request had a substantial
22 possibility of prevailing at the second hearing.

23 At this second hearing, the issue before the
24 Commission is whether to adopt the new test-claim
25 decision to supersede the previously adopted test-claim

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1 decision based on a subsequent change in law.

2 Staff finds that Proposition 83 constitutes a
3 subsequent change in law that modifies the State's
4 liability for the test claim. However, staff finds that
5 Proposition 83 does not eliminate all liability under the
6 program, and staff therefore identifies two activities
7 that remain reimbursable.

8 Staff recommends that the Commission adopt the
9 staff analysis and proposed statement of decision as its
10 new test-claim decision, ending reimbursement for most of
11 the test-claim activities as of July 1, 2011.

12 Staff also recommends that the Commission
13 direct staff to prepare new expedited parameters and
14 guidelines to reflect the State's modified liability
15 under the new test-claim decision.

16 And staff further recommends that the
17 Commission authorize staff to make any non-substantive
18 technical changes to the proposed new test-claim decision
19 following the hearing.

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

22 MS. YAGHOBYAN: Hasmik Yaghobyan on behalf of
23 County of Los Angeles.

24 MR. SPITZER: Todd Spitzer, Orange County
25 Supervisor and former member of the State Legislature.

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1 MR. OSAKI: Craig Osaki, Deputy Public
2 Defender, from the Los Angeles County Public Defender's
3 Office.

4 MR. BARRY: Timothy Barry, Office of County
5 Counsel, on behalf of the County of San Diego.

6 MR. NEILL: Geoffrey Neill, CSAC.

7 MS. GEANACOU: Thank you. Susan Geanacou,
8 Department of Finance.

9 MR. BYRNE: Michael Byrne, Department of
10 Finance.

11 CHAIR ORTEGA: And since the Department of
12 Finance is the claimant here, we'll start with Mr. Byrne
13 or Ms. Geanacou.

14 MS. GEANACOU: Yes, I'll start.

15 Thank you.

16 This is Finance's request for a new test-claim
17 decision on the *Sexually Violent Predators* mandate.

18 Finance's request asserted that the duties
19 comprising the *Sexually Violent Predators* mandate were
20 all either expressly included in Proposition 83 or
21 necessary to implement it.

22 Commission staff now agrees with Finance on
23 six of eight of those activities in that they are no
24 longer reimbursable by the State, and recommends that
25 two of eight of those activities remain reimbursable

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1 mandates.

2 Finance accepts that recommendation and urges
3 the Commission to adopt the final staff analysis.

4 I will just recite briefly a chronology of the
5 events here, hopefully to make your decision more clear.

6 In 1998, the statement of decision adopted by
7 the Commission established this as a reimbursable
8 mandate.

9 In 2006, the voters approved Proposition 83.

10 Four years later, in 2010, the Legislature
11 enacted a process, now in Government Code section 17570,
12 to allow for a new test-claim decision following a
13 subsequent change in law, affecting state liability for
14 mandate reimbursement. Here, that subsequent change in
15 law is Proposition 83 approved by the voters.

16 Government Code section 17556(f) says that:
17 "The Commission shall find no costs mandated by the State
18 if the statute or executive order imposes duties that are
19 necessary to employment or are expressly included in a
20 ballot measure approved by the voters in a statewide or
21 local election."

22 And based on the voters' approval of
23 Proposition 83, Finance continues to assert that many of
24 the *Sexually Violent Predators* mandated activities
25 identified by the Commission staff are no longer

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1 reimbursable based on Government Code sections 17556(f)
2 and 17570.

3 Finance has considered the comments filed
4 following the first hearing in July, and believes, in
5 light of our filing for a new decision, there is no legal
6 basis on which to continue the State's liability for the
7 six *Sexually Violent Predators* activities identified by
8 the Commission staff.

9 The staff's recommendation should be approved.

10 CHAIR ORTEGA: Thank you.

11 MS. YAGHOBYAN: Hasmik Yaghobyan, on behalf of
12 County of Los Angeles.

13 As we have been expressing our disagreement,
14 we disagree with the staff's recommendation for many
15 reasons, one of which is just not being fair. Because we
16 believe the reason the Commission was put in place to
17 resolve the issue between the state and the locals were,
18 the Commission was supposed to be partial [*sic*].

19 But we don't believe that we see that here
20 because when the Department of Finance initiated this
21 redetermination process, our first comment was: Well,
22 this has been -- it's been almost seven years. Even if
23 there was a change in law, which we don't believe there
24 was, still, Department of Finance, why did they wait
25 seven years, or six and a half years?

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1 The Commission responded, "Well, there was no
2 mechanism."

3 Okay, we said, "Well, there was mechanism, at
4 least after 2010, Government code section 17570. Still
5 they didn't do anything. They still waited '10, '11,
6 '12, and '13, January."

7 And then the Commission responded, "Okay, even
8 if they came late, what is your loss?"

9 Well, our loss is here. It's like almost
10 \$12 million a year for just the County of L.A. alone for
11 this program.

12 We don't think we would have even a good
13 society if there was no such statute of limitation for
14 any crimes or anything. People would be worried about
15 being sued for the rest of their lives. And a code
16 section which applies to the past, present, and future
17 on its face, if it's not unconstitutional, we don't
18 believe -- we don't know what else it is.

19 Because the Commission goes on and on for some
20 of the activities and refers them as being
21 constitutionally required. But when it come to the code
22 section itself, they say, we don't know if it's
23 constitutional or not, we just have to take it on its
24 face until the court -- a judge rules whether it's
25 constitutional or not; which it is clear, like I said, if

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1 the law applies to the past, the present, and the future,
2 if it's not unconstitutional, what else is it?

3 The second thing that we think is not fair is
4 just that we as locals, we have 12 months or one year
5 after the incurrence of the cost of new statute of law to
6 file a test claim. And even if we file a test claim, it
7 is very particular to just the word by word, what is
8 necessary. Or not even necessary, what is new? And
9 there could be pages of code sections that we recited
10 from previous law, we cannot claim anything.

11 But, on the other hand, in this case, even a
12 recitation of other codes that there were no changes.
13 Even as the Commission said, there was not even a comma
14 change, still they are considered to be new laws.
15 However, we have one year. But the Department of
16 Finance, they just initiated this process in January.
17 And we are in September, and we are getting almost final
18 decision.

19 The County of L.A. has a test claim which was
20 filed in 2000, *ICAN*. It's been 13 years. We have no
21 resolution yet. So we don't know what the Commission's
22 responsibilities are in this process.

23 So for the same reason, my colleague is going
24 to explain more about the necessity of activities that
25 the Commission rule is not necessary in order to have a

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1 probable cause. However, for the reason I stated, we
2 urge the Commission to deny the recommendation that the
3 staff is making.

4 Thank you.

5 CHAIR ORTEGA: Thank you.

6 MR. OSAKI: Good morning. My name is Craig
7 Osaki. I'm the deputy in charge of the SVP branch in
8 Los Angeles County with the Public Defender's office.

9 I currently practice in the field. I supervise
10 20 lawyers in the field. I've also conducted trainings
11 across the state for the past few years now.

12 Today, I'm here to speak to a few issues
13 regarding the practice that may have an impact on your
14 decision.

15 First, I want to address the reimbursement for
16 retaining the experts, investigators, and professionals
17 for the preparation of a probable-cause hearing.

18 In an SVP case, there are three things or three
19 elements that must be proven: There has to be evidence
20 of a conviction of a qualifying sexually violent offense;
21 there has to be a diagnosed mental disorder as defined in
22 the code; and then also the individual has to be likely
23 to commit another SVP-type offense again. And that's
24 been defined as, they have to have a serious and
25 well-founded risk of re-offending.

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1 Now, these SVP cases are very expert-driven.
2 The psychologists often testify, and they have to look at
3 the facts of the case, they do a clinical interview, they
4 have to look into a person's background, review thousands
5 of pages, conduct multiple actuarial -- there are
6 multiple actuarial tools that are administered. And at a
7 probable-cause hearing, the D.A. must prove by way of a
8 strong suspicion that the individual meets these three
9 elements.

10 The defense is allowed to confront and
11 cross-examine these experts and provide additional
12 information to challenge the allegations. But we would
13 not be able to do so if we weren't provided with the
14 experts and the necessary professionals to do so.

