

ORIGINAL

**PUBLIC HEARING**

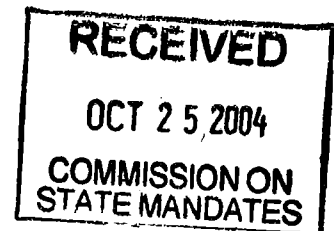
**COMMISSION ON STATE MANDATES**

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**TIME:** 9:39 a.m.

**DATE:** Thursday, September 30, 2004

**PLACE:** Commission on State Mandates  
State Capitol, Room 126  
Sacramento, California



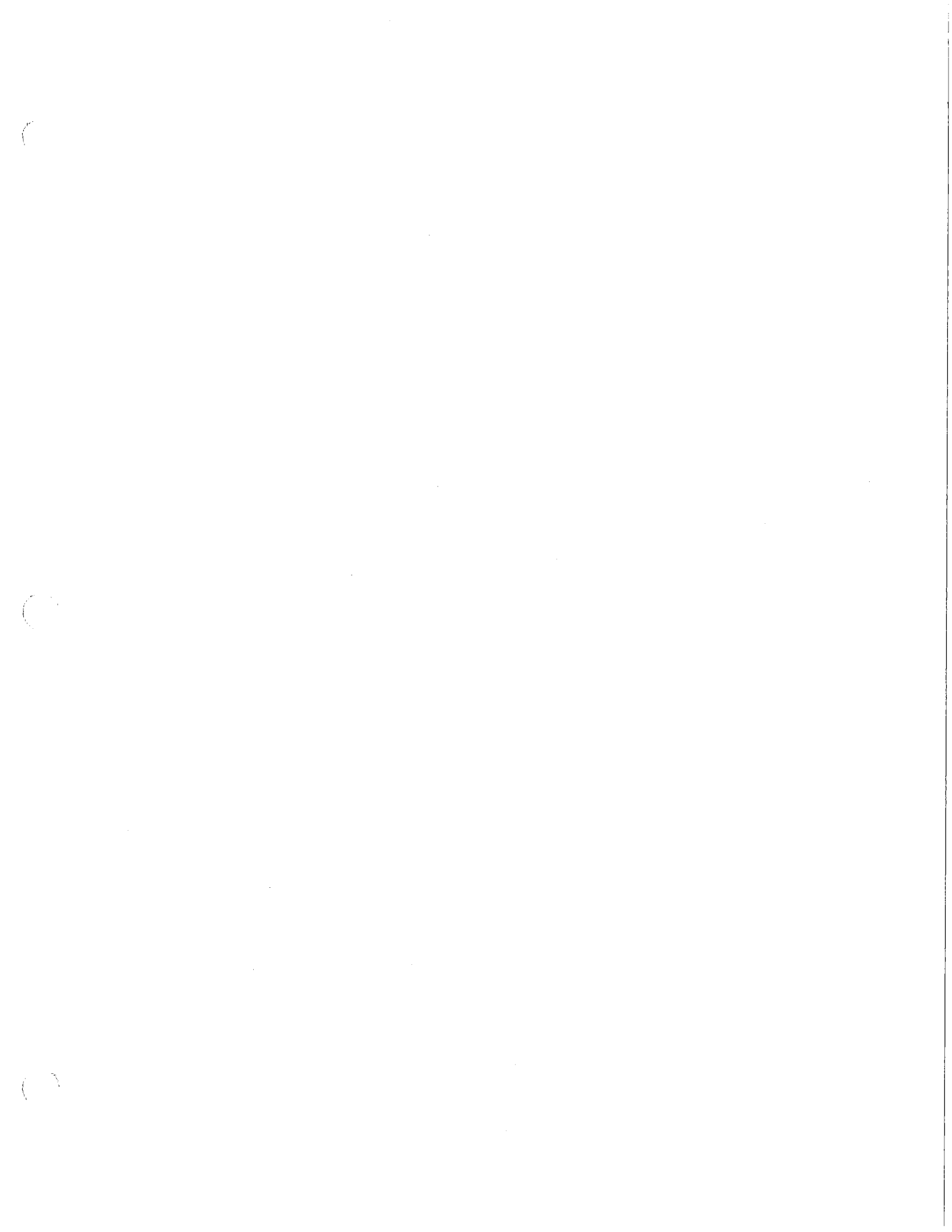
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By:

DANIEL P. FELDHAUS  
CSR #6949, RDR, CRR



A P P E A R A N C E S

COMMISSIONERS PRESENT

JAMES TILTON  
(Commission Chair)  
Representative for DONNA ARDUIN  
Director  
Department of Finance

LINDA K. McATEE  
Representative for PHILIP ANGELIDES  
State Treasurer

WALTER BARNES  
Representative for STEVE WESTLY  
State Controller

JAN BOEL  
Acting Director  
State Office of Planning and Research

JOHN S. LAZAR  
City Council Member  
City of Turlock

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director

PAUL M. STARKEY  
Chief Legal Counsel

CATHY CRUZ  
Program Analyst

ERIC FELLER  
Commission Counsel

NANCY PATTON  
Assistant Executive Director

--oOo--

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 3:**

For the Modesto City Schools:

MIKE BROWN  
Mandate Manager  
MCS Education Services  
11130 Sun Center Drive, Suite 100  
Rancho Cordova, CA 95670

For the Department of Finance:

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

LENIN DEL CASTILLO  
Finance Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, CA 95814

**Appearing Re Item 5:**

For Brentwood Union School District

DAVID E. SCRIBNER  
Executive Director  
Schools Mandate Group  
One Capitol Mall, Suite 200  
Sacramento, CA 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

(continued)

Appearing Re Item 5: (continued)

For the Department of Finance:

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

BLAKE JOHNSON  
Department of Finance  
915 L Street  
Sacramento, CA 95814

WALT SCHAFF  
Principal Program Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, CA 95814

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1 BE IT REMEMBERED that on Thursday, September 30,  
2 2004, commencing at the hour of 9:39 a.m., thereof, at  
3 the State Capitol, Room 126, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR TILTON: The time of 9:30 has come for  
8 initiating or starting the meeting for the Commission on  
9 State Mandates. If you're here for another meeting,  
10 you're lost. There's familiar faces, huh?

11 Paula, would you call the roll, please?

12 MS. HIGASHI: Mr. Barnes?

13 MEMBER BARNES: Here.

14 MS. HIGASHI: Ms. Boel?

15 MEMBER BOEL: Here.

16 MS. HIGASHI: Mr. Lazar?

17 MEMBER LAZAR: Here.

18 MS. HIGASHI: Ms. McAtee?

19 MEMBER McATEE: Here.

20 MS. HIGASHI: And Mr. Tilton?

21 CHAIR TILTON: Here.

22 MS. HIGASHI: The first item on our agenda is the  
23 minutes from the last meeting, July 29th, Item 1.

24 CHAIR TILTON: Do we have any objections, comments,  
25 corrections to the minutes from the last meeting?

1 Can I have a motion then?

2 MEMBER LAZAR: So moved.

3 MEMBER BOEL: I second.

4 CHAIR TILTON: The motion is seconded.

5 All in favor, say "aye."

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

7 CHAIR TILTON: Opposed?

8 The minutes are approved.

9 MS. HIGASHI: Thank you.

10 There are no appeals pending on Item 2.

11 This brings us to the Proposed Consent Calendar.

12 And you should have before you a blue sheet, which  
13 itemizes everything on the proposed consent calendar.

14 Quickly, Item 7, Proposed Statement of Decision *DNA*  
15 *Database*; Items 9, 10, 11 and 12 are all statewide cost  
16 estimates: First is *Charter Schools II*. Second is  
17 *Sexual Assault Response Procedures*. Third, *Criminal*  
18 *Background Checks II*. And fourth, *Absentee Ballots:*  
19 *Tabulation by Precinct*.

20 We have not received any correspondence or phone  
21 calls requesting that these items be taken off the  
22 consent calendar.

23 CHAIR TILTON: Okay, are there any objections or  
24 comments about the consent calendar? From the audience?  
25 Anyone else?

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*(No audible response was heard.)*

CHAIR TILTON: Can I have a motion then?

MEMBER McATEE: I move approval.

CHAIR TILTON: We've got a motion.

MEMBER LAZAR: Second.

CHAIR TILTON: And a second.

All in favor of approving the consent calendar,  
signify by saying "aye."

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

CHAIR TILTON: Opposed?

*(No audible response was heard.)*

CHAIR TILTON: The motion passes.

MS. HIGASHI: Thank you.

This brings us to the test claim portion of our  
meeting today. And we will be taking up Items 3, 4, 5  
and 6.

At this time, I'd like to ask all of the parties,  
witnesses and representatives who intend to testify on  
these matters to please stand.

At this point, would you please raise your right  
hand?

*(Several persons stood and raised their right hands.)*

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

1 or belief?

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

3 MS. HIGASHI: Thank you very much.

4 This brings us to Item 3. Commission Counsel Eric  
5 Feller will present this test claim on *English Language*  
6 *Development Test*.

7 MR. FELLER: Good morning. The test claim statutes  
8 require the Superintendent of Public Instruction to  
9 develop an examination for English-learner pupils, now  
10 known as the California English Language Development  
11 Test. A separate test claim statute requires  
12 English-learner pupils to be tested upon enrollment  
13 and annually, until they're redesignated as  
14 English-proficient.

15 Staff finds that the test claim legislation does  
16 not impose state-mandated activities because the  
17 requirements are in preexisting federal statute and  
18 federal case law. In addition, the English Language  
19 assessment is not a new program or higher level of  
20 service because it was already required by state  
21 regulations enacted after Proposition 227 of 1998.

22 The staff recommends the commission adopt this  
23 analysis and deny the test claim.

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

1 MR. BROWN: Mike Brown with MCS Education Services,  
2 representing the claimant, Modesto City Schools.

3 MS. GEANACOU: Susan Geanacou, Department of  
4 Finance.

5 MR. DEL CASTILLO: Lenin Del Castillo with the  
6 Department of Finance.

7 CHAIR TILTON: Mr. Brown, do you want to go ahead  
8 and start your testimony?

9 MR. BROWN: All right. Mr. Chairman, the claimant  
10 wishes to state that they disagree with the final staff  
11 analysis recommending denial of this test claim, and also  
12 that the claimant has nothing further to argue at this  
13 time.

14 CHAIR TILTON: Thank you.  
15 Department of Finance?

16 MS. GEANACOU: Go ahead.

17 MR. DEL CASTILLO: We submitted a letter, indicating  
18 that we concur with the staff analysis.

19 CHAIR TILTON: Very good.  
20 Any questions from Members or --

21 MEMBER McATEE: No.

22 CHAIR TILTON: What's the pleasure?

23 MEMBER BARNES: I'll move the staff recommendation.

24 MEMBER BOEL: Second.

25 CHAIR TILTON: Okay, we have a motion and a second

1 to approve staff recommendations.

2 Paula, call the roll, please.

3 MS. HIGASHI: Mr. Barnes?

4 MEMBER BARNES: Aye.

5 MS. HIGASHI: Ms. Boel?

6 MEMBER BOEL: Aye.

7 MS. HIGASHI: Mr. Lazar?

8 MEMBER LAZAR: Aye.

9 MS. HIGASHI: Ms. McAtee?

10 MEMBER McATEE: Aye.

11 MS. HIGASHI: Mr. Tilton?

12 CHAIR TILTON: Aye.

13 MS. HIGASHI: The motion is carried.

14 This brings us next to the Proposed Statement of

15 Decision on Item 3.

16 Mr. Feller?

17 MR. FELLER: Unless there are objections, staff

18 recommends that the Commission adopt the Proposed

19 Statement of Decision which accurately reflects the

20 decision on the test claim.

21 Staff also recommends that the Commission allow

22 minor changes to be made to the SOD, including reflecting

23 the hearing testimony and vote count that will be

24 included in the final statement of decision.

25 CHAIR TILTON: Mr. Brown, do you have any further



1 testimony?

2 MR. BROWN: No, sir.

3 CHAIR TILTON: Any questions or comments from the  
4 Members?

5 MEMBER McATEE: Move approval.

6 MEMBER LAZAR: Second.

7 CHAIR TILTON: We have got a motion and a second to  
8 approve the staff recommendation.

9 Paula, call the roll.

10 MS. HIGASHI: Ms. Boel?

11 MEMBER BOEL: Aye.

12 MS. HIGASHI: Mr. Lazar?

13 MEMBER LAZAR: Aye.

14 MS. HIGASHI: Ms. McAtee?

15 MEMBER McATEE: Aye.

16 MS. HIGASHI: Mr. Barnes?

17 MEMBER BARNES: Aye.

18 MS. HIGASHI: Mr. Tilton?

19 CHAIR TILTON: Aye.

20 MS. HIGASHI: The motion is carried.

21 This brings us to Item 5.

22 MR. FELLER: Good morning again.

23 This is the *Acquisition of Agricultural Land for a*  
24 *School Site* test claim. Claimant seeks reimbursement for  
25 various activities related to selecting a school site on

1 land zoned for agricultural use and for assessments  
2 required under the Leroy F. Green School Facilities Act.  
3 Staff finds that the test claim does not constitute a  
4 reimbursable state mandate.

5 As to section 17515.5, the findings the school  
6 district must make if the proposed school site is on land  
7 zoned for agricultural use is not state-mandated because  
8 the decision to build a school, as well as where to  
9 locate it, including the acquisition of agricultural  
10 land, is a discretionary decision left to the school  
11 district by state law.

12 As to section 17213.1, the procedures a school  
13 district must follow when it seeks state funding pursuant  
14 to the Leroy F. Green School Facilities Act of 1998 are  
15 not state-mandated because the school district is not  
16 required to request state funding under the Act.

17 Claimant requests that the Commission find a limited  
18 exception to reimbursement in those districts that can  
19 establish they are practically compelled to build a new  
20 school site due to overpopulation or expected additional  
21 development and growth within the district, and that the  
22 only available option is to acquire agricultural land.  
23 However, claimant has submitted no evidence on the  
24 scenario, so the record does not support a finding that  
25 this would be a mandated program.

1           Thus, staff recommends the Commission adopt this  
2 analysis and deny the test claim.

3           Again, would the parties and witnesses please state  
4 your names for the record?

5           MR. SCRIBNER: Good morning. David Scribner for the  
6 Claimants.

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

9           MR. JOHNSON: Blake Johnson, Department of Finance.

10          MR. SCHAFF: Walt Schaff, Department of Finance.

11          CHAIR TILTON: Mr. Scribner, are you going to start  
12 your testimony?

13          MR. SCRIBNER: Thank you.

14          The claimant agrees with staff that we have been  
15 unable to provide substantial evidence in the record to  
16 support the exception that we were seeking. We have been  
17 looking for a district to meet this exception, and we  
18 were right in our initial call that this is limited, so  
19 we were having a difficult time doing so. We believe  
20 that we may have a district or two that may meet these  
21 requirements. At this time, we were unable to get a  
22 declaration before this hearing. We will continue to  
23 seek a declaration, citing that they can meet the  
24 exceptions, as we outlined in our comments and staff has  
25 put forward in the final staff analysis for you this

1 morning.

2 If we do so before the time for reconsideration  
3 tolls, we'll request reconsideration based on that  
4 declaration. But at this time, we have nothing further.

5 CHAIR TILTON: I appreciate that.

6 Department of Finance?

7 MR. JOHNSON: Yes, Blake Johnson. We concur with  
8 the staff analysis.

9 CHAIR TILTON: Any comments or questions from the  
10 Board?

11 MEMBER LAZAR: No.

12 CHAIR TILTON: Do I have a motion?

13 MEMBER LAZAR: I'd like to adopt the staff analysis,  
14 please.

15 MEMBER BOEL: I second.

16 CHAIR TILTON: A motion and a second to accept staff  
17 recommendations and adopt the analysis.

18 Paula, call the roll.

19 MS. HIGASHI: Ms. McAtee?

20 MEMBER McATEE: Aye.

21 MS. HIGASHI: Mr. Barnes?

22 MEMBER BARNES: Aye.

23 MS. HIGASHI: Ms. Boel?

24 MEMBER BOEL: Aye.

25 MS. HIGASHI: Mr. Lazar?

1 MEMBER LAZAR: Aye.

2 MS. HIGASHI: Mr. Tilton?

3 CHAIR TILTON: Aye.

4 MS. HIGASHI: Thank you.

5 MS. HIGASHI: This brings us to Item 6, the Proposed  
6 Statement of Decision.

7 MR. FELLER: Unless there is objection, staff  
8 recommends the Commission again adopt the Proposed  
9 Statement of Decision, accurately reflecting the decision  
10 on the test claim. Staff also recommends the Commission  
11 allow minor changes to be made to the Statement of  
12 Decision, including reflecting the hearing testimony and  
13 vote count that will be included in the final SOD.

14 CHAIR TILTON: Mr. Scribner, any further testimony?

15 MR. SCRIBNER: None. Thank you.

16 CHAIR TILTON: Any questions or comments from  
17 Commission members?

18 *(No audible response was heard.)*

19 CHAIR TILTON: Do we have a motion?

20 MEMBER LAZAR: I'll make the motion to adopt it.

21 CHAIR TILTON: We have a motion.

22 MEMBER McATEE: Second.

23 CHAIR TILTON: A motion and second to accept staff  
24 recommendations.

25 Paula, call roll.

1 MS. HIGASHI: Ms. McAtee?  
2 MEMBER McATEE: Aye.  
3 MS. HIGASHI: Mr. Barnes?  
4 MEMBER BARNES: Aye.  
5 MS. HIGASHI: Ms. Boel?  
6 MEMBER BOEL: Aye.  
7 MS. HIGASHI: Mr. Lazar?  
8 MEMBER LAZAR: Aye.  
9 MS. HIGASHI: Mr. Tilton?  
10 CHAIR TILTON: Aye.  
11 MS. HIGASHI: Thank you.  
12 MR. SCRIBNER: Thank you.  
13 MS. HIGASHI: Item 7 has already been adopted.  
14 Item 8 has been postponed. Items 9, 10, 11 and 12  
15 have been adopted.  
16 This brings us to item 13. And this is a staff  
17 report on the California Performance Review.  
18 Ms. Cruz will present it for us.  
19 MS. CRUZ: Good morning. On August 3, 2004, the  
20 California Performance Review issued its report entitled,  
21 "Report of the California Performance Review, Government  
22 for the People for a Change." The report contains  
23 comprehensive recommendations to reform and revitalize  
24 California state government.  
25 The report makes the following recommendations

1 regarding the mandates reimbursement process:

2 First, the Governor should direct state agencies to  
3 review pending draft legislation as early in the process  
4 as possible and to focus on mandate impacts to make  
5 reimbursements more cost efficient, predictable and fair.

6 Second, the Governor should direct state agencies  
7 to actively review and provide input into the parameters  
8 and guidelines document during the Commission on State  
9 Mandates process. This should occur whenever the  
10 Commission determines that a reimbursable mandate exists.

11 Third, the Governor should direct the Department of  
12 Finance to develop standardized cost units for specific  
13 functions that claimants use in their cost submissions.

14 State agencies and departments were asked to submit  
15 analyses of these recommendations to CPR. Commission  
16 staff submitted its analysis, indicating that the above  
17 recommendations will provide the Administration and the  
18 Legislature with timelier information about pending  
19 legislation that could result in cost savings to the  
20 State. The recommendations would also assist the  
21 Commission when it makes mandate determinations and  
22 develops and adopts parameters and guidelines and  
23 statewide cost estimates.

24 The report also recommends that state government be  
25 significantly restructured. One of the recommendations

1 would create the Governor's Office of Management and  
2 Budget to provide administrative and fiscal services for  
3 all areas of state government. The report recommends  
4 that the Commission on State Mandates be transferred  
5 intact to OMB.

6 According to the Governor's office, CPR is  
7 requesting state agency secretaries to analyze the  
8 proposed reorganization, but is not requesting that we  
9 analyze a proposed reorganization at this time.

10 The Governor's CPR Commissioner has been conducting  
11 hearings around the state on the proposed reorganization  
12 and is expected to issue its final report on  
13 October 30th. Commission staff will keep you apprised as  
14 further reports and recommendations are issued.

15 CHAIR TILTON: Thank you, Cathy.

16 Any questions of members?

17 MEMBER LAZAR: I'm just curious. What does that  
18 mean in terms of our staff and who you report to and that  
19 sort of thing?

20 MS. HIGASHI: As near as we can tell from looking at  
21 the report, it would place the Commission on State  
22 Mandates within this agency, which would be called "OMB."  
23 It says that the move would be intact.

24 What is not necessarily clear is how all of the  
25 staffing ends up because of the fact that the proposed



1 statutory proposal that's included in the report, in the  
2 appendices, has sentences basically transferring all the  
3 staff to the agency. And so I suspect that once we get  
4 closer, if this recommendation were to go forward, that a  
5 bill would be introduced, and there would be time to  
6 review the legislation in terms of exactly what it means  
7 because there are two types of transfers: The intact and  
8 the other, which is more of -- what can I say -- an  
9 absorption process of an agency -- an agency's functions  
10 being merged into the larger office of OMB.

11 MEMBER LAZAR: In your opinion, is this a good move?

12 MS. HIGASHI: Well, there are many instances where  
13 we are at a significant disadvantage because we are an  
14 independent organization. And one example that is most  
15 recent is during the budget process, that when all of the  
16 budget letters were issued over the last two and three  
17 years, requesting that departments take budget  
18 reductions, there were also guidelines that departments  
19 that were in agencies, the agency secretaries had the  
20 authority to basically come up with the total amount of  
21 a hit, and decide how it should be spread among all of  
22 the departments.

23 Well, we had no agency to be part of, to share our  
24 budget reductions with. So we had to take most of the  
25 reductions almost -- I should say, almost 100 percent

1 every time, not every instance. Certainly, this last  
2 year it slowed down considerably, we kept our positions  
3 that we started the fiscal year with.

4 And the other instances are when we end up out of  
5 the communications loop because it's not clear whether  
6 the Commission is part of the Administration. So if  
7 there are memos, directives, policies, procedures  
8 promulgated from the Governor's office or, I should say  
9 certain other agencies, we may not get them. We'll hear  
10 about them, and then we'll get copies of them from  
11 friends in other state agencies. But we're not part of  
12 a normal distribution process because -- and it's  
13 probably because of the makeup of the Commission because  
14 we do have constitutional officers in the mix.

15 MEMBER LAZAR: But will we be maintaining the  
16 current staff level?

17 MS. HIGASHI: I think that would end up being a  
18 function of the budget process; that depending on how the  
19 proposal ends up being shaped and, as I understand it, it  
20 would also have to go to the Little Hoover Commission,  
21 and how Little Hoover responds to it.

22 MEMBER LAZAR: Okay, thank you.

23 MS. HIGASHI: Good questions.

24 MEMBER LAZAR: Thank you.

25 MS. HIGASHI: And since we at this time are not

1 being directed to respond to that memo, if we are  
2 directed to, we will file the response and certainly  
3 share with the Commission members.

4 MEMBER LAZAR: Thank you.

5 CHAIR TILTON: Any other questions or comments?

6 Thank you.

7 Thank you, Cathy.

8 MS. HIGASHI: This brings us to Item 14,  
9 Mr. Starkey's report.

10 MR. STARKEY: Good morning. Mercifully, no updates,  
11 so the report stands.

12 CHAIR TILTON: Thanks, Paul.

13 We're moving right along today; aren't we?

14 MS. HIGASHI: Okay, Item 15, in contrast, in  
15 Item 14, we have lots of updates.

16 First, I wanted to note that in adding all of the  
17 caseload and historical detail about our workload, I was  
18 trying to respond to some of the questions that came up  
19 at our last Commission meeting. And I had been asked the  
20 question about how old are our test claims that are in  
21 our pending caseload. And we have given you that  
22 information.

23 Some of the cases that are very old, are very old  
24 because, one, they were inactive for a number of years,  
25 where a claimant, in the sense, abandoned the claim. And

1 then when we started to go through a process of trying to  
2 dismiss what we perceived to be abandoned claims, other  
3 claimants wished to come in and take them over. So we  
4 had to go through a process of allowing another entity to  
5 come in and be amended in to substitute for the original  
6 claimant.

7 We have other cases here where the test claim issues  
8 and statutes relate directly to the cases that are  
9 pending. And one example is, on the expulsions decision  
10 that was recently decided by the Supreme Court, there are  
11 a number of education test claims that can now be decided  
12 and scheduled because we have that decision. And rather  
13 than going through the process of deciding those cases  
14 and to have other changes in the future, we chose to hold  
15 back on those and to wait, so then they can all be  
16 decided within the same time lines.

17 Are there any questions about this?

18 Ideally, we would love to be able to say that the  
19 first in, first out. But what ends up happening,  
20 realistically, is that records don't close on time,  
21 records remain open, parties change, representatives  
22 change, our staffing has changed. Also, what we have are  
23 situations where, when we're able to find test claims  
24 that might be within the similar subject area, we might  
25 group them for hearing. Also, we might have amendments

1 filed for other test claims filed at a future date that  
2 are then consolidated with an older test claim for  
3 efficiency of effort. So that's why, you know, as you  
4 look at these numbers, you'll note that some of the newer  
5 claims appear to have already been decided. But those  
6 are most likely the amendments that were filed or  
7 consolidations that occurred; and that's when it's  
8 statutes that amend test claims that have previously been  
9 filed.

10 And also what we do is, when we have law clerks and  
11 we are training new staff, we try to find test claims  
12 that are shorter test claims, that can be handled as  
13 teaching test claims, in a sense. And so sometimes a  
14 newer test claim may have to come out of line in order to  
15 help us through that process.

16 The interesting thing that happened this year is,  
17 we have an unprecedented number of old test claim  
18 decisions that the Legislature has directed the  
19 Commission to reconsider for various reasons. And  
20 basically, the table under "C," on page 2 there, details  
21 what all of those claims are. Everything that was  
22 pending on the Governor's desk has been signed, on that  
23 list. So we have all of these claims.

24 We have actually started our meetings and  
25 discussions. We had a workshop yesterday with

1 representatives from the local agencies that filed these  
2 test claims originally, to start talking about how we  
3 would set up the briefing schedule and how we would  
4 schedule these claims, because all of these have a  
5 statutory time line of January 1, 2006, for completion.  
6 And so these will need to be moved up in terms of  
7 prioritization for the workload.

8 As you know, the Commission's budget didn't change  
9 this year. And we maintained the same level of  
10 positions. We also did not receive any funding for  
11 SB 1033; and yet we know we have an application that is  
12 pending and is expected to be filed very shortly.

13 We have responded to the pending SB 1033, by putting  
14 in all the necessary documentation with the Department of  
15 Finance, so that once that application is received, we  
16 have a funding request, so that we will have the funds to  
17 actually process here and determine that application.

18 In terms of the additional workload and the  
19 statutory changes that have occurred, we have also  
20 submitted a BCP to address that. And, obviously, we  
21 won't know what will occur until the Governor's budget is  
22 issued in January.

23 I have some notes also on mandate reimbursements.  
24 The fact that there were only a few appropriations made  
25 this year for reimbursements, one being the *Animal*

1        *Adoption* mandate, 13.9 million dollars, and the other  
2        being the *Handicapped and Disabled Students* mandate.

3        Also, there were appropriations made for school district  
4        mandates for prior claims.

5                The budget trailer bills are interesting this year,  
6        too. The one that is probably the most significant for  
7        local government is SB 1096. And that's the budget  
8        trailer bill where the State actually codified its  
9        promise and commitment to begin payments to local  
10       agencies for the costs of all of the back claims that had  
11       been accumulating.

12                SB 1102 was a general government trailer bill. And  
13        this trailer bill addressed a CSM reconsideration of a  
14        very old Board of Control decision regarding regional  
15        housing needs determinations. And this is a case in  
16        which the Commission adopted parameters and guidelines  
17        but did not exist at the time that the decision was made.  
18        So this will be a reconsideration under a different  
19        standard and by a different body. So it will be  
20        interesting.

21                We have also an education budget trailer bill, which  
22        continued some suspensions and added some suspensions,  
23        but also directed reconsideration of the STAR testing  
24        mandate.

25                And then, obviously, we have SCA 4, the proposition,

1 which is the local government initiative that the  
2 administration and the Legislature agreed on at the very  
3 end of the budget process. And that will be on the  
4 November ballot.

5 There was another proposition on this ballot, which  
6 is Proposition 65. And we've included in your agendas  
7 informational material prepared by the Leg. Analyst's  
8 Office regarding those two propositions, for your  
9 information, since the ballot pamphlet hasn't been issued  
10 yet. But both propositions amend XIII B, section 6,  
11 which is our basis for all of the Commission's  
12 decision-making. So if either passes, the law will  
13 change. And you may have some questions about that  
14 later. I will not attempt to answer them.

15 In terms of our other legislation, the CSM sponsored  
16 a bill this year, AB 2224, and that was the bill to  
17 implement the recommendations from the Bureau of State  
18 Audits report on animal adoption and <sup>POBOR</sup>~~POBR~~. And that bill  
19 was enacted and will take effect on January 1.

20 AB 2851, which was the first of the Assembly Special  
21 Committee on State Mandates-sponsored legislation was  
22 also signed by the Governor. And that is another bill  
23 that requires reconsiderations and also declares some of  
24 the older mandates as being repealed and also has  
25 suspensions in it.



1 AB 2853 was signed yesterday. And this bill makes  
2 a number of mandates optional, including *County Treasury*  
3 *Oversight Committees, Investment Reports, Two-Way Traffic*  
4 *Signal Communications*. And it narrows another mandate,  
5 *Misdemeanors Booking and Fingerprinting*.

6 AB 2854 was signed, and that was on *Local Elections*  
7 *Consolidation Programs*, making the reporting activities,  
8 the cost effectiveness evaluations optional. And then  
9 also yesterday, AB 2855 was signed. And this bill  
10 addresses a number of education mandates; and it also  
11 requires the Commission to reconsider the *School*  
12 *Accountability Report Cards* mandate and makes various  
13 changes in the ed. mandates programs.

14 There are also some provisions in AB 2855 that  
15 affect our statutory provisions. And one is that  
16 there's an amendment to 17556, which clarifies the  
17 provision that addresses funding and whether or not  
18 funding is provided actually in a test claim statute or a  
19 budget act or other appropriations bill. And that's in  
20 Government Code 17556.

21 AB 2856 is also a bill that was signed yesterday.  
22 And this is the one that makes the most significant  
23 changes to the Commission's procedures. The first major  
24 change is that it places in statute what the contents of  
25 a test claim should be. And let me add -- I forgot to

1 mention that we passed out the Governor's signing message  
2 on the bill package, so I think all of you have that.  
3 That particular change will require that we develop a  
4 test claim filing form that is very detailed and  
5 different from the kinds of test claims that have been  
6 filed to date. So that will be something that we'll be  
7 working with all of the parties in developing, before we  
8 bring a product before you, so that it can be reviewed  
9 and approved.

10 There are a number of other provisions: One which  
11 is significant, another one which is significant, is the  
12 change to the statute of limitations. The current  
13 statute of limitations is three years. This bill changed  
14 it to one year.

15 There are other provisions in this bill which are  
16 identical to the provisions that are in AB 2224. And  
17 those relate to the sections on the Parameters and  
18 Guidelines amendments and also on the -- some of the  
19 provisions that relate to the State Controller's auditing  
20 time lines and claiming instructions.

21 There is a provision in this bill which creates a  
22 new definition for a reasonable reimbursement  
23 methodology. And it's a definition that encapsulates  
24 everything that everybody thinks we should be doing, we  
25 would like to be doing, but hasn't been done for

1 determining how mandates should be reimbursed. And  
2 basically it's a definition which covers unit costs, cost  
3 allocations, formulas, whatever, that can be established  
4 through the context of Parameters and Guidelines to  
5 simplify claiming practices. And this bill has a  
6 definition, and the definition clarifies that a  
7 reasonable reimbursement methodology may be proposed by  
8 claimants, Department of Finance, State Controller's  
9 Office. Basically anybody. And that the Commission must  
10 consider it as part of parameters and guidelines. And so  
11 this could be very significant. And we look forward to  
12 seeing how this develops.

13 The other issues that are addressed in this bill,  
14 are the state mandates claims fund which some of us  
15 recall was created to be used as a source for funding and  
16 appropriating funds for mandates that were less than a  
17 million dollars in cost. The balance of that fund had  
18 been significantly less than a million dollars in the  
19 past several years. And what has happened, as many of  
20 you may recall, is during the last budget process, the  
21 balance of that fund was swept back into the general  
22 fund, which basically ended up with a fund with a zero  
23 balance. So all of the statutory provisions relating to  
24 this fund were repealed as part of this bill, since there  
25 is not a need for it.

1           And then I think there's another provision that is a  
2           17556-related provision, and that is, there's a change to  
3           the definition of costs mandated by the federal  
4           government. And that is actually an amendment that's  
5           made to the definition in Government Code 17513.

6           Are there any questions on this part of it?

7                           *(No audible response was heard.)*

8           MS. HIGASHI: All of these bills can be linked from  
9           our Web site. We have a leg. portion, and all of these  
10          bills are identified by number. And you can click on the  
11          numbers and it will take you directly to the leg. info  
12          Web site.

13          MEMBER BARNES: My question is, what kind of action  
14          is the Board supposed to take in those cases where a  
15          mandate is now optional; and/or does it require an action  
16          by the Board?

17          MS. HIGASHI: We talked about this yesterday. We  
18          had a local agency workshop and State Controller's Office  
19          staff were present in that meeting. And we have a  
20          variety of situations. The most common situation seems  
21          to be the mandate that has been suspended in the  
22          Governor's budget for a number of years. There's also  
23          the situation where the statutes have continued to be in  
24          the codes.

25          The next situation is the one where the mandate has

1       been funded forever and ever, and now it's being made  
2       optional. And so for all of those situations, it seems  
3       that if all of the reimbursable activities have, indeed,  
4       become optional at this time or just the statute is  
5       repealed, that what we would need to do is look at the  
6       P's and G's and put a cap on the reimbursement period  
7       based on the date that the statute is effective. And so  
8       that for some mandates, it might mean a mandate that has  
9       not been funded. Maybe we don't need to do anything.  
10      I'm not sure yet. But for those mandates that have  
11      thousand-dollar appropriations, we would need to put a  
12      cap.

13           MEMBER BARNES: So the Board will have to do  
14      something?

15           MS. HIGASHI: So the Board will have actions to  
16      amend the P's & G's.

17           And we think at this time that the moving party will  
18      probably, if the State Controller's Office agrees, would  
19      be the State Controller's staff because of the direct  
20      impact on the claiming instructions, that they might be  
21      in the best place to identify those and to file the  
22      proposed amendments. And then we could bring them  
23      forward as packaged, as based on the legislation, because  
24      they would all have different dates.

25           CHAIR TILTON: But I assume, Paula, you can group

1 those, so our discussion will be based on the theory?

2 MS. HIGASHI: Right, it would be the same theory.

3 And it might be that one would be an urgency bill package  
4 that was on September 30th, and another one might be a  
5 January 1 package.

6 Are there any other questions on these?

7 *(No audible response was heard.)*

8 MS. HIGASHI: And then there are others where the  
9 P's & G's actually would need to have a couple of  
10 activities deleted from reimbursable activities.

11 CHAIR TILTON: So it would just add to the workload  
12 that you have been tracking for us?

13 MS. HIGASHI: Yes, a major addition to the workload.

14 There are a couple of other related bills that I  
15 wanted to note:

16 SB 815 was approved by the Governor. And that bill  
17 appropriated 3.66 million dollars to the Attorney General  
18 to pay for one of our cases. The judgment in the County  
19 of San Diego vs. the Commission on State Mandates case.

20 SB 1271, I'm not sure of the status of it yet.

21 SB 1895 was signed by the Governor. That is the one  
22 that addresses the *Handicapped and Disabled Students*  
23 mandate.

24 And then also there is another bill that we are  
25 still exploring the relationship it will have to some of

1 our work, and that's one of the education bills that was  
2 signed yesterday. I don't have it noted here, but it was  
3 part of the Governor's signing package yesterday for the  
4 education reform bills, and it's the one on the  
5 categorical funding. And a couple of programs that are  
6 identified in that bill are programs which we have  
7 statewide cost estimates pending for the next agenda.  
8 So we'll have to look into that as well.

9 Are there any questions about this?

10 At this time, I'd like to acknowledge all of the  
11 work that Nancy Patton has put in to managing our  
12 legislative program, and just acknowledge her for her  
13 excellent work in coordinating all of this and making  
14 sure that we always knew what was happening; and if  
15 anyone needed information, that she took care of all of  
16 the requests, including questions we were getting as of  
17 yesterday, in terms of what the impact might be, in terms  
18 of signing orders and whatnot.

19 Nancy?

20 CHAIR TILTON: Thank you, Nancy.

21 MS. HIGASHI: The last page of my report has the  
22 next hearing agenda for November 18; and I'd like to just  
23 start by noting that I have received a request from  
24 Mr. Allan Burdick, representing CSAC, requesting that we  
25 change the date of our next hearing because the hearing

1 falls within two days of CSAC's annual meeting. And  
2 because of some of the issues on this year's ballot and  
3 the attendance of some of the parties who would normally  
4 be at our hearing, he's filed a request to postpone the  
5 hearing and move it to December.

6 Staff has no objection to this request; and it's up  
7 to the Commission to decide if you wish to change the  
8 hearing date.

9 CHAIR TILTON: Any comments?

10 In reaction, when I heard this, my response is, as  
11 you know, I've been on and off again in terms of a chair;  
12 and this postponement would help my calendar also.

13 MEMBER LAZAR: It would help mine as well.

14 MEMBER BARNES: And mine as well.

15 CHAIR TILTON: So thank you for bringing the issue  
16 to our attention.

17 MR. BURDICK: Mr. Chairman and Members, Allan  
18 Burdick on both behalf the California State of  
19 Association of Counties and the League of California  
20 Cities. We have an advisory committee on state mandates.  
21 And there are a number of issues that are coming up that  
22 will affect that date. Obviously, the first and most  
23 significant, probably, is the election; and hopefully the  
24 strong probability that Proposition 1-A will pass.  
25 There's also Proposition 65, both which would have a



1 significant impact on the operation of the Commission  
2 if one or both of those -- well, both of those -- they  
3 could both pass, but only one would become law,  
4 obviously.

5 Secondly, as was reported just recently by Paula  
6 last night, when the Governor signed Assembly Bill 2856,  
7 that that's going to have another significant impact on  
8 how we do business and file test claims in January. And  
9 I think there's going to be a need to have some  
10 discussions with Committee staff on how we meet the test  
11 claim process come January, and prepare for that.

12 There are two significant mental health bills. One  
13 was AB 2781 of the 2002 legislative session, which made  
14 changes to one of your existing mandates. That's the  
15 handicap and disabled program. That was -- there's a  
16 second bill that you reported on today, Senate bill 1895.  
17 And in combination, those two make very significant  
18 impacts on that mandate. And we would like to see that  
19 mandate handled as soon as possible and the discussions  
20 moved forward on that.

21 Our concern is that we would be able to do something  
22 before the next hearing.

23 As was mentioned, CSAC does have its annual  
24 conference at the same time as the hearing; and we had  
25 hoped that possibly some Members of the Commission, as

1 well as some County staff that are involved, would be at  
2 that meeting, which conflicts with this.

3 So we think there's a series of reasons to postpone  
4 that meeting. We just suggested a date of December 9th,  
5 which is the date we just felt should be sometime in  
6 December. So something probably earlier, so you don't  
7 get close to the Christmas holiday.

8 But I would also like to apologize for the lateness  
9 of the request and also to our colleagues in the school  
10 community. We didn't coordinate with them. But I'm sure  
11 if they have any concerns, that we would be able to hear  
12 from them.

13 Thank you very much.

14 CHAIR TILTON: Any questions or comments of members?

15 Any other comments from the audience, in terms of  
16 the motion to move the date from November 18th to  
17 December 9th?

18 *(No audible response was heard.)*

19 CHAIR TILTON: Do we have a motion then?

20 MEMBER LAZAR: I'll make those motion.

21 MEMBER BARNES: I'll second.

22 CHAIR TILTON: Motion and a second. All in favor,  
23 say "aye."

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

25 CHAIR TILTON: Opposed?

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*(No audible response was heard.)*

CHAIR TILTON: The motion carries.

MR. BURDICK: Thank you very much.

CHAIR TILTON: Is there any other public comment?  
Does anyone want to talk on anything we have before us  
today?

*(No audible response was heard.)*

CHAIR TILTON: With that then, the Commission will  
adjourn to its closed session. We will now meet in  
closed executive session pursuant to Government  
Code 11126(e), to confer with and receive advice from  
legal counsel, for consideration and action as necessary  
and appropriate upon the pending litigation listed on the  
public notice and agenda; and to confer with and receive  
advice from legal counsel regarding potential litigation  
and pursuant to Government Code section 11126(a) and  
17526, the Commission will also confer on personnel  
matters listed on the published noticed agenda.

We'll reconvene in probably about ten or 15 minutes.

*(The Commission met in closed executive session from  
10:20 a.m. to 10:40 a.m.)*

CHAIR TILTON: The Commission met in closed  
executive session pursuant to Government Code 11126(e),  
to confer with and receive advice from legal counsel for  
consideration and action, as necessary and appropriate,

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

5 All required reports from the closed session have  
6 been made; and with no further business to discussion,  
7 I'd entertain a motion for adjournment.

8 MEMBER LAZAR: So moved.

9 CHAIR TILTON: Moved.

10 MEMBER McATEE: Second.

11 CHAIR TILTON: Second.

12 All in favor, "aye."

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

14 MS. HIGASHI: Thank you.

15 MR. STARKEY: Thank you.

16 *(Proceedings concluded at 10:41 a.m.)*

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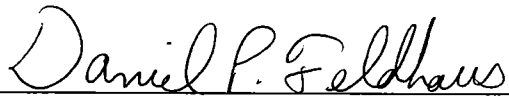
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REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

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

In witness whereof, I have hereunto set my hand this 25th day of October 2004.



DANIEL P. FELDHAUS  
CSR #6949, RDR, CRR