

## **Minutes**

### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
September 27, 2019

Present: Member Gayle Miller, Chairperson  
Representative of the Director of the Department of Finance  
Member Jacqueline Wong-Hernandez  
Representative of the State Controller, Vice Chairperson  
Member Lee Adams  
County Supervisor  
Member Mark Hariri  
Representative of the State Treasurer  
Member Jeannie Lee  
Representative of the Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member

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

#### **CALL TO ORDER AND ROLL CALL**

Chairperson Miller called the meeting to order at 10:00 a.m. Executive Director Heather Halsey called the roll.

#### **APPROVAL OF MINUTES**

Chairperson Miller asked if there were any objections or corrections to the July 26, 2019 minutes. Member Olsen made a motion to adopt the minutes. With a second by Member Ramirez, the July 26, 2019 hearing minutes were adopted by a unanimous voice vote.

#### **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

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

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

Executive Director Halsey stated that there were no items on consent; Item 7, a Decision and Parameters and Guidelines on *Public School Restrooms: Feminine Hygiene Products*, had been postponed to the November hearing due to the late filing of a declaration by the claimant; and staff of the State Controller were present but did not plan to come to the table for any of the items. Executive Director Halsey then swore in the parties and witnesses participating in the Article 7 portion of the hearing.

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

Item 2      Appeal of Executive Director Decisions

Executive Director Halsey stated that there were no appeals to consider for this hearing.

**TEST CLAIMS**

Item 3      *Youth Offender Parole Hearings, 17-TC-29*

Penal Code Section 3041, 3046, 3051, and 4801; Statutes 2013, Chapter 312 (AB 260); Statutes 2015, Chapter 471 (SB 261); Statutes 2017, Chapter 675 (AB 1308); Statutes 2017, Chapter 684 (SB 394)

County of San Diego, Claimant

Senior Commission Counsel Raj Dixit presented this item and recommended that the Commission adopt the Revised Proposed Decision denying the Test Claim.

Parties were represented as follows: Stephanie Karnavas and Laura Arnold appeared on behalf of the claimant; Susan Geanacou appeared on behalf of the Department of Finance.

Following discussion among the Commission members, staff, and parties, Chairperson Miller made a motion to adopt the staff recommendation. With a second by Member Wong-Hernandez, the motion to adopt the staff recommendation was adopted by a vote of 6-1 with Member Ramirez voting no.

**MANDATE REDETERMINATIONS**

Item 4      *High School Exit Examination (00-TC-06), 17-MR-01*  
Second Hearing: New Test Claim Decision

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003; as alleged to be modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Department of Finance, Requester

Senior Commission Counsel Raj Dixit presented this item and stated that the Department of Finance requests that a new test claim decision be adopted to replace the Commission's prior Decision on this program based on a subsequent change in law and that this is the second hearing in the mandate redetermination process. Mr. Dixit recommended that the Commission adopt the Proposed Decision as the new Test Claim Decision ending reimbursement for the mandated program.

Parties were represented as follows: Lina Grant appeared on behalf of the Department of Finance.

Ms. Grant stated that the Department of Finance agrees with the staff recommendation. There was no further comment from parties, interested parties, or the public on this matter. Member

Olsen made a motion to adopt the staff recommendation. With a second by Member Wong-Hernandez, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

Item 5      *Academic Performance Index (01-TC-22)*, 18-MR-01

First Hearing: Adequate Showing

Education Code Section 52056(c); Statutes 1999 1st Extraordinary Session, Chapter 3; Statutes 2000, Chapter 695; as alleged to be modified by Statutes 2013, Chapter 47 (AB 97)

Department of Finance, Requester

Commission Counsel Elena Wilson presented this item and stated that the Department of Finance requests the Commission to adopt a new test claim decision to end the State's liability for the program based on the subsequent change in law resulting from the repeal of the statute which imposed the mandate and that this is the first of two hearings in the mandate redetermination process. Ms. Wilson stated staff's finding that Finance has made an adequate showing that the State's liability may be modified based on the subsequent change in law and that there is a substantial possibility that the request will prevail at the second hearing. Ms. Wilson recommended that the Commission adopt the Proposed Decision and direct staff to notice the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.

Parties were represented as follows: Dan Hanower appeared on behalf of the Department of Finance.

Mr. Hanower stated that the Department of Finance agrees with the staff recommendation. There was no further comment from parties, interested parties, or the public on this matter. Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Wong-Hernandez, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

#### **PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS**

Item 6      *Peace Officer Training: Mental Health/Crisis Intervention*, 17-TC-06

Penal Code Section 13515.28; Statutes 2015, Chapter 469 (SB 29)

Cities of Claremont and South Lake Tahoe, Claimants

Senior Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines.

Parties were represented as follows: Annette Chinn appeared on behalf of the claimants; Susan Geanacou appeared on behalf of the Department of Finance.

Ms. Chinn thanked Commission staff for the analysis and stated that the claimants agree with the findings. Ms. Geanacou stated that the Department of Finance supports the staff's work as well. There was no further comment from parties, interested parties, or the public on this matter. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Adams, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

Item 7      *Public School Restrooms: Feminine Hygiene Products*, 18-TC-01

Education Code Section 35292.6; Statutes 2017, Chapter 687 (AB 10)

Desert Sands Unified School District, Claimant

Chairperson Miller stated that Item 7 was postponed and requested to move on to Item 8.

Item 8      *High School Exit Examination*, 00-TC-06 (17-MR-01)

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003; as modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Department of Finance, Requester

Senior Commission Counsel Raj Dixit presented this item and recommended that the Commission adopt the Proposed Decision and Parameters and Guidelines Amendment ending reimbursement for the activities related to this program.

Parties were represented as follows: Lina Grant appeared on behalf of the Department of Finance.

Ms. Grant stated that the Department of Finance supports the staff recommendation. There was no further comment from parties, interested parties, or the public on this matter. Member Wong-Hernandez made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to adopt the staff recommendation was adopted by a vote of 7-0.

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

Item 9      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Executive Director Heather Halsey stated that no SB 1033 applications have been filed.

**REPORTS**

Item 10      Legislative Update (info)

Program Analyst Kerry Ortman presented this item and described three bills that the Commission is tracking: SB 287, AB 400, and AB 1471.

Item 11      Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

Item 12      Executive Director: 2020 Hearing Calendar, Workload Update, and Tentative Agenda Items for the November 2019 and January 2020 Meetings (info/action)

Executive Director Heather Halsey presented the proposed 2020 hearing calendar.

Without further discussion among the Commission members and staff, Member Ramirez made a motion to adopt the proposed 2020 hearing calendar. With a second by Member Olsen, the 2020 hearing calendar was adopted by a unanimous voice vote.

Executive Director Halsey described the Commission's pending caseload and congratulated Commission procurement staff for their successful efforts identifying competitive certified Disabled Veteran Business Enterprises (DVBE) and certified Small Business (SB) vendors for over a quarter of the Commission's fiscal year of 2018/2019 procurement.

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

### **A. PENDING LITIGATION**

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

#### Trial Courts:

1. ***On Remand from the Third District Court of Appeal, Case No. C070357***  
*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)  
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. *City of San Diego v. Commission on State Mandates, State Water Resources Control Board, Department of Finance*,  
Sacramento County Superior Court, Case No. 2019-80003169  
(*Lead Sampling in Schools: Public Water System No. 3710020* (17-TC-03))

#### Courts of Appeal:

1. *Coast Community College District, et al. v. Commission on State Mandates*,  
Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections

51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023, 51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

2. ***On Remand from California Supreme Court, Case No. S214855, 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. B292446  
[Los Angeles County Superior Court, Case No. BS130730, Related Appeal from Second District Court of Appeal, Case No. B237153 [*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]

California Supreme Court:

1. *California School Board Association (CSBA) v. State of California et al.*  
California Supreme Court, Case No S247266  
First District Court of Appeal, Case No. A148606  
Alameda County Superior Court, Case No. RG11554698  
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

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

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

**B. PERSONNEL**

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

The Commission adjourned into closed executive session at 11:13 a.m., pursuant to Government Code section 11126(e)(2), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published

notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION**

**REPORT FROM CLOSED EXECUTIVE SESSION**

At 11:24 a.m., the Commission reconvened in open session.

**ADJOURNMENT**

Chairperson Miller reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2) 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 to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

Hearing no further business, Chairperson Miller requested a motion to adjourn the meeting. Member Adams made a motion to adjourn the meeting. Member Wong-Hernandez seconded the motion.

The September 27, 2019 meeting was adjourned by a unanimous voice vote at 11:24 a.m.

  
Heather Halsey  
Executive Director

STATE OF CALIFORNIA  
COMMISSION ON STATE MANDATES

PUBLIC MEETING

FRIDAY, SEPTEMBER 27, 2019  
10:00 A.M.

STATE CAPITOL BUILDING  
ROOM 447  
SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

**ORIGINAL**

REPORTED BY:

KATHRYN S. SWANK  
Certified Shorthand Reporter No. 13061  
Registered Professional Reporter

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Roseville, California 95661  
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KathrynSwankCSR@sbcglobal.net



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**A P P E A R A N C E S**

**COMMISSIONERS PRESENT**

GAYLE MILLER  
Representative for KEELY BOSLER, Director  
Department of Finance  
(Chair of the Commission)

JACQUELINE WONG-HERNANDEZ  
Representative for BETTY T. YEE  
State Controller  
(Vice Chair of the Commission)

MARK HARIRI  
Representative for FIONA MA  
State Treasurer

JEANNIE LEE  
Representative for KATE GORDON, Director  
Office of Planning & Research

LEE ADAMS III  
Sierra County Supervisor  
Local Agency Member

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member

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**COMMISSION STAFF**

RAJ DIXIT  
Senior Commission Counsel

HEATHER A. HALSEY  
Executive Director

MATTHEW B. JONES  
Senior Commission Counsel

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

KERRY ORTMAN  
Program Analyst

HEIDI PALCHIK  
Assistant Executive Director

CAMILLE N. SHELTON  
Chief Legal Counsel

ELENA WILSON  
Commission Counsel

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***PUBLIC PARTICIPANTS***

LAURA ARNOLD  
Claimant County of San Diego

ANNETTE CHINN  
Claimants Cities of Claremont and South Lake Tahoe

SUSAN GEANACOU  
California Department of Finance

LINA GRANT  
California Department of Finance

DAN HANOWER  
California Department of Finance

STEPHANIE KARNAVAS  
Claimant County of San Diego

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*E R R A T A S H E E T*

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<u>16</u>	<u>13</u>	<u>California Judicial <del>Counsel</del> Council</u>
<u>34</u>	<u>4</u>	<u>voters <del>opposed</del> imposed</u>
<u>35</u>	<u>17</u>	<u><del>scenary</del> scenery</u>
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	County of San Diego, Claimant	

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C. Mandate Redeterminations

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Education Code Sections  
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1999x, Chapter 1, (SB 2) and  
Statutes 1999, Chapter 135  
(AB 2539); California Code of  
Regulations, Title 5, Sections  
1200, 1203, 1205, 1206, 1207,  
1208, 1209, 1210, 1211, 1211.5,  
1212, 1215, 1217, 1220 and  
1225, Register 01, No. 25  
effective July 20, 2001 and  
Register 03, No. 18, effective  
May 1, 2003; as alleged to be  
modified by: Statutes 2015,  
Chapter 572 (SB 172) and  
Statutes 2017, Chapter 641  
(AB 830)

Department of Finance, Requester

Item 5    Academic Performance Index    60  
          (01-TC-22), 18-MR-01  
          First Hearing: Adequate  
          Showing

Education Code Section  
52056(c); Statutes 1999 1st  
Extraordinary Session, Chapter  
3; Statutes 2000, Chapter 695;  
as alleged to be modified by  
Statutes 2013, Chapter 47  
(AB 97)

Department of Finance, Requester

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1 SACRAMENTO, CALIFORNIA

2 FRIDAY, SEPTEMBER 27, 2019, 10:00 A.M.

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4 CHAIRPERSON MILLER: Good morning. The meeting of  
5 the Commission on State Mandates will come to order.

