

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:39 a.m.
DATE: Thursday, December 6, 2007
PLACE: State Capitol, Room 126
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



ORIGINAL

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A P P E A R A N C E S

COMMISSIONERS PRESENT

TOM SHEEHY
(Commission Chair)
Director, State Department of Finance

CYNTHIA BRYANT
Director
State Office of Planning and Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

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



A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 18)

NANCY PATTON
Assistant Executive Director
(Item 2)

CAMILLE SHELTON
Chief Legal Counsel
(Item 17)

DEBORAH BORZELLERI
Commission Counsel
(Items 9 and 10)

KATHERINE TOKARSKI
Commission Counsel
(Items 3 and 4)



PUBLIC TESTIMONY

Appearing Re Item 3:

For the County of Los Angeles:

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

DAN SCOTT (Sergeant)
Special Victims Bureau
County of Los Angeles
Sheriff's Department
11515 S. Colima Road, D106
Whittier, California 90604

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3: *continued*

For Department of Finance:

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

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

Appearing re Item 9:

For Claimant City of Newport Beach:

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

For Claimant City of Newport Beach: *continued*

GLEN EVERROAD
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 95658

ANTONY BRINE, P.E.
Transportation Engineer
Public Works Department
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 95658

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing re Item 9: *continued*

For Department of Industrial Relations:

GARY J. O'MARA
Attorney
Department of Industrial Relations
Office of the Director - Legal Unit
2424 Arden Way, Suite 130
Sacramento, California 95825

ANTHONY MISCHEL
Staff Counsel
Department of Industrial Relations
Office of the Director - Legal Unit
320 West Fourth Street, Room 600
Los Angeles, California 90013

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance



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1 BE IT REMEMBERED that on Thursday, December 6,
2 2007, commencing at the hour of 9:45 a.m., thereof, at
3 the State Capitol, Room 126, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 CHAIR SHEEHY: The Commission on State Mandates
8 will come to order the meeting this morning will come to
9 order.

10 Paula, will you please call the roll?

11 MS. HIGASHI: Ms. Bryant?

12 MEMBER BRYANT: Here.

13 MS. HIGASHI: Mr. Chivaro?

14 MEMBER CHIVARO: Here.

15 MS. HIGASHI: Mr. Glaab?

16 MEMBER GLAAB: Here.

17 MS. HIGASHI: Mr. Lujano?

18 MEMBER LUJANO: Here.

19 MS. HIGASHI: Ms. Olsen?

20 MEMBER OLSEN: Here.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: And Mr. Sheehy?

24 CHAIR SHEEHY: Here.

25 The Commission will meet in closed executive

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1 session pursuant to Government Code section 11126,
2 subdivision (e), in order to confer with and receive
3 advice from our legal counsel for consideration and
4 action, as necessary and appropriate, upon the pending
5 litigation listed on the published notice and agenda and
6 also in order to confer with and receive advice from
7 legal counsel regarding additional potential litigation.

8 We will reconvene in open session at the same
9 location in approximately 15 minutes.

10 Thank you.

11 *(Closed executive session from 9:45 a.m.*
12 *to 9:52 a.m.)*

13 CHAIR SHEEHY: The Commission met in closed
14 executive session pursuant to Government Code section
15 11126, subdivision (e), in order to confer with and
16 receive advice from our legal counsel for consideration
17 and action, as necessary and appropriate, upon pending
18 litigation listed on the published notice and agenda and
19 potential litigation.

20 The Commission will now reconvene in open
21 session, and we will recess until ten o'clock this
22 morning.

23 Thank you.

24 *(Recess from 9:53 a.m. to 10:02 a.m.)*

25 CHAIR SHEEHY: The Commission on State Mandates

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1 meeting will come to order.

2 We've already had a roll call, established a
3 quorum, and taken care of some preliminary business.

4 So having said that, I'd like to ask the
5 members of the Commission if there are any objections or
6 corrections to the September 27th minutes?

7 *(No response)*

8 CHAIR SHEEHY: Hearing none, is there a motion
9 to adopt the minutes from September 27th?

10 MEMBER LUJANO: Moved.

11 MEMBER GLAAB: Second.

12 CHAIR SHEEHY: Thank you.

13 Paula, please call the roll.

14 MS. HIGASHI: Ms. Bryant?

15 MEMBER BRYANT: Aye.

16 MS. HIGASHI: Mr. Chivaro?

17 MEMBER CHIVARO: Aye.

18 MS. HIGASHI: Mr. Glaab?

19 MEMBER GLAAB: Aye.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

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1 MS. HIGASHI: And Mr. Sheehy?

2 CHAIR SHEEHY: Aye.

3 Okay, so the minutes have been approved.

4 MS. HIGASHI: There are no appeals to consider
5 today under Item 2.

6 And this brings us to the proposed consent
7 calendar.

8 Ms. Patton, do you want to present the consent
9 calendar?

10 MS. PATTON: I just wanted to let you know that
11 I just found out from San Bernardino County that they are
12 requesting that Item 11, *Mentally Disordered Offenders*,
13 be postponed. So it's coming off calendar today.

14 MEMBER WORTHLEY: Does that require a motion?

15 MS. PATTON: No.

16 So that leaves Item 13, *Pupil Safety Notices*
17 Parameters and Guidelines, and Item 16, the
18 implementation of AB 1222 regulations.

19 CHAIR SHEEHY: Okay, so the consent calendar is
20 as presented in the agenda, minus Item Number 11; is that
21 correct, Ms. Patton?

22 MS. PATTON: Right.

23 CHAIR SHEEHY: Do we have a motion to approve
24 the consent calendar?

25 MEMBER OLSEN: So moved.

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1 CHAIR SHEEHY: Can I have a second, please?
2 MEMBER WORTHLEY: Second.
3 Mr. Chairman, just a point of clarification
4 because the agenda did indicate initially that 14 and 15
5 were also going to be consent items, they are being
6 postponed. So the consent calendar would be, as I
7 understand it, Items 13 and 16?
8 MS. HIGASHI: That's correct.
9 CHAIR SHEEHY: Is that accurate, Paula?
10 MS. HIGASHI: Yes, that's correct.
11 CHAIR SHEEHY: Let the record show that the
12 consent calendar is amended as per Mr. Worthley.
13 MS. HIGASHI: All of you should have a blue
14 sheet of paper. On the back of it, it indicates the
15 postponed items that were initially on the consent
16 calendar. So if you would just mentally move Item 11 to
17 the back of the page, then we'll have a current list.
18 CHAIR SHEEHY: Oh, I see. It's on the front
19 side and you want to have it on the back.
20 MS. HIGASHI: And then just move Item 11 to the
21 back.
22 We were just made aware of this issue this
23 morning.
24 CHAIR SHEEHY: I hope too many people didn't
25 fly in from out of town for that one item.

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1 Okay, Paula, is the motion still in order? Do
2 we have to --

3 MS. HIGASHI: Let me clarify -

4 CHAIR SHEEHY: Does the motion need to be
5 remade?

6 MS. HIGASHI: Let me clarify the motion --

7 CHAIR SHEEHY: Can you clarify what the motion
8 is, please?

9 MS. HIGASHI: Okay. It was my understanding
10 that the motion that was made was to adopt the proposed
11 consent calendar. And as Ms. Patton indicated, it
12 consisted of Items 13 and 16.

13 CHAIR SHEEHY: Okay, so that's the motion.
14 Paula, could you please call the roll?

15 MS. HIGASHI: Certainly.

16 Mr. Chivaro?

17 MEMBER CHIVARO: Aye.

18 MS. HIGASHI: Mr. Glaab?

19 MEMBER GLAAB: Aye.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

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1 MS. HIGASHI: Ms. Bryant?

2 MEMBER BRYANT: Aye.

3 MS. HIGASHI: And Mr. Sheehy?

4 CHAIR SHEEHY: Aye.

5 MS. HIGASHI: The motion carries.

6 This brings us to the hearing portion of our
7 meeting.

8 First, I'd like to ask all of the parties and
9 witnesses who are here to testify on one of the
10 test-claim items to please stand.

11 *(Parties and witnesses were sworn or affirmed.)*

12 MS. HIGASHI: Thank you very much.

13 Our first test claim today is Item Number 3.

14 And there have been some changes regarding how this item
15 is being presented today.

16 And I would just like to briefly read into the
17 record a statement regarding Items 3, 4, 5 and 6,
18 essentially. And a copy of a letter that I issued
19 yesterday is available for all the parties, and was
20 mailed to all the parties on this test claim.

21 On December 5th, the Commission received a
22 request from the Department of Finance to postpone the
23 hearing and determinations of those portions of the
24 analysis of Item 3 that are related to the adjudication
25 of the following case: *Department of Finance vs.*

1 *Commission on State Mandates*, currently pending in the
2 California Court of Appeal, Case Number C056833. And
3 this is known as the POBOR case.

4 This request was approved. Therefore, today's
5 Commission hearing on Item 3 will be limited to the
6 analysis of the test-claim statutes and executive orders
7 for cities and counties.

8 The test-claim statutes and executive orders
9 pled by the County in Item 3, as they may apply to other
10 types of local governmental entities, are hereby severed
11 and consolidated with another pending test claim, *Child*
12 *Abuse and Neglect Reporting*, 01-TC-21, which is on this
13 agenda as Item 5. This test claim was filed by the
14 San Bernardino Community College District.

15 By this consolidation, the Commission is also
16 postponing the December 6th hearing on Item 5, for
17 01-TC-21. The consolidated test claim comprised of
18 00-TC-22 and 01-TC-21 will be set for hearing within
19 60 days after the final adjudication of the *Department of*
20 *Finance vs. Commission on State Mandates* case. At that
21 time, a new draft staff analysis will be issued for
22 review and comment.

23 And it's my understanding that all of the
24 parties that are involved in these two test claims are in
25 agreement with this action that's been taken.

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1 Are there any questions?

2 CHAIR SHEEHY: Do we have any questions or
3 comments from members of the Commission?

4 *(No response)*

5 MS. HIGASHI: Item 3 will be presented by
6 Commission Counsel Katherine Tokarski.

7 MS. TOKARSKI: Good morning. The County of
8 Los Angeles filed a test claim on June 29th, 2001,
9 alleging that amendments to California's mandatory child
10 abuse reporting laws since 1975 impose a reimbursable
11 state-mandated program on law enforcement agencies and
12 other county departments. A number of changes to the
13 Penal Code are claimed, including a reenactment in 1980,
14 and substantive amendments in 1997 and 2000.

15 In initial comments filed, the Department of
16 Finance and the Department of Social Services both oppose
17 the test claim, arguing that the claim alleges duties of
18 law enforcement and child protective services that were
19 required by prior law.

20 Where the state agencies acknowledge that some
21 new duties may have been imposed, they contend that
22 adequate funding has already been provided to counties as
23 part of the joint federal, state, local funding scheme
24 for child welfare.

25 At this time, there is no evidence in the

1 record to demonstrate that the mandated activities have
2 been fully offset or funded by the state or federal
3 government in a manner and amount sufficient to fund the
4 cost of the state mandate.

5 Staff finds that the test-claim statutes and
6 executive orders have created numerous new local duties
7 for reporting child abuse to the state that were not
8 required by prior law, thus mandating a new program or
9 higher level of service.

10 Such activities include distributing the
11 suspected child-abuse report form, cross-reporting
12 suspected child abuse and neglect by telephone and in
13 writing between local departments, completing the
14 investigation needed to prepare and submit the state
15 child-abuse investigation report to DOJ, as well as
16 related record-keeping and notification activities.

17 Staff recommends the Commission adopt the staff
18 analysis to partially approve this test claim for
19 counties and cities.

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

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

23 SERGEANT SCOTT: Daniel Scott.

24 CHAIR SHEEHY: Mr. Kaye, do you have some
25 testimony for us this morning on this item?

1 MR. KAYE: Very brief.

2 CHAIR SHEEHY: Okay, please precede.

3 MR. KAYE: We concur completely with Commission
4 staff's analysis and urge you to adopt their recommended
5 position on this in developing this test claim, which I
6 think we did it six and a half years ago.

7 We feel it's important to update the
8 Commissioners, should they have questions at this point
9 in time. And Sergeant Dan Scott, who is a POST-certified
10 trainer in this area and also has substantial experience
11 in this area, is prepared to answer any questions you may
12 have in that regard.

13 However, we feel that there is a tremendous
14 amount of work to be done in the subsequent parameters
15 and guidelines phase to follow. And this might take, of
16 course, work with many, many jurisdictions over some
17 period of time. But we like the endorsement, the green
18 light to start this long-delayed reimbursement program
19 this morning.

20 Thank you.

21 CHAIR SHEEHY: Thank you.

22 Mr. Scott?

23 SERGEANT SCOTT: Good morning. My name is Dan
24 Scott. I'm a sergeant with the Los Angeles Sheriff's
25 Department, Special Victims Bureau. I have been with the

1 department 28 years, and have spent 20 years in the field
2 of child abuse -- 13 as a detective and seven as a
3 sergeant.

4 And the magnitude of this bill is extremely
5 important in that law enforcement get out to take a look
6 at these cases, something that is required to have by
7 law, and also to have a perspective from law enforcement,
8 not just the Department of Children and Family Services.

9 It's important that both entities take a look
10 at the protection of children from their respective
11 expertise. And law enforcement is unique in that we look
12 at these cases from a different perspective, as far as
13 the safety of the children, and to determine what should
14 proceed as far as if it's criminal or not.

15 About 30 percent of our cases actually go to
16 criminal. But the majority of them are dealt with in a
17 manner that protects the children first.

18 CHAIR SHEEHY: Thank you, Mr. Scott.

19 The Department of Finance, would you like to
20 comment on this item?

21 MS. CASTAÑEDA: Carla Castañeda, Department of
22 Finance.

23 We have no objections to the staff analysis
24 with the exception of the education components. And we
25 also will work with local agencies and Commission staff

1 in developing the parameters and guidelines to
2 appropriately address the offsets as we asserted during
3 the staff analysis. The funding is provided through
4 social services.

5 CHAIR SHEEHY: Thank you, Carla.

6 Ms. Geanacou, did you have anything to add?

7 MS. GEANACOU: No, I don't.

8 Susan Geanacou, Department of Finance.

9 CHAIR SHEEHY: Are there any questions from the
10 members of the Commission or any further discussion on
11 this item that's desired at this time with the members?

12 *(No response)*

13 CHAIR SHEEHY: Very well. Do we have a motion?

14 MEMBER WORTHLEY: Mr. Chairman, I'd be glad to
15 move approval of the staff analysis.

16 MEMBER GLAAB: Second.

17 CHAIR SHEEHY: Thank you.

18 Paula, could you please call the roll?

19 MS. HIGASHI: Mr. Glaab?

20 MEMBER GLAAB: Aye.

21 MS. HIGASHI: Mr. Lujano?

22 MR. LUJANO: Aye.

23 MS. HIGASHI: Ms. Olsen?

24 MEMBER OLSEN: Aye.

25 MS. HIGASHI: Mr. Worthley?

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MEMBER WORTHLEY: Aye.

MS. HIGASHI: Ms. Bryant?

MEMBER BRYANT: Aye.

MS. HIGASHI: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HIGASHI: And Mr. Sheehy?

CHAIR SHEEHY: Aye.

MS. HIGASHI: The motion is carried.

MR. KAYE: Thank you very much.

CHAIR SHEEHY: Ms. Tokarski will introduce
Item 4, the proposed Statement of Decision.

MS. TOKARSKI: The staff recommends the
Commission adopt the proposed Statement of Decision with
modifications reflecting today's hearing testimony, and
also limiting the analysis and conclusions to cities and
counties only. Staff will make such changes and
circulate the document to the parties before issuing the
final Statement of Decision.

CHAIR SHEEHY: Thank you, Katherine.

Is there a motion on Item Number 4?

MEMBER GLAAB: So moved.

MEMBER WORTHLEY: Second.

CHAIR SHEEHY: Thank you.

Please call the roll.

MS. HIGASHI: Mr. Lujano?

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MEMBER LUJANO: Aye.

MS. HIGASHI: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HIGASHI: Mr. Worthley?

MEMBER WORTHLEY: Aye.

MS. HIGASHI: Ms. Bryant?

MEMBER BRYANT: Aye.

MS. HIGASHI: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HIGASHI: Mr. Glaab?

MEMBER GLAAB: Aye.

MS. HIGASHI: Mr. Sheehy?

CHAIR SHEEHY: Aye.

MS. HIGASHI: The motion is carried.

Now, you'll have to shift binders at this point.

Items 5 and 6 are postponed.

Items 7 and 8 are postponed.

And this brings us now to the test claim, Item Number 9, Senior Commission Counsel Deborah Borzelleri will present Item 9, which is the *Prevailing Wages* test claim.

MS. BORZELLERI: Thank you.

This test claim addresses changes to the California prevailing-wage law, which was designed to

1 enforce prevailing-wage standards on projects funded in
2 whole or in part with public funds.

3 Private contractors in public works projects
4 are required to pay local prevailing wages to
5 construction workers on any projects that exceed \$1,000.
6 The requirement to pay prevailing wages does not apply to
7 work carried out by a public agency with its own forces.

8 The test-claim statutes and regulations
9 modified several provisions of the prevailing wage law
10 and local agencies that contract out for public works
11 projects are affected by these changes. But in order to
12 determine whether those new Labor Code requirements are
13 truly mandated by the state, the case law requires the
14 analysis to focus on the nature of the claimant's
15 participation in the underlying program, and whether the
16 decision to participate triggers the new requirements.

17 If the test-claim statutes or other law
18 required the underlying activity, that constitutes legal
19 compulsion. Absent legal compulsion in some very narrow
20 circumstances, the courts have found practical compulsion
21 exists.

22 The *Kern High School District* case sets forth
23 these narrow circumstances, that is, where the local
24 agency would face penalties such as double taxation other
25 severe consequences, leaving no reasonable alternative

1 but to participate in the underlying activity.

2 Here, the significant underlying decision is
3 whether to undertake a public works project in the first
4 place.

5 Public works includes a broad variety of
6 projects from such things as construction and repair of
7 buildings, to installing carpet. And the decision to
8 undertake a public works project could be driven by any
9 number of reasons, from a local administrative decision
10 to a ballot initiative.

11 There is nothing in the test claim or elsewhere
12 in law to indicate such projects are legally compelled by
13 the state. Moreover, claimant has put no evidence into
14 the record to demonstrate that public works projects are
15 practically compelled. It is the claimant that is
16 required to meet the burden of demonstrating the
17 circumstances under which it is practically compelled to
18 engage in the underlying activity. And here, that burden
19 has not been met. Therefore, staff recommends the
20 Commission adopt this analysis to deny the test claim.

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

23 MS. GMUR: Juliana Gmur on behalf of the City
24 of Newport Beach.

25 MR. BRINE: Tony Brine, City traffic engineer,

1 Newport Beach.

2 MR. EVERROAD: Glenn Everroad, City of Newport
3 Beach.

4 MR. MISCHER: Anthony Mischel, Department of
5 Industrial Relations.

6 MR. O'MARA: Gary O'Mara with the Department of
7 Industrial Relations.

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

10 MS. CASTAÑEDA: Carla Castañeda, Department of
11 Finance.

12 CHAIR SHEEHY: Thank you.

13 Ms. Gmur, would you like to open up with your
14 testimony?

15 MS. GMUR: Yes, I would. Thank you very much.

16 Good morning, Commissioners. This test claim
17 is regarding the expansion of the prevailing wage law.
18 We appreciate staff's thoughtful analysis on this matter,
19 and staff points to the decision that local governments
20 engage in to start a public works project as a voluntary
21 discretionary decision.

22 This is in line with the case law that we've
23 seen from the Department of Finance. But initially, the
24 first case was the *City of Merced*.

25 In the *City of Merced* case, we have a similar

1 fact pattern. The City of Merced opted, instead of in
2 this case to, say, perhaps build a building, they opted
3 to acquire a building by eminent domain. And in so
4 doing, they put themselves into the position of having to
5 comply with the mandate.

6 The theory behind the *City of Merced* is that if
7 you don't make the decision -- that is, if you choose to
8 go into a particular direction -- and you run into the
9 statutes that create the mandate, you could have avoided
10 it; therefore, it is not a mandate.

11 Staff says that it's a voluntary, discretionary
12 decision. But is it? When it comes to erecting a
13 building, perhaps that is the case. But when it concerns
14 health, safety, and welfare of the public, is it truly a
15 discretionary decision?

16 We have here today from the City of Newport
17 Beach, Tony Brine, and he's going to talk to you about a
18 situation that the City is facing with regards to
19 maintenance of traffic signals.

20 CHAIR SHEEHY: Thank you.

21 Mr. Brine?

22 MR. BRINE: Good morning. We have a contract
23 with a private contractor to do our annual maintenance of
24 traffic signals in Newport Beach. We have 112 traffic
25 signals in the city. And we pay that contractor wages to

1 do maintenance on a per-signal location.

2 We feel -- and I'm going to move ahead -- that
3 this is a mandated type of maintenance work, because it's
4 the type of work we need to do on a regular basis to make
5 sure the signals are functional; that there are no safety
6 issues related to, as an example, red light is no longer
7 functioning or the traffic-signal controller is no longer
8 functioning. If those issues arise, then it puts the
9 traffic signal into a condition where it could be unsafe
10 for the drivers. And there have been situations where
11 there have been accidents related to poorly maintained
12 traffic signals.

13 So we have to, and we have a responsibility to
14 the residents and the drivers to maintain the traffic
15 signals and to keep them functioning. And so for that
16 purpose, then we believe this is not a discretionary
17 action but, rather, it's a necessary, mandatory-type
18 action.

19 CHAIR SHEEHY: Thank you.

20 Mr. Everroad, do you -- does that conclude your
21 testimony, Mr. Brine?

22 MR. BRINE: Yes.

23 CHAIR SHEEHY: Mr. Everroad -- maybe you could
24 surrender your seat so Mr. Everroad could sit up. I
25 think he would like to --

1 MR. EVERROAD: Actually, I would like to thank
2 staff for their analysis, and would argue that, as
3 Juliana has related, that we do have discretion in some
4 situations. However, there's a legal compulsion and
5 there's a practical compulsion as it relates to
6 maintaining traffic signals, an activity that, prior to
7 the statutes, may not have constituted or been defined as
8 a public works project. These statutes redefine public
9 works projects to include maintenance.

10 And in this particular agreement, our
11 contractor, the cost increased threefold as a result, in
12 part, due to the prevailing-wage requirements associated
13 with the statutes.

14 So we don't have discretion as it relates to
15 traffic signals. We have a practical and -- I believe
16 the California Vehicle Code also points to a legal
17 requirement to maintain traffic signals. So I would just
18 like to ask for your understanding about the differences
19 between a practical compulsion and this discretionary
20 act.

21 We don't have discretion as it relates to
22 maintaining traffic signals, not practically and not
23 lawfully.

24 Thank you.

25 MS. GMUR: And as a point in fact, Mr. Everroad

1 was referring to Vehicle Code 21351, which states that
2 local authorities shall place and maintain or cause to be
3 placed and maintain, such traffic lights, signals, and
4 other traffic-control devices upon streets and highways
5 as required hereunder.

6 CHAIR SHEEHY: Ms. Bryant?

7 MEMBER BRYANT: Is there anything that
8 precludes -- I mean, I agree with you, you clearly have
9 to have functioning traffic lights in Newport Beach. But
10 is there anything that prevents you from training a city
11 employee to perform that task and to maintain the
12 streetlights for you?

13 MR. BRINE: I would say probably.

14 In our case, we have one traffic signal
15 technician and one engineer as part of our staff. And
16 they are responsible for the entire 112 signals, and
17 reviewing that, and making sure they're operational on a
18 daily basis.

19 So to add to their tasks, in addition, their
20 regular maintenance and going in and actually, physically
21 doing work on the intersections to maintain them, I think
22 that goes beyond what we can do within the City in terms
23 of going past operational issues to then include
24 maintenance.

25 MEMBER BRYANT: So the City is making a choice

1 to have a contract to maintain the stoplights as opposed
2 to expanding City staff to perform that task?

3 MR. BRINE: We have in over a 30-year period
4 had contracts with consultants to do the work. And I
5 think it's worked in the best fashion for the City to do
6 that from a staffing standpoint and also from a cost
7 standpoint for the City to contract.

8 CHAIR SHEEHY: I'm sorry, I just want to make
9 sure I understand. So you think it's more cost-effective
10 for you to contract the work out than having City staff
11 do the work?

12 MR. BRINE: I personally do believe that.

13 CHAIR SHEEHY: I see.

14 MR. EVERROAD: If I might speak to the
15 Commissioner's question, with regards to whether or not
16 we decide to do this ourselves or contract out for that,
17 state law directs at least general law cities as to
18 whether or not they are obligated to contract out for
19 services after certain threshold amounts have been met.
20 Our traffic signal maintenance agreement annually is
21 \$210,000, well beyond what the statutory requirements are
22 for contracting this out. So we don't have the
23 discretion as it relates to maintaining traffic signals
24 with using City staff.

25 MS. GMUR: And Mr. Everroad was referring to

1 the Public Contracts Code, which I believe was cited in
2 our comments to the draft staff analysis.

3 CHAIR SHEEHY: The Department of Finance -- I'm
4 sorry, the Department of Industrial Relations is here
5 this morning.

6 Did you have comments on this item?

7 MR. MISCHEL: Yes, we do.

8 CHAIR SHEEHY: Please proceed.

9 MR. MISCHEL: Yes, I would like to start -- I'm
10 sorry, again, my name is Anthony Mischel.

11 CHAIR SHEEHY: Thank you, Mr. Mischel.

12 MR. MISCHEL: I'd like to start with going back
13 to the comment about what the *City of Merced* case really
14 says.

15 If you look at *Merced*, it does talk about the
16 fact that the City makes a decision first to take
17 property, and then it decides it's going to proceed by
18 eminent domain. And the Court just addressed the
19 question of whether the decision to proceed by eminent
20 domain was a discretionary act. But the Court
21 specifically said it was not addressing any of the other
22 issues that were actually unspecified because of the
23 result. And there's no indication in the record that the
24 *Merced* court thought that looking at the second
25 discretionary act as opposed to the first discretionary

1 act was of any significance.

2 It's also really important to see *Merced* in the
3 context of the development of the law around state
4 mandates. Remember, *Merced* was decided in 1984, very
5 shortly after the Commission is, in fact, created. It's
6 not the first case; it's one of the first cases.

7 And on *Merced* is then built a whole analysis
8 about what is a discretionary act that really culminates
9 in *Kern County*, the Kern School District case, in which
10 the Court was extremely clear about what a mandate was.

11 So I think it's disingenuous to somehow parse
12 *Merced* as carefully as the City has parsed it.

13 What you're looking at, I think after *Kern*, is
14 whether or not there is state law requiring certain
15 activities; and if not, whether state law creates such
16 Draconian consequences that a city actually has no
17 choice.

18 So the only example so far before you is the
19 relatively small question of traffic signal maintenance.
20 Whether all other construction is sort of per force no
21 longer in this test claim or not, I don't know. I don't
22 know what is in and what is out. It has been a problem,
23 I think, from the beginning, I think, for us to respond.

24 And having not been aware of, or had the chance
25 to look at the Vehicle Code or the Public Contracts Code

1 insofar as it applies to maintenance as opposed to the
2 more general questions of construction, I'm at a little
3 bit of a loss in terms of the very specific responses.

4 Mr. O'Mara, who has been with the Department
5 for decades and has been doing this work for virtually
6 his entire career, does have some comments about when
7 maintenance became - was considered to be a public work
8 or subject to the payment of prevailing wages under 1771.

9 And I'd like to turn this over to him to talk
10 about maintenance historically in terms of when it became
11 a requirement.

12 CHAIR SHEEHY: Mr. O'Mara, you have a green
13 light.

14 MR. O'MARA: Thank you, sir.

15 Maintenance was added to the statute in 1974,
16 at the same time that the Legislature codified the *Bishop*
17 decision from 1969, which excluded force account.
18 Maintenance was added -- overruled *sub silentio*, a
19 decision called *Franklin vs. County of Riverside* decided
20 in 1962 by the California Supreme Court, which excluded
21 maintenance from the statute.

22 So there has been a requirement for maintenance
23 as enacted since 1974. It's not a new requirement
24 post-Proposition 13.

25 MR. MISCHER: So what this would mean is that

1 this wouldn't be a mandate. This would not be subject to
2 subvention because this has been required all along.

3 I would also like to, as a final comment, go
4 back to the comments we originally made about the Labor
5 Code amendments. And I will really try to get through
6 this part quickly, so as I don't get a red light from the
7 chair.

8 CHAIR SHEEHY: Please continue.

9 MR. MISCHEL: Thank you.

10 But if you look at the kind of work that cities
11 had to do before 1976, and the work that cities have to
12 do now, they do less. They do less.

13 We have taken over -- the State has taken over
14 responsibilities for setting the prevailing wage rate,
15 setting the requirements for prevailing wage, enforcing
16 the prevailing wage, adjudicating the prevailing wage.
17 And awarding bodies, local governments merely have to
18 make sure that everybody knows to look to our Web site.
19 That if somebody raises a violation, they can't shield
20 their eyes. And if the State says, "Don't pay the money
21 until this is adjudicated," to hold onto the money.
22 And beyond that, there's not much left for the cities to
23 do.

24 The real problem is, the cost of construction
25 has gone up since 1976. But the bulk of the cost of that

1 increase is on private contractors, because it's on the
2 payment of the prevailing wage side. And that's not
3 subject to this test claim. What has resulted, they say,
4 is a minor increase in the administration of prevailing
5 wages.

6 And we put it to you that that is not subject
7 to mandate for the variety of reasons from, maintenance
8 has been in the code since before 1976, and the cities
9 now do less in administering than they did before.

10 Thank you.

11 CHAIR SHEEHY: Thank you, Mr. Mischel.

12 The Department of Finance, do you have comments
13 on this item?

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

16 We generally support the staff analysis and
17 urge its recommendation -- or its adoption, rather --
18 today.

19 I will note that I don't believe there's any
20 prior testimony or evidence in the record regarding the
21 traffic-signal issue raised here, nor the specific
22 Vehicle Code section that I think was raised generally by
23 Mr. Everroad. So if we're asked to look at that
24 particular issue, I think we'd need more specifics in
25 order to address it.

1 CHAIR SHEEHY: Yes, Ms. Gmur?

2 MS. GMUR: Yes. We were trying to find some
3 way to put something specific to this so that we could
4 look at an example that everyone is familiar with. And
5 the issues were raised generally in the comments. But
6 it's too easy to look at the concept of erecting a
7 building and saying, "Well, you don't have to do that."
8 It's harder to look at things like traffic signals,
9 repairing bridges, other things that are required under
10 health and safety, welfare, police powers, those sorts of
11 things that counties and cities exercise.

12 I would like to take a quick comment on the
13 *City of Merced*. Although counsel has raised some
14 excellent issues with regard to the application of the
15 Labor Code sections and what exactly all of this means,
16 we have a threshold issue, and that threshold issue is
17 the application of *City of Merced* and this concept of
18 voluntary. If we don't get over that threshold issue, it
19 doesn't matter what the statutes say. If it's a
20 voluntary decision, even if the application -- even if we
21 have a much more complicated process, a much more costly
22 process, it doesn't matter if it's still a process we
23 walk into voluntarily.

24 Therefore, back on the *City of Merced* -- and I
25 know I'm constantly in front of you talking about this.

1 You probably all sit around saying, "Oh, there she is,
2 Ms. City-of-Merced."

3 But counsel pointed to the fact that the case
4 came about early in the Commission's life in 1984. But
5 counsel overlooks the fact that this Commission was
6 preceded by the Board of Control. So although it is an
7 early decision coming out of our appellate courts, it was
8 not an early decision for this commission.

9 Counsel points to the Department of Finance
10 case, which I'm certain you're all familiar with the
11 language, we're looking at the issue of practical
12 compulsion, are there draconian results -- that one seems
13 to kind of crop up -- and double taxation, those are the
14 terms that are used. But there's also another case out
15 there, and that is the *San Diego Unified* case, which,
16 again, I routinely bring up.

17 In that case, the Court, the California Supreme
18 Court, went out of its way to make a point about the *City*
19 *of Merced*. It is dicta, indeed. It is something that
20 was not germane or relevant to the issue pending because
21 it was not the basis upon which the decision was made.

22 However, I have seen it quoted by your staff in
23 the past, and it is basically a caution, a caution as to
24 how you apply the *City of Merced*.

25 You must look at the intent of the law, the

1 intent of the Legislature or the voters, and see if the
2 application of *City of Merced* defeats that intent.

3 The case that was cited by the Court at the time was
4 *Carmel Valley* which, as you all may recall, is the fire
5 protection safety. The Court pointed to the fact that
6 you could control your costs under the *City of Merced*
7 analysis by simply not hiring any firefighters. If you
8 don't hire firefighters, they don't need protective
9 clothing, and so you have solved your problem.

10 And the Court has said that that's an
11 inappropriate way to apply *City of Merced*.

12 So I just caution the Commission to look before
13 they leap; to go through the analysis to see if *City of*
14 *Merced* and its companion case, the *Department of Finance*,
15 is the direction this Commission wants to go.

16 MEMBER WORTHLEY: Mr. Chairman, may I ask a
17 question?

18 CHAIR SHEEHY: Please.

19 MEMBER WORTHLEY: Mr. Mischel presented an
20 argument which I really didn't see presented in the staff
21 analysis, which is basically a statute of limitations
22 argument, I believe. As I understood his statement, this
23 is long-standing law; therefore, it's not really before
24 the Commission today to examine, if I understood you
25 correctly.

1 MR. MISCHEL: Actually, what I was trying to --
2 I'm sorry, I wasn't clear.

3 MEMBER WORTHLEY: You were very clear, but I
4 probably just misunderstood it.

5 MR. MISCHEL: What I was trying to say is that
6 the maintenance provision in the Labor Code, in 1771,
7 preexists the operative date on which the -- the trigger
8 date for whether or not a change in the Labor Code
9 creates a mandate.

10 MEMBER WORTHLEY: So it is a statute of
11 limitations issue?

12 MR. MISCHEL: It is in that sense, yes. I
13 mean, there's all sorts of statute of limitations
14 questions because -- but I think they're sort of down the
15 line, if you go there, about how far back do you get to
16 go. I mean, they're talking about changes in the Labor
17 Code starting in 1977. And the claim is filed
18 twenty-some years later or whatever. But that's a
19 different question.

20 CHAIR SHEEHY: I'm sorry. Mr. Lujano, did you
21 want to ask a question?

22 MEMBER LUJANO: Yes, I'd like to hear from our
23 counsel on both issues of the contract.

24 MEMBER OLSEN: One of them is already done.

25 MS. BORZELLERI: Okay, the contracting issue

1 for the traffic-signal contract?

2 MEMBER LUJANO: Yes.

3 MS. BORZELLERI: Well, I think Ms. Geanacou put
4 it very succinctly. I would need to go back and look at
5 what that Vehicle Code section says and what the
6 threshold limits are. But the Public Contract Code
7 sections, as you may have seen in the analysis, are very
8 convoluted. They say, "Up to this limit, you need to
9 contract out, but then if you're a city of this size or
10 if you're a charter city, different rules apply."

11 And then there also is a lot of discretion with regard to
12 accepting bids and rejecting bids. And you can go all
13 the way down the line.

14 So we haven't had any specific situations to
15 look at. And so I would have a hard time answering your
16 question today.

17 MR. MISCHEL: May I make one comment just on
18 this point?

19 CHAIR SHEEHY: All right, well, why do we
20 let -- Mr. Mischel, why don't we let Deborah finish on
21 the second, and Mr. Lujano had two questions, and she
22 answered the first.

23 MS. BORZELLERI: The second issue on the *City*
24 *of Merced*?

25 MEMBER LUJANO: Yes.

1 MS. BORZELLERI: Well, it is our -- I mean, we
2 have looked at the *San Diego* case and the caution
3 language that's in it; but, again, it did not overrule
4 the *City of Merced*. The cautionary discussion in
5 *San Diego Unified* just says, "Well, you can't go quite
6 that far," as to looking at how many firefighters to
7 employ.

8 But we don't believe -- we believe that the
9 *City of Merced* is directly on point for this case, as far
10 as the voluntariness of the issue absent any other
11 information brought into the record.

12 So does that answer your questions?

13 MEMBER LUJANO: Yes.

14 MS. BORZELLERI: Okay, thank you.

15 CHAIR SHEEHY: Mr. Mischel?

16 MR. MISCHEL: Thank you.

17 Early on in our comments back when we filed the
18 initial ones, one of the points we tried to make was that
19 the test claim was extremely unclear as to what
20 activities -- what construction activities were being
21 claimed raised subvention issues. And we're here now
22 years later, and for the first time hearing about
23 traffic-signal maintenance.

24 And I'm totally at a loss. I don't know
25 anything about that, other than the little piece that

1 Mr. O'Mara commented on.

2 So if you were going to use that as the basis
3 for saying there's a mandate, I think it would only be
4 fair to everyone, including staff, if the City were
5 required to list the actual acts of construction that are
6 subject to the Public Contracts Code in their experience.

7 I mean, even though the City of Newport Beach
8 is a chartered city, it can exempt itself from all of the
9 Public Contracts Code. So it doesn't get traffic signal
10 maintenance as a mandate in they could just ignore the
11 Public Contracts Code requirements and choose to either
12 contract it out or not.

13 But for the general-law cities which are also
14 before you sort of as a class, there may be issues; but
15 you ought to know what the scope is and so the staff
16 could look at it and say, "Is this in? Is this out?
17 Does this make a difference?" And if necessary, go on to
18 the next steps.

19 But to do it here today, sort of without any
20 ability for us to respond, I think is kind of unfair.
21 I do believe that you don't have sufficient evidence to
22 say there is a mandate to contract out. But if you were
23 inclined to think that, you're going to have to take more
24 time to look at it.

25 But I think the City should present something

1 more concrete.

2 CHAIR SHEEHY: Ms. Shelton, did you want to add
3 something?

4 MS. SHELTON: I do want to add a few things.

5 One, if you take a look, beginning on page 14
6 through I think about page 19 or 20, those are the list
7 of activities that the claimant has requested
8 reimbursement for. And they begin with activities of
9 increased costs to pay the prevailing wages. They also
10 ask for the increased cost of hauling refuse because the
11 prevailing wages. So they're asking for not only the
12 administrative activities to comply with any amendment
13 made after '77, but also any increased costs in paying
14 under their contract provisions for prevailing wage.

15 When we got this test claim, I agree with
16 Mr. Mischel that this is -- it was a completely -- it's
17 very broad. It asks for many things. It wasn't limited.
18 There were no facts in this record, only conclusions that
19 it should be reimbursable.

20 And as you can hear, there are many, many
21 layers of decision-making, many, many layers of the type
22 of entity and different laws applying with respect to
23 different types of entities.

24 Today is the first time we've ever heard about
25 the Vehicle Code.

1 I can tell you just from our review, we have
2 pulled leg. history, we have pulled the Government Code,
3 we've pulled the Constitution, the Public Contracts Code,
4 the Labor Code. There are many provisions which have an
5 impact on this law.

6 This analysis addresses the record that we had
7 before us up until today. And this analysis addresses
8 just the first threshold issue of whether there's a
9 state-mandated program based on the test-claim statutes
10 that were pled.

11 The test-claim statutes on their face do not
12 require them to take on any public works projects.
13 The test-claim statutes on their face do not require them
14 to contract out. And nothing has been put into the
15 record to show that they have been practically compelled
16 by the State to make those decisions, at least up until
17 this point today.

18 If you want staff to go back and maybe take a
19 look at some of the issues, we would request additional
20 briefing from the claimants, from DIR, from the
21 Department of Finance, and another round, if you're
22 wanting us to go farther. But at this point, this record
23 is so broad, and there was no evidence in the record
24 suggesting any type of practical compulsion.

25 MEMBER WORTHLEY: Mr. Chairman, may I ask

1 another question?

2 CHAIR SHEEHY: Please.

3 MEMBER WORTHLEY: My question really is related
4 to more of a fundamental, broad question, and that is, I
5 see a lot of focus here on the concepts of repairs and
6 maintenance as being non-discretionary. And I'm very
7 sympathetic with that, and I think Mr. Mischel has tried
8 to point out, that's not really the issue before us
9 today.

10 But I see a lot of our staff analysis which
11 deals with that, and it doesn't really raise a statute of
12 limitations argument.

13 But I think there's a good discussion that
14 could be had about that particular issue, that of
15 practical compulsion. I mean, it's one thing to say,
16 "You decide whether or not you want to erect a building,"
17 it's quite another to say, "You'd better fix your roof,
18 or the roof is going to fall in." And so you have to do
19 that. That is a practical compulsion.

20 Is that before this commission today?

21 MS. SHELTON: Yes, but there has been no
22 evidence in the record; and as staff, we're not going to
23 make the claimant's case for them. They have not put any
24 evidence into the record, no suggestion of unwilling.

25 And let me just suggest, with maintenance

1 schedules, there has been no showing that the State has
2 required a certain maintenance schedule.

3 We have a witness today that indicated that
4 their maintenance schedule is decided by them on a
5 contract basis. It's up to the local agency as just an
6 owner of property to decide when to maintain their own
7 property. You know, certainly there's common law
8 principles of maintaining your own property; but they
9 haven't pointed to any state legal requirement to
10 maintain, except for maybe the Vehicle Code section,
11 which we haven't looked at today.

12 MEMBER WORTHLEY: My argument -- I mean, my
13 thought is not about compulsion in terms of maintenance,
14 this talks about practical -- I mean, again, going to the
15 concept of practical compulsion, practically speaking --
16 because the argument is made, it's discretionary to
17 determine whether you want to elect to do a project.
18 And my thought would be, as a County Supervisor, I don't
19 have an election to fix a roof that's leaking. I have to
20 fix the roof. And if I have to spend \$100,000 to fix
21 that, then I've got to spend \$100,000 to fix that.
22 That's a practical compulsion.

23 Now, because I have to do that, suddenly I come
24 under the requirement of having to pay prevailing wage.
25 So in that situation, I mean, there could be a zillion

1 fact situations like that that could be presented.

2 MS. SHELTON: Right. And I'm not disagreeing
3 with your statements, Mr. Worthley. I'm simply saying,
4 nothing has been put into the record at all until maybe
5 today. There's no factual allegation, nothing is in the
6 record by the claimant. Counties, communities, cities,
7 et cetera.

8 I did want to mention, you were mentioning the
9 statute of limitations of the 1974 edition of maintenance
10 and to prevailing wage. That may have a great impact on
11 some of the activities requested by the claimants in
12 their request.

13 We haven't done that analysis. It really is a
14 new-program, higher-level-of-service analysis. You know,
15 they have alleged statutes and regulations enacted after
16 1975. So those the Commission would definitely have
17 jurisdiction over to determine whether or not those
18 amendments added or created a higher level of service to
19 that existing maintenance provision. And this analysis
20 has not gone that far.

21 You have to do an analysis if the Commission
22 were wanting to approve the test claim.

23 MS. GEANACOU: I have a question of --

24 MS. SHELTON: I'm sorry, I forgot one thing.

25 If we're talking about transportation, there's

1 also a funding issue, too, in there is a transportation
2 fund, and there probably are federal funds, state funds
3 that do pay for maintenance schedules of traffic signals.
4 We haven't done that analysis, either.

5 MS. GEANACOU: May I ask a question?

6 CHAIR SHEEHY: Ms. Geanacou?

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

9 I was hoping for clarification from the
10 claimants as to whether or not the traffic-signal issue
11 is an example of the types of things that would
12 precipitate your claim for reimbursement, or whether it's
13 a limitation on what you're seeking in your test claim?

14 MS. GMUR: We were brought that as an example.

15 The problem with the prevailing wage -- here's
16 the issue: The prevailing wage, the definition of public
17 works got expanded, and the program as we see it -- I'm
18 certain the Department will disagree -- but as we see it,
19 it was expanded, bringing in more and more issues.
20 Things that you didn't have to do prevailing wage before,
21 you have to now.

22 At the time that this was filed, this was filed
23 under the old commission rules, where a general
24 allegation of a mandate existing was all that was
25 necessary. This is before the new specific pleading. So

1 they are quite correct, this is a bare-bones pleading.

2 After the draft analysis, I did additional
3 research and we found the Public Contracting Code. So
4 now you've got the prevailing wage issues and their
5 expansions and where they apply and where they don't; and
6 that is further complicated by the Public Contract Code,
7 which has a zillion limitations, and even more exceptions
8 to the rule. So the Department here was quite correct,
9 charter cities, they go into prevailing wage voluntarily.
10 So a charter city may not be an appropriate claimant if
11 this is found to be a mandate.

12 I'm sorry, to further complicate all of this,
13 because the "*public works*" definition is so broad, we've
14 got everything, as counsel aptly pointed out, from
15 building a building to laying carpet. We've got
16 everything in there. And so in order to try to look just
17 at that initial issue of voluntariness -- because that's
18 our first hurdle right out of the gate -- if we don't get
19 over that, this is a denial -- to focus in on something
20 we're more familiar with. Because up until this point,
21 when you say "public work," everyone says, "Erect a
22 building."

23 The Department of Finance even cited in their
24 comments "Oh, building a building." Everyone's talking
25 about building a building. And it's too easy to look at

1 building a building and say, "Oh, that's voluntary, you
2 don't need to build a building."

3 But it's harder to look at things, as
4 Commissioner Worthley said, "Fix the roof." The City had
5 come up with it, the traffic signals. This is something.
6 There are a myriad of things.

7 And as Ms. Shelton accurately pointed out,
8 every time you're looking into one of these things,
9 you've got Transportation Codes, there's health and
10 safety codes, there's Vehicle Codes. There's everything
11 out there that would impinge.

12 It is the Commission's pleasure as to whether
13 they decide on the initial issue of voluntariness and
14 practical compulsion or whether we bring this back for
15 additional briefing, which I would be more than happy to
16 do, to shed some light on this extremely complicated
17 analysis on this.

18 CHAIR SHEEHY: Thank you, Ms. Gmur.

19 I'd like to hear from our executive director.

20 Do you have any recommendations at this point?

21 MS. HIGASHI: At this point, what is before you
22 is the staff analysis. And certainly you've heard
23 testimony, and there's been new information added to the
24 record. It's entirely up to you to determine whether or
25 not, one, you want to vote on the existing staff

1 analysis; two, you wish to modify it; or, three, if you
2 wish to return it and to ask us to update it based on the
3 testimony we've heard today; or, four, if you want to
4 open it up completely and give everybody a chance to add
5 more to the record.

6 Now, some of the issues that came up today seem
7 to imply that perhaps there might be a need to add
8 different test-claim statutes into the record. And I
9 just state that as a caution because if the Commission
10 acts today, based on the final staff analysis, then this
11 matter would be completed as far as the Commission's work
12 in terms of making a decision.

13 If the Commission keeps it open, then we have
14 issues in terms of test-claim amendments and other things
15 that could occur.

16 I don't know when that Vehicle Code statute on
17 the traffic control signals was enacted. I've never seen
18 a copy of it. I know the Commission has had traffic
19 control signals before the Commission before.

20 And as Ms. Shelton pointed out, we know about
21 the transportation fund and how that might apply.
22 So different issues were raised today, but they were not
23 in the record that the Commission has before it, nor were
24 they in the record that the Commission staff analyzed.

25 CHAIR SHEEHY: Thank you, Paula.

1 Well, I am concerned that we have so much new
2 information showing up today at the table, particularly
3 on this traffic-signal issue. And it's unfortunate that
4 this wasn't raised earlier so it could have been
5 addressed in the staff analysis. So I'd like to just
6 note for the record that I find that very concerning.

7 I'd like to hear from other members of the
8 Commission, if they have any comments at this time on
9 what is before us.

10 Ms. Bryant?

11 MEMBER BRYANT: I have a question.

12 So if we accept and adopt the staff analysis
13 today, where does that leave future -- can people come
14 back with a second test claim on it, or that's that for
15 these statutes?

16 MS. SHELTON: No, that would be it for these
17 statutes.

18 The test claim was the first filing, so that
19 would be ending the Commission's jurisdiction on these
20 statutes.

21 CHAIR SHEEHY: May I ask counsel, when was this
22 test claim filed?

23 MS. HIGASHI: Look on page 3.

24 MS. BORZELLERI: September 26th, '03.

25 MS. HIGASHI: September 26th, '03.

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1 CHAIR SHEEHY: Okay, September 26th of '03.

2 MEMBER LUJANO: Mr. Chair?

3 CHAIR SHEEHY: Please.

4 MEMBER LUJANO: Based on the new information, I
5 am really not prepared to vote on this item today. I
6 think we should allow the claimants and the Department
7 and our Commission staff to add more information to the
8 record and to give us a complete briefing on it.

9 CHAIR SHEEHY: Thank you, Mr. Lujano.

10 Do I have any other comments from other members
11 of the Commission?

12 MEMBER GLAAB: Yes, Mr. Chairman and Members, I
13 concur with Mr. Lujano. I think in view of the
14 additional information, I think that it would be good to
15 have the claimant come forward with the additional
16 information based upon the conversation, the testimony
17 that we've had here.

18 You know, as a city councilperson, I'm
19 sensitive to the issue of traffic lights functioning
20 properly and having the latitude to get them fixed as
21 early as possible. Because without that, the big issue
22 is that on some of the labor compliance programs, you
23 know, cities can avoid prevailing wage under certain
24 conditions. So I do have a sensitivity with that. But I
25 think we should come back, requesting more information.

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Thank you.

MEMBER BRYANT: I just would add that I think that there's maybe some very narrow issues in here that because of the way the City pled this, that we don't have the information in front of us. But for the most part, if we're going to go back and let staff revisit it, we need somehow or another -- I don't know how to do that exactly -- but narrow these issues. Because a lot of this, I think we can get rid of early on. But there might be an issue of practical compulsion as it relates to the public contracting code.

It doesn't sound like the Vehicle Code itself gets you there. Just because the Vehicle Code requires you to maintain your traffic lights, it certainly doesn't say anything about how you get that done, whether it's with a city employee or a contract employee. It seems like the issue might be somewhere in this Public Contracts Code.

But it looks like you went for the whole enchilada instead of really focusing on where you have a practical compulsion. Because, to me, you're not required -- I view -- just on the basis that there's no -- you know, when you read the record, there's no, like, rule that says you have to contract out. And now you're here, saying that you're forced to, in many

1 circumstances. And I don't know what the circumstances
2 are. But it needs to be -- I would never vote for this
3 unless it was very, very narrow in terms of creating a
4 mandate.

5 CHAIR SHEEHY: Thank you, Ms. Bryant.

6 Ms. Olsen?

7 MEMBER OLSEN: Well, I'm concerned because this
8 was filed in 2003.

9 Up until what point could the claim have been
10 amended?

11 MS. HIGASHI: Up until the hearing.

12 MEMBER OLSEN: Well, that gives me my answer.
13 You know, I think I actually am prepared to vote on it
14 today then, based on that.

15 CHAIR SHEEHY: We haven't heard from
16 Mr. Chivaro.

17 Would you like to weigh in?

18 MS. HIGASHI: Typically, when an amendment is
19 contemplated, there's a request to put over, postpone.
20 And the claimants have been on notice that we've been
21 working on this draft since spring.

22 CHAIR SHEEHY: I'm sorry, I don't mean to put
23 Mr. Chivaro on the spot, but if you'd like to make any
24 comments.

25 MEMBER CHIVARO: No, I agree with Ms. Olsen.

1 You know, this has been open for four years and it's kind
2 of a last-minute request to ask us to reconsider or to
3 take additional evidence on things that were not in the
4 record, that they've had ample time to put into the
5 record. So I'm also prepared to vote.

6 CHAIR SHEEHY: I want to just add my agreement
7 to the comments Mr. Chivaro just made. I had already
8 expressed that I'm concerned that this is all coming to
9 us for the first time today, when it could have come in
10 anytime in the last four years.

11 And I would also like to note that I think that
12 if we were to go back and look at the different state
13 funding streams for maintenance of local streets and
14 roads, I'm quite convinced that the record would show
15 that the state subvenes hundreds of millions of dollars
16 to cities and counties and other local government
17 jurisdictions specifically for the purpose maintaining
18 local streets and roads. I've realized that research is
19 not before us today, but I'm quite confident that that's
20 what the record would show.

21 I am prepared to vote on this matter today.

22 So I'm wondering if we have a motion?

23 MEMBER LUJANO: One more question.

24 CHAIR SHEEHY: Yes, Mr. Lujano?

25 MEMBER LUJANO: I would direct this to counsel.

1 In the past, have we allowed additional
2 informational to come during the hearing and held things
3 over?

4 MS. HIGASHI: Yes, we have.

5 MEMBER LUJANO: And that's just my concern.
6 It's just if we vote on this and there are questions, you
7 know, how is it going to impact the claimants and if they
8 do -- well, I'd just leave it at that.

9 CHAIR SHEEHY: Mr. Worthley?

10 MEMBER WORTHLEY: Mr. Chair, in listening to
11 all the comments, as I look at it, the issue here has to
12 do -- the heart of it really is this issue of the *Merced*
13 case and whether or not we have a practical compulsion
14 argument that would be made as it relates to maintenance
15 and repairs.

16 The streetlights is an example of that. But
17 there is a broad and generic question, and that was why
18 I asked the question: Is that properly before us today?
19 In the testimony I thought given by Mr. Mischel, I think
20 he made the comment that it was not.

21 And if it is, I'm prepared to vote on that
22 issue today.

23 The specific examples of how that plays itself
24 out probably need to be worked out in the parameters and
25 guidelines or something like that. But I use the

1 example -- I've thought of the example of, you know, is
2 it discretionary to rebuild a jail that burns down? Is
3 it discretionary to build a board of supervisors office
4 that burn down?

5 Do you see what I'm saying? There are things
6 that are discretionary. There are other things which are
7 not really discretionary. They're discretionary in the
8 fact that you have to get a building permit, you have to
9 meet zoning requirements; but the fact of the matter is,
10 from a practical standpoint, you have to do those things.
11 You have to fix roofs. You have to maintain roads,
12 surfaces. Those are things that you have to do. And
13 they're practical.

14 So if that's before us today, I could vote on
15 that.

16 And the other part of what's an example of that
17 is another matter in my mind.

18 CHAIR SHEEHY: Ms. Shelton?

19 MS. SHELTON: Let me just say that those really
20 are not issues for parameters and guidelines. They
21 really would need to be decided at the test-claim phase
22 because they are questions of law.

23 The Statement of Decision has to decide, if
24 there is an approved position, what activities are
25 reimbursable and under what scope. You've got to be able

1 to define it so that you can put it over to P's and G's
2 because the only authority really that the Commission has
3 to add activities to the parameters and guidelines are
4 only those that are reasonably necessary to carry out the
5 mandated activity.

6 So even if you wanted to go in that direction,
7 we would still need to take it back and parse those out.

8 CHAIR SHEEHY: Mr. Mischel?

9 MR. MISCHEL: I might just make one point
10 because I didn't think the practical compulsion issue was
11 really going to come up.

12 But at least the way I read the *Kern School*
13 *District* case, when the Supreme Court was talking about
14 practical compulsion, it was really talking about a
15 practical compulsion created and mandated by the State,
16 that it still comes back to the State is telling you to
17 do something.

18 And the City of Newport Beach in its comments
19 to the staff analysis pointed out that local governments
20 have to ensure the health and the safety and the
21 protection of its populace. And I don't disagree. I
22 mean, that is why government exists. But that doesn't
23 create a state mandate, a state-mandated practical
24 compulsion, which is I think what the *Kern* case was
25 talking about. That is, it's either a state law or it is

1 something the State will do, which is so Draconian, that
2 you really can't get out of complying with some policy.

3 And so the fact that, yes, if the roof is about
4 to cave in, you have liability issues, you have
5 responsibilities to your constituents, which you wouldn't
6 be in government if you didn't want to fix it. But
7 that's not the State telling you to fix it.

8 And I think that's the distinction you have to
9 make when you get to the question of practical compulsion
10 when it comes to maintenance, rebuilding, or whatever it
11 may be.

12 CHAIR SHEEHY: Ms. Shelton, did you want to add
13 something else?

14 MS. SHELTON: This is a very unsettled area of
15 the law, and I know this is what Ms. Gmur is probably
16 going to say, too.

17 That's true all about *Kern*, except that a year
18 later the Supreme Court came out with the *San Diego*
19 *Unified School District* decision. That decision was a
20 little bit different in that it was dealing with --
21 certain portions of it were dealing with a school
22 District's discretionary decision to expel a student for
23 offenses such as -- let's see, possession of drugs, other
24 explosives, assault and battery, and those types of
25 criminal offenses.

1 And there, the Court did not answer the
2 question, but the Court did look at a constitutional
3 provision that requires schools to have a safe
4 environment for pupils and employees.

5 And a constitutional provision is -- that's all
6 it says, you have to have a safe environment for pupils
7 and their employees.

8 You know, the Court instructed -- not
9 instructed, but advised that we really need to take a
10 look at things like that.

11 Now, that constitutional provision is not
12 something that was -- I don't remember if that was a
13 legislative initiative.

14 MS. HIGASHI: It was the Victim's Bill of
15 Rights, Prop. 8, many, many years ago.

16 MS. SHELTON: I don't right now remember if
17 that was a legislative initiative or a voter initiative
18 to put into the Constitution. That may make a difference
19 with the argument. I don't remember at this point.

20 But what they were trying to get reimbursed for
21 were the downstream due-process requirements that were
22 required by the State once you took on that discretionary
23 decision.

24 It is a complicated area of the law.

25 I do believe -- you have to have evidence in

1 the record or the law. You can't just make the finding
2 that there's practical compulsion.

3 MEMBER BRYANT: May I ask one more question on
4 that Public Contracts Code?

5 As I'm reading through the staff analysis, it
6 appears to me that no matter -- you have to follow the
7 Public Contracts Code and go through all these steps; but
8 that at the end, the governing body of the city or county
9 can vote by four-fifths vote and not -- and say
10 something -- that they can do it a different way.

11 Am I reading that right?

12 MS. BORZELLERI: Yes, there are a lot of
13 exceptions all the way through the Public Contract Code,
14 depending on the type of agency that you're talking
15 about. And each one would need to be looked at
16 separately.

17 But, generally, for emergencies, which may take
18 into account some of what Mr. Worthley is talking about,
19 the governing body has a lot of discretion with regard to
20 the Public Contract Code, because I think the state
21 really was trying not to tie their hands when there was
22 an emergency.

23 So we do show that in many instances, the
24 Public Contract Code does not require them to contract
25 out to do certain things.

1 So, yes, you're reading it correctly.

2 MEMBER LUJANO: I have a question.

3 CHAIR SHEEHY: Yes, Mr. Lujano?

4 MEMBER LUJANO: So when they talked about the
5 Public Contract Code, they had no discretion to hire more
6 staff, more public employees, they had to go out for
7 contract.

8 Do you agree with that or you have to look at
9 that?

10 MS. BORZELLERI: Well, I have to look at each
11 situation, because there are so many exceptions as we go
12 down the line, that we would need to know that.

13 Generally speaking, for cities, they are
14 required to contract out if the project is going to be
15 more than \$5,000. But then there are many exceptions
16 down the road that say they can use their own employees
17 if certain conditions are met and use a force account and
18 that sort of thing.

19 Maybe DIR can help us on this issue.

20 MEMBER LUJANO: Well, do you think that if they
21 don't have discretion, then that would compel them? That
22 it would --

23 MS. BORZELLERI: That would constitute legal
24 compulsion, yes. If, for a particular instance, the
25 Public Contract Code covered it and they were required to

1 contract out by the Public Contract Code, and there
2 wasn't an exception down the road that you could find,
3 that would constitute legal compulsion.

4 MEMBER LUJANO: And that would change your
5 recommendation?

6 MS. SHELTON: Well, that's legal compulsion to
7 contract. But there's still another decision to make on
8 whose decision is it to even engage in the public works
9 project.

10 MS. BORZELLERI: Correct.

11 MS. SHELTON: So there's two aspects to it.

12 MEMBER LUJANO: So there's a questions again in
13 the record.

14 MS. SHELTON: Yes.

15 MEMBER LUJANO: See, that's what I'm struggling
16 with. There is still a question here.

17 Before, it was like, "Okay, if you're telling
18 me there's nothing in the record, okay. You've brought
19 it you up."

20 Now, there's a question -- I'm having
21 questions.

22 CHAIR SHEEHY: I'd like to make a comment.

23 It's a matter of record here that two members of the
24 Commission have asked that this item be put over.

25 However, I think we have a majority of the members of the

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1 Commission that are prepared to vote on this today.

2 And I reiterate that I'm very concerned that this issue,
3 particularly the example that was used with the traffic
4 signals, was brought to us literally at the last minute
5 after the Commission meeting started. And that very much
6 concerns me.

7 So while I want to extend all courtesies to the
8 members of the Commission on putting an item over, I also
9 think that we have a majority of members that are
10 prepared to vote on this today. And that would be my
11 inclination.

12 Mr. Lujano?

13 MEMBER LUJANO: Two questions -- or one, just
14 to remind the Commissioners that we've allowed
15 information to come in before. And two, if we are going
16 to vote on this, I'd request maybe a ten-minute recess if
17 possible.

18 CHAIR SHEEHY: Certainly.

19 Mr. Glaab?

20 MEMBER GLAAB: Thank you, Mr. Chairman and
21 Members.

22 Commissioners Olsen and Bryant made some
23 comments that resonate with me. The one that
24 Commissioner Olsen said was that, you know, the claimant
25 knew that this was coming along and that it had been

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1 engaged in negotiations and discussions with staff. That
2 clearly is the case here, and I see that.

3 Commissioner Bryant also made the point that
4 this is extremely broad. I think the term used, it was
5 the whole enchilada; and I concur with that.

6 My reasoning for suggesting or to be willing
7 to put this over would be to allow the claimant to take
8 those comments to heart; and possibly at that time come
9 back with a reduced scope, possibly, and the additional
10 information. And this is out of a sensitivity to the
11 claimant, you know, Newport Beach, because they clearly
12 feel they have a case.

13 But those are my comments, and I offer them
14 only for the purposes of discussion.

15 Thank you.

16 CHAIR SHEEHY: Thank you, Mr. Glaab.

17 MEMBER BRYANT: I think we should take
18 Mr. Lujano's suggestion of a ten-minute recess. I
19 wouldn't mind having a minute to read this again.

20 CHAIR SHEEHY: I concur with the recommendation
21 of my colleague.

22 The Commission on State Mandates will take a
23 ten-minute recess.

24 *(A recess from 11:06 a.m. to 11:15 a.m.)*

25 CHAIR SHEEHY: Thank you, ladies and gentlemen.

1 The Commission on State Mandates meeting will come back
2 to order.

3 I'd like to at this time ask our executive
4 director to address several points that I just discussed
5 with her.

6 Paula, could you please?

7 MS. HIGASHI: One of the questions that came up
8 today is just the difference between testimony at the
9 hearing and also amending a test claim and adding new
10 statutes to a test claim filing. And what I just wanted
11 to remind everyone of is the fact that you may recall at
12 our last hearing, we had the test claim filed on LAFCO.
13 And the week of the hearing, the claimants filed an
14 amendment to that test claim, which I immediately severed
15 from the pending test claim that was on the agenda, so we
16 could proceed with that hearing.

17 And the claimants understood the regulations
18 correctly. By filing it, they preserved their rights to
19 be amending that old test claim and also to cover the
20 issues that were related, that they felt were -- they
21 realized at that time had not been addressed in that test
22 claim filing.

23 And I just -- and Ms. Gmur and I had had
24 discussions before that hearing so that she did get that
25 filing in, preserved her filing date. And that amendment

1 was accepted.

2 There have been other hearings as well. And
3 Mr. Lujano asked this question earlier, and I just wanted
4 to expand that, yes, certainly we have taken testimony at
5 hearings; yes, we have had to change staff analyses. But
6 when that has occurred, typically, it's based on factual
7 information of costs, information about funding. It's
8 not necessarily been information where additional
9 statutes are mentioned during the course of a hearing,
10 statutes which are not pled, statutes which are not part
11 of a record, and that are actually not before the
12 Commission in terms of mandate determination, and the
13 subject of the mandate determination.

14 Because if you just look at the face sheet for
15 this test claim, it says, "Labor Code sections, and DIR
16 regulations and executive orders." It doesn't say
17 "Public Contracts Code," it doesn't say "Vehicle Code."
18 But it's limited to the Labor Code and the prevailing
19 wage statutes.

20 So the staff analysis before you addresses the
21 Labor Code and what was actually pled.

22 And I just wanted to clarify that because I
23 know there were some questions.

24 CHAIR SHEEHY: I just want to ask one question
25 of Ms. Gmur.

1 MS. GMUR: Yes.

2 CHAIR SHEEHY: I just want to clarify you are
3 aware of the process for amending a test claim?

4 MS. GMUR: You know, I am, but --

5 CHAIR SHEEHY: And you were also aware that
6 before this meeting started, that clock had stopped
7 running for you?

8 MS. GMUR: Yes, I am. And I'm not certain that
9 we should amend it.

10 CHAIR SHEEHY: Okay, very good.

11 Do we have any comments from members of the
12 Commission?

13 *(No response)*

14 CHAIR SHEEHY: Okay, the decision of the Chair
15 is, I would like to entertain a motion on the analysis
16 that's before us, that's dealing with Labor Code; it's
17 not dealing with the Public Contracting Code or the
18 Vehicle Code. If this test claim was to be amended, it
19 would have needed to have happened before today, before
20 this meeting was convened.

21 And since it didn't, the preference of the
22 Chair would be to see if we can take action on this item
23 today.

24 So having said that, do we have a motion from a
25 member of the Commission?

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1 MEMBER OLSEN: I'll move adoption of the staff
2 analysis.
3 CHAIR SHEEHY: Ms. Olsen moves adoption.
4 MEMBER CHIVARO: Second.
5 CHAIR SHEEHY: Mr. Chivaro is the second.
6 Paula, please call the roll.
7 MS. HIGASHI: Mr. Chivaro?
8 MR. CHIVARO: Aye.
9 MS. HIGASHI: Mr. Glaab?
10 MR. GLAAB: Aye.
11 MS. HIGASHI: Mr. Lujano?
12 MEMBER LUJANO: Yes.
13 MS. HIGASHI: Mr. Olsen?
14 MEMBER OLSEN: Aye.
15 MS. HIGASHI: Mr. Worthley?
16 MEMBER WORTHLEY: No.
17 MS. HIGASHI: Ms. Bryant?
18 MEMBER BRYANT: Aye.
19 MS. HIGASHI: Mr. Sheehy?
20 CHAIR SHEEHY: Aye.
21 MS. HIGASHI: The motion is adopted.
22 CHAIR SHEEHY: Okay.
23 MS. HIGASHI: Item 10, Proposed Statement of
24 Decision.
25 MS. BORZELLERI: The only issue before the

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1 Commission on this item is whether the Statement of
2 Decision accurately reflects the Commission's decision on
3 the previous item, Item 9.

4 Staff would make minor changes to the final
5 Statement of Decision to reflect witnesses, testimony,
6 and the vote count.

7 CHAIR SHEEHY: Thank you.

8 Do we have a motion?

9 MEMBER OLSEN: So moved.

10 MEMBER CHIVARO: Second.

11 CHAIR SHEEHY: Paula, please call the roll.

12 MS. HIGASHI: Ms. Bryant?

13 MEMBER BRYANT: Aye.

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: Aye.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Aye.

24 MS. HIGASHI: Mr. Sheehy?

25 CHAIR SHEEHY: Aye.

1 MS. HIGASHI: The motion is adopted.

2 MS. GMUR: Thank you, Commissioners.

3 MR. MISCHEL: Thank you.

4 CHAIR SHEEHY: Thank you.

5 MS. HIGASHI: This brings us to the very end of
6 the binder, Item 17, Chief Counsel Camille Shelton's
7 report.

8 MS. SHELTON: I have nothing further to add to
9 this report, unless there are any questions.

10 CHAIR SHEEHY: Do we have any questions of
11 Ms. Shelton?

12 *(No response)*

13 CHAIR SHEEHY: Paula?

14 MS. HIGASHI: Item 18 is my report, an update
15 on the pending workload.

16 And I've given you a copy of the State
17 Controller's recent report to the State Legislature and
18 the Department of Finance on the accounts on mandate
19 reimbursement claims that are pending.

20 I've also given you a tentative set of agenda
21 items for the January and March hearings. And what --
22 because of recent court dates that have been set, as well
23 as briefing dates, all of these test claims that are
24 currently listed are not going to be heard in January.
25 We are going to have to change the date and move them

1 forward because we have so much other work that's
2 competing for our attention at the same time. However,
3 we will have other agenda items.

4 And another item that we're going to place on
5 the agenda is going to be what we're going to term as a
6 "workshop on AB 1222." So at that time, we will cover
7 the changes in the Government Code and how this affects
8 the Commission's decision-making and go over exactly what
9 staff is doing in the way of implementation.

10 Today, you adopted the first step in developing
11 regulations to implement AB 1222. And if there's public
12 testimony -- if a public hearing is requested on that
13 regulation packet at the same time, we can also have that
14 public hearing on the regulations.

15 So our focus for the next month and a half,
16 two months, is very seriously on making sure we properly
17 implement AB 1222, since the law takes effect.

18 And we also have one agenda item that we have
19 to have in January, which is another one of the
20 legislatively directed actions to amend parameters and
21 guidelines. And this is a result of legislation.

22 We also have a couple of statewide cost
23 estimates planned for January. And we hope to get the
24 test claims that we're having to move from January on the
25 March agenda.

1 So your workload continues. And all of the
2 coming agenda items, as you can see, we have prevailing
3 wage, disabled students, notice to students, expulsions.
4 They're all major agenda items in terms of complexity,
5 issues covered, and just size and breadth, and enormity
6 of the statutes that are being analyzed. So I just
7 wanted to point that out.

8 Are there any questions about that?

9 *(No response)*

10 MS. HIGASHI: Then that's all I have to say, if
11 you don't have any questions.

12 Ms. Patton, do you have any reminders about
13 lunch or announcements?

14 MS. PATTON: For those of you that are
15 attending our holiday lunch, it's at noon at Frank Fats
16 upstairs.

17 CHAIR SHEEHY: Great. Thank you, Ms. Patton.

18 Do we have any additional public comment?
19 Would anybody like to come forward and enter anything
20 into the record at this time?

21 *(No response)*

22 CHAIR SHEEHY: Okay. With no further
23 business to conduct today, I would entertain a motion to
24 adjourn.

25 MEMBER GLAAB: So moved.

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MEMBER WORTHLEY: Second.

CHAIR SHEEHY: Thank you.

The Commission on State Mandates meeting has
adjourned.

(The meeting concluded at 11:23 a.m.)-

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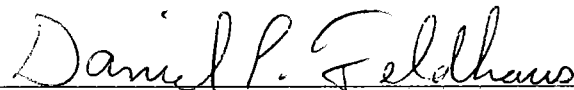
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I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

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

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

In witness whereof, I have hereunto set my hand on December 20, 2007.



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