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COMMISSION ON  
STATE MANDATES

ORIGINAL

PUBLIC HEARING  
COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:32 a.m.

DATE: Thursday, March 29, 2007

PLACE: State Capitol, Room 126  
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomat Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHAEL GENEST, Chair  
Director  
State Department of Finance

CYNTHIA BRYANT  
Director  
State Office of Planning and Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

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

--oOo--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
(Item 15)

NANCY PATTON  
Assistant Executive Director  
(Items 11 and 13)

CAMILLE SHELTON  
Chief Legal Counsel  
(Item 14)

DEBORAH BORZELLERI  
Senior Commission Counsel  
(Items 4 and 5)

KERRY ORTMAN

--o0o--

PUBLIC TESTIMONY

Appearing Re Item 4:

For Co-Claimant City of Palos Verdes Estates:

JULIANA F. GMUR  
Manager, Cost Services  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

For Co-Claimant County of Napa:

JACQUELINE M. GONG  
Deputy County Counsel  
County of Napa  
1195 Third Street, Room 301  
Napa, California 94559-3035

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4: *continued*

For California Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

Appearing Re Item 5:

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
MAXIMUS  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

JULIANA F. GMUR  
Manager, Cost Services  
MAXIMUS

For County of Los Angeles:

LEONARD KAYE, ESQ.  
Department of Auditor-Controller  
County of Los Angeles  
500 West Temple Street, Suite 603  
Los Angeles, California 90012

For Commission on Peace Officer Standards and Training:

BRYON G. GUSTAFSON  
Commission on POST  
1601 Alhambra Boulevard  
Sacramento, California 95816-7083

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5:** *continued*

For the County of Sacramento:

CHERYL MacCOUN  
Deputy  
Sacramento County Sheriff's Department  
711 G Street  
Sacramento, California 95814

GAIL WILCZYNSKI  
Deputy  
Sacramento County Sheriff's Department

NANCY GUST  
Administrative Services Officer III  
Sacramento County Sheriff's Department

CHRISTINE HESS  
Chief  
Sacramento County Sheriff's Department

For California Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

**Appearing Re Item 12:**

For California Department of Finance

TOM Dithridge  
Mandates Unit  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 12: *continued*

For Legislative Analyst's Office:

MARIANNE O'MALLEY  
Fiscal and Policy Analyst  
Local Government  
Legislative Analyst's Office  
925 L Street  
Sacramento, California 95814

For Clovis Unified School District:

MICHAEL JOHNSTON  
Assistant Superintendent  
Business Services  
Clovis Unified School District  
1450 Herndon Avenue  
Clovis, California 93611

For San José Unified School District:

EDGAR MANALO  
Mandated Costs  
San José Unified School District  
855 Lenzen Avenue  
San José, California 95126

For San Diego Unified School District

ART PALKOWITZ  
Manager, Office of Resource Development  
San Diego City Schools Finance Division  
4100 Normal Street, Room 3209  
San Diego, California 92103-2682

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 12: *continued*

For County of Los Angeles:

LEONARD KAYE, ESQ.  
Department of Auditor-Controller  
County of Los Angeles

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
MAXIMUS

--oOo--

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>18</u>	<u>25</u>	change "full-podged" to "full-fledged"
<u>51</u>	<u>25</u>	change "Deathrage" to "Dithridge"
<u>52</u>	<u>8</u>	change "Deathrage" to "Dithridge"
<u>52</u>	<u>20</u>	change "voice" to "chair Genest"
<u>52</u>	<u>21</u>	change "Deathrage" to "Dithridge"
<u>61</u>	<u>10</u>	change "Proposal" to "process"
<u>82</u>	<u>18</u>	change "unique" to "unit"
<u>88</u>	<u>7</u>	change "San Rafael" to "center of"



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Commission on State Mandates – March 29, 2007

1 BE IT REMEMBERED that on Thursday, March 29,  
2 2007, commencing at the hour of 9:32 a.m., thereof, at  
3 the State Capitol, Room 126, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR GENEST: Good morning. The clock has  
8 struck 9:30, so I think we can get started.

9 Paula, can we get a roll call?

10 MS. HIGASHI: Ms. Bryant?

11 MEMBER BRYANT: Here.

12 MS. HIGASHI: Mr. Chivaro?

13 MEMBER CHIVARO: Here.

14 MS. HIGASHI: Mr. Glaab is absent today due to  
15 personal illness.

16 Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Mr. Worthley?

21 MEMBER WORTHLEY: Here.

22 MS. HIGASHI: And Mr. Genest?

23 MEMBER GENEST: Here.

24 MS. HIGASHI: We can begin.

25 CHAIR GENEST: Okay, did you want to talk about

1 the minutes from last --

2 MS. HIGASHI: Certainly. Item 1 is adoption of  
3 the minutes for the January 25th hearing.

4 CHAIR GENEST: Are there any corrections or  
5 objections to those minutes?

6 *(No audible response)*

7 CHAIR GENEST: Hearing none, can we get a motion  
8 to adopt those?

9 MEMBER WORTHLEY: Move approval, Mr. Chairman.

10 MS. OLSEN: Second.

11 CHAIR GENEST: All in favor?

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

13 CHAIR GENEST: Okay, those are adopted.

14 MS. HIGASHI: Item 2 is the Proposed Consent  
15 Calendar.

16 Before you, you should have a sheet identifying  
17 the Proposed Consent Calendar. It's blue. The Consent  
18 Calendar consists of Items 9, 10, and 11. Item 4 has  
19 come off.

20 CHAIR GENEST: Are there any objections to the  
21 proposed Consent Calendar?

22 Any questions?

23 *(No audible response)*

24 CHAIR GENEST: Can we get a motion?

25 MEMBER CHIVARO: Move approval.

1 CHAIR GENEST: Second?

2 MEMBER OLSEN: Second.

3 CHAIR GENEST: All in favor?

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

5 CHAIR GENEST: Okay, the Consent Calendar is  
6 approved.

7 MS. HIGASHI: There are no appeals to consider  
8 under Item 3.

9 And this brings us to the hearing portion of our  
10 meeting.

11 And I'd like to request that all of the parties  
12 and witnesses for Items 4, 5, 6, and 12, please stand --  
13 or I should say, 4, 5, and 6.

14 Do you solemnly swear or affirm that the  
15 testimony which you are about to give is true and  
16 correct, based upon your personal knowledge, information  
17 or belief?

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

19 MS. HIGASHI: Thank you very much.

20 Item 4 will be presented by Senior Commission  
21 Counsel Deborah Borzelleri. It's on the Binding  
22 Arbitration test claim.

23 MS. BORZELLERI: Thank you, Paula.

24 This item is the proposed Statement of Decision  
25 for the reconsideration of a prior final decision on the

1        *Binding Arbitration* test claim.

2                The Proposed Statement of Decision was updated  
3        to reflect the addition of witnesses, vote count and  
4        staff analysis provided at the last hearing on  
5        January 25th, 2007.

6                The sole issue before the Commission today is  
7        whether the proposed Statement of Decision in Item 4  
8        accurately reflects the Commission's decision on the  
9        reconsideration of the *Binding Arbitration* test claim  
10       that was heard at the January 25th, 2007, Commission  
11       hearing.

12               Staff recommends the Commission adopt the  
13       proposed Statement of Decision as presented.

14               Will the parties please state your name for the  
15       record?

16               MS. GMUR:    Juliana Gmur on behalf of the City of  
17       Palos Verdes Estates.

18               MS. GONG:    Jacqueline M. Gong, Napa County  
19       Counsel's office, for Napa County.

20               CHAIR GENEST:    So who will begin?

21               MS. GMUR:    I would like to lead off, if I may.

22               CHAIR GENEST:    Could we have our last witness?  
23       Finance.

24               MS. GMUR:    Just as a little bit of a refresher,  
25       when last we were before the Commission on this matter,



1 all parties were supporting the staff analysis, and so we  
2 were waiting just to come back for a vote today on the  
3 Statement of Decision.

4 Since then, the Statement of Decision has  
5 issued; and I find some of the material that's in it to  
6 be of concern.

7 Certain things have been excluded as  
8 reimbursable activities. One in particular that troubles  
9 me most is the preparation for the hearing.

10 In the past, this Commission has found that  
11 preparing for hearings, preparing witnesses for hearings,  
12 drafting of documents, has been a reasonably related  
13 activity, and has been included as part of the claiming.

14 In this case, however, in looking at staff's  
15 statements, they have found that these are not included  
16 items; and the reasoning is that because they were not  
17 specifically listed in the statute. That is to say, the  
18 statute does not say you must prepare for the hearing.  
19 The statute does not say you must draft a document.

20 The statute does say you must be at the hearing.  
21 The statute does say that documents have to be submitted  
22 or filed, but there is nothing in statute. And I find  
23 this to be rather odd because I'm not familiar with any  
24 statute anywhere that says at any time that you need to  
25 be prepared for a meeting or a hearing, or that documents

1 need to be drafted.

2 Staff also points to the fact that the arbiter  
3 can order particular things. And, of course, if the  
4 arbiter orders it, then it becomes part of the mandate.  
5 But, indeed, I cannot imagine an arbiter ordering that  
6 the parties be prepared for the next hearing.

7 It has been my experience that if a judge,  
8 arbiter or hearing officer orders you to be prepared for  
9 the next hearing, that you are in deep trouble with your  
10 client, your boss, and perhaps the State Bar.

11 So I don't see that this is quite a reflection  
12 of the reality of how the program works. And I cannot  
13 speak to that directly. Ms. Gong can.

14 I'm going to allow her now to take over this  
15 discussion.

16 MS. GONG: Thank you.

17 Good morning. I appreciate the opportunity to  
18 give the Commission some input on this issue.

19 As stated, the County of Napa has a concern with  
20 a single issue, primarily with the proposed decision's  
21 limitation on what constitutes mandated activities  
22 limiting preparation of the hearing itself only as  
23 directed by an arbitration panel.

24 Obviously, an arbitration proceeding is a  
25 full-pledged evidentiary hearing. To prepare for it,

1 it's very necessary to carry out certain kinds of  
2 activities.

3           The arbitration laws require an arbitration  
4 panel to select, without modification, the last best  
5 offer on each disputed economic issue that's before the  
6 arbitration panel. So you look at both the county's  
7 proposals and you look at the union's proposals; and then  
8 you have to adhere to a series of criteria that are  
9 outlined in the arbitration laws. You have to look at  
10 what's in the best interest and welfare of the public.  
11 In other words, what's the impact of each economic  
12 proposal on the county's ability to provide services and  
13 to serve the public; and you have to couple that with how  
14 competitive are the economic proposals in terms of  
15 retaining employees and avoiding high turnover of  
16 employees.

17           You could look at the financial condition of the  
18 county and its ability to make payment on the proposed  
19 arbitration economic packages.

20           You look at what's available in terms of sources  
21 of funds from the county to meet the proposals.

22           And most challenging of all is there are issues  
23 of comparability. We have to look at the compensation  
24 and how does that compare with compensation that's  
25 provided to similarly situated employees: Law

1 enforcement staff in other jurisdictions.

2 None of that can be really addressed fully in a  
3 hearing without what ultimately resulted for the county  
4 of a massive compilation of data to address the financial  
5 condition of the county, its ability to pay, how it  
6 compared with other jurisdictions. And in addition to  
7 just compiling the data, we had to analyze it.

8 None of that can occur. It's like trying to  
9 expect the county to show up at a hearing to put on a  
10 play without actually doing any dress rehearsal or doing  
11 whatever preparation you need to actually put forth the  
12 best evidence for the arbitration panel.

13 Given all of this, the fact that we had to pull  
14 together so many different kinds of information, looking  
15 at past and present years' budget projections, budget  
16 updates, looking at wage increase to all of our county  
17 employees, pulling all of this together, you know, it  
18 would fly in the face of reality as to what binding  
19 arbitration laws require.

20 Preparation is an integral part of a hearing.  
21 The reason is very simple, that the plain language of the  
22 statute doesn't say that you need to prepare for the  
23 hearing, and that's a state-mandated activity simply  
24 because that is an inherent part of any hearing, is that  
25 you would expect this.

1           Given all of that, we think that the county had  
2 no choice. It was mandated to participate in this  
3 hearing.

4           While it could have challenged this particular  
5 proceeding as unconstitutional, it proceeded with this  
6 because it believed in the merits of its proposals and  
7 they did not want the community or the union to perceive  
8 that the county was somehow going to legally manipulate  
9 or maneuver by challenging the arbitration on its  
10 constitutionality. So we went through the arbitration.

11           Ultimately, the county was upheld in most all of  
12 its economic proposals.

13           And I think that in looking at the arbitration  
14 laws and what is required, that the plain meaning of the  
15 law is what you have to look at, not the plain language  
16 as the proposed decision suggests, and that there can't  
17 be really any effective hearing -- participation in the  
18 hearing without that preparation. And that this is  
19 certainly reasonable in prior Commission dealings with  
20 reimbursements in the school district collective  
21 bargaining arena, in PERB cases. When there's  
22 litigation, school districts are entitled to seek  
23 litigation costs.

24           Similarly, in the school district arena, when  
25 there are disputes, contract disputes and arbitration,

1 those costs to a school district as the employer are  
2 reimbursable.

3 And this is no different, there is a very  
4 similarly situated hearing process. And for these  
5 reasons, I'd ask the Commission to direct staff to amend  
6 the proposed Statement of Decision for reconsideration,  
7 as we've proposed in our written response to the  
8 Commission, to more clearly allow that these are  
9 reasonably related activities; and so as a result,  
10 necessary to carry out a hearing that's mandated, that  
11 this certainly should just be recognized as  
12 state-mandated activities without any limitations.

13 CHAIR GENEST: Thank you.

14 Can we hear from Finance?

15 MS. CASTAÑEDA: We concur with the proposed  
16 Statement of Decision as it's currently drafted.

17 As to the statement that the claimant is  
18 proposing to add, we feel that this addition is more  
19 appropriately addressed in the parameters and guidelines  
20 as the reimbursable activities necessary to carry out the  
21 specifically required items in the statute.

22 CHAIR GENEST: Any questions or comments from  
23 members of the Commission?

24 MEMBER WORTHLEY: Mr. Chairman?

25 If I understand correctly then, you're not

1 denying that they should be allowed to seek  
2 reimbursement, but it would come through the parameters  
3 and guidelines as opposed to the Statement of Decision?

4 MS. CASTAÑEDA: That's the way it should be  
5 considered.

6 MEMBER WORTHLEY: So in which case, you would  
7 get to the same place, it's just that it is by a  
8 different means?

9 MS. CASTAÑEDA: Yes.

10 MEMBER WORTHLEY: I see our counsel is nodding  
11 her head, too.

12 MS. GMUR: My thought on this is that -- at  
13 first, I agreed, I thought it should be brought up in the  
14 P's & G's stage. However, it's been brought up in the  
15 Statement of Decision. The Statement of Decision is the  
16 law of the case. And so I believe that if the door shuts  
17 now, it is a door that cannot be reopened at the  
18 P's & G's stage, since the P's & G's come off the  
19 Statement of Decision; but it's the Statement of Decision  
20 that stands as the law of the case. Thus, you're hearing  
21 from us on this issue now.

22 MEMBER WORTHLEY: Mr. Chairman, if that's -- I  
23 guess I'm looking to our counsel, because if we've done  
24 this in the past in the past, if we've allowed people to  
25 recover these costs, are we doing something different in

1 this case than we've done in the past? We've allowed  
2 people through the P's & G's to get reimbursed for this,  
3 even though it's not stated in the Statement of Decision?

4 MS. BORZELLERI: Yes. But we're not precluding  
5 that to be brought forward at the P's & G's stage.

6 MS. GMUR: I'm sorry, but it specifically says  
7 in here that these are excluded. I don't understand how  
8 they can be excluded in the Statement of Decision and  
9 then included in the P's & G's.

10 MS. BORZELLERI: Can I just state something?

11 MS. GMUR: Sure.

12 MS. BORZELLERI: The stage that we're at on this  
13 test claim, we have to look at the actual language of the  
14 law, the plain language of the statute. That's what  
15 happens at the test claim phase. We're making a legal  
16 determination as to what the law actually says.

17 At the Parameters and Guidelines stage, it's  
18 more a quasi-legislative proceeding that the Commission  
19 goes through, where you hear all of this type of  
20 testimony. This is very helpful testimony, it's good to  
21 have it in the record; and we will be taking that into  
22 account at the time we do an analysis on the Parameters  
23 and Guidelines. And the Commission has the ability to  
24 listen to all of these pieces and put them in. And  
25 certainly staff will listen and incorporate what we



1 believe is reasonably necessary under the regulation that  
2 allows us to do that.

3 And I'm happy to read that for you, if it's a  
4 good clarification.

5 The section -- it's section 1183.1 of the  
6 Commission's regulations -- states that -- it defines the  
7 most reasonable methods of complying with the mandate as  
8 those methods not specified in statute or executive order  
9 that are necessary to carry out the mandated program.

10 So in this case, we had to be very careful about  
11 what was mandated and what wasn't. And I think we  
12 probably went into a little more detail than usual in our  
13 analysis. But if it is reasonably necessary, staff will  
14 certainly consider that and the Commission will be able  
15 to consider that when it comes forward at that stage.

16 MS. GMUR: Then I ask, can that be reflected  
17 in the Statement of Decision, that this matter will be  
18 reopened, and that we are not precluded from bringing  
19 this up at the P's & G's stage? I just don't want that  
20 door to close.

21 MS. SHELTON: Let me just mention a couple of  
22 things. First, the Commission already took a vote on  
23 this item; and you're receiving new testimony today.  
24 So for the Commission to change the Statement of  
25 Decision, the claimants would have to be asking for a

1 rehearing of this item, and the Commission would have to  
2 grant the rehearing before the analysis is changed.

3 This is new testimony today.

4 MS. GMUR: Well, I have to point out also that  
5 the Statement of Decision brings up materials that were  
6 not discussed at the last hearing.

7 MS. BORZELLERI: Actually, no, we took it  
8 precisely from the staff analysis. I did not change that  
9 language one bit.

10 CHAIR GENEST: That's my question, since I  
11 wasn't at the last hearing. I don't think we're  
12 considering the issue; we're considering whether this  
13 reflects the last hearing.

14 And do the members of the committee have an  
15 opinion on this? Does this, in your opinion, reflect  
16 what was discussed at the last hearing?

17 MEMBER WORTHLEY: I don't --

18 MEMBER OLSEN: Well, you know, I think there are  
19 two ways of looking at this issue. And, Mike, I agree  
20 that that's one way to look at the issue in a very narrow  
21 sense; but the other way to look at the issue is in a  
22 sense of what's a reasonable standard here. And if this  
23 is new testimony and it needs to be reheard -- I have no  
24 problems with the idea that it might need to be reheard  
25 based on new testimony; but I don't think it's the rule

1 of we Commission members to simply say, "Oh, that's what  
2 we said last time, this reflects what we said last time,  
3 and so irrespective of hearing something new and hearing  
4 a new concern, we cannot look at it again." I mean, I  
5 think that's -- why are we commissioners then?

6 CHAIR GENEST: Of course, we can look at it  
7 again.

8 My question is, is this accurate? Is the staff  
9 report accurately reflective of what was discussed at the  
10 last hearing? What was decided?

11 MEMBER WORTHLEY: Well, I frankly don't recall,  
12 Mr. Chairman. But what I was going to say is that  
13 there's -- we're talking, it seems, almost semantics  
14 here, because if we all agree that we're going to get to  
15 the same place, likely, through the Parameters and  
16 Guidelines, I would like us to move forward with this  
17 today. And then in the event that there was a problem  
18 with bringing it forward to the Parameters and  
19 Guidelines, then it would be allowable for rehearing,  
20 if we could do that. So we don't preclude this from  
21 being -- the concern here is closing the door to having  
22 it taken up in the Parameters and Guidelines. I think  
23 we've created a record here today which would indicate  
24 that that is not the case and that you would have some  
25 kind of equitable relief, if not legal relief. Because

1 based on the representations made by staff, you will have  
2 every opportunity to present this information at the  
3 Parameters and Guidelines stage.

4 MS. SHELTON: I was just going to mention that  
5 the hearing testimony today is transcribed into a  
6 transcript, which does become an official part of the  
7 administrative record. So it is part of the record.

8 The Parameters and Guidelines expressly give the  
9 Commission discretion to include activities that are not  
10 expressly mandated by statute, but are reasonably  
11 necessary to comply with the mandate. So it's at that  
12 stage that the discretion comes in.

13 MS. HIGASHI: And one of the most important  
14 considerations, too, is that the statute provides that  
15 it is the successful test claimants who has the right to  
16 submit the Parameters and Guidelines; and that is a duty  
17 as well as a right. So it would then be up to Napa and  
18 Palos Verdes to submit the Proposed Parameters and  
19 Guidelines that would detail the reimbursable activities.

20 CHAIR GENEST: Okay, well, have we heard enough?  
21 Do we have a motion?

22 MEMBER WORTHLEY: Mr. Chairman, I would move  
23 approval of the Parameters and Guidelines -- I'm sorry,  
24 the Statement of Decision as presented.

25 CHAIR GENEST: Do we have a second?

1 MEMBER LUJANO: Second.

2 CHAIR GENEST: Do we need -- let's just see if  
3 we have -- let's have a voice vote.

4 All in favor?

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

6 CHAIR GENEST: Okay, it's adopted.

7 MS. HIGASHI: Okay, thank you.

8 MS. GMUR: Thank you so much.

9 MS. HIGASHI: Our next item is a test claim,  
10 Item 5, *Training Requirements for Instructors and Academy*  
11 *Staff*. This item will also be presented by  
12 Ms. Borzelleri.

13 MS. BORZELLERI: Thank you.

14 This is Item 5, *Training Requirements for*  
15 *Instructors and Academy Staff*.

16 We have a cast.

17 This test claim addresses regulations adopted by  
18 the Commission on Peace Officers Standards and Training,  
19 which we're referring to as POST, that requires  
20 classified training for certain POST instructors and key  
21 staff of POST-training academies.

22 POST training is provided to law enforcement  
23 officers by POST-approved institutions, and POST can  
24 certify training courses and curricula developed by other  
25 entities as meeting required minimum training standards.

1           Staff finds that the regulations establish  
2 requirements that flow from a discretionary decision by  
3 the local agency to participate in POST, and a  
4 discretionary decision to provide POST-certified  
5 training or establish a POST-training academy. Staff  
6 further finds that local agencies have alternatives to  
7 providing POST-certified training or establishing a  
8 POST training academy. Therefore, the test claim  
9 regulations do not impose a state-mandated program on  
10 local agencies within the meaning of Article XIII B,  
11 Section 6, of the California Constitution.

12           Staff recommends the Commission adopt the Staff  
13 Analysis to deny the test claim.

14           Will the parties please state your name for the  
15 record?

16           MR. BURDICK: Allan Burdick on behalf of the  
17 CSAC SB 90 Service.

18           MR. KAYE: Leonard Kaye, County of Los Angeles.

19           MS. MacCOUN: Cheryl MacCoun, Sacramento County  
20 Sheriff's office.

21           MS. WILCZYNSKI: Deputy Gail Wilczynski,  
22 Sacramento County Sheriff's Department.

23           MS. GUST: Nancy Gust, Sacramento County  
24 Sheriff's Department.

25           MR. GUSTAFSON: Bryon Gustafson, Commission on

1 POST.

2 MS. CASTAÑEDA: Carla Castañeda, Department of  
3 Finance.

4 MS. HESS: Christine Hess, Sacramento County  
5 Sheriff's Department.

6 CHAIR GENEST: Okay, who wants to start? And  
7 let's try to be focused on the exact question here.

8 MR. BURDICK: Yes. We'll try to be as specific  
9 as we can. Some of these members are here to address  
10 issues that may come up; so all of the people are not  
11 providing testimony.

12 I would like to indicate that Ms. Juliana Gmur,  
13 the attorney that was on the last issue, will also  
14 be joining us on this particular issue.

15 Thank you very much for giving us the  
16 opportunity to present this test claim today on behalf of  
17 the County of Sacramento.

18 Since this issue had surfaced, a number of  
19 people and agencies have called and have shown interest  
20 in it because this particular test claim deals with two  
21 really critical issues:

22 The first issue is the basic underlying issue  
23 related to whether or not POST regulations can result in  
24 a reimbursable state mandate.

25 And the second issue then is dealing with the

1 specifics of this test claim. Because in order -- it  
2 appears in order to get to their position, you first have  
3 to deal with a larger issue.

4 Now, we're not sure how the Commission wants to  
5 proceed; but I think from a local standpoint, a critical  
6 issue is the question of whether or not POST regulations  
7 are reimbursable state mandates or not; and is there an  
8 alternative to providing POST-certified training, or  
9 whether they want to get into the very specifics of the  
10 test claim.

11 So I guess that's kind of the issue that we  
12 would like to raise initially is, from your standpoint,  
13 how would you prefer to proceed?

14 CHAIR GENEST: Well, being a little bit new to  
15 this committee, I'm going to ask for the advice of our  
16 counsel.

17 MS. BORZELLERI: Well, this is all new  
18 information to us. I must say, we did not receive one  
19 comment on this draft staff analysis when it went out.

20 And, you know, I guess it's probably more in the  
21 interest of what the Commission's time parameters are.  
22 I think we have something time-certain at 10:00. You  
23 know, if we want to move on with the business, it may be  
24 better to push forward with the test claim.

25 That's your discretion.



1 CHAIR GENEST: Paula?

2 MS. HIGASHI: I think so. We can certainly move  
3 forward with the test claim hearing, as the Commissioners  
4 wish.

5 The ten o'clock time-certain was set just to  
6 give people an estimated time that we would get to the  
7 Mandate Reform item.

8 MEMBER WORTHLEY: Mr. Chairman, as I was reading  
9 the staff analysis, it strikes me that the issue, as I  
10 see it, unless someone can educate me differently, is  
11 that we have an issue of whether we have strict legal  
12 compulsion or whether we have practical compulsion. And  
13 there was a dearth of information that I could find that  
14 would indicate -- I mean, I think it was agreed that all  
15 the language is precatory, and it's all in "may" and  
16 "wish" and "desires" and so forth; and then the issue  
17 would come down to, is there a practical compulsion  
18 element to this? And I don't have any information that  
19 I could see that addresses this.

20 If that's the issue, we could perhaps focus on  
21 that, unless some people disagree with my analysis.

22 MR. KAYE: Commissioner Worthley, I would  
23 indicate that staff has provided a very nice and  
24 specific and focused statement of what you just mentioned  
25 in terms of two statements. They say, just before they

1 conclude, "Here, local agencies have alternatives  
2 available in that they can, 1, choose not to become  
3 members of POST; and 2, elect to present training courses  
4 in-house and, instead, send them law enforcement officers  
5 to POST-certified training institutions operated by other  
6 entities such as community colleges or other law  
7 enforcement agencies; or 3, hire only those individuals  
8 who are already POST-certified peace officers."

9 And we have people from local law enforcement  
10 agencies here today that can talk to the even theoretical  
11 possibility of those other alternatives.

12 MEMBER WORTHLEY: So have I properly addressed  
13 the big issue here today?

14 MR. KAYE: Yes.

15 MEMBER WORTHLEY: I mean, first and foremost,  
16 that's foundational, it seems to me.

17 MR. KAYE: Yes.

18 CHAIR GENEST: Well, let's hear a little of  
19 that.

20 MS. WILCZYNSKI: Yes.

21 MR. BURDICK: Let's have -- Gail is from the --  
22 actually, the training academy for the County of  
23 Sacramento, just as kind of a reminder, since we've  
24 overwhelmed you with a number of witnesses.

25 MS. WILCZYNSKI: Thank you very much.

1           It really is a pleasure to be here today. I've  
2 worked hand in hand with POST over the past ten years,  
3 being a training coordinator for the Sheriff's  
4 Department. And I have always appreciated POST and your  
5 quality, your standard. And we appreciate this document.

6           The test claim, reading the Final Staff  
7 Analysis, it's a very comprehensive document.

8           The two issues that we see as important here  
9 today for your review is, number one, regarding the  
10 academy instructors, while it's true that the Sheriff's  
11 Department does not have to have a training academy,  
12 neither does LA County Sheriff's, neither does San Luis  
13 Obispo, neither does El Dorado County. But the question  
14 I put in front of you is, if everybody said, "Well, not  
15 one in my backyard," where would the training occur?  
16 Someone has to have a training academy, whether it's a  
17 law enforcement agency or a community college. And we're  
18 falling under the same POST mandates.

19           It is mandated. Somewhere, someone has to  
20 provide this training.

21           Now, looking at it from a citizen's point of  
22 view, take Sacramento as a test case here, our citizens  
23 are served best by us having an academy. We can provide  
24 this training less expensive because we're not shipping  
25 our officers off for the travel per diem, et cetera, to

1 go elsewhere to get training. So we help our citizens.

2 We also help our little neighbor citizens.

3 I say "little" only in population.

4 El Dorado County will send their officers to  
5 our class, saving them money because we provide the  
6 training nearby.

7 So that is the one issue I have for you, the  
8 cost savings, and the fact that somebody, somewhere, has  
9 to provide POST training to meet your POST mandates.

10 The second piece of that is -- let me just check  
11 my notes. I'm sorry, I'm nervous.

12 The second part is whether or not any particular  
13 sheriff's officer or peace officer has to meet your  
14 standards. There really is nothing that is voluntary  
15 about that anymore.

16 When POST started out 25 -- well, I'm sorry,  
17 I've been around for 25 years. You were there before  
18 I was. It was there to help, to guide, to suggest, to  
19 put  
20 us on the track. But over the 25 years of my law  
21 enforcement experience, POST has stepped up to setting  
22 a minimum, to now setting exact standards, to now  
23 providing us exact curricula that you will meet. It's a  
24 standard-of-care issue.

25 I don't believe that you could run a -- what I

1 would call a Sheriff's department or a City Police  
2 Department without being POST-certified. It's just not  
3 reasonable anymore. It's a standard-of-care issue, the  
4 same way a medical board sets standards for doctors.

5 And it's important that people realize you can't  
6 even really become a police officer, no matter what kind  
7 of training you've had, without meeting POST standards.

8 And I'd like to take one second to give you a  
9 personal example. My husband is an FBI agent, was for  
10 25 years. And in his time, he was always assigned to  
11 California. He worked in the Los Angeles FBI office and  
12 the Sacramento FBI office. He is SWAT-trained, he is a  
13 full investigator, he has done a numerous amount of field  
14 work. He has been on task force with local law  
15 enforcement across California. He is an expert marksman.  
16 I'm very proud of him, with a big 10X. You put a fist  
17 right through it, he didn't miss a deal. And yet,  
18 with all this experience, he's worked on task force with  
19 local enforcement in the street on kidnappings, murders,  
20 bank robberies, car thefts, Homeland Security issues. He  
21 has top-secret clearance, for heavens sakes. He's been  
22 to two prison riots, and he does covert entries. And  
23 yet, as he retires from the FBI, my chief here cannot  
24 pick him up as a sheriff's officer because he is not  
25 POST-certified. Not only that, he cannot even take the

1       equivalency. He would have to take a full-blown academy.

2               So here's a guy that can 10X a bullet; but  
3 those skills he's picked up in firearms don't count  
4 unless they're POST-certified.

5               So that's my example of, is it voluntary or is  
6 it mandated?

7               And in conclusion, for me, I would just like to  
8 say, we love POST -- I do. I really do. And the idea  
9 that we want standards -- we all want those standards.  
10 We just need to have everybody understand the tremendous  
11 cost that goes with meeting your standards. And it isn't  
12 voluntary anymore.

13               And that's my conclusion.

14               MEMBER WORTHLEY: May I ask a question,  
15 Mr. Chairman?

16               I appreciate your testimony, because I think  
17 you're getting to the issue, which is, is it a practical  
18 compulsion as opposed to maybe perhaps a legal  
19 compulsion.

20               What prevents Sacramento from having a parallel  
21 track? That is, they would create -- because  
22 according -- as I understand it, it's by an ordinance  
23 process, whereby a county or a city would obligate itself  
24 to be POST-certified.

25               MS. WILCZYNSKI: I'm sorry -- a parallel track?

1       What do you mean?

2               MEMBER WORTHLEY: The idea would be, what would  
3 prevent you, Sacramento, from creating your own  
4 standards -- they might parallel and look very much like  
5 POST standards, but they're your own standards; and these  
6 are the standards to which you require your police  
7 officers to commit; and they have to meet these standards  
8 in order to be hired by your agency. But they could be  
9 totally separate from POST.

10              MS. MacCOUN: As law enforcement providers,  
11 participation in POST in its most basic form is mandated  
12 by statute.

13              If you look at 832(a), it says -- in the Penal  
14 Code -- it says that every peace officer in the state of  
15 California has to satisfactorily complete an introductory  
16 course on training prescribed by the Commission on Peace  
17 Officer Standards and Training.

18              It's not practical for us to send our people  
19 outside for that training because we're a very large  
20 agency, as is the City of Los Angeles.

21              It's more practical for us to provide the  
22 mandated training that's mandated by statute in-house, to  
23 our officers and the smaller agencies that need  
24 them.

25              CHAIR GENEST: Are we sort of losing track of

1 the actual issue?

2 MS. SHELTON: Let me just mention that Penal  
3 Code section 832(a), I believe is the citation, deals  
4 with basic training of individuals that want to become  
5 peace officers.

6 MS. WILCZYNSKI: Correct.

7 MS. SHELTON: There is a statute that does  
8 mandate -- anybody that does want to become a peace  
9 officer does have to go through a POST-certified training  
10 to receive their basic training certificate.

11 That's not true for continuing education,  
12 however.

13 CHAIR GENEST: And that mandate for being a  
14 police officer predates SB 90 and --

15 MS. SHELTON: I'd have to pull the statutes. I  
16 don't remember, but I think --

17 CHAIR GENEST: It's my understanding that that  
18 mandate is not a reimbursable mandate under the state  
19 Constitution.

20 MS. SHELTON: No.

21 MS. WILCZYNSKI: May I add --

22 CHAIR GENEST: So the question is not whether  
23 participation in POST training is mandatory -- it is --  
24 to become a police officer, but it's the classes beyond  
25 the basic qualification that are in question; right?



1 MS. BORZELLERI: Actually, what is at issue in  
2 this test claim is training of certain trainers.

3 CHAIR GENEST: Right.

4 MS. BORZELLERI: And certain academy staff and  
5 qualifications.

6 CHAIR GENEST: But that's only with regard to  
7 sort of extra training. It's not with regard to basic  
8 training; correct?

9 MS. BORZELLERI: Correct.

10 MS. MacCOUN: But in order to put on our own  
11 academy, our new instructors have to put on the new  
12 requirements that POST came up with in 2001.

13 MR. GUSTAFSON: If I could speak to this from  
14 the Commission's POST perspective, this is --

15 MR. BURDICK: I don't think -- I mean, aren't we  
16 supposed to complete our testimony first or not,  
17 Mr. Genest? I'm not sure what the --

18 CHAIR GENEST: Well, I'm trying to find out what  
19 exactly we're talking about. We're not talking about  
20 POST, in general, every aspect of it. We're talking  
21 about a specific part of it. And that's what we're  
22 trying to dig into.

23 But if you would like to continue for a moment;  
24 we're past our time, so we have to hurry up.

25 MS. WILCZYNSKI: I think this is the core issue.

1           The bottom line is POST sets the standard of  
2 care. It's the minimum standard by which officers and  
3 instructors are able to engage in their profession.  
4 That's it. You can't really anymore engage in your  
5 profession without meeting these POST mandates. Call  
6 them voluntary, but it's mandates.

7           That's all I want to say.

8           CHAIR GENEST: Well, let's hear from the  
9 Commission staff.

10          MR. GUSTAFSON: There are several inaccuracies in  
11 the statements that Sac County has made. However, there  
12 are examples of police departments in the state of  
13 California that do not participate in our program. For  
14 example, the City of Isleton has a police department.  
15 And for many years, the City of Los Angeles did not  
16 participate in the POST program.

17          I think that it is very practical for agencies  
18 to do so because we reimburse the training. So when  
19 there's discussion about the costs of, for example, the  
20 El Dorado County Sheriff to have to travel, those are  
21 costs that are reimbursed under a training reimbursement  
22 through POST. So I don't think that is actually key to  
23 the issue when we're talking about this instructor  
24 training. We have a plan for, what we call it, that we  
25 reimburse that travel and per diem.

1           There are 44 of the 58 counties in our state  
2           that do not have their own academy. So in that sense,  
3           Sacramento has chosen to have their own because they can  
4           have that local control, they can train their officers to  
5           meet the particular needs of their community; but they  
6           certainly aren't compelled to have that academy.

7           So I have examples of law enforcement agencies  
8           that aren't in our program, many sheriff's departments  
9           that don't have their own academy.

10           And it's true that somebody would need to have  
11           the training, but those are people who choose to  
12           participate in our program.

13           And to speak to Commissioner Worthley's  
14           question, you could have your own standard that would  
15           parallel POST. The downside of that is that we wouldn't  
16           reimburse that. So the incentive, from a POST  
17           perspective, is that if you join our program, we'll pay  
18           for your training. And so I think there's a catch there  
19           that you can't have it both ways. If you want the  
20           reimbursement, then you're in the program; but there have  
21           been a few that have chosen to have their own program,  
22           and we don't reimburse that. And they're still law  
23           enforcement agencies and they're still law enforcement  
24           trainers.

25           CHAIR GENEST: Yes?

1 MS. MacCOUN: Briefly, POST does reimburse  
2 agencies for some programs; but, for example, we're  
3 talking about the instructor development programs that in  
4 order for us to maintain our business as a law  
5 enforcement training advisor -- or provider, we have to  
6 send our instructors or provide that training for them.  
7 It's a "plan for." Yes, they provide reimbursement for  
8 travel and per diem, but they don't provide the  
9 reimbursement for backfill, they don't provide the  
10 reimbursement for the tuition, they don't provide the  
11 reimbursement for the assistance in maintaining the  
12 records and the documentation that's now required in  
13 order for our instructors to maintain their certification  
14 in order to continue to teach in our academies.

15 MS. WILCZYNSKI: And one other piece of that,  
16 that he brought up is, yes, there may be agencies who  
17 have chosen not to participate in any particular training  
18 and use some outside source. That's called an  
19 "equivalency." But then who measures the equivalency?  
20 It's measured back to the POST standards.

21 MS. MacCOUN: Right.

22 MS. WILCZYNSKI: Does your outside class that  
23 you did without any POST money or POST help meet POST  
24 standards? You're right back to: Well, that was a great  
25 class, but if it doesn't meet the POST standards and

1 mandates, it doesn't count as an equivalency course.

2 MS. MacCOUN: And we have to meet with our  
3 consultants to determine whether or not it meets with  
4 their equivalency standards.

5 MS. WILCZYNSKI: Right.

6 CHAIR GENEST: Can we see -- do the other  
7 members of the committee -- and I'm not sure I do --  
8 understand what the question before the Commission is?  
9 Can we get that restated?

10 MS. SHELTON: And let me clarify. The analysis  
11 before the Commission focuses only on one issue, on  
12 whether or not the regulations constitute a  
13 state-mandated program.

14 In order for the Commission to approve any test  
15 claim, you have to make findings on more than just that  
16 element, which has not been analyzed here. You have to  
17 first find it out to be a mandate. And I'll get into  
18 what the courts have said about that in just a second.

19 You'll also have to find that the new activities  
20 constitute a new program or higher level of service.

21 And the third element is whether there are any  
22 increased costs mandated by the state. And in that  
23 issue, you would have to take into consideration any cost  
24 of the training, any reimbursement from POST, and those  
25 types of issues.

1           With regard to the state mandate issue, the  
2 Supreme Court has given it some direction, namely that  
3 either -- one, that it's not an equitable decision, it's  
4 a question of law; two, it either has to be expressly  
5 mandated by the statute; or, three, the courts have  
6 provided exceptions, even if it's not expressly mandated  
7 by statute, it has to impose certain or severe penalties,  
8 such as double-taxation or other types of fiscal  
9 financial penalties.

10           The other exception the courts have discussed  
11 have been a public safety exception, when the entity has  
12 no other choice but to perform the mandate. And you  
13 would need to look at -- you know, we would need to take  
14 it back to further analyze that issue. This is new  
15 evidence for us here today. So I wouldn't want to give a  
16 recommendation on that.

17           But the plain language of these statutes does  
18 not mandate the training or the costs incurred by the  
19 local agency.

20           CHAIR GENEST: Well, since we've run ten minutes  
21 past our time -- and I don't know that the Commission is  
22 ready to vote on this -- maybe we should put it off and  
23 take up our other issue. And I suppose that means  
24 putting it off until the next meeting.

25           MS. HIGASHI: Since we have no written evidence

1 in the record on this issue, as they testified to today,  
2 what I would suggest that we do is, we would reissue the  
3 draft analysis -- the final staff analysis as it was  
4 issued for this hearing, and allow the parties an  
5 additional 30 days to submit written briefs and comments,  
6 and to clearly articulate what it is that they are  
7 objecting to and what their new positions are.

8 CHAIR GENEST: If I don't hear any objection  
9 from the other members, let's do that and let's proceed  
10 to the next issue on the agenda.

11 Thank you.

12 MS. HIGASHI: Thank you very much.

13 MR. BURDICK: Thank you very much.

14 And we do concur with your decision that you  
15 made today, and we look forward to discussing this in the  
16 future. Thank you very much.

17 MS. HIGASHI: Item 7 and Item 8 have been  
18 postponed.

19 Item 9 was adopted on consent.

20 Item 10 was adopted on consent.

21 Item 11 was adopted on consent.

22 And this brings us to Item 12.

23 This item will be introduced by Assistant  
24 Executive Director Nancy Patton.

25 MEMBER PATTON: Good morning.

1           Since 2003, mandate reform has been a major  
2 budget and policy issue. Problems with the mandates  
3 determination and reimbursement process include lack of  
4 payments for mandated programs, problems with the  
5 claiming system, the need to provide the Legislature with  
6 better information and delays in the mandates  
7 determination process.

8           The Administration and the Legislature have  
9 enacted several changes since 2003 to improve the  
10 mandates process, including repealing or modifying many  
11 state-mandated programs to provide clarity to the program  
12 or to reduce the costs of programs, enacting reforms to  
13 the test claim and claiming processes, conducting audits  
14 by the Bureau of State Audits on two programs, and  
15 enacting changes to those programs based on the BSA's  
16 recommendations, providing the Commission, the Department  
17 of Finance, and the State Controller with additional  
18 staff to reduce the test claim backlog and increase  
19 audits of mandated programs.

20           Last year, the Commission sought to streamline  
21 and reform the existing process using a collaborative  
22 process. The Legislature elected not to fund this  
23 process.

24           This year, the Department of Finance is  
25 proposing an alternative to the existing process for



1 developing parameters and guidelines and statewide cost  
2 estimates and funding mandated programs. In addition,  
3 the Legislative Analyst's office, in its analysis for the  
4 Governor's proposed 2007-08 budget included a section on  
5 improving the mandate process.

6 LAO cited continuing problems with the mandate  
7 process and released a mandate reform proposal similar to  
8 Finance's proposal.

9 The Commission's executive director invited  
10 Staff from the Department of Finance and the Legislative  
11 Analyst's Office to present their proposals to the  
12 Commission. There will be public testimony regarding the  
13 proposals following the presentations.

14 First, Commission staff would like to discuss  
15 some of the LAO findings in their report and provide  
16 additional information.

17 As I stated previously, the Commission was  
18 provided with additional staff to eliminate the current  
19 test claim backlog. As a result, the Commission is  
20 increasing the number of test claims it completes and is  
21 reducing the backlog.

22 The LAO report, however, contends that our data  
23 shows that we are not reducing workload because we are  
24 completing test claims at the same rate as new test  
25 claims are being filed.

1           The LAO report, however, does not recognize that  
2           at its request, the Legislature directed the Commission  
3           to reconsider 13 prior mandate determinations. The  
4           Commission was required to complete this new workload  
5           prior to eliminating the existing backlog.

6           In 2004, the Commission completed 11 of the  
7           13 reconsiderations. The remaining two reconsiderations  
8           will be completed within the next six months.

9           The Legislature also modified or repealed  
10          numerous mandates and required the Commission to modify  
11          or set aside 48 sets of Parameters and Guidelines in  
12          2006.

13          In 2006 and 2007, the Commission has completed  
14          22 test claims and drafted analyses on another 23 test  
15          claims that will be heard in April, May, and July of this  
16          year.

17          The LAO report states that the Commission's  
18          failure to eliminate our backlog of claims is frequently  
19          cited as the main reason for time delays in the mandates  
20          process. Staff points out that all the participating  
21          entities contribute to this delay by frequently  
22          requesting extensions of time to comment on the test  
23          claim filings, and frequently seeking postponement of the  
24          hearings. For example, state agencies requested  
25          107 extensions of time on the 51 test claims filed in

1 2002; and claimants have requested 30 extensions of time  
2 for acting on the P's & G's for one program.

3 In 2004, Assemblyman Laird's Special Committee  
4 on State Mandates sponsored, and the Governor enacted,  
5 AB 2856 to allow the Commission to adopt a reasonable  
6 reimbursement methodology that places a greater emphasis  
7 on the use of formulas and unit costs or unit times to  
8 reimburse mandate claims.

9 AB 2856 requires two criteria to be met to  
10 adopt the reasonable reimbursement methodology. Prior  
11 to these criteria being required, the Commission adopted  
12 unit-cost methodologies for several programs including  
13 *Absentee Ballots, Administrative License Suspension,*  
14 *Animal Adoption, Annual Parent Notification, Expulsions*  
15 *Hearings, Immunization Hepatitis-B, the Open Meetings*  
16 *Act, People Health Screenings, and Scoliosis Screenings.*  
17 However, the new criteria that must be met makes it  
18 impossible to adopt a methodology.

19 Commission staff supports eliminating or  
20 amending the criteria as both Finance and the LAO  
21 propose. In the meantime, today, the Commission  
22 initiated a rulemaking package to amend its regulations  
23 to further define the criteria so that methodologies can  
24 be adopted.

25 With us this morning is Tom Deatherage with the

1 Department of Finance's new mandates unit, and Mary Ann  
2 O'Malley with the Legislative Analyst's Office to discuss  
3 their proposals.

4 Thank you.

5 CHAIR GENEST: Do we want to start with  
6 Mr. Deatherage?

7 Okay. Welcome.

8 MR. DEATHERAGE: Thank you, Mr. Chairman,  
9 Members of the Commission. My name is Tom Deatherage.  
10 I'm the program budget manager in the Department of  
11 Finance over the local mandate unit, a new unit that we  
12 just created this last summer.

13 And, by the way, the local mandate unit in  
14 finance deals with the local agency mandates. It doesn't  
15 deal with the school mandates. They're still dealt  
16 with by the education unit.

17 But I believe that since the creation of that  
18 unit, the Department of Finance has not requested an  
19 extension of any issue that's come before the Commission.

20 VOICE: I can't hear you.

21 MR. DEATHERAGE: I believe that since the  
22 creation of that unit, the Department of Finance has not  
23 requested an extension.

24 Now, to mandate reform. Our goal in trying to  
25 create a new process for reviewing and dealing with

1 mandates, is to create a process that is considerably  
2 more timely, so that the local governments can know what  
3 the reimbursement is going to be, the Legislature and the  
4 Administration can know what it's going to cost.

5 The worst thing -- or one of the worst things  
6 for the Department of Finance in preparing the budget is  
7 to have some unknown liability building up, and not being  
8 able to deal with or plan for that liability.

9 So we have a very great interest in trying to  
10 speed up this process and simplify it.

11 We have been working with the Commission staff  
12 on a reform. One of the first things that we would do  
13 is, we are proposing to eliminate the current statute  
14 that sets up the reasonable reimbursement methodology.  
15 We find that there is a difficulty in the current statute  
16 in that it requires everything to go to the median. And  
17 determining a median can be problematic. Is the  
18 median, the median of all affected entities, those that  
19 happen to file claims? You know, how is that going to be  
20 defined?

21 We think it's going to be easier if we just  
22 eliminate that requirement and move forward with a new  
23 process.

24 Our process would allow us to begin working with  
25 local governments either prior to or immediately after

1 enactment of a potential mandate.

2 And we would work on deciding whether, indeed,  
3 there is a reimbursable mandate at issue. We would then  
4 be working with the local governments on how we might  
5 best approach estimating the cost.

6 And we would work with associations, we would  
7 work with specific local entities, and we would try to  
8 come up with a methodology that seemed reasonable to the  
9 people involved.

10 And I liken it to the Department of Finance's  
11 role in looking at budget-change proposals for other  
12 departments. We sit down with the department. We work  
13 with them to determine what are the real costs, how can  
14 we best approach the work that needs to be done, and how  
15 can we implement this in a reasonable manner.

16 It's not going to be a process that is going to  
17 necessarily fully reimburse every entity. It may  
18 overreimburse some entities.

19 What we're looking for is something that looks  
20 Reasonable, and we can say it looks like it would be  
21 implemented in an efficient and effective way.

22 We would then take that back to the  
23 Legislature -- and hopefully we can do this within about  
24 a year - and that would permit the Legislature to  
25 determine if, indeed, they intended to spend that amount

1 of money for the local governments to do what they're  
2 telling them to do.

3 That issue would be before the Legislature; and  
4 they could decide if they want to repeal the mandate or  
5 modify the mandate, or what they want to do with it.

6 When money is appropriated, then the money would  
7 be paid to the locals.

8 We've been working with so far cities and  
9 counties on the process. We're not excluding school  
10 districts from the discussions. But we're putting school  
11 districts off for the time being, and that's partly my  
12 experience I have had. At various times in my career  
13 I have dealt with local governments, and the local  
14 government unit in Finance. I've spent quite a bit of  
15 time in the education unit. And one thing I did find out  
16 is that the school districts in local governments often  
17 approach things in different ways. So what works for one  
18 may or may not work for the other.

19 We want to come up with a process that will work  
20 for cities, counties, special districts; and then we're  
21 going to take it to the school community and see if it's  
22 going to work for them.

23 If it's not going to work for them, then we'll  
24 work with the school community on what will work for  
25 them because, as I said in the beginning, we want to have

1 a process that is much more timely. We want to know what  
2 these things cost. That's our goal.

3 MEMBER WORTHLEY: Mr. Chairman, can I ask a  
4 question?

5 I'm curious, have you considered instead of  
6 going to the Legislature, that you would come to the  
7 Commission?

8 MR. DEATHERAGE: Yes, that is a possibility.

9 MEMBER WORTHLEY: It would seem to me that it's  
10 so political at the legislative level, that coming here,  
11 where you would bring it -- it would be like a stipulated  
12 judgment, essentially, to this board, that this  
13 Commission would consider that, we'd have our staff  
14 review it, or whether we concur with the analysis, the  
15 determination. And then this board would -- I don't want  
16 to say rubber-stamp it, but it would probably approve it  
17 95 per percent of the time. But the idea is it would be  
18 done in a timely fashion.

19 My concern about going to the Legislature is  
20 that it could become a hot potato, and it might not get  
21 acted upon in this legislative session, in the next  
22 legislative session, or -- there's a lot of things that  
23 could happen once you go to the Legislature.

24 MR. DEATHERAGE: You're absolutely correct. And  
25 I didn't mean to imply we were going to go directly to



1 the Legislature.

2 MEMBER WORTHLEY: That's what you just said.

3 MR. DEATHERAGE: We do intend to. That's a  
4 possibility; but I think generally, we would expect to  
5 come back to the Commission with a reasonable  
6 reimbursement methodology that the Commission could --  
7 would endorse and adopt. And, yes, that would be a more  
8 timely process than going through the Legislature.

9 CHAIR GENEST: But you've mentioned one of the  
10 outcomes might be the repeal of a statute, in which case,  
11 the Commission doesn't have that power.

12 MR. DEATHERAGE: No, that would be an issue that  
13 the Legislature would have to act on.

14 MS. HIGASHI: I just want to add one point, one  
15 comment. The Department of Finance and some local  
16 agencies are working together right now on some cost  
17 surveys that would then be proposed as reasonable  
18 reimbursement methodologies for the Commission to  
19 consider.

20 CHAIR GENEST: Other questions for  
21 Mr. Deatherage?

22 MR. DEATHERAGE: I just want to clarify that we  
23 are going to be dealing with the school districts, so we  
24 are not leaving them out. We want to make sure that we  
25 have a process that will work for the first section,

1 and then we'll work on the process for the other section.

2 MEMBER WORTHLEY: One bite at a time?

3 MR. DEATHERAGE: One bite at a time.

4 CHAIR GENEST: So are we ready to hear from  
5 Ms. O'Malley?

6 MS. O'MALLEY: Good morning.

7 I'm going to be speaking today from this handout  
8 that you have called, "Improving the mandate process."  
9 And I also brought copies of it, which are back there  
10 along with the public agenda for people that may be in  
11 the audience who don't have a copy.

12 I just want to start, we don't have nothing --  
13 we at the LAO, we have nothing but respect for the  
14 enormity of the work that the Commission faces.

15 You wrestled with some very difficult issues of  
16 state and local governments. You have to define and  
17 measure this peculiar layer of geography in the state and  
18 local landscape, this peculiar layer of geography called  
19 the state-mandated local program.

20 Our office has watched the Commission's work,  
21 both in the audience -- occasionally up here, always  
22 on your Web site. And we've reached a number of  
23 conclusions regarding the mandate reimbursement process  
24 that we'd like to share with you that are outlined in the  
25 handout.

1           And your staff is correct, for many, many  
2 reasons there is a long process between submission of the  
3 mandate test claim and final action by the Commission.  
4 It takes about five years; and that process is certainly  
5 hampered by all the incorrect reduction of claims that  
6 you have to handle, the reconsiderations, and also the  
7 delays by many parties' requests for delays in the  
8 process.

9           Our only point is those IRCs, those  
10 reconsiderations, those request for delays are going to  
11 continue to happen. And we need to plan a process that  
12 can get us through this mandate-reimbursement process on  
13 a quicker basis. It imposes very significant hardships  
14 for local government and for the state, it makes it very  
15 difficult to have mounting liabilities and not know what  
16 the scope of the mandate is for five years.

17           The other concern we've got regarding the  
18 Mandate-reimbursement process is the claiming process  
19 is highly complicated. Given the definition of a  
20 reimbursable mandate, most of your mandates are not  
21 entire new programs. They add a marginal increased  
22 activity or, frankly, much legislation adds marginal  
23 increased activities in 12 different areas.

24           And it's very difficult to quantify what the  
25 cost is of carrying out a marginal-increased activity in

1 12 different areas.

2 So we kind of have a choice, we could either  
3 hand out stop watches to all of local government and time  
4 it, how long did the training take, how long did that  
5 phone call take, and take a log for it, and record things  
6 like we require them to record in POBOR, which is how  
7 does a peace officer bring a tape recording to the  
8 hearing; and if so, did the peace officer press the  
9 button first, and did you document that?

10 We can either go through this kind of process  
11 with stop watches, or we can embrace the imperfect and  
12 rely on unit cost. And unit costs are sloppy. They  
13 provide too much money to some and too little money to  
14 others.

15 But our sense of it is, the staying with the  
16 status quo places enormous costs on state government to  
17 review and audit these claims, and local governments to  
18 prepare them, and places enormous friction between state  
19 and local governments regarding this whole mandate-  
20 reimbursement process.

21 So our second concern after the time is the  
22 claiming process, the complexity of it.

23 And the very last one is the little incentive  
24 for cost containment.

25 If you think of it from a local government

1 standpoint, what do they gain if they create the most  
2 efficient way of following a mandate? If they do it  
3 most efficiently, they get less money.

4 We have no incentives for local government to  
5 carry out a mandate in an incredibly efficient fashion.  
6 And we think from a governmental standpoint, and as  
7 accountability for taxpayer revenues, we ought  
8 to create incentives at all levels of government to carry  
9 out responsibilities in a cost-effective fashion.

10 So those are our concerns with the proposal.

11 To give you an overview of our proposal, our  
12 goal is not to tilt the balance of scales to make it  
13 easier for state government or easier for local  
14 government to file a mandate claim; but simply to  
15 expedite the process, to simplify the claiming process.  
16 And we wanted to create a process that provided  
17 alternatives for local government.

18 And from our standpoint, we wanted to include  
19 schools. But they're all optional alternatives. So if  
20 a local government claimant or the Department of Finance  
21 didn't want to play on a particular mandate, they didn't  
22 have to. But that process would be available to all  
23 local governments, including schools.

24 In our proposal, we really wanted to have this  
25 have a wide public hearing. And so at the same time we

1 discussed our proposal in the P & I, our perspectives and  
2 issues, we gave the Legislature draft language of our  
3 proposal, because the devil is in the details and the  
4 people need to look at the specifics of it and respond to  
5 it. And Assembly Member Silva very graciously  
6 incorporated it and introduced it into AB 1576.

7 So our proposals got three different concepts.  
8 The first is regarding the reasonable reimbursement  
9 methodology. We've all been talking for a long time  
10 about the difficulty, almost the impossibility of  
11 measuring the marginal frugal cost of carrying out a  
12 mandate. And in 2004, the Legislature tried to create a  
13 reasonable reimbursement methodology that would highlight  
14 and define the kind of unit costs that we were thinking  
15 about. For many reasons, it didn't work out.

16 Now, the choice is, we could either repeal it,  
17 or maybe we could take a look at that reasonable  
18 reimbursement methodology and say, why didn't it work out  
19 and how do we fix it?

20 And our two proposals is this: We suggest that  
21 there are two different criteria. One is that  
22 100 percent of the cost equals 100 percent of the state  
23 reimbursement; and the other one is 50 percent of the  
24 local agencies get fully reimbursed.

25 We suggest make it one of those two criteria,

1 and also clearly specify in legislation what was always  
2 the legislative staff's standpoint, which is, we expected  
3 this to be based on estimates of local government cost.  
4 Use representative samples, use reverse engineering, use  
5 a variety of ways of trying to estimate the cost.

6 So our first proposal is to highlight the  
7 reasonable reimbursement methodology. Amend it, not end  
8 it.

9 MEMBER WORTHLEY: Mr. Chairman, if I may ask a  
10 question.

11 Have you thought about something of a hybrid  
12 there? My thought was this: You could offer to the  
13 claimant what you just referred to as standardized costs  
14 and so forth, but California is an extremely diverse  
15 state. So if I'm in Imperial County and I have to hire  
16 somebody that has to come from Los Angeles to fulfill a  
17 responsibility, my costs might be, let's say, four times  
18 what somebody else could have it done for in an urban  
19 setting. So that you would allow for that kind of  
20 extenuating circumstance, a person to make a  
21 significant -- make a claim based upon actual cost versus  
22 unit cost.

23 And the idea would be probably that most people  
24 would want to take advantage of a unit cost. From a  
25 simplicity standpoint, it would be more burdensome to do

1 the other. But allowing for the discrepancies that we  
2 have in this county, and the diversity that would allow  
3 people to be able to make such a claim.

4 MS. O'MALLEY: It's not completely inconsistent  
5 with our proposal. But what we would prefer to see is  
6 having your \$10.50 a widget or \$11.50 in rural areas, you  
7 know, define it as categories, as opposed to giving all  
8 the local government stop watches.

9 MEMBER WORTHLEY: Well, I agree with the  
10 concept.

11 MS. O'MALLEY: If you read over the audits by  
12 the State Controller's Office -- and no disrespect to the  
13 very high quality staff work they're doing -- they're  
14 measuring to each one of your Parameters and Guidelines  
15 and saying, "Where's your documentation? Where's your  
16 log? Where's your" -- and this is what they need to be  
17 doing. And I would suggest that for the good of the  
18 state and for the good of state and Imperial County  
19 relations, let's move to unit costs wherever possible.

20 Certainly, there are going to be cases where  
21 it's impossible. But to the maximum extent, we think  
22 it would be a good direction to go.

23 The second alternative -- so the first one was  
24 modifying the reasonable reimbursement methodology.

25 The second one is, we call it, allowing



1 reimbursement methodologies or Parameters and Guidelines,  
2 any statewide cost estimate to be developed through  
3 negotiations.

4 Now, some people say, "You know, you can do that  
5 right now." But the reality is, it never is. And the  
6 reason is because there are no clear benefits, and  
7 there's no clear process, and no real clear timeline for  
8 local governments and Department of Finance to go off and  
9 do that work in a negotiated fashion.

10 We're proposing something different. So after  
11 you adopt a Statement of Decision, a local government  
12 claimant and the Department of Finance may come back and  
13 propose to you a negotiations work plan. They say,  
14 "We're going to work on developing the Parameters and  
15 Guidelines. Here's our plan. We promise to consult with  
16 a large sample of local governments; and to develop this,  
17 we're going to assess local support before we bring  
18 it back. And by the time we bring it back, we're going  
19 to have some kind of unit cost to be able to estimate the  
20 statewide cost."

21 So they'll come on back, and they'll say, "This  
22 was our process. Here's our reasonable reimbursement  
23 methodology. Here's indication of broad local acceptance  
24 of our reasonable reimbursement methodology, and here is  
25 the statewide cost estimate at once." All right, your

1 review of that process would be largely procedural.

2 Is it reasonable reimbursement methodology that  
3 squares with that SOD? Yes.

4 Did they, indeed, go out and check with a  
5 representative sample of local governments? Yes.

6 Okay, then that's all right. And then you would  
7 adopt the statewide cost estimate.

8 Pulling that whole process together through the  
9 adoption of the P's & G's and the statewide cost estimate  
10 shaves a year from the process. Okay, that alone shaves  
11 a year. And if we go to unit cost, and we don't have to  
12 actually send everything on out, we can say to you -- and  
13 the statewide cost estimate will be a whole lot better.  
14 I don't know if you realize, but the statewide cost  
15 estimates over the last -- frankly, from the beginning of  
16 the statewide cost estimating process are incredibly  
17 inaccurate. And that's true even for the most recent  
18 statewide cost estimates. And that's because you sent  
19 out the claiming instructions, and you get feedback from  
20 only a small selection of the local agency claimants that  
21 actually have the data.

22 Within another year or two or three, the local  
23 agencies learn how to collect the data, and they're  
24 submitting claims.

25 So the difference between the statewide cost

1 estimate and the actual costs that the state faces is  
2 enormous. And so you would give the Legislature  
3 information a year faster and much better quality data.

4 The third alternative is a process very similar  
5 to what the Department of Finance has suggested. Our  
6 concern, and maybe because we work for the Legislature  
7 is we want to have a very clear legislative process  
8 and options for the Legislature.

9 And so our proposal -- we call it our fast-track  
10 process. Shortly after the Legislature enacts  
11 legislation, where regulation has passed, a local agency  
12 can go to the Department of Finance and say, "We think  
13 there's a mandate," and they can say, "You know what? We  
14 think so, too."

15 They can go on off and define what they think is  
16 a mandate, develop a reasonable reimbursement  
17 methodology, estimate the cost, and prepare a funding  
18 package for the Legislature.

19 It would be introduced to the Legislature, for  
20 the Legislature to consider it.

21 If the Legislature adopted it, they would do  
22 this: They would say, "We declare" -- the Legislature  
23 declares that these five elements of SB-whatever  
24 constitute a legislatively determined mandate. And here  
25 is the reimbursement methodology that we will follow in

1 reimbursing this mandate.

2           The local agencies then, when the money is  
3 appropriated, can look at it and say, "Do I wish to  
4 accept this?" If they don't wish to accept it, they can  
5 come here and file a test claim. But I think in many  
6 cases, they would much rather go through the simplicity  
7 of going to the Legislature and just taking the money.

8           If so, if the local agency accepts the money,  
9 they signify for the Legislature and to the  
10 Administration that they accept this as a reasonable  
11 reimbursement methodology, and they will continue with  
12 this process for five years. During that time, they will  
13 not file a test claim, and they will accept this as a  
14 reimbursement.

15           If a local agency doesn't agree, they can come  
16 here.

17           What if the Legislature, after two years, runs  
18 into fiscal difficulties and doesn't fund the thing that  
19 they promised to fund? Well, then all bets are off. The  
20 local agency didn't get the dough that they were  
21 promised, or didn't get the full amount of dough that  
22 they were promised, and they can come in here and file a  
23 test claim.

24           The notion is to create something particularly  
25 for widely agreed mandates, where they can come through

1 this legislatively determined process and bypass the  
2 Commission entirely.

3 This wouldn't work for your most complicated  
4 Claims. You guys would still be here, resolving those.  
5 But it would shed a lot of the workload for your simpler  
6 claims and free up your time to do the harder work.

7 Let me just tell you that since we've issued our  
8 report and put out the draft legislation, we've gotten  
9 very positive feedback. However, it's been very  
10 preliminary positive feedback. And we're really  
11 hoping -- our intention in providing this in legislation  
12 was to have a broad public debate. We really know that  
13 we, alone, won't be able to get it a hundred percent  
14 right. We would benefit from the input from the  
15 Commission, from state agencies, from the Department of  
16 Finance, from local governments. And we really welcome  
17 that process. Because our intention of it was to have a  
18 broad public policy discussion, and that was the purpose  
19 of putting our legislation out.

20 And with that, I'd be happy to take any of your  
21 questions.

22 CHAIR GENEST: Any questions from the Committee?

23 *(No audible response)*

24 CHAIR GENEST: No?

25 I actually have a couple of questions, probably

1 for both of you.

2 I'm not sure I understand precisely what the  
3 differences are between the two bills, the Legislative  
4 Analyst's-sponsored bill and the Department of Finance  
5 bill.

6 What are those key differences?

7 MR. DEATHERAGE: I believe the key differences  
8 are, one, the Legislative Analyst specifies in the  
9 statute the process by which something would be taken  
10 directly to the Legislature. We leave that to be done  
11 on an individual basis because you're going to go to the  
12 Legislature, anyway.

13 The other key difference that I recall is that  
14 we called for eliminating the current reasonable  
15 reimbursement methodology provision, and the Legislative  
16 Analyst's proposal leaves that provision in the statute.

17 MS. O'MALLEY: Philosophically, they're  
18 remarkably similar, perhaps just with different hats.  
19 Ours has be a little bit more of a detailed process in  
20 terms of the Legislature.

21 CHAIR GENEST: What about the impact of  
22 Proposition 1A, especially under your expedited proposal  
23 in which individual local governments would be able to  
24 come back and challenge the determination?

25 Proposition 1A says that, for those mandates

1 that are affected by it, if the Budget Act of a given  
2 year fails to fully fund the legally determined cost of  
3 a mandate in the most recent year in which it was legally  
4 determined, then the mandate is suspended.

5 If you went through your expedited process and  
6 thereby established, since it's a statutory process, a  
7 legal determination of what the mandate costs, and then  
8 it wasn't funded in the Budget Act, then the mandate  
9 would be suspended.

10 What would be the recourse of a local government  
11 who didn't agree with that determination of what it cost?

12 MS. O'MALLEY: I want to make sure that I  
13 understand your question.

14 Let me just say, in terms of the Legislatively  
15 determined mandate, or alternative 3, by the Legislature  
16 declaring something to be a mandate, the provisions of 1A  
17 apply. In other words, local governments expect to  
18 receive funding on an annual basis, or the Legislature  
19 should be suspending that mandate. It also authorizes  
20 the Legislature to carry out the Government Code's  
21 authority of suspending the mandate.

22 So the Legislature may suspend. Local  
23 governments are entitled to reimbursement if the  
24 Legislature does not suspend or repeal.

25 In terms of your question, if a local agency

1 doesn't agree with the amount of money provided in the  
2 legislatively determined mandate, a local agency,  
3 provided it doesn't accept the money one year, can come  
4 to the Commission and file a test claim, which is part of  
5 the reason why the Legislature -- when the Department of  
6 Finance brings to the Legislature a funding package and  
7 says, "We have an agreement with a local agency regarding  
8 something that we want you to call a legislatively  
9 determined mandate," in our process, the Legislature will  
10 look to the Department of Finance and local agencies and  
11 say, "Show us broad information suggesting wide local  
12 support for your proposal."

13           If you don't have a lot of local agencies saying  
14 that this is a reasonable reimbursement methodology, why  
15 is it worth the Legislature's time to go ahead and  
16 declare something a mandate and provide funding?

17           So when the Department of Finance comes with a  
18 package, saying, "Declare something to be a mandate," the  
19 Legislature is going to say, "Do you have pretty  
20 widespread local government support? Because if you  
21 don't, don't come here, just send the local agencies to  
22 the Commission on State Mandates."

23           CHAIR GENEST: Let me answer my own question a  
24 little bit, because I actually think your proposal works  
25 very well in the context of the mandates that are



1 affected by 1A; because you will establish some price,  
2 some cost. And then if the Legislature chooses not to  
3 put it in the budget, or if it gets put in the budget and  
4 the Governor chooses to veto it, in either event, it's no  
5 longer in the Budget Act at that price, then it's  
6 suspended.

7 Now, with respect to any activity that occurred  
8 before the suspension, there's obviously a chance to get  
9 reimbursed at some point. Nobody's going to change that.  
10 That's a constitutional guarantee.

11 However, the local government that didn't agree  
12 with the price, if it thought the price was much higher,  
13 it would be sort of a moot point at that point. If  
14 there's no longer a mandate, why would you appeal to get  
15 a higher-priced determination?

16 If it thought the price was lower, I think it's  
17 an unlikely scenario that a local government would want a  
18 mandate to continue and in order to get it to continue,  
19 they would come appeal for a lower unit price.

20 So I think for those mandates, your process  
21 would absolutely get us to where we need to be. And  
22 where we need to be is a matter of not just legislative  
23 determination, but the people agree with Proposition  
24 1A.

25 The Legislature put it on the ballot and the

1 people agreed with it. It's in the Constitution.

2 And the underlying idea there is: Let's not  
3 build up these massive overdue payments on mandates.  
4 Let's quickly get a decision to either pay for it or get  
5 rid of it, suspend it.

6 At one point it was going to be repealed, but  
7 it ended up coming out of the legislative process as  
8 suspension. It has the same effect. It just isn't  
9 permanent, necessarily.

10 So I think your proposal really answers -- and  
11 so does the Department of Finance's -- really answers the  
12 question, how should this Commission and how should the  
13 mandate-reimbursement process accommodate the new thing  
14 that Proposition 1A has put into the Constitution? And  
15 the urgency of getting a decision one way or another --  
16 fund it or get rid of it -- is addressed by your  
17 proposal. And that's why I'm very attracted to it.

18 I think it's less clear how that would work out  
19 in mandates such as POBOR and others which are not  
20 subject to Proposition 1A, or all of the education  
21 mandates which are not subject to Proposition 1A.

22 I wish we could have applied Proposition 1A to  
23 all mandates, but we didn't do it that way. Maybe  
24 someday in the future it will be done.

25 But at least with respect to Proposition 1A, I

1 think both proposals are, in Chairman Mao's words, a  
2 great leap forward. And I think the Commission should  
3 seriously consider whether or not to endorse those.

4 I think we could wait until our next meeting to  
5 do that because both proposals come up before the  
6 Legislature after our -- is it April 16th, the next  
7 meeting?

8 MS. HIGASHI: Yes.

9 CHAIR GENEST: So I would like us to urge the  
10 members of the Committee to take a serious look at this  
11 between now and then, and contemplate whether the  
12 Commission should endorse one or both of these proposals.

13 And I suppose it sounds like we could almost  
14 pick one and flip a coin between the two; they're not  
15 that different, obviously.

16 With my other hat on, I would naturally lean  
17 towards the Finance version, but I don't think the  
18 Department of Finance is particularly opposed to the  
19 Legislative Analyst's version.

20 MR. DEATHERAGE: Mr. Chairman, as I said,  
21 we're in discussion with local governments.

22 My guess is that the two proposals will come  
23 together and meld into one here in the next several  
24 weeks.

25 And hopefully, that could happen even before

1 your next meeting. I don't know that it will happen that  
2 quickly; but I think endorsing in concept, at least, puts  
3 the message out there that the Commission supports the  
4 idea. The specifics really aren't that much different  
5 for the two proposals.

6 MEMBER WORTHLEY: Mr. Chairman, the one thing --  
7 I'm from local government, so it's my job to be skeptical  
8 about considering things in the State Legislature. So  
9 I kind of like ones with the Department of Finance. I  
10 would think it might be advantageous to have the  
11 negotiations, have what would be in a sense a stipulated  
12 agreement, come before this Commission, which is a  
13 quasi-judicial body, which will be reviewed by our staff,  
14 approved by the quasi-judicial body, and then they would  
15 put a little more pressure on this Legislature to act on  
16 it.

17 I'm concerned that the Legislature will not act.  
18 Even though they ought to act, that doesn't mean they  
19 will act. They could delay it, they could disagree with  
20 the agreement. I just think all kinds of things could  
21 happen when it gets there.

22 I would rather -- I would feel more comfortable  
23 if you had a quasi-judicial determination supporting the  
24 agreement reached by the parties, and then it go to the  
25 Legislature. I would think it would have a greater

1 impact on the Legislature, or hopefully so.

2 MS. O'MALLEY: If I may -- and I'm sure I'm  
3 going to butcher some of the legal language on this  
4 one -- the reason our third alternative bypasses the  
5 Commission process entirely and goes to the Legislature  
6 is in the interest of time. It would take about a year  
7 to do this alternative third process.

8 Our understanding of if we were to -- say, the  
9 Department of Finance and local governments were to come  
10 together and draft a Statement of Decision and Parameters  
11 and Guidelines and a statewide cost estimate and bring  
12 it to you, our understanding -- and you've got a lot of  
13 lawyers in this room who can correct me -- is you would  
14 need to do full public hearings on it and review the  
15 whole merits of this proposal being brought to you. And  
16 so that would slow down the process.

17 And so in the interest of time, we were  
18 suggesting having a process where the Legislature could  
19 declare something to be a mandate.

20 But certainly if it got bogged down in the  
21 Legislature, people do not get satisfaction, they could  
22 come here, and they would already have the work product  
23 that hopefully would expedite the process coming through  
24 the Commission.

25 CHAIR GENEST: I see a problem with that almost

1 philosophically, because the entire mandate-reimbursement  
2 portion of the Constitution is actually a limitation on  
3 the Legislature. It is, on its face, suspicious of the  
4 Legislature, and anxious to keep the Legislature from  
5 imposing costs on local governments that are never  
6 reimbursed.

7 But I don't think your proposal actually raises  
8 that problem, because it wouldn't affect the underlying  
9 constitutional requirement that mandates be reimbursed;  
10 it would just be a way of expediting the determination of  
11 how to do that.

12 MS. O'MALLEY: Our proposal, if I may, is very  
13 similar to if the Legislature were to pass a bill and  
14 say, "Gee, we understand that there's some local cost.  
15 Let's put an appropriation in the bill," okay, which  
16 doesn't happen all that often. But this is sort of the  
17 division by about a year. The Legislature would pass a  
18 law where there would be a regulation, and a year later,  
19 with information provided by the Administration and local  
20 government, there would be some information regarding the  
21 cost of the legislation and the amount that would need to  
22 be provided.

23 It's essentially like putting that funding in  
24 the bill, which ideally it would have been in the first  
25 place.

1 CHAIR GENEST: I think it's important for me,  
2 anyway, that the Commission think about the implications  
3 of Proposition 1A. And, to my knowledge, the  
4 Commission hasn't really dealt with that explicitly.

5 And I think it's urgent that we do so, because  
6 that has been the law of the land now for two years. It  
7 fundamentally changes a large number or a big category  
8 of mandates -- not all.

9 And I think any proposals that affect mandates  
10 not affected by Proposition 1A may be experimental, in  
11 the sense that we may adopt something and then decide  
12 it's not quite what we had in mind; and we may find that  
13 all of this comedy of people getting together and  
14 agreeing on things is blown up every time by some  
15 outlier, single, local government saying, "Well, I don't  
16 agree," and blowing up the whole thing.

17 That, I don't believe, is a problem with respect  
18 to 1A, for the reasons I stated before, because  
19 essentially the action moots it out.

20 It would be a problem if we agreed on a cost,  
21 put the cost in the budget, and then somebody said, "But  
22 wait, that's not enough." That would still be an issue.  
23 But I think they would be fighting an uphill battle if  
24 the process by which that amount was made was reasonable,  
25 public, and endorsed by this Commission.

1           So while my enthusiasm for the proposal is  
2           tempered when it comes to the non-Proposition 1A  
3           mandates, since it's not that clear to me how that would  
4           work, when it comes to the 1A mandates, this Commission  
5           needs to do something, and I think both of these  
6           proposals are a step in the right direction. The goal  
7           being to get to that point where the Legislature either  
8           funds or suspends the mandate as quickly as possible.

9           The worst-case scenario is the one that  
10          Prop. 1A was designed to avoid, which is that you go on  
11          almost indefinitely incurring the costs with no -- and  
12          then that's bad for both sides because you're not being  
13          reimbursed at the local level and we, at the state  
14          level, have built up this huge debt that we somehow have  
15          to pay, which is what we're actually doing right now,  
16          every -- for the next, what, 13 years left to get it paid  
17          off -- or something like that.

18                 MS. HIGASHI:    14.

19                 CHAIR GENEST:  So I think we have to take some  
20          action about Prop. 1A, and I think these proposals do  
21          that.

22                 MEMBER WORTHLEY:  Just one last thing.  
23          As you discussed the problem before the Commission, I  
24          could see we might adopt different rules. In other  
25          words, if you're talking about something coming before



1 the Commission that's not contested, we're talking coming  
2 before the Commission with an approval, you've got  
3 parties agreeing, the Department of Finance and an  
4 applicant or the affected local government coming  
5 together requesting approval of that agreement before  
6 this Commission, I'm not sure we'd have to have the same  
7 kind of -- because it's really designed now to be a  
8 contested matter. But if you're bringing it before the  
9 board not as a contest but as an agreement for approval,  
10 I'm not sure we'd have to have the same kind of due  
11 process requirements. Because the parties in front of  
12 you are agreeing that this is what they agreed to do.  
13 Therefore, you don't have to go out to the world,  
14 necessarily.

15 Just a thought. There may be a way of  
16 addressing that way, to expedite it.

17 I just would feel more comfortable if this  
18 Commission ruled in favor of the agreement and then it  
19 went before the Legislature because I think it gives  
20 more impetus for the Legislature, to fulfill it. But I  
21 could be wrong.

22 MS. HIGASHI: I just wanted to add just a couple  
23 of comments.

24 First, the concept of legislatively determined  
25 mandates is certainly not new. We still actually have a

1 few in the budget that they're designated by the letter  
2 "L" before a number. And we couldn't find them, we had  
3 no records of decisions, and then discovered from the  
4 original statutes that they were actually bills that,  
5 back in the olden days, language was added directing the  
6 State Controller's office to issue claiming instructions  
7 with a specific formula, and an appropriation was made.  
8 And there are only a handful of those still in the  
9 budget.

10 The other point I wanted to make is that there  
11 were some comments made earlier by LAO about the  
12 inaccuracy of the Commission's statewide cost estimates.  
13 And I just wanted to point out that the Commission is  
14 basing those statewide cost estimates on the claiming  
15 data that is received by the State Controller's Office.  
16 And it's on the actual cost claims.

17 The Commission itself does not have the power to  
18 initiate reasonable reimbursement methodologies or unique  
19 costs. Even though we have encouraged the proposals --  
20 and this has happened even before the definition was  
21 added to statute -- unless there was virtually agreement  
22 by the parties, it was very rare that the Commission  
23 actually did approve them when they were proposed, if it  
24 was just a claimant proposal without some agreement by  
25 the Department of Finance.

1           And so this is a new day today. Certainly the  
2           new Mandates unit is working very hard, very closely with  
3           both Commission staff and with claimants in trying to  
4           develop cost surveys and actually undertaking activities  
5           without having the benefit of audited data, which used  
6           to be the mantra that unless the data that the statewide  
7           cost estimate -- or I should say, the reasonable  
8           reimbursement methodology or unit was based on audited  
9           data or it should never be considered by the Commission,  
10          or never come before the Commission.

11           So we really are pleased by the change in  
12          environment and culture about how mandates are  
13          approached, and the willingness of especially the  
14          Department of Finance to really become more engaged in  
15          discussing unit costs, unit reimbursements, and  
16          expediting the process.

17           CHAIR GENEST: Are there any other comments from  
18          the Commission?

19           Well, I would like to suggest that we ask  
20          probably the Department of Finance to come back to the  
21          next meeting with a proposal for the Commission to  
22          endorse -- or not, depending on the will of the  
23          Commission - its legislation. By that time, that may be  
24          somewhat revised.

25           It sounds like in the interest of getting more

1 votes, it might be a good idea if it could somehow  
2 involve getting that process back through the Commission  
3 rather than straight to the Legislature. But I think the  
4 Commission, at least, should have an opportunity to vote  
5 on whether or not to endorse mandate reform in some form  
6 next time.

7 MEMBER WORTHLEY: Mr. Chairman, I agree. I  
8 appreciate that our staff is very familiar with the  
9 process that we will probably deal with it, so I  
10 appreciate their comments and recommendations back to us  
11 as well.

12 MS. HIGASHI: Our next -- what we'd like to do  
13 at this point is allow members of the public to come  
14 forward to comment on the proposals.

15 And I don't know if any members of the public  
16 did --

17 CHAIR GENEST: Let's do that.

18 Thank you both for your time and effort.

19 How do we want to do this? Should we start that  
20 way or -- why don't we start here?

21 Please introduce yourself.

22 MR. JOHNSTON: My name is Michael Johnston from  
23 Clovis Unified School District.

24 And I would just like to address the proposal  
25 that was submitted. We haven't had a lot of time to

1 review them. I appreciate the Commission's understanding  
2 that, you know, mandate reform is a big issue for  
3 agencies, and especially school districts, looking at how  
4 we can reform mandates and the process that we have, as  
5 we know there's some concerns with the process, we've  
6 been dealing with it for some time now, looking at how we  
7 can reform that.

8 But I'm also concerned that, when we look at the  
9 issue and we look at the proposals, that we're not  
10 including school districts. School districts are being  
11 excluded. We're not going to be included in the process.

12 Yes, later on, maybe we will be included, look  
13 at how we can implement that, or phase that approach we  
14 use with local agencies. But I'm concerned that we'll  
15 try to use the same cookie-cutter approach to those local  
16 agencies to the school districts, and not have -- we  
17 won't have the same type of input that local agencies  
18 will have in that process.

19 So that's a big concern for us as we look at the  
20 process and looking at the proposals. Obviously, we need  
21 more time to review those proposals. We're concerned  
22 also that, you know, it's not a reform effort, total  
23 reform effort. And it's looking at applying a unit rate,  
24 and if there's an issue coming back for a test claim.  
25 So the processing is still there for test claims. And

1 coming back through that process, we'd like to see  
2 something that's a total implementation and reform  
3 effort, including all agencies, including public school  
4 districts.

5 So I appreciate your time.

6 CHAIR GENEST: Thank you.

7 If the Commission were to endorse the proposal  
8 which, at this point, as I understand it, does not  
9 involve mandates that affect school districts, with the  
10 idea that at some point that would be a model with which  
11 to work with the school community to figure out what  
12 would work in that arena, would that be something that  
13 schools, you think, would be opposed to? Or would that  
14 be seen as a step -- it doesn't affect you immediately,  
15 but a step in the right direction, that gives you an  
16 opportunity to have a reform that addresses your issues?

17 MR. JOHNSTON: I think we look forward to  
18 reform. But, obviously, we don't, like I said, don't  
19 want that cookie-cutter approach. We want to have input  
20 into what that will be when we look forward and when we  
21 move forward.

22 And also one of the things that came up was  
23 audited records, audited mandate claims, basing unit  
24 rates on that would be a concern for school districts on  
25 the basis of the audits and where they have been and

1 where we're at with audits right now. How can we base  
2 it on audits if we don't have a good audit process in  
3 place and school districts cannot submit claims and know  
4 when to submit claims and know what the proper  
5 documentation is for those claims?

6 You know, looking at all those processes and not  
7 trying to come down with a lower unit rate because of  
8 reduced audit claims?

9 CHAIR GENEST: Thank you.

10 Next?

11 MR. MANALO: Good morning. And thank you for  
12 the opportunity to speak. My name is Edgar Manalo, and  
13 I work for San José Unified School District.

14 In the capacity of the mandated costs analyst,  
15 I'm in charge for claims for reimbursable mandates for  
16 the district.

17 On behalf of the school districts across the  
18 state of California and San José Unified, I'm here today  
19 to voice the importance of including school districts in  
20 the process of reforming the mandates system.

21 This morning we all heard the proposals made by  
22 the Department of Finance and the Legislative Analyst's  
23 Office on mandate form. Even though it's promising  
24 to witness movement in any type of reform, I cannot  
25 emphasize enough how vital it is to include all

1 stakeholders in the successful streamlining of the  
2 process, in successfully streamlining the process. This  
3 includes school district participation at the  
4 negotiations table.

5 It has been exactly one year to this date,  
6 March 29, 2006, when the Commission staff did a special  
7 report assessing the work of the San Rafael Collaborative  
8 Policy on reforming the mandate-reimbursement process.

9 And the staff had several recommendations to  
10 the Commission for mandate reform. In one item, it  
11 specifies, and I quote, "To work with the Department of  
12 Finance, the Legislature and other stakeholders to  
13 encourage participation."

14 It was made clear then, and it remains clear  
15 today that for reforms to be successful, all stakeholders  
16 must participate in the process. The idea of making  
17 proposals without school district input deviates from any  
18 type of reform being successful.

19 At San José Unified, in developing a process to  
20 document reimbursable activities at the school sites, my  
21 department meets with principals and secretaries on a  
22 continuous basis to develop an efficient way to have  
23 staff fill out mandated cost forms.

24 It is the input from the school sites that drive  
25 increased participation and success in filing for



1 mandated-cost reimbursement.

2 And in closing, I would like to reiterate again  
3 the collaborative approach in reforming mandates.

4 San José Unified District, along with the other  
5 California school districts, is growing and ready to  
6 participate in a reform, if allowed to do so. Again, any  
7 deviation from school district participation will result  
8 in an unsuccessful process, reform process.

9 Thank you again for the opportunity to be heard.

10 CHAIR GENEST: Thank you.

11 MR. PALKOWITZ: Good morning. My name is Art  
12 Palkowitz and I'm here on behalf of San Diego Unified  
13 School District.

14 I applaud everyone's efforts to move forward on  
15 this matter. It has been really challenging for all  
16 school districts involved. For example, the *STAR* test  
17 claim was approved in 2001 after going through the test  
18 claim process, and there still has not been any payment  
19 made on that test claim.

20 As you can imagine, just like the Department of  
21 Finance commented, it's difficult for them to go through  
22 their budget, while the school districts have similar  
23 challenges, trying to establish a budget, where five  
24 years you don't get paid, and then you get a lump-sum  
25 payment. And who knows when the next payment will be?

1 So that causes a real challenge for the school districts.

2 I think you've commented and analyzed the  
3 Prop. 1A impact, which, for a school district, it's  
4 disheartening that in the Constitution, we are supposed  
5 to be a reimbursement for the mandate, but it doesn't  
6 seem like there's much impact, unless you have a  
7 Prop. 1A proposition with it that says we'll suspend  
8 it, otherwise in an attempt to force payment. Maybe  
9 that's why the Department of Finance is starting out with  
10 the local agencies in trying to work that out, and then  
11 come to the school districts, where there, the challenge  
12 is a little more immediate.

13 You know, this is not sounding like mandate  
14 reform, this is sounding like mandate reform for state  
15 and local agencies other than school districts. And to  
16 me, that doesn't seem like the way we're going to resolve  
17 the mandate reform.

18 Based on the proposals that I heard, I think  
19 that it's important to have some alternative process in  
20 there, whether it be mediation or something else, that  
21 gives the parties a way to try to resolve this in a  
22 prompt manner when they can agree on a unit rate or  
23 whether this is or is not a mandate that should be  
24 reimbursed.

25 So to me, that should be an important element

1 of this process.

2 Thank you very much.

3 CHAIR GENEST: Thank you.

4 MR. KAYE: Good morning. Leonard Kaye, County  
5 of Los Angeles.

6 I'm here also to echo what Art and many others  
7 have thought, that this is a lot of constructive forward  
8 motion. I've met and conferred with Marianne in her  
9 approach, and also with Finance's approach and so forth.  
10 And I think they're both productive.

11 And I think there's some fundamental things that  
12 need to perhaps be said in the beginning, and that is, as  
13 you're aware, the Legislature every year passes hundreds  
14 of potential test claims and state agencies have issued  
15 many, many executive orders which are all subject,  
16 possibly, to SB 90 reimbursement. And so it's not so  
17 much how do we handle the current backlog, because we  
18 filed perhaps one out of ten or 20 possible test claims  
19 on the local agency side; but how do you deal with the  
20 vast majority of test claims that never see the light of  
21 day?

22 And I think Finance's proposal and LAO's  
23 proposal have great merit, and I think they should be  
24 discussed.

25 I think the big issue regarding the mechanics of

1 how this comes about, and the thing that I thought was  
2 interesting is that POST, we heard earlier, sets the  
3 standards for training and so forth.

4 And in my experience, over 18 years practicing  
5 before the Commission, I can tell you that I think there  
6 should be no other body that is better-suited to setting  
7 the legal standards for what constitutes a mandate or not  
8 than the Commission. I mean, obviously, we disagree at  
9 times; but they are the repository of a vast amount of  
10 expertise, if you will, in this area.

11 That's not to say that jurisdiction for the more  
12 garden variety, the smaller SB 90 matters shouldn't be  
13 surrendered perhaps to other things. So like POST,  
14 perhaps they could serve and set some standards for how  
15 that is to occur and so forth.

16 But I think in all my experience, this is the  
17 first time since 1985, I believe, when it was the old  
18 Board of Control and you dealt with test claims on a  
19 very individual basis, the decisions were just a page or  
20 two long. And we've come a long way.

21 It's not all bad.

22 Thank you.

23 CHAIR GENEST: Thank you.

24 MR. BURDICK: I'll try to be brief.

25 Again, my name is Allan Burdick. I'm with the

1 CSAC SB 90 Service, but I serve as an advisor to CSAC on  
2 the technical issues, and I represent them before the  
3 Commission on State Mandates.

4 I'd like to point out that in addition, I'm the  
5 chief of staff, for we have a joint CSAC, League of  
6 California Cities' Advisory Committee on State Mandates.  
7 And to let you know that at this point there is totally  
8 uniformity between schools and counties on this  
9 particular issue. And so in that regard, it's very  
10 fortunate, if we're dealing with local government.

11 Also, the special districts very often are  
12 involved, they don't have as many mandates. And when  
13 there are, we bring them -- you know, the special  
14 districts are also involved in that. So just to kind  
15 of let them know, coming from a local government  
16 standpoint.

17 Now, today, this is going to be a legislative  
18 issue, obviously, as we move down. And in this regard,  
19 Steve Keil would be here today, and I would be supporting  
20 him. He is the legislative representative for CSAC on  
21 this particular issue and their director of legislative  
22 Services. CSAC is having its board of directors meeting  
23 today, and Steve has to be over at the board of  
24 directors. Otherwise, he would be here today on this  
25 particular matter.

1 I think just generally from a local government  
2 standpoint, I think they're very encouraged by most of  
3 the proposals by the Governor's office, as well as by the  
4 Legislative Analyst's, and believe that there is -- I  
5 guess there's two things I want to say.

6 One is the movement. You know, there's no  
7 dearth of issues this year before the Legislature and the  
8 Administration. But to be able to indicate their  
9 interest in that, as well as the Legislative Analyst,  
10 that has, including this in their issues report, which  
11 identifies where are the key issues before the state.

12 I think one of the issues that I'd like to raise  
13 is -- I think it was raised by the school community --  
14 and that is, we have the whole Commission process that  
15 everybody has to deal with, whether this alternative or  
16 alternatives are developed for local agencies, we still  
17 have the Commission process in place, which would be the  
18 same for cities, counties, districts, and school  
19 districts. And last year -- and I think we need to  
20 echo -- I think everybody will -- the leadership provided  
21 by this Commission last year, when it engaged an outside  
22 agency to come in and to do an analysis of the problem,  
23 and included that. And we were looking forward to moving  
24 kind of with a collaborative process, with an outside and  
25 neutral mediator at that time. And then that process

1 ended.

2 And so I think the Commission needs to be  
3 commended.

4 I think the other comments that were made by the  
5 Commissioners, in terms of getting their involvement and  
6 input in this process, important however that may be,  
7 because you're the people that have expertise in this  
8 knowledge of how this process works and can deal with it,  
9 I know that both Finance and the Analyst will be working  
10 closely with your staff, and have over the past years.

11 The fortunate thing is we have people who have  
12 been involved in this a number of years.

13 While Mr. Genest today is his first meeting,  
14 and this is the first director of Finance we have seen  
15 since Jeff Huff arrived in 1985 and was made chair at the  
16 motion of Jesse Unruh, and the Department of Finance has  
17 been the director since, we're very pleased to see him  
18 here. But we know he has been involved in this issue for  
19 a number of years. While this may be his first  
20 Commission meeting, this is not his first involvement  
21 in the mandate issue. And we know and we appreciate his  
22 past involvement.

23 I think the issue out there at this point is  
24 where does the leadership come? How do we coordinate it?  
25 We have some proposals.

1           Last year, the coordination was clear, it was  
2 going to be by an outside collaborator. The Legislature  
3 concluded that we should use a regular legislative  
4 process.

5           I think as we all know, one of the key players  
6 in this process happens to be Assemblyman John Laird, the  
7 chairman of the Assembly Budget Committee, the kind of  
8 designated "Mr. Mandates" by the Speaker, and also a  
9 long-time former county employee as well as mayor  
10 of the City of Santa Cruz. So somebody that local  
11 government has a great deal of confidence in. And I  
12 guess more of it is, how do we pull all of this together?  
13 We have the Commission and everything, and the  
14 process and the timing and the schedule and, you know,  
15 can we get this done this year.

16           We have probably until the end of August, I'm  
17 assuming, to get this job done.

18           So I kind of would like to leave with that.

19           Although the last comment I would like to make  
20 is that I think the creation of the Mandate Unit in the  
21 Department of Finance and the staff that have been  
22 assigned to that are extremely positive. And I think  
23 that I'd like to commend the Department of Finance for  
24 taking the effort to create that, and also with the  
25 assignment and the selection of the staff in that



1 particular thing.

2 We have had -- I'm surprised, I look back, we  
3 have been working with those people for a year now -- I'd  
4 have to ask Carla for sure. It seems like only a few  
5 months, but I was looking back at an e-mail I sent to her  
6 in April of '06, and I said, "Oh, my god," and she's  
7 probably been there since July of '05, I'm not  
8 sure.

9 But what I would like to do is take the  
10 opportunity, since the director of Finance is here today  
11 as chairman, to commend them for the creation of that and  
12 for the staff of that unit and their working  
13 relationships they have established with local  
14 government.

15 I'm not sure, I think it might be a good idea  
16 to have something more similar. I know it's a little  
17 different structure on the education side, but I would  
18 like to close with that particular comment.

19 Thank you very much.

20 CHAIR GENEST: Well, thank you.

21 I think we need to move on to the next issue.

22 Thanks very much.

23 MR. BURDICK: Thank you.

24 MS. HIGASHI: This is a nice segue into Item 12,  
25 which is our staff report on mandate reform legislation.

1 And Ms. Patton will also present this issue.

2 MS. PATTON: This is Item 13. It's a discussion  
3 of our current procedures for submitting bill analysis  
4 and Commission positions to the Governor's office, and  
5 then a quick recap to let you know what the 2007 bills  
6 are out there right now.

7 The Governor's office requests that boards and  
8 commissions prepare a bill analysis and recommend  
9 positions on pending legislation. And because the  
10 deadline for submitting these analysis is short, usually  
11 three to five days, the Commission has authorized the  
12 Executive Director to submit bill analysis on bills that  
13 impact the Commission. And with those, we include staff  
14 positions, staff recommendations. Each bill analysis  
15 includes a statement that the analysis was prepared by  
16 Commission staff and does not reflect the position of any  
17 individual member or the Commission itself. However,  
18 this process, of course, does not preclude the Commission  
19 from voting to take formal positions on legislation. So  
20 we will update you at each hearing about pending  
21 legislation.

22 For 2007, there are four bills pending that  
23 would affect the Commission in the mandates determination  
24 process. AB 281 by Assembly Member Silva is a spot bill.  
25 The author is interested in eliminating unfunded

1 mandates, according to his staff. And they use this bill  
2 to revise the mandates process. It is pending committee  
3 assignment in the Assembly.

4 AB 1222 by Assembly Member Laird would require  
5 claimants, when they are pleading executive orders or  
6 regulations in their test claims, to include the  
7 effective date and reference numbers of those executive  
8 orders or regs in their test claim filing.

9 Assembly Member Laird continues to meet with  
10 local agency reps and state agencies on mandate reform;  
11 and he may use this bill for further reform to the  
12 mandates process.

13 This bill is also pending committee assignment  
14 in the Assembly.

15 AB 1576, as you heard earlier, is the bill from  
16 Assembly Member Silva that included LAO's mandate reform  
17 proposal. It is scheduled for hearing in Assembly local  
18 government on April 25th.

19 And on Tuesday, Assembly Member Krekorian  
20 introduced AB 1170. It is sponsored by the Five Star  
21 Education Coalition. And it would require the Commission  
22 to issue its statements of decision on the test claim no  
23 later than 24 months after the test claim is filed. And  
24 if we do not issue the Statement of Decision within that  
25 time, the test claim filing would automatically become a

1 reimbursable mandate.

2 AUDIENCE MEMBER: Hurrah.

3 MS. PATTON: Are you with the Five Star  
4 Education Coalition?

5 AUDIENCE MEMBER: No.

6 MS. PATTON: It also includes some revisions to  
7 the audit deadlines that the State Controller has for  
8 auditing reimbursement claims. That bill is scheduled  
9 for hearing in Assembly Local Government Committee on  
10 April 18th.

11 The Commission staff continues to provide  
12 technical information to the authors of the bills,  
13 Department of Finance, the Legislative Analyst's Office,  
14 and the claimants, and to work with them on the mandate  
15 reform proposals. And we make the following  
16 recommendations on these bills:

17 We don't believe the Commission should take a  
18 position on 281 at this time. It's still a spot bill.  
19 It doesn't have any substantive language in it.

20 Staff recommends that we think the Commission  
21 should consider supporting Assembly Member Laird's 1222.  
22 It would assist the Commission staff in determining which  
23 regulations are being pled in test claims; thus,  
24 shortening the time it requires us to draft staff  
25 analyses.

1           And the Commission should consider supporting  
2           Assembly Member Silva's 1576, which is the LAO's reform  
3           proposal, and the Department of Finance's proposal. But  
4           we are continuing to talk to them about some technical  
5           amendments to those proposals.

6           Because together with those two proposals and  
7           the rulemaking package that the Commission approved  
8           earlier today, we think they will streamline the process,  
9           notify the Legislature sooner of the cost of programs,  
10          and enable all parties to develop simpler and more  
11          efficient reimbursement formulas. So we will provide  
12          analyses of each of these proposals for the April  
13          hearing.

14          CHAIR GENEST: Thank you.

15          Are we to your spot?

16          MS. HIGASHI: As long as you're fine with that.

17          CHAIR GENEST: Well, unless someone has a  
18          question.

19          MS. HIGASHI: Next is our Chief Legal Counsel's  
20          report.

21          MS. SHELTON: I do have some updates. There has  
22          been one lawsuit filed since I issued this Chief  
23          Counsel's report. The Department of Finance and the  
24          Integrated Waste Board have sued the Commission, the  
25          Santa Monica Community College District, and the Lake

1 Tahoe County Community College District on the Integrated  
2 Waste Management program. That case was filed in  
3 Sacramento County Superior Court.

4 Two decisions have been issued since last week.  
5 One, CSAC EIA and the City of Newport Beach versus the  
6 Commission on State Mandates and the Department of  
7 Finance. The Supreme Court denied the petition for  
8 review which has left the Court of Appeal decision valid;  
9 and it upholds the Commission's decision to deny those  
10 claims.

11 And secondly, the Sacramento County Superior  
12 Court did issue its ruling in the CSBA et al., versus  
13 Commission and State defendants in the case dealing with  
14 the constitutionality of AB 138 and certain statutes that  
15 directed reconsideration of the mandate reimbursement  
16 process, School Accountability Report Cards and the Open  
17 Meetings Act programs. And the Court found that the  
18 revisions made by AB 138 were unconstitutional.

19 And that's all I've got.

20 CHAIR GENEST: Okay, Paula?

21 MS. HIGASHI: Item 15 for my report.

22 First off, I'd like to introduce a new member of  
23 our staff, Kerry Ortman.

24 Kerry, could you please stand?

25 Kerry has come on board to help us with many of

1 our admin functions, as well as to help Cathy on  
2 Parameters and Guidelines and on statewide cost  
3 estimates.

4 Are there any questions about the Commission's  
5 workload? We offered some clarifications during the  
6 course of the hearing. We didn't make much progress  
7 today, but we're hoping for April and we're hoping for  
8 May.

9 CHAIR GENEST: When Anne gets back, we'll do  
10 much better.

11 MS. HIGASHI: One step forward, one step back;  
12 okay.

13 I have an update on the budget issues. We have  
14 talked about some of these issues, mainly the budget  
15 hearings are focusing in on mandate reform concepts and  
16 LAO's report. We have had one hearing in the Senate. No  
17 action was taken at that time in the subcommittee.  
18 Another hearing is scheduled, as well as a hearing in the  
19 Assembly. And those hearings will actually take place  
20 after our April hearing. So if anything new happens,  
21 I'll report that to you.

22 The proposed agenda for April 16th, our next  
23 meeting, is in my report. And there are a couple of  
24 changes I just wanted to note.

25 The third item on here, *California Youth*

1 Authority Sliding Scale for Charges, that item will move  
2 to the next agenda.

3 And I think that's pretty much it. Everything  
4 else is still there.

5 And Item 5, *Peace Officer Instructor Training*,  
6 since that is relating to the same statute, the same  
7 regulations from POST, what I would do with that one as  
8 well, is offer the claimants an opportunity to submit  
9 further briefing in light of today's testimony, and then  
10 we'll reschedule both of them at the same hearing.

11 CHAIR GENEST: Plus, more discussion on the LAO  
12 and Finance?

13 MS. HIGASHI: Right, exactly.

14 We have a proposed statewide cost estimate  
15 coming forward on the Stull Act.

16 And then on the very last page, I have test  
17 claims identified for the May hearing. And what we'll be  
18 doing is updating you on these as we get closer. Thus  
19 far, though, *Medically Indigent Adults* was a test claim  
20 under consideration for May. And that test claim was  
21 withdrawn yesterday by the County of San Bernardino. So  
22 what we'll be doing is notifying all of the parties that  
23 it was withdrawn. And if any other county wishes to step  
24 forward and take the place of San Bernardino, they may do  
25 so. And then we would proceed on that as a test claim.



1           If no party comes forward, then we would set the  
2 test claim for dismissal.

3           And there are just some Parameters and  
4 Guidelines that we're working on and more statewide cost  
5 estimates that we'll be working on for May.

6           CHAIR GENEST: Okay, before we go to --

7           MS. HIGASHI: Are there any questions?

8           *(No audible response)*

9           CHAIR GENEST: Before we go to closed session,  
10 are there any comments from the public?

11           *(No audible response)*

12           CHAIR GENEST: All right, I believe I need to  
13 read this entire --

14           MS. HIGASHI: Yes.

15           CHAIR GENEST: I don't do well with reading.

16           The Commission will meet in closed executive  
17 session pursuant to Government Code section 11126,  
18 subdivision (e), to confer with and receive advice from  
19 legal counsel for consideration and action, as necessary  
20 and appropriate, upon the pending litigation listed on  
21 the published notice and agenda, and to confer with and  
22 receive advice from legal counsel regarding potential  
23 litigation, and pursuant to Government Code sections  
24 11126, subdivision (a), and 17526, the Commission will  
25 also confer on personnel matters.

1 MS. HIGASHI: I'd just like to make one  
2 announcement. The prehearing conference on the  
3 Parameters and Guidelines amendment for *Graduation*  
4 *Requirements* will convene here after the closed session,  
5 probably in about 20 minutes.

6 (The Commission met in executive closed  
7 session from 11:23 a.m. to 11:37 a.m.)

8 CHAIR GENEST: The Commission met in  
9 closed executive session pursuant to Government Code  
10 section 11126, subdivision (e), to confer with and  
11 receive advice from legal counsel, for consideration and  
12 action, as a necessary and appropriate, upon the pending  
13 litigation listed on the published notice and agenda, and  
14 potential litigation, and Government Code sections 11126,  
15 subdivision (a), and 17526, to confer on personnel  
16 matters listed on the published notice and agenda.

17 All required reports from the closed session  
18 having been made and with no further business to discuss,  
19 I will entertain a motion to adjourn.

20 All those in favor?

21 Do I have to get a motion first? Motion to  
22 adjourn?

23 MEMBER CHIVARO: Motion to adjourn.

24 MEMBER OLSEN: Second.

25 CHAIR GENEST: All in favor, say "aye."

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

CHAIR GENEST: The meeting is adjourned. Thank  
you.

*(Proceedings concluded at 11:37 a.m.)*

--oOo--

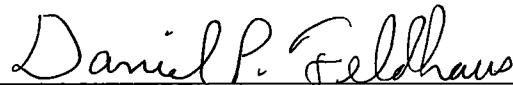
REPORTER'S CERTIFICATE

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

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

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on April 12, 2007.



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