6 And, first, I have some housekeeping information.  
7 On the table near the end of the dais are copies of the  
8 meeting notice, the agenda, new filings, witness list,  
9 and the electronic public hearing binder is also located  
10 over there, on the laptop.

11 At the witness table, the claimant and local agency  
12 interested parties sit facing the center of the dais,  
13 and the state agency parties and interested parties sit  
14 to the claimant's right.

15 The restrooms are down the hall near the elevators.  
16 And, finally, please take note of the emergency exits in  
17 this room.

18 Heather, will you please call the roll.

19 MS. HALSEY: Sure.

20 Mr. Adams.

21 MEMBER ADAMS: Here.

22 MS. HALSEY: Mr. Hariri.

23 MEMBER HARIRI: Here.

24 MS. HALSEY: Ms. Lee.

25 MEMBER LEE: Here.



1 MS. HALSEY: Ms. Miller.

2 CHAIRPERSON MILLER: Here.

3 MS. HALSEY: Ms. Olsen.

4 MEMBER OLSEN: Here.

5 MS. HALSEY: Ms. Ramirez.

6 MEMBER RAMIREZ: Here.

7 MS. HALSEY: Ms. Wong-Hernandez.

8 MEMBER WONG-HERNANDEZ: Here.

9 CHAIRPERSON MILLER: Thank you.

10 We have a quorum. Everyone is here on time. This  
11 is a new high for me.

12 Are there any objections or corrections from the  
13 minutes for July 26?

14 MEMBER OLSEN: Move adoption.

15 MEMBER RAMIREZ: Second.

16 CHAIRPERSON MILLER: Thank you very much. They  
17 have been moved and seconded.

18 And any objection to unanimous...

19 Thank you. The minutes are adopted.

20 MS. HALSEY: You can do a voice vote or a roll  
21 call.

22 CHAIRPERSON MILLER: Oh, okay. All those in favor  
23 of adopting the minutes, signify by saying "aye."

24 (Ayes)

25 CHAIRPERSON MILLER: Any opposed? Abstentions?

1 (No response)

2 CHAIRPERSON MILLER: Thank you.

3 MS. HALSEY: And now we will take up public comment  
4 for matters not on the agenda. Please note that the  
5 Commission cannot take action on items not on the  
6 agenda. However, it can schedule issues raised by the  
7 public for consideration at future meetings.

8 CHAIRPERSON MILLER: Thank you, Heather.

9 Is there any public comment?

10 (No response)

11 CHAIRPERSON MILLER: Hearing no public comment, we  
12 will move to the next item.

13 MS. HALSEY: Moving to the Article 7 portion of the  
14 hearing, there are no items on consent today.

15 Item 7, the decision on parameters and guidelines  
16 on Public School Restrooms: Feminine Hygiene Products,  
17 has been postponed to the November hearing due to the  
18 late filing of a declaration by the claimant. Also,  
19 staff of the State Controller are present today but do  
20 not plan to come to the table for any of the items on  
21 this hearing.

22 Will the parties and witnesses for Items 3, 4, 5,  
23 6, and 8 please rise.

24 (Parties/witnesses stood to be sworn or  
25 affirmed.)

1 MS. HALSEY: Thank you.

2 Item 2 is reserved for appeals of Executive  
3 Director decisions. There are no appeals to consider  
4 for this hearing.

5 And next is Item 3. Senior Commission Counsel Raj  
6 Dixit will present a test claim on new offender parole  
7 hearings.

8 At this time, we invite the parties and witnesses  
9 for Item 3 to please come to the table.

10 CHAIRPERSON MILLER: Thank you. Thank you, Raj.

11 MR. DIXIT: Good morning, ladies and gentlemen.

12 The test claim statutes require the Board of Parole  
13 Hearings, a state agency, to conduct a new type of  
14 parole hearing: A youth offender parole hearing to  
15 review the suitability -- suitability for parole with  
16 certain specified exceptions of youthful offenders,  
17 those who are 25 or younger at the time of their offense  
18 and who are sentenced to 15 or more years in prison; or  
19 to youthful offenders who are sentenced to life without  
20 the possibility of parole for crimes committed before  
21 the age of 18.

22 These test claim statutes were enacted, in part, in  
23 response to a series of decisions by the United States  
24 and California Supreme Courts and restricted the  
25 imposition of such sentences on juveniles.

1           The plain language of the test claim statutes do  
2 not impose any state-mandated activities on local  
3 agencies. Claimant, however, seeks reimbursement for  
4 costs associated with the presentation of evidence at  
5 the sentencing hearings of youthful offenders to  
6 preserve evidence for eventual youth offender parole  
7 hearing review by the Board of Parole Hearings.

8           These presentations, known as Franklin Hearings,  
9 are not imposed by the legislature or by any state  
10 agency, and do not constitute a state-mandated program  
11 for the purposes of Article XIII B, section 6.

12           Furthermore, staff finds that these test claim  
13 statutes change the penalty for crimes committed by all  
14 youth offender parole hearing eligible offenders, and,  
15 therefore, are not eligible for subvention, pursuant to  
16 Government Code section 17556(g).

17           Accordingly, staff recommends that the Commission  
18 adopt the revised proposed decision denying the test  
19 claim.

20           Further, staff requests authorization to make any  
21 technical, nonsubstantive changes to the proposed  
22 decision following the hearing.

23           Thank you.

24           CHAIRPERSON MILLER: Thank you very much, Raj.

25           Would the parties and witnesses please state your

1 name for the record.

2 MS. KARNAVAS: Stephanie Karnavas on behalf of the  
3 claimant, the County of San Diego. Thank you very much.

4 MS. ARNOLD: Laura Arnold. I'm the public defender  
5 for Stanislaus County.

6 CHAIRPERSON MILLER: Great. Thank you very much.

7 MS. GEANACOU: Susan Geanacou, G-E-A-N-A-C-O-U,  
8 Department of Finance.

9 CHAIRPERSON MILLER: Thank you very much.

10 Is there any public comment on this item?

11 (No response)

12 MS. KARNAVAS: Oh, sorry. I thought you meant from  
13 the gallery. This is my first time here. Thank you.

14 CHAIRPERSON MILLER: It is only my second, if it  
15 makes you feel better.

16 MS. KARNAVAS: My name is Stephanie Karnavas. I'm  
17 here from the County of San Diego. With me is Laura  
18 Arnold, who, as she said, is the -- is currently the  
19 public defender of Stanislaus County.

20 Laura provided a declaration in support of the  
21 County's test claim and is a true subject matter when it  
22 comes to the role of the public defender,  
23 specifically -- in a lot of areas, but for the issues  
24 that we're going to be discussing here today.

25 And so a lot of the discussion, I'm actually going

1 to turn over to her, because I feel like what may be  
2 missing from the analysis is, really, an understanding  
3 of the practical implications of the youth offender  
4 parole statute on what a public defender -- a public  
5 defender does and what they have done in their role in  
6 the past.

7 At this point, I would just ask Ms. Arnold to  
8 please provide the Commission with a brief statement of  
9 your background and your qualifications so they  
10 understand where you come from.

11 MS. ARNOLD: Hi. This is also my first time here.

12 CHAIRPERSON MILLER: Could you state your name one  
13 more time.

14 MS. ARNOLD: Laura Arnold.

15 CHAIRPERSON MILLER: Thank you, Ms. Arnold.

16 MS. ARNOLD: I'm the public defender for Stanislaus  
17 County, having been appointed by the board of  
18 supervisors on February 18th of this year, so I'm the  
19 brand new department head. Prior to that, for five  
20 years, I ran the writs and appeals unit of Riverside  
21 County Public Defender's Office. Prior to that, I spent  
22 17 years as a deputy public defender in San Diego  
23 County. And in addition to that, I spent about a year  
24 and a half in private practice in Los Angeles, doing  
25 death penalty, habeas work, and complex civil

1 litigation. And I also took appointments -- sorry, I'm  
2 going too fast. I also took appointments through the  
3 Indigent Criminal Defense Panel and did routine work  
4 there.

5 I am the second vice president for the California  
6 Public Defenders Association. I chair the Youth  
7 Offender Franklin Committee for CPDA. I also chair the  
8 Mental Health Civil Commitment Committee for CPDA, and I  
9 chair the Amicus Committee for CPDA.

10 If you want something done well, get a busy mom to  
11 do it. I also sit, on appointment, by the chief justice  
12 of the California Supreme Court on the Criminal Law  
13 Advisory Committee to the California Judicial Counsel.

14 So that's my background.

15 CHAIRPERSON MILLER: Thank you.

16 Do you want to speak to the -- oh.

17 MS. KARNAVAS: Sorry. So I want to focus our  
18 argument, our discussion here today on the two main  
19 grounds that are set forth in the proposed decision for  
20 denial of the test claim. I'm not going to repeat  
21 what's already been presented in our -- in our prior  
22 comments, but I would like to respond to some of the  
23 response to our comments from the last proposed  
24 decision, and also give Laura, again, the opportunity to  
25 provide some context from how this works, actually, out

1 on the ground.

2 The Commission's position -- so the first basis on  
3 which the Commission has denied the test claim, or has  
4 proposed to deny the test claim, is that the statute  
5 does not expressly direct or require local agencies to  
6 perform the activities, and, therefore, is not  
7 cost-mandated by the state. That's set forth in the  
8 Government Code section 17514.

9 However, that section defines "costs" broadly, to  
10 mean increased costs a local agency is required to incur  
11 as a result of any statute. The legislature could have  
12 easily just has said, "as expressly provided by a  
13 statute," or "as expressly directed by a statute," but  
14 they didn't say that. They said "as a result of any  
15 statute."

16 And as a lawyer, using the term "as a result of" is  
17 generally construed very broadly, I can say, just as  
18 general matter. And I think that was the intent here.

19 The -- the Commission relies on the fact that no  
20 court has found activities which are not expressly  
21 required, by a test claim statute, to be mandated by the  
22 state. And that's likely just because the issue hasn't  
23 been litigated yet.

24 So as I'm sure you are aware, there's really a  
25 dearth of case law that has that -- that addresses



1 mandates. I think that's maybe less than 30 or around  
2 that number. So there's a lot of issues that haven't  
3 been put before the courts, including, I think, another  
4 thing we'll discuss today, which is the interpretation  
5 of a section -- of the exceptions in 17556.

6 So the Commission, in its proposed decision, while  
7 it claims that the costs flow from the procedures  
8 identified by the courts to implement the test claim  
9 statutes, the court, in *Cook* -- the Supreme Court in  
10 *Cook* expressly stated that the proceeding outlined in  
11 *Franklin*, quote, derives from the test claim statutes,  
12 particularly sections 3051 and 4801.

13 In other words, if the statutes did not exist, no  
14 *Franklin* proceeding would be required, and, thus, the PD  
15 would not need to conduct the investigation, prepare the  
16 evidence, and submit the information to the CDCR.

17 There is an exception, which Laura will speak to  
18 for -- at true juveniles sentenced to LWOP. But as she  
19 can explain better than I can, even if, per the  
20 sentencing, the public defender was putting some of the  
21 youthful information into the record, they still didn't  
22 have an obligation to get that information to the CDCR,  
23 which is a minor distinction, but it is a distinction  
24 that should be noted with respect to the very limited  
25 part of the population that's at issue in these

1 statutes.

2 As a sub-point to the argument that the test claim  
3 statutes do not expressly require local agencies to  
4 perform any activities, the Commission's proposed  
5 decision also makes the point that juvenile offenders  
6 have a constitutional right to assistance of counsel for  
7 their defense. But what's missing from the proposed  
8 decision is any acknowledgment of the fact that public  
9 defenders have never been charged with representing  
10 defendants in parole proceedings. The obligation to  
11 provide counsel of those proceedings, when it is  
12 required, has always fallen on the State.

13 So, at this point, I want to turn it over to Laura  
14 to explain what the role of defense counsel has been in  
15 parole proceedings prior to SB 260.

16 MS. ARNOLD: So when I first saw SB 260 and the  
17 youth offender parole statutes, I was the supervisor of  
18 the Writs and Appeals Unit in Riverside County.  
19 Riverside County has a lot of youthful offenders because  
20 they have a lot of gangs, and so we're talking about a  
21 large population of people under the age of 26 who get  
22 involved in crimes that carry very serious sentences,  
23 life sentences, and potentially LWOP sentences. They  
24 also were one of the lead counties in terms of direct  
25 filing of juvenile cases in adult court, meaning that

1 juvenile -- that during the years of 2000 to 2015, when  
2 juvenile cases against juvenile offenders of certain  
3 ages, for certain crimes, could circumvent the juvenile  
4 court process all together, and the prosecution could  
5 just file directly in adult court, Riverside County did  
6 it a lot.

7 So when I learned about youth offender parole,  
8 honestly, my first thought was, oh, it's a parole thing,  
9 and I took -- I passed it off to my parole person, who  
10 does parole release habeas work, and I didn't think it  
11 was really a big deal. I thought it was a big deal for  
12 the State. But I -- I didn't think it affected us at  
13 all, to be honest.

14 And at first, I thought, oh, this is a really good  
15 thing for the juvenile offenders. I really hope that  
16 they program well while they are in prison so that they  
17 have a second chance and a meaningful opportunity for  
18 release. That's all great.

19 And then I had to present on the *Franklin* case for  
20 the California Attorneys for Criminal Justices appellate  
21 seminar in San Francisco. And so I read *Franklin*, and I  
22 still didn't see it. I thought, oh, okay. Caballero  
23 claims are now moot because of youthful offender parole.  
24 Okay. That sort of makes sense. The legislature has  
25 figured out a way to address this constitutional problem

1 for this particular population of juveniles. But then I  
2 read on to the remand order, and the remand order  
3 directed the -- directed remand of the matter to the  
4 superior court, so that trial counsel could put into the  
5 record these youthful circumstance factors, this  
6 individualized information regarding the child  
7 circumstances of the defendant. That wasn't there.

8 And the reason why it wasn't there is because, one,  
9 he was convicted of crime. He had a mandatory life  
10 sentence. So there was no discretion at the sentencing  
11 hearing as to whether or not the judge was going to say,  
12 give him probation or give him a mitigated sentence.

13 Two, he has a mandatory gun enhancement allegation,  
14 another 25 to life. Again, there was no reason for  
15 there to be any conversation of any kind.

16 Third, he was direct filed in adult court; he  
17 didn't come through the juvenile court, so there hadn't  
18 been any investigation done of his childhood  
19 circumstances.

20 And when I read the remand order, and I looked at  
21 the parole statutes that existed prior to SB 260, and  
22 the parole statutes that -- for youthful offenders, I  
23 realized that things had changed dramatically.

24 Prior to SB 260, parole release -- youth  
25 circumstances was not a consideration in parole release

1 proceedings, and it was -- and the public defender had  
2 no role whatsoever in parole release proceedings. In  
3 fact, while the district attorney and crime victims are  
4 required, by statute, to be given notice of parole  
5 hearings, defense counsel is not required, by statute.  
6 We truly do not play any part in that.

7         The way we look at the -- the way that the parole  
8 statute is read before SB 260, all that mattered was the  
9 crime and the criminal history of the individual and his  
10 or her behavior and progress and participation in  
11 programming while in the CDCR. We didn't play any part  
12 in that.

13         I mean, we're not going to put in information about  
14 the facts of the crime; that's already there through the  
15 probation report. And the probation department is the  
16 investigatory branch of the judiciary. They were the  
17 ones who did the investigation regarding the relevant  
18 information and put it into a report that should have  
19 gone to CDCR. We didn't play any role in that at all.

20         When SB 260 changed the game, and the legislature  
21 mandated that the individual's circumstances of youth  
22 must be considered and given great weight in these  
23 parole release proceedings, we realized that while --  
24 and then the Supreme Court did the remand order in  
25 *Franklin*, that's when we actually -- that's when it

1 clicked for us. And we said, oh, my gosh, we're the  
2 people who have the person at the time of sentencing.  
3 We're the people that have the ability to get a release  
4 of information signed by the person so that we can go  
5 ahead and get his school records, get his medical  
6 records, his pediatric records. We can get family  
7 information from him. We can find out about childhood  
8 trauma by interviewing his parents.

9 We're the only people who can do this, and if we  
10 don't do it, there's no way that, 25 years from now,  
11 anyone is going to be able to recreate it, because these  
12 records don't exist forever. They are -- I mean, as  
13 soon as someone graduates from high school, all of their  
14 school records are destroyed except for the transcript.  
15 But those school records are critically important to  
16 understanding the developmental issues and the complex  
17 trauma that our clients were dealing with and that gave  
18 rise to this one terrible decision on this one fateful  
19 day. And that's the background under which the law  
20 requires that they be considered for parole release.

21 So I went to the California Public Defenders  
22 Association board and presented them with this analysis.  
23 Everybody in this state agreed, nobody was doing this  
24 work. We did a half-day seminar, and then I did a  
25 magical mystery tour, going from county to county,

1 explaining *Franklin* and SB 260, and we started doing it  
2 with the limited resources that we had, to the best of  
3 our ability. And we realized, even just with the SB 260  
4 population, which is true juveniles, under the age of  
5 18, that stuff, while in the court file, wasn't in the  
6 C-file and couldn't get into the C-file without our  
7 intervention.

8         And the reason why is this: Even if they came  
9 through juvenile court, and they weren't a direct-file  
10 kid, and a full fitness hearing was conducted, and the  
11 probation officer was able to do a comprehensive  
12 investigation of individual circumstances and file it  
13 with the court, that juvenile case file is confidential.  
14 And it can -- while it can be disseminated to the DA and  
15 it can be disseminated to the judge, it can't be  
16 disseminated beyond the enumerated agencies and  
17 individuals in Welfare and Institutions Code 827, and  
18 the CDCR and the BPH are not.

19         So the only way that information was even going to  
20 get from the court file to the CDCR is if we came in, as  
21 petitioners, on behalf of our client or our former  
22 client, and asked the juvenile court for permission to  
23 disseminate it to the CDCR for the purpose of  
24 consideration.

25         So even for that -- that's not a huge time

1 commitment, by the way, as things go. Okay? But that  
2 was something we had never done before, ever.

3 And so -- and then the -- and then the statute  
4 expanded the population. So now we're not only dealing  
5 with the purer kids that came through 707 and the  
6 direct-file juveniles, those who had charges filed  
7 against them in adult court, now we have got adults.  
8 Wow. Okay. Adult sentencing is what's considered by  
9 the court, is in the rules of court, and I have to tell  
10 you, these youth circumstances aren't included. So we  
11 did do investigation for our adult sentencing, but it  
12 wasn't going back and delving into their childhood,  
13 because that wasn't even relevant, we didn't think.  
14 Because there wasn't -- the court didn't list these  
15 individual youth circumstances. And the probation  
16 department didn't do that investigation either because  
17 that wasn't relevant to their investigation, which was  
18 governed by the rules of court.

19 And we realized that the only way we were going to  
20 be able to get these youth circumstances into the  
21 C-file, really, is if we did the investigation  
22 ourselves, now, while the iron is hot, while those  
23 records still exist, while those witnesses can still be  
24 located and interviewed, while that stuff can still be  
25 absorbed, maybe while our client can still be evaluated



1 by psychologist as to his complex trauma, and put it  
2 together into this time capsule for eventual  
3 consideration by the BPH.

4 And that's exactly what the *Franklin* remand  
5 requires. And that's what is required in *Perez* and  
6 *Cook*. Both -- all agree that that's what we have today.

7 How we do it, that's sort of the up to the court,  
8 and the Supreme Court acknowledged that in *Cook*. We can  
9 do it with a full-blown hearing, with witnesses and  
10 court reporters; or we can do it with something that  
11 exists called a Statement of View, which, historically,  
12 only dealt with view of the crime, and that was a tool  
13 that was only used by prosecutors, because prosecutors,  
14 unlike trial counsel, play a very big role in the parole  
15 release proceedings, particularly with their life --  
16 their life inmates. They are entitled to notice. They  
17 want to make sure that relevant information regarding  
18 how dangerous the person is gets into the C-file, and  
19 they even have teams that go and testify at the  
20 institutions, and they bring family members as well at  
21 the parole release proceedings.

22 We don't do that. That's never been our job, ever.

23 So we can use that vehicle now to get these time  
24 capsules into the C-file, which is less time consuming  
25 than the full-blown hearing and, in my opinion, more

1 effective, because a 800-page transcript is never going  
2 to be read by anybody, whereas the Statement of View,  
3 with some relevant documents, will. But in order to do  
4 the Statement of View, we have to do the investigation  
5 and we have to process it and we have to then write  
6 something that communicates it in a cohesive way so that  
7 the BPH and the commissioners can actually comprehend  
8 it, given the limited time that they have to prepare for  
9 these parole hearings. So it has changed the way we do  
10 business dramatically.

11 Is that sufficient?

12 MS. KARNAVAS: Yeah. I think --

13 CHAIRPERSON MILLER: I'm going to --

14 MS. KARNAVAS: Oh. A comment.

15 CHAIRPERSON MILLER: No, please. If you want to  
16 wrap it up.

17 MS. KARNAVAS: I was going to say, I think that,  
18 kind of, the net of what I hope is coming across is that  
19 this really, substantially expanded the services that  
20 need to be provided by a public defender, as a matter of  
21 statute, not because of the constitution. These --  
22 these new obligations that are being posed -- imposed on  
23 the public defender are a result of the statute. And I  
24 know there's been an argument that it's, you know, a  
25 court mandate. I think that that argument has been

1 dropped from the current proposed decision.

2 But I understand it's complex because you have a  
3 court interpreting the law and then it's -- you are sort  
4 of trying to figure out, okay, what's the court saying  
5 versus what do the statutes say.

6 But I think the California Supreme Court was clear:  
7 The requirement to perform a Franklin proceeding derives  
8 from the statute. And so...

9 CHAIRPERSON MILLER: So I think -- so I do want to  
10 be clear on what -- the pieces we can discuss.

11 Ms. Geanacou, do you want to go ahead and -- do you  
12 have any comments from Finance?

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

15 We support the Commission's staff analysis on this  
16 and recommend denial of the test claim for the reasons  
17 stated in the analysis.

18 CHAIRPERSON MILLER: Thank you.

19 And I really appreciate that and am really grateful  
20 for your work. It's remarkable. Unfortunately, all we  
21 can talk about today -- and you are right about the  
22 statute. But in terms of whether or not the statute  
23 went beyond *Franklin*, that that isn't at issue today.  
24 And the *Franklin* requirements that we're all aware of  
25 and that you are instituting -- that hopefully will do

1 exactly what you are saying and help you -- we only  
2 have -- you know, we can only look at the factors of the  
3 test claim that are laid out here. So it's not -- it's  
4 not -- it's such a global view of -- even though what  
5 you are presenting is fascinating, that all we can look  
6 at here are very specific pieces of the case. So I do  
7 appreciate that.

8 Are there any --

9 MS. HALSEY: Might it be helpful for Commission  
10 staff to respond to that first part, before we go to the  
11 second piece of their argument?

12 CHAIRPERSON MILLER: Please. That would be great.  
13 Heather, do you want to do that or Mr...

14 MR. DIXIT: If I may. Thank you, ladies and  
15 gentlemen.

16 CHAIRPERSON MILLER: Thank you.

17 MR. DIXIT: Having been a public defender myself  
18 for several years, and having briefly been a district  
19 attorney in Stanislaus County, I am fully sympathetic to  
20 what Ms. Karnavas and Arnold are stating. However, that  
21 cannot allow the analysis to be swayed.

22 The idea that as a result of a statute would create  
23 a mandate is simply untenable. That's not a catch-all  
24 provision, or else every statute would impose a mandate.  
25 It has been said that, in re *Cook*, the Franklin

1 proceedings derive from the test claim statutes; that  
2 was stated in re *Cook*. But, yet again, that's merely a  
3 part of the sentencing process, and these youth offender  
4 parole hearings have drastically changed the penalties  
5 for crimes, and, therefore, are exempt under 17556(g).

6 And in terms of this Franklin process requiring  
7 that certain elements be proven up or preserved, an  
8 analogy would be the three strikes law. When the three  
9 strikes law was passed, it created new requirements on  
10 DAs and public defenders. And for a three-strikes trial  
11 upon conviction, if the person was convicted, the DA  
12 would have to prove up the strike priors to -- there  
13 would be a separate proceeding after the guilt phase of  
14 the underlying crime. The DA was responsible to prove  
15 up priors. Or when gun enhancements and the gang  
16 enhancements, when those became new statutes, they  
17 required additional proof from DAs to prove them up and  
18 additional responsibilities on PDs to defend against  
19 them. Yet, none of those were mandates, as they changed  
20 the penalties for a crime. And these Franklin  
21 proceedings, as parole is a natural and necessary part  
22 of the penalty and process of a crime, these are an  
23 inherent responsibility. Just as proving up or  
24 defending against strike priors did not create a mandate  
25 for public defenders and DAs, it did impose more

1 responsibilities, but they weren't mandated; they  
2 weren't reimbursable. And the same analogy applies  
3 here.

4 Ms. Arnold made the comment that public defenders  
5 have never represented defendants at parole hearings.

6 Our response would be, exactly. The test claim  
7 statutes don't impose any activities, any mandated  
8 activities, on local agencies. They only impose  
9 mandated activities on the BPH, which is a state agency.

10 In terms of having no discretion in sentencing, a  
11 proper analogy would be, what criminal attorneys, both  
12 prosecution and defense have always done, is pleadings,  
13 factors in aggravation and mitigation at sentencing.  
14 Assume, hypothetically, a world where judges did have  
15 discretion. There were no three strikes or judges had  
16 very broad discretion to sentence defendants to a  
17 wide -- wide range of years.

18 If that were the case, then both the DA and the  
19 public defender would be responsible to present factors  
20 in aggravation on behalf of the DA and factors in  
21 mitigation on behalf of defense counsel at sentencing,  
22 and that would be part of the penalty process. It would  
23 be a greater duty and not reimbursable.

24 And, in fact, public defenders -- which I was one,  
25 and a DA, which I was one briefly -- have had to present

1 such information in cases that aren't three strikes.  
2 Not every case is a three-strikes case. Not every --  
3 many cases are general felonies, where there is a  
4 range -- lower, middle, and upper term -- and there's a  
5 possibility that aggravating or mitigating factors would  
6 be considered. In those cases, the defense counsel was  
7 obligated by the duty to not only represent the  
8 defendant, to present factors in mitigation if such  
9 could be found.

10 And that's in the California Rules of Court and the  
11 statute, and it's not a mandate. It's part of the  
12 responsibility of being a defense attorney.

13 So parole is part of the sentence and changes to it  
14 are a change in penalty and exempt under 17556(g).

15 And *Cook* referenced Penal Code 1203.01. Ms. Arnold  
16 said that, historically, that's only been used by DAs.  
17 That may be true, in her experience, but the plain  
18 language of 1203.01 makes it clear, that section is  
19 available to both sides. 1203.01 allows either the  
20 district attorney or the attorney for the defendant may  
21 submit information pursuant to 1203.01, and they always  
22 have been able to do so. The fact that, de facto, this  
23 information wasn't being done, because of the essential  
24 futility of it, can't change our analysis here. This  
25 mechanism has always existed, and this is pursuant to a

1 change in the penalty for a -- for a broad swath of  
2 crimes, just as three strikes was.

3 And on that same logic and same rationale, it is  
4 respectfully submitted that this is -- this is not a  
5 state-mandated activity and subvention cannot be  
6 granted; these are not reimbursable.

7 Thank you.

8 CHAIRPERSON MILLER: Thank you.

9 Are there any further comments? Ms. Shelton?

10 MS. SHELTON: Just to bring it back, to circle back  
11 to the mandate elements, we have had a lot of the test  
12 claims before the Commission that seek reimbursement for  
13 activities that occur as a result of the statute.

14 The courts have not focused on 17514 for the  
15 mandate issue. For that element, for the mandate  
16 element, they looked at who is imposing the cost. On  
17 page 55, particularly footnote 289, we list all the  
18 cases there. And they say, from *County of Los Angeles*  
19 *vs. State of California*, that it has to be legislation  
20 enacted by the state or executive orders enacted by any  
21 state agency.

22 *Long Beach Unified School District*, we understand  
23 the use of the word "mandates" as an ordinary -- as an  
24 order or a command.

25 In *Hayes*, it was talking about whether the State



1 imposed the mandate or the federal government imposed  
2 the mandate.

3 And in *CSBA*, again, talking about whether the  
4 voters opposed the mandate or the state or any  
5 legislature or any state agency imposed the mandate.

6 So when you are looking at the mandate element and  
7 isolating that element, the courts are looking at who is  
8 imposing that mandate. And that is the purpose of this  
9 analysis as the first element.

10 I think Mr. Dixit adequately summarized the  
11 subsequent finding on 17556(g). If any of the elements  
12 to reimbursement under XIII B, section 6, are not met,  
13 then this Commission is required to deny the test claim.

14 CHAIRPERSON MILLER: Right.

15 Thank you for that clarification, Ms. Shelton.

16 Ms. Arnold, do you want to respond?

17 MS. ARNOLD: I do.

18 CHAIRPERSON MILLER: Or Ms. Karnavas?

19 MS. KARNAVAS: Yes. I will have Ms. Arnold respond  
20 to the comments by Mr. Dixit, and then I have got some  
21 comments as well.

22 MS. ARNOLD: I tried to write them down as I heard  
23 them.

24 The analogy to the three strikes law fails with  
25 respect to, it's always been an initiative, so it's

1 automatically exempt and can't be a mandate. But, more  
2 importantly, what the three strikes law did is it  
3 actually changed the punishment. It changed the  
4 sentence. People who would have been formerly looking  
5 at a determinant term, meaning a finite amount of years,  
6 we're now looking at a life sentence in prison.

7 This -- the youth offender parole statutes do not  
8 do that. They don't change punishment at all. What  
9 they do is they mandate a parole release consideration  
10 hearing after a particular number of years.

11 While parole is part of the sentence that -- a  
12 person who is serving a life sentence who is paroled  
13 remains on parole for life. In other words, they are  
14 still a CDCR inmate. They are just not actually inside  
15 of prison. They are still in custody of the CDCR for  
16 the rest of their life; they just had a change of  
17 scenary.

18 Nothing about the youth offender parole statute  
19 guarantees that any individual who qualifies as a  
20 youthful offender will be released prior to their  
21 otherwise sentenced termination date.

22 And I think that it's somewhat illogical to --  
23 well, while there's definitely authority that says  
24 lengthening a period of parole is increasing penalty for  
25 purposes of ex post facto analysis, no case law says

1 that the opportunity for parole release consideration at  
2 a particular time changes the punishment, and, in fact,  
3 the Supreme Court, in 2012, in a case called People  
4 versus Brown looked at accelerated credits in Penal Code  
5 section 4019. And the issue there was whether, under  
6 the rule of *Estrada*, it should apply retroactively,  
7 because it ameliorates punishment. Okay? And they  
8 said, it's not. The reduction credits does not apply  
9 under *Estrada* retroactively, because it does not lessen  
10 the punishment for the offense, so that argument also  
11 fails.

12 It is -- Franklin sentencing, or the ability to put  
13 into a record the youth circumstances, is not a part of  
14 the criminal proceeding, unlike an actual sentencing  
15 hearing, where the judge has the authority to do  
16 something in terms of what sentence is  
17 imposed usually -- sometimes he doesn't; sometimes it's  
18 a mandatory life sentence, and it doesn't matter what  
19 circumstances in aggravation or mitigation may exist.  
20 The court has not discretion; the legislature has  
21 mandated a particular sentence.

22 Unlike a sentencing hearing, where a judge has the  
23 opportunity to change the sentence or decide a sentence,  
24 in a Franklin proceeding, the sentence is decided. It's  
25 already been imposed. All that the judge can do in a

1 Franklin proceeding is receive information and have the  
2 clerk send it off to the CDCR. So it's nothing like a  
3 sentencing hearing and it's not part of the court's  
4 Sixth Amendment duty of defense counsel. It's never --  
5 nothing like this has ever existed anywhere, actually.