15 I know that the staff has allowed for the
16 reimbursement of probable-cause hearings because there is
17 a right-to-counsel at these hearings. But these
18 individuals also have a right to competent counsel; and
19 having competent counsel requires the retention of
20 experts and professional services.

21 And I would urge that at least those
22 additional -- at least reimbursement for those things
23 also be included for consideration.

24 Another issue that I do wish to discuss is the
25 6603 trial provisions. My understanding of the staff

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1 analysis is that preparation and attendance in trial is
2 not reimbursable because the trial is necessary to
3 implement Prop. 83. I don't deal with mandates a lot too
4 often, but I understand that that was the position.

5 But I wanted to advise the Commission and staff
6 members that there are circumstances when a trial is not
7 necessary. We have had cases where the district
8 attorney, the defense attorney, the Court, through
9 consultation with the psychologist -- we all kind of get
10 together, and we conduct a form of plea bargain. And
11 sometimes we say -- the district attorney will say, "You
12 know what? Your client has been doing really well. We
13 don't think he should be released now. But, you know, if
14 he does well in treatment for another year, perhaps we'll
15 consider releasing him in one or two years, say."

16 And the individual will admit to the petition,
17 and then we will -- and a trial is waived at that point
18 in time.

19 We also have an unfortunate situation that we
20 find occurring more and more often. You have to remember
21 that in these SVP cases, these individuals have served a
22 significant amount of prison time, and that right when
23 they're about to be released, that's when they file these
24 petitions.

25 Many of these individuals are old and infirmed.

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1 They have health issues. They have no support, no money.
2 And for some of these individuals, we are finding
3 individuals who will just voluntarily waive their right
4 to a trial, you know, in these cases, and just
5 voluntarily submit to commitment in these cases.

6 I provide these examples to show that -- I
7 understand what the staff was acknowledging, that there
8 are significant due-process protections; and if an
9 individual wants a trial, there's a lot of due-process
10 protections.

11 But I just wanted to make sure that the staff
12 and the Commission were aware that there are situations
13 where a trial is not necessary. And if a trial is not
14 necessary, then I believe that preparation and attendance
15 for a trial would still be reimbursable as well, and also
16 the retention of experts and investigators and so forth
17 should be reimbursable as well.

18 Finally, I do wish to address one issue that's
19 specific to L.A. County. Prior to the passage of SB 1128
20 and Prop. 83, the District Attorney, the Public Defender,
21 and the L.A. Superior Court agreed and stipulated that
22 cases filed prior to the passage of the law will still
23 be governed under the old law for the two-year term.

24 In addition, in this agreement, once the
25 individual finished that two-year term, the District

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1 Attorney would be allowed to file a recommitment petition
2 if the individual still qualified as an SVP.

3 Now, the validity of this agreement was
4 litigated in the California Supreme Court. In 2010,
5 they reached the decision in *People v. Castillo*,
6 49 Cal.4th 145. It's the validity of this agreement was
7 upheld and the terms of its agreement were enforced.

8 Also, I wanted to inform this Commission as
9 well, with respect to this agreement, there was a
10 24-month limitation on this agreement. There was a
11 subsequent agreement that lifted that 24-month agreement.
12 And so we still have a few cases, still around, that are
13 still pursuant to this agreement.

14 Also, for those individuals that are subject to
15 recommitment petitions, we believe that those cases also
16 are subject to the old law; and, thus, those cases would
17 still be reimbursable to L.A. County as well.

18 So I'd be happy to answer any questions at this
19 time. Otherwise, I thank you for your time and
20 attention.

21 MR. BARRY: Good morning. Timothy Barry,
22 Office of County Counsel on behalf of the County of
23 San Diego, including the Office of the Public Defender,
24 the D.A.'s Office, and the Sheriff.

25 We had raised arguments with respect to the

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1 constitutional of the applicable statutory provisions
2 in our original comments. And I understand that it is
3 the Commission's position that it doesn't have the
4 authority to address the constitutionality of those
5 statutes in this forum. And so I will yield to that
6 position and not raise those arguments here again.

7 The proposed statement of decision correctly
8 concludes that certain costs related to the probable-
9 cause hearing required by Welfare and Institutions Code
10 section 6602 continue to be reimbursable.

11 This includes the cost of transporting each
12 sexually violent predator to and from the facility, the
13 secured facility, to the probable-cause hearing on the
14 issue of whether or not he or she is a sexually violent
15 predator.

16 This is notwithstanding the fact that that
17 particular activity was not previously expressly found by
18 the Commission to be reimbursable.

19 The same rationale that the staff has applied
20 to the reimbursement for that activity, should apply to
21 the costs that the counties incur -- the county's
22 designated counsel and the indigent defense counsel incur
23 in the retention of experts, investigators, and
24 professionals in the preparation for the probable-cause
25 hearing.

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1 We have submitted a declaration, which is at
2 pages 344 through 346 from Michael Ruiz, setting forth
3 how essential it is for counsel, both the prosecutor and
4 defense counsel, to have the availability of experts,
5 investigators, and professionals at the probable cause
6 hearing.

7 As Mr. Osaki pointed out, the individual who is
8 essentially on trial, has the right to competent counsel.
9 And part of the competent counsel is that the counsel be
10 able to retain experts to educate himself or herself with
11 respect to the nuances and the issues that confront his
12 or her client.

13 So I would urge -- I understand that in the
14 staff analysis that's indicated, that this would be more
15 appropriately raised at the parameters and guidelines
16 time; but I do think -- I do not see the difference in
17 the rationale for the activity of transporting prisoners
18 to and from the probable-cause hearing, how that is
19 materially different from this other issue with respect
20 to the retention of professionals, experts, and
21 investigators for the probable-cause hearing.

22 So I'd urge the Commission to -- again, we
23 oppose the elimination of the six activities from
24 reimbursement. But to the extent that you are going to
25 approve the staff analysis, we would also request that

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1 the activities for those probable-cause hearings be
2 included as a -- continue to be included as a
3 reimbursable mandate.

4 CHAIR ORTEGA: Ms. Shelton?

5 MS. SHELTON: Just to clarify that point while
6 we're on it.

7 The reason why -- we're not disagreeing with
8 the arguments that are made with respect to probable-
9 cause hearing. The reason why we can't address them now
10 is because the original parameters and guidelines did not
11 identify those costs as reasonably necessary or necessary
12 to comply with the mandate.

13 So we don't have jurisdiction to add things in
14 right yet. It would have to be after -- when the
15 Commission does have jurisdiction, to address those
16 P's & G's. And that's the difference between the
17 transportation and the probable-cause hearing, where
18 transportation was explicitly provided in the parameters
19 and guidelines, but the experts and investigators for the
20 probable-cause hearing was not. We're not disagreeing
21 substantively.

22 Do you see what I'm saying?

23 CHAIR ORTEGA: Are we ready to move on?

24 MS. SHELTON: Yes, it just needed more. We had
25 nothing in there -- I'm not disagreeing with it, other

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1 than I don't want to tweak the parameters and guidelines
2 until we get to the parameters and guidelines.

3 MS. HALSEY: All we have before us currently,
4 is the current decision that exists. And it doesn't
5 address this issue.

6 MR. BARRY: I'm hesitant to argue the point.
7 But I don't know that the original parameters and
8 guidelines approves -- expressly approved transportation
9 costs for prisoners to the probable-cause hearing.

10 MS. HALSEY: It didn't.

11 MR. BARRY: Okay, now, I was under the
12 impression it didn't. That's why I'm saying the argument
13 should apply to this position.

14 MR. JONES: Actually, Heather, I think the
15 original P's and G's identified transportation generally,
16 and I think it just meant to and from the courthouse for
17 all of the proceedings.

18 We had to carve-out probable cause in this
19 case, which seemed reasonable, since we were determining
20 staff has concluded that the probable-cause hearing
21 should remain reimbursable. So we carved out the
22 transportation element for a probable-cause hearing
23 specifically. It's a little bit different than adding an
24 entire new activity which, from our perspective, based on
25 the P's and G's and based on the test-claim SOD,

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1 providing expert witnesses for a probable-cause hearing
2 would be a new activity.

3 I believe the comments that were filed that
4 suggested that these things have been reimbursed and that
5 the Controller has been allowing reimbursement for those
6 activities, but they're simply not spelled out in the SOD
7 or the P's & G's previously. And again, we do -- I can
8 definitely see the argument that those should be added in
9 as reasonably necessary activities in the P's & G's
10 phase. I just don't think we should be doing it here.

11 MS. HALSEY: Yes. The only thing before the
12 Commission right now is whether the State's liability has
13 been modified based on a subsequent change in law. And
14 so if the answer is "yes" and there is a next hearing on
15 parameters and guidelines, then it's appropriate to talk
16 about the scope of what those approved activities would
17 be.

18 CHAIR ORTEGA: Mr. Spitzer.

19 MR. SPITZER: Thank you, Madam Chair.

20 It is really an honor to be here. The
21 intellectual discussion far exceeds anything that I
22 experienced in my six years in the Legislature. So I
23 just want you to know that I appreciate this discussion
24 very, very much.

25 I think it's important just to tell you just a

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1 little bit about why I'm here.

2 I was the statewide co-chair of Prop. 83, with
3 Senator George Runner, who was in the Senate at the time.
4 I was also Governor Schwarzenegger's co-chair with Rudy
5 Bermudez at the time of the first High-Risk Sex Offender
6 Task Force. I was also the co-chair or the principal
7 author with Judy Chu. When she was in the Assembly,
8 before she went to Congress, we created the first Sex
9 Offender Management Board here in the state of
10 California. I was also the statewide co-chair and
11 co-author of Marsy's Law, the Victim's Bill of Rights
12 which amended the California Constitution.

13 I've been a prosecutor, police officer -- I've
14 been in law enforcement for two decades. I've worked
15 with a lot of your bosses, and we've been all this
16 together, on this whole issue of public safety.

17 And what bothers me about this discussion, the
18 staff analysis, is we have to remind ourselves who these
19 individuals are that will be affected by this change
20 today.

21 These are sexually violent predators. There
22 are real people who are evil, who commit heinous,
23 horrible crimes that affect people's lives forever, who
24 are incarcerated; and then because they are deemed so
25 dangerous, we don't want them back on the street because

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1 as indicated by the Public Defender, it has been proven
2 in a court of law that they have a high propensity --
3 like Mr. Gardner who killed Chelsea King and Amber Dubois
4 in San Diego -- that they have the highest propensity to
5 go out and commit another sexually violent act.

6 So there are real, real dangerous people who
7 are going to be impacted by your vote today; and there
8 are real victims, people who are dead, who knew laws had
9 been created, like Chelsea King, as a result of being
10 murdered by Mr. Gardner who was deemed and is a sexually
11 violent predator.

12 So this is an incredibly serious decision
13 today. And it goes way beyond the paper.

14 And I respect the staff work, because I work
15 with staff as an elected official all the time; and I
16 respect the Department of Finance's position. But we
17 need to go back and look at the record.

18 There was a letter transmitted -- and it's in
19 the supporting documents but it needs to be highlighted.
20 As part of the legal -- you know, when I ran Marsy's
21 Law, I had to meet with LAO, and go through all the legal
22 requirements that LAO is deemed and is necessary to get
23 the ballot initiative prepared.

24 The Attorney General's office has to prepare
25 legal documents for this to go into the ballot statement.

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1 And when you look at the letter that was
2 transmitted by Liz Hill -- and let me tell you, when I
3 was in the Legislature, Liz Hill -- so many of us as
4 partisan advocates try to manipulate the LAO's office our
5 way, every six ways to Sunday. But if there's any
6 institution here in Sacramento, which I think is above
7 reproach, whether it was Mr. Hamm or any of his
8 predecessors, that LAO's office is here to be right down
9 the middle and to call it like they see it.

10 And Ms. Hill wrote a letter to then Attorney
11 General Bill Lockyer, signed by the Department of
12 Finance, who is now the dean of the Chapman Law School,
13 Mr. Campbell. That letter was the premise for the
14 assumption of how -- what the legal issues were that was
15 going to be represented of the voter and who was going to
16 pay for it.

17 And in the letter of September 2nd -- and I'm
18 trying to be respectful to this gentleman who has to take
19 down everything we say, because I'm very sensitive to
20 court reporters, having been a prosecutor; so I'll try
21 to, in my exuberance, speak more slowly.

22 In the September 2nd, 2005, letter to
23 Mr. Lockyer from Ms. Hill and Mr. Campbell, in their
24 respective positions, in the fiscal impact on local
25 government section, they represented, quote, "to the

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1 extent that this occurs" -- that is, changes to criminal
2 penalties, and supervision -- "local governments would
3 likely experience some criminal justice savings."
4 Specifically, they delineated, when they talked about the
5 *Sexually Violent Predator* program, quote, "The provisions
6 of this measure related to the SVP program could increase
7 county costs. The additional SVP commitment petitions
8 that are likely to result from this measure would
9 increase costs for district attorneys and public
10 defenders to handle these civil cases. Also, county jail
11 operating costs would increase to the extent that
12 offenders who have court decisions pending on their
13 SVP cases were held in local jail facilities instead of
14 state mental health facilities."

15 Important part, the last sentence: "Counties
16 would be reimbursed in full for all of these costs after
17 they had filed and processed claims with the state."

18 In the summary of fiscal effect, there's three
19 bullets. And when they delineated to the Attorney
20 General, quote, "Unknown, but potentially significant
21 net operating costs or savings to counties for jail,
22 probation supervision, district attorneys, and public
23 defenders. The portion of costs related to changes -- to
24 changes -- in the *Sexually Violent Predators* program
25 would be reimbursed by the state."

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1 Okay, look, I've been doing this for twenty
2 years as an elected official. At some point, we have
3 got to have an understanding -- and as all the lawyers
4 in the room, we all know about this -- about detrimental
5 reliance and understanding. It's when people make
6 promises and make representations in their official
7 capacity, we have to respect that.

8 More to the point, when that letter got
9 transmitted to the analysis that went in the official
10 voter handbook to the voters for Prop. 83, it was
11 unequivocally clear, as represented to the voters, in
12 the section on page 45 of Prop. 83, that analysis, under
13 "Other impacts on state and local governments," it's
14 represented that, quote, "There could be other savings to
15 the extent that offenders in prison for longer periods
16 require fewer government services or commit fewer crimes
17 that result in victim-related government costs.
18 Alternatively, there could be an offsetting loss of
19 revenue to the extent that offenders serving longer
20 prison terms would have become tax-paying citizens under
21 current law."

22 I think that's a stretch, but that's my own
23 parenthetical comment.

24 "The extent and magnitude of these impacts is
25 unknown."

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1 My point in sharing the letter from Ms. Hill
2 and Mr. Campbell to the Attorney General has a legal duty
3 to incorporate the legislative analysts and the ballot
4 title, so that the voters know what they're voting on,
5 did not say in any way whatsoever, that any of the
6 changes that were either approved by the Legislature in
7 the Alquist bill -- because I was in the Legislature when
8 Elaine carried that bill, and I testified when she was
9 the chairman of the Senate Public Safety Committee, and
10 then what we put on the ballot to corroborate and re-
11 mention, if you will, and talk about some of those
12 provisions, which you needed to mention so that the
13 voters would understand the totality of what you were
14 trying to convey, and then the analysis by all the
15 players that we rely on -- the Attorney General, the
16 Legislative Analyst, and the Department of Finance --
17 all indicated there was no fiscal impact.

18 CHAIR ORTEGA: Mr. Spitzer, can I interrupt for
19 just a minute?

20 MR. SPITZER: Yes, of course.

21 CHAIR ORTEGA: Isn't it the case that the law
22 has changed since 2005 regarding the reimbursement
23 question?

24 MR. SPITZER: Right.

25 CHAIR ORTEGA: With the mechanism that's being

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1 created to bring the claim today, I don't think we would
2 ever look at past ballot write-ups or letters from the
3 LAO on initiative measures and assume that everything
4 they were saying at that time was still accurate today,
5 when there could have been thousands of state statutes
6 changed, and who knows how many initiatives since then.

7 MR. SPITZER: Right.

8 CHAIR ORTEGA: So that, I think, is pretty
9 relevant to the point that you're making.

10 MR. SPITZER: That's my third point.

11 So the change in state law that your staff
12 is relying on, the Government -- the code section that
13 they're now saying that you can now reevaluate this
14 scenario, essentially, was incorporated in Senate
15 Bill 856. So I pulled the Senate Rules Committee
16 analysis.

