

PUBLIC HEARING
COMMISSION ON STATE MANDATES

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ORIGINAL

TIME: 9:37 a.m.
DATE: Friday, June 20, 2003
PLACE: Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California

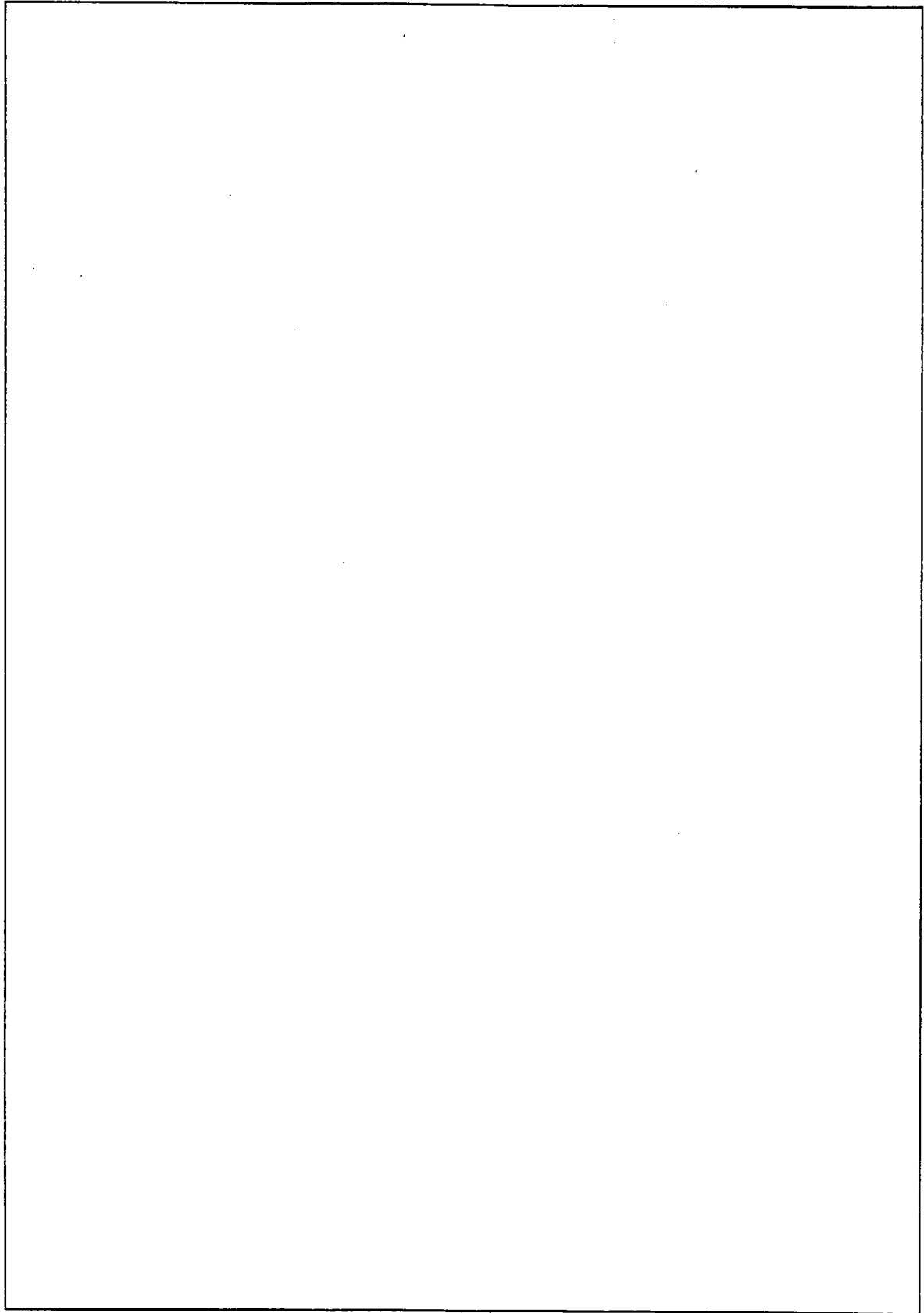
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: DANIEL P. FELDHAUS, CSR #6949, RDR, CRR

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ROBERT MIYASHIRO
Representative for
STEVE PEACE, Director
State Department of Finance

SHERRY WILLIAMS
Representative for
TAL FINNEY, Interim Director
State Office of Planning and Research

WALTER BARNES
Representative for
STEVE WESTLY
State Controller

JOHN S. LAZAR
City Council Member
Turlock City Council
(*Appearing via telephone*)

WILLIAM SHERWOOD
Representative for
PHILIP ANGELIDES
State Treasurer

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
~~Commission~~ Counsel
Chief Legal

CAMILLE SHELTON
~~Staff~~ Counsel
Senior Commission

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A P P E A R A N C E S

Appearing Re Item 2:

For County of Los Angeles:

Leonard Kaye, Esq.
Office of the Audit-Controller
County of Los Angeles
500 W. Temple Street, Suite 603
Los Angeles, CA 90012

For Department of Finance:

Susan S. Geanocou
Senior Staff Attorney
Department of Finance
915 L Street
Sacramento, CA 95814

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1 BE IT REMEMBERED that on Friday, June 20, 2003,
2 commencing at the hour of 9:37 a.m., thereof, the
3 Commission on State Mandates, 980 Ninth Street,
4 Suite 300, Sacramento, California, before me, DANIEL P.
5 FELDHAUS, CSR #6949, RDR and CRR, the following
6 proceedings were held:

7 --oOo--

8 (The following proceedings occurred with Mr. Lazar
9 appearing via telephone.)

10 MEMBER LAZAR: Hello. I'm here and Katherine
11 is here.

12 CHAIR MIYASHIRO: Seeing that it is now 9:35, I
13 would like to call the meeting of the Commission on
14 State Mandates to order.

15 Paula, if you could call the roll?

16 MS. HIGASHI: Mr. Barnes?

17 MEMBER BARNES: Here.

18 MS. HIGASHI: Mr. Lazar?

19 MEMBER LAZAR: Here.

20 MS. HIGASHI: Mr. Sherwood?

21 MEMBER SHERWOOD: Here.

22 MS. HIGASHI: Ms. Williams?

23 MEMBER WILLIAMS: Here.

24 MS. HIGASHI: Mr. Miyashiro?

25 CHAIR MIYASHIRO: Here.

1 MS. HIGASHI: Thank you.

2 I'd like to note that on Item 1, we don't have any
3 appeals pending, so there is nothing really to be heard.

4 On Item 2, it's a request for reconsideration of a
5 prior Statement of Decision. This item will be presented
6 by Camille Shelton.

7 MS. SHELTON: This is a request for reconsideration
8 of the Commission's decision in the Crime Victims'
9 Domestic Violence Incident Report test claim. The
10 purpose of reconsideration is to allow the Commission
11 to correct its ruling, if the Commission determines that
12 the decision contains an error of law. Under the
13 Commission's regulations, five affirmative votes are
14 required to grant the request for reconsideration and
15 schedule the matter for hearing on the merits of the
16 request.

17 The Commission partially approved this claim for
18 the activity of storing domestic violence incidence
19 reports and face sheets for five years. Reconsideration
20 of this claim is requested because a decision does not
21 analyze prior law codified in Government Code sections
22 26202 and 34090.

23 Prior law requires counties and cities to maintain
24 all records for a minimum of two years before
25 destruction. Staff recommends that the Commission

1 approve this request for reconsideration in order to
2 address the prior law.

3 The County of Los Angeles has filed comments on the
4 merits of the reconsideration. Thus, if the Commission
5 adopts the staff recommendation today, the next step in
6 the process is to issue the draft staff analysis on the
7 merits of the claim.

8 All parties, including the County of Los Angeles,
9 the Department of Finance, other affected state agencies
10 and interested parties may file comments on the draft.

11 A final staff analysis will then be prepared and a
12 hearing on the merits of the request will be scheduled.

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

15 MS. GEANACOU: Susan Geanacou, Department of
16 Finance.

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

18 MS. HIGASHI: At this time, I'd like to request that
19 the parties please raise their right hands for the
20 swearing in of witnesses.

21 Do you solemnly swear or affirm that the testimony
22 which you're about to give is based upon your personal
23 knowledge, information or belief?

24 MR. KAYE: Yes, I do.

25 MS. GEANACOU: Yes, I do.

1 MS. HIGASHI: Thank you.

2 CHAIR MIYASHIRO: Okay, I'd like to remind everyone
3 as we speak -- and I'll start off, this is Robert -- to
4 identify themselves, as we make comments for the benefit
5 of John, who is with us by telephone.

6 MEMBER LAZAR: Thank you.

7 CHAIR MIYASHIRO: Mr. Kaye?

8 MR. KAYE: Thank you.

9 This is Leonard Kaye, County of Los Angeles.

10 I'd like to start off by focusing on the particular
11 paragraph or so that is purported to contain the error
12 of law. And I'd like to read it in for the record, so
13 that this might serve as sort of a framework for my
14 comments, so that we don't wander too far afield. It's
15 found on page 2 of the document sent to me by Ms. Higashi
16 on June 13th. And it is, let's see, 3 paragraphs down or
17 so.

18 And it's starts, quote,

19 "Under prior law, local law enforcement
20 agencies are required to provide daily reports
21 of misdemeanor and felony offenses on a monthly
22 report on domestic violence calls to the
23 Attorney General and the Department of
24 Justice."

25 "Footnote 1: Penal Code section 11107

1 added by Statutes 1953, Chapter 1385; Penal
2 Code section 13730, added by Statutes 1984,
3 Chapter 1609. As indicated above, Penal Code
4 section 13730 has been suspended by the
5 Legislature."

6 And that is, pertains to domestic violence, records,
7 incident reports, and so forth.

8 The point is, in all of this, and the reason why we
9 were so surprised to see this come before the Commission
10 as a purported error of law, is that under current
11 California law, we believe that this is a precise and
12 accurate legal statement regarding what the law on the
13 subject is. Otherwise, we have to ask ourselves: Can a
14 prior mandatory duty to retain the said domestic violence
15 records flow from a prior discretionary duty? That is,
16 the duty to prepare those records, in the first place,
17 under Government Code 17581? And as everyone knows,
18 17581 is the statute whereby the Legislature puts a zero
19 in the State budget, and then the duty to perform that
20 activity -- in this case, prepare domestic violence
21 incident reports and so forth and prepare those records
22 provide those records and so forth -- is then excused.
23 It becomes not a mandated duty.

24 So basically, the question in a broader context is:
25 Do we have a prior mandated requirement to perform a

1 purely discretionary act under 17581?

2 We've also -- and, of course, the answer, we
3 believe, is no. There is substantial case law which says
4 when the saw cuts the other way -- in other words, when
5 we're looking to establish a new, quote, "mandated duty,"
6 that we have no -- we can't use anything other than the
7 most strict and literal definitions of what that word,
8 "mandated" means. So under 17581, I believe it is
9 legally impermissible to say that the duty to prepare
10 domestic violence incident reports is, quote, "mandated."
11 The prior duty is clearly not mandated under 17581.

12 I've gone on, which I think you all have had a copy
13 of, and prepared other comments, comparing and
14 contrasting the particular storage duties that are
15 imposed under the test claim legislation, Family Code, I
16 believe it's 6228. And in that regard, clearly, the
17 failure to destroy records is absolutely not the same as
18 the failure to file records. We can transfer records.
19 We can sell records. We can do a lot of things to
20 records and not retain them, yet not destroy them. So
21 this raises whole other issues, even if you want to go
22 in that direction.

23 With those remarks -- and also we found that under
24 the State Controller's general requirements, where they
25 have the new three-year record retention period under

1 the new law, I guess we can file a reimbursement claim
2 for this, and those records must be retained under the
3 new law, the new duty, for five, ten, fifteen years,
4 whenever we get paid for this new mandate.

5 So with those remarks, rather than to go on and on,
6 perhaps I'll be quiet and see, you know, if I'm missing a
7 legal basis or reasoning that is contrary to what I've
8 said.

9 Thank you.

10 CHAIR MIYASHIRO: Would the Department of Finance
11 like to comment?

12 MS. GEANACOU: Sure, yes. This is Susan Geanacou,
13 Department of Finance.

14 My understanding that the issue for consideration by
15 the Commission today is whether the finding that there
16 was a five-year maintenance of these records requirement
17 exceeds that -- excuse me, whether the additional three
18 years should be the reimbursable period versus the entire
19 five-year reimbursable period. That's my understanding
20 that the sole issue is whether or not there was an error
21 of law in the decision of, I believe it was May 29th of
22 this year. And we're not really here to discuss the
23 substantive merits of whether or not that's a correct
24 position or not, but, rather, whether to entertain this
25 in a full hearing to take testimony on the correctness

1 or incorrectness of that position.

2 So the Department of Finance would strongly
3 recommend and urge the Commission to grant the request
4 for reconsideration today, so that there can be a full
5 hearing on the merits of that argument or the lack
6 thereof, at which time, we would provide any additional
7 comments we feel appropriate on this issue.

8 CHAIR MIYASHIRO: Okay, questions or comments from
9 members of the Board?

10 MEMBER LAZAR: I have none.

11 CHAIR MIYASHIRO: John?

12 MEMBER LAZAR: I have none.

13 CHAIR MIYASHIRO: Walter?

14 MEMBER BARNES: You know, I understand that what
15 we're asking for here is a decision about whether or not
16 we should reconsider this and to get more specific
17 testimony. But at least a part of that reconsideration
18 has to be, you know, how valid is the request, in the
19 first place.

20 And so I guess I'm sort of compelled to ask you
21 a little bit more about -- and I'm talking to the
22 Department of Finance -- a little bit more about your
23 reaction to this issue about the basis for this request,
24 which is based on a section that deals with when records
25 can be destroyed, versus the issue that's in this

1 particular mandate, which has to do with the -- more,
2 I think, with the matter of making documents available,
3 which seems to be kind of two separate things.

4 And I guess -- I'm not sure that whether we call it
5 "available" or whether we call it -- you know, you can't
6 destroy records after a certain period of time. It's
7 fairly clear you can't destroy these records for five
8 years. And it's not just -- it seems like it's not just
9 a matter of maintaining them or storing them some place,
10 like other records. It seems like the activity
11 incorporated within this here is to store them in a
12 place where you can get them and make them available in
13 48 hours.

14 So I guess -- I'm not sure that I fully understand,
15 you know, the basis for this argument, for this request.
16 So maybe if you could give me a little bit more about
17 how you see this playing it out, I would feel more
18 comfortable about voting one way or the other on this.

19 MS. GEANACOU: Okay, again, this is Susan Geanacou,
20 the Department of Finance.

21 My reading of the statutes, those being Government
22 Code sections 26202 and 34090, which do speak, by their
23 terms, to the duty not to destroy certain records until
24 two years have lapsed, essentially is the same as an
25 affirmative duty to maintain and store those records for

1 that equivalent period of time. "Not to destroy" implies
2 a duty to retain and keep.

3 And because we have a five-year -- in the Statement
4 of Decision, we have a five-year maintenance of storage
5 of records requirement, what the Department of Finance
6 is arguing is that preexisting law to not destroy or, in
7 the affirmative, to keep and retain for two years
8 constitutes, for those two years, a preexisting duty to
9 retain the records, to store the records. And so only
10 that incremental three years imposed by Family Code 6228
11 should be reimbursable under the Statement of Decision.

12 Now, I understand L.A. to be saying that there is a
13 time aspect -- a timeliness aspect of their ability to
14 access records for purposes of meeting a public request
15 that may affect how and where they keep those records.
16 And I'd actually be interested in hearing what the
17 Commission staff thinks about that timeliness
18 accessibility requirement that L.A. is arguing as it
19 relates to the preexisting law in the Government Code
20 sections I cited.

21 CHAIR MIYASHIRO: Camille?

22 MS. SHELTON: Yes, Camille Shelton with the
23 Commission counsel.

24 Let me just make a couple of points.

25 MEMBER BARNES: Sure.

1 MS. SHELTON: First, with this request for
2 reconsideration, it's done in two stages, as you have
3 noticed.

4 MEMBER BARNES: I understand.

5 MS. SHELTON: With the second stage, if the
6 Commission approves the request and decides to go forward
7 to hear the merits of the request, what would have to be
8 required would be an analysis of the rules of statutory
9 construction and how to read two statutes, and see if
10 they can be reconciled and be read together.

11 We read the Government Code statutes, 26202 and
12 34090, to apply to all records. In case law,
13 interpreting those provisions require that they cannot
14 destroy any record for at least two years.

15 So that would, just by the plain language, appear
16 to apply to any record that they're required to maintain
17 by law. And under Family Code 6228, one of those records
18 is the domestic violence incident report.

19 But it does require a full analysis of the rules of
20 statutory construction, which can get detailed. And at
21 that point, all the parties will be able to make their
22 arguments one way or the other.

23 With regard to the intent of the statute to make
24 those domestic violence incident reports available
25 within 48 hours, or the five-day time limit, there's

1 nothing in the plain language of the statute to require
2 them to maintain them in any particular fashion. Nothing
3 is mandated that they keep them on a computer disk or
4 physically in a box.

5 But what the Commission's duty at the P's and G's
6 stage would be, to determine what the most reasonable
7 method of complying with that statute would be, you know,
8 given the intent of the statute. So those issues would
9 be discussed at the P's and G's stage, exactly how an
10 agency is going to be required to maintain it.

11 MR. KAYE: This is Leonard Kaye, County of Los
12 Angeles. I'd like to comment of Commissioner Barnes'
13 comment, which I think is well taken.

14 The Department of Finance has just mentioned that
15 the duty not to destroy implies a duty to maintain and
16 keep. As simple as this sounds, this prima facie
17 evidence is nowhere to be found in the evidence. There
18 is no evidence in the record on this matter that this
19 prima facie threshold has been demonstrated or even
20 argued. Basically, the entire argument consists of
21 citing these two statutes, which don't tell us very much.

22 Secondly, I don't believe that there is any possible
23 legal basis for concluding that there is a mandatory duty
24 to prepare a non-existent record. And under 17581, the
25 duty to prepare domestic violence incident reports, the

1 records in question, is clearly optional. And so it's
2 sort of a legal absurdity, if you will.

3 CHAIR MIYASHIRO: Camille?

4 MEMBER BARNES: Well, Can I --

5 CHAIR MIYASHIRO: Let Camille just respond.

6 MEMBER BARNES: The only thing I would say is having
7 heard the three of them, I'm compelled to feel that
8 perhaps an analysis would be helpful in this issue and
9 clarify the issue for it. So I just wanted to get a
10 sense of what some of the arguments might be. So it
11 looks to me like this is probably something that we
12 should have them take a look at.

13 CHAIR MIYASHIRO: Okay, Camille, do you want to
14 respond?

15 MS. SHELTON: Yes, again, this is Camille Shelton.

16 I'm just responding to Mr. Kaye's argument on the
17 discretionary nature of preparing this report. That
18 argument was made before the Commission at the test claim
19 hearing, and the Commission did disagree with that in the
20 Statement of Decision.

21 The 1993 amendment to the Penal Code 13519 has not
22 been suspended; and it did require that they prepare the
23 report. So that test claim -- excuse me, that 1993
24 statute has not yet been determined by the Commission to
25 be a mandated activity. But it does require that they

1 prepare that report. So that is not suspended and that
2 is not discretionary. And it's not part of this request
3 for reconsideration.

4 CHAIR MIYASHIRO: This is Robert again.

5 Camille, could you walk me through, or just help me
6 understand the two-phase process that -- is it in statute
7 or is it in our regulations that the Commission needs to
8 act first on the reconsideration, and then let a certain
9 amount of time elapse; or at its next available board
10 meeting we take up the issue specifically? I mean, why
11 is it a two-phase process with regard to a meeting date?

12 MS. SHELTON: Well, that part is in the Commission's
13 regulations.

14 CHAIR MIYASHIRO: Okay.

15 MS. SHELTON: The Government Code allows a request
16 for reconsideration to be filed 30 days after the
17 Statement of Decision is issued or mailed to the
18 claimant. And that was met here.

19 But under the Commission's regulations, under
20 section 1188.4, it does require a two-step process --
21 a two-hearing process. Both hearings require a
22 super-majority vote.

23 The first hearing is just to determine whether you
24 want to accept this request and to hear it at a
25 subsequent time on the merits of the claim.

1 But like Mr. Barnes was indicating, there needs to
2 be something there for you to decide whether or not you
3 want to take that up.

4 You have the discretion whether to take it up. You
5 can decide not to take any of it up on the
6 reconsideration or you can decide to take part of it or
7 the whole thing. That's within your discretion.

8 If you do decide to accept the request for
9 reconsideration, at that point, then we need to issue the
10 request out for comment. And in this case, Mr. Kaye has
11 already filed comments on the request. A draft staff
12 analysis will then be prepared, and it has to be issued
13 out for comment, which requires another 30 days on that.
14 So the soonest that this could be heard, assuming that
15 the parties are not waiving any time, would be the
16 September hearing.

17 CHAIR MIYASHIRO: I see, okay.

18 All right, any other questions of members from the
19 Commission?

20 (No audible response was heard.)

21 CHAIR MIYASHIRO: Comments from the public?

22 (No audible response was heard.)

23 CHAIR MIYASHIRO: Okay, I would entertain a motion
24 on the staff recommendation for reconsideration.

25 MEMBER WILLIAMS: This is Sherry Williams. I so

1 move that we consider it.