6 The factors in aggravation and mitigation which  
7 were discussed by Mr. Dixit -- is that correct?

8 MR. DIXIT: Dixit.

9 MS. ARNOLD: Okay. The factors in aggravation and  
10 mitigation, I did mention. Those are in the rules of  
11 court. They do not include any of the youthful  
12 circumstance information that's required to be  
13 considered and given great weight by the BPH at the  
14 youth offender parole hearing. Therefore, they would  
15 not be included in a statement in mitigation.

16 I want to -- I think that's all that I had in  
17 response.

18 CHAIRPERSON MILLER: I appreciate that.

19 I'm going to open it up to the Commission.

20 Ms. Karnavas, do you want to make a -- any type of  
21 observation? And then we still have questions.

22 MS. KARNAVAS: Sure.

23 Just to respond briefly to the 17556 argument,  
24 suffice it to say, we disagree with the interpretation  
25 of that section. It is not an issue that's been

1 litigated, so we don't have the benefit of a court  
2 opinion providing some analysis. There's nothing that I  
3 could find in the legislative history that sheds any  
4 light on what exactly the legislature intended by that  
5 language.

6 But one thing I don't think Mr. Dixit addressed --  
7 and, first of all, we disagree that the -- giving an  
8 individual the opportunity to have a hearing, making  
9 them eligible, does not equal suitable. And so we would  
10 disagree that this is a change in penalty. And I  
11 think -- I don't want to repeat what Laura has already  
12 said, but we disagree with that, as an initial matter.

13 Additionally, 17556(g) specifically says -- it  
14 talks to -- it says -- the Commission shall not find  
15 costs mandated by the state in any claim submitted by a  
16 local agency. If the Commission finds the statute  
17 created a new crime or infraction, eliminated a crime or  
18 infraction, or changed the penalty for a crime or  
19 infraction, but only for that portion of the statute  
20 relating directly to the enforcement of the crime or  
21 infraction.

22 And I just don't -- I understand -- the support  
23 that the Commission gave for the argument that this  
24 is -- this should be considered, quote, directly related  
25 to enforcement, is essentially a definition within

1 Black's Law Dictionary.

2 And I think the commonly understood -- and I  
3 understand that that -- the Commission, in prior  
4 opinions, has interpreted directly to the enforcement of  
5 the crime very broadly to basically include anything  
6 having to do with a crime: The detention, the arrest,  
7 the -- the prosecution, the sentence.

8 And I think that is an extremely overbroad way to  
9 define "enforcement," which, in the law enforcement  
10 context, has a generally understood meaning as meaning  
11 actual law enforcement activities, and not going all --  
12 not extending all the way to, you know, after sentence,  
13 into a parole situation.

14 So I think the position taken by the Commission in  
15 the proposed decision, on that point, is really not  
16 supported by anything that should be persuasive, should  
17 be considered persuasive.

18 CHAIRPERSON MILLER: Thank you for that.

19 Let me -- we will still be able to entertain some  
20 comments.

21 MS. KARNAVAS: Sure.

22 CHAIRPERSON MILLER: Let's open it up to the  
23 Commission to see if there's any questions or comments.

24 Ms. Ramirez.

25 MEMBER RAMIREZ: I would like to hear you first.

1 CHAIRPERSON MILLER: Ms. Wong-Hernandez.

2 MEMBER WONG-HERNANDEZ: I have a lot of questions.  
3 We will tag-team this.

4 Thank you all for being here, and I appreciate the  
5 time everybody has taken with all this. I have some  
6 questions that I would like to ask that are a little --  
7 a little broader about, sort of, the higher level of  
8 service aspect.

9 So I found Mr. Dixit's arguments compelling  
10 about -- that the level of service being provided, sort  
11 of, by defense counsel, by the public defenders, is  
12 essentially to mount a competent defense, you know, of  
13 your client.

14 And so I -- I would like somebody to speak to, sort  
15 of, how the imposition of these new statutes makes you  
16 perform at higher levels. I get that there are new  
17 tasks involved in that defense, because, ostensibly, you  
18 would want your client -- if you are defending him or  
19 her to be able to get -- if once they have been  
20 convicted, you know, the quickest opportunity for  
21 parole, or the -- or the most reduced sentence, whatever  
22 those factors are. I get that you would take additional  
23 steps to put things on the record that you might not  
24 have in a determinant sentence world.

25 But can you make the argument for me that this is

1 a -- this is fundamentally a higher level of service?  
2 Do you understand what I mean, sort of, philosophically.

3 CHAIRPERSON MILLER: Yeah. And it speaks  
4 specifically to the Commission's mandate --

5 MEMBER WONG-HERNANDEZ: Sure.

6 CHAIRPERSON MILLER: -- on Ms. Wong-Hernandez's  
7 question, about the -- because we're not able to look at  
8 it sort of in the global way that you are presenting.  
9 We have very specific statutes that guide our work. So  
10 it's -- and I think that will get --

11 MEMBER WONG-HERNANDEZ: Yes.

12 CHAIRPERSON MILLER: That's kind of what the  
13 Commission is able to speak to.

14 MEMBER WONG-HERNANDEZ: Sorry. Just -- that more  
15 work doesn't necessarily equal a higher level of  
16 service. And so that's what why I am trying to figure  
17 out the distinction that is important to us up here.

18 MS. ARNOLD: So I am speaking now as to what our  
19 Sixth Amendment constitutional obligation is. Okay?  
20 And I don't consider this to be part of that. So I'm  
21 going to talk about that.

22 MEMBER WONG-HERNANDEZ: Sure.

23 MS. ARNOLD: The case law has established that if a  
24 client is faced with the death penalty, trial counsel  
25 has an obligation to do what we call mitigation



1 investigation. And that does include delving into the  
2 client's childhood circumstances: It includes looking  
3 at generational information, parents' background,  
4 grandparents' background, but it is a very small  
5 percentage of our cases. And for adult -- and  
6 it's actually none of our youthful offenders at all.

7 So we -- so there we do -- in that tiny population  
8 of cases, public defenders have done mitigation  
9 investigation for years, ever since the Supreme Court --  
10 or the courts have determined that we have to, and,  
11 quite frankly, probably some did it on their own  
12 beforehand, because they cared. I mean, they cared. We  
13 sometimes do more than the Sixth Amendment requires,  
14 because we care, obviously.

15 What we didn't do, and didn't have to do, was  
16 mitigation investigation in a case that resolved with a  
17 stipulated sentence, meaning that the two parties came  
18 together and the client was looking at life, and we  
19 said, how about 18 years at 85 percent. That's a  
20 youthful offender. It's a stipulated sentence; the  
21 judge has no discretion at the time of the sentencing.  
22 And so there would be no reason to do any kind of  
23 background investigation in a case like that.

24 I thought -- coming from San Diego, I was trained,  
25 because we care, that -- and we have a lot of resources,

1 quite frankly. I was trained that on these serious  
2 cases, you do want to understand your client, because  
3 you need to be able to figure out why your -- you know,  
4 you need to use that to try and negotiate with the  
5 district attorney.

6 Then I moved to Riverside County, where they didn't  
7 have enough investigators and they didn't have resources  
8 and they were core Sixth Amendment, and they did exactly  
9 what the Sixth Amendment required. They focused on the  
10 guilt. They focused on guilt and innocence. They  
11 focused on reasonable doubt. They focused on how are  
12 they going to defend against the charges and not so much  
13 on negotiation, because that wasn't the culture, and  
14 there weren't resources to do the investigation. But  
15 even if there had been, there wasn't an audience for  
16 that information. The district attorney's office at --  
17 for many, many years there, wasn't open to conversations  
18 in gang cases about plea bargaining.

19 So I saw the culture there. And it was a -- I was  
20 shell-shocked, because I thought everybody did it like  
21 we did it in San Diego. And then I learned that most  
22 counties actually don't, because the Sixth Amendment  
23 doesn't require them to, and they are not able to get  
24 resources from their boards, from their -- funding from  
25 their general fund to have the staffing to do the

1 extra-frills-type work.

2 So does that answer your question?

3 MEMBER WONG-HERNANDEZ: That's helpful.

4 So, Ms. Arnold, where I am struggling is the idea  
5 that this is -- that there are new opportunities for  
6 parole, that will be open to certain offenders, youth  
7 offenders, at a certain point in time, based on these  
8 new statutes and court rulings, and there's -- there's  
9 some layers of interaction.

10 That being able to utilize that tool seems very  
11 similar to me to variance among cases, right? You are  
12 going to defend someone who is being prosecuted for  
13 shoplifting differently than you are going to defend  
14 someone who is being prosecuted for murder. You are  
15 going to spend different time -- a different amount of  
16 time, you know, looking into plea bargains or  
17 investigating the circumstances or -- that, basically,  
18 that each case varies, but you mount a defense for that  
19 case.

20 And I guess, with the additional tools that this  
21 affords, to help the court and future parole hearing  
22 officers understand your client, I still am struggling  
23 with how -- how that additional tool becomes a higher  
24 level of service to the public.

25 MS. ARNOLD: Okay. So I think the difference is

1 that -- it's not so much that they are eligible for  
2 release on parole, because we have got tons of clients  
3 who are eligible for release on parole, and we have had  
4 a vehicle through which to put information into the  
5 record, whether it's been commonly used or not, which is  
6 1203.01. The change, I think, that changed -- that  
7 increased the duty was the change in the release  
8 criteria.

9 MEMBER WONG-HERNANDEZ: Okay.

10 MS. ARNOLD: Okay? So I don't know that 40 -- it's  
11 not 3051. It's, like, the 4800 statute, the one that  
12 talks about what the parole board must consider.

13 The change in the release criteria is what put on  
14 us an obligation to do something that had never been  
15 done before, which is, get this childhood stuff together  
16 and put it into the record, and get it off to the CDCR,  
17 even if we're dealing with a 25-year-old.

18 MEMBER WONG-HERNANDEZ: So if the parole board --  
19 Board of Parole Hearings with CDCR is doing these  
20 hearings now, how are they doing it without that record?

21 MS. ARNOLD: Well, they are. So what they are  
22 relying on right now is just generalized -- so they are  
23 being educated about adolescent brain development  
24 generally, and they really are. And I think that, to  
25 some degree, they are being educated about complex

1 trauma, generally.

2 But what they don't have before them is the  
3 person's develop -- individual circumstances that  
4 informed his or her behavior, and that disallows the  
5 comparison of subsequent growth and maturity, which is  
6 one of the criteria.

7 And that really is the critical one, because I  
8 don't think -- I mean, the Supreme Court, certainly,  
9 didn't think that the generalized social science about  
10 adolescent brain development was adequate to fulfill the  
11 mandate of the youth offender parole statute.

12 Otherwise, they wouldn't have remanded it, right? And I  
13 wouldn't be sitting here.

14 I would say, let's just assume that all of them  
15 were adolescents and their brains weren't done  
16 developing. Let's go ahead and assume all of them had  
17 complex trauma, because, come on -- right? -- they did.  
18 And let's assume that all of them also were exposed to  
19 numerous adverse childhood experiences that delayed  
20 their development even further beyond that of a normal  
21 person. That still doesn't show you subsequent growth  
22 and maturity, because it's -- you can't look at a pool  
23 of individuals and make that analysis. Or at least, the  
24 Supreme Court in *Franklin* and in *Cook* and the court of  
25 appeal, in *Perez*, didn't interpret it that way.

1           And so because of that, we have to get involved.  
2           If we didn't have to do individual stuff, then it would  
3           be up to the State to educate the Board of Parole  
4           Hearings about adolescent brain development, and we  
5           wouldn't be involved, the way we used to not be  
6           involved.

7           MEMBER WONG-HERNANDEZ: Thank you.

8           MS. KARNAVAS: And so just to add on briefly, I  
9           think the point that I was trying to make earlier is  
10          that, in terms of a higher level of service, you are  
11          talking about the PD now being involved in the parole  
12          process. Despite the fact that it's -- which they have  
13          never historically been involved in. So it's -- this  
14          information is not being used for purposes of defense of  
15          their client in the case.

16          It's being used 20 -- 15, 20 years down the road  
17          for the reasons that were articulated by the Board of  
18          Parole Hearings, or that were articulated by the youth  
19          offender parole statutes --

20          MEMBER WONG-HERNANDEZ: But it's being put on the  
21          record at the time of sentencing, right?

22          MS. KARNAVAS: Sorry?

23          MEMBER WONG-HERNANDEZ: It's being put on the  
24          record at the time of sentencing.

25          MS. KARNAVAS: At or near the time of sentencing,

1 the court could basically -- you would have to do that.  
2 Otherwise, how could the Board of Parole Hearings  
3 actually take into consideration the factors that they  
4 are required to? If it's not at the time, it's not  
5 going to get done.

6 MEMBER WONG-HERNANDEZ: Okay. Thank you.

7 MS. SHELTON: Just a couple of things. And you can  
8 look at this on page 7. And these are statements from  
9 different courts:

10 One, in *Franklin*, recognized that the test claim  
11 statutes, by operation of law, superseded the  
12 statutorily mandated sentences by capping the number of  
13 years the offender may be in prison before becoming  
14 eligible for release on parole.

15 In *People vs. Garcia*, the test claim statute has,  
16 in effect, abolished de facto life sentences for  
17 juvenile offenders.

18 So it falls within the plain language of 17556(g),  
19 just based on those two interpretations by the court.

20 There's no doubt that the County has to perform  
21 these new services, and there's no doubt that they have  
22 to do it. It's just doesn't fall within the elements of  
23 mandated reimbursement.

24 MS. ARNOLD: And I would agree with regard --

25 CHAIRPERSON MILLER: Maybe let Mr. Dixit respond,

1 please.

2 MR. DIXIT: Just briefly.

3 To reiterate what Ms. Shelton said, and to use  
4 Ms. Arnold's own example, the example of a person facing  
5 25 to life, a youth offender who plea bargained out for  
6 an 18-year sentence, well, under the test claim statute,  
7 that person would now be eligible for parole in 15  
8 years. They are not guaranteed they would get it, but  
9 under prior law, if you pled a term years -- 18 years,  
10 85 percent, you were doing 18 years at 85 percent,  
11 period.

12 Now, with the test claim statute, you are eligible  
13 for parole, if you are a youth offender, after 15 years  
14 of incarceration. That's a change in penalty.

15 All juveniles previously who were getting life  
16 without parole, without any hope of release in this  
17 lifetime, who were condemned to die in a cell, now have  
18 a meaningful opportunity to be paroled. That's a change  
19 in penalty.

20 Previously juvenile offenders who were sentenced  
21 because of the numerous enhancements to decades  
22 before -- 35 to life, 45 to life -- now that's capped at  
23 25 before they are eligible for a parole hearing.  
24 That's a substantive change in penalty.

25 CHAIRPERSON MILLER: Right.



1 MR. DIXIT: And interesting -- interesting to note  
2 that the test claim statute itself, at 3051 -- Penal  
3 Code 3051(f)(1), when it talks about assessing the  
4 growth and maturity and psychological evaluations, if  
5 used by the Board of Parole Hearings, those should be  
6 administered by a licensed psychologist employed by the  
7 Board of Parole Hearings. So even the test claim  
8 statute contemplated that the board itself would be  
9 doing --

10 CHAIRPERSON MILLER: Right.

11 MR. DIXIT: -- some of these evaluations.

12 CHAIRPERSON MILLER: Right.

13 And I do want to just clarify that the State itself  
14 didn't establish the process to create the record for  
15 the youthful offender.

16 I do hear what you are saying, Ms. Arnold. But,  
17 you know, this -- it's not -- we only have this very  
18 small area of law that we can look at to determine the  
19 mandate. And because, you know, the State itself  
20 hasn't -- even though, practically, I understand what  
21 you are saying, where you have to do all this research  
22 that you didn't previously have to do, the State  
23 actually didn't set that up.

24 Just to clarify your question, are you talking  
25 about the 5700 youthful offenders that are in prison,

1 that are going to be subject to the new -- the *Franklin*  
2 ruling? Or are you saying, even going forward, this  
3 isn't -- it wouldn't be a change in practice for the  
4 public defenders?

5 MS. SHELTON: Let me clarify. I think she's  
6 referring to, the 5700 was in a committee analysis for  
7 the 2013 bill that identified the number of offenders  
8 that were already in prison.

9 MS. ARNOLD: Oh, so the *Cook* population.

10 CHAIRPERSON MILLER: Okay.

11 MS. SHELTON: Yes.

12 MS. ARNOLD: So the *Cook* population is actually --  
13 is much greater than 5700, because it now includes all  
14 of the under-25-year-olds that it didn't have this  
15 information put into their record.

16 So the question is, am I saying -- I mean, in cases  
17 going forward as of the date of the youth offender  
18 parole statutes, of SB 260, whatever that population was  
19 on that given day, because it's changed --

20 CHAIRPERSON MILLER: Right.

21 MS. ARNOLD: -- that duty had existed in cases  
22 going forward.

23 After *Cook*, that duty exists as soon as somebody  
24 files a motion for a -- a *Cook* motion for a Statement of  
25 View, and were reappointed, and now we have to try and

1 go back in time and recover information that nobody  
2 necessarily put -- grabbed, because no one ever thought  
3 it would be relevant to anything. Right? And like we  
4 would in a death penalty case, with a 50-year-old, who  
5 we are trying to recreate what he was when he was 15  
6 years old. And it's extremely difficult work and it's  
7 very resource-intensive, and but for the youth offender  
8 parole statutes, we wouldn't be doing it.

9 I think that the argument about penalty -- I was  
10 going to concede that I think that taking a juvenile --  
11 taking a life without possibility of parole sentence,  
12 and making it a life with possibility of parole  
13 sentence, that changes; that is a change in penalty. I  
14 think that it's a very reasonable thing to conclude.

15 But just like possibility for credits earning  
16 doesn't change penalty, I don't think possibility for  
17 parole consideration changes penalty, because it doesn't  
18 actually change the sentence. It simply creates the  
19 possibility for a consideration, and the fact of the  
20 matter is that most of the people coming up the youth  
21 offender parole are not being released because they have  
22 more -- they are damaged, and they have more work to do.

23 But at least now, because of SB 260 and the other  
24 youth offender parole statutes, eventually, the decision  
25 making will be informed by the perfect storm that gave

1 rise to the criminal act that resulted in their  
2 commitment to prison, and hopefully that will diminish  
3 culpability the way that the legislature intended it to.  
4 And we all know that that's what these statutes were  
5 intended to do, recognize the diminished culpability of  
6 youth.

7 So I think we're getting there, but I think without  
8 the individual information, there's a big -- there's a  
9 big gap in what the legislature intended.

10 CHAIRPERSON MILLER: I appreciate that. Thank you  
11 very much.

12 Any further questions, Ms. Garcia -- or  
13 Ms. Ramirez? I'm sorry.

14 MEMBER RAMIREZ: At least you didn't say Rodriguez.

15 CHAIRPERSON MILLER: I'm so sorry.

16 MEMBER RAMIREZ: Thank you.

17 First of all, I want to -- I am really just  
18 fascinated by the argument, pro and con. And I want to  
19 congratulate you particularly, Ms. Arnold, for your  
20 stunning career defending people who are in need of  
21 fantastic representation.

22 We're dealing with some very huge social issues  
23 here, and it comes down to whether or not the government  
24 and the legislature provided the resources. I think  
25 whatever manner -- either at the county level or the

1 state level -- to not just say people are entitled to  
2 justice, but provided -- provided through human beings,  
3 such as the both of you.

4 I really want to allow this, but we are in such a  
5 very difficult situation with the statute's  
6 requirements. And I always do respect the work of our  
7 staff on -- I may just vote to let you get the  
8 reimbursement just because I'm so compelled with your  
9 argument, but I think we do have the limitation of the  
10 statute, which, to me, it's always let's go back to the  
11 legislature and get some more money. But that's not our  
12 role.

13 CHAIRPERSON MILLER: Right.

14 MEMBER RAMIREZ: Right?

15 It's the role of your people, your association,  
16 your community, to deal with these things that cost  
17 everybody so much later on if we don't take care of it  
18 at the early stage, before people get into trouble.

19 So I do want to congratulate everybody for the high  
20 level of argument here.

21 CHAIRPERSON MILLER: I absolutely agree with that  
22 Ms. Ramirez.

23 And I think, you know, this obviously isn't a  
24 policy hearing, where we are talking about what's right  
25 for the people that you obviously so honorably defend.

1 I mean, we really have a very narrow view of what we can  
2 and can't decide at the hearing, and we're very limited  
3 by the statutes. And I know that you can appreciate how  
4 difficult that is.

5 Are there any other questions or comments from the  
6 Commission?

7 Mr. Adams, please.

8 MEMBER ADAMS: I feel a need to point out, as  
9 Ms. Ramirez did, that I, too, am sympathetic after a  
10 26-year career in law enforcement. At the county level,  
11 I certainly understand the realistic day-to-day of what  
12 you are dealing with.

13 I think what would be very helpful to us is to have  
14 the courts weigh in on 17556, because that text after  
15 the last comma is really problematic. But, again, as  
16 has been said, we have such a narrow window here.

17 So thanks.

18 CHAIRPERSON MILLER: Thank you very much.

19 Any other questions or comments from the  
20 Commission?

21 (No response)

22 CHAIRPERSON MILLER: Anyone else in the public that  
23 want to comment or weigh in?

24 (No response)

25 CHAIRPERSON MILLER: Okay. With that, any further

1 discussion? Anything else?

2 We really do appreciate you being here today.

3 Thank you.

4 Is there a motion?

5 (No response)

6 CHAIRPERSON MILLER: I am going to move to adopt  
7 the staff's recommendation.

8 MEMBER WONG-HERNANDEZ: I will second.

9 CHAIRPERSON MILLER: Thank you.

10 It has been moved by me and seconded by  
11 Ms. Wong-Hernandez.

12 Since there is no further discussion, Heather,  
13 please call the roll.

14 MS. HALSEY: Mr. Adams.

15 MEMBER ADAMS: Aye.

16 MS. HALSEY: Mr. Hariri.

17 MEMBER HARIRI: Aye.

18 MS. HALSEY: Ms. Lee.

19 MEMBER LEE: Aye.

20 MS. HALSEY: Ms. Miller.

21 CHAIRPERSON MILLER: Aye.

22 MS. HALSEY: Ms. Olsen.

23 MEMBER OLSEN: Aye.

24 MS. HALSEY: Ms. Ramirez.

25 MEMBER RAMIREZ: No.

1 MS. HALSEY: Ms. Wong-Hernandez?

2 MEMBER WONG-HERNANDEZ: Aye.

3 MS. HALSEY: Thank you.

4 CHAIRPERSON MILLER: That motion -- that motion  
5 carried.

6 And, again, we sincerely appreciate your service  
7 and what you are doing to make a huge difference in our  
8 state and are very, very grateful. Thank you.

9 MS. ARNOLD: Thank you.

10 MS. KARNAVAS: Thank you.

11 CHAIRPERSON MILLER: And thank you to the  
12 Commission. I really appreciate it. And to Mr. Dixit  
13 and to Heather as well.

14 MS. HALSEY: Next is Item 4. Senior Commission  
15 Counsel Raj Dixit will present a mandate -- a Request  
16 for Mandate Redetermination on High School Exit  
17 Examination.

18 At this time, we invite the parties and witnesses  
19 for Item 4 to please come to the table.

20 CHAIRPERSON MILLER: Thank you very much.

21 Will the parties and witnesses please state your  
22 names for the record.

23 MS. GRANT: Lina Grant, Department of Finance.

24 CHAIRPERSON MILLER: Great. Thank you very much.  
25 Mr. Dixit.



1 MR. DIXIT: Thank you.

2 Good morning again, ladies and gentlemen.

3 This mandate redetermination requests that a new  
4 test claim decision be adopted to replace the  
5 Commission's prior decision on the High School Exit Exam  
6 program based on subsequent change in law. This is the  
7 second hearing under the mandate redetermination  
8 process.

9 Staff finds that the State's liability has been  
10 modified based on a subsequent change in law.  
11 Specifically, the suspension of the exam, as subsequent  
12 repeal of the statutes and regulations implementing the  
13 program mean that the activities previously determined  
14 to impose a reimbursable mandate are no longer mandated  
15 by the State, and, thus, no longer constitute a  
16 reimbursable State-mandated program within the meaning  
17 of XIII B, section 6. Staff recommends that the  
18 Commission adopt the proposed decision and this new test  
19 claim decision, ending reimbursement for the mandated  
20 program beginning July 1st, 2016.

21 Further, staff requests authorization to make any  
22 technical, nonsubstantive changes to the proposed  
23 decision following the hearing.

24 Thank you.

25 CHAIRPERSON MILLER: Thank you, Mr. Dixit.

1 Is there any comment on this item? Ms. Grant?

2 MS. GRANT: Department of Finance agrees with the  
3 staff recommendation.

4 CHAIRPERSON MILLER: Thank you very much.

5 Are there any questions from members?

6 (No response)

7 MEMBER OLSEN: So move.

8 MEMBER WONG-HERNANDEZ: Go ahead.

9 MEMBER OLSEN: Move the staff recommendation.

10 MEMBER WONG-HERNANDEZ: Second.

11 CHAIRPERSON MILLER: Moved by Ms. Olsen. Seconded  
12 by Ms. Wong-Hernandez.

13 If there are no further questions or discussion,  
14 Heather, please call the roll.

15 MS. HALSEY: Mr. Adams.

16 MEMBER ADAMS: Aye.

17 MS. HALSEY: Mr. Hariri.

18 MEMBER HARIRI: Aye.

19 MS. HALSEY: Ms. Lee.

20 MEMBER LEE: Aye.

21 MS. HALSEY: Ms. Miller.

22 CHAIRPERSON MILLER: Aye.

23 MS. HALSEY: Ms. Olsen.

24 MEMBER OLSEN: Aye.

25 MS. HALSEY: Ms. Ramirez.

1 MEMBER RAMIREZ: Aye.

2 MS. HALSEY: Ms. Wong-Hernandez.

3 MEMBER WONG-HERNANDEZ: Aye.

4 CHAIRPERSON MILLER: Great. That motion carries.

5 Thank you very much.

6 MS. HALSEY: Next is Item 5. Commission Counsel

7 Elena Wilson will present a Request for Mandate

8 Redetermination on Academic Performance Index.

9 At this time, we invite the parties and witnesses  
10 for Item 5 to please come to the table.

11 CHAIRPERSON MILLER: Thank you very much.

12 Will you please state your full name for the  
13 record.

14 MR. HANOWER: Certainly. Dan Hanower, Department  
15 of Finance.

16 CHAIRPERSON MILLER: Thank you, Dan. Thank you  
17 very much.

18 May we present the item, Ms. Wilson? Thank you.

19 MS. WILSON: This mandate redetermination requests  
20 that the Commission adopt a new test claim decision to  
21 end the State's liability for the Academic Performance  
22 Index program based on the subsequent change in law  
23 resulting from the repeal of the statute which imposed  
24 the mandate.

25 Pursuant to the Government Code and the

1 Commission's regulations, this is the first of the two  
2 hearings in the mandate redetermination process.

3 Staff finds that Finance has made an adequate  
4 showing that the State liability may be modified based  
5 on the subsequent change in law and that there's a  
6 substantial possibility that the request will prevail at  
7 the second hearing.

8 Accordingly, staff recommends that the Commission  
9 adopt the proposed decision and direct staff to notice  
10 the second hearing for November 22nd, 2019, to determine  
11 whether a new test claim decision shall be adopted to  
12 supersede the previously adopted test claim decision on  
13 the Academic Performance Index.

14 Staff further requests authorization to make any  
15 technical, nonsubstantive changes to the proposed  
16 decision following the hearing.

17 CHAIRPERSON MILLER: Thank you very much.

18 Dan?

19 MR. HANOWER: The Department of Finance agrees with  
20 the staff recommendation.

21 CHAIRPERSON MILLER: Great. Thank you.

22 Is there any further public comment?

23 (No response)

24 CHAIRPERSON MILLER: Any discussion or questions  
25 from members? Ms. Ramirez?

1 MEMBER RAMIREZ: I am going to move the  
2 recommendation.

3 CHAIRPERSON MILLER: Oh, great.

4 Moved by Ms. Ramirez.

5 Is there a second?

6 MEMBER WONG-HERNANDEZ: Second.

7 CHAIRPERSON MILLER: Second by Ms. Wong-Hernandez.

8 Since we see no further comment, thank you very  
9 much.

10 Ms. Halsey, please call the roll.

11 MS. HALSEY: Mr. Adams.

12 MEMBER ADAMS: Aye.

13 MS. HALSEY: Mr. Hariri.

14 MEMBER HARIRI: Aye.

15 MS. HALSEY: Ms. Lee.

16 MEMBER LEE: Aye.

17 MS. HALSEY: Ms. Miller.

18 CHAIRPERSON MILLER: Aye.

19 MS. HALSEY: Ms. Olsen.

20 MEMBER OLSEN: Aye.

21 MS. HALSEY: Ms. Ramirez.

22 MEMBER RAMIREZ: Aye.

23 MS. HALSEY: Ms. Wong-Hernandez.

24 MEMBER WONG-HERNANDEZ: Aye.

25 CHAIRPERSON MILLER: Thank you very much. The

1 motion carries. Thank you.

2 MS. HALSEY: Next is Item 6. Senior Commission  
3 Counsel Matt Jones will present parameters and  
4 guidelines on Peace Officer Training: Mental  
5 Health/Crisis Intervention.

6 At this time, we invite the parties and witnesses  
7 for Item 6 to please come to the table.

8 CHAIRPERSON MILLER: Thank you very much.

9 Would you please state your name for the record.

10 MS. CHINN: Annette Chinn, Cost Recovery Systems,  
11 representing clients City of Claremont and South Lake  
12 Tahoe.

13 CHAIRPERSON MILLER: Thank you very much.

14 MS. GEANACOU: Susan Geanacou, G-E-A-N-A-C-O-U,  
15 Department of Finance.

16 CHAIRPERSON MILLER: Thank you very much.

17 Mr. Jones.

18 MR. JONES: Good morning.

19 These parameters and guidelines provide for  
20 reimbursement for law enforcement field training  
21 officers to take a training course on crisis  
22 intervention and behavioral health. Reimbursement is  
23 not required for the local officer employer to develop  
24 or present the trainings, as these activities are not  
25 mandated by the State.

1           Accordingly, staff recommends the Commission adopt  
2 the proposed decision and parameters and guidelines and  
3 authorize staff to make any technical, nonsubstantive  
4 changes to the proposed decision following the hearing.

5           CHAIRPERSON MILLER: Thank you very much.

6           MS. CHINN: I am just here to thank Commission  
7 staff for their analysis.

8           We agree with the findings and have no further  
9 comments.

10          CHAIRPERSON MILLER: Thank you for that.

11          Ms. Geanacou.

12          MS. GEANACOU: The Department of Finance supports  
13 the staff's work as well.

14          CHAIRPERSON MILLER: Thank you very much.

15          Any further public comment?

16          (No response)

17          CHAIRPERSON MILLER: Any questions from members?

18          (No response)

19          MEMBER OLSEN: Move the staff recommendation.

20          CHAIRPERSON MILLER: Thank you, Ms. Olsen.

21          MEMBER ADAMS: Second.

22          CHAIRPERSON MILLER: It's been moved by Ms. Olsen;  
23 seconded by Mr. Adams.

24          With no further comment, Ms. Halsey, will you  
25 please take the roll.

1 MS. HALSEY: Mr. Adams.  
2 MEMBER ADAMS: Aye.  
3 MS. HALSEY: Mr. Hariri.  
4 MEMBER HARIRI: Aye.  
5 MS. HALSEY: Ms. Lee.  
6 MEMBER LEE: Aye.  
7 MS. HALSEY: Ms. Miller.  
8 CHAIRPERSON MILLER: Aye.  
9 MS. HALSEY: Ms. Olsen.  
10 MEMBER OLSEN: Aye.  
11 MS. HALSEY: Ms. Ramirez.  
12 MEMBER RAMIREZ: Aye.  
13 MS. HALSEY: Ms. Wong-Hernandez.  
14 MEMBER WONG-HERNANDEZ: Aye.  
15 CHAIRPERSON MILLER: Great. Thank you very much.  
16 That motion carries.  
17 Thank you very being here today.  
18 Item 7 was postponed, so we will move now to  
19 Item 8, please.  
20 MS. HALSEY: Senior Commission Counsel Raj Dixit  
21 will present a parameters and guidelines amendment on  
22 High School Exit Examination.  
23 At this time, we invite the parties and witnesses  
24 for Item 8 to please come to the table.  
25 CHAIRPERSON MILLER: Thank you very much.



1           Could you please state your name for the record  
2 again.

3           MS. GRANT: Lina Grant, Department of Finance.

4           CHAIRPERSON MILLER: Thank you.

5           Mr. Dixit, will you please present the item.

6           MR. DIXIT: Thank you. And good morning, once  
7 again, ladies and gentlemen.

8           This is the proposed decision and amendment to  
9 parameters and guidelines for the new test claim  
10 decision that was adopted by the Commission in Item 4.

11           Staff recommends that the Commission adopt this  
12 proposed decision and amendment to the parameters and  
13 guidelines, ending reimbursement for the activities  
14 related to the High School Exit Examination beginning  
15 July 1st, 2016, in accordance with XIII B, section 6(a)  
16 of the California Constitution and Government Code  
17 section 17514.

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

22           Thank you.

23           CHAIRPERSON MILLER: Thank you very much.

24           Ms. Grant.

25           MS. GRANT: The Department of Finance supports the

1 staff recommendation.

2 CHAIRPERSON MILLER: Thank you for that.

3 Is there any further public comment?

4 (No response)

5 CHAIRPERSON MILLER: Any questions or comments from  
6 the members?

7 MEMBER WONG-HERNANDEZ: Move approval.

8 CHAIRPERSON MILLER: Moved by Ms. Wong-Hernandez.

9 MEMBER OLSEN: I will second.

10 CHAIRPERSON MILLER: Second by Ms. Olsen.

11 Ms. Halsey, will you please call the roll.

12 MS. HALSEY: Mr. Adams.

13 MEMBER ADAMS: Aye.

14 MS. HALSEY: Mr. Hariri.

15 MEMBER HARIRI: Aye.

16 MS. HALSEY: Ms. Lee.

17 MEMBER LEE: Aye.

18 MS. HALSEY: Ms. Miller.

19 CHAIRPERSON MILLER: Aye.

20 MS. HALSEY: Ms. Olsen.

21 MEMBER OLSEN: Aye.

22 MS. HALSEY: Ms. Ramirez.

23 MEMBER RAMIREZ: Aye.

24 MS. HALSEY: Ms. Wong-Hernandez.

25 MEMBER WONG-HERNANDEZ: Aye.

1 CHAIRPERSON MILLER: Thank you very much. That  
2 motion carries.

3 Item 9, please.

4 MS. HALSEY: Item 9 is reserved for county  
5 applications for a finding of significant financial  
6 distress, or SB 1033 applications. No SB 1033  
7 applications have been filed.

8 Program Analyst Kerry Ortman will present Item 10,  
9 the legislative update.

10 MS. ORTMAN: We have been monitoring the following  
11 three bills:

12 First is SB 287, Commission on State Mandates:  
13 Test claims: Filing date, which proposes language that  
14 would specify that for purposes of filing a test claim  
15 based on the date of incurring increased costs, the  
16 phrase, "within 12 months" means by June 30 of the  
17 fiscal year following the fiscal year in which increased  
18 costs were first incurred by the test claimant.

19 On August 30th, the bill was held in Assembly  
20 Committee because it failed to get sufficient votes to  
21 pass out of the committee, and also held under  
22 submission an indication of further discussion by the  
23 office and authoring committee members, but without a  
24 motion for the bill to progress out of the committee.

25 Next is AB 400, State Mandates, which, according to

1 the author's office, is a spot bill.

2 And then, finally, AB 1471, State-Mandated Local  
3 Costs Notification, which proposes language that would  
4 specify that the reimbursement of lost revenue be  
5 provided to certain local agencies as a result of  
6 delayed state action, pursuant to the same procedures as  
7 filing a test claim with the Commission. Also, the  
8 provisions of this bill would be exempt from the  
9 exceptions under Government Code section 17556. This  
10 bill did not make it out of its house of origin by the  
11 deadline, and, as a result, it may become a two-year  
12 bill and be acted on when the legislature reconvenes in  
13 2020.

14 So staff will continue to monitor legislation.

15 CHAIRPERSON MILLER: Thank you very much.

16 Any questions on the legislative update?

17 (No response)

18 CHAIRPERSON MILLER: No? Great.

19 Moving on to Item 11, please.

20 MS. HALSEY: Chief Legal Counsel Camille Shelton  
21 will present Item 11, the Chief Legal Counsel Report.

22 MS. SHELTON: Good morning.

23 There have been no new filings or no new recent  
24 decisions, but we do have a couple of hearing dates.

25 The California Supreme Court has set oral argument

1 in the *California School Boards Association vs. State of*  
2 *California* case, dealing with the budget trailer bills  
3 relating to graduation requirements and behavioral  
4 intervention program for students, for October 2nd at  
5 9:00 a.m., and that oral argument can be viewed on the  
6 court's website through the webcast.

7 The second hearing is the remand of the discharge  
8 of stormwater runoff test claim. That is currently  
9 pending in the Sacramento County Superior Court, and  
10 that hearing is scheduled for December 6th.

11 That's all I have.

12 CHAIRPERSON MILLER: Thank you very much.

13 MS. HALSEY: Next is Item 12, the Executive  
14 Director's Report.

15 This report has an action item, and then the rest  
16 is information.

17 The action item is the 2020 hearing calendar.  
18 Commission meetings are generally held on the fourth  
19 Fridays of odd months unless they conflict with a  
20 holiday. In 2020, the fourth Friday of November is a  
21 holiday. Therefore, the first Friday of December is  
22 proposed for that hearing.

23 Additionally, the May hearing is proposed to remain  
24 on the Friday of Memorial Day weekend, as is usual.

25 And, therefore, all 2020 regular meetings are

1 proposed for the fourth Fridays of odd months, except  
2 for the November hearing, which is proposed for the  
3 first Friday of December.

4 In addition, tentative hearing dates are proposed  
5 for April 24th, 2020, and October 23rd, 2020.

6 Staff recommends that the Commission adopt the  
7 proposed 2020 hearing calendar.

8 CHAIRPERSON MILLER: Great.

9 May we have a motion to adopt the committee  
10 calendar?

11 MEMBER RAMIREZ: So moved.

12 CHAIRPERSON MILLER: Moved by Ms. Ramirez.

13 MEMBER OLSEN: Second.

14 CHAIRPERSON MILLER: Second by Ms. Olsen.

15 May we do a voice vote? All in favor?

16 (Ayes)

17 CHAIRPERSON MILLER: Any opposed?

18 (No response)

19 CHAIRPERSON MILLER: Any abstentions?

20 (No response)

21 CHAIRPERSON MILLER: Thank you. So the calendar  
22 has been adopted.

23 MS. HALSEY: And then moving on. Workload, after  
24 this hearing, there are 40 pending test claims, 39 of  
25 which are regarding stormwater NPDES permits and there's

1 also one active parameters and guidelines pending.  
2 There are three statewide cost estimates that are  
3 currently pending inactive. And, in addition, there's  
4 one other parameters and guidelines and one other  
5 statewide cost estimate, which are both regarding  
6 stormwater NPDES permits that are inactive status,  
7 pending the outcome of litigation regarding the test  
8 claim decisions underlying those matters.

9 In addition, there's one parameters and guidelines  
10 amendment on inactive status, pending the outcome of  
11 litigation in the CSBA case, which is currently pending  
12 before the California Supreme Court.

13 We also have two requests for mandate  
14 redetermination currently pending, one of which is on  
15 remand from the court.

16 Finally, there are five IRCs pending.

17 Commission staff currently expects to complete all  
18 of the currently pending test claims and IRCs by  
19 approximately the December 2022 Commission meeting,  
20 depending on staffing and other workloads.

21 With regard to administrative workload, I wanted to  
22 highlight some of the work of our procurement team. All  
23 state agencies are required to award 25 percent of their  
24 annual contracting dollars to certified small  
25 businesses, and 3 percent to certified disabled veteran

1 business enterprises, or DVBEs, and report annually the  
2 SB/DVBE participation on all of its procurement to  
3 ensure that participation goals are met.

4 This report is known as the Consolidated Activity  
5 Report, or CAR report.

6 Commission Procurement staff met and exceeded its  
7 goals for SB/DVBE procurement 2018/2019 as follows:  
8 Instead of the minimum 3 percent DVBE participation, we  
9 achieved 24.39 percent. And also, in addition to the  
10 minimum 25 small business percent -- or sorry,  
11 25 percent small business participation, we achieved  
12 29.27 percent.

13 I would like to congratulate our Procurement staff  
14 for their successful efforts and identifying competitive  
15 DVBE and SB vendors for over a quarter of the  
16 Commission's fiscal year of 2018/2019 procurement.  
17 Great work.

18 CHAIRPERSON MILLER: Yes. Congratulations.

19 MEMBER RAMIREZ: Congratulations.

20 MS. HALSEY: And then on the tentative agenda  
21 items, please see my Executive Director's Report for the  
22 items we expect to be hearing in the next meeting or so.

23 That's all I have.

24 CHAIRPERSON MILLER: Great. Thank you very much.

25 It's remarkable, the amount of work you do, the



1 detail. So thank you to all of you and congratulations  
2 to your Procurement team.

3 MS. HALSEY: Thank you.

4 CHAIRPERSON MILLER: So now we will meet in closed  
5 executive session. And we will recess for that pursuant  
6 to Government Code section 11126(e) to confer with and  
7 receive advice from legal counsel for consideration and  
8 action, as necessary and appropriate, upon the pending  
9 litigation listed on the published notice and agenda;  
10 and to confer with and receive advice from legal counsel  
11 regarding potential litigation. The Commission will  
12 also confer on personnel matters pursuant to Government  
13 Code section 11126(a)(1).

14 We will reconvene in open session in approximately  
15 15 minutes. Thank you very much.

16 (Closed session was held from  
17 11:13 a.m. to 11:24 a.m.)

18 CHAIRPERSON MILLER: The Commission met in closed  
19 executive session pursuant to Government Code section  
20 11126(e)(2) to confer with and receive advice from legal  
21 counsel for consideration and action, as necessary and  
22 appropriate, upon the pending litigation listed on the  
23 published notice and agenda; and to confer with and  
24 receive advice from legal counsel regarding potential  
25 litigation and pursuant to Government Code section

1 11126(a)(1) to confer on personnel matters.

2 With no further business to discuss, I will  
3 entertain a motion to adjourn.

4 MEMBER ADAMS: So moved.

5 MEMBER WONG-HERNANDEZ: Second.

6 CHAIRPERSON MILLER: All those in favor of  
7 adjourning, say "aye."

8 (Ayes)

9 CHAIRPERSON MILLER: Anyone opposed?

10 (No response)

11 CHAIRPERSON MILLER: The meeting is adjourned.

12 Thank you and have a great weekend.

13 (Proceedings concluded at 11:24 a.m.)

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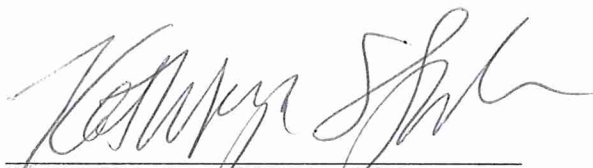
CERTIFICATE OF REPORTER

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

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of October 2019.



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