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**COMMISSION ON
STATE MANDATES**

PUBLIC HEARING

COMMISSION ON STATE MANDATES

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TIME: 9:33 a.m.

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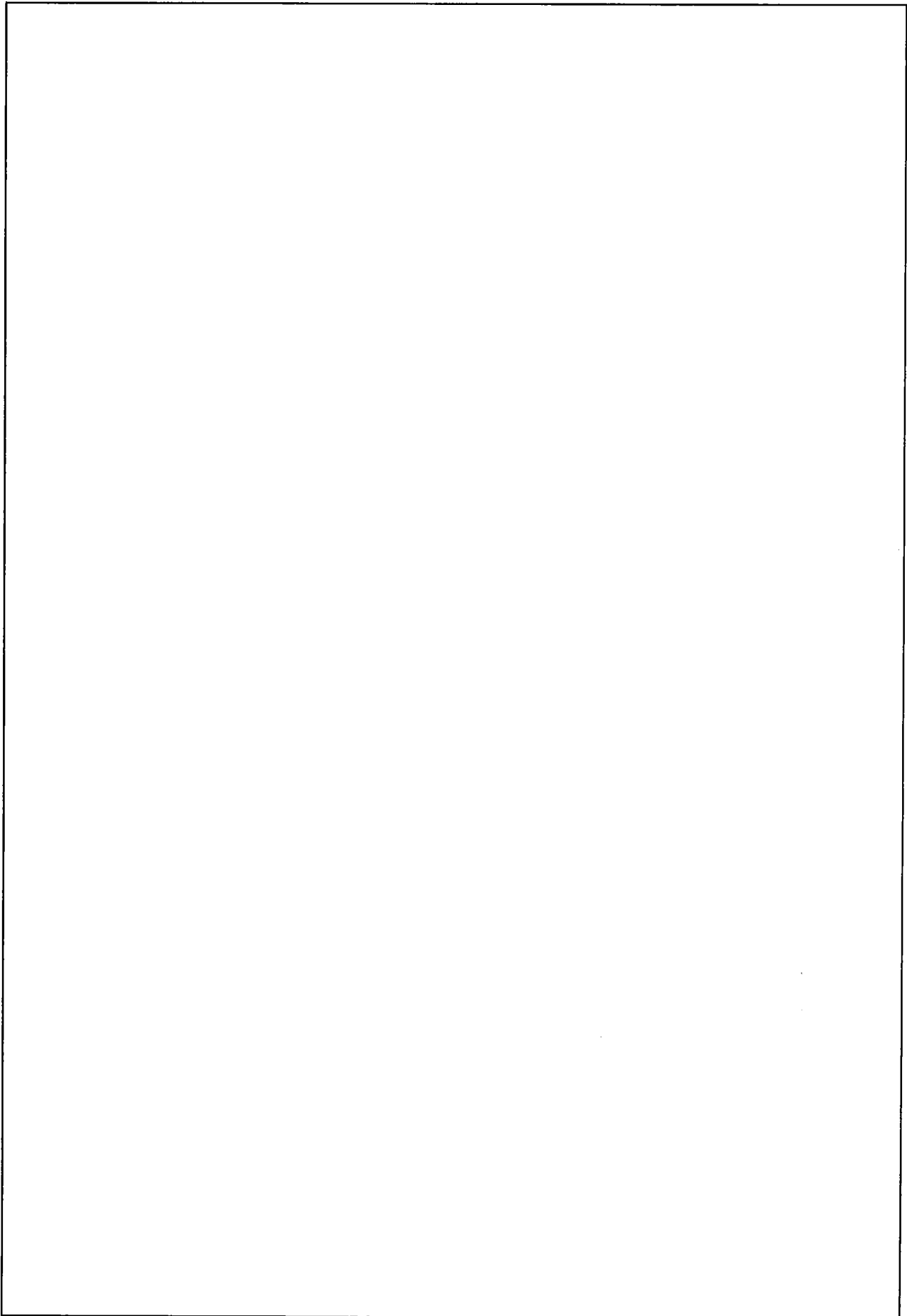
PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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



A P P E A R A N C E S

COMMISSIONERS PRESENT

SHELLEY MATEO, Chair
Representative of
STEVE PEACE, Director
State Department of Finance

WALTER BARNES
Representative of
STEVE WESTLY
State Controller

JOHN LAZAR
City Council Member
City of Turlock

DAVID ROSEBERG
Supervisor
Yolo County Board of Supervisors

BRUCE VANHOUTEN
Representative of
PHILIP ANGELIDES
State Treasurer

SHERRY WILLIAMS
Representative of
STEVEN A. NISSEN, Director
State Office of Planning and Research

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

CATHERINE M. CRUZ
Program Analyst

SHIRLEY OPIE
Assistant Executive Director

A P P E A R A N C E S

COMMISSION STAFF PRESENT

continued

CAMILLE SHELTON
Counsel

KATHERINE TOKARSKI
Counsel

PUBLIC TESTIMONY

Appearing Re Item 4:

For Claimant Santa Monica Community College District:

KEITH B. PETERSON
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

For Department of Finance:

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

Appearing Re Item 5:

For Claimant County of Los Angeles:

LEONARD KAYE
Certified Public Accountant
Office of Auditor-Controller
County of Los Angeles
500 W. Temple Street, Suite 603
Los Angeles, CA 90012

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5: *continued*

For Department of Finance:

SARAH MANGUM
Budget Analyst
State of California
Department of Finance

SUSAN S. GEANACOU
Senior Staff Attorney
State of California
Department of Finance

Appearing Re Item 8:

For Claimant Santa Monica Community College District:

KEITH B. PETERSON
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

For California State Association of Counties:

ALLAN BURDICK
California State Association of Counties
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 16 and Item 17:

For San Diego Unified School District:

ARTHUR PALKOWITZ
Legislative Mandate Specialist
San Diego City Schools
Finance Division
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

For State Controller's Office:

SHAWN D. SILVA
Staff Counsel
State Controller's Office

Appearing Re Item 18:

For California State Association of Counties:

ALLAN BURDICK
California State Association of Counties
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

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1 [pointing to Ms. Higashi].

2 I'm pleased to see in the audience some of the faces
3 that I dealt with a decade ago. But you're going to need
4 to be patient with me today. It has been a long time.
5 So if I take a wrong turn here anywhere on protocol, let
6 me know. I would appreciate it.

7 So, Paula, that takes us to our first item.

8 MS. HIGASHI: The first item, which is Item 1,
9 approval of minutes of our last hearing on July 31st.

10 CHAIR MATEO: Do we have any questions or comments?

11 MEMBER WILLIAMS: No.

12 CHAIR MATEO: No?

13 Do we have a motion?

14 MEMBER ROSENBERG: I'll move the minutes.

15 MEMBER WILLIAMS: Second.

16 CHAIR MATEO: I have a motion and a second.

17 All in favor.

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

19 MEMBER VANHOUTEN: And for the record, I abstain.

20 CHAIR MATEO: We have one abstention.

21 That motion passes.

22 MS. HIGASHI: This brings us to the proposed consent
23 calendar. All of you should have before you a green
24 sheet, which lists the items on the consent calendar.
25 For the record, I'll read them: Item 6, Item 9, Item 10,

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1 Item 11, Item 12, Item 14, Item 15.

2 MEMBER LAZAR: I move adoption.

3 CHAIR MATEO: Move adoption?

4 MEMBER WILLIAMS: So moved.

5 MEMBER ROSENBERG: I'd like to discuss Items 6, 9,
6 10, 11, 12, 14 -- I'm kidding, actually.

7 [Laughter]

8 CHAIR MATEO: It's okay.

9 MEMBER ROSENBERG: You were ready for that.

10 MS. HIGASHI: We were ready.

11 CHAIR MATEO: Paula, you didn't warn me about this.

12 Okay, I have a motion and a second on the consent
13 calendar.

14 All in favor?

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

16 CHAIR MATEO: Do we do voice votes on these?

17 MS. HIGASHI: We have in the past, especially if
18 it's unanimous.

19 CHAIR MATEO: Okay. So that motion passes.

20 MS. HIGASHI: This brings us to Item 2. And just
21 for the record, this is a standing agenda item, which
22 relates to executive director appeals. There are no
23 appeals to be heard today. So we can move forward to the
24 hearing portion of the meeting.

25 And, as we typically do at our hearings, we have a

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1 mass swearing-in of the witnesses for all of the items
2 that are under Article 7.

3 So at this time I'd like to ask all of the witnesses
4 and representatives for Items 4, 5 and 8, who are in the
5 audience, to please stand.

6 Do you solemnly swear or affirm that the testimony
7 which you are about to give, is true and correct, based
8 upon your personal knowledge, information or belief?

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

10 MS. HIGASHI: Thank you.

11 With that, we'll go to Item 4. And this item will
12 be presented by Commission counsel, Katherine Tokarski.

13 (Mr. Barnes entered the hearing room.)

14 MS. HIGASHI: I'd just like to note for the record,
15 that Mr. Barnes has arrived.

16 CHAIR MATEO: Walter, we're on Item 4 now.

17 MS. TOKARSKI: Good morning.

18 *Peace Officer Personnel Records: Unfounded*
19 *Complaints and Discovery* was originally four test claims
20 filed individually by a city, county, and a community
21 college district on legislation addressing the discovery
22 of peace officer personnel records and citizen complaints
23 on peace officers.

24 At the July hearing, the Commission went forward on
25 the substantive issues for county and city claimants, and

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1 the staff analysis for those issues was adopted by a
2 5-to-1 vote. The issues specific to community college
3 districts as eligible claimants were postponed for
4 testimony and vote until today's hearing.

5 Staff found that pursuant to state law, school
6 districts -- the essential government function of which
7 is to provide public education -- remain free to
8 discontinue providing their own police department, and
9 statutory duties that follow from such discretionary
10 activities, do not impose a reimbursable state mandate.

11 Discussion of this issue is found on pages 8 through
12 12 of the staff analysis. Staff recommends that the
13 Commission find that school districts are not eligible
14 claimants for these test claim statutes.

15 Will the parties and witnesses please state your
16 names for the record?

17 MR. PETERSEN: Keith Petersen, representing Santa
18 Monica Community College District.

19 MS. GEANACOU: Susan Geanacou, Department of
20 Finance.

21 CHAIR MATEO: Would you go ahead and begin,
22 Mr. Petersen?

23 MR. PETERSEN: Thank you.

24 Today we're discussing a threshold issue that the
25 Commission had resolved about 12 years ago. So you won't

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1 be so far out of time on this one.

2 The threshold issue is whether you are reimbursing
3 specific employees to perform a mandate, or whether you
4 are reimbursing the mandate itself.

5 There is no dispute in the documentation that the
6 activity to be reimbursed is new. The dispute turns on
7 whether you want to reimburse school. It also includes
8 community-college peace officers, reimburse their costs
9 associated with the mandate; because the Commission staff
10 alleges they are discretionary.

11 The Commission -- this commission -- has never
12 excluded any class of employee from reimbursement before.
13 The Commission staff is recommending that you exclude
14 peace officers from reimbursement.

15 The Commission, 12 years ago, decided that as an
16 exception to that general rule, that the cost of
17 classroom teachers performing mandates during the
18 classroom won't be reimbursed, because the classroom
19 day does not grow longer. They did not decide not to
20 reimburse teachers; they decided not to reimburse
21 mandates occurring during the classroom time. So it's
22 very clear to understand that -- it's very important to
23 understand that the Commission has never said any one
24 employee is not reimbursable. Because of the nature of
25 their employment, they have said some activities are not

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1 reimbursable. So we have to focus on which activities
2 are reimbursable.

3 The Commission, two months ago, decided that parts
4 of the test claim were reimbursable; so some of those
5 activities are reimbursable. The only difference is,
6 they sliced out peace officers working for school
7 districts and colleges.

8 The Commission staff concludes that operating police
9 departments is not an essential governmental function of
10 providing public education. However, they also admit
11 that schools have a statutory public safety duty; that
12 is, to maintain safe campuses. So, clearly, peace
13 officers can be a necessary employee to maintain safety
14 on campus.

15 I believe that about 30 colleges have peace
16 officers; seven or eight school districts have peace
17 officers. I'm informed and believe that the Los Angeles
18 City School District police force is the third largest in
19 Los Angeles County, behind the sheriffs and the city
20 police. So they definitely have a function on some
21 campuses, in some school districts.

22 And what is wrong about the staff's conclusion that
23 school districts only reimburse for public education, is
24 that it contradicts the definition in the County of Los
25 Angeles, and it contradicts the definition in Carmel

1 Valley.

2 Mandate case law does not limit school district
3 reimbursement for education items. Some of you know,
4 there are 56-approved mandate programs for schools right
5 now, most of which are funded, to the extent that funding
6 is available. Several of them have nothing to do with
7 public education. Scoliosis screening, immunization
8 records, collective bargaining, none of these have
9 anything to do with classroom education services.

10 The correct interpretation of the County of
11 Los Angeles and Carmel Valley is that school districts
12 are like any other local agency, they provide public
13 service. Most of their public service is public
14 education.

15 I'd like to read a couple short quotations from the
16 staff material. It's on page 9 of the -- I guess this is
17 a proposed decision now.

18 I don't know if that's the same page numbering for
19 the Bates page; is it? I'm not sure.

20 MS. TOKARSKI: If you're in the proposed decision,
21 that's not the same item as Item 4.

22 MS. HIGASHI: It's a different item.

23 MR. PETERSEN: Can I reference it, though?

24 It's the first document in Item 4.

25 MS. TOKARSKI: Those are the final staff analysis.

1 MR. PETERSEN: Fine, okay.

2 If you look on page 9, halfway down -- and I hope
3 we're on the same page -- it says,

4 "District, in comments, on the draft
5 analysis received June 30th, disagrees.

6 District argues Carmel Valley does not exclude
7 school district eligibility. The fact that
8 school district police departments are
9 permissive has not been dispositive in prior
10 test claims."

11 And here we have the quote.

12 "Just as Carmel Valley establishes 'police
13 protection' as an essential and basic public service" --
14 citing Long Beach -- "Long Beach concludes that public
15 education is administered by local agencies to provide
16 service to the public."