17 That bill was a fifty-plus-page trailer bill,
18 where the language that your staff is now relying on was
19 inserted amongst numerous provisions. The Senate Rules
20 Committee analyzed this now new law that everybody is
21 relying on to not have to fund this anymore, in one
22 paragraph.

23 Now, I just have to submit to you, as a former
24 legislator: A trailer bill, one paragraph? Trailer
25 bills are constructed in the dark of night. They're

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1 rushed through as part of a budget. Legislators may or
2 may not understand or see the significance or magnitude
3 of something slipping in.

4 And when you want to rely on something that
5 went in as a trailer bill as opposed to what we're used
6 to, a separate piece of legislation that people know
7 about, it goes through all the committee processes -- in
8 fact, if you look at the Senate analysis from the Rules
9 Committee, there is no analysis from what this bill --
10 what happened on the Assembly floor. And I'm trusting,
11 because it was probably a gut-and-amend.

12 My point is this: The reason this Commission
13 is comprised of elected officials and public members and
14 other people is because that's why we do what we do in
15 our capacity as electeds. We take all the information
16 that comes to us, and then we make decisions about, given
17 the totality of these circumstances, is it now right,
18 after this went on the ballot, after it was fully
19 disclosed, and after the voters voted on it and
20 understood there would be no additional costs to local
21 government; and if there were, it would be fully
22 reimbursed by the State of California, just like it was
23 before Prop. 83. In fact, if Prop. 83 hadn't passed,
24 it would still be a state mandate.

25 So now we're going to say, "But we have this

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1 law that was passed in a trailer bill, fifty-plus pages,
2 with a paragraph this big in the analysis, and say, 'We
3 can now wipe out the entire record of that reliance in
4 that arena.'" I think that's just wrong.

5 And so I'm requesting, respectfully, that we
6 understand the magnitude of this vote. We will cripple
7 local governments' ability to prosecute sexually violent
8 predators.

9 The other thing that the Public Defender
10 argument, I think -- it's not an argument you'll normally
11 hear from me as a former prosecutor. But we did this
12 with the DNA initiative, Prop. 69. It was important to
13 release innocent people who were exonerated because DNA
14 exonerated them, they were not the perpetrator of the
15 crime.

16 We have a duty to provide the Public Defender
17 with the resources they need to ensure that if somebody
18 doesn't meet the definition of a sexually violent
19 predator, they shouldn't be incarcerated for the rest of
20 their life.

21 So we could potentially ruin future victims'
22 lives by putting these perpetrators on the street, and we
23 could ruin an individual's life who is not a sexually
24 violent predator.

25 I am respectfully urging you not to support

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1 your staff recommendation.

2 CHAIR ORTEGA: Mr. Neill?

3 MR. NEILL: I would like to speak on the law,
4 on the Department of Finance's claim. The claim is based
5 on the statute that Assembly Member Spitzer was referring
6 to, Government Code section 15570.

7 MR. BARRY: 15570.

8 MR. NEILL: 15570, which says that the
9 Commission can adopt a new test claim only upon a showing
10 that a subsequent change in law has modified the State's
11 liability.

12 So we're relying on their having been a
13 subsequent change in law. Specifically -- not just any
14 law, it has to be a subsequent change in law to the laws
15 that impose the mandates.

16 The main statute that this mandate relies on
17 is Welfare and Institutions Code 6601 that has the
18 bulk of the -- that has the kernel of this mandate. It
19 has the bulk of the mandate in it. Most of the other
20 stuff flows from 6601.

21 So the Department of Finance's claim is that
22 there was a subsequent change in law to Welfare and
23 Institutions Code 6601 made by Proposition 83.

24 In the analysis that staff has provided for you
25 on page 11, it says that the change to 6601 -- nobody's

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1 arguing that the change was relevant to the mandate, by
2 the way. The change in 6601 had nothing to do with
3 mandated activities. That's not at issue here. What's
4 at issue is, they're saying that if there is any
5 amendment to that law, then the whole law is reenacted as
6 amended.

7 But there was no change to 6601 because of
8 Prop. 83. The language in statute before Prop. 83 passed
9 and the language in statute after Prop. 83 passed were
10 exactly the same.

11 The change that staff puts on page 11 is that
12 it changed the words to "shall toll the term of an
13 existing parole." That was already the law. In exactly
14 the same words before voters passed Prop. 83.

15 A subsequent change in law is defined in
16 15570 as -- and common sense also dictates this, that
17 a subsequent change in law includes a change in law.
18 There was no change to this law.

19 The Commission can only adopt a new test claim
20 upon a showing that a subsequent change in law changes
21 State's liability. Without a subsequent change in law,
22 you cannot make that finding. That law was not changed.

23 Likewise, the change to 6604 was not made by
24 Prop. 83. It was made by SB 1128, which passed and went
25 into effect before Prop. 83. Prop. 83 did not change

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1 that law. Therefore, the Commission can't find that the
2 subsequent change in law modified the State's liability.

3 Department of Finance's claim also is reliant
4 on the fact that an amendment to an irrelevant subsection
5 reenacts -- repeals and reenacts the entire section of
6 law.

7 But it wasn't amended. It can only be
8 reenacted as amended if it was amended. Section 6601 and
9 section 6604 were not amended by Prop. 83. Therefore,
10 Prop. 83 did not reenact section 6601 and 6604. So the
11 Commission can't find that the State's liability has
12 changed because of those sections.

13 Activities 1, 2, and 3, as numbered in the
14 analysis and in the Department of Finance's claim,
15 flowed directly from section 6601. The activities found
16 to be necessary to implement also flow directly from
17 section 6601. So the State's liability can't have
18 changed based on this subsequent change in law because
19 there was no change in law.

20 Furthermore, courts, both in California and
21 across the country, have regularly found that this
22 interpretation of full reenactment of an entire statute,
23 because of a change in one portion of it, is not the
24 case.

25 The best example I found is *County of*

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1 *Sacramento v. Pfund.* It's "Pfund," but I think the "P"
2 is silent. And in that, the Court faced a decision that
3 was almost exactly like this one, where there was a
4 change to an irrelevant section of statute, and somebody
5 was claiming that because of that, the whole thing was
6 reenacted. And what the Court found was that considering
7 the entire statute as having been wholly reenacted,
8 quote, "*is to do violence to the code and all canons of*
9 *construction.*"

10 So this idea that an amendment to an irrelevant
11 piece of the law reenacts the whole thing would do that.
12 And I don't think any of you came here today to do
13 violence to all the canons of construction.

14 To the constitutionality, Commission analysis
15 asserts that the Commission must presume that the
16 statutes enacted by the Legislature are constitutional.
17 And they cite a couple of cases. But the cases don't
18 say that -- the cases in those courts -- the courts are
19 actually referring to themselves. And I don't think the
20 courts would ever find that courts must presume that
21 statutes enacted by the Legislature are constitutional.
22 The court's most important duty is to determine when
23 statutes are not constitutional.

24 Instead, what those court cases and the entire
25 chain of court cases behind them, what they do is, they

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1 describe the circumstances where that's not the case.
2 You do have to begin from an assumption of validity, of
3 constitutionality. But when the court cases go on to
4 describe the circumstances, what they say is that you
5 must interpret it so that it harmonizes. You don't just
6 assume it at face value. You interpret it to harmonize
7 with the Constitution. And when a statute clearly and
8 unquestionably conflicts with a constitutional
9 prohibition, it must be voided on its face, it must not
10 be upheld.

11 In this case, Section 6 of Article XIII B,
12 which is the basis of all of the proceedings here, says
13 that whenever the Legislature mandates a new program, the
14 State shall provide funds to reimburse.

15 There's no question in any of the filings that
16 the State mandated this new program.

17 There's a statement of decision that shows --
18 that says that the State mandated this new program.
19 There is no exception in the Constitution for later
20 irrelevant amendments to those statutes.

21 If voters had rejected Proposition 83, the
22 mandates here would have remained exactly the same. So
23 to assert that the voters established this mandate, when
24 their actions could not have affected it, is absurd.
25 You can't say that voters did something, when whether

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1 they did do it or didn't do it, the actions remain the
2 same.

3 But all of that is secondary to the fact that
4 the Department's claim relies on a subsequent change in
5 law, and based on the passage of Prop. 83, and Prop. 83
6 did not change the law. The Commission cannot find that
7 the State's liability has changed for this mandate.

8 CHAIR ORTEGA: Any comments from Members?

9 MEMBER OLSEN: With all due respect to
10 Mr. Spitzer, especially his passion about the *Sexually*
11 *Violent Predators* law, I actually think the principle and
12 the issue here goes well beyond that.

13 I cut my teeth at the LAO, so I'm happy that
14 you think that's a great office. But my concern here
15 is the sort of meta-principle, and that is that as an
16 informed voter, when I'm faced with a proposition, I want
17 to know the context of the law that I'm voting on. And
18 I actually read the language of the law. I don't just
19 read the LAO's advice about it or anything else. I go in
20 and look at the actual text of the law.

21 And so we're getting into a situation here
22 where if we're not able to have the context of the law --
23 that is, the law that existed beforehand -- restated in
24 the new law, I, as a voter, lose a great deal of
25 information in terms of making an independent decision.

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1 And I think that is a really scary thing that we're
2 talking about today.

3 So I felt really strongly that we need to be
4 able to have the context of the old law reenacted, and
5 to be able to know what we're doing in the new stuff
6 we're putting in on top. That's the first thing.

7 The second thing is, I'd like to know if
8 there's anybody from the LAO here to testify today?
9 Because we are hearing a lot about the joint letter from
10 the LAO and the Department of Finance. And I would --
11 since the Department of Finance is now the person
12 requesting this change, I'd certainly like to hear from
13 the LAO about whether their view about Prop. 83, whether
14 their view is that something has changed since they wrote
15 that letter.

16 Is there anybody here who can speak to that?

17 *(No response)*

18 MEMBER OLSEN: So in the absence of that being
19 able to be addressed, I don't think I can get to "yes" on
20 this today, just so you know.

21 CHAIR ORTEGA: Anyone else?

22 Ms. Ramirez?

23 MEMBER RAMIREZ: Thank you.

24 And I do appreciate the passion of our counsel
25 here. Speaking about what this law means to society,

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1 though, I think that our role here is a little bit more
2 narrow than solving these -- the funding issues of our
3 justice system. I know it's very challenging to be
4 either a prosecutor or a defense counsel in these
5 situations. But that might be an issue for the whole
6 Legislature and the society, is how to properly fund the
7 things we need to have done to protect the public.

8 But I'd really like to ask our staff comments
9 about the issue that Mr. Spitzer raised of detrimental
10 reliance.

11 MR. JONES: So I'm sure you all remember, we
12 discussed this a little bit in the last hearing because
13 several of the commenters had raised arguments relating
14 to detrimental reliance, misrepresentation, unclean
15 hands -- a bunch of different kind of equitable arguments
16 that are all legal terms of art and so forth.

17 First of all, you all know that this Commission
18 is not designed to, nor is it really equipped to practice
19 equity. Your role is merely to follow the law. And in
20 this case, the law is unfortunately pretty clear, and
21 it's not on the side of those that are raising these
22 arguments.

23 But in terms of the misrepresentations
24 specifically that's been addressed by several of the
25 commenters -- not just Mr. Spitzer today, but several of

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1 the commenters have raised the letter that was sent to
2 the then Attorney General Lockyer, by the LAO and
3 Department of Finance, and have raised the ballot
4 pamphlet materials.

5 And while it's true that at the time those
6 things were written, all the parties expected
7 reimbursement to continue, and, in fact, expected
8 reimbursement to increase because they thought that
9 this would be a more expensive program, one of the
10 changes that was made, for example, to the code -- and
11 we can quibble over whether it was done by SB 1128 on
12 September 20th, 2006, or whether the change was made
13 by Prop. 83 in November of 2006. But one of the changes
14 that was made, was the definition of an SVP was taken
15 from one -- or from "two underlying crimes" that were
16 necessary to "one underlying crime." So in theory, you
17 have an increase in the volume of these cases because the
18 definition was loosened, essentially; and then the other
19 most significant change, perhaps, is changing the
20 commitment term from two years to indeterminate which, in
21 the long-term, should taper off that increase in volume
22 you would expect.

23 But at the time that the Prop. 83 ballot
24 materials were written, SB 1128 had not been enacted.
25 That is one point that I think is worth mentioning.

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1 At the time that the letter was written from
2 the LAO and Department of Finance to the Attorney
3 General, there was no mechanism for mandate
4 redetermination in the law. And that's a point that's
5 been argued based on some of the prior reconsideration
6 actions that this Commission has taken, which have been
7 found to be unconstitutional and a violation of
8 separation-of-powers principles. But there was no
9 redetermination mechanism at the time. And so when those
10 assertions were made regarding mandate reimbursement
11 continuing -- and, in fact, increasing -- those
12 assertions were true. And that's essential to a
13 misrepresentation that it has to be in some way a
14 misrepresentation of a material fact. And in this case,
15 those things were true when they were said.

16 Ms. Ortega has pointed out that the legal
17 landscape has since changed, obviously, because now we do
18 have a mandate redetermination procedure. And because of
19 the legal landscape has changed in that way, that's why
20 we're able to -- that's why the Department of Finance is
21 able to bring this claim.

22 MEMBER RAMIREZ: Additionally, could you
23 comment on Mr. Neill's discussion of the subsequent
24 irrelevant non-material change to the law?

25 MR. JONES: Certainly.

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1 First of all, Mr. Neill is, I think, conflating
2 the term "subsequent change in law" with the idea of a
3 "substantive change in law." The words don't mean the
4 same thing; and in this case, "subsequent change in law"
5 is defined very clearly in the Government Code.

6 In section 17570 -- which I happen to have
7 right in front of me -- "A subsequent change in law is
8 defined as a change in law that requires a finding that
9 an incurred cost is a cost mandated by the state as
10 defined by section 17514, or is not a cost mandated by
11 the state pursuant to section 17556, or a change in
12 mandates law."

13 Now, that definition doesn't say anything about
14 the change in law having to relate to the test-claim
15 statute at issue. And that is, unfortunately, where
16 Mr. Neill's argument falls off the rails because he is
17 arguing that because Proposition 83 didn't make a
18 substantive change to the language or the effect or the
19 text of the test-claim statute as it was pled in 1995,
20 and as it was approved by the Commission in 1998, or
21 alternatively, that it didn't make a substantive change
22 to the test-claim statute as it read on the day before
23 the election, he is arguing that you can't find a
24 subsequent change in law.

25 But that's not the meaning of "subsequent

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1 change in law," that's not the definition that you have
2 to work with in the Government Code of the phrase
3 "subsequent change in law." It has absolutely nothing
4 to do with the test-claim statute itself, and it need
5 not -- you need not even move a comma or change a verb or
6 anything in the test-claim statute.

7 MEMBER RAMIREZ: Thank you very much.

8 MR. NEILL: May I respond?

9 I think you were misrepresenting my point,
10 because you were conflating two separate points that I
11 was making.

12 One point: As you read the definition, the
13 first --

14 MEMBER ALEX: Can you address your comments to
15 us?

16 MR. NEILL: Yes, absolutely. I apologize.

17 MEMBER ALEX: Thank you.

18 MR. NEILL: I believe staff was misrepresenting
19 my comments.

20 My main point is that a subsequent change in
21 law -- as staff read, the primary, before anything else,
22 what a subsequent change in law requires is a change in
23 law. And my argument is that section -- the law, called
24 Welfare and Institutions Code section 6601, was not
25 changed by Prop. 83.

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1 The Department of Finance's claim is based --
2 you can -- I mean, it's there. What they claim is that
3 Proposition 83 counts as a subsequent change in law for,
4 among other things, section 6601.

5 However, a subsequent change in law requires a
6 change in law that it has to fulfill certain other
7 requirements. And section 6601 was not changed. It
8 fails the very first test of a subsequent change in law.

9 So all of the other things -- whether it
10 fulfills all the rest of the requirements falls by the
11 wayside because the law was not changed.

12 MEMBER ALEX: Let me ask you this: There are
13 consequences to an initiative voted on by the people.

14 MR. NEILL: Yes.

15 MEMBER ALEX: And one of them, conceivably --
16 I mean, we have to work this through -- is that it
17 changes the nature of the mandate.

18 MR. NEILL: It can. Absolutely.

19 MEMBER ALEX: So even without any change, if
20 a statute then goes in front of the voters as an
21 initiative, there may be consequences to that, and I
22 wonder if --

23 MR. NEILL: It could. But the statutory basis
24 for this Commission's decision today says -- it says,
25 "The Commission may adopt a new test-claim decision only

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1 upon a showing that a subsequent change in law modifies
2 the State's liability."

3 And in this case -- so you have to have a
4 subsequent change in law.

5 MEMBER ALEX: Okay, I've got it.

6 MR. NEILL: A subsequent change in law has to
7 change the law, and section 6601 wasn't changed.

8 MEMBER ALEX: Thank you.

9 CHAIR ORTEGA: Ms. Shelton?

10 MS. SHELTON: I think it might be helpful at
11 this point just to describe the history of this whole
12 statutory authority for a mandate redetermination.

13 Back in 2004, 2005, and 2006, the Legislature
14 directed the Commission to reconsider a number of prior
15 Commission mandate decisions. Several of them were on
16 the ground that there was a subsequent federal law that
17 imposed the same requirements as state statutes.

18 Others, like Open Meetings, for example, there
19 now was an initiative that required all meetings to be
20 open to the public; and, therefore, the argument that the
21 Legislature wanted us to accept, was that there was no
22 reimbursable state-mandated program because now there was
23 an initiative.

24 Those cases went to court. The *California*
25 *School Boards Association* challenged, on constitutional

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1 grounds, that those statutes directing the Commission to
2 reconsider were unconstitutional. And they won on that
3 point.

4 In the Court's finding and judgment, they said,
5 if the Legislature had a statutory scheme for the
6 Commission to be able to reconsider a prior final
7 decision, then maybe it would have some merit. Then
8 there wouldn't be a separation-of-powers violation.

9 So this bill, even though it was a budget
10 trailer bill, and it was lengthy, the stakeholders
11 absolutely knew what was going on, because the bill was
12 enacted as a direct result of the CSBA language and the
13 Court's language, saying you just need a statutory
14 process to redetermine.

15 Once that was done, it came into existence in
16 2010, that allowed the Department of Finance, and
17 likewise, the claimant community, if it went the other
18 direction, to file a request for redetermination.

19 The second point is that, yes, by law, the
20 Commission is required to presume that 17570 is
21 constitutional because there is a provision in the
22 California Constitution, and Article III, section 3.5,
23 directing administrative agencies to presume that a
24 statutory scheme is constitutional, unless otherwise
25 determined by a court.

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1 Here, we have to presume it's constitutional.
2 It is being challenged. CSBA has brought another
3 challenge to 17570. That action remains pending in the
4 Alameda County Superior Court, and hasn't gone anywhere
5 yet. And so until -- and there is no stay for the
6 Commission to continue with this process. So at this
7 point, you're required to presume it's constitutional.

8 MS. HALSEY: And I just wanted to add one
9 thing. I think Mr. Neill is confusing two things, and
10 that's why we're having this kind of cross-wise
11 discussion.

12 But "subsequent change in law" is defined
13 specifically in 17570 as a change in law that requires a
14 finding that incurred costs as mandated by the State as
15 defined by section 17514 is not a cost mandated by the
16 State pursuant to 17556, or changes to mandates law.

17 And I think the rule he is thinking of is,
18 there is also a rule of statutory construction that if
19 a -- for instance, when you do a cleanup of a code and
20 you move a code section from one part of the code to
21 another part of the code, but you don't change the
22 language, it continues, in effect, as though it was never
23 reenacted.

24 And so those are two separate rules and two
25 separate definitions.

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1 MR. NEILL: Can I -- go ahead.

2 MR. SPITZER: I just want to say a couple
3 things, if I could respond to Commissioner Ramirez's
4 point.

5 You know, I was a high-school teacher a long
6 time ago, and I used to teach Luis Valdez's as a migrant
7 farm-worker plays in the field, acted out to the migrant
8 farm workers.

9 And there's a lot of principles here that are
10 at stake, in my opinion. And I really appreciate
11 Commissioner Olsen's point about reading the ballot
12 measure in totality.

13 People have a right to look at the Attorney
14 General's summary -- I mean, it's the Attorney General of
15 the State of California, you've got to give that some
16 weight. I mean, I've known Bill Lockyer for a long time.
17 He is one of the most honorable elected officials I have
18 ever met and will ever know again.

19 When I know Bill Lockyer, when he puts his
20 name on this and says "net, net," which means after
21 reimbursement, unknown -- I mean, in other words, this is
22 going to be reimbursed -- I would expect him, and would
23 think that he would uphold that representation to the
24 voters.

25 This law change is being interpreted and

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1 challenged in the courts.

2 I could understand prospectively initiatives
3 that came after. But what I learned in law school was
4 that we could rely on what the state of the law was and
5 what the rules of engagement and games were at that time.

6 That's what I taught my kids when I was a
7 teacher, and that's what I think we have an obligation to
8 do.

9 You want to change the rules prospectively
10 given this statute; but to go back and reconstruct
11 voter-approved initiatives, I think that's a territory
12 I'm asking this Commission not to go to.

13 I know the staff is saying it's arguable, but
14 we know we're going to end up in court on it, we know
15 it's pending in the jurisdiction that staff has
16 recommended. Why don't we let that case get played out?
17 Why would we jeopardize *Sexually Violent Predators* in the
18 interim?

19 I would argue, keep the status quo, see what
20 the outcome is of that case, see if that code section is
21 interpreted a certain way. But put this off to another
22 day then. Deny the claim at this point in time and say,
23 "It's inappropriate until we get a settlement on that
24 legal issue of whether it should be only prospective."
25 But to jeopardize and potentially allow sexually violent

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1 predators back onto the street is a big risk.

2 Oh, last thing, just real quick. Senator
3 Runner, I think you all know, he was the motivator behind
4 Prop. 83. He was completely unaware of this proceeding.
5 And I don't know -- I would respectfully request, just as
6 part of the record -- I'm not going to read it because
7 I'm not going to take up time -- if I could just submit
8 his comments so that if the Commissioners were to
9 consider it, they can do so.

10 MEMBER OLSEN: We have them.

11 MS. HALSEY: They have been submitted and
12 received by the Commissioners.

13 MR. SPITZER: I did not know that.

14 Thank you very much.

15 CHAIR ORTEGA: Mr. Neill?

16 MR. NEILL: I just want to clarify because,
17 once again, somebody tried to say what I was saying. I
18 don't think it was what I was trying to say.

19 I'm not arguing any rules of statutory
20 construction. What I'm arguing is whether there was a
21 change in the law.

22 Proposition 83, nothing that -- I'm not saying
23 it wasn't substantive, I'm not saying whether it was
24 relevant to the mandate. Section 6601 was not changed in
25 any way -- no word of 6601 was changed by Prop. 83.

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1 The words in Welfare and Institutions Code
2 6601 were exactly the same the day before Prop. 83 was
3 passed and the day after. There was no change in law.

4 I'm not saying it wasn't substantive. There's
5 no rules of statutory construction. A subsequent change
6 in law requires the change in law; and this law was not
7 changed.

8 MEMBER ALEX: Okay, not to be argumentative,
9 but I just want to give you an example of where there may
10 be -- without changing a word, you could have a very
11 significant change in consequence.

12 If you moved a provision from a statute into
13 the State Constitution -- which is, itself, fairly
14 massive -- it could change the meaning and the purpose of
15 those exact, same words.

16 MR. NEILL: I agree.

17 MEMBER ALEX: So there are situations, just
18 to --

19 MR. NEILL: But that's not what happened here.

20 MEMBER ALEX: Okay.

21 MR. NEILL: There was a statute, that was
22 Welfare and Institutions Code 6601, it remains Welfare
23 and Institutions Code 6601, the language remains exactly
24 the same before and after. And we have to -- with the
25 Department -- you're going to be deciding on what the

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1 Department of Finance has claimed. And what they have
2 claimed is that Proposition 83 effected a subsequent
3 change in law to, among other things, section 6601. And
4 that is not the case. It did not effect a change to
5 section 6601.

6 MS. HALSEY: The change, actually, is that now
7 it's a requirement of a proposition of the voters, and it
8 can't be eliminated by the Legislature. That's the
9 change in law.

10 CHAIR ORTEGA: Mr. Jones?

11 MR. JONES: Just to add to what Heather just
12 said, if you look at section 33 of Proposition 83, which
13 is on page 492 of your exhibits -- I apologize for the
14 length, we've got lot of comments on this one.