2 MEMBER BARNES: I'll second. This is Walter.

3 CHAIR MIYASHIRO: I have a motion and a second.

4 Paula?

5 MS. HIGASHI: Mr. Barnes?

6 MEMBER BARNES: Aye.

7 MS. HIGASHI: Mr. Lazar?

8 MEMBER LAZAR: Aye.

9 MS. HIGASHI: Mr. Sherwood?

10 MEMBER SHERWOOD: Aye.

11 MS. HIGASHI: Ms. Williams?

12 MEMBER WILLIAMS: Aye.

13 MS. HIGASHI: Mr. Miyashiro?

14 CHAIR MIYASHIRO: Aye.

15 MS. HIGASHI: The motion carries.

16 CHAIR MIYASHIRO: May I ask another question?

17 You've mentioned the super-majority. On the
18 reconsideration, once it comes back to us in September,
19 what is the vote requirement on that, if we were to
20 proceed?

21 MS. SHELTON: It is five.

22 CHAIR MIYASHIRO: Is it all members of the
23 Commission?

24 MS. SHELTON: It's a super-majority of the existing
25 membership.

1 MS. HIGASHI: The five is in regulation.

2 MS. SHELTON: And the five is in regulation, yes.
3 So it always requires at least five votes.

4 CHAIR MIYASHIRO: Okay, thank you.

5 All right, any other matters to come before us?

6 MS. HIGASHI: I'll move closer to the phone.

7 John, this is Paula Higashi.

8 Item 3 is my report. And what I've done is given
9 you a compilation of information that was provided to
10 the Assembly Special Committee on State Mandates. They
11 had a second hearing on June 2nd, and then yet a third
12 hearing was held on June 16th; and we expect another
13 hearing to be held on June 23rd.

14 For the agenda purposes, I highlighted the
15 recommendations that I excerpted from the letter to the
16 committee that was presented by Steve Keil and Jean
17 Korinke, CSAC's rep and League of Cities rep.

18 And as you can see from the points there, there are
19 a number of recommendations for structural reform of the
20 mandates process. Some of the recommendations refer to
21 how legislation is enacted, the process, what happens to
22 legislation after a mandate determination is made and an
23 appropriation is made, and also a call for a thorough
24 management audit of all of the procedures, for all of
25 the parties who are part of the mandates process. It's

1 an interesting list. It's my understanding from having
2 met with CSAC SB 90 group last month, that the
3 representatives who were not attending our hearing were
4 in meetings with Steve Keil in order to help contribute
5 to the list of items that was developed.

6 One of the handouts in the packet from CSAC I just
7 wanted to call your attention to is one at the very end.
8 They have provided a long list of all of the bills that
9 potentially impact local government, and their status on
10 that at that point in time. And for some of you, you
11 may find this very interesting. For others, it's very
12 depressing if all of them are enacted. But it's their
13 bill folder on mandates.

14 They've also provided a summary of the mandates
15 that have been approved that are part of the budget
16 documents, the suspended lists, the funded lists, the
17 repeal lists. And at the very end of their documents,
18 they have provided a chart which has columns showing
19 processing time for Commission test claims.

20 I just wanted to note for the record that the one
21 test claim that they've highlighted here, which has taken
22 the longest, which is Brown Act Reform, is shown as
23 having taken seven years. And I wanted to note for the
24 record here that that particular test claim was inactive
25 for five years at the request of the county who filed

1 the claim. And it was only upon a decision to propose
2 dismissal of that claim that another test claimant
3 stepped forward and then took it over, and then the
4 Commission decided it.

5 So looking at that, it's way up at the top for seven
6 years; and it was actually much less. And that has been
7 pointed out to CSAC as well.

8 Are there any questions on those materials?

9 The Committee has continued to meet -- and I have
10 another handout I left outside the room that I'll give
11 to you, and that is one that the special committee has
12 started consideration of. And it's basically walking
13 through the Governor's budget, recommendations from the
14 May revision, in terms of all of the mandates that have
15 been proposed for suspension or repeal. And they've
16 already started going through this list; and they're
17 being very cautious as they review the list because their
18 primary concern is just knowing what they're doing and
19 knowing that whatever language that is put forth, if
20 they're going to repeal the mandate or make it optional
21 in statute that Leg. Counsel has presented all of the
22 options to them and does it correctly.

23 The theme of these discussions from Leg. Analyst's
24 perspective has been that this is code cleanup. That if
25 for the past ten years or twenty years, a mandate has

1 been suspended through the Budget Act, that we really
2 need to make a cleanup of the statutes.

3 As Mr. Kaye pointed out previously on Item 2, you
4 can't always know what has been suspended by reading the
5 Penal Code, because the Budget Act suspensions don't tie
6 back to the actual code provisions. So that is the theme
7 that the Leg. Analyst is proposing.

8 What we are faced with in actuality though, in
9 sitting through these hearings is a number of members
10 have just left local government, and many of them aren't
11 familiar with all of the mandates that are being
12 discussed as part of the appeal package or the suspension
13 package, and a number of questions are starting to come
14 up.

15 So staff at the Speaker's office is in the process
16 of trying to put together lists identifying statutes and
17 codes. They've asked us to help them, so that they can
18 put a comprehensive package together for Leg. Counsel to
19 work from, because Leg. Counsel was having some
20 difficulty in determining what they should be writing,
21 because this is a massive package. The last time it was
22 undertaken was in the early nineties. And as some of you
23 know, some of those mandates went away and then they came
24 back again. And so it's very dangerous, but it's also a
25 very important process they are going through.

1 A couple of mandates which you're more familiar with
2 that were addressed at the last hearing were Investment
3 Reports and County Treasury Oversight Committees. And
4 recommendations have been taken -- have been made,
5 actually, in different places; first, in the Senate
6 Budget Subcommittee regarding those mandates. And now
7 it's my understanding the Budget Conference Committee has
8 also recommended suspension.

9 And the committee members of the Special Mandates
10 Committee were very cautious about the two wanting to
11 take a little bit of time instead of going straight to a
12 repeal recommendation, but actually taking a look at the
13 statutes, getting input so that they're not actually
14 monkeying around and doing something that could ^{be} dangerous
15 in the long run.

16 So I think that the committee chair -- you know, he
17 definitely has a good working relationship with the
18 committee members; they are doing a very thoughtful job
19 of it, proceeding carefully. And we'll see what happens
20 at the next meeting.

21 The other assurance they've given us is that the
22 structural reform issues aren't going to come up until
23 the budget has been dealt with. So all of these issues
24 continue to just be compiled. And at the staff level,
25 we're also doing the same thing, beginning compilation of

1 issues that could come up that we may want to propose for
2 amendment.

3 But in the meantime, it continues. The next meeting
4 is set for Monday, at 10:00. All of us here are going
5 to call them again, to see if they really mean Monday at
6 10:00, another date; because there's so many other
7 competing events occurring at that time.

8 Are there any questions?

9 CHAIR MIYASHIRO: Paula -- John, this is Robert --
10 I would suggest that we make sure that the committee
11 staff understand what we just talked about here, and that
12 is, within our own regulations, certain time must elapse
13 between Commission action, so that the members of the
14 committee are not led to believe that the Commission
15 should be acting expeditiously because there is a
16 trade-off between acting so expeditiously that it
17 disallows public input, and what our regulations allow
18 for is enough time for people to receive our thoughtful
19 analysis and provide enough time for them to give us
20 their thoughts and comments. And all of that takes time,
21 so that I don't want the legislative committee to be
22 under the impression that the Commission and its staff
23 are dragging their heels in making decisions, but that
24 this process does require a certain amount of time, so
25 that it's done thoughtfully and carefully.

1 MS. HIGASHI: I think, you know, we covered the
2 process at the first hearing. At the last hearing, it
3 was the first time that there was actually some testimony
4 from Allan Burdick, at the very end, in which he made the
5 observation in talking about the audit issues, that there
6 really needs to be a look at the resources of all of the
7 agencies, the participants in the process, whether it's
8 the Department of Finance staff or the Controller's staff
9 or the Commission staff. Because everyone is
10 understaffed; and in order to make the process move more
11 quickly, a management audit might be an important step.

12 And so I think it has come up; when they get back to
13 the structural reform issues, I suspect that we'll all
14 have to testify again because there were only a few
15 Democratic members and Republican members at the first
16 hearing. The second hearing there were more members; but
17 there's still a couple members who we haven't even seen
18 at the hearing. So I'm sure there will be time to do
19 that. But, you know, I will make that special effort to
20 be sure that the data is placed in the proper context.

21 CHAIR MIYASHIRO: Okay.

22 MS. HIGASHI: What I wanted to segue into is just a
23 discussion about the next hearing agenda. And as you
24 know, the July hearing is our first hearing where we are
25 attempting to go to this bimonthly schedule. And the

1 budget trailer bill language did have a provision in it
2 to amend the Commission to the bimonthly hearings.

3 What we're learning is that because we are operating
4 with a larger agenda for the next hearing, that the
5 claimant community is also finding themselves impacted
6 by the competing deadlines that they're faced with all at
7 the same time, for many more items than they're used to
8 receiving. And so some of the claimants have given us
9 some feedback that they're all kind of -- they all have
10 a lot of work to do, on comments. And, obviously, at the
11 staff level, we have a tremendous amount of work to do to
12 get the agenda out.

13 And right now, I'll just -- if you want to turn to
14 page 2, we're not sure yet exactly how many agenda items
15 we're going to end up with. It's in Item 3.

16 MEMBER WILLIAMS: Page 2?

17 MS. HIGASHI: We started out with potentially three
18 test claims for the July hearing. Right now we are
19 waiting to receive comments on two that are out for
20 comment. Both of them could end up having significant
21 testimony, if they go forward.

22 On Proposed Parameters and Guidelines, we expect to
23 have five Parameters and Guidelines on the agenda. I've
24 received a verbal telephonic request for an extension of
25 time on one of them; and I expect to receive that

1 extension today.

2 And we also have some Statements of Decision and
3 other matters that need to go forward, that can go
4 forward on consent calendar.

5 So, at a minimum, if we have at least one of these
6 test claims on the agenda, you know, for sure it's at
7 least a morning hearing, as well as time for closed
8 session. But if everything that is here were to go
9 forward, it would be a longer hearing.

10 I won't be at a point where I can give you that
11 prediction until the comment periods close.

12 CHAIR MIYASHIRO: What I'd like -- John, this is
13 Robert again -- to offer the public and the audience is
14 an opportunity to comment on this first bimonthly meeting
15 schedule. And I'd just like to get the other
16 participants in this process on the record as to how they
17 feel about it, because I want to go along with everyone's
18 input. And if this turns out to be something that, in
19 fact, is not more efficient and is not achieving the
20 goals that the Legislature generally has in mind, then we
21 can reconsider it. But I'd like to have their input as
22 we go through this process.

23 MS. BERG: This is Carol Berg, Education Mandated
24 Cost Network.

25 We support the bimonthly approach, as long as the

1 agenda can be a full one. I'm one of those old dogs who
2 has been around here watching these tricks for many, many
3 years. And as Mr. Sherwood can validate, the Commission
4 used to have full-day hearings. We used to be able to
5 have a full agenda, we would break for lunch; but we
6 took up business and we got it done. And if we can get
7 to a place where, again, we have a full-day hearing, then
8 based on workload, the one -- I think it's possible.

9 The other one consideration I would have for the
10 Commission's staff, is to try not to hear one group's
11 claims of the same month, because that's what puts the
12 claimants in a terrible bind, too. So that if you could
13 mix it up a little bit with not just education but with
14 cities and counties and education all having their share,
15 you can get ready for two test claims or two P's and G's
16 or two whatever's. But to do five or ten or six, or
17 whatever, is a real burden. And I think it also doesn't
18 spread the workload out well enough with the Commission
19 staff to have them tackle that.

20 But we do support this notion. I think it can work.
21 Because we've had so many hearings since many of you have
22 joined the Commission as commissioners, that have been a
23 couple hours. We could probably, you know, condense all
24 of that into three or four months and arrive at the same
25 spot where we live now.

1 If I may, just to go back to Paula's report, I think
2 it's important, at least for the record, that it's noted
3 that that special committee did, in fact, take action at
4 this last hearing; and they did take action to repeal
5 16 city and county mandates, to suspend one and to bring
6 two back for further discussion.

7 And there's a concern there that I discussed with
8 Paula and with Dan Wall of the special committee staff,
9 that even though the label on all this stuff says
10 "non-Prop. 98 mandates," there are those occasions where
11 they overlap. And it's real important that when they go
12 back to repeal, that we also pick up that Ed. Code
13 section that repeals it for schools as well.

14 For instance, **I**nvestment **R**eports will be talked
15 about, but the Open Meetings Act was repealed in the last
16 activity. Nobody from the publisher's committee were
17 there to complain, which was amazing. But there's a
18 school piece in that one as well. And so we do need to
19 be sure that they repeal the entirety of that mandate and
20 not just the portion that fits cities and counties.

21 CHAIR MIYASHIRO: John, this is Robert again.

22 Carol, it's your view that their act was an
23 inadvertent omission versus explicitly wanting them to
24 be --

25 MS. BERG: Yes, and Paula was there with me when I

1 talked to Dan Wall, and mentioned to him that we need to
2 be sure that this piece gets cleaned up. And his comment
3 was, well, he was going to talk to Rick Simpson; and I
4 said that's not the right person to talk to.

5 Paula and I really need to work with them so that
6 they get that piece covered.

7 CHAIR MIYASHIRO: Because, see, that's going to make
8 a distinct -- that could possibly make a real policy
9 distinction there versus --

10 MS. BERG: Right.

11 CHAIR MIYASHIRO: -- that it was inadvertent.

12 MS. BERG: Right.

13 CHAIR MIYASHIRO: This is the Legislature's action.

14 MS. BERG: Right, but we need to help them.

15 CHAIR MIYASHIRO: Yes.

16 MS. HIGASHI: Let me just add one other thing. And
17 the problem -- this is Paula, John.

18 The problem is that there are two different
19 procedures, if they go through the suspension procedure.
20 One is for local government, local agencies; and the
21 other procedure is an add-on section from last year,
22 17581.5, I believe it is, where that actual code section
23 has to be amended to list the mandates in the education
24 budget that are suspended.

25 But for the local agency's side, all that has to

1 happen is the 17581 reference needs to be made.

2 In the pending Governor's budget, the wrong code
3 cite reference is still there, the 17581 is still there
4 for the Ed. mandates even though it needs to be 17581.5
5 and the other action needs to take place.

6 CHAIR MIYASHIRO: I see, okay.

7 MS. HIGASHI: So they're all getting up to speed in
8 understanding it; and the staff at the committee is
9 calling and e-mailing when they have questions.

10 MS. BERG: If I could add one more to that. Again,
11 because I've been around a long while, it's important
12 for you folks to really realize, though, that there is
13 no institutional memory left on that committee.

14 John Laird, who is the chairperson, gets it. He
15 understands mandates; he understands the process. But,
16 you know, Paula's assuring you that she did give
17 testimony and it was eloquent. However, as a newcomer
18 to the mandate arena myself way back when, I still have
19 a memory, that it takes more than one exposure to
20 understand this whole process. And those people who are
21 on that committee have heard it once -- not all of them.
22 Some of them will hear it twice -- not all of them. And
23 so to expect them to really understand what it is you
24 folks are up against is not an easy task. And we really
25 need to be sure that they get all of that information as

1 frequently as we can get it to them.

2 CHAIR MIYASHIRO: Okay, thank you, Carol.

3 MR. KAYE: Good morning, Leonard Kaye with the
4 County of Los Angeles.

5 I appreciate this opportunity to speak. I'm not
6 going to comment on legislation and so forth, but just as
7 a claimant that's been involved in the process for, I
8 guess, 12, 13 years now. And over a period of time, the
9 Commission's decisions, analyses and so forth have grown
10 quite lengthy and complex. And I think having bimonthly
11 meetings sort of allows claimants more time to perform
12 the legal research and to do the legwork that's necessary
13 to provide the Commission with our side of the story, so
14 to speak. And so I would generally support bimonthly
15 meetings. However, I agree also that they would probably
16 need to be expanded or extended, maybe a morning session
17 and an afternoon session.

18 We would appreciate, as claimants -- not that we
19 are not concerned with what happens with schools and so
20 forth -- but, for example, if counties and cities could
21 be scheduled in the morning or in the afternoon, that
22 way, we could --

23 (Laughter)

24 MS. BERG: Pardon me. We sat through animal rights.

25 (Laughter)

1 MR. KAYE: But that's the point. They shouldn't sit
2 through animal rights.

3 MEMBER SHERWOOD: That's a good point, I think.

4 MR. KAYE: Yes, and it is interesting to admire the
5 legal scholarship and the points and so forth.

6 But, really, as everybody knows, we're also in sort
7 of a state of sensory overload with the amount of work
8 that we have to do; and I think this would facilitate our
9 travel plans and our scheduling of our work schedules to
10 tie in with what the Commission needs to do. And I think
11 that could be done.

12 The other thing that I would strongly encourage,
13 that would help facilitate this new scheduling approach,
14 is -- and you mentioned it, Commissioner Miyashiro -- the
15 idea of coming up front with unit costs, flat rates and
16 so forth, so we don't create a whole area of controversy
17 subject to audit and so forth. And this might be
18 fairly easily accomplished.

19 I know we're working, I guess with the State
20 Controller to come up with certain time study standards
21 and so forth. So I think that would be a huge, huge
22 help.

23 And then there are other things that we're prepared
24 to stipulate to, or to have mediations or settlements,
25 particularly in the area -- Carol mentioned the

1 investment reports and so forth; so that when you read
2 the Commission's decision on the matter, one might say,
3 "Well, they didn't mention this, so I'm certain," and so
4 forth. So then we might then walk over to the State
5 Controller and give them an opportunity, to see if we
6 could reach some settlement or stipulation and so forth,
7 and be done with the matter.

8 I think the present situation, as everybody knows,
9 is we've got a tremendous backlog of incorrect reduction
10 claims and so forth. So there are a lot of practices
11 and policies, actually procedures that I don't think are
12 monumental in terms of requiring legislative action that
13 the Commission might adopt to facilitate the bimonthly
14 meeting format.

15 Thank you.

16 CHAIR MIYASHIRO: Thank you, Leonard.

17 MR. SANCHEZ: This is Juan Sanchez with the
18 California Department of Education.

19 As far as the bimonthly meeting schedule, we're
20 flexible either way. Kind of our approach was we kind of
21 assumed that the meetings are going to be run a little
22 bit longer, so we just discussed that, knowing that the
23 agendas were going to be more involved and such. The
24 suggestions to have either local and then Ed. maybe
25 separated in some way, you know, we'd be fine with that,

1 if that was what the decision was.

2 One thing also that I did want to address -- and
3 this is a point that Carol brought up -- is that in
4 looking -- we've been also piping into the special
5 Assembly committee meetings. So, you know, obviously the
6 focus was that it was going to be on the local types of
7 mandates. But our assumption had been that when they
8 were talking about **I**nvestment **R**eports and the like, even
9 though they were focusing on the local, that they were
10 going to focus on the mandate in its entirety. So in
11 looking at that, when you look at the mandate, you know,
12 the Ed. Code is referenced in there. So that was kind of
13 our approach.

14 But as Carol was saying, so our thought was, in
15 looking at that, when they were talking about **I**nvestment
16 **R**eports, our feedback was they are going to repeal it.
17 If there's a chance of they're going to suspend it,
18 whatever they're going to do, it will affect Ed., as
19 well as the locals. So I think that point is pretty well
20 taken, because that is how we were looking at it.
21 Because when somebody says "investment reports" to us,
22 we look at it in the entirety of the mandate, not just
23 the local or the Ed.

24 Thank you.

25 CHAIR MIYASHIRO: Thank you, Mr. Sanchez.

1 Any other comments before the Commission?

2 Comments by the commissioners?

3 John?

4 MEMBER LAZAR: No, thank you.

5 CHAIR MIYASHIRO: Paula, do we need to go to a
6 closed session today?

7 MS. HIGASHI: Yes. It will be brief, though.

8 CHAIR MIYASHIRO: I'll go ahead and read the
9 statement.

10 All right, the Commission will now meet in closed
11 executive session pursuant to Government Code section
12 11126(e) to confer with and receive advice from legal
13 counsel for consideration and action, as necessary and
14 appropriate, upon the pending litigation listed on the
15 published notice and agenda, and to confer with and
16 receive advice from legal counsel regarding potential
17 litigation; and Government Code section 11126(a) and
18 17526, the Commission will also confer on personnel
19 matters listed on the published notice and agenda.

20 We'll reconvene in open session at this location in
21 approximately 15 minutes.

22 (The Commission met in closed executive session from
23 10:23 a.m. to 10:33 a.m.)

24 CHAIR MIYASHIRO: The Commission met in closed
25 executive session pursuant to Government Code 11126(e) to

1 confer with and receive advice from legal counsel for
2 consideration and action, as necessary and appropriate,
3 on the pending litigation listed on the published notice
4 and agenda and potential litigation; and Government Code
5 sections 11126(a) and 17526, to confer on personnel
6 matters listed on the published notice and agenda.

7 All required reports from the closed session having
8 been made.

9 And with no further business to discuss, I will
10 entertain a motion to adjourn.

11 MEMBER WILLIAMS: So moved.

12 CHAIR MIYASHIRO: All those in favor?

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

14 CHAIR MIYASHIRO: Opposed?

15 (No audible response was heard.)

16 CHAIR MIYASHIRO: We are adjourned.

17 MEMBER LAZAR: Thank you.

18 CHAIR MIYASHIRO: Thanks, John.

19 MS. HIGASHI: Good-bye, John.

20 MEMBER LAZAR: Good-bye.

21 (The proceedings concluded at 10:33 a.m.)

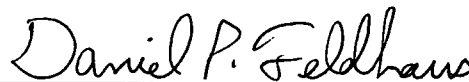
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REPORTER'S CERTIFICATE

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

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

In witness whereof, I have hereunto set my hand this 27th day of June 2003.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR