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COMMISSION ON
STATE MANDATES

ORIGINAL

PUBLIC HEARING

COMMISSION ON STATE MANDATES

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TIME: 1:32 p.m.

DATE: Monday, December 4, 2006

PLACE: Department of Water Resources
1416 Ninth Street, First Floor
Auditorium
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported by:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN, Chair
Representative for MICHAEL GENEST
Director
State Department of Finance

PAUL GLAAB
City Council Member
City of Laguna Niguel

AMY HAIR
Representative for STEVE WESTLY
State Controller

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

SEAN WALSH
Director
State Office of Planning and Research

--oOo--

A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

NANCY PATTON
Assistant Executive Director

CAMILLE SHELTON
Chief Legal Counsel
(Items 5, 6, 13, and 14)

DEBORAH BORZELLERI
Senior Commission Counsel
(Items 9 and 10)

KATHERINE TOKARSKI
Commission Counsel
(Items 7 and 8)

--o0o--

PUBLIC TESTIMONY

Appearing Re Item 5 and Item 6:

For Claimant San Jose Unified School District:

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

For Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 7 and Item 8:

For Claimant City of Newport Beach:

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

TERRY ULASZEWSKI
Fire Support Services Manager
Newport Beach Fire and Marine Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 95658-8915

GLEN EVERROAD
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 95658-8915

For Department of Finance:

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

DONNA FEREBEE
Staff Counsel III
Department of Finance

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 7 and Item 8: (Continued)

For the State Fire Marshal:

GINEVRA CHANDLER
Chief Counsel
Department of Forestry and Fire Protection
1416 Ninth Street, Room 1516-20
P.O. Box 944246
Sacramento, CA 94244-2460

MARILYN PENNY NICHOLS
Staff Services Analyst
Office of the Fire Marshal
Department of Forestry and Fire Protection
1416 Ninth Street, Room 1516-20
P.O. Box 944246
Sacramento, CA 94244-2460

Appearing Re Item 9 and Item 10:

For Claimants City and County of Sacramento:

PAMELA STONE
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

JOHN LIEBERT, Attorney
Liebert Cassidy Whitmore
6033 West Century Boulevard, Suite 500
Los Angeles, CA 90045

DEE CONTRERAS
City of Sacramento
915 I Street, Room 4133
Sacramento, CA 95814

EDWARD J. TAKACH
Labor Relations Officer
City of Sacramento
915 I Street
Sacramento, CA 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 9 and Item 10: (Continued)

For Claimants City and County of Sacramento:

KRISTA C. WHITMAN
Supervising Deputy County Counsel
County of Sacramento
700 H Street, Suite 2650
Sacramento, CA 95814

For Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance

DONNA FEREBEE
Staff Counsel III
Department of Finance

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

For State Department of Personnel Administration:

WENDI L. ROSS
Labor Relations Counsel
Department of Personnel Administration
1515 S Street, North Building, Suite 400
Sacramento, CA 95814

Appearing re Item 13:

For Claimant County of Los Angeles:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 13: *(Continued)*

For City of Sacramento

DEE CONTRERAS
City of Sacramento

For Claimant County of San Bernardino:

BONNIE TER KEURST
Manager, Reimbursable Projects
County of San Diego Auditor/Controller-Recorder
222 W. Hospitality Lane, Fourth Floor
San Bernardino, California 92415-0018

For City of Los Angeles:

LAURA FILATOFF
City of Los Angeles

DAVID W. MCGILL
Lieutenant II
Los Angeles Police Department
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Los Angeles, CA 90013

For State Controller's Office:

JIM L. SPANO
Chief, Compliance Audits Bureau
Controller of California
300 Capitol Mall, Suite 518
Post Office Box 942850
Sacramento, CA 94250-5874

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Item 13: (Continued)

For Department of Finance:

CARLA CASTANEDA
Principal Program Budget Analyst
Department of Finance

For California State Association of Counties:

STEVE KEIL
Director of Legislative Services
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

For Regional Council of Rural Counties:

STACI HEATON
Director of Regulatory Affairs
801 Twelfth Street, Suite 600
Sacramento, CA 95814

Appearing re Item 14:

For Claimant County of Los Angeles:

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

For Claimant County of Stanislaus:

PAMELA STONE
MAXIMUS

A P P E A R A N C E S

PUBLIC TESTIMONY

For Claimant County of Stanislaus:

LINDA DOWNS
Assistant Director
Behavioral Health and Recovery Services
County of Stanislaus
800 Scenic Drive
Modesto, CA 95350

For State Controller's Office:

GINNY BRUMMELS
Section Manager
Local Reimbursement Section
State Controller's Office
3301 C Street, Suite 500
Sacramento, CA 95816

JIM L. SPANO
Chief, Compliance Audits Bureau
Controller of California

For Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance

Appearing re Public Comment on Mandate Reform:

For Education Mandated Cost Network:

ROBERT MIYASHIRO
Education Mandated Cost Network

For San Jose Unified School District:

PATRICK DAY
San Jose Unified School District

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing re Public Comment on Mandate Reform:
(Continued)

For California State Association of Counties:

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

STEVE KEIL
Director of Legislative Services
California State Association of Counties

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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>22</u>	<u>15</u>	<u>change "LED" to "lead"</u>
<u>67</u>	<u>24</u>	<u>cross-off one "L" on</u> <u>miliias</u>
<u>68</u>	<u>2</u>	<u>cross off "same" and</u> <u>replace it with "claim"</u>
<u>69</u>	<u>5</u>	<u>Cross of the letter "g"</u> <u>in Tagach and replace it</u> <u>with a letter "k". (Takach)</u>
<u>155</u>	<u>10</u>	<u>cross off "research and</u> <u>development" and replace</u> <u>it with "reimbursement"</u>
<u>163</u>	<u>23</u>	<u>Cross off "Rm" and</u> <u>replace it with "RRM"</u>
<u>177</u>	<u>18</u>	<u>Cross off "BARNES" and</u> <u>replace it with "WALSH"</u>

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Commission on State Mandates – December 4, 2006

1 BE IT REMEMBERED that on Monday, December 4,
2 2006, commencing at the hour of 1:32 p.m. thereof, at the
3 Department of Water Resources, 1416 Ninth Street, First
4 Floor Auditorium, Sacramento, California, before me,
5 DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the following
6 proceedings were held:

7 --oOo--

8 CHAIR SHEEHAN: The December 4th meeting of the
9 Commission on State Mandates is called to order.

10 Paula, would you call the roll?

11 MS. HIGASHI: Mr. Glaab?

12 MEMBER Glaab: Present.

13 MS. HIGASHI: Ms. Hair?

14 MEMBER Hair: Present.

15 MS. HIGASHI: Mr. Lujano?

16 MEMBER LUJANO: Present.

17 MS. HIGASHI: Ms. Olsen?

18 MEMBER OLSEN: Present.

19 MS. HIGASHI: Mr. Walsh is going to be a little
20 bit late. Mr. Worthley is absent.

21 Ms. Sheehan?

22 CHAIR SHEEHAN: Present.

23 MS. HIGASHI: Thank you.

24 CHAIR SHEEHAN: We have a quorum.

25 The first item are the minutes.

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1 MS. HIGASHI: Item 1, the minutes of the
2 October 4th meeting.

3 CHAIR SHEEHAN: All right, any changes?
4 Do members have any comments or edits on
5 the minutes?

6 (No audible response)

7 CHAIR SHEEHAN: If not, I'll entertain a motion.

8 MEMBER LUJANO: Move approval.

9 MEMBER GLAAB: Second.

10 CHAIR SHEEHAN: We have a motion and a second.
11 All those in favor, say aye.

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

13 CHAIR SHEEHAN: Any opposed?

14 MEMBER OLSEN: I should be noted as abstained,
15 because I was not present for that meeting.

16 CHAIR SHEEHAN: Okay, Ms. Olsen will be
17 reflected as abstaining.

18 MS. HIGASHI: Then we have the minutes for
19 October 26th.

20 CHAIR SHEEHAN: That was the October 4th?

21 Okay, so the October 26th meeting. If there are
22 no changes or edits to the minutes, then we would
23 entertain a motion.

24 MEMBER GLAAB: So moved.

25 MEMBER OLSEN: Second.

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1 CHAIR SHEEHAN: We have a motion and a second to
2 approve the October 26th minutes.

3 All those in favor, say "aye."

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

5 CHAIR SHEEHAN: Any opposed?

6 *(No audible response)*

7 CHAIR SHEEHAN: Those minutes are approved also.

8 All right.

9 MS. HIGASHI: We're now at the Consent Calendar,
10 Item 3.

11 The Consent Calendar consists of Item 12,
12 *Charter Schools III* Proposed Parameters and Guidelines,
13 and Item 15, the request to amend Parameters and
14 Guidelines to add time study language to all P's & G's.

15 CHAIR SHEEHAN: Okay.

16 MS. HIGASHI: Item 11 has been postponed.

17 CHAIR SHEEHAN: Okay, so we just have the two
18 items on consent.

19 Any objections to the Consent Calendar?

20 *(No audible response)*

21 CHAIR SHEEHAN: No?

22 All right, is there a motion to adopt the
23 proposed Consent Calendar?

24 MEMBER OLSEN: So moved.

25 MEMBER GLAAB: Second.

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1 CHAIR SHEEHAN: We have a motion and a second.
2 It's been moved and seconded.

3 All those in favor, say "aye."

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

5 CHAIR SHEEHAN: Any opposed?

6 *(No audible response)*

7 CHAIR SHEEHAN: The Consent Calendar is adopted.
8 Okay.

9 MS. HIGASHI: There are no issues to consider
10 under Item 4.

11 This brings us to the test claim portion of our
12 hearing today.

13 CHAIR SHEEHAN: Okay.

14 MS. HIGASHI: And as is customary, at this time
15 I would like to invite all of the parties, witnesses,
16 representatives who intend to come to the table and
17 testify on any of the test claim matters to please stand.

18 *(Several persons stood to be sworn or affirmed)*

19 MS. HIGASHI: Do you solemnly swear or affirm
20 that the testimony which you are about to give is true
21 and correct based upon your own personal knowledge,
22 information or belief?

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

24 MS. HIGASHI: Thank you very much.

25 CHAIR SHEEHAN: And I'm assuming everyone will

1 be brief when you all get up to testify; correct?

2 MR. PETERSEN: We're off to a bad start then;
3 aren't we?

4 MS. HIGASHI: Item 5, our first test claim, is
5 Pupil Safety Notices. This item will be presented by
6 Chief Counsel Camille Shelton.

7 MS. SHELTON: Good afternoon.

8 This test claim concerns *Pupil Safety Notices*
9 issued by school districts to parents, guardians, staff,
10 and students regarding health, safety, and legal issues.
11 It also includes statutes permitting school districts to
12 withhold the transcripts, grades, and a diploma of a
13 student who has willfully damaged or failed to return
14 school property. Although schools have discretion to
15 withhold these items, they are mandated to establish
16 rules and regulations governing the procedures for
17 withholding the grades, transcripts, and diplomas.

18 In addition, a transferee's school is mandated
19 to continue to withhold these items until it receives
20 notice from the school district that initiated the
21 decision to withhold the student's grades, transcripts or
22 diploma, that the decision has been rescinded.

23 For the reasons stated in the staff analysis,
24 staff finds that the activities listed on page 25
25 constitute a reimbursable state-mandated program within

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1 the meaning of Article XIII B, Section 6, of the
2 California Constitution.

3 Staff recommends that the Commission adopt this
4 analysis that partially approves the test claim.

5 Will the witnesses and their representatives
6 please state your names for the record?

7 MR. PETERSEN: Keith Petersen representing the
8 test claimant.

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

11 CHAIR SHEEHAN: Mr. Petersen, would you like to
12 go first?

13 MR. PETERSEN: Certainly.

14 I will be brief. There are no new issues. I
15 just want to comment for the record that I disagree with
16 the staff's application of the Kern High School case.
17 And, unfortunately, I have to agree with their
18 application of the City of Merced, even though I don't
19 like that court decision. But we've been talking about
20 that for three years, so there's no reason to --

21 CHAIR SHEEHAN: Finally.

22 MR. PETERSEN: Yes.

23 CHAIR SHEEHAN: Is that it?

24 MR. PETERSEN: That's it.

25 CHAIR SHEEHAN: Any questions for Mr. Petersen?

1 (No audible response)

2 CHAIR SHEEHAN: No?

3 All right, Ms. Ferebee?

4 MS. FEREBEE: The Department of Finance concurs
5 with the final staff analysis.

6 And just by way of clarification, the
7 Legislature has not appropriated funds from the Child
8 Health and Safety Fund pursuant to Education Code
9 section 32245. That was one question presented in the
10 analysis.

11 CHAIR SHEEHAN: Okay, so that helps clarify it.
12 Camille?

13 MS. SHELTON: There is a statute that does
14 provide for offsetting savings if the Legislature does
15 appropriate funds for the LED notices. So if there's
16 nothing that has been appropriated, then they wouldn't
17 have an offset to identify.

18 CHAIR SHEEHAN: Okay, any other questions for
19 the witnesses?

20 (No audible response)

21 CHAIR SHEEHAN: Is there any further discussion
22 on Item Number 5?

23 (No audible response)

24 CHAIR SHEEHAN: If not, we will entertain a
25 motion.

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1 MEMBER OLSEN: Move it.

2 CHAIR SHEEHAN: Okay, we move the staff
3 recommendation.

4 MEMBER GLAAB: And second.

5 CHAIR SHEEHAN: We have a second.

6 All right. We have a motion and a second to
7 move the staff recommendation.

8 *All those in favor, say "aye."*

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

10 CHAIR SHEEHAN: Opposed?

11 *(No audible response)*

12 CHAIR SHEEHAN: That motion carries.

13 MS. HIGASHI: Item 6, the proposed Statement of
14 Decision.

15 MS. SHELTON: This whole issue before the
16 Commission is whether the proposed Statement of Decision
17 accurately reflects any decision made by the Commission
18 in Item 5. The decision will be updated to reflect the
19 witnesses that were present at the hearings and the vote
20 count for this item.

21 CHAIR SHEEHAN: All right, would you all like to
22 say anything on Item 6?

23 MS. FEREBEE: No.

24 MR. PETERSEN: No comment.

25 CHAIR SHEEHAN: All right, any question from

1 staff or witnesses?

2 (No audible response)

3 CHAIR SHEEHAN: If not, we'll entertain a
4 motion.

5 MEMBER GLAAB: So moved.

6 MEMBER OLSEN: Second.

7 CHAIR SHEEHAN: All right, a motion and a
8 second.

9 All those in favor, say "aye."

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

11 CHAIR SHEEHAN: Any opposed?

12 (No audible response)

13 CHAIR SHEEHAN: The motion carries.

14 Thank you.

15 MR. PETERSEN: Thank you.

16 CHAIR SHEEHAN: That brings us to Item 7, the
17 CFIRS.

18 MS. HIGASHI: Item 7 will be presented by
19 Commission Counsel Katherine Tokarski.

20 MS. TOKARSKI: Item 7, *California Fire Incident*
21 *Reporting System Manual*. This amended test claim alleges
22 that a 1987 amendment to the Health and Safety Code and
23 the 1990 addition of the California Fire Incident
24 Reporting System Manual, also known as CFIRS, imposed a
25 reimbursable state-mandated program. All fire protection

1 agencies in California have had a duty since January 1st,
2 1974, to report information and data to the State Fire
3 Marshal relating to each fire in their jurisdiction
4 pursuant to Health and Safety Code Section 13110.5.

5 The State Fire Marshal issued the CFIRS manual
6 and reporting forms in 1974.

7 Staff finds that requiring the local
8 implementation of a computerized version of CFIRS with
9 submission of forms by diskette or magnetic tape
10 completed a new program or higher level of service on
11 local fire agencies. This was a significant substantive
12 change to the CFIRS program compared to what was required
13 pre-1975.

14 Claimants who concurred actual costs for
15 implementing the new computerized CFIRS format may be
16 eligible for one-time costs for acquiring and
17 implementing any necessary hardware and software.

18 However, staff finds that this activity is only
19 reimbursable from July 1st, 1990, the beginning of the
20 reimbursement period based on the filing date, until
21 June 30th, 1992, the date a letter was issued from the
22 State Fire Marshal, stating that fire incident reports
23 may be submitted by hard copy rather than diskette or
24 tape.

25 Other than the time-limited higher level of

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1 service for implementing a computerized version for
2 CFIRS, the claimants have failed to demonstrate how the
3 1990 CFIRS manual creates a new program or higher level
4 of service for filing incident reports beyond the broad
5 pre-1975 requirement that the chief fire official of each
6 fire department in the state shall furnish information
7 and data to the State Fire Marshal relating to each fire
8 which occurs within his area of jurisdiction in a time,
9 form, and manner prescribed by the State Fire Marshal.

10 The State Fire Marshal submitted a late filing
11 on November 30th, 2006, which you should all have,
12 requesting amendment of a sentence on page 12 of the
13 final staff analysis which references the California
14 All-Incident Reporting System rather than CFIRS.

15 If this analysis is adopted, staff recommends
16 that the sentence be substituted with a statement
17 regarding the purpose of CFIRS from the State Fire
18 Marshal's September 22nd, 1992, letter, found as
19 Exhibit C. This would be a non-substantive change.

20 Staff recommends that the Commission adopt this
21 analysis and partially approve the test claim as
22 described in the conclusion at page 22 of the final staff
23 analysis.

24 Will the parties and representatives please
25 state your names for the record?

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1 MS. GMUR: Juliana Gmur on behalf of the City of
2 Newport Beach.

3 MR. ULASZEWSKI: Terry Ulaszewski, Fire Support
4 Service Manager for the City of Newport Beach

5 MR. EVERROAD: Glen Everroad, City of Newport
6 Beach.

7 MS. CASTANEDA: Carla Castaneda, Department of
8 Finance.

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

11 MS. GEANACOU: Susan Geanacou, Department of
12 Finance.

13 MS. CHANDLER: Ginevra Chandler on behalf of the
14 State Fire Marshal.

15 MS. NICHOLS: Penny Nichols on behalf of the
16 State Fire Marshal.

17 CHAIR SHEEHAN: Go ahead.

18 MS. GMUR: Thank you.

19 Good afternoon, Commissioners.

20 With regard to the staff analysis, we concur
21 with it as far as it goes, but it does not provide for
22 reimbursement for ongoing costs.

23 CFIRS is a filing of a report with the state.
24 The CFIRS manual is the instructions that allow you to
25 fill out a form. It explains to you how it is that you

1 file this report.

2 The issue then is the higher level of service
3 between the original, the 1974 CFIRS manual, and the
4 current 1990 -- although it has been updated, the 1990
5 CFIRS manual.

6 There has been about 1500 pages of
7 administrative record on this matter. And I must say
8 that I was new to this case. I was not around at the
9 time of the filing. So certain others have had the
10 joyous opportunity of going through those 1500 pages.
11 And as I was doing that, there were charts, there were
12 graphs, there was argument on both sides. And as I was
13 reading these arguments, it seemed to turn on a question
14 of fact rather than a question of law.

15 Is the 1990 manual that much more difficult than
16 the 1974 manual? And I thought, well, I can read the
17 arguments, but I really am not finding either one
18 persuasive. So I thought I'd give it a shot myself.

19 I opened up the manuals and I took out the
20 forms, and I must admit, when you look at the forms at
21 face value, they look very, very similar. But there are
22 differences when you sit down and try to fill one out.

23 One of the primary differences between the 1974
24 and the 1990 manual is the definition of "incident."
25 Now, when you look at the form, it says put down an

1 incident number, and that incident number is your ability
2 to track this through the system. It's the number that's
3 been assigned to that incident. And it seems very
4 straightforward. But the definition has changed.

5 In the old manual, an "incident" was a fire.
6 Under the new manual, the incident is every time a
7 vehicle is dispatched. So we are filing more forms
8 because vehicles are dispatched for things other than
9 fires.

10 Moreover, when you try to actually fill out some
11 of the incidents, the codes used to describe them have
12 become more complex. The Fire Marshal is seeking
13 additional detail, which is fine, but it does take more
14 time and more effort to fill those out.

15 And, like me, you may not find that the
16 arguments have been sufficient on either side. It's easy
17 to look at rhetoric. But we're going to ask you -- and
18 I believe the handouts have been provided to everyone --
19 have they been passed out?

20 MS. HIGASHI: They've been passed out.

21 MS. GMUR: Great.

22 Then we're actually going to let you take a look
23 at the documentation in question.

24 And these are pages we've pulled out, so you
25 don't have to go through the 1500.

1 So for the record, these are pages number 303 in
2 the first handout. The second handout includes sections
3 pages 111 through 114, 121, and 139. And the final
4 handout is pages 297 to 299, and 329 to 335.

5 And, now, if you will hold your questions and
6 comments, I will turn this over to a real expert. This
7 is Mr. Terry Ulaszewski, and he is with the City of
8 Newport Beach.

9 And he is going to walk you through a short
10 exercise.

11 MR. ULASZEWSKI: Good afternoon.

12 I've been the fire service support manager for
13 the City of Newport Beach since 1997. And I have had
14 some extensive dealings with CFIRS, as we've tried to
15 implement the new NFIRS, which referred back to the old
16 days of the 1990 version.

17 I believe that the CFIRS 1990 mandated changes
18 to the scope of the incident report process that requires
19 a significantly higher level of service with requirement
20 for significant resources in addition to the resources
21 that were necessary from the earlier CFIRS.

22 I'd like to talk about three issues. One is,
23 there are significantly more reports. Second, there's a
24 significant increase in the data intensity. And third,
25 there's a significant increase in the degree of

1 difficulty that it takes in order to fill out the forms.

2 You have three handouts in front of you. The
3 first handout I'd like to talk about is the one that you
4 have as a half page. This page came from the CFIRS
5 manual, and it is the latest revision as of 11/98. That
6 was the manual that it came out of.

7 There's been a lot of discussion as to what is
8 mandatory, what is optional, what is "maybe," what is
9 "yes," what is "no." But I'd like you to read section A.
10 It says, "General information is completed each time the
11 fire department unit is dispatched."

12 The O.J. Simpson hearing verbiage on that would
13 be: If the tire rolls, the ink flows.

14 As you can see, it is not a big report. And I
15 think we're talking about semantics. Maybe there isn't a
16 big report that is due; but this top part, and section G
17 is required for every incident, not just fires -- it is
18 not required for EMS and hazmat, we're not arguing those
19 issues today. But every other incident in which a
20 dispatch is made -- and this applies also to automatic
21 and mutual aids with other fire departments.

22 I'd like you to flip that over now and take a
23 look at page 2.

24 What I did is I took our incidents from last
25 year -- this is from data date July 1st of 2005 through

1 the 30th of 2006. It should be a simple handout like
2 that.

3 And Glen is pointing it out.

4 I don't have the statistics available for the
5 '74 CFIRS or the '90 CFIRS, but I did have last year's,
6 and so I broke it out according to the current CFIRS
7 manual as to how it would be categorized. As you see, we
8 had a total of 8,684 incidents. If I reported those
9 under the 1990 CFIRS, we would have reported 201
10 incidents, fires only -- I'm sorry, '74 CFIRS.
11 pre-1990, the 1974 CFIRS.

12 If you look at the column further over to the
13 right, this is what is required by the front page, not
14 including medical, rescue, and hazardous conditions, we
15 would have reported 2,710 reports. That's a 13 times
16 order of magnitude increase in the amount of reports that
17 we are required to make under the 1990 CFIRS.

18 We left out the hazmat and the rescue incidents
19 because those are topics of another discussion, and we
20 didn't want to confuse the issue at this time.

21 If you said that every report -- and let's just,
22 for the sake of argument, every report took us an hour to
23 do, in 1994, it would require us 200 hours of report
24 time.

25 Under last year's -- or under the 1990 CFIRS, we

1 would have over a man year of report time that would be
2 required.

3 Any questions on the first set of handouts?

4 *(No audible response)*

5 MR. ULASZEWSKI: Let's go to "data intensity."
6 What I would like you to look at now is the page that
7 says, "CFIRS code book." This is a page right out of the
8 1974 code book. And go to the second page.

9 Just in general, let's look down the form. And
10 if you see in the upper right-hand corner, there's a
11 bunch of checked blocks. And this is a nicer,
12 user-friendly age in which we wrote things. It is not
13 data-intense.

14 There are places for codes to be listed; but for
15 the most part, there are blanks to be filled out. This
16 allowed the captain or battalion chief, whoever was
17 making the report, to spend about ten minutes to go
18 through and write down the facts of the incident, check
19 off the boxes as appropriate. And in some cases, what
20 would happen is they would never refer to a code book.
21 But what he would do is send the report on to a clerical
22 staff who had a lot of familiarity with it, and they
23 would fill out the rest. So there was a savings in terms
24 of a ten-minute captain's report, filling out the report
25 in written format, and a clerical perhaps spending ten to

1 15 minutes filling in the codes and forwarding it on to
2 the chief fire marshal's office.

3 If you look at page 2, which is the incident in
4 which if there was a casualty, either -- or death to a
5 fire member or to a civilian member, it's all check
6 boxes. You could finish this entire form without looking
7 at a book. Just run down, fill out the form, very easy,
8 very user-friendly.

9 Let's go on to the next form, which is the CFIRS
10 1990 form. That's the full form in front of you. The
11 top section, A, is what needs to be filled out for every
12 incident, and also G, which is the bottom section, where
13 the blue arrows are.

14 If you look at the form -- and when we start out
15 with Line 4, you immediately get into codes, the
16 "situation found" codes, the "method of the alarm" code,
17 the "type of weather" code, the "air temperature" code,
18 the "property management" code.

19 Let's go down to block 12 or line 12, "General
20 properties" code, specific property-use code. Suddenly,
21 you have to hit the code book.

22 The saying I would attach to this is, instead of
23 checking the box, you've got to check the book.

24 This resulted in significant increase in time
25 spent in terms of the reporting process.

1 If you take a look at the second page, which,
2 again, is the fire casualty report, which is very similar
3 to what it would be for civilian, again, no check boxes,
4 it's all codes. So this requires the fire captain or the
5 person that's preparing the report to go to the manual,
6 pull out the codes that are appropriate for the report,
7 and then to fill it out. No narrative.

8 He can't pass it down to a lower-paid clerical
9 staff person because it has to be put on here as to what
10 happened. And the obvious case is that the fire captain
11 or battalion chief is now spending a lot more time trying
12 to fill out a simple form, the report.

13 If you look at the two, which would be easier to
14 fill out: The first one or the second one?

15 The last item I want to talk about is the form's
16 complexity. And let's go through a little example.

17 We're going to go back to the CFIRS code book
18 package, the last attachment in there. And this is the
19 type of incidents. It equates to the situation found on
20 the 1990 CFIRS.

21 Let's go for an incident in which there is an
22 earthquake here in this building. As a result of an
23 earthquake, there's a gas leak in the basement. The fire
24 units are dispatched because of the gas leak. And before
25 they get here, a fire begins in the mailroom.

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1 Okay, let's go down to block line 1, and say,
2 what would we fill out into that code, the top line?

3 There is an explosion, but there's no
4 after-fire; so we wouldn't use that one. That was code
5 number 16.

6 Looking at the rest of them, my guess is that
7 it's going to be 11, building fire. Pretty easy.

8 Let's do the same thing to the "situation found"
9 report, which is, again, back to the CFIRS -- CFIRS 1990,
10 that's a little confusing.

11 Let's go to that same issue. There's an
12 earthquake, a gas leak in the basement, a fire erupts in
13 the mailroom. Well, first off, you'll find that you have
14 six or seven pages of choices to make now. And do we
15 make the choice as a fire explosion, overpressurization,
16 rescue, hazardous materials, service call, false alarm,
17 natural disaster?

18 Let's start with natural disaster. So there is
19 a Code 81 for natural disaster for an earthquake. So we
20 can fill that in the block.

21 Then there was a reported gas leak.

22 You would think that it might be under
23 "overpressurizations or explosions" but it's not. It's
24 under "hazardous conditions." And that's a 41, which is,
25 "Flammable gas and liquid conditions, including natural

1 gas leaks or gasoline or flammable liquid spills."

2 And then last but not least, I think we had a
3 fire. So we go to the "fire explosion" category, and we
4 put in "structure fire."

5 So where it took all of about ten seconds to do
6 the first one, we took about four times as long -- and
7 I'm prepared for this, so it took me a little bit of time
8 to walk you through it.

9 The bottom line is that it takes longer to fill
10 out the form.

11 These are the two books. This is the 1974
12 book -- that thick, mimeographed.

13 This is the 1990 book, that thick, printed.

14 If you have your clerical person filling in the
15 codes, you only need one copy. If you have 20 stations,
16 20 copies, so my printing costs are up.

17 One of the other things that happens with this
18 complexity is that there are keys in the state's data
19 structure that says if you put in block 15 -- in a
20 certain block, you put the answer "15." In block 50, you
21 can't put a "52," you can only put a "53" or "54." And
22 as a result of that, your data gets kicked out, which
23 adds to the overall process of trying to satisfy the
24 requirements of the Fire Marshal's office.

25 The bottom line, more time is being spent in the

1 1990, above the 1974 CFIRS. It's coming in terms of
2 increased reporting, it's coming in terms of an
3 unfriendly user device, and it's coming in terms of more
4 specific data complexity that adds to the time and the
5 labor and the amount of effort that is required to fill
6 out the same form.

7 Are there any questions?

8 CHAIR SHEEHAN: Questions of the witness?

9 MEMBER GLAAB: With the advancement of
10 technology, is there -- are these things being done
11 electronically, or are those being done the old-fashioned
12 way, just filling them out, filling paper out?

13 MR. ULASZEWSKI: For the sake of, I guess, a
14 good note, currently, it's being done electronically.
15 we have a system -- a computer software system that is
16 online. Our information currently is provided from our
17 dispatch. It electronically fills out portions of the
18 form. The captain goes in after a fire incident and
19 fills out portions of the form. And also, I have a
20 consultant that comes once every quarter, cleans up my
21 data, tells me that it's going to pass the scrub that
22 goes into the State Fire Marshal's computer, and that
23 costs me money. But, yes, it's working now.

24 And we have no argument with the fact that data
25 is good. If you would look at our statistics from the

1 1974, we would have probably had a lot more fires. Fires
2 are down, and they're down because we've collected data,
3 and we've learned that we need smoke detectors, we know
4 we need better building materials, we know we need
5 sprinkler systems, we know that there are certain types
6 of vehicles, appliances and things like that that cause
7 problems. That's all good. We're not arguing with that
8 at all.

9 Our issue is, the State has mandated that we
10 provide more data, and to provide that data, it takes
11 more time. That time has to be charged some place. In
12 addition to that, you have to buy the software systems,
13 you have to buy the consultants. That all costs money.
14 And we believe we should be reimbursed for that.

15 Thank you, sir.

16 CHAIR SHEEHAN: Any further questions for this
17 witness?

18 MEMBER LUJANO: I have a question.

19 CHAIR SHEEHAN: Go ahead.

20 MEMBER LUJANO: If the fire captain wasn't
21 filling out these reports, what would he be doing?

22 MR. ULASZEWSKI: Well, in our case, he would be
23 training new recruits. We have over a 75 percent change
24 in our staffing over the last four years. We are trying
25 to build up a solid cadre of people to put out fires.

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1 In some cases, he is not responding to the calls
2 because he is tied up, gathering information. He may not
3 be filling it out at the station; but if you look at some
4 of the information, to take it to the extreme, he might
5 have to be searching the inside of a house that's burned
6 down to find out what is the model of the toaster that
7 burned. I mean, that's part of the requirement to do.

8 MEMBER LUJANO: So how many more firefighters
9 have you had to hire because of this system?

10 MR. ULASZEWSKI: I would say that we haven't had
11 to hire any more firefighters; but in the current years,
12 we have hired more computer people. We just hired a new
13 computer person this year in order to manage all of the
14 fire systems.

15 CHAIR SHEEHAN: Okay, any other questions for
16 this witness?

17 *(No audible response)*

18 CHAIR SHEEHAN: Don't go far. There may be
19 some.

20 MR. ULASZEWSKI: Okay.

21 CHAIR SHEEHAN: Did you want to --

22 MR. EVERROAD: Yes, please.

23 Glen Everroad, City of Newport Beach.

24 And just to touch on Member Glaab's question,
25 prior to Terry's tenure with the city, between the time

1 that the electronic reporting requirement was introduced
2 in 1990 and the current state of affairs, cities were
3 given -- or fire districts were given to their own
4 resolution of software systems, so that the State Fire
5 Marshal proposed that the cities and fire districts
6 themselves would be better suited to determine how to
7 create this electronic reporting.

8 There wasn't the kind of consultant available to
9 us between 1990 and 1992 or '93 to satisfy -- to acquire
10 an off-the-shelf computer system to satisfy the reporting
11 requirements. So during that two-year period, what
12 you'll see in our test claim in terms of costs largely
13 relate to hiring somebody in a computer capacity to
14 develop a software system to satisfy the reporting
15 requirements. So there wasn't an off-the-shelf version
16 out. There weren't a lot of people that were versed in
17 preparing this. And the State Fire Marshal was not,
18 and I don't believe -- still is not, providing a system
19 for fire districts to report CFIRS or whatever the
20 current system is.

21 With that, I'd like to thank staff for their
22 recommendation of an approval of finding that the
23 computerization of CFIRS from July 1 of 1990 through
24 June 30 of 1992 is appropriate.

25 We think, though, it's a little bit

1 shortsighted. Staff analysis relates that other than the
2 limited higher level of service for implementing a
3 computerized version of CFIRS, the claimants have failed
4 to demonstrate how the 1990 CFIRS manual creates a new
5 program or higher level of service for filing incident
6 reports beyond the broad pre-1975 requirement that the
7 chief fire official of each fire department in the state
8 shall, and I quote, "Furnish information and dated to the
9 State Fire Marshal relating to each fire" -- emphasis on
10 the word "fire" -- "which occurs within his area of
11 jurisdiction," end quote.

12 Staff relies on the State Fire Marshal in their
13 analysis that the amount of data has not increased. The
14 State Fire Marshal concedes that the electronic reporting
15 is an increase of the level of service. And for that
16 limited period of time, to his providing clarification in
17 1992, we should be reimbursed for that.

18 It contends that the type and the net amount of
19 data to be reported for the fire incident is, and I
20 quote, "essentially the same."

21 The State Fire Marshal disregards the specific
22 increases and complexity of incidents we are asserting,
23 with the general statement, and I quote, "There has been
24 no change to the underlying services and functions
25 provided by California fire departments."

1 Talk to a fireman and ask him if the nature of
2 the service that we're providing in this century differs
3 from what it was in 1974. We didn't have hazmat calls.
4 We didn't have EMS calls. We're not claiming on those
5 two items, but there is a great deal of difference in the
6 fire authorities today.

7 We've demonstrated that, in reality, the new
8 CFIRS reporting requirement results in a greater than
9 tenfold increase in the number of incidents we're
10 required to report. It's not just fires today, excluding
11 hazmat materials -- hazardous materials and medical
12 incidents.

13 We also demonstrated by these examples that the
14 amount of time and the type of staff required to complete
15 the new CFIRS has increased cost to the City of Newport
16 Beach. Whereas the old CFIRS could be started in the
17 field in longhand, and then advanced to a clerical type
18 for coding purposes in the station, the new CFIRS
19 eliminates the longhand, converting entirely to codes,
20 requiring fire captains rely on the CFIRS manual in the
21 field to make these code conversions.

22 The City acknowledges that based on the State
23 Fire Marshal's November 3rd, '06, transmittal, that the
24 CFIRS system has evolved from the California Fire
25 Incident Reporting System to the more accurate

1 descriptor, "California All-Incident Reporting System,"
2 as of January of 2003. And we're conceding that the
3 CFIRS system may have ended in terms of a mandated
4 activity as of that date, January of 2003.

5 Thank you very much.

6 CHAIR SHEEHAN: Any questions for the witness?

7 *(No audible response)*

8 CHAIR SHEEHAN: All right.

9 MR. BURDICK: Allan Burdick on behalf of the
10 CSAC SB 90 Service.

11 And I just wanted to comment on this because it
12 became clear to me that many of these people here today
13 were not around and participated in the original filing
14 of the test claim and the implementation of the CFIRS
15 system. And I think for those years as relates to the
16 implementation that's been covered by staff, I think
17 there's a couple of very important things that should be
18 included and added.

19 When the system was first implemented, the State
20 at that time sanctioned -- I believe there were only two
21 software vendors and systems which were approved for use,
22 and purchased and used by local agencies.

23 Both of these systems had serious problems and
24 required considerable problems for local agencies in
25 amending those systems. And, first, there would have to

1 be some training, and then they weren't working, and then
2 they had to reenter. This became very complicated.

3 And many of these local agencies -- small fire
4 districts, particularly -- back in '90, '91 and/or '92,
5 those local agencies, many for the first time, this was
6 the first time they had any computer systems. They had
7 to actually go out and purchase computers for the very
8 first time, train their staff on the use of those
9 computers that they hadn't used before, and figure out
10 this whole process and implement it. And it was much
11 more time-consuming.

12 So I think as it relates to those early years,
13 and the staff looking at the costs which they are
14 recommending be approved and included in this, I think
15 those need to be expanded substantially to cover this
16 additional time and effort that it took, and many of the
17 things, the factors that were pointed out by the three
18 earlier witnesses that were included in here.

19 But because that piece is being treated
20 separately, I just wanted to comment on that for those
21 people that were around at that time and did see the time
22 and effort that was required to try to convert from, at
23 that time, a system which was relatively straightforward,
24 to this much more complicated system.

25 And in closing, I'd just like to say one thing

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1 for the members. This issue on mandates is essentially,
2 did it take more time and effort? Not was it good and
3 bad, was it a requirement, whatever. But the question
4 is, is there additional time and effort that was required
5 to do this that prevented a local agency and that person
6 from doing something else?

7 And I want to remind the members that that's
8 what we're looking at in this particular case: Did this
9 requirement take time away, did this require somebody to
10 do something that they would have not otherwise done?

11 So I want to thank you very much and I
12 appreciate the opportunity to be able to make those
13 additional comments.

14 CHAIR SHEEHAN: Great.

15 Thank you.

16 Questions for Mr. Burdick?

17 *(No audible response)*

18 CHAIR SHEEHAN: No?

19 All right. The Department of Finance?

20 MS. CASTANEDA: Carla Castaneda, the Department
21 of Finance.

22 We have no objection to the staff analysis, and
23 we will withhold any comments on the eligibility of the
24 one-time costs until we review the Parameters and
25 Guidelines.

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1 CHAIR SHEEHAN: Okay.

2 MS. GEANACOU: Yes, Susan Geanacou, Department
3 of Finance.

4 I have one comment. I hope it's clarifying.

5 It does show up in the Commission's final staff
6 analysis. But I did want to reiterate that the Health
7 and Safety Code, 13110.5, only ever required fire
8 incidents to be reported. And if the Fire Marshal had
9 ever attempted even to require more to be reported --
10 which we're not arguing they did -- such a requirement is
11 prohibited because it's contrary to the Health and Safety
12 Code, the statutory law, and then also to case law which
13 prohibits administrative rules that are contrary to
14 statute.

15 CHAIR SHEEHAN: Okay, thank you.

16 The State Fire Marshal?

17 MS. CHANDLER: We'll do our best to respond to
18 the comments that we've heard.

19 CHAIR SHEEHAN: Go ahead.

20 MS. CHANDLER: I'll try not to take too much of
21 your time.

22 I'm Ginny Chandler. I'm the chief counsel for
23 the California Department of Forestry and Fire
24 Protection, which includes the State Fire Marshal.

25 I have with me also Penny Nichols who's been

1 involved in this program.

2 Like many of the people at this table, neither
3 of us were here when the original 1974 manual was put in
4 place, nor were we here when the 1990 manual was put into
5 place.

6 But what I do want to be clear about is that the
7 State Fire Marshal did concede that between, roughly,
8 1989 and 1992, it was unclear whether or not local fire
9 departments had to report on fires using a computerized
10 model. There was never any confusion that fire
11 departments were required to report on any other kind of
12 incident. That was voluntary on their part.

13 And I think that that's important because it
14 appears that now the State Fire Marshal is essentially
15 being asked to reimburse local fire departments for
16 ongoing costs which relate to more than just fire
17 reporting.

18 It's also clear that as of 1992, the Fire
19 Marshal did make it clear to all fire departments that
20 they could report in the old hard copy. They were not
21 required to use this new copy. So for them to ask the
22 State Fire Marshal to reimburse them for a system which
23 was their discretion to choose to use or not seems
24 unfair.

25 Thirdly, the last point that I would like to

1 make is that one of the benefits of the computerized
2 system for local reports, is that there is also a
3 separate OES requirement that hazmat incidents be
4 reported. This system allows local fire departments to
5 report any hazmat incident, and we do the reporting to
6 OES. So it actually removes another potential reporting
7 cost for local fire departments.

8 With that, I think the record is clear.

9 Unless there are any questions, I have nothing
10 further.

11 Penny?

12 MS. NICHOLS: No.

13 CHAIR SHEEHAN: Could you clarify one issue for
14 me? And that is in terms of the -- when they talked
15 about the 100 pages versus 500 pages, the complexity of
16 what needs to be reported, can you address that issue at
17 all? Because I think the claimants feel that that has
18 expanded to a new higher level of service; whereas I
19 think your testimony -- at least the written reflected,
20 you know, just clarification of the type of information
21 you were looking for; but could you comment on that point
22 that was raised by the witnesses?

23 MS. CHANDLER: Well, again, I'm looking at this
24 from the front, looking backward.

25 CHAIR SHEEHAN: Sure, I understand.

1 MS. CHANDLER: I think that there certainly
2 is -- we understand more about why fires are started, and
3 so there certainly are more potential starts to a fire.
4 So I expect that, yes, the new manual does ask for
5 additional, more detailed information.

6 And as the claimants have themselves admitted,
7 the fact that this reporting has taken place has reduced
8 significantly the number of fires to which they are
9 actually responding.

10 But, yes, I think there probably are more
11 potential categories when you look at a fire, what is the
12 cause. In the old system, you wrote down longhand, and
13 you probably wrote two or three things.

14 I would also contend, however, having been a
15 sufferer of computer systems myself, that you start to
16 learn those codes pretty fast. If you're in the business
17 and you're working on these kinds of fires on a regular
18 basis, you're not going to that manual every day and
19 looking up the number for a structure fire or a pipeline
20 rupture. You know what that code is.

21 Furthermore, the dispatcher fills out a lot of
22 the beginning of that form. In fact, the fireman is not
23 usually filling out that form in the field; he's filling
24 it out after he comes back to his station. The
25 dispatcher starts the form for him.

1 And the third thing that I would say is that
2 there actually is a free federal system, as I understand
3 it, that's available to all fire departments, you know,
4 to help them work with the system. So it's really not
5 accurate to say that as ongoing costs they're required to
6 hire people and buy other software systems, because there
7 is something out there that's available to them. And
8 they don't have to use it except as it relates to actual
9 fires.

10 CHAIR SHEEHAN: And I guess that would be the
11 final question that at least I would have, is as
12 Ms. Geanacou said, the real requirement is for fires.
13 There seemed to be some question about every time a unit
14 was dispatched. But the statutory requirement is fires;
15 is that correct?

16 MS. CHANDLER: That is correct. That's what the
17 statute says, and that's all we're allowed to collect --
18 to require people to provide us information for.

19 If they choose to provide us other information,
20 we're very happy to have it; but we have no statutory
21 ability to command them to give us that information.

22 CHAIR SHEEHAN: Did you want to address or
23 respond to that?

24 MS. GMUR: Yes. On that issue, you know,
25 Commission Members, we've just handed out to you the

1 pages, and I would direct you to that very first page,
2 page 303 in the administrative record. And we've just
3 read that to you, section A, "General information is
4 completed each time a fire department unit is
5 dispatched." That change in definition from the 1997
6 version, which did say "fire," has required that this top
7 page be filled out.

8 There's nothing here that says "Oh, but this is
9 optional if it's not a fire." There's nothing in the
10 instruction manual to designate "optional" and
11 "non-optional."

12 So we've got a system that requires this, what
13 are we to do? Say, "Oh, no, I'm sorry"?

14 The evidence is here. It's in the record. It's
15 clear. There's no statement.

16 The testimony now is interesting, but it is not
17 documentary evidence that's in the record.

18 CHAIR SHEEHAN: Go ahead.

19 MR. ULASZEWSKI: Just to reiterate, I might have
20 slipped over it; but that page that she's referring to
21 came out of the CFIRS manual that was revised as of
22 11/98. So this was still in the book as of 1998.

23 Irrespective of -- and there's no other
24 highlighting on here.

25 I want to, I guess, state that I learned about

1 CFIRS in 1997. They were shifting to NFIRS. In terms of
2 the complexity, I spent two days trying to understand
3 this book. That's not what I would call a
4 user-friendly -- I mean, it's not a one-week course on
5 Oracle. But something I'm expecting a fire captain to
6 learn, that's probably a pretty good chunk right there.

7 Yes, he probably learns the familiar ones.
8 After a while, he knows that "72" is a cat in a tree.
9 But it's still the issue of data intensity, in terms of
10 what he has to report.

11 Our contention still is that the report is
12 factually there.

13 In the course that I took for two days, there
14 was never any mention of the fact that it was an optional
15 report, or that you only had to fill it out for fires.
16 That wasn't part of the training program.

17 Your question, Ms. Sheehan, regarding the
18 complexity, in terms of ten versus a hundred categories.
19 The example we just worked out in which we looked at the
20 old CFIRS, and said -- you had ten categories there
21 regarding what was the situation found. That was the
22 form that I asked you -- the type of incident. It was
23 the last page of the CFIRS code book handout.

24 CHAIR SHEEHAN: Yes.

25 MR. ULASZEWSKI: This is a prime example of the

1 specificity of the reports.

2 So in the old 1974 system, you had a building
3 fire. And that was the only choice you had.

4 If you go to the 1990 form, I didn't go back and
5 count them, but there were seven pages of choices to fill
6 out there -- I'm sorry, one, two, three, four, five,
7 six -- yes, seven pages to fill out.

8 So, yes, they're collecting better data. And in
9 1974 we didn't have -- we might have had fax machines.
10 Maybe not. We sure didn't have cell phones. We weren't
11 playing with our Blackberries in those years. If we had
12 a computer, it was the big IBM machine that was taking
13 punch cards.

14 Now, there's more data available, and we're
15 feeding the data monster.

16 Let me just say that from the issue I see is
17 from the 1990 to probably '98. At that point in time, we
18 were shifting over to NFIRS, which is the National Fire
19 Incident Reporting System. And now we're CAIRS or
20 whatever.

21 So we've evolved, and we've learned how to get
22 the software to work better. But the issue is, during
23 those initial years, we were spending a lot of money
24 trying to play catch-up.

25 CHAIR SHEEHAN: Yes, Katherine?

1 MR. ULASZEWSKI: One other thing, a question
2 about dispatch. The comment was made is that the
3 dispatcher started filling it out. We are a multi-agency
4 dispatcher, so we do not have our own dispatch services.
5 Our dispatch service is provided by the City of Anaheim,
6 under the joint powers activity. So they don't do that.
7 And depending on your local fire department, you may or
8 may not have that service available to you.

9 CHAIR SHEEHAN: Yes?

10 MS. TOKARSKI: I just wanted to refer the
11 commissioners to page 18 of the staff analysis, where
12 there's a detailed quote from the questions and answers
13 the booklet provided by the State Fire Marshal,
14 contemporaneous with the release of the 1990 CFIRS
15 manual. And I think a lot of this comes down to using
16 this chart provided by the claimants today, the
17 comparison of reportable CFIRS incidents, of whether
18 anything is reportable or was required to be reported
19 besides these first two categories, of building fires,
20 which they have 60, and other fires of 141.

21 And I believe that the State Fire Marshal's own
22 contemporaneous -- not late or after the fact, but the
23 fact actually came out before they issued the manual to
24 prepare people for the upcoming manual, said, "Do I have
25 to submit a new CFIRS report for every dispatch,

1 regardless of what it is?"

2 "Yes, if it's a fire. No exceptions, just like
3 it's always been."

4 And then they say, "Maybe if it's hazmat."

5 And that goes to the point made by the Fire
6 Marshal.

7 "No, if it's EMS. No, if it's any other type of
8 call, public assistance" -- and I think that would also
9 cover false calls, good intent, and service calls.

10 So if you take those things out, and then go to
11 the list of possible categories for situation found, you
12 still only have the same, essentially, ten categories,
13 because you're only dealing with mandatory reporting on,
14 in this case, explosion.

15 So you wouldn't have to go to overpressure,
16 rupture, explosion, overheat, not ensuing fire, because
17 that's exactly that, not ensuing fire. And the same with
18 the next category and the next category and the next
19 category.

20 So it's just a fundamental disagreement between
21 the claimants and staff's position and the other state
22 agency's position over whether those other items were
23 required by the State Fire Marshal to be reported.

24 And if they're not required, then it's not a
25 longer list of things that you have to look through.

1 MEMBER LUJANO: Did that have to do with the
2 1990 revisions?

3 CHAIR SHEEHAN: Yes, it came out in '89.

4 MEMBER LUJANO: Okay, so it had to do with the
5 revisions?

6 MS. TOKARSKI: Yes.

7 MEMBER LUJANO: Okay.

8 CHAIR SHEEHAN: Yes, yes, because it said in
9 there Q and A with the new section. They had the, I
10 guess what we call now FAQs, in terms of, "Okay, how do I
11 implement this?" And that was part of the guidance that
12 went out as part of that.

13 Did you want to say something, Paula?

14 MS. HIGASHI: I just had a question of
15 clarification. I just wanted to check with Katherine.

16 Is the 1998 version of the manual the one we're
17 reviewing here?

18 MS. TOKARSKI: 1998 version? No, it's the 1990.

19 MS. HIGASHI: Because there's been testimony
20 referring to forms and versions of documents that are
21 1998.

22 MS. GMUR: Yes, as a point of clarification, the
23 testimony was that the form that we were looking at, this
24 page, is still in the 1998 manual, having
25 not been updated since 1990.

1 So eight years have ensued, and it is still this
2 exact, same page that you're looking at, that is still in
3 the modern manual.

4 So if there were changes to be made, it should
5 have been made during those eight years.

6 But back to the question as to whether there is
7 an increase in what we're doing. Even if this Commission
8 finds that there is not an increase -- even if the
9 Commission says, "No, you only had to report fires,"
10 there is still an increase in the amount of material that
11 you have to go through to report that fire.

12 The case that we had as our example is
13 earthquake that involved gas and a fire. All you need is
14 that fire, and suddenly you've gone from one simple
15 two-digit, probably know-it-off-the-top-of-your-head-if-
16 you-do-this-for-a-living code, to let's fill out --
17 you've got to find the three codes that fit, and which
18 one's going to fit, even if it does involve hazardous
19 materials. If it's a fire, you still have to report it.
20 Even if it involves overpressurization, if it results in
21 a fire, you still have to report it.

22 And again, it's not "check the box," it's "check
23 the codes." If you're reporting a fire, it is still more
24 complex; and fires clearly are required to be reported.

25 CHAIR SHEEHAN: All right, on that, everybody

1 agrees.

2 Did you have a question?

3 MEMBER WALSH: Yes, I have a question.

4 Were there any other questions and answers or
5 FAQs that went out in subsequent releases of these
6 manuals?

7 MS. CHANDLER: There were two versions.

8 There also were several of the Fire Marshal's --
9 and I don't know that these are in the record, but these
10 are journals that the Fire Marshal publishes -- that go
11 out. And they go out to all fire departments. And we
12 actually did take the trouble to go back and check to see
13 whether these two particular fire departments received
14 these. And since they had a state reporting number at
15 the time that these were being mailed out, yes, they did
16 receive them.

17 So the questions and answers were not the only
18 information that was made available to fire departments
19 relating to the changes in the manual.

20 And these did make it very clear (*pointing*),
21 that changing to the computerized system was optional,
22 not mandatory.

23 CHAIR SHEEHAN: Well, did it talk about
24 reporting fires in there?

25 MS. CHANDLER: Again, it talks about reporting

1 fires.

2 And, you know, if a city chooses not to report
3 the earthquake or the rupture, and just reports the fire,
4 that's their choice. They don't have to fill out the
5 other two codes. If they don't want to provide that
6 information, we can't require them to do it.

7 Obviously, we'd like to have that information.
8 It's of more benefit if we know why the fire started, and
9 ultimately someone's going to find that out. But the
10 fact of the matter is, the statute is still very clear,
11 it's fires.

12 MEMBER WALSH: My question again is, were there
13 other questions and answers that went out separate from
14 that, as opposed to just two journals that may have gone
15 out? Did you send any other when you updated this --

16 MS. CHANDLER: In other words, when the manual
17 was updated between 1990 --

18 MEMBER WALSH: Yes.

19 MS. CHANDLER: -- and 1998?

20 I don't know the answer to that.

21 Do you know if other questions and answers were
22 sent out?

23 MS. NICHOLS: There were only two versions of
24 the questions and answers sent out, as were in the
25 exhibits. There have been multiple discussion at public

1 meetings of the State Board of Fire Services, as well as
2 the CFIRS advisory committee, that did discuss what the
3 intentions of this program were.

4 CHAIR SHEEHAN: Did you want to add something
5 else?

6 MR. ULASZEWSKI: Just to go back two items. One
7 is, in the timeline, as I understand it, the Q and A's
8 came out in '89, just prior to the release of the manual?

9 MS. TOKARSKI: In preparation, with some
10 letters.

11 MR. ULASZEWSKI: Okay, so let's follow this as
12 I'm the fire captain, or the fire battalion chief at a
13 fire department. And in 1989 I get a sort of informal
14 Q and A, "This is what's happening."

15 In 1990, a manual comes up that's signed by Pete
16 Wilson, the Governor, and Ronnie Coleman, the State Fire
17 Marshal, that says, "That's the way it is." So what do I
18 follow?

19 An informal bulletin is mailed to fire
20 departments sometime between 1990 and 1998 -- which this
21 is the latest revision of -- the manual has never been
22 changed.

23 So what am I to follow as the person that is new
24 to the system and said, "I've got to fill out a report?"
25 And it says in here -- I guess I could always call the

1 State Fire Marshal, but that's not what we're talking
2 about here.

3 The second thing was it alluded to the fact that
4 I was in training for two days. That training was put on
5 by the State Fire Marshal OES office. I think you were
6 affiliated at that time.

7 MS. CHANDLER: You're asking the wrong person.

8 MR. ULASZEWSKI: You know, you've gone through
9 so many iterations of who you belong to, at what point in
10 the --

11 MS. CHANDLER: The State Fire Marshal became
12 part of CDF, I believe --

13 MS. NICHOLS: 1995.

14 CHAIR SHEEHAN: 1996, 1995.

15 MS. CHANDLER: Yes, it's been ten years.

16 MR. ULASZEWSKI: Well, at that time it was OES.

17 MS. CHANDLER: At that time, it could have been
18 somebody else.

19 MR. ULASZEWSKI: Somebody else. But again, at
20 that time, during the training, it wasn't talked about as
21 being optional or it was not talked about as being fires
22 only.

23 CHAIR SHEEHAN: I do have to -- I don't mean
24 this to be flip, but the name of the program is Fire
25 Incident Reporting.

1 MR. ULASZEWSKI: That's correct.

2 CHAIR SHEEHAN: Okay, that's California fires.

3 It's not hazmat, it's not other incidents. So
4 it's hard for me to try and say that you want to expand a
5 fire incident reporting -- reporting fire incidents --
6 beyond that. That's what I'm having a hard time
7 struggling with, especially when you look at the statute,
8 the Q and A's, some of the other, and the very title of
9 the program is "Fire Incidents."

10 MR. ULASZEWSKI: I think that's because we are
11 the fire department. And essentially, we go to do
12 everything that don't involve a gun.

13 CHAIR SHEEHAN: I understand that. I think
14 that's why, even if the ones you gave us, they point out
15 if it's not a fire, if it's not EMS, then it's not the
16 other. So it leads you back to a fire.

17 This is a little bit what I'm struggling with on
18 this one.

19 MR. ULASZEWSKI: Well, but if you go back to
20 the manual, look at the manual, they're accounting for
21 everything that we do. And I think it's -- fires are a
22 small part of our business. EMS is our big business now,
23 other than the Department of Forestry.

24 CHAIR SHEEHAN: But we already -- everybody
25 admits that is not part of this.

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1 MR. ULASZEWSKI: Right.

2 CHAIR SHEEHAN: And hazmat is a large part of
3 your business.

4 MR. ULASZEWSKI: Right. Sure. So I think
5 that -- and since this program is being put out by the
6 State Fire Marshal, the fire community was looking and
7 himself -- and I think there was a statement by Ronnie
8 Coleman talking about the fire community wants the data,
9 and we need the data. They wanted to know, what is it we
10 do, and how much time does it take to do it, what do we
11 need to do to focus on in the future? All those things
12 that a good business or a good agency would want to know.

13 And the incident reporting system, from our
14 standpoint, was a catch-all for everything the firemen
15 do.

16 CHAIR SHEEHAN: Okay, other questions by --

17 Anything else that any of the other witnesses
18 would like to add on this one?

19 *(No audible response)*

20 CHAIR SHEEHAN: As I say, it's a struggle for
21 me, and having been around when the Fire Marshal and all
22 that happened, I spent a lot of time -- I mean, that was
23 very much the focus. So that's the one I'm struggling
24 with in terms of that, you know, because if not, it could
25 be incident reporting -- you know, everything.

1 And I agree with you in terms of trying to get a
2 little more detail on stuff; but then the issue is, is
3 that really the higher level of service or just more
4 background on some of these incidents?

5 So, anyway, what is the will of the Commission
6 on this one?

7 MEMBER GLAAB: Yes, Madam Chairman and Members,
8 I am pleased to see there's one or two people in here old
9 enough, as I am currently, and I recall many industries
10 going through the transition from a manual system over to
11 a computer system. So I certainly recall those days, and
12 a lot of people were going through this. So I'm sure
13 that there were expenses incurred, and I'm sensitive to
14 that particular thing.

15 But I think the evolution of technology
16 certainly is, we're starting to catch up, do much better
17 especially in government, which I'm pleased to see, too.
18 So the information -- we do have the opportunity to
19 gather more information; and I think we're better off as
20 a state as a result.

21 But just my comments.

22 Thank you.

23 CHAIR SHEEHAN: Do we have any motion on the
24 staff recommendation?

25 Any further discussion?

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1 MEMBER WALSH: Move to approve the staff
2 recommendation.

3 CHAIR SHEEHAN: We have a motion.
4 Is there a second?

5 MEMBER HAIR: I'll second.

6 CHAIR SHEEHAN: All right, we have a motion and
7 a second to approve the staff recommendation.

8 *All those in favor, say "aye."*

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

10 CHAIR SHEEHAN: Any opposed?

11 *(No audible response)*

12 CHAIR SHEEHAN: The motion carries.

13 Thank you all very much. I know this was not an
14 easy one.

15 MS. CHANDLER: Thank you for the opportunity to
16 speak.

17 CHAIR SHEEHAN: Thanks.

18 MS. HIGASHI: Item 8, Ms. Tokarski.

19 MS. TOKARSKI: Item 8 is the proposed Statement
20 of Decision for this item.

21 Staff recommends that the Commission adopt the
22 proposed Statement of Decision beginning on page 3, which
23 accurately reflects the staff analysis and recommendation
24 on this test claim, including the single-sentence change
25 on page 12, as referenced earlier.

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1 Minor changes, including those that reflect the
2 hearing testimony and vote count will be included in
3 issuing the final Statement of Decision.

4 CHAIR SHEEHAN: Okay, is there any further
5 discussion on this?

6 *(No audible response)*

7 CHAIR SHEEHAN: If not, we'll entertain a motion
8 on the proposed Statement of Decision.

9 MEMBER WALSH: So moved.

10 MEMBER GLAAB: Second.

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

12 All those in favor, say "aye."

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

14 CHAIR SHEEHAN: Opposed?

15 That motion carries.

16 Thank you.

17 Thank you for your time.

18 MS. HIGASHI: Item 9. This is the test claim on
19 *Local Government Employment Relations*. This Item will be
20 introduced by Senior Commission Counsel Deborah
21 Borzelleri.

22 MS. BORZELLERI: Thank you, Paula.

23 This test claim deals with statutes that amend
24 in the Meyers-Millias-Brown Act, or "MMBA," requiring
25 employer-employee relations between local public agencies

1 and their employees.

2 The test same statutes primarily authorize an
3 additional method for creating an agency shop arrangement
4 without the employer's consent, and expand the
5 jurisdiction of the Public Employment Relations Board, or
6 "PERB," in resolving disputes and enforcing the statutory
7 duties and rights of local public agencies, employers,
8 and employees that are subject to MMBA.

9 There are still a few issues in dispute over
10 this test claim between the claimant, the Department of
11 Finance, and the staff analysis.

12 These issues relate to the new method we're
13 creating, agency shop arrangements, and also with the
14 PERB administrative process, which replaces the previous
15 court process for resolving disputes under MMBA. Those
16 issues are identified and analyzed in detail in the
17 analysis.

18 Staff recommends the Commission adopt the
19 analysis and partially approve this test claim for the
20 activities listed on pages 29 and 30.

21 Will the witnesses please state your name for
22 the record?

23 MS. STONE: Good afternoon Members of the
24 Commission, Pamela Stone on behalf of the City of and
25 County of County of Sacramento.

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1 MR. LIEBERT: John Liebert of the firm of
2 Liebert Cassidy Whitmore, on behalf of the claimants.

3 MS. CONTRERAS: Dee Contreras, City of
4 Sacramento, claimant.

5 MR. TAGACH: Ed Tagach, labor relations officer,
6 City of Sacramento.

7 MS. WHITMAN: I'm Krista Whitman, Supervising
8 Deputy County Counsel for the County of Sacramento.

9 MS. CASTANEDA: Carla Castaneda, Department of
10 Finance.

11 MS. FEREBEE: Donna Ferebee, Department of
12 Finance.

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

15 CHAIR SHEEHAN: Sacramento and Finance are well
16 represented; so why don't you go ahead, Sacramento?

17 MS. STONE: Good afternoon, Commission Members.

18 This is a very complicated test claim. And
19 you're going to be hearing from some of the penultimate
20 experts in labor law as we go through with this hearing.
21 And as your staff counsel indicated, we do agree with the
22 staff's recommendation insofar as it goes. However, we
23 do believe that there are issues that have not been fully
24 addressed.

25 One issue I would like to raise now, because we

1 will be bringing it up -- assuming your Commission
2 approves this as a partially-reimbursable mandate -- we
3 will be requesting training as you'll see in the
4 Parameters and Guidelines.

5 As you see going through this -- I consider
6 myself fairly intelligent. By no means, an expert in
7 labor relations. I was exposed to it when I was working
8 for the Fresno County Counsel's office, and realized this
9 is not an area in which I wish to spend the rest of my
10 life. And it is extremely complex, the requirements that
11 it takes to go through PERB. So we will be requesting
12 one-time training for employees in this process at the
13 Parameters and Guidelines stage.

14 And with that, I'm going to turn it over to John
15 Liebert.

16 MR. LIEBERT: Thank you.

17 Members of the Commission, as was indicated, we
18 do not take exception to much of the staff analysis.
19 However, there are a few areas that we do want to talk
20 about.

21 The first of those tends to be a little bit on
22 the technical side, but I'll try to make it as
23 straightforward as I can. It pertains to the issue of
24 agency shop, and the fact that the statute, the test
25 claim statute provides for a new, and I might say, a

1 rather unique arrangement for the implementation of
2 agency shop.

3 Now, an agency shop arrangement is one whereby
4 all unit employees, whether they are members of the union
5 or employee organization that represents that unit,
6 whether they are members or not; and if they choose not
7 to be members, then they pay an agency fee. That is what
8 is known by an "agency shop."

9 At the outset of the Meyers-Millias-Brown Act,
10 that was not an authorized subject for bargaining. After
11 the implementation of the Act, the Act was amended to
12 provide that agency shop is authorized to be negotiated
13 as part of the contract or the collective bargaining
14 contract that is negotiated under the
15 Meyers-Millias-Brown
16 Act between agencies and their employee organizations and
17 unions.

18 There are many of those arrangements that have
19 been negotiated into these collective bargaining
20 agreements or, as we call them under the Act,
21 "Memorandums of Understanding" in the state. But there
22 are a number where they are not part of those agreements.

23 Now, the reason they are not part of those
24 agreements, in most cases, is that while this is
25 something of great importance, obviously, to employee

1 organizations, because it relates to their financial
2 well-being, it is an area that many employers seek in
3 negotiations to trade off as something of significance to
4 the employer.

5 That doesn't necessarily succeed and, therefore,
6 there are many memorandums that do not have that type of
7 an arrangement.

8 The result was that the employee organization
9 and the unions were ultimately successful in enacting the
10 test claim statute, which includes reference to this
11 issue of agency shop.

12 Under that statute, as is indicated in your
13 staff analysis, it is no longer required that as part of
14 the contractual negotiations, an agency shop issue be one
15 of the areas that is negotiated; but, instead, under the
16 test claim statute, a union who has not been successful
17 in negotiating that or who has chosen not to negotiate
18 it -- though, usually it's the former -- may at any time
19 during the course of the bargaining contract, the
20 collective bargaining contract, may at any time approach
21 the employer and ask that a petition be acted on to
22 implement an agency shop.

23 Now, that petition has to indicate 30 percent
24 approval from the employees in that bargaining unit, and
25 then that would be made subject to a secret ballot

1 election. And if more than half of the employees in that
2 election vote in favor of the agency shop, the agency
3 shop would go into effect.

4 There's one condition, however, in the Act that
5 says that prior to acting on that petition, there is an
6 obligation on the parties to, quote, "negotiate for up to
7 30 days in an endeavor to agree on the arrangements for
8 the implementation of this petition for agency shop.

9 The position of the staff report is that this is
10 not a mandatory -- or it's not a mandated cost; and the
11 theory of the staff report seems to be to say that, after
12 all, the agency has had the obligation to negotiate ever
13 since the Meyers-Millias-Brown Act went into effect. So
14 the mere fact that we now have a situation where we have
15 a new and a different type of system for implementing an
16 agency shop that does say you have to negotiate, but for
17 no more than 30 days, that that really is nothing new.

18 Our position is that that is not correct. And
19 the reason we take that position is that, as part of the
20 Meyers-Millias-Brown Act -- and I won't take the time to
21 read it for you, but in the Act, in section 3502.5, it
22 makes clear that what we mean by, as the wording of the
23 Act says "meet and confer in good faith," is the meeting
24 and conferring leading to a collective bargaining
25 agreement or, as mentioned in the Act, a memorandum of

1 agreement. And it requires that that process occur in
2 sufficient time so that it is completed before the
3 adoption of the agency's final budget.

4 Clearly, that is the meaning, the intent, and
5 that has been the consistent practice under the
6 Meyers-Millias-Brown Act for several decades now in terms
7 of the negotiation process that is the first part of the
8 section that we're talking about, which is 3502.5 of the
9 Government Code.

10 The new section is paragraph (b). And that
11 section indicates what I've just explained, and that is
12 that the process is now going to be supplemented, or the
13 word "added to," or as an alternative through this
14 petitioning process. And as it indicates, that occurs,
15 quote, "when there is not an agreement, or specifically,
16 shall be placed in effect without a negotiated
17 agreement."

18 Normally, meeting and conferring or bargaining
19 means that you seek to endeavor to reach agreement on an
20 entire collective bargaining contract. And that is then
21 implemented as a contract, a memorandum of understanding.
22 And if you do not reach agreement, and you certainly have
23 an obligation to negotiate much longer than 30 days, if
24 you do not reach an agreement on what are substantially
25 all the terms and conditions of employment, then there

1 are certain impasse procedures that come into play.

2 That is not the case here. This is defined as a
3 different or an alternative procedure, as far as the
4 negotiations are concerned. Indeed, the language in your
5 staff report on page 14 itself describes it as a new
6 method.

7 The Act, that is the Meyers-Millias-Brown Act,
8 refers to it as one that is without a negotiated
9 agreement.

10 The staff report on page 15 cites as precedent
11 or as support for its position two things: One is the
12 Senate Rules Committee analysis, and the second is the
13 Attorney General's opinion. And that, as I say, appears
14 on page 15 of the staff analysis.

15 Well, it's our position that those very
16 citations support what is clearly the intent and the
17 practice and the understanding insofar as the meaning of
18 that added language is concerned. It refers to, "This
19 bill provides employees with an alternative process to
20 obtain an agency fee agreement through a fair and
21 democratic process."

22 The Attorney General's opinion, "It is clear
23 from the legislative history of section 3502.5 that the
24 election procedures of subdivision (b) were added to the
25 statute to deal with situations emphasized where the

1 negotiated MOU procedures specified in subdivision (a)
2 proved to be unsuccessful."

3 In other words, this is something that occurs
4 during the term of the collective bargaining contract.

5 And you have, as part of your file, a
6 declaration under penalty of perjury that emphasizes that
7 that is the intent and that is the impact of that
8 provision.

9 So it is our position that this is a mandated
10 process; it is new; it is not merely one that reflects
11 that paragraph A -- that is, the negotiating of the
12 collective bargaining contract of all the terms and
13 conditions of employment.

14 The next area, but still within the context of
15 this procedure, there's another requirement. And the
16 requirement is that the parties are mandated to jointly
17 seek to agree on who shall conduct the election. And
18 it is mandatory language. There is no other way of
19 interpreting that language. And that appears in, again,
20 section 3502.5 on page 14, I think it is, referenced in
21 your analysis. That is another element that we think
22 clearly mandates on the employer the obligation to engage
23 in that type of joint discussion, or whatever you choose
24 to call it. There is no right to refuse on the part of
25 the employer when that issue comes up.

1 The next area, still, within the context of this
2 agency shop, is the lists that are required to conduct
3 the election. In other words, who are the employees in
4 this unit that are going to be the ones that are entitled
5 to vote in the election?

6 Well, first, on page 8 of your analysis, there's
7 reference to a Clovis Unified School District test claim,
8 which you acted on some time ago, which, in fact,
9 provides -- where you, in fact, indicated that those are
10 areas that are subject to reimbursement, that they do
11 relate to a mandate.

12 And as I say, that appears on page 8 of your
13 staff analysis. And it provides, quote, "Providing the
14 exclusive representative of a public employer with the
15 home address of each member of the bargaining unit, and
16 timely filing with the PERB," who is the one that would
17 conduct the election, "an alphabetical list containing
18 the names and job titles or clarifications of the persons
19 employed in the unit."

20 There is no way that this election can be
21 conducted, whether it is by State Conciliation Service or
22 by anybody else that the parties may have jointly agreed
23 to, without having a list of those employees. It is
24 mandatory. The employer may not refuse to provide that
25 type of a list.

1 We have submitted to you -- I don't know whether
2 it's been distributed or not -- all right, that you have
3 in front of yourselves, a rundown of the procedures of
4 the State Mediation and Conciliation Service that is
5 titled, "Procedures for Mandated Agency Shop Elections."

6 And if you look about halfway down that page,
7 under, "Investigation of Petition," you will find that it
8 says, "The employer will provide an alphabetical list of
9 employees in the bargaining unit to assist SMCS in the
10 investigation of the petition. The list will include the
11 employee's classifications and will identify any
12 bargaining unit employees designated supervisory,
13 confidential, or management. The information will be
14 provided as soon as possible but not later than
15 15 business days after the request has been made."

16 So it is clear whether or not the election is
17 conducted by State Mediation, which is normally the case,
18 or if it's conceivably by some other third party, then
19 this is something that the employer is mandated to
20 provide. For without it, the election cannot be properly
21 completed.

22 Our position, therefore, as far as the election
23 is concerned, that the items that should be included as
24 being reimbursable, are those that involve performing
25 activities that are mandated by either the PERB or the

1 State Mediation or Conciliation Service in the conducting
2 of the agency shop elections. And we think that that is
3 something that needs to be amended to the staff analysis.

4 Then finally, there is -- the last issue in this
5 area, and that has to do with rescissions.

6 CHAIR SHEEHAN: Can you briefly go over this?
7 Because we've got a lot of witnesses, and I've got a lot
8 of other issues also. So could you briefly summarize
9 your last points?

10 MR. LIEBERT: Yes, I will briefly summarize it,
11 Ms. Sheehan.

12 It has to do with rescission of an agency shop
13 arrangement. And reference is made in this particular
14 section of the Act.

15 The staff analysis makes reference to the fact
16 that when we cite the regulation, the PERB regulation
17 that addresses that issue and provides that the rules be
18 followed as stated in that regulation, the staff analysis
19 says, "No, that is not a reimbursable expense because
20 there is a section in a regulation that says that
21 agencies are not bound by PERB regulations unless they
22 choose to adopt them."

23 However, we respectfully submit that that's not
24 correct. Section 3509(a) of the Meyers-Millias-Brown Act
25 was amended later to provide, quote, in paragraph A,

1 that, "The PERB has the jurisdiction to adopt rules to
2 apply in areas where a public agency has no rule."
3 Therefore, agencies that do not have such a rule -- and
4 many do not -- would be bound by the regulation 61610 of
5 the PERB.

6 I've tried to make it very brief.

7 Thank you.

8 CHAIR SHEEHAN: Thank you.

9 All right, and then let's go ahead, and then
10 we'll have staff address each of the issues when you
11 complete your testimony.

12 MS. CONTRERAS: Dee Contreras, City of
13 Sacramento.

14 And you have no idea what an honor it is
15 to follow John Liebert in speaking on any issue related
16 labor relations, and particularly to
17 Meyers-Millias-Brown.

18 I'm going to do a brief and probably fast, by
19 the time I get talking, overview of some of the problems
20 from an actual operating perspective. So John referenced
21 local rules. If an agency has local rules, then the PERB
22 rules do not apply. That's correct.

23 The City of Sacramento has local rules. We have
24 an employer-employee relations policy that was adopted
25 almost 30 years ago. However, PERS has determined, and

1 has the right to determine, whether your local rules, in
2 fact, fit the particular requirements.

3 So we have had some interesting issues
4 regarding, for example, unit determinations. And this is
5 the kind of thing that a local agency can get into and
6 have to deal with PERB that never occurred before. We
7 have a 30-year history of how we designate and bargain,
8 basically, on local rules and classifications
9 assignments. We have created classifications, assigned
10 them, transferred, moved, deleted, merged, made them
11 represented; and had been decerted to unrepresented
12 status over the course of that time.

13 In two cases now, we are sitting at PERB today,
14 as we speak, dealing with issues regarding unit
15 determination. In one case, a union petitioned to create
16 a unit; and our Board -- our City Council ultimately
17 rejected that petition.

18 Six months later a new union came in and
19 petitioned for that same unit. Because we had just had a
20 hearing on the issue and made determinations and
21 findings, we again rejected the second petition. They
22 then filed a petition with PERB.

23 After a long discussion and evaluation, PERB
24 determined that our rules do apply, and we couldn't --
25 they're not going to move forward with the unit creation

1 process, but they accepted an unfair labor practice
2 charge relative to our assignment of them to a unit.

3 So we're in the middle of an unfair labor
4 practice charge because of a unit establishment question
5 that, from our perspective, is a complete Catch 22.

6 Another union filed for -- unit accrete classes
7 from other unions, and PERB accepted that on the basis
8 that it isn't covered by our local rules. And we are in
9 the middle of what I referred to as the "unit hearing
10 determination from hell," approaching ten days of hearing
11 on what is essentially about 150 employees out of a
12 jurisdiction that has about 6,000 employees. So it has
13 become very complicated.

14 And the interjection of PERB in all of those
15 cases is difficult and needs to be addressed and
16 compensated. And their determinations have an impact on
17 us.

18 As you will hear, the increase in unfair labor
19 practice charges is profound. It's not just whether
20 there's reimbursement. And the staff report recommends
21 reimbursement for unfair labor practice charges; but we
22 are looking at a whole new universe of those.

23 And as an employer, we get caught in the middle
24 of between, for example, competing unions or very
25 aggressive union tactics in terms of dealing with unfair

1 labor practice charges. And one of the things that your
2 staff report recommends is that an employer filing a
3 charge is discretionary. It is discretionary to the
4 extent that you actually are choosing freely to do it.

5 But this move to PERB changes the playing field
6 in many areas, and leaves us in a position where unless
7 we respond to some of these tactics by filing unfair
8 labor practice charges, we are in a great deal of
9 difficulty.

10 The difference between filing an unfair labor
11 practice charge with PERB and going through that
12 administrative process and filing a writ and going to
13 court is about ten times more work.

14 A writ typically takes one set of pleadings, one
15 set of responses, and, you know, a half an hour hearing,
16 and you're done.

17 In PERB, you could have days and days of hearing
18 on the issue going through -- it is a trial as opposed to
19 a writ process. Huge difference. And it is completely
20 ignored by staff if the employer is pushed into it.

21 And lastly, in terms of the agency-fee issue
22 that John spoke about, let me just say, typically, if you
23 don't reach an agreement on an issue, the status quo
24 pertains.

25 In the case of this new agency-fee procedure, if

1 you don't reach an agreement, there's going to be an
2 election. The employer has no ability to move past that.
3 And all of the things that relate to, employers often
4 have very good reasons for not agreeing to an agency fee,
5 including our responsibility relative to transferring and
6 administering money, Hudson requirements that arise in
7 the case of these things. The City of Sacramento was
8 sued by a person who was terminated pursuant to a
9 collective bargaining agreement agency fee process
10 because the union's internal bookkeeping requirements did
11 not meet the status. We don't control their internal
12 bookkeeping requirements.

13 So getting an agency fee and dealing with it is,
14 as John pointed out, the kind of thing employers used to
15 bargain about and make trade-offs for. Now, it can be
16 raised at any point in or out of bargaining. It requires
17 a whole 'nother set of bargaining on that issue if it's
18 done outside of the normal successor agreement process.
19 And it will be done. You don't have to reach agreement.
20 The status quo, if you don't reach an agreement, doesn't
21 pertain. The election is going to go forward. The law
22 mandates it. So it has a very different impact than
23 where we were before.

24 As I said, the playing field has been changed.
25 We appreciate the work that staff did and the pieces that

1 acknowledge it. From the perspective of a practitioner,
2 there are holes in that decision, and that's what we
3 would urge you to go back and look at very carefully as
4 we move through this process.

5 Thank you very much.

6 CHAIR SHEEHAN: Thanks.

7 MS. WHITMAN: Again, I'm Krista Whitman from the
8 County Counsel's office from the County of Sacramento.

9 I wanted to briefly discuss just a couple of
10 points, the first being situations where the local entity
11 has to go to PERB in the event of a strike or work
12 stoppage. And then I'll briefly discuss the situation
13 where there is a ruling before PERB that is in the
14 employer's favor, and then it's on appeal.

15 So on the first issue.

16 The staff report recommends against
17 reimbursement of costs concurred by the local entity in
18 filing unfair practice charges in the event of strikes or
19 work stoppages. Staff concludes that filing of an unfair
20 practice by the employer in that circumstance is
21 discretionary because the employer has other options.
22 You can resolve employment issues internally. You can
23 hold firm in the face of demands, settle, or you can
24 contract out those services.

25 Certainly an agency can avoid a strike by giving

1 the employees everything they're demanding, but that's
2 hardly good public policy.

3 Holding firm is also not an option where the
4 services provided are essential to the public health and
5 safety.

6 Contracting out is often not an option because
7 only special services may be contracted out under
8 Government Code section 31000. You cannot contract out
9 services that are additionally provided by civil service
10 employees.

11 The County of Sacramento has a charter
12 provision, section 71(j), which allows the County to
13 contract out services that are traditionally provided by
14 civil service employees; but the rules are very tight in
15 that circumstance.

16 First of all, you have to go to the Board of
17 Supervisors. The contract can only be awarded by the
18 Board. You have to go through a competitive bidding
19 process. You have to meet and confer with the affected
20 union, and you have to make a showing that you haven't
21 displaced any civil service employees.

22 So if you have notice that you've got a strike
23 that's threatened in the next three days, you simply
24 cannot get through that process in time to contract out
25 those essential services. So because of our charter

1 provision and because of the state law, contracting out
2 is often not an option. It may work in some
3 circumstances if you have a long lead time, but typically
4 it is not available.

5 As probably most of you are aware, the County
6 faced a very large county-wide strike this September.
7 And in that situation, the County had to make a choice as
8 to whether to go to PERB first, and have PERB do the
9 filing in court, or whether to go to court directly.

10 The County chose to go to court directly, taking
11 the position that the PERB rules were not in effect where
12 there's an immediate threat to the public health and
13 safety.

14 The trial court agreed with us, but PERB has now
15 filed an appeal; and that is currently on appeal before
16 the Third District Court of Appeals.

17 The same issue is also on appeal in other
18 courts. This issue has cropped up just this summer, I
19 think, three times.

20 Assuming that the Court of Appeals, one or
21 another of them, rules that you have to go to PERB even
22 when there's an immediate threat to the public health and
23 safety, the County will then be required to go to PERB
24 and go through their process before going to court.

25 That procedural step of going to PERB is not, in

1 our view, discretionary. We're talking about not all
2 public services that are subject to a work stoppage.
3 We're talking about essential services. And I always use
4 the example of those who operate the wastewater treatment
5 plant. And if you have certain -- a very small number of
6 individuals who don't show up for work, those services
7 are too specialized to contract out. And truly, in the
8 matter of five to ten days, you can have raw sewage
9 dumping into the river. That is not discretionary for
10 the County as to whether to get those employees to work.
11 It's absolutely necessary to protect the public health
12 and safety, to protect the drinking water supply of the
13 County, and in some cases, even the state.

14 I think this case is equivalent to the San Diego
15 Unified School District case where the court held that
16 mandatory expulsions from schools are mandatory under the
17 mandate -- for purposes of mandate. For instance, if you
18 have a student that comes onto campus with a handgun,
19 because in that case the school district, in order to
20 protect the safety of the other students, has to expel
21 that student because they have a duty to protect the
22 health and safety of the students.

23 The same situation with the raw sewage pouring
24 into the river. The County has an obligation to protect
25 the health and safety of its residents by going to court

1 or by going to PERB in this case and ensuring that that
2 small number of employees go back to work.

3 So we feel that that's a very similar situation.

4 Also, the test that would be looked at by the
5 courts -- what happens in that circumstance is we would
6 go to PERB, assuming that we lose this issue with the
7 Court of Appeal, we go to PERB, and then PERB makes a
8 decision whether they want to get an injunction, and they
9 go to court on our behalf and get the injunction.

10 Assuming that that happens, the tests that the
11 court would look at is under this case called County
12 Sanitation District, which requires that the employees
13 sought to be enjoined are essential employees.

14 Once that test is met, you've met the same test
15 that was met in the San Diego Unified School District,
16 which is that you've got -- that it's necessary to
17 protect the public health and safety.

18 So, again, I think that going to PERB is
19 mandatory for the same reason that going to PERB is
20 mandatory -- or not going to PERB, excuse me -- for the
21 same reason that expelling a student with a handgun is
22 mandatory.

23 On the last issue, just very briefly, the staff
24 analysis would not reimburse for costs relating to
25 responding to appeals that have been filed by employees

1 or employee organizations. And this simply -- this
2 result doesn't work for us.

3 This would be a situation where you've got an
4 unfair practice that was filed by an employee or an
5 employee organization and PERB's decision is in favor of
6 the employer, and then the employee or the employee
7 organization goes to superior court or the Court of
8 Appeals seeking to overturn PERB's decision.

9 So in that case, under the staff analysis, the
10 county would be reimbursed for the costs of defending the
11 unfair practice but not the costs of responding to the
12 appeal on the theory that that's not mandatory.

13 Well, sure, it's not mandatory; but it's -- it's
14 not legally mandatory. We could not respond to the
15 appeal, but then we would have our default taken. And
16 the PERB decision that we just won would be overturned
17 immediately without any opportunity for a response by the
18 county. So it's really the same situation.

19 We also don't have to respond to an unfair
20 practice charge. If we wanted to, we could just let it
21 be entered and have a complaint -- and have a ruling in
22 favor of the employee organization without our response,
23 but that's not the analysis of staff.

24 There's really no difference on appeal. We
25 ought to be able to protect those positive rulings that

1 we get at PERB through the appellate process. We're not
2 the ones filing the appeal. That's an appeal that's
3 being filed by the petitioner.

4 I have nothing further, unless you have any
5 questions.

6 CHAIR SHEEHAN: We'll wait and get through.

7 MR. KEIL: Nothing.

8 CHAIR SHEEHAN: Nothing to add?

9 The Department of Finance?

10 MS. CASTANEDA: Carla Castaneda, the Department
11 of Finance.

12 We concur with the staff recommendation that the
13 first activity on page 29, deducting the payment of dues
14 and service fees, is a reimbursable mandate. But we
15 continue to oppose activities 2 and 3 listed there -- the
16 receiving proof of in lieu payments and following PERB
17 procedures -- because these shouldn't result in increased
18 costs.

19 CHAIR SHEEHAN: All right.

20 MS. GEANACOU: I have an additional comment, if
21 I may.

22 Susan Geanacou, Department of Finance.

23 As to the Item Number 3 on page 29, following
24 PERB procedures, we have a witness with us today to
25 provide some testimony on comparing undertaking the PERB

1 procedures versus the Court procedures in this context.
2 And I'd like to allow that person to testify, and then
3 reserve some comment for later.

4 The purpose of the testimony is to illustrate
5 that there are, indeed, offsetting savings associated
6 with participating in the PERB procedures as opposed to
7 the previous, more costly court procedures.

8 So, if I may?

9 CHAIR SHEEHAN: All right, briefly. We have a
10 full agenda.

11 MS. GEANACOU: Yes, briefly, of course.

12 MS. ROSS: Good afternoon. Wendi Ross. I'm a
13 Labor Relations Counsel with the Department of Personnel
14 Administration.

15 With all due respect to the people of the City
16 and County of Sacramento, I have been practicing before
17 PERB for approximately the last 14 years. Initially, I
18 represented school districts, and now I represent the
19 State of California.

20 Let me just briefly say, many times, when the
21 employer walks into court, judges will look at us and
22 they will not understand the specifics of the laws that
23 we are asking them to interpret. They will not
24 understand the terminology that we are using. Whereas
25 when we go to PERB, they are the subject matter experts.

1 They understand the laws that they administer. They have
2 spent a great deal of time, energy and effort not only
3 looking at the laws, but trying to apply them to the
4 various factual circumstances.

5 When an unfair practice charge is filed, it
6 doesn't necessarily mean that the entire train goes on
7 the train tracks, and a lot of energy is put forth in
8 responding to that charge. Oftentimes, PERB itself, in
9 investigating that charge, will dismiss the charge.

10 We, as a state, don't often file any kind of
11 response to a charge.

12 If a complaint is issued, one of the best things
13 that PERB does is have a settlement conference with the
14 parties. And oftentimes, the parties are able to resolve
15 the issue at that settlement conference or subsequent
16 settlement conferences.

17 If the parties do have to go to hearing, the
18 hearing itself doesn't necessitate a lot of discovery.
19 In all the time that I've been before PERB, I've never
20 been to a deposition. I've never had to do a lot of --
21 in fact, I can't think of any interrogatories. Request
22 for production of documents is nil.

23 In the court cases I handle, it has now been
24 well over years, and we are still in the discovery
25 stages.

1 So the discovery practice that is part and
2 parcel of court actions is nil, basically, at PERB.

3 And the same goes with respect to motion
4 practice. I'm in a case right now where we spent a lot
5 of hours putting in -- for a motion for judgment on the
6 pleadings. I got that granted, and the union was allowed
7 to come back and amend its complaint. We're now doing a
8 demurrer. Again, many, many hours.

9 Whereas at PERB, many motions are made right
10 there on the record, or simply by filing a short brief
11 with respect to that issue.

12 The administrative law judges will oftentimes
13 assist the parties in trying to figure out how best to
14 resolve the motions that are brought.

15 The one other thing that I wanted to mention was
16 that the hearings themselves, within the space of a year,
17 the parties could have had the unfair practice charge
18 filed, have gone to a settlement conference, had the
19 hearing, written their post-hearing briefs, and gotten a
20 decision. And they can move on now because they have the
21 decision. Whereas when we're in court, it can be years
22 and years until we actually get a decision.

23 The one exception I will say is when there is a
24 strike. PERB's process for addressing strike activity is
25 not great. It can take the Board days to respond whether

1 or not it is going to go to court to seek injunctive
2 relief. But otherwise, it is an excellent process, and a
3 process that works very well.

4 CHAIR SHEEHAN: Okay, thanks.

5 Is that it for the testimony?

6 Susan, could you -- I appreciate the testimony
7 from DPA. Bring back the --

8 MS. GEANACOU: The core issue?

9 CHAIR SHEEHAN: Yes. I mean, I thought it was a
10 very good explanation for the PERB process; but bringing
11 it back to the issue before us in terms of savings would
12 be helpful.

13 MS. GEANACOU: Yes.

14 Finance had argued in our previous papers that
15 by the test-claim legislation perceiving PERB as the new
16 proceeding to follow would result in offsetting savings
17 to claimant employers resulting in no net costs because
18 of the substitution of a cheaper, more efficient,
19 time-saving process as compared to the former court
20 process.

21 And the purpose for Ms. Ross's testimony was to
22 provide more of a specialist's expert in that area,
23 comparing participating in the PERB process as compared
24 to the court process.

25 In light of Ms. Ross's testimony, we would like

1 to request a continuance of the hearing in order to allow
2 Finance to obtain more evidence in the spirit of the
3 offsetting savings by getting more information, perhaps,
4 from DPA, possibly from PERB itself, and any other
5 sources that might be available for that purpose.

6 We'd also like to ask the Commission staff what
7 discovery mechanisms are available for the Commission to
8 possibly use its subpoena powers to obtain information
9 about possible cost savings at the local level associated
10 with using PERB in lieu of the court process.

11 MS. STONE: Madam Chair and Members of the
12 Commission, just for your information, we have experts
13 here who, if we are allowed to continue with this
14 hearing, will indicate and demonstrate quite clearly that
15 whereas only one or two writs of mandate may have been
16 filed against an employer by a union representative in a
17 number of years, as a result of the change in going to
18 PERB, the number of actions which have been filed either
19 by employee organizations or by individual employee, have
20 created a tremendous amount of work for local agencies.
21 And that rather than any actual cost savings, the amount
22 of work and the necessity of going through this has
23 increased dramatically.

24 So before the Department of Finance wishes to
25 continue with this, we would like them to know right now,

1 so there's no sandbagging, that the evidence that can be
2 presented not just by the City and County of Sacramento,
3 but by other agencies, as this has caused a tremendous
4 amount of money to local agencies, far and above whatever
5 small cost savings there may have been by going to an
6 agency with knowledge in the area.

7 Thanks.

8 MR. LIEBERT: Could I just, just for
9 two minutes, review what the procedures are? In other
10 words, with respect to the issue that's just been raised.

11 Prior to the Meyers-Millias-Brown Act, if there
12 was a violation of the Meyers-Millias-Brown Act -- excuse
13 me, prior to PERB, if there was a violation of the
14 Meyers-Millias-Brown Act, the party that was the victim
15 of
16 this unfair labor practice would file a writ of mandate
17 in the superior court, they would file a brief in the
18 superior court, there would normally be oral argument;
19 and normally, with most cases, within a matter of a month
20 or two or three, the Court would either issue or not
21 issue the writ of mandate.

22 After the PERB went into effect, the
23 procedure -- just speaking about the procedure, not the
24 number of charges filed -- the procedure is that an
25 employee or an employee organization representative can

1 file a charge. No formal requirements. No attorneys
2 required. A very informal type of filing.

3 That goes to the PERB. The PERB will undertake
4 an investigation. In connection with that investigation,
5 they will make contact with not only the charging party,
6 but also the charged party, in order to determine whether
7 or not a valid charge has been filed.

8 Normally, then the employer will file a position
9 statement as to why they believe the charge that has been
10 filed is not valid.

11 Assuming that it is the decision of the PERB
12 agent that the charge is a valid charge, that it does
13 state the relevant -- the correct allegations, a
14 complaint would be issued by the PERB.

15 Contrary to the National Labor Relations Act, it
16 is a complaint that doesn't represent either side of the
17 charge.

18 After the complaint is filed, there will be
19 scheduled an informal meeting at which, number one, the
20 issues would be discussed, and perhaps, more importantly,
21 the possibility of settlement will be discussed under the
22 direction of an agent of the PERB.

23 Assuming that there is no settlement, the next
24 stage would be the formal hearing. The formal hearing,
25 contrary to a mandate hearing, is a full evidentiary

1 hearing at which there are witnesses, evidence is
2 presented, documents are presented. In this process,
3 depositions may be authorized by the administrative law
4 judge, and subpoenas issued. It is a formal process.

5 After that formal hearing, the administrative
6 law judge will issue a decision. That decision is not
7 binding on anyone other than the parties. And either
8 party may then appeal that decision to the full Board.

9 The full Board will then consider the decision
10 of the administrative law judge. The parties would brief
11 their respective positions.

12 Normally, the full Board will not authorize oral
13 argument, but they will consider it based upon the record
14 and the briefs.

15 After that has occurred, the Board will issue a
16 decision. Normally, it is a matter of months between the
17 time that a charge is filed and a decision emanates from
18 the full Board.

19 After a decision from the full Board, which then
20 is precedential, the matter can be appealed as just
21 mentioned, directly to the court of appeal.

22 And in that case, assuming that it is the union
23 that is filing that, then briefs are filed in the Court
24 of Appeal, and the normal court of appeal process would
25 prevail. And it is, of course, our position that in

1 order to respond, that is something that we believe
2 should be a mandated cost.

3 CHAIR SHEEHAN: Thanks.

4 Okay, Deborah, did you want to address the
5 issues, starting with Mr. Liebert?

6 MS. BORZELLERI: Yes.

7 CHAIR SHEEHAN: Okay, from the top.

8 MS. BORZELLERI: Okay, yes.

9 CHAIR SHEEHAN: I don't know if Camille wants
10 to --

11 MS. HIGASHI: I just wanted to respond briefly
12 to the subpoena question, just as it came up as
13 procedure.

14 CHAIR SHEEHAN: Okay.

15 MS. HIGASHI: Our regulations provide a --

16 CHAIR SHEEHAN: Oh, for us to subpoena? Yes.

17 MS. HIGASHI: -- a number for issuance of
18 subpoenas, and require that a request be made at least
19 six weeks before a hearing, so that the parties can be --
20 it can come before the Commission in time. Because the
21 majority vote of the Commission would have to occur in
22 order for a subpoena, either for a person or a subpoena
23 duces tecum to be issued.

24 Staff does not routinely sign off on subpoena
25 requests.

1 MEMBER WALSH: Can I ask a question?

2 To what end do you think we would need subpoena
3 power that we couldn't get just by asking?

4 MS. GEANACOU: I'm sorry, I didn't hear the
5 beginning of your question.

6 MEMBER WALSH: To what end do you think -- why
7 do you think we would need subpoena power to get
8 something we could get just by merely asking?

9 MS. GEANACOU: I think the concern of the
10 Department of Finance is the actual cost data that might
11 substantiate the argument we're trying to make regarding
12 offsetting savings. It's not something within our
13 possession at the Department of Finance. And it might
14 not be produced on the natural by claimants. Of course,
15 they're testifying today to the contrary, so that's the
16 clear position. We respect that.

17 CHAIR SHEEHAN: All right, thank you for that
18 clarification in terms of the subpoena authority.

19 And then did you want to add anything, Camille?

20 MS. SHELTON: Just to note at the time they
21 filed this test claim, the Government Code only required
22 that they estimate costs of \$200. It did not require a
23 full-cost analysis when they filed their test claim.

24 MS. WHITMAN: Do you mind if I say one brief
25 thing on that?

1 If I received a subpoena in my office, saying,
2 "Please provide your costs for responding to all the
3 unfair labor practices," we couldn't do it. We don't at
4 this point track individual items.

5 We can give you testimony here that the number
6 of unfair labor practice claims has skyrocketed since
7 we've been subject to PERB, but I can't tell you that
8 number.

9 So you can send all the subpoenas you want, but
10 the information is not available in our office.

11 CHAIR SHEEHAN: So subpoena or not, you can't
12 respond?

13 MS. WHITMAN: Right.

14 CHAIR SHEEHAN: Okay.

15 MS. BORZELLERI: Okay, thank you.

16 CHAIR SHEEHAN: Take it away, Deborah.

17 Let me -- after we finish these two items, then
18 we'll take a brief break before we get into the P's and
19 G's, just for the benefit of the group.

20 Go ahead.

21 MS. BORZELLERI: Okay, with regard to agency
22 shop arrangements, Mr. Liebert has pointed out some good
23 information. It is staff's position, however, the new --
24 there are two ways an agency shop can be formed. One is
25 allowed under section 3502.5, subdivision (a). That

1 provision came into effect in 1981 -- and as you say, it
2 wasn't part of the original MMBA -- and it allows for
3 agency shops to be formed by negotiating between the
4 employer and the employee organization. And it argues
5 that statute authorize that negotiation and that ability
6 to occur.

7 Our view, though, is that the test claim
8 statute, under section 350.25, subdivision (b), that type
9 of agency shop arrangement is formed, presumably, without
10 the consent of the employer.

11 It is our view that the provisions already
12 existed for the negotiations under subdivision (a) and
13 subdivision (b) merely sets a time frame under which
14 those negotiations -- under which the actual petition can
15 be filed.

16 So we do not read that statute in terms of a
17 mandate to the employer, the public agency employer.
18 That time period merely needs to pass.

19 There's nothing in that section -- and I can
20 actually read it to you -- that states that it has to be
21 part of the MOU process.

22 If you'll turn to page 120 in Item 9. Just,
23 "Notwithstanding section 3502 or any other provision in
24 this chapter, or any other law, rule or regulation, an
25 agency shop agreement may be negotiated between a public

1 agency and a recognized public employee organization
2 which has been recognized as the exclusive or majority
3 bargaining agent pursuant to reasonable rules and
4 regulations, ordinances, enactments, in accordance with
5 this chapter."

6 And then it goes on to say that, "As used in
7 this chapter, 'agency shop' means an arrangement that
8 requires an employee" -- well, I think we know what
9 "agency shop" means. It's just a definition.

10 So there's nothing in there that ties that to
11 the MOU process.

12 So it's staff's view that in providing the
13 additional provision under subdivision (b), the only
14 thing really that's required is for the petitioner to
15 show that 30 days have passed for them to negotiate. It
16 doesn't require that negotiation to occur.

17 With regard to the issue in subdivision (b),
18 again, on page 120, there's a -- it's about
19 three-quarters of the way down the page. It says that,
20 "An election that may not be held more frequently than
21 once a year shall be conducted by the Division of
22 Conciliation of the Department of Industrial Relations
23 in the event that the public agency and the recognized
24 employee organization cannot agree within ten days from
25 the filing of the petition to select jointly a neutral

1 person or entity to conduct the election."

2 Again, the plain meaning of that language does
3 not require the negotiation between the employee
4 organization and the employer.

5 Thirdly, we do have a new document filed, which
6 we did not have filed with the test claim regarding
7 procedures for mandated agency shop elections dated
8 December 2, 2006. The issue that we had addressed in the
9 analysis was that this document was never filed with the
10 test claim, so the Commission did not have jurisdiction
11 to rule on it.

12 At this point, I guess we have to say that the
13 document was actually filed; but I don't think we can
14 make that part of this test claim.

15 Camille?

16 MS. SHELTON: They have not requested that that
17 document be filed as an amendment, nor as a separate test
18 claim.

19 Currently, we have no jurisdiction over this
20 document to make any mandate findings.

21 MS. STONE: Excuse me, by the filing of it this
22 morning -- or pardon me, this afternoon -- it was meant
23 to be part of our test claim filing, and to be included
24 within the test claim, and was presented to you this
25 afternoon.

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1 The date, unfortunately, on this document is the
2 date of the most recent copy that was pulled off the
3 Internet.

4 MS. SHELTON: Just to note, a test claim
5 amendment has to be filed on a form that is provided by
6 the Commission.

7 I'm not aware of any test claim amendment being
8 filed today. They are required -- should be filed before
9 a hearing.

10 If it is concerning an amendment, it still needs
11 to be taken back to be analyzed, to see if it's complete.

12 It has not gone out for comment. So the regular
13 procedures would have to be gone through before the
14 Commission could take jurisdiction over this document.

15 If it truly is a test claim amendment,
16 the executive director has authority to sever this
17 document as a separate test claim to make separate
18 rulings on it --

19 CHAIR SHEEHAN: From what is before us.

20 MS. SHELTON: -- from what is before us today.

21 MR. LIEBERT: I guess I have a question.

22 Is the Commission allowed to take judicial
23 notice, so to speak -- I guess administrative notice --
24 of documents that are, as this is, a public record?

25 MS. SHELTON: No, if you're asking for

1 reimbursement of the activities that are listed on this
2 document, you have to plead them, because the findings
3 have to be made.

4 MR. LIEBERT: We did -- they were pled.

5 MS. SHELTON: The analysis discusses the
6 statutes and regulations that were pled. And this
7 language is not in any of the statutes or regulations.

8 If you're trying to get reimbursed for the
9 activities on this piece of paper, you have to plead it
10 and argue that it's an executive order, and then the
11 Commission can make findings on this document.

12 MR. LIEBERT: Okay, I think I understand.

13 Let me make sure I understand. Are you saying
14 that we did claim as a mandate election-related costs,
15 and specifically, we claimed lists of qualified voters,
16 in so many words. And I guess you're saying, even though
17 we pled that, the Commission is not allowed to take
18 notice of this public document which relates to that
19 claim?

20 MS. SHELTON: That's correct, because the
21 definition of an "executive order" in the Government Code
22 says any rule, regulation, plan or letter. And the
23 Commission would have to make a finding first that this
24 is an executive order; and then if it is an executive
25 order, whether there are any mandated activities, whether

1 those activities constitute a new program or higher level
2 of service, and whether there are increased costs
3 mandated by the state.

4 So at this point, we're not aware of any test
5 claim being filed on this document.

6 MR. LIEBERT: Thank you.

7 MS. STONE: Just for the record, the information
8 and the requirement to provide the list of employees was
9 alleged and pled in your test claim, and is contained in
10 the regulations, at page 172 of the regulations, 61610,
11 subdivision (a). And this was merely to provide
12 additional support to it since there was reference that
13 the Web site was referred to, but the document was not
14 provided. We have provided it.

15 But 61610 does require that the employer provide
16 the alphabetical list of employees -- and regulations.

17 MS. BORZELLERI: Actually, that regulation is
18 not applicable to agency shop petitions.

19 MR. LIEBERT: Which document?

20 MS. STONE: 61610.

21 MS. CONTRERAS: Can I respond to the statement
22 about, there is no obligation to meet and confer
23 regarding the agency fee in this alternative process?

24 CHAIR SHEEHAN: But you know what? Can you hold
25 on one second so that she can finish her comments?

1 MS. CONTRERAS: Sure. I apologize, yes.

2 CHAIR SHEEHAN: Just like we let everyone
3 testify, and then if there are some brief points you want
4 to make. But I think in fairness --

5 MS. CONTRERAS: No problem.

6 CHAIR SHEEHAN: -- to the testimony, as we sat
7 here and listened to you, I think Ms. Borzelleri ought to
8 also have the opportunity to also respond.

9 Okay, go ahead.

10 MS. BORZELLERI: Thank you.

11 And then with regard to the citation in our test
12 claim that mentions the Clovis Unified School District,
13 those, of course, are procedures under the EERA, not in
14 the MMBA. So I just wanted to make that clear that, yes,
15 we have approved them under EERA; but in this case we're
16 under MMBA. We have different procedures, as you
17 well know how convoluted all these different acts are.

18 So, yes, we did approve them there. I can't say
19 what would happen had they been pled correctly, but we
20 understand the point that you've made.

21 Okay, let's see. With regard to agency shop
22 rescissions, that was a difficult question.

23 Mr. Liebert, thank you again for pointing out
24 the fact that the regulations -- the PERB regulations --
25 in my reading of them, at the time this test claim was

1 filed, the PERB regulations were really only applicable
2 when an agency -- a local public agency had adopted the
3 PERB regulations. And that has subsequently been
4 changed. As you can see on -- I've lost my place here.
5 Just a second.

6 I've got a footnote on page 17 which notes that
7 the regulations were subsequently amended to be in place
8 if a public agency employer had not adopted them. But
9 that was subsequent to this test claim being filed. We
10 did not get an amendment on the test claim about that.
11 So they're not applicable in our reading.

12 So rescissions to agency shop agreements under
13 subdivision (d) are not subject to those regulations that
14 you point to, at the time this was filed.

15 Let's see. Staff -- this is back to the PERB
16 process. Staff has made the point in the staff analysis
17 on pages 20 and 21, that we believe the County of
18 Los Angeles v. Commission on State Mandates 1995 case is
19 applicable here. That case stands for the proposition
20 that, "Where local entities have alternatives under
21 statute other than paying the costs in question, the
22 costs don't constitute a state mandate."

23 And counsel made a point about this case being
24 very similar to San Diego Unified, where we talked about
25 expulsions of students. And in our reading of that --

1 it's a very fine point; but our reading of that is when
2 you have a student with a gun, you have no alternative
3 but to expel that student -- or other arguments that the
4 San Diego Unified case made, but this point in
5 particular.

6 In this case, it is very clear from the other
7 cases, from the County Sanitation District case, that
8 entities -- their only option is not to file a PERB
9 unfair labor practice. They do have other alternatives.
10 Some of them may be difficult, but there are all kinds of
11 negotiations and tactics that occur in employer and
12 employee negotiations.

13 And it is staff's view that the County of
14 Los Angeles case is controlling here; and that the fact
15 that they do have alternatives is the controlling
16 principle, and we know they have alternatives, and so we
17 do still maintain our position that filing a case with
18 PERB is discretionary on their part.

19 As far as filing appeals to report, the same
20 rationale holds, in addition to the fact that that was
21 the existing process when an unfair labor practice charge
22 was filed or any appeals were filed, it was a court
23 process. So we can't see that that is a mandate if an
24 entity chooses to either file an appeal or respond to an
25 appeal.

1 What happened, when PERB got jurisdiction over
2 MMBA disputes, is that the state now said, "This is the
3 process." So we have a state mandate over PERB
4 jurisdiction and PERB process which requires employers to
5 come to the table at PERB, and the State has set forth
6 what that process is going to be.

7 Mr. Liebert very clearly laid it out. So we see
8 a clear difference between an employer having to respond
9 and be in the forum of PERB, as opposed to going to court
10 and filing a case or going to court and filing an appeal
11 or responding to an appeal. Because the PERB process is
12 the thing we're talking about here, and that's the
13 mandate that staff are recommending gets reimbursed
14 first, is where the public -- local public agency has to
15 respond to a case in front of PERB.

16 Let me see if there are any other issues.

17 No, that's it. Thank you.

18 CHAIR SHEEHAN: All right, do you briefly want
19 to address an issue?

20 MS. CONTRERAS: Yes, a couple of them.

21 CHAIR SHEEHAN: Okay.

22 MS. CONTRERAS: First of all, in terms of the
23 last thing that was said, which is basically the state
24 has mandated the forum, and it is PERB; and we're only
25 entitled to reimbursement when we can't help the fact

1 that we are there, it ignores substantially the fact that
2 what the State did is give the keys to the auditorium to
3 the kids and tell us not to worry about what it costs to
4 baby-sit it.

5 In the 16 years I worked for the City of
6 Sacramento, the 12 years before this law was passed,
7 there were zero unfair labor practices filed against the
8 City of Sacramento.

9 I've been doing labor relations for more than
10 26 years. I was a union rep, and I filed unfair labor
11 practice charges in court. I have filed them, and I
12 have dealt with them in this jurisdiction, in this venue.
13 And the difference is huge. The County of Sacramento had
14 more than 20 unfairs filed against it in September.

15 That the state tells us straight-faced that they
16 simply ignore those charges, I guess, speaks volumes
17 about their labor relations policy. But it doesn't do
18 for local jurisdictions who take seriously when they are
19 being charged with illegal labor relation acts, that they
20 have a responsibility to respond.

21 And as to the piece where they said, "We do not
22 have to negotiate under the alternative process for the
23 30 days," I'm going to read this, and then I want
24 somebody to explain to me why we don't.

25 "The petition may only be filed after good faith

1 negotiations not to exceed 30 days have taken place
2 between the parties, and never to reach agreement."

3 That sounds like every other mandate to meet and
4 confer in good faith, that we have a legal statutory
5 obligation to adhere to. And I do not understand how in
6 this case that very clear and express language, which is
7 on page 120 of your report and which is referenced as
8 Chapter 901, it's in the middle of that section B at the
9 bottom, I do not understand how we can refuse to meet and
10 confer, and have it be in good faith for that 30-day
11 period, so that there are no alternative negotiations and
12 impacts required by that language.

13 If that's true, then every place where it says
14 we are to meet and confer, I guess we can just say, "No,
15 we don't have to because we don't want to, and that's
16 good enough."

17 I think that that response and the
18 interpretation of that language is critical in terms of
19 how seriously anybody takes this mandate. It requires
20 that we meet and confer in good faith. And that has
21 statutory and a lot of case law behind it.

22 So the concerns I have are twofold: The
23 offsetting savings -- it may be cheaper in some way to go
24 to PERB rather than to court. Not always, because you
25 can wind up, in the cases I've talked about. But the

1 number of times we are there defending ourselves is ten
2 or 20 times what it ever was before.

3 Any unhappy employee can file an unfair labor
4 practice charge. We have people who have filed three or
5 four of them over time, because they don't like their
6 working conditions.

7 There is no stop. They would never be able to
8 get a lawyer to take this case for them, but they have a
9 free arena, and they use it aggressively.

10 There is no savings that can be identified out
11 of that. And I don't know how we avoid the meet and
12 confer obligation identified here.

13 Thank you.

14 CHAIR SHEEHAN: Did you want to --

15 MEMBER OLSEN: No.

16 CHAIR SHEEHAN: Or Camille, did you want to
17 address that?

18 MS. WHITMAN: Can I correct a misstatement?
19 Against the county, 20 unfair labor practices since
20 April. Not in the month of September. We've had 20
21 since April of '06.

22 MS. CONTRERAS: Thank you.

23 MS. SHELTON: I think Deb's analysis already
24 addressed the 30-day requirement. She can repeat what
25 she said earlier, if you want.

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1 CHAIR SHEEHAN: Do you have anything further to
2 add on that one?

3 MS. BORZELLERI: No.

4 CHAIR SHEEHAN: I think you made it clear.

5 All right, any other comments from witnesses or
6 questions from --

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

9 I just wanted to reiterate our request for a
10 continuance of the matter until a subsequent hearing, to
11 allow us to address -- further examine the issue of
12 potentially offsetting costs -- savings.

13 CHAIR SHEEHAN: Well, I appreciate that request.

14 I guess the concern is, this issue has been out
15 there for a while in terms of helping to identify costs.
16 That's what I'm struggling with in terms of this is not a
17 new issue. If Finance felt -- or DPA felt this that they
18 were offsetting costs, the opportunity to go find out
19 what those were. And that's difficult for me. But this
20 is not a new issue. So that's at least how this member
21 feels on that.

22 I don't know how the other members of the
23 Commission feel on this one.

24 So that's the concern that I have in terms of --
25 I guess the question is, at what point, if they did

1 identify any offsetting costs, could they come forward
2 with it?

3 MS. SHELTON: Let me just kind of clarify the
4 mandates law.

5 Costs mandated by the state is a finding that
6 does have to be made at the test claim phase. If you
7 find that there are increased costs mandated by the
8 state, it can't be overturned at some other date unless
9 somebody requests reconsideration or there's litigation
10 over the Commission decision.

11 But 17556, subdivision (e), says that, "The
12 Commission shall not find costs mandated by the state
13 when the statute, executive order or an appropriation in
14 the Budget Act or other bill provides for offsetting
15 savings to local agencies or school districts that result
16 in no net cost to the local agency or school district."

17 Here, we don't have any evidence of any other
18 appropriation being made.

19 CHAIR SHEEHAN: Or costs.

20 MS. SHELTON: -- for this change in procedure.
21 And we have declarations filed by claimants that they
22 have incurred costs.

23 CHAIR SHEEHAN: That's what I'm struggling with.
24 If you actually felt there were offsetting costs, where
25 is the documentation?

1 And since the claim has been out there for a
2 little while --

3 MS. GEANACOU: Yes, I understand your concerns
4 you have. We would just like an opportunity to be able
5 to further flesh out the argument and perhaps pursue --
6 address the fact that either we think we're correct or we
7 agree that we're incorrect in making that assertion. But
8 without having the time to get some numbers, get our
9 hands on some actual documents, we continue to think
10 there's merit in that assertion.

11 CHAIR SHEEHAN: What is the will of the
12 Commission?

13 MEMBER WALSH: Well, do you want to put a vote
14 up to see whether we postpone and vote it up or down?

15 CHAIR SHEEHAN: The claimants, in terms of any
16 opportunity for Finance to either identify costs in the
17 next -- when's our next meeting?

18 MS. HIGASHI: January.

19 MS. SHELTON: January 26th.

20 One other thing, too. If the Commission does
21 adopt a decision today, there is a 30-day time period to
22 request a reconsideration.

23 If the Department of Finance comes up with
24 evidence of cost savings during that time period, it
25 would be new information that they could request

1 reconsideration as a legal error of law in the Statement
2 of Decision, if there's evidence to come forward.

3 MEMBER OLSEN: Madam Chair?

4 CHAIR SHEEHAN: Yes?

5 MEMBER OLSEN: Ms. Geanacou, is the issue that
6 you feel you need a subpoena in order to find that
7 information out? That you feel that you've somehow been
8 stymied in getting the information? Or is it -- I'm just
9 trying to figure out, if we were to postpone it, are we
10 any more likely to have better information later?

11 MS. GEANACOU: We may very well. It depends
12 what information we're able to find out.

13 We will intend to likely approach both the
14 claimants and other sources of information, either PERB
15 or perhaps DPA, to better quantify our assertion. Either
16 prove ourselves correct or incorrect, or perhaps
17 somewhere in between.

18 We have not approached the claimants for that
19 type of information. We would like an opportunity to do
20 so. And hopefully, they could cooperate in helping us to
21 quantify the information.

22 CHAIR SHEEHAN: Do the claimants have any
23 comments?

24 MS. STONE: Yes, I'm sorry. I was just going
25 through the record to ascertain since I didn't have it.

1 This test claim was filed over four years ago, on
2 August 1st, 2002. We have provided information in the
3 record with regard to the fact that, contrary to popular
4 opinion, this is one situation where going to an
5 administrative body is not cheaper or more expeditious
6 than going directly to court with a writ. Usually it's
7 the other way around.

8 Even the testimony of the eminent representative
9 of PERB speaks in terms of PERB process. It does not
10 speak in terms of writs of mandate, which were the ways
11 for enforcing the MMBA.

12 Writs of mandate, as your counsel are aware,
13 usually do not involve trials; and they're basically on
14 the record.

15 So even the evidence presented by the
16 representative of PERB does not go to the issue, which
17 is, what were the costs of proceeding by way of writ of
18 mandate versus what are the costs of proceeding by way of
19 PERB, and the numbers of writs of mandate that were
20 previously filed under the MMBA versus the numbers of
21 unfair labor practice charges, whether or not they are
22 complaints or issued by the PERB.

23 There has been no evidence presented by the
24 Department of Finance to show that the number of filings
25 with the PERB have gone down; there's nothing -- there's

1 no evidence, documentary or through testimony, to show
2 that there haven't been a substantial number of filings
3 of unfair labor practice charges.

4 There is no evidence presented to this point
5 with regard to the number of charges that are dismissed
6 before complaints are issued versus a total universe of
7 charges.

8 There is nothing in the record with regard to
9 the fact that some of these unfair labor practice charges
10 go on and have hearings for a series of days, when the
11 evidence is in the record that if you have a writ of
12 mandate, you may be stuck in court for a day.

13 So I don't think there is -- even with the
14 presentations that have been made by Finance, at this
15 juncture -- evidence sufficient to be able to continue
16 and to provide the information requested.

17 It's comparing how many, you know, oranges you
18 have versus how many bushels of apples. And that's sort
19 of the problem, you are comparing two substantially
20 different kinds of fruit or processes.

21 And so this is why we would request that your
22 Commission proceed with the staff analyses.

23 CHAIR SHEEHAN: Okay, comments of --

24 I guess the only thing that I would say,
25 Ms. Stone -- and as you heard me say, I'm a little bit

1 skeptical -- I guess then in response to your most recent
2 statement, would be then, if a continuance were granted,
3 then they wouldn't find anything, so we'd be in the same
4 boat in January.

5 MS. STONE: And we'd have to go through all this
6 all over again, you know.

7 MS. CONTRERAS: Entirely too much fun.

8 MS. STONE: Yes, I hate to say this, this is too
9 much fun.

10 CHAIR SHEEHAN: Right. I guess what I would say
11 is not necessarily, because even if the Commission voted
12 to send Finance out to find something in the next
13 60 days, it would be the desire of this Chair to only
14 bring back the issue in terms of the evidence that they
15 would identify, and not to retry all of the -- and rehear
16 all of the issues that we've heard today. It would be
17 narrower on that one.

18 It would be my desire, if the Commission voted
19 to give them the time. So that would be the only
20 observation that I would have; that we wouldn't -- you
21 know, we heard all the other substantive issues and have
22 responded.

23 Yes, Mr. Liebert?

24 MR. LIEBERT: I would only point out that if
25 that were the case, then, of course, the claimants would

1 have to undertake the necessary investigation, which
2 would be investigation statewide as to the activities of
3 the PERB, as compared to pre-PERB activities by the
4 courts and by way of writs of mandate.

5 So I did want you to be aware that that would be
6 part of the process.

7 CHAIR SHEEHAN: Well, in response to the request
8 from Finance.

9 Yes, Camille?

10 MS. SHELTON: And let me just mention that there
11 was no mandate in law for them to keep cost data for
12 going to court on unfair labor practices before this. So
13 I don't know that they're going to have any cost data,
14 number one.

15 It does have to be done on a statewide basis.

16 And just the third point I wanted to bring up,
17 there is a definition of cost savings by the state in the
18 Government Code. And it defines cost savings by the
19 state to mean, "Any decreased costs that a local agency
20 or school district realizes as a result of any statute
21 enacted or any executive order adopted that permits or
22 requires the discontinuance of or the reduction in the
23 level of service of an existing program that was mandated
24 before January 1st, 1975."

25 This test claim statute was mandated after that

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1 date, so that definition does not apply.

2 MS. GEANACOU: Okay.

3 MS. STONE: Okay.

4 CHAIR SHEEHAN: All right, what's the will of
5 the Commission?

6 MEMBER WALSH: I recommend that we move to do a
7 vote on the Commission to see if we can put it over, and
8 then move -- if that's denied, then move to vote on
9 the --

10 CHAIR SHEEHAN: Okay, so your motion --

11 MEMBER WALSH: I move to --

12 CHAIR SHEEHAN: -- grant Finance's request for a
13 delay?

14 MEMBER WALSH: -- grant Finance's request for a
15 delay.

16 CHAIR SHEEHAN: Is there a second?

17 MEMBER WALSH: That answers that.

18 CHAIR SHEEHAN: Okay. So then you move --

19 MEMBER WALSH: I now move to adopt the staff
20 recommendation.

21 CHAIR SHEEHAN: Is there a second on that?

22 MEMBER GLAAB: Second.

23 CHAIR SHEEHAN: All right, so we have a motion
24 and a second on the staff recommendation.

25 All those in favor, say "aye."

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

2 CHAIR SHEEHAN: Opposed?

3 (No audible response)

4 CHAIR SHEEHAN: Staff recommendation is adopted.

5 MS. STONE: Thank you very much.

6 CHAIR SHEEHAN: All right, we're going to take
7 five to ten minutes.

8 (A recess was taken from 3:52 p.m.
9 to 4:03 p.m.)

10 CHAIR SHEEHAN: I would like to reconvene the
11 December 4th meeting of the Commission on State Mandates.

12 We are missing Mr. Glaab.

13 Did Nancy go out to find him?

14 MS. HIGASHI: Yes.

15 CHAIR SHEEHAN: Okay. Why don't we go ahead and
16 proceed with Item 10?

17 MS. HIGASHI: We are at Item 10.

18 Ms. Borzelleri will continue with this.

19 CHAIR SHEEHAN: Yes.

20 MS. BORZELLERI: Thank you.

21 This is the proposed SOD for the previous
22 Item 9, which is *Local Government Employment Relations*.
23 The sole issue before the Commission is whether the
24 Statement of Decision accurately reflects the vote of the
25 Commission on the previous item.

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1 The final Statement of Decision will be updated
2 to reflect the witnesses, testimony, and votes on the
3 Statement of Decision when it is issued.

4 CHAIR SHEEHAN: All right, is there a motion?

5 MEMBER WALSH: So moved.

6 CHAIR SHEEHAN: We have a motion.

7 MEMBER OLSEN: Second.

8 CHAIR SHEEHAN: We have a motion and a second.

9 Those in favor, say "aye."

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

11 CHAIR SHEEHAN: Opposed?

12 (No audible response)

13 CHAIR SHEEHAN: The motion carries.

14 All right, now, we are on --

15 MS. HIGASHI: We are now on Item 13, proposed
16 amendments to the Parameters and Guidelines, *Peace*
17 *Officers Procedural Bill of Rights*.

18 Chief Counsel Camille Shelton will introduce
19 this item.

20 CHAIR SHEEHAN: All right, and would all the
21 witnesses please come forward?

22 MS. HIGASHI: If the principal proponents could
23 sit at the table and the other witnesses sit in the front
24 row.

25 CHAIR SHEEHAN: Yes, and the "me, too's," sit in

1 the front row. And I really am -- because of the
2 lateness of the hour, we have got this and the next one
3 to get through. Get to your point quickly. If you want
4 to support what someone else has said, please say, "I
5 agree" with whoever brought it up. But I don't want to
6 be here until ten o'clock tonight.

7 MR. MCGILL: Nor do we, ma'am.

8 CHAIR SHEEHAN: Yes, exactly. I figured you
9 didn't.

10 MS. TER KEURST: We've already missed our
11 planes.

12 CHAIR SHEEHAN: Exactly.

13 All right, go ahead, Camille.

14 MS. SHELTON: This is a request to amend the
15 Parameters and Guidelines for the Peace Officers
16 Procedural Bill of Rights program.

17 In April 2006, the Commission reconsidered the
18 POBOR claim as directed by the Legislature and made some
19 modifications to the original findings. In addition,
20 several parties have filed several requests to amend the
21 reimbursable activities and to add a reasonable
22 reimbursement methodology for purposes of claiming costs.

23 Staff recommends the following changes be made
24 to the reimbursable activities section of the Parameters
25 and Guidelines for costs incurred beginning July 1st,

1 2006.

2 Number one, the addition of time study language
3 to support salary and benefit costs when an activity is
4 task-repetitive. Time study usage is subject to the
5 review and audit conducted by the State Controller's
6 Office.

7 Number two, deletion of specific activities
8 relating to the administrative appeal hearing and the
9 receipt of an adverse comment that the Commission
10 expressly denied in a Statement of Decision on
11 reconsideration.

12 Number three, clarification of administrative
13 activities and activities related to the administrative
14 appeal, interrogations, and adverse comments that are
15 consistent with the Commission's Statement of Decision
16 adopted in 1999, the Statement of Decision on
17 reconsideration, and the Commission's prior findings when
18 adopting the original Parameters and Guidelines.

19 Language is included to clarify that certain
20 activities are not reimbursable, including investigation
21 and conducting the interrogation.

22 The Commission expressly denied reimbursement
23 for these activities when it adopted the original
24 Parameters and Guidelines in the year 2000, and again
25 when it adopted the Statement of Decision upon

1 reconsideration in April 2006.

2 Staff further recommends that the Commission not
3 adopt the reasonable reimbursement methodologies proposed
4 by the California State Association of Counties, the
5 County of Los Angeles, and the Department of Finance.

6 The proposed methodologies do not meet the
7 statutory requirements of Government Code section 17518.5
8 and, therefore, must be denied.

9 Staff recommends that the Commission adopt the
10 proposed amendments to the Parameters and Guidelines
11 which clarify the reimbursable activities, add current
12 boilerplate language, and require eligible claimants to
13 claim reimbursement based on actual costs.

14 I do have one technical correction to page 56 of
15 the proposed amendments to the parameters and guidelines.
16 Number three, the underlying sentence, the last
17 underlying sentence that says, "The investigator's time
18 to record the session and transcription costs of
19 non-sworn," the "and" should be deleted. That was a
20 typo. And it needs to be taken out of that sentence. So
21 it should read, "The investigator's time to record the
22 session and transcription costs of non-sworn peace
23 officers are not reimbursable."

24 Will the parties and witnesses please state your
25 names for the record?

Commission on State Mandates – December 4, 2006

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

2 MS. CONTRERAS: Dee Contreras, City of
3 Sacramento.

4 MR. MCGILL: David McGill, Los Angeles Police
5 Department, City of LA.

6 MS. TER KEURST: Bonnie Ter Keurst, County of
7 San Bernardino.

8 MS. FILATOFF: Laura Filatoff, City of
9 Los Angeles.

10 MR. SPANO: Jim Spano, State Controller's
11 Office.

12 MS. CASTANEDA: Carla Castaneda, Department of
13 Finance.

14 MR. KEIL: Steve Keil, California State
15 Association of Counties. Thank you.

16 MS. HEATON: Staci Heaton, Regional Council of
17 Rural Counties.

18 CHAIR SHEEHAN: Okay, Mr. Kaye, do you want to
19 go first?

20 MR. KAYE: I think Dee is going first.

21 CHAIR SHEEHAN: Oh, Dee is going to go first?
22 Okay.

23 MS. CONTRERAS: We're here today as part of the
24 process of amending the Parameters and Guidelines, and
25 really I'm going to do an overview and response to where

1 we stand on some of these issues.

2 Our prior efforts have identified issues from
3 the field perspective and, in fact, broadened what you
4 finally issued as the P's and G's from the original staff
5 recommendation.

6 It now appears that, at least in some areas, we
7 are facing having those constricted as opposed to working
8 through the problems that we have had arisen between
9 agencies and auditors over the past several years trying
10 to implement this process.

11 Based on the recommendations of your board, we
12 sought a reasonable reimbursement methodology but no
13 agreement was reached. And, in fact, there was never
14 really any response to it except the one that exists in
15 the final report, which is to say it doesn't meet the
16 standards. Nobody came back to us with anything. Nobody
17 really engaged in any dialogue whatsoever to try and work
18 through that process of developing a reasonable
19 reimbursement methodology, which I think is a sad failure
20 of this process and the decisions you have in front of
21 you.

22 We sought, as I said, clarifications, not
23 take-aways. And this issue impacts all areas of police
24 discipline, review, complaint process, and ultimately
25 customer service, in terms of how the citizens are

1 handled. Because what we have to do and how we have to
2 respond to each and every investigative process is at the
3 core of the impacts of POBOR.

4 You have the ability to both update the
5 P's and G's consistent with your prior decisions, and
6 establish or recommend moving towards a reasonable
7 reimbursement methodology that everybody can live with.
8 However, it's going to take direct intervention by your
9 board and direction basically by you to move that process
10 forward in our opinion, because nothing happened without
11 that.

12 We are very concerned that any disregard of the
13 prior record and testimony -- the impact that has is very
14 disheartening. This is a hard-fought issue. The POBOR
15 has an impact; it is continuously being expanded by court
16 decisions. So it is a major hurdle for employers to deal
17 with. Other people here are going to talk about some of
18 the specifics relative to the P's & G's. But I hope you
19 listen and recognize that the difficulty that employers
20 have in addressing these issues and the costs that are
21 consequent to this law need to be addressed and need to
22 be reimbursed; and we need to have the support of this
23 Commission on State Mandates to recognize what, in fact,
24 are increased costs of a substantial nature on every
25 jurisdiction that does police activities in the state.

1 And with that, I'll turn it over to Leonard.

2 MR. KAYE: Oh, okay. I think LAPD is next.

3 MS. CONTRERAS: Oh, okay.

4 MR. KAYE: Thank you.

5 MR. MCGILL: Thank you.

6 Good afternoon -- or evening, almost. David
7 McGill from LAPD. I'm a lieutenant with LAPD. I work at
8 Internal Affairs. I've been doing LAPD for about
9 20 years. This group, L.A. Internal Affairs, is
10 responsible for all aspects of the department's
11 disciplinary system, including tracking, analyzing,
12 investigating personnel complaints and misconduct.

13 In my current role, I'm in charge of all aspects
14 of internal affairs issues other than the actual case
15 investigations. This means I'm responsible for
16 collection, tracking, administration of all records,
17 classification of all complaint investigations initiated,
18 and a review and audit of all complaint investigations.

19 My department has over 9,000 sworn in it. Over
20 250 sworn and civilian employees are assigned to the
21 internal affairs group. It's pretty large, of which we
22 have about 150 sworn investigators actually doing cases.
23 Eight separate offices throughout the 400 square miles of
24 my city.

25 To give you some perspective about how much work

1 we do as a department, in the past several years we've
2 averaged about 6,000, 6,500 cases a year. Those are
3 complaint investigations that POBOR has an impact on.

4 Keep in mind that 6,000 cases often have
5 multiple accused officers and multiple witnesses. All
6 these require initiating tracking, administrating, and
7 the absolute adherence to the requirements of POBOR.

8 For the past several years, the City of LA,
9 along with other cities, have submitted reimbursement
10 claims to the state for activities required of my
11 employees related to POBOR mandates, among others. Our
12 POBOR claims go back to 1994, 1995, and have totaled
13 about \$69 million.

14 My city and my department has spent the last
15 four years trying to comply with the requirements of the
16 P's and G's. We have followed the suggestions from the
17 Controller's Office that a comprehensive time study be
18 done to prove our claim, which we did, only to later find
19 out that the results of our time studies were not
20 reimbursable.

21 We have spent countless hours and enormous
22 amount of resources to prove our worth, but major
23 differences of opinion over the interpretation of POBOR
24 P's and G's for eligible costs still remain.

25 It seems like the end result of our claim is

1 being denied, but the work obviously is still continuing.
2 We're still doing the POBOR work in the field.

3 From a practical standpoint, from someone who
4 deals with real-world experiences concerning the actual
5 application of POBOR, we are probably never going to come
6 to complete agreement on what is a reimbursable cost and
7 what is not -- that's easy for me to say.

8 However, for law enforcement, in general, my
9 department in particular, I can assure you that the costs
10 of doing business according to the mandates of POBOR is
11 not and will never be de minimis. The essence seems to
12 be that we essentially conduct the same business today --
13 at least this is recorded in one of the reports I read --
14 that we did prior to POBOR. We're doing the same work
15 today that we've done prior to POBOR, except for a very
16 few exceptions. And those exceptions are the ones that
17 we're going to be allowed to be reimbursed.

18 This is totally just plain wrong. Our efforts
19 have changed over the last 30 years. POBOR, remember,
20 way back in 1977 when POBOR was enacted.

21 In my Department we've handled thousands of case
22 in the past several years. And some of these cases
23 you're probably familiar with based on media counts.
24 Every case must be handled according to the POBOR.

25 Some of the examples of the differences between

1 Skelly and POBOR, which is at the core of this issue, we
2 believe written reprimands are not covered by Skellies
3 but are covered under POBOR. In fact, many legal experts
4 believe the suspension of five days or less does not
5 automatically call for Skelly procedures.

6 Reprimands are, by far, the most common form of
7 discipline in any police department, including mine.

8 A reprimand is considered punitive action and
9 must be handled with extreme diligence.

10 In my department, as in others, only about 20,
11 23 percent of the cases result in a sustained allegation.
12 This is consistent throughout the United States. Of
13 those few cases that are sustained, over 80 percent of
14 them contain penalties of five days or less. So about
15 4 percent of our cases really involve greater penalties
16 of five or more days.

17 In virtually every one of our cases, the
18 investigation involves at least one police officer,
19 whether an accused or a witness. All officers must be
20 treated as accused officers in terms of the investigative
21 practices, and must be afforded the rights and
22 protections mandated by POBOR.

23 Another example of difference between POBOR and
24 due process is informing interviewees of the
25 investigation prior to questioning. It happens in no

1 other venue that I know of. I can't express to you the
2 amount of degree which this mandate negatively affects
3 the course of our investigations and the nature our
4 investigatory practices. We have overcome this through
5 training and experience, but one can't minimize this
6 impact. In order to effectively prepare for such
7 encounters, our investigators must ensure they have
8 diligently reviewed and recorded every other witness
9 prior to the police officer's interviews.

10 In other non-law enforcement investigations, the
11 investigators do not have to prepare so thoroughly.

12 As far as the right to respond to adverse
13 comments was another issue. This is not as simple as it
14 sounds. This entails a huge obligation to process, file,
15 maintain, track each and every response, and to attach
16 those responses to the correct document or documents. Of
17 course, all of these requires administrative review to
18 ensure we're following the concepts of POBOR.

19 POBOR is absolutely a matter of statewide
20 concern. My professional colleagues in all departments
21 throughout the state take the responsibility of ensuring
22 the mandates are followed explicitly, fairly, and
23 diligently. There's no doubt in my experience that most
24 of the critical mandates -- that many of the critical
25 mandates under POBOR go beyond due process and,

1 therefore, should be reimbursed. Or as an alternative, a
2 reasonable reimbursement methodology should be developed.

3 And I will yield my time to my esteemed
4 colleague from Los Angeles.

5 MS. FILATOFF: I will be very brief.

6 My name is Laura Filatoff, and I'm a commanding
7 officer of our fiscal operations division with the LAPD.
8 And my staff are responsible for coordinating the
9 submission of our state mandate claims, most notably
10 POBOR, which has been a part of my existence for the last
11 four years.

12 I'd like to talk to you today about this
13 process. It's been extremely frustrating and
14 time-consuming for both the sworn personnel that
15 Lieutenant McGill works with and my staff in the budget
16 unit who have to put together the claim.

17 We've worked very cooperatively with the State
18 Controller when they came in to audit us. They felt that
19 a lot of the documentation that we had during their
20 initial audit had shortcomings. We worked with them
21 cooperatively in putting together a time study that they
22 felt was going to measure all of the things that we
23 needed to measure in order to satisfy the various
24 activities within POBOR.

25 We gave all that work over to the sworn side to

1 do that time study. It took hundreds of hours for them
2 to do that.

3 Once we completed our entire document and then
4 we compiled all of our data, we submitted it to the State
5 Controller. And once they were done with their analysis,
6 they came back and said basically that most of what we
7 had claimed was disallowed.

8 That was extremely frustrating for us,
9 considering the fact that we work with them on the front
10 side to identify those activities that we did need to go
11 back and count and ensure that we were properly
12 accounting for everything that we needed to do in order
13 to be compliant with this claim.

14 I'm not going to sit here and try to discuss the
15 activities what's covered under POBOR and what's not.
16 I'm not sworn. I don't live and breathe it like
17 Lieutenant McGill does. I'm here to tell you that this
18 is just an extremely frustrating process, it's a very
19 time-consuming process. And I think in this era where we
20 don't have sufficient staff, we don't have sufficient
21 sworn out there to do their job, we need to come up with
22 a cost-effective way for local agencies to be able to
23 implement or to be able to make these claims.

24 The problem is not implementing the mandate; the
25 problem is turning around and submitting these claims and

1 having it pass muster with the State Controller or with
2 the Auditor.

3 So I would very strongly urge that you put into
4 place -- and I don't know the state process -- some form
5 of reasonable reimbursement methodology that will allow
6 us to very systematically submit our claims based on very
7 quantifiable data that will be easy for all of us bean
8 counters to capture and submit.

9 CHAIR SHEEHAN: Go ahead.

10 MS. TER KEURST: I attended the meetings
11 directed at the staff with the reasonable reimbursement
12 methodology. And part of the discussions -- there was
13 some agreement that we could all agree on -- that until
14 we could all agree what was reimbursable, we weren't
15 going come up with a reasonable reimbursement
16 methodology.

17 We talked about clarifying the P's and G's. It
18 also seemed that the clarification, at least in part,
19 would need to be through a request to amend the P's and
20 G's. As a result, I submitted a request for amendment.

21 The original Statement of Decision, as has been
22 identified by the State Controller's Office, is the
23 final authority on what should be considered in the
24 P's and G's.

25 The original Statement of Decision is in

1 administrative record page 871 of November 30, 1999,
2 reads, "The Government Code section 3303, subdivision
3 (a), establishes procedures for the timing and
4 compensation of a peace officer subject to an
5 investigation and interrogation by an employer. This
6 section requires that interrogation be conducted at a
7 reasonable hour, preferably at a time when the peace
8 officer is on duty or during the normal waking hours of
9 the peace officer, unless the seriousness of the
10 investigation requires otherwise."

11 "If the interrogation takes place during
12 off-duty time of the peace officer, the peace officer
13 shall be compensated for the off-duty time in accordance
14 with regular department procedures."

15 The next section went on to give an example of
16 overtime. And then it reads, "The Commission agreed,
17 conducting the investigation when the peace officer is on
18 duty and compensating the peace officer for off-duty time
19 in accordance with regular department procedures are new
20 requirements, not previously imposed on local agencies
21 and school districts."

22 Then on page 884 of the administrative record,
23 in the conclusion, it reads, "Based on the foregoing
24 analysis, the Commission concluded that the test claim
25 legislation constitutes a partial reimbursable

1 state-mandated program pursuant to Article XIII B,
2 section 6, of the California Constitution for the
3 following reimbursable activities," with number two
4 being, "Conducting an interrogation of a peace officer
5 while the officer is on duty, or compensating the peace
6 officer for off-duty time in accordance with regular
7 department procedures."

8 When the reconsideration came up, what was
9 defined as a decision was, "The Commission further finds
10 that the San Diego Unified School District case supports
11 the Commission's 1999 Statement of Decision."

12 When I submitted the analysis, it was included
13 as part of -- for the amendment, it was included as part
14 of the final draft staff analysis.

15 On page 25 of that final staff analysis, it
16 reads, "On pages 38 and 39 of the Statement of Decision
17 on reconsideration, the Commission expressly concluded
18 that conducting the interrogation and investigative time
19 are not reimbursable."

20 I disagree with that statement. When I read
21 through that argument, I felt like it dealt with the
22 investigative-time portion of it, but it didn't really
23 direct the comments to interrogation per se.

24 The only reference to conducting an
25 interrogation is on page 26, where it reads, "When

1 adopting Parameters and Guidelines for this program" --
2 and that's the key to this thing, it says, "When adopting
3 the Parameters and Guidelines." It's not discussing the
4 Statement of Decision.

5 And if you go back through that analysis, you'll
6 find that numerous references are made to the Parameters
7 and Guidelines. But our amendment was to clarify what
8 the original Statement of Decision was, not what the
9 Parameters and Guidelines were.

10 We're very aware that all of the agencies that
11 are trying to file under this claim are having problems
12 with what the Parameters and Guidelines are. We don't
13 have an agreement with the State Controller's Office --
14 and I'm sure they'll agree with that on this issue.

15 So the issue becomes -- it says, "When adopting
16 the Parameters and Guidelines for this program, the
17 Commission recognizes that Government Code section 3303
18 does not impose new mandated requirements to investigate
19 an allegation, prepare for interrogation or conduct the
20 interrogation or review responses given by officers
21 and/or witnesses."

22 My comment would be that I don't think that that
23 agrees with the original Statement of Decision.

24 I know that in the transcript, when I went
25 back -- because I was told there was discussion -- I went

1 back and looked at the transcripts for the original
2 decision, and there was discussion, because there was
3 concern by the claimants -- and I was not one of them --
4 but that they were concerned that the overtime wouldn't
5 be included as well. So there were discussions about
6 overtime, but there was never any discussion that I could
7 find that said, "We're disallowing regular time."

8 So the process of mandate-claiming is that there
9 was a requirement out there for us to do these things,
10 and there's time involved. And whether that's regular
11 time or overtime has not, from the claims I've been
12 involved in, been that part of the issue.

13 So I would ask that the Commission go back and
14 reconsider the amendment, revisit my request for an
15 amendment.

16 I would also say that while pages 38 and 39
17 dealt with investigative time and disallowed it, in the
18 same Staff Analysis, on page 19, it reads, "In 1990, the
19 Supreme Court revisited the POBOR legislation in Pasadena
20 Police Officers Association v. City of Pasadena. The
21 Pasadena case addressed the POBOR requirement in
22 Government Code section 3303 to require the employer to
23 provide an officer subject to an interrogation with any
24 reports, complaints, et cetera."

25 And I'll move down to the last line. "Thus, in

1 order to maintain the public's confidence, a law
2 enforcement agency must" -- and that's italicized --
3 "promptly, thoroughly, and fairly investigate allegations
4 of officer misconduct."

5 With that, I would again request that you
6 revisit the amendment. And I'll turn it over.

7 CHAIR SHEEHAN: Thank you.

8 MS. HEATON: Good afternoon. Staci Heaton with
9 the Regional Council of Rural Counties.

10 And I'm going to be brief this afternoon.

11 RCRC has not been very involved here at the
12 Commission in the past. And my members were concerned
13 enough and frustrated enough with this to ask me to come
14 here today to give brief testimony to you about their
15 costs with POBOR.

16 Our member counties typically have fewer
17 resources per person to implement any kind of mandate,
18 no matter what agency it comes from. And we have
19 30 members. Of the 30 small rural counties, we have
20 everybody from Del Norte down to Imperial. And they do
21 not have full-time resources to devote to a
22 mandate-reimbursement process and to finding people work
23 and doing time studies and things like that.

24 And so in coming here today, I would urge you
25 to continue working towards development of a reasonable

1 reimbursement methodology, so that it will ease the
2 reimbursement process.

3 Thank you.

4 MR. KEIL: Madam Chair, Members, my name is
5 Steve Keil. I'm with the California State Association of
6 Counties.

7 I'm actually here representing efforts that have
8 gone on, as near as I can recall, as long as seven years,
9 by a number of local agency representatives.

10 I can say with certainty I'm speaking on behalf
11 of the League of California Cities, as well as a couple
12 of the sponsors of the original POBOR legislation. That
13 would include POROC, Peace Officers Research Organization
14 of California, along with ALADS, the Association of
15 Los Angeles County Deputy Sheriffs, who sponsored the
16 original legislation, or most of the amendments to POBOR
17 over the years.

18 We first became involved in this -- and forgive
19 me, I'm here also to express our frustration about the
20 rejection of any effort at a reasonable reimbursement
21 methodology.

22 We first became involved in this process when
23 Senator Peace was in his last year in the Senate. As you
24 all may recall, through this process it was an extremely
25 volatile time, in which there was enormous acrimony over

1 this specific mandate. Accusations dealing with the
2 reimbursement process that was underway, was one of the
3 incendiary issues that led, I believe, to the Assembly's
4 efforts of the special committee looking at the entire
5 mandate process.

6 Starting from that, it was clear to us we
7 couldn't sustain this continued controversy with the
8 State Legislature. In talking to our colleagues in the
9 cities and counties, we couldn't sustain the enormous
10 staff work going into these mandates, not to mention the
11 total uncertainty, to date, of any ability to come up
12 with some kind of a process for determining how to
13 reimburse properly for these mandates.

14 With that in mind, I think everyone at this
15 table, from the local government perspective, was
16 involved with this process, along with a number of other
17 local government agencies, and public sector employees
18 who try to come up with a simplified, streamlined, easy
19 to understand, easy to compute process for this mandate.

20 If we can crack this mandate, we can find a way
21 to do this with any mandate.

22 And it's taken years. Originally, the little
23 government agencies were of the opinion that what we
24 wanted to do was find a single event or two that involved
25 the processing of a claim under POBOR and then assign a

1 dollar value to that, to try to find some simplified
2 approach.

3 First of all, we couldn't find the single
4 events, for the same reason we're having trouble finding
5 ways of clearly identifying what are new duties under
6 POBOR.

7 But more importantly, the employee groups
8 rejected that because they were fearful that might serve
9 as a profit incentive to have more administrative
10 hearings for more state reimbursement.

11 Whether that was true or not, we're honoring
12 their concerns. And what we ended up with is a process
13 that was submitted to your commission in a letter that
14 was under my signature dated May 24th. I had the
15 opportunity to present this in one public hearing
16 before -- it was a work group, which we appreciate your
17 commission offering. We've had a chance to talk to the
18 Department of Finance and the Controller staff privately
19 since then about this process.

20 What we did was come up with a real simple
21 approach. It may not be the best approach, but it was
22 the best one we could come up with. And that was to
23 identify, of all the claimant agencies at that time, the
24 number of peace officers they represent, divide that into
25 the total that was owed by the state; and we came up with

1 a figure of \$526, I believe -- or \$528 per officer. And
2 we proposed that that become the reimbursement
3 methodology or a starting point for discussions.

4 At that time we were under the opinion that we
5 had to make it only an optional payment system because we
6 believed the Constitution wouldn't have given local
7 agencies the ability, if they felt that there were
8 additional costs coming to them, to claim those initial
9 costs.

10 Since that time our position has evolved. We
11 submitted last year, local agencies collectively
12 submitted a bill in the Legislature, it was a Senator
13 Cedillo bill, Senate Bill 328, in which we tried to
14 capture some system of a reasonable reimbursement
15 methodology. And it ended up on the suspense file of the
16 Appropriations Committee and the Assembly.

17 And at that time, we, number one, modified it
18 because we were advised that your own counsel believed
19 that we could actually impose a reasonable reimbursement
20 methodology on local agencies and deny them the ability
21 for other claiming options. Under that assumption, we
22 proceeded with that basis, that this would be the one and
23 only process for reimbursement of local agencies.

24 Secondly, we tried to come up with what we
25 thought was a reasonable number for purposes of what had

1 already been determined as a reimbursement of the state
2 budget, and divided what we thought then was the number
3 of peace officers in the state at that number, and came
4 up with a rounded-up number of \$300 per officer.

5 Now, that's subject to further discussion.

6 There's nothing magical about that number. It was simply
7 a clean and simple way of trying to come up with a way of
8 putting together a simple way of reimbursing for this
9 process.

10 We also proposed to the state that we stick in
11 the budget language -- or stick in the trailer to the
12 budget bill language that would have said that the state
13 could have reimbursed in arrears what it owed us at \$200,
14 if it chose to do so for the next year, just to get that
15 off of the books as well.

16 We weren't trying to make a profit out of this;
17 we were trying to make this thing go away.

18 Now, what's frustrating is, the Legislature
19 believes you've got the authority to fix this thing.
20 They told us they were not going to proceed ahead with
21 this bill last year under the belief that this issue was
22 going to be dealt with by your Commission.

23 Now, that brings us to the present. We're
24 open -- we want to find a way to make this thing go away.
25 There are other efforts by the Department of Finance,

1 Los Angeles County has a very valid approach.

2 It's in all of our interests to realize that the
3 shortest distance between two points is a straight line.
4 We have public policy disaster in this POBOR process.
5 And there's an easy way around it. And what I would ask
6 is your support on trying to find a way to make a
7 reasonable reimbursement methodology fix. We're open.
8 We think we have a valid proposal on the table. There
9 may be others. But what we're doing right now is nuts.

10 That's my testimony.

11 MR. KAYE: Thank you.

12 Leonard Kaye, County of Los Angeles.

13 You probably understand now why I wanted to be
14 last, because I can take advantage of all this wonderful
15 testimony, be very brief, and sort of add on to this.

16 One of the things before I very, very briefly
17 discuss what our approach is, which is a little bit
18 different from the CSAC approach of \$528 per officer,
19 this has been scrutinized by the State Controller's
20 Office, this figure. And Mr. Vincent Brown, who I
21 believe is -- I forgot his title at the time, but he's
22 a high-ranking official with the State Controller's
23 Office -- reviewed this matter in terms of the BSA audit,
24 and in terms of actual filed claims.

25 And on page 41 of Commission's staff's analysis,

1 they find that SCO's comments are based on the definition
2 of reimbursable activities in the Statement of Decision,
3 final staff analysis to the Parameters and Guidelines,
4 and Parameters and Guidelines, and consistent with the
5 position of the BSA in its published 2003 audit report on
6 POBOR.

7 Now, this is the interesting part. The SCO is
8 concern that the CSAC proposal is based on filed claims
9 rather than reimbursable claims adopted by the
10 Commission, and that as much as 75 percent of the 528
11 rate may be for activities not reimbursable under POBOR.

12 Now, I always look at -- I put that in the
13 mirror and I turned it around. And I said, "At least
14 25 percent is reimbursable according to the State
15 Controller's Office based upon their audits and their
16 findings." So that is the minimum threshold that we're
17 talking about, \$134 per officer.

18 Now, if you don't like that approach, which I
19 think is minimal, basic, then you have another approach.
20 You have the approach that we took, where we did, based
21 upon meetings that were held in the southern region and
22 throughout the state, we got together with law
23 enforcement officials and so forth, and we said, "Look,
24 what does your caseload look like? Are they big cases,
25 small cases?" and so forth. And we did a lot of analyses

1 on that.

2 And then through the good graces of the State
3 Controller's Office, they made available 803 claimants'
4 data. And we took that data, we analyzed it, and we
5 broke it down.

6 Now, the underlying presumption that we have,
7 particularly since I'm with the Auditor-Controller's
8 office of the County of Los Angeles, is that those claims
9 are reputable. They're to be believed, and so forth.

10 And so on that assumption we did an analysis,
11 and we were able to really come up with something that
12 was comparable in terms of meeting the reasonable
13 reimbursement criteria, whereas 50 percent of the
14 claimants would get 100 percent of their claimed costs.
15 We submitted this very, very detailed analysis, and so
16 forth.

17 So the Commission was presented with several
18 different approaches, several different options. And,
19 obviously, no one is prepared to buy off entirely on
20 either one approach or the other approach. But there is
21 something there. There is half a loaf, perhaps, on
22 either approach.

23 So what my plea would be is that somehow, some
24 way, we continue just the portion of this proceeding with
25 the very spirited attempt to develop something that

1 works; something that's simple enough so that accountants
2 and local agencies can figure it out and can explain it,
3 to sheriffs, to local police officials as to what it is,
4 how it's to be counted, and so forth, and that we proceed
5 in that fashion. And perhaps with the thought that this
6 could be bifurcated; that, obviously, I share the same
7 anxiety and concern that's been expressed here regarding
8 what's reimbursable, what's not reimbursable, and so
9 forth. But in the spirit of moving on and developing
10 something that's reasonable, unit cost, standard cost,
11 standard time, whatever, I think that I would make that
12 request.

13 Thank you.

14 CHAIR SHEEHAN: Thanks.

15 All right, the Controller's office?

16 Do you want to go first and then Finance?

17 MR. SPANO: Okay, I'm Jim Spano -- is this on?

18 CHAIR SHEEHAN: It's on.

19 MR. SPANO: -- of the State Controller's Office.

20 We've been doing audits for the last two or
21 three years and it has been a struggle. And the struggle
22 primarily is because there's been large differences as
23 far as what are the reimbursable activities. You know,
24 primarily dealing with interrogator time, investigator
25 time, the costs associated with maintaining a status

1 report, updating files.

2 And I know we had a pre-hearing back in July.
3 We talked about all the different issues we had. And it
4 was suggested that maybe based on our experience, we can
5 identify what we felt, you know, per the records, are the
6 reimbursable activities and identify some activities that
7 maybe are not reimbursable activities. We submitted
8 proposals right now.

9 And I think we're a hundred percent -- we're
10 supportive of a reasonable research and development
11 methodology; but I think the difficult thing is that
12 it was hard really to go forward until we have an
13 understanding and consensus as to what are the
14 reimbursable activities. And that's the biggest issue
15 right now is, we're so far apart between -- we did our
16 proposal based on what we understand the administrative
17 records to say, as far as reimbursable activities. And
18 I know that law enforcement agencies has their take as
19 far as what they believe were the increased costs
20 associated with that.

21 So I don't disagree that they truly believe
22 those are reimbursable. I don't know where the answer is
23 right now. All we're doing from an audit perspective is
24 we're trying to identify what's in the administrative
25 records.

1 So I think the reasonable reimbursement
2 methodology is valid. But I think first, before we go
3 there, I think we really need to really clarify and
4 define what are the reimbursable activities. And once we
5 do so, we're completely open to having follow-up meetings
6 and try and work out some type of numbers here. Because
7 right now, until we have the meetings, we don't know what
8 activities to include into the calculation.

9 CHAIR SHEEHAN: Okay, go ahead.

10 MS. CASTANEDA: Carla Castaneda, Department of
11 Finance.

12 As other people have said, we did meet several
13 times, and the majority of the disagreements were the
14 reimbursable activities.

15 We support the final staff analysis with the
16 amendments that are clarifying that. And then we
17 continue to support working towards a reimbursable rate
18 methodology that we can go forward with.

19 CHAIR SHEEHAN: Okay, any other -- I think we've
20 got everyone.

21 Camille, what I'd like you to do is go back to
22 the original SOD to discuss some of the issues in terms
23 of reimbursable activities.

24 I don't think anyone disagrees that coming up
25 with a reasonable reimbursement is the thing to do on

1 that. But I think the representative from the
2 Controller's office sort of hit the nail. We need to
3 figure out, okay, what are the activities, and then begin
4 to sit down.

5 So I'd like Camille to address the issue in
6 terms of what those activities in the staff's
7 recommendation are on those, specifically the
8 investigation and interrogation issue was discussed, and
9 then we can open the questions at that point in time.

10 Go ahead.

11 MS. SHELTON: I will focus on those two
12 activities. There have been a lot of clarifications with
13 regards to status reports, and everything is in the staff
14 analysis.

15 It appears that some statements in the original
16 Statement of Decision are being taken out of context.
17 The whole statute, if you look at the original Statement
18 of Decision, on pages 874 and 875, it discusses that
19 compensation and timing of the interrogation.

20 The test claim legislation does not mandate
21 local agencies to interrogate an officer; it does not
22 mandate local agencies to investigate.

23 As indicated in the Statement of Decision on
24 reconsideration, those activities are based on local
25 policy and rule and regulation; they are not

1 state-mandated.

2 The Commission made those clarifications on the
3 Statement of Decision on reconsideration. Those findings
4 are binding and they cannot be changed, absent a court
5 order or another statute directing the Commission to
6 change those findings. So this Commission is bound by
7 those two findings already made.

8 CHAIR SHEEHAN: Questions on that one?

9 Okay, and I guess that was a concern that
10 somebody raised in terms of the SOD. As Camille said, we
11 are beyond the time in terms of that. I understand there
12 may be agreements of what went into that, but we are
13 somewhat bound on the time, at this point in time
14 unless -- I'm not going to send you off to the
15 Legislature to get redirection. I'm not suggesting that,
16 please.

17 And then in terms of -- anything else you wanted
18 to address?

19 MS. SHELTON: Just to address -- we did look at
20 all of the requests to amend the reimbursable activities.
21 One of the requests made by the Controller's office we
22 disagreed with. One of the requests on the adverse
23 comment was to only reimburse when the adverse comment
24 resulted in some type of discipline.

25 The case law is very clear with regard to the

1 adverse comment section, that it applies to any adverse
2 comment. It could be a citizen complaint. It doesn't
3 even have to be investigated for those rights of notice
4 and review to occur. So we clarified those sections as
5 well.

6 CHAIR SHEEHAN: All right.

7 Any other comments?

8 As I say, from this -- at least from this
9 member, I agree in terms of we've got to move forward on
10 this. I mean, I can't even imagine for some of you how
11 long this has been going around. And since I took over
12 as chair, it has been swirling in every possible
13 direction.

14 I think what we have before us -- you know, some
15 people are not going to agree; but my concern is, we've
16 got to move forward and come up with something because I
17 don't want us to be here in another five, six, seven
18 years, still talking about the same issues.

19 So, anyway, comments or questions from the
20 Commission members?

21 Mr. Glaab?

22 MEMBER GLAAB: Yes, Madam Chairman and Members,
23 I am sensitive to the pleadings that are before us today.
24 I certainly think they resonate. I think staff has done
25 an excellent job in putting this material together.

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1 But I have to say as a local elected official
2 myself, I know that those costs are real. And it pains
3 me that we're not able to come up with a methodology that
4 is beneficial, mutually beneficial for everybody. So I
5 just wanted to make those comments.

6 CHAIR SHEEHAN: I appreciate that.

7 MEMBER WALSH: Steve, any other comments or any
8 other thoughts?

9 MR. KEIL: No, I've expressed them.

10 What I would simply ask is this -- I don't mean
11 to challenge your staff's legal analysis on whether
12 there's a flaw in the reasonable reimbursement
13 methodology statute. Perhaps there is. I'm a lobbyist.
14 When I hear what I want to hear, I run with it. I don't
15 go back and do the analysis on it.

16 However, what I would urge is that we not wash
17 our hands and walk away from this.

18 I think there is a consensus that no one's
19 interest is benefited by continuing on as we now are.
20 There has to be a simple way of resolving this. And it
21 could end up being a model for how we can deal with
22 future mandates as well.

23 We're open to that; we want that. We're tired
24 of the controversy. And I would hope that we would
25 collectively, including with the help of your staff, look

1 at, if there's problems with the current reasonable
2 reimbursement methodology, specifically identify what
3 they are and collectively go back and fix it so we can
4 address this head-on.

5 We sincerely are not coming into this with an
6 effort at trying to find ways of cleverly getting more
7 money out of the General Fund. We don't want to lose
8 what's coming to us, either. What we want is a simple
9 process, that takes all the incredible controversy and
10 cost that's now associated with this process out of it.

11 And thank you for your time.

12 CHAIR SHEEHAN: What's the will of the -- oh,
13 Camille, I'm sorry.

14 MS. SHELTON: Just one quick comment.

15 17158.5 does provide a definition of reasonable
16 reimbursement methodology, and that was enacted effective
17 January 1st, 2005. Before that time, the Commission had
18 the ability to adopt a unit cost. And it was done based
19 on a consensus of the parties. And it was just whether
20 something sounded reasonable based on the testimony in
21 the record.

22 With this definition of reasonable reimbursement
23 methodology, the Commission is required to make the two
24 findings on the conditions required by statute. And
25 that's the difficulty. Those two findings require,

1 number one, that the total amount to be reimbursed
2 statewide is equivalent to total estimated local agency
3 and school district costs to implement the mandate in a
4 cost-efficient manner; and, number two, for 50 percent or
5 more of the eligible local agency and school district
6 claimants, the amount reimbursed is estimated to fully
7 offset their projected cost to implement the mandate in a
8 cost-efficient manner.

9 So those conditions are very difficult to meet.
10 It was a lot easier before that statute was enacted to
11 establish those two conditions.

12 But the Commission is bound by that statute --
13 or stuck.

14 MEMBER WALSH: Move to approve the staff
15 recommendation.

16 CHAIR SHEEHAN: Okay, we have a motion.

17 Do we have a second?

18 MEMBER HAIR: I'll second.

19 CHAIR SHEEHAN: We have a motion and a second.

20 If there's no further discussion, all those in
21 favor, say "aye."

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

23 CHAIR SHEEHAN: Opposed?

24 MEMBER GLAAB: No.

25 CHAIR SHEEHAN: Mr. Glaab is reflected as voting

1 "no," let the record show.

2 It would be my hope that we can sit down and go
3 forward on some further discussions on this. We still
4 have a long way to go on this. And I am hopeful that
5 with the help of the Controller's office and other
6 parties, we can begin to move forward and come to closure
7 on this issue.

8 I know it's not what everyone wants. Sometimes
9 that's the nature of the process up here. But I still am
10 hopeful that we can come up with something that at least
11 does reflect some of the costs and, as I say, with the
12 help of the Controller's office we can get some numbers
13 and, with the parties, sit down and come up with
14 reasonable reimbursement methodology.

15 MS. CONTRERAS: I would think it would be
16 helpful if you would direct your staff to facilitate that
17 process because if you're going to adopt a reasonable
18 reimbursement methodology, it has to come back to you.
19 So it really should go through your staff.

20 CHAIR SHEEHAN: I'm happy -- go ahead, Camille.

21 MS. SHELTON: It can come back through staff
22 without a problem. The problem is the Commission or its
23 staff cannot propose an RM. By statute, it has to come
24 from Finance, the Controller, an affected state agency, a
25 claimant, or an interested party. The Commission does

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1 not have the authority to develop its own RM.

2 MS. CONTRERAS: But you can facilitate --

3 CHAIR SHEEHAN: Absolutely, absolutely.

4 MS. CONTRERAS: -- a process in order to make it
5 occur.

6 CHAIR SHEEHAN: Yes, yes.

7 MS. CONTRERAS: Without that, I don't believe,
8 frankly, that it will. Even with your pushing on that
9 seven -- whatever, nine months ago, we're still sitting
10 here.

11 CHAIR SHEEHAN: Yes.

12 MS. CONTRERAS: And it is an important issue.

13 CHAIR SHEEHAN: And certainly you have my
14 commitment. If you put a proposal forward, if you want
15 to put something forward for discussions, we can
16 facilitate that. Absolutely, you have my commitment on
17 that.

18 MS. STONE: Madam Chairman, Pam Stone on this
19 matter.

20 I didn't want to bore you with another person up
21 here. I've also worked with the folks on POBOR with
22 regard to the reasonable reimbursement methodology. What
23 I'm concerned about at this juncture, and we've had
24 discussions of other mandate claims in other Parameters
25 and Guidelines issues, is that now that your commission

1 has adopted the amended Parameters and Guidelines, we
2 will once again hear from staff that they do not have any
3 jurisdiction to facilitate this because of the fact that
4 there have been no parameters and guidelines before them.
5 And I wanted to make sure that the fact that your
6 adoption --

7 CHAIR SHEEHAN: Can you back up and say that
8 again? That we don't have --

9 MS. STONE: We've had discussion on other
10 mandates --

11 CHAIR SHEEHAN: I missed a word.

12 MS. STONE: -- Madam Chair. And since there
13 were no amendments to parameters and guidelines pending
14 before the Commission, or no action that would have to be
15 taken by the Commission, we've heard from your staff that
16 they have no jurisdiction to work on this matter because
17 of the fact that there's nothing pending before them.

18 By the adoption of the Parameters and Guidelines
19 today, my concern is that there's no longer anything
20 pending before your staff that would assist with
21 regard -- and that's my main concern, you know, that
22 something actually happened and we don't have to file
23 again to work up on this issue of reasonable
24 reimbursement methodology.

25 CHAIR SHEEHAN: Okay. Did you want to -- okay,

1 you go ahead --

2 MS. HIGASHI: I just wanted to respond.

3 CHAIR SHEEHAN: -- and then I'll give you my
4 comment as the chair.

5 MS. HIGASHI: As I see this issue, what we would
6 be having would be continuing discussions on development
7 of reasonable reimbursement methodologies, whether it's
8 for this program or other programs. And also, we are
9 working with folks, trying to figure out, is there
10 another way that this definition can be worded so that we
11 can achieve the objectives that we all hoped would be
12 achieved with this change in definition. And so I just
13 need to see requests coming in for meetings, workshops,
14 whatever.

15 But even having us facilitate them, I just want
16 to add, that there's nothing that bars the parties
17 sitting at the table from convening meetings on their own
18 without Commission staff present.

19 CHAIR SHEEHAN: Right. And I guess what I would
20 say is -- and this is why I asked staff in terms of doing
21 this, because from my perspective, this issue has gone on
22 far too long. We have got to get the parties together.
23 We've got to figure out something.

24 I think now that we have adopted these -- as I
25 say, they may not be what everyone -- we've got something

1 to go forward on. We're going to get some additional
2 information, working with the Controller's office. And
3 at least as the chair, I can commit -- if any of you feel
4 that the staff has not been responsive -- and I think
5 both of them have said they want to be, because I think
6 they want to get this resolved as much as you all want to
7 get this resolved -- please feel free to contact me if
8 you feel they haven't been.

9 I know the staff and I have had numerous
10 discussions about this issue; and the will is to try and
11 come up with some solution to this.

12 So I will put that out there if you all feel
13 that for some reason they aren't or something has
14 happened. I find that hard to believe; but if you do
15 feel that, I'm happy to get involved or engaged in that
16 process, if it would be helpful.

17 MS. CONTRERAS: I think it would be very
18 helpful. As a person who negotiates for a living, I
19 think sometimes you have to have some push behind it in
20 order to get the parties to even sit down at the table
21 and seriously look at seeking a resolution. Otherwise,
22 you're in the position where you try and try and try, and
23 then one or both sides walk away.

24 CHAIR SHEEHAN: Well, and especially on one
25 that, you know, we don't necessarily have the pressure or

1 a deadline or some external force, forcing it.

2 And I don't disagree with you in terms of that.
3 So I think -- but as I say, I think I speak for the other
4 members of the Commission on this, we all want this
5 resolved. And I think the staff is committed also to
6 getting this done.

7 But we do need something from you to start --
8 you know, we can't initiate that. So we do need
9 something to begin this. And it can be simple, or
10 however you want to do it.

11 So, all right, thank you all.

12 MR. MCGILL: Thank you.

13 MS. HIGASHI: We're now at Item 14, proposed
14 amendments to Parameters and Guidelines.

15 *(Brief discussion off record at 4:55 p.m.)*

16 MS. HIGASHI: Item 14. This item will be
17 presented by Chief Counsel Camille Shelton.

18 MS. SHELTON: This is a request to amend the
19 original Parameters and Guidelines for *Handicapped and*
20 *Disabled Students* by the Counties of Los Angeles and
21 Stanislaus pursuant to Government Code section 17557.

22 Government Code section 17557 gives the
23 Commission discretion to amend or modify parameters and
24 guidelines. If the Commission approves any of the
25 counties' requests, the reimbursement period affected is

1 from July 1st, 2000, through June 30th, 2004, only.

2 Staff finds that the request to add or to amend
3 the reimbursable activities are not consistent with the
4 Statement of Decision, and recommends that the Commission
5 deny these requests.

6 Staff further finds that the proposed indirect
7 cost language does not identify any additional costs that
8 could not have been previously claimed by Counties and
9 thus it is not necessary to amend Section 6 regarding
10 claim preparation as requested.

11 Staff recommends that the Commission deny the
12 request to amend the indirect cost language.

13 Finally, the County of Stanislaus requests that
14 the Commission amend the offsetting revenue section of
15 the Parameters and Guidelines to specifically identify
16 offsetting revenue. In its late filing, the County
17 states that the amendment is necessary since various
18 counties did not claim costs for this program because
19 they were under the impression that realignment funds
20 received under the Bronzan-McCorquodale Act would be
21 considered an offset. A discussion of realignment funds
22 can be found on pages 21 and 22 of the staff analysis.

23 The State Controller's office opposes the
24 request to amend the offsetting revenue section of the
25 Parameters and Guidelines. The Controller contends that

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1 the Counties should not be allowed to file new claims for
2 the period between July 1st, 2000, through June 30th,
3 2004, since no changes have been made to the reimbursable
4 activities. Staff notes that there is no evidence in the
5 record at this point regarding the fiscal impact of
6 potential claims being filed for costs incurred at this
7 time.

8 Based on the evidence in the record, staff
9 recommends that the Commission approve the request to
10 amend the language regarding offsetting revenue.

11 The proposed language amends the section to
12 correct a legal error found by the Commission when it
13 reconsidered the original Handicapped and Disabled
14 Students program as directed by the Legislature for costs
15 incurred beginning July 1st, 2004.

16 The original Parameters and Guidelines
17 incorrectly states that Medi-Cal and private insurance
18 proceeds cannot be used as offsetting revenue. As
19 determined by the Commission when it reconsidered the
20 original program, federal law under specified
21 circumstances allows agencies to use these proceeds to
22 pay for this program.

23 The proposed amended Parameters and Guidelines
24 begins on page 33 of your record.

25 Will the parties and representatives please

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1 state your name for the record?

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

3 MS. STONE: Pam Stone on behalf of the County of
4 Stanislaus.

5 MS. DOWNS: Linda Downs, Stanislaus County.

6 MS. BRUMMELS: Ginny Brummels, State
7 Controller's Office.

8 MR. SPANO: Jim Spano, State Controller's
9 Office.

10 MS. CASTANEDA: Carla Castaneda, Department of
11 Finance.

12 MS. STONE: Thank you very much. Good evening,
13 Members of the Commission.

14 First of all, I would like to thank Commission
15 staff for the work on the Handicapped and Disabled
16 Students proposed amendments to Parameters and
17 Guidelines.

18 We do request that the offsetting revenue be
19 specified. Using my CSAC SB 90 hat and being on that
20 committee, there were some small rural counties that were
21 under the misapprehension that they could not file if
22 realignment revenues were received. And this needs to be
23 clarified.

24 It has been a matter of some contention amongst
25 the counties; and it does needs to be clarified. And

1 we're very grateful to Commission staff to clarify the
2 offsetting revenues.

3 We would request that the ICRP, the indirect
4 cost rate proposal language be amended to state the
5 boilerplate as has been developed over the last several
6 years.

7 Yes, a change theoretically does not result in
8 any increased costs or any reason to amend a claim; but
9 we have an opportunity to clean something up.

10 A number of years ago there were some
11 difficulties with regard to interpretation of the ICRP
12 language, as a result of which under the aegis of your
13 Commission staff, together with the Department of
14 Finance, Controller's office, and claimants'
15 representatives, new terminology was written which now
16 makes it more comprehensible to the claimants' pool, as
17 well as eliminates issues with regard to the State
18 Controller's Office.

19 So although the change in terminology will not
20 have any net effect with regard to claims whatsoever, we
21 are requesting it merely to bring this set of Parameters
22 and Guidelines, even though they cease effectiveness in
23 2004, to make it clean and comply with what has gone on
24 before.

25 And thank you very much for your attention.

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

2 I certainly concur with Pam Stone speaking for
3 the California State Association of Counties.

4 Just a couple of things. I think it's a
5 tremendous piece of work that Commission staff and this
6 Commission has done by approving these -- the detailed
7 reimbursement rules on a go-forward basis from July 1,
8 2004. I think the only issue before us is that these
9 Parameters and Guidelines are sort of like a legal
10 curiosity, and they still have language from the repealed
11 Short-Doyle language and so forth.

12 And, of course, for the record, we do feel that
13 medication-monitoring and a lot of the activities that
14 were found to be reimbursable on July 1, 2004, are
15 actually reimbursable going back to July 1 of 2000, which
16 would be the effective date of these Parameters and
17 Guidelines.

18 And we understand but do not necessarily agree
19 with Commission's argument that the Statement of Decision
20 is controlling, because we believe that at the time that
21 the Parameters and Guidelines were adopted, that the
22 Short-Doyle Program was actually repealed.

23 So there is that thought that I would just like
24 to make for the record.

25 And in the lateness of the hour. Those are my

1 only comments. Thank you.

2 CHAIR SHEEHAN: Thank you.

3 MS. DOWNS: In the interest of time, I have no
4 comments.

5 MR. SPANO: Just really briefly. We did make a
6 couple proposals. One is the indirect costs. We stated
7 that we felt that the proposal just clarified versus
8 added new activities.

9 The question I have was just to eliminate issues
10 down the line here. The issue I have with the offsetting
11 revenues, I concur with the staff analysis that
12 private-pay Medi-Cal was not clarified before and now it
13 is, so it should be a deducted item from claimed costs.

14 Stanislaus identified -- indicated that various
15 counties have not claimed costs to which they were
16 entitled to because they were under the misapprehension
17 that utilization of the realignment fund would be
18 considered an offsetting cost.

19 The only question I have right now is that,
20 based on this thing right now, that there was no
21 requirement to deduct realignment, and therefore those
22 counties that didn't file a claim because they thought
23 they had to deduct realignment, they can file a claim, is
24 what I think the argument that Stanislaus is making.

25 The only question I have right now is often that

1 realignment is used for the local match for the treatment
2 cost, which is usually the 90 percent of treatment costs
3 was realignment and 10 percent was actually the cost
4 itself that was being reimbursed.

5 If you look in the body of the P's & G's, it
6 still says treatment costs is still 10 percent
7 reimbursable.

8 So the question is -- because I don't think
9 realignment funds is actually being deducted for being
10 applied for assessment, it's usually applied for
11 treatment costs. So that's the only issue I
12 have relating -- I agree with the proposal by the
13 Commission.

14 My only question is, how does realignment fall
15 into play into the Parameters and Guidelines? Because
16 I'd rather to eliminate -- and I'm not sure if I'm
17 confusing people here --

18 CHAIR SHEEHAN: No, I don't think you are.

19 I think the issue -- well, let me have Finance
20 speak, and then I can sort of give you my observations on
21 this. Thanks.

22 MS. CASTANEDA: Carla Castaneda, Department of
23 Finance.

24 We have no objections to the staff analysis; and
25 we support the correction of law.

1 CHAIR SHEEHAN: Okay, let me tell you my issue,
2 because as we went into the staff analysis for the two
3 issues, of the Medi-Cal and the private insurance, and
4 then Stanislaus comes in with this other -- where I'm
5 reluctant to act a little bit today is, what are the
6 implications of this realignment issue? How many people
7 are we talking about, what are the costs, what did people
8 do?

9 I'm a little reluctant to move today until I get
10 a better understanding of how many counties we're talking
11 about, what they used them for, what they didn't, what
12 could be. That's the concern that I have.

13 So we went into it, trying to -- this would be
14 the no-good-deed goes unpunished, trying to fix what we
15 thought was a wiggle issue, and all of a sudden we've
16 backed into this other issue -- or it backed into us, I'm
17 not quite sure. So I'm trying to get a handle on, okay,
18 what would be the implications if we do move forward with
19 this because then it opens up that claiming period again,
20 and we figure out what's going on.

21 I guess my question is -- I don't know who I'm
22 asking this to -- if we put this over, could we get a
23 better feel of what some of those offsetting costs -- the
24 implication of the realignment, how many counties, what
25 are we talking about?

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1 MS. BRUMMELS: I'm Ginny Brummels with the State
2 Controller's Office. And I did some research on this
3 last Friday. We have 22 counties out of the 58 counties
4 that have not filed for the 2000-2001 fiscal year. Eight
5 of those that did not file, have filed one or more years
6 between 2000-2001 through 2003-04. So we have 14
7 counties which are small counties that have not filed in
8 any of those fiscal years.

9 So looking at what the costs were -- the actual
10 costs that were claimed in one or more fiscal years, I
11 came up with an estimate of \$1.3 million for all eight of
12 those claimants that had filed one or more years.

13 CHAIR SHEEHAN: So eight for the total? What
14 did you say, 1.8 --

15 MS. BRUMMELS: 1.3 million for eight counties
16 that had filed one more years between 2000-2001, through
17 2003-04.

18 MEMBER BARNES: So it's the net?

19 MS. STONE: That's what she's saying, it would
20 be 1.3 million for all eight counties.

21 MEMBER WALSH: Okay, gotcha.

22 MS. STONE: So it's not like a budget buster
23 that it is -- for example, for Los Angeles, for
24 Stanislaus. You're looking at -- and we're not even
25 saying that they're all going to file.

1 CHAIR SHEEHAN: Right, because we've got the
2 14 --

3 MS. STONE: But there are a few out there that
4 had small claims that did not file because they were
5 under the misapprehension with regard to --

6 CHAIR SHEEHAN: Realignment revenues.

7 MS. STONE: -- if they got any realignment
8 money, they couldn't claim anything.

9 CHAIR SHEEHAN: So are we only talking about
10 then the 14? Is that our universe now?

11 MS. STONE: Yes. That's my understanding, that
12 the 14 is the universe.

13 CHAIR SHEEHAN: Okay.

14 MS. BRUMMELS: No, there's a total of 22 that
15 did not file in the 2000-2001 fiscal year. However,
16 eight of those 22 had filed in one or more of the other
17 years, through the 2003-04.

18 CHAIR SHEEHAN: So they can still go back for
19 that year, so there could be 22.

20 MS. BRUMMELS: So what I did is I looked at the
21 actual cost of the claims that they had found in one of
22 those other years, and projected if all eight of those
23 filed a claim, it would amount to approximately
24 \$1.3 million.

25 That does not count for the other 14 that have

1 not filed any claims during the entire period of
2 2000-2001 through 2003-04.

3 CHAIR SHEEHAN: And the other fourteen are the
4 smaller --

5 MR. KAYE: Very small.

6 CHAIR SHEEHAN: -- rural counties?

7 MS. BRUMMELS: Yes, they are.

8 CHAIR SHEEHAN: Not that we don't love
9 Los Angeles. Of course, we love them, but it gives me a
10 little better feel, in terms of just --

11 MS. STONE: Yes, they're all the small, little
12 ones.

13 CHAIR SHEEHAN: Okay.

14 MS. STONE: I think Ginny could give you an idea
15 as to the size of them.

16 CHAIR SHEEHAN: Yes, if we're talking about
17 Del Norte, Modoc, that makes me feel better then, and a
18 few other ones.

19 We love all the counties, you understand that.

20 MR. SPANO: Can I -- from an audit perspective,
21 I'd like to clarify one thing, is that we're talking
22 about counties that had not filed a claim and now given
23 the opportunity to go back and file a claim. Because how
24 about the counties that actually filed a claim and
25 deducted realignment funds? You know, they're

1 significant. If you look at '00-01, you're looking at
2 \$20 million that deducted realignment funds.

3 Are we opening the door to --

4 CHAIR SHEEHAN: And they could go back and
5 amend --

6 MR. SPANO: Are we opening the door to allow
7 them to go back and recover that \$20 million? I mean, if
8 you're looking at the overall picture, I figure we might
9 as well at least deal with it now.

10 CHAIR SHEEHAN: We're not. So we have the
11 fourteen, plus we have the others.

12 MR. SPANO: Or if we're only -- are we only
13 talking about those that didn't file a claim, to give
14 them an opportunity?

15 CHAIR SHEEHAN: I don't know that we can --

16 MS. SHELTON: You can't limit that. If the
17 Commission amends the Parameters and Guidelines, then the
18 Controller has to issue revised claiming instructions
19 which applies to everybody.

20 CHAIR SHEEHAN: Like all the other --

21 MS. SHELTON: So they can file amended claims
22 based on the new revised claiming instructions. So the
23 ones that have already filed can refile under the revised
24 claiming instructions.

25 CHAIR SHEEHAN: Which could be -- it could be a

1 substantial amount of money.

2 MR. SPANO: Right.

3 And the issue I had right now is just to
4 eliminate -- from an audit perspective, I'd like to
5 eliminate confusion down the line here because right now
6 it says in the P's & G's that you're entitled to only
7 10 percent of treatment costs because -- and typically
8 they fund the 90 percent with realignment funds.

9 And so now you have -- if realignment funds are
10 allowed to be recovered, but yet you're only allowed to
11 claim 10 percent treatment costs, you know, we may have a
12 conflict there.

13 MS. SHELTON: Can I just mention something on
14 that?

15 CHAIR SHEEHAN: Go ahead, yes.

16 MS. SHELTON: The 90-10 split for the medical
17 treatment costs was in Short-Doyle. The Commission made
18 that finding in the original Statement of Decision. The
19 Third District Court of Appeal -- I think it was the
20 Third District Court of Appeal upheld -- oh, the Sixth
21 District Court of Appeal upheld the Commission's
22 decision. The Commission does not have jurisdiction to
23 go back. And even though realignment was enacted in
24 1991, it does not have jurisdiction to go back all the
25 way to 1986 and change that finding. It was upheld by

1 the Court.

2 The Legislature did direct the Commission to
3 reconsider that original program, but only directed the
4 Commission to reconsider it beginning July 1st, 2004.

5 So as of July 1st, 2004, counties can claim
6 100 percent of their treatment costs. But until that
7 point, the Commission has no jurisdiction to make that
8 correction.

9 And that was requested in this request to amend
10 the P's and G's. And I've stated in the analysis --

11 MS. STONE: And it was denied.

12 MS. SHELTON: -- that the Commission doesn't
13 have jurisdiction to change that.

14 CHAIR SHEEHAN: No, you were honest about it.

15 MR. KAYE: Yes.

16 MEMBER WALSH: May I ask a question?

17 So the worst-case scenario, what do you think
18 ballpark costs would be? Controller's Office?

19 MR. SPANO: I don't know, Ginny was mentioning
20 1.3 for the --

21 MS. BRUMMELS: Eight.

22 MR. SPANO: -- eight. And, I don't know, I
23 would figure --

24 MR. KAYE: Would it be 1.3 for the 80 percent of
25 costs -- 90 percent of cost? Or what if we just got

1 reimbursed for the 10 percent?

2 MS. STONE: That's what he said.

3 MR. KAYE: Oh, it would be 1.3 at the 10 percent
4 level?

5 MS. BRUMMELS: It would be -- the 1.3 was based
6 upon their claims that they filed in 2001-02 through
7 2003-04.

8 MR. KAYE: Right, for 100 percent of their
9 treatment cost?

10 MS. BRUMMELS: Yes.

11 MR. KAYE: So it would be 10 percent of the
12 1.3 million.

13 CHAIR SHEEHAN: No, and I guess where I'm having
14 some -- oh, go ahead, Camille.

15 MS. SHELTON: There is a statute, and that is
16 identified on page 21, that if a county did claim the
17 90-10 split, they could not go back and refile to claim
18 the 100 percent.

19 MS. STONE: Right.

20 MS. SHELTON: And that is Statutes 2002,
21 Chapter 1167, AB 2781.

22 So if during that time period they claimed
23 90-10, you can't go back and refile for the 100 percent
24 of treatment costs.

25 But that doesn't have anything necessarily to do

1 with realignment offsets and funding.

2 CHAIR SHEEHAN: And I guess that would be the
3 question I would have just sort of understanding the
4 universe, potentially, because the counties could come
5 back in and amend their -- once we issue claiming
6 instructions.

7 I'd like to just understand what that universe
8 there -- or what we're talking about in terms of
9 ballpark dollars.

10 MEMBER WALSH: Worst-case scenario.

11 MR. SPANO: If you're talking about what Camille
12 just said, because of the 2781 in 2002, you can't go
13 back, whatever you filed, you filed, and you can't go
14 back and revise a file claim for 2000-2001.

15 MS. SHELTON: For only treatment costs --

16 MR. SPANO: For treatment costs.

17 MS. SHELTON: -- and for only the 90-10 split.

18 MR. SPANO: Right, right. Only for the 90-10.

19 In other words, you claim --

20 CHAIR SHEEHAN: But there are other activities
21 which they may have used the realignment for.

22 MS. SHELTON: Right.

23 MR. SPANO: So if they claim 10 percent and use
24 90 percent for realignment, you can't go back now and
25 recover the 90 percent right now. And so --

1 CHAIR SHEEHAN: But only for the treatment
2 costs; but there may have been other activities.

3 MS. SHELTON: If they can show they used
4 realignment funds for any of the other reimbursable
5 activities, then --

6 MR. SPANO: I think realignment is the only
7 issue for treatment costs.

8 MS. SHELTON: -- that's what they would be
9 requesting.

10 MR. SPANO: It's not used for assessment.

11 CHAIR SHEEHAN: Are you going to swear to that
12 under penalty of perjury?

13 MR. SPANO: On the claims we've looked at, it's
14 always been lumped under treatment.

15 CHAIR SHEEHAN: Because at least then we know
16 that --

17 MS. STONE: Ms. Chairman, administrative costs,
18 for example, were allowed on a 100 percent basis, and
19 then there was the 90/10.

20 Obviously, these counties under the new section
21 SB 2781, it allows -- it directs the State Controller's
22 Office not to dispute reimbursement claims; but it has a
23 deadline. And it does not give these other entities the
24 right to go back and claim the full 100 percent, but it
25 does give them a right to get a small bite out of the

1 apple. They still have -- the ones that never filed,
2 they still have the ability to --

3 CHAIR SHEEHAN: Exactly, right.

4 MS. STONE: -- claim the 10 percent of the
5 treatment costs and 100 percent of the administrative
6 costs. So we're not talking about a huge apple; we're
7 talking about a bite.

8 MEMBER WALSH: So what's the dollar of that?

9 MEMBER HAIR: Of that?

10 CHAIR SHEEHAN: Hold on. Do you disagree with
11 that?

12 MS. SHELTON: Not necessarily. But to clarify
13 something that Jim did say, in 2004 the Legislature
14 enacted SB 1895 and clarified that any money used from
15 realignment to fund costs of any part of this program did
16 not have to be identified as an offset. So based on that
17 language -- I've never had to do this research yet. But
18 based on that language, it seems that they could have
19 used the realignment funds for any activity that was
20 found to be reimbursable and not just the treatment
21 services.

22 MR. KAYE: To address your question, I think
23 we're looking at 1.3 as the highest possible level.

24 And I agree with Jim, as I recall, we used most
25 of ours for treatment. So I think it's going to be

1 between 10 percent of 1.3 million and 1.3 million, with
2 something much, much closer to the low figure.

3 CHAIR SHEEHAN: I am concerned that it actually
4 could be higher because if they're not limited on what
5 they could do, it could be other activities that they
6 could have used these for under this mandate.

7 MS. STONE: But, Ms. Sheehan, if that's so, then
8 they don't have the ability to claim the 100 percent of
9 costs that they would have previously --

10 CHAIR SHEEHAN: Of treatment.

11 MS. STONE: -- of the treatment, which is the
12 biggest -- which is the biggest bundle of it.

13 MR. KAYE: Right.

14 MS. STONE: And they would be then forced to go
15 back to the 90-10 split, because they would not have the
16 legislative forgiveness, which does not allow them to go
17 back and amend the claim.

18 CHAIR SHEEHAN: I understand. And that's a
19 little bit of the conundrum we're in.

20 MS. STONE: So they're given a Hobson's choice.
21 If you had never claimed, you can claim the 10 percent
22 was 100 percent of your administrative costs in the
23 indirect.

24 If you have claimed --

25 CHAIR SHEEHAN: Right.

1 MS. STONE: -- and you've claimed 100 percent,
2 you've got a choice: You can go back and claim
3 10 percent with 100 percent of your administrative costs
4 if that's going to be greater than what you've received
5 if you filed later for 100 percent of the costs.

6 And I don't think that's going to work if you
7 can't claim 90 percent of your treatment costs.

8 CHAIR SHEEHAN: No, and I understand what you're
9 saying, Ms. Stone.

10 I guess the only -- what would make me feel a
11 little bit better in approving this is, okay, we talked
12 about the treatment costs and the administrative costs.
13 I guess my question is, can anyone sit here definitively
14 and say they did not use those funds for any other
15 activities related to this mandate?

16 MS. SHELTON: If you just turn to page 35, there
17 is the discussion of the other reimbursable activities.
18 And it's the IEP participation, assessment, and case
19 management activities. Those are the ones that fall
20 outside of the 90-10 split.

21 MR. KAYE: Right.

22 MS. STONE: Yes.

23 CHAIR SHEEHAN: Okay, and so then the question
24 is, if they offset --

25 MS. SHELTON: If they used realignment costs.

1 CHAIR SHEEHAN: -- if they used them, right.
2 Because I would just feel a little bit better getting a
3 handle -- even if we surveyed some of the counties to
4 find out did they use some of these for this, just to see
5 what the universe is in terms of that. Because I
6 understand what you're saying in terms of that issue, and
7 the administrative issues; but it's some of these other
8 activities that Camille points to. You know, and I don't
9 know if we would send the Controller's office off and
10 just sort of do a survey, sort of a sampling, so we'd get
11 a feel of what it is we're talking about. That's the
12 issue I have.

13 Because, as I say, while we went into this one
14 way, this other issue arose which is going to have an
15 impact, and it's going to have a fiscal impact. And I
16 understand that because, in fairness, in terms of
17 changes. But I guess I would just feel a little bit
18 better understanding the universe before I just jumped
19 off the cliff.

20 But, anyway --

21 MEMBER WALSH: Let me ask my question again.

22 Based on what you've heard, do you have a
23 ballpark of what you think potentially could be a
24 top-end --

25 MR. SPANO: You know, I think assuming --

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1 MEMBER WALSH: Because these look very
2 expensive.

3 MR. SPANO: Right, right. Madam Chair and
4 Members, I know that -- and the concern right now is
5 making an assumption that the realignment is only applied
6 against treatment costs. And you want some assurances
7 that that's the case, not versus being applied
8 assessment, all of a sudden this bill is up.

9 And I believe that to my knowledge -- and we may
10 go back and look at the claims that are filed right
11 now -- but to my knowledge, the realignment is only
12 applied against treatment costs. So if that's the case,
13 the amount we're talking about probably is only less than
14 five --

15 CHAIR SHEEHAN: Is a smaller number.

16 MR. SPANO: Is less than four or five million
17 dollars, I think.

18 CHAIR SHEEHAN: And if it's not --

19 MR. SPANO: Right -- and I don't know. I'd be
20 giving you numbers I can't support.

21 CHAIR SHEEHAN: Right, and that's -- yes.

22 MR. SPANO: So we can pull the claims and find
23 out what the realignment -- because I don't know --

24 CHAIR SHEEHAN: I guess what I'm saying is if
25 you're right in what you've done that they are; but if

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1 you go back and some of these other activities -- you
2 know, were some of them covered under that.

3 MR. SPANO: Right.

4 CHAIR SHEEHAN: So, anyway --

5 MS. HIGASHI: Could I just ask a question of the
6 parties?

7 CHAIR SHEEHAN: Absolutely.

8 MS. HIGASHI: I'd like to ask the Counties of
9 Los Angeles and Stanislaus, that if the Commission
10 adopted these amendments to the P's and G's, would you
11 plan on refiling your claims that you're legally allowed
12 to file?

13 MR. KAYE: The County of Los Angeles would be
14 absolutely no.

15 MS. DOWNS: Stanislaus would not, either.

16 CHAIR SHEEHAN: What was the answer?

17 MR. KAYE: No.

18 CHAIR SHEEHAN: You would not?

19 MR. KAYE: I'm sorry, I should keep it simple:
20 No.

21 CHAIR SHEEHAN: Did you get that, sir?

22 MS. DOWNS: Neither would Stanislaus.

23 MS. SHELTON: Can I just remind also the
24 Commission --

25 CHAIR SHEEHAN: If there are other counties here

1 also that would like to come forward and make the same
2 statement?

3 Steve, do you want to talk for anybody else in
4 your association?

5 MS. SHELTON: The Commission is not required to
6 amend these Parameters and Guidelines. You have
7 discretion to do that. So it's nothing, you're not
8 directed by the Legislature to change; it's just a
9 request made by counties. So you are not required to
10 amend these.

11 CHAIR SHEEHAN: What is the will of the
12 Commission at this late hour?

13 MEMBER WALSH: From my perspective, I'd like to
14 go back and get a little more information.

15 CHAIR SHEEHAN: Other members?

16 MEMBER OLSEN: Well, I'm ready to act now, but
17 I'm deferring to people who would like more information.
18 That's perfectly reasonable.

19 MEMBER HAIR: Tell me -- can I ask a question?

20 CHAIR SHEEHAN: Absolutely.

21 MEMBER HAIR: To what is the size -- what have
22 we paid out out of this, the mandate at this point, the
23 size of what we've paid in claims?

24 MS. BRUMMELS: What's been paid out for the
25 2000-2001 fiscal year -- or what has been claimed --

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1 MEMBER HAIR: Right, I'm sorry, yes.

2 MS. BRUMMELS: -- not necessarily paid, is
3 \$86.7 million.

4 What has been claimed for 2001-02 is
5 111.4 million, and 2002-03 is 125.5 million. And the
6 2003-04 is 62.2 million.

7 MS. HIGASHI: I've just passed out an old
8 deficiency report that was from last spring.

9 CHAIR SHEEHAN: The other two -- our colleagues
10 here?

11 MEMBER LUJANO: That's fine. I need more
12 information.

13 MEMBER GLAAB: More information, yes.

14 I move it quickly.

15 CHAIR SHEEHAN: Because at least we can make, I
16 guess from my opinion, an informed decision. And we have
17 the request in front of us.

18 I sincerely hope you are correct, that as you've
19 looked at these, it is the -- this is what you've seen
20 them used for, that has been the primary use -- maybe
21 some administrative costs. But I think if we can pull a
22 few, just to see, okay, there is a feel that some of them
23 have used for those, you may be correct. But as I say, I
24 just -- I would just feel better knowing that we would
25 have that.

1 I don't think it necessarily is going to change
2 the outcome in terms of moving forward, but just to be a
3 little more informed.

4 MS. BRUMMELS: Right. And there are the 14 that
5 I have no historical cost or history on, that I projected
6 any costs on.

7 CHAIR SHEEHAN: Right, exactly. And we
8 understand in terms of what you had already estimated
9 those costs to be, absolutely, so we can sort of
10 extrapolate from the other, okay.

11 So then we would postpone this until January.
12 Just get some information. I think it's just pulling
13 some and seeing what they are. And then we can proceed
14 at that point.

15 All right, thank you all.

16 MS. STONE: Thank you very much.

17 MS. HIGASHI: Very briefly, we have public
18 comment on mandate reform --

19 CHAIR SHEEHAN: Public Comment on Mandate
20 Reform.

21 MS. HIGASHI: And then my report, Camille's
22 report, and a very quick closed session.

23 CHAIR SHEEHAN: Okay. I know we have a couple
24 of witnesses on Mandate Reform.

25 Robert, I know your name was down and Allan and

1 Patrick Day.

2 Do you all three want to come to the table?

3 MR. MIYASHIRO: Robert Miyashiro, for the
4 record, representing the Education Mandated Cost Network.

5 I think just to speak to the issue of mandate
6 reform, it was on your agenda. I thought -- I didn't
7 know what might precede it. But I did want to just
8 briefly address it.

9 What I would begin with is, I think that the
10 hearing today is illustrative of the need for mandated
11 reform.

12 CHAIR SHEEHAN: I knew somebody was going to say
13 that.

14 MR. MIYASHIRO: What I would also add is that
15 everyone here takes this job very diligently, very
16 seriously, and puts forth a lot of effort in it. And as
17 some of you know, I sat on the other side, in
18 Ms. Sheehan's chair, and have seen this issue from both
19 sides. So I think there is considerable effort that goes
20 into this. Everyone is working very hard in this
21 process. But it's the process itself, it is what we have
22 to live with right now that is causing all of this
23 frustration, both from your side of the dais and from our
24 side of the dais.

25 Three things that I would like to just point out

1 in our thinking this through.

2 One is timing. We need to think and be
3 sensitive to the timing of this entire process, from when
4 the Legislature passes a new law to when that test claim
5 is filed before you, to when the staff provides an
6 analysis on that test claim, and you ultimately act. And
7 then finally, when and if a local agency receives its
8 money.

9 Okay, that's just the process to bring that
10 money forward. And if we take a look at the people
11 notification claim today, it was three and a half years
12 between the time that the test claim was filed and the
13 decisions you made today. And that's not even counting
14 when the original Lead Prevention Act was enacted by the
15 Legislature in 1991. So it has its roots back to a law
16 that goes back 16, 15 years. So timing.

17 Second, I think we want to be focusing on
18 simplicity. And that is, this process is entirely
19 complicated. And we're talking about the people who are
20 sitting in this room, trying to understand these issues.

21 Who implements this? Thousands of local
22 agencies throughout the state that never sit before this
23 Commission, that never have an opportunity to even
24 understand this debate; and yet they're charged with
25 implementing these laws, they're charged with making

1 claims for reimbursement under this process; and none of
2 them will ever have an opportunity to even remotely come
3 close to understanding the discussion that takes place
4 before us here.

5 And for someone like myself who's had quite a
6 bit of finance background, I mean, a lot of this
7 discussion is completely complicated. And I have a lot
8 of sympathy for the members of the Commission having to
9 sift through this. And I think ultimately what happens
10 is, there becomes a dialogue between the particular
11 experts on a very narrow issue, the lawyers and the
12 consultants involved, and the lay public, let alone --
13 and you, as members of the Commission are baffled. I
14 mean, I'm just going to say, it's very, very confusing.
15 So we need to strive for simplicity.

16 And finally, I think we need to look toward
17 outcomes. And what we have right now is a
18 mandate-claiming process that strictly focuses on
19 process. And we never really looked to see whether or
20 not what the Legislature and the Governor intended with
21 the passage of new laws is ever enacted.

22 And unfortunately, again, it's the product of
23 what everyone has to deal with.

24 We've reviewed 55 of the last final audit
25 reports issued by the Controller's office since June of

1 2003 with regard to school districts. The Controller's
2 office disallowed over 80 percent of the claims that were
3 filed by local school districts.

4 As Commissioner Glaab points out, he can see
5 that a lot of effort has taken place at the local level
6 to implement these mandates, and yet the process that
7 we've inherited -- and I'm not going to criticize the
8 Controller's office staff -- they focus on paper
9 documentation or questions about what should be
10 considered reimbursable activities; but they're not
11 focusing on whether the actual mandate was implemented
12 and the services are delivered. They look at
13 documentation to justify the reimbursement of those
14 claims.

15 And so for this process to result, at least with
16 regard to schools, in an 80 percent disallowance rate,
17 and of those 55, over a dozen where 100 percent of the
18 claim is disallowed, strikes us as a process in serious
19 need of repair.

20 I mean, we're not talking about fraud in the
21 case of these school claims. And yet when 100 percent of
22 a claim is disallowed, it suggests that an agency is
23 fraudulently making claims. But that is not the case.
24 It is the deficiency of the documentation under a process
25 for which local agency have no idea what the rules of the

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1 game are; and we need to focus on making a simple, fair
2 system where we do focus on outcomes.

3 So those are my comments.

4 CHAIR SHEEHAN: Thanks.

5 MR. BURDICK: Let me let this gentleman who's
6 been here for four hours from a school district listening
7 to city/county issues speak.

8 MR. DAY: Good evening. My name is Patrick Day,
9 and I'm the director of maintenance operations,
10 purchasing and contract management for San Jose Unified
11 School District.

12 In all of this discussion, I guess what really
13 frustrates me in my years of mandates is, I never heard
14 anything about a kid -- I mean, I'm a 29-year veteran in
15 public school education. So it's about papers and it's
16 about law and the legal lawyers talking back and forth,
17 and citing codes and all this stuff. And I'm sure it's
18 all necessary; but we have got children out there who are
19 counting on this money to get educated. That's our
20 system. It's not a system maybe a lot of us created, but
21 we're trying to live with it, and somehow trying to
22 educate children.

23 So I've been a public school teacher, a resource
24 teacher, a middle school assistant principal, high school
25 assistant principal, middle school principal, high school

1 principal, and currently a district-level director over
2 the past 29 years.

3 My first involvement with mandated cost
4 reimbursements was seven years ago as a high school
5 principal. At that time I was asked to be a pilot school
6 in our district to work on creating site-level processes
7 to document mandated costs reimbursements for work that's
8 actually taking place at the school site. During the
9 next two years, we successfully piloted and implemented
10 processes.

11 I was then assigned to the district office as a
12 director. And one of my responsibilities for the past
13 five years have been overseeing mandated costs for
14 San Jose Unified School District.

15 I believe there is agreement among public school
16 educators who work with mandates that reform is needed in
17 all facets of the mandate process. And I was going to
18 start by saying what Robert said ,that this is only the
19 second Commission on State Mandates meeting I've been to.
20 And the first one was in October. And I think it speaks
21 for itself, the need for how can we do things better.

22 I just want to -- if reform ever does -- if this
23 process ever gets accepted, I went to a meeting last
24 spring that looked like something was going to happen, a
25 collaborative process; and that, I guess, is dead. I

1 don't know. Never heard. I know the funding didn't
2 happen. But my concern is that if the mandate reform
3 process ever gets kicked off, is who is at the table.

4 If we want it to work, I was always taught, and
5 have implemented and believed that if you want anything
6 changed to work, you'd better include the people who have
7 to implement the change at the lowest level. And as
8 Robert said, they aren't here.

9 As a high school principal, trying to implement,
10 trying to bring resources in to help kids, trying to just
11 figure that part out was amazing. I still don't get it.
12 And I'm in charge of it for our district. And we're
13 probably pretty successful at this whole thing when you
14 compare it throughout the state.

15 But for mandate reform to have meaning and
16 change be beneficial, people who have actually done the
17 work -- I want to repeat that -- who have actually done
18 the work at the school and district level must be
19 involved in every reform discussion, and have equal
20 authority in approving potential recommendations.

21 I see lots of involvement -- consultants,
22 lobbyists. But I'm talking about the people who have a
23 credential, who live every day in the school site, know
24 what it's like to fill out all those forms, know what
25 it's like to try to go back seven, eight, ten, 12 years

1 to capture documentation that happened because finally,
2 P's and G's got approved. And then it's, "What do you
3 mean, you don't have anything contemporaneous?" Now,
4 that just doesn't make sense.

5 So people who actually do the work at the table,
6 not big representatives of whole groups that wouldn't
7 know a mandate form if it was in front of them.

8 So I believe actually no one knows better than
9 the district personnel how the mandate process works and
10 impact school districts, school sites, and ultimately
11 students and the people who do the mandated work,
12 complete the forms and see the process through, to
13 ultimately receiving funds, and now handling audits.

14 Thank you very much.

15 CHAIR SHEEHAN: Thank you. Thank you for your
16 time. I appreciate it.

17 MR. BURDICK: Allan Burdick. And I'm here as
18 Keil's advisor today.

19 I want to be very, very brief since the lateness
20 of the hour.

21 And I think the key thing I want to do is to
22 kind of echo the comment made by the chair about the need
23 for pressure to make a decision.

24 And what I'd like to urge the Commission to do
25 at this point is to take the leadership at the

1 legislative process, because I don't see them moving, and
2 at least introducing spot bills and doing something to
3 get this process going. We've got to do something to put
4 the pressure on.

5 CHAIR SHEEHAN: Thanks.

6 MR. KEIL: Steve Keil, CSAC.

7 I think we're at the point in your agenda where
8 everything that needs to be said has been said, but not
9 everybody has said it. Just a couple quick comments that
10 I hope are a little different.

11 In my tenure as a lobbyist, I've either
12 sponsored or supported probably upwards of a dozen
13 mandate reform bills. Most of them die. Or what has
14 been signed, a couple of them are very small shells of
15 what they started out to be. And I fought to kill an
16 equal number of mandate reform bills.

17 And the problem is, we typically think of
18 mandate reform as the process is so incredibly
19 complicated that we deal at the micro level. And what
20 advantages us, disadvantages the Controller or the
21 Commission staff or the Department of Finance and vice
22 versa, and so we're never -- we're at loggerheads in
23 terms of reform.

24 Local government officials were very, very
25 pleased when your Commission, earlier this year, the end

1 of last year, over this year, started a process with an
2 outside facilitator looking at it from the big picture.

3 We, and I know the education coalition had a
4 parallel process, took that seriously. We took the
5 challenge as real. We put together at the local
6 government level a group that represented pretty much a
7 broad coalition of at least the leadership of local
8 government. We had the League of Cities, Rural County,
9 Regional Caucus, Urban County Caucus, Special District
10 Association, a number of individual public agencies
11 involved in the process, along with our
12 auditor-controllers. And we went through the entire
13 process that you went through, including your report,
14 and basically offered to come with a single coalition of
15 local agencies, speaking as one voice.

16 We can't say that an individual local agency
17 might not show up on its own, but essentially local
18 government was prepared to proceed ahead with reform.
19 And what we wanted to suggest was that we basically start
20 from the perspective that everybody has to give up
21 something with a goal of cutting the time for processing
22 mandates in half and cutting the costs associated with
23 processing mandates in half. Just start with a simple
24 premise like that, which means everyone give up some
25 cherished times of the principals, everyone gives up some

1 procedural advantages they have and love, for the greater
2 good.

3 Again, it's our understanding that the schools
4 are going through a separate process.

5 My suspicion is, if we get this back on track,
6 we'll probably end up with two separate procedures: One
7 for schools and one for local agencies. There are
8 substantive difference between each in terms of impact of
9 mandates.

10 Now, getting to the point we are at and schools
11 are at is not a simple process. So we have a lot of
12 valuable time committed to a number -- and many hours of
13 meetings, and it came to a dead stop. We could resurrect
14 that, but it would have to be real.

15 I think my sense was that we had talked to some
16 legislative leadership people about this, and there was
17 some real buck-passing that went on between your
18 commission and the Legislature on this whole issue last
19 year. I think there needs to be a discussion involving
20 your staff, involving the principals and the Legislature,
21 and makes sure there's consensus.

22 It's clear the Legislature wants some ownership
23 over it and involvement but no fingerprints -- figure
24 that one out, but that's kind of as close and as best as
25 I can get from last year.

1 We would be willing participants in a process
2 like that. We were ready to start last year on the
3 Department of Finance proposal. It was flawed from our
4 perspective, but you have to start somewhere.

5 CHAIR SHEEHAN: That's a starting point.

6 MR. KEIL: It's a big step forward.

7 But wherever it is, we would applaud this effort
8 if we undertake it. But we need to try to get all the
9 parties together early and make a real effort this time
10 to push it over the finish line.

11 CHAIR SHEEHAN: Great. Thank you, all.

12 As I know staff and I have chatted and the
13 Department of Finance were still talking to analysts, we
14 are still committed to doing something.

15 I was the one who had kicked off the
16 collaborative process, wanted to see. But, you know,
17 some of the players felt maybe we didn't need to go that
18 way, so I deferred and said, all right, we'll try it
19 again. But at least from this member, I can commit that
20 I do want -- we have to amend this process for exactly
21 the reasons you all stated. We've been sitting here four
22 and a half hours later, there's got to be a better way to
23 do this. So at least you have my commitment. And I know
24 I speak for some of the members also in terms of getting
25 involvement in this process.

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1 And it is a matter, as you said, Mr. Day, there
2 has to be something in it for them to come to the table
3 and as you say, Steve, give up a little bit of something.
4 Everybody's got to give some.

5 But if we realize the process at the end is
6 going to be better, at least from my perspective, it's
7 worth it.

8 So thank you for your time.

9 CHAIR SHEEHAN: You have one minute, Ms. Paula,
10 for your report.

11 MS. HIGASHI: Are there any questions of Camille
12 or me in terms of our two reports?

13 CHAIR SHEEHAN: We've got a couple folks who
14 have airplanes to catch.

15 MS. HIGASHI: And we're thinking of putting the
16 closed session off.

17 MS. SHELTON: Unless you have questions.

18 CHAIR SHEEHAN: No, because I've got to leave.

19 Is that it?

20 MS. HIGASHI: That's it for us.

21 CHAIR SHEEHAN: All right, if there's no further
22 business, we are adjourned.

23 Thank you.

24 *(Proceedings concluded at 5:39 p.m.)*

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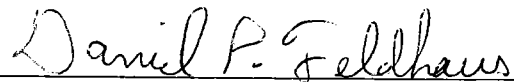
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I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

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 29, 2006.



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