

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447
Sacramento, California
December 2, 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
Member Paul Glaab
City Council Member

I. CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 9:38 a.m. Executive Director Paula Higashi called the roll. Member Chivaro was absent.

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 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, subdivision (a)(1), to appoint the new Executive Director and Interim Executive Director pursuant to Government Code section 17530.

Member Chivaro entered the hearing room.

II. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126 (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, subdivision (e)(1)(2)(A):

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. *Cross Petition Filed: County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region, 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]*
6. *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]*

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 (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126, subdivision (a)(1), to appoint the new Executive Director and Interim Executive Director pursuant to Government Code section 17530.

III. REPORT FROM CLOSED EXECUTIVE SESSION

At 10:17 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 published notice and agenda; and to confer with and receive advice from legal counsel regarding potential

litigation; to confer on personnel matters pursuant to Government Code section 11126, subdivision (a)(1), to appoint the new Executive Director and interim Executive Director pursuant to Government Code section 17530.

Chairperson Bryant congratulated Members Worthley, Olsen, and Glaab on their recent reappointments to the Commission and Member Worthley on his reelection as Tulare County Supervisor, representing the Fourth District.

IV. APPROVAL OF MINUTES

Item 1 November 9, 2010

The November 9, 2010 hearing minutes were adopted by a vote of 7-0, on a motion by Member Chivaro and second by Member Glaab.

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

Item 2 *Appeal of Executive Director's Decision to Deny the County of Santa Clara's Request for an Expedited Hearing on its Incorrect Reduction Claim: Handicapped and Disabled Students, 09-4282I-05*
County of Santa Clara, Appellant

Chief Counsel Camille Shelton presented this item. Ms. Shelton stated that this is an appeal of the Executive Director's decision that denies a request by the County of Santa Clara to expedite the hearing on its incorrect reduction claim which was originally filed April 13, 2010.

The incorrect reduction claim challenges the Controller's reduction of mental health rehabilitation costs for fiscal years 2003-2004 through 2005-2006 under the Handicapped and Disabled Students program.

Staff recommends that the Commission uphold the Executive Director's decision to deny the County's request for an expedited hearing. The County has not submitted evidence to justify prioritizing its claim over old or pending incorrect reduction claims.

Furthermore, as discussed in prior commission meetings, the analysis for this item contains a plan for addressing the incorrect reduction claims that remain pending.

Consistent with the Commission's practice and under the new regulations adopted in September, and operative January 1, 2011, the County's incorrect reduction claim on Handicapped and Disabled Students will be noticed for hearing when the draft staff analysis is issued.

Parties were represented as follows: Patrick Premo, Fenwick and West, representing the County of Santa Clara, and Jenny Yelin with the County of Santa Clara.

Mr. Premo stated that the IRC involves \$8 million that pays for critical federal and state rehabilitation services for extremely needy members of the local community. These services are for children who are severely emotionally disturbed; who have been exposed to drugs in utero; who have suffered major abuse. The services that are being provided are in-home services that are helping these children get educational benefits that they would not otherwise obtain.

According to Mr. Premo, the County is in a very difficult and untenable position because it must decide whether to continue funding this program or wait and possibly violate the state and federal mandate to provide these services. The County is willing to go through the incorrect reduction claim (IRC) process, and has attempted to comply with that process and to expedite it. But due to the backlog of claims there is an indefinite delay.

Mr. Premo stated that the County has reviewed the appeal of its request for an expedited hearing and noticed dates that said that optimistically, the hearing could be September 2012. Mr. Premo went on to state that he thinks it would be just speculation that the incorrect reduction claim could be decided in that time frame. And he believes that the decision about the funding needs to take place soon.

As part of the appeal, the county was asked what was unique about their situation that should be handled differently from other claims. Mr. Premo stated that he believed that the county's situation was unique, because the expenditure is ongoing and "extremely sizable." Additionally, because of the benefits that are at issue and the possibility of being in violation of this federal and state mandate if the funding is not continued, there is an urgency here that he believes requires this to be on an expedited process.

Member Worthley stated that although he was sympathetic to the plight of the county, the Commission has a large backlog of claims and that all claimants likely view their claims as critical. Additionally, he pointed out that there is no procedure in place to "leapfrog" one claim over another, although the Commission has discussed some policy changes that may allow for headway to be made in the backlog. He noted that the county was, effectively, looking for declaratory relief and that the Commission could not offer that remedy.

Mr. Premo pointed out that the Bureau of State Audits addressed the claim backlog and recommended that IRCs be prioritized.

Member Worthley repeated that the Commission would need to make policy changes before any sort of claim prioritization could occur, and he noted that the rights of other claimants before the Commission must be respected.

Ms. Shelton noted that many IRCs include reductions for ongoing costs. All mandated programs provide a service to the public which the Legislature felt was important enough to enact and therefore, it is difficult for the Commission to say one is more important than another.

Mr. Premo acknowledged that Santa Cara's claim was not the only claim that has ongoing expenditures, and stated that all such claims should be prioritized based on the impact of the amount. He pointed out that the way the claims are prioritized by age will not effectively address the backlog. If this urgent matter cannot be expedited then, at minimum, the September 2012 date needs to be made a certain date.

Ms. Shelton clarified that the way the Commission must comply with the BSA recommendation to prioritize the workload efficiently and as expeditiously as possible, is to batch the claims by program because there are usually multiple incorrect reduction claims filed over the years on each program. She stated that she is hopeful that the same procedure the Commission is discussing using for Investment Reports can be used for other programs without having to go through a full hearing process. The problem with the County's claim, is that the program that it is filed on is relatively new and the county's issue of rehabilitation costs is an isolated claim.

Therefore, the Commission's decision won't have any effect on any of the other claims pending. Chairperson Bryant warned that prioritizing by dollar value might not be the best method since county budgets vary widely in size.

Member Glaab echoed Member Worthley's sentiment that the Commission is very sensitive to prioritizing claims. He suggested that the Commission should look into a way to prioritize claims based on set criteria.

Ms. Higashi suggested that if the commission wants to address claim prioritization it should place the matter on the agenda for another meeting because that is not the topic currently before them.

Chairperson Bryant agreed and suggested that the members also consider whether working on prioritization criteria might keep staff from actually doing the work itself.

Ms. Shelton pointed out that the Commission's regulations do provide for an informal conference procedure which would be available to discuss these issues with all interested parties.

Mr. Premo reiterated the county's position that claims should be prioritized based on the "real impact" that the claim has on the members of the community rather than on the age of the claim.

Ms. Shelton highlighted the fact that there are currently other lawsuits pending on programs that deal with what is going to happen next to the county and the program. The governor's decision to blue pencil the appropriation for the Handicapped and Disabled Students program and declare it suspended created an issue as to the rights and responsibilities of the state, the Department of Education, the school districts, and the counties as to who was going to provide those services.

With a motion by Member Olsen, and a second from Member Cox, the staff recommendation to deny the appeal was adopted by a vote of 7-0.

Item 3 Appeals of Executive Director's Decisions regarding this month's agenda items. (Placeholder item)

Ms. Higashi indicated that there were no other appeals under Item 3.

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

PROPOSED PARAMETERS AND GUIDELINES

Item 4 *Comprehensive School Safety Plans II*
Draft Proposed Parameters and Guidelines
02-TC-33, from January 1, 2002 through June 30, 2009
07-TC-11, from January 1, 2005 through June 30, 2009
and
Comprehensive School Safety Plans I and II
Draft Proposed Consolidated Parameters and Guidelines
98-TC-01, 99-TC-10, 02-TC-33, 07-TC-11
Beginning Fiscal Year 2009-2010
Education Code Sections 32281, 32282, 32286, and 32288
Statutes 1997, Chapter 736; Statutes 1999, Chapter 996;
Statutes 2001, Chapter 890; Statutes 2002, Chapter 506;
Statutes 2004, Chapter 895
Bakersfield City School District, Sweetwater Union High School District,
and San Diego Unified School District Claimants

Ms. Shelton presented Item 4, stating that this item includes the proposed parameters and guidelines for the initial year's cost for *Comprehensive School Safety Plans II* and proposed consolidated parameters and guidelines for *Comprehensive School Safety Plans I and II* for costs incurred beginning July 1, 2009. She confirmed that the Commission received and responded to comments on the draft staff analysis and proposed parameters and guidelines from the State Controller's Office.

Staff recommended that the Commission adopt the proposed parameters and guidelines for *Comprehensive School Safety Plans II*, test claim number 02-TC-33, for reimbursement from January 1, 2002 through June 30, 2009; to adopt the Proposed Parameters and Guidelines for *Comprehensive School Safety Plans* for the amendment in 07-TC-11 for reimbursement from January 1, 2005, through June 30th, 2009; and to adopt the proposed consolidated parameters and

guidelines for *Comprehensive School Safety Plans I* and *Comprehensive School Safety Plans II* for costs incurred beginning July 1, 2009. She also recommended that the Commission authorize staff to make any non-substantive and technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing test claimant, and Jill Kanemasu, State Controller's Office.

Mr. Petersen stated that he had no objections. Ms. Kanemasu stated that once the changes requested by the State Controller were made, the Controller's Office concurs with the proposed parameters and guidelines.

With a motion by Member Glaab, and a second by Member Worthley, the staff recommendation to adopt the parameters and guidelines was approved by a vote of 7-0.

VII. STAFF REPORTS

Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

Note: This item will only be taken up if an application is filed.

Ms. Higashi announced that there was nothing to report on Item 5.

Item 6 Update on 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 Item 6. She explained that in September 2010, the Commission submitted its final report on the implementation of the 2009 BSA audit. BSA has responded that the Commission has not fully implemented Recommendation 1: to work with the Department of Finance to seek additional resources to reduce backlog. BSA required the Commission to submit a form, explaining why the recommendation is not being implemented and whether we plan to fully implement it. The Commission did not implement this recommendation because we could not meet the criteria for filing a budget change proposal. However, we will continue to seek additional resources. Ms. Patton recommended the Commission approve the report for submission next week.

Member Cox commented that the form for BSA should include the exact language from the Department of Finance to explain why no BCP was filed.

Member Olsen commented that there needs to be some sort of exception for small organizations because there is no way that a small organization, a single purpose organization, can meet the requirements for the BCP proposal.

Member Worthley moved to approve the staff recommendation with the caveat that it include Member Cox's suggestion. The motion was approved unanimously (7-0)

Item 7 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Camille Shelton presented Item 7. She stated that there were only two things to report. First, the court sustained the demurrer of the Commission and the State Controller in the *County of Santa Clara* case. The County of Santa Clara has leave to amend on or before December 17, 2010. Second, Ms. Shelton pointed out that in the *California School Boards Association v. Schwarzenegger*, the court has now listed the Commission as a respondent and so the case will be put on the closed-session litigation report now.

Item 8 Executive Director's Report

Ms. Higashi indicated that since she was retiring, this was her last Executive Director report. She noted that the Commission's emergency regulations on the mandate redetermination process have been filed and are in effect. She recognized Heather Halsey, Heidi Palchik, Nancy Patton, and Camille Shelton for the work that they did on the regulations and thanked them for meeting the timelines.

Ms. Higashi pointed out that she was not reporting on the budget. She stated that there have been letters sent asking the Commission to identify further cuts but the Commission is still in discussions with Finance to determine what the cuts will be. The Commission has until December 23 to identify what the cuts will be.

According to Ms. Higashi, the Commission received the State Controller's AB 3000 report which was included in the members' binders. The reports are also available online.

Ms. Higashi stated that there is a laundry list of tentative agenda items for the coming year on the following pages. The only one that needs to be removed from the list is *Comprehensive School Safety Plans* because the Commission just heard that one. She stated that most of the cases on the list are works in progress.

VIII. PUBLIC COMMENT

Chairperson Bryant opened public comment and read the report from closed-executive session which stated:

"The Commission on State Mandates appointed Drew Bohan as the Executive Director. Drew is currently the assistant secretary for climate change programs at the California Natural Resources Agency, and he has previously held the following positions: chief counsel, California Department of Conservation; executive policy officer for the California Ocean Protection Council; deputy cabinet secretary in the Office of the Governor; assistant secretary for Policy at the California Environmental Agency; and executive director of Santa Barbara Channelkeeper."

Additionally, Chairperson Bryant announced that the Commission also appointed Nancy Patton as interim Executive Director from December 17 until the date on which Drew Bohan assumes the Executive Director position.

Chairperson Bryant congratulated Mr. Bohan on his new position. She commented that she and Member Cox have both worked with Mr. Bohan in the past and agree that he will be terrific at the Commission. She also thanked Nancy for her continued stewardship of the Commission.

Ms. Patton presented a resolution to Ms. Higashi that gave an overview of Ms. Higashi's 35-year career with the state and that honored her upon her retirement and thanked her for her dedicated service to the state. Chairperson Bryant opened the floor to additional public comment.

Mr. Allen Burdick thanked Ms. Higashi on behalf of local government. He commented that they felt that they had been treated fairly by her during her tenure as Executive Director. He also thanked her for all of her work to try to bring about reforms in the mandate filing process. He stated that local government representatives have enjoyed working with her and have appreciated her help.

Chairperson Bryant also announced that after four years serving on the Commission, this would be her last meeting as well. She thanked the Commission staff, the Department of Finance staff and the OPR staff.

IX. ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 12:17 p.m.

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a stylized flourish at the end.

Drew Bohan
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:30 a.m.
DATE: Thursday, December 2, 2010
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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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

PAUL GLAAB
City Council Member
City of Laguna Niguel

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
(Item 8)

NANCY PATTON
Assistant Executive Director
(Item 6)

CAMILLE SHELTON
Chief Legal Counsel
(Items 2, 4, and 7)

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 2

For County of Santa Clara:

PATRICK E. PREMO
Fenwick & West, LLP
801 California Street
Mountain View, California 94041

JENNY S. YELIN
County of Santa Clara
Office of County Counsel
70 West Hedding Street
East Wing, Ninth Floor
San Jose, California 95110-1770

Appearing Re Item 4 (Comprehensive School Safety Plan II)

For Bakersfield City School District, Sweetwater Union
High School District, and San Diego Unified School
District:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Public Comment

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



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1 BE IT REMEMBERED that on Thursday, December 2,
2 2010, commencing at the hour of 9:38 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:



7 *(The following proceedings commenced with*
8 *Mr. Chivaro absent from the hearing room.)*

9 CHAIR BRYANT: I will call the meeting of the
10 Commission on State Mandates to order.

11 Paula, will you call the roll?

12 MS. HIGASHI: Mr. Chivaro is absent.

13 Mr. Glaab?

14 MEMBER GLAAB: Present.

15 MS. HIGASHI: Ms. Cox?

16 MEMBER COX: Here.

17 MS. HIGASHI: Mr. Lujano?

18 MEMBER LUJANO: Present.

19 MS. HIGASHI: Ms. Olsen?

20 MEMBER OLSEN: Here.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: Ms. Bryant?

24 CHAIR BRYANT: Present.

25 The Commission will meet in closed executive

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1 session pursuant to Government Code section 11126,
2 subdivision (e), to confer with and receive advice from
3 legal counsel for consideration and action, as necessary
4 and appropriate, upon the pending litigation listed on
5 the published notice and agenda; and to confer with and
6 receive advice from legal counsel regarding potential
7 litigation; and to confer on personnel matters pursuant
8 to Government Code section 11126, subdivision (a)(1), to
9 appoint the new Executive Director and Interim Executive
10 Director pursuant to Government Code section 17530.

11 *(Mr. Chivaro entered the hearing room.)*

12 MEMBER CHIVARO: Here.

13 CHAIR BRYANT: We will convene in open session
14 in approximately 30 minutes.

15 And for the record, note Mr. Chivaro just
16 walked in.

17 MEMBER OLSEN: And the "heres" have it.

18 CHAIR BRYANT: Did he say "here"?

19 And the "heres" have it.

20 *(The Commission met in closed executive
21 session from 9:39 a.m. to 10:16 a.m.)*

22 *(The gavel was sounded.)*

23 CHAIR BRYANT: The Commission met in closed
24 executive session pursuant to Government Code section
25 11126, subdivision (e), to confer with and receive advice

Commission on State Mandates – December 2, 2010

1 from legal counsel for consideration and action, as
2 necessary and appropriate, upon the pending litigation
3 listed on the published notice and agenda; and to confer
4 with and receive advice from legal counsel regarding
5 potential litigation; to confer on personnel matters
6 pursuant to Government Code section 11126, subdivision
7 (a)(1), to appoint the new Executive Director and interim
8 Executive Director pursuant to Government Code section
9 17530.

10 The Commission will now reconvene in open
11 session.

12 And before we get started on the main agenda,
13 I really wanted to congratulate our colleagues, Steve
14 Worthley, Sarah Olsen, and Paul Glaab on their recent
15 reappointments to the Commission, and also to Supervisor
16 Worthley on his reelection.

17 So we're glad they're still here.

18 *(Applause)*

19 CHAIR BRYANT: Paula?

20 MS. HIGASHI: The first item is approval of the
21 proposed minutes from the November meeting.

22 CHAIR BRYANT: Is there a motion?

23 MEMBER CHIVARO: Move approval.

24 MEMBER GLAAB: Second.

25 CHAIR BRYANT: I should ask if there's any

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1 corrections or changes?

2 (No response)

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

4 Is there any public comment?

5 (No response)

6 CHAIR BRYANT: All those in favor?

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

8 CHAIR BRYANT: Any opposition or abstentions?

9 (No response)

10 CHAIR BRYANT: The motion has passed.

11 MS. HIGASHI: Thank you.

12 This brings us to Item 2. Chief Counsel
13 Camille Shelton will present it. It's the appeal of the
14 Executive Director's decision to deny the County of
15 Santa Clara's request for an expedited hearing on its
16 incorrect-reduction claim.

17 MS. SHELTON: This is an appeal of the
18 Executive Director's decision that denies a request by
19 the County of Santa Clara to expedite the hearing on its
20 incorrect-reduction claim which was originally filed
21 April 13th, 2010.

22 The incorrect-reduction claim challenges the
23 Controller's reduction of mental-health rehabilitation
24 costs for fiscal years 2003-2004 through 2005-2006 under
25 the *Handicapped and Disabled Students* program.

Commission on State Mandates – December 2, 2010

1 Staff recommends that the Commission uphold the
2 Executive Director's decision to deny the County's
3 request for an expedited hearing. The County has not
4 submitted evidence to justify prioritizing its claim over
5 old or pending incorrect-reduction claims.

6 Furthermore, as discussed in prior commission
7 meetings, the analysis for this item contains a plan for
8 addressing the incorrect-reduction claims that remain
9 pending.

10 Consistent with the Commission's practice and
11 under the new regulations adopted in September, and
12 operative January 1st, 2011, the County's incorrect-
13 reduction claim on *Handicapped and Disabled Students* will
14 be noticed for hearing when the draft staff analysis is
15 issued.

16 Will the parties please state your names for
17 the record?

18 MR. PREMO: Patrick Premo, Fenwick & West, for
19 the County of Santa Clara.

20 Ms. YELIN: Jenny Yelin from the County of
21 Santa Clara.

22 CHAIR BRYANT: Okay, Mr. Premo?

23 MR. PREMO: Good morning, and thank you for
24 your time today.

25 I'm here representing the County on our appeal

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1 for a request for an expedited hearing.

2 As the Commission knows, there is \$8 million
3 that has been challenged here; and funding on critical
4 services for extremely needy members of our local
5 community. These are rehabilitation services that are
6 federally mandated and state mandated. They are for
7 children who are severely emotionally disturbed, children
8 who have been exposed to drugs in utero, who have had
9 tales of major abuse. And the services that are being
10 provided are in-home services that are helping these
11 children get educational benefits that they would not
12 otherwise obtain.

13 Right now, the County is in a very difficult
14 and, frankly, untenable position because with this
15 current uncertainty about this \$8 million, they have to
16 decide whether to continue funding this or to wait and
17 possibly violate the state and federal mandate to provide
18 these services.

19 The County is more than willing to go through
20 the IRC process, and has attempted to do everything in
21 its power to comply with that process and expedite it.
22 But, unfortunately, as the Commission is well aware,
23 there is this huge backlog; and that backlog,
24 realistically, is going to mean that there is this
25 indefinite delay.

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1 And so we have certainly reviewed the appeal of
2 our request for an expedited hearing. And we noticed
3 that there are some dates in there that optimistically,
4 the hearing could be September of 2012. But, again, it
5 says "optimistically." It doesn't give any guarantees.
6 And at this point, I think it would be just speculation
7 that, in fact, this can be decided in that time frame.
8 And the decision about the funding needs to be happening
9 at this point.

10 So as part of the appeal, there was a question
11 as to whether or not there was any -- what is the
12 prejudice that the County is feeling, why -- what is
13 unique about this situation that should be handled
14 differently from the very large backlog?

15 And I think the fact that there is the benefits
16 at issue, I think makes this a very unique situation; and
17 it is something that needs to be addressed immediately.
18 Because this isn't a one-time expenditure or
19 reimbursement that we're talking about, but an ongoing
20 one and an extremely sizable one.

21 And so because of the benefits that are at
22 issue, the possibility of being in violation of this
23 federal and state mandate if the funding is not
24 continued, there is an urgency here that I think requires
25 this to be on an expedited process.

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1 If there are any further questions that I can
2 address.

3 CHAIR BRYANT: Did you have anything to add to
4 that?

5 MS. YELIN: No.

6 CHAIR BRYANT: Okay, are there any questions
7 from commissioners?

8 MEMBER WORTHLEY: Madam Chair, I'm very
9 sympathetic with the plight; but I just have difficulty
10 trying to figure out how we get from Point A to Point B.

11 Everyone's claim is always important to them,
12 so we have all these backlogged claims. Their claims, to
13 them, seems as critical to them, I'm sure, in many cases
14 as yours is to you. And we have no procedure whereby we
15 can leapfrog over the top of those other ones.

16 We have discussed some policy changes that may
17 allow us to actually make headway on these, where we've
18 been thwarted in the past. And so we are somewhat
19 hopeful that we can move forward on this backlog so it's
20 not pure speculation on our part to try to advance these.

21 But I certainly can understand and am
22 sympathetic with the concerns of the County because
23 you're looking for declaratory relief, really. Are we
24 going to be able to -- are we providing more service than
25 we need to? Can we do some things that would modify our

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1 costs and operations? And that's really what you're
2 trying to find out.

3 But, unfortunately, I don't know how we can
4 resolve your problem before the Commission today.

5 MR. PREMO: Well, I think when the Bureau of
6 State Audits addressed the backlog, it did recommend that
7 these claims be prioritized. And I'm not aware of
8 anything that would prevent one claim being addressed on
9 an expedited basis over another.

10 I suppose it's leapfrogging over some. The way
11 I view it, as just simply prioritizing the ones that have
12 the biggest need, that are most urgent.

13 MEMBER WORTHLEY: Well, I think you make a good
14 point -- excuse me, Madam Chair, if I could quickly jump
15 in.

16 Again, I think it might take -- we might need
17 to adopt some changes in our own policies. But the idea
18 that something is an ongoing expense versus a one-time
19 expense is a very compelling argument. So if you've got
20 a one-time expense and you're waiting to get your claim
21 adjudicated in, that's understandable, but it's not going
22 to change.

23 But if you've got ongoing expenses of an
24 extremely expensive amount of money, then -- you know, a
25 large amount of money, then that would be the kind of

1 argument that could be made for prioritizing. But as we
2 stand right today, I don't believe the policy is in place
3 before this Commission to make that kind of a
4 determination. And I know there's some issue in terms
5 of -- counsel, I think, perhaps some issues in terms of
6 other folks' rights before the Commission for us to make
7 that change midstream. I'm not sure.

8 MS. SHELTON: That could be an issue, if we
9 don't have anybody here to testify with regard to their
10 claims.

11 I just will note that many IRCs include
12 reductions for ongoing costs. The difficulty is that all
13 mandated programs provide a service to the public. And
14 so, obviously, the Legislature felt that all those
15 programs were important and provide -- or were enacted
16 for public-policy reasons. So it's difficult from the
17 Commission's standpoint to say one is more important than
18 another one. That's where the difficulty lies.

19 MR. PREMO: I agree that not all of them are
20 one-time expenditures. There are some that are. And I
21 think those should be treated differently.

22 I also think that there are some that the
23 amount at stake is a big difference. And so the impact
24 of this requires that there would be a different
25 prioritization as a result.

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1 The plan that was suggested in the appeal
2 process is a four-point plan. And one of the points is
3 to take them and the date when they were ordered and they
4 were filed.

5 So it suggests that it's going to be the oldest
6 one will go first, and that there is no additional
7 criteria that will be applied.

8 Whether it's of precedential value, we don't
9 necessarily agree with that part of the analysis, too.
10 But it does seem like the plan that's in place isn't
11 going to effectively address the backlog, with all due
12 respect.

13 I think we all appreciate that there's a lot of
14 important issues at stake and there's limited resources,
15 and everyone is doing the best they can to address the
16 backlog.

17 But because of the urgency of these services,
18 I do think that a change in the policy needs to -- should
19 be addressed at this time, and see what can be done to
20 add that to this plan, to address the backlog.

21 And in addition to that, I think, at a minimum,
22 the September 2012 date, if that could be something that
23 could be really a certain date as opposed to something
24 that's just optimistic, that would be something I think
25 would go a long way in order to know that there is a

1 definitely ending point in which this will be resolved.
2 Because at the rate it's been going and in the order that
3 we have filed our IRC, it's a hundred years into it now.
4 That may be an overstatement, and we appreciate that.
5 But if we did even a quarter of that, 25 years is a long
6 time. And again, I think we have to look at the
7 historical background to predict what's going to happen
8 as the best predictor of what will happen in the future.

9 MS. SHELTON: Can I just clarify the plan that
10 has been suggested? And we've talked about this at many
11 hearings in the past; it's not new.

12 But the way we have, you know, to comply with
13 the BSA recommendation to do this -- prioritize our work
14 efficiently and expeditiously as possible, it's not
15 taking them, doing each incorrect-reduction claim
16 chronologically. I mean, we're not doing the oldest one
17 first and then going to the next one. We're doing it by
18 program, so that the first -- the oldest program on file,
19 for example, is Mandate Reimbursement Process.

20 The next oldest one on file is Emergency
21 Procedures Act -- is that right, Emergency Procedures
22 Act?

23 MS. PATTON: *(Nodding head.)*

24 MS. SHELTON: And then the next oldest one
25 after that, is whatever program. And there are multiple

1 incorrect-reduction claims filed on that program, that
2 have been filed over a number of years.

3 So those are taken out of order and brought up
4 so that they can be addressed, and maybe using the same
5 type of procedure that the Commission is discussing right
6 now with parties on the *Investment Reports* program, to
7 see if we can work that out without having to go through
8 a full hearing process.

9 The difficulty, again, here is that there are
10 only four incorrect-reduction claims on the *Handicapped*
11 program.

12 The County's claim -- and those programs, I
13 think the oldest one was filed just two years ago. And
14 those issues mainly deal with -- on the other claims deal
15 with medication monitoring.

16 And I believe the County's issue is
17 rehabilitation costs, which seems to be different. So,
18 you know, it is an isolated claim that the Commission's
19 decision won't really at this point have an effect on any
20 of the other claims pending, although we recognize the
21 effect on the County for sure.

22 And that's the difficulty in handling the
23 workload.

24 CHAIR BRYANT: Any other questions or comments
25 from the Commission?

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1 (No response)

2 CHAIR BRYANT: I just would add to -- just a
3 caution, I would say that in terms of recommending to the
4 Commission that a look at dollar values, that, you know,
5 \$8 million to Santa Clara County would be like \$8,000 to
6 Modoc County. So I'm not sure that's the greatest
7 technique to think about how to put them into priority
8 order.

9 Any other comments?

10 Paul?

11 MEMBER GLAAB: Yes, thank you, Madam Chairman
12 and Members.

13 I just want to kind of echo what Commissioner
14 Worthley said, is that this body is very sensitive, I
15 think, to priorities. And certainly you've made the case
16 with regards to the children. Those are very difficult
17 cases. I happen to know some of them, and they're
18 really, really tough.

19 But I don't think that we have the right to
20 say, "Okay, let's pull yours up quicker and closer, and
21 we'll do that." Because what happens there is, you might
22 deal with a lot of lawsuits because as has been stated
23 from the dais here, everybody sees their case as being
24 extremely important.

25 Having said that, I do believe that it would

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1 not be a waste of our time for us to look at how we could
2 do that.

3 It might turn out that we can't, and that
4 there's no criteria by which we could arrive at; but I
5 would certainly entertain at least a discussion on that
6 by the body because there are some things that are very
7 hot topics and need to be moved ahead.

8 So within that context, assuming that we can,
9 I think we should look at it in hopes of maybe coming up
10 with a way to move that 2012 date.

11 Thank you.

12 MS. HIGASHI: I just wanted to quickly respond
13 to Mr. Glaab's comment. And I would suggest that if the
14 Commission does want to do that, that it be agenda'd for
15 another meeting because that's not the topic that's
16 before us today.

17 CHAIR BRYANT: Right. Definitely.

18 And also consider whether or not working on a
19 system to create a priority list -- a change in priority
20 list takes staff away from actually doing the work on the
21 IRCs, too, as well, so...

22 MEMBER WORTHLEY: Just real quick. I think
23 that part -- I see that could be part of the
24 comprehensive approach we're trying to take right now to
25 deal with the IRCs, that this prioritization issue might

1 be something we would want to include as a part of that
2 process.

3 And I agree, you know, as our Chairman has
4 said, you can't just use the dollar amounts because it
5 will vary between the size of counties and so forth. But
6 there are other criteria, I think, that certainly will
7 fit, that we could look at to say, you know, "This is of
8 such significance to local governments" -- let's say
9 statewide or whatever -- "of high significance, that it
10 would have some sort of priority over something."

11 And, again, I think the concept of one-time
12 events versus multiple -- you know, ongoing expenses is a
13 good one. Looking for types of criteria that would make
14 sense to deal with issues that are of great importance,
15 I know, I think in our own personal life, sometimes we've
16 got this backlog of things we do. But at some point, to
17 say, "I've got to just take this thing and do it, and
18 then I'll get to the other things in due course."

19 MS. SHELTON: One thing that we do encourage
20 the parties in cases, maybe like this or in future cases,
21 is that the Commission's regulations do provide for an
22 informal conference procedure which would be available to
23 discuss those issues with all interested parties.

24 So using this case as a possible example, if
25 the County wanted to, you know, call an informal

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1 conference with the Executive Director, the director
2 would notice that and maybe work on these issues with all
3 interested parties. And then, you know, to have a
4 consensus-building and prioritizing claims would be much
5 better than having it, you know, maybe presented kind of
6 openly to the Commission without having any discussion
7 with other parties. It's more helpful that way. And
8 that's the purpose of that regulation and that process,
9 to have that.

10 So that's also available for use.

11 CHAIR BRYANT: Okay, any other comments?

12 Is there -- did you want to close with any
13 comment?

14 MR. PREMO: I just wanted to respond to one or
15 two points, and then I would be finished.

16 In terms of the plan that was discussed, we
17 appreciate you outlining that. And it does sound that
18 it's still based on how old the groups of IRC claims are.
19 And it seems like the date of it is the main determinant
20 as to when they'll be decided. And so I think that is
21 the real issue here, is that they are of different
22 impact, different services at issue, and there are --
23 it's going to affect the members of the community in a
24 different manner.

25 I don't think, Madam Chairman, it should just

1 be on a dollar amount. And if I suggested that that's
2 the sole criteria, that's not what I meant. I think that
3 is a factor to consider. And the one that is
4 significantly higher in our county versus another one in
5 our county, that would be why we're prioritizing it,
6 because it's not only the dollar amount but because of
7 the impact on the children.

8 And it's going to be -- the services are that
9 critical here; and the impact that they will feel will be
10 immediate. And so even a two-year wait is a long time.
11 And the concern, really, here is that we don't even have
12 a certainty on the two-year wait.

13 MS. SHELTON: I do want to just kind of put
14 this into perspective, though. And there is some
15 relevance to the fact that there are some other lawsuits
16 pending on program that deal with what is going to happen
17 next year to the County and this program. When the
18 Governor, you know, did blue-pencil that appropriation
19 and declared the program to be suspended with respect to
20 counties, then it becomes an issue as to the rights and
21 responsibilities of the state, the Department of
22 Education, the school districts, and the counties as to
23 who is going to provide those services.

24 So the uncertainty for the program definitely
25 lies in that action as well. And that deals with the

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1 whole program. And we don't know the outcome of those
2 lawsuits at all.

3 CHAIR BRYANT: Okay, is there a motion on this?

4 *(No response)*

5 CHAIR BRYANT: I think we need to approve. One
6 way or the other, we need to --

7 MEMBER OLSEN: I'll -- with some reservation,
8 I will move adoption of the staff recommendation.

9 CHAIR BRYANT: Is there a second?

10 MEMBER COX: Second.

11 CHAIR BRYANT: Paula, please call the roll.

12 MS. HIGASHI: Sure.

13 Olsen?

14 MEMBER OLSEN: Aye.

15 MS. HIGASHI: Worthley?

16 MEMBER WORTHLEY: Aye.

17 MS. HIGASHI: Cox?

18 MEMBER COX: Aye.

19 MS. HIGASHI: Chivaro?

20 MEMBER CHIVARO: Aye.

21 MS. HIGASHI: Lujano?

22 MEMBER LUJANO: Aye.

23 MS. HIGASHI: Glaab?

24 MEMBER GLAAB: Aye.

25 MS. HIGASHI: Bryant?

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1 CHAIR BRYANT: Aye.

2 The motion carries.

3 MR. PREMO: Thank you for your time.

4 CHAIR BRYANT: Thank you.

5 MS. HIGASHI: There are no other appeals today,
6 so we'll move to Item 4.

7 And this item will also be presented by Chief
8 Counsel Camille Shelton. It's parameters and guidelines,
9 *Comprehensive School Safety Plans*.

10 MS. SHELTON: This item includes the proposed
11 parameters and guidelines for the initial year's costs
12 for *Comprehensive School Safety Plans II* and proposed
13 consolidated planners and guidelines for *Comprehensive*
14 *School Safety Plans I and II* for costs incurred beginning
15 July 1st, 2009.

16 We did receive comments on the draft staff
17 analysis and proposed P's & G's by the State Controller's
18 office, and we did respond to those comments and have
19 made some changes. And I haven't heard any objection
20 back to those changes, so I'm not sure if the parties
21 will have disagreement with that.

22 But at this point, staff recommends that the
23 Commission adopt the proposed parameters and guidelines
24 for *Comprehensive School Safety Plans II*, which is the
25 test claim number 02-TC-33, for reimbursement from

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1 January 1, 2002, through June 30th, 2009; to adopt the
2 Proposed Parameters and Guidelines for *Comprehensive*
3 *School Safety Plans* to the amendment in 07-TC-11 for
4 reimbursement from January 1, 2005, through June 30th,
5 2009; and to adopt the proposed consolidated parameters
6 and guidelines for *Comprehensive School Safety Plans I*
7 and *Comprehensive School Safety Plans II* for costs
8 incurred beginning July 1, 2009.

9 Staff also recommends that the Commission
10 authorize staff to make any non-substantive and technical
11 corrections to the parameters and guidelines following
12 the hearing.

13 Will the parties please state your names for
14 the record?

15 MS. KANEMASU: Jill Kanemasu, State
16 Controller's Office.

17 MR. PETERSEN: Keith Petersen, representing one
18 of the test claimants.

19 CHAIR BRYANT: Mr. Petersen, do you want to go
20 first?

21 MR. PETERSEN: I have no objection to
22 proceeding.

23 CHAIR BRYANT: Do you have anything to add?

24 Ms. Kanemasu, did you have anything to add?

25 MS. KANEMASU: With the final staff analysis

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1 and the changes they've made, we concur with the proposed
2 parameters and guidelines.

3 CHAIR BRYANT: Are there any questions or
4 comments from the Commission?

5 *(No response)*

6 CHAIR BRYANT: Is there a motion?

7 MEMBER GLAAB: So moved.

8 MEMBER WORTHLEY: Second.

9 CHAIR BRYANT: We have a motion and a second.
10 All those in favor?

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

12 CHAIR BRYANT: Any opposed?

13 *(No response)*

14 CHAIR BRYANT: Abstentions?

15 *(No response)*

16 CHAIR BRYANT: The motion carries.

17 MS. HIGASHI: We have nothing to report on
18 Item 5.

19 And Item 6, Ms. Patton will present this item.

20 MS. PATTON: Good morning. I reported to you
21 at the September hearing that we had submitted our final
22 report on implementation of the BSA audit, the
23 October 15th BSA audit. And we submitted that final
24 report on October 7th, and I was wrong because we got a
25 letter on November 22nd that the BSA does not believe we

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1 have fully implemented Recommendation 1, which is to work
2 with the Department of Finance to seek additional
3 resources to reduce the backlog. And so, therefore, we
4 are required to submit this attached form explaining
5 either why we're not implementing it or do we plan to
6 fully implement it.

7 So we filled this out, saying that, yes, we
8 plan to fully implement the recommendation, but we do not
9 have a date for obtaining the additional resources.

10 We explained again, as we did in the final
11 report, that we did talk to -- we continue to talk to the
12 Department of Finance on an ongoing basis. But the rules
13 for filing a BCP this year, we couldn't meet them, so we
14 were prohibited from filing a BCP.

15 And we did note that the Legislative Analyst's
16 report on the deficit, the future budget deficit, so --
17 that we would continue to seek additional resources, but
18 we haven't implemented it at this time. This information
19 will go into a report that they compile and present to
20 the Legislature.

21 So the staff recommendation is to approve the
22 report for submission next week.

23 CHAIR BRYANT: Are there any questions or
24 comments?

25 MEMBER COX: I have some.

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1 CHAIR BRYANT: Ms. Cox?

2 MEMBER COX: Thank you.

3 Just with respect to filling out the comments
4 that the -- the answers within the form, I think if you
5 could present some -- the exact language from the letters
6 from the Department of Finance might help with the
7 explanation. Because when it was saying, "Therefore, the
8 Commission was prohibited from filing a BCP," I think
9 with the background from what the criteria was from the
10 Department of Finance might add to the reason.

11 MS. PATTON: Okay.

12 CHAIR BRYANT: With that suggestion, anything
13 else?

14 Is there a --

15 MEMBER OLSEN: Actually, I do have a comment.

16 This is sort of preaching to the choir, I know;
17 but in a small organization like the Commission, that has
18 a single purpose -- especially the fact that it's a
19 single-purpose, small organization -- I mean, there are
20 other organizations like this across state government,
21 and none of them can meet this criterion, it seems to
22 me. So this is just -- I guess this is my jab at the
23 Department of Finance today, that there needs to be some
24 sort of exception for small organizations, because there
25 is just no way a small organization, a single-purpose

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1 organization -- it doesn't have multiple programs from
2 which it can rob Peter to pay Paul, and it doesn't have
3 very many staff dedicated to the one purpose it does,
4 that no single-purpose organization can meet this.

5 It would seem to me that Finance ought to have
6 some other policy for small organizations.

7 CHAIR BRYANT: Duly noted.

8 Any other questions or comments?

9 *(No response)*

10 CHAIR BRYANT: Is there a motion on this?

11 MEMBER WORTHLEY: A motion to approve.

12 MEMBER OLSEN: Clarification.

13 Is that with Ms. Cox's suggestion in addition?

14 MEMBER WORTHLEY: I don't know, is it
15 understood how we would do that? Is that clear?

16 MS. PATTON: It's easy.

17 MEMBER COX: I think you should cite the budget
18 letter.

19 MEMBER OLSEN: Okay.

20 MEMBER WORTHLEY: That's fine. And that would
21 be part of my motion.

22 CHAIR BRYANT: All those in favor?

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

24 CHAIR BRYANT: Any opposed?

25 *(No response)*

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1 CHAIR BRYANT: The motion carries.

2 MS. HIGASHI: Item 7, Chief Counsel's Report.

3 Ms. Shelton?

4 MS. SHELTON: Nothing really new to report
5 except for two things.

6 One, I have listed here, that in the *County of*
7 *Santa Clara* case, the Court did sustain the demurrer of
8 the Commission; and the State Controller's Office would
9 leave to amend on or before December 17th, 2010.

10 The only other item I wanted to address is on
11 page 3, Cases of Interest, where the Commission was not a
12 party in the *California School Boards Association vs.*
13 *Schwarzenegger*, the Court has now listed the Commission
14 as a respondent. And so this case will be taken off this
15 open-session report and put into the closed-session
16 litigation report.

17 CHAIR BRYANT: Any questions or comments for
18 Camille?

19 *(No response)*

20 CHAIR BRYANT: Okay, and on to Item 8.

21 MS. HIGASHI: Item 8.

22 CHAIR BRYANT: The last Executive Director
23 report.

24 MS. HIGASHI: My last report.

25 CHAIR BRYANT: Last Executive Director report.

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1 MS. HIGASHI: I won't go over the workload,
2 since you've talked about it already and have been
3 concerned about it.

4 I'd like to note that our emergency regulations
5 on the mandate redetermination process have been filed,
6 and are actually in effect. And they've met all the
7 deadlines and time-lines.

8 And I'd really like to recognize our staff who
9 worked on this project, namely Heather Halsey, Heidi
10 Palchik, Nancy certainly worked on it, and Camille
11 certainly worked on it. And I'd like to thank them all
12 for meeting these time-lines and getting this project
13 done.

14 What is not included in this report is the
15 update on the budget. And as all of you know from
16 reading the papers, we all received another budget letter
17 asking us to identify further cuts.

18 We are still in discussions with the Department
19 of Finance regarding what this additional cut will be.
20 And so we hope to hear that soon; but the cuts will have
21 to be identified by December 23rd.

22 We have received the State Controller's AB 3000
23 report. You have copies of the report here in your
24 binders. The reports are also available online. So
25 that's another, much easier way of accessing the reports.

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1 And beyond that, there is a long laundry list
2 of tentative agenda items for the next nine months to a
3 year; and they're on the following pages.

4 There's only one that needs to come out, and
5 that's the *Comprehensive School Safety Plans* under
6 parameters and guidelines, because you just went through
7 that.

8 And most all of these cases that are identified
9 here are in progress. The files have been opened. There
10 is ongoing work in progress.

11 And the only ones that we have not really
12 started work on are some of the statewide cost estimates
13 that we don't have claims data yet; and also some of the
14 items where records are open. But this is basically what
15 you'll be looking at in the year if you stick around.

16 And so with that, I'd like to conclude my last
17 report.

18 CHAIR BRYANT: Thank you. Brilliant, as usual.

19 And before we move into Public Comment, I did
20 want to read out a report from closed-executive session
21 this morning.

22 The Commission on State Mandates appointed Drew
23 Bohan as the Executive Director.

24 Drew is current the assistant secretary for
25 climate change programs at the California Natural

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1 Resources Agency, and he previously has held the
2 following positions: Chief counsel, California
3 Department of Conservation; executive policy officer for
4 the California Ocean Protection Council; deputy cabinet
5 secretary in the Office of the Governor; assistant
6 secretary for Policy at the California Environmental
7 Agency; and executive director of Santa Barbara
8 Channelkeeper.

9 The Commission also appointed Nancy Patton as
10 interim Executive Director from December 17th to the date
11 on which Drew Bohan assumes the Executive Director
12 position.

13 So I'd like to congratulate Drew.

14 Both Cathleen and I have worked with him in the
15 past. I think he'll be terrific at the Commission; and
16 thank Nancy for her continued stewardship of our
17 Commission.

18 With that, moving into Public Comment; I think,
19 Nancy, you had something?

20 MS. PATTON: I do.

21 MS. HIGASHI: Uh-oh.

22 MS. PATTON: Don't be afraid.

23 MS. HIGASHI: I didn't get to review it.

24 MS. PATTON: What I said, don't be afraid.

25 Paula, the Commission and staff have a

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1 resolution for you.

2 Whereas Paula Higashi, Executive Director, has
3 distinguished herself as an outstanding State employee
4 for 35 years.

5 Ms. Higashi began her state career in 1975,
6 managing field offices and supervising elections under
7 the Agricultural Labor Relations Act and the Educational
8 Employment Relations Act. She also worked as an
9 appointments coordinator for the Department of Consumer
10 Affairs. In 1985 Ms. Higashi began a ten-year career
11 in the Attorney General's office, serving Attorneys
12 General John Van de Kamp and Dan Lungren, she managed
13 crime-prevention programs and developed public policy
14 initiatives in the Crime and Violence Prevention Center
15 before coming to the Commission on State Mandates.

16 Whereas, Ms. Higashi served as the Executive
17 Director for over 13 years; and as the Commission's
18 longest tenured Executive Director, she has participated
19 in 121 meetings and hearings of the Commission on State
20 Mandates.

21 Whereas, she has advised and assisted numerous
22 Commission members, including State Treasurers, State
23 Controllers, directors of Finance, director of the Office
24 of Planning and Research, county supervisors, city
25 council members, and school board members.

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1 Whereas, she has advised and influenced the
2 Commission in determining over 200 test claims, including
3 *Special Education, POBR, ERAF, Three Strikes, Animal*
4 *Adoption, Pupil Expulsions, and Regional Water Board*
5 *Permits*, pursuant to Article XIII B, Section 6, of the
6 California Constitution; and successfully represented the
7 Commission before the Sixth District Court of Appeal in
8 *City of San José vs. State of California;*

9 Whereas, Paula Higashi has guided the
10 Commission, staff, and parties on the Open Meetings Act
11 *Graduation Requirements and Investment Reports*
12 incorrect-reduction claims, including successfully
13 negotiating agreement on over 400 open-meeting IRCs.

14 Whereas, she provided expert and invaluable
15 assistance to the Governor's office, Legislature, the
16 Commission, and state and local agencies for over
17 13 years on complex and controversial legislation
18 regarding the mandates process, and is recognized
19 throughout the state and local governments for her
20 leadership and knowledge of the mandates process.

21 Now, therefore, be it resolved, that upon her
22 retirement, the members and staff of the Commission on
23 state mandates are honoring Paula in appreciation of her
24 35 years of outstanding dedication, leadership, and
25 service to the State of California.

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1 MS. HIGASHI: Thank you.

2 *(Plaque presented to Ms. Higashi)*

3 *(Applause and standing ovation)*

4 CHAIR BRYANT: Additional public comment?

5 MR. BURDICK: Thank you very much, Members of
6 the Commission.

7 I hadn't really planned to do this right now;
8 but I think maybe this is the appropriate time. And I
9 don't know how many people are going to be able to join
10 us for lunch; hopefully almost everybody is. But I think
11 on behalf of local government, you know, we have really
12 found that we've been treated fairly, you know, we've
13 appreciated Paula's leadership and commitment.

14 I think one thing that was left out was the
15 work that she did on trying to put a process in place to
16 bring about reforms and go through the process that we
17 almost did until the Legislature sidetracked it at the
18 last minute to bring in an outside agency to help bring
19 all the parties together.

20 We have enjoyed working with her.

21 I personally have worked with all the executive
22 directors of the Commission, and remember when
23 Mr. Stewart made the wise decision to bring Paula over to
24 help the Commission, I think, out at that time, and then
25 shortly thereafter, was appointed as the executive

1 director.

2 And I can tell you, beginning with the -- Paula
3 has brought and put the Commission in a place where I
4 think the founders originally -- and many other people --
5 felt the Commission should be: Much more of what I would
6 call, as a non-attorney, a full dress administrative law
7 process, pretty much going through that process.

8 When the original Commission process was kind
9 of put together with a Board of Control, there was a
10 battle between the city managers and county executives,
11 and the county counsels and the city attorneys. And
12 initially, the CAOs and the city managers prevailed, and
13 we had the process before the Board of Control, which led
14 to the problems with the creation of the Commission in
15 1985. And that process was saying then, "Yeah, we need
16 to make this process much more -- you know, we have to
17 deal with the legal issues because things are going to
18 court."

19 And as I had mentioned with Paula, you know,
20 sometimes she said, you know, "We have to have lawyers in
21 the process." And I said, "That bites," and I think that
22 kind of surprised her.

23 But, anyway, I think on behalf of local
24 government, I have a little token here from - actually,
25 with the CSAC and the League to Paula Higashi in

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1 appreciation for outstanding contributions and
2 leadership.

3 And we have really appreciated her help. And
4 hopefully, she'll stay around and provide some advice to
5 people when we get through this process, now that she can
6 be independent.

7 So I'd like to give this to Paula.

8 *(Applause)*

9 CHAIR BRYANT: Any additional public comments?

10 *(No response)*

11 CHAIR BRYANT: Okay, then with that, I did want
12 to just say quickly myself, this is my last meeting after
13 four years on this Commission: Three in this chair, one
14 here *(pointing)*.

15 I just want to thank the Commission staff.
16 You're just all outstanding.

17 And the Department of Finance staff and the OPR
18 staff, they helped me, too. So it's just been -- it's
19 been great.

20 Thank you.

21 That's it. Meeting adjourned.

22 *(Applause)*

23 *(The meeting concluded at 10:52 a.m.)*

24 

25

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 December 9th, 2010.



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