

PUBLIC HEARING

COMMISSION ON STATE MANDATES

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ORIGINAL

TIME: 9:30 a.m.

DATE: Thursday, May 29, 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
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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 CAPS
State Controller

SHERRY WILLIAMS, Legislative Analyst
Representative of Tal Finney CAPS
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

CATHERINE M. CRUZ, Program Analyst

KATHERINE TOKARSKI, ~~Program Analyst~~ Commission Counsel

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PUBLIC TESTIMONY

Appearing Re Item 3:

On Behalf of Palmdale School District:

CAROL A. BERG, PhD., Executive Vice resident
Education Mandated Cost network
1121 L Street, Suite 1060
Sacramento, CA 95814

On behalf of the Department of Finance:

BARBARA TAYLOR, Finance Budget Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

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

Appearing Re Item 4:

On Behalf of Irvine Unified School District:

JIM JAGGERS, General Counsel
Centration Management Advisors & Consultants
12150 Tributary Point Drive, Suite 140
Gold River, CA 95670

CAROL BERG, PhD.

On Behalf of the State Controller's Office:

SHAWN SILVA

On Behalf of the Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney

BARBARA TAYLOR, Finance Budget Analyst

PUBLIC TESTIMONY

Appearing Re Item 6:

On Behalf of County of Los Angeles:

LEONARD KAYE, Attorney at Law
Office of Auditor-Controller
603 Hall of Administration
Los Angeles, CA 90012

On Behalf of Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney

DIRK ANDERSON

Appearing Re Item 9:

On Behalf of San Diego Unified School District:

ART PALKOWITZ, Attorney at Law

~~CAROL BERG, PhD., Education Mandated Cost Network~~

DAVID SCRIBNER, Attorney at Law
Law Offices of Spector, Middleton, Young & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

On Behalf of Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney

BLAKE D. JOHNSON, Finance Budget Analyst

BARBARA TAYLOR, Finance Budget Analyst

On Behalf of the State Controller's Office:

SHAWN SILVA

PUBLIC TESTIMONY

Appearing Re Item 10:

On Behalf of the State Controller's Office:

SHAWN SILVA

On Behalf of the Department of Finance:

SUSAN GEANACOU, Senior Staff Attorney

BARBARA JOHNSON, Finance Budget Analyst

BLAKE D. JOHNSON, Finance Budget Analyst

On Behalf of the San Diego Unified School District:

ART PALKOWITZ, Attorney at Law

CAROL BERG, PhD.

~~DAVID E. SCRIBNER, Attorney at Law~~

Appearing Re Item 11:

On Behalf of San Diego Unified School District:

ART PALKOWITZ, Attorney at Law

CAROL BERG, PhD.

On Behalf of the Department of Finance:

SUSAN GEANACOU, Senior Staff Attorney

BLAKE D. JOHNSON, Finance Budget Analyst

BARBARA TAYLOR, Finance Budget Analyst

On Behalf of the State Controller's Office:

SHAWN SILVA

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1 BE IT REMEMBERED, that on Thursday, ^{May 29}~~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
8 CHAIR MIYASHIRO: I'd like to call the meeting of
9 the Commission on State Mandates to order.

10 Paula, would you call roll?

11 MS. HIGASHI: Mr. Barnes?

12 MR. BARNES: Here.

13 MS. HIGASHI: Mr. Lazar?

14 MR. LAZAR: Here.

15 MS. HIGASHI: Mr. Sherwood?

16 MR. SHERWOOD: Here.

17 MS. HIGASHI: Ms. Williams?

18 MS. WILLIAMS: Here.

19 MS. HIGASHI: Mr. Miyashiro?

20 CHAIR MIYASHIRO: Here.

21 MS. HIGASHI: The first item on our agenda is
22 approval of the minutes from the April meeting.

23 CHAIR MIYASHIRO: Are there any corrections or
24 objections to the minutes as presented?

25 If not, entertain a motion.

1 MR. SHERWOOD: Move for approval.
2 CHAIR MIYASHIRO: All those in favor, say "aye."
3 (A chorus of "ayes" was heard.)
4 CHAIR MIYASHIRO: Opposed?
5 Minutes are approved.
6 MS. HIGASHI: The next item on our agenda is the
7 Proposed Consent Calendar, which you have before you.
8 CHAIR MIYASHIRO: Are there --
9 MS. HIGASHI: It's the yellow sheet. It is Items
10 5, 7 and 8.
11 CHAIR MIYASHIRO: Do the -- give the members a
12 few minutes to take a look at the Proposed Consent
13 Calendar.
14 MR. SHERWOOD: So Number 5 then has been moved
15 from the earlier schedule?
16 MS. HIGASHI: Yes. That's correct.
17 MR. SHERWOOD: And you've moved off --
18 MS. HIGASHI: That's correct.
19 MR. SHERWOOD: -- based on the --
20 MS. HIGASHI: The late filing.
21 CHAIR MIYASHIRO: Okay. Do I have a motion on
22 the Consent Calendar?
23 MS. WILLIAMS: So moved.
24 MR. SHERWOOD: Second.
25 CHAIR MIYASHIRO: All those in favor please say

1 "aye."

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

3 CHAIR MIYASHIRO: All opposed?

4 Consent calendar is adopted.

5 MS. HIGASHI: This brings us to the hearing
6 portion of the meeting, and at this time I'd like to ask
7 all of the ~~party~~^{parties} witnesses and representatives who will be
8 participating in the hearing of the agenda items to please
9 stand and to raise your hands for swearing in of
10 witnesses.

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

14 MEMBERS OF AUDIENCE IN UNISON: I do.

15 MS. HIGASHI: Thank you very much.

16 The first item will be Item Number 3. There are
17 no matters to consider under Item 2. Item 3 is a test
18 claim on Differential Pay and Reemployment, and that item
19 would be presented by Katherine Tokarski.

20 MS. TOKARSKI: Good morning. Claimant, Palmdale
21 School District, filed a test claim alleging amendments to
22 the Education Code by Statutes 1998, chapter 30 impose a
23 reimbursable state mandate on school districts.
24 Previously, Education Code section 44977 required school
25 districts to pay "differential pay" for up to five months

1 to public school teachers who were absent due to illness or
2 injury. Differential pay is calculated as the difference
3 between the teacher's salary and the cost of hiring a
4 substitute. The amendment to the differential pay statute
5 specifies that the five-month period runs consecutively,
6 following the exhaustion of all accumulated sick leave.
7 Prior to the amendment, the interpretation by the courts
8 was that the five-month period ran concurrently with all
9 accumulated sick leave, following the use of 10 annual days
10 of sick leave.

11 The claimant also alleges Education Code section
12 44978.1 imposes a mandate by requiring that when an ill or
13 injured certified employee remains unable to return to his
14 or her original duties after all sick leave and
15 differential pay is exhausted, the teacher shall, if not
16 placed in another position, be placed on a reemployment
17 list.

18 On May 23rd, 2003, Department of Finance submitted
19 a late filing -- which you have before you -- expressing
20 general agreement with the legal ~~finance~~^{findings} in the staff
21 analysis, ~~that~~^{but} asking^{ed} for greater specificity in describing
22 the required activities. Staff notes that the test claim
23 process has several phases. If the Commission partially
24 approves the test claim today, the parameters and
25 guidelines hearing is the appropriate proceeding for

1 determining, pursuant to regulation, specific costs and
2 types of cost, including one time ^{and} ongoing costs and the
3 most reasonable methods of complying with ^{the} mandate.

4 Staff concludes that Education Code sections 44977
5 and 44978.1, as added or amended by Statutes 1998, chapter
6 30, imposes a reimbursable state mandated program for the
7 new activities specified beginning on page 14 of the
8 analysis. Staff recommends denial of remaining alleged
9 costs or activities, because they do not impose a new
10 program or higher ^{level} of service, and do ^{not} impose costs mandated
11 by the state.

12 CHAIR MIYASHIRO: Dr. Berg, if you'd like to lead
13 off.

14 MS. BERG: I would. My name is Carol Berg,
15 Educated ~~M~~andated Cost Network for the claimant, Palmdale
16 Unified School District. We thank the staff for the
17 efforts they put forth, and we support the staff
18 recommendations.

19 CHAIR MIYASHIRO: Thank you.

20 Department of Finance?

21 MS. TAYLOR: Barbara Taylor. Department of
22 Finance. We do support staff's recommendation. We just
23 would reiterate that to prevent confusion in the parameters
24 and guidelines, we believe it would be better if there were
25 more detailed activities listed in the recommended

1 decision.

2 CHAIR MIYASHIRO: Okay. And any assistance you
3 can provide -- you can provide the Commission staff in
4 developing those definitions and clarity would be greatly
5 appreciated.

6 MS. TAYLOR: Okay.

7 MS. GEANACOU: Susan Geanacou. Department of
8 Finance. I don't have anything further to add. We support
9 the staff analysis.

10 CHAIR MIYASHIRO: Okay.

11 MR. SHERWOOD: Question.

12 CHAIR MIYASHIRO: Mr. Sherwood.

13 MR. SHERWOOD: Now, Paula, where are we? Because
14 we have these recommendations here. And do we need to
15 recognize these and help these input into the statement of
16 decision, or it seems to me maybe we -- do we need to
17 discuss it? We need to come back and have time for you to
18 look at it? Because I think it's important, what Finance
19 has done here. And I think it's an attempt at doing
20 something that we need to do, and being specific, and yet I
21 know it's a little late in the process.

22 CHAIR MIYASHIRO: Noted.

23 MS. HIGASHI: Let me defer to Katherine on this,
24 because Katherine's taking a look at this.

25 MS. TOKARSKI: I certainly understand that -- the

1 concern with making a statement of decision as specific as
2 possible. I believe the activities listed on page 14 are
3 the legal findings that would be appropriate at the
4 statement of decision phase, and I've identified which
5 costs, pursuant to statute, so it would be one-time costs
6 versus ongoing activity costs. But I really want to
7 emphasize there is a two-step process here.

8 The statement of decision, the test claim process
9 is the point at which the Commission makes legal findings
10 pursuant to the statutes, and not in this case, but in
11 other cases, regulations or other types of executive orders
12 that may have been alleged. And the parameters and
13 guidelines really would identify the types of expenses that
14 would be reimbursable. And I think those are the nature of
15 the Department of Finance's comments, identifying things
16 such as computer costs.

17 MR. SHERWOOD: And so you feel that the specific
18 item can be addressed at the P's and G's level?

19 MS. TOKARSKI: Absolutely.

20 MR. SHERWOOD: Any comment from Finance on that?

21 MS. TAYLOR: We believe it could be addressed at
22 the P's and G's also. We're just concerned that in the
23 statement of decision the test claim laid out very specific
24 activities. And with the decision, as it's written now,
25 it's up to interpretation what the Commission is deciding

1 of the activities in the test claim are really part of the
2 decision.

3 Obviously, it can be addressed at the P's and G's.
4 We just believe it would be better if it was clarified
5 before the statement of decision was issued.

6 MS. TOKARSKI: Then of course, the other
7 alternative is we don't have to come back and make a
8 two-step process out of it as part of your motion. You
9 could ask that the language ^{suggested} ~~adjusted~~ by the Department of
10 Finance, once you've had an opportunity to look it over and
11 you're in agreement with it, to be included in the -- the
12 statement of decision as part of the activities.

13 CHAIR MIYASHIRO: I guess I would just like to,
14 again, make sure I understand. The adoption of the
15 statement of decision here will not foreclose the
16 tightening and the more precise definitions that Department
17 of Finance is seeking. Is that what we're hearing here?
18 Are we acting prematurely if we don't address your concerns
19 about definitions in the statement, or are you saying that
20 for the record you want to make sure that we have precise
21 definitions that want to be adopted by these P's and G's?

22 ^{Taylor} ~~MS. TOKARSKI~~: Well, based on what staff has said,
23 it sounds like there's an ability to go from a statement of
24 decision to be more specific in the parameters and
25 guidelines. We just believe it would be less confusing

1 when we get to the parameters and guidelines area, if those
2 were already detailed, if the decision matched what the
3 claimant was claiming as activities.

4 MR. BARNES: Could I have -- do you have comments
5 on this?

6 MS. BERG: Yes. My heart is beating out of my
7 chest here. Thank you, Mr. Barnes.

8 The idea that is being proposed by the Chair
9 aborts the whole process that's been established in terms
10 of what the statement of decision is, which is the legal
11 interpretation of the statute and what the parameters and
12 guideline phase does. I agree that we need better
13 definitions in the P's and G's, but I absolutely disagree
14 that the proper place for those is in the statement of
15 decision.

16 Otherwise you're collapsing the whole thing into
17 one huge operation in which you not only have to deal with
18 the legal issues, but all of the activities, and you just
19 abort the second phase of this process. And I have strong
20 objections to that.

21 MR. SHERWOOD: Well, to the Chair, I think I just
22 want to point out I could understand that, Carol. And
23 I have been sitting on the board for years. I think you're
24 correct in what you're saying up to this point.

25 I just want to be on record indicating I think

1 what Finance has done here is excellent. We need this type
2 of input. And when we move the P's and G's, I would be --
3 like to be looking at that very closely and take this into
4 consideration, because I think you made some good points
5 here.

6 CHAIR MIYASHIRO: Mr. Barnes.

7 MR. BARNES: I guess I would also state that I
8 understand the tradition of having kind of a general
9 comment or general indication in the decision, and getting
10 more specific in the P's and G's. But I'd also state that
11 I think to the extent that the Commission can give -- you
12 know -- some clear direction in the writing of the P's and
13 G's, I think it -- it reduces the potential that the P's
14 and G's can be inconsistent with what the real intent of a
15 decision is.

16 So I'm not so much unhappy or disagreeing with the
17 idea that we could get more specific in the
18 decision-making. And I think that's a laudable goal for
19 the Commission to be thinking about. Not having had a
20 chance to really review these, I don't know whether or not
21 these particular items themselves are in fact reflective of
22 what should be in the decision.

23 So I'm a little reluctant to do more on this,
24 except adopt the staff's recommendation, but perhaps give
25 the -- the staff some direction to look very closely at

1 this, as -- as the -- the content that should be -- go into
2 the -- into the P's and G's. It doesn't necessarily mean
3 it's -- this particular stuff, but certainly this is the
4 kind of detail that we need to have to -- I think --
5 resolve a lot of some of the issues that we've been having
6 lately. So --

7 CHAIR MIYASHIRO: Okay. You heard, I think, the
8 sentiment of the Commissioners, as we go forward on the P's
9 and G's.

10 Any other comments and discussions?

11 MS. HIGASHI: I just wanted to clarify that the
12 agenda item before you is a consideration of the staff
13 analysis. At the next hearing there will be a proposed
14 statement of decision presented, so that would be the final
15 document.

16 CHAIR MIYASHIRO: Okay.

17 MS. HIGASHI: That's the statement of Commission's
18 decision. That's why Ms. Tokarski indicated they did have
19 some flexibility in terms of what you wanted to do with
20 that statement of decision.

21 CHAIR MIYASHIRO: Okay. Thank you for that
22 clarification.

23 Do I have a motion to adopt on this item?

24 MS. WILLIAMS: So moved.

25 MR. LAZAR: I'll second.

1 CHAIR MIYASHIRO: Motion goes.
2 Paula, please call the roll.
3 MS. HIGASHI: Mr. Barnes?
4 MR. BARNES: Yes.
5 MS. HIGASHI: Mr. Lazar?
6 MR. LAZAR: Yes.
7 MS. HIGASHI: Mr. Sherwood?
8 MR. SHERWOOD: Yes.
9 MS. HIGASHI: Ms. Williams?
10 MS. WILLIAMS: Aye.
11 MS. HIGASHI: Mr. Miyashiro?
12 CHAIR MIYASHIRO: Aye.
13 Thank you very much. That item is adopted.
14 MR. BARNES: Just one question. Is it appropriate
15 to give some direction at this time or at the time when we
16 are confronted with the statement of decision, with regard
17 to this P's and G's?
18 MS. HIGASHI: It would be better if we heard it
19 right now, because the next step would be to review the
20 hearing transcript and to prepare the proposed statement of
21 decision.
22 MR. BARNES: Well, I guess the question is that
23 would -- that would seem to involve having the statement of
24 decision incorporated into this as part of our statement of
25 decision. And I guess the only thing I'm saying right now

1 is that I think we'd like to see the staff take this
2 information into account ^{when} and putting together the P's and
3 G's, not necessarily saying this is absolutely the thing,
4 because we haven't had a chance to look at it.

5 CHAIR MIYASHIRO: Right.

6 MR. BARNES: So this is more direction as opposed
7 to decision, and I guess my question is should we begin
8 that direction now, or should that be at the time we vote
9 on the statement of decision?

10 MS. HIGASHI: I think it's pretty clear that we
11 would be incorporating references.

12 MR. BARNES: You're starting to hear us, right?

13 MS. HIGASHI: I think it's very clear that the
14 information of this late filing would be incorporated into
15 the body of it.

16 MR. BARNES: Okay.

17 MR. SHERWOOD: And the staff will use its good
18 judgment.

19 MS. HIGASHI: Absolutely. And the parties will
20 keep us in check by allowing it to go ~~in~~ ^{on} consent or not.

21 CHAIR MIYASHIRO: Very good. Thanks.

22 All right. Next item.

23 MS. HIGASHI: Next item is Item 4, Incorrect
24 Reduction Claim on Graduation Requirements. Cathy Cruz
25 will present this item.

1 MS. CRUZ: Good morning. The Irvine Unified
2 School District filed this incorrect reduction claim on the
3 Graduation Requirements program after the State
4 Controller's Office reduced its reimbursement claim for
5 costs associated with science teachers' salaries. The
6 claimant incorporated by reference the same arguments
7 raised in the San Diego Unified School District's IRC,
8 which the Commission denied on September 28, 2000.

9 The Controller asserts that it adjusted the
10 claimant's reimbursement claim for teachers' salaries
11 because the claim did not comply with the Commission's
12 parameters and guidelines. If a school district claimed
13 reimbursement for teachers' salaries and did not identify
14 any offsetting savings from laying off teachers of
15 non-mandated subjects, or provide documentation supporting
16 the reason why there were no offsetting savings, the claim
17 was reduced by the entire amount claimed. The Department
18 of Finance supports the Controller's position.

19 There are five issues for consideration by the
20 Commission. First, did the Controller exercise its audit
21 authority in accordance with state law when it reduced the
22 claimant's reimbursement claims? Staff finds that the
23 Controller did exercise its audit authority in accordance
24 with state law. Two, did the Controller establish a
25 standard of general application without the benefits of law

1 or the due process of rulemaking? Staff finds that the
2 Commission does not have specific or implied authority to
3 make this determination. Three, did the Controller reduce
4 the claimant's reimbursement claim based on the
5 Commission's parameters and guidelines, and the claiming
6 instructions? Staff finds that the Controller did perform
7 the reductions in accordance with the parameters and
8 guidelines and claiming instructions. Four, does the
9 Controller's payment of teachers' salaries on 38 other
10 claims have a bearing on this IRC? Staff finds that this
11 argument has no bearing on this because the referenced
12 claims are not before the Commission. Five, does the ~~SCO~~ ^{Controller}
13 have the burden of proof to show a legal basis for the
14 adjustments? Staff finds that the ~~SCO~~ ^{Controller} does have a legal
15 basis for the adjustments made in this case. Based on
16 these findings, staff recommends that the Commission deny
17 this IRC.

18 Will the parties and representatives please state
19 your names for the record?

20 MS. BERG: Carol Berg for Education Mandated Cost
21 Network.

22 MR. JAGGERS: Jim Jagers for Centration,
23 representing Irvine Unified School District.

24 MS. TAYLOR: Barbara Taylor, Department of
25 Finance.

1 MS. GEANACOU: Susan Geanacou, Department of
2 Finance.

3 MR. SILVA: Shawn Silva, State Controller's
4 Office.

5 CHAIR MIYASHIRO: Mr. Silva, will you lead off for
6 us? Explain the -- give us your position on our staff
7 recommendation, and you can elaborate on your Controller's
8 process.

9 MR. SILVA: Mr. Chairman, I think I can keep it
10 fairly quick. We are in agreement with the staff's
11 analysis. And based on the long precedence on these cases,
12 we believe this is no different than the many that have
13 preceded it, and therefore we would recommend adopting the
14 staff's analysis.

15 CHAIR MIYASHIRO: Mr. Jagggers, or Miss Berg?

16 MR. JAGGERS: My client doesn't wish to offer any
17 new testimony today, but does wish the Commission to take
18 notice of -- restate the arguments that have been
19 previously made.

20 MS. BERG: I have nothing further to add.

21 CHAIR MIYASHIRO: Ms. Taylor?

22 MS. TAYLOR: We concur with staff's analysis and
23 with the Controller's.

24 CHAIR MIYASHIRO: Ms. Geanacou, any other
25 comments?

1 MS. GEANACOU: Susan Geanacou. No. I have no
2 further comments. We support the staff analysis.

3 CHAIR MIYASHIRO: Thank you. Any comments or
4 questions from members of the Commission?

5 All right. Take a motion?

6 MR. SHERWOOD: I'd like to move for approval of
7 staff recommendation.

8 MS. WILLIAMS: Second.

9 CHAIR MIYASHIRO: Motion. Second.

10 Paula, could you take roll?

11 MS. HIGASHI: Mr. Lazar?

12 MR. LAZAR: Aye.

13 MS. HIGASHI: Mr. Barnes?

14 MR. BARNES: Aye.

15 MS. HIGASHI: Ms. Williams?

16 MS. WILLIAMS: Aye.

17 MS. HIGASHI: Mr. Miyashiro?

18 CHAIR MIYASHIRO: Aye.

19 MS. HIGASHI: Mr. Sherwood?

20 MR. SHERWOOD: Aye.

21 CHAIR MIYASHIRO: Thank you.

22 MS. HIGASHI: This brings us to Item 6, Proposed
23 Statement of Decision on the test claim Crime Victim's
24 Domestic Violence Incident Reports. This item will be
25 presented by Camille Shelton.

1 MS. SHELTON: Good morning. This item's the
2 proposed statement of decision of the Crime Victims'
3 Domestic Violence Incident Reports test claim filed by the
4 County of Los Angeles. The Commission heard this test
5 claim last month, and by unanimous vote, partially approved
6 the claim for the activity of storing domestic violence
7 incident reports and face sheets for five years, pursuant
8 to Family Code Section 6228. The Commission denied the
9 claim for the activities of preparing, retrieving and
10 copying the incident report and face sheet.

11 After the binders were delivered, we received a
12 late filing from the County requesting that the executive
13 summary for this item be amended to include a paragraph
14 indicating that the claimant filed an amendment to the test
15 claim and that the amendment has been severed, and will be
16 separately decided by the Commission at a future date.

17 Late filing is before you in green.

18 Staff has no objection to the inclusion of the
19 paragraph proposed by the County. Also in front of you is
20 a beige supplemental executive summary that includes the
21 proposed paragraph, which is underlined on page two of the
22 executive summary.

23 I also understand that the claimant has a few
24 additional comments to make on this proposed statement of
25 decision.

1 Staff does recommend that the Commission adopt the
2 proposed statement of decision before you, which accurately
3 reflects the Commission's decision.

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

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

7 MR. ANDERSON: Dirk Anderson, Department of
8 Finance.

9 MS. GEANACOU: Susan Geanacou. Department of
10 Finance.

11 CHAIR MIYASHIRO: Mr. Kaye.

12 MR. KAYE: Thank you. Generally, we agree with
13 the Commission ~~of~~ staff that the statement of decision
14 before you accurately reflects what actually went on in our
15 last hearing. However, there's one area that is sort of
16 troubling, and I think that we are very mindful that we
17 could have requested a reconsideration. But perhaps
18 clarification in the statement of decision might serve the
19 interest of all parties concerned.

20 And what this has to do with is the detail
21 reviewed that we performed on Commission's decision on
22 January 22nd, 1987. And this decision has to do with the
23 parameters and guidelines for Chapter 1609~~84~~.

24 This decision, as you know, is a final decision,
25 and it cannot be changed, by anyone. And this decision

1 appears to be contradictory to something that's in your
2 statement of decision, particularly, and it's sort of
3 understandable in the sense that it was a flura of
4 paperwork back and forth, and it perhaps wasn't fully
5 appreciated at the time.

6 But the statement of decision indicates that
7 Section 13730 as amended by Statutes of 1993, Chapter 1230,
8 first added the requirement that domestic violence incident
9 reports be in writing. And I think if you turn to the
10 statement of the decision for the parameters and
11 guidelines, which again is a final decision for chapter
12 1609~~84~~, which was adopted by the -- I think at the time it
13 might have been the Board of Controller -- perhaps the
14 Commission on ~~the~~ State Mandates -- that that clearly
15 appears to indicate that the writing of mandated reports
16 are basically required and reimbursable.

17 So there appears to be some disconnect, if you
18 will. And so perhaps the statement of decision could be
19 modified to reflect this -- this activity. Perhaps not.
20 But I bring this to your attention because it is sort of a
21 troubling feature of the statement of decision as written.

22 Thank you.

23 CHAIR MIYASHIRO: Any other comments from
24 Department of Finance?

25 Camille, would you like to respond?

1 MS. SHELTON: Sure. This is new information to me
2 this morning. I have not received this concern before this
3 morning.

4 MR. KAYE: No. Right.

5 MS. SHELTON: That set of parameters and
6 guidelines from the 1984, chapter 1609 is in the
7 administrative record for this test claim. It was given to
8 you last month to -- on a hearing of the item. We don't
9 have it before you today because we didn't know that it was
10 a concern. But as I recall that -- those -- that in the
11 P's and G's did authorize reimbursement for the preparation
12 of the domestic violence incident report. After the
13 Commission adopted those P's and G's, the legislature
14 suspended the program. Okay. That's under 17581. They
15 continue to be suspended today. I -- and we have that
16 reflected in the statement of decision.

17 After the suspension in 1993, the legislature
18 amended 13730 in 1993, and that currently has not ever been
19 decided by the Commission as a reimbursable state mandated
20 program under Article 13, section 6. So that item issue is
21 still outstanding.

22 For purposes of the test claim, though, it does
23 qualify as prior law. Because it clearly stated in the
24 1993 amendment that now agencies are required to prepare a
25 written incident report for domestic violence calls. So

1 that statute is considered prior law, and it can't -- we
2 have it in the statement of decision as an argument to
3 address the claimant's argument that Family Code Section
4 6228 in and of itself required the preparation of the
5 report, and that's not the case, because it was the Penal
6 Code.

7 So I'm not sure which -- what type of a fix you're
8 proposing to the statement of decisions. Legally, I
9 believe it's all there. But if you want to propose
10 something, we would be open to any suggestions.

11 CHAIR MIYASHIRO: I guess I'm a little
12 uncomfortable, without allowing staff sufficient time to
13 clearly understand what's just being proposed here. I
14 don't know that we necessarily disagree with it, but
15 without having had time to understand it and explain it to
16 us, I'm a little hesitant to act on what you're requesting.

17 MR. KAYE: Yes.

18 CHAIR MIYASHIRO: Paula, do you have anything to
19 add, or -- or I'm not quite understanding, Mr. Kaye, what
20 you're bringing to us? Because at first it seemed that the
21 staff was okay with what you brought earlier.

22 MR. KAYE: Right. Okay.

23 CHAIR MIYASHIRO: And I'm missing --

24 MR. KAYE: Right. I guess this is an
25 exceptionally complex matter, and I'm not being critical of

1 anyone or anything. But I think what the -- what has
2 happened is we've had a number of statutes which staff had
3 correctly added to the record to show that the matter has
4 been made optional and so forth. The issue, I think, is a
5 very hyper-technical one, and that is precisely, I don't
6 think we have added to the record, for example, that the --
7 the statute in question was made optional. I'm pretty sure
8 that 17581, I think, was only added to the Government Code
9 in 1990. And this decision reflects back to, I think, '87.

10 And so there is some concerns as to the interplay
11 between the optionality and the original requirement which
12 Commission defined back in '87 that these reports be in
13 writing.

14 MS. HIGASHI: I would like to suggest that what we
15 do is continue this matter to the next hearing. And staff
16 at that time can respond to the questions and to put into
17 the record before we -- consideration of the statement of
18 decision -- the documents that Mr. Kaye is referencing.

19 CHAIR MIYASHIRO: Let me make sure, though, I
20 understand what the consequence would be of delaying this,
21 since we're now going to miss a June meeting, and only be
22 meeting in July.

23 Is it your judgment that this issue is worth
24 waiting two months to make a decision on? Is there a
25 consequence to delaying to resolve the issue brought before

1 us today, or can we act on what we originally have been
2 presented, and entertain Mr. Kaye's issue in July, as
3 necessary -- if necessary.

4 MS. HIGASHI: I think it's up to -- if Mr. Kaye is
5 willing to delay it, that's certainly -- you know -- he
6 could agree to the delay. Two, we could go back to the
7 office and maybe, before the end of this hearing, have the
8 relevant documents here, and take a look at them to allow
9 you to make a decision today.

10 That's another option. If Mr. Kaye has copies of
11 the documents in his hands, he could allow us to go have
12 copies made, so we could pass them out to you. That would
13 be a faster option.

14 MR. KAYE: To facilitate things, what I would
15 perhaps suggest is I would be willing to, after a meeting
16 with Commission staff -- and again, we're not talking about
17 changing the substantive aspects of the decision. What
18 we're talking about is clarifying the record. If I -- I
19 would be willing to stipulate and -- and we could have
20 consultation with staff so we have time to reflect on some
21 of these things, so that at your next hearing, it would
22 basically be a -- simply a stipulated agreement. That
23 was -- was fine.

24 And again, this is -- is a -- in my view, it's a
25 critical point, but it really won't impact the nature of

1 the decision or hold up anything.

2 CHAIR MIYASHIRO: Uh-huh.

3 Ms. Geanacou?

4 MS. GEANACOU: Yes. Susan Geanacou. Department
5 of Finance. I guess I'm not entirely clear on what's being
6 proposed. Am I -- are we to understand that perhaps the
7 background piece of the proposed statement of decision
8 would reflect some of the ideas you've proposed, and the
9 substance of the reimbursable activities would remain the
10 same? Is that a close paraphrase of it?

11 MR. KAYE: Yes. I think that it's important --
12 again, when you're dealing with 17581, over a long period
13 of time, I think it's important, and staff has done that,
14 and they've shown the interplay of -- between the option
15 years and whether this writing of the reports was mandated
16 and so forth.

17 It's just that the earlier year, I think that's
18 the earlier year, that's a -- an area of -- of possible
19 confusion, which I don't think would take much to fix.

20 CHAIR MIYASHIRO: All right. The other thing I
21 guess, just as a general statement from the Chair, I'm
22 mindful of the backlog of activities that this Commission
23 needs to address. And to the extent that significant
24 issues are going to be brought before this Commission, I
25 think that those who wish to bring them should bring them

1 to the attention of the staff before the moment of the
2 hearing, if this Commission is expected to move forward on
3 items.

4 Because now that we're moving toward Commission
5 hearings every other month, I would rather have these
6 issues, if they're minor, if they can be resolved, even if
7 it's a matter of calling the day before, so that the staff
8 can be reassured of what they are being presented and can
9 advise us accordingly. Then we can act on this.

10 But this issue now potentially delays this
11 adoption for two months. And I guess I'm not sure that in
12 the future I want that decision to solely rest with the
13 claimant, because we could be bogged down here, never
14 resolving anything, because of last minute issues raised
15 when I think it would be reasonable to present these to the
16 staff in a more timely manner so that they could advise us
17 fairly and thoroughly.

18 MS. HIGASHI: And I will add that Mr. Kaye did
19 contact me after the statement of decision was issued. And
20 I did advise him that he should put his concerns in
21 writing. When we received the late filing last week, we
22 thought we had received all of his concerns. And staff
23 worked accordingly to determine whether or not that late
24 filing could be accommodated. And the decision was made
25 that yes -- Camille reviewed it and said the executive's

1 summary would -- could be modified, and we thought that was
2 the end of the issue. And so this is new today.

3 CHAIR MIYASHIRO: Yes, Mr. Barnes.

4 MR. BARNES: Just to clarify, my -- what I'm
5 hearing is that your -- your clarification would not change
6 the decision with regard to what's eligible or not
7 eligible. Is that correct?

8 MR. KAYE: That --

9 MR. BARNES: In this particular item?

10 MR. KAYE: That is correct.

11 MR. BARNES: Okay. I guess I feel if in fact
12 the -- it had some impact on the ultimate decision that's
13 encompassed in here, I might feel inclined to recommend
14 putting it over. But again, the fact that it's really just
15 kind of clarification in the -- in the writeup, it doesn't
16 really change the decision, I feel, you know, very much
17 along your lines, that we need to move these things along.
18 We've had a lot of items, and I would rather move ahead
19 with this one, as it is, adopt the staff recommendation and
20 move ahead. So I'll just make that recommendation, if
21 that's okay, as a motion.

22 MR. SHERWOOD: I'll second that.

23 CHAIR MIYASHIRO: You have a motion to second.
24 Like any discussion or comment?

25 MS. WILLIAMS: No.

1 CHAIR MIYASHIRO: Paula, can you call roll?
2 MS. HIGASHI: Mr. Sherwood?
3 MR. SHERWOOD: Aye.
4 MS. HIGASHI: Ms. Williams?
5 MS. WILLIAMS: Aye.
6 MS. HIGASHI: Mr. Barnes?
7 MR. BARNES: Aye.
8 MS. HIGASHI: Mr. Lazar?
9 MR. LAZAR: Aye.
10 MS. HIGASHI: Mr. Miyashiro?
11 CHAIR MIYASHIRO: Aye.
12 MS. HIGASHI: Thank you.
13 MR. KAYE: Thank you.
14 MS. HIGASHI: So this brings us up to items 9, 10
15 and 11. And I'm calling them together because they are a
16 package. All of these items will be presented by Nancy
17 Patton of our staff.
18 MS. PATTON: Good morning. As Paula said, items
19 9, 10 and 11 are related. Item 9 is the -- are the
20 proposed parameters and guidelines for **C**omprehensive **S**chool
21 **S**afety **P**lans, which deal with routine and disaster
22 emergency plans. Item 10 is the request from State
23 Controller's Office to amend the **E**mergency **P**rocedures,
24 **E**arthquake **P**rocedures program, and that one deals solely
25 with earthquake disaster plans. And if you choose to adopt

1 items 9 and 10, then we would move forward to item 11,
2 which proposes to consolidate both sets of parameters and
3 guidelines.

4 On August 23rd, 2001, the Commission adopted the
5 statement of decision for the Comprehensive School Safety
6 Plans program. This program requires school districts to
7 develop and adopt comprehensive school safety plans that
8 are relevant to the safety needs of each school.

9 On July 30, 2002, the Commission reconsidered and
10 amended the statement of decision for the Comprehensive
11 School Safety Plans program, to clarify that it requires
12 preparation of routine and emergency disaster procedures.

13 Before you are the claimant's proposed parameters
14 and guidelines, as modified by staff. There are two
15 outstanding issues. First, is training a reimbursable
16 activity under this program? Staff finds that training is
17 not a reimbursable activity under this program. The test
18 claim statutes and the statement of decision do not
19 expressly provide for training for the Comprehensive School
20 Safety Plans. In addition, training is not necessary
21 because this program only requires schools to develop
22 comprehensive school safety plans, and to do so in
23 consultation with law enforcement agencies and other school
24 sites. It does not require schools to implement the safety
25 plans.

1 The second issue was raised following release of
2 the final staff analysis -- and was raised by Keith
3 Petersen of Sixten and Associates. The period of
4 reimbursement for statutes 1997, chapter 736 is incorrect.
5 It should read January 1, 1998. Mr. Petersen is correct.
6 Staff revised this section to include the January 1, 1998
7 date, and to update the language to reflect the correct
8 deadline for filing test claims. These changes are found
9 on the purple piece of paper before you.

10 Staff recommends that the Commission adopt the
11 proposed parameters and guidelines, as modified by staff,
12 beginning on page nine.

13 Will the parties and representatives please state
14 your names for the record?

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

17 MR. SCRIBNER: David Scribner, with Spector,
18 Middleton, Young and Minney.

19 MR. SILVA: Shawn Silva. State Controller's
20 Office.

21 MR. JOHNSON: Blake Johnson. Department of
22 Finance.

23 MS. GEANACOU: Susan Geanacou. Department of
24 Finance.

25 MS. TAYLOR: Barbara Taylor. Department of

1 Finance.

2 CHAIR MIYASHIRO: Mr. Palkowitz?

3 MR. PALKOWITZ: Yes. Good morning. I'm going to
4 really address the issues of number 11, consolidation, so I
5 think it would probably be appropriate to go through items
6 9 and 10 first, before we go there.

7 CHAIR MIYASHIRO: Okay.

8 MR. PALKOWITZ: Thank you.

9 CHAIR MIYASHIRO: Mr. Scribner?

10 MR. SCRIBNER: Thank you. Good morning. This is
11 really a small matter, as far as the training issue goes.
12 On page one of the executive summary, and again, on page
13 six, staff finds training's not necessary because there's
14 no implementation on the plan. We just suggest that if you
15 look at page 11 of the parameters and guidelines, and it
16 continues onto page 12, you have a series of ongoing
17 activities that relate to updating the plan.

18 Now, because you have ongoing activities, and you
19 have -- and unfortunately, during these times, staff
20 turnover in districts, institutional knowledge is not what
21 it once was. The training, even if it is only a ten-minute
22 session between two people to discuss these ongoing
23 activities to ensure the districts are in compliance with
24 the mandate and that the plan is properly updated as
25 outlined in this document, that training should be included

1 for that. We're not talking about a one-week retreat to
2 Carmel to make sure that the plans are updated.

3 But because they're ongoing activities, and that
4 these things must be done on an annual basis, and that
5 there is the potential to -- for staff turnover, that
6 training be included for these ongoing activities.

7 Thank you.

8 CHAIR MIYASHIRO: Department of Finance?

9 MR. JOHNSON: Blake Johnson. Department of
10 Finance. We concur with staff analysis.

11 CHAIR MIYASHIRO: Mr. Silva?

12 MR. SILVA: We concur with the staff's analysis in
13 those two incidences.

14 CHAIR MIYASHIRO: Any other comments or questions
15 from members of the Commission?

16 If not, I'll entertain a motion on Item 9.

17 MR. SHERWOOD: Move for approval of staff
18 recommendation Item 9.

19 MR. LAZAR: Second.

20 CHAIR MIYASHIRO: Paula?

21 MS. HIGASHI: I have one clarification. I just
22 wanted to offer. There's a reference in the body of the
23 parameters and guidelines to the **S**chool **S**ite **C**ouncils
24 mandate, and I'd like to recommend that we strike that
25 reference.

1 MR. BARNES: Where is that?
2 CHAIR MIYASHIRO: It begins at the bottom of page
3 12 of the strike-out and underline version.
4 MR. BARNES: Okay.
5 CHAIR MIYASHIRO: With that amendment, Paula, call
6 roll?
7 MS. HIGASHI: Ms. Williams?
8 MS. WILLIAMS: Aye.
9 MS. HIGASHI: Mr. Barnes?
10 MR. BARNES: Aye.
11 MS. HIGASHI: Mr. Lazar?
12 MR. LAZAR: Aye.
13 MS. HIGASHI: Mr. Sherwood?
14 MR. SHERWOOD: Aye.
15 MS. HIGASHI: Mr. Miyashiro?
16 CHAIR MIYASHIRO: Aye.
17 Thank you.
18 MS. HIGASHI: Item 10.
19 MS. PATTON: The Emergency Procedures, Earthquake
20 and Disasters program requires the governing body of each
21 school district, private school and county superintendent
22 of schools to establish an earthquake emergency procedure
23 in each school building under their jurisdiction. The
24 parameters and guidelines provide for reimbursement for the
25 cost to establish emergency procedures and to train

1 employees and students in earthquake disaster procedures.

2 The State Controller's Office is requesting that
3 the **E**mergency **P**rocedures, **E**arthquake and **D**isasters
4 parameters and guidelines be amended to clarify that the
5 program only includes preparation of earthquake plans.

6 This request to amend the parameters and
7 guidelines was originally heard by the Commission on July
8 30, 2002 hearing. At that hearing, the Commission directed
9 staff to revise the proposed parameters and guidelines to
10 address two issues.

11 A technical modification was requested to clarify
12 that the provisions of this program that require school
13 facilities to be used for mass care and welfare shelters
14 apply to earthquake and other disasters. A technical
15 modification was requested to clarify that these amendments
16 apply to the 2000, 2001 fiscal year.

17 Staff made the requested modifications. Staff
18 recommends that the Commission adopt the State Controller's
19 proposed amendments to the parameters and guidelines, as
20 modified by staff, beginning on page nine.

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

23 MR. PALKOWITZ: Art Palkowitz.

24 MS. BERG: Carol Berg. Education Mandated Cost
25 Network.

1 MR. SILVA: Shawn Silva. State Controller's
2 Office.

3 MR. JOHNSON: Blake Johnson. Department of
4 Finance.

5 MS. GEANACOU: Susan Geanacou. Department of
6 Finance.

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

9 CHAIR MIYASHIRO: Mr. Silva, would you like to
10 add anything to staff recommendation and comments?

11 MR. SILVA: No, Mr. Chairman. I think we could
12 suffice with saying that we are in agreement with staff's
13 analysis.

14 CHAIR MIYASHIRO: Thank you.

15 Ms. Berg?

16 MS. BERG: We too are in agreement with the
17 staff's analysis. We think it provides the necessary
18 clarification and avoids the ambiguity that we experienced
19 when things got changed. So we support the staff.

20 CHAIR MIYASHIRO: Okay.

21 Mr. Johnson?

22 MR. JOHNSON: Yeah. We concur with staff.

23 CHAIR MIYASHIRO: Any comments or discussion on
24 this item?

25 Paula, can you call roll?

1 Oh, we need a motion.
2 MR. SHERWOOD: Motion.
3 MR. LAZAR: Second.
4 CHAIR MIYASHIRO: Motion ^{and} to second.
5 Paula?
6 MS. HIGASHI: Mr. Barnes?
7 MR. BARNES: Aye.
8 MS. HIGASHI: Mr. Lazar?
9 MR. LAZAR: Aye.
10 MS. HIGASHI: Mr. Sherwood?
11 MR. SHERWOOD: Aye.
12 MS. HIGASHI: Ms. Williams?
13 MS. WILLIAMS: Aye.
14 MS. HIGASHI: Mr. Miyashiro?
15 CHAIR MIYASHIRO: Aye.
16 MS. HIGASHI: Item 11.
17 MS. PATTON: As part of the request to amend the
18 parameters and guidelines for Emergency Procedures,
19 Earthquake Procedures, and Disasters program, San Diego
20 Unified School District and Education Mandated Cost/
21 Network requested that the parameters and guidelines --
22 ~~both~~ of those programs, be consolidated for reimbursement
23 purposes.
24 Therefore, proposed parameters and guidelines were
25 drafted to consolidate both programs. If the Commission

1 adopts the consolidated parameters and guidelines,
2 claimants will file reimbursement claims, including
3 estimated claims, for fiscal years 2003, 2004 and beyond
4 under the consolidated parameters and guidelines.

5 Staff finds that it is reasonable to consolidate
6 these parameters and guidelines. Both programs impose
7 similar duties upon school districts by requiring them to
8 develop safety plans. And, filing for reimbursement for
9 both programs simultaneously may reduce workload for
10 claimants and the State Controller's staff.

11 Staff recommends the Commission consolidate the
12 P's and G's for Comprehensive School Safety Plan with the
13 parameters and guidelines for the Emergency Procedures,
14 Earthquake Procedures, and Disasters program, commencing
15 with the reimbursement claims, including estimated claims,
16 filed for the 2003-2004 fiscal year. The consolidated
17 parameters and guidelines begin on page five.

18 Will the parties and representatives please state
19 your names for the record?

20 MR. PALKOWITZ: Art Palkowitz, San Diego Unified
21 School District.

22 MS. BERG: Carol Berg, Education Mandated Cost
23 Network.

24 MR. SILVA: Shawn Silva, State Controller's
25 Office.

1 MR. JOHNSON: Blake Johnson. Department of
2 Finance.

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

5 MS. TAYLOR: Barbara Taylor, Department of
6 Finance.

7 CHAIR MIYASHIRO: Mr. Palkowitz?

8 MR. PALKOWITZ: Yes. Thank you.

9 Nancy's correct. It was a year ago that we felt
10 it might be logical to combine them. And now a year later,
11 things have changed throughout the government, and trying
12 to analyze it, the plus side of combining is really the
13 potential that there might be a savings workload to
14 claimants. And to State Controller's Office, maybe Mr.
15 Barnes could comment on that potential load.

16 But the negative implications, I think, outweigh
17 the benefits to consolidate. As was mentioned earlier,
18 there's a lot of change in our district as far as
19 personnel, and I feel there's been a lot of confusion. One
20 mandate has been going on for many years, and another one
21 is starting. One mandate has been funded for many years,
22 another one has not been funded yet. There are similar
23 activities in the type of it, but there are different
24 actual activities.

25 I don't really see much of a benefit to us in

1 consolidating these claims that would make our workload
2 easier, and the potential for confusion is great. This,
3 also pending, IRC, Incorrect Reduction Claims, that will
4 have to go back and analyze how it was at the time versus
5 the way it is now.

6 I would propose that we allow these two plans to
7 separate for a couple years. See how that develops. And
8 then reanalyze it. Maybe at that point, after the initial
9 claim period has been completed for the Comprehensive
10 School Safety Plans there might be less confusion, less
11 different dates that would impact the two claims. And
12 then, at that point, reanalyze the possible -- you know --
13 workload, combine the two mandates.

14 CHAIR MIYASHIRO: Thank you.

15 Ms. Berg, comments?

16 MS. BERG: I would reiterate Mr. Palkowitz's
17 position, in that things have changed in the past year.
18 And if it is -- if it is in fact easier for the Controller,
19 then I have no objections to combining at this time.
20 However, we have some record that when issues -- one old,
21 one new -- are combined into a singular claim, we have some
22 real problems out there.

23 If there's a way for us to clearly communicate
24 what the expectation is for the claimants, and sorting this
25 out at the time of filing, perhaps we could -- we can go

1 forward. If not, we may wish to recommend that you give
2 some consideration to whatever is easiest for the parties
3 involved. Both the claimant and the Controller's office.

4 CHAIR MIYASHIRO: Mr. Silva?

5 MR. SILVA: In general, we are in concurrence with
6 staff's analysis. We do have a couple concerns we'd like
7 to raise. The first concern would be under the period of
8 reimbursement, which is section three, which is on page
9 six. The first two paragraphs of that section address
10 **E**arthquake **E**mergency **P**rocedures, **E**arthquake **P**rocedures and
11 **D**isasters and **C**omprehensive **S**afety in order. However, they
12 refer to the dates which were for the other -- for the
13 prior two -- 9 and 10 -- which we just discussed in the
14 past not for the combined.

15 Although it does note in a one-sentence paragraph
16 following that, the combined set of parameters are
17 operative for reimbursement claims, beginning fiscal year
18 2003/2004. Our concern is that kind of hiding it with one
19 sentence, while the prior two paragraphs specifically
20 relate back to '85 and 2000, might be confusing to
21 claimants.

22 One other concern, a little more minor, but
23 relating to the issues of ease of use and clarity, is on
24 page nine, which discusses the conference of school safety
25 plans, I believe that's ongoing activities -- or excuse

1 me -- one-time activities. The second bullet under F, near
2 the top of the page, it refers to routine and emergency
3 disaster procedures, but only to the extent those costs are
4 not combined under Emergency Procedures, Earthquake and
5 Disasters. And we believe that maybe something along the
6 lines of a reference back to the second, within it's -- the
7 own document -- this own document here would provide some
8 clarity such that the claimant doesn't go back to the
9 preexisting, the non-combined or consolidated P's and G's
10 and use that as their source, rather than looking at it's
11 merely referring to another section within this P's and
12 G's.

13 CHAIR MIYASHIRO: Thank you. Department of
14 Finance?

15 MR. JOHNSON: Yeah. Blake Johnson. We have no
16 concerns with the consolidation and would concur with the
17 staff.

18 CHAIR MIYASHIRO: Okay.

19 Any comments or questions from members of the
20 Commission on this? Mr. Barnes?

21 MR. BARNES: Yeah. Well, I'd ask the staff to
22 comment on Mr. Silva's recommendation, particularly the one
23 for the period of reimbursement. Any thoughts about that?

24 MS. PATTON: Mr. Silva did raise this issue this
25 morning, and to go back to Item 10, on page 11 -- on page

1 10, I'm sorry -- there are two sentences in the Emergency
2 Procedures P's and G's that clarify that the amendment is
3 only effective for ~~2002~~²⁰⁰³⁻²⁰⁰⁴ 2001 forward. And I think if we
4 added those two sentences to the consolidated, that it
5 would clear up that confusion.

6 Is that right, Shawn? Would that do it? Are --
7 you really want it moved around?

8 MR. SILVA: I think the concern would be that when
9 we really have, in a sense, three different things going on
10 at once, we have compactions of safety that have just been
11 created, so it has no prior version. But earthquakes,
12 emergency procedures has two versions. And then we'll have
13 in a sense a third version, which it consolidates together
14 with comprehensive safety.

15 So to that extent, it does bring the potential for
16 confusion and errors, and claiming and more time spent in
17 reviewing and adjusting claims because of that -- the --
18 the confusion on the part of the claimants. So we just
19 want to ensure that when this goes out to the claimants,
20 that they have a good understanding of which version
21 they're going to be relying on for that specific year.

22 And the references back to when the test claim
23 became effective are confusing when it's in the
24 consolidated, because it really is only effective 2003,
25 2004 and forward. So I'm not even sure we should even

1 refer back to '85 and '90. Those dates are just a source
2 of confusion.

3 CHAIR MIYASHIRO: Uh-huh.

4 MR. BARNES: So your recommendation is to take out
5 those two paragraphs altogether, or just to place them
6 somewhere different in the order?

7 MR. SILVA: I think my recommendation would be to
8 remove them and maybe add something to that third
9 one-sentence paragraph that is informational, that these
10 have come from these prior test P's and G's. But -- but
11 that these P's and G's are only for the -- or the period of
12 reimbursement is only 2003, 2004 and forward.

13 MR. BARNES: Uh-huh. Okay. Some of comment about
14 that.

15 MS. PATTON: Well, I think if we're -- if you want
16 to pursue consolidation, that we should take these back
17 and -- you know -- and have more discussions about the
18 language, so that we make sure they're not a confusing
19 document that we're issuing.

20 MR. BARNES: Uh-huh.

21 CHAIR MIYASHIRO: May I ask, was it at the request
22 of the claimants that consolidation was being considered?

23 MS. PATTON: Yes.

24 CHAIR MIYASHIRO: And they've now based on --

25 MS. BERG: A year ago. Right.

1 CHAIR MIYASHIRO: Because of the events --

2 MR. PALKOWITZ: The correct language was it may be
3 logical to combine them.

4 CHAIR MIYASHIRO: Right.

5 MR. PALKOWITZ: And that was June of '02.

6 CHAIR MIYASHIRO: And your view is now that you
7 would recommend against the consolidation.

8 MR. PALKOWITZ: And I mean, this is just another
9 reason, which Shawn's pointing out. I just see confusion
10 in this. And I -- I -- this -- think it's something that
11 can be reset after we go through the reimbursement period
12 and we have some claiming history.

13 CHAIR MIYASHIRO: Okay.

14 MR. BARNES: I tend to think that creates another
15 problem, because I think in the previous two that we just
16 adopted, it makes it fairly clear that claiming for those
17 end on a certain date, because this one takes over. So I
18 tend to think consolidation is still a good idea.

19 Workload is one issue. But I think just the fact
20 that we -- you know -- we have the multitude of -- of
21 mandates out there right now, which is confusing enough.
22 And particularly when there are two that -- that relate in
23 many ways to the same type of activity, I think whatever we
24 can consolidate, that's a good idea.

25 At the same time, this has been admittedly a very

1 confusing item, and I certainly wouldn't have a problem in
2 putting this over to give a little bit of time to make sure
3 that -- that this particular issue is associated with a
4 period of reimbursement and gets taken care of, because
5 that's going to be critical when the claims come in.
6 There's no sense of -- in consolidating and then in, by
7 consolidating and achieving some workload savings and some
8 consistency, then finding ourselves, you know, having to
9 deal with, you know, confusion.

10 So I -- I would wouldn't have a problem in putting
11 it over and giving the staff time to clear these two
12 matters up, 'cause I think they are pretty critical, to
13 make sure that the claims coming in are going to be right.

14 MR. SHERWOOD: I would support that.

15 MR. BARNES: Okay.

16 MS. WILLIAMS: Yeah.

17 CHAIR MIYASHIRO: My comment is a little bit along
18 the lines of -- I want to make sure that we're going to be
19 efficient. Let's say on the part of the Controller's
20 Office, against a situation that is never soft, individual
21 claims on the part of the claimants. The administrative
22 process of the claimants is going to be multiplied by
23 many-fold, claims coming in.

24 I -- I understand that if these are consolidated
25 and it works well, we may see some streamlining of

1 activities on the Controller's part. But I would want to
2 be sensitive to what Mr. Palkowitz and Ms. Berg testified
3 to. If it's confusing, then are we generating potentially
4 more work?

5 MR. BARNES: And I understand that. I tend to
6 think that, and I realize that in -- in the middle of the
7 storm, it's hard to realize that the sun's going to come
8 out some day. But I tend to think that by having two
9 mandates out there that have the potential for overlap of
10 people, you know, basically a lot of the same -- same
11 people are going to be working on both activities.

12 I think the more that we can consolidate it, the
13 better it's going to be. So that we don't end up finding
14 that -- oops, you know, this part here, you know, has to
15 get denied out of earthquake preparedness because it really
16 shouldn't be over-comprehensive plans. So we take it from
17 there, and it's too late to file a claim.

18 I just think that given the -- the potential for
19 overlap, I -- and consolidation of the activities, it's
20 better to go ahead and try to consolidate for
21 consolidation. I mean, that's a minor amount of workload
22 in terms of processing and paying the claims. But I think
23 ultimately it will pay off by, you know, a lack of less
24 having to -- to deal with -- you know -- inadvertent
25 claims, you know. Claims going from one versus the

1 other. So -- which is kind of how we got into this in the
2 first place. So I think if we can avoid that I think this
3 is good.

4 CHAIR MIYASHIRO: Okay.

5 MR. BARNES: And I think -- the only point I think
6 Shawn is making, and I -- I -- I -- I agree with it, is
7 that -- and it goes back to what you said -- is that the
8 more we can be sure up front that everybody understands
9 what the rules are in the game plan, that's fine. And
10 particularly this period of reimbursement. I think it
11 is -- that would clear up one activity here, to make sure
12 that we still don't get this claim and that claim and this
13 old claim that doesn't -- you know -- rule anymore.

14 So I think given that, and I, as I said, I'm very
15 sympathetic and in line with you about the idea of trying
16 to move this stuff through as quickly as we can.

17 But given the fact that we spend an awful lot of
18 time on all of this already, I think one extra time to make
19 sure that the right is kind of time well spent. So --

20 CHAIR MIYASHIRO: Okay.

21 Ms. Berg?

22 MS. BERG: Thank you, Mr. Miyashiro.

23 I think if we can -- if we can have just a little
24 time and put this together in a package so that it's clear,
25 that these two are ending, and then this one is starting,

1 it will go a long way to clearing up this -- this mess
2 that's out there. So I think that's going to be an
3 important piece.

4 And the -- the area that Shawn's identified, we
5 can clean that up. It will also help in this effort, and I
6 think we can do it.

7 MR. BARNES: I do to.

8 CHAIR MIYASHIRO: Ms. Geanacou?

9 MS. GEANACOU: Susan Geanacou. Department of
10 Finance. Yeah. I just want to emphasize an observation
11 that Mr. Barnes made a few minutes ago.

12 MR. BARNES: Oh, I hate to have my -- have my
13 words thrown back at me, you know. I hate that.

14 MS. GEANACOU: This is just, I hope, for
15 clarification, so that there's a -- an understanding here.
16 As you observed that the adopted P's and G's and amendments
17 in items 9 and 10 presume that there will be a
18 consolidation under the period of reimbursement. And I
19 just wanted to make sure what's being taken back on item 11
20 is just item 11, and how to consolidate, rather than
21 whether to consolidate.

22 MR. BARNES: Yes. Yes.

23 MS. GEANACOU: Otherwise they were affecting 9 and
24 10 as well.

25 MR. BARNES: That's correct. I think the two

1 decisions we made should stand.

2 MS. GEANACOU: Okay.

3 MR. BARNES: And the only thing I'm suggesting is
4 that we put this one over to clarify this particular
5 till --

6 MS. GEANACOU: Okay. Thank you.

7 CHAIR MIYASHIRO: Paula, could -- do we need a
8 motion to put it over?

9 MS. HIGASHI: We can just take it back.

10 CHAIR MIYASHIRO: Okay.

11 MS. HIGASHI: And we will agree to convene another
12 pre-hearing conference to hear the language, and just
13 remind the parties that we like getting our comments in
14 writing so we can react, and also to share comments in
15 writing with the Commissioners before the hearing.

16 CHAIR MIYASHIRO: Okay. We'll note that. Get
17 back and bring it back to us.

18 MS. HIGASHI: Thank you.

19 This brings us to Item 12. This is the
20 bi-lateral hearing process, and all of you know, we talked
21 about this in prior meetings, that because of the proposed
22 cuts to the Commission's budget -- it's not just the
23 Commission's budget, but to many other state agency
24 budgets regarding the number of meetings that are held each
25 year, we are having to cut back to six meetings a year.

1 And so what we have done is presented you with the schedule
2 with the proposed cancellations for the remainder of this
3 year, as well as the schedule for next year's
4 hearings on the bi-monthly basis.

5 And in order to effect these changes, I would need
6 to have the Commission vote to actually cancel those
7 hearings, and then to adopt next year's calendar as well.
8 We have also presented information for you on how we
9 propose to implement the schedule. At this point in time,
10 we -- staff has had a number of meetings. I have met with
11 different parties, claimants, representatives and talked
12 with folks generally about how we would initially plan to
13 try to operate without making any regulatory changes until
14 we have a sense of whether or not we can actually
15 accommodate this with the timelines that we have proposed.
16 And if so, with hearings at that point in time, then we
17 could move forward with a package if necessary.

18 On the other hand, we have already discovered that
19 when you receive a Supreme Court decision on the same week
20 that you're slated to release draft staff analysis, that it
21 can be -- put a wrinkle in your plan. And so we're still
22 trying to recover from that, just in the first instance,
23 for getting documents out for the July hearing ten weeks
24 before the hearing. It's probably going to be more like
25 the regular schedule of eight weeks. But we are working

1 very hard with limited staff to try to make the schedule.

2 We've also laid out for you what we hope our
3 agendas will look like in the near future. The issue that
4 comes up naturally, is with more agenda items, how long
5 will the hearings be? And that's something that, like
6 today, it's always hard to tell, because until the comments
7 are in on the agenda items, we're never quite sure just how
8 much dispute there is on the gray areas that we can get
9 testimony, and just how much discussion you would require
10 in order to come to a decision.

11 So we wanted to give you basically notice that by
12 going to a bi-monthly hearing schedule, that we will be
13 doing everything we can to communicate with all of the
14 parties, all of the claimants, to use our website to the
15 maximum to get information out on as timely a basis as
16 possible.

17 But the schedule is only going to work if we have
18 everyone's cooperation and participation in getting the
19 information to us on a timely basis. And with the same
20 token, we'll be trying very hard to make these schedules.
21 But as you can see, it puts many more items before you, if
22 in fact you are faced with what would be a two-month
23 agenda.

24 CHAIR MIYASHIRO: What provisions do we have if
25 we find after, say we adopt this schedule, that we need to

1 add a meeting in between these two months' scheduled
2 meetings?

3 MS. HIGASHI: Then we would obviously do
4 everything we can to accommodate it, because the sooner we
5 do that, the better. This would be our regular meeting
6 schedule that would be -- we would be adopting, and special
7 meetings could be scheduled.

8 CHAIR MIYASHIRO: I guess what I'm asking is can
9 a special meeting be scheduled through an act of the Chair?
10 Executive Director? Do we need to anticipate a special
11 meeting and have that scheduled at a -- at an official
12 meeting?

13 MS. HIGASHI: No. We can schedule. This is our
14 hearing schedule. This is our meeting and hearing schedule
15 for the agenda items. There are other Commissions that
16 could be called.

17 CHAIR MIYASHIRO: Okay.

18 MS. HIGASHI: And our costs here are not just the
19 costs of Mr. Lazar's travel and salary, but also the cost
20 for the court reporter. Certainly that adds to our
21 budget.

22 MR. SHERWOOD: Might add two other members who
23 would require travel.

24 MS. HIGASHI: Absolutely. If we've a San Diego
25 member or another member, our costs would increase

1 dramatically.

2 CHAIR MIYASHIRO: All right. I think, given the
3 difficult fiscal times we all face, this is a responsible
4 act.

5 Mr. Barnes?

6 MR. BARNES: I apologize that I really didn't have
7 a chance to look this up. But I notice that in the
8 Executive's Summary, you mention Governing Code Section
9 17/526.

10 MS. HIGASHI: Yes. That's correct. That's a
11 provision that specifies that we will meet monthly. It's
12 our understanding that that provision would be amended as
13 part of the budget trailer bills.

14 MR. BARNES: And has anybody proposed -- all
15 right. Has it been picked up?

16 MS. HIGASHI: Yes. It's my understanding it's
17 part of the budget package.

18 MR. BARNES: Okay.

19 MS. HIGASHI: That would be -- would have been
20 amended for this.

21 MR. BARNES: I see someone coming up here to keep
22 us up to speed on this.

23 MR. ANDERSON: Dirk Anderson. Department of
24 Finance. I just wanted to confirm that that's the trailer
25 bill part of the trailer package of the budget.

1 MR. BARNES: What does it say?

2 MR. ANDERSON: We can go bi-monthly.

3 CHAIR MIYASHIRO: It authorizes bi-monthly and
4 and -- right.

5 MR. BARNES: Doesn't prevent us from holding a
6 special meeting if we need to.

7 MR. ANDERSON: I'm not familiar with those
8 provisions.

9 MS. HIGASHI: It would not. As I understand, that
10 requirement was first added because the Commission was
11 meeting three and four times a year. And there were many
12 more times that needed to be dealt with. But they were
13 during some periods of time when there were other types of
14 matters that were being considered, like SB1033.

15 CHAIR MIYASHIRO: Ms. Williams?

16 MS. WILLIAMS: Can we then change the dates before
17 the budget's signed?

18 MR. BARNES: Yeah. That's --

19 MS. WILLIAMS: I'm not sure we can. If the
20 language is in the trailer bill, it hasn't been signed.

21 MR. STARKEY: Let me just weigh ⁱⁿ a little bit.
22 Basically what this statutory scheme does, it lays out
23 statutory minimum, even with the current statutory scheme
24 the way it's set up is the chairperson -- it addresses the
25 chairperson can cancel the meeting for good cause. And

1 clearly -- clearly for the ensuing, upcoming fiscal year
2 we're going to have good cause, because of the budget
3 considerations.

4 At the same time, on the current scheme, under the
5 amended statutory scheme, the Commission has complete
6 flexibility with the setting of hearings to move the
7 agenda.

8 So you have complete flexibility. The only
9 restrictions are the notice requirements. And so if -- if
10 you -- you're -- you give adequate notice requirements,
11 you're going to -- and set those meetings, and if they
12 would be publicized through the normal course.

13 CHAIR MIYASHIRO: Okay. Any other discussion?

14 Okay. Paula, we need to vote on this?

15 MS. HIGASHI: I would like to vote on the -- this
16 for Exhibit A and B. Exhibit A reflects the cancellations,
17 and Exhibit B -- I should say Exhibit A. The back of it
18 reflects the 2004 hearing calendar. Therefore, also helps
19 all of the parties before us in terms of budgeting for
20 future attendance at meetings.

21 CHAIR MIYASHIRO: Do I have a motion on the staff
22 recommendation?

23 MS. WILLIAMS: So moved.

24 MR. LAZAR: Second.

25 CHAIR MIYASHIRO: Motion and second.

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Paula, call roll.

MS. HIGASHI: Mr. Lazar?

MR. LAZAR: Aye.

MS. HIGASHI: Mr. Sherwood?

MR. SHERWOOD: Aye.

MS. HIGASHI: Ms. Williams?

MS. WILLIAMS: Aye.

MS. HIGASHI: Mr. Barnes?

MR. BARNES: Aye.

MS. HIGASHI: Mr. Miyashiro?

CHAIR MIYASHIRO: Aye.

MS. HIGASHI: Thank you.

This brings us to Item 13, the last item on our agenda. But before I start my report, I would just like to make a couple of introductions.

It's -- today's hearing has brought someone, a visiting retiree, and I didn't want his attendance to go unnoticed, and that's Jim ^{Apps}~~Abbs~~, who was formerly with the Department of Finance. And he's known as "Mr. Mandates" around the Capitol. Something caused Jim to visit us today, and he's -- he was talking about reading the Bee lately.

Sitting in front of him is John Corach. And John is with the State Controller's Office, and he has not been in the Mandates Hearing since the days when Graduation

1 Requirements were always postponed. So I'd like John to
2 stand. He's back at the State Controller's Office, and
3 we're all happy to see him back here, and welcome him to
4 our hearing.

5 CHAIR MIYASHIRO: Thank you, Jim. Thank you,
6 John, for attending. And your presence is missed, I can
7 tell you. You might not miss us, though.

8 MS. HIGASHI: Then I have three people I'd like to
9 introduce from our staff. ^{Soraida Melgar} ~~Sariah Melanberg~~.

10 ^{Melgar} MS. MELANBERG: Hi everyone.

11 MS. HIGASHI: Charles Frank, better known as
12 "Charlie." And our newest law clerk, Amber Pierce. Some
13 of you may recall that she used to sit at the table a year
14 ago, representing the Department of Finance. And she is a
15 law clerk, a student at McGeorge.

16 CHAIR MIYASHIRO: Welcome to the Commission
17 staff.

18 MS. HIGASHI: In our report I show pending
19 workload, and I'm sure it's not a surprise to anyone, we
20 are just starting to receive test claims in the mail. Over
21 the last couple of days, my in-box has been stacked about
22 four or five inches deep with new test claim filings. So I
23 believe the June rush is beginning, and it will also be
24 part of the statute of limitations filings' rush.

25 In terms of the budget, there were no issues that

1 affected the Commission's budget, and I think the issues
2 that affected mandates should probably be reading about in
3 the newspapers recently in terms of school budget. The May
4 revision proposes to defer education mandates. And that
5 would result in a savings of 125 million dollars.

6 The local agency mandates, as you know, had been
7 already ~~postponed~~^{Proposed} for suspension in the Governor's
8 proposal. There are some new proposals regarding
9 suspensions and repeals for some of the newer mandates that
10 had not previously been part of that list. There's also a
11 proposal to repeal the Open Meetings Act Mandate. And a
12 proposal to repeal some 27 other mandates that are part of
13 the mandates that have been suspended for a number of
14 years.

15 And those recommendations have been discussed,
16 certainly, in the Senate Budget Committees' subcommittees,
17 and I believe will have further discussion in the Assembly
18 Budget Committees.

19 The Commission's budget has been approved by both
20 houses now, and the subcommittees and our report -- our
21 last report to the legislature has been filed.

22 On a new front, I'd like to report that for those
23 of you who may have missed the news, there is now an
24 assembly special committee on state mandates, chaired by
25 Assemblyman John ~~Lard~~^{LAYAD}. And yesterday it held -- the

1 committee held its first hearing. I have the agenda. And
2 the handout that I provided to the committee, to give to
3 you. The committee has a couple objectives.

4 The first and short-term objective of course is to
5 evaluate the Governor's budget proposals as they relate to
6 mandate suspensions, mandate deferrals and mandate repeals.
7 And so the process for the committee to do that will be
8 proceeding over the next couple of weeks. And it -- it's
9 our -- already late, but at least they have started a
10 process for discussion. They have a long -- the longer
11 term objective of actually looking at the mandates'
12 process. And yesterday's hearing was really designed to
13 give the committee members background information on what
14 the mandates' landscape looks like and to introduce the
15 committee members to the agencies that are on the map in
16 terms of mandates.

17 And the agenda shows you that we started off with
18 Mary O'Malley giving a presentation on what's a mandate.
19 And she gave examples of mandates that have been approved
20 by the Commission; mandates that have been denied by the
21 courts, et cetera. Just to give examples. And basically
22 provided a framework for looking at mandates.

23 The -- I was the second speaker going over the
24 Commission processes, passing out the brochure. And what's
25 attached here is the information that the committee staff

1 and the committee chair had requested that I bring to the
2 hearing, information on our processes, as well as what is
3 pending before the Commission. So what we ended up doing
4 is preparing different versions of information that we have
5 previously given to you.

6 And so if you want to look at your packets, if you
7 turn to page three, the first section of approved claims
8 with parameters and guidelines and statewide costs
9 estimates are detailed. These are the mandates that the
10 Commission has approved over the past two years that have
11 the -- now been reported to the legislature, and in the
12 cost for reimbursement have been deferred. They had --
13 there's not been a claims bill for two years now. And the
14 amount reflected here is, I think, about 357 million
15 dollars.

16 It -- originally it was over 400 million dollars,
17 but after we struck out the school site council, the amount
18 goes down considerably. And there's just a brief overview
19 of each of the mandates. And some of you will recall
20 having voted on them.

21 When you get to page eight, you see a list of all
22 of the test claims and the programs where the parameters
23 and guidelines and the statewide cost estimates are still
24 pending. And this list is basically the list of mandates
25 that will be reported to the legislature next year. And so

1 it's a preview of what is to come.

2 When you get to page 11, it is a different display
3 of all of the test claims that we have yet to decide, that
4 have been filed. The first several pages are the Education
5 Mandates. And as we go through this, eventually, on page
6 18, you reach the pending local agency mandates. And what
7 I did for purposes of this hearing is I organized the test
8 claims based on the assembly policy committee in which the
9 mandate would have been voted on and the test claims
10 legislation would have been through. And so this was an
11 interesting review as well, because I had never done it
12 that way.

13 But certainly, for purposes of the hearing, we
14 have been trying to schedule some of the mandates together,
15 if we thought they had common witnesses. So if committee
16 members were all very -- those were present which is only a
17 few -- were very interested in seeing what else is here,
18 and concerned about what this means to the state in terms
19 of potential liability. We had some discussion with them
20 where questions were asked mainly about the liability
21 period, how far back do we go, and going over trying to
22 explain about the filing dates and reimbursement, and
23 depending on the test claim, when it was filed and what the
24 law was at that point in time with the reimbursement
25 periods could differ just slightly.

1 And Mr. Barnes was also there. Mr. Miyashiro was
2 also at the hearing. And I encourage you to add anything,
3 since -- since I was sitting there. I'm trying to answer
4 questions. I wasn't as observant, perhaps.

5 CHAIR MIYASHIRO: I had to leave for the second
6 half, but did the committee provide any indication of what
7 its next step would be, and what role Commission staff here
8 would have in that?

9 MS. HIGASHI: It seems as if the next step is more
10 focused on the Governor's proposals in the May revision,
11 the suspensions, the deferrals, repeals.

12 CHAIR MIYASHIRO: So they have not asked for
13 anything else from us?

14 MS. HIGASHI: At -- at the conclusion of the
15 hearing, I went up to speak with Dan Wahl, who is the
16 committee staff, and asked him if I should be taking back
17 in the issue, when Mr. ~~Lard~~^{Laid} asked me if I had any proposed
18 legislation I would want to suggest that would improve the
19 efficiency of the Commission. And I had indicated that I
20 would bring -- be bringing that back to you today to
21 determine whether or not there were any proposals that we
22 could put forward.

23 And Mr. Wahl suggested that if we had any
24 proposals, we should bring them forward to him. And we
25 have not done that before. And so I wanted to have a

1 discussion about that.

2 Mr. Barnes, certainly he indicated that the State
3 Controller's Office would be sending some proposals
4 forward.

5 MR. BARNES: The clear message was that they don't
6 have a lot of time. And so the focus is on the financial
7 proposals. At the same time, they have a number of pieces
8 of the legislation that they're trying to -- you know --
9 provide, advise on with regard to the -- to the assembly.
10 And it's AB837B613. Actually, all of those legislative
11 items that Paula listed here. I think they certainly are
12 interested in any suggestions from a legislative
13 perspective that either the Commission or the individual
14 members or anybody else for that matter has, that would
15 address, you know, some of the -- the criticisms and -- and
16 public -- you know -- perceived problems associated with
17 mandate program.

18 And so because -- however, they're -- they're on a
19 very short time frame. My impression was they were going
20 to try to wrap up whatever they were going to do within
21 about a week at most. So by the end of next week, I would
22 think they're going to be pretty much done with what
23 they're doing, and that's mainly 'cause they're -- they
24 have a budget-oriented focus.

25 So to the extent that either the Commission or you

1 know, members or anybody else has any input to them, they
2 need to get it to them in very early this next week.

3 CHAIR MIYASHIRO: One thing that occurs to me is
4 that the Governor has asked that the legislature, in
5 addition to addressing the budget, challenge what's in
6 front of us, affecting the fiscal year, that legislature
7 also address structural issues with the budget. And I
8 think that the mandates process and the claiming would fit
9 into that.

10 Did you get a sense that the committee would be
11 functioning during the summer? Let's see, assuming you
12 have a timely budget, after the adoption of a budget, and
13 address some of the more structural issues.

14 MS. HIGASHI: That's certainly the sense I've
15 gotten from Dan Wahl's conversations with us, and also from
16 Mr. Lard's statements that he made at the hearing. I think
17 they're just immediately focused on the budget. But they
18 wanted to continue the discussion.

19 CHAIR MIYASHIRO: Because I guess I would -- I
20 would think it would be appropriate for this Commission to
21 meet the executive assistant in ideas that would streamline
22 the -- facilitate our process. If there are ideas that we
23 could contribute, then I would think that it would be
24 appropriate that some of -- the executive officer -- that
25 we participate. I don't know if other people have

1 different feelings on that.

2 MR. LAZAR: I think of -- I think it would be a
3 mistake not to participate. But influence the process.

4 MR. BARNES: I think the question is yeah, in
5 what manner is Paula going to participate? And do we want
6 her to, again, be the short time frame? The only thing, it
7 will be able to comment on this group, will be the
8 Department of Finance's proposal for consolidation for
9 suspension, that kind of thing.

10 So the question is, with regard to kind of longer
11 term, you know, focus, or even potentially short term
12 changes, who do we want to -- do we have any ideas that you
13 should be pushing forward with, or is she basically just
14 going to be available to answer questions and help define
15 what the impact of -- of various proposals are going to be?

16 MR. SHERWOOD: Well, I was looking more along the
17 longer term structural, I think, one week, if that's what
18 we're looking at. That may be difficult for Paula probably
19 to have too much input, long term significance. I think
20 she has to be available, though, for, questions.

21 MR. BARNES: Right.

22 MR. SHERWOOD: But I think in the long run, she
23 needs to be available for questions. But also I think if
24 any of us are, or staff should be thinking about any type
25 of improvements that can be offered, and I would imagine

1 we, as Commission members, should support -- well, we would
2 be in a position to determine whether we wish to support
3 those type of issues.

4 MR. BARNES: So we're asking her to actually kind
5 of come up with some ideas that could be presented to us
6 for approval to go ahead and foster as the Commission's
7 proposes.

8 MR. SHERWOOD: I think that makes sense to me, and
9 obviously if we have any also, too.

10 MR. BARNES: In the long term, and in the short
11 term, she's available to them as they need to clarify
12 impacts or answer questions or whatever.

13 MR. SHERWOOD: Correct. Because we know this is a
14 complicated process, and frankly, she probably knows it as
15 well as anybody.

16 MR. BARNES: Sure.

17 MR. SHERWOOD: And I think her input is needed and
18 valuable. I'm sure that maybe as long -- with the rest of
19 the staff -- has had to work with this system over the
20 years. And I think it would be really valuable assistance
21 to the state in this issue, in the long term and short
22 term.

23 MR. LAZAR: Uh-huh.

24 MR. BARNES: Okay.

25 CHAIR MIYASHIRO: Okay. You've heard the

1 sentiments of the members.

2 MS. HIGASHI: Thank you. I appreciate that. What
3 I'll do is continue to keep you updated if we receive
4 anymore communication from Mr. Lard's office regarding the
5 committee and its future hearings.

6 CHAIR MIYASHIRO: Okay.

7 MS. HIGASHI: Are there any questions on any of
8 the other information in the packet? I think the only bill
9 that was pending here that I -- I note major changes in, I
10 tried to do a check last night, is the Carnet Bill has been
11 amended now. And the block grant part of the bill has been
12 deleted. But interestingly, what appeared in the bill
13 and -- is amendments to the Education Code that were
14 basically make the mandates -- I think the mandates that
15 are listed here optional programs.

16 And is Dr. Berg here?

17 MS. BERG: Yes.

18 MS. HIGASHI: If she could clarify that for me,
19 but that is how I understand, when I just glanced at the
20 bill last night.

21 MS. BERG: That's true.

22 MS. HIGASHI: And so the category proposal is now
23 gone, but it's making those mandates optional.

24 MR. BARNES: Okay. The one thing I did hear was
25 that AB637, which is listed as being suspended, the

1 Republican member, and he wasn't there, but his staff
2 person commented that whatever came out of this, they
3 wanted to move ahead with AB637. So that's one -- one
4 could see the light of day as we go forward.

5 CHAIR MIYASHIRO: At yesterday's hearing, assembly
6 hearing?

7 MR. BARNES: Right.

8 MS. HIGASHI: And because we weren't at
9 appropriations committee -- I think it's still on
10 suspension -- there was -- when I checked the file this
11 morning, it didn't consider -- it didn't appear as having
12 been changed, unless anyone here has any new information.
13 The next hearing agenda is here, and we are still working
14 on the test claims. So there could be some changes. We
15 hope not.

16 And we have a number of proposed parameters and
17 guidelines that will be coming up. And we have a couple
18 incorrect reduction claims. And also, a proposed
19 regulatory action.

20 CHAIR MIYASHIRO: Okay.

21 MS. HIGASHI: Are there any questions?

22 MR. BARNES: I -- I probably didn't get this from
23 my staff, but just -- you know how many more graduation
24 requirement IRCs we have? It seems like we still kind of
25 dribbling them out just one more.

1 MS. HIGASHI: Just one more.

2 MR. BARNES: Is this the one?

3 MS. CRUZ: No. There is one more in July.

4 MR. BARNES: One more in -- after this. Any
5 reason it can't get into this?

6 MS. CRUZ: That one actually has a different --

7 MR. BARNES: I'm sorry?

8 MS. CRUZ: It has a different issue.

9 MR. BARNES: Okay. Thank you.

10 MS. HIGASHI: There's one other report that I
11 would like to add to the agenda as part of the
12 informational part of our meeting. And that is all of you
13 note the School Site Council case was decided by the
14 Supreme Court, and I thought it would be a good idea,
15 certainly for Robert, to hear.

16 CHAIR MIYASHIRO: I think I want to hear staff's
17 summary of the Supreme Court decision, and we don't
18 necessarily have to discuss in open session what that means
19 for other cases, but I would like to -- just an explanation
20 of what the purpose here is.

21 MR. STARKEY: I'll be happy to do that.

22 On May 22nd, the California Supreme Court issued
23 its decision in the Department of Finance versus Commission
24 on State Mandates. That's the case we've been referring to
25 throughout today's hearing, as the School Site Councils

1 case. It's on the agenda. It's under Pending Litigation,
2 Item Number 7.

3 This report at this time is an informational item.
4 Comments about the decision as they may relate ~~depending on~~ ^{to pending}
5 litigation, of course, will be reserved to closed executive
6 session.

7 The case involves the Department of Finance
8 challenging the School -- School Site Councils test claim.
9 The test claim concerned the requirement for school site
10 councils and advisory committees to have agendas and
11 meeting notices to comply with the Brown Act. The
12 Commission found the test claim legislation constituted a
13 reimbursable state mandated program.

14 The Commission's decision was upheld by the
15 Superior Court, and then by the Third District Court of
16 Appeal, last July. In reaching its decision, the Court of
17 Appeal concluded that a state mandate is established under
18 Article XIII B, section 6, when ~~which~~ ^{the} local governmental
19 entity has no reasonable alternative and no true choice but
20 to participate in the program, and incurs additional costs
21 associated with an increased or higher level of service.

22 The court of appeals stated ~~the~~ the rationale was
23 contrary to the Commission's longstanding view, following
24 prior case law, that a state mandate must be required in
25 the legal sense of being ordered or commanded by the state.

1 The Commission and the Department of Finance filed
2 separate petitions for review by the State Supreme Court in
3 August of last year. The Supreme Court granted review in
4 October on the fundamental issue of whether legal
5 compulsion is necessary to establish a reimbursable state
6 mandate under article XIII B, section 6. That was the
7 issue presented. The Court permitted the California State
8 Association of Counties and the California School Boards
9 Association, Education Legal Alliance, to file friend of
10 the court briefs in support of the claimant school
11 districts.

12 After briefing by the parties, the Court requested
13 additional briefing on the issue of whether existing
14 funding for administrative costs for school site councils
15 was available to cover the costs of agendas and meeting
16 notices.

17 The case was heard on May 6, and as mentioned, it
18 was -- the decision was issued last week. The California
19 Supreme Court rejected the Court of Appeal rationale, and
20 concluded as follows:

21 As to eight of the nine programs at issue,
22 claimants were not legally compelled to participate in
23 those programs, and cannot therefore claim they were
24 compelled to incur costs for the agenda and meeting
25 notices.

1 As to the remaining program, the Court found no
2 mandate because funds had been provided by the state from
3 which the program expenses could be paid.

4 In reaching its decision, the Court stopped short
5 of announcing a rule of law for all future cases. Instead,
6 the Court left open for future cases the ultimate
7 resolution of whether legal compulsion is necessarily
8 required under the constitutional definition of mandate.
9 Also, the Court left open what factors, if any, might
10 create a practical, or as we lawyers like to say, a de
11 facto mandate. On the facts presented, the Court ruled
12 there was no evidence in this particular case of practical
13 compulsion.

14 While the Court left open for future cases the
15 ultimate legal issue, the decision stands for a general
16 proposition that state-imposed restrictions or conditions
17 on voluntary local programs ^{are} ~~or~~ not mandates under the
18 Constitution.

19 And I emphasize that that is a general proposition
20 that can be drawn from the case, and the staff, in making
21 its analysis, will now use this case as a tool to help the
22 Commission to make the proper legal finding in future
23 cases.

24 I want to take this opportunity to commend legal
25 staff for their efforts throughout this litigation, and

1 especially Senior Commission Counsel Camille Shelton, who
2 ably presented the Commission's position before the Supreme
3 Court.

4 Again, any questions about the case as it may
5 affect pending litigation can be addressed in closed
6 session. If there any other general questions, I'll try to
7 answer those.

8 CHAIR MIYASHIRO: Thank you, Paul.

9 Any questions of Paul?

10 I'd like to ask Ms. Geanacou if you'd like to add
11 anything from the Department of Finance's perspective?

12 MS. GEANACOU: Sure.

13 Hello again. Susan Geanacou, Department of
14 Finance. I too was at the Assembly Committee on Mandates
15 yesterday afternoon, and presented a summary of the same
16 case. Again, you may want to reserve some discussion of
17 this for your closed section purposes, but one point I made
18 or drew from the case is that the Court recognized that
19 sources of revenue other than that which is found in your
20 test claim statutes that are -- are being examined can be
21 basis for defeating finding of reimbursability.

22 In this situation, it was the underlying
23 educational program that had the money that could be used
24 to cover the Brown Act cost. It was not the test claim
25 statutes themselves. So I think what the decision leaves

1 open is the possibility of looking to other sources of
2 revenue to defeat finding of reimbursability.

3 By that, I mean we have to look at the interplay
4 between the court's finding and the Government Code Section
5 17556. I believe it's subdivision (e). Which by it's
6 terms would appear to require revenue to be in the test
7 claim statute itself in an amount sufficient to cover the
8 cost of the activities in order for there to be an
9 exemption to costs mandated by the state.

10 So I -- I did mention that in -- in the testimony
11 yesterday as something that may warrant a future review,
12 because it was pointed out by one of my colleagues, Mark
13 Hill, from our Education Unit, that it has historically
14 been Finance's practice, when appropriate, to make
15 reference to funding in the Budget Act that was designated
16 a certain purpose, and I think we have concerns as to
17 whether or not that has been viewed favorably by the
18 Commission, and I think we would like to see this case
19 standing for the Court endorsing looking more broadly at
20 what revenue can be used to possibly fund a mandate and
21 defeat reimbursability.

22 CHAIR MIYASHIRO: Thank you. All right. Thank
23 you, Susan. Thank you, Paul, for those presentations.

24 Paula, any other issues to come before the
25 Commission on concession?

1 MS. HIGASHI: There's no business from staff. We
2 might check to see if there is any public comment.

3 CHAIR MIYASHIRO: Any comments from members of the
4 audience?

5 Okay. With that, I think we will move to closed
6 session.

7 The Commission will now meet in closed executive
8 session pursuant to Government Code section 11126,
9 subdivision (e) to confer with and receive advice from
10 legal counsel, for consideration and action, as necessary
11 and appropriate upon the pending litigation listed on the
12 published notice and agenda; and to confer with, and
13 receive advice from legal counsel regarding potential
14 litigation; and Government Code sections 11126, subdivision
15 (a) and 17526, the Commission will also confer on personnel
16 matters listed on the published notice and agenda.

17 We will reconvene in open session at this location
18 in approximately 30 minutes.

19 (Off the record.)

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

1 with, and receive advice from legal counsel regarding
2 potential litigation; and Government Code section 11126
3 subdivision (a) and 17526, to confer on personnel matters
4 listed on the published notice and agenda.

5 All required reports from the closed session
6 having been made, and with no further issues to discuss, I
7 entertain a motion to adjourn.

8 All those in favor please say aye.

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

10 CHAIR MIYASHIRO: Opposed?

11 Meeting is adjourned.

12 (Proceeding concluded at 12:09 P.M.)

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ERRATA SHEET

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<u>Page</u>	<u>Line</u>	<u>Correction</u>
2		Change "Program Analyst" to "Commission Counsel"
8	1	Change "April 24" to "May 29"
10	7	Change "Party" to "Parties"
11	20	Change "Finance" to "Findings"
11	21	Change "that asking" to "but asked"
12	2	Change "time ongoing" to "time and ongoing"
12	3	Change "with mandate" to "with the mandate"
12	10	Change "higher of" to "higher level of"
12	10	Change "do impose" to "do not impose"
15	9	Change "adjusted" to "suggested"
15	22	Change "Ms. Tokarski" to "Ms. Taylor"
20	2	Change "account and putting" to "account when putting"
20	20	Change "go in consent" to "go on consent"
21	25	Change "benefits" to "benefit"
22	12	Change "SCO" to "Controller"
22	14	Change "SCO" to "Controller"
26	13	Change "Commission of staff" to "Commission Staff"
26	23	Change "160984" to "1609 84"
27	12	Change "160984" to "1609 84"
27	14	Change "on the State" to "on State"

E R R A T A S H E E T

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>43</u>	<u>4</u>	<u>Change "Motion to Second" to "Motion and Second"</u>
<u>43</u>	<u>20</u>	<u>Change "Costs" to "Cost"</u>
<u>43</u>	<u>22</u>	<u>Change "both of those" to "of those"</u>
<u>49</u>	<u>3</u>	<u>Change "2002-2001" to "2003-2004"</u>
<u>60</u>	<u>9</u>	<u>Change "177526" to "17526"</u>
<u>61</u>	<u>21</u>	<u>Change "weigh a" to "weigh in a"</u>
<u>63</u>	<u>18</u>	<u>Change "Jim Abbs" to "Jim Apps"</u>
<u>63</u>	<u>25</u>	<u>Change "graduation" to "Graduation"</u>
<u>64</u>	<u>9</u>	<u>Change "Sariah Melanberg" to "Saraida Melgar"</u>
<u>64</u>	<u>10</u>	<u>Change "Ms. Melanberg" to "Ms. Melgar"</u>
<u>65</u>	<u>7</u>	<u>Change "postponed" to "proposed"</u>
<u>65</u>	<u>25</u>	<u>Change "Lard" to "Laird"</u>
<u>69</u>	<u>17</u>	<u>Change "Mr. Lard" to "Mr. Laird"</u>
<u>76</u>	<u>13</u>	<u>Change "Council" to "Councils"</u>
<u>77</u>	<u>4</u>	<u>Change "depending on" to "to pending"</u>
<u>77</u>	<u>18</u>	<u>Change "which" to "the"</u>
<u>77</u>	<u>22</u>	<u>Change "stated the rationale" to "stated rationale"</u>
<u>79</u>	<u>17</u>	<u>Change "or not" to "are not"</u>
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