

PUBLIC HEARING
COMMISSION ON STATE MANDATES

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ORIGINAL

TIME: 9:35 a.m.
DATE: Thursday, April 24, 2003
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:

KAREN S. CHALLE
CSR #8244, RPR

NC ■
■ **CR**

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ROBERT MIYASHIRO, Chair
Representative of STEVE PEACE
Director
Department of Finance

WILLIAM SHERWOOD, Vice Chair
Representative of PHILIP ANGELIDES
State Treasurer

WALTER BARNES, Chief Deputy State Controller
Representative of Steve Westly
State Controller

SHERRY WILLIAMS, Legislative Analyst
Representative of Tal Finney
Interim Director
Office of Planning and Research

JOHN S. LAZAR
City Council Member
City of Turlock

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COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director

CAMILLE SHELTON, Senior Commission Counsel

NANCY PATTON, Staff Services Manager

PAUL M. STARKEY, Chief Legal Counsel

ERIC FELLER, Staff Counsel

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PUBLIC TESTIMONY

Appearing Re Item 3:

On Behalf of San Diego Unified School District:

ARTHUR PALKOWITZ

On behalf of the Department of Finance:

BARBARA TAYLOR

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

Appearing Re Item 4:

On Behalf of County of Orange:

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Maximus Consulting Group
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

ROSALYN LEVER, Retired Registrar of Voters
County of Orange

STEVE RODERMUND, Interim Registrar of Voters
County of Orange

On Behalf of the Department of Finance:

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915 L Street
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Department of Finance
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PUBLIC TESTIMONY

Appearing Re Item 5:

On Behalf of County of Los Angeles:

LEONARD KAYE, Esquire, Certified Public Accountant
Office of Auditor-Controller Accounting Division
County of Los Angeles
500 W. Temple Street, Suite 603
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Monterey Park, CA 91754-2169

On Behalf of the Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney
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Sacramento, CA 95814

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Department of Finance
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Sacramento, CA 95814

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1 BE IT REMEMBERED, that on Thursday, April 24,
2 2003, commencing at the hour of 9:35 a.m., thereof, at the
3 State Capitol, Room 126, Sacramento, California, before me,
4 KAREN S. CHALLE, CSR #8244, RPR, the following proceedings
5 were held:

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7 CHAIR MIYASHIRO: We'll go ahead and call our
8 meeting to order. Paula?

9 MS. HIGASHI: Mr. Barnes?

10 MR. BARNES: Here.

11 MS. HIGASHI: Mr. Lazar?

12 MR. LAZAR: Here.

13 MS. HIGASHI: Mr. Sherwood?

14 MR. SHERWOOD: Here.

15 MS. HIGASHI: Ms. Williams?

16 MS. WILLIAMS: Here.

17 MS. HIGASHI: Mr. Miyashiro?

18 CHAIR MIYASHIRO: Here.

19 Let me go ahead and read this for the closed
20 session.

21 This Commission will now meet in closed Executive
22 Session pursuant to Government Code Section 11126,
23 Subdivision (e) to confer with and receive advice from
24 legal counsel, for consideration and action, as necessary
25 and appropriate upon the pending litigation listed on the

1 published notice and agenda; and to confer with, and
2 receive advice from legal counsel regarding potential
3 litigation; and Government Code Sections 11126 Subdivision
4 (a) and 17526, the Commission will also confer on personnel
5 matters listed on the published notice and agenda. We will
6 reconvene in open session at this location at approximately
7 10:00 a.m.

8 Off the record.

9 (Off the record.)

10 CHAIR MIYASHIRO: Okay. If we can get started
11 again. The meeting of the Commission on State Mandates
12 convened at 9:35 a.m., and the Commission met in closed
13 Executive Session, pursuant to Government Code Section
14 11126, Subdivision (e), and conferred with and received
15 advice from legal counsel for consideration and action, as
16 necessary and appropriate upon the pending litigation
17 listed on the published notice and agenda and potential
18 litigation; and Government Code Section 11126 Subdivision
19 (a) and 17526 to confer on personnel matters listed on the
20 published notice and agenda.

21 We move now to Item 1. Paula?

22 MS. HIGASHI: Item 1 is the approval of the
23 minutes for the March 27th meeting.

24 CHAIR MIYASHIRO: Would there be objections?
25 Are there corrections to the minutes?

1 MR. LAZAR: (Mr. Lazar indicating negatively.)
2 CHAIR MIYASHIRO: No. Can I get a motion?
3 MR. LAZAR: So moved.
4 CHAIR MIYASHIRO: Yes?
5 MS. WILLIAMS: Second.
6 CHAIR MIYASHIRO: Motion to second. Any
7 objections? All those in favor of voting?
8 (A chorus of "ayes" was heard.)
9 CHAIR MIYASHIRO: Those minutes will be adopted.
10 MS. HIGASHI: Next item is the Proposed Consent
11 Calendar. The Proposed Consent Calendar is the pink
12 handout that's before you, indicating there are two items.
13 One is Item 6. The incorrect reduction claim on Graduation
14 Requirements filed by Sweetwater Union High School
15 District, and Item 8, the Proposed Statement of Decision
16 for the test claims on Enrollment Fee Collections and
17 Enrollment Fee Waivers.
18 CHAIR MIYASHIRO: Any objection to the Proposed
19 Consent Calendar? Do I have a motion?
20 MS. WILLIAMS: Motion to adopt.
21 MR. SHERWOOD: Second.
22 CHAIR MIYASHIRO: All those in favor please say
23 "Aye."
24 (A chorus of "ayes" was heard.)
25 CHAIR MIYASHIRO: Opposed? Item's adopted.

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Item 2?

MS. HIGASHI: I just wanted to review, on the back of the Proposed Consent Calendar we show that item 7 and 9 are being postponed at the request of the parties.

CHAIR MIYASHIRO: Okay. That's so noted.

MS. HIGASHI: Okay. Item 2 in the binder is an item that we're not -- we have nothing before you regarding this item today. It's an item that has been created. It's a staffing agenda item to address appeals that may be filed regarding items on the agenda. And so we have nothing before you on this. So we can move onto the hearing portion of our meeting.

CHAIR MIYASHIRO: Okay. Let's go back to 3.

MS. HIGASHI: Okay. What I'd like ask to for, all of the individuals in the audience who will be witnesses or representatives for Items 3, 4 or 5, I have a request that you stand at this point, so we can have the swearing in of witnesses and parties.

Will you please raise your right hands? Do you solemnly swear or affirm that the testimony that you're about to give is based upon your personal knowledge, information or belief?

AUDIENCE MEMBERS IN UNISON: Yes. I do.

MS. HIGASHI: Thank you very much. Commission Counsel Camille Shelton will present Item 3. San Diego

1 Unified School District is the requester.

2 MS. SHELTON: This is a request for
3 reconsideration of the Commission's statement of decision
4 on the Teacher Incentive Program. Under the Commission's
5 regulations, five affirmative votes are required to grant
6 the request for reconsideration and schedule the matter for
7 hearing on the merits of the request.

8 The Teachers Incentive Program concerns the
9 administration of a \$10,000 merit award to teachers
10 certified by the National Board for Professional Teaching
11 Standards. The Commission approved the test claim for the
12 administrative activities associated with the program, but
13 denied reimbursement for the benefits and employer
14 contributions associated with the merit award, including
15 contributions to STRS, PERS, Unemployment Insurance,
16 Workers Compensation, Medicare, and life insurance.

17 The claimant is requesting reconsideration on the
18 denied portions of the claim and, in this respect, contends
19 that the Commission's decision constitutes an error of law.

20 Staff recommends the Commission deny this request
21 for reconsideration because the claimant raised the same
22 allegations at the hearing on the test claim, and the
23 Commission disagreed. Furthermore, the Commission's
24 decision denying reimbursement for the benefits and
25 employer costs associated with the merit award under

1 article XIII B, section 6 is supported by case law,
2 including the City of Richmond v. Commission on State
3 Mandates case.

4 Will the parties please state your names for the
5 record?

6 MR. PALKOWITZ: Good morning. Arthur Palkowitz
7 for the San Diego Unified School District.

8 MS. TAYLOR: Barbara Taylor. Department of
9 Finance.

10 SUSAN GEANACOU: Department of Finance.

11 CHAIR MIYASHIRO: Mr. Palkowitz, would you like
12 to begin?

13 MR. PALKOWITZ: Yes. Thank you for the
14 opportunity. The reason we're asking for the
15 reconsideration, as Ms. Shelton indicated, was we believe
16 there's an error of law. I also wanted to inform the
17 Commission that after looking at and reviewing the
18 decision, we felt it was not appropriate to ask for
19 benefits relating to STRS and PERS. So therefore, the
20 request is for the other employee-related benefits.

21 It's our contention that the cases related by the
22 Commission Staff do not apply to this, since those cases,
23 the Commission found there was not a mandate. In this
24 case, the Commission found by 5 to 0 there is a mandate,
25 yet they're relying on language from two cases that found

1 there was not a mandate and are applying that language to
2 the issue of the benefits and cost related to the employer.

3 It's our contention that those cases are not
4 relevant to this case, because there was a finding that
5 there is a mandate. Those cases apply to the general
6 public, and are not unique to school districts. In this
7 instance, as you may recall, there was a legislation that
8 gave merit awards to teachers in the amount of \$10,000.
9 The State paid those amounts, sent that 10,000 amount to
10 the school districts, requiring the school districts to pay
11 them to the individual teachers. With that payment of
12 \$10,000, each payment made to each school teacher, the
13 school district incurred expense of approximately ten
14 percent of that amount. To us that is not an expense that
15 the district should bear. Rather, the State shifted that
16 burden to the school district to pay that expense. That
17 expense is unique to school districts. It does not apply
18 to the general public.

19 As to the cases that they referred on, they relate
20 to Workers Compensation, that applies to the whole State
21 and every employee in the State. And by taking specific
22 language from those two cases, I believe there is an error
23 in law in applying that to this case.

24 CHAIR MIYASHIRO: Okay. Mr. Palkowitz, you have
25 a --

1 MR. PALKOWITZ: It's just a final note.

2 CHAIR MIYASHIRO: Maybe if I could do this. If
3 you could, on your close, highlight areas that we, in your
4 view, did not consider in the last deliberation on this,
5 kind of focus our thinking for the -- for the
6 reconsideration.

7 MR. PALKOWITZ: Well, in reading the transcript
8 from the formal argument at that time, I don't feel that
9 there was enough discussion or consideration regarding
10 these two cases and how these two cases were not mandates.
11 Yet language was taken from these mandates. I also would
12 like to point out that in reading the decision and oral
13 argument, the term of employee benefits was loosely
14 stated. It wasn't clear if every time someone said that
15 they were referring to PERS or only Workman's Compensation
16 benefits, which relates to those cases, it wasn't
17 uniformly, to me, clear that when we were talking about
18 employee benefits, we were talking about all of them.
19 The -- the global benefits, not just Workers' Comp or PERS.

20 And as I said, I have reevaluated, after doing
21 some more research, that I do not feel it's appropriate
22 that we be reimbursed for expenses related to STRS and
23 PERS. So that is different than what we -- we considered
24 last time.

25 I would like to give, for example, the following

1 hypothetical. If the State decided and passed legislation
2 that rewarded teachers and stated that they should be paid
3 \$100,000 per year, and that billion dollar expense was then
4 passed onto the district to pay that additional salary, is
5 the employee benefits relating to that incidental in a way
6 that it's articulated in this decision that that would not
7 be shifting of an expense to the local agencies? And is
8 that hypothetical any different than what has really taken
9 place here?

10 CHAIR MIYASHIRO: Department of Finance, would
11 you like to make a presentation?

12 MS. GEANACOU: Yes. I think all we have to say is
13 that we support the staff's analysis. We believe the
14 issues were adequately addressed at the hearing. And I
15 don't think we have anything further to add, unless there
16 are questions.

17 CHAIR MIYASHIRO: Camille?

18 MS. SHELTON: To address the hypothetical that was
19 just posed, it is very different, because in that case,
20 when the State says you shall pay a salary to a teacher,
21 there is still not any higher level of service. The school
22 district has always been performing that activity. So that
23 would, in and of itself, not be a reimbursable
24 State-mandated program.

25 Secondly, the reference to the Richmond and the

1 County of L.A. cases, the district is alleging that those
2 cases found that there was not mandate, which is not
3 exactly true. Those cases found that they denied
4 reimbursement because one, they were not unique to local
5 government. And two, because there was not a new program
6 of higher level of service.

7 But if you look at the City of Richmond case,
8 there are several comments in that case. One of which says
9 although the law entrusts all local government imposes new
10 costs on them, that they may still not be a reimbursable
11 State-mandated program, because you need a new program or a
12 higher level of service. And here, based on the reasoning
13 of the Court's interpretation of the Article XIII B,
14 there's not a new program or higher level of service
15 associated with the employers' contribution. That was for
16 the new activities that were required of districts to
17 administer the program, and the Commission approved of
18 those activities for reimbursement.

19 CHAIR MIYASHIRO: Questions from members?

20 Mr. Barnes?

21 MR. BARNES: You mentioned that you are
22 withdrawing your request for PERS and STRS.

23 MR. PALKOWITZ: Yes, sir.

24 MR. BARNES: But I'm still having a little
25 difficulty figuring out what is still left on paper as far

1 as you're concerned?

2 MR. PALKOWITZ: What would be left, sir, is the
3 Federal, State taxes, unemployment insurance, Workers Comp,
4 Medicare. And let me look at one document.

5 MS. SHELTON: Life insurance, I think was another
6 one.

7 MR. PALKOWITZ: And I think part of that analysis
8 is that one could say that, and it was raised in papers,
9 that the STRS and PERS may be related to collective
10 bargaining issues or things like that, that might be unique
11 in each district. And so in that way, trying to be
12 conservative, and feel what was more objective, that the
13 district has no choice. And -- and to say that this
14 program is a new program or higher level of service, but
15 the payment that must be made directly relating to that
16 program is not a new program of higher level of service, is
17 really hard to separate the two.

18 I mean, how could the payment of the \$10,000 be in
19 relation to a new program higher level of service, but than
20 when you actually pay that money, those expenses relating
21 to that are not a new program of higher level of service?

22 MR. BARNES: Then it seems to me that some of
23 these are, you know, that you have to do anyway. I mean,
24 I -- I unemployed insurance and Medicare and that kind of
25 stuff. But some of them seem to be somewhat voluntary or

1 subject to negotiation, like life insurance and things like
2 that.

3 Is there -- is there some reason why life
4 insurance and that kind of thing is on the table?

5 MR. PALKOWITZ: Well, I didn't say life insurance
6 when you asked me. I said Federal and State. If life
7 insurance -- and this is part of the reason that I had a
8 problem with the last time, was is it just globally spoke
9 about life insurance to me. I would agree with you. But
10 you're saying well, we'd have to pay Federal anyway. But
11 without this new program, we wouldn't have had to pay
12 Federal taxes related to this program.

13 MR. BARNES: I understand. I'm just trying to
14 state that you're paying because of decisions that you sort
15 of made that has --

16 MR. PALKOWITZ: Right.

17 MR. BARNES: -- as opposed to decision payments
18 sort of imposed upon you by --

19 MR. PALKOWITZ: I would really think it would be
20 fair to say Federal, State tax, the Medicare, Workers'
21 Compensation.

22 MR. BARNES: Okay.

23 MR. PALKOWITZ: And unemployment benefits.

24 MR. BARNES: Can I -- I'd like to ask a question
25 about this. And I -- I went back and took another look at

1 the reading of the case in Richmond, particularly Richmond
2 that I think you cited. And as I recall, the -- the
3 operating phrase was sort of the higher cost of the local
4 government of compensating its employees, and not the same
5 as the higher cost of providing services. And I guess my
6 question in this particular case is that the -- the
7 benefits have -- haven't gone up, so to speak. In other
8 words, nobody's asking for higher levels of unemployment
9 insurance or Workman's Comp or any of that kind of stuff.

10 I -- the -- the extra benefits seem to derive by
11 the fact that they have to make this particular payment.
12 So is there -- is it -- this entirely in sync, I guess is
13 what I'm asking?

14 MS. SHELTON: It is complicated. Mandates are
15 complicated.

16 MR. BARNES: Is that --

17 MS. SHELTON: And the Richmond case, and a couple
18 other cases also say that you don't look at what the end
19 result is. You look at a cost has to occur directly as a
20 result of a new activity or service. They are getting
21 reimbursed, as the Commission found, for notifying the
22 teachers of the award, of -- you know -- processing the
23 applications, and then giving the money back to the teacher
24 once the Department of Education issues the award to the
25 department. Those activities are being reimbursed and --

1 and those do result in increased costs mandated by the
2 State.

3 But the Commission found that one, the plain
4 language of the statute does not require those benefits
5 increase. Number one. And two, because those benefits
6 increased, it may be a result, but that it's not entirely a
7 result of the activity of -- the district is performing.
8 They're not directly tied to the administrative activities
9 that they are performing. Those -- the payment of the
10 entire benefits, if they are occurring, are not, in and of
11 themselves, related to a tied revenue, to a program or a
12 higher level of service.

13 MR. BARNES: But aren't they tied to the fact
14 that -- that the activities are actually being performed to
15 produce at this -- in effect this check in effect requires
16 then that these payments be made?

17 MS. SHELTON: Well --

18 MR. BARNES: I mean isn't there a closer tie
19 between this?

20 MS. SHELTON: Well, it would go back to the
21 claimant's argument or hypothetical that if the State were
22 to say that teachers salaries go up to \$100,000, the case
23 law would not support a decision saying that the -- the
24 school districts would be entitled for the payment of the
25 actual salary. Just like the -- the case law does not

1 support a decision that the districts are entitled to any
2 increases in benefits.

3 MR. BARNES: Why -- and -- and I guess in this
4 case we're not -- they're not increasing in benefits, or --
5 or necessarily even increasing their salaries or -- or
6 anything like that. They're -- but because they're having
7 to make this particular payment, they're having to incur
8 this additional cost. So I guess it -- it --

9 MS. SHELTON: It is -- I will say that it is
10 slightly different than the Richmond case, obviously,
11 because in Richmond, and the County of L.A., those cases
12 were completely denied. The court did not find any part of
13 the program to be reimbursable. Here, the Commission found
14 some parts of it reimbursable, and the claimants are
15 eligible to receive reimbursement on those parts. This a
16 different part of the program.

17 We have that each activity or each alleged cost --

18 MR. BARNES: Sure.

19 MS. SHELTON: -- in and of itself has to meet the
20 elements for reimbursement.

21 MR. BARNES: Okay.

22 MS. SHELTON: And the elements for reimbursement
23 are not satisfied with the employer contribution, because
24 in and of themselves, they do not pose a new program or
25 higher level of service.

1 CHAIR MIYASHIRO: Any other questions of
2 members? Let me entertain a motion to adopt that staff
3 recommendation, or accept reconsideration.

4 MS. WILLIAMS: I would move to adopt the staff
5 recommendation and deny reconsideration.

6 MR. SHERWOOD: Second.

7 CHAIR MIYASHIRO: Any further discussion?

8 MR. BARNES: Not yet. May I suggest --

9 CHAIR MIYASHIRO: Yes --

10 MR. BARNES: I suggest -- I'm sort of moved by
11 this discussion about the benefits that have to be paid in
12 connection with this particular thing.

13 CHAIR MIYASHIRO: Uh-huh.

14 MR. BARNES: Would it be possible to -- and I --
15 I'm -- I'm a little reluctant to make a decision on this,
16 you know, without having a little bit more discussion about
17 this. And because I think it does present us with a
18 dilemma here.

19 CHAIR MIYASHIRO: Uh-huh.

20 MR. BARNES: It may seem like we're cutting hairs,
21 but I think the hairs are very important, so I could -- I
22 could offer an amendment to add the -- add this back in.
23 But I -- I guess that -- I guess --

24 CHAIR MIYASHIRO: I think the motion would have to
25 be to --

1 MR. BARNES: -- it would be to basically deny the
2 motion.

3 CHAIR MIYASHIRO: It would be reconsideration --
4 reconsideration -- I mean, it's kind of diametrically
5 opposed to the motion before us.

6 MR. BARNES: Uh-huh.

7 CHAIR MIYASHIRO: You're free to --

8 MR. BARNES: Yeah. I mean, it's -- basically
9 would go against the -- you know -- the -- this specific
10 issue that's on the table, because we've already decided
11 everything else. So it's really just a -- the item they're
12 appealing on.

13 MR. STARKEY: Let me just -- let me make sure I'm
14 understanding. Is your question whether you can reconsider
15 a portion of a decision as opposed to all of it?

16 MR. BARNES: Yeah. Actually it is the -- it's
17 more.

18 MR. STARKEY: The answer is yes.

19 MR. BARNES: It's whether or not --

20 MR. STARKEY: And the answer is yes. The
21 Commission has the ability to reconsider all of the
22 decision or a portion of it. But Mr. Miyashiro is correct,
23 that it would have to be a separate motion to do that, and
24 five affirmative votes.

25 MR. BARNES: And I guess I would ask -- my -- my

1 issue is mainly with regard to the specific mandatory
2 things that they have to add onto, I suppose, for those to
3 end up getting negotiated, or I -- you know -- derived
4 from -- you know -- some action on their particular part.
5 The -- the three items that we've talked about, you know,
6 Workman's Comp and Medicare deductions would seem to be the
7 ones that I'm -- I'm most concerned about. So I guess,
8 yeah.

9 MS. SHELTON: I was going to say you certainly
10 have the discretion to make that motion. But there is a
11 paragraph on page ten of this staff analysis which did go
12 into a little bit more detail in the Statement of Decision,
13 and it does individually describe each one of those costs.
14 And it starts with the "Furthermore" paragraph. And it
15 just mentions that, you know, the Medicare really are costs
16 that originate in Federal law. And then the courts have
17 already held that increases in Workers' Compensation and
18 unemployment insurance are not costs that are unique to
19 local government. And claims on those types of costs have
20 already been denied by -- one, by the Supreme Court, and
21 than the other by the Third District Court of Appeal.

22 MR. BARNES: Do you have any comment about that?

23 MR. PALKOWITZ: I'm not sure which case you're
24 referring to by the Supreme Court?

25 MS. SHELTON: The County of Los Angeles versus the

1 State of California 1997 Workers' Compensation case.

2 MR. PALKOWITZ: Right. Well, that was the case
3 where they didn't find there was a new program or higher
4 level of service.

5 MS. SHELTON: They also said that increases in
6 Workers' Compensation insurance for local government
7 employees is not unique to local government.

8 MR. PALKOWITZ: Right. But once again, in that
9 case they found that there was not a new level of higher
10 level of service or a new program as we find here. So
11 they're going to carve language to be consistent with
12 that. I mean, if the incidental aspect of unemployment
13 insures or Workers' Compensation, but then I re-visit my
14 hypothetical with an amendment that we're going to award
15 teachers a one-time bonus or require additional education
16 and then reward them, you know -- is the reasoning behind
17 the Commission here that this is incidental? Or is the
18 reasoning behind the Commission that this is consistent
19 with the County -- City of Richmond or the County of L.A.
20 case, where they're taking language out of their where they
21 found no mandate, and then carve it and apply it to a case
22 where you, 5-0, found there was a mandate.

23 You know, to me, trying to be simple about it, is
24 that before this program, the district didn't have to pay
25 this amount. The State sent the district \$10,000. And now

1 the district has to pay an additional amount. And that
2 additional amount relates to the activities performed that
3 relate to the mandate.

4 CHAIR MIYASHIRO: As I understand it, the
5 distinction here though is that there is no higher level of
6 service provided to the public.

7 MR. PALKOWITZ: Well, I think the way that's being
8 argued is that the payment of the salary or the award of
9 \$10,000 is no new program or a higher level of service.
10 But the activities that relate to that award is a new
11 program or higher level of service. And now we're slicing
12 that and we're saying those activities -- we're not going
13 to look at that. We're just going to look at the payment.
14 And now that does not relate to a new program or higher
15 level of service. And I'm not sure you could take that and
16 separate that like that. It really has a nexus to the
17 actual activities that were approved.

18 CHAIR MIYASHIRO: Okay. We have a -- a motion to
19 second before us. Mr. Barnes, if you would like to make a
20 substitute motion.

21 MR. BARNES: I guess what I would suggest is that
22 I'm -- I'm reluctant to just put another motion on the
23 table without kind of knowing what the consequences are.
24 And I -- I kind of get the sense that they're -- that we're
25 kind of shaving hairs right here, you know, you don't

1 believe it, but maybe I do. So I just -- what I'm
2 wondering is is it possible we could put this over and ask
3 the staff to kind of give us a little bit more with regards
4 to the issue of is it mandatory?

5 MS. SHELTON: Under the Commission's regulations,
6 this is a two-step process. And we're not, at this step,
7 really analyzing the merits of the error of law. In order
8 to get there, the Commission has to affirmatively agree to
9 accept the request for reconsideration before we can get to
10 the actual merits of the claim for our subsequent hearing.

11 MR. BARNES: Okay. So in other words we're not
12 actually here to decide whether to accept it.

13 MS. SHELTON: Today -- what's before you today is
14 whether or not you want to accept it. If you feel like
15 there's enough question in the Statement of Decision that
16 you do want to accept that, then you would need to have a
17 motion to accept the request for reconsideration, and need
18 five affirmative votes for that. And then we'll have a
19 staff analysis, comments from the parties, and another full
20 hearing on the merits of the claim.

21 MR. BARNES: Yes. I'd like to do that.

22 CHAIR MIYASHIRO: Okay. So that's a substitute
23 motion, granting reconsideration.

24 MR. BARNES: Is that -- you know -- basically
25 accept it as a -- as, you know, court consideration on the

1 agenda. Yes.

2 CHAIR MIYASHIRO: Okay. We have the substitute
3 motion. Do I have a second?

4 MR. LAZAR: I'll give him a courtesy second.

5 CHAIR MIYASHIRO: We have a motion to second. Any
6 further discussion on the substitute motion?

7 Paula, please call the roll.

8 MS. HIGASHI: Mr. Barnes?

9 MR. BARNES: Aye.

10 MS. HIGASHI: Mr. Lazar?

11 MR. LAZAR: No.

12 MS. HIGASHI: Mr. Sherwood?

13 MR. SHERWOOD: No.

14 MS. HIGASHI: Ms. Williams?

15 MS. WILLIAMS: No.

16 MS. HIGASHI: Mr. Miyashiro?

17 CHAIR MIYASHIRO: No.

18 We have the original motion before us, which is to
19 adopt staff recommendation to deny reconsideration. Any
20 further discussion?

21 Paula, please call the roll.

22 MS. HIGASHI: Mr. Lazar?

23 MR. LAZAR: Aye.

24 MS. HIGASHI: Mr. Sherwood?

25 MR. SHERWOOD: I'm sorry. Would you repeat?

1 MS. HIGASHI: The motion is the original motion
2 to adopt the --

3 MR. SHERWOOD: Adopt staff's recommendation.

4 MS. HIGASHI: -- to deny the request.

5 MR. SHERWOOD: Yeah.

6 MS. HIGASHI: Ms. Williams?

7 MS. WILLIAMS: Aye.

8 MS. HIGASHI: Mr. Barnes?

9 MR. BARNES: Aye.

10 MS. HIGASHI: Mr. Miyashiro?

11 CHAIR MIYASHIRO: Yes.

12 MS. HIGASHI: The motion is carried. The request
13 is denied.

14 MR. PALKOWITZ: Thank you.

15 CHAIR MIYASHIRO: Okay. Paula?

16 MS. HIGASHI: This brings us to Item 4, which is
17 a test claim. This item will be presented by Eric Feller.

18 MR. FELLER: Good morning. The --

19 CHAIR MIYASHIRO: Eric, if you would just wait a
20 minute, till they sit down.

21 MR. FELLER: As Paula mentioned, this is the
22 Absentee Ballots II test claim. The Commission's
23 regulations allow for an expedited process for adopting the
24 Statement of Decision if the test claim which is approved
25 and there are no objections from the parties. In this test

1 claim, all parties acknowledged the existence of a mandated
2 program, so before you is both the final staff analysis
3 and, starting on the pink pages of page 13 of the proposed
4 Statement of Decision, if the Commission disapproves or
5 partially approves the test claim and declines to adopt the
6 Proposed Statement of Decision at this hearing, another
7 Proposed Statement of Decision would be presented at the
8 next hearing.

9 In the test claim itself, staff found that the
10 following activities constitute new programs or higher
11 level of service:

12 First, including the precinct of each absentee
13 voter on the elections official's absentee ballot list.
14 This activity is ongoing, but offsets would be available
15 due to County authority to bill other local agencies for
16 elections services.

17 And the other two activities are limited to
18 statewide elections or special elections to fill a vacant
19 congressional or legislative office conducted between June
20 1, 2000, and January 1, 2001. Those are tabulating by
21 precinct the votes cast by absentee ballot and ballots cast
22 at the polling place, and making available to the
23 Legislature and appropriate committees election returns for
24 each precinct reflecting the total for all ballots cast,
25 including both absentee ballots and ballots cast at polling

1 places.

2 Staff recommends that the Commission approve the
3 test claim and adopt the Proposed Statement of Decision and
4 authorize staff to complete the Proposed Statement of
5 Decision by making technical changes.

6 Would the parties and witnesses please state your
7 names for the record?

8 MS. STONE: Good morning, Members of the
9 Commission. Pamela Stone on behalf of the County of
10 Orange.

11 MR. RODERMUND: Steve Rodermund with the County of
12 Orange.

13 MS. LEVER: Rosalyn Lever, Retired Registrar of
14 Voters, County of Orange.

15 MR. LUTZENBERGER: Tom Lutzenberger, Department of
16 Finance.

17 MS. GEANACOU: Susan Geanacou, Department of
18 Finance.

19 CHAIR MIYASHIRO: Ms. Stone?

20 MS. STONE: Good morning.

21 CHAIR MIYASHIRO: Would you like to start for us?

22 MS. STONE: Mr. Miyashiro, we would concur with
23 statements made by your staff and thank them very much. We
24 are in concurrence with the draft staff analysis and
25 Proposed Statement of Decision.

1 CHAIR MIYASHIRO: Mr. Rodermund, do you wish to
2 make a statement?

3 MR. RODERMUND: Yes, sir. We also concur.

4 MS. LEVER: I concur.

5 MR. LUTZENBERGER: Department of Finance concurs.

6 MS. GEANACOU: (Ms. Geanacou indicating
7 affirmatively.) I have nothing to add.

8 CHAIR MIYASHIRO: Okay. We have, since my tenure
9 here, I have never been presented with such a situation.

10 Do we have questions from board members?

11 MR. LAZAR: I'll make a motion to adopt.

12 MR. BARNES: Oh sorry, actually no. No
13 objection. I have -- actually it's more just a question
14 procedure. I know that we recently approved the Absentee
15 Ballot Decision, and in fact we're working right now on P's
16 and G's to implement that decision. This is related to
17 this, so I guess my -- and I don't know whether this is
18 directed to staff or whatever, but I would think that what
19 we want to do is try and save a few trees, and is to ask
20 that this decision, assuming it's adopted, get incorporated
21 into the same mandate, the same P's and G's. And so I just
22 wanted to see if anybody had an objection or concern about
23 that.

24 CHAIR MIYASHIRO: Paula, can you help us out
25 there?

1 MS. HIGASHI: I would like to hear from the
2 claimant's representatives first on it. And I think
3 there's some concerns about this mandate, because it is
4 primarily a one-time cost.

5 MS. STONE: Correct. Mr. Barnes, this particular
6 mandate lasted for one calendar year, when -- basically
7 trickling into two fiscal years. We have prepared the
8 Draft parameters and guidelines, which will be submitted
9 forthwith. And because it basically is a one-time
10 activity, I don't think it would behoove us to incorporate
11 them into the original absentee ballots and take them back
12 out again.

13 I mean, if this were on an ongoing program, it
14 would make sense to submit Proposed parameters and
15 guidelines that combine them. But since this is basically
16 a one-time deal, it doesn't make sense to muck up what is
17 already working for regular absentee ballots.

18 MR. BARNES: Okay. Just a suggestion.

19 CHAIR MIYASHIRO: Okay. Do I have a motion?

20 MR. LAZAR: So moved.

21 MR. SHERWOOD: John, I think you started it, so --

22 MR. LAZAR: I'll make that motion.

23 CHAIR MIYASHIRO: And second?

24 MR. SHERWOOD: Second.

25 CHAIR MIYASHIRO: I have a motion to second. Any

1 further discussion? Hearing none, Paula, please call roll.
2 MS. HIGASHI: Mr. Lazar?
3 MR. LAZAR: Yes.
4 MS. HIGASHI: Mr. Sherwood?
5 MR. SHERWOOD: Yes.
6 MS. HIGASHI: Ms. Williams?
7 MS. WILLIAMS: Yes.
8 MS. HIGASHI: Mr. Miyashiro?
9 CHAIR MIYASHIRO: Yes.
10 MS. HIGASHI: Mr. Barnes?
11 MR. BARNES: Yes.
12 MS. HIGASHI: Forgot you.
13 MR. BARNES: Thank you.
14 MS. STONE: Thank you very much.
15 CHAIR MIYASHIRO: Okay. Let's move to the next
16 item.
17 MS. HIGASHI: Now up to Item 5 in your binder.
18 Commission Counsel Camille Shelton will present this item.
19 We have some handouts before you, related to this
20 item.
21 MS. SHELTON: I think the claimant also has some
22 handouts. Right?
23 MR. KAYE: Yes. Yeah.
24 MS. SHELTON: This test claim has been filed on
25 Penal Code Section 13730, as added in 1984 and amended in

1 1995. It's also been filed on Family Code 6228, which is
2 known as the Access to Domestic Violence Reports Act of
3 1999. The claimant is seeking reimbursement for the
4 activities of preparing domestic violence incident reports
5 after each law enforcement call, storing those reports for
6 five years, and providing, retrieving and copying the
7 reports upon request by a victim of domestic violence.

8 As plead, staff recommends the Commission find
9 that it does not have jurisdiction over Penal Code section
10 13730 because the Commission has approved two prior test
11 claims on the statute, as added in 1984 and 1995. That
12 statute required law enforcement agencies to develop an
13 incident report form and report local domestic violence
14 information to the Department of Justice on a monthly
15 basis. Under the parameters and guidelines for the
16 program, claimants were eligible to receive reimbursement
17 for the cost of writing the reports.

18 As indicated in the staff analysis, staff further
19 recommends that the Commission approve Family Code section
20 6228 as a reimbursable State-mandated program for only the
21 activity of storing the report for five years after it is
22 completed.

23 The additional information in front of you is the
24 blue sheet, which is just the supplemental information to
25 clarify exactly the budget bills that suspended the Penal

1 Code Section 13730 as originated in 1984 by Chapter 1609.
2 Also, is this yellow sheet, which is part of Exhibit C,
3 which we noticed yesterday was not a complete Statement of
4 Decision of the 1995 Commission Decision, so we're just
5 trying to complete that record.

6 Will the parties please state your name for
7 record.

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

9 MR. BILOWIT: Wayne Bilowit on behalf of Los
10 Angeles County Sheriff Department.

11 MR. ANDERSON: Dirk Anderson, Department of
12 Finance.

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

15 CHAIR MIYASHIRO: Mr. Kaye, will you start us
16 off?

17 MR. KAYE: Thank you, Mr. Miyashiro.

18 Before I begin, I -- and again, I was busy before
19 the -- the hearing in the preliminary parts, but were we
20 sworn in?

21 MS. HIGASHI: I did swear in. But were you
22 missing at the time?

23 MR. KAYE: I think I was.

24 MS. HIGASHI: Then let's do it right now.

25 MR. KAYE: Okay. Thank you.

1 MS. KAYE: For the two witnesses for the County of
2 Los Angeles, please raise your right hands.

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

6 MR. KAYE: I do.

7 MR. BILOWIT: I do.

8 MS. HIGASHI: Thank you.

9 MR. KAYE: Thank you.

10 Now that we've done the preliminaries, it's my
11 pleasure to be here this morning and to talk about this
12 very, very important local law enforcement program. The
13 County concurs with Commission staff's very detailed
14 analysis, finding that storage costs are reimbursable. But
15 we respectfully disagree with staff's contention that the
16 cost of preparing, retrieving and copying domestic violence
17 incident reports are not.

18 The County finds that the duties to prepare, store
19 retrieve and copy section -- Family Code Section 6228
20 reports, we find those duties to be mandatory. Without all
21 such mandatory duties, the Legislature could not assure
22 victims access to the reports, precisely the problem with
23 the access to Domestic Violence Reports Acts of 1999. The
24 Test Claim Legislation was intended to correct.

25 And I might add that the Department of Finance, in

1 their Enrolled Bill Report on AB 403, which is the same as
2 the Test Claim Legislation Chapter 1022 Statutes of 1999,
3 found that -- and it's on -- I believe bates page 373 --
4 found that 2.2 million of one time cost and \$440,000 in
5 continuing costs would be imposed under this Test Claim
6 Legislation upon local law enforcement agencies in the
7 State of California.

8 We believe that Family Code Section 6228 plainly
9 requires that a domestic violence incident report and face
10 sheet shall be made available to the domestic violence
11 victim. There are no exceptions. There are no excuses for
12 not doing so. The County has no alternative but to
13 prepare, in order to provide domestic violence incident
14 reports and face sheets. This type of mandatory duty was
15 found to be reimbursable by Department of Finance, the
16 Commission on State Mandates -- High School District, et
17 al., Case Number C037645, which I believe you've been given
18 a -- a copy of, just to -- as -- as a courtesy to ease our
19 citations here.

20 In this -- actually it's a Commission case. The
21 Third District Appellate Court decided in their opinion,
22 issued on July 17th, 2002, on the last page on the exhibit
23 that's before you, that we do not construe State Mandate as
24 limited to situations of legal compulsion. We construe it
25 to also encompass situations where there is no reasonable

1 alternative or no true choice but to participate in the
2 states scheme. And we certainly agree with this reasoning
3 and with this result.

4 Here, we have no true choice, no reasonable
5 alternative but to prepare in order to provide domestic
6 violence incident reports as requested by domestic violence
7 victims. Also, in this case, the Legislature, in Family
8 Code Section 6228, was careful not to specifically
9 reference domestic violence report and face sheets in Penal
10 Code Section 13730. The citation Penal Code Section 13730
11 is not to be found in Section 6228 of the Family Code.
12 Therefore, even if Section 13730 has been made optional,
13 as staff suggests, or even repealed, the duty to prepare in
14 order to provide some type of domestic violence incident
15 report and face sheet under Section 6228 survives. And
16 such duty is independent and apart from the duties set
17 forth in section 13730.

18 Accordingly, we believe approval of the County's
19 claim as submitted is required. In particular, the staff's
20 proposal that preparation of domestic violence incident
21 reports and face sheets under Section 6228, we believe,
22 should be stricken, and in its place language adopted along
23 the following lines. Family Code Section 6228 imposes a
24 new program or higher level of service and cost mandated by
25 the State for activity of preparing in order to provide

1 requested domestic violence incident reports and face
2 sheets.

3 Thank you very much.

4 CHAIR MIYASHIRO: Thank you.

5 MR. BILOWIT: Good morning. I'm Sergeant Wayne
6 Bilowit with the Los Angeles County Sheriffs Department.
7 I'm here to provide two different perspectives. If you
8 have any questions on, one, on particularly being a
9 sergeant out in the field, and answer most of your
10 questions, or try to answer most of your questions
11 concerning domestic violence reports. And secondly, and
12 for the last four years, being the Sheriff's Legislative
13 Advocate up here, I, on a number of bills that became law
14 dealing with domestic violence, have either appeared to
15 testify, or actually at the time noticing and taking some
16 degrees, and actually wrote one of those sections
17 concerning that that has become law.

18 So I'd be more than happy to answer any questions
19 concerning any of those issues. Thank you.

20 CHAIR MIYASHIRO: Okay. Department of Finance?

21 MS. GEANACOU: Thank you. Department of Finance
22 supports the staff analysis on this test claim. We would
23 echo the staff's recommendation that this Family Code
24 Section 6228 does not, by its language, require the
25 preparation of this report. And we would also echo the

1 sentiments of the Commission staff that the Public Records
2 Act already required much of the claimed conduct, with the
3 exception of the storage item, for which reimbursement is
4 recommended.

5 The appellant case that was brought to our
6 attention today, Exhibit 7, I would have the Commission
7 note that this case has been accepted for review before the
8 California Supreme Court, and it's scheduled to be argued
9 May 6th of this year, which is in just a few days. So the
10 proposition for which it is cited is up for review before
11 the California Supreme Court.

12 CHAIR MIYASHIRO: Questions from the members?

13 MR. LAZAR: I just would like to have her comment
14 on Mr. Kaye's remarks.

15 MS. SHELTON: Well, first I would agree with Ms.
16 Geanacou. The Commission is prohibited from relying on
17 this case by law. It is -- the Supreme Court did take
18 review of it, so you can't rely on the holding of the Third
19 District Court of Appeal in that case.

20 Any particular questions? Or you want me just to
21 go over the findings?

22 MR. LAZAR: One more time, please.

23 MS. SHELTON: Okay. We're recommending that the
24 Commission not find that it have jurisdiction over the
25 Penal Code Section as plead because of the two prior

1 Commission's decisions. The law states that administrative
2 agency, once the decision is finalized, does not have the
3 jurisdiction, unless you have an express statutory
4 authority to re-hear something. And the only statutory
5 authority you have to re-hear something is what we had on
6 the earlier item. Within 30 days you can get a request for
7 reconsideration on something. After that, you cannot
8 re-hear it. And then they have a statute of limitations to
9 court to appeal the Commission's decision, and that was not
10 done on those two earlier cases.

11 So we're recommending that you find -- don't find
12 jurisdiction over those two statutes as plead. The Family
13 Code section, it -- the plain language of the section
14 requires that the agency provide a copy of the domestic
15 violence incident report and the face sheet to the victim
16 upon request within a specified time period at no charge,
17 and then they keep those incident reports for five -- for a
18 period of five years after they complete the report. The
19 claimant has asked for a number of activities applying to
20 the preparation of that report. And by the plain language
21 of that Family Code section, it doesn't require that
22 agency to prepare the report.

23 I do need to clarify something, though, because in
24 preparation for today's hearing, there was a lot of
25 discussion, a lot of the claimants and their writings about

1 the suspension of the domestic violence incident report by
2 the Legislature. What was suspended was the 1984 statute.
3 And the Commission did also agree that the 1995 amendment
4 to the 1984 statute was optional, because it was the same
5 part of that report. But what has not been plead, and
6 there is no Commission decision, is on a 1993 amendment to
7 13730 -- if you turn to your yellow copy, it's actually in
8 the Commission's decision, on page ten. And it's indented
9 as a quote. And it notes that the Commission has never
10 made a test claim finding on the 1993 amendment. The 1993
11 amendment states by the plain language that all
12 domestic-violence-related calls for assistance shall be
13 supported with a written incident report as described in
14 Subdivision (c), and there's never been a test claim
15 finding on that, and that has not been the suspended.

16 So the preparation of the report is not mandated,
17 clearly, by the statutes that have been plead. Possibly
18 mandated, which is -- you know -- a subject of actually
19 another test claim, by this 1993 amendment, which is not
20 before the Commission today.

21 The activities of the providing and copying the
22 report already have been required by the California Public
23 Records Act. Under that, those provisions of law says an
24 agency has to provide copies of public records upon
25 request, and the courts have found that a domestic violence

1 incident report is one section -- record that has to be
2 produced. And by the plain language of those sections, it
3 does say that victims of crime have -- are entitled to
4 receive information relating to a -- a domestic law
5 enforcement call, and arrest in a description of those
6 circumstances.

7 There is a difference between this program and the
8 Public Records Act. One, under the Public Records Act,
9 they are entitled to receive a fee, or charge a fee to
10 anybody requesting a public record. And under Family Code,
11 we have to give the victim a copy of the record free of
12 charge. We have had case law on that issue that when a --
13 when the State eliminates a fee authority, elimination of a
14 revenue source does not result in a reimbursable
15 State-mandated program, as we've referenced by the County
16 of Sonoma case. So they're not entitled to that loss of a
17 fee authority. The actual activities required by the
18 statute are that activities that's -- that are also
19 required by the California Public Records Act. So there's
20 nothing new as far as the activities are concerned.

21 So the only thing new we found was the actual
22 storage of the report for five years. And in prior law
23 there's not any State requirement relating to record
24 retention policies. And we are recommending that the
25 Commission approve reimbursement for that activity.

1 CHAIR MIYASHIRO: Any other questions of
2 Commission members?

3 I have a question. Mr. Kaye, if you might explain
4 your perspective on the jurisdiction of the Commission with
5 regard to 13730.

6 MR. KAYE: Well, I believe that the Commission has
7 sole and exclusive jurisdiction to determine whether a
8 statute is reimbursable. And I believe that Government
9 Code 17581, the Legislature has a preliminary authority to
10 determine that such acknowledged mandates are optional and
11 are not -- by placing a zero in the Budget Act -- Public
12 Budget Act, therefore making it optional.

13 What -- what we are here before you trying to
14 implore is that as we don't see -- we think it's factually
15 impossible to -- for the Legislature to give the victim of
16 domestic violence an unqualified right to receive the
17 report, and yet view that preparation of that report as
18 optional. We think that that is more than a legal
19 curiosity. We think that there is a second mandate that is
20 implied, and -- and that this second mandate is absolutely
21 reimbursable. And in this regard, again, we -- we are not
22 complaining. We are trying to explain.

23 But knowing that this would be a -- a very big
24 issue, and as I cited this Kern County case, the case that
25 you have before you, on March 10th, I wrote to the

1 Commission's Executive Director, indicating that perhaps
2 this matter might be postponed until the Supreme Court
3 reached a level of finality in this matter as to the -- the
4 whole issue of do we have any true choice in preparing
5 these reports. And again, respectfully I just inform you
6 that the Commission's Director informed us on March 13th
7 that such an extension of time was not to be granted.

8 So perhaps once the California Supreme Court does
9 decide one way or the other, it might be good at that time
10 to -- to make a decision. That's a -- merely a -- a
11 suggestion that I'm making to resolve these legal -- legal
12 complexities in a more absolute way.

13 Thank you.

14 CHAIR MIYASHIRO: You might ask that question of
15 the Department Finance. The -- the Legislature has
16 suspended this mandate for -- maybe I should ask the other
17 way.

18 Have local agencies received reimbursement for
19 this mandate, and that's the mandate with regard to
20 preparation of the report? And if not, could you clarify
21 the application of the suspension as I understand it, and
22 testify that it has been suspended? So would you clarify
23 how the suspension of the mandate worked with regard to Mr.
24 Leonard -- Mr. Kaye's assertion that the reports themselves
25 continue to be required?

1 MS. GEANACOU: Uh-huh. Mr. Miyashiro, I'm sure
2 before -- I don't know if they continue to be funded for
3 this duty that the claim is required. We don't have the
4 analyst on the assignment with us here today. So I don't
5 have that information.

6 CHAIR MIYASHIRO: Does our Chief of Staff note
7 whether that reimbursement has provided for the preparation
8 of the report?

9 MS. SHELTON: I can clarify on before for the 1984
10 decision or the 1984 statute as originally acted under the
11 parameters and guidelines for that program. The Commission
12 did authorize reimbursement to write the reports. The
13 decision was only on the 1984 statute. Subsequently, since
14 1992, the 1984 statute has been suspended and the new sheet
15 that I gave you identifies all the budget bills showing
16 that the 1984 statute has been suspended over the last four
17 years.

18 It's also proposed for suspension, I believe,
19 still, for the next fiscal year, even though, in the
20 parameters and guidelines the Commission, on the
21 reimbursement to write the reports they had to have
22 done, they did so under their authority to provide any
23 reasonable activity necessary to comply with the
24 ramifications. Because subsequently, in 1993, the
25 Legislature amended 13730. There has never been a mandate

1 finding on 13730 as amended in 1993. As amended in 1993,
2 it specifically requires that all calls of domestic
3 violence be recorded on an incident report form. That 1993
4 amendment cannot be suspended yet because there's been no
5 mandate determination.

6 If you look at the plain language of the
7 suspension statute, which is 17581, it requires first that
8 there be a mandate determination by either the Commission
9 or a Court of Appeal, and then a zero dollar appropriation
10 by the Legislature that specifically identifies the statute
11 that they are suspending.

12 So our recommendation on -- on the Family Code
13 section 6228 that it doesn't impose a reimbursable
14 State-mandated program to prepare is based on two things.
15 One, the plain language of that statute does not require
16 them to prepare it. And two, even if it did, it would not
17 be a new program or higher level of service, because
18 there's a preexisting duty in law based on Penal Code
19 section 13730 as amended in 1993 for them to prepare a
20 domestic violence incident report for each call that they
21 make.

22 CHAIR MIYASHIRO: So the Department of Finance,
23 if -- if the information provided by Commission staff on
24 the suspension statutes '99 through 2002 are corrections,
25 then can I conclude that no reimbursement was provided for

1 the preparation of the incident report during those four
2 years?

3 MS. GEANACOU: During the period of the
4 suspension.

5 CHAIR MIYASHIRO: Assuming this is correct, and
6 it's been suspended pursuant to Chapters 505 -- 50216 and
7 379, am I correct in assuming -- concluding that no
8 reimbursement for preparation of incident reports has been
9 provided to local agencies?

10 MS. GEANACOU: I think that's a reasonable
11 assumption to make. But I can't testify to that being my
12 personal knowledge.

13 CHAIR MIYASHIRO: Okay. Any other questions?
14 No? So --

15 MR. SHERWOOD: I -- I wonder if we could go back
16 to what Mr. Kaye's comment was in his request he made.

17 CHAIR MIYASHIRO: Microphone.

18 MR. SHERWOOD: I think this one's burned out.

19 Paula, maybe you could address Mr. Kaye's request
20 that you have evidently rejected -- turned down to postpone
21 this item until after -- the Supreme Court decision on the
22 case is very relative to this, and many other issues,
23 actually. And what your thinking might have been in
24 turning that request down.

25 MS. HIGASHI: In the past, when cases have been

1 postponed or set aside due to pending litigation, they have
2 been cases that are related to actual challenges made to
3 the same statute and the same code section. For example,
4 binding arbitration test claim had been set aside for work
5 because of -- of the pending review by the courts. And
6 that decision was just reached by the Supreme Court because
7 that decision obviously had addressed direct -- directed
8 impacted on that determination, and it also happened at a
9 point in time when we had a case on, I think, abortion
10 counseling issues.

11 There was another case that went before the
12 courts, and that test claim was subsequently withdrawn and
13 dismissed. Here, the case on point was the School Site
14 Council's Decision. It was not any of the -- it does did
15 not include any of the statutes that were included in this
16 test claim. If we were to begin that practice, virtually,
17 the Commission could stop meeting, because there's always
18 pending litigation. And if the Commission wishes to direct
19 me to change the approach that we've taking to these kinds
20 of requests, then we could study the issue and come back
21 with a new policy.

22 But up to now, that's what has transpired. And
23 Mr. Kaye had not filed a -- an appeal of my decision when I
24 denied that request to postpone the hearing.

25 MR. SHERWOOD: I just wanted to hear your

1 reasoning. Seems sounds in many ways. Sometimes, when
2 I -- when I hear that maybe the decision's only a month
3 down the road, and it's a general decision, not specific to
4 these statutes, it makes me wonder why we don't wait a
5 month, if that's the case. But it also seems to me that
6 these decisions at the court level can go on for a long
7 period of time, also, and we definitely don't want to
8 delay the whole process.

9 MS. HIGASHI: And that's the balancing we try to
10 do.

11 MR. SHERWOOD: That's what we do, is a balancing
12 act and a judgment decision.

13 MS. HIGASHI: That's correct. Because other test
14 claims that relate to the expulsion statutes, for example,
15 have been postponed too. Because there's a statement of
16 decision on expulsions that's pending, that would affect
17 all of those other amendments to the same code sections.

18 MR. SHERWOOD: Thank you. The other issue I had
19 was the '93 code. Once again, to be more -- once again, to
20 repeat, that -- that -- the claim could be back and a claim
21 under the '93 amended code, if they wish to?

22 MS. HIGASHI: And in fact they have the -- there's
23 another test claim that has included the '93 statute, which
24 the record on that is not closed yet. So it hasn't reached
25 staff, and it hasn't reached you yet. So I don't know when

1 that will occur. But there's -- there is a final on it,
2 but there's no determination by the commission on the '93
3 statute.

4 MR. SHERWOOD: 13730 has been suspended the last
5 four years.

6 MS. HIGASHI: Actually, pretty much going all the
7 way back to 1992, it's been suspended, but definitely in
8 the last four years.

9 MR. SHERWOOD: Definitely last four years.

10 MS. HIGASHI: But there was a period of time when
11 there was some compensation.

12 MS. SHELTON: Yes. Well, I believe the
13 Commission's decision was issued in 1987.

14 MS. HIGASHI: Uh-huh.

15 MS. SHELTON: And I look for a date on the P's and
16 G's, but I don't remember when the reimburse -- they did
17 get reimbursed for a couple years, then it was suspended.
18 I think they actually lifted the suspension for a few of
19 those years in the '90s, and then we installed it back, you
20 know, put it back in. So it's been suspended since then.

21 MR. SHERWOOD: Thank you.

22 MS. HIGASHI: Mr. Sherwood, as a reference, you
23 might want to take a look at the supplemental to Exhibit C
24 on page two of this material. There's a -- the 3 bullets
25 at the bottom of the page that stated the conclusion. If

1 you'll note that, the conclusions are very carefully
2 drafted to conform with what had happened with the Budget
3 Act during the reimbursement period. So that there is
4 recognition for the fact that there -- there was a gap when
5 a budget had not been enacted, when a suspension had --
6 cannot be in effect.

7 MR. SHERWOOD: Right.

8 MS. HIGASHI: And that process would no longer
9 occur, because since this time, 17581 was amended to the
10 extent the suspension went into the period of time when the
11 budget was not.

12 MR. SHERWOOD: Yeah. Yeah. Thank you.

13 CHAIR MIYASHIRO: Are there questions from
14 members? I would entertain a motion.

15 MR. BARNES: Staff recommendation.

16 CHAIR MIYASHIRO: I have a motion to adopt. Do I
17 have a second?

18 MR. SHERWOOD: Second.

19 CHAIR MIYASHIRO: The motion is seconded. Any
20 further discussion?

21 Paula, please call roll.

22 MS. HIGASHI: Mr. Sherwood?

23 MR. SHERWOOD: Aye.

24 MS. HIGASHI: Ms. Williams?

25 MS. WILLIAMS: Aye.

1 MS. HIGASHI: Mr. Barnes?

2 MR. BARNES: Aye.

3 MS. HIGASHI: Mr. Lazar?

4 MR. LAZAR: Aye.

5 MS. HIGASHI: Mr. Miyashiro?

6 CHAIR MIYASHIRO: Aye.

7 MR. KAYE: Thank you.

8 MS. HIGASHI: This now brings us up to Item 10.

9 Nancy Patton will present this item.

10 MS. PATTON: Good morning. At the March 27th,
11 2003 Commission hearing, Commission members requested that
12 staff prepare an analysis of Assembly Bill 637. AB 637
13 would prohibit Commission -- the Commission on State
14 Mandates' legal representation or appearances in any court
15 action or proceeding involving CSM decisions; would add an
16 alternate CSM member; would revise deadlines for filing
17 reimbursement claims, and would modify the State Mandates
18 Apportionment System.

19 AB 637 passed the Assembly Local Government
20 Committee on April 9th, 2003 with a vote of 9 to 0. It is
21 currently pending in Assembly Appropriations Committee with
22 no hearing date set. For your information, you will find
23 the staff analysis of AB 637 and the Assembly Local
24 Government Committee analysis and a copy of the bill in the
25 binders under Item 10. Commission staff did forward this

1 bill analysis to Appropriations Committee staff and the
2 author's staff, upon request.

3 Thank you.

4 CHAIR MIYASHIRO: Thank you, Nancy.

5 Any questions on the -- the bill analysis?

6 Okay. Item 11.

7 MS. HIGASHI: Item 11. There is an overview of
8 the workload, and as we've noted, we have not received any
9 new filings. I -- I've given you a -- a brief update on
10 our budget, and mainly that the assembly subcommittee did
11 actually approve our budget. However, the senate
12 subcommittee has not yet acted on the budget. In both
13 hearings, though, what is occurring is legislative analyst
14 staff is briefing the members of the budget subcommittees
15 in discussions about the mandates that are within their
16 jurisdiction, mandates that have previously been suspended
17 or mandates that have been funded. And there has been some
18 dialogue.

19 For example, the Senate Subcommittee Chair,
20 Senator Dunn, had asked for input on the issue of mandates
21 recommendations or meetings with parties to discuss what
22 mandates could be employed or suspended. So I see
23 tremendous interest in the Capitol.

24 We're getting more and more calls from
25 legislative staff, asking questions about existing

1 mandates, tying existing mandates to bills that they might
2 be authoring, looking at cost estimates, reimbursement,
3 trying to get -- I think really trying to determine what
4 would their legislation end up costing if it were actually
5 to move forward.

6 So I think the training that is being done, both
7 with the Legislature and their staffs, and certainly with
8 the budget of the fiscal committee staff is beginning to
9 pay off, and that we're getting many more questions. And
10 we'll just continue to respond. And it does take some
11 time. Just wanted to note that.

12 We have also given you information on the making
13 of the agenda. And for that hearing, we have one test
14 claim scheduled, and we have parameters and guidelines
15 scheduled and incorrect reduction claims scheduled. We
16 will not have a June hearing, as we move into our new
17 schedule of having bi-monthly hearings. And we'll begin
18 the next fiscal year on July 31st, in our July hearing.
19 The agenda for that hearing at this point in time looks
20 quite large and --

21 MR. LAZAR: Will that be a full day meeting?

22 MS. HIGASHI: We're not sure yet. As we get
23 closer to it, probably about three weeks out, we'll be
24 getting you better information as to how much time we --
25 you need to reserve that day. And it will obviously depend

1 on how much agreement can be reached with all the parties
2 on some of the agenda items prior to that hearing.

3 CHAIR MIYASHIRO: Paula, if I might ask. In the
4 Senate Subcommittee Committee forum, did the subcommittee
5 take no action?

6 MS. HIGASHI: They took no action.

7 CHAIR MIYASHIRO: Did they -- I mean, is there a
8 date set for that, or did they just use the occasion to
9 speak about --

10 MS. HIGASHI: Some of the agenda items and
11 government mandates.

12 CHAIR MIYASHIRO: Okay.

13 MS. HIGASHI: Let me ask Mr. Anderson if he has a
14 hearing.

15 MR. ANDERSON: Dirk Anderson, Department of
16 Finance. Just in informal discussions with Judy Smith, the
17 consultant for that committee, she was going to be setting
18 the date for that committee hearing, possibly at the very
19 end of this month or May 7th, I think was the date she
20 said.

21 CHAIR MIYASHIRO: Are you aware of any issues
22 being raised about the Commission's budget, as opposed to
23 mandate issues more broadly?

24 MR. ANDERSON: No. The assembly commission's
25 budget, really no questions have been raised concerning

1 their -- the State operations budget.

2 CHAIR MIYASHIRO: Okay. All right.

3 MR. BARNES: I have --

4 CHAIR MIYASHIRO: Yes. Mr. Barnes?

5 MR. BARNES: Just two questions. The -- the
6 postponement of incorrect reduction claims, are those
7 likely to come back at the May meeting?

8 MS. HIGASHI: We're hoping so.

9 MS. PATTON: The claimant has asked for a
10 one-month extension. Both of these should be back in May.

11 MR. BARNES: Okay. And by going to the bi-monthly
12 claim meeting, my assumption is that the agenda is going to
13 get bigger. Is there some possibility that we -- you would
14 be able to cut off things off a little earlier than you do,
15 so you can get the focus much earlier.

16 MS. HIGASHI: We will be coming to you next month
17 with a much more representative proposal just how we're
18 going to make this work or how we hope to make this work.
19 And we're still in staff level discussions about it in
20 terms of how far out we will have to mail, address staff
21 analysis in order to get the commenting. And I'll check
22 with you before we complete that draft date, if we have
23 special requirements.

24 MR. LAZAR: Okay. Thanks.

25 MS. HIGASHI: But they could end up being two and

1 three-binder hearings without any difficulty.

2 MR. LAZAR: Will we be given carriers or
3 something?

4 MS. HIGASHI: If you need one. Yes, we will.

5 Although some of the State agency representatives
6 manage very well in their boxes here.

7 CHAIR MIYASHIRO: Okay.

8 MS. HIGASHI: I'd like to do one last thing today
9 as part of my report.

10 CHAIR MIYASHIRO: Sure.

11 MS. HIGASHI: I'd like to introduce a member of
12 our staff, Gary Lindsey, Jr.

13 Gary, would you come forward?

14 Gary has been a law clerk with our office for the
15 past year, and he is -- this is actually his last day. You
16 haven't seen him before the Commission because typically
17 he's been in law school classes, so he hasn't been able to
18 come to our hearings. But he's made very significant
19 contributions to our office throughout his tenure with the
20 Commission.

21 And he will be graduating from McGeorge. He's
22 recently taken the Federal Patent Bar Exam, and he and his
23 wife will be relocating to the Los Angeles area upon
24 completion of the Bar examination and we wanted to
25 acknowledge him because he has just been such an asset to

1 the Commission. And we also wanted to note that if any of
2 you have contacts in Los Angeles law offices, he's ready
3 to become an L.A. lawyer, and he's dressed for success. We
4 urge you to make his acquaintance after the hearing and do
5 anything you can to help him. I know we all will be doing
6 that.

7 And I just wanted to thank you very much
8 publically for all he's contributed to our staff.

9 (Applause was heard.)

10 MS. HIGASHI: And we wish him the best of luck,
11 and I might add that we are going miss his movie reviews.

12 CHAIR MIYASHIRO: Gary, would you like to give us
13 your latest on recommendation, on thumbs up?

14 MR. LINDSEY: I haven't seen much lately, but I
15 will be seeing the Matrix movie when it comes out.

16 CHAIR MIYASHIRO: All right. So noted for the
17 record. Thank you again, Gary. Very much appreciate your
18 contribution to the Commission.

19 MR. LINDSEY: Thank you.

20 MS. HIGASHI: That's it.

21 CHAIR MIYASHIRO: Okay. I think we're going to
22 move back to closed session.

23 MS. HIGASHI: We would ask for the public comment
24 to, if there is any public comment.

25 CHAIR MIYASHIRO: Okay. Any comments from members

1 of the public? Members of the audience? Otherwise, I
2 think we'll move to closed session again. Off the record.
3 We'll take a ten-minute break.

4 (Off the record.)

5 CHAIR MIYASHIRO: Commission met in closed
6 Executive Session pursuant to Government Code Subdivision
7 (e), to confer with and receive advice from legal counsel,
8 for the consideration and action, as necessary and
9 appropriate upon the pending litigation listed on the
10 published notice and agenda and potential litigation; and
11 Government Code section 11126 Subdivision (a) and 17526 to
12 confer on personnel matters listed on the published notice
13 and agenda.

14 Meeting adjourned.

15 (Proceeding concluded at 12:45 P.M.)
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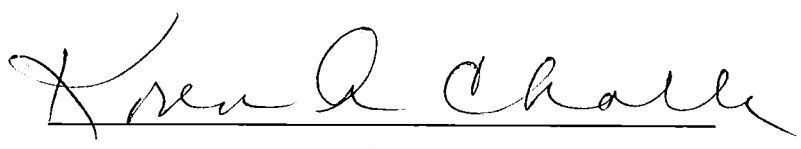
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That the said proceedings were recorded stenographically by me and were thereafter transcribed under my direction via computer-assisted transcription;

That the foregoing transcript is a true record of the proceedings which then and there took place;

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on May 1, 2003.



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