15 On page 492 of your exhibits, section 33 of
16 Prop. 83 states that "The provisions of this act shall
17 not be amended by the Legislature except by a statute
18 passed in each house by a roll-call vote entered in the
19 journal, two-thirds of the membership of each house
20 concurring."

21 So one change that I think is not insignificant
22 is that Proposition 83 made sections 6601 and 6604 and
23 6605, and I think also 6608 -- essentially made it a lot
24 harder for the Legislature to repeal those provisions.

25 And in addition to which, the purpose of

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1 mandate reimbursement has always been, and will always
2 be, to reimburse the local government for actions of the
3 State Legislature, not for actions of the voters.

4 And if the Legislature were to -- well, so the
5 Legislature did, actually. The Legislature created this
6 program. The Legislature always had the ability to
7 repeal this program if it didn't want to pay for it. It
8 no longer has that ability, to an extent.

9 And certainly, it doesn't have that ability to
10 the same extent that it did when the Legislature created
11 the program.

12 Section 17556 is very clear, Article XIII B is
13 very clear, when the voters enact a statute or a program,
14 it is not reimbursable by the Legislature. And the
15 reason for that is quite simply because the Legislature
16 doesn't have the power to overrule the voters. The
17 Legislature's power is limited, the voter's power is very
18 much not.

19 CHAIR ORTEGA: And I think Mr. Jones' point
20 goes directly to the question that is before the
21 Commission, which is: Did the State's liability change
22 as a result of Prop. 83?

23 So, Mr. Barry, you had something else?

24 MR. BARRY: I just wanted to refer, for your
25 reference, that we've detailed, at pages 204 through 206

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1 of the exhibits, each code section, and the fact, whether
2 there has been any change to any of the applicable code
3 sections; and if so, what those changes were.

4 There were no substantive changes to the law.
5 I understand that we're talking about substantive as
6 opposed to changes in form rather than substance. That's
7 effectively what we have here.

8 And the only way you get to this decision today
9 is because of the addition, I think, of the sentence to
10 17556(f), in 2005, which says that it shall apply,
11 regardless of whether the statute was enacted before or
12 after the date on which the ballot measure was approved
13 by the voters.

14 Very clearly -- and I think that's where we're
15 going -- I mentioned this at the last hearing -- that you
16 can't have a statute that has -- that's so overly broad
17 and inclusive, that it does harm and is contrary to the
18 purpose and intent of Article XIII B, Section 6, that the
19 State be required to provide a subvention of funds for
20 these activities.

21 And I think that provision, especially that
22 sentence, goes beyond the constitutional bounds, and does
23 violate that provision of the Constitution.

24 MS. SHELTON: I was going to say on that point,
25 in this current CSBA lawsuit, they are also challenging

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1 all the before-and-after sentences in 17556. So, again,
2 that is pending.

3 MR. BARRY: And Mr. Spitzer's comment, why not
4 let that play out in the courts? Until we have a
5 decision as to the viability of those code sections, it
6 would seem to make sense to allow these mandates to
7 continue to be reimbursable.

8 And if the courts find that they're
9 constitutional, there is no reason that this couldn't be
10 revisited by the Commission at a later time.

11 CHAIR ORTEGA: I don't think that's our charge
12 to wait and see what happens in the court.

13 MS. SHELTON: There is no stay on the process.
14 That case has been sitting there for three and a half,
15 four years now, and it keeps getting amended every time
16 the budget changes. And this is a challenge from
17 schools, so they may be affected a little bit differently
18 than local agencies.

19 So, you know, I don't have a legal reason to
20 stay it. It would be your decision.

21 MS. GEANACOU: I'd also like to make an
22 observation, please. Susan Geanacou for Finance.

23 I just observed that the Commission staff
24 analysis on page 25, about a third of the way down the
25 page, notes that Proposition 83 amended and reenacted

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1 wholesale sections 6601, 6604, 6605, and 6608 of the
2 Welfare and Institutions Code. So just to note that,
3 that is consistent with what we're arguing, and is in
4 contrast to some of the testimony you've heard over the
5 last few minutes.

6 CHAIR ORTEGA: Any other comments from Members?

7 MS. SHELTON: But just a concern -- is it
8 Mr. Osaki raised issues with respect to a California
9 Supreme Court decision dealing with the retroactive
10 effect of Prop. 83 --

11 MS. HALSEY: The *Castillo* case.

12 MS. SHELTON: -- the *Castillo* case. That's
13 new, a new argument. And it might change the period of
14 reimbursement recommended for -- in this proposed
15 statement of decision.

16 We had case law, different Court of Appeal
17 decisions, finding that Prop. 83 took effect once the
18 two-year term was over, so that the next -- under prior
19 law, so that the next petition filing would be operated
20 under Prop. 83. Is that correct?

21 MR. JONES: Actually, it was even broader than
22 that. Some of the case law that we found when addressing
23 the retroactivity issues raised primarily by L.A. County
24 actually suggest that -- in fact, clearly state that the
25 indeterminate sentencing rule, specifically of Prop. 83

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1 ,can be applied without retroactivity issues to all
2 pending and future SVP cases.

3 So even an SVP who was -- whose petition was
4 filed on November 4th, 2006, the Court clearly states
5 that retroactivity is not a problem by changing the
6 petition from a two-year commitment to, ultimately,
7 finding for an indeterminate commitment for that
8 individual.

9 And the reason for that is because
10 retroactivity is based on the last act or event that
11 occurs before the law takes -- before the impact of the
12 law, essentially. And the last event or act in this case
13 is the mental state of the defendant on the day he is
14 committed.

15 So on the date of the determination made by the
16 Court, the Court can determine that this person is an
17 SVP, fits the definition of an SVP. So even if the
18 petition was filed the day before Proposition 83, that
19 person can still be committed to an indeterminate
20 sentence.

21 So whatever stipulation the County of L.A. made
22 between defense and prosecution, I'm not certain that
23 it's consistent with the case law, and I'm not sure that
24 it really affects mandate reimbursement at all.

25 MS. SHELTON: And I know we're just talking

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1 about this for the first time, so kind of indulge me just
2 for a second.

3 I think when you have a Supreme Court ruling in
4 a particular jurisdiction, though, it might become the
5 law of the case for that jurisdiction. And so I'm
6 thinking, with that jurisdiction, their period of
7 reimbursement may be different, but...

8 MR. OSAKI: Yes, and I wanted to clarify, the
9 staff analysis, when they were discussing this issue,
10 where we're referencing Court of Appeal decisions. What
11 I was referencing was *People v. Castillo*, a California
12 Supreme Court case, that specifically dealt with an
13 agreement in L.A. County, because we were dealing with
14 various issues at that time. And that each party had
15 reasons for entering into such an agreement.

16 Now, it was challenged at the Court of Appeal,
17 and we actually lost. L.A. County did lose at the Court
18 of Appeal, and then that was taken up to the Supreme
19 Court. And the Supreme Court said, "No, this is an
20 enforceable agreement and a valid agreement."

21 And so to the extent that we still have these
22 cases that are still pursuant to the stipulation, I do
23 believe that those are still reimbursable. And we do
24 have published case -- a published California Supreme
25 Court case to that effect.

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1 MR. JONES: Staff hasn't really had much time
2 to address this, but this sounds an awful lot like a
3 current issue to me, that the County made a decision to
4 make an agreement between prosecutor and --

5 MS. HALSEY: Matt, may I interrupt?

6 We have not analyzed this, and we have not
7 talked about this in our office.

8 I do think if the members are concerned about
9 this, we might want to take it back to analyze this
10 point.

11 CHAIR ORTEGA: And can you say what that would
12 mean in terms of the staff recommendation today?

13 MS. HALSEY: It would mean that we would
14 recommend that you defer your decision until next hearing
15 for the vote. We've done that before.

16 MS. SHELTON: She means substantively.

17 Substantively, right now, the period of
18 reimbursement that is affected by the filing of the
19 request is July 1, 2011, by statute.

20 If potentially the court order is binding and
21 becomes a law of the case for a particular jurisdiction,
22 if it were to go that way, then that date may not apply
23 to the County of L.A. only.

24 MS. HALSEY: For those cases subject to that.

25 CHAIR ORTEGA: Could we take action, should

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1 there be a motion, take action today, and then address
2 this --

3 MS. HALSEY: This is a mandate issue, so it's
4 not a P's & G's issue.

5 CHAIR ORTEGA: I'm not suggesting that we would
6 defer it to the P's & G's; but that if there needs to be
7 some modification of today's action, to address this
8 issue that needs to come before us?

9 MS. SHELTON: You could bifurcate your ruling,
10 and not adopt a -- I mean, you could make findings on
11 issues in this proposed decision and defer your ruling on
12 this particular issue to the next hearing, in which case
13 we would present another proposed statement of decision
14 just on the period of reimbursement and the issue of
15 retroactivity.

16 CHAIR ORTEGA: For Los Angeles?

17 MS. SHELTON: For Los Angeles, right. Or if
18 there's any other jurisdiction, I don't know.

19 CHAIR ORTEGA: Okay.

20 MEMBER RAMIREZ: I have a question.

21 CHAIR ORTEGA: Yes, Ms. Ramirez.

22 MEMBER RAMIREZ: Actually, of Commissioner
23 Olsen.

24 You seemed to earlier be interested in seeing
25 whether or not the LAO had something to offer.

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1 MEMBER OLSEN: Yes.

2 MEMBER RAMIREZ: So is there a procedure for us
3 to do that?

4 MS. SHELTON: They receive notice of all of our
5 hearings. And they have in the past sometimes come to
6 testify. And so they just are not here today.

7 MS. HALSEY: But the Commission could request
8 them to appear, though.

9 MEMBER ALEX: Can I ask, Camille, is there any
10 legal implication -- you know, if the LAO says A or
11 anti-A, does it have any effect on our obligation in
12 making a determination as to what the mandate is?

13 MS. SHELTON: No.

14 MEMBER ALEX: Thank you.

15 CHAIR ORTEGA: Okay, any other comments?

16 *(No response)*

17 CHAIR ORTEGA: Is there a motion?

18 MEMBER RAMIREZ: I'll move the bifurcation as
19 stated.

20 MS. SHELTON: Can I help phrase that motion?

21 MEMBER RAMIREZ: Yes, please. Thank you.

22 MS. SHELTON: Is your motion to adopt the
23 findings in the proposed statement of decision, all
24 except the period of reimbursement and the issue of
25 retroactivity with respect to the County of Los Angeles

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1 or any other county that has a binding order?

2 MEMBER RAMIREZ: Yes, that's what I wanted to
3 say.

4 MR. SPITZER: It was very eloquent.

5 MEMBER RAMIREZ: As usual.

6 MR. SPITZER: As usual.

7 CHAIR ORTEGA: Is there a second?

8 MEMBER ALEX: I'll second.

9 CHAIR ORTEGA: Please call the roll.

10 MS. HALSEY: Mr. Alex?

11 MEMBER ALEX: Aye.

12 MS. HALSEY: Mr. Chivaro?

13 MEMBER CHIVARO: Aye.

14 MS. HALSEY: Ms. Olsen?

15 MEMBER OLSEN: No.

16 MS. HALSEY: Ms. Ortega?

17 CHAIR ORTEGA: Aye.

18 MS. HALSEY: Ms. Ramirez?

19 MEMBER RAMIREZ: Aye.

20 MS. HALSEY: Mr. Rivera?

21 MEMBER RIVERA: Abstain.

22 CHAIR ORTEGA: Is that four?

23 MS. HALSEY: Yes.

24 The motion carries.

25 CHAIR ORTEGA: Thank you, everyone, for being

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1 here today.

2 MR. SPITZER: Thank you for your time.

3 CHAIR ORTEGA: Items 6 and Item 7 were on the
4 consent agenda?

5 MS. HALSEY: Yes. Item 8 is reserved for
6 county applications for a finding of significant
7 financial distress or SB 1033 applications. No SB 1033
8 applications have been filed.

9 Item 9, Commission staff member Kerry Ortman
10 will present the Legislative Update.

11 MS. ORTMAN: Good morning. Commission staff
12 has been following these two bills related to the
13 mandates process.

14 AB 392: Existing law requires the Controller
15 to prorate claims at the amount appropriated for
16 reimbursement is not sufficient to pay all of the claims
17 approved by the Controller. Existing law also requires
18 the Controller to report to the Department of Finance and
19 various legislative entities when it is necessary to
20 prorate claims. This bill deleted that reporting
21 requirement, and requires the Controller to determine the
22 most cost-effective allocation method if \$1,000 or less
23 is appropriated for a program. On August 12th, 2013,
24 this bill was chaptered by the Secretary of State.

25 AB 1292 is a spot bill that we've been

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1 following. We have contacted the author's office and
2 were told that they have no plans to propose changes to
3 the mandate process. We will continue to monitor that
4 legislation.

5 CHAIR ORTEGA: Thank you.

6 MS. HALSEY: Item 10, which Chief Legal Counsel
7 Camille Shelton will present the Chief Legal Counsel
8 report.

9 MS. SHELTON: I don't have anything new to
10 report. We're still waiting for the Second District
11 Court of Appeal decision in the *Municipal Stormwater*
12 *Urban Runoff Discharge* case. They have until October 22
13 to issue their decision.

14 CHAIR ORTEGA: Thank you.

15 MS. HALSEY: And Item 11 is Executive
16 Director's report on workload, meeting calendar, and
17 tentative agenda items for the next meeting.

18 After today's hearing, we'll have ten test
19 claims, four P's & G's, three PGAs, eight statewide cost
20 estimates, and 81 IRCs, and three-point-something mandate
21 redeterminations pending.

22 We're making good progress towards eliminating
23 the backlog and hearing claims in a timely manner.

24 I do anticipate that we will hear all of our
25 2012 claims in early 2014. So it's getting much shorter.

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1 For an action item today, we have the meeting
2 calendar for 2014.

3 Commission meetings have traditionally been
4 held on the fourth Friday of odd months for many years.
5 The November meeting is usually set for the first Friday
6 in December to avoid holidays, and the fourth Friday of
7 May 2014 is May 23rd, which is Memorial Day weekend --
8 or the beginning of Memorial Day weekend, and may be a
9 conflict for parties and members. And, therefore, staff
10 proposes holding the May meeting on the following Friday,
11 May 30th.

12 So with that, we have our proposed calendar for
13 fourth Fridays except for what would be the November
14 hearing and the May hearing.

15 CHAIR ORTEGA: Do we have a motion on the 2014
16 calendar?

17 MEMBER OLSEN: I'll move it.

18 MEMBER CHIVARO: Second.

19 CHAIR ORTEGA: Thank you.

20 All those in favor?

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

22 CHAIR ORTEGA: Opposed?

23 *(No response)*

24 CHAIR ORTEGA: Okay.

25 MS. HALSEY: Great. And then we have tentative

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1 agenda items listed on the Executive Director's report.

2 There is a lot coming up. I know we lost a lot
3 of our audience; but please take a look and see if these
4 are your items because we have a pretty heavy agenda
5 anticipated for December, and then also maybe January.
6 So time to get comments in.

7 And that's it for me.

8 CHAIR ORTEGA: Okay, so we are going to recess
9 to closed executive session.

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

17 The Commission will also confer on personnel
18 matters pursuant to Government Code section sections
19 11126(a)(1).

20 We will reconvene in open session in
21 approximately 15 minutes. So if we can ask all the
22 public to exit.

23 *(The Commission met in closed executive*
24 *session from 11:48 a.m. to 11:52 a.m.)*

25 CHAIR ORTEGA: We are returning to open

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1 session. The Commission met in closed executive session
2 pursuant to Government Code section 11126(e)(2) to confer
3 with and receive advice from legal counsel, for
4 consideration and action, as necessary and appropriate,
5 upon the pending litigation listed on the published
6 notice and agenda; and to confer with and receive advice
7 from legal counsel regarding potential litigation, and
8 pursuant to Government Code 11126(a)(1) to confer on
9 personnel matters.

10 And no action was taken in the closed session.

11 And with no further business to discuss, I
12 believe I can take a motion to adjourn.

13 MEMBER OLSEN: So moved.

14 MEMBER CHIVARO: Second.

15 CHAIR ORTEGA: All in favor?

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

17 CHAIR ORTEGA: Thank you, everyone.

18 *(The meeting concluded at 11:53 a.m.)*

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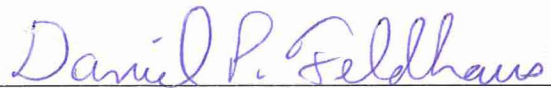
REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 21st of October 2012.



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