

PUBLIC HEARING
COMMISSION ON STATE MANDATES

---o0o---

TIME: 9:38 a.m.
DATE: Thursday, March 27, 2003
PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

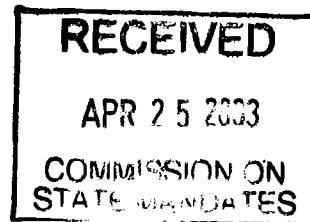
---o0o---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

---o0o---

Reported By:

KAREN S. CHALLE
CSR #8244, RPR



A P P E A R A N C E S

COMMISSIONERS PRESENT

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

WILLIAM SHERWOOD, Vice Chair
Representative of PHILIP ANGELIDES
State Treasurer

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

JOHN S. LAZAR
City Council Member
City of Turlock

GREG LARSON
Representative of STEVE WESTLY
Chief of Staff
State Controller's Office

---o0o---

COMMISSION STAFF PRESENT

PAULA HIGASHI, Executive Director
NANCY PATTON, Staff Services Manager
PAUL M. STARKEY, Chief Legal Counsel
ERIC FELLER, Staff Counsel

---o0o---

PUBLIC TESTIMONY

Appearing Re Item 2:

On Behalf of Los Rios Community College District and
Glendale Community College District:

KEITH B. PETERSEN, MPA, JD, President
SIX TEN and ASSOCIATES
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

On Behalf of the Financial Aid Department, Sacramento City
College, representing Los Rios Community College District:

ALICE KWONG, Financial Aid Supervisor
Cosumnes River College
8401 Center Parkway
Sacramento, CA 95823

On behalf of the Department of Finance:

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

On behalf of the Department of Finance:

RANDY KATZ, Finance Budget Analyst
Department of Finance
915 L Street
Sacramento, CA 95814

On behalf of the Department of Finance:

LESLIE LOPEZ, Deputy Attorney General

---o0o---

I N D E X

<u>Proceedings</u>	<u>Page</u>
I. Roll Call	5
II. Approval of Minutes	6
III. Hearings and Decisions, pursuant to California Code of Regulations, Title 2.5, Article 7 (action)	6
Item 2 Enrollment Fee Collection, 99-TC-13 and Enrollment Fee Waivers 00-TC-15, Los Rios Community College District and Glendale Community College District, Claimants	
IV. Staff Reports	76
Item 3 Final Report to State Auditor, Bureau of State Audits, School Bus Safety II Audit Report	
Item 4 New Audit: Peace Officer Bill of Rights (CSM-4499), Animal Control (98-TC-11), and Other Mandates	
Item 5 Update on Pending Legislation: SB 55, SB 93, SB 497, SB 525, AB 405, AB 613, and AB 637	
Item 6 Executive Director's Report on Pending Workload, Budget, and Finance Agendas	
V. Public Comment	84
VII. Closed Executive Session	85
IX. Adjournment of Hearing	86
Reporter's Certificate	87

---o0o---

1 BE IT REMEMBERED, that on Thursday, March 27,
2 2003, commencing at the hour of 9:38 a.m., thereof, at the
3 State Capitol, Room 126, Sacramento, California, before me,
4 KAREN S. CHALLE, CSR #8244, RPR, the following proceedings
5 were held:

6 ---o0o---

7 CHAIR MIYASHIRO: I'd like to call this
8 Commission of State Mandates to order.

9 Paula, would you call roll?

10 MS. HIGASHI: Mr. Larson?

11 MR. LARSON: Present.

12 MS. HIGASHI: Mr. Lazar?

13 MR. LAZAR: Here.

14 MS. HIGASHI: Mr. Sherwood?

15 MR. SHERWOOD: Here.

16 MS. HIGASHI: Ms. Williams?

17 MS. WILLIAMS: Here.

18 MS. HIGASHI: Mr. Miyashiro?

19 CHAIR MIYASHIRO: Here.

20 Before we begin today's meeting, I think it would
21 be appropriate if we have a moment of silence in honor of
22 Kirk Stewart. Kirk Stewart served as the Executive
23 Director for the Commission on State Mandates from May 1995
24 through February of 1997, and he most recently served with
25 the Department of Finance, and retired a couple years ago.

1 Kirk passed away on March 14th of this year. And
2 I'd ask for a moment of silence this morning.

3 (Silence observed.)

4 CHAIR MIYASHIRO: Okay. Thank you.

5 Okay. Paula, Item 1.

6 MS. HIGASHI: Item 1 is adoption of minutes from
7 our last meeting.

8 CHAIR MIYASHIRO: Are there any objections or
9 corrections to the minutes?

10 MR. SHERWOOD: Mr. Chair, I would just like to
11 abstain on this matter.

12 CHAIR MIYASHIRO: Okay. The record will reflect
13 that abstention.

14 MR. LARSON: Mr. Chair, Walter Barnes has reviewed
15 the minutes as presented and has made a motion for
16 adoption.

17 CHAIR MIYASHIRO: Okay. Do we have a motion to
18 second?

19 MS. WILLIAMS: Motion to adopt minutes.

20 CHAIR MIYASHIRO: Okay. All in favor?

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

22 CHAIR MIYASHIRO: Opposed?

23 Mr. Sherwood abstained.

24 MS. HIGASHI: Thank you. I noted the abstention.

25 Item 2 is a hearing on two test claims.

1 Enrollment Fee Collection and Enrollment Fee Waivers. This
2 item will be presented by Eric Feller of our staff.

3 CHAIR MIYASHIRO: And before we begin with the
4 presentations I'd like for the witnesses and parties to
5 come forward so we can do the swearing in.

6 MS. HIGASHI: Please raise your right hand.

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

10 (The following in unison.)

11 MS. GEANACOU: I do.

12 MR. KATZ: I do.

13 MS. KWONG: I do.

14 MR. PETERSEN: I do.

15 MS. LOPEZ: I do.

16 MS. HIGASHI: Thank you.

17 MR. FELLER: Good morning.

18 As Paula said, before you is the final analysis
19 for the combined Enrollment Fee Collection and Enrollment
20 Fee Waivers test claims. The activities plead by the
21 community college districts relate to collecting,
22 refunding, and waiving fees and administering, documenting
23 and reporting on financial aid. For reasons stated in the
24 analysis, staff found the following activities to be
25 reimbursable mandates:

1 Calculating and collection of student enrollment
2 fee; exempting or waiving fees pursuant to criteria in
3 statute and regulation; reporting to the community college
4 chancellor's office on the number of and amounts for fee
5 waivers; adopting procedures to document student financial
6 assistance, documenting public benefits, and attending
7 financial aid training.

8 Staff also found that one activity, making refunds
9 for program changes, was not a new program or higher level
10 of service, for reasons stated in the analysis.

11 Staff recommends that the Commission adopt the
12 analysis and approve the test claims of the activities
13 listed.

14 Would the parties and witnesses please state their
15 names for the record?

16 MR. PETERSEN: Keith Petersen, representing Los
17 Rios Community College District.

18 MS. KWONG: Alice Kwong for the Financial Advisor
19 of the Cosumnes River College, representing Los Rios
20 Community College.

21 MS. LOPEZ: Leslie Lopez of the Attorney General's
22 Office.

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

25 MR. KATZ: Randy Katz. Department of Finance.

1 CHAIR MIYASHIRO: Okay. Mr. Petersen, would you
2 like to begin?

3 MR. PETERSEN: Thank you. That combination -- as
4 Mr. Feller indicated, this is a combination of two test
5 claims, filed a year apart. The first was enrollment fee
6 collection, followed by enrollment fee waiver. They both
7 derive from the same Code Section 76300 of the Education
8 Code. Combined together, we alleged 13 activities. The
9 staff recommendation has consolidated some of those and
10 limited some of those, and there's about seven recommended
11 activities remaining.

12 The seven recommended for approval by commission
13 staff, I believe, are consistent with the past practice and
14 how the commission staff applies the law. The -- I take
15 issue in two areas. First, the elimination of the refund
16 activity as a reimbursable activity, and the second dealing
17 with non-resident students -- the enrollment fee collection
18 for non-resident students.

19 Taking the easiest one first, I need to direct
20 your attention to page 11 of the staff recommendation.
21 There's one or two sentences at the top of the page 11. The
22 first paragraph says, "Additionally, prior to the test
23 claim statute, there was no requirement to collect
24 enrollment fees except for tuition from non-resident
25 students." Therefore, because it is not a new activity,

1 staff finds that collecting the fees -- the enrollment fees
2 from non-resident students is not a new program or higher
3 level of service.

4 This is a factual dispute. I believe we all agree
5 that non-resident students did pay tuition, and tuition was
6 collected from non-resident students, but the fact that
7 tuition was collected was not the same as collecting the
8 enrollment fees, which came along in 1984. So the
9 claimant's statement of the position that the enrollment --
10 collecting enrollment fees is different from collecting the
11 tuition fee, and the fact that tuition fees were collected
12 from non-residents is not relevant to the collection of
13 enrollment fees. These things may occur at different times
14 and involve different staff people at the college, and it
15 may take longer. It may take less. The difference would
16 show up when the actual claim's done. But it's actually
17 fully different, and I don't see how it's relevant that
18 collecting fees for another purpose are the same as
19 collecting fees for a new purpose. That's my first issue.

20 The second issue is on page 12, and it's a little
21 bit more complex. At the top of the page you see about
22 five lines which complete a paragraph from the prior page.
23 I'd like to start with that first sentence that says "Staff
24 finds that refunding enrollment fees" -- and this is my
25 second issue -- "refunds is not a new program or higher

1 level of service." That should properly read that program
2 changes are not a new activity or higher level of service.
3 Enrollment fees are new. The staff ties this together in
4 the following manner.

5 First of all, in the next paragraph it quotes
6 Title 5, Section 58507 correctly that a community college
7 district may allow a student to add or drop classes during
8 term pursuant to the district policy. The college staff
9 sees it as discretionary. A community college may allow a
10 student to add or drop classes. They have probably been
11 doing that forever. Program changes have probably been
12 around forever. Most of us probably had program changes
13 when we were in California colleges.

14 If you go down to the bottom of the page, it
15 says -- Section 58508 provides: "A community college
16 district governing board shall refund upon request any
17 enrollment fee paid." So it's quite clear that the Title 5
18 intended that the community college district refund
19 enrollment fees under certain conditions. Commissioning
20 staff has applied a court case called City of Merced, which
21 all of us on this side of the room disagree with, which
22 states to the effect that if something was discretionary,
23 anything that follows that is mandatory, and is not
24 reimbursable. So it's kind of a three-type thing here.
25 The commission staff is saying since program changes were

1 at the discretion of the district, since allowing program
2 changes were discretionary, anything that comes after,
3 which is the mandatory refund, is not reimbursable.

4 This issue, of course, will be tested in Supreme
5 Court cases sometime next year, in the process. But as a
6 practical matter, this has a Draconian result, and an
7 unintended result, and that is that program changes are
8 district policy and have been around forever. The decision
9 whether to allow program changes was not invented with the
10 enrollment fee collection program. That first quoted
11 section merely cites what everyone knows, and that is the
12 district can or can not allow program changes. And if they
13 do, the next section kicks in, which is if they do, a
14 student initiates the request for a refund.

15 So what you have here is a district with a long
16 standing policy to allow refunds -- excuse me -- program
17 changes. I'm getting caught up in my own analogy here.

18 We have the district, and probably all
19 districts -- most districts have a policy to allow program
20 changes. And because they allow these program changes, the
21 enrollment fee issue kicks in. A student pays the
22 enrollment fee upon enrollment, and then two weeks later
23 decides to reduce or increase the number of classes. And
24 when they do that, it creates a need for more fees, or a
25 refund of fees. So what I'm suggesting here is that

1 you disconnect the district policy of allowing program
2 changes from the intended consequence of the refund
3 process, okay?

4 For instance, if there was a non-resident student
5 who paid tuition and then left, that student would get a
6 refund. That policy has been around forever. The same
7 thing applies to enrollment fees. The district decided 100
8 years ago that there would be program changes. And the
9 intended consequence here is that enrollment fees are
10 subject to those program changes. So its result is
11 inappropriate to disallow the refund process, because the
12 district adopted a policy for program changes. And I would
13 ask for that section to be reinstated as a reimbursable
14 activity.

15 CHAIR MIYASHIRO: Any questions of the commission
16 members?

17 MR. LAZAR: Could I ask staff to comment on that?

18 MR. SHERWOOD: Yeah. I believe, Mr. Chair, that
19 these issues were addressed in your analysis. But in my
20 review of that --

21 MR. FELLER: Sure. With regard to non-resident
22 tuition, there was no evidence in the record that the --
23 that collecting tuition from non-residents was different
24 than collecting an enrollment fee from all students.
25 Without that evidence in the record, staff's conclusion

1 remains the same that it was in the equivalent activity
2 regarding the refunding of enrollment fees.

3 As Mr. Petersen pointed out, 58507, in the
4 regulations here -- on page 133 in your binder -- that a
5 community college district may allow a student to add or
6 drop classes during the term pursuant to district policy.
7 If that district policy did not allow program changes, then
8 no refund would be owing to the student, because no program
9 changes would be allowed. And because of the district has
10 that option to prohibit refunds then, and doesn't take it,
11 then refunding enrollment fees is not a matter of the
12 program.

13 Regarding 58508, the first sentence, "Community
14 college districts shall refund upon request any enrollment
15 fee or differential enrollment fee paid by a student
16 pursuant to these sort of sections for program changes made
17 during the first two weeks of instruction." Again the
18 only reason for those refunds was the program changes. If
19 those program changes are not allowed, there is no refund
20 on there. And because the district does not have to adopt
21 a policy requiring the program changes, then it was not
22 found to be a mandated program.

23 CHAIR MIYASHIRO: I'd like to ask the Department
24 of Finance their view of staff's interpretation of the
25 discretion of the program.

1 Do you agree with the Commission on State
2 Finance -- I mean, the Commission on State Mandates'
3 interpretation?

4 MS. GEANACOU: Yes. We support the staff's
5 analysis on this point.

6 CHAIR MIYASHIRO: Mr. Petersen?

7 MR. PETERSON: Well --

8 CHAIR MIYASHIRO: Any comment?

9 MR. PETERSEN: Rebuttal is more of the same, and
10 that's in essence that college districts decided many,
11 many, many, many years ago whether they would conduct to
12 allow program changes. And the fact that this impacted the
13 enrollment fee process was not planned for. Perhaps the
14 middle ground here is if a district had a policy to allow
15 program changes before 1984, they could be reimbursed for
16 the refund process.

17 In other words, if they had a pre-existing policy
18 to allow program changes, this new law comes along, it
19 impacts that policy. And if the policy was to allow
20 program changes, then a refund process should be
21 reimbursable. If they had a policy not to allow program
22 changes, there would be nothing to reimburse, because there
23 would be no enrollment fee refunds. It works out in a very
24 practical matter, and avoids the Draconian result of
25 applying that court case.

1 As to the non-resident tuition fees, Mr. Feller
2 and I have exchanged letters regarding facts and evidence.
3 We have -- we don't have particular facts and evidence
4 saying tuition fees or enrollment fees are different. I
5 think you can take notice that they are. Enrollment fees,
6 at the time of this test claim, were \$11 per unit. Tuition
7 fees for non-residents are significantly larger. And
8 whether they're collected at the same time or not, as a
9 factual issue, might be different for every college. So I
10 don't think, as a matter of law, you can say that
11 collecting tuition fees is the same as collecting
12 enrollment fees.

13 CHAIR MIYASHIRO: Okay. Thank you.

14 MR. PETERSEN: Uh-huh.

15 CHAIR MIYASHIRO: Miss Kwong?

16 MS. KWONG: In regards to the community college
17 having the -- the policy to allow program changes, it's
18 only fair that -- you know -- for students to come into a
19 community college and to have that flexibility. And rather
20 than looking at them when they come in on the first day and
21 saying, you know, "Make sure you enroll in the right
22 program the first day," and don't give them the
23 flexibility to make certain changes --

24 MR. PETERSEN: Crashing classes. That sort of
25 thing. I think we can all remember doing that, those

1 program changes, crashing a class.

2 MS. KWONG: Yeah. When you remember some of these
3 students are coming in right out of high school, they
4 have -- may have got counseling prior to coming in. But
5 most of them -- you know -- decide on what they're -- like
6 it's a real critical time to come in. Maybe the week
7 before school starts, and they haven't had a chance to get
8 to talk to a counselor, but they want to start classes,
9 and they do make mistakes. So you know, you do want to
10 make -- you know -- give that flexibility, instead of
11 changing that policy.

12 CHAIR MIYASHIRO: Did you want to make a
13 presentation on the broader test claim, or are you here as
14 a backup resource?

15 MR. PETERSEN: By the way, she's more in the way
16 of BOG side of the equation. The second test claim. She's
17 substituting for a district administrator that was
18 available last month, then it was postponed, and the person
19 is no longer available.

20 CHAIR MIYASHIRO: Okay. Very good.

21 MS. GEANACOU: If I may? Susan Geanacou,
22 Department of Finance. We would note that the issue of
23 possibly refunding the fee is only material during the
24 first two weeks of instructions. Per 58508(A) of the
25 Education Code. So that's the time period we're focused

1 on. After that, it does not appear to be a material
2 issue.

3 CHAIR MIYASHIRO: Okay. Thank you.

4 Miss Lopez, did you have anything to add on the
5 issues that we raised thus far?

6 MS. LOPEZ: No. Just if the Commission has any
7 questions.

8 CHAIR MIYASHIRO: Okay. You have any other
9 comments or questions regarding the first aspect of this
10 test claim?

11 And Paula, are we also discussing the Glendale
12 test claims?

13 MS. HIGASHI: Yes. We have -- the two test claims
14 have been consolidated. So when the Commission acts on
15 the -- this analysis today, it will be acting on the
16 consolidated test claims, and then the decision would be
17 issued.

18 CHAIR MIYASHIRO: And could you just -- both the
19 Commissioners as well as members of the audience, just kind
20 of explain why these have been combined?

21 MS. HIGASHI: The reason I combined the test
22 claims was because the Statutes and Code Section
23 overlapped. And it seemed that it would be more
24 economical, both for staff, as well as for Commission
25 Members, to be able to address these sections of law at the

1 same time, in one claim and one hearing, instead of having
2 them as separate agenda items, where we would have to
3 have -- where they may or may not even be heard on the same
4 hearing date.

5 So I decided to combine them. There was no
6 objection from the claimant regarding that.

7 MR. PETERSEN: You probably saved a tree.

8 MS. HIGASHI: Or maybe two trees, here.

9 CHAIR MIYASHIRO: We appreciate that.

10 MS. HIGASHI: Because the issues -- one issue
11 flowed into the next issue. And Mr. Feller can certainly
12 help with filling in more of the details in terms of
13 getting back into the second part of the issues on the
14 enrollment fee waivers.

15 CHAIR MIYASHIRO: Okay. Are we ready to move to
16 the Glendale aspect of the claim then at this point?

17 MR. FELLER: I believe --

18 MR. PETERSEN: I have no dispute on the waiver
19 side -- by the waiver side.

20 CHAIR MIYASHIRO: Okay. Well, let's go ahead and
21 move to that, and maybe we can have a more broad discussion
22 about that -- that claim at that juncture.

23 MR. FELLER: I don't have anything to add above
24 what's in the -- in the analysis on the fee waivers.

25 We've -- I -- I -- like I said, they've been -- like Paula

1 said, they have been consolidated, so they're all together,
2 and --

3 CHAIR MIYASHIRO: Okay. I have a question of
4 Paul. The legislative analyst bill analysis was cited by
5 the Chancellor's Office as suggesting that the amount
6 provided under the two percent would be insufficient to --
7 or was insufficient to pay for the administrative costs
8 incurred locally to administer the fees. The legislative
9 analysis, however, cites that there's a disclaimer; that
10 the legislature, while making appropriations, it provided
11 for the two percent, made no appropriation for the fee to
12 be retained locally to cover the cost of those
13 administrative activities. And you say that the bill
14 includes a self-financing authority disclaimer. Could you
15 explain what that disclaimer means, relative to our
16 jurisdiction here, and whether the legislature, when they
17 say this is self-financing, why then are we entertaining a
18 claim that suggests that the costs are above that?

19 MR. STARKEY: Basically we follow the direction of
20 the Courts on this particular issue. In the case of
21 legislation, the Legislature, of course, has been
22 conducting hearings and taking testimony in making
23 determinations up front about a particular bill, and making
24 some assessment about what they believe based upon the
25 information that they have at the time. And so it's not

1 uncommon that the legislature will either directly through
2 the statutes, or -- in the committee reports -- make the
3 determination about the estimated set cost of a particular
4 program or activity.

5 The fact remains that the Courts have said that
6 the Commission has the jurisdiction to determine the
7 existence or not of a mandate when the legislature puts a
8 dollar amount on a particular activity. And that is not
9 going to be determinative on the ability of the Commission
10 to make a finding about whether a mandate exists.

11 And they would -- the Commission will look at the
12 program in the statute, and then take testimony of the
13 parties and make the determinations based upon that
14 presentation by the parties as to whether or not they find
15 there is a legal mandate there.

16 Is that sufficient to -- is that what you're
17 asking about?

18 CHAIR MIYASHIRO: Well, I guess I'm looking at it
19 in two stages. One is whether there's a mandate there.
20 And I think all the partes have agreed that there is a
21 mandate. There is a new activity, a higher level of
22 service. But then the question is has the legislature made
23 some allowance to pay for that by providing for the two
24 percent retention of fees collected? And my question goes
25 to what weight or how do we determine that that amount is

1 insufficient, and therefore a claim for cost above that,
2 that the legislature had provided for in the two percent
3 rate, should be considered reimbursable above and beyond
4 that two percent?

5 MR. STARKEY: I think there's at least two
6 considerations. One is that when you make an analysis --
7 in this case the analysis is at page 24 of the staff
8 recommendation -- we look at the statute itself. And if
9 the statute itself had, for example, capped fees, but still
10 continued, still imposed a duty, then the mere fact that
11 some amount of fees was in there would not be derminative,
12 because of the fact that there's still an existing mandate.
13 The second aspect of it is that we look to the record and
14 the evidence presented by the parties. And that's
15 explained at page 24 of what was present in this record;
16 that there is a declaration provided by the claimants. And
17 basically, that declaration has been provided.

18 MR. FELLER: Can I add something? The Statutes we
19 operated under in this case, Government Code 17556,
20 require that the revenue be sufficient to fund the cost of
21 the mandate. And as Paul mentioned, it's in the records.
22 And in this case, it indicated -- it wasn't -- the
23 declaration should be on page 124 in your binders for
24 enrollment fee collection. And 278, 279 for the -- the fee
25 waiver portion of the test claim indicated that those

1 were -- those revenues were not sufficient.

2 MS. HIGASHI: And let me just add one more point,
3 and that is that the basic statutory requirements set
4 minimum amounts in order to file a test claim with the
5 Commission on State Mandates. At the time these tests
6 claims were filed, the threshold was only \$200. Currently
7 it's \$1,000. And that's also the minimum threshold for
8 filing a reimbursement claim with the State Controller's
9 Office. And that's been in effect since September 30.

10 CHAIR MIYASHIRO: Is there a representative of Los
11 Rios to help walk us through what is submitted here on page
12 124?

13 MR. PETERSEN: Yes. I prepared that schedule
14 based on information provided to me.

15 CHAIR MIYASHIRO: And I guess my question is --

16 MR. PETERSEN: Because the numbers go down,
17 certainly, since the staff analysis has wacked several
18 portions of it.

19 CHAIR MIYASHIRO: Okay. There's -- I will assume
20 that these costs were in fact incurred by Los Rios
21 Community College District. But how are the Commissioners
22 to know whether what was incurred -- was only sufficient
23 in -- was no more than sufficient versus what the
24 legislature provided for in the two percent? If I read
25 this correctly --

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PETERSEN: Uh-huh.

CHAIR MIYASHIRO: -- it's roughly \$140,000.

MR. PETERSEN: Yes.

CHAR MIYASHIRO: You had to apply to a hundred and -- possibly \$217,000?

MR. PETERSEN: Yes.

CHAIR MIYASHIRO: The gap is large. The difference is large.

MR. PETERSEN: Uh-huh. It often is in mandates.

CHAIR MIYASHIRO: In a sense, how can the Commissioners be assured that \$140,000 was insufficient as compared to an argument that well, here it is, what we ended up spending? Because I think the Legislature, when they use the term "sufficient," is distinguishing between sufficiency and what was ultimately spent.

MR. PETERSEN: Uh-huh.

CHAIR MIYASHIRO: And if the activities elected to be undertaken locally exceed the amount provided by the legislature in this case --

MR. PETERSEN: Uh-huh.

CHAIR MIYASHIRO: -- the two percent, I think it's up to the Commission here to determine whether that amount spent was what would be sufficient, and the two percent was not, versus here's what was spent locally. There's -- there's a distinction --

1 MR. PETERSEN: Uh-huh.

2 CHAIR MIYASHIRO: -- I want to draw. And I think
3 it's up to the Commission kind of to draw that line.

4 MR. PETERSEN: Several things are happening here.
5 The jurisdiction of the Commission for finding costs of
6 expenses of reimbursement is if there was sufficient funds
7 in the Legislation, which were indicated in the mandate
8 whether there's sufficient funds in that Legislation to
9 offset the cost. Or the other part to this is if the
10 Legislation provided fee power -- granted the local agency
11 the power to charge their consumer's a fee. What the two
12 percent is is something rather clever, and the legislature
13 has many, many, many clever days, including 1984. The two
14 percent is not a transaction in the sense that the
15 Chancellor's Office gives two percent, the 140,000 to the
16 college. The college reports to the Chancellor's
17 Office how much it collected, and the Chancellor's Office
18 gives it credit for 98 percent of what they collected
19 against their statewide appropriation for educating
20 college students. So in that way, they avoided putting a
21 funding requirement in legislation, and they avoided --
22 they avoided two-thirds vote.

23 You see, we all know if you put some money in
24 Legislation, you have to have a two-third vote. So since
25 the money was never in the Legislation, it doesn't meet the

1 test of whether it is an exception to reimbursement because
2 it wasn't in the legislation. It's not a fee they charge
3 students. It's an accounting transaction. Whether these
4 costs are correct, the costs will be different for every
5 college, which is one point in support of the fact that you
6 subtracted two percent from the actual cost.

7 We know they're getting credit for two percent.
8 And whatever they report their costs to be, the two percent
9 comes off. And that's how that calculation occurred here.
10 So whatever the cost, that was the best guesstimate. This
11 is not cost accounting, because you do that with claims
12 later. This is a best guesstimate. And then based on the
13 things we allege, since these have been cut almost in half,
14 that's going to go down. So every college is going to
15 report their costs and subtract the two percent. So it
16 might be \$3 a student. It might be \$4 a student. A very
17 small college might have a higher cost, because they have
18 the office staff servicing fewer students. And that's a
19 cost accounting issue. So it's going to vary.

20 Now several examples do exist already. There's
21 a -- an annual claim called Pupil Health Screening, which
22 school districts are required to collect from each student
23 a copy of a health exam prior to entering first grade, or a
24 document that says various families won't allow the health
25 exam -- pupil health screen. And the State had an

1 appropriation in place from the Department of Health
2 Services that was paying the districts a dollar per student
3 to perform that function. Appropriation exists, and it is
4 being paid out every year, a dollar, to perform that
5 function. When the test claim was filed, the Commission
6 took notice of the dollar and said that should be
7 subtracted from the cost of the process. And indeed, based
8 on the claims I've seen, the cost is anywhere to three to
9 five to \$6 per student in the actual world, to perform that
10 function. And then if the dollar is subtracted, that's how
11 the mandate reimbursement process works. You appropriate
12 the actual cost, and then you subtract any revenue that
13 you receive directly. So in this test claim, they would
14 report their actual cost, and then subtract the revenue.

15 Now the nice thing about this test claim is a low
16 overhead, high variable cost claim process, in that the
17 cost -- the total cost of the process depends on how many
18 allotted -- on how many students you have. So if you're
19 doing a lot of students, you have a lot of cost. Those
20 types of things lend themselves to unit cost rates.
21 They're very uniform costs. So after a few years of cost
22 experience, this will lend itself to a unit cost rate of
23 \$3, \$4 -- whatever it turns out to be, which would just be
24 multiplied by the number of students from which you collect
25 the fee, or which you do the waiver. So it's going to be

1 tied to the claim.

2 In that sense, there will be some cost containment
3 there. But I am sensitive to your issue, and it has come
4 up a lot in the last few years. If the legislature says
5 we're giving you enough money, then it's -- can't be
6 declared a mandate, one point of fact is the Legislature
7 has never done that since, I believe 1977, when they
8 provided a couple hundred thousand dollars for something
9 called Expulsion Transcripts.

10 The County of -- I believe it was Los Angeles
11 Unified School District filed a test claim on that and
12 proved it was insufficient cost. The test claim was
13 approved, and the appropriation was withdrawn from the
14 budget in the future. So there was never any
15 appropriation.

16 Of course, that's the other side of the coin, too,
17 is next year the Legislature could take two percent away,
18 and you'd still have the actual cost of collecting the
19 fee. And two percent will go up. I believe the
20 Legislature is talking about \$24 dollars a unit right now
21 for enrollment fees. And two percent of that will climb
22 with the \$24. So there will be some recognition of --
23 there will be some connection between the fee and the work,
24 in that sense.

25 CHAIR MIYASHIRO: Can you give us a sense of

1 submission here?

2 MR. PETERSEN: Uh-huh.

3 CHAIR MIYASHIRO: How much of this \$217,000
4 represents personnel, and are we talking about --

5 MR. PETERSEN: It all will be personnel.

6 CHAIR MIYASHIRO: Are we talking about people who
7 are engaged full time, year-round, exclusively in the
8 collection of this fee? Or are we talking about people who
9 have year-round duties and may touch upon this mandated
10 activity? And how much of the time then is allocated to
11 this? So what I would be looking for is a sense of how
12 many people are engaged in this activity, and for how much
13 of their year?

14 MR. PETERSEN: When I prepared this a couple years
15 ago, my recollection is, at Los Rios, they have three
16 colleges, of course. So there will be several cashiers who
17 collect fees. The workload is -- I'm sure -- intense for
18 several weeks at the beginning of each semester. This
19 estimate is not predicated on 100 percent of anybody's job.
20 It is -- we did a very informal time study, and they asked
21 the cashiers "How long does it take to collect fees?" And
22 they would say "Well, I got this form to do. Then I've got
23 to hand it to this person," and it came out to like "x"
24 number of minutes.

25 So what we did is we took "x" number of minutes

1 and multiplied it by that person's salary. The clerk at
2 the window multiplied it by the number of students for whom
3 they had to collect the fees. Very, very, very, very
4 primitive cost study, which is actually more sophisticated
5 than what we usually do for these estimates. So it's not
6 anyone's position. It's not an all-year job. It's a very
7 intense process at the beginning of the semester.

8 As for the refunds -- a special place in my heart
9 there. I used to be a cost accountant for the State, and
10 you realize sometimes it costs more to perform an activity
11 than the value provided. For instance, if someone had a
12 program change and wanted a \$12 refund, it might cost \$26
13 to do that, because you have to do several things before
14 you can issue a check from a public entity.

15 So it's not so much the dollar amount involved.
16 It's the process. And again, we just did a quick-and-dirty
17 on the process. The net result, here again, is going to be
18 high, because there have been some things removed by the
19 Commission staff. But if you think about \$4.63, if the
20 average staffing cost here is \$15 or \$16 an hour for the
21 front line troops, you're looking at at least then 15
22 minutes of everybody's time to perform the entire
23 function. You see what I mean there?

24 If the average hourly cost of the cashier and the
25 accountants and the supervisors and the people who correct

1 the mistakes or -- or make refunds is \$16 dollars an
2 hour -- which it's not. It's much higher -- you're looking
3 at 15 minutes of one person's time to do the entire
4 process. It's people -- or labor, of course, is expensive,
5 as you all know. But 15 minutes is not an untoward amount
6 of time when you visualize the process.

7 CHAIR MIYASHRO: Okay. Can I ask how many
8 cashiers -- how many people are involved in this activity?

9 MR. PETERSEN: I've also talked about this with my
10 other clients, and smaller colleges, during the rush in
11 August. And I guess February or January will have extra
12 staff on. And there might be two or three cashiers at the
13 window, handling this process. And during the rush, there
14 might be five or six people to handle the students, of
15 course, in line.

16 Some of this is done on the computer. You can
17 register on line and a check comes in the mail. But still,
18 some of it is done face-to-face.

19 CHAIR MIYASHIRO: So we're saying -- let's say
20 six per college? 18 people?

21 MR. PETERSEN: Well again, you could say that, but
22 we would -- we're not -- we're not requesting to manage
23 reimbursement for 100 percent of the day. We've just done
24 an estimate of when they're doing enrollment fee collection
25 and what that costs. They might be doing three or four

1 different jobs.

2 CHAIR MIYASHIRO: Okay. I'm just trying to get
3 this math to reconcile, because I guess the way you
4 described it, it says "Well, tell me how many minutes you
5 spent on this?"

6 MR. PETERSEN: Yes.

7 CHAIR MIYASHIRO: "And then make multiplications."

8 MR. PETERSEN: Right. Because of this.

9 CHAIR MIYASHIRO: I guess the other way you might
10 look at it is here's the course of your entire year, week,
11 month.

12 MR. PETERSEN: Uh-huh.

13 CHAIR MIYASHIRO: How much of that entire time is
14 spent on this? Because if you were to ask that person,
15 again, "How much time did you spend collecting parking
16 fees?"

17 MR. PETERSEN: Uh-huh.

18 CHAIR MIYASHIRO: "How much time did you spend
19 collecting" --

20 MR. PETERSEN: Uh-huh.

21 CHAIR MIYASHIRO: -- "student registration fees?"
22 And let's say you just went down the list and you ended up
23 with more than 2000 hours, well, the trouble I have with
24 this methodology is if we assume \$40,000 per person here --

25 MR. PETERSEN: Excuse me?

1 CHAIR MIYASHIRO: If we assume \$40,000 -- and you
2 said 30, but let's add benefits and so forth.

3 MR. PETERSEN: Right.

4 CHAIR MIYASHIRO: An \$800,000 claim suggests 20
5 people doing this all year long.

6 MR. PETERSEN: Yes, it would. At three different
7 locations.

8 CHAIR MIYASHIRO: 20 people, all year long.
9 That's their entire activity. And I guess I need to have
10 something reconciled between an \$800,000 number here
11 supporting this claim --

12 MR. PETERSEN: Uh-huh.

13 CHAIR MIYASHIRO: -- and what -- as you
14 described -- would be a marginal amount of activity of a
15 number of six people per campus at six campuses.

16 MR. PETERSEN: Well, again, also an accounting
17 term, if you're approaching -- and I'm approaching this
18 accurately -- you come up with the same result. In other
19 words, if I asked a cashier -- and there are very few
20 full-time cashiers. There are people who put on
21 temporary -- I told you, there's some overtime involved
22 during the heavy season that raises their cost. But if I
23 asked a cashier "How much time do you spend doing the
24 enrollment fee collection?" The cashier would tell me
25 "Well, most of the year we don't do it at all, because it's

1 enrollment-related. But during the enrollment season it
2 seems like I do that all day long." Okay? And well, "How
3 many people are at the window?" "Well, during the year we
4 have one person who is the receptionist, and someone comes
5 to window, you know, to pay a parking thing or a cafeteria
6 thing or something, that person goes to the window. But
7 during the -- the busy season, there might be five or six
8 of us knee deep in students," you see? So that the cost is
9 concentrated in that period.

10 \$800,000 could be 12 or so, to 15. If you look at
11 it full time it could be 40 or 50 people working
12 frantically for several months a year. But as I said,
13 that's going to go down, because the Commission -- the
14 Commission staff is -- has removed parts of it.

15 CHAIR MIYASHIRO: Well, I guess --

16 MR. SHERWOOD: Can --

17 CHAIR MIYASHIRO: Go ahead.

18 MR. SHERWOOD: I think the Chair is making a good
19 point here, though. When you put it on that perspective of
20 15 to 20 people, say, full time --

21 MR. PETERSEN: Uh-huh.

22 MR. SHERWOOD: -- for a year, it just doesn't
23 quantify in my mind, quite frankly. I've read Finance's
24 analysis also. I think it's on page 580 that breaks it
25 down a little bit differently. I'm sorry. That breaks it

1 down a little bit differently. And I think it comes up
2 with a costing area of \$70,000. I have to go back and
3 review it, but it's quite a bit lower than what these
4 estimates are.

5 MR. PETERSEN: Do you think it would be more than
6 90 cents a student?

7 MR. SHERWOOD: I don't know.

8 MR. PETERSEN: That's what the two percent is.

9 MR. SHERWOOD: 90 cents?

10 MR. PETERSEN: And 90 cents would be five
11 minutes -- three minutes of somebody's time.

12 MR. SHERWOOD: It's quite a problem, though.
13 Because if we can't get over this little -- this huge
14 hurdle --

15 MR. PETERSEN: Uh-huh.

16 MR. SHERWOOD: -- of indicating what the actual
17 cost might have been -- now this is an estimate.

18 MR. PETERSEN: Yeah. In point of the fact, we
19 could switch it to \$1,000 right now. It'd no longer be an
20 issue. It's whatever the cost turns out to be, in reality.

21 MR. SHERWOOD: The P's and G's claims this doesn't
22 generate any cost.

23 MR. PETERSEN: This is an estimate. Yeah.

24 MR. SHERWOOD: But it's still a -- I think an
25 important point of -- the Chair is making in this case.

1 CHAIR MIYASHIRO: And I guess what I am, again,
2 aiming at is -- and I raised this last meeting.

3 MR. PETERSEN: Yeah.

4 CHAIR MIYASHIRO: In my mind it's not what the
5 local agency spends or elects to spend --

6 MR. PETERSEN: Uh-huh.

7 CHAIR MIYASHIRO: -- to fulfill a mandate, and
8 then we say "Okay, you have documentation to show that you
9 spent an amount."

10 MR. PETERSEN: Uh-huh.

11 CHAIR MIYASHIRO: "And here's the reimbursement."
12 I want to get back more to what is sufficient to fund the
13 mandate, and for this Commission to have a very good sense
14 of what that will be, going into the reimbursement process,
15 not after the fact that -- you know -- of going through the
16 audits and audit appeals and --

17 MR. PETERSEN: Which is the jurisdiction of the
18 State Controller.

19 CHAIR MIYASHIRO: So -- right. This claim is
20 based on this information here, and it has not been
21 audited, and you would acknowledge that it's based on a
22 general survey. And someone just needs to say "Well, ten
23 minutes of my time was spent doing this." But I guess,
24 again, if I'm not accounting for their entire time, I don't
25 know if ten minutes is grossly overstating it. Because if

1 we have a cost, by doing that multiplication, that --

2 MR. PETERSEN: Uh-huh.

3 CHAIR MIYASHIRO: -- section sees \$800,000 for the
4 district, which sounds to me like 20 people being paid
5 \$40,000 a year undertaking this activity all year long.
6 That's seems quite in excess of your suggestion that it may
7 be five or six people at the window during the heavy times
8 of the season.

9 MR. LARSON: Mr. Chair?

10 CHAIR MIYASHIRO: Mr. Larson.

11 MR. LARSON: If you kind of take your analysis on
12 the two percent reverse, you do get to roughly a 15
13 pedantic hiring, if you take 140, using the 40,000 actual.
14 Obviously what it is is three and a half and a quarter
15 bodies, multiply that out by about a quarter of the year,
16 it sounds like.

17 MR. PETERSEN: Well, three semesters. Three
18 enrollment periods.

19 MR. LARSON: Three enrollment periods. So the
20 average of that would just fall to part of a fifth of a
21 count.

22 MR. PETERSEN: We can't know how many hours they
23 work. This was a very informal survey.

24 MR. LARSON: Obviously sort of a thumb test. The
25 Chair led us through the other direction. Now I'm taking

1 it from the sufficiency point going up, and you get to
2 about 15.

3 CHAIR MIYASHIRO: Right.

4 MR. LARSON: Both on at a time that would be
5 handling this.

6 MR. PETERSEN: If that's --

7 MR. LARSON: Which seems to match the number.

8 MR. PETERSEN: Yeah.

9 MR. LARSON: And that would be full time, just on
10 this process.

11 MR. PETERSEN: Yeah.

12 MR. LARSON: On the work.

13 MR. PETERSEN: Mr. Chair, I'm sensing a catch-22
14 here. The law requires that I allege at least \$1,000.
15 Commission staff has indicated in the past few years you
16 all would like to get a taste of what things are going to
17 cost the State eventually. And in order to do that, I put
18 together a very informal survey. And I wouldn't stand up
19 and say it's going to be this number. It might be \$2 per
20 student. But had I elected only a thousand dollars, you
21 might have gone away thinking this is cheap. And then
22 we'd all be surprised, like we have been in the past 12
23 years, when we come in with \$1,000 alleged, and someone
24 finds out that it's a 50 million dollar mandate.

25 I don't -- I guess what I'm suggesting here is

1 focusing on these numbers would be inappropriate in the
2 sense that this is something we put together to give a
3 rough idea. And I understand -- I really do understand,
4 especially at these times, your sense of what things cost.
5 But the laws regarding the Commission process and the
6 jurisdiction of the respective agencies allocate those
7 tasks in the following sense. The Commission decides
8 whether the activities are new, and then claims are filed,
9 and they find out what the cost is. And the State
10 Controller has a jurisdiction to adjust costs to be
11 reasonable.

12 The two percent is a legal issue that has nothing
13 to do with it actually, nothing to do with what the
14 mandate's going to cost, whether it's a dollar a student or
15 \$9 student. And I particularly think it will be closer to
16 \$3, once things are winnowed out. The two percent is a
17 legal threshold issue under 17556 as to whether a mandate
18 exists. The Legislature never said the two percent was
19 adequate. The Chancellor's Office never said the two
20 percent was adequate. So as a matter of law, it's not
21 adequate. It will be an amount in the normal mandate
22 process that gets subtracted from the cost. And again, the
23 practicality of that argument is seen easily. That is,
24 next year they could take the two percent away. It's an
25 arbitrary number.

1 And one more thing, the BOG waiver process has a
2 91 cent per credit offset. So there's actually two
3 offsets. There's two percent for the collection fee, and
4 there's .917 cents per unit. So if it's students taking
5 ten units, you're looking at a \$9 offset for the BOG waiver
6 process.

7 Both of these are arbitrary numbers, and they were
8 never in the Legislation as funding. They're in the
9 Legislation as a credit against amounts collected.

10 CHAIR MIYASHIRO: You have a question?

11 MR. PETERSEN: I'm sorry -- very sorry I gave you
12 a cost estimate.

13 CHAIR MIYASHIRO: Any questions of members of the
14 Commission?

15 Would the Department of Finance or Attorney
16 General like to offer comments?

17 MS. GEANACOU: We don't have any comments at this
18 point.

19 CHAIR MIYASHIRO: Any members of the audience that
20 would like to comment on this at this time, with the
21 State?

22 Okay. I guess -- and I guess this is something I
23 put forth at our last Commission meeting. And that is, I
24 would like the Commission staff and the other parties --
25 the Department of Finance, Attorney General, Controller's

1 Office, Legislative Analyst to participate and assist in
2 the development of unit cost rates for these claims, so
3 that we as Commissioners have a better sense of what these
4 mandates may ultimately cost, rather than wait till
5 activities have been performed, claims are made, claims are
6 audited by the Controller's Office and -- you know -- we
7 have this back and forth in it.

8 And really, until spending has already taken
9 place, the Commission largely is without a good sense of
10 what the mandate that we have found is ultimately going to
11 cost. And I would hope you would be providing some -- not
12 just parameters and guidelines simply on what activities
13 are acceptable, but the reimbursement rate for these
14 activities, and a reasonable amount of time that those
15 activities would be undertaken, so that this Commission,
16 when it adopts parameters and guidelines, has much more of
17 a sense of what the mandate will ultimately cost, and not
18 simply specifying various activities that may be claimable.

19 I would like to try and have as many of the
20 variables brought before us before we adopt them, so that
21 we have a much better sense that -- you know -- of what
22 this mandate would cost, and the range of this. Because if
23 we nail down variables as best we can, versus leaving so
24 many variables open -- and I'm not saying that the process
25 hasn't been rigorous to date. But I think the more we can

1 move toward that, the better sense the locals will have as
2 to what they will receive as reimbursement when undertaking
3 the activities, and not necessarily feeling that they
4 undertake activities as some risk of finding that the
5 activities that they had undertaken in good faith were in
6 fact not reimbursable.

7 MR. LARSON: Mr. Chair, just two comments in
8 response. Certainly the Controller's Office wants the unit
9 cost ultimately realized, and I think you're right in
10 moving towards some of that data earlier. And that would
11 be helpful to the Commission's continuing deliberations,
12 and especially to give them -- it's kind of a second point
13 I just want to make clear. I think we also all have the
14 understanding the schedule is not as --

15 MR. PETERSEN: It's pretty close to a W-A-G, sir.

16 MR. LARSON: We understand that. And I think that
17 actually lends credence to what the Chair is suggesting, to
18 go forward. So just to follow up on your comments, sir,
19 you were going to say we're interested in, both for the
20 State and the district, minimizing cost, and second, I
21 think revisiting the -- the W-A-G schedule as was presented
22 in the unit cost might present an opportunity to refine the
23 data that the Commission is to base its decision on, at
24 least in part.

25 MR. PETERSEN: If I may, one technical problem --

1 MR. SHERWOOD: If I may, Mr. Chair, I -- I'm going
2 to be in agreement with the direction you're heading. I
3 think the more information that's available, not only to
4 us, but to everyone in the process, from the claimant's
5 side and from the Legislative side -- the more information
6 we have -- all of us have is to be prudent. However, I
7 think the decisions we make here have to -- frankly, have
8 to be made upon the facts and the information brought
9 before us, based on whether it's a mandate or not, and
10 not the costs involved.

11 Quite frankly, I think the costs are important to
12 the system, and for everyone to understand what the cost
13 could be in the fund. But I still think our decision would
14 be based -- should be based upon whether it's a mandate or
15 not, and not influenced, frankly, to a great extent, by the
16 cost itself.

17 CHAIR MIYASHIRO: I agree. I do agree with your
18 point.

19 MR. SHERWOOD: Thank you.

20 MR. LARSON: And Mr. Chair, I agree with that as
21 well. When I go back to the Commission staff report,
22 they -- pages 24 and 25 -- it's pretty clear the direction
23 and recommendation is coming from staff. And really, I
24 view your request as a chance to get additional data to
25 help us analyze that going forward, and Finance's claims,

1 which is different than Commission staff on this matter.

2 CHAIR MIYASHIRO: Yeah. Yeah. I appreciate that
3 clarification. I think that's exactly my point.

4 Any other comments by Mr. Petersen?

5 MR. PETERSEN: If you didn't know already, we very
6 much supported the idea of unit cost. In fact, we have
7 nine matters. We filed a request to make nine existing
8 programs in the cost, and we're having a meeting about that
9 today, which would reduce their workload -- State
10 Controller's workload reduces our workload. As you know,
11 you reimburse our workload. So everybody wins on that
12 proposition.

13 I have participated in a test claim where we did
14 unit costs at the parameter and guidelines stage. The
15 annual parent notice in the school district bulletin
16 reports were going back five or six years. You might
17 remember that, Mr. Sherwood. And it has to be done with
18 the P's and G's statement. That's when you know the things
19 you're going to approve, and it does involve less than
20 scientific methods to get that data, because you're asking
21 a lot of districts to respond to a list of activities.
22 And it -- first of all, it's tough to get a lot of
23 responses. We'll get nowhere near a statistically valid
24 average, or within two very small cell minuses or bell
25 curve or anything like that. It's generally a process

1 where we think the data looks reasonable. We, being
2 everybody involved.

3 So if you're looking for a scientific solution, we
4 know to make things work we have to move into the realm of
5 the possibles on proposed scientific data, but we very much
6 support unit cost rates. We love unit cost rates a lot.

7 CHAIR MIYASHIRO: Did the Court Reporter get that
8 you're emphatic?

9 Any other comments or questions?

10 MR. SHERWOOD: The mandate in general.

11 CHAIR MIYASHIRO: Yes.

12 MR. SHERWOOD: I do have a question. On page 278,
13 of course, it includes the board, or the staff -- excuse
14 me -- in six items, I believe, that are considered to be
15 mandated by staff accordance. Mr Petersen, you have two
16 other points you brought up, which I believe staff spoke to
17 in its analysis. And I happen to be in agreement with
18 staff. But on the sixth I'm looking at here, the fifth one
19 documented the public benefits for -- this is on page 28,
20 documenting public benefits for recipient assistants, and
21 also dealing with the training. And it refers to the
22 manual, and then the manual goes back to page 20, and it
23 says the BOG Fee Manual comes up, and whether or not that's
24 an executive order or not. And the Department of Finance
25 had the argument that it is not an Executive Order. And I

1 believe staff feels that it does find a place in that
2 executive order or even in a regulation or ruling by a
3 state agency. And I believe Mr. Petersen, you feel that
4 way also?

5 MR. PETERSEN: Right. And you have a special code
6 section in the mandate law that's speaks to executive
7 orders specifically.

8 MR. SHERWOOD: Uh-huh.

9 MR. PETERSEN: Did you cite that?

10 MR. FELLER: It's Government Code 17516.

11 MR. SHERWOOD: Yes. I guess my point is -- maybe
12 I'll hear more from Finance. When I read that through it,
13 I'm not quite sure. I guess it needs to be explained to me
14 a little bit more fully as to why it is or it isn't, and
15 where the ramifications are not carried out there, or
16 order. Why -- what is the penalty for not carrying out
17 this order? I mean, it isn't really a requirement of the
18 community colleges to carry this out.

19 MR. PETERSEN: You're required to report your
20 BOG, Board of Governors, fee waiver student data in order
21 to get that two percent. And indeed, in Education Code
22 76300, if you don't report data, they can penalize you ten
23 percent of your entire annual appropriations. So you're
24 compelled to report data consistent with the manual, I
25 guess is the shortest answer. The manual says you'll keep

1 track of financial aid for the students, and a couple other
2 things they're training on.

3 MR. SHERWOOD: Right.

4 MR. PETERSEN: But you know, in the scheme of
5 things, it goes to Statute Code, to Regs, Manuals, and to
6 the Section 1 Items, you know. The Superior Law Reg,
7 whatever, it is. An executive order. And the punitive
8 side, I don't necessarily agree you need a punitive side to
9 make the manual effective. You just need the Department
10 saying you have to do this.

11 But in this case, the underlying Code
12 Section 76300 says if you don't comply, don't report.
13 Let's say your state appropriation was 128 million dollars
14 or something, not just the BOG fees. But ten percent of
15 your state appropriations can be held until you report. So
16 there is definitely a punitive aspect to not complying with
17 the Chancellor's Office. And of course, Title 5 came from
18 the Chancellor's Office. It didn't come from the
19 legislature, okay? The Chancellor's Office, the Board of
20 Governors created the title -- these Title 5 sections
21 there's jurisdiction on. So to comply with Title 5 and to
22 comply with the Code Section you have to comply with those
23 aspects of the manual.

24 MR. SHERWOOD: Thank you.

25 CHAIR MIYASHIRO: Department of Finance, do you

1 have any comments then?

2 MS. GEANACOU: Yes. Susan Geanacou, Department of
3 Finance. I had hoped you were not finished taking
4 testimony. We have comments on both of these manuals, and
5 on another aspect of the test claim. We'll address it in
6 this order. The Department of Finance continues to oppose
7 the staff finding that this manual constitutes an executive
8 order. The authority for the Board of Governors adopted
9 rules and regulations is in the Education Code,
10 specifically at Section 70901, Subdivision (C), (D) and
11 (E). And there is no evidence in the record, that we're
12 aware of, that this process was followed by the
13 Chancellor's Office in issuing the mandate which, as we
14 noted in our comments to the draft staff analysis, is
15 self-described in section 1.3.3 as sub-regulatory
16 guidance.

17 I'll also add that the Board of Governors issues
18 standing orders. And specifically, they're Standing Order
19 Number 334, which I have copies of here today, and we were
20 not able to include it previously with our submissions. If
21 you'd like me to distribute it so members and the parties
22 here at the table can cite it for their consideration, I
23 have, I believe, ample copies of the Board of Governors
24 Standing Order 334, Subdivision (D)3, which includes
25 executive orders as a matter that would have to go through

1 the consultation process that is set forth in the Education
2 Code 70901(E).

3 And there's no evidence in the record, that we're
4 aware of, that that process occurred. I'll just
5 reemphasize what our comments were in our written filing;
6 that Section 1.3.3 of the Manual specifically says in
7 addition that it's additional guidance on the
8 administration of the BOG fee waiver program; that it's
9 offered by the California Community College Chancellor's
10 Office through the manual program updates and training
11 program manuals.

12 We would basically submit that this manual does
13 not and cannot legally be -- excuse me -- cannot legally
14 require the college districts to do anything, because the
15 authority for its existence as an Executive Order is in
16 doubt.

17 CHAIR MIYASHIRO: Ms. Williams.

18 MS. WILLIAMS: I do have a question. I just
19 wanted to agree with Mr. Sherwood and Finance's comments.
20 This -- in reading the manual, it's clear to me it's
21 guidance. It's not mandatory. It's guidance. And wasn't
22 adopted by the Board. It wasn't adopted by the Board of
23 Governors. It wasn't mandated or directed by the Board of
24 Governors. It describes it as additional guidance. The
25 regulation stand -- law stands, but I don't see anything

1 where the manual stands.

2 MR. PETERSEN: I can respond to that.

3 MS. WILLIAMS: You can? Great.

4 MR. PETERSEN: Page 20 of your staff
5 recommendation, in the middle of the page it says "Staff
6 disagrees regarding opinions of the community college
7 chancellor. The Commission is not bound to rely on legal
8 opinions of the administering agencies as to what is not an
9 executive order or regulation." So it's case law. What's
10 pertinent here is, first, that -- and this comes up
11 frequently, as to what is an executive order in the mandate
12 world is controlled by your mandate legislation and the
13 government code. What the Department of Finance described
14 to you is the process -- the internal process that the
15 Gov- -- that the Gov- -- 789, the Board of Governors has
16 for their own rulemaking. Okay? They've decided that
17 before something rises to the exalted height of Title 5,
18 that they go through what they call the consensus or the
19 collaborative process. That's a process they built in
20 that's a sharing of the process with the colleges. A
21 similar process would be someone posting a regulation
22 proposed, as this Commission does, for 45 days or 90, and
23 wait for people to respond. At that point you adopt
24 regulations. It's not a process that defines executive
25 order. It's Government Code section. And it's a perfect

1 match here.

2 As to whether the Chancellor's Office or the Board
3 of Governors thinks it's a regulation or not, having been
4 on the receiving end of having worked for state agencies
5 myself for ten years, and then since having been on the
6 receiving end of the jurisdiction of state agencies, the
7 issue of whether manuals, forms and such are executive
8 orders is an ongoing issue. We're all quite experienced
9 with the State Department of Education for 12K issuing
10 advisories saying "This is absolutely an advisory. You
11 don't have do any of this. But of course, if you want the
12 funding, please fill out the forms." That makes an
13 executive order. Or another advisory comes out and says
14 three pages of how to do something, how to fill out a form.
15 At the very end it says this is just guidance, but if you
16 don't turn in the form, you don't get the money.

17 Same thing with the manual. They declare it to be
18 sub-regulatory, when -- which is a legal issue they can't
19 decide for you. You have a Government Code section that
20 tells you what an executive order is, and then, for that
21 agency, for its own benefit, suggesting that it's not
22 mandatory, has several sub-issues involved. First of all,
23 if it's not mandatory, they can avoid their collaborative
24 process. I believe, based on the description, if it's not
25 mandatory, the Department of Finance doesn't have to buy

1 off on it. The Department of Finance has to approve or
2 disapprove Title 5 changes from the Board of Governors.
3 That's a matter of procedure that I'm aware of and I've
4 been told about. So if they declare something
5 sub-regulatory, the Department of Finance doesn't have to
6 look at it. So there's more going on than meets the eye
7 there.

8 But the bottom line is whether something's an
9 order or not is in your Government Code sections, whatever
10 that number was. And it's not the particular
11 self-interested agency saying this is not required, 'cause
12 it is required. It's an independent judgment on your part.
13 It's not what they tell you. And Commission Staff hit that
14 right on the nose. And that happens in every state agency.
15 There's nothing evil about that. This is just the way it
16 is. And in past test claims, this Commission has found
17 advisories whether they have an exculpatory clause of some
18 sort or escape clause to be executive orders, because they
19 require something to be done, okay? So it's not the window
20 address, it's the net effect. And the net effect is if
21 you don't report this information to the Board of
22 Governors, you don't get your two percent.

23 MR. FELLER: If I can add to that. Government
24 Code 17516, the definition of executive order in that
25 statute, which in mandate laws, we're bound to, in this

1 MR. SHERWOOD: Are we?

2 MR. PETERSEN: Well, I think you'll have some very
3 serious repercussions with the present Board of Governors
4 if people no longer are required to comply with their
5 manuals.

6 MR. SHERWOOD: I am here. I see this statement,
7 technical assistance document.

8 MR. PETERSEN: I just want to show you there's a
9 connection. Some materials don't have to make a broader
10 description about mandates. One, two and three -- excuse
11 me -- one and two is data you have to collect to infer the
12 answer. Reporting the BOG data, the student financial aid,
13 the training is obviously a rational method of making the
14 program work better. Somebody gets trained on the manual.

15 MR. SHERWOOD: Right.

16 MR. PETERSEN: Okay? But I don't think --

17 MR. SHERWOOD: Well, maybe Finance can speak to
18 that. Because I believe that comes out of their analysis,
19 the technical assistance document.

20 MR. KATZ: Yes. Thank you, Mr. Sherwood.
21 Randy Katz. And we just wanted to say, first of all, the
22 comment that it would be very disrepresentative to the
23 Board of Governors' governance process. There is nothing
24 in here to indicate that any of the regulations -- Title 5
25 Regulations don't apply to the Board of the Governors, and

1 would be waived by this manual. And in fact, on the other
2 test claims -- on other components of this claim, it is
3 based on either the statute or a Board of Governors test
4 claim.

5 So second -- let's see. Second, we would indicate
6 that in the regulations are those reported requirements.
7 So even in the absence of the -- of the technical guidance
8 of this program manual, there would still be a need to
9 report.

10 MR. SHERWOOD: There would still be a need to
11 do -- on page 20, number one and number two?

12 MR. KATZ: No. That's a third point. On number
13 one. Number two, Mr. Petersen talked about the succession
14 of code and Title 5 regulations, which is a higher level.
15 It clearly indicates that it is the student that documents
16 that they received the public benefits. And that they are
17 eligible under income standards.

18 MR. SHERWOOD: I guess I'm lost a little bit. I
19 still -- I guess, back to the manual, and in the manual it
20 speaks to one, two and three, on page 20. One and two, I'm
21 hearing, are requirements, with or without the manual and
22 regulations.

23 MR. PETERSEN: Yes. There's a penalty. And the
24 code will -- well, the manual offers guidance on not to
25 comply as to that part of the regulations on the manual,

1 saying those things are required by the regulation already.

2 MR. SHERWOOD: Right.

3 MS. WILLIAMS: Yeah.

4 MR. SHERWOOD: Well, what I'm getting back to then
5 is that one and two then, whether the manual is executive
6 order or not --

7 MR. PETERSEN: Right.

8 MR. SHERWOOD: -- have to be put it into effect,
9 and there is a --

10 MR. PETERSEN: I think you could find that one and
11 two are reasonable inferences from the Title 5 in the Ed
12 Code, because the Ed Code would say you've got to report.
13 And it's up to the Board of Governors to say what have you
14 to report. So if it's in the manual or not, they said you
15 had to provide that data, with or without the manual. The
16 fact it's in the manual, I think, is a matter of
17 convenience for all parties.

18 MR. SHERWOOD: Okay. And then that would get me
19 to the point of saying number three, though --

20 MR. PETERSEN: Yeah.

21 MR. SHERWOOD: -- would not be an actual
22 requirement.

23 MR. PETERSEN: No. That's something you folks
24 traditionally decide in the parameters and guidelines
25 stage, is the need for training.

1 MR. SHERWOOD: Okay. That's where I'm at right
2 now. It does not tie in well.

3 MR. PETERSEN: Right.

4 MR. SHERWOOD: I have a problem with the manual.
5 Number one, I can get by that by looking at one or two as
6 actually being a requirement over and above what -- whether
7 it is put in the manual or not by the Chancellor, by the
8 community colleges.

9 MR. PETERSEN: Well, I think it's fair to say if
10 it wasn't in the manual, and there was no manual, it would
11 be a reasonable data reporting requirement.

12 MR. SHERWOOD: Right.

13 MR. PETERSEN: And would what you like for the
14 source in Title 5, in the Ed Code.

15 MR. SHERWOOD: So -- and that takes me back to
16 page 28, and the fifth item docket, of public benefit.

17 MR. PETERSEN: Uh-huh.

18 MR. SHERWOOD: I then get -- go through one and
19 two possibly, and feel more comfortable. Number three, I
20 would have a problem with.

21 MR. PETERSEN: Uh-huh.

22 MR. FELLER: May I say something on that?

23 CHAIR MIYASHIRO: What I'd like to do is clarify
24 where we are here, 'cause I think we're getting down to
25 several levels of debate. And I want to kind of come back

1 up and make sure that we understand the issue before us
2 with regard to Finance's disagreement with Commission
3 Staff's view, that activities related to complying with the
4 instruction provided now would be part of the reimbursable
5 activities. Is that the focus of this discussion on the
6 manual?

7 I'm asking. Is that the consequence of the view
8 of Finance, that the manual itself does not constitute an
9 executive order, and therefore any activities suggested in
10 that manual are not reimbursable? What is it that we are
11 focusing on with regard to this discussion by the way of
12 the manual?

13 MS. GEANACOU: I think that is exactly the
14 position we were attempting to make, is that we don't
15 believe any activities that are claimed to flow from the
16 manual are reimbursable, because the manual does not
17 constitute an executive order.

18 CHAIR MIYASHIRO: Okay.

19 MS. GEANACOU: My point was not -- although,
20 perhaps you want some additional commentary on whether that
21 would affect any requirements under Title 5 regulations.
22 That was not the point I was trying to make.

23 CHAIR MIYASHIRO: Okay. And Mr. Sherwood, I mean,
24 that's kind of part of what your problem is.

25 MR. SHERWOOD: That was part of my problem.

1 Right. And then, after the discussion with him, we've gone
2 to Title 5, and at least two of the three points that were
3 in the manual.

4 CHAIR MIYASHIRO: Okay.

5 MR. SHERWOOD: Because I understood that is what
6 the Department of Finance is coming from, I believe. And I
7 seem to understand your viewpoint here, especially when it
8 became number three. But if discussion went on one and
9 two, and possibly they weren't even necessarily tied to the
10 manual, or the manual is what we're looking at right now,
11 and discussing. But one and two might have been
12 requirements anyway under Title 5.

13 MR. LARSON: Mr. Chair, actually that's a question
14 I have. I think it's appropriate for Commission Staff to
15 respond to that on whether -- on what are the requirements
16 for one and two. Not just what's in the manual. And is
17 that a D.A. resolved issue for staff?

18 CHAIR MIYASHIRO: Mr. Feller?

19 MR. FELLER: The only place that I saw, in
20 everything that the claimant submitted of the requirements
21 or the public benefit to document income eligibility, came
22 from the manual. And the claimant submitted the manual
23 without specific allegations from it. And I -- so I read
24 through it, like I would read through a statute, and I
25 read -- every time it said that the college was required to

1 do something, I -- I -- I made note of it. And that's --
2 and those were the three things that I found were in the
3 manual and came from the manual, where it says the
4 community colleges were required to do something.

5 I can point you to those in the record, if you
6 like. But --

7 MR. LARSON: Again, I don't think the question is
8 on the manual, is it? It's if there is any other
9 requirements. Because that makes the manual issue moot,
10 and we can move on.

11 CHAIR MIYASHIRO: Right. And I guess what I am
12 hearing is that the members of the Commission have some
13 comfort and sense about where they stand with regard to
14 staff recommendation versus finance being on this question
15 of activities related to the mandate. But do we need to
16 flush this out a little bit more?

17 MR. SHERWOOD: In general, you're talking about
18 now, or in the manual?

19 CHAIR MIYASHIRO: Well, I'm not -- I don't want
20 us to get too far below here so that we're losing sight of
21 the issues being brought by the Department of Finance.

22 MR. PETERSEN: Mr. Miyashiro, I'll withdraw the
23 manual from the test claim.

24 CHAIR MIYASHIRO: Okay.

25 MR. PETERSEN: We're suffering from a catch-22

1 here. I'm compelled to do test claims, declare everything
2 I know about this program, and including if I know of
3 existing of manuals. And now I've entered the manual, and
4 it's working against the outcome. I'm withdrawing the
5 manual.

6 MS. WILLIAMS: I would just ask everybody to look
7 at page 431, and maybe I'm just confused about the
8 relevance here of Title 5. If you look at 4.2.2.

9 MR. SHERWOOD: What page?

10 MS. HIGASHI: 435. Exhibit A.

11 MS. WILLIAMS: I'm sorry. All right. Go to
12 4.2.2, documentation for part of it says "In order to
13 qualify" -- blah, blah -- "plus document the public
14 benefits listed above per Title 5." So isn't that saying
15 Title 5? And if you go over to 4.3.4, it's the same
16 reference.

17 MR. PETERSEN: This is a well-written manual.
18 They do state the law.

19 MS. WILLIAMS: I'm just saying, is that Title --

20 MR. PETERSEN: They haven't specified. But they
21 seem to tie into the Title 5 section.

22 MR. FELLER: They're interpreting Title 5, I
23 mean.

24 MS. WILLIAMS: We're going back, saying pursuant
25 to Title 5 with documents.

1 MR. FELLER: Actually, Title 5 doesn't say they
2 have to document. Title 5 lists these public benefits, but
3 does not itself contain this language.

4 MS. WILLIAMS: Okay.

5 CHAIR MIYASHIRO: I mean, if we have decided to
6 withdraw the manual, then I think we heard from Nancy.

7 MR. PETERSEN: Yeah. My problem is Finance is
8 saying it's a manual. It's not mandatory, because the
9 Board of Governors says it's not mandatory. I don't think
10 you ever want to go down that path, that it's a manual
11 because you say it is.

12 CHAIR MIYASHIRO: Well, let's leave it at this.

13 MR. PETERSEN: Yeah.

14 CHAIR MIYASHIRO: You withdraw it. We didn't go
15 down any path.

16 MR. PETERSEN: Yes, sir. Happy trails to all of
17 us.

18 CHAIR MIYASHIRO: Okay.

19 MR. SHERWOOD: I agree with that.

20 CHAIR MIYASHIRO: All right. We have any further
21 discussion and testimony on this? Ms. Geanacou?

22 MS. GEANACOU: Yes. Please. Susan Geanacou,
23 Department of Finance. We'd like to focus your attention
24 on page 15 of the final staff analysis, and the six student
25 groups that are listed there on the -- towards the top of

1 the page. We'd like to draw the distinction between fee
2 exemptions and fee waivers for these six student groups in
3 Education Code Section 76300. The groups one, two and
4 three are not subject to the fee requirements at all. They
5 are exempt from paying fees by virtue of their signing up
6 for one of these three types of classes at the time they
7 register.

8 The basis for fee exemptions is the very act of
9 enrolling in these certain courses for these three groups
10 of students. There is no so-called two-way transaction for
11 a fee exemption. The exemption is essentially achieved
12 unilaterally by the student's action of registering.
13 That's in contrast to what the final staff analysis says.
14 Simply by signing up, the student has achieved that fee
15 exemption. Education Code Section 76300 Subdivision (E)
16 provides that fee exemption without the colleges having to
17 do anything. Therefore, we would propose there's no
18 entitlement to reimbursement for any of the activities
19 associated with 76300 Subdivision E for fee exemptions.

20 We would also note that the -- well, the fee
21 waiver manual is now, I suppose, off the table. But I'll
22 make this point anyway. That the fee waiver manual, at
23 section 7.3, which the staff cites for authority, that a
24 waiver is a transaction involving two parties. It says
25 nothing about a fee exemption being such a transaction.

1 And again, I'd reassert that any activities
2 claimed for fee exemptions should not be subjected to
3 reimbursement under these tests claims.

4 CHAIR MIYASHIRO: Mr. Feller?

5 MR. FELLER: Well, Mr. Petersen, I'll defer to him
6 first.

7 MR. PETERSEN: Mr. Feller reached, I think, the
8 same conclusions as staff analysis. A student is exempt
9 from fee collection. You don't collect a fee. But I have
10 to make sure the student's exempt. The student comes up
11 and says "I'm exempted because my father's a National
12 Guard, a Veteran of Foreign Wars," whatever. This is a
13 very esoteric exemption here. I think that's got to be
14 loaded in a computer somewhere. There has to be an
15 administrative determination that indeed that person's the
16 surviving spouse or child of that veteran or otherwise
17 exempt under these other programs. I just don't think it's
18 the student declaring they're exempted, and that's the
19 college saying okie-dokie.

20 CHAIR MIYASHIRO: Well, do we have someone from
21 the district who can maybe illuminate for us what
22 activities do take place locally, when a student provides
23 documentation verifying that they will need a clarify for
24 their exemption of fees?

25 MS. GEANACOU: Excuse me, could I clarify my

1 testimony?

2 CHAIR MIYASHIRO: Sure.

3 MS. GEANACOU: Before we answer, Mr. Petersen used
4 the example of a child or so forth of a National Guard
5 member. There's student group six on page 15, a student
6 that might be eligible for a fee waiver. My testimony went
7 to the students who are simply exempt from fees by virtue
8 of the courses they're signing up for.

9 CHAIR MIYASHIRO: Okay.

10 MS. GEANACOU: Those are groups one, two and
11 three. And that's my point. To distinguish between
12 activities that might flow from a fee waiver granted versus
13 a student who is simply exempt from fees in one, two and
14 three.

15 CHAIR MIYASHIRO: Okay. Mr. Petersen, can you
16 address the one, two, three clarification?

17 MR. PETERSEN: Well, yeah. The non-credit
18 courses, the remedial classes that -- you know -- what the
19 students enroll for. As they enroll, they have an
20 enrollment document. They present that enrollment
21 document. Again, I'm extrapolating from what was told to
22 me. This is some sort of administrative effort to
23 determine whether these courses are chargeable or not
24 chargeable. I don't know how big the effort is, but to
25 simply presume that nothing happens because it's not a

1 chargeable course --

2 CHAIR MIYASHIRO: Okay. Are you suggesting that
3 there is some activity related to the collection or
4 remittance of a fee? Or are you saying that there's some
5 activity to designate such a course into one of these
6 categories?

7 MR. PETERSEN: No. I'm saying that when the
8 student, hypothetically, steps up to the window, and the
9 person says "Let me have your enrollment fees," and they
10 say "I'm exempt," I'm expecting there's some sort of
11 document or checking on the computer or something.

12 CHAIR MIYASHIRO: Well again, to distinguish
13 between what Ms. Geanacou is talking about, the student is
14 electing the course that is exempt, versus declaring their
15 status of exemption from a fee that would otherwise be
16 required.

17 MR. PETERSEN: Yes. But what you get --

18 CHAIR MIYASHIRO: So if you could speak to the
19 issue of electing the course.

20 MR. PETERSEN: I understand what you're saying.
21 My difficulty is, I think, distinction on the day the
22 student comes to a window and somebody says "This is where
23 we collect your enrollment fee," and the student says "No.
24 I'm exempt because my classes are remedial," or "My classes
25 are non-credit." And then somebody has to look at a piece

1 of paper or a computer to say "Yes. You're entirely
2 right." Or "No. You're not." That may take, you know, a
3 nanosecond compared to the actual collection of the fee,
4 but there is some transaction which occurs. And maybe for
5 these students who do it on the Internet, it's all
6 electronic, and a person's never involved, but somewhere
7 there will be a transaction to verify that the student
8 indeed is not liable for enrollment fees. And if it's
9 just them presenting a computer printout from the window
10 they were just at a minute ago, that may be all it is. I
11 don't know.

12 MR. FELLER: May I say something? The way that
13 these are analyzed is an activity falls within the
14 definition of programs. Is it a new activity? And do
15 any statutory exemptions apply? In this case, staff found
16 that there was an activity, as slight as it may be, in
17 determining an exemption for a student, based on the course
18 that that student is enrolling in. And it's a new
19 activity, because before fees existed, there was no need to
20 make that determination. So that's why staff came to the
21 conclusion it did.

22 MR. PETERSEN: Just maybe diminishes it, that's
23 all.

24 CHAIR MIYASHIRO: Comments?

25 Mr. Katz.

1 MR. KATZ: Yes. We just wanted to note that
2 for -- that for as long as there's been courses, there have
3 been different types of courses pre-dating -- pre-dating
4 fee -- the fee policy. So that the determination of
5 whether a course is non-credit or credit, whether it's one
6 of these categories that is exempt or eligible, the
7 determination of the type of course has always been
8 practiced by the community colleges as part of the course
9 accreditation process.

10 CHAIR MIYASHIRO: Thank you.

11 Mr. Petersen?

12 MR. PETERSEN: I would like to respond. There's
13 always been program changes. It doesn't help the
14 situation. It's not -- that's not the determinative
15 issue. It's whether there's a new activity. And there's
16 some minimal, tiny little activity, because there's
17 something called enrollment fees.

18 CHAIR MIYASHIRO: Ms. Higashi?

19 MS. HIGASHI: I was going to suggest that as we
20 wind down testimony, maybe it would be a good idea to take
21 a five-minute break. We usually give our Court Reporter a
22 break by now.

23 CHAIR MIYASHIRO: I think that's a good
24 suggestion. Let's try and hold these thoughts here so that
25 we don't lose track of what we're discussing. We'll take a

1 five-minute break and come back.

2 (Off the record.)

3 CHAIR MIYASHIRO: Okay. If we could get started.
4 And Mr. Larson.

5 MR. LARSON: Yes. Mr. Chair and Members of the
6 Commission, as you know, this is my first time attending
7 this Commission meeting on behalf of the Controller. Not
8 knowing the extent of the discussion we're going to have, I
9 did make another commitment, and I will have to leave at
10 11:30. So I apologize for my departure at that time.

11 CHAIR MIYASHIRO: Okay. What I'd like to do is,
12 if we could wrap this testimony up, and I mean, I guess
13 what I would hope is that we could get comfortable and
14 come to some decision, to allow Mr. Larson to cast a vote,
15 and wrap it up in about ten minutes? I would like to do
16 that.

17 MR. LARSON: Thank you.

18 CHAIR MIYASHIRO: Okay. Paula, if you want to let
19 us know where we left off?

20 MS. HIGASHI: Well, we left off -- we were on page
21 15, and the Department of Finance had raised the issues
22 regarding the differences between fee exemption and the fee
23 waiver exemptions, and they had stated their case. And
24 then the claimant's representative, Mr. Petersen, had
25 responded, and staff had responded. And I think it was

1 left for Commission Member discussion.

2 CHAIR MIYASHIRO: Okay. Do we have questions of
3 Commission Members of the witnesses or staff?

4 Okay. Let's move on then.

5 Ms. Geanacou, you have another --

6 MS. GEANACOU: I have a very brief comment, which
7 I hope to be a clarifying point for the Commission. If a
8 student approaches the registration window and signs up for
9 any one or all three of the types of classes listed in
10 groups one, two and three on page 15, that student will
11 never go to the enrollment fee payment window. They will
12 never go to the window where an issue of fees might trigger
13 some activity, however minimal it might be claimed. I just
14 want to clarify they're never going to go from the
15 registration window one -- being number one -- to fee
16 payment window, being number two.

17 CHAIR MIYASHIRO: Okay.

18 MR. PETERSEN: Is that sworn testimony based on
19 her experience being a cashier to a college? 'Cause I
20 could suggest -- well, first of all, the focus is whether
21 this is a new activity or not. And I think that's easy for
22 you to decide whether it's a new activity or not, whether
23 it takes a long time at how many windows involved. That's
24 not an issue. It's just whether it's new as to whether the
25 student actually goes to the cashier window or the

1 registrar. You don't have to go to the cashier window. I
2 mean, the point is it's a new activity. And if it doesn't
3 involve a whole lot of efforts, then there's no cost --
4 very little cost involved.

5 But the test claim, the Statement of Decision is
6 whether it's a new activity, and Commission Staff responded
7 that it's a new activity. We get into a lot of difficulty
8 when -- especially when Finance tries to relate to what's
9 happening out at the college or a school district, because
10 they're not there. I'm just a little bit closer. I
11 wouldn't say I'm an expert witness on this. But the scope
12 of our work today, traditionally, has been whether it's
13 new, and then the next step, the parameters and guidelines,
14 is how big is it.

15 CHAIR MIYASHIRO: Okay. But I guess I'm willing
16 to entertain some discussion about whether there is in fact
17 an activity here or not, and whether there's a difference
18 of opinion.

19 MR. PETERSEN: I can agree there's no fee
20 collected.

21 CHAIR MIYASHIRO: You may have had a witness here
22 in the district, and that person, whether they work at the
23 cash window or not, again, I think it's fair to hear the
24 various points of view. So I would --

25 MR. PETERSEN: Yeah.

1 CHAIR MIYASHIRO: -- consider it a valid
2 comment.

3 We have any other questions from members of the
4 Commission on this?

5 I would note that the Petitioner has dropped --
6 they're withdrawing the inclusion of the manuals. And the
7 Department of Finance has raised an issue with regard to
8 are these classes of -- these are classes for which there
9 will be no fee collected. Their argument is that there
10 would be no activity related to the local administration of
11 collecting a fee, since the election is made by the
12 student, and no further activity would be required of the
13 local agency. That is the contention.

14 I would -- Mr. Larson.

15 MR. LARSON: Yes. In the original there was two
16 additional issues raised contrary to the staff report.
17 That makes four items on the table, besides the staff
18 recommendation. On reviewing that, I would request a
19 referral back to staff --

20 CHAIR MIYASHIRO: Yeah.

21 MR. LARSON: -- for some cost analysis.

22 CHAIR MIYASHIRO: Yes. What I want to do, the way
23 I envision this rolling out is would be the staff has
24 presented a recommendation to us.

25 MR. LARSON: Uh-huh.

1 CHAIR MIYASHIRO: We can modify that. And some of
2 it has been modified by the claimant. And then what I
3 would append to that would be that the staff, in developing
4 the P's and G's, that it be submitted to us to provide the
5 unit cost rate that they see at the time for, our
6 consideration. And during that process, to include all
7 parties, claimants, finance, competitors', Office of
8 Legislative Analyst, Attorney General if appropriate, and
9 bring the new costs to us. And with the direction that it
10 be as tight or as focused as we can get it, recognizing
11 that there is always going to be limitations in data and
12 limitations with whatever survey instruments might be
13 used. But that would be a direction to staff.

14 MR. LARSON: Okay. Uh-huh.

15 CHAIR MIYASHIRO: That's along with our action on
16 the claim itself. I'm going to entertain a motion on this
17 item.

18 MR. LAZAR: I move staff analysis, absent the
19 manual.

20 CHAIR MIYASHIRO: Okay. The manual, I think, has
21 been withdrawn.

22 MR. LAZAR: Okay. We'll withdraw that.

23 CHAIR MIYASHIRO: Okay.

24 MR. LARSON: And that includes the addition of the
25 staff referral on unit cost.

1 MR. LAZAR: Yeah.

2 MR. LARSON: Okay.

3 MS. WILLIAMS: What -- okay. What about the three
4 categories of students?

5 CHAIR MIYASHIRO: Yes. That has not been
6 addressed.

7 MS. WILLIAMS: Are we going to do that?

8 CHAIR MIYASHIRO: You want to move that as well?

9 MS. WILLIAMS: I'd like to move that we delete
10 those three from the six that are mentioned on staff.

11 CHAIR MIYASHIRO: We'll take it one at a time.
12 We'll take it one at a time.

13 Commissioner Lazar has moved staff recommendation,
14 noting the withdrawal of the manual, and the direction of
15 staff to come back with unit cost.

16 MR. LAZAR: Yes.

17 CHAIR MIYASHIRO: Do we have a second on that?

18 Okay. I have no second on that. So that motion
19 will fail.

20 MR. LAZAR: Fail? Okay.

21 CHAIR MIYASHIRO: I will entertain an alternative
22 motion or another motion.

23 MS. WILLIAMS: I would like to move the staff
24 analysis, absent the manual, and delete the three
25 categories of students mentioned on page 15.

1 CHAIR MIYASHIRO: Uh-huh.
2 MS. WILLIAMS: And the cost -- unit cost figure as
3 well.
4 MR. SHERWOOD: And those three categories are to
5 the fee exemption.
6 MS. WILLIAMS: Fee exemptions. Right.
7 CHAIR MIYASHIRO: All right. Do I have a second?
8 MR. LAZAR: I'll second that.
9 CHAIR MIYASHIRO: Any discussion on that motion?
10 Okay. Paula, will you call role?
11 MS. HIGASHI: Mr. Larson?
12 MR. LARSON: Aye.
13 MS. HIGASHI: Mr. Lazar?
14 MR. LAZAR: Yeah.
15 MS. HIGASHI: Mr. Sherwood?
16 MR. SHERWOOD: Aye.
17 MS. HIGASHI: Ms. Williams?
18 MS. WILLIAMS: Aye.
19 MS. HIGASHI: Mr. Miyashiro?
20 MR. MIYASHIRO: Aye.
21 Motion is carried.
22 Okay. Thank you.
23 MR. PETERSEN: Thank you.
24 CHAIR MIYASHIRO: Okay. Paula, 3 and 4.
25 MS. HIGASHI: This brings us to staff reports,

1 Items 3 and 4. These are regarding our recent
2 relationships with the Bureau of State Audits. Ms. Patton
3 will present these items.

4 MS. PATTON: Good morning. On March 28th of 2002,
5 the Bureau of State Audits released its audit report on the
6 School Bus Safety II program. The audit report requires
7 the Commission to report within 60 days, six months, and
8 one year of release of the report. On March 17th, 2003,
9 staff submitted the Commission's final report on
10 implementation to the Bureau of State Audits.

11 Since the Audit Report was released, the following
12 substantive steps were taken to implement the audit
13 recommendations:

14 Existing procedures were amended, and several new
15 procedures were implemented so that all relevant parties,
16 including the Legislative and state agencies are notified
17 as claims proceed through the process.

18 A rulemaking package was initiated to incorporate
19 the process for developing statewide cost estimates in the
20 Commission's regulations.

21 New parameters and guidelines language was adopted
22 that clarifies the documentation necessary to support
23 reimbursement claims.

24 Staff continues to provide annual training to
25 legislative staff, state agency staff, and local agencies

1 and school districts on the mandates process, and to review
2 Commission processes and resources for ways to reduce the
3 time it takes to complete a test claim.

4 This completes the implementation of the Audit
5 Report Recommendations for the School Bus Safety II
6 program.

7 CHAIR MIYASHIRO: Any questions of Ms. Patton on
8 that report?

9 Okay. Move to the next one.

10 MS. PATTON: On March 12th, 2003, the Joint
11 Legislative Audit Committee authorized an audit of the
12 process used by the Commission on State Mandates to develop
13 statewide cost estimates and to establish parameters and
14 guidelines for claims reimbursement related to the Peace
15 Officer Procedural Bill of Rights (POBