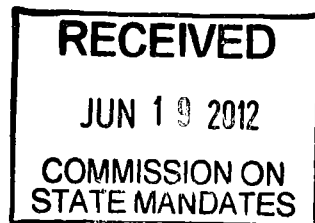


**ORIGINAL**

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**



**TIME:** 9:30 a.m.

**DATE:** Friday, May 25, 2012

**PLACE:** State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

PEDRO REYES  
(*Commission Chair*)  
Representative for ANA MATOSANTOS, Director  
State Department of Finance

KEN ALEX  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member

DON SAYLOR  
Yolo County Supervisor  
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER HALSEY  
Executive Director  
(Items 2, 11, and 14)

NANCY PATTON  
Assistant Executive Director  
(*Item 12*)

CAMILLE SHELTON  
Chief Legal Counsel  
(*Items 5 and 13*)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

ERIC FELLER  
Senior Staff Counsel  
(Items 3 and 6)

KENNY LOUIE  
Staff Counsel  
(Item 4)



PUBLIC TESTIMONY

**Appearing Re Item 3:**

For County of Los Angeles:

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

LORI A. HARRIS  
County of Los Angeles  
Law Offices of the Public Defender  
312 So. Hill Street, 3<sup>rd</sup> Floor  
Los Angeles, California 90013

For Department of Finance:

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

CARLA SHELTON  
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 4:**

For Clovis Unified School District:

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

For Department of Finance:

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

CHRIS FERGUSON  
Education Systems Unit  
Department of Finance  
915 L Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

**Appearing Re Item 5:**

For City of Newport Beach:

JULIANA F. GMUR  
Manager, Financial Services  
MAXIMUS  
625 Coolidge Drive, Suite 100  
Folsom, California 95630

For Union Sanitary District:

DAVID M. O'HARA  
Attorney at Law  
39300 Civic Center Drive, Suite 110  
Fremont, California 94538

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 5:**

For Department of Finance:

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

RANDALL WARD  
Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
MGT of America, Inc.  
2001 P Street, Suite 200  
Sacramento, California 95811

**Appearing Re Item 6:**

For Castro Valley Unified School District:

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

For Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Public Comment**

ALLAN BURDICK  
MGT of America, Inc.  
2001 P Street, Suite 200  
Sacramento, California 95811

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**Commission on State Mandates – May 25, 2012**

1 BE IT REMEMBERED that on Friday, May 25, 2012,  
2 commencing at the hour of 9:31 a.m., thereof, at the  
3 State Capitol, Room 447, Sacramento, California, before  
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the  
5 following proceedings were held:



7 CHAIR REYES: The hour of 9:30 having arrived,  
8 we will begin the May 25<sup>th</sup> Commission on State Mandates  
9 meeting. The meeting will come to order.

10 It is good to be back. I think I've been gone  
11 for the last two meetings, so good to see everybody.

12 Please join me in welcoming the new Commission  
13 member, Carmen Ramirez. Carmen is currently the City  
14 Councilmember for the City of Oxnard.

15 Welcome, Carmen. This is your first meeting.

16 MEMBER RAMIREZ: Thank you very much. I  
17 appreciate the confidence.

18 CHAIR REYES: Excellent.

19 And also, this was going to be my first meeting  
20 with Don Saylor. I know he was here last time.

21 But please join me in welcoming the new  
22 Executive Director, Heather Halsey.

23 Welcome, Heather, in your new role. You were  
24 with the Commission before.

25 MS. HALSEY: Thank you.

Commission on State Mandates – May 25, 2012

1 CHAIR REYES: And before we get into the roll  
2 call, I would like to personally thank the Selection  
3 Committee for all the extra work that was involved in  
4 going through this process and finding an executive  
5 officer. Thank you very much. It's much appreciated.

6 You'll all get a 20 percent raise on what the  
7 Commission pays for that extra effort. And although  
8 you --

9 MEMBER OLSEN: In the next life, right?

10 CHAIR REYES: There you go.

11 Well, I was debating whether 25 or 50, so...

12 But anyhow, so given the economic  
13 circumstances, I will go with 20 percent.

14 May we have the roll call, please?

15 MS. HALSEY: Mr. Alex?

16 MEMBER ALEX: Here.

17 MS. HALSEY: Mr. Chivaro?

18 MEMBER CHIVARO: Here.

19 MS. HALSEY: Mr. Lujano?

20 MEMBER LUJANO: Here.

21 MS. HALSEY: Ms. Olsen?

22 MEMBER OLSEN: Here.

23 MS. HALSEY: Ms. Ramirez?

24 MEMBER RAMIREZ: Here.

25 MS. HALSEY: Mr. Saylor?

Commission on State Mandates – May 25, 2012

1 (No response.)

2 MS. HALSEY: Mr. Reyes?

3 CHAIR REYES: Present.

4 Thank you.

5 Are there any objections or corrections to the  
6 March 23<sup>rd</sup> minutes?

7 MEMBER RAMIREZ: I will be abstaining.

8 CHAIR REYES: Okay.

9 MEMBER OLSEN: I'll move the minutes.

10 CHAIR REYES: It's been moved.

11 Seconded?

12 MEMBER CHIVARO: Second.

13 CHAIR REYES: Moved and seconded.

14 (Commissioner Saylor entered the hearing room.)

15 CHAIR REYES: And the record will show that  
16 Commissioner Saylor has joined us.

17 Good morning. Welcome.

18 We'll give him a couple seconds to settle in.

19 Sir, good to see you.

20 Okay, so the minutes have been moved and  
21 seconded.

22 All those in favor, say "aye."

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

24 CHAIR REYES: Opposed?

25 (No response)

**Commission on State Mandates – May 25, 2012**

1 CHAIR REYES: And we'll have two abstentions:  
2 Myself and Ms. Ramirez.

3 Are we okay with that, in terms of the vote?

4 MS. HALSEY: Yes.

5 CHAIR REYES: Thank you.

6 The next item?

7 MS. HALSEY: The next item is the Proposed  
8 Consent Calendar, which consists of Items 7, 8, 9, and  
9 10.

10 CHAIR REYES: Is there any objection to taking  
11 up the consent items?

12 Does anybody want to pull any of the items?

13 *(No response)*

14 CHAIR REYES: Seeing none, can we take roll  
15 call on -- or is there a motion on the Consent Calendar?

16 MEMBER CHIVARO: I move approval.

17 MEMBER LUJANO: I second.

18 CHAIR REYES: It's been moved and seconded.

19 Any other comments?

20 *(No response)*

21 CHAIR REYES: All those in favor, say "aye."

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

23 CHAIR REYES: Opposed?

24 *(No response)*

25 CHAIR REYES: The "ayes" have it.

Commission on State Mandates – May 25, 2012

1 Thank you.

2 Ms. Halsey?

3 MS. HALSEY: Item 2 is reserved for appeals of  
4 the Executive Director's decision.

5 There are no appeals to consider under Item 2.

6 CHAIR REYES: Thank you.

7 MS. HALSEY: So let's go ahead and move to the  
8 Article 7 portion of the hearing.

9 Will the parties and witnesses for Items 3, 4,  
10 5, and 6 please rise?

11 *(The parties and witnesses were sworn.)*

12 MS. HALSEY: Senior Staff Counsel Eric Feller  
13 will present Item 3, a test claim on *Juvenile Offender*  
14 *Treatment Program Court Proceedings*.

15 CHAIR REYES: Thank you.

16 MR. FELLER: Good morning.

17 CHAIR REYES: Good morning.

18 MR. FELLER: This test claim alleges activities  
19 of public defenders in the juvenile justice system as a  
20 result of a test-claim statute that realigned the duties  
21 of the former Youthful Offender Parole Board and the  
22 former California Youth Authority.

23 Staff recommends that the Commission adopt the  
24 proposed final staff analysis and statement of decision  
25 to deny the test claim for the reasons stated in the

Commission on State Mandates – May 25, 2012

1 analysis.

2 Would the parties and witnesses please state  
3 your names for the record?

4 MR. KAYE: Leonard Kaye, Los Angeles County.

5 MS. HARRIS: Lori A. Harris, deputy public  
6 defender from Los Angeles County.

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

9 CARLA SHELTON: Carla Shelton, Department of  
10 Finance.

11 CHAIR REYES: Okay, you've all seen the  
12 analysis.

13 Mr. Kaye?

14 MR. KAYE: All? Okay.

15 CHAIR REYES: Or you may want to -- I think you  
16 presented --

17 MR. KAYE: It's traditional that staff present.

18 CHAIR REYES: Go ahead, staff, present.

19 MR. FELLER: Well, I did.

20 MR. KAYE: Oh, you just did? Okay.

21 CHAIR REYES: He did.

22 MR. KAYE: Okay. We also feel that the record  
23 is complete on our side as well. However, what we wish  
24 to do this morning is briefly highlight some key points  
25 and introduce a few brief exhibits into the record which



**Commission on State Mandates – May 25, 2012**

1 support our contentions.

2 Lori Harris has prepared Exhibits A through D.  
3 We promise that they're brief.

4 CHAIR REYES: Has staff had a chance to look at  
5 those exhibits?

6 MR. KAYE: We're going to distribute them now,  
7 according to staff's recommendation.

8 CHAIR REYES: Okay.

9 MR. KAYE: So why don't you give that to  
10 Camille Shelton?

11 And this has to do with Lori's portion of the  
12 presentation. So she will give you an opportunity to  
13 respond.

14 And as I say, these brief exhibits illustrate  
15 some of the points we'll be making. There is no heavy  
16 legal analysis that's required.

17 So let me know when I can begin with my  
18 portion, which should be just momentarily.

19 CHAIR REYES: Hold on. Before we move any  
20 further here, I have two copies, Camille. I have two  
21 copies.

22 I'm looking at this Exhibit 1 is November 6<sup>th</sup>;  
23 another one is November 6<sup>th</sup> of 2002; September 24, 2007;  
24 November 21<sup>st</sup> of 2008.

25 And I'm not quite sure why they would not have

1       been -- the other one is at the bottom of the page, in  
2       Exhibit D. I'm looking at December 2003.

3               MR. KAYE: Commissioner Reyes, we apologize for  
4       any delay that we may have had. These recently came to  
5       our attention.

6               CHAIR REYES: Finance did not get a copy of  
7       this, Camille.

8               CAMILLE SHELTON: I'm sorry?

9               CHAIR REYES: Did Finance get a copy of this?

10              CAMILLE SHELTON: I'm sorry. You did not?

11       Okay.

12              CHAIR REYES: So are we complete with A, B, C,  
13       and D exhibits?

14              MR. KAYE: Yes, that is correct.

15              We debated whether to give you these exhibits  
16       during Lori's portion; but we felt it very important to  
17       do it in the beginning. And we'll be getting to those --  
18       a brief discussion of those exhibits in a little bit.

19              First of all, let us say that we are very  
20       pleased to have the Commission's time to consider our  
21       case. We feel that apart from issues of equity, as a  
22       matter of law, this program is SB 90-reimbursable.

23              We find that staff -- and we have a great deal  
24       of respect for staff's prowess in this area, they've done  
25       a very comprehensive and thorough analysis -- but we

1 respectfully feel that it's basically wrong.

2 And what are the reasons for this?

3 Mainly, staff seems to be basing the  
4 recommendation on analysis, which finds that SB 459  
5 mandated that public defenders provide the same services  
6 to wards, as were required under prior law. And then  
7 they indicate that they have the same right, the public  
8 defender has the same right to receive copies of reviews  
9 on their behalf, under prior and current law. It sort of  
10 ends right there.

11 For the County, the relevant issue is: Were  
12 County Public Defenders mandated to implement new  
13 services designed to protect their clients' rights to new  
14 treatments specified in SB 459?

15 And just based upon a statutory analysis, there  
16 are a host of new services that are now required for the  
17 first time: individual treatment plans, individual  
18 education plans -- all these services and many, many  
19 other types of new services. And this will be  
20 illustrated by some of the exhibits that we'll be going  
21 into in a little bit.

22 And these are not found under prior law. This  
23 required our public defender, which, because of  
24 due-process requirements, was mandated to provide these  
25 new services, and to enforce the law.

1           The public defender, as you know, is charged  
2 with not necessarily representing all defendants, but  
3 those that can't afford these services. And,  
4 unfortunately, many of them are indigent, so they have  
5 no other alternative.

6           The court has no other mechanism to enforce the  
7 law. It's an adversarial proceeding. No one doubts that  
8 the prosecuting attorney in this case is, by statute, the  
9 district attorney. The district attorney is the sound of  
10 one hand clapping. I mean, you have to have a public  
11 defender and a district attorney; otherwise, the court is  
12 befuddled as to how to proceed. So there is no doubt  
13 that this is a mandated program and it's a new program.

14           And then when you look at what was the  
15 legislative intent, and you look at the tremendous number  
16 of analyses, newspaper reports, and most importantly, the  
17 Inspector General's report, that treatment planning,  
18 psychiatric services, and so forth, was nonexistent prior  
19 to SB 459. There just wasn't anything.

20           So the question arises, again: Why claim that  
21 it's the same? And staff respectfully suggests that the  
22 same type of services as were provided under current,  
23 prior law, are the same as those provided now; and they  
24 provide a list of 20 or so factors to consider, such as  
25 the sophistication or the maturity level of the

1 individual.

2 And this is completely different from an  
3 individual education plan which, as you know, under  
4 federal requirements, is required to be implemented.  
5 So we have further analyses that we have submitted. We  
6 stand on the record on that. We feel fairly confident  
7 that this will be upheld.

8 But the real proof of the pudding, so to speak,  
9 is the fact that we have five or six declarations, with  
10 people with personal knowledge of this matter, that have  
11 actually done this work, that have actually worked with  
12 psychiatric social workers which we've had to hire, and  
13 so forth, and provide these new services.

14 And in that regard, I introduce Lori Harris to  
15 give some pertinent examples that are tied into her  
16 exhibits.

17 MS. HARRIS: Good morning. I'm Lori Harris.  
18 I am a Deputy Public Defender from Los Angeles County.  
19 And in 2007, I was assigned to join what's called the  
20 "DJJ unit." DJJ is the new name for what was formerly  
21 known as the California Youth Authority.

22 Our unit was formed in 2004 in response to  
23 SB 459. And historically, I think it's important for the  
24 Commission to know why SB 459 came about.

25 Generally, it was in response to taxpayer

1 litigation and other civil litigation in relation to the  
2 care and treatment of the children that were housed  
3 within the California Youth Authority. Children were  
4 being -- there were some DUFs, there was some harm done  
5 to the children, and there were kids that were not  
6 benefiting from the services that were being provided  
7 from the Youth Authority.

8 Now, the documents that you have before you,  
9 there is Exhibits A through D. You will note that these  
10 are true and correct copies of documents that could be  
11 found in court files within Los Angeles County related to  
12 the clients that the documents refer to.

13 For my clients' privacy, their names have  
14 been omitted. The only thing that I have added to these  
15 documents is highlighted in yellow, where it says "Before  
16 SB 459" and the words "Exhibits A through D."

17 Now, prior to SB 459, it resulted in a  
18 change -- SB 459 resulted in a change to what my  
19 obligation as counsel would be to a child who was  
20 committed to the Youth Authority.

21 So once a judge committed a child to the Youth  
22 Authority prior to SB 459, our office would monitor to  
23 make sure that the child got proper credits and actually  
24 got moved off. And then their case was basically put on  
25 a file and we were done with it.

1           And we never really heard about that child  
2 again until it was time for them to be considered for  
3 parole. And then at that time, DJJ would send out a  
4 letter saying that in 30 days' time you can expect that  
5 this child will be considered for parole. And there was  
6 no communication between our agency or, really, the court  
7 prior to SB 459.

8           Then after SB 459 -- so we have this letter  
9 here. And it is referred to as "Exhibit A."

10           The name of the child has been removed from the  
11 document, but it will indicate to you that the Youth  
12 Authority has reviewed the documents that were sent by  
13 the court and has decided to accept that child. And  
14 that's what you would normally receive. And then the  
15 County would have a responsibility for transferring that  
16 child to the Youth Authority within 90 days in order for  
17 there to be action on the acceptance.

18           After SB 459, in Exhibit B, that document  
19 indicates that, as required by SB 459, the Division of  
20 Juvenile Justice has, in fact, done an individualized  
21 change plan. And the individualized change plan is an  
22 analysis of the care and treatment that would be required  
23 for the care and rehabilitation of that minor.

24           Now, if you look at Exhibit --

25           CHAIR REYES: Hold on a second, though.

1           The individualized plan is required, but was  
2 the child not entitled to that plan prior to SB 459 as a  
3 matter of course?

4           I mean, you talk about kids being hurt in the  
5 Youth Authority. And technically, while not required by  
6 law, there are certain rights that those kids had.

7           MS. HARRIS: Okay, if I could refer you to  
8 Exhibit D, Exhibit D is a document that I retrieved from  
9 the Department of Youth Authority Institutional Camps  
10 Manual. The only thing that I added to that document, is  
11 the highlighted portion that says "After SB 459" and the  
12 words "Exhibit D."

13           You will note that therein, they list the  
14 things that they are now required to do as a result of  
15 the change in statute.

16           And the language at the side that -- there's a  
17 line that runs vertically down the page; and in the  
18 middle of that line, it says "New." That line was  
19 created and printed by the Youth Authority at the time of  
20 the preparation of that document.

21           And while it may be true that -- the Inspector  
22 General's report, I believe that you have, indicates that  
23 there was substantial substandard services that were  
24 provided to the young people that were in the facility;  
25 and that is why the Legislature took it upon themselves



1 to do this analysis to decide what kinds of care and  
2 treatment should happen and what authority does the court  
3 have in order to act upon it.

4 So the *Owens* court said that the court can't  
5 just substitute its judgment and move in and say, "Okay,  
6 this child is not doing well within Youth Authority, and  
7 I'm going to move them out," or "This child is ready to  
8 parole and I'm going to move them out."

9 The *Owens* court wrote quite clear that the  
10 court does not have that authority.

11 SB 459 was designed to respond to that, and to  
12 give the court the authority to do that. But the court  
13 is a neutral and detached entity. They have no mechanism  
14 for getting to a child and removing them, or getting to a  
15 child and taking an action upon their case to determine  
16 what it is that they need.

17 And because of SB 459, our office formed, in  
18 response to this must, this mandate, to contact and  
19 monitor and evaluate the services that were provided to  
20 our clients. Because each kid is different, they're  
21 there for different reasons, and they present with  
22 different problems.

23 MEMBER ALEX: Excuse me, can I --

24 MS. HARRIS: And these children have due-  
25 process rights to counsel.

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1 CHAIR REYES: Mr. Alex?

2 MS. HARRIS: Yes?

3 MEMBER ALEX: Let me ask you this way: If the  
4 court determined that, as a constitutional matter, that  
5 an individual should have been provided a right to  
6 counsel and had previously not been, would that be a  
7 mandated state obligation or would that have been simply  
8 that the service had not been provided previously and was  
9 a violation of the law?

10 MS. HARRIS: I'm not certain what you're asking  
11 me.

12 I think what you're asking me is: If a kid has  
13 a right to have an attorney, does the state have to  
14 provide it?

15 MEMBER ALEX: Well, let's say that the  
16 procedure before was, as a matter of course, no attorney  
17 was provided; and then a court decides that either as a  
18 statute or a constitutional provision, in fact, there is  
19 an obligation to provide an attorney.

20 Does that create a state-mandated requirement  
21 for which there is compensation?

22 MS. HARRIS: As long as you're going to have  
23 the district attorney continuing to represent the people  
24 of the state of California, then I believe that it does.

25 It doesn't make any sense for you to say that

1 you have a right to have counsel if a child is indigent.  
2 Clearly, it has no meaning. Due process doesn't mean  
3 anything if, in fact, you're not going to put something  
4 behind it.

5 CHAIR REYES: Ms. Shelton?

6 CAMILLE SHELTON: Just to add a couple of  
7 things on that very point.

8 A mandate exists only if a state statute or a  
9 state executive order requires the public defender's  
10 office to do something.

11 What has been discussed here are underlying  
12 constitutional due-process requirements to allow the  
13 child to have the right to counsel, which have existed  
14 always.

15 If a court now is going to say that the public  
16 defender needs to step in, that is a mandate by the  
17 court, or required under constitutional law, and by a  
18 long line of cases. That is not a state-mandated  
19 program.

20 MR. KAYE: May I respond?

21 I think Camille is right, generally.

22 But in this particular case, we would rely upon  
23 cases such as the *San Diego Unified School District* case,  
24 33 Cal.App.4<sup>th</sup> 859, which said that if the state creates  
25 a mandate, then the courts have a -- which requires due

1 process, that even the federal due-process procedures  
2 and requirements are now state-mandated and state-  
3 reimbursable.

4 So there is a fine point that has to be put on  
5 all of this. The issue is basically: Is this a new  
6 state mandate?

7 And we would point out on a purely  
8 plain-reading statutory basis, you won't find the  
9 requirements to have the individual education plan, you  
10 won't find the requirements to have individual treatment  
11 plans, progress reports in statute before SB 459. They  
12 may have been occasionally, or now and then, required in  
13 specific cases; but the statutory requirement started  
14 with 459.

15 Thank you.

16 CHAIR REYES: Ms. Shelton?

17 CAMILLE SHELTON: The *San Diego Unified School*  
18 *District* case is completely distinguishable from this  
19 case.

20 In that case, those statutes dealt with the  
21 expulsion and suspension procedures for students in K-12  
22 education. And they, on the plain language of those  
23 statutes, explicitly provided excess due-process  
24 requirements in order to expel or suspend a student.

25 Here, on these statutes that are pled, there is

1 nothing requiring local government to do anything. These  
2 statutes were transferring duties from the Youthful  
3 Offender Parole Board to the CYA. So nothing on the face  
4 of these statutes requires local government to do  
5 anything.

6 Some of the information -- if you turn to  
7 page 31 of the analysis, there was a lot of prior  
8 regulations that were imposed on the Youthful Offender  
9 Parole Board. And under prior law, it did have to have  
10 an initial case conference conducted of the ward. They  
11 had to provide complete medical diagnostic services upon  
12 commitment to the CYA. And there were initial case  
13 conferences and annual reviews, all of which the ward had  
14 the right to request counsel.

15 So really, the statute is transferring just  
16 those duties. And certainly, they probably -- the  
17 communication and the services may have gotten better  
18 with CYA, when it transferred to CYA; but, again, those  
19 deputies imposed on the public defender's office under  
20 due process are not mandated by the state.

21 MR. KAYE: This is Leonard Kaye.

22 In response to Camille's thing, I refer you to  
23 Bates page 116. This is an excerpt at the bottom of the  
24 page from the California performance review in 2002,  
25 which, as many of you know, at the time was a very, very

1 comprehensive review conducted by experts out of the  
2 state executive office that appointed various panels of  
3 experts. And they did a very thorough analysis of this  
4 matter.

5 And the title -- the headline for this thing --  
6 and I'll just read a sentence or so, it's found on Bates  
7 page 116: "Judges and probation officers have no  
8 role in decisions to continue incarceration."

9 And it says, "The California Youth Authority  
10 has not been mandated to involve local courts, judges,  
11 and probation officers in the treatment and incarceration  
12 of youthful offenders. And one superior court judge  
13 noted recently in correspondence to Senator Gloria  
14 Romero, that local juvenile justice systems are not  
15 afforded the opportunity to oversee or be involved in  
16 decisions affecting wards committed to the California  
17 Youth Authority."

18 And it goes on and on and on. But the basic  
19 point is, there was no mandate before SB 459; now, there  
20 is.

21 CHAIR REYES: Ms. Shelton?

22 CAMILLE SHELTON: The information that Mr. Kaye  
23 is referring to, is the statutory change to section 1720.  
24 And there, it did require the CYA to provide reports to  
25 the court and to the parole officer. That's a mandate on

1 CYA. It is not a mandate by the plain language on local  
2 government.

3 MS. HARRIS: However, it's my understanding  
4 that once this court gets this information, there is no  
5 mechanism for the court to take any action to do  
6 anything. And the monitoring that happens by the public  
7 defender's DJJ unit allows them to have some meaning  
8 behind these empty reports that they might receive.

9 So my role as a DJJ lawyer changes a bit  
10 because when I'm in the trial court, I'm clearly simply  
11 advocating for the child that is before the court and  
12 representing their interests.

13 Once I move into the role as DJJ unit attorney,  
14 then I am a liaison between the court and the youth and  
15 the Youth Authority, to let the court know exactly what  
16 is going on within the institution with the  
17 individualized child.

18 So I'm the eyes and ears of the court. And  
19 they may receive a report like you have in Exhibit C,  
20 which is a progress report. So Exhibit B is the initial  
21 report that they receive from CYA. Exhibit C is a  
22 progress report. And I'm in a position to give meaning  
23 to these words that are put on a page, to let the court  
24 know what exactly is happening with the ward.

25 And just to give you an example of the type of

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1 work that we do in the CYA unit or the DJJ unit, is I  
2 attend hearings with the client, to make sure that  
3 they're getting appropriate services that would be within  
4 CYA. I monitor their medical treatment. I monitor that  
5 they are getting appropriate mental health treatment.

6 We have had clients who, after getting to CYA,  
7 it became apparent that they were mentally disabled,  
8 developmentally disabled, and that they were being  
9 required to interact with materials that were presented  
10 to them at a higher level than they could handle of the  
11 curriculum. So we work with them to have adjustments  
12 made to the curriculum, so that they could be successful.

13 CHAIR REYES: Mr. Saylor, and then Mr. Feller.

14 MEMBER SAYLOR: I'm interested in what you've  
15 described as your duties. And I'm reading through the  
16 packet, and see the various elements included in the  
17 individualized change plan.

18 Frankly, I'm compelled by the points that  
19 Ms. Shelton has made about the absence of a change in  
20 responsibility for public defenders as a result of  
21 SB 459.

22 MS. HARRIS: Well, we --

23 MEMBER SAYLOR: Excuse me, if I may complete...

24 MS. HARRIS: I'm sorry.

25 MEMBER SAYLOR: And so my interest is in



1 understanding specifically what changed in the  
2 responsibilities as you've identified them for public  
3 defenders in working with these cases.

4 My reason for asking the question is that the  
5 items that you've shown in Exhibit D were, I believe,  
6 unchanged for many years prior to SB 459, as requirements  
7 as a part of the interaction between the Youth Authority  
8 and the YOPB with wards incarcerated in the Youth  
9 Authority. So I'm not sure what your case is for what  
10 exactly changed for your responsibilities with this  
11 measure.

12 MS. HARRIS: I'm sorry for the confusion.

13 What I wanted to make sure that was clearly  
14 understood is, these documents are in addition to other  
15 documents that were provided to the Commission early on  
16 in the process.

17 And the other document --

18 MEMBER SAYLOR: What specifically changed as a  
19 result of the bill for your responsibilities? Because I  
20 don't see it.

21 MS. HARRIS: Okay. All right, well, prior to  
22 SB 459, as I said before, we normally closed out our  
23 cases, because we treated the clients as if they went to  
24 state custody. And now that they -- and they were then a  
25 state responsibility. After that SB 459, I continued to

1 monitor the conditions of confinement. I advocated for  
2 the clients to make sure they were receiving appropriate  
3 treatment, training, education, and mental health  
4 services.

5 I assured that they were getting the  
6 appropriate mental health treatment. And as I said, I  
7 gave you an example of a child who was in a sex-offender  
8 program which has a very complicated curriculum. We made  
9 adjustments to make sure that the curriculum was brought  
10 to a level that the developmentally disabled child could  
11 understand. We monitored their educational services that  
12 they received, to make sure that they're getting  
13 appropriate services.

14 We've had clients who were severely mentally  
15 ill, such that it was beyond what CYA could handle. And  
16 we brought them back on 779 motions to have their  
17 services changed.

18 Prior to SB 459, that information would not  
19 have come to light. We would not have been aware of the  
20 condition of that severely disabled client, had it not  
21 been for SB 459.

22 We continue to monitor clients to make sure  
23 that they were on track for parole. And that meant in  
24 addition to doing the programs that they were ordered to  
25 do, that if -- making sure that the programs were made

1 available to them. Because many times, the young people,  
2 without an advocate, would languish in DJJ, waiting on a  
3 waiting list to get substance-abuse programming. And  
4 they couldn't get in it because the program was full, and  
5 so we advocated to make sure they got what they needed.

6 And prior to SB 459, we wouldn't have known  
7 about it, wouldn't have been able to do it, wouldn't have  
8 been able to act on it.

9 CHAIR REYES: Who wants to go first:  
10 Mr. Feller or Ms. Shelton? I'll leave it up to you two.

11 MR. FELLER: I just wanted to emphasize, the  
12 mandate question is a question of law. And for us, in  
13 this analysis, the main question was the power of the  
14 court to change, modify, or set aside an order of  
15 commitment.

16 And in looking at the legislative history that  
17 referred to that in that amendment to section 779 as a  
18 clarification and in comparing it to the *Owen* case, which  
19 held that the court has that power where CYA has failed  
20 to comply with the law or has abused its discretion in  
21 dealing with the ward in its custody, we didn't see on  
22 the face of these statutes any new programs or higher  
23 levels of service.

24 I just wanted to emphasize that.

25 CHAIR REYES: Ms. Shelton?

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1 CAMILLE SHELTON: Let me just kind of put this  
2 whole thing in perspective, maybe.

3 I think a lot of what counsel is arguing, is  
4 that there has been better communication because of this  
5 statute. And I think that was the intent, right, to  
6 switch some of the duties from the Youthful Offender  
7 Parole Board to CYA because there were problems.

8 And a lot of times, under old law, they had to  
9 do annual reviews. All of those services were supposed  
10 to be provided by the board; but they didn't have to turn  
11 over their reports to the court or to the parole officer.  
12 So I would imagine there probably was miscommunication or  
13 noncommunication between, you know, what was going on  
14 with the child and, you know, what the court may be  
15 potentially overseeing in their role of maintaining  
16 jurisdiction over that child.

17 So I'm sure communication has gotten better.  
18 But a mandates analysis is not a but-for test. You know,  
19 it's not "But for the statute, we've incurred costs."

20 You've got to have a statute or a regulation  
21 that directly requires you to perform a new activity.  
22 And that has not shown that here. None of these statutes  
23 impose anything on the local government.

24 MR. KAYE: Okay, could I respond?

25 CHAIR REYES: Yes.

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1 MR. KAYE: We understand Camille's point. And  
2 as usual, she is very, very accurate.

3 However, we feel that in this case, to use her  
4 term, is distinguishable, because there have been other  
5 cases in the history of SB 90 that necessarily implied  
6 mandates have been found to be reimbursable.

7 And I give you this hypothetical: We all know  
8 that the legislative intent for this was to vastly  
9 improve whether you call it communication, whatever, the  
10 treatment that is provided to these kids. So they  
11 weren't getting individual treatment plans, it wasn't in  
12 statute, there was no IEPs in statute. All these new  
13 services and so forth were to be provided.

14 So my hypothetical is: What was a judge to do  
15 when he got a copy of this report?

16 He could either do one of two things, let's  
17 suppose: He could either throw it in the trash can and  
18 ignore it, or he could take action.

19 Now, we say that it's a necessarily implied  
20 mandate because we presume that the judge would take  
21 action. And once the action the judge would take, he  
22 would have no alternative but to give it to the public  
23 defender. He can't give it to the prosecuting attorney,  
24 the district attorney who has no role in this type of  
25 discovery effort. It's a motion filed by the public

1 defender.

2 So we feel that it is, in effect, a necessarily  
3 implied mandate; and reimbursement should be found in  
4 this particular case because it has involved a huge  
5 amount of work on the part of the public defender to  
6 handle the avalanche of cases and treatment requirements  
7 that are flooding our juvenile courts.

8 CHAIR REYES: Okay, so we have staff's  
9 recommendation. We have clearly disagreement.

10 I'm not seeing Finance grabbing the microphone.  
11 So I think they're happy with staff's -- Commissioner  
12 Ramirez?

13 MEMBER RAMIREZ: May I ask a question?

14 CHAIR REYES: Yes.

15 MEMBER RAMIREZ: I'm really interested in what  
16 you just said, Mr. Kaye, on "necessarily implied"  
17 mandate.

18 I'd like to have Camille respond to that.

19 CAMILLE SHELTON: Since I've been here -- I  
20 don't know about 15 years -- there have been occasions  
21 where there are statutes that do impose activities on  
22 local government by the plain language. But you don't  
23 really know what it means, what the language means. And  
24 so through statutory interpretation, you have to kind of  
25 understand what that activity requires. And in some of

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1 those cases, you would certainly imply something.

2 As an example, there was a statute for a report  
3 given from one school district to the other school  
4 district; but the plain language said that the second  
5 school district --

6 MEMBER OLSEN: Receive.

7 CAMILLE SHELTON: -- receive -- yes, received  
8 the report -- yes, received the report; but there was no  
9 requirement for the other -- the first school district to  
10 provide it. And so, obviously, there needs to be a  
11 requirement to provide it in order for the second school  
12 district to receive it.

13 We've only done that when the statute on its  
14 plain language does impose an activity on local  
15 government.

16 Again, these statutes don't impose any  
17 activities on local government.

18 MEMBER OLSEN: Well, if I might on that one, on  
19 that case, I believe --

20 CHAIR REYES: Ms. Olsen, do you want to turn on  
21 your microphone?

22 MEMBER OLSEN: I'm sorry.

23 I believe the finding of the Commission on that  
24 case was that the providing district, it wasn't a  
25 mandate, but that it could be taken care of in the

1 P's and G's.

2 CAMILLE SHELTON: Correct. And, you know, that  
3 is where the Commission has discretion to include  
4 activities that are reasonably necessary to comply with a  
5 mandate. But you have to find a mandate first. As a  
6 question of law, like Mr. Feller was saying, you have to  
7 find a mandate in the language of the statute first.

8 MS. HARRIS: May I be heard?

9 Due process requires that people have  
10 representation at every stage of any important  
11 proceeding, okay.

12 Now, my understanding of SB 459 imposed on  
13 counsel an obligation to the post-dispositional child.  
14 Prior to SB 459, we didn't have such an obligation. A  
15 post-dispositional child was -- their case was shelved  
16 and we were done with it.

17 In order for the court to take any kind of  
18 action to have any kind of meaning for these simple  
19 reports that are coming across their desk, there needs to  
20 be active interaction and monitoring to know exactly what  
21 it means, what's available, what can be done, whether the  
22 child is materially benefitting or not, or if it requires  
23 some change in action.

24 CHAIR REYES: Commissioner Saylor?

25 MEMBER SAYLOR: It just strikes me generally,



1 that prior to SB 459, there were activist judges who  
2 obtained the information that would be now provided to  
3 everyone as a result of the language in SB 459. Those  
4 judges then would need to take whatever action was at  
5 their discretion to unfold their commitment or their  
6 disposition. So that prior to the legislation, there  
7 already were mechanisms in place for judges and public  
8 defenders, presumably, and others to look into these  
9 matters.

10 This simply -- this measure simply allows -- or  
11 it simply requires the State to perform something that  
12 it didn't perform before, and was a reorganization of  
13 responsibilities at the state level.

14 I'm failing to see a new requirement or  
15 mandated activity, though I appreciate that the tools  
16 that are now available to local judges and public  
17 defenders and communities to look into the cases more  
18 thoroughly after the kid has been sent to another  
19 location is a value to society. I don't see it as new  
20 mandated state activity.

21 MR. KAYE: And on that, Commissioner -- on  
22 that, we respectfully disagree.

23 I think if you'll look at the statutory  
24 requirements after SB 459, you'll find a whole host, a  
25 paragraph filled with specific requirements. And these

1 are specific mandated requirements, as I said, that are  
2 heading their way towards the juvenile courts; and the  
3 judge has two choices: He can either trash-can them or  
4 he can implement them. And we presume that he would want  
5 to implement them.

6 Now, the big difference, before SB 459 --  
7 you're absolutely right, the judge from Santa Clara  
8 County and a number of others were very active. But this  
9 was on an ad hoc, idiosyncratic basis, and they would  
10 have their pet treatment programs or this or that, or  
11 legislators, and they would go to them and get results.  
12 But that is definitely not a state-mandated situation.  
13 That is a situation where judges took the initiative at  
14 their discretion and solved the problem. And we applaud  
15 that.

16 But this clearly is a uniform and reliable  
17 implementation of a new treatment standard. And I don't  
18 see any way around that.

19 CHAIR REYES: Ms. Olsen?

20 MEMBER OLSEN: I guess I'm struck by the idea  
21 that maybe this is the difference between a state mandate  
22 and a professional compulsion. That because information  
23 has improved and because the system at the state level  
24 has become more transparent, that you, as legal  
25 professionals, feel more compelled to provide services.

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1 But that is not necessarily the same thing as a  
2 state-mandated program.

3 And I think we're all sympathetic to the costs  
4 you may be incurring because you are needing to do this  
5 for your clients. But, again, as with Mr. Saylor, I'm  
6 not seeing where the state mandate is.

7 MR. KAYE: Okay. And to that, we simply reply,  
8 it's a due-process requirement that if a child is  
9 entitled to a service and is not being provided that  
10 service, then they have a due-process right and a new  
11 remedy to get the new service. That's where our  
12 difference is.

13 CHAIR REYES: Are there any further questions  
14 from board members?

15 *(No response)*

16 CHAIR REYES: Anybody else from the public that  
17 would like to speak on this subject?

18 *(No response)*

19 CHAIR REYES: Finance?

20 CARLA SHELTON: We would just like to support  
21 the staff recommendation to deny the test claim.

22 CHAIR REYES: Thank you.

23 Is there a motion?

24 MEMBER CHIVARO: I'll move adoption of the  
25 staff recommendation.

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1 MEMBER ALEX: Second.

2 CHAIR REYES: It's been moved and seconded.

3 Any additional comments?

4 *(No response)*

5 CHAIR REYES: All in favor, say "aye."

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

7 CHAIR REYES: Opposed?

8 *(No response)*

9 CHAIR REYES: Abstentions?

10 *(No response)*

11 CHAIR REYES: The "ayes" have it.

12 Thank you.

13 MR. KAYE: Thank you.

14 MS. HARRIS: Thank you.

15 MS. HALSEY: Moving on to Item 4, Commission

16 Counsel Kenny Louie will present Item 4, a test claim on

17 *Public Contracts* for school districts and community

18 college districts.

19 MR. LOUIE: This test claim addresses

20 allegations of public contract requirements imposed on

21 school districts and community college districts when

22 contracting for goods, services, and public works

23 projects.

24 Staff recommends that the Commission deny some

25 of the alleged public contracting activities on the basis

1 that the activities are triggered by the discretionary  
2 decision to purchase goods and services and undertake  
3 public works projects. This finding is consistent with  
4 prior Commission decisions.

5 The claimants continue to disagree with the  
6 staff's recommendation of a denial on this basis.

7 Finance disagrees with the recommended partial  
8 approval contending that sufficient funding has been  
9 provided for the test-claim activities through various  
10 state grant programs and local fee authority for school  
11 districts.

12 However, none of the grant programs cited to  
13 appropriate monies specifically intended to fund the  
14 specific activities approved in this test claim.

15 In addition, the fee authority cited to does  
16 not cover all of the activities -- or cannot be used for  
17 all of the activities that have been approved in this  
18 claim.

19 Staff recommends that the Commission adopt the  
20 staff analysis and the proposed statement of decision to  
21 partially approve the test claim.

22 Will the parties and witnesses state their  
23 names for the record, please?

24 MR. PALKOWITZ: Good morning. Arthur Palkowitz  
25 on behalf of the claimant.

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1 MS. GEANACOU: Susan Geanacou, Department of  
2 Finance.

3 MR. FERGUSON: Chris Ferguson, Department of  
4 Finance.

5 CHAIR REYES: Thank you.

6 It's been presented.

7 MR. PALKOWITZ: Yes, thank you.

8 CHAIR REYES: At this point, we have that  
9 neither party agrees with the staff's analysis; is that  
10 correct?

11 So you disagree with what's been approved, and  
12 you disagree with what's been denied?

13 MR. FERGUSON: I would say we don't necessarily  
14 disagree 100 percent. We believe it should be much more  
15 narrowly confined.

16 CHAIR REYES: Okay, all right, go ahead.

17 MR. PALKOWITZ: Thank you, sir.

18 This test claim relates to activities that are  
19 involved when you're doing construction. The activities  
20 are listed as approximately 13 activities that involve  
21 the bidding process, selecting the vendor, dealing with  
22 minorities when it comes to who should be selected.

23 Staff has, out of the 13 activities, has  
24 approved four and partially approved one and denied  
25 approximately four activities. And I would like to

1 address those four activities that were denied.

2 For the most part, the activities that were  
3 approved relate to repair and maintenance type of work  
4 that staff has concluded is required by statute. Repair  
5 and maintenance, we're referring to usually  
6 school-related facilities. And staff said that based on  
7 statutes requiring that schools maintain and repair  
8 facilities, that those activities are then triggered by  
9 a statute that's reimbursable.

10 The denial of the activities, staff is  
11 concluding, do not relate to repair and maintenance; and,  
12 therefore, there is a belief that those activities are  
13 discretionary and are not required by the statute and is  
14 the basis for the denial.

15 Staff, in their thorough analysis, goes to  
16 great lengths on several pages. And I'd like to just  
17 highlight some of that.

18 Staff -- and so what we're really dealing with  
19 as an issue is, the need to build schools and other  
20 school-related facilities, and is that a requirement  
21 under the law.

22 Staff comments that the courts have  
23 consistently held publication as a matter of statewide  
24 concern, not local concern, which is the basis of the  
25 reimbursable state mandate process.

1           It goes on -- and they cite authority in the  
2     *Butte versus California* case. It also talks about that  
3     it is legislative policy that the state strengthen and  
4     be responsible for the control of school districts.

5           It is the State that holds title to the school  
6     districts. So we have evidence here -- ample evidence to  
7     show that this is a statewide, not a local concern.

8           And the authority that the staff is relying  
9     upon to say, "No, it's really a local decision and  
10    therefore, since it's a local decision, it is not a  
11    statewide mandate that should be approved for  
12    reimbursement" -- and they're relying on a *Santa Barbara*  
13    *School District* case that occurred fifty years ago. And  
14    in that case, the school district was faced with a  
15    decision to condemn schools based on the amount of repair  
16    greatly exceeded a value that they felt the school was  
17    worth; and there was other facilities able to absorb the  
18    children.

19           Based on that decision by the local, which was  
20    a local decision on what to do with a school, is the  
21    basis that they're using to show that since this is a  
22    local decision on whether you have or have not schools,  
23    it is then not a statewide decision.

24           Now, in that case, what I think is clearly easy  
25    to distinguish, is that the Court said, as long as there



1 are -- let me get the correct language here.

2 MS. HALSEY: Could you point us to the page  
3 that you're --

4 MR. PALKOWITZ: Of course. I'm sorry. It's  
5 page 25 of the staff analysis.

6 And I apologize, I've lost my place here.

7 And in the first paragraph, near the end of the  
8 paragraph, it said that, "The court held that absent  
9 proof that there were no school facilities to absorb the  
10 students, the school district, 'in the reasonable  
11 exercise of its discretion,' could lawfully take this  
12 action."

13 And I think this is the paramount part of the  
14 discussion. What happened is, a school district made a  
15 decision that they could lawfully take an action to close  
16 down a school; and on the other flip side, they could  
17 make a lawful decision to open a school. But when it  
18 does that, in this case, there has to be proof that there  
19 can be a facility to absorb it.

20 And that argument, contrary, is used when you  
21 want to build a school; and that there is no way to  
22 absorb the children, so now, the decision is, you must  
23 build a school.

24 That is not meant to be a discretionary  
25 decision by a local that should bar it from being

1 reimbursed for the construction costs.

2 I think the previous page comments on how the  
3 staff recommends -- or states, rather -- that there is a  
4 statewide obligation to build schools, a statewide  
5 obligation to provide free public education.

6 Either can be viewed as this being a legal  
7 compulsion or a practical compulsion to have schools  
8 throughout the state; and that decision is not a  
9 discretionary decision that a local has and, therefore,  
10 should not preclude it from being reimbursed for  
11 activities.

12 CHAIR REYES: Let me ask you a question,  
13 though: Has there been case law now that, in fact,  
14 requires the State to build schools for local districts?  
15 Or is it a permissive program under the State Allocation  
16 Board Office of Public School Construction?

17 MR. PALKOWITZ: Has there been case law?

18 CHAIR REYES: Yes, is there case law that says,  
19 "The state shall provide school facilities for kids"?

20 I'll agree that we have compulsory education,  
21 kids under 16 must attend school. But is there a case  
22 law or in statute that says, "And the state shall provide  
23 for those school facilities"?

24 MR. PALKOWITZ: Well, there is no statute that  
25 says you provide for teachers.

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1 CHAIR REYES: That's not the question.

2 The question is -- because you say that the  
3 State requires that you provide the school facilities.

4 MR. PALKOWITZ: Right.

5 CHAIR REYES: And so what is the citation for  
6 that?

7 You're talking to the chair of the State  
8 Allocation Board, by the way, in all fairness.

9 MR. PALKOWITZ: Thank you for that disclosure.

10 I think we have to not leave our common sense  
11 outside the room here. That if we have to provide a --

12 CHAIR REYES: I vehemently disagree with you on  
13 that statement you are about to make because there is no  
14 case law, there is nothing, there is no statute, there's  
15 no case law.

16 Now, yes, you can argue the common-sense  
17 approach, and the common-sense approach, too, is that  
18 school districts are responsible for the facilities for  
19 the kids and they must provide adequate facilities as  
20 well. But that's a different issue of the mandate.

21 I just don't understand that there would be a  
22 case law. At this point, I have not been able to find  
23 one.

24 Okay, I'm sorry, proceed.

25 MR. PALKOWITZ: That has -- I believe I've made

1 my comments that I wanted to make on that issue.

2 CHAIR REYES: Okay.

3 MR. FERGUSON: In response to the staff's  
4 analysis, we believe that there should be a more narrowly  
5 tailored view of the mandate.

6 Specifically, Education Code 17070.75, which  
7 outlines the requirements of the School Facilities  
8 Program and participation in it, clearly states that any  
9 applicant shall maintain and keep in good repair those  
10 facilities.

11 As such, any of those facilities should not  
12 apply to this particular mandated claim for additional  
13 contracting requirements, because as a condition of  
14 participating in the School Facilities Program, they have  
15 agreed to maintain those facilities. So it's a condition  
16 of building; therefore, we don't see that as subject to  
17 the partial mandate claim that's here, because they're  
18 required to do that.

19 In addition, we also see that staff's analysis  
20 references Education Code section 17002, which has the  
21 definition for "good repair."

22 We would note that the definition for "good  
23 repair" is further defined in the Emergency Repair  
24 Program under section 17592 point -- I believe it's 75?

25 MS. GEANACOU: .70.

1 MR. FERGUSON: -- .70, which clearly identifies  
2 what are the emergency repairs and maintenance that are  
3 needed.

4 And if we look at that, it clearly identifies  
5 that all of those activities under section 17002  
6 constitute emergency repairs.

7 So we would disagree that those would apply to  
8 this mandate claim.

9 To the extent that there are additional  
10 activities required when contracting for maintenance and  
11 repair, we would then state that the deferred maintenance  
12 program, which provides approximately \$250 million  
13 annually on a matching basis to school district funds,  
14 would cover any costs borne from the additional  
15 contracting requirements of the Public Contracting Code.

16 I think the staff's analysis states that while  
17 the program doesn't explicitly authorize the use of those  
18 funds for contracting, that that means it would be  
19 precluded from using that money for contracting.

20 However, we disagree; and we've been in contact with  
21 staff from the Office of Public School Construction  
22 who clearly have told us that school districts do, in  
23 fact, use that funding to pay for some of the  
24 contracting-related activities of their maintenance and  
25 repair.

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1 MR. LOUIE: I'd just like to clarify that last  
2 statement. That was in the draft staff analysis. We've  
3 amended that in the final staff analysis to find that  
4 those funds could be used but are not required to be used  
5 for those purposes.

6 Additionally, the funding under SFFR, it's a  
7 voluntary program. There is no in evidence in the  
8 record -- in this particular record -- that any of the  
9 school districts have -- clearly, they probably have.  
10 But in this record, there is no evidence that school  
11 districts have applied for that funding, nor is there  
12 any specific requirement in that funding to use those  
13 funds for these specific activities.

14 MR. FERGUSON: Sure. And we agree with that to  
15 the extent there is no specific funding requirement to  
16 it. But we would argue that those funds should be used  
17 to offset any costs to the extent that they are used by  
18 districts for that purpose.

19 MR. LOUIE: And I believe that we've allowed  
20 for that within the findings of the staff analysis.

21 MR. PALKOWITZ: If I may respond?

22 CHAIR REYES: Hold on. Ms. Shelton has a  
23 point.

24 Go ahead.

25 CAMILLE SHELTON: I was trying to understand

1 Finance's argument just a little bit more.

2 I think it is your argument that you're trying  
3 to except from the mandate those districts that  
4 participate in those grant programs, so that they would  
5 not be eligible to claim reimbursement if they  
6 participate in the School Facilities Program and the  
7 Deferred Maintenance Program?

8 MR. FERGUSON: Correct, correct, those should  
9 be excepted.

10 CAMILLE SHELTON: Okay, that's an interesting  
11 argument. I have never heard it that way before.

12 The problem with that is that that is a grant  
13 program, and they voluntarily entered that program.

14 The statutes that Mr. Louie was talking about  
15 for repair and maintenance are statutes and requirements  
16 imposed on all school districts, regardless of whether  
17 they are participating in the School Facilities Program  
18 or the Deferred Maintenance Program.

19 So they -- all school districts -- regardless,  
20 are required to repair and maintain facilities.

21 CHAIR REYES: Mr. Ferguson, is it your position  
22 that the State grant program meets 100 percent of the  
23 needs for the maintenance and repair to the statewide  
24 school district -- the school districts and throughout  
25 the state?

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1 MR. FERGUSON: No, that's not my position.  
2 My position is that as a condition of accepting those  
3 grant funds, they've agreed to do the activity, and that  
4 includes the maintenance and repair of those facilities  
5 to keep them in good repair. So any of the facilities  
6 built under that program necessarily require that. And  
7 that was a discretionary choice of the school districts  
8 to participate in the School Facilities Program.  
9 Therefore, it is a discretionary downstream activity  
10 requirement.

11 CHAIR REYES: But if they did not participate  
12 in the State's program and they built it out of their  
13 own...?

14 MR. FERGUSON: That is where we would agree  
15 with the staff.

16 CAMILLE SHELTON: So what their argument is  
17 doing, they're making it a mandate issue, and our  
18 analysis is making it a cost issue.

19 I still strongly believe that it's not a  
20 mandate issue because by law, those two statutes -- or  
21 that one statute that requires repair and maintenance  
22 is imposed on everybody, regardless of their decision.

23 CHAIR REYES: Everybody. Regardless of who  
24 paid for the funding and whether or not they  
25 participated.



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1 CAMILLE SHELTON: Right.

2 CHAIR REYES: Yes?

3 MS. GEANACOU: May I ask -- I think it's maybe  
4 a rhetorical or an actual question.

5 Susan Geanacou from Finance.

6 I was just looking at the order in which the  
7 statutes were adopted. The General Repair and  
8 Maintenance statute, 17- --

9 MR. FERGUSON: -565.

10 MS. GEANACOU: -565, I think is what is cited,  
11 was a 1996 enacted statute.

12 And I think it was two years later that the  
13 School Facilities Program, a piece of which is 17070.75,  
14 said if schools elect to take that grant money, optional  
15 money, to build their schools, with it comes the  
16 attendant requirement on them to repair and maintain  
17 their schools, which is a two-year later, arguably more  
18 specific statute, so that they were aware of the prior  
19 requirement; but then came along the assumption of  
20 responsibility to, if they take the money, take on the  
21 cost and responsibility of repairing and maintaining.

22 CAMILLE SHELTON: Do you have anything on that?  
23 I believe the repair and maintenance statute, although it  
24 may have been renumbered, I think that's been in law for  
25 a long time.

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1           We have other test claims that we have had a  
2 triggering point for repair and maintenance. And without  
3 having the Ed. Code with me -- do you have that?

4           MR. FERGUSON: That's correct, I don't have the  
5 Ed. Code in front of me.

6           CAMILLE SHELTON: Okay.

7           MR. FERGUSON: But that's correct. So what  
8 we're arguing here is that any of those  
9 contracting-related activities specific to School  
10 Facilities Program-built facilities should be excluded  
11 from the mandate claim because, as a condition of  
12 participating in that program, you have agreed to  
13 maintain and repair those facilities. Therefore, you  
14 should be excluded.

15           CAMILLE SHELTON: But their -- whatever their  
16 decision is, they are still required by state law,  
17 regardless of those local decisions that they made, to  
18 repair and maintain under 170- -- I didn't write it  
19 down -- 17065, or whatever that statute.

20           MR. FERGUSON: Yes, 17565.

21           So we're agreeing with you in those regards.

22           CAMILLE SHELTON: Right.

23           MR. FERGUSON: But we're saying it should be  
24 more narrowly tailored to exclude any facilities that  
25 were constructed under the School Facilities Program.

1 CHAIR REYES: So your position is if a school  
2 facility -- if a school district participated in the  
3 School Facilities Program in accepting that  
4 participation, whether 50 percent or for hardship, a  
5 higher percentage, the agreement was made by that school  
6 district that they will assume all maintenance and  
7 responsibilities downstream --

8 MR. FERGUSON: Correct.

9 CHAIR REYES: -- indefinitely?

10 MR. FERGUSON: That is correct.

11 In fact, within that, there is the routine  
12 restricted maintenance account, which requires school  
13 districts to set aside a portion of their general fund  
14 monies for the purpose of maintaining those facilities,  
15 built under the School Facilities Program.

16 CHAIR REYES: So under that scenario then, the  
17 Emergency Repair Grant Program, does that mean that the  
18 school facilities -- because the school districts that  
19 participate in the school construction program can't tap  
20 those? Because you sort of -- if I'm a school, and I tap  
21 the School Construction grant bond program, then I assume  
22 all responsibility for downstream of construction -- I  
23 mean, for repairs, then the state grants for repairs, am  
24 I then kicked out of that?

25 MR. FERGUSON: No, you would not. But that is,

1 again, a discretionary choice of the State to settle the  
2 *Williams* lawsuit and provide additional assistance to  
3 school districts for those types of repairs. But it does  
4 not mean that that is a mandate of the state; that is  
5 simply assistance of the state to school districts.

6 CAMILLE SHELTON: The argument is not working  
7 with case law with me. I mean, with case law, it says  
8 you have to look at your triggering point. And if your  
9 triggering point in law requires you to do something,  
10 then downstream from that, new state-imposed requirements  
11 are eligible for reimbursement. So that's what the staff  
12 recommendation is.

13 Now, also the staff recommendation does point  
14 out all of the grant programs and the funding that you've  
15 identified. And to the extent that they receive that  
16 money and they apply it to the contracting activities,  
17 then those would be offsetting revenue and have to be  
18 reduced in their reimbursement claim.

19 But I don't see an argument that would allow  
20 the Commission to exclude those districts that  
21 participate in those grant programs. Mandates doesn't  
22 work like that.

23 MS. GEANACOU: Susan Geanacou from Finance.

24 Then what would the Commission staff then think  
25 of the requirement of participating in the School

1 Facilities Program to repair and maintain?

2 CAMILLE SHELTON: Well, those -- I understand,  
3 you're trying to say there is an overlap in statutes, and  
4 that is hard for me to conceptualize. I understand what  
5 you're saying.

6 Those test claims have been filed and have been  
7 denied by the Commission. So that was claimed in those  
8 test claims that "once we participated in those funding  
9 programs, we were required to comply with all these  
10 activities." But independent of those programs, there's  
11 a separate requirement in law to repair and maintain.  
12 And those statutes haven't changed. They can't be  
13 ignored.

14 MR. FERGUSON: We're not disagreeing with what  
15 you're saying, necessarily. What we're saying is that  
16 further downstream, any district that elected to  
17 participate in the program necessarily waived their right  
18 to claim that mandate funding because they agreed to, as  
19 a condition of participating in that program, to repair  
20 and maintain the facility.

21 CAMILLE SHELTON: Well, I guess from the State  
22 Allocation Board, when money -- when a school district  
23 comes before the board, they apply for specific projects,  
24 right?

25 CHAIR REYES: They apply for construction,

1 modernization.

2 Let's think of this as new construction.

3 So what I'm hearing Mr. Ferguson say is if I'm  
4 a school district, and I come up to the OPSC, and I seek  
5 a grant for participation by the State in new  
6 construction, and the project is -- I'm just going to say  
7 \$10 million for lack of a better number, the locals put  
8 five, the state puts five.

9 In accepting the five from the State, the  
10 locals, therefore, assume all responsibility for  
11 maintaining and repairing that facility.

12 So under your argument, Mr. Ferguson, is that  
13 if years later, when there's a need to repair and this  
14 statute kicks in, and says, "It needs repair, therefore,  
15 you need to pay it," then by virtue of the fact that they  
16 participate in the OPSC program, they're not entitled to  
17 that mandate, but they're required to repair because they  
18 now have met a substandard -- whether they recognize it  
19 on their own or not, it is below standard and they need  
20 to take care of it?

21 MR. FERGUSON: That would be correct.

22 CHAIR REYES: Okay. Commissioner Olsen, then  
23 Commissioner Saylor.

24 MEMBER OLSEN: So it seems to me that that's  
25 not an issue of whether there's a mandate. That's an

1 issue for the P's & G's.

2 That's a claiming issue; isn't it?

3 CAMILLE SHELTON: Well, we have it as --

4 It's what? I'm sorry.

5 MEMBER OLSEN: It's a claiming issue?

6 CAMILLE SHELTON: Well, and that's how we've  
7 written the analysis. I still think of it as a claiming  
8 issue and an offset issue.

9 CHAIR REYES: I kind of agree with you there  
10 because the broad law would be -- schools -- you're all  
11 required to pay, to take care of the maintenance and  
12 repairs; and then if you happen to participate through  
13 this program, you're exempted from doing that, then  
14 you're exempted.

15 But overall, all schools -- and then it's in  
16 the P's & G's that you didn't differentiate who would and  
17 who would not.

18 MS. GEANACOU: I don't think the analysis is  
19 written that way, though, that it would --

20 CAMILLE SHELTON: Well, maybe I'm missing  
21 something. The analysis, as written, were those grant  
22 funding programs are identified as offsetting revenue.  
23 So to the --

24 CHAIR REYES: But you're talking about the  
25 offsetting -- for the emergency repair for the

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1 offsetting. Not necessarily if you originally were built  
2 through OPSC.

3 MEMBER LUJANO: I'd like to note that we have  
4 specifically excluded new construction in this claim.

5 MS. HALSEY: Yes. Can I clarify? Because I  
6 think I'm understanding what everybody is saying and kind  
7 of going this way, because I did the *School Facilities*  
8 *Funding Requirement* test claim.

9 But I think what Finance is arguing is, if you  
10 build a new school and you're using school-facility  
11 program financing, then you have entered into a  
12 commitment for eternity to then repair and maintain that  
13 at your own expense. And, therefore, you cannot be  
14 eligible for reimbursement under a state mandate to  
15 repair and maintain.

16 That's the argument, right?

17 MR. FERGUSON: That's correct.

18 MS. HALSEY: And then in our analysis, we find  
19 a duty to repair and maintain is reimbursable. However,  
20 there is also a state facility program for modernization  
21 that can be used for major repairs and maintenance.  
22 That's a separate issue.

23 CHAIR REYES: Right.

24 MS. HALSEY: That is a program you can apply  
25 for. And in our analysis, we say you can use that as



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1 offsetting for the mandate, so...

2 CHAIR REYES: But you don't make the  
3 distinction whether or not the school was originally  
4 built for the OPSC?

5 MS. HALSEY: Right, we don't.

6 And also, just something to think about, if  
7 that's where the Commissioners are thinking of going:  
8 You can't say a school district isn't eligible because it  
9 would be a facility-by0facility.

10 CHAIR REYES: Right.

11 CAMILLE SHELTON: Exactly.

12 MS. HALSEY: Whether or not they were built  
13 with the school -- and I don't know if there's even a way  
14 to track that.

15 CHAIR REYES: Right. It gets back to the --  
16 Commissioner Olsen?

17 MEMBER OLSEN: Take care of it in the  
18 P's & G's.

19 MS. HALSEY: Well, no, but I mean, as a claim,  
20 it could be -- I don't know how you would even do it in  
21 claiming, because I don't know how you track whether a  
22 school has been built with School Facilities Program  
23 funds, particularly schools that are really old,  
24 50 years -- I don't know how long these records are kept.  
25 Or I don't know what that would mean for claiming. We

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1 don't have anyone here from the State Controller's office  
2 that could speak to that.

3 CHAIR REYES: Well, let's have Mr. Ferguson  
4 answer that question, then we will go back to  
5 Commissioner Saylor.

6 MR. FERGUSON: I know under the late 90's,  
7 under the lease purchase program, which was the prior  
8 iteration of the School Facilities Program, we do have  
9 data of schools constructed under those programs. We  
10 know school-site by school-site what was constructed at  
11 those schools.

12 CHAIR REYES: Okay.

13 MS. GEANACOU: I want to add, I don't think  
14 Finance is arguing that whole school districts be  
15 excluded because they may or may not have ever used the  
16 school facility funding to build one or more of their  
17 schools.

18 I think we just want to see in the analysis  
19 an acknowledgment that for districts that did do --

20 CHAIR REYES: "If the project..." Call it a  
21 "project."

22 MS. GEANACOU: Project-specific, yes.

23 CHAIR REYES: Project-specific?

24 Commissioner Saylor?

25 MEMBER SAYLOR: So on the issue -- there are

1 two issues, as I'm hearing: One is new construction and  
2 one is repair and maintenance.

3 It strikes me for repair and maintenance, that  
4 the staff analysis is on target.

5 Here is the circumstance that I see: If we've  
6 required somebody to do something in return for a grant  
7 and then we change the cost and procedures involved with  
8 that requirement, then that seems to me to be a mandate.  
9 Because we've required -- in fact, it's an even stronger  
10 one because we're requiring them to do something, and now  
11 we're adding an additional requirement downstream that  
12 they had no eyes open to understand that they were going  
13 to be facing at a later time.

14 We could just as easily require that as a part  
15 of any repair and maintenance, they lower the light  
16 switches from four feet to three feet. And that's a new  
17 cost, but we could say that's simply a matter of repair  
18 and maintenance to meet current standards.

19 So I think for the repair and maintenance  
20 portion, I certainly agree with the Commission staff that  
21 these procedural contractual, procedural requirements are  
22 a new mandate and we ought to figure out how to  
23 appropriately set the claim process.

24 For new construction, it strikes me then that  
25 our witness here said something about common sense. And

1 it strikes me that school districts don't have  
2 unfettered, unlimited discretion in the area of whether  
3 or not they construct schools. And, frankly, the State  
4 Allocation Board is not paying for the full cost of  
5 school construction, and hasn't and can't.

6 So what we have is a set of -- a framework,  
7 I think, of statutes from the federal and state  
8 governments, the "free and appropriate public education  
9 in the least restrictive environment..." and all of that --  
10 structure that people have to live within, health and  
11 safety requirements, where, what patterns of growth are.  
12 It strikes me that there are limits to what we would  
13 think of as discretion.

14 This statute establishes a requirement. The  
15 requirement is that certain contractual procedures have  
16 to fall in place. That's a mandate. To me, that's a  
17 mandate.

18 And I don't care -- we can say that they don't  
19 have to build schools; but practically speaking, that's  
20 not accurate.

21 This is a requirement for people, when they are  
22 taking an action, they must fulfill this new requirement.  
23 That sounds like a mandate to me, under law and under  
24 practical common sense.

25 CAMILLE SHELTON: Can I just clarify that the

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1 recommendation here on the -- the activities are  
2 triggered only for repair and maintenance of existing  
3 facilities. So we're not even talking about new  
4 construction.

5 MEMBER SAYLOR: Well, I am.

6 CAMILLE SHELTON: Oh, you are? I'm sorry.

7 MEMBER SAYLOR: I am definitely talking about  
8 new construction because I believe that is a part of the  
9 statute that sets up the contractual requirements.

10 CAMILLE SHELTON: Okay.

11 MEMBER SAYLOR: And while the Commission staff  
12 recommendation is not to identify these requirements for  
13 new construction as a mandate, I disagree with that  
14 because in practical terms, I don't -- I'm not compelled  
15 that whether or not school districts have the discretion  
16 is the relevant point. It seems to me that there is a  
17 new requirement placed on them when they take a certain  
18 action. And that requirement is a mandate.

19 So I believe that that's a mandate that we  
20 should be identifying for reimbursement.

21 MR. PALKOWITZ: If I may follow up --

22 CHAIR REYES: Yes.

23 MR. PALKOWITZ: -- to your previous question as  
24 far as the legal authority.

25 And I'm not aware of one, but there is a

1 California Supreme Court case that follows, and that line  
2 of thinking is that it could be legal or practical  
3 compulsion. And that is really what I believe is correct  
4 as far as the practical compulsion, that there really,  
5 really is no discretionary decision on a board making a  
6 decision and moving forward for a new school facility.

7 When a board goes through that analysis, they  
8 have exhausted every alternative which is required under  
9 CEQA and other requirements. It's not that school  
10 districts are building new facilities because they have  
11 extra money or there is no need for it. I mean, there is  
12 an exhaustive process that's done.

13 CHAIR REYES: I'm just thinking of Elk Grove,  
14 who built the school and -- I'm sorry.

15 MR. PALKOWITZ: Well, you know, there are  
16 800 school districts out there, and you could find an  
17 exception, but...

18 CHAIR REYES: That's what the smile was about.  
19 I apologize.

20 MR. PALKOWITZ: Yes, that's okay. I'm not  
21 offended.

22 And I agree with the other comments that  
23 really the other school facilities funding is really a  
24 parameters and guidelines issue, so...

25 Thank you.

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1 CHAIR REYES: Mr. Louie?

2 MR. LOUIE: I would just note, as in prior  
3 Commission decisions, there is a slew of other options,  
4 as pointed out I believe in SFFR and even CEQA, that  
5 there's a slew of other options that districts can take.  
6 And there have been instances based off of policy reasons  
7 why they've -- why districts have decided to build a new  
8 building rather than take the other options.

9 Here, there's no evidence in the record to  
10 suggest one way or the other that school districts, all  
11 the time, need to build these districts -- or need to  
12 build these schools. We can't find, just on our own,  
13 just based off of gut assumption, that this occurs. We  
14 can't make our mandates finding based off of that.

15 MEMBER SAYLOR: I think it's a mandate if you  
16 have a requirement for certain procedures.

17 Now, the school districts can choose to do a  
18 number of different things. They can choose to have  
19 overcrowded schools forever. But the point is, if  
20 they're ever going to have a contract to build something,  
21 they have to follow this requirement that's now set out.  
22 That's a mandate.

23 There's argument in the staff analysis about  
24 use of developer fees. Well, that's shifting -- that's a  
25 tax. If we actually say that we're going to have school

1 districts tax developers, that is a back door to avoiding  
2 a state responsibility.

3 And there are limits, frankly, to how much  
4 developer impact fees can be raised. So I think it's a  
5 specious argument that somehow the district can avoid  
6 this cost simply by overcrowding their schools or by  
7 operating substandard schools. I don't find that  
8 compelling at all.

9 MS. GEANACOU: Could I make one comment for  
10 Finance, please?

11 CHAIR REYES: Sure.

12 MS. GEANACOU: Susan Geanacou.

13 Regarding the Education Code 17070.75 in the  
14 School Facilities Program, which imposes on the districts  
15 the obligation to maintain and repair if they accept the  
16 School Facilities Program money, Mr. Saylor -- if I  
17 understood your comments correctly, you were concerned  
18 that the Legislature here, in the non-emergency repair  
19 contracted out area, has added new requirements on the  
20 districts that may not have been specified or are not  
21 contained in that statute that they agreed to upon  
22 accepting the money. So nothing precludes the state from  
23 adding on additional requirements.

24 And so you think that's a mandate?

25 I want to make sure I understood what you were



1 saying.

2 MEMBER SAYLOR: As I understand the measure,  
3 the issue before us, is that as a requirement for  
4 contract procedures for specific elements of the  
5 contracting process. So that's a specific mandate.  
6 Whether we're -- every time that a school district  
7 chooses to take an action, whether it's for new  
8 construction or for repair and maintenance, they must  
9 follow this new mandate.

10 Now, I think we can set up some process for  
11 what kinds of fees -- or what kinds of P's & G's,  
12 parameters and guidelines may go into effect for  
13 claiming; but I really hope that this Commission does not  
14 dismiss this as not a requirement.

15 It is a requirement. We're saying, "For the  
16 repair and maintenance, you're going to have to do this,"  
17 And we can say, "We're not going to pay you because you  
18 agreed to do this forever."

19 Well, frankly, that doesn't seem right because  
20 they didn't have any idea that they were going to be  
21 facing this new set of requirements. That's a cost.

22 There is a statewide interest. The Legislature  
23 has identified clearly a statewide interest in  
24 establishing these standard contract procedures.

25 Great. It's appropriate. There is nothing

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1 wrong with it. But it is requiring local governments to  
2 do something they didn't have to do before.

3 That is a mandate. That's a state mandate for  
4 every time they choose to -- or have to do either a new  
5 construction or rehab. There has got to be a recognition  
6 that that's a mandate; and we should figure out how we're  
7 going to pay for it or not. But it is a requirement that  
8 we're imposing on local government.

9 CHAIR REYES: Well, the Commission has to  
10 decide whether or not it's a mandate.

11 MEMBER SAYLOR: Okay, well, that's my vote.

12 CHAIR REYES: Go ahead, Susan, you had a  
13 question, or you wanted a clarification?

14 MS. GEANACOU: Well, I wanted to make sure I  
15 understand what he was saying.

16 I think my concern on behalf of Finance is that  
17 when the districts assume that obligation, I think it's  
18 with the awareness that the Legislature can subsequently  
19 amend or alter what the duty of repair and maintaining  
20 involves.

21 And I'd be eager to hear what the Commission  
22 staff has on that line of thinking.

23 CAMILLE SHELTON: Okay, there is case law from  
24 the California Supreme Court.

25 If these public contract duties were placed in

1 the School Facilities Program statutes, or the Deferred  
2 Maintenance statutes, or the Emergency -- whatever --  
3 fund statutes, then the courts have said that that  
4 initial decision to participate in that program is a  
5 discretionary program of the school district, and the  
6 Legislature can subsequently impose requirements.

7 And, yes, they're required to do those things; but those  
8 are not state-mandated programs.

9 So you have to look at the underlying decision.  
10 If the underlying decision is discretionary, then any  
11 downstream requirement imposed by the Legislature is not  
12 mandated by the statute, okay.

13 So here, we have a -- it's kind of not the same  
14 because these test-claim statutes were not placed in  
15 these voluntary programs. They were not intended to be  
16 included in the voluntary programs. They're outside of  
17 that. They're imposed on every school district. And so  
18 that's the distinction.

19 Mandates law is very difficult, the Supreme  
20 Court has determined, because you are looking at it in  
21 the abstract. You don't have, usually, a lot of facts to  
22 show you what is really going on.

23 So what the court has said is, you have to  
24 perform that legal analysis, just like I explained.  
25 If you want to get to a practical compulsion situation,

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1     though, the claimant has the burden to bring in  
2     substantial evidence in the record.

3             We don't have any evidence filed here. I don't  
4     have any evidence from a school district saying they have  
5     exhausted all their alternatives and have felt compelled  
6     to build new construction and then, therefore, they've  
7     got to comply with all these downstream requirements.  
8     If they had that, then that would be something we would  
9     have to absolutely consider.

10            CHAIR REYES: Your point?

11            MR. PALKOWITZ: I'm not aware of there being a  
12     court that has ruled the State School Facilities is not a  
13     mandate.

14            CAMILLE SHELTON: The courts haven't, no.  
15     The Commission has made that ruling.

16            The case law I'm talking about is *San Diego*  
17     *Unified School District, Kern High School District,* and  
18     the *Department of Finance versus Commission on State*  
19     *Mandates POBR* case.

20            MR. PALKOWITZ: I just want to clarify that  
21     there is no court that has made a ruling on school  
22     facilities or deferred maintenance programs.

23            CHAIR REYES: Mr. Alex?

24            MEMBER ALEX: So, I don't want to get into a  
25     debate over this, but I do want to make the point that as

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1 director of the Office of Planning and Research, we see,  
2 on a fairly regular basis, school districts that are  
3 building schools in areas that, from a state perspective,  
4 we may not think is appropriate.

5 And so I don't think that that creates -- that  
6 building a new construction is necessarily a state  
7 mandate. And I concur that there is no evidence in the  
8 record that would support it on this particular record.

9 MEMBER SAYLOR: No, the contractual procedures  
10 are the mandate.

11 MEMBER ALEX: That was his second step.

12 CHAIR REYES: Commissioner Saylor, do you have  
13 your mike on?

14 Okay, anybody else?

15 *(No response)*

16 CHAIR REYES: Any other questions?

17 *(No response)*

18 CHAIR REYES: Okay, there are several  
19 recommendations from staff. There are some denied, some  
20 approved, and then there's some partially approved.

21 We can take all in bulk and see where the votes  
22 go, or we can go one by one and see where the votes go.  
23 And what it would take is a motion from somebody to get  
24 the ball rolling.

25 CHAIR REYES: Commissioner Olsen?

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1 MEMBER OLSEN: Well, I'll move staff  
2 recommendation, and we'll see what happens with that.

3 MEMBER LUJANO: I'll second.

4 MEMBER OLSEN: And then we can go back, if we  
5 need to.

6 CHAIR REYES: Okay, staff's recommendation has  
7 been moved and seconded.

8 Commissioner Ramos?

9 MEMBER RAMIREZ: Aye.

10 CHAIR REYES: Okay, let's do --

11 MS. HALSEY: Call the roll?

12 CHAIR REYES: Call the roll.

13 MS. HALSEY: Mr. Alex?

14 MEMBER ALEX: Aye.

15 MS. HALSEY: Mr. Chivaro?

16 MEMBER CHIVARO: Aye.

17 MS. HALSEY: Mr. Lujano?

18 MEMBER LUJANO: Aye.

19 MS. HALSEY: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. HALSEY: Ms. Ramirez?

22 MEMBER RAMIREZ: Aye.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: No.

25 MS. HALSEY: Mr. Reyes?

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1 CHAIR REYES: Aye.

2 MEMBER SAYLOR: If I could make a brief  
3 comment?

4 CHAIR REYES: Yes.

5 MEMBER SAYLOR: I'll make it very briefly, and  
6 I won't do this often.

7 But I would support the staff recommendation  
8 pertaining to repair and maintenance, obviously; but I  
9 disagree with the other part. And so that was the reason  
10 for my vote in this case.

11 CHAIR REYES: Thank you, sir.

12 Let's take a five-minute recess, if we can,  
13 very quickly. And be back here by 11:00, please.

14 *(Recess from 10:53 a.m. to 11:01 a.m.)*

15 CHAIR REYES: Okay, we're back.

16 MS. HALSEY: Item 5, Chief Counsel Camille  
17 Shelton will present Item 5, a test claim on *Local Agency*  
18 *Ethics*, AB 1234.

19 CAMILLE SHELTON: This test claim addresses the  
20 required policy-making, reporting, record-keeping, and  
21 ethics training and notice requirements imposed on local  
22 agencies if they provide any type of compensation,  
23 salary, or stipend to a member of a legislative body, or  
24 provide reimbursement for actual and necessary expenses  
25 incurred by a member of a legislative body in the

1 performance of official duties.

2 Staff finds that some of the code sections pled  
3 impose a reimbursable state-mandated program only on  
4 general-law counties and those eligible special districts  
5 subject to the tax-and-spend provisions of articles XIII  
6 A and XIII B that are required by their enabling acts to  
7 provide reimbursement to the members of legislative  
8 bodies.

9 Claimant City of Newport Beach did not file any  
10 comments on the draft staff analysis, and Finance did  
11 file comments concurring. However, the co-claimant Union  
12 Sanitary District argues that it is an eligible claimant  
13 because it operates primarily on proceeds of taxes, is  
14 subject to the tax-and-spend limitations of the  
15 California Constitution, and, under Prop. 218, the sewer  
16 service charges that it imposes are considered special  
17 taxes.

18 However, staff finds that the evidence in the  
19 record does not support the co-claimant's assertions that  
20 its charges have been determined to be proceeds of taxes;  
21 and staff finds that the co-claimant is not subject to  
22 the tax-and-spend restrictions of the California  
23 Constitution and, thus, not eligible to claim  
24 reimbursement under this program.

25 Staff recommends that the Commission adopt the



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1 staff analysis and proposed statement of decision to  
2 partially approve the test claim.

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

5 MR. O'HARA: David O'Hara, attorney for Union  
6 Sanitary District.

7 MS. GMUR: Juliana Gmur on behalf of the City  
8 of Newport Beach.

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

11 MR. WARD: Randall Ward, Department of Finance.

12 CHAIR REYES: Okay, thank you.

13 MS. GMUR: Good morning, Commissioners.

14 CHAIR REYES: Good morning.

15 MS. GMUR: The City of Newport Beach would like  
16 to compliment staff on its analysis insofar as it  
17 addresses issues for cities and counties. We support  
18 that analysis.

19 My esteemed co-counsel would like to address  
20 the balance of that analysis.

21 CHAIR REYES: Thank you.

22 MR. O'HARA: Honorable Commissioners, I'm here  
23 to talk about Union Sanitary District and not the bulk of  
24 the staff analysis that relates to the City of Newport  
25 Beach.

1           We are not going to be talking about stipends  
2           paid to officials attending ethics training or  
3           disseminating information regarding the training, or  
4           keeping records or expense forms or anything like that.  
5           What we seek is the \$32,000 that it cost my client in  
6           order to have the materials prepared to provide ethics  
7           training in 2006.

8           In that case, it was 240 directors of sanitary  
9           districts throughout the state of California who attended  
10          a California Association of Sanitation Agencies meeting  
11          in Monterey.

12          Since then, there have been two more repeats of  
13          the ethics training, using essentially the same  
14          materials. But this is a claim that was made in 2007 for  
15          a set of expenses, and we have not made any subsequent  
16          claims for any further compensation other than the  
17          \$32,000 involved here.

18          There are three issues that are dealt with  
19          regarding Union Sanitary District that are in the staff  
20          analysis.

21          The first issue is: Are the directors of  
22          sanitary districts required to be paid?

23          And that's very easy. That's, without a doubt,  
24          Health and Safety Code section 6489 states, "Each of the  
25          members of the board shall receive compensation in an

1 amount not to exceed \$100 per day for each day's  
2 attendance of meetings of the board." It goes on to say,  
3 "up to six different meetings, or six different days of  
4 service per month."

5 As a practical matter today, with the  
6 adjustments, they get a little over \$200 per meeting.  
7 And, of course, the directors who attended ethics  
8 training would have been paid by the district, as well as  
9 the other 235 attendees in Monterey in 2006.

10 But that's not what we're dealing with here.  
11 This is a threshold issue; and that is, that there's an  
12 eligibility for mandate compensation if the compensation  
13 to directors is mandatory. And, of course, it's  
14 mandatory in this case. That isn't clear from the  
15 analysis.

16 The second issue is a little more involved, and  
17 that is: Are sanitary districts able to raise  
18 discretionary funds through sewer service charges?

19 Now, perhaps when I started representing my  
20 client 35 years ago, the client could conceivably have  
21 raised more funds through their sewer service charges  
22 than they really needed to provide the sewer service.  
23 But that was all a thing of the past in 1996, when  
24 Proposition 218 was passed.

25 Now, revenue for operations of sanitary

1 districts is extremely limited, and there are no  
2 discretionary funds at all, or funds for complying with  
3 the law that required ethics training.

4 In 2005, AB 1234 -- or AB 1-2-3-4, as it's  
5 referred to -- required that each compensated public  
6 official, such as a sanitary district director, must  
7 every two years have two hours of ethics training.

8 The unfortunate situation was that when we got into the  
9 summer of 2006, having a deadline of the end of the year  
10 to provide the ethics training, the only place I could  
11 find that had any ethics training materials available,  
12 was one law firm located in Oakland, who provided ethics  
13 training for their own clients.

14 Therefore, under the auspices of the attorneys'  
15 committee for the California Association of Sanitation  
16 Agencies -- and I believe your Executive Director was a  
17 member of that committee about that time -- several of us  
18 volunteered to set about getting a curricula prepared for  
19 the ethics training.

20 As it turned out, I ended up writing virtually  
21 all of the written materials, preparing the workbook and  
22 the PowerPoint, which was no real problem for me. At  
23 that point in time, I was younger and had a little bit  
24 more energy than I have today.

25 And my client, as is stated in the test claim

1 that we've submitted, paid me a total of \$22,000 for  
2 preparation of this particular document, which is a  
3 manual that was prepared. I don't have copies because  
4 this has been out of print since 2006. But this was the  
5 manual that was prepared and distributed to all of the  
6 directors who attended the ethics training. And there  
7 are other materials that accompanied that and dovetailed  
8 in with it.

9 Now, the question here is: When Union Sanitary  
10 District paid to comply with the new AB 1234 law, did  
11 they have discretionary funds? In other words, are they  
12 an enterprise district that has funds that they can  
13 utilize for purposes other than for the treatment and  
14 disposal of sewage?

15 And the answer to that question is, no, they  
16 have no discretionary funds because Proposition 218,  
17 enacted in 1996, provides that the revenue derived from  
18 a fee or a charge relating to public-agency fees, cannot  
19 exceed the funds provided to the property-related  
20 service.

21 And there's cases that have established that  
22 sewer service charges are properly related charges.

23 Further, article XIII D of the California  
24 Constitution provides that "Revenues derived from a fee  
25 or a charge must not be used for any purpose other than

1 that for which the fee or charge was imposed." Fairly  
2 straightforward there.

3 These days, sanitary districts are not  
4 enterprise districts. I think of an enterprise district  
5 as -- I know Washington Hospital in Fremont, they made a  
6 profit, they were proud to report in about 2005 or 2006,  
7 \$50 million. That's an enterprise.

8 Union Sanitary District, however, doesn't do  
9 anything that would be an enterprise. They don't process  
10 their sewage sludge into pellets for sale, like  
11 milorganite or some of the other organic fertilizers.  
12 They simply collect, treat, and dispose of sewage that  
13 is produced by the cities of Fremont, Newark, and Union  
14 City.

15 Part of the scheme of Proposition 218 is that  
16 every landowner has a vote in the setting of rates for  
17 sanitary services.

18 Generally, every year, the rates are  
19 readjusted; but every landowner has a vote. And the bulk  
20 of them -- almost all of the sewer service charges are  
21 collected on the tax roll.

22 And as I indicated in my reply memorandum and  
23 provided some exhibits, of the \$30,900,000 that Union  
24 Sanitary District had in calendar year 2006, that we're  
25 referring to as sewer service charges, \$30,160,000 of

1 those came from the tax collector.

2 So the sanitary districts being unable to  
3 provide through their sewer services or their charges,  
4 anything in excess of what it costs to treat and dispose  
5 of the sewage, has no alternative when they comply with  
6 the new requirement, which is obvious in this case, a new  
7 requirement that all of the directors receive the ethics  
8 training.

9 Issue number three that comes up then is: Is  
10 ethics training a new program? Since it didn't exist, it  
11 wasn't required before 2006, from the 2005 legislation,  
12 the training has to come from somewhere. It can't come  
13 out of the air.

14 As I indicated, at the time I started working  
15 on this project, there was just one law firm that had  
16 any type of ethics training that could be provided. The  
17 staff has indicated that the FPPC has an online course to  
18 comply with the ethics training. However, that course  
19 wasn't available until October of 2006; and we presented  
20 the first of the ethics trainings in Monterey in August  
21 of 2006. And I started working on the project in May of  
22 2006. So there was a vacuum, essentially, as far as the  
23 materials were concerned.

24 In the staff report, it appears that the  
25 Department of Finance agrees that this is a new program

1 in that if the sanitary district directors are required  
2 to be paid by law, then it is compensable as a state  
3 mandate.

4 In closing, we're just asking for the \$32,000,  
5 which went for the preparation of materials and arranging  
6 the ethics training for the 240 sanitary district  
7 directors in Monterey in 2006, and nothing beyond that.  
8 So the staff's analysis as it relates to other expenses  
9 is not relevant to the claim that we've made here on  
10 behalf of Union Sanitary District.

11 CHAIR REYES: Okay, does anybody have any  
12 questions?

13 *(No response)*

14 CHAIR REYES: Staff?

15 *(No response)*

16 CHAIR REYES: It sounds like we're asking for  
17 something that is really not there for us.

18 Go ahead, Ms. Shelton.

19 CAMILLE SHELTON: Well, our analysis is  
20 presented a little bit differently. We have separated  
21 out the analysis for the Union Sanitary District because  
22 of Mr. O'Hara's claim.

23 And the whole purpose of reimbursement under  
24 article XIII B, section 6, is to provide reimbursement to  
25 those agencies that are subject to the tax-and-spend



1 limitations in the Constitution.

2           The Union Sanitary District does not have any  
3 statutory authority to levy taxes. They do have  
4 authority to assess fees, and they have decided to assess  
5 fees through the ordinance -- through the property taxes  
6 of the county. But the money they receive is a fee  
7 assessment and not a tax.

8           There hasn't been any evidence submitted into  
9 the record that the District has gone out for a special  
10 tax requiring two-thirds vote of the voters to authorize  
11 a special tax under Prop. 218, and no voter has come  
12 forward whereby the court has ruled that their fees are  
13 now taxes. So they don't have authority to levy taxes  
14 and their money comes from fee revenue.

15           The courts have made it pretty clear that the  
16 purpose of our article XIII B, section 6, is not to  
17 reimburse for those expenditures of fees or assessments.  
18 The purpose is to reimburse for the expenditures of tax  
19 revenue. So there's a lot of special districts in the  
20 state that are not eligible to claim reimbursement under  
21 this process.

22           With respect to developing the training, our  
23 recommendation was based on the plain language of the  
24 statute, which imposes the duty to get trained on the  
25 individual.

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1           It doesn't, on the plain language, require that  
2 the training be developed; and, in fact, there was the  
3 training program prepared as Mr. O'Hara was mentioning by  
4 the A.G.'s office and FPPC, which was available online,  
5 free of charge, by October 1<sup>st</sup>, '06.

6           CHAIR REYES: So my take of this is, the  
7 closest we can come to this is, if in recovering his  
8 \$32,000 he imposed a fee on special districts as part of  
9 the cost of providing the ethics training and recover  
10 that way, then the special districts would come to us and  
11 say, "In order to receive the ethics training, it would  
12 cost us X dollars."

13           Right now, you can get the ethics training for  
14 50 bucks or 500 bucks to recover the costs -- I'm just  
15 making up a number. And it's that cost that then comes  
16 before the Commission as a reimbursable mandated cost.

17           And then the question to the Commission is: It  
18 is a mandate, but is it reimbursable? And the position  
19 of the Commission is that it is not reimbursable because  
20 they have fee authority.

21           The claimants then would say that is not --  
22 they don't have a fee authority because it is, A, tax;  
23 and, B, the fee that they currently charge is only for  
24 the processing of the sewage treatment and so forth, and  
25 not for the administrative costs.

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1           And then the Commission would then say: Yes,  
2           but there is an administrative component to doing that,  
3           since the water doesn't turn itself on and off, and  
4           somebody has to supervise that person, write the check.  
5           So some administrative component would need to be added  
6           to the fee structure, which should include the ethics  
7           training.

8           Is that --

9           CAMILLE SHELTON: Close. Yes.

10          CHAIR REYES: -- close?

11          Okay, I'm tracking. Go ahead.

12          CAMILLE SHELTON: Well, the only other thing  
13          I was going to mention is that the Sanitary District's  
14          report to the Controller's office does list their  
15          revenues from fee authority and their expenses. And it  
16          includes, you know, 12 percent for administration and  
17          general expenditures, which is paid for by their fee.

18          CHAIR REYES: Which would have included the  
19          ethics training?

20          CAMILLE SHELTON: Right.

21          CHAIR REYES: Mr. Burdick, you joined the  
22          table, sir.

23          Welcome.

24          MR. BURDICK: Mr. Chairman, Members of the  
25          Commission. Allan Burdick here; and my role is director

1 of the CSAC SB-90 Service.

2 And part of it is clarification I kind of want  
3 on this issue because I'm a little bit confused. Because  
4 the cities have agreed and the League agrees that this is  
5 not placing a mandate on cities. However, as I believe  
6 the analysis is, that it does place a mandate to some  
7 extent, on general-law counties.

8 So my question kind of -- and it appears that  
9 one of the things that counties are responsible for doing  
10 is to tell their supervisors about the availability of  
11 training. But it doesn't appear that the costs of  
12 training or going to the training are reimbursed, if I  
13 read it right -- I hope I'm reading it wrong.

14 So, for example, your board members for the  
15 Del Norte County Board of Supervisors who have to receive  
16 this ethics training, and the only closest place to get  
17 this ethics training is in Sacramento, as an example, it  
18 appears to me to say that if those supervisors were then  
19 told, yes, the closest, best, cheapest training available  
20 is in Sacramento, they had to travel to Sacramento and  
21 go, take the training or whatever and come back, then  
22 none of those expenses are reimbursable? Am I reading  
23 that right? Is that your recommendation?

24 CAMILLE SHELTON: Well, we haven't reached that  
25 issue because there is nothing in the plain language of

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1 the statute that requires training be conducted during  
2 their normal business hours, number one. And number two,  
3 the training is provided free, online. It's a duty  
4 imposed on the member of the legislative body.

5 So the requirements are listed -- or the  
6 alleged reimbursable activities that we're recommending  
7 reimbursement for are on page 41.

8 MR. BURDICK: Well, I would --

9 CAMILLE SHELTON: These are not employees.  
10 They're members of a legislative body. It's a little bit  
11 different.

12 You know, in past test claims, before the  
13 Commission, we've had training claims. And under certain  
14 laws and certain federal laws, the agency is required to  
15 provide the salary, continued salary of the employee if  
16 they receive the training during normal business hours.  
17 That law would not apply to a member of a legislative  
18 body because they're not employees.

19 MR. BURDICK: They're not employees?

20 CAMILLE SHELTON: Or you could provide some --  
21 do you have any legal analysis to say otherwise?

22 CHAIR REYES: But I think to Mr. Burdick's  
23 point, though, if they don't incur costs to go to the  
24 training site, and you're saying because the training is  
25 available online and you're not required to go to a

1 facility...?

2 MS. HALSEY: Backing up a little bit, it's  
3 because the agency's not required to provide the  
4 training. It's similar to a professional responsibility  
5 requirement, where attorneys may be required to have  
6 certain training to maintain their status as attorneys,  
7 but the employer is not necessarily required to provide  
8 that training. It's on the attorney. It's similar. But  
9 it is provided.

10 MR. BURDICK: A couple things clearly on the  
11 online part: This was not available initially, you know,  
12 I don't think. There was a lot of confusion earlier.  
13 Now, it may be fine. Back in 2005, I think, when AB 1234  
14 was there, there was real questions who did it, it was  
15 done differently, whatever.

16 Now, you know, seven years later, people got  
17 this under control. It's routine. They understand it,  
18 whatever.

19 I'm sure that probably both of our local  
20 members have received this training and gone to some  
21 training during their tenure, and probably didn't do it  
22 online, is my guess. I'm just guessing. Because  
23 normally, I think most elected officials go to where the  
24 training is provided; provided, generally, the best place  
25 for local agencies is by the Institute of Local

1 Self-Government, an organization of CSAC and the League  
2 of Cities, for city and county people.

3 But that's what I was looking at, it looked  
4 pretty clear to me. If I was -- so let's go back to  
5 2005, so we don't have to deal with the other stuff when  
6 this first came into place.

7 I'm a member of the Del Norte County Board of  
8 Supervisors. I now have this obligation to get this  
9 training. And the only place I can get this training,  
10 probably, would be to come to Sacramento, San Francisco,  
11 some place. I'd doubt if there's any place north of  
12 Sacramento at that time that was providing this training,  
13 whether or not the time and expenses of those members.

14 Also at that time, I know there's some  
15 indication about the fact that, you know, level of  
16 compensation could be set. Well, when it was passed,  
17 those people, for the term of their office, their  
18 compensation had been set. That compensation can't be  
19 changed, I don't believe. And I'm not an attorney and  
20 I'm not sure of that. But generally speaking, elected  
21 officials' compensation is set during their term.

22 And so if, unless you'll say they were getting  
23 a hundred dollars a day in Del Norte, it would seem to me  
24 that -- and the county had to pay that hundred dollars,  
25 that that compensation and their expenses should seem

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1 like it would be reimbursable.

2 CHAIR REYES: Well, I think to the first  
3 question, would the -- well, I'll ask the supervisor:  
4 If you have to go to a training in your role as a  
5 supervisor, does the county have to compensate you for  
6 that function, for being gone to do that?

7 MEMBER SAYLOR: Well, they're different.  
8 County supervisors and some of the special district  
9 people that are being described here are different, so  
10 they're --

11 CHAIR REYES: All I'm asking you is the  
12 supervisor.

13 MEMBER SAYLOR: Okay, no, you're not.  
14 Supervisors do not receive compensation on a per diem or  
15 per-meeting basis.

16 MS. HALSEY: Right.

17 MEMBER SAYLOR: Nor do city council members nor  
18 school board member, unless there are charter or city  
19 arrangements that I don't know about.

20 CHAIR REYES: Right.

21 MEMBER SAYLOR: But there are special district  
22 representatives who are subject to the AB 1234  
23 requirements that do have the per-meeting.

24 That doesn't mean that they have to have a  
25 special meeting to do this particular training.



1           Currently, of course, you do have the online  
2 versions. You could also combine this meeting -- this  
3 training with another meeting, if you had to do it. Most  
4 of the organizations are associations of special district  
5 or city council members, the League of Cities, the CSB --  
6 the School Board Association, CSAC, have provided this  
7 kind of training at their annual conferences as a way to  
8 make it accessible to people, like the Del Norte folks  
9 who may be remote and far away.

10           In the first going, I would -- personal  
11 observation is accurate, that in the 2005-2006 era, there  
12 was a tremendous panic. People didn't know exactly what  
13 this was all going to be, how to do it; and they were all  
14 spinning wheels to try to put things in place. So there  
15 were circumstances where if they had waited a couple more  
16 months, they could have had access to the online  
17 training. They didn't know that was going to happen, and  
18 they were trying to find ways to deliver the training.  
19 So CSAC, the League of Cities, CSBA all did things to try  
20 to get the training in place.

21           Cities, in their local areas, would make the  
22 training available to whoever was required to do it, so  
23 you'd have mixed groups of planning commissioners and  
24 school board members and others all in one room, which is  
25 my experience that we had.

1           Certainly, there were costs imposed for  
2           conducting the training. Whether people had to have all  
3           of the those costs is a question. It was at their  
4           discretion. There were alternatives that didn't require  
5           the cost. But putting in context at that moment in time,  
6           did people believe they had to -- they knew they had a  
7           requirement. Did they believe they had an option that  
8           was a no-cost-option? I think, reasonably, some of them  
9           didn't.

10           CHAIR REYES: But the requirement was on you as  
11           a supervisor.

12           MEMBER SAYLOR: Yes, it was a requirement for  
13           the individual to seek -- to be sure that they had the  
14           training. And there were many -- that's correct, yes.

15           And in terms of compensation for the stipend,  
16           that sort of thing, I'm not compelled by that.

17           CHAIR REYES: Yes, okay.

18           MEMBER SAYLOR: That's a discretionary act; and  
19           there are a variety of ways of achieving the purpose.

20           In terms of the cost to the organization to  
21           assemble the materials and provide the training, that's  
22           another question.

23           CHAIR REYES: Okay.

24           MR. BURDICK: Chairman Reyes, if I could just  
25           clarify?

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1 CHAIR REYES: Yes.

2 MR. BURDICK: I wasn't suggesting that there be  
3 additional compensation. All I'm saying is, supervisors  
4 are compensated. It varies, depends on county, but they  
5 get compensation for their work. So they're paid for  
6 that day.

7 So when that person goes, they're receiving  
8 compensation for the work they perform that day. So I'm  
9 not suggesting that there was additional compensation.  
10 And it varies by county in terms of their...

11 CHAIR REYES: Absolutely. In some counties,  
12 it's full-time job --

13 MR. BURDICK: And I don't know if --

14 CHAIR REYES: -- and other times, it's a  
15 volunteer job.

16 MR. BURDICK: Yes, sometimes it's full-time,  
17 sometimes it's voluntary. So it's going to vary.

18 CHAIR REYES: Right.

19 MR. BURDICK: But whatever it is, they're  
20 compensated; essentially, that that compensation is for  
21 that.

22 So you could compute and say -- well, let's say  
23 they had to take a whole day and go and do this or  
24 whatever. They say, "Well, what is your compensation for  
25 a day's work?"

1           And that would be what I would say would be a  
2 reimbursable state-mandated cost. I'm not suggesting  
3 additional stuff, but...

4           So let's just say --

5           CHAIR REYES: So if you did it on Sunday  
6 training, that would be...?

7           MR. BURDICK: Well, they don't offer those  
8 trainings to you on a Sunday.

9           CHAIR REYES: I know, but I'm just saying, if  
10 they did it on Sunday, you'd split the salary by 31 or  
11 30 or 28...

12           MEMBER SAYLOR: With the church -- split it  
13 with the church.

14           MR. BURDICK: So I guess the question would be,  
15 as an example, if you had to go to training, and went  
16 to a conference, and you said, "Okay, well, I'm going to  
17 the League's conference, and it's going to be on  
18 Saturday, and I can pick up that training on Saturday."  
19 The Department of Finance compensates me. So if I go on  
20 Saturday, I can't claim any costs because I went on  
21 Saturday? But you did something that you're being  
22 compensated for, right?

23           CHAIR REYES: Not for Saturdays. Being a  
24 salaried employee, I...

25           MR. BURDICK: Well, that's always an issue with

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1 the Controller when you talk about people who -- are they  
2 compensated for overtime.

3 CHAIR REYES: What is the actual cost, right.

4 MR. BURDICK: But the only thing I'm just  
5 saying is, I did not want to suggest that this was  
6 additional compensation. I'm just talking about base  
7 salary of a supervisor who has to -- who goes to attend,  
8 to not take care of his normal business and duties and  
9 responsibilities because the state required him or her  
10 to attend ethics training.

11 CHAIR REYES: Not compel.

12 Ms. Shelton?

13 CAMILLE SHELTON: Just to clarify. The staff  
14 recommendation is that the decision to compensate a  
15 member is a local decision. There is no mandated cost to  
16 compensate these members.

17 MR. O'HARA: If I might clarify again?

18 CHAIR REYES: Yes, Mr. O'Hara?

19 MR. O'HARA: As Commissioner Saylor pointed  
20 out, in 2006, there was panic, this had to be done.  
21 There was no assistance.

22 I had to go to both the Attorney General's  
23 office and the FPCC to have the outline of my course  
24 materials approved. And no one told me that they were  
25 going to offer some kind of online or other training at

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1 that time.

2 Now, plus, by having this particular training  
3 at a meeting that all of these sanitary districts'  
4 directors from around the state were attending, anyway,  
5 there's transportation, meals, habitation, and tuition  
6 that they might have had to spend to go someplace else,  
7 particularly if they're from a less populous area.

8 CHAIR REYES: Any questions for follow-up by  
9 board members?

10 *(No response)*

11 CHAIR REYES: Any additional comments by staff  
12 or Finance?

13 Finance?

14 MR. WARD: Randall Ward, Department of Finance.

15 We support the staff recommendation to deny and  
16 partially recommend reimbursement for elements of the  
17 mandates.

18 MS. FEREBEE: And Donna Ferebee, Department of  
19 Finance.

20 I'd also just like to respond specifically to  
21 the arguments presented by Union Sanitary District.

22 As Mr. Ward said, we agree with the staff  
23 recommendation. And it did not seem to us that Union  
24 Sanitary had met its burden of showing that it is subject  
25 to the tax-and-spend limitations of article XIII B --

1 article XIII A and B, and that its revenue is considered  
2 proceeds of taxes, particularly I think in light of the  
3 conflicting information from the State Controller's  
4 Office.

5 And that's all. Thank you.

6 CHAIR REYES: Okay.

7 MR. O'HARA: If I could then respond briefly.

8 In 1991, when the *Fresno* decision was made,  
9 article XIII B was the only thing that related to tax-  
10 and-spend limitations.

11 But since then, Proposition 218, enacted in  
12 1996, added articles XIII C and D, which were tax-and-  
13 spend limitations to Union Sanitary District and other  
14 sanitation districts because they had what's been  
15 determined by other court cases to be property-related  
16 fees and charges. And, therefore, they are limited in  
17 what they can spend it on.

18 So it's kind of outdated to look back at 1991,  
19 when article XIII only had A and B; and 2006, when  
20 Proposition 218 added article XIII C and D that relates  
21 to the limitations on expenditures and revenues for water  
22 districts, sanitary districts, other special agencies.

23 CHAIR REYES: Okay. Is there anybody else from  
24 the public who would like to comment on this item?

25 (No response)

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1 CHAIR REYES: Okay, seeing none, is there a  
2 motion?

3 MEMBER CHIVARO: I'll move staff  
4 recommendation.

5 MEMBER LUJANO: Second.

6 CHAIR REYES: Staff recommendation has been  
7 moved and seconded.

8 All in favor, say "aye."

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

10 CHAIR REYES: Opposed?

11 *(No response)*

12 CHAIR REYES: Abstentions?

13 *(No response)*

14 CHAIR REYES: The ayes have it.

15 Thank you.

16 MS. GMUR: Thank you, Commissioners.

17 MR. O'HARA: Thank you very much.

18 MS. FEREBEE: Thank you.

19 CHAIR REYES: Item 6.

20 MS. HALSEY: Mr. Eric Feller will present  
21 Item 6, a test claim on *California English Language*  
22 *Development Test II*.

23 MR. FELLER: All right, this test claim alleges  
24 activities based on statutes and regulation governing  
25 bilingual education, or more accurately, identification



1 and instruction of limited English proficient pupils and  
2 activities related to the California English Language  
3 Development test.

4 Staff found that the test claim should be  
5 denied because the bilingual education statute ceased to  
6 be operative in 1987, and the remaining regulations are  
7 either required under or part and parcel of federal law  
8 or part and parcel of a 1988 ballot initiative,  
9 Proposition 227.

10 Staff recommends the Commission adopt the  
11 attached proposed final staff analysis and statement of  
12 decision to deny the test claim.

13 Would the parties and witnesses please state  
14 your name for the record?

15 MR. PALKOWITZ: Good morning. Arthur Palkowitz  
16 on behalf of the claimant.

17 MS. FEREBEE: Donna Ferebee, Department of  
18 Finance.

19 CHAIR REYES: Please.

20 MR. PALKOWITZ: Thank you.

21 I don't know if you wanted to summarize the  
22 argument that I'm going to make because you do it a lot  
23 better than I do.

24 CHAIR REYES: It seems to me that...

25 No, I'm kidding.

1 I just want to show that I've read the stuff.

2 MR. PALKOWITZ: You're doing a great job.

3 CHAIR REYES: Go ahead. You have the mike,  
4 sir.

5 MR. PALKOWITZ: Thank you.

6 Well, I think the issue I would like to focus  
7 in on is not the federal-law preemption. And I  
8 understand staff analysis, we've submitted that already.

9 I think it's interesting when there is a  
10 statute, and then another statute comes about, and the  
11 interpretation is the recent legislation carries the same  
12 mandate. And, therefore, since the previous statute  
13 already existed, it's not a new statute that requires a  
14 mandate.

15 I mean, that interpretation leads one to  
16 believe that the Legislature passed this bill with really  
17 no value to it because the previous statute already had  
18 those requirements. And to me, I think there is case law  
19 that says we have to have a reasonable basis that the  
20 Legislature passes new bills for reasons.

21 And so if there's a recommendation that some of  
22 these activities are to be denied because it already  
23 existed, to me, flies in the face of legislative intent  
24 that there is an intent to create a new statute that has  
25 its own activities.

1 I don't know if I misinterpreted staff  
2 analysis.

3 And that only applies to some of the  
4 activities, not all of the activities.

5 MR. FELLER: I think you're talking about the  
6 *Parent Notification* statute, the one at the -- I think  
7 it's at page 49, on.

8 And I believe that wasn't a case -- well, that  
9 was more of a case of renumbering of an existing statute.

10 MR. PALKOWITZ: Isn't there language in the  
11 staff analysis that this -- I mean, if you look at the  
12 summary that is on pages 5 and 6 -- well, the one on  
13 page 7, the top activity regarding 2003, *English Language*  
14 *Learner*, it states the activities are either expressly  
15 required by prior statutes and the Ed. Code.

16 And so when that is written, does that mean  
17 that this legislation that's part of the test claim, if  
18 it has the same activities required, is not to be  
19 considered as a mandate because of the prior statute that  
20 had those activities?

21 MR. FELLER: I think, if you're talking about  
22 the Proposition 227 regulations -- is that under B on  
23 page 7? Those -- what happened was, yes, those were  
24 regulations adopted in the aftermath of Proposition 227.

25 And so some of the regulations repeated

1 requirements in the Proposition 227 statutes, and it  
2 clarified and did some other things as well.

3 CAMILLE SHELTON: And the authority in  
4 reference to those regulations are the statutes.

5 MR. FELLER: Right. So those weren't statutes  
6 enacted as much as just the regulations the Department of  
7 Ed. adopted.

8 MR. PALKOWITZ: And is that the same reasoning  
9 with the notices you just mentioned, which was the last  
10 activity in the summary of page 6?

11 MR. FELLER: That was actually -- that was a  
12 statute that was enacted in 1981 -- or amended in --  
13 let's see.

14 It was a '77 statute, amended in 1981.

15 What we found, however, was that an identical  
16 statute was enacted in 1976 as Education Code 10926.

17 It appears that the '77 was a renumbering. But  
18 because it was the '77 and not the '76 statute that was  
19 pled, we had to find that it wasn't a new program.

20 MR. PALKOWITZ: Thank you for the  
21 clarification.

22 I have no other comments.

23 CHAIR REYES: No other comments?

24 *(No response)*

25 CHAIR REYES: Finance is fine with it?

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

3 We do concur with the final staff analysis  
4 denying the test claim. The statutes claimed do not  
5 impose a new program or higher level of service for the  
6 reasons that are stated in the analysis; and we urge you  
7 to adopt the staff recommendation.

8 Thank you.

9 CHAIR REYES: Any other comments or questions  
10 from board members?

11 *(No response)*

12 CHAIR REYES: Any comments from the public?

13 *(No response)*

14 CHAIR REYES: Seeing none, is there a motion?

15 MEMBER OLSEN: I'll move the staff  
16 recommendation.

17 CHAIR REYES: It's been moved.

18 MEMBER SAYLOR: Second.

19 CHAIR REYES: It's been seconded.

20 All in favor, say "aye."

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

22 CHAIR REYES: Opposed?

23 *(No response)*

24 CHAIR REYES: Abstentions?

25 *(No response)*

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1 CHAIR REYES: The "ayes" have it.

2 Thank you.

3 And then we have Item 7 is consent, Item 8 is  
4 consent.

5 MS. HALSEY: Items 7 through 10 are consent.

6 Moving on to Item 11. Item 11 is reserved for  
7 County applications for findings of significant financial  
8 distress or SB 1033 applications.

9 No SB 1033 applications have been filed.

10 CHAIR REYES: Okay.

11 MS. HALSEY: Item 12, Nancy Patton will present  
12 the legislative update.

13 MS. PATTON: I have no new legislation to  
14 report on. We still have the two pending spot-bills  
15 which have not moved; of course, not including the budget  
16 trailer bills that are going through right now.

17 CHAIR REYES: Thank you.

18 MS. PATTON: Thank you.

19 CHAIR REYES: Nancy, for the benefit of the  
20 dais and the folks in the audience, would you please  
21 introduce the Nancy-in-training?

22 MS. PATTON: Heidi, do you want to stand up?

23 I think everyone knows Heidi, but she is going  
24 to be taking over my duties, at least temporarily after  
25 I retire on August 14<sup>th</sup>. So I think everyone knows Heidi

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1 Palchik.

2 CHAIR REYES: Thank you.

3 MEMBER RAMIREZ: Excuse me, Mr. Chair?

4 CHAIR REYES: Yes?

5 MEMBER RAMIREZ: I would like to ask at some  
6 appropriate point, information about the two spot-bills,  
7 which I'm not familiar with, that you just mentioned.  
8 That's all for later.

9 CHAIR REYES: Thank you very much.

10 MEMBER RAMIREZ: Thank you.

11 MS. PATTON: They're listed on Item 12.

12 MEMBER RAMIREZ: Okay.

13 CHAIR REYES: Heather?

14 MS. HALSEY: Okay, Item 13, Chief Legal Counsel  
15 Camille Shelton will present the Chief Legal Counsel's  
16 report.

17 CAMILLE SHELTON: Good morning.

18 Just a couple of things.

19 The litigation dealing with the Commission's  
20 decision on the *Graduation Requirements*, parameters and  
21 guidelines amendment, has been continued to September.  
22 So that one's put off.

23 Also, for the last time, I'll list this *Fenton*  
24 *Avenue Charter School* lawsuit that was brought by charter  
25 schools against the Controller's office, where the

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1 Controller returned reimbursement claims on 21 separate  
2 programs filed by charter schools.

3 The court has finally decided that case, and  
4 has dismissed the lawsuit by the charter schools on the  
5 ground that they failed to exhaust their administrative  
6 remedies with the Commission; and also that the decision  
7 on who the eligible claimant was, was not meant for the  
8 Controller. It is one that was meant for the Commission.

9 So we could see continuing litigation on that,  
10 or we'll see what happens.

11 CHAIR REYES: Okay, thank you.

12 MS. HALSEY: Moving on to Item 14, the  
13 Executive Director report.

14 With regard to workload, our backlog reduction  
15 plan has been included as an attachment to the Executive  
16 Director's report. And it's the most up-to-date document  
17 in terms of our workload.

18 And as of today, I'm happy to announce the  
19 Commission has completed all the 2002, 2004 test claims,  
20 and also all the community college test claims. So that  
21 is a big milestone for the Commission.

22 CHAIR REYES: Okay.

23 MS. HALSEY: With regard to the 2012-2013  
24 budget, on May 14<sup>th</sup>, the Governor issued his May Revise.  
25 It now includes a reappropriation of \$79,000 for the



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1 Commission to pay for staff retirement and related  
2 employee costs, increasing our total operating budget to  
3 \$1,599,000 for the next fiscal year.

4 Additionally, the May Revise proposes employees  
5 savings, equivalent to 5 percent reduction in pay. The  
6 Administration's pursuing a four-day, 38-hour workweek.  
7 But the Administration is currently negotiating with  
8 unions on how that might look.

9 But if his original proposal does go forward,  
10 it may mean the closing of the office one day a week and  
11 some possible rescheduling of hearings. So I wanted to  
12 alert everyone. And we'll definitely notify everyone if  
13 our hearings change, and post that on our Web site as  
14 well.

15 CHAIR REYES: Okay, thank you.

16 MS. HALSEY: Also, with regard to the budget,  
17 there are three major program changes with regard to  
18 mandates.

19 One is to suspend and repeal mandates for a  
20 decrease in \$728.8 million in the 2012-2013 fiscal year,  
21 by suspending most mandates that are not related to law  
22 enforcement or property taxes.

23 In addition, the Administration is proposing  
24 trailer billing language to repeal or make permissive  
25 many of the mandates that have been suspended for two

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1 years or more.

2 CHAIR REYES: Okay, thank you.

3 MS. HALSEY: Of particular interest, is the  
4 proposal to eliminate many of the -- or the existing  
5 mandates claiming process for K-12 -- or, actually,  
6 K-14 -- by creating a block grant, rolling many of the  
7 mandated programs into a block grant and providing  
8 funding that would then go to all school districts  
9 without going through the SCO's claiming process.

10 Our understanding is that that would not  
11 eliminate the mandate process here. That first new  
12 mandates would be found by the Commission, and then  
13 the Administration would then roll future mandates  
14 conceivably into that block grant in the future.

15 CHAIR REYES: Okay.

16 MS. HALSEY: And then moving on to our 2012  
17 meeting calendar. We currently have scheduled, our next  
18 few meetings are July 27<sup>th</sup>, September 28<sup>th</sup>. We have a  
19 tentative meeting on October 26<sup>th</sup>, and then our final  
20 meeting of the year scheduled for December 2<sup>nd</sup>. And as  
21 I said before, keep an eye on the Web site and, of  
22 course, we'll be sending out official notices to everyone  
23 if anything changes with that.

24 CHAIR REYES: Okay.

25 MS. HALSEY: And finally, we have the backlog

1 reduction plan which everyone should have a copy of now.  
2 And just a few highlights from that.

3 The Commission has a backlog of 36 test claims  
4 and 129 incorrect reduction claims. And I can actually  
5 update that. It's now 127 as of yesterday. And that is  
6 down from 51 test claims and 163 IRCs last year at this  
7 time. So we are definitely working that backlog  
8 expeditiously. And we're going to continue to try and  
9 speed that along.

10 And last year, we developed our first backlog  
11 reduction plan. This is the first annual update of the  
12 plan. It describes several tools we're employing to  
13 expeditiously reduce the backlog.

14 Main points include completing all of our 2003  
15 test claims in 2012, continuing to support the SCO and  
16 claimants in settling incorrect reduction claims,  
17 completing all but ten storm-water NPDES claims by the  
18 end of 2013. And then ideally, completing the remaining  
19 test claims and IRCs in 2014. And part of that will  
20 depend on what happens in the court with the NPDES  
21 stormwater test-claim cases.

22 And I'm happy to field any questions that any  
23 Members have on any of that -- or anyone from the public.

24 CHAIR REYES: Does anyone have anything?

25 Mr. Saylor?

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1 MEMBER SAYLOR: Pursuant to your suggestion  
2 that we look at the dates -- the alternative dates,  
3 anticipating the possibility of Fridays going away, the  
4 Yolo County Local Agency Formation Commission is  
5 rescheduling its meetings so that I can attend meetings  
6 of this Commission on Thursdays.

7 So we should send them a "thank you" note to  
8 each of them.

9 MS. HALSEY: Thank you, Yolo County.

10 CHAIR REYES: We wouldn't change anything until  
11 negotiations are concluded by the Administration and  
12 unions. We don't want to upset anybody.

13 MEMBER SAYLOR: So it's very tentative.

14 CHAIR REYES: It's very -- just kind of a  
15 heads-up. It may come up. It may end up something  
16 different. But at this point --

17 MEMBER SAYLOR: We will be submitting the claim  
18 for the discussions that we've been having about  
19 calendar.

20 CHAIR REYES: Very good.

21 Okay, public comments?

22 MR. BURDICK: Chairman Reyes and Members, I  
23 would like to address the backlog reduction plan.

24 First, I would like to -- I guess it's  
25 personally because I don't have official authority to do

1 this -- is to congratulate you on the selection of your  
2 former member, and now Executive Director. Heather  
3 Halsey I think was an outstanding selection. And with  
4 her knowledge as both a member, staff, and I think it's  
5 more of -- we're going to welcome her to the team.

6 And you have an outstanding staff of people  
7 that you have, and they did a very nice job on this  
8 backlog report.

9 You have one serious problem, and that is the  
10 fact that because you do not have enough staff -- and  
11 if you look at this backlog plan, one of the things it  
12 points out, clearly, is you have a statutory obligation  
13 to perform this process in 18 months.

14 The backlog plan talks about hoping to get, I  
15 think it's the 2003 test claims done by the end of this  
16 calendar year. That's nine years later. That's a little  
17 different than the 18 months.

18 You are the exclusive body to determine what  
19 is and what is not a reimbursable state mandate. By  
20 delaying the action, and every year you delay, you're  
21 incurring 20, 30, 50 -- maybe more -- million dollars a  
22 year.

23 Let me give you a couple of examples. Last  
24 year, a few minutes ago you adopted a statewide cost  
25 estimate for *Crime Statistics* DOJ reports. \$120 million.

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1 Basically, ten years, starting off earlier now is about  
2 \$15 million a year. So every year that was delayed the  
3 last few years, the State incurred an additional  
4 \$15 million for that one, single mandate.

5 I have prepared, and CSAC has filed four  
6 requests for reasonable reimbursement methodologies.  
7 Some of those will result in additional obligations to  
8 the state. Some of those will reduce the requirements  
9 for the State Controller to have to spend the time on the  
10 review, payment, and audit of those claims.

11 The amount of money that is incurred by the  
12 delay in this process versus the amount of staff you  
13 have, to me, in looking at it, is very, very difficult to  
14 understand.

15 I was in the office yesterday. I looked at the  
16 whiteboard, and could not believe that the number of  
17 staff is probably about half of what it was when you  
18 first moved into that office.

19 When I first moved in there -- I think there  
20 are ten people on that list now. There were about 18,  
21 I think, when I first moved in there. And at that time,  
22 because of the process which I, as a non-attorney, feel  
23 is a little overkill on the legal side but obviously  
24 because everything is subject to court review, that's the  
25 way it has to be -- I accept that -- the Commission is

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1 falling further behind on its ability to stay up.

2 Now, the one thing that's been helpful is  
3 because the State is in such a difficult problem the  
4 last several years, so many bills have been killed in  
5 Appropriations; because if it says "reimbursable state  
6 mandated program," those bills don't see the light of  
7 day.

8 And so the one thing is, there have been far  
9 fewer mandates passed in the last three years than  
10 there were since 1979, when this was placed in the  
11 Constitution. I can personally adhere to that.

12 So the one thing I'm looking at is, it seems to  
13 me that this Commission, who has the responsibility given  
14 to it to oversee this process, who has the statutory  
15 obligation, up to 18 months, should take a look at this  
16 and say, you know, this is a dereliction of our duty to  
17 say we're going to adopt something without at least going  
18 forward and trying to say this is costing the State  
19 money.

20 The Legislature has made it clear, the  
21 Administration has made it clear, I'm sure that the  
22 Treasurer does not want to incur additional debt. You  
23 know, I've talked to the Treasurer personally about the  
24 amount of debt that is going to be incurring. And what  
25 is happening is, every year you fail to act, that debt

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1 is growing. The costs of the State is growing. And my  
2 thought is, you should go back and look at it.

3 You probably need at least twice as many staff.  
4 What is that, a million? 1.2, 1.5 million? But every  
5 year something is delayed because of that, you're  
6 incurring tens of millions of dollars, and even more.  
7 And I'm just looking at the local government side.

8 My friends from the school district behind me,  
9 you know, they have some mandates in there that may even  
10 be much more substantial than that.

11 One of the other things that has happened in  
12 this process is because of the fact that the more  
13 complicated mandates tend to take longer to get there,  
14 sometimes the most expensive ones, one of which you're  
15 going to be seeing hopefully before the end of this  
16 calendar year, that's been delayed for ten years, is  
17 going to be even bigger than that \$120 million statewide  
18 cost estimate you adopted.

19 Why? Because the Commission didn't have staff.

20 So I was very pleased to see that there was an  
21 acknowledgment of the 18-month statutory requirement.

22 The former Executive Director and I had a  
23 little dispute about that, having to have been the  
24 drafter of AB 1960, Reyes, in 1998 to put that into code,  
25 I could not understand how that could not be viewed as a



1 statute. But Paula is not here to defend herself. But  
2 it is clear in there that the Commission staff is now  
3 saying they have 18 months to hear these claims. And  
4 this proposal is to hear 2003 test claims by the end of  
5 2012.

6 And I just look at this, in 1981 I was a party  
7 to a lawsuit relative to the futility of the process.  
8 And one of the reasons also you don't have more IRCs and  
9 more other things and other actions is because people  
10 look at the futility of this process. And I can tell  
11 you that if people felt that this was moving or something  
12 was going to happen in a reasonable period of time, your  
13 workload would be much greater -- substantially greater.

14 So I think we've gone back to reaching the  
15 futility of this process.

16 That lawsuit led to the creation of this  
17 Commission. We have some new members that probably  
18 weren't there, but this Commission was created based upon  
19 a joint meeting of the California Legislature. The  
20 Attorney General, the Legislative Counsel Bureau pulled  
21 the two houses together in June of '84, and said, "We  
22 have a problem: Local government is killing us in the  
23 courts." And the key thing that was coming up was what  
24 is called *Contra Costa County*, it was really the CSAC  
25 lawsuit, in 1981, on the futility of this process.

1           And I think if you look at this workload and  
2 look at your duties and responsibilities and those things  
3 that you want to do as administrative representatives or  
4 as you want to do, I know, as the Controller, the  
5 Treasurer's representative is concerned about the debt  
6 that California is growing, and the Legislature is  
7 concerned about getting decisions quickly so they know  
8 what the cost of a mandate is; I would urge you to send  
9 this back, ask your staff to come back and say, "What do  
10 we need to do to meet our 18-month statutory  
11 requirement?" -- take that forward, still have 22 days  
12 before the budget is adopted, and at least tell the  
13 Legislature, "Look, if you don't do this, if you don't  
14 spend this one, one and a half, two million, whatever  
15 it's going to take, to add that staff, you're going to be  
16 incurring" -- and they can make an estimate better than  
17 me.

18           As I said, I read this at ten o'clock last  
19 night, so I didn't have much time to do much analysis.  
20 And I apologize, and I appreciate you putting up with  
21 me -- but I urge you not to accept this, and I urge you  
22 to go back and to say, "What do we need to do?"

23           And then if the Legislature and the Governor  
24 say, "No, you know, we don't have \$2 million some place,"  
25 whatever it is, "to avoid these tens of millions

1 of dollars," then at least you've done your job; because  
2 I think you're the ones that are responsible out there  
3 to tell the Legislature, when it comes there, that "Hey,  
4 wait a minute, you gave us a duty and responsibility to  
5 do, but we can't do it with the little money you've given  
6 us."

7 So with that, I again thank you so much for  
8 putting up with me. Obviously, I feel overly passionate  
9 about this issue. But when I read that last night, I...

10 Anyway, thank you very much.

11 CHAIR REYES: Thank you.

12 Any other public comments before we go into  
13 closed session?

14 *(No response)*

15 CHAIR REYES: All right, so we're going to go  
16 to closed session.

17 And I have to read this:

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

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Thank you.

*(The Commission met in closed executive session from 11:57 a.m. to 12:03 p.m.)*

CHAIR REYES: We're coming back from closed session.

There is nothing to report. We were updated by counsel.

Thank you. And the meeting is adjourned.

Thank you, everybody.

*(Proceedings concluded at 12:03 p.m.)*



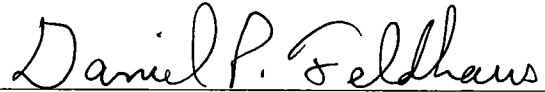
**REPORTER'S CERTIFICATE**

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on the 18<sup>th</sup> of June 2012.



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