17 It doesn't say that public education is the only
18 reimbursable activity at schools. It's one of the
19 reimbursable activities.

20 There are several other points of departure.
21 There's several things that make this recommendation not
22 work.

23 The jurisdiction of the peace officer is not at
24 issue. In other words, these are not junior peace
25 officers; they're not reserves or pretend peace officers.

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1 Their jurisdiction is decided by the Penal Code, just
2 like the jurisdiction of the sheriff, the park police,
3 who are also peace officers now. They have specific
4 jurisdiction. The fact that their jurisdiction is not
5 the same as the city police does not exclude them from
6 providing a public safety duty. Their public safety duty
7 is just different.

8 The fact that peace officers at school districts are
9 discretionary doesn't work, either. Obviously, peace
10 officers are discretionary at school districts and
11 colleges because not all of them have it.

12 The fact that an employee is discretionary does not
13 exclude the employee from reimbursement.

14 You may be surprised to know that vice-principals,
15 counselors, bus drivers, cafeteria staff -- most
16 everybody in the district office at a school district or
17 at a college is not a mandatory employee. These people
18 are not in the statutes as required employees. Yet
19 nearly the 20 years this Commission has been functioning,
20 they are reimbursing those employees for conducting the
21 mandates.

22 So clearly eliminating peace officers because they
23 are peace officers is arbitrary. It's what they -- it's
24 the duties, the mandate, and not who does them, with the
25 exception of the classroom.

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1 One of the points raised by the Commission staff
2 says the district has the discretion of firing or
3 discontinuing their peace officers. That's true. School
4 districts and colleges always have the discretion of
5 reducing staff. And just like state government, the
6 local school districts and colleges had severe staff
7 reductions, in the last few years.

8 The fact that you're reducing a certain type of
9 employee, in this case peace officers, does not remove
10 the mandate. The mandate is still required, the public
11 safety part of the mandate is still required, but you
12 just have to do it differently. And different sized
13 school districts do the mandates differently.

14 And so, in other words, the fact that these people
15 are discretionary and you can remove them and
16 vice-principals are discretionary, they've been removed
17 en masse in the last few years due to cutbacks, doesn't
18 mean that the mandate doesn't continue. So there must be
19 something new.

20 In the determination of the test claim two months
21 ago and in the recommendation here, the staff did not
22 point out anywhere in the law that makes peace officers
23 compulsory for cities and counties. Yet for schools, for
24 some reason, the staff thinks they must be compulsory or
25 else you won't reimburse them. They did not apply the

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1 same tests to the cities and counties. And you did not
2 apply the same tests when you adopted the mandate two
3 months ago. There was no showing that peace officers are
4 compulsory for cities and counties.

5 It may seem inherently logical to you; but you
6 probably know that there are some cities that do not have
7 peace officers. So they are not mandated.

8 I'm sure if deputy sheriffs were mandated by a
9 certain amount or city police were mandated by a certain
10 amount, the cities and county groups would have test
11 claims filed on that.

12 So if they're not compulsory at cities and counties
13 and they're not compulsory at school districts, why were
14 school districts chosen to exclude peace officers from
15 reimbursement? There is no logic there.

16 There must be something new. And I think what the
17 Commission staff thinks is new, is the recent Supreme
18 Court decision on the Kern case. As quoted twice in
19 the documents -- and I'll have to reference those in a
20 moment -- but essentially the Kern case as recently
21 decided said that the state need not reimburse the cost
22 of public agendas for school site councils because the
23 councils were funded by categorical funds. And the fact
24 that they were funded was the incentive to -- the
25 requirement to publish the agenda.

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1 Now, in the case before you, there's no funding
2 involved. They don't hire peace officers to obtain
3 funding, okay. That's not the mandate.

4 And the part of the quote from the court case that
5 the Commission staff picked was on page 11. It's just a
6 couple sentences. It's two-thirds of the way down after
7 the indent. It says, "In the Department of Finance," the
8 case I referenced,

9 "the Court stated, 'Our conclusion is based on
10 the following determinations: First, we reject
11 the claimants' assertion that they had been
12 legally compelled to incur costs, and, hence,
13 are entitled to reimbursement...without regard
14 to whether claimant's participation in the
15 underlying program is voluntary or compelled."

16 So voluntariness and compulsion was not an issue in
17 that court case.

18 The quote that staff did not include in their
19 analysis, that I included in my responses is in
20 Exhibit N. And it starts on the bottom of page 388.
21 It's another short quote.

22 So to recap at this point, staff is recommending not
23 reimbursing because peace officers are not compulsory.
24 So starting on the bottom of page 388:

25 //

1 "For the reasons explained below, although
2 we shall analyze the legal compulsion issue, we
3 find it unnecessary in this case to decide
4 whether a finding of legal compulsion is
5 necessary in order to establish a right to
6 reimbursement."

7 In other words, they're saying, "We've decided this case
8 for another reason. This case is not decided on legal
9 compulsion."

10 The staff is trying to use this case to eliminate
11 peace officers because they are not compelled -- they're
12 not compulsive employees.

13 Now, this Commission has already approved school
14 and college peace officers for reimbursement in seven
15 previous test claims: The Peace Officer Procedural Bill
16 of Rights, Threats against Peace Officers, Peace
17 Officers' Survivors Health Benefits, Law Enforcement
18 Sexual Harassment Training, Photographic Record of
19 Evidence, Law Enforcement College Jurisdiction
20 Agreements. And in that particular test claim, they
21 approved only community-college police and no other peace
22 officers. And finally, Sex Offenders: Disclosure by Law
23 Enforcement Officers; that's reimbursement for
24 maintaining the Megan's Law register. So, obviously,
25 these peace officers have serious duties.

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1 Now, nothing has changed since this Commission has
2 decided to reimburse peace officers, except for that
3 recent court case. And if you look at the quotes, you
4 know the court case was not based on compulsion; it was
5 based on a funding issue. There is no funding issue in
6 this test claim and there is no legal requirement that
7 peace officers be compelled, or compulsory employees.
8 There are very few compulsory employees in local
9 government. So that is not an adequate basis for
10 excluding peace officers.

11 Thank you.

12 CHAIR MATEO: The Department of Finance?

13 MS. GEANACOU: Do you wish to hear our comments now
14 or hear our staff response to Mr. Petersen's assertion?

15 CHAIR MATEO: What would we normally do here?

16 MS. HIGASHI: You can do whatever you prefer. It's
17 at the pleasure of the Commission.

18 CHAIR MATEO: Okay.

19 MS. GEANACOU: Okay, I'll proceed.

20 Susan Geanacou, Department of Finance.

21 The Department of Finance supports the Commission's
22 staff analysis as to this remaining item in this test
23 claim.

24 And I will note for the record, that the Department
25 of Finance court decision to which Mr. Petersen refers

1 did, in part, turn on the fact that the district's
2 participation in eight of the nine underlying programs
3 was discretionary. And as to the ninth program, that is
4 where the funding issue came in; and they found that
5 because the funds could be used to cover the reimbursable
6 costs, there was no requirement for reimbursement in that
7 case. So I do believe that's a relevant issue.

8 And here, participation in the underlying program of
9 creating a police department at a school district and
10 community-college level is discretionary. And for that
11 reason, we support the Commission's staff analysis.

12 CHAIR MATEO: Staff?

13 MS. TOKARSKI: First of all, I'd like to address the
14 issue of whether the staff analysis discusses whether
15 counties and cities have a law enforcement
16 responsibility. And that can be found in the first full
17 paragraph on page 9. Basically, there is a discussion of
18 the fact that school districts are not functioning within
19 their educational governmental capacity when they are
20 operating police departments. However, in contrast,
21 article XI of the California Constitution provides for
22 the formations of cities and counties.

23 Section 1, counties, states that, "The Legislature
24 shall provide an elected county sheriff," and section 5,
25 city charter provisions, specifies that, "City charters

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1 are to provide for the government of the city police
2 force." Thus, at the constitutional levels, cities
3 and counties are given local law enforcement
4 responsibilities, while school districts are statutorily
5 permitted to form police departments." So there is the
6 distinction that I have identified of why it's
7 permissible to reimburse the identified activities that
8 were discussed at the July hearing for city and county
9 police departments; because they have the primary
10 function of providing law enforcement for the state's
11 residents.

12 However, school districts only have to do these
13 activities if they become employers of peace officers;
14 and that's where the Department of Finance Supreme Court
15 decision comes in, which does say that you must look at
16 whether the underlying program is voluntary or compelled
17 when making these determinations.

18 And in this case, the underlying program is a
19 discretionary activity of forming police departments and
20 employing peace officers which, granted, is clearly good
21 public policy for some of these districts that have done
22 so, but it's not required and, therefore, is not
23 reimbursable for the activities stated in this test
24 claim.

25 CHAIR MATEO: Are there any questions from Members?

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1 Go ahead.

2 MEMBER ROSENBERG: Yes, thank you.

3 I'm impressed with the logic of both your positions.
4 One of you has got to be wrong.

5 Mr. Petersen makes kind of a compelling argument.
6 And I'd like staff to address, perhaps by analogy, his
7 point; and that is, that we really ought to be looking at
8 the function and not at who is doing it, in terms of
9 assessing whether or not it's a mandate.

10 By analogy, let's assume that you have a situation
11 where a vice-principal is responsible for undertaking a
12 new program. Let's assume the new program is clearly a
13 new program; and if you were looking just at the program,
14 it would be considered a mandate by the state. If the
15 vice-principal position is a discretionary position, as
16 Mr. Peterson says, then I guess the threshold question
17 is, is it a discretionary position? But if it is a
18 discretionary position and a vice-principal is charged
19 with undertaking this new program, wouldn't we find that,
20 as a Commission, to be a state mandate? We wouldn't look
21 at who's doing it; we would look at what the program is?

22 MS. TOKARSKI: Okay, this is the distinction I'll
23 try to articulate. If the state mandate in that case was
24 a state mandate that all vice-principals -- whenever you
25 have a vice-principal, they must clock in at 9 a.m. every

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1 morning, or something that is specific to
2 vice-principals.

3 Now, if vice-principals were not required to be part
4 of the educational system, then that would not be a
5 reimbursable state mandate under this analysis.

6 However, if the mandate is that school districts
7 must comply with a particular -- I know vice-principals
8 often deal with discipline issues -- but they must comply
9 with a particular discipline issue; and it happens to be
10 the vice-principal who is charged by that school district
11 with performing those activities, the activities are
12 reimbursable and, within reason, it doesn't matter who is
13 performing those activities; these activities in this
14 case only come about because they are employing peace
15 officers, which they do not need to do. So that's the
16 best way I can explain that situation.

17 MEMBER ROSENBERG: I would truly be interested in
18 hearing a brief comment by Mr. Petersen.

19 MR. PETERSEN: The staff position contradicts what
20 this Commission has always done. The vice-principal is a
21 good example. There is a mandate called Pupil Counseling
22 and Pupil Classroom Visits. It's a mandate which
23 requires school site personnel to respond to requests
24 from parents to visit the classroom and to discuss
25 reasons why their pupil has been removed -- discipline

1 reasons.

2 When that test claim went forward 11 years ago, the
3 Department of Finance suggested that only counselors and
4 not vice-principals be reimbursed. And this Commission
5 decided there was no distinction about who provided the
6 services. It was whether the services were provided.

7 So not until today has the Commission considered
8 excluding any one class of employee because of the nature
9 of their employment. They've always considered whether
10 the activity had to be done.

11 Bus drivers are reimbursed, to some extent, in
12 the school bus mandate because there are buses.
13 Vice-principals are reimbursed because they perform a
14 discipline function. Not every school site has a
15 vice-principal. Some school sites have several
16 vice-principals based on the need. Not every school
17 district has peace officers. Large, urban school
18 districts have peace officers based on the need. They
19 all have the same public education and public service
20 function.

21 Public education is not the only reimbursable aspect
22 of school district and college mandates. This commission
23 has recognized that these local agencies do other things,
24 other than public education; and they are reimbursed for
25 doing these other things.

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1 So the Commission staff position on this today has
2 no basis in fact or law. It's just a policy preference.
3 The court cases make no distinction between the public
4 safety function of schools and cities and counties.

5 Obviously, cities and counties have the brunt of the
6 burden of public safety; but so do schools. And school
7 districts and colleges meet that commitment -- in some
8 cases by hiring peace officers, in some cases by hiring
9 what we would call "rent-a-cops." They meet these
10 functions in various ways, cost-effective ways, in what
11 meets their individual needs.

12 The fact that city police and county sheriffs are
13 the traditional peace officers in the state is not
14 controlling.

15 The Penal Code, 830.31, in 1980, said that, "Those
16 persons who are peace officers, who extends authority any
17 place in the state for the purpose of performing their
18 primary duty or where making arrests, included are
19 community-college police and school police." They have
20 the same statewide peace officer responsibilities as any
21 other peace officer. They are not second-class peace
22 officers. They're performing a mandated function.

23 Discretionary, again, is not the issue. They are
24 using "discretionary" here to make a change.

25 Discretionary employees has never been the issue. It is

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1 whether the activity was done and who did the activity.

2 One of my favorite examples is, I was told several
3 years ago, that down in Furnace Creek in Death Valley,
4 the principal of a very small school, one of his tasks is
5 driving the bus and picking up the kids. That's how they
6 implement that mandate. It's not who does it. It's
7 whether the activities are implemented or not.

8 CHAIR MATEO: I'm having trouble picking up some of
9 the distinctions here. The emphasis you have placed is
10 on employees, and yet it's the activity within school
11 districts rather than the employees that I'm hearing is
12 the issue, that the activity is discretionary, itself,
13 within school districts. And so it's not clear to me
14 that this discussion on employees is germane.

15 MR. PETERSEN: I'm sorry, as to who does the work?

16 CHAIR MATEO: Yes.

17 MR. PETERSEN: I agree.

18 CHAIR MATEO: And so what I'm hearing staff say, is
19 that they're seeing a constitutional direction to cities
20 and counties that is not made to districts; and that the
21 requirement, if you will, in statute is discretionary;
22 and that that is the basis, as opposed to the kinds of
23 employees performing the function.

24 Am I missing something here?

25 MR. PETERSEN: I believe you are.

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1 MR. STARKEY: Can I weigh in? I believe you
2 understand exactly.

3 The notion was raised that this was -- that staff
4 was somehow making a policy decision. The policy
5 decision is set out in the Constitution, which vests
6 traditional police functions in the local agencies and
7 in the precise specific Education Code that says that the
8 police function can be carried out through the school
9 districts, but that is at their discretion. They can
10 elect to do that.

11 And that is exactly the issue of discretion that
12 staff believes that -- the City of Merced, which was a
13 long-standing case, was upheld by the Supreme Court
14 recently in the Kern case. And so we believe the clear
15 direction -- clear direction from the Supreme Court
16 now -- is that if you find that the local agency can make
17 an election, a policy decision -- a policy decision in
18 this case, for example: "We shall elect to have safety
19 enforcement on our campus." That's a policy decision
20 they make, it's at their discretion. It's allowed by the
21 Education Code, not required. That is not going to be
22 reimbursed by a state mandate because of the
23 discretionary choice.

24 So, yes, you understand that exactly correct.

25 MR. PETERSEN: I would disagree.

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1 CHAIR MATEO: Go ahead, Mr. Barnes.

2 MEMBER BARNES: Sure. I had two questions.

3 One question had to do with the list of mandates
4 that were cited in Exhibit N.

5 MR. PETERSEN: Uh-huh.

6 MEMBER BARNES: On page 389.

7 My impression is that these mandates have been
8 approved before the Kern case came about.

9 MR. PETERSEN: Yes.

10 MEMBER BARNES: Am I correct about that?

11 The other issue that I'm kind of struggling with,
12 although I tend to feel the staff analysis is on point
13 on this, is that it seems to me that there may be a
14 distinction here, and maybe you can help me with it,
15 which is the fact that most mandates -- excuse me, most
16 mandates are imposed upon agencies, like school districts
17 or counties or whatever; and there are people within
18 those districts who carry them out, some of whom may be
19 discretionary hires or may be non-discretionary hires.

20 In this case, my impression is that the law was
21 intended to apply to all people who were categorized as
22 police officers. And I guess the fact that some of those
23 police officers are discretionary on the part of school
24 districts or community colleges, to a certain extent,
25 they're discretionary in the police and sheriffs, too.

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1 They can decide that they're going to have one police
2 officer or ten police officers. And in addition, the
3 school district could make a decision that instead of
4 hiring staff to police their district, they could go and
5 work with the board of supervisors or the city to hire
6 more police officers who might be targeted at a
7 particular school.

8 So on another case, that if you had something that
9 was specifically required of a school district, like --
10 and I forget what the example was -- but let's say that
11 they decided that a discretionary employee, like a
12 vice-principal would do it. I tend to think that since
13 the mandate is on the school to do something, whether
14 they had it being done by a discretionary employee or a
15 non-discretionary employee, shouldn't make a difference.
16 Because to a certain extent, they can't shove that off on
17 somebody else. They can't go to the city council and
18 say, "Could you have the police department or the
19 department of sanitation or somebody else do that for us,
20 because we don't want to do it?" It's imposed upon the
21 institution, in most cases.

22 In this case, I guess what I'm hearing is that it's
23 being imposed upon a certain class of employee,
24 regardless of where they are.

25 Am I mistaken about that? And if so, I'd like any

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1 comments that you have.

2 MS. TOKARSKI: Well, just sort of a semantic point
3 of clarification.

4 The activities are being imposed not on the class of
5 employee, but on the employer of the peace officers. I
6 don't know if that makes any distinction for you in what
7 you're saying.

8 But the point is that school districts do not have
9 to be employers of peace officers. And, therefore,
10 under the Department of Finance case, they're not
11 compelled to -- if they have a peace officer program,
12 then yes, they need to follow these statutes. But
13 practical or not, they can make that choice to step out
14 of the mandate program, which is distinct from many other
15 examples of test claims that have been approved by the
16 Commission.

17 MR. PETERSEN: Can I respond now?

18 CHAIR MATEO: Go ahead.

19 MR. PETERSEN: The staff position just cannot work.
20 There's no support in Kern for it.

21 The law does not mandate vice-principals, cafeteria
22 workers, counselors, librarians, bus drivers. Yet in
23 mandates, some of those functions -- and whether they're
24 done by cafeteria workers or the janitor, whatever, is a
25 local choice. The mandate is on public education, not on

1 specific employees.

2 If you choose to employ a particular category of
3 employees, with them comes some baggage. The baggage is
4 this test claim, and that is personnel procedures
5 regarding requests for their records and unfounded
6 complaints. If you've got a peace officer, you have this
7 higher level.

8 Similar baggage exists -- if you want to call it
9 "baggage" -- if you hire teachers. You have collective
10 bargaining. It has nothing to do with classroom
11 education. It's a huge mandate. Over 50 million dollars
12 a year, that's reimbursed by the State. It's the nature
13 of the employee relationship that you have. You have
14 employees, if they select to be represented by union,
15 must collectively bargain. It has nothing to do with
16 public education.

17 Public schools provide public education and other
18 public services, as required by law. The test is whether
19 it's a duty on local government, not required of private
20 employers. Private employers do not employ peace
21 officers, only governments do.

22 So the basic definitions in place for the last
23 20 years have directed this Commission to decide to
24 reimburse the activity, not the person doing it.

25 The only change is the Kern case. And the Kern

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1 case, as you saw, does not turn on any sort of
2 compulsion. Your staff says that law enforcement
3 officers are not compelled and cites Kern as support.

4 Kern says there's nothing about compulsion in their
5 decision. So the reliance is misplaced. Nothing has
6 changed.

7 Kern is about school site council agendas being
8 posted because you have these school site committees
9 which are funded by categorical funds. There is no
10 funding issue. Kern is not relevant. There is no reason
11 to change what you've been doing for 20 years.

12 And if you do exclude peace officers because they're
13 "discretionary," nearly every other employee in local
14 government is discretionary. And if that's the basis,
15 there's no mandate reimbursement, which might be
16 attractive to some.

17 But the Constitution, Article XIII B 6, says the
18 state will reimburse new programs and higher levels of
19 service. And this Commission decided 12 years ago that,
20 with the exclusion of duties occurring in the classroom,
21 you would reimburse the employee doing the work,
22 regardless of which employee it was.

23 This is not a new issue. This has been decided 12
24 years ago.

25 Thank you.

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1 CHAIR MATEO: Any further questions from any
2 members?

3 Do I have a motion?

4 MEMBER WILLIAMS: I would like to move the staff
5 analysis.

6 CHAIR MATEO: Do I have a second?

7 MEMBER BARNES: I'll second.

8 CHAIR MATEO: We have a motion and a second.
9 All in favor?

10 MEMBER ROSENBERG: Any discussion --

11 MS. HIGASHI: I will do roll call, too.

12 CHAIR MATEO: Oh, you do roll call on these? Okay,
13 thank you.

14 MS. HIGASHI: If there isn't discussion.

15 CHAIR MATEO: Go ahead.

16 MEMBER ROSENBERG: I would just like to say that
17 Mr. Petersen makes a very good policy argument. But the
18 law would compel a different result, I'm afraid. Here,
19 the law was sorted out in the Constitution, which imposes
20 a mandatory duty on the cities and counties to provide
21 law enforcement. And although school districts have the
22 ability to provide the law enforcement, it is a
23 discretionary decision given to --

24 MR. PETERSEN: Actually, that's in the Constitution,
25 too, safe public schools.

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1 MEMBER ROSENBERG: All the more reason that the
2 policy argument has been sorted out in the Constitution.

3 There is no mandate on school districts to provide
4 law enforcement. That function can and, in most cases,
5 is provided by cities and counties.

6 School districts can chose to provide law
7 enforcement; and so that is a discretionary decision they
8 make. The rest of this falls out as a result of that.

9 CHAIR MATEO: Paula, please call the roll.

10 MEMBER BARNES: Before you --

11 CHAIR MATEO: Oh, I'm sorry, Walter. I didn't see
12 you.

13 MEMBER BARNES: I just had one question. And I
14 raised this at the last meeting. And we've talked about
15 school districts and we talked about community colleges.
16 And my impression, when I asked this question at the last
17 meeting, is that we were talking about community
18 colleges, as opposed to school districts. And I guess I
19 just want to make sure what we're voting on here. Are we
20 voting on school districts, K-14; or are we just voting
21 on community colleges?

22 MS. TOKARSKI: Yes, in this case Santa Monica
23 Community College District is standing in the shoes of
24 all types of school districts as --

25 MEMBER BARNES: So it is K-14?

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1 MS. TOKARSKI: It is K-14.

2 MEMBER BARNES: Thank you. Just to clarify.

3 MS. HIGASHI: Mr. Barnes?

4 MEMBER BARNES: Yes.

5 MS. HIGASHI: Mr. Lazar?

6 MEMBER LAZAR: Yes.

7 MS. HIGASHI: Mr. Rosenberg?

8 MEMBER ROSENBERG: Aye.

9 MS. HIGASHI: Mr. VanHouten?

10 MEMBER VANHOUTEN: Yes.

11 MS. HIGASHI: Ms. Williams?

12 MEMBER WILLIAMS: Aye.

13 MS. HIGASHI: Ms. Mateo?

14 CHAIR MATEO: Aye.

15 MS. HIGASHI: The motion is adopted.

16 At this point, what I would like to suggest we do,
17 is move to Item 8, which is adoption of the proposed
18 Statement of Decision on this test claim.

19 Mr. Petersen, we're going to move to Item 8, which
20 is the Proposed Statement of Decision. And we need to
21 have you at the table.

22 This is for the Proposed Statement of Decision.

23 MR. PETERSON: What?

24 MS. HIGASHI: This is for the proposed Statement of
25 Decision.

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1 MR. PETERSEN: Well, the school district is no
2 longer in there.

3 MS. HIGASHI: It's still part of the decision.

4 MR. PETERSON: Okay.

5 Ms. Tokarski will present this item.

6 MS. TOKARSKI: What you have before you is the
7 Proposed Statement of Decision. Because we're doing
8 bimonthly hearings, as much as possible, we'll try to
9 move the statements of decision, along with the item,
10 when feasible.

11 So this Statement of Decision includes all of the
12 material that was approved at the July hearing, as well
13 as the vote taken today. There will be, of course, some
14 clerical changes to reflect the vote taken today, when
15 the Final Statement of Decision is mailed. But other
16 than that, it is identical to the material that you
17 approved in the final staff analysis.

18 CHAIR MATEO: I'm lost on my script here, Paula.
19 Okay, let's see.

20 MS. HIGASHI: I'm sorry.

21 CHAIR MATEO: Bear with me, folks. They are guiding
22 me through this.

23 MS. HIGASHI: I know I made this change; but this is
24 for Item 8, and it's the proposed Statement of Decision.
25 And it's up to the Commission members to decide if they

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1 want to adopt the Proposed Statement of Decision.

2 CHAIR MATEO: Okay. And so normally we would go
3 through the similar routine?

4 MS. HIGASHI: Normally, it would be on the consent
5 calendar. But because we're doing this a little bit
6 differently, we're calling the item so Mr. Petersen has
7 a chance to speak on this issue.

8 CHAIR MATEO: So we would at this point ask for a
9 presentation from --

10 MS. HIGASHI: Correct.

11 CHAIR MATEO: Okay.

12 MS. HIGASHI: I'm sorry.

13 MEMBER ROSENBERG: Can we clarify that? We're not
14 here to reargue the matter?

15 MS. HIGASHI: No.

16 MEMBER ROSENBERG: We're here to simply determine
17 whether the Proposed Statement of Decision reflects
18 the --

19 MS. HIGASHI: Commission's decision.

20 MEMBER ROSEBERG: -- decision.

21 CHAIR MATEO: Correct.

22 MS. HIGASHI: Which previously was to adopt --

23 MEMBER ROSENBERG: And is there anything in the
24 statement of --

25 MS. HIGASHI: -- the staff analysis.

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1 MEMBER ROSENBERG: -- decision which does not
2 accurately reflect the decision of the Commission, even
3 though one may disagree with that decision?

4 MR. PETERSEN: That's my understanding.

5 MS. HIGASHI: Yes. And I'd just like to note,
6 Mr. Burdick has joined us; and I don't believe he was
7 here when we did the swearing in.

8 MR. BURDICK: No.

9 MS. HIGASHI: Had you intended to testify?

10 MR. BURDICK: Yes, I do.

11 CHAIR MATEO: Go ahead and swear Mr. Burdick in,
12 please.

13 MR. PETERSEN: Actually, could I just say the
14 Statement of Decision reflects the decision you just made
15 and bow out?

16 [Laughter]

17 CHAIR MATEO: That's fine, Mr. Peterson.

18 MR. PETERSON: But I still disagree with it.

19 MS. HIGASHI: Mr. Burdick, do you solemnly swear or
20 affirm that the testimony which you are about to give is
21 true and correct based upon your personal knowledge,
22 information or belief?

23 MR. BURDICK: I do.

24 MS. HIGASHI: Okay.

25 MR. BURDICK: Thank you very much, Madam Chair and

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1 Members of the Commission.

2 Allan Burdick.

3 And in this case, the person who argued this last
4 time on our behalf, Ms. Pamela Stone, had a family
5 emergency and was unable to be here, so I'm kind of a
6 last-minute pinch hitter for her. I apologize for that.

7 So I'm actually here representing both the City of
8 Hayward and the County of San Mateo in this particular
9 case.

10 As you know, while we've raised a number of issues
11 at the last meeting, I think, you know, we do not
12 disagree with the Statement of Decision.

13 I think the only comment would be made, is some that
14 we might want to talk with staff later on; and that's
15 that I think the Statement of Decision generally reflects
16 the staff analysis and what was presented to the
17 Commission prior to the discussion. There was a
18 discussion of a number of items, I think, during the
19 hearing, and that are not necessarily included in there.

20 And I don't want to open up a whole can of worms
21 because this may create a lot more staff work. But we
22 recently have had some questions about the Statement of
23 Decision and what it reflected. And in some cases, when
24 there was discussion about, "Well, that was discussed at
25 the hearing," there was an indication that that is not

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1 contained in the Statement of Decision.

2 So I think that maybe there is -- if I could switch
3 for a second and say that I'm representing the California
4 State Association of Counties and all the counties for a
5 second, I think there's a need to talk about the
6 Statement of Decision and what it's intended to do.

7 Because if, in fact, those items are not included in
8 there later on, many people are saying that other state
9 agencies which are auditing or looking at some of these
10 items are questioning some of the discussion that may
11 have been taking place, or some of the decisions that may
12 have been made by the Commission on various items.

13 But setting that aside, we have no objection to the
14 Statement of Decision.

15 CHAIR MATEO: I almost think I heard you did, and
16 you didn't.

17 MEMBER ROSENBERG: Don't egg him on.

18 MR. BURDICK: No.

19 CHAIR MATEO: Don't egg him on? Okay.

20 All right. Understanding that there's no objection
21 from the audience on our Statement of Decision --

22 MEMBER ROSENBERG: I just have a question, and
23 perhaps you can help me on this. In the hearing
24 previously, I voted "no" on the decision. I was in the
25 minority on that decision. What has been the practice in

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1 the past for Members of the Commission who find
2 themselves in that position when voting on the Statement
3 of Decision? Do they vote "yes" or do they vote "no" or
4 do they abstain?

5 MS. HIGASHI: Typically, they have voted to adopt
6 the Statement of Decision because it does reflect the
7 vote taken by the Commission.

8 MEMBER ROSENBERG: Right.

9 MS. HIGASHI: But the votes of the prior members of
10 the hearing are reflected.

11 MEMBER ROSENBERG: Thank you.

12 MS. HIGASHI: And let me just add, this is unusual
13 because this is our first hearing that we've had on this
14 bimonthly schedule. So normally, a decision would come
15 at the next month's hearing; but we're experimenting, as
16 we had talked about doing, in terms of putting proposed
17 statements of decision on the same agenda as the test
18 claim. And in the event that it could be adopted and
19 there would be no objection so that we could move items
20 along -- and this is just in the spirit of trying to keep
21 the test claims moving. But going to the bi-monthly has
22 created some scheduling issues and just changes in agenda
23 setting.

24 CHAIR MATEO: Thank you. I think we appreciate
25 staff's effort to keep things moving.

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1 Do I have a motion on this item?

2 MEMBER LAZAR: I'll move adoption.

3 MR. BARNES: I'll second.

4 CHAIR MATEO: I have a motion and a second.

5 Paula, will you call the roll?

6 MS. HIGASHI: Mr. Lazar?

7 MEMBER LAZAR: Yes.

8 MS. HIGASHI: Mr. Rosenberg?

9 MEMBER ROSENBERG: Aye.

10 MS. HIGASHI: Mr. VanHouten?

11 MEMBER VANHOUTEN: Yes.

12 MS. HIGASHI: Ms. Williams?

13 MEMBER WILLIAMS: Aye.

14 MS. HIGASHI: Mr. Barnes?

15 MEMBER BARNES: Aye.

16 MS. HIGASHI: Ms. Mateo?

17 CHAIR MATEO: Aye.

18 MS. HIGASHI: The motion is carried. The Statement
19 of Decision is adopted.

20 MR. BURDICK: Thank you very much.

21 MS. HIGASHI: This brings us to Item 5.

22 Commission counsel, Camille Shelton, will present
23 this item.

24 MS. SHELTON: Good morning.

25 Item 5 is the request for reconsideration on the

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1 Commission's Statement of Decision issued in May 2003 on
2 the Crime Victims' Domestic Violence Incident Reports
3 test claim. The issue on reconsideration is limited to
4 whether storage of the report and face sheet, pursuant to
5 Family Code section 6228(e) constitutes a new program or
6 higher level of service for five years as the Commission
7 found, or for three years.

8 As indicated in the staff analysis on
9 reconsideration, existing Government Code statutes
10 require local agencies to keep all documents required
11 by law to be kept for two years. These statutes were not
12 considered in the Statement of Decision.

13 The County of Los Angeles argues, however, that the
14 Government Code statutes are not relevant, since no law
15 prior to Family Code section 6228 required local agencies
16 to store domestic violence incident reports in a
17 readily-accessible manner.

18 Staff disagrees with the county. The plain language
19 of Family Code section 6228(e), does not address the
20 manner of storage. It simply establishes the length of
21 time the documents must be kept by the local agency.
22 Thus, the existing law in Government Code sections 26202
23 and 34090, which established the timing for the retention
24 of all records required by law to be kept, are relevant
25 and apply to the test claim statute.

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1 The Commission does have the discretion, however, to
2 address the manner of storage in the parameters and
3 guidelines, when establishing the reasonable means of
4 complying with this mandate.

5 For the reasons stated in the analysis, staff finds
6 that Family Code section 6228(e), mandates a new program
7 or higher level of service for storing the domestic
8 violence incident report and face sheets for three years
9 instead of five. Staff, therefore, recommends that the
10 Commission find that the Statement of Decision contains
11 an error of law.

12 Staff further recommends that the Commission amend
13 the Statement of Decision to reflect the analysis of the
14 Government Code sections, and to change the five-year
15 finding to three years.

16 Under the Commission's regulations, a supermajority
17 of five affirmative votes is required to change a prior
18 final decision.

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

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

22 MS. MANGUM: Sarah Mangum, Department of Finance.

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

25 CHAIR MATEO: Mr. Kaye, would you like to begin?

1 MR. KAYE: Thank you. Good morning.

2 We appreciated the legal scholarship that Commission
3 staff have poured into this matter. They held a special
4 hearing, as Camille mentioned, in the end of June, where
5 this was, I believe, the only matter on the agenda. And
6 they've gone to some lengths to try and be very specific
7 and correct in phrasing their finding.

8 Apparently, as I understand it, the error of law is
9 that they studied, to some great extent, is accurately
10 stated. On page 11, on their Statement of Decision. And
11 it says,

12 "The Commission finding that the State has
13 not previously mandated any record-retention
14 requirements on local agencies for information
15 to victims of domestic violence, does not take
16 into consideration prior law."

17 And I would like to focus our attention on the
18 specific words, because as the current discussion among
19 many of us is: How specifically should we refer to
20 language when it's incorporated into a decision? Do we
21 have license to say that retaining something is the same
22 as storing something? Or must we adhere to the specific
23 context and the specific wording as found in statute?

24 And I would argue that we must continue to adhere to
25 the specific terminology as found in statute. And prior

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1 law makes no reference to the storage of domestic
2 violence records.

3 There is other law, as correctly noted by Commission
4 staff, which talks about retaining records or failing to
5 destroy records.

6 And so what we recommend, if I may jump to the
7 conclusion, in the interest of time, is a slight
8 modification of Commission staff's terminology and
9 finding. Because, as Camille correctly noted, we will
10 shortly -- and the County of Los Angeles will be
11 responsible for coming up with Parameters and Guidelines
12 which hope to delineate the reimbursable activities.
13 So our finding, hopefully, will give us a little head
14 start in this area.

15 And what we propose, I believe on page 30 of the
16 Commission staff analysis, their version, which I'll
17 repeat verbatim, is that they find reimbursable the
18 activity of storing domestic violence incident reports
19 and face sheets for three years. We recommend modifying
20 that, again, in keeping with the literal interpretation
21 and use of the specific words that appear in statute, "to
22 storing domestic violence incident reports and face
23 sheets, including retaining such documents for only three
24 years."

25 Thank you.

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1 CHAIR MATEO: Staff?

2 MS. SHELTON: If I can comment on that? Staff does
3 not have a problem with that recommended change.

4 Under the law that we have analyzed for you in the
5 staff analysis, local agencies are required to keep those
6 documents in a manner that they are not destroyed. So
7 this still preserves the discretion with the Commission
8 in the Parameters and Guidelines to determine how exactly
9 they -- how they should be storing these documents and
10 the manner in which they store the documents, which
11 certainly can be left for Parameters and Guidelines.

12 CHAIR MATEO: Department of Finance?

13 MS. GEANACOU: We're wanting to make sure -- Susan
14 Geanacou, Department of Finance.

15 We wanted to make sure we captured Mr. Kaye's
16 language correctly.

17 Could you reread, please, what you're proposing?

18 MR. KAYE: Yes. I'll try and be consistent.

19 MS. GEANACOU: No, that's okay.

20 MR. KAYE: "Storing domestic violence incident
21 reports and face sheets, including retaining such
22 documents for only three years."

23 MS. GEANACOU: Okay, could you please clarify how
24 that is materially different from what the Commission is
25 proposing right now?

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1 MR. KAYE: I think it provides a little bit more
2 guidance. For example, one might adopt the metric, and
3 say that we simply should take our total storage costs
4 and claim that 60 percent, or three-fifths, is
5 reimbursable, and the other three-fifths are. And as a
6 CPA, I can tell you that that metric is not necessarily
7 reliable.

8 This wording would allow us to say that there's
9 certain, perhaps, fixed costs. And as Camille said, we
10 can argue about this or talk about this in the Parameters
11 and Guidelines phase; but it would get us away from the
12 simple mindset of simply saying that a certain proportion
13 of the storage costs are reimbursable. And we would be
14 able to analyze and present to this Commission all the
15 activities required under storage costs, of which record
16 retention is a very important cost.

17 CHAIR MATEO: I have a question of staff. I want to
18 know whether this clarification abridges, in any fashion,
19 our limited reconsideration of this item?

20 MS. SHELTON: I don't believe that it does, no.

21 MEMBER WILLIAMS: I have one question. Inserting
22 the word "only three years," doesn't that kind of
23 restrict with the locals?

24 MR. KAYE: Well, this is what Commission staff
25 found, is that under prior law, we were required to

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1 retain these types of documents for two years. So the
2 five years, minus the two years under prior law, would be
3 the new requirement to retain them for three years.

4 MEMBER WILLIAMS: But inserting the word "only" kind
5 of worries me.

6 MS. SHELTON: I didn't have that in mine.

7 Did you --

8 MR. KAYE: Okay, we can delete the word "only for
9 three years," yes, that would be fine.

10 MEMBER ROSENBERG: Help me out here.

11 MR. KAYE: Okay.

12 MEMBER ROSENBERG: You seem to be making a
13 distinction between the word "retention" and the word
14 "storage."

15 MR. KAYE: Yes.

16 MEMBER ROSENBERG: I'm not sure I understand there
17 to be a significant difference. Why don't you explain to
18 me why you're making an issue of that?

19 MR. KAYE: Okay.

20 MEMBER ROSENBERG: What is the difference between
21 retaining something and storing something?

22 MR. KAYE: Okay. Under the particular statute,
23 there are requirements by which we must make these
24 documents readily available, and certain penalties or
25 sanctions if we don't.

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1 And it is my understanding that, in order to do
2 this, we have to perform certain storage activities that
3 have nothing to do with the duration of how long you keep
4 a document, whether it's transforming them into a certain
5 software or optically-read characteristics and so forth.

6 So retaining a document then is a necessary but not
7 sufficient condition for performing the storage
8 requirements under the test claim legislation.

9 MEMBER ROSENBERG: Okay, you're going to have to
10 clarify a little bit more. Are you saying that retaining
11 is a lesser duty than storing?

12 MR. KAYE: I believe so.

13 MEMBER ROSENBERG: Okay, explain why. In other
14 words, are you suggesting that "storing" means to take
15 the document and put it in a box; whereas "retaining" can
16 mean simply --

17 MR. KAYE: Failing to destroy.

18 MEMBER ROSENBERG: Well, that's no difference. Wait
19 just a second. Are you suggesting that "storing" is
20 taking the document and putting it in a box; whereas
21 "retaining" can include taking the document and putting
22 it in electronic form --

23 MR. KAYE: Yes.

24 MEMBER ROSENBERG: -- and actually taking the
25 original document and throwing it away?

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1 MR. KAYE: Well, my baseline distinction is the fact
2 that irrespective of whether one activity is subsumed
3 under another, the statutory language is different. And
4 I think that I'm trying to be literal in terms of the
5 statutory language.

6 MEMBER ROSENBERG: Okay.

7 MR. KAYE: And whether it's more or less, and to the
8 extent that it's more or less, I think that's a
9 Parameters and Guidelines issue.

10 But I'd like to preserve the distinction that under
11 prior law, they talked about retaining records. Under
12 the current test claim, they talk about storage
13 requirements.

14 MEMBER ROSENBERG: All right, let me ask staff then,
15 if I may, is the more appropriate word to use, if we
16 follow the literal language of the statute, "retain" or
17 "retention," as opposed to "storing" or "storage"?

18 MS. SHELTON: Actually, I think we're getting off
19 the language of the statute.

20 If you look on Bates page 15, that is the quote of
21 the entire statute. And subdivision (e), at the very top
22 of page 15, says --

23 MEMBER ROSENBERG: Wait. Page 15, where?

24 MS. SHELTON: On the very top.

25 MEMBER ROSENBERG: No, no. We have a staff report

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1 and then numerous exhibits.

2 MS. SHELTON: They're all chronologically numbered.
3 This is page 15.

4 MS. GEANACOU: Of the staff analysis?

5 MS. SHELTON: Of the staff analysis, yes.
6 Everything is chronologically numbered.

7 MEMBER ROSENBERG: Well, everything you may have,
8 may be chronologically numbered; but everything I have is
9 not.

10 MS. SHELTON: Okay. Under the staff analysis on
11 page 15. So that should be before Exhibit A.

12 MEMBER ROSENBERG: Chronological numbering is a very
13 helpful tool; and it would be useful if all of us had
14 that.

15 MS. SHELTON: Well, we normally do that.

16 I'm not sure why it's not done in your case; but I
17 do --

18 MEMBER ROSENBERG: All right, go ahead.

19 MS. SHELTON: At the very top of page 15 is
20 subdivision (e). Do you all have that? Okay.

21 It says,

22 "This section shall apply to requests for
23 face sheet or reports within five years from
24 the date of completion of the domestic violence
25 incident report."

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1 Going back to the time that this claim was
2 originally heard, the claimant argued that that
3 subdivision required local agencies to store the report
4 and face sheets for five years. And the Commission
5 agreed with that interpretation.

6 Let me try to help, maybe with the storage and the
7 retention. And it's going back to the first -- to the
8 test claim hearing in April. This whole program requires
9 local law enforcement agencies, upon request of a victim
10 of domestic violence, to provide to the victim a copy of
11 the report within short turn-around time frames. They
12 have to provide a copy of the face sheet within 48 hours
13 or five days, if they can show that they have good cause
14 for not turning it over in 48 hours; and a copy of the
15 report within, I believe it's five days, or ten days, if
16 they show good cause why they cannot turn it over.

17 Now, as part of the existing decision, which is not
18 before you on reconsideration, was the Commission
19 finding, that under prior law, this report had to be
20 already turned over to the victim and made promptly
21 available, which is language under the Public Records
22 Act.

23 So before, they had to keep this report for two
24 years and make the report promptly available to the
25 victim. Now, they have to keep the report for five years

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1 and turn it over within either 48 hours, five days, or
2 ten days.

3 So the issue of the manner of storage can be
4 addressed by the Commission in the Parameters and
5 Guidelines. Because I believe before, during the two
6 years, they had to retain those documents in a certain
7 manner, to make them readily available, and now you have
8 three additional years that you also have to make them
9 readily available to the victim.

10 MEMBER ROSENBERG: I understand that we can and we
11 will address that, when we address Parameters and
12 Guidelines.

13 MS. SHELTON: Okay.

14 MEMBER ROSENBERG: And I understand that the issue
15 today is simply the period of time for reconsideration.

16 All I want to know is, what word would be
17 appropriate to use, based on the statutes, "storage" or
18 "retention"?

19 MR. KAYE: Sir, if I --

20 MEMBER ROSENBERG: Before you answer, let me hear
21 from staff; and then I'd be pleased to hear from you as
22 well.

23 MS. SHELTON: Legally, I believe that they're
24 required to do both. They're required to store and
25 retain the document.

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1 MEMBER ROSENBERG: So you think there may be a
2 difference between the two terms?

3 MS. SHELTON: Well, maybe not. To store and retain
4 something --

5 MEMBER ROSENBERG: Well, maybe that is the best
6 solution, just say "storage and retention," and be done
7 with it.

8 CHAIR MATEO: I have --

9 MS. SHELTON: And the courts have used -- I'm sorry.

10 CHAIR MATEO: I was going to say I have some
11 hesitancy here because I'm not sure whether the change in
12 the language opens the door to essentially retread a
13 decision that was made previously by the Board. And so I
14 am really at this point not supportive of the change.

15 Department of Finance?

16 MR. STARKEY: Let me -- on that point, I've been
17 looking at the request for reconsideration the way it was
18 phrased. The original request came in with the exact
19 language of the word "store," which is in the Statement
20 of Decision. And I share your concern that -- I
21 understand what the reason for this, for the
22 clarification would be. But at this point in time, I
23 believe that we're beyond that; and we're focusing on
24 three years or five years.

25 MEMBER ROSENBERG: Right.

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1 MR. STARKEY: And not the possible interpretations
2 of what "storage" means.

3 And while I greatly appreciate and truly understand
4 the need to have as much specificity as we can, the
5 Statement of Decision at this point, I think, we've
6 picked a term, and we've decided on that.

7 So I believe the sole issue is three to five years.

8 MEMBER VANHOUTEN: I agree with what you're saying;
9 but Mr. Burdick's testimony leaves me uncomfortable in
10 that --

11 MR. KAYE: Mr. Kaye.

12 MEMBER VANHOUTEN: Mr. Kaye, I'm sorry.

13 MR. KAYE: That's all right.

14 MEMBER VANHOUTEN: It almost sounds like you're
15 saying that there would be a higher level of custody if
16 we put in that word.

17 MR. KAYE: Okay.

18 MEMBER VANHOUTEN: It might at one point be on a PC
19 and readily available. And now it's in storage, and
20 because it's in storage, it's at a higher level of
21 security, so you don't just take your costs by
22 two-thirds; you go in and you look at the square footage,
23 you look at the boxes, you look at the --

24 MR. KAYE: There are many aspects which we will get
25 into in the Parameters and Guidelines.

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1 I merely think this would be a clarifying matter;
2 and it goes to the essence of the heart of the matter.

3 I think if you go to that page 15, that we were
4 searching at before, and you dropped down four or five
5 lines, you'll see that the very essence, the intent of
6 the legislation is to make that distinction. And then
7 I believe this was captured in the Statement of Decision.
8 It says,

9 "The author notes that the victims of
10 domestic violence do not have an expedited
11 method -- an expedited method of obtaining
12 police reports under existing law. Currently,
13 victims of domestic violence must write and
14 request that copies of reports be provided by
15 mail. It often takes between two and three
16 weeks to receive the report."

17 And this statutory requirement, requires us to make
18 them readily available.

19 And what we're saying is, we understand the
20 Commission's staff uses the word "storage"; and we don't
21 mean to quibble, but under prior law, which they're
22 talking about here, which this statute appears to
23 correct, and the sole purpose, as a matter of fact, is to
24 correct this, is to make these documents readily
25 available.

1 And so what we're saying is that retaining documents
2 is not synonymous under this particular statute with the
3 storage requirements of documents.

4 And so we hope to provide some further guidance for
5 the parameters and guidelines that we're about to enter
6 into, as opposed to leave this statement as an
7 inscrutable statement where, you know, we ponder what
8 "storage" means.

9 CHAIR MATEO: I think, though, that that has the
10 potential for redefining the previous decision, beyond
11 what we were going to look at today, which is really the
12 question of three years versus five years.

13 Walter?

14 MEMBER BARNES: Personally, I think the record is
15 fairly clear that we sort of recognize the fact that your
16 duty to have documents readily available would affect
17 your storage of those documents. And so perhaps I think
18 the clarification of that is a proper thing for the
19 Parameters and Guidelines to make that a little bit more
20 clear.

21 So I tend to think that we don't need to deal with
22 that kind of clarification here. And I think the record
23 is fairly clear, in the direction to the staff about what
24 to do with that.

25 I do have a little bit of a concern -- and, boy, I

1 hate to do wordsmithing in this environment -- but the
2 way in which it is discussed, it seems to indicate that
3 there's three years of storage costs when, in fact, I
4 think the intent of all of this was to reflect the fact
5 that you get three years after the two years. So the
6 first two years are already covered by the current law
7 and rule; and the additional three years is what's on the
8 table, now which, to me, argues potentially for leaving
9 it as it is, as five years and, again, letting the
10 Parameters and Guidelines deal with it.

11 I'll take any suggestions, comments or questions on
12 that.

13 MS. SHELTON: Mr. Barnes, I think your analysis is
14 right; but I don't think you can keep it in the Statement
15 of Decision as five years, because you need to make the
16 finding of what exactly is the new program or higher
17 level of service now.

18 So if you say -- if you keep it at five years and
19 they're going to get reimbursed for five years and not
20 three. But if you want to add, as you were suggesting,
21 clarifying language here, that's also within your
22 discretion to do that.

23 MR. KAYE: Right.

24 MS. SHELTON: To maybe indicate that the storage
25 domestic violence incident reports and face sheets for

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1 three years, after the initial two years, or some
2 language to that effect to.

3 MR. BARNES: And that, to me, would clarify it and I
4 think put it directly on point as to what we're trying to
5 get at here.

6 CHAIR MATEO: So would you state again your
7 suggested language there?

8 MS. SHELTON: Mr. Barnes, correct me if you have
9 something much better than I do; but "storing domestic
10 violence incident reports and face sheets for three
11 years" -- you might just --

12 MEMBER BARNES: "Following the initial --

13 MS. SHELTON: -- "following the initial two-year" --

14 MEMBER BARNES: -- two-year period covered by" --

15 MS. SHELTON: -- "period, required by prior law."

16 MR. KAYE: Okay. This is Leonard Kaye, County of
17 Los Angeles.

18 I feel that that particular statement does provide
19 clarification. But respectfully, I believe it's
20 erroneous because it's not supported by any matter
21 litigated before this Commission.

22 I don't think we've ever discussed, or it's not in
23 the administrative record, as to whether it's the first
24 three years or the last two years or what the chronology
25 is. And this would add further confusion because as many

1 of you know, the placed items in storage, the really big
2 costs are initially placing it into storage, which would
3 occur within the first -- the initial period.

4 And so we would argue just the reverse, that we
5 would say that it would be the initial three years, and
6 that the last two years would not be reimbursable.

7 However, this matter has not been addressed at all
8 by the Commission to date and it's certainly not present
9 within anything that I've seen within the Statement of
10 Decision.

11 MEMBER ROSENBERG: Well, that's certainly an
12 interesting point; and it goes back, regrettably, to the
13 initial questions that were raised, as to whether there
14 really is a distinction between "storage" and
15 "retention," and what are the requirements of existing
16 law versus what this law imposes.

17 Unfortunately, I think the only way we can sort that
18 out is during the Parameters and Guidelines discussion;
19 and that all we are dealing with here today is not
20 rewriting the prior decision and not writing the
21 Parameters and Guidelines, but simply addressing whether
22 we're talking about a three-year mandate or a five-year
23 mandate.

24 And so I think we can either adopt that new language
25 that was just cited, or we can keep it a little bit vague

1 and just use the three-year language.

2 What do you suggest?

3 MS. SHELTON: Well, let me clarify. This item is
4 the -- the staff is recommending that the Commission
5 first find that there is an error of law; and secondly,
6 to adopt the proposed corrected Statement of Decision,
7 which is on page 11, and incorporates all of the staff
8 analysis on our reconsideration. So it would be changing
9 the Statement of Decision.

10 But on the Proposed Statement of Decision, on
11 page 28, it does address what Mr. Barnes was indicating.
12 The second full paragraph down, it says,

13 "Based on these authorities, the Commission
14 finds that before the enactment of the test
15 claim statute, cities and counties were
16 required by Government Code section 34090 and
17 26202, to keep domestic violence incident
18 reports for two years."

19 So the two years has to come first.

20 MEMBER ROSENBERG: Okay.

21 MR. KAYE: But, respectively, it doesn't say that
22 there.

23 MS. SHELTON: But we're talking about a higher level
24 of service is something up and above an existing program.
25 You already have an existing program in place, and this

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1 is a higher level of service, going beyond that.

2 MR. KAYE: I agree with everything that you've said,
3 except the fact that it's not in writing, that specific
4 thing above the order.

5 MS. SHELTON: That is the definition of a "higher
6 level of service." You have an existing program and
7 you're adding activities to that.

8 MEMBER ROSENBERG: Okay, I think --

9 CHAIR MATEO: Any further questions?
10 Walter?

11 MEMBER BARNES: No, actually, I was just going to
12 make a motion.

13 CHAIR MATEO: Do we have a motion?

14 MEMBER BARNES: And I guess, you know, this points
15 why it's important to try to be as specific in the
16 Statement of Decision as possible, because those are
17 going to get dealt with in the Parameters and Guidelines,
18 and then the claiming instructions, and then later on
19 brought out through the audits and things like that.

20 So I think that, clearly, from my point of view, the
21 expectation was, it was three years on top of the two
22 years, which I think needs -- because of the different
23 interpretations that we've already seen put on this, that
24 it would be good to adopt the language that you proposed,
25 that clarifies that this three years is on top of the two

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1 years. So that would be my motion.

2 CHAIR MATEO: Does anybody need to hear that
3 language once more?

4 MEMBER ROSENBERG: No. But I would second the
5 motion. And as I understand the motion, it is to find --
6 it is to follow the staff recommendation, which is to
7 find an error of law and to adopt the Proposed Statement
8 of Decision as recommended by staff.

9 MEMBER BARNES: Right.

10 MEMBER ROSENBERG: Parenthetically --

11 CHAIR MATEO: As amended --

12 MS. HIGASHI: As revised.

13 MS. SHELTON: With the correction that Mr. Barnes
14 and I suggested with the language, so that it now will
15 say -- the bullet will now say,

16 "Storing domestic violence incident reports
17 and face sheets for three years, following the
18 two-year period required under prior law."

19 MEMBER ROSENBERG: Okay, I'll withdraw my second.
20 I'm not prepared to go that far at this time. I would be
21 prepared to have that discussion at the Parameters point.
22 Because I don't know at this moment in time whether the
23 new requirements of the mandate actually impose greater
24 requirements of storage or retention than existing law
25 proposed for those first two years. I just don't know

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1 that. So I will just withdraw my second at this time.

2 CHAIR MATEO: I have a motion.

3 MEMBER VANHOUTEN: I'll second.

4 CHAIR MATEO: Paula, will you call the roll?

5 MS. HIGASHI: Mr. Rosenberg?

6 MEMBER ROSENBERG: No.

7 CHAIR MATEO: Mr. VanHouten.

8 MEMBER VANHOUTEN: Yes.

9 CHAIR MATEO: Ms. Williams?

10 MEMBER WILLIAMS: No.

11 MS. HIGASHI: Mr. Barnes?

12 MEMBER BARNES: Yes.

13 MS. HIGASHI: Mr. Lazar?

14 MEMBER LAZAR: Yes.

15 MS. HIGASHI: And Ms. Mateo?

16 CHAIR MATEO: Yes.

17 MS. HIGASHI: I have four votes.

18 CHAIR MATEO: All right. That motion fails.

19 MEMBER ROSENBERG: We'll have to have another motion
20 because, clearly, I think all of us agree that there was
21 an error of law; it's just a matter of the language that
22 should be adopted at this point in time.

23 CHAIR MATEO: Shall we break it up and decide the
24 first?

25 MEMBER ROSENBERG: Sure.

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1 CHAIR MATEO: May I have a motion on the question,
2 on whether there was an error in law?

3 MEMBER ROSENBERG: I'll move that we find there was
4 an error of law.

5 MEMBER WILLIAMS: Second.

6 CHAIR MATEO: We have a motion and a second.

7 Paula, will you call the roll?

8 MS. HIGASHI: Mr. VanHouten?

9 MEMBER VANHOUTEN: Yes.

10 MS. HIGASHI: Ms. Williams?

11 MEMBER WILLIAMS: Aye.

12 MS. HIGASHI: Mr. Barnes?

13 MEMBER BARNES: Aye.

14 MS. HIGASHI: Mr. Lazar?

15 MEMBER LAZAR: Yes.

16 MS. HIGASHI: Mr. Rosenberg?

17 MEMBER ROSENBERG: Aye.

18 MS. HIGASHI: Ms. Mateo?

19 CHAIR MATEO: Yes.

20 MS. HIGASHI: The motion is carried.

21 MEMBER ROSENBERG: And could I ask if staff could
22 recommend the language? We may have to just go back to
23 the original language you recommended in order to get
24 five votes. But could you read that language again?

25 MS. SHELTON: Certainly. I'll read the full

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1 conclusion that's proposed for the Statement of Decision
2 for you.

3 "The Commission concludes that Family Code
4 section 6228, as added by Statutes 1999,
5 chapter 1022, mandates a new program or higher
6 level of service for local law enforcement
7 agencies within the meaning of article XIII B,
8 section 6 of the California Constitution, and
9 imposes costs mandated by the state pursuant to
10 Government Code section 17514 for the following
11 activity only: Storing domestic violence
12 incident reports and face sheets for three
13 years."

14 MEMBER ROSENBERG: I would move we adopt the
15 Proposed Statement of Decision, with that language
16 included.

17 CHAIR MATEO: I have a motion.

18 Do I have a second?

19 MEMBER LAZAR: I'll second.

20 CHAIR MATEO: Paula, will you call the roll?

21 MS. HIGASHI: Ms. Williams?

22 CHAIR MATEO: Pardon, just one moment.

23 MEMBER BARNES: I guess, Mr. Rosenberg, I want to
24 clearly understand your concern about the previous
25 motion, in terms of this one here, because I kind of

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1 heard you say that during those first two years, when
2 there is already a mandate or an expected level of
3 activity, this mandate might impose a greater level of
4 costs in those two years. So that by limiting it
5 strictly to costs in the three years following those two
6 years, we may be depriving them of that incremental cost,
7 whatever it might be, that this mandate imposes during
8 the first two years.

9 Is that correct?

10 MEMBER ROSENBERG: Let me clarify. As a matter of
11 process, I'm not prepared to make that decision today.

12 I may very well agree with the point you were making
13 earlier and the motion you made; but I'm not in a
14 position to make that decision today. I just don't have
15 enough facts or information on what the new mandate
16 required and whether or not greater duties were imposed,
17 even in those first two years.

18 MEMBER BARNES: And I guess I would ask, would you
19 agree that to the extent we're talking about costs
20 associated with this, we're trying to talk about costs
21 that are in addition to the costs that are already
22 incurred, as a result of that new mandate -- I mean, that
23 old mandate.

24 MEMBER ROSENBERG: Old mandate, yes, precisely.

25 MEMBER BARNES: So I guess rather than talking about

1 it in terms of three years or two years, I wonder if it
2 might be more clear to all of us if we basically went
3 back to the five years but indicated that, in effect,
4 it's the costs associated with those five years that are
5 in excess of the costs that are already incorporated in
6 the current mandate during those first two years, which
7 then allows the P's and G's to be developed to deal
8 with -- I mean, the P's and G's, they can determine
9 whether or not there's a particular cost element and what
10 that would be.

11 I won't offer it necessarily as an amendment to your
12 proposal, but I'd like -- that may be a way of kind of
13 getting us through this and giving the guidance that we
14 need, to the staff with regard to the P's and G's, and
15 preserving, I think, Mr. Kaye's comment about there might
16 be an incremental cost during those first two years that
17 they would want to try to have available to them.

18 MEMBER ROSENBERG: It's an interesting thought, and
19 it would be useful to hear from counsel on that. I mean,
20 within the five-year period, we should not be finding
21 more than three years of costs are reimbursable.

22 So is there a way to state that?

23 MR. STARKEY: My concern is that the posture of this
24 case is that the original decision was that there was a
25 new program or a higher level of service for five years.

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1 And staff had overlooked an existing requirement in prior
2 law that the documents be stored for two years --
3 retained for two years under both local and city
4 statutes.

5 The intent of the reconsideration motion was simply
6 to say: Was that a mistake? And the Commission has
7 found that there was an error of law. And so the focus
8 now is getting language that the Commission can agree
9 upon that the years three, four and five are a new
10 program of higher level of service.

11 MEMBER ROSENBERG: Let me suggest something based on
12 what Mr. Barnes suggested. Why don't we stay with the
13 five years, but except from that the two years of storage
14 under existing law? What is wrong with that?

15 MS. SHELTON: I'm not sure if I can answer your
16 question or not. But I just want to put this into
17 perspective. When you're ruling on a Statement of
18 Decision, the courts have instructed the Commission to
19 not apply standards of equity or define what is necessary
20 to comply with the mandate. We're supposed to just look
21 at the plain language of the mandate. And here, we're
22 only talking about time element, not the manner of
23 storage.

24 During the Parameters and Guidelines phase, the
25 Commission does have discretion to determine what is

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1 reasonable in the manner of storage.

2 So I think that those discussions, as far as how
3 they store these documents, if the three years comes
4 before or after the initial two years, are really
5 questions reserved for the Parameters and Guidelines.

6 And I think that to keep it at five years could --
7 and then even with the qualifying language -- could
8 cause confusion if this were litigated, because you have
9 to define what is the new program or higher level of
10 service. And the two Government Code statutes, under
11 prior law, already required them to keep and store -- or
12 to keep these documents for two years.

13 MEMBER ROSENBERG: Certainly no more confusing than
14 what has already been caused.

15 I think under the circumstances, I'll just stand by
16 the motion that I've made.

17 CHAIR MATEO: Ms. Geanacou, do you --

18 MEMBER BARNES: I'll second.

19 CHAIR MATEO: Just one second.

20 Did you have something you wish to say?

21 MS. GEANACOU: Yes, Department of Finance, Susan
22 Geanacou. I admit to being somewhat confused.

23 I just wanted to make sure; I thought I heard
24 testimony that the activity -- that the Commission was
25 possibly leaving open the possibility that in years

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1 three, four and five, the activities for which
2 reimbursement would be appropriate might be different and
3 implicitly greater than those in years one and two. And
4 my concern is: Are we possibly leaving to Parameters and
5 Guidelines an even greater level of reimbursement than is
6 being proposed for adoption in this Statement of
7 Decision? I thought I heard testimony to that effect. I
8 just want to be clear.

9 CHAIR MATEO: I guess my take on it is, staff was
10 persuasive to me that what we're talking about is a
11 higher level of service, so that there is a base there.
12 Logically, to me, this means the first two years. But I
13 also, like Mr. Rosenberg, am okay with the original staff
14 proposal, because I think that isn't such a gray area,
15 and should be able to be worked out in P's and G's.

16 MEMBER ROSENBERG: So we come full circle.

17 CHAIR MATEO: Camille?

18 MS. SHELTON: I was just going to say that the issue
19 for the Parameters and Guidelines on this matter, would
20 be the first two years the documents had to be stored in
21 a manner that they could make them promptly available.
22 And that's language from the Public Records Act.

23 The three years that constitutes the higher level of
24 service, they have to store them to make them available
25 within the statutory time frames established in Family

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1 Code 6228, so within the 48 hours, five days and ten
2 days. If that's a difference, I don't know. And I'm
3 suggesting that that be put off for the discussion at the
4 Parameters and Guidelines.

5 MEMBER VANHOUTEN: I'm confused as to the motion
6 that's before us. I'm completely lost.

7 Could you reread the motion that we're going to be
8 voting on?

9 MEMBER ROSENBERG: It's a motion for adjournment, I
10 think.

11 CHAIR MATEO: You have to stay an hour longer.

12 I think the motion that was before us was for the
13 staff recommendation on the change in the language.

14 MEMBER BARNES: Right.

15 MEMBER WILLIAMS: To the three years? Is that what
16 we're going with?

17 MS. SHELTON: The staff recommendation as is, with
18 no change.

19 MEMBER ROSENBERG: That's correct.

20 CHAIR MATEO: I had a motion at this point, I don't
21 recall from whom.

22 MEMBER ROSENBERG: Me.

23 CHAIR MATEO: Mr. Rosenberg, and we had a second.

24 (Member Barnes raising his hand.)

25 CHAIR MATEO: Okay. Paula, will you call the roll.

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1 MS. HIGASHI: Ms. Williams?

2 MEMBER WILLIAMS: Aye.

3 MS. HIGASHI: Mr. Barnes?

4 MEMBER BARNES: Aye.

5 MS. HIGASHI: Mr. Lazar?

6 MEMBER LAZAR: Aye.

7 MS. HIGASHI: Mr. Rosenberg?

8 MEMBER ROSENBERG: Aye.

9 MS. HIGASHI: Mr. VanHouten?

10 MEMBER VANHOUTEN: Yes.

11 MS. HIGASHI: Ms. Mateo?

12 CHAIR MATEO: Aye.

13 MS. HIGASHI: The motion is adopted.

14 MR. KAYE: Thank you.

15 MS. HIGASHI: Thank you.

16 MEMBER ROSENBERG: We had five "ayes" and one "yes."

17 I don't know what that means.

18 MEMBER WILLIAMS: Some of us go back and forth.

19 MS. HIGASHI: Ms. Mateo, could we take a brief
20 break, five-minute break?

21 CHAIR MATEO: Surely. Five minutes?

22 MS. HIGASHI: Yes.

23 CHAIR MATEO: Okay, we will get back together again
24 at ten after 11:00.

25 (A recess was taken from 11:04 a.m. to 11:14 a.m.)

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1 MS. HIGASHI: At this time, I would like to call
2 Items 16 and 17, which are Proposed Parameters and
3 Guidelines on the agenda. I understand that we have a
4 request from Mr. Shawn Silva to continue this item.

5 And so would you like to have a staff introduction
6 of the item and then have Mr. Silva speak?

7 CHAIR MATEO: Yes, that's fine.

8 Mr. Silva, you were sworn in?

9 MR. SILVA: No, I have not been sworn in.

10 MS. HIGASHI: It's okay, it's P's and G's.

11 MS. CRUZ: Good morning.

12 Before you is an errata sheet on yellow buff-colored
13 paper.

14 Item 17 is the proposed consolidation of the
15 existing Parameters and Guidelines for Charter Schools,
16 with the Parameters and Guidelines for Charter Schools
17 II. Staff proposes that the effective date of
18 reimbursement period for the consolidated Parameters and
19 Guidelines be changed from fiscal year 2003 to 2004, to
20 January 1, 1999, which is the effective date of the
21 Charter Schools II test claim legislation.

22 Item 16 included a provision that requires claimants
23 to refile reimbursement claims for the Charter Schools
24 program for fiscal years 1998-99 through 2002-2003. This
25 was included because of changes in the law that, one,

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1 established a fee authority that school districts or
2 county offices of education must use to offset any
3 claimed reimbursement for the costs of charter school
4 supervisorial oversight under the existing Charter
5 Schools program; and second, it replaced the activity
6 related to the petition appeals in the existing Charter
7 Schools program.

8 However, direction to refile reimbursement claims
9 resides with the State Controller's Office. Government
10 Code section 17558(a) requires the Commission to submit
11 the adopted Parameters and Guidelines to the Controller
12 who shall pay and audit the reimbursement claims.

13 Subdivision (b) of the section of the Government Code
14 requires the Controller to issue claiming instructions
15 after receiving the Parameters and Guidelines to assist
16 local agencies and school districts in claiming costs.

17 With the modification to 17, Item 16 is no longer
18 necessary. As indicated in the table of contents for
19 Item 17, the exhibits for Item 16 are incorporated as
20 part of the record. Therefore, staff withdraws Item 16
21 for consideration and vote, and recommends that the
22 Commission only adopt the consolidated Parameters and
23 Guidelines, but with the reimbursement period beginning
24 January 1, 1999.

25 The proposed consolidated Parameters and Guidelines

1 begin on page 9 of Item 17.

2 Staff also recommends that the Commission authorize
3 staff to make any nonsubstantive technical corrections to
4 the P's and G's following the hearing.

5 Will the parties and representatives please state
6 their names for the record?

7 MR. PALKOWITZ: Good morning. Arthur Palkowitz on
8 behalf of San Diego Unified School District.

9 MR. SILVA: Shawn Silva on behalf of the State
10 Controller's Office.

11 I guess procedurally, it's simpler if I go first,
12 since my request is to continue.

13 Recently, a concern has been raised on the issue of
14 refileing, when we have to look back at changes in the
15 P's and G's as to how they apply to claims that have
16 already been filed. And this presents an important
17 issue, which can affect the ability of the Controller's
18 office to review and audit those claims. And since it's
19 an important issue, which should foreclose the ability to
20 look at claims based on the new P's and G's, and has been
21 recently raised, we request the opportunity to delve into
22 that legal issue and to be able to present a logical
23 researched argument on our position. And so that it's
24 appropriately decided, and that ability to review is not
25 foreclosed.

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1 all, we have issues that school districts don't maintain
2 records for an indefinite period. So I'm not sure how
3 that's going to be feasible for schools to do that.

4 Also, I think one of the issues in deciding to
5 continue a matter is whether it's good cause or not.
6 This claim was filed in 1998. I would think these issues
7 should have been addressed at an earlier time. So I
8 would feel that it would be inappropriate to grant a
9 continuance.

10 MEMBER BARNES: Since you're looking at me, I guess
11 I should say something.

12 [Laughter]

13 MEMBER BARNES: On the one hand, I have to say that
14 I really hate postponements. So it's a little awkward
15 for me to argue for a postponement in this particular
16 case.

17 The issue that we're concerned about is that in the
18 previous item, which staff is now withdrawing, this issue
19 was dealt with and dealt with in a way that we felt was
20 appropriate.

21 It is not dealt with in the revised 17, you know,
22 that we have before us now; and I think it does raise
23 some questions to us, particularly given the quickness
24 with which this change has taken place, that we do need
25 to have some time to take a look at it.

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1 I mean, obviously we all got this notice of this
2 change last night -- at least that's when I got it. And
3 so it really doesn't give us much time to take a look at
4 it.

5 I don't think we have any problem with the concept
6 of what they're doing of consolidating this into one,
7 single claim. We don't object to taking Item 16 off.
8 But I think we would like to have some time to make sure
9 that, in fact, our ability to deal with what may have
10 been erroneous claims submitted is going to be taken care
11 of.

12 And we may end up concluding that the recommendation
13 of the staff would come up with is just fine. But,
14 again, I think your comment: Do you want to have some
15 time to think about it, or do we want to fly by the seat
16 of our pants? I think this has -- in fact, it could
17 affect counties -- I mean, school districts very
18 significantly. And I just -- I'm a little reluctant to
19 take quick action on it, without having a chance to take
20 a look at it. So that's what I would request.

21 MEMBER ROSENBERG: Even though I always prefer the
22 latter option, I see no hardship in a brief continuance.
23 The next meeting is --

24 MS. HIGASHI: November 20th.

25 MEMBER ROSENBERG: November? I mean, if this matter

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1 has already been pending for four or five years, I'm not
2 sure I see the hardship of continuing the matter six,
3 seven weeks from now.

4 CHAIR MATEO: Yes, I certainly have some sympathy
5 with this, too, putting it over. The change was quick.

6 So procedurally, how do we do this?

7 MS. HIGASHI: If the Commission wishes to grant it,
8 we should just have a motion to grant the continuance.

9 CHAIR MATEO: Do I have a motion?

10 MEMBER BARNES: I'll make the motion.

11 MEMBER WILLIAMS: Second.

12 CHAIR MATEO: We have a motion and a second.

13 Will you call the roll, Paula?

14 MS. HIGASHI: Mr. Barnes?

15 MEMBER BARNES: Yes.

16 MS. HIGASHI: Mr. Lazar?

17 MEMBER LAZAR: Yes.

18 MS. HIGASHI: Mr. Rosenberg?

19 MEMBER ROSENBERG: Aye.

20 MS. HIGASHI: Mr. VanHouten?

21 MEMBER VANHOUTEN: Yes.

22 MS. HIGASHI: Ms. Williams?

23 MEMBER WILLIAMS: Aye.

24 MS. HIGASHI: Ms. Mateo?

25 CHAIR MATEO: Aye.

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1 MS. HIGASHI: The motion is carried. The item is
2 continued.

3 MR. SILVA: Thank you.

4 CHAIR MATEO: A clarification, Paula. That was both
5 items?

6 MS. HIGASHI: Yes, both items, 16 and 17. And staff
7 will issue a letter with a new draft, so we can receive
8 feedback on the item before it comes back again.

9 MEMBER BARNES: I should say, I guess I thought that
10 the issue of 16 was settled; that, essentially, we were
11 going to consolidate into 17. And the only question that
12 was at odds was whether or not something that was in
13 16 should be put into 17 as well. So personally, I have
14 no interest in having 16 come back to us again.

15 MS. HIGASHI: Okay.

16 MEMBER BARNES: I'd rather go with 17, and then --

17 MS. HIGASHI: I'll note that clarification.

18 MEMBER BARNES: Is that okay?

19 MEMBER ROSENBERG: That's fine.

20 CHAIR MATEO: Good.

21 MS. HIGASHI: This brings us to Item 18, which is
22 our rulemaking item. We had a request for this to come
23 off the consent calendar. This item will be presented by
24 Shirley Opie.

25 MS. OPIE: Good morning.

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1 The purpose of this rulemaking is to incorporate the
2 current methodology for developing statewide cost
3 estimates into the Commission's regulations. This
4 proposed rulemaking also includes changes to the conflict
5 of interest code that would require designated filers to
6 complete ethics training, as required, to changes in the
7 Government Code that took effect the beginning of this
8 year.

9 If anybody has any comments or questions about the
10 rulemaking, I'd be happy to answer.

11 MEMBER ROSENBERG: There's no intention to provide
12 redundant ethics training; is there? In other words, if
13 a member of the Commission takes the ethics training
14 pursuant to another position or another commission on
15 which they serve, they don't have to do it twice; do
16 they?

17 MS. OPIE: That's correct.

18 MEMBER ROSENBERG: Okay.

19 CHAIR MATEO: This is an action item? Do we need a
20 motion?

21 MS. HIGASHI: Yes, it is an action item.

22 MEMBER BARNES: Yes, I did have a question.

23 I have no problem with the part of the regulations
24 that deals with the requirement to provide ethics
25 orientation and training. I'm a little -- I think we may

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1 be a bit premature on the incorporation of the procedures
2 for developing statewide estimates. As many of you know,
3 or will find out, the Bureau of State Audits has been
4 conducting a review of two mandates, POBR and Animal
5 Adoptions. And one of the specific areas they've been
6 looking at is the issue of statewide estimates and how
7 those estimates are developed now. And my expectation
8 that that report, which is due to come out today in draft
9 form, will contain some specific recommendations for how
10 to compute and compute and develop statewide estimates.
11 So I think that it would be appropriate for us to see
12 what that report has to say, before we contemplate moving
13 ahead on these regulations, which basically just sort of
14 incorporate the process as it is.

15 So I would ask that we move ahead with the ethics
16 orientation training part of the regulations but save the
17 rest of it for the next session, when we should have the
18 BSA recommendations and decide whether or not we'd like
19 to incorporate some of that. That's my recommendation.

20 I don't know if we need a motion to consider or --

21 MS. HIGASHI: I would like to have Ms. Opie respond
22 just to your comments.

23 MEMBER BARNES: Sure.

24 MS. OPIE: It's a little difficult to comment on for
25 sure what's going to be included in the BSA's findings in

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1 the audits that were recently completed.

2 This change in the regulations, it came out of the
3 last report from the Bureau of State Audits on the School
4 Bus Safety audit. And in that report, they recommended
5 that the Commission just incorporate the methodology for
6 adopting the statewide cost estimates.

7 My understanding of the preliminary -- in
8 preliminary discussions with the Bureau of State Audits,
9 their issues were more about the points and times -- and
10 it does have to do with the calculation of the statewide
11 cost estimate. But I don't see that their
12 recommendations would have any material effect on what
13 we're proposing here.

14 MS. HIGASHI: The other concern I have is that we
15 have already filed our final report with the Bureau of
16 State Audits for the School Bus Safety II audit, where we
17 indicated that this rulemaking was in progress, to
18 incorporate the changes that they had proposed.

19 And so that would be my hesitation at agreeing with
20 Mr. Barnes; because it takes so long to do a rulemaking,
21 that I don't want to find myself in a hearing and be
22 asked the question of what happened to those
23 recommendations, and we did not proceed.

24 MEMBER BARNES: And I think we actually have a good
25 excuse for that, because, in effect, what we'd be

1 delaying for, is to deal with additional recommendations
2 that come from the same agency that made the original
3 ones.

4 And I agree with you, I think that the original
5 recommendation was to put the current process in the
6 regulation. And again, we will know better when we see
7 the draft report today; but my impression is that they
8 are going to recommend not just some timing, but also
9 some processes about how the statewide recommendation
10 would be developed that would be different than these
11 here.

12 Now, we have the ability to say, "Thanks very much,
13 but we're going to do what we currently do." But we also
14 may decide that we want to incorporate some of those
15 changes within these regulations.

16 So I think postponing this particular part of it
17 until next session, when we definitely will have the
18 final report and we'll know what it specifically says,
19 I think it would be a better way to go.

20 CHAIR MATEO: But is there any harm in moving
21 forward now, and then prepare another rulemaking to pick
22 up whatever the Bureau of State Audits says?

23 MS. HIGASHI: I would say no, because we're not even
24 sure yet what recommendations, in terms of the
25 specificity in their findings and whether or not some of

1 those recommendations would require statutory change
2 first to be implemented.

3 CHAIR MATEO: Any other discussion?

4 MEMBER ROSENBERG: Is there testimony?

5 CHAIR MATEO: Comment?

6 MR. BURDICK: Madam Chair and Members of the
7 Commission, Allan Burdick on behalf of the California
8 State Association of Counties. And we would second
9 Mr. Barnes' recommendation.

10 I think what we would like to see, is this to be
11 made as an alternative that could be used if agreed upon
12 by the parties who develop the statewide cost estimate.

13 In some cases, I don't think it's necessary that you
14 actually have to file claims. If there's a unit cost
15 developed, as an example, and a set of Parameters and
16 Guidelines, you may have the statewide statistics that
17 just need to be multiplied times that dollar amount, and
18 you could come up with an outstanding estimate of what
19 the costs would be.

20 The reason for the difference is the timing. If you
21 adopt this as the methodology for doing it, I don't think
22 there's any way you can meet your statutory obligation to
23 complete a test claim from beginning to end in 12 months.

24 Now, there's a provision to extend it to 18 months;
25 but this would take a minimum of seven months, and

1 probably in most cases nine months for the Commission to
2 do a statewide cost estimate.

3 And, you know, I think part of the regulations that
4 you initiate in this process will bring them into
5 conformance with Assembly Bill 1693, which established
6 that statutory limitation to try to speed up this
7 process.

8 So I would suggest that if you want to go to this
9 methodology, which sometimes I would agree is the best
10 methodology, you might want to make it as an alternative.
11 But I would not want you to preclude the option of being
12 able to develop your own statewide cost estimate under
13 your previous methodology that you have used, because in
14 some cases, that may be the most expeditious way to do
15 it.

16 And from a local standpoint, if the state ever
17 starts paying again and has a claims bill, then that
18 could make a difference as much as 14 or 15 months, as to
19 when local government would get their money.

20 So we would like to see it from the standpoint of
21 being an alternative available for developing it, but not
22 as the sole method for determining in how you adopt the
23 statewide cost estimate.

24 CHAIR MATEO: Shirley?

25 MS. OPIE: Yes, thank you.

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1 In the regulation, I believe that we have allowed
2 for what Mr. Burdick is suggesting. I'd just like to
3 read it to you. That,

4 "Commission staff may develop the statewide
5 cost estimate based on initial reimbursement
6 claims filed with the office of the State
7 Controller; or staff may use a different
8 methodology based on recommendations from the
9 test claimant, the Department of Finance or
10 other interested parties."

11 So I think it preserves that flexibility that
12 Mr. Burdick is asking for.

13 MR. BURDICK: I guess our only comment probably is
14 we would like agreement obviously from the local agencies
15 that we find ourselves in a situation, obviously very
16 often, that it's not in the best interests sometimes of
17 the state sometimes to be moving forward quicker, because
18 interest doesn't start accruing until after the
19 development of a statewide cost estimate. And so, you
20 know, you're always behind the eight ball in terms of
21 what it's done.

22 It seems like if the intent is to try to complete
23 the process in 12 months, that whenever possible, you
24 should probably look for the other alternative, if you
25 want to stay within the prescribed statutory scheme.

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1 CHAIR MATEO: Any other discussion?

2 MEMBER BARNES: I'll make a recommendation that we
3 proceed with Part 2, dealing with the ethics of the
4 proposed regulations, and postpone consideration of the
5 other part until the next meeting.

6 MEMBER ROSENBERG: I'll second that.

7 CHAIR MATEO: Shirley?

8 MS. OPIE: I would just like to make one more
9 comment, just from a process standpoint.

10 And that's fine to do that; but just as long as you
11 know that that will require us to renote the
12 regulations because there's been a substantial change.

13 MEMBER ROSENBERG: What is the substantial change?

14 MS. OPIE: In removing the portion related to the
15 statewide cost estimates.

16 MEMBER ROSENBERG: So if we just continued the
17 entire matter, we wouldn't need to renote it?

18 MS. OPIE: That's correct.

19 MEMBER ROSENBERG: We might want to just continue
20 the whole thing.

21 MEMBER BARNES: I'll make that -- I'll amend it to
22 just put it all over again. That's a good point. I
23 appreciate your bringing it up.

24 MEMBER ROSENBERG: I'll second that motion.

25 CHAIR MATEO: Okay, we have a motion and a second.

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1 Will you call the roll?

2 MS. HIGASHI: Mr. Barnes?

3 MEMBER BARNES: Aye.

4 MS. HIGASHI: Mr. Lazar?

5 MEMBER LAZAR: Aye.

6 MS. HIGASHI: Mr. Rosenberg?

7 MEMBER ROSENBERG: Aye.

8 MS. HIGASHI: Mr. VanHouten?

9 MEMBER VANHOUTEN: Yes.

10 MS. HIGASHI: Ms. Williams?

11 MEMBER WILLIAMS: Aye.

12 MS. HIGASHI: Ms. Mateo?

13 CHAIR MATEO: Aye.

14 MS. HIGASHI: The motion is carried.

15 MR. BURDICK: Thank you very much.

16 MS. HIGASHI: This brings us to Item 19.

17 Mr. Starkey will present this report.

18 MR. STARKEY: This is an informational item. And
19 the information is provided in a writing that was given
20 to the Commission. What I'd like to do, for purposes of
21 the hearing, is simply to provide some short updates.

22 There have been no new filings, other than the
23 Animal Adoption case, which is referenced in the report.

24 Under recent decisions, the County of Los Angeles
25 case, which is described in the report, is now final.

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1 And that matter is concluded.

2 And, again, it is a published decision. So as
3 appropriate, that case will be worked into our future
4 Commission recommendations as guidance from the court.

5 Under the litigation calendar, there were two
6 matters heard. The Eastview Optional Attendance Area
7 case, which was in the Sacramento Superior Court, was
8 heard in September and decided in favor of upholding the
9 Commission's decision. There will be some period of time
10 for that matter to be appealed, if the parties decide to
11 do that. I don't have any information with respect to
12 that. But the Commission's decision was upheld in that
13 case.

14 And in the second matter that's listed on the
15 litigation calendar, that was the matter of the County of
16 San Diego case, which we referred to as the "San Diego
17 MIA case," a decision came down yesterday that the court,
18 on appeal, overturned the Commission's decision. And
19 there will be further reporting back to the Commission
20 with respect to the next actions.

21 And I don't have any information from the positions
22 of the other parties with respect to any other further
23 proceedings at this time.

24 So that's the status of litigation.

25 MS. HIGASHI: This brings us to Item 20, and that's

1 my report. In the very, very back of the third binder,
2 unless you moved it forward, is Item 20.

3 The first thing that I've reported is the status of
4 workload after Labor Day. And at that point in time, we
5 had about 121 test claims on file. This is a record
6 number of test claims that we have ever had on file with
7 the Commission, to my knowledge.

8 Among those test claims are about 14 claims that
9 could be called "duplicates," which in some way, shape or
10 form, plead statutes that are identical to statutes pled
11 in other test claims. So frequently that happens in the
12 case of a test claim that's filed by a city or a county,
13 and then a school district also files a claim on the same
14 or some of the same statutes, and vice versa.

15 So when those cases come forward, what we typically
16 do, as you saw today, is consolidate; because for
17 purposes of the substantive analysis, if it's the same
18 statutes or code sections, it's much more economical for
19 us to proceed in that way.

20 The other items on the agenda are the Budget Act of
21 2003. When the binders went out, I indicated that I
22 would give you an update today on our current new budget.
23 As you may recall, the Budget Act this year appropriated
24 1.3 million dollars to the Commission for its operating
25 budget. And it was subject to control section 4.10.

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1 This section authorized the Director of Finance to make
2 additional budget reductions and to report reductions to
3 the Legislature.

4 On August 28th, the Department of Finance notified
5 the Legislature that the Commission's budget would be
6 reduced by 195,300 dollars; and that these reductions
7 will be approved no later than 30 days after the
8 notification. The Department also indicated in its
9 letter, that if there were subsequent adjustments to
10 these amounts, those adjustments would be made in a
11 separate letter.

12 The Commission on State Mandates had requested that
13 an adjustment be made to this requirement for the
14 adjustments. And we have been notified that our request
15 was approved; but we have nothing in writing, and we have
16 not seen a subsequent letter, notifying the Legislature
17 of any change in the amounts which were originally
18 proposed. But because it has not been disclosed yet,
19 this is all still confidential.

20 On the 2004-05 budget year front, after we issued
21 the binders, another budget letter was issued, and that
22 was, like, 4:45 on a Friday. And that letter directed
23 state agencies to submit 20 percent budget reductions to
24 the Department of Finance; and that these reductions
25 should be intended to be permanent. We were instructed

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1 that the 20 percent reduction should be based on the
2 amount in the final 2003-04 Budget Act, before any
3 control sections were taken. And the 20 percent target
4 applies to each agency, not each department.

5 However, because the Commission is not in another
6 agency, a super agency, we are treated with the full
7 20 percent that is expected of us.

8 We submitted a request to be excluded from this base
9 to the Department of Finance based on the role that the
10 Commission has to implement the determinations of the
11 amounts to be subvned to cities, counties and school
12 districts under the Constitution. This week we were
13 formally notified that this request was denied.

14 Yesterday, we met with the Department of Finance
15 budget staff to discuss their decisions and also to
16 review the requirements of the budget letter. Based on
17 our discussion yesterday, we have agreed to submit a
18 20 percent reduction proposal next Wednesday. And so
19 staff continues its work on determining whether it will
20 be submitting a reduction proposal and if any statutory
21 or constitutional changes should be proposed that are
22 necessary to support the budget proposal.

23 And this is the state I think all state agencies
24 find themselves in. There might be some differences with
25 constitutional officers.

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1 And let me just note lastly, that 20 percent
2 reduction would equal 260,400 dollars, out of the -- for
3 2004.

4 MEMBER ROSENBERG: Could I just comment, if I may?
5 That there really needs to be a distinction made, I
6 think, to a very small agency like this one, that is
7 charged with constitutional duties. It is always
8 possible for state agencies to reduce and find ways to
9 reduce. But when you have a very small agency, with
10 very limited staff, a 20 percent reduction is
11 significant. And I think it will be difficult for this
12 Commission to meet its constitutional requirements with a
13 reduction of that magnitude.

14 CHAIR MATEO: Any other comments on the report?

15 MEMBER BARNES: Yes. I'm curious. Basically, their
16 comment was that we should sponsor a constitutional
17 amendment to eliminate or reduce our recommendations? Is
18 that what they're saying?

19 MS. HIGASHI: I guess if we wanted the exclusion to
20 apply, we would have to have our name in the
21 Constitution.

22 CHAIR MATEO: I'd doubt that was an official Finance
23 recommendation.

24 MS. HIGASHI: But, basically, because the
25 Constitution does not specify that the Commission on

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1 State Mandates is the agency that is required to carry
2 out Article XIII B, section 6. That's one take on it.
3 And then the other is that, you know, one other method
4 for exclusion would be court-ordered. And we are
5 starting to get some court orders to change decisions and
6 to rehear cases; but it's not like it's a major health or
7 welfare policy or something where the state is under a
8 court order to perform a service.

9 MEMBER ROSENBERG: Well, the function of the
10 Commission is to implement a constitutional mandate.

11 MS. HIGASHI: Right.

12 MEMBER ROSENBERG: It may not be identified in the
13 Constitution, but the function is certainly identified.

14 MS. HIGASHI: The Department of Finance budget
15 letter this time is very different from others because it
16 really gives us the opportunity to propose changes to
17 statute or the Constitution, in order to carry out our
18 program, based on the proposed reductions that we would
19 have to submit.

20 But since we're an agency with basically one
21 program, the mission, which is XIII B, section 6, to
22 determine test claims and incorrect reduction claims, we
23 don't have the flexibility as a large department would
24 have. And virtually, all staff work on this program to
25 carry out the Commission's mission.

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1 CHAIR MATEO: You do need to distinguish between
2 what's required right now for a planning process and how
3 the ultimate decision process will go. And this is,
4 right now, part of the planning process.

5 MEMBER ROSENBERG: Good point.

6 MS. HIGASHI: That is correct. And since they are
7 requesting 20 percent proposals, there is a view that
8 with all of these proposals submitted, that there will be
9 a number of good ideas generated for statutory changes
10 that, you know, maybe some would be taken, others would
11 not have to be. And there is definitely sympathy towards
12 the Commission's status. It's just it's very difficult,
13 though, to have to go through these drills.

14 And I appreciate all of your support.

15 CHAIR MATEO: The planning process, because there's
16 not an agency here, is going to be by department; but the
17 decision process for non-agency departments won't be by
18 department, in the same sense.

19 MEMBER ROSENBERG: Good. Good to know.

20 MS. HIGASHI: The next item that I wanted to bring
21 up is just what happened with the Assembly Committee,
22 Special Committee on State Mandates. They continued to
23 have weekly meetings until the end of session. And I've
24 given you a compilation. It's a matrix that's folded
25 over. And it's a compilation of all of the recommended

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1 actions that were taken by the Special Committee. At the
2 end of session, there was a belief that the committee
3 would sponsor legislation; and actually four bills were
4 drafted to carry out and implement the recommendations of
5 the Special Committee. And it included corrections to
6 the State Budget Act, repeal of mandates that had been
7 suspended for 20 years. It also included suspensions of
8 mandates that were new, and that had not yet been funded,
9 and just a variety of changes that had not been covered
10 in the Budget Act.

11 And this is the first time that a committee, acting
12 on a policy basis, actually looked at prior mandates that
13 had been found, either by the Board of Control or the
14 Commission on State Mandates, and tried to examine them
15 and consider whether or not those mandates should
16 continue in state law.

17 So the Committee has plans to reconvene again in
18 January. And the next phase of their process is to begin
19 to examine more the procedures and the processes
20 involving the mandate determinations, the filing of
21 reimbursement claims, preparation of statewide cost
22 estimates, examining the Commission's functions, the
23 State Controller's functions, and all of the parties
24 involved in that process.

25 I gave you, in my report, a list of some of the

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1 issues that have come up, Commission staff as well as
2 Finance staff, Controller's office staff and
3 representatives of the cities and counties and school
4 districts have participated in state-level meetings with
5 the committee staff, as well as the Leg. Analyst's office
6 staff and other leg. staff. And some of the issues that
7 have come up repeatedly are the ones that I have listed
8 here; and they're all issues that require further
9 discussion.

10 The committee itself has not gotten to the point of
11 having this further discussion or to focus on the
12 processes; but at the staff level, the discussions have
13 started. And so briefly enumerated is:

14 The first one is the Commission on State Mandates,
15 continuing jurisdiction to reconsider prior actions in
16 order to respond to changes in law and new court
17 decisions.

18 Two, rethinking Parameters and Guidelines and
19 statewide cost estimates. Just what procedures should be
20 in place, should it continue to be the same, or should it
21 be completely altered?

22 Three, establishing a cost recovery or fee authority
23 for the Commission. And this is something also that the
24 Leg. Analyst's office is very interested as well as the
25 Senate staff for Subcommittee Four of our budget, in

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1 seeing this develop. Staff is currently researching
2 other agencies to find out what fee authorities other
3 quasi-judicial agencies have, and to see what we would
4 need to do and what would be reasonable.

5 Four is examining the State Mandates claims fund,
6 which is established in statute to reimburse only local
7 agencies for the costs of claims, when the first year
8 costs are under a million dollars. And this fund has not
9 been used in recent years. It has a balance of about
10 875,000 dollars.

11 There have been suggestions that perhaps the fund's
12 purpose could be expanded to also provide additional
13 revenue source for the Commission.

14 Item 5 is reports to the Legislature. This issue
15 comes up quite frequently, where Leg. Analyst's office is
16 always requesting additional information from the
17 Commission and changes are being proposed in terms of
18 what should the Commission report, at what time; and is
19 the report that's going back to the officers of the
20 Legislature, the appropriate venue for the report to be
21 received; or should we be reporting back to the budget
22 committees or the policy committees; and should we be
23 reporting back at the time the statement of decision is
24 rendered, and not just at the point in time specified in
25 statute, to report when the statewide cost estimate is

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1 adopted statewide. Because at that point in time, often
2 the statute of limitations has run out on the decision.
3 And certain members of the Legislature have indicated an
4 interest in finding out sooner which subdivisions the
5 Commission finds to be reimbursable state-mandated
6 programs.

7 This also is something that fiscal committee staff
8 is interested in because it would assist them in doing
9 the bill analyses and appropriations committee to have a
10 sense of the Commission's current direction.

11 So these are all issues that have been discussed at
12 the staff level in some way, shape or form, and will
13 probably come up again when the Committee reconvenes in
14 January.

15 And at this time, there are no plans for interim
16 hearings.

17 Are there any questions?

18 On the last page I've given you, I've identified
19 some of the test claims and Parameters and Guidelines
20 that are scheduled for the next agenda. This is still
21 tentative. The drafts would have to be released within
22 the next few days for these items to stay on the November
23 calendar. Plus, we also have the item of the Bureau of
24 State Audits report. Assume that it is released on the
25 schedule that the staff has indicated to us, which is

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1 around mid-October, the first opportunity to place it on
2 the agenda for member discussion and receipt of public
3 comment would be the November hearing. So I would
4 propose to add that to the agenda; plus, the items that
5 were continued today.

6 Are there any other questions about the agenda?

7 MEMBER ROSENBERG: Well, this is not so much a
8 question but a comment. The next meeting with the
9 Commission is scheduled to be -- you said November 20.
10 That is the week of the County Supervisors meeting, which
11 I attend, as a county supervisor. Do we have any ability
12 to -- if this Commission is interested -- to change that
13 date?

14 MS. HIGASHI: It would be up to the Commission.

15 We have, in the past, changed the date, I guess
16 before you were appointed.

17 MEMBER ROSENBERG: Okay.

18 MS. HIGASHI: So we perhaps were not sensitive to
19 that scheduling concern.

20 CHAIR MATEO: I certainly don't have a problem with
21 looking for a better date.

22 MEMBER LAZAR: Does it have to be a Thursday meeting
23 date, too?

24 MS. HIGASHI: It could change.

25 What we'll do is we'll check with you and find out

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1 what dates are available.

2 MEMBER ROSENBERG: Thank you.

3 The 27th and 28th are state holidays; but I have no
4 problem meeting on those days.

5 CHAIR MATEO: By yourself.

6 MS. HIGASHI: Some of us have already had our
7 vacations approved.

8 MEMBER ROSENBERG: All right, all right. Thank you.

9 MS. HIGASHI: And that concludes my report, unless
10 there are another questions.

11 CHAIR MATEO: Okay, are we ready for our closed
12 session?

13 Okay, the Commission --

14 MS. HIGASHI: We should ask for public comment, the
15 last requirement under Bagley-Keane.

16 CHAIR MATEO: Okay, do we have public comment?

17 (No audible response was heard.)

18 CHAIR MATEO: Okay. Then the Commission will now
19 meet in closed executive session pursuant to Government
20 Code section 11126(e), to confer with and receive advice
21 from legal counsel for consideration and action, as
22 necessary and appropriate, upon the pending litigation
23 listed on the published notice and agenda, and to confer
24 with and receive advice from legal counsel regarding
25 potential litigation; and Government Code section

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1 11126(a) and 17526 of the Commission will also confer
2 on personnel matters listed on the published notice and
3 agenda.

4 We will reconvene in open session at this location
5 at approximately -- Paula, what's your guess?

6 MS. HIGASHI: 20 minutes, 30 minutes.

7 CHAIR MATEO: That would be approximately 12:25 p.m.

8 *(Whereupon the Commission met in executive closed*
9 *session from 11:55 a.m. to 12:36 p.m.)*

10 CHAIR MATEO: We reconvene to close the closed
11 session. And whatever the time is -- I can't see from
12 here -- 1:36?

13 MEMBER ROSENBERG: 12:36.

14 CHAIR MATEO: Thank you.

15 Do we have any other issues?

16 MR. STARKEY: Shelley, there is magic language to be
17 read off for closed session.

18 CHAIR MATEO: Okay, the magic language.

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

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1 section 11126(a), and 17526 to confer on personnel
2 matters listed on the published notice and agenda. All
3 required reports from the closed session having been
4 made.

5 And with no further business to discuss, I will
6 entertain a motion to adjourn.

7 MEMBER WILLIAMS: So moved.

8 MEMBER ROSENBERG: Second.

9 CHAIR MATEO: All in favor?

10 (A chorus of "ayes" were heard.)

11 CHAIR MATEO: We are adjourned.

12 *(The proceedings concluded at 12:38 p.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 20th day of October 2003.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR