

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447
Sacramento, California
September 30, 2010

Present: Member Cynthia Bryant, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Cathleen Cox
Acting Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member

Absent: Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 10:33 a.m. Executive Director Paula Higashi called the roll.

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

Chairperson Bryant adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation; and also to confer on personnel matters and a report from the personnel subcommittee pursuant to Government Code section 11125, subdivision (a)(1).

A. PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento, Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
3. *County of Santa Clara v. Commission on State Mandates, State*

Controller's Office, et al., Sacramento County Superior Court Case No.34-2010-80000592 [Handicapped and Disabled Students, Incorrect Reduction Claim CSM 09-4282-I-5, Fiscal years 2003-2004 through 2005-2006]

4. *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., 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]*
5. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et. al., Sacramento County Superior Court Case No. 34-2010-80000605 [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]*

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

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

B. REPORT FROM PERSONNEL SUBCOMMITTEE

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

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:10 a.m., Chairperson Bryant reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and also to confer on personnel matters listed on the published notice and agenda pursuant to Government Code section 11126, subdivision (a)(1).

Chairperson Bryant announced that Executive Director Paula Higashi intends to retire after a long and distinguished career with the State and that the job announcement for this position will be posted within a week. Since Paula has been here, the Commission has completed over 200 test claims, including several landmark decisions. Chairperson Bryant asked everyone to join her in congratulating Paula on her retirement.

APPROVAL OF MINUTES

Item 1 July 29, 2010

The July 29, 2010 hearing minutes were adopted by a vote of 6-0, on a motion by Member Lujano and second by Member Worthley.

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

Item 2 Staff Report (if necessary)

There were no appeals to consider.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED REGULATION AMENDMENTS

Item 10* General Cleanup Provisions
California Code of Regulations, Title 2, Division 2,
Chapter 2.5., Adopt Sections 1185.21 and 1189
Amend Sections 1181, 1181.1, 1181.2, 1181.4, 1183-1183.03,
1183.06 -1183.09, 1183.11-1183.12, 1183.131-1183.21, 1183.30-1183.32,
1185, 1185.2-1185.6, 1186-1187.3, 1187.9-1188.31 and 1189.1, and 1189.3;
and Delete Sections 1181.3, 1189.4, and 1189.5

Member Worthley made a motion to adopt item 10 on the consent calendar. With a second by Member Olsen, the consent calendar was adopted by a vote of 6-0.

HEARING AND DECISION ON CLAIMS AND STATEMENTS OF DECISION, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7(Gov. Code, § 17551) (action)

Ms. Higashi swore in parties and witnesses participating in the hearing.

A. TEST CLAIM

Item 3 *California Environmental Quality Act (CEQA)*, 03-TC-17
Education Code Section 17025 added by Statutes 1996, Chapter 1562
Government Code Sections 66031 and 66034 as amended by Statutes 1994,
Chapter 300 (SB 517), and Statutes 1990, Chapter 1455 (SB 2374)
Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09,
21080.1, 21080.3, 21080.4, 21081, 21082, 21082.1, 21082.2, 21083,
21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5,
21092.6, 21094, 21100, 21102, 21150, 21151, 21151.2, 21151.8, 21152,
21153, 21154, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166,
21167, 21167.6, 21167.6.5, 21167.8, 21168.9 as added or amended by
Statutes 1970, Chapter 1433 (AB 2045); Statutes 1972, Chapter 1154 (AB

899); Statutes 1975, Chapter 222 (AB 335); Statutes 1976, Chapter 1312 (AB 2679); Statutes 1977, Chapter 1200 (AB 884); Statutes 1983, Chapter 967 (AB 1829); Statutes 1984, Chapter 571 (AB 2527); Statutes 1985, Chapter 85 (AB 841); Statutes 1987, Chapter 1452 (SB 998); Statutes 1989, Chapter 626 (AB 40); Statutes 1989, Chapter 659 (SB 896); Statutes 1991, Chapter 905 (AB 1642); Statutes 1991, Chapter 1183 (AB 928); Statutes 1991, Chapter 1212 (SB 948); Statutes 1993, Chapter 375 (SB 104); Statutes 1993, Chapter 1130 (AB 1888); Statutes 1993, Chapter 1131 (SB 919); Statutes 1994, Chapter 1230(SB 749); Statutes 1994, Chapter 1294 (AB 314); Statutes 1995, Chapter 801 (AB 1860); Statutes 1996, Chapter 444 (SB 2073); Statutes 1996, Chapter 547 (AB 298); Statutes 1997, Chapter 415 (AB 175); Statutes 2000, Chapter 738 (AB 1807); Statutes 2001, Chapter 867 (AB 1532); Statutes 2002, Chapter 1052 (AB 3041); Statutes 2002, Chapter 1121 (SB 1393)

California Code of Regulations, Title 5, Sections 14011 and 57121 as added or amended by Register 77, Nos. 01 & 45; Register 83, No. 18;

Register 91, No. 23; Register 93, No. 46; and, Register 2000, No. 44

California Code of Regulations, Title 14, Sections 15002, 15004, 15020, 15021, 15022, 15025, 15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064 15064.5, 15064.5, 15064.7 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084, 15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094 15095, 15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129, 15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162, 15164, 15165, 15167, 15168, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203, 15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register 75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05; Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97, No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30

California State Clearinghouse Handbook

Governor's Office of Planning and Research (January 2000)

Clovis Unified School District, Claimant

Heather Halsey, Senior Commission Counsel presented this item. Ms. Halsey stated that the test claim addresses the activities required of school districts and community college districts pursuant to the California Environmental Quality Act (CEQA), and related statutes and regulations. At the January 2010 Commission hearing, staff found that there was no evidence in the record to support a finding that school and community college districts are legally or practically compelled to acquire new school sites or build new school facilities or additions to existing schools of greater than 25 percent, or to receive state funding for such projects, which would trigger the requirement to comply with CEQA. However, claimant requested, and the Commission granted permission to submit evidence that school districts are practically compelled to comply with some or all of the statutes and regulations pled in this claim. Claimant submitted supplemental filings to support its claim that school districts are practically compelled to construct new facilities.

Ms. Halsey asserted that the evidence submitted showed that the district considered many non-construction options to accommodate students, but chose not to pursue those options because they did not meet its own policy of small schools. Staff found that the evidence submitted by claimant did not support a finding of practical compulsion. Rather it supported a conclusion that the test claim statutes, regulations and executive orders do not impose a state mandated local program because CEQA requirements are triggered by local decision-making. Therefore, staff did not change its conclusion and recommended that the test claim be denied.

Parties were represented as follows: Art Palkowitz, of Stutz, Artiano, Shinoff, and Holtz, representing claimant Clovis Unified School District; and Donna Ferebee, Department of Finance.

Mr. Palkowitz argued that CEQA requirements are state-mandated because they are complied with prior to any decision to build a school. Mr. Palkowitz added that there is no dispute that the state requires local agencies to educate children and to provide facilities, and accordingly, the state pays schools to educate. He reiterated that the test claim is not requesting reimbursement for construction-related activities, but rather for CEQA activities. While schools have discretion regarding whether to move forward with a building project, there is no discretion of the need to comply with CEQA.

Chairperson Bryant asked Mr. Palkowitz to clarify his statements regarding performance of CEQA activities prior to making a decision to build or substantially expand a school site. Does every school district that is making an infrastructure decision run a CEQA initial study?

Mr. Palkowitz replied that there are exemptions, such as maintenance. If there is a decision that will impact the environment a district must do a CEQA analysis.

Member Worthley added that before a proposed project can go forward a CEQA analysis is required. The entity has made the decision that you anticipate a proposed project.

Chairperson Bryant added that a school district is not compelled to make the decision to expand the facility.

Member Olsen asked if CEQA is required to change a school from a traditional nine-month school to a year-round school. Mr. Palkowitz replied that he believed it would be prudent to do a CEQA study because there could be transportation or other impacts on the area.

Member Olsen responded that this was a key issue. Mr. Palkowitz stated that if she was asking him to honestly testify that transportation impacts or year-round schools warrant an initial study, his answer was yes.

Mr. Palkowitz also stated that he believed that to make a blanket ruling that there is never practical compulsion would seem inequitable. There is an opportunity out there to make an argument for practical compulsion.

Camille Shelton, Chief Legal Counsel, clarified that the Court of Appeal has made it clear in the *POBOR* case that even if there is a practical compulsion finding, school districts are practically compelled as a matter of law. The Commission has no jurisdiction to do equity in these cases. And, the *POBOR* case clearly stated that there must be evidence in the record to support the finding.

Ms. Halsey added that making a decision to transfer students to a new school in lieu of building or expanding a school is exempt from CEQA under California Code of Regulations section 15701.

Mr. Worthley asserted that as a former school board member, he transferred students to other schools, added portable buildings to schools, and did everything until there was no option but to build a new school. Therefore, there should be some flexibility about being reasonably practical. There are situations where there is practical compulsion to build a new school, given real-life situations. Chairperson Bryant appreciated Mr. Worthley's comments, but added that those are not the facts before the Commission.

Mr. Palkowitz stated that the case in *POBOR* is different because there were no other practical options in that record.

With a motion by Member Chivaro and a second by Member Lujano, the staff recommendation was adopted by a vote of 5-1 with Member Worthley voting no.

Item 4 Proposed Statement of Decision: *California Environmental Quality Act (CEQA)*, 03-TC-17
[See Item 3 above]

Ms. Halsey presented this item and stated that staff recommends that the Commission adopt the proposed Statement of Decision.

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

B. INCORRECT REDUCTION CLAIMS

Item 5 *School Bus Safety I and II*
Fiscal Year 2002-2003
07-4433-9722-I-01 through 07-4433-9722-I-05
Education Code Sections 38408, 39831.3, and 39831.5;
Vehicle Code Section 22112
Statutes 1992, Chapter 624 (AB 3144); Statutes 1994, Chapter 831 (SB 2019); Statutes 1996, Chapter 277 (SB 1562); Statutes 1997, Chapter 739 (AB 1297)
San Jose Unified School District, Fullerton Joint Union High School District, Sweetwater Union High School District, San Ysidro School District, Clovis Unified School District, Claimants

Chief Counsel Camille Shelton presented this item. Ms. Shelton stated that the State Budget Act of 2002 specifically identified the *School Bus Safety II* program as suspended and appropriated zero dollars for that program for the fiscal year. The State Controller's Office returned the reimbursement claims on the ground that the program was suspended for that fiscal year.

Ms. Shelton explained that Government Code section 17581.5, the statute that relieves school districts of the duty to comply with a suspended mandate, did not become effective and operative until two months after the effective date of the budget. Therefore, the claimants contend that they are entitled to reimbursement for the limited time period from July 1, 2002, until September 30, 2002, when Government Code section 17581.5 became effective. Staff found that the school district claimants are entitled to reimbursement for the *School Bus Safety I* program from July 1, 2002 through September 29, 2002. Therefore the State Controller's Office incorrectly returned and reduced the claims at issue here.

Staff recommended the Commission adopt the analysis approving the incorrect reduction claims and remanding the reimbursement claims back to the State Controller's Office for further review and reinstatement of eligible costs.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing the claimants; Jill Kanemasu, State Controller's Office, and Donna Ferebee and Lenin Del Castillo, Department of Finance.

Mr. Petersen and Ms. Kanemasu concurred with the staff recommendation.

Ms. Ferebee stated that Finance filed late comments on this item, arguing that the suspension at issue here was accomplished by way of the Budget Act, and there was no need to rely on Government Code section 17581 to do that. It is the Budget Act. Therefore, suspension began on September 5 when the Budget was passed by the Legislature.

Ms. Shelton responded that the Budget Act simply appropriated no money to the program. There is nothing in the Budget Act that relieves local governments from complying with the underlying mandated statutes. Government Code section 17581.5, enacted on September 30, relieves school districts of the duty.

Ms. Ferebee countered that Department of Finance's legal interpretation is different. Finance does not believe that the Legislature needs to rely on any other code section.

With a motion by Member Worthley and a second by Member Olsen, the staff recommendation to approve the incorrect reduction claims was approved by a vote of 6-0.

Item 6 Proposed Statement of Decision: *School Bus Safety I and II*
Fiscal Year 2002-2003
[See Item 5 above]

Ms. Shelton presented this item and stated that staff recommends that the Commission adopt the proposed Statement of Decision.

Member Cox made a motion to adopt the proposed Statement of Decision. Member Olsen seconded the motion and the Statement of Decision was adopted by a vote of 6-0.

Item 7 *School Crimes Reporting II*, 07-9703-I-01, 07-9703-I-02, 07-9703-I-03, 07-9703-I-04, 07-9703-I-05, 07-9703-I-06, 07-9703-I-07, and 07-9703-I-08
Penal Code Sections 628.2 and 628.6;
Title V, California Code of Regulations, Sections 700-704;
Statutes 1984, Chapter 1607 (AB 2483); Statutes 1988, Chapter 78 (AB 2583); Statutes 1989, Chapter 1457 (SB 271); Statutes 1992, Chapter 759 (AB 1248); Statutes 1995, Chapter 410 (SB 822);
California Department of Education, Guidelines for School Crimes Reporting;
Fiscal Year 2002-2003
Bonita Unified School District, Fullerton Joint Union High School District, San Ysidro School District, Castro Valley Unified School District, Encinitas Union Elementary School District, Carlsbad Unified School District, San Diego County Office of Education, and Rosedale Union Elementary School District, Claimants

Chief Counsel Camille Shelton also presented this item, noting that it is similar to Item 5 and addressed the Controller's return of reimbursement claims for the *School Crimes Reporting II* program because it was identified in the Budget Act as being suspended. But, Government Code section 17581.5 did not become effective until September 30, 2002.

Staff recommended the Commission approve the incorrect reduction claims, and remand the reimbursement claims back to the State Controller for further review and reinstatement of the costs eligible for reimbursement for the *School Crimes Reporting* program.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing claimants; Jill Kanemasu, State Controller's Office, and Donna Ferebee and Lenin Del Castillo, Department of Finance.

Mr. Petersen and Ms. Kanemasu concurred with the staff recommendation.

Ms. Ferebee again argued that the suspension at issue here was accomplished by way of the Budget Act, and there was no need to rely on Government Code section 17581 to do that. It is the Budget Act. Therefore, suspension began on September 5 when the Budget was passed by the Legislature.

Chairperson Bryant asked Ms. Shelton if the Budget Act said "pursuant to section 17581.5," there would be no argument. Ms. Shelton agreed, but added that section 17581.5 would have to be enacted to make the program voluntary.

Paula Higashi, Executive Director, clarified the difference between section 17581 and 17581.5.

With a motion by Member Worthley, and a second by Member Olsen, the staff recommendation to approve the incorrect reduction claims was adopted by a vote of 6-0.

Item 8 Proposed Statement of Decision: *School Crimes Reporting II*, 07-9703-I-01, 07-9703-I-02, 07-9703-I-03, 07-9703-I-04, 07-9703-I-05, 07-9703-I-06, 07-9703-I-07, and 07-9703-I-08
[See Item 7 above]

Ms. Shelton presented this item and recommended that the Commission adopt the proposed Statement of Decision.

Member Olsen made a motion to adopt the proposed Statement of Decision. Member Cox seconded the motion and the Statement of Decision was adopted by a vote of 6-0.

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

A. PROPOSED PARAMETERS AND GUIDELINES

Item 9 *Crime Statistics Reports for the Department of Justice Amended*
02-TC-04, 02-TC-11, 07-TC-10

Penal Code Sections 12025, Subdivision (h)(1) and (h)(3), 12031, Subdivision (m)(1) and (m)(3), 13014, 13023, and 13730, Subdivision (a) Statutes 1989, Chapter 1172 (SB 202); Statutes 1992, Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250); Statutes 1998, Chapter 933 (AB 1999); Statutes 1999, Chapter 571 (AB 491); and Statutes 2000, Chapter 626 (AB 715)
Penal Code Section 13023
Statutes 2004, Chapter 700 (SB 1234)
City of Newport Beach and County of Sacramento, Claimants

Chief Counsel Camille Shelton also presented this item. These are the proposed parameters and guidelines for the *Crime Statistics Reports* program, which requires county and city law enforcement agencies and district attorneys' offices to file homicide, hate crimes, and firearm

reports to the State Department of Justice, and to support domestic violence calls for assistance with incident reports. The issue in dispute is the claimant's request for reimbursement for a supervisor to review and edit the crime reports provided to the state and to review the local written incident reports on domestic violence. The claimant filed two declarations from peace officers to support these requests. Based on evidence in the record, staff found that verifying the information in the homicide and hate-crime reports or to provide additional information when requested by the State was reasonably necessary to comply with the mandate. However, reimbursement was not required to review and edit every report filed with the state. Staff also found that reviewing and editing the incident reports on domestic violence was reasonably necessary to comply with the mandate because those reports were filed with the court.

Staff recommended the Commission adopt the staff analysis and claimant's proposed parameters and guidelines as modified by staff.

Parties were represented as follows: Juliana Gmur, MAXIMUS, representing claimants; and Carla Shelton, Department of Finance.

Ms. Gmur and Ms. Carla Shelton concurred with the staff analysis.

With a motion by Member Olsen, and a second by Member Chivaro, the staff recommendation to adopt the parameters and guidelines was approved by a vote of 6-0.

Ms. Higashi reported that item 10 was previously adopted on the consent calendar and there was no action for item 11.

STAFF REPORTS

Item 12 Final Report to State Auditor: Implementation of Recommendations from Bureau of State Audits October 15, 2009 Report 2009-501
State Mandates: Operational and Structural Changes Have Yielded Limited Improvements in Expediting Processes and Controlling Costs and Liabilities

Assistant Executive Director Nancy Patton presented this item, and reported that the Commission and staff have completed implementation of the BSA audit recommendations issued on October 15, 2009, and recommended that the Commission approve the one-year report to BSA.

With a motion by Member Worthley, and a second by Member Olsen, the one-year report was approved by a vote of 6-0.

Item 13 Legislative Update

Ms. Patton also presented this item and reported that there was one bill remaining in this legislative session that addressed the mandates process: SB 894. This bill was co-sponsored by the Commission and required the Commission to include additional information in its annual reports to the Legislature on approved mandates. The bill was pending before the Governor.

Item 14 Budget Trailer Bills

Ms. Higashi stated that there was no update on budget trailer bills because the 2010-2011 budget had not yet been enacted.

Item 15 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton reported that there are two hearings forthcoming; a hearing on the demurrer and motion to strike on November 19 in the *County of Santa Clara* case, and a hearing on December 10 on the *BIPS* lawsuit.

Also, a decision was issued on September 21, 2010, on the *Clovis Unified School District* case. The Third District Court of Appeal found that the contemporaneous source document rule as applied to four particular school district programs constituted an unenforceable underground regulation. The trial court will issue a peremptory writ of mandate to invalidate the Controller's audits, to the extent that the audits were based on contemporaneous source documentation and to the extent that those audits fell within the statute of limitations. The court also found that the Controller's applications of offsets in the *Health Fee Elimination* program were valid.

The second case is the *CSBA* case that challenges the Legislature's deferment of mandate reimbursement in the budget. Briefing is complete and oral argument may be set this year. The last case is a new case file by San Diego Unified School District against the Controller, challenging audit reductions made on the *STAR* program. The Commission is not a party to this case.

Item 16 Executive Director's Report

Proposed Hearing/Meeting Calendars

After discussion, the Commission agreed on the following 2010 meeting/hearing dates: November 9 and December 2. The Commission also approved the 2011 calendar with the following dates: January 27, March 24, April 28, May 26, July 28, September 29, October 27 and December 1, 2011.

Ms. Higashi noted that the Commission has been provided with the annual Report to Department of Finance showing workload levels and backlog data.

PUBLIC COMMENT

Alan Burdick, CSAC-SB 90 Service, requested that members think about developing proposed reforms to the mandates process for the incoming administration.

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 12:00 p.m.


PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 10:30 a.m.
DATE: Thursday, September 30, 2010
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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California Certified Shorthand Reporter #6949
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A P P E A R A N C E S

COMMISSIONERS PRESENT

CYNTHIA BRYANT
(Commission Chair)
Representative for ANA MATOSANTOS
Director, State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

CATHLEEN COX
Acting Director
Director, Office of Planning & Research

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

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



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Items 14 and 16)

NANCY PATTON
Assistant Executive Director
(Items 12 and 13)

HEATHER HALSEY
Commission Counsel
(Items 3 and 4)

CAMILLE SHELTON
Chief Legal Counsel
(Items 5, 6, 7, 8, 9, and 15)

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 3 & 4:

For Claimant Clovis Unified School District:

ART PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For Department of Finance

DONNA FEREBEE
Staff Counsel III
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Items 5, 6, 7, and 8:

KEITH B. PETERSEN
President
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For Controller's Office:

JILL KANEMASU
Chief, Bureau of Payments
Division of Accounting and Reporting
State Controller's Office
3301 C Street,
Sacramento, California 95816

For Department of Finance

DONNA FEREBEE
Staff Counsel III
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 5, 6, 7, and 8: *continued*

For Department of Finance *continued*

LENIN DEL CASTILLO
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 9:

For Claimant:

JULIANA F. GMUR
Manager, Financial Services
MAXIMUS
3130 Kilgore Road, Suite 400
Rancho Cordova, California 95670

For Department of Finance:

CARLA SHELTON
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Public Comment

ALLAN BURDICK
California State Association of Counties
SB-90 Service
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

--oOo--

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
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Commission on State Mandates – September 30, 2010

1 BE IT REMEMBERED that on Thursday,
2 September 30, 2010, commencing at the hour of 10:33 a.m.,
3 thereof, at the State Capitol, Room 447, Sacramento,
4 California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR
5 and CRR, the following proceedings were held:

6 --oOo--

7 CHAIR BRYANT: The meeting of the Commission on
8 State Mandates will come to order.

9 Paula, will you call the roll?

10 MS. HIGASHI: Mr. Chivaro?

11 MEMBER CHIVARO: Rick Chivaro here for John
12 Chiang, State Controller.

13 MS. HIGASHI: Mr. Glaab is absent today.

14 Ms. Cox?

15 MEMBER COX: Here.

16 MS. HIGASHI: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Worthley?

21 MEMBER WORTHLEY: Here.

22 MS. HIGASHI: Bryant?

23 CHAIR BRYANT: Here.

24 The Commission will now meet in closed
25 executive session pursuant to Government Code section

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1 11126, subdivision (e), to confer with and receive advice
2 from legal counsel for consideration and action, as
3 necessary and appropriate, upon the pending litigation
4 listed on the public notice and agenda, and to confer
5 with and receive advice from legal counsel regarding
6 potential litigation.

7 The Commission also will confer on personnel
8 matters and a report from the personnel subcommittee
9 pursuant to Government Code section 11126, subdivision
10 (a).

11 We will reconvene in open session in about
12 30 minutes.

13 *(The Commission met in executive closed*
14 *session from 10:34 a.m. to 11:10 a.m.)*

15 CHAIR BRYANT: All right, we're back in open
16 session.

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

24 The Commission also met in closed session
25 pursuant to Government Code section 11126, subdivision

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1 (a)(1), to confer on personnel matters and a report from
2 the personnel subcommittee as listed on the published
3 notice and agenda.

4 And it is with a certain amount of sadness, but
5 happiness at the same time, that I announce that we heard
6 from our executive director, Paula Higashi, that she
7 intends to retire after a long and distinguished career
8 with the State.

9 We are going to post the job announcement
10 within a week and kind of wrap things up probably by the
11 end of the year.

12 I just wanted to say a few good things about
13 Paula.

14 She began her state career in 1975; and during
15 her 35 years in state service, she has worked for the
16 Agricultural Labor Relations Board, Department of
17 Consumer Affairs, and the Public Employee Relations Board
18 before moving to a ten-year career in the Attorney
19 General's Crime Prevention Unit.

20 In 1996, she came to the Commission as a staff
21 counsel; and six months later, began her 13-year tenure
22 as the Commission's executive director.

23 Since she has been here, the Commission has
24 completed over 200 test claims, including landmark
25 decisions on *Special Education*, *Three Strikes*, and

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1 recently *Water Board Permits*. And under her tutelage,
2 staff analyses have gone from two-page documents with no
3 findings, to detailed and professional legal briefs that
4 are continually praised and upheld in the courts.

5 Please join me in congratulating Paula on her
6 retirement.

7 I don't know how we'll replace her; but just to
8 start a long round of thank-yous.

9 *(Applause)*

10 CHAIR BRYANT: Okay then, Item 1.

11 MS. HIGASHI: Approval of the minutes,
12 July 29th.

13 CHAIR BRYANT: Are there any questions and
14 comments from Commission members?

15 MEMBER CHIVARO: I move approval.

16 MEMBER WORTHLEY: Second.

17 CHAIR BRYANT: We have a motion and a second.
18 All those in favor?

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

20 CHAIR BRYANT: Any opposed or abstentions?

21 *(No response)*

22 CHAIR BRYANT: The minutes are adopted.

23 Are there any objections to the Proposed
24 Consent Calendar -- oh, I'm sorry, I'm just -- I'm not
25 reading the script very well. Sorry.

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1 MS. HIGASHI: There's only one item on the
2 Proposed Consent Calendar, and that is adoption of the
3 proposed regulation amendments, Item 10.

4 CHAIR BRYANT: Is there any objection to the
5 consent calendar?

6 *(No response)*

7 CHAIR BRYANT: Is there a motion?

8 MEMBER WORTHLEY: Move approval, Madam Chair.

9 MEMBER COX: Second.

10 MEMBER OLSEN: Second.

11 CHAIR BRYANT: We have a motion and a second.

12 All those in favor?

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

14 CHAIR BRYANT: Any opposed?

15 *(No response)*

16 CHAIR BRYANT: Abstentions?

17 *(No response)*

18 MS. HIGASHI: This brings us to the hearing
19 portion of our meeting.

20 At this time, I'd like to ask all the parties
21 and witnesses to please stand.

22 *(Witnesses and parties stood.)*

23 MS. HIGASHI: Do you solemnly affirm that the
24 testimony which you are about to give is true and correct
25 based upon your personal knowledge, information, or

1 belief?

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

3 MS. HIGASHI: Thank you.

4 Item 3 will be presented by Commission Counsel
5 Heather Halsey.

6 MS. HALSEY: Good morning.

7 This test claim addresses the activities
8 required of school districts and community college
9 districts pursuant to the California Environmental
10 Quality Act, or CEQA, and related to statutes and
11 regulations.

12 In the final analysis for this test claim
13 prepared for the January 29th, 2010, hearing, staff found
14 that there was no evidence in the record to support a
15 finding that school districts and community-college
16 districts are legally or practically compelled to acquire
17 new school sites or build new school facilities or
18 additions to existing schools of greater than 25 percent,
19 or to receive state funding for such projects, which
20 would trigger the requirement to comply with CEQA.

21 Claimant conceded at the January 29th, 2010,
22 hearing that districts were not legally compelled to
23 build new schools. However, claimant requested, and the
24 Commission granted, permission to submit evidence that
25 school districts are practically compelled to comply

1 with some or all of the statutes and regulations pled in
2 this claim.

3 Claimants submitted supplemental filings to
4 support its claim that school districts are practically
5 compelled to construct new facilities. Specifically,
6 claimant reiterated its earlier arguments that districts
7 are practically compelled to comply with CEQA as a matter
8 of law and submitted a portion of the EIR for a new
9 school for factual support.

10 The evidence submitted shows that the District
11 had considered many non-construction options which could
12 have accommodated students, but it chose not to pursue
13 those options because they did not meet the District's
14 own policy objectives of small neighborhood schools.

15 Staff finds that the evidence submitted by
16 claimant and its supplemental filing on practical
17 compulsion does not support a finding of practical
18 compulsion. Rather, the evidence in the record supports
19 a conclusion that the test-claim statutes, regulations,
20 and alleged executive orders do not impose a
21 state-mandated local program because CEQA requirements
22 are triggered by local decision-making. Therefore, staff
23 has not changed its conclusion and recommends that this
24 test claim be denied.

25 Will the parties and witnesses please state

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1 your names for the record?

2 MR. PALKOWITZ: Good morning. Art Palkowitz on
3 behalf of the claimant, Clovis School District.

4 MS. FEREBEE: Donna Ferebee, Department of
5 Finance.

6 CHAIR BRYANT: Mr. Palkowitz, did you want to
7 start?

8 MR. PALKOWITZ: Yes, thank you.

9 Good morning, everyone.

10 I would like to point out in the next few
11 minutes why the claimant believes that CEQA, California
12 Environment Quality Act, a state legislation, is a
13 mandate that should be approved by the Commission today.

14 The claimant believes that the issue before you
15 is whether a district is legally or practically compelled
16 to comply with CEQA when undertaking a non-exempt
17 project. CEQA, California Environment Quality Act, is
18 intended to raise the public awareness and to increase
19 public participation. This is often done through an
20 initial study and/or an environmental impact report.

21 The claimant contends that CEQA's activities
22 must be done, a condition precedent, prior to any
23 decision. The decision to build a school, for example,
24 will be decided after CEQA is complied with. The
25 condition precedent of CEQA is not a discretionary

1 decision; rather, it's the decision that is done after
2 which may be considered discretionary as pointed out by
3 Commission staff.

4 Clearly, CEQA is not a state -- is not a local
5 law but a state law, and the requirements are all
6 contained in the claim statute.

7 The Commission staff has cited a case,
8 *People v. Oken*. This case is approximately 55 years old.
9 What is not cited in the Commission analysis is the
10 following: The duty to provide for the education of the
11 children of the state, so far as the state has, by the
12 adoption of the Constitution, cannot be delegated to any
13 agency.

14 As the Commission points out in their analysis,
15 the state is a beneficial owner of school properties.
16 The state holds the school properties as trustee for the
17 state. I don't believe there's any dispute that the
18 state requires local agencies to educate the children;
19 and they're required to provide facilities. And
20 accordingly, the state pays schools to educate.

21 This test claim is not requesting reimbursement
22 for construction-related activities. Rather, once a
23 district moves forward to decide whether to proceed on a
24 project, they are required to perform the CEQA
25 activities.

1 What has gotten into the discussion of staff is
2 the definition of "*project*," and whether a project is
3 discretionary or not.

4 The decision of the project on whether to move
5 forward, as I mentioned, is a decision that is made after
6 CEQA. Therefore, we feel that the analysis should not
7 be discretionary thought on whether the project moves
8 forward. On the contrary, it's the thought that CEQA
9 must be performed prior to making the decision of the
10 project.

11 I just want to reiterate and make sure it's
12 clear that this claim statute does not require
13 reimbursement for building or land costs. Rather, the
14 claim statute and the claimants are contending that CEQA,
15 a state law, is requiring local agencies to perform
16 activities, and those activities should be reimbursable
17 as they are required by the state to be performed by the
18 local levels.

19 Though, as pointed out by the Commission staff,
20 school boards have the discretion whether to move forward
21 with the project, there is no discretion of whether they
22 need to comply with CEQA.

23 I'd like to reserve some time to respond after.

24 CHAIR BRYANT: Can I just ask you a quick
25 question? Are you saying that before a school makes a

1 decision -- before a school district makes a decision to
2 build a new school or to substantially expand a school
3 site, they have to do a CEQA analysis? Is that your
4 position?

5 MR. PALKOWITZ: Well, the first step is to do
6 an initial study; and then if required, they need to
7 do the --

8 CHAIR BRYANT: So every school district that's
9 undertaking an infrastructure -- making an infrastructure
10 decision, runs a CEQA initial study?

11 MR. PALKOWITZ: No. There are some exemptions.
12 Maintenance, I think --

13 CHAIR BRYANT: So the district has made the
14 decision to do something larger before they start CEQA?

15 MR. PALKOWITZ: Well, there are some decisions
16 that are exempt under CEQA. Not counting those, if there
17 is a decision that will impact the environment, a
18 district school must move forward and do a CEQA analysis.

19 Is that answering your question?

20 MEMBER WORTHLEY: Well, Madam Chair, I think
21 the way I understand it, is that you have a proposed
22 project. You don't just go out and do CEQA analysis for
23 no reason. You have a proposed project. Now, before
24 that proposed project can go forward, now you're required
25 to do the CEQA analysis.

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1 CHAIR BRYANT: Right. But you've made the
2 decision about the proposed --

3 MEMBER WORTHLEY: Well, you've made a decision
4 that there is going to be -- that you anticipate a
5 proposed project. But you don't just go out and do CEQA
6 analysis to do an analysis --

7 CHAIR BRYANT: But you're not compelled -- but
8 you're not compelled to make the decision to expand
9 the --

10 MEMBER WORTHLEY: That's a different question,
11 I think --

12 CHAIR BRYANT: Right.

13 MEMBER WORTHLEY: -- that I would like to weigh
14 in a little bit later on. But I don't think that is --

15 CHAIR BRYANT: To me, my point -- I think that
16 I was hearing something different than was in your letter
17 in the staff analysis, and I was just trying to make the
18 point that I think the question in front of us is whether
19 or not that decision to expand or to make larger or to do
20 a new school site is a decision that might, may create --
21 that could possibly create the CEQA mandate.

22 It's not -- you don't have a mandate to use
23 CEQA to make that decision about whether you're going to
24 expand. You've already decided, I would say.

25 MR. PALKOWITZ: I don't necessarily think

1 that's always the case, because CEQA may come up with a
2 result that you may not go forward with that decision or
3 that project. But CEQA is a condition precedent before
4 the final decision is made to go forward on that project.

5 CHAIR BRYANT: Anyway, okay, do you want to --
6 Sarah?

7 MEMBER OLSEN: I'm sorry, I have a question.
8 Do you have to do CEQA to do year-round
9 schools?

10 MR. PALKOWITZ: Say that again?

11 MEMBER OLSEN: If you're changing a school from
12 a nine-month/three-month school to a year-round school,
13 is CEQA triggered?

14 MR. PALKOWITZ: I think that a board would be
15 prudent to do a CEQA study because there could be impact
16 on transportation, there could be impact on other types
17 of environmentally sensitive areas affecting that
18 decision. So I think another example is if the school
19 wants to do transportation or not.

20 MEMBER OLSEN: That was going to be my next
21 question.

22 MR. PALKOWITZ: Okay. So I don't -- I don't
23 want to feel that I am the expert on when to move forward
24 on a CEQA decision, but I think that would be reasonable
25 to say that since a year-round will affect that area,

1 that environment around the school versus a nine-month
2 school or something less than year-round, that it would
3 be appropriate to do an initial study and see if that
4 would lead on to do an environmental impact report.

5 MEMBER OLSEN: Because, I mean this is sort
6 of -- to me, this is a key issue here because in the
7 staff analysis, you know, some of the examples that are
8 given are that the school district doesn't have to build
9 a new facility, it doesn't have to enlarge a facility, it
10 could do transportation to other facilities that are
11 underutilized, it could go to year-round schools. Those
12 are two of the major examples that are given.

13 And so if CEQA is triggered for those as well,
14 then I think you're on stronger footing than if it isn't.
15 So I think that's a pretty important fact that we need to
16 know here.

17 MR. PALKOWITZ: Well, it's our contention you
18 would have to.

19 MEMBER OLSEN: But that's not what you said
20 before. You said, a school district would be prudent to
21 do it.

22 MR. PALKOWITZ: Well, on the transportation,
23 I -- and that was in our papers as an example that would
24 do that.

25 You're giving an example of a 12-months. I

1 would say yes, that would be prudent to do that initial
2 study and have that.

3 Now, I honestly can't -- you know, if you don't
4 do that, we did -- could there be an objection that would
5 have merit? I think so.

6 But if you're asking me to honestly testify
7 before you that that is definitely a fact that would
8 justify an initial study, I say yes.

9 MEMBER OLSEN: Okay, thank you.

10 CHAIR BRYANT: Ms. Ferebee, did you have
11 anything to add?

12 MS. FEREBEE: Yes. Just that the Department of
13 Finance concurs with the staff analysis that there has
14 been no evidence presented to support a finding of
15 practical compulsion.

16 CHAIR BRYANT: Are there any other questions or
17 comments from Commission members?

18 MR. PALKOWITZ: I would like to also -- the
19 last time we had a hearing on this, we were graciously
20 given more time to produce more evidence, and we're
21 appreciative of that.

22 At that point, we provided an example, an
23 environmental impact was done at a school in San Diego,
24 and that report indicated the alternatives looking
25 forward and trying to decide whether there was

1 justification to move forward. And Commission staff
2 determined that there was not a basis there to have a
3 practical compulsion. That type of analysis leads itself
4 to a very specific fact pattern of when there is a
5 practical compulsion and when there isn't.

6 To me, for a decision that would blanketly rule
7 out that there's never practical compulsion, would seem
8 to me to be -- not being equitable, nor fully
9 understanding the law, that there is, more than likely,
10 out there opportunity to make an argument for a practical
11 compulsion.

12 So we feel that that type of recommended ruling
13 to have a blanket understanding that there can never be a
14 practical compulsion is really too broad of a type of
15 decision.

16 CHAIR BRYANT: Did you want to -- I can see
17 Camille over there.

18 CAMILLE SHELTON: Just to clarify. In the
19 *POBRA* case, the Court of Appeal made it clear that even
20 if you have a practical compulsion finding, it is --
21 they're practically compelled as a matter of law. So the
22 Commission has no jurisdiction to do equity in these
23 cases.

24 And also the *POBRA* case did clearly state that
25 you had to have evidence in the record to support that

1 finding.

2 MS. HALSEY: And if I could add on the
3 transfer-to-schools question that was asked, if you look
4 at California Code of Regulations 15301, that's the
5 specific exemption from that, from CEQA.

6 MEMBER OLSEN: For transportation to schools?

7 MS. HALSEY: For transferring the kids to
8 another school, versus rebuilding or building a new
9 school.

10 CHAIR BRYANT: Mr. Worthley?

11 MEMBER WORTHLEY: Just if we're in the
12 discussion stage, I agree with counsel, that the
13 difficulty -- it is difficult, I think, to state facts
14 upon which to make this determination.

15 And my thinking is this: I put the word
16 "reasonably practical" in front of it because I come from
17 a small town with a -- and I was on an elementary school
18 board for 12 years. And we did all those things. I
19 mean, other than going to year-round schools, we did
20 the transfer -- I mean, we were continually moving people
21 around. We were putting as many portable buildings on
22 the school sites that were designed for 500 kids. We had
23 600 and 700 on them.

24 You'd get to the place where you had done
25 everything; and now, you have to build a new school. And

1 that's why it's kind of rough and tough because it's not
2 like there's a magic number where you say, "Okay, here it
3 is. Tomorrow, we have to build a new school," because
4 that's not the way life is. That's not the way you build
5 schools. You have to project into the future about,
6 depending upon -- looking at the growth and demographics
7 of our community, based upon where we're going to be two
8 years from now, three years from now, we've got to start
9 the process. Because you just don't build a new school
10 tomorrow. It's a long process.

11 And so I think there has to be some flexibility
12 built into this thing about a reasonably practicable
13 situation where you've got to say, "Okay, at this point
14 in time, as a school district, we've got to project the
15 need to build a new school site." And now, when I do
16 that, I'm compelled to do so; and now I'm required to do
17 a CEQA analysis.

18 And so I really think that's the real life out
19 there. I mean, I don't know how you could plead that,
20 because it's very difficult to plead.

21 But this idea that if we think about large
22 districts, where they've got some declining schools, some
23 growing schools, yes, they've got more flexibility. But
24 if you're in the San Joaquin Valley and you've got a town
25 that's growing, and every school is maxed out -- we're

1 not getting rid of schools; all we're doing is adding
2 schools.

3 So I do think that there are situations where
4 you've got to say there is a practical compulsion to
5 build a school that is very difficult to define those
6 terms because, again, given the real-life situation out
7 there, you don't wait until this day and then make a
8 determination that, "Okay, now we have to build a new
9 school." I don't know how you can define those facts.

10 CHAIR BRYANT: I appreciate what you're saying,
11 but those are not the facts that we have in front of us.

12 Their own EIR demonstrates that they had
13 options, and they chose to build, and they probably chose
14 to build for other reasons. And those facts aren't in
15 front of us.

16 And, in fact, it might very well be in those
17 situations you get a different school bill. You have a
18 developer pay all the fees, or you have a developer build
19 the schools. And it's just not here. I don't know, at
20 least --

21 MR. PALKOWITZ: May I respond?

22 CHAIR BRYANT: Yes.

23 MR. PALKOWITZ: I think in the EIR that's in
24 the record, the options were considered by the District
25 but not taken.

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1 In *POBRA*, there really weren't any practical
2 expulsion -- I mean, practical other options that were in
3 the record.

4 Additionally, it seems to me that when staff
5 cites the *People v. Oken* case that talks about how
6 governing boards have the discretion to make the
7 decisions, to me and the claimant, we believe that the
8 timing of the project is at the local level. But the
9 compliance is regulated by the state, and that's not
10 delegated.

11 Thank you.

12 CHAIR BRYANT: Any other questions or comments?

13 MEMBER WORTHLEY: Just a last -- just a
14 comment. I know where -- I know what's going to happen
15 here, pretty much; but I just want to -- I just have to
16 say that I think these things, even though they're not
17 pleaded, they could be handled in the parameters and
18 guidelines. Because I think you could say, you know, you
19 have to exhaust all your other alternatives before it no
20 longer is where you are practically compelled to do so.
21 And so I think it could be handled in that regard.

22 I think it's a tough standard to meet. I don't
23 think a school could just say -- in other words, if the
24 concept is, "Well, we could add more portable classrooms,
25 but we choose to build a new school," okay, that's

1 clearly discretionary.

2 But if I've already done all the reasonable
3 expected things that I could possibly do, and now I have
4 really no choice but to build a new school, that's a
5 compulsion. And that's why I'm thinking that and, again,
6 I'm trying to determine when that comes into play is more
7 difficult.

8 But I think that's the way we should go
9 forward. And I realize that I think the -- what I said
10 is why it's so difficult to try to plead these things
11 because it won't apply in a lot of places. A lot of
12 school districts won't be able to meet that standard.
13 But I do think there are schools, especially in these
14 small school districts and growing communities where they
15 will be able to meet that standard because they just
16 don't have any other options.

17 CHAIR BRYANT: Mr. Chivaro?

18 MEMBER CHIVARO: No.

19 CHAIR BRYANT: Okay, is there a motion?

20 MEMBER CHIVARO: I'll move staff
21 recommendation.

22 MEMBER LUJANO: Second.

23 CHAIR BRYANT: Call the roll.

24 MS. HIGASHI: Chivaro?

25 MEMBER CHIVARO: Yes.

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1 MS. HIGASHI: Cox?

2 MEMBER COX: Yes.

3 MS. HIGASHI: Lujano?

4 MEMBER LUJANO: Aye.

5 MS. HIGASHI: Olsen?

6 MEMBER OLSEN: Aye.

7 MS. HIGASHI: Worthley?

8 MEMBER WORTHLEY: No.

9 MS. HIGASHI: Bryant?

10 CHAIR BRYANT: Aye.

11 MS. HIGASHI: The motion carries.

12 CHAIR BRYANT: It's always got to be one of us
13 that's a "no."

14 MS. HIGASHI: Item 4, the Proposed Statement of
15 Decision.

16 MS. HALSEY: Staff recommends that the
17 Commission adopt the proposed Statement of Decision. The
18 sole issue before the Commission is whether the proposed
19 Statement of Decision accurately reflects the decision of
20 the Commission on Item 3. Minor changes to reflect the
21 vote will be included in the final Statement of Decision.

22 CHAIR BRYANT: Are there any comments from the
23 parties?

24 *(No response)*

25 CHAIR BRYANT: Is there a motion?

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1 MEMBER CHIVARO: I'll move approval.

2 MEMBER LUJANO: Second.

3 CHAIR BRYANT: We have a motion and a second.

4 Can you go ahead and call the roll?

5 You know what? I didn't ask for public

6 comment.

7 Oh, I did. I'm sorry, I'm just losing my mind

8 today.

9 Sorry, I did. I said, "Is there any comment?"

10 Is there any other public comment?

11 *(No response)*

12 CHAIR BRYANT: Okay, now we can vote.

13 MS. HIGASHI: Chivaro?

14 MEMBER CHIVARO: Yes.

15 MS. HIGASHI: Cox?

16 MEMBER COX: Aye.

17 MS. HIGASHI: Lujano?

18 MEMBER LUJANO: Aye.

19 MS. HIGASHI: Olsen?

20 MEMBER OLSEN: Aye.

21 MS. HIGASHI: Worthley?

22 MEMBER WORTHLEY: Aye.

23 MS. HIGASHI: Bryant?

24 CHAIR BRYANT: Aye.

25 MS. HIGASHI: The motion is carried.

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1 We're now at Item 5. This is an incorrect-
2 reduction claim, a set of incorrect-reduction claims.

3 This item will be presented by Chief Counsel
4 Camille Shelton.

5 CAMILLE SHELTON: These are incorrect-reduction
6 claims addressing reductions to the *School Bus Safety I*
7 *and II* programs for fiscal year 2002-03.

8 The State Budget Act of 2002 specifically
9 identified the *School Bus Safety II* program as suspended
10 and zero dollars were appropriated for that program for
11 that fiscal year.

12 The State Controller's office returned the
13 reimbursement claims on the ground that the program was
14 suspended for that fiscal year.

15 Government Code section 17581.5, which is the
16 statute that relieves school districts of the duty to
17 comply with a suspended program, did not become effective
18 and operative until September 30th, 2002, which was two
19 months after the effective date of the budget.

20 The claimants contend they are entitled to
21 reimbursement for the limited time period from July 1st,
22 2002, until September 30th, 2002, when Government Code
23 section 17581.5 became effective.

24 Staff finds that the school district claimants
25 are entitled to reimbursement for the state-mandated

1 activities in the *School Bus Safety I* Program from
2 July 1st, 2002, through September 29th, 2002, the time
3 period before the effective date of Government Code
4 section 17581.5.

5 In this respect, the State Controller's office
6 incorrectly returned and reduced the claims of the
7 school-district claimants.

8 Staff recommends that the Commission adopt the
9 analysis and remand the reimbursement claims back to the
10 State Controller's office for further review and
11 reinstatement of the costs that are eligible for
12 reimbursement pursuant to the parameters and guidelines
13 amended on March 25th, 2004, for the *School Bus Safety I*
14 program for the limited time period from July 1st, 2002,
15 through September 29th, 2002.

16 Last night, we did receive a late filing from
17 the Department of Finance, which is in pink. And I'll be
18 happy to address these comments when you get to that
19 point.

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

22 MR. PETERSEN: Keith Petersen, representing the
23 claimants.

24 MS. KANEMASU: Jill Kanemasu, State
25 Controller's office.

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1 MS. FEREBEE: Donna Ferebee, Department of
2 Finance.

3 MR. DEL CASTILLO: Lenin Del Castillo with the
4 Department of Finance.

5 CHAIR BRYANT: Mr. Petersen?

6 MR. PETERSEN: Thank you.

7 These incorrect-reduction claims were filed to
8 find out how short-period claims caused by late budget
9 acts should be handled for school districts and community
10 colleges. It was fairly clear several years before that
11 how they would be handled for local agencies, cities, and
12 counties. But we weren't quite sure how to proceed on
13 the K-12 claims.

14 This decision, I believe, correctly construes
15 the statutes; and we concur with it.

16 CHAIR BRYANT: Do you have something to add?

17 MS. KANEMASU: The State Controller's office
18 concurs with staff recommendation.

19 CHAIR BRYANT: Finance?

20 MS. FEREBEE: I'm happy to speak to the
21 comments that we submitted yesterday. I know Camille
22 mentioned wanting to address them.

23 I can go first or after, or however you like.

24 CHAIR BRYANT: Go ahead.

25 MS. FEREBEE: Okay, we just wanted to make this

1 one small point, and that is that we believe that the
2 suspension at issue here was accomplished by way of the
3 Budget Act of September 5th. And it didn't need to --
4 the Budget Act did not need to rely on Government Code
5 section 17581 in order to do that, and nor did it need to
6 rely on any other code section to do that because it was
7 the Budget Act. It was the statute. And the Legislature
8 itself in the Budget Act of September 5th expressly
9 suspended the program.

10 And so it's our position that in terms of
11 measuring when the suspension began, that rather than
12 looking at September 30th, that that date ought to be
13 September 5th.

14 Thank you.

15 CHAIR BRYANT: Camille?

16 CAMILLE SHELTON: The Budget Act -- when the
17 Budget Act suspends a program, they just put a
18 zero-dollar appropriation next to the program. But the
19 program itself, the statutes for the underlying test
20 claim remain in statute, and still continue to impose the
21 mandate.

22 Nothing in the Budget Act relieves them of the
23 duty to not comply with the underlying statutes.

24 That doesn't occur until you look at 17581.5.
25 And when the budget was originally adopted in this case

1 on September 5th, it referred back to 17581, which is the
2 corresponding suspension statute for counties. But that
3 expressly does not apply to school districts. So they
4 made the exception in 17581, stating that it would not
5 apply to school-district mandated claims.

6 It wasn't until September 30th when 17581 was
7 enacted to implement the '02-03. Also, it doesn't make
8 sense to go back to September 5th because the effective
9 date of the Budget Act is July 1st. It's the whole
10 fiscal year. So that July 5th date doesn't make sense.

11 Also, looking at 17581.5, the plain language of
12 that is where they expressly relieve the duty to the
13 school-district claimants of complying with the program.

14 The program now becomes voluntary. If they do
15 want to perform those services under the program, they
16 can charge a fee. Those are the situations and the
17 language that does relieve them of that duty. So we are
18 not changing our staff recommendation.

19 MS. FEREBEE: If I can respond again.

20 I think it's a question of -- it's a purely
21 legal question, and our interpretation is different.
22 We don't think that the Legislature needed to rely on
23 any other code section.

24 It's true that it did purport to rely on
25 section 17581, which would have only applied to local

1 government agencies; but I don't think that detracts from
2 the clear intent of the Legislature in enacting the
3 September 5th Budget Act, that it intended to suspend
4 that program.

5 And I think a court would look to what the
6 intention of the Legislature was there. And I think that
7 it was plain and clear that the intention was to
8 suspend -- in fact, suspension is used in the terms of
9 this Budget Act language; that it was appropriated a
10 dollar amount of zero, and it was suspended.

11 CAMILLE SHELTON: This is going to be a case of
12 statutory interpretation; and you don't look towards leg.
13 intent unless you find that the plain language is vague
14 and ambiguous.

15 I agree the plain language of that Budget Act,
16 if you look on page 4, is vague and ambiguous because
17 it's referring to 17581 which, by its plain terms, does
18 not apply to school districts.

19 So what a court would do would look at
20 everything, including budget trailer bills that were
21 enacted to implement the Budget Act. And so 17581.5 was
22 a budget trailer bill that was enacted to implement the
23 Budget Act. And that did not become effective until
24 September 30th.

25 If you were to go along the lines that Finance

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1 is suggesting, that would mean that the court would
2 completely ignore 17581.5. And that's on page 6.

3 The very first line of subdivision (a) says:
4 "A school district shall not be required to implement or
5 give effect to the statutes identified in subdivision (b)
6 that are suspended."

7 No other language in the Budget Act relieves
8 them of the duty like 17581.5.

9 MEMBER WORTHLEY: Move approval, Madam Chair.

10 MEMBER OLSEN: Second.

11 MEMBER WORTHLEY: Staff recommendation.

12 CHAIR BRYANT: Call the roll.

13 MS. HIGASHI: Cox?

14 MEMBER COX: Aye.

15 MS. HIGASHI: Lujano?

16 MEMBER LUJANO: Aye.

17 MS. HIGASHI: Olsen?

18 MEMBER OLSEN: Aye.

19 MS. HIGASHI: Worthley?

20 MEMBER WORTHLEY: Aye.

21 MS. HIGASHI: Chivaro?

22 MEMBER CHIVARO: Aye.

23 MS. HIGASHI: Bryant?

24 CHAIR BRYANT: Aye.

25 CHAIR BRYANT: Any public comment? Is there

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1 any public comment?

2 (No response)

3 CHAIR BRYANT: All right.

4 MS. HIGASHI: The motion is carried.

5 Item 6 is the Proposed Statement of Decision.

6 CAMILLE SHELTON: Staff recommends that the

7 Commission adopt the proposed Statement of Decision

8 MEMBER COX: So moved.

9 MEMBER OLSEN: Second.

10 CHAIR BRYANT: All those in favor?

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

12 MS. HIGASHI: The motion is carried.

13 Item 7, *School Crimes Reporting*.

14 CAMILLE SHELTON: This item is similar to

15 Item 5, and addresses the Controller's return of

16 reimbursement claims for the *School Crimes Reporting*

17 Program for the same fiscal year 2002-2003. And, again,

18 the program was identified in the Budget Act as being

19 suspended. But Government Code section 17581.5 did not

20 become effective until September 30th, 2002.

21 Staff recommends that the Commission adopt this

22 analysis and remand the reimbursement claims back to the

23 State Controller's office for further review and

24 reinstatement of the costs eligible for reimbursement

25 pursuant to the parameters and guidelines for the *School*

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1 *Crimes Reporting* Program that were adopted on
2 September 28th, 2000, for the limited time period from
3 July 1, 2002, through September 29th, 2002.

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

6 MR. PETERSEN: Keith Petersen, representing the
7 claimants.

8 MS. KANEMASU: Jill Kanemasu, State Controller.

9 MS. FEREBEE: Donna Ferebee, Department of
10 Finance.

11 MR. DEL CASTILLO: Lenin Del Castillo,
12 Department of Finance.

13 CHAIR BRYANT: Are there any comments?

14 MR. PETERSEN: We concur with the staff
15 recommendation.

16 MS. KANEMASU: We concur also.

17 CHAIR BRYANT: Department of Finance?

18 MS. FEREBEE: We have the same comments that we
19 made in the prior test claim; mainly, that the Budget Act
20 of September 5th accomplished the suspension. It was
21 clear in that it was suspending the program, and to adopt
22 any other time period would be to ignore that expression
23 by the Legislature in the Budget Act of September 5th.

24 CHAIR BRYANT: Camille, just a quick question.
25 If it said "Pursuant to section 1715.5 in the Budget

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1 Act," we'd be done, right?

2 CAMILLE SHELTON: Yes.

3 CHAIR BRYANT: Okay.

4 MR. PETERSEN: I'm sorry, we'd be done at
5 September 5th.

6 CAMILLE SHELTON: Well, we would be done, but
7 they would have to have enacted 17581.5 as well.

8 It's 17581.5 that relieves the duty. That's
9 the only statute that says, "You do not have to comply
10 with this." Otherwise, the budget, all that does is put
11 a zero-dollar appropriation to it.

12 CHAIR BRYANT: I thought that -- don't we, when
13 you have a zero-dollar appropriation, doesn't that
14 automatically suspend it?

15 CAMILLE SHELTON: Not -- no, when these
16 statutes were enacted, what they were trying to do --

17 CHAIR BRYANT: Right. Nowadays, we have a code
18 provision that's the effect.

19 CAMILLE SHELTON: Yes, in fact, you have to be
20 able to do that. You have to be able to have a statute
21 relieving them of that duty.

22 CHAIR BRYANT: Okay, thank you.

23 MS. HIGASHI: Let me just add one thing. There
24 is a significant difference between 17581 and 17581.5.

25 17581 is the generic section that refers to the

1 process for how a mandate is suspended.

2 17581.5 also requires that the name of the
3 program that is being suspended be amended into that
4 Government Code provision.

5 And so every year a budget is enacted, that
6 section needs to be amended if there are additional
7 programs that are being suspended. Otherwise, it's not
8 done correctly.

9 MS. FEREBEE: We don't disagree with that.
10 I think the fact is that 17581.5 didn't even exist yet.
11 And so you can't even look to it at the time of the
12 Budget Act of September 5th. And the Legislature doesn't
13 need to rely on another code section to do something.
14 It can do what it wants to do; and I think it did
15 effectuate the suspension there by appropriating zero and
16 by suspending the mandates.

17 CAMILLE SHELTON: And, again, it doesn't
18 suspend because it doesn't relieve them of the duty
19 unless you have a statute to relieve them of the duty.
20 And the statute that's cited expressly does not apply to
21 school districts.

22 MEMBER WORTHLEY: Move staff recommendation.

23 MEMBER OLSEN: Second.

24 CHAIR BRYANT: All those in favor?

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

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1 CHAIR BRYANT: Any abstained?

2 (No response)

3 CHAIR BRYANT: Okay. Moving on --

4 MS. HIGASHI: Item 8, the same subject,
5 Proposed Statement of Decision.

6 CAMILLE SHELTON: Staff recommends that the
7 Commission adopt the proposed Statement of Decision.

8 MEMBER OLSEN: So moved.

9 MEMBER COX: Second.

10 CHAIR BRYANT: All those in favor?

11 Public comment?

12 (No response)

13 CHAIR BRYANT: All those in favor?

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

15 MR. PETERSEN: Are we done?

16 MS. HIGASHI: We're done.

17 Item 9, the Proposed Parameters and Guidelines,
18 Chief Counsel Camille Shelton will present this item.

19 CAMILLE SHELTON: These are the parameters and
20 guidelines for the *Crime Statistics Reports* program.

21 This program requires county and city law-enforcement
22 agencies and district attorneys' offices to file

23 homicide, hate crimes, and firearm reports for the State

24 Department of Justice. The test-claim statute also

25 requires county and city law-enforcement agencies to

1 support domestic-violence calls for assistance with a
2 local written incident report.

3 An issue in dispute is the claimant's request
4 for reimbursement for a supervisor to review and edit the
5 crime reports provided to the state and also to review
6 and edit the local written incident reports on domestic
7 violence. The claimant filed two declarations from peace
8 officers to support these requests.

9 Based on the evidence in the record, staff
10 finds that verifying the information contained in the
11 homicide and hate-crime reports or to provide additional
12 information to the State when specifically requested by
13 the Department of Justice is reasonably necessary to
14 comply with the mandated program. However, reimbursement
15 is not required to review and edit every report filed
16 with the state.

17 Staff also finds that reviewing and editing the
18 local written incident report on domestic violence is
19 reasonably necessary to comply with the mandate to have a
20 local report because those reports are filed with the
21 court.

22 Staff recommends that the Commission adopt this
23 analysis and the claimants' proposed parameters and
24 guidelines, as modified by staff, beginning on page 19 of
25 your binders.

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

3 MS. GMUR: Juliana Gmur on behalf of the test
4 claimants.

5 CARLA SHELTON: Carla Shelton, Department of
6 Finance.

7 CHAIR BRYANT: Go ahead, Ms. Gmur.

8 MS. GMUR: Thank you.

9 Good morning, Commissioners. We'd like to
10 compliment staff on their fine analysis. And we concur
11 with it, and we ask that you adopt the P's & G's as they
12 are before you today.

13 Thank you.

14 CHAIR BRYANT: Ms. Shelton?

15 CARLA SHELTON: Finance has no concerns with
16 the staff analysis.

17 CHAIR BRYANT: Is there a motion -- is there a
18 public comment? Any other public comment?

19 *(No response)*

20 CHAIR BRYANT: Is there a motion?

21 MEMBER OLSEN: So moved.

22 MEMBER CHIVARO: Second.

23 CHAIR BRYANT: We have a motion and a second.

24 All those in favor?

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

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1 CHAIR BRYANT: Opposed?

2 (No response)

3 CHAIR BRYANT: Abstentions?

4 (No response)

5 MS. HIGASHI: Thank you.

6 Item 10 was adopted on consent.

7 Item 11, we have no action.

8 Item 12, staff report.

9 Ms. Patton will present this.

10 MS. PATTON: Good morning. As you know, the
11 Bureau of State Audits issued an audit report on the
12 mandates process on October 15th, 2009; our final report
13 to BSA to inform them of how we implemented their
14 recommendations as due on October 15th, 2010. The
15 Commission and staff have completed implementation of the
16 BSA recommendations, including issuing an annual report
17 to the director of Finance on workload levels. We issued
18 that, and it will provide Finance and the Legislature
19 with information to assess the Commission's resource
20 needs.

21 We've continued to eliminate the test-claim
22 backlog, completing 18 test claims in the last fiscal
23 year. And we have begun eliminating the IRC backlog. As
24 of today, 15 IRCs have been completed.

25 We adopted amendments to the Commission's

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1 regulations that will, among other things, encourage the
2 use of electronic filing. We've adopted the 49 sets of
3 boilerplate amendments to the parameters and guidelines.
4 And we are continuing to work with legislative staff and
5 local agency school representatives to develop a new
6 redetermination process.

7 Staff recommends that the Commission approve
8 the one-year report for implementing the audit report's
9 recommendation.

10 CHAIR BRYANT: Are there any questions of
11 Nancy?

12 *(No response)*

13 CHAIR BRYANT: Is that an action item?

14 MS. PATTON: Yes.

15 CHAIR BRYANT: I'm sorry.

16 Is there a motion?

17 MEMBER WORTHLEY: Move approval.

18 MEMBER OLSEN: Second.

19 CHAIR BRYANT: All those in favor?

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

21 MEMBER WORTHLEY: Public comment.

22 CHAIR BRYANT: Public comment? Seriously,
23 maybe I should just step down.

24 Do you want to take over, Rick?

25 Okay, any public comment?

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1 (No response)

2 CHAIR BRYANT: All right, all those in favor?

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

4 CHAIR BRYANT: Any opposed or abstentions?

5 (No response)

6 CHAIR BRYANT: Item 13.

7 MS. HIGASHI: Item 13, Ms. Patton?

8 MS. PATTON: This is our legislative update.

9 There is one bill remaining in this legislative
10 session that revises the mandates process, that's SB 894.
11 It's co-sponsored by the Commission. And it includes
12 information in statute that we will be required to report
13 to the Legislature in our annual reports on joint
14 proposals for reasonable reimbursement methodologies.
15 And that bill is still pending before the Governor.

16 CHAIR BRYANT: That requires no action?

17 MS. PATTON: Correct.

18 MS. HIGASHI: Correct.

19 CHAIR BRYANT: Item 14.

20 MS. HIGASHI: Item 14 is a pass as well. We
21 have no new updates on budget trailer bills, but we'll
22 keep this item on our agenda.

23 Item 15, Ms. Shelton?

24 CAMILLE SHELTON: As you can see from this
25 report, we do have a couple of hearings coming up, one on

1 November 19th on the *County of Santa Clara* case. And
2 that's a hearing on the demurrer and motion to strike.

3 The second hearing is December 10th, which is
4 scheduled on the *BIPS* lawsuit, *Department of Finance v.*
5 *Commission on State Mandates*.

6 I do have some informational update on those
7 cases of interest that we have been reporting. A
8 decision has been issued on September 21st on the *Clovis*
9 *Unified School District* case. And there, the Third
10 District Court of Appeal did find that the
11 contemporaneous source document rule as applied to four
12 particular school programs constituted an unenforceable
13 underground regulation. And they will issue, or have
14 directed the trial court to issue a peremptory writ of
15 mandate to invalidate the Controller's audits, only to
16 the extent that the audits were based on the
17 contemporaneous source document rule and only to the
18 extent that those audits fall within the applicable
19 statute of limitations.

20 Also, they found that the Controller's
21 application of offsets in the *Health Fee Elimination*
22 program were valid.

23 The second case that we've been reporting is
24 the *CSBA v. State* case. That one challenges the
25 Legislature's deferment of mandate reimbursement in the

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1 budget. I understand that briefing is complete in that,
2 so you should probably see an oral argument set this
3 year, I would imagine.

4 We do have one last case to report. I was just
5 made aware of a case filed by San Diego Unified School
6 District against the Controller. That one is challenging
7 audit reductions made by the Controller on a STAR
8 program. The Commission is not a party to that case.
9 And that one, the District alleges that the Controller
10 initiated the audit after the audit period lapsed. So
11 it will involve an interpretation of Government Code
12 17558.5.

13 And that's all I have.

14 CHAIR BRYANT: Are there any questions?

15 *(No response)*

16 CHAIR BRYANT: Okay, Item 16.

17 MS. HIGASHI: The only issue that I need your
18 help on is our favorite agenda item, the calendar. We
19 are recommending changes to the 2010 calendar. And the
20 calendar as it now stands has a tentative meeting date
21 on October 28th. And we were planning to meet on that
22 date; but we're recommending now that that meeting date
23 be canceled and that, instead, we add a meeting on
24 November 9th. The last meeting of the year would remain
25 on the same date: December 2nd.

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1 MEMBER WORTHLEY: Do you need a motion for
2 that?

3 MS. HIGASHI: Yes.

4 MEMBER WORTHLEY: I would move that we adopt
5 the recommended change to our calendar.

6 MEMBER COX: Second.

7 CHAIR BRYANT: All those in favor?

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

9 CHAIR BRYANT: Opposed?

10 *(No response)*

11 CHAIR BRYANT: Abstentions?

12 *(No response)*

13 CHAIR BRYANT: Okay.

14 MS. HIGASHI: Thank you.

15 And then I also need you to adopt a calendar
16 for 2011.

17 I have a couple of comments I just wanted to
18 make. I had received one e-mail regarding this proposed
19 calendar. One was calling to our attention that May 26th
20 is the Thursday before Memorial Day weekend, which, for
21 some people, might be a problem; and the other is that
22 September 29th is Rosh Hashanah.

23 So what I would propose doing is leaving
24 May 26th and if people have vacations, you know, we have
25 our policy of dealing with requests for changes of

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1 hearing dates, whatever, or extensions of time. And I
2 would propose making September 29th a tentative date, and
3 then making October 27th an actual hearing date, meeting
4 date instead.

5 CHAIR BRYANT: I would really recommend that
6 you start meeting weekly next year.

7 MEMBER WORTHLEY: Oh, no. You can get somebody
8 else for this job.

9 MR. BURDICK: Are you coming back?

10 CHAIR BRYANT: Just kidding.

11 MS. HIGASHI: Since I have other plans, I
12 really don't have any other --

13 CHAIR BRYANT: Once a week, we get together and
14 laugh about the weekly meetings.

15 MS. HIGASHI: So we think it's best that the
16 Commission adopt a meeting calendar because even though
17 there will be a change of administration, it's important
18 that we get the calendar dates in.

19 It's also possible that if their appointments
20 have not been made or if there are new budget issues with
21 the new director of Finance, that on some of the
22 post-election years we've not met in January, but the
23 first meeting has been either February or in March. But
24 certainly by March, typically, the Commission has met and
25 reformed and had its elections. So I just wanted to note

1 that.

2 MEMBER OLSEN: Paula, can I ask for a
3 clarification?

4 You said, keep the May -- your recommendation
5 was to keep the May 26th, eliminate the September 29th,
6 and make October --

7 MEMBER WORTHLEY: Make it tentative.

8 MS. HIGASHI: Make it tentative.

9 MEMBER OLSEN: Make it tentative.

10 But make the October 27th one firm?

11 MS. HIGASHI: Right.

12 MEMBER OLSEN: Okay.

13 MEMBER COX: And then I just would encourage
14 the Commission to -- like, May 26th or so, look to see
15 what kind of workload you have for September 29th. I
16 think the fact that it is on a holiday needs to be taken
17 into consideration, even if it's tentative.

18 MS. HIGASHI: Right. And typically, we have
19 not met on those tentative dates but we have marked them
20 on our calendars, anyway. But because of vacation
21 schedules and whatnot, when you count back eight or ten
22 weeks from that meeting date, production sometimes hits a
23 drop because of those schedules.

24 MEMBER COX: Yes, so if you evaluate it in the
25 spring, you'll be able to see whether you need to move

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1 the September 29th date to a different date.

2 CHAIR BRYANT: It would be tentative, so it
3 probably wouldn't happen.

4 MEMBER COX: I hear that, but based upon the --

5 MS. HIGASHI: Right. But what we can do is,
6 I'll suggest that this be on the first agenda that the
7 calendar be reviewed next year.

8 CHAIR BRYANT: Do we need to approve that?

9 MS. HIGASHI: Because then we can at least get
10 the dates calendared.

11 MEMBER OLSEN: I'll move the calendar as
12 changed just now.

13 CHAIR BRYANT: Is there a second?

14 MEMBER COX: Second.

15 CHAIR BRYANT: *All in favor?*

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

17 CHAIR BRYANT: Any opposed?

18 *(No response)*

19 MS. HIGASHI: Thank you very much.

20 And at the bottom of page 3, is a list of
21 agenda items for future meetings. And basically what
22 we've done is identified everything that we are now
23 currently working on and hope to have scheduled.

24 And lastly, we've given you a copy of the
25 report on workload levels and backlog, which we've

1 submitted to the Department of Finance, as required by
2 last year's Budget Act.

3 And so for those of you who will still be here
4 next year, you can see what's coming your way. There's
5 still a lot of work.

6 And with that, I have nothing else to add.

7 If there are any questions?

8 CHAIR BRYANT: No.

9 Any other questions for Paula?

10 *(No response)*

11 CHAIR BRYANT: All right, is there any public
12 comment?

13 MR. BURDICK: I was thinking what I want to add
14 is that some of you -- hopefully as few as possible -- of
15 you that won't be back next year. But that one of the
16 things to think about maybe in the next few months is
17 whether or not it would make sense for you to develop
18 some proposed reforms to the system for the new director
19 of Finance if they continue to be -- and the
20 administration coming into this process, for those of you
21 that have been on this for a long period of time and
22 understands some of the weaknesses and the needs for
23 reform and some of the things that were led by the
24 Commission in the past which were set aside by the
25 Legislature, is to give some thought within these next

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1 few months, you might put a little something, departing
2 memo, together for the new administration and new
3 Legislature to consider in terms of making some fixes to
4 this process.

5 So with that, I just thought maybe we would
6 raise that as a possible suggestion.

7 I don't know what the members think, if there's
8 enough time and effort to do that. But I think it would
9 be helpful to those new to the new Legislature and the
10 new Governor to have some specific possibly statutory
11 changes that they could consider when they come back for
12 their first meeting.

13 Thank you.

14 CHAIR BRYANT: Thank you.

15 Any other public comment?

16 *(No response)*

17 CHAIR BRYANT: Okay, then without any other
18 further business, I'll entertain a motion to adjourn.

19 MEMBER CHIVARO: So moved.

20 CHAIR BRYANT: Is there a second?

21 MEMBER OLSEN: I second.

22 CHAIR BRYANT: This meeting is adjourned.

23 Thank you.

24 *(The meeting concluded at 12:00 noon.)*

25 --oOo--

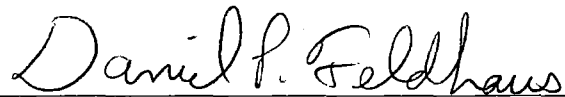
REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on October 22nd, 2010.



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