

**PUBLIC HEARING**  
**COMMISSION ON STATE MANDATES**



TIME: 9:38 a.m.  
DATE: Friday, August 1, 2008  
PLACE: State Capitol, Room 447  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:  
Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomate Reporter, Certified Realtime Reporter

---

---

**Daniel P. Feldhaus, C.S.R., Inc.**  
**Certified Shorthand Reporters**  
**8414 Yermo Way, Sacramento, California 95828**  
**Telephone 916.682.9482 Fax 916.688.0723**  
**FeldhausDepo@aol.com**

A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHAEL C. GENEST  
(*Commission Chair*)  
Director  
State Department of Finance

CYNTHIA BRYANT  
Director  
Office of Planning & Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

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



A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
(Item 13)

NANCY PATTON  
Assistant Executive Director  
(Items 10 and 11)

CAMILLE SHELTON  
Chief Legal Counsel  
(Items 7 and 12)

ERIC FELLER  
Senior Commission Counsel  
(Items 3 and 4)

ADENIYI ADEWALE AYOADE  
Commission Counsel



PUBLIC TESTIMONY

**Appearing re Item 3 and Item 4:**

For Claimant San Juan Unified School District:

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

For San Diego Unified School District

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing re Item 3 and Item 4: *continued***

For Department of Finance:

NICOLAS SCHWEIZER  
Principal Program Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

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

**Appearing re Item 7:**

For Claimant:

KEITH B. PETERSEN, MPA, JD  
President  
SixTen and Associates

For Department of Finance

NICOLAS SCHWEIZER  
Principal Program Budget Analyst  
Department of Finance

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing re Item 10:**

For Claimant County of Orange:

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

For the Department of Finance:

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

DONNA FEREBEE  
Staff Counsel III  
Department of Finance

**Appearing re Public Comments:**

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

GLEN EVERROAD  
Revenue Manager  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92658-8915

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



I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Roll Call . . . . .	11
II. Approval of Minutes	
Item 1    June 26, 2008 . . . . .	11
III. Proposed Consent Calendar	
<i>(Items 8 and 9)</i> . . . . .	12
IV. Appeal of Executive Director Decisions Pursuant to California Code of Regulations	
4    Title 2, Section 1181(c)	
Item 2    Appeal of Executive Director's Decision . . . . .	--
V. Hearings and Decisions on Claims Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7	
A. Dismissal of Withdrawn Test Claim	
Item 3 <i>Pupil Expulsions II</i> <i>(96-385-03, 03A, 03B,</i> <i>98-TC-22, and 01-TC-18),</i> <i>Pupil Suspensions II</i> <i>(96-358-04A, 04B, 98-TC23,</i> <i>and 01-TC-17), and</i> <i>Educational Services Plan</i> <i>for Expelled Pupils</i> <i>(97-TC-09) San Juan Unified</i> School District . . . . .	13

I N D E X

Proceedings

Page

V. Hearings and Decisions on Claims Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

A. Dismissal of Withdrawn Test Claim *continued*

Item 4	Proposed Statement of Decision: <i>Pupil Expulsions II</i> (96-385-03, 03A, 03B, 98-TC-22, and 01-TC-18), <i>Pupil Suspensions II</i> (96-358-04A, 04B, 98-TC23, and 01-TC-17), and <i>Educational Services Plan for Expelled Pupils</i> (97-TC-09) San Juan Unified School District . . . . .	21
Item 5	<i>Prevailing Wage Rate</i> , 01-TC-28 Clovis Unified School District . . . . .	--
Item 6	Proposed Statement of Decision: <i>Prevailing Wage Rate</i> , 01-TC-28 Clovis Unified School District . . . . .	--

I N D E X

Proceedings

Page

VI. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8

A. Parameters and Guidelines

Item 7 *Pupil Discipline Records, (00-TC-10) and Notification to Teachers: Pupils Subject to Suspension Or Expulsion II (99-TC-11) Carpinteria Unified School District and Sweetwater Union and Grant Joint Union High School Districts . . . . .* 23

Item 8\* *California Fire Incident Reporting System (CFIRS) (CSM-4419/00-TC-02) San Ramon Valley Fire Protection District and City of Newport Beach (Consent calendar item) . . . . .* 12

Item 9\* *In-Home Supportive Services II (00-TC-23) County of San Bernardino (Consent calendar item) . . . . .* 12

Item 10 *Fifteen-Day Close of Voter Registration (01-TC-15) County of Orange . . . . .* 36

B. Meeting and Hearing Calendars

Item 11 *Adoption of Revised Meeting and Hearing Calendars . . . . .* 39

I N D E X

<u>Proceedings</u>	<u>Page</u>
VII. Staff Reports	
Item 12 Chief Legal Counsel's Report . . .	40
Item 13 Executive Director's Report . . .	41
VIII. Public Comment . . . . .	44
IX. Closed Executive Session . . . . .	49
X. Reconvene Open Session and Report from Closed Executive Session . . . . .	49
Item 14 Proposed Revisions to Executive Director Duty Statement and Adjustment to Salary/ Classification pursuant to Government Code Section 17530 . . .	50
Adjournment . . . . .	59
Reporter's Certificate . . . . .	60

--o0o--

**Commission on State Mandates – August 1, 2008**

1 BE IT REMEMBERED that on Friday, August 1,  
2 2008, commencing at the hour of 9:38 a.m., thereof, at  
3 the State Capitol, Room 447, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR GENEST: Okay, this is the meeting of the  
8 Commission on State Mandates. And we're going to come to  
9 order now.

10 Paula, can you call the roll?

11 MS. HIGASHI: Ms. Bryant?

12 MEMBER BRYANT: Here.

13 MS. HIGASHI: Mr. Chivaro is not here yet.

14 Mr. Glaab?

15 MEMBER GLAAB: Present.

16 MS. HIGASHI: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Mr. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Mr. Worthley?

21 MEMBER WORTHLEY: Here.

22 MS. HIGASHI: And Mr. Genest?

23 CHAIR GENEST: Here.

24 MS. HIGASHI: The first item of business is  
25 approval of the minutes of June 26th.

**Commission on State Mandates – August 1, 2008**

1 CHAIR GENEST: Are there any objections or  
2 corrections to the minutes?

3 MEMBER WORTHLEY: Move approval, Mr. Chairman.

4 MEMBER LUJANO: Second.

5 CHAIR GENEST: All in favor -- I guess we can  
6 do this by unanimous consent?

7 MS. HIGASHI: Yes.

8 CHAIR GENEST: Okay, let's do that, unless we  
9 have an objection.

10 So now we're moving on.

11 MS. HIGASHI: This takes us to the Consent  
12 Calendar.

13 The Consent Calendar consists of Items 8 and 9.

14 CHAIR GENEST: Are there any objections -- or  
15 corrections or objections to the Consent Calendar?

16 *(No response)*

17 CHAIR GENEST: Do we have a motion to adopt?

18 MEMBER OLSEN: I'll move it.

19 MEMBER BRYANT: Second.

20 CHAIR GENEST: Without objection, that's  
21 adopted unanimously.

22 MS. HIGASHI: This now brings us to the hearing  
23 portion of our meeting.

24 And at this time, I'd like to ask all of the  
25 parties and witnesses who will be appearing in today's

1 hearing to please stand.

2 Do you solemnly swear or affirm that the  
3 testimony which you are about to give is true and  
4 correct, based upon your personal knowledge, information,  
5 or belief?

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

7 MS. HIGASHI: Thank you very much.

8 Our first test claim today is Item 3, and it's  
9 actually the consolidation of nine test claims. It's on  
10 *Pupil Expulsions, Suspensions, and Educational*  
11 *Services -- I should say, Educational Services Plan for*  
12 *Expelled Pupils.*

13 Senior Commission Counsel Eric Feller will  
14 introduce this item.

15 MR. FELLER: Good morning.

16 The test claims and amendments were filed  
17 between 1996 and 2002 on Education Code statutes that  
18 involve expelling and suspending pupils for various  
19 offenses and related activities.

20 Based on the statutory language of *San Diego*  
21 *Unified School District* and other cases, staff found that  
22 the test claim is a reimbursable state mandate for  
23 expelling and immediately suspending pupils for new  
24 mandatory expulsion offenses that were enacted after the  
25 original *Pupil Expulsion* decision. Other offenses are

1 reimbursable only for recommending the pupil for  
2 expulsion but not suspending or issuing the expulsion  
3 order.

4 Staff also found that some new  
5 expulsion-hearing procedures are reimbursable, especially  
6 for hearings involving allegations of sexual assault or  
7 sexual battery.

8 Staff analyzed numerous activities that are  
9 downstream to the expulsion, such as suspending  
10 enforcement, recommending a rehab plan, ensuring an  
11 educational program, the appeal procedure, reviewing for  
12 readmission, and data maintenance and records. Staff  
13 found that many of these activities are reimbursable if a  
14 pupil is expelled for any of the mandatory expulsion  
15 offenses.

16 The list of activities that staff found to be  
17 reimbursable is on page SA-4 through SA-13 and, again, on  
18 pages SA-108 through SA-117, as corrected by the errata  
19 sheets that you received after the binders went out.  
20 These only changed the conclusion to more accurately  
21 reflect the analysis but otherwise made no substantive  
22 changes.

23 Also, the amendments to the P's & G's in  
24 Attachment 1, from page 119 to the end, are not part of  
25 the recommended activities but are for illustrative

1 purposes.

2 Claimant and the San Diego Unified School  
3 District have two items in dispute.

4 First, that expulsion for possession of an  
5 explosive is a federal mandate under the Gun-Free Schools  
6 Act of 1994 and its successor, No Child Left Behind; and  
7 second, that issuing subpoenas and expulsion hearings is  
8 not a mandate.

9 Claimant also stated that extending a  
10 suspension until the governing board issues an expulsion  
11 order should be reimbursable, and it should be  
12 reimbursable for a county office of education to use in  
13 an administrative hearing panel to conduct expulsion  
14 appeal hearings.

15 The Department of Finance has stated it should  
16 not be reimbursable for the school district to adopt  
17 findings for an expulsion on remand from the county  
18 office of education when it determines that the school  
19 district's decision is not supported by the findings but  
20 evidence supporting the required findings exists in the  
21 record of the proceedings.

22 All these matters in dispute were addressed in  
23 the analysis.

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

**Commission on State Mandates – August 1, 2008**

1 MR. PALKOWITZ: Good morning. Art Palkowitz on  
2 behalf of San Diego Unified School District.

3 MR. PETERSEN: Keith Petersen, representing the  
4 test claimant.

5 CHAIR GENEST: So who wants to go first?

6 MEMBER BRYANT: We don't care about Finance?

7 CHAIR GENEST: Oh, I'm sorry. Pardon me.

8 Nick, I do care.

9 MR. SCHWEIZER: Nick Schweizer, Department of  
10 Finance.

11 MR. WORTHLEY: We know who they are.

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

14 CHAIR GENEST: And we're going to start with  
15 one of you, I think?

16 MR. PETERSEN: I guess I can start since I'm  
17 representing the test claimant.

18 These nine test claims were filed subsequent to  
19 the original four test claims filed for *Pupil Expulsions*,  
20 *Suspensions*, and *Appeals*. The San Diego test claims of  
21 1994, which went through this process over several years  
22 ended up in the Supreme Court.

23 Much of the findings in this test claim are  
24 controlled by the Supreme Court findings.

25 It was the Supreme Court; wasn't it?

**Commission on State Mandates – August 1, 2008**

1 MR. PALKOWITZ: Yes, the California Supreme  
2 Court.

3 MR. PETERSEN: There we go. The big time.  
4 Much of the findings are controlled here.  
5 I had a dispute on a couple legal --  
6 excruciating legal issues.

7 The *City of Sacramento II* application, to the  
8 question of whether the explosives is a federal mandate  
9 or a state mandate, the expulsion for explosives. And  
10 the other issue was regarding the issuing of subpoenas,  
11 whether -- since that was an alternative, whether that  
12 was reimbursable or not.

13 We responded. The Commission staff replied.  
14 And their application of those two cases -- those three  
15 cases -- are consistent.

16 So unless the four of you are interested in  
17 overruling several years of past practices, the results,  
18 as I said, are consistent. So I will just stand on the  
19 written submissions.

20 MR. PALKOWITZ: Good morning. I would concur  
21 with Keith. That I agree after review, that those  
22 conclusions by staff are correct.

23 MR. PETERSEN: Oh, I didn't say that. I'm  
24 sorry.

25 MR. PALKOWITZ: Okay, excuse me.

**Commission on State Mandates – August 1, 2008**

1 MR. PETERSEN: I said "consistent."

2 MR. PALKOWITZ: Consistent, excuse me.

3 And I would like an opportunity to respond to  
4 any comments the Department of Finance has on their  
5 objections to the staff analysis.

6 CHAIR GENEST: Okay, Finance?

7 MR. SCHWEIZER: We don't have any real  
8 significant objections to the staff analysis. We think  
9 there are a couple of minor issues that may not meet the  
10 cost threshold for reimbursement. But aside from that,  
11 we are in agreement with the staff analysis.

12 CHAIR GENEST: Okay.

13 MR. PALKOWITZ: If everything went this  
14 smoothly.

15 CHAIR GENEST: That's a lot of paper for that.

16 MEMBER WORTHLEY: Mr. Chairman, I think that  
17 Eric may decide he wants to start writing a great  
18 American novel now after writing this.

19 I appreciate the comments, and I'm ready to  
20 move approval. My only comment was, I did struggle with  
21 the subpoena language because, as an attorney, I  
22 understand that if I have to do a job, I have to do it  
23 right. If an attorney did not subpoena -- especially if  
24 I have a witness that I have no control over, I'm not  
25 talking about an employee situation where I might be able

**Commission on State Mandates – August 1, 2008**

1 to force them to come and testify. But if I have an  
2 outside person, I would have to subpoena them or  
3 otherwise be subject to malpractice. And to me, that's  
4 just a downstream thing which results from the initial  
5 requirement.

6 I realize there is a case that's decided  
7 differently. I just think the judge was wrong -- or the  
8 justices were wrong. I'm not sure who decided it.

9 MR. PETERSEN: So do we.

10 MEMBER WORTHLEY: But aside from that, I would  
11 move the staff recommendations.

12 CHAIR GENEST: So you're not recommending --  
13 you're not making an alternative?

14 MEMBER WORTHLEY: No, I'm not. I just --

15 CHAIR GENEST: You're just noting your  
16 objection?

17 MEMBER WORTHLEY: I'm just noting my objection.

18 MEMBER GLAAB: Second.

19 CHAIR GENEST: Were there no other comments?

20 *(No response)*

21 CHAIR GENEST: Any comments from the audience?

22 *(No response)*

23 CHAIR GENEST: So it's --

24 MS. GEANACOU: I'd like to just make a quick  
25 comment.

**Commission on State Mandates – August 1, 2008**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Susan Geanacou, Department of Finance.

In light of just some of the comments about the correctness or incorrectness of the staff analysis, especially as it regards the issues raised by claimants, the Department of Finance believes the legal recommendations on those are correct.

CHAIR GENEST: Are what? Correct?

MS. GEANACOU: Correct, as recommended by the Commission staff.

CHAIR GENEST: Okay. So it's moved and seconded.

Shall we take a roll-call vote?

MS. HIGASHI: Certainly.

Ms. Bryant?

MEMBER BRYANT: Aye.

MS. HIGASHI: Mr. Glaab?

MEMBER GLAAB: Aye.

MS. HIGASHI: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HIGASHI: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HIGASHI: Mr. Worthley?

MEMBER WORTHLEY: Aye.

MS. HIGASHI: Mr. Genest?

CHAIR GENEST: Aye.

**Commission on State Mandates – August 1, 2008**

1 MS. HIGASHI: Thank you very much.

2 We now go to Item 4, which is the Proposed  
3 Statement of Decision on this test claim.

4 Mr. Feller?

5 MR. FELLER: Unless there is objection, staff  
6 recommends the Commission adopt *the Expulsions II,*  
7 *Suspensions II,* and *Educational Services Plan for*  
8 *Expelled Pupils* test claim, which accurately reflects the  
9 Commission's decision to partially approve the test  
10 claim -- excuse me, approve the Statement of Decision --  
11 which accurately reflects the Commission's decision to  
12 partially approve the test claim.

13 Staff also recommends the Commission allow  
14 minor changes to be made to the Statement of Decision,  
15 including reflecting witnesses, hearing testimony, and  
16 the vote count that will be included in the Final  
17 Statement of Decision.

18 CHAIR GENEST: Okay, Art, I assume there's no  
19 comments on this piece?

20 MR. PALKOWITZ: No.

21 CHAIR GENEST: All right, do we have a motion?

22 MEMBER BRYANT: I'll move it.

23 MEMBER GLAAB: Second.

24 CHAIR GENEST: Without objection, that's  
25 adopted unanimously.

**Commission on State Mandates – August 1, 2008**

1 MS. HIGASHI: Thank you very much.

2 MEMBER BRYANT: Can I say something?

3 CHAIR GENEST: Ms. Bryant would like to opine.

4 MEMBER BRYANT: I do want to just say, I kind  
5 of want to follow up on Commissioner Worthley.

6 This record was so massive, and you sat there,  
7 I spent a number of hours myself on it with the CD-ROM.  
8 And I just know everyone at the table worked so hard on  
9 this, and the staff. And it sort of seems -- it seems  
10 unceremonious to dismiss it so quickly.

11 CHAIR GENEST: Yes.

12 MEMBER BRYANT: I just want to compliment  
13 everyone, because we really have a very complete record  
14 in front of us, and it seems we dispensed it quickly.  
15 But I think it reflects a lot of work on the part of all  
16 the parties that were involved in it that we could,  
17 because it is a really good record.

18 Thank you.

19 MR. PETERSEN: Thirteen years, well said.

20 MS. HIGASHI: I'd just like to add as a  
21 follow-up to it, the Commission staff will be preparing  
22 the Proposed Statement of Decision into final form. And  
23 when we issue it, we will also be issuing proposed  
24 amendments to the parameters and guidelines and proposed  
25 parameters and guidelines to help expedite the

1 proceedings. And the draft that you had here attached  
2 was just our first attempt. And we're taking comments  
3 from parties so that we can further refine it and then  
4 issue it as a proposed set of amendments to the  
5 consolidated, as well as the initial reimbursement period  
6 P's & G's. And this is all in an attempt to expedite it.

7 Our next item is Item 7. This item will be  
8 presented by Camille Shelton, Chief Legal Counsel.

9 MS. SHELTON: These are proposed parameters and  
10 guidelines that address two Education Code statutes  
11 dealing with pupil discipline records and notification to  
12 teachers about students who have been suspended or  
13 expelled.

14 The only issue in dispute involves Education  
15 Code section 48201, and that statute requires school  
16 districts, when receiving a pupil that transferred from  
17 another school district, to request from the former  
18 school district any records maintained in the ordinary  
19 course of business or received from a law-enforcement  
20 agency regarding acts committed by the student that  
21 resulted in suspension or expulsion from school. The  
22 Statement of Decision finds that the activity to request  
23 the records is mandated by the plain language of  
24 section 48201 and is, thus, reimbursable.

25 The Statement of Decision further states that

1 the activity to provide those records to the receiving  
2 district is not mandated by the statute but would be  
3 addressed by the Commission during the parameters-and-  
4 guidelines phase pursuant to the Commission's regulatory  
5 authority.

6 The Department of Finance continues to oppose  
7 reimbursement for the transferring school district to  
8 provide the suspension and expulsion records upon request  
9 of the receiving school district.

10 Yesterday, you were sent a copy of their  
11 written comments dated June 6th, 2008, which was  
12 inadvertently left out of the record. And the comments,  
13 again, just oppose that reimbursement for the activity to  
14 provide those records.

15 Staff recommends that the Commission approve  
16 reimbursement to provide suspension records upon request  
17 of the receiving school district. The Commission does  
18 have the authority under its regulations to approve  
19 reimbursement for activities found to constitute the most  
20 reasonable method of complying with the mandate. The  
21 most reasonable method of complying with the mandate is  
22 defined as those methods not specified in statute that  
23 are necessary to carry out the mandated program.

24 Staff finds that the activity to provide the  
25 suspension records is necessary to carry out the mandate

**Commission on State Mandates – August 1, 2008**

1 of Education Code Section 48201 based on the purpose of  
2 the statute, which is to address the need for accurate  
3 information to be available to schools and teachers about  
4 potentially harmful behavior of transfer students.

5 Staff further recommends that the Commission  
6 deny the claimant's request for reimbursement for  
7 providing expulsion records, however, since that activity  
8 is required by other statutes in the Education Code.

9 Accordingly, staff recommends that the  
10 Commission adopt the staff analysis and the parameters  
11 and guidelines that are printed in your items on yellow,  
12 green, and blue paper.

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

15 MR. PETERSEN: Keith Petersen, representing the  
16 test claimant.

17 MR. SCHWEIZER: Nick Schweizer, Department of  
18 Finance.

19 MS. FEREBEE: Donna Ferebee, Department of  
20 Finance.

21 CHAIR GENEST: Paula, can I see you for a  
22 second?

23 (Off record at 9:52 a.m.)

24 (Back on record at 9:53 a.m.)

25 CHAIR GENEST: Mr. Petersen, did you want to

1 start?

2 MR. PETERSEN: This was on consent until a few  
3 days ago. And I agree with it moving forward on consent.  
4 I haven't got any new issues.

5 MR. SCHWEIZER: Nicolas Schweizer, Finance.

6 Our issue continues to be with the  
7 reimbursement of schools for providing the records. Our  
8 reading of the legislation is that it clearly required  
9 schools to request the records, but it did not require  
10 the school receiving the request to acquire the records.

11 While it may be appropriate and good for the  
12 school to provide those records, it is nonetheless not  
13 required. And we don't support reimbursing of local  
14 agencies for activities that are not clearly required by  
15 state law.

16 MEMBER WORTHLEY: Mr. Chairman, I commend  
17 counsel for being able to say that with a straight face.

18 If you can't -- if you know people don't  
19 respond, then what's the point of having the statute?  
20 And in light of our conversation about the fact you can't  
21 even subpoena the records and recover for the costs for  
22 subpoenaing, there's no alternative. I mean, if they  
23 don't get paid for this -- they're ordered to do it. If  
24 they don't respond, what's the point of the whole  
25 program?

1           So I just think common sense needs to fit in  
2 here. I would support the staff recommendation and move  
3 approval.

4           MS. FEREBEE: Yes, Donna Ferebee, Department of  
5 Finance.

6           I believe that there are at least two other  
7 examples in law where the Legislature saw fit to  
8 expressly require the provision of the records.  
9 Education Code section 48915 and 48918, which are both  
10 described on page 18 of the final staff analysis. I  
11 think that this goes to show that the Legislature can  
12 make that a requirement if it so chooses to. And if  
13 it does not, then it is not for us to read into the  
14 statute that requirement.

15           And in addition, I don't believe that this  
16 requirement would be appropriate at the  
17 parameters-and-guidelines phase because I believe that  
18 the activity -- only the activities that are necessary to  
19 carry out the requesting of the records is what should be  
20 found reimbursable at this stage, since that is the  
21 mandated activity.

22           MEMBER OLSEN: Mr. Chairman, I really remember  
23 this case when it came up before. This is the case that  
24 occasioned my outburst, and I'm trying not to have one  
25 today. You know, and what we were told at that time was

1 that this issue was appropriate at the P's & G's stage.  
2 So I'm just going to dismiss the idea that it's not  
3 appropriate here now and get back to the issue of this is  
4 common sense. You don't require something -- you don't  
5 require something to be requested without assuming that  
6 the folks at the other end are going to provide it. And  
7 we're talking about child safety in our schools here.

8 You know, I get to be the crank because I'm the  
9 public member. But part of the reason a commission has a  
10 public member is the commonsense test; that we don't get  
11 so involved in the minutiae of legalese that we cannot  
12 think about how things work in the real world.

13 And this one, I have to say, since the case  
14 came before us originally, I have talked to many people  
15 in the public. When they asked me, "Well, what do you do  
16 on the Commission," this is the case I bring up.

17 And it's an eye-roller for everybody that this  
18 wouldn't be -- that this isn't a mandate on the  
19 respondent school district. So I'm going to second  
20 Mr. Worthley's motion to adopt as before us.

21 CHAIR GENEST: Is there anything in the  
22 legislative history or record that would suggest why they  
23 didn't require the requested district to provide the  
24 record?

25 MS. FEREBEE: None that I have seen.

**Commission on State Mandates – August 1, 2008**

1           As far as I can tell -- well, nothing that I  
2 have seen in the legislative history. But we would also  
3 submit that --

4           CHAIR GENEST: Was the bill -- in any form, did  
5 it ever require that and then had that been amended out?

6           MS. FEREBEE: No, not that I'm aware of, no.

7           MS. SHELTON: Can I just add one thing to this?  
8 In the Statement of Decision, on page -- the Bates page  
9 numbers are -- page 115, under Exhibit A, is the  
10 Statement of Decision. And it lays out the statute.

11           And under (b)(2) of the statute, which was  
12 added at the same time as the activity to request  
13 language was added, that language absolves the school  
14 district or its employees from civil or criminal  
15 liability from providing information. So the statute  
16 does discuss the activity of providing.

17           It doesn't say "You shall provide." It does  
18 absolve criminal liability for providing information if  
19 they don't intentionally provide false information. So  
20 it was part of the discussions.

21           We've looked through leg. history, which was  
22 part of the test-claim record, and the only thing that  
23 we found as the purpose was to address the need to have  
24 knowledge about potential harmful behavior of students  
25 that were transferring into the school district.

**Commission on State Mandates – August 1, 2008**

1 CHAIR GENEST: Well, I resist applying the  
2 commonsense test to anything that originated from this  
3 building. It's the Legislature; and common sense doesn't  
4 usually prevail, as far as I can tell.

5 MEMBER WORTHLEY: Are we on the record?

6 CHAIR GENEST: Let us be on the record. That's  
7 the way -- I've been here for a long time. That's the  
8 way it looks to me.

9 And I don't know that common sense is a rule  
10 that you apply on legal issues. And the question here  
11 is, does the law require -- maybe I've got the question  
12 wrong, but I think the question is, does the law require  
13 the district, who has had the records requested of it, to  
14 actually provide those? Does anything else in law  
15 require them to provide something to a requesting  
16 district, whether it's these kinds of records or anything  
17 else?

18 MS. SHELTON: Yes, the law identified in the  
19 analysis, that the law does require sending districts to  
20 send -- to provide the expulsion records when a student  
21 does transfer.

22 But let me clarify what the Commission's role  
23 is on the parameters and guidelines. You do have  
24 discretion on parameters and guidelines to include  
25 activities if they're not mandated by statute if those

1 activities are reasonably necessary to comply with the  
2 mandate.

3 CHAIR GENEST: Well, yes, but that sort of gets  
4 around the question.

5 The question is: Does the mandate extend in  
6 some way to the district that's being requested to  
7 provide the record?

8 And if there's some other aspect of law or  
9 something about the way schools do business which puts  
10 them in a position of being required to respond, then  
11 I would say this law triggers that requirement.

12 But this law itself doesn't have that  
13 requirement in it; does it?

14 MS. SHELTON: No. And that's why the  
15 Commission could not find that, as a matter of law, that  
16 that was mandated by the State. Again, the Commission  
17 has discretion on parameters and guidelines.

18 And you've laid out the issue correctly, so the  
19 Commission as a body just needs to decide if you believe  
20 this is a reasonably necessary activity within your  
21 discretion of the activity to request that record given  
22 the purpose of the statute.

23 CHAIR GENEST: Well, at the risk of violating  
24 common sense, I think I will be with the Department of  
25 Finance on this issue.

**Commission on State Mandates – August 1, 2008**

1 So we have a motion and a second.

2 Any other comments?

3 MR. PETERSEN: Mr. Chair?

4 CHAIR GENEST: Yes?

5 MR. PETERSEN: The Department of Finance  
6 mentioned two other Education Codes, 48915 and 48918, and  
7 seemed to assert that these records would be provided  
8 pursuant to those code sections, anyway.

9 That's not --

10 MS. FEREBEE: No.

11 MR. PETERSEN: No, you didn't assert that?

12 MS. FEREBEE: No.

13 MR. PETERSEN: Well, I'm asserting those  
14 records are different records, and they are requested at  
15 different times for different purposes. So there's no  
16 extant requirement prior to this legislation to provide  
17 all of the discipline records.

18 MS. FEREBEE: I pointed those out merely as an  
19 example of places where the Legislature has called out  
20 specifically a requirement to provide records and to  
21 point out that we don't have that here. We don't have  
22 that before us now. The Legislature did not make it a  
23 requirement.

24 CHAIR GENEST: Isn't it at least conceivable  
25 that the Legislature intentionally wrote the law this way

**Commission on State Mandates – August 1, 2008**

1 so as to avoid having to pay a mandate cost? Is there  
2 anything in any analysis of the bill that suggests that  
3 that was the intent?

4 MR. PETERSEN: Poor drafting. That's what I  
5 thought.

6 MEMBER BRYANT: In the original -- when we  
7 originally adopted the decision, I recall my colleague to  
8 the left and I both voted "no" on this for entirely  
9 different reasons.

10 And I agree with -- I think the Legislature is  
11 very specific when they work in this mandate area, and  
12 they know what they're doing. And I agreed at the time  
13 that that provision -- that the intent was clear.

14 Now, I'm in this funky position on the  
15 P's & G's because it kind of makes sense in this -- when  
16 you think about it in this light and there's some kind  
17 of -- I don't have a good answer for that. But I think  
18 I'm persuaded by the staff analysis, in a certain amount  
19 of irony -- not that I was wrong before, but that, in  
20 fact, in practice, as Sarah points out, that you pretty  
21 much have to give those records up when you're asked to  
22 in a mandated kind of way.

23 CHAIR GENEST: And why do you have to give them  
24 up?

25 If a school district simply said, "We're too

**Commission on State Mandates – August 1, 2008**

1 busy. Our clerk is gone," whatever, could they not give  
2 them up?

3 MEMBER BRYANT: I don't know how to answer  
4 that.

5 MEMBER OLSEN: Can I try to respond to that?

6 CHAIR GENEST: Yes.

7 MEMBER BRYANT: Yes.

8 MEMBER OLSEN: If I'm a school administrator  
9 and I get a request for disciplinary records, and it's a  
10 mandated request for disciplinary records, and I say,  
11 "Oh, but I'm not mandated to respond, so I'm not going  
12 to." And that student then causes -- wreaks havoc in  
13 that new school --

14 MR. PETERSEN: You're then negligent.

15 MEMBER OLSEN: -- you're negligent.

16 MEMBER WORTHLEY: Exactly.

17 MEMBER OLSEN: There is a compulsion to provide  
18 those records.

19 MR. PETERSEN: Practical.

20 MEMBER OLSEN: There may not be a mandate;  
21 there's a practical compulsion, and that's part of what  
22 we deal with at the P's & G's stage.

23 MEMBER WORTHLEY: That goes to the point that  
24 if they don't comply, then the whole purpose of the  
25 statute is thwarted.

**Commission on State Mandates – August 1, 2008**

1 MEMBER OLSEN: Right.

2 MEMBER WORTHLEY: What is the point of having a  
3 statute that does not accomplish something?

4 And I shouldn't probably ask that question to  
5 the Legislature, but...

6 MS. FEREBEE: I think that if there is a hole  
7 in the legislation, if there is a hole in the statute,  
8 that that would be for the Legislature to address and to  
9 repair.

10 MEMBER WORTHLEY: Well, given the fact that we  
11 have the discretion to take care of it here, it seems to  
12 me I'd rather not waste their time on that. They can  
13 work on the budget.

14 MEMBER GLAAB: Yes, Mr. Chairman, I think if  
15 we withhold that, you almost set up the very thing that  
16 we're trying to address here. So I think that we should  
17 move staff recommendation on this.

18 CHAIR GENEST: I think we have a motion and a  
19 second.

20 Let's have a roll call.

21 MS. HIGASHI: Okay.

22 Ms. Bryant?

23 MEMBER BRYANT: I'm first?

24 MS. HIGASHI: I'll skip you.

25 I'll say, Mr. Glaab?

**Commission on State Mandates – August 1, 2008**

1 MEMBER GLAAB: Aye.

2 MS. HIGASHI: Mr. Lujano?

3 MEMBER LUJANO: Aye.

4 MS. HIGASHI: Ms. Olsen?

5 MEMBER OLSEN: Aye.

6 MS. HIGASHI: Mr. Worthley?

7 MEMBER WORTHLEY: Aye.

8 MS. HIGASHI: Okay, now, Ms. Bryant?

9 MEMBER BRYANT: Aye.

10 MEMBER WORTHLEY: She feels better.

11 MS. HIGASHI: Mr. Genest?

12 CHAIR GENEST: No.

13 MS. HIGASHI: Motion carries.

14 MR. PETERSEN: Thank you.

15 CHAIR GENEST: So now, are we on --

16 MS. HIGASHI: This now brings us to Item 10.

17 CHAIR GENEST: Okay.

18 MS. HIGASHI: The proposed parameters and  
19 guidelines for the *15-day Close of Voter Registration*  
20 program.

21 This item will be presented by Assistant  
22 Executive Director Nancy Patton.

23 MS. PATTON: Good morning.

24 This program provided voters with additional  
25 days to register prior to an election. Staff proposed

**Commission on State Mandates – August 1, 2008**

1 that the one-time activity of modifying the county Web  
2 site to reflect the test-claim statute be included as a  
3 reimbursable activity. The Department of Finance  
4 submitted comments recommending that this activity be  
5 deleted.

6 After further conversation with the claimant  
7 and Finance staff, Commission staff recommends that the  
8 proposed parameters and guidelines be revised to delete  
9 this activity.

10 The proposed revision is before you on blue  
11 paper in double-strike-out.

12 Staff also recommends that the Commission  
13 authorize staff to make any non-substantive technical  
14 corrections to the parameters and guidelines following  
15 the hearing.

16 Will the parties state their names for the  
17 record?

18 MS. GMUR: Juliana Gmur on behalf of the County  
19 of Orange.

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

22 MS. FEREBEE: Donna Ferebee, Department of  
23 Finance.

24 CHAIR GENEST: Did you want to start?

25 Is it "Gmur"?

**Commission on State Mandates – August 1, 2008**

1 MS. GMUR: "Mur," yes. The "G" is silent.

2 Yes, we were on consent, and then some  
3 questions were raised and answers have been provided.  
4 And we are, once again, in agreement. So we're  
5 supporting the staff's recommendation.

6 MS. CASTAÑEDA: Carla Castañeda, the Department  
7 of Finance. We also support the staff recommendation.

8 MS. PATTON: I think the issue here, what  
9 came up, the mandate requires some amendment -- minor  
10 amendment to the Web site, so we added that as a  
11 reasonably necessary activity. And Finance was opposed  
12 to that. And the claimant then took a look at it, and  
13 they said the cost is so small. As they do normal,  
14 everyday updates to the Web site, they can't pull that  
15 cost out for this program. So they agreed to remove the  
16 activity.

17 MEMBER WORTHLEY: That makes sense.

18 MEMBER OLSEN: I'll move the staff  
19 recommendation.

20 MEMBER BRYANT: I'll second it.

21 CHAIR GENEST: Let's have a vote then.

22 MS. HIGASHI: I'll start with Mr. Lujano?

23 MEMBER LUJANO: Aye.

24 MS. HIGASHI: Ms. Olsen?

25 MEMBER OLSEN: Aye.

**Commission on State Mandates – August 1, 2008**

1 MS. HIGASHI: Mr. Worthley?

2 MEMBER WORTHLEY: Aye.

3 MS. HIGASHI: Ms. Bryant?

4 MEMBER BRYANT: Aye.

5 MS. HIGASHI: Mr. Glaab?

6 MEMBER GLAAB: Aye.

7 MS. HIGASHI: Mr. Genest?

8 CHAIR GENEST: Aye.

9 MS. HIGASHI: The motion is adopted.

10 CHAIR GENEST: Okay.

11 MS. HIGASHI: Item 11.

12 MS. PATTON: This is the revised calendar  
13 hearing and meeting calendar for the Commission meeting  
14 for the remainder of 2008 and the proposed meeting and  
15 hearing calendar for 2009. And it's before you under  
16 Item 11.

17 Basically, we'll have our meeting on  
18 September 26th, and we've canceled the October -- or  
19 proposed to cancel the October 31st and December 12th  
20 meetings, and instead, have one meeting on November 6th.

21 And then below that are the dates for the 2009  
22 hearings.

23 MEMBER OLSEN: Do you need a motion to adopt  
24 this calendar?

25 MS. PATTON: Yes.

**Commission on State Mandates – August 1, 2008**

1 CHAIR GENEST: Does that work for everybody  
2 here?

3 MEMBER OLSEN: I'll move it.

4 MEMBER GLAAB: Second.

5 CHAIR GENEST: Without objection then, that's  
6 adopted.

7 MS. HIGASHI: Mr. Chair, what happens is that  
8 throughout the year we make adjustments to the calendar  
9 as are necessary, as individual calendars are finalized  
10 and it becomes obvious we need to change dates.

11 This brings us to Item 12, Chief Legal  
12 Counsel's report.

13 MS. SHELTON: Since the last Commission  
14 hearing, we've had one decision that was issued by the  
15 San Diego Superior Court, and that's in the Emergency  
16 Procedures Program, Emergency Procedures Act Program.  
17 And the Court upheld the Commission's decision to end  
18 reimbursement on December 31st, 2004, based on the  
19 statutory changes.

20 I also would like to introduce a new attorney  
21 that we were able to hire before the hiring freeze.  
22 His name is Adeniyi Adewale Ayoadé.

23 If you can stand.

24 CHAIR GENEST: Good job.

25 MS. SHELTON: He comes most recently from the

**Commission on State Mandates – August 1, 2008**

1 California Gambling Control Commission, and he started  
2 last week.

3 CHAIR GENEST: Welcome.

4 *(Applause)*

5 MEMBER WORTHLEY: Mr. Chairman, he says we can  
6 call him "Walé."

7 MR. AYOADE: Yes.

8 CHAIR GENEST: Since you mentioned the hiring  
9 freeze, people may notice that we have our court reporter  
10 here, who is a contract staff. And we have got an  
11 exemption from the contract freeze. And the basis of  
12 that exemption was that we would have had to have called  
13 you all back and spent a lot more money someday in the  
14 future to have the same hearing if we hadn't had our  
15 reporter here. So it seemed like a reasonable exemption  
16 to grant.

17 MEMBER WORTHLEY: It seemed like a commonsense  
18 thing.

19 CHAIR GENEST: Common sense, we like to think,  
20 applies in the Department of Finance. We just aren't so  
21 sure about the Legislature.

22 MS. HIGASHI: And staff, as well as our court  
23 reporter, Dan, do thank the Department of Finance for  
24 granting us that extension yesterday.

25 This brings us to Item 13.

**Commission on State Mandates – August 1, 2008**

1           The first couple pages of this item give you  
2 more detail than you may want to see on the pending  
3 workload, what we've completed and what we still have to  
4 complete. The good news is that today, by adopting the  
5 test claim, that we can reduce our pending test-claim  
6 workload by nine. So that is really good news.

7           Most of this documentation will be reported in  
8 our report to the Department of Finance on  
9 September 15th, when we do an annual report on pending  
10 workload. So I just wanted to give you the preview of  
11 it.

12           Also, last year, last fiscal year, we received  
13 12 new filings. A couple of them were amendments, as  
14 well as a couple were also dismissed. So the detail is  
15 also listed for those.

16           And we adopted, as you know, one reasonable  
17 reimbursement methodology and statewide estimate of  
18 costs. So that was a first for us.

19           And the bad news, of course, is that the  
20 incorrect-reduction-claim workload continues to  
21 increase; and we got 24 new filings last fiscal year.  
22 And we haven't really had staff to address the  
23 incorrect-reduction claims. We're trying to figure out  
24 how we can effectively come up with a plan to deal with  
25 them.

1           And since all of them are individual cases,  
2 with individual facts, and individual audits or desk  
3 reviews, it's very difficult, but we're working on it.

4           At the last meeting -- the last couple of  
5 meetings -- we've experienced amendments to test claims  
6 prior to the hearing. And Ms. Bryant asked us how many  
7 we had pending that could still be amended before the  
8 hearing date.

9           And as our count is now adjusted, it's now 47,  
10 because we can drop -- we can thank Mr. Petersen for not  
11 having amended *Pupil Expulsions* again before this  
12 hearing.

13           And we've attached the details. So you can see  
14 the names of the claims that are still pending without  
15 the detail of all the statutes and regulations that  
16 accompany them.

17           And many of these actually -- you know, some  
18 of them would take half the page if we had listed all the  
19 statutes and executive orders that were pled. So it's  
20 just a snapshot view for you.

21           The state budget, there's nothing I can say.

22           The tentative agendas, we have some items  
23 specified here for our next couple of hearings.

24           There's one change I want to make to this, and  
25 that is that on the November 6th agenda, we will also be

**Commission on State Mandates – August 1, 2008**

1 hearing the parameters-and-guidelines amendments on the  
2 *Integrated Waste Management Board* case. And that was one  
3 involving litigation, where the Court has directed us to  
4 amend the parameters and guidelines. And so we have  
5 until the end of November to take that action.

6 So are there any questions or comments?

7 *(No response)*

8 CHAIR GENEST: No? Okay.

9 MS. HIGASHI: Okay.

10 MEMBER WORTHLEY: Job security.

11 CHAIR GENEST: So do we want to move on to  
12 Mr. Burdick and Mr. Kaye?

13 MS. HIGASHI: Yes, we should take public  
14 comment.

15 CHAIR GENEST: Public comment on your report,  
16 or --

17 MS. HIGASHI: No, we just call it "public  
18 comment" because it's not agendaed.

19 Mr. Burdick asked to speak on Public Comment.

20 MR. BURDICK: Mr. Chairman and Members, Allan  
21 Burdick on behalf of the CSAC and League of California  
22 Cities advisory committee on state mandates.

23 And I'd like to -- I see I have two gentlemen  
24 who have joined me today. And this is a joint committee  
25 of the two associations which advises them on matters

**Commission on State Mandates – August 1, 2008**

1 related to state mandates. This committee has been  
2 together now for almost 20 years to look at items and  
3 provide representation before you.

4 What I'd like to do is I'd like to now turn  
5 this over to Glen Everroad, who is the co-chair of the  
6 committee from the City of Newport Beach.

7 MR. EVERROAD: Chairman and Members, thank  
8 you for the opportunity to recognize today someone who  
9 has been before you for the last 20 years presenting  
10 test-claim issues. Leonard Kaye has represented the  
11 County of Los Angeles for some 21 years on  
12 mandate-related issues.

13 He reportedly has an 83 percent track record  
14 of successful test claims. And I think it's because he  
15 doesn't want to damage his record and continue any  
16 further that he's decided to step down. But it's with  
17 equal amounts of appreciation and admiration that we  
18 share with Leonard this small token.

19 MR. KAYE: Oh, wow.

20 Yes, I'd just like to say a few words to, first  
21 of all, thank Allan, who is the -- I won't say the  
22 grandfather, but recently he was the grandfather of  
23 SB 90; and Glen, of course, who has been with the program  
24 almost as long and has -- it's really been -- it's really  
25 been an honor and a privilege to appear before this group

**Commission on State Mandates – August 1, 2008**

1 and to argue the various cases. I was going to say a  
2 pleasure but, at times, it hasn't been pleasurable.

3 You know, they say when you lose a good friend,  
4 that's serious; but when you lose a good adversary,  
5 that's down right terrible.

6 So it's really been great, and I really  
7 appreciate your recognition of my retirement today.

8 Thank you.

9 *(Applause)*

10 CHAIR GENEST: Now, Mr. Kaye, the Commission  
11 has a presentation for you. And since we have plenty of  
12 time, I think I'll go ahead and read the entire thing.

13 *"Whereas Leonard Kaye has*  
14 *distinguished himself as an employee of*  
15 *the County of Los Angeles for 21 years,*  
16 *including 18 years as the County's*  
17 *SB 90 coordinator, and is recognized*  
18 *throughout state and local governments*  
19 *for his leadership and knowledge of*  
20 *the mandates process,*

21 *"And whereas he has advised and*  
22 *influenced the Commission on State*  
23 *Mandates in determining if counties,*  
24 *cities, and other local agencies*  
25 *should be reimbursed pursuant to*

**Commission on State Mandates – August 1, 2008**

1           Article XIII-B, Section 6, of the  
2           California Constitution, and  
3           Government Code section 17514;

4           "And whereas he represented all  
5           counties, cities, and other local  
6           agencies by successfully sponsoring  
7           and completing numerous test claims  
8           for such critical mandated programs  
9           as Animal Adoption, Sexually Violent  
10          Predator, SIDS, Firefighter Training,  
11          Handicapped and Disabled Students II,  
12          Seriously Emotionally-Disturbed  
13          Pupils, Out-of-State Mental Health  
14          Services, and several domestic  
15          violence programs;

16          "And whereas he jointly sponsored  
17          with the Department of Finance the  
18          first reasonable reimbursement  
19          methodology on the Firearm Hearings  
20          for Discharged Patients Program, and  
21          sponsored the reasonable reimbursement  
22          methodology on the Peace Officer  
23          Procedural Bill of Rights Program;

24          "And whereas Leonard Kaye is being  
25          honored by the members and staff of

**Commission on State Mandates – August 1, 2008**

1           *the Commission on State Mandates in*  
2           *appreciation of his outstanding*  
3           *dedication, leadership, and service*  
4           *to the County of Los Angeles and the*  
5           *State of California."*

6           *"Now therefore be it resolved that*  
7           *the members and staff of the Commission*  
8           *on State Mandates warmly congratulate*  
9           *Leonard Kaye upon his retirement."*

10          Congratulations.

11          *(Applause)*

12          MR. KAYE: I guess in the law it's called a  
13          *non sequitur*. I just don't know what to say after that.

14                 I think that it's just been -- it has been a  
15          pleasure, I guess, in working on these programs because  
16          many times in this room we argue over cost issues and  
17          so forth; but sometimes when you go back home to your  
18          locality, you realize the tremendous value and service  
19          that's being provided to the communities. And that is  
20          something that is really motivating.

21                 So I appreciate your recognition again.

22                 Thank you very much.

23          CHAIR GENEST: Thank you.

24                 If there's no other public comment, we'll go  
25          into closed session.

**Commission on State Mandates – August 1, 2008**

1 CHAIR GENEST: And, again, I think I have to  
2 read it in full.

3 MS. HIGASHI: You have to read the script.

4 CHAIR GENEST: The Commission will meet in  
5 closed executive session pursuant to Government Code  
6 section 11126, subdivision (e), to confer with and  
7 receive advice from legal counsel for consideration and  
8 action, as necessary and appropriate, upon the pending  
9 litigation listed on the published notice and agenda, and  
10 to confer with and receive advice from legal counsel  
11 regarding potential litigation.

12 The Commission will also confer on personnel  
13 matters listed on the published notice and agenda.

14 We will reconvene in open session in  
15 approximately 15 minutes.

16 *(The Commission met in closed execution*  
17 *session commencing at 10:19 a.m.)*

18 *(Open session resumed at 10:35 a.m.)*

19 CHAIR GENEST: We're back. There's no  
20 audience. We have an "audient."

21 The Commission met in closed executive session  
22 pursuant to Government Code section 11126, subdivision  
23 (e), to confer with and receive advice from legal counsel  
24 for consideration and action, as necessary and  
25 appropriate, upon the pending litigation listed on the

**Commission on State Mandates – August 1, 2008**

1 published notice and agenda, and potential litigation  
2 pursuant to Government Code section 11126, subdivision  
3 (a), and 17526, to confer on personnel matters listed on  
4 the published notice and agenda.

5 The Commission will reconvene in open session.

6 Do we now need to hear from our --

7 MS. HIGASHI: Yes, the last item is Item 14.

8 Mr. Lujano or Mr. Worthley?

9 MEMBER LUJANO: Good morning.

10 The Personnel Subcommittee met, and we  
11 discussed the executive director's duty statement and  
12 looked it over. And we felt that there were more duties  
13 that -- it needed to be amended to reflect the actual  
14 duties that she is performing now. So that we're  
15 actually recommending that the duty statement be amended,  
16 and that the level that it sits at also be increased.

17 MEMBER OLSEN: Mr. Chairman, I'd like to make  
18 a motion to approve the proposed revisions of the  
19 executive director's duty statement to request that the  
20 executive director position be set at Level D on the  
21 exempt-salary chart because the work performed by the  
22 executive director continues to become more complex and  
23 difficult; and finally authorize submission of this  
24 request to the Governor's office and the Department of  
25 Personnel Admission to set the executive director's

**Commission on State Mandates – August 1, 2008**

1 salary at Level D on the exempt-salary chart subsequent  
2 to adoption of the budget.

3 CHAIR GENEST: Is there a second?

4 MEMBER GLAAB: Second.

5 CHAIR GENEST: Let's have roll call then.

6 MS. HIGASHI: Mr. Lujano?

7 MEMBER LUJANO: Aye.

8 MS. HIGASHI: Ms. Olsen?

9 MEMBER OLSEN: Aye.

10 MS. HIGASHI: Mr. Worthley?

11 MEMBER WORTHLEY: Aye.

12 MS. HIGASHI: Ms. Bryant?

13 MEMBER BRYANT: Aye.

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: Aye.

18 MS. HIGASHI: Mr. Genest?

19 CHAIR GENEST: Aye.

20 MS. HIGASHI: Thank you very much.

21 CHAIR GENEST: Okay. So I think with that, if  
22 there's no further business to discuss --

23 MEMBER BRYANT: Rick has something.

24 CHAIR GENEST: What's that?

25 MEMBER BRYANT: I think Rick has something.

**Commission on State Mandates – August 1, 2008**

1 CHAIR GENEST: Rick has something?

2 MEMBER LUJANO: No, no.

3 I just had a question on how the information is  
4 going to be provided.

5 I know at one point we had talked about  
6 actually having laptops available for the members. So  
7 since they have the information electronically, in  
8 electronic media, that you would not bring your books,  
9 and can search through the document as we're going  
10 through the process. I know it would have to be a budget  
11 item. However, I think you have a cost savings that  
12 would offset it, you know, based on paper and staff time.

13 I'm not sure.

14 MEMBER OLSEN: We could probably get the U.S.  
15 Forest Service behind it, too.

16 Yes, there's workers' comp implications, all  
17 sorts of things.

18 MEMBER LUJANO: And also, too, if we're getting  
19 confidential information, or just as a safety precaution,  
20 maybe we should have passwords on them. So if you do  
21 send them overnight, only the Commission member could  
22 open them; or if it's lost, you don't have it in the  
23 paper that, you know, all this information was found.

24 MS. HIGASHI: Everything that we send you in  
25 your binder, except for Camille's closed-session report

1 or the personnel subcommittee is public.

2 And believe it or not, some of that is being  
3 uploaded on our Web site now and for this hearing in  
4 particular. Because we had two agenda items originally  
5 scheduled: Expulsions, Suspensions, et cetera, and then  
6 also Prevailing Wage, that if we had assembled a paper --  
7 I know Rick actually was the only one who asked for  
8 paper.

9 MR. WORTHLEY: You're "old school."

10 CHAIR GENEST: But I've got paper.

11 MEMBER CHIVARO: I have a very old computer.  
12 And the reason for that is, really, if you send large  
13 documents to me electronically, it crashes my computer.

14 CHAIR GENEST: His computer is so old, that  
15 we're thinking of paying it to minimum wage.

16 MEMBER CHIVARO: We will refuse to implement  
17 that order.

18 MS. HIGASHI: So, Francisco, a quick answer to  
19 your questions. We are in the process right now of  
20 exploring how we might address this; and probably part of  
21 this process will be actually serving you individually,  
22 to find out what you think you would like and what would  
23 work best for you. Because I know Sarah does Mac and  
24 others may not have Macs.

25 MEMBER OLSEN: I am a Mac person.

**Commission on State Mandates – August 1, 2008**

1 CHAIR GENEST: That sort of sounds right,  
2 actually.

3 MEMBER BRYANT: I'd really love having the  
4 exhibits electronically. It's easier to scroll through  
5 them.

6 MEMBER LUJANO: And search for words.

7 MEMBER BRYANT: I loved it. So, I mean, maybe  
8 a starting point would be the exhibits. So that would  
9 certainly -- like Mike takes the exhibits out a lot of  
10 times to make the binder thinner. You don't have --

11 MEMBER LUJANO: Just remember, the sooner you  
12 act, the more trees we save.

13 MEMBER BRYANT: Yes, and the more that they can  
14 take --

15 MEMBER OLSEN: I think that's a really good  
16 first step, is at the next hearing, maybe put all the  
17 exhibits on either a CD or a flash drive.

18 MS. HIGASHI: What works better on your  
19 computers, the flash drive on the CD?

20 MEMBER LUJANO: The flash drive is easier.

21 Like this one, actually, I was wrong, it's two  
22 gigabytes.

23 MS. HIGASHI: We'll probably have to wait until  
24 after the budget is adopted to --

25 MS. PATTON: I have two.

**Commission on State Mandates – August 1, 2008**

1 MS. HIGASHI: We have two flash drives.

2 MEMBER WORTHLEY: Well, the flash drives are  
3 inexpensive.

4 MEMBER OLSEN: They have got to be cheaper than  
5 what you're photocopying now.

6 MS. SHELTON: We can't spend money, though,  
7 now. We can't spend money right now.

8 MEMBER WORTHLEY: The thought of having  
9 computers for every member would be an expense.

10 The only thing I can think of would be if you  
11 could utilize the computers in your operations, and  
12 they'd only be provided for us on the day that we have  
13 Commission meetings.

14 MS. HIGASHI: We've talked about that in-house.

15 MEMBER WORTHLEY: We don't need to be taking it  
16 home and have another computer.

17 MS. HIGASHI: Right. So it would be like  
18 members of the Legislature sitting at their desk during  
19 floor session that, as you walk in, here's everything on  
20 the computer preloaded, and you could just scroll  
21 through.

22 MEMBER GLAAB: I just think, you know, the age  
23 has arrived. I mean, we're here, and there's not too  
24 many people that are still doing it the old way, in my  
25 opinion.

**Commission on State Mandates – August 1, 2008**

1 I know that we -- our city binders are still as  
2 thick as heck, and I'm making a motion that we get this  
3 thing kicked off so that we get it electronically. And I  
4 just think that we are all in the electronic age.

5 And, you know, a budget-line item, just taking  
6 a look at whatever that dollar amount is for reproduction  
7 and printing purposes and things like that -- you are  
8 already preparing it electronically, and then you're  
9 putting it down into a paper thing. It's already  
10 existing that way. So why not deal with it in the way  
11 that it's developed? Notwithstanding if you've got a  
12 computer that won't handle it, and I do think that we  
13 probably should have laptops.

14 MEMBER LUJANO: I mean, the cost in one year,  
15 guaranteed, you'll save money the first year.

16 I mean, you know how much money you've spent on  
17 paper, and then mailing it --

18 MEMBER WORTHLEY: Postage, getting it to us.

19 MEMBER LUJANO: Yes, right there, you know,  
20 it's --

21 MEMBER OLSEN: I just have a question --

22 MS. HIGASHI: So what we're going to do: We  
23 are in the planning process. And as I indicated, one of  
24 the important parts of it, obviously, is we need to ask  
25 each of you individually what your preferences are, how

**Commission on State Mandates – August 1, 2008**

1 you work with your computer in terms of PDF files versus  
2 HTML or whatever, and whether the Web site is serving  
3 your needs or whether we should have a different Web site  
4 just for members. There's so many ways we can approach  
5 this.

6 MEMBER LUJANO: And just for the members, right  
7 now, I get my stuff electronically.

8 MEMBER OLSEN: Because you've provided a flash  
9 drive?

10 MS. HIGASHI: No, because he asks us for it.

11 MEMBER LUJANO: Yes, they e-mail them to me.  
12 And I'm local, so I could walk over for a flash drive.

13 MEMBER OLSEN: And that's actually my question:  
14 If I were to provide you with a flash drive, since I  
15 understand you cannot purchase one right now, would you  
16 be willing to do that for the next hearing, send my stuff  
17 to me on flash drive, assuming that we don't have a  
18 budget by the next hearing that would allow you to --

19 MS. HIGASHI: Because a Mac Book is lighter  
20 than a binder.

21 MEMBER OLSEN: A what?

22 MS. HIGASHI: A Mac Book is a lot lighter than  
23 a binder.

24 MEMBER OLSEN: I don't have a Mac Book.

25 I would still need a binder in front of me at

**Commission on State Mandates – August 1, 2008**

1 the hearing, unless there's going to be laptops here.

2 But you don't have to send all that stuff --

3 MS. PATTON: Sarah, I have two flash drives in  
4 the office and I can do that.

5 MEMBER GLAAB: I don't have a laptop myself. I  
6 want to get one.

7 MEMBER WORTHLEY: The county provides you with  
8 that.

9 MS. HIGASHI: So we will check in with you  
10 before the next hearing and find out what your  
11 preferences are. And if there's a budget, we'll have  
12 more flash drives available. And Rick is going to have  
13 to write a BCP to get a new computer.

14 MEMBER LUJANO: Actually, you might just have  
15 to just have a BCP to move money around.

16 MS. HIGASHI: Or we might have a very old  
17 laptop we can send you just for Commission agendas.

18 MEMBER CHIVARO: That's all right. There's  
19 high tech, low tech; and I'm "no tech."

20 CHAIR GENEST: Maybe we should think about  
21 paying you the minimum wage.

22 MEMBER CHIVARO: I think I already get that.

23 MS. HIGASHI: Thanks for your input, and thanks  
24 for helping us work through the bugs on this with CDs and  
25 everything.



**REPORTER'S CERTIFICATE**

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

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

In witness whereof, I have hereunto set my hand on August 20, 2008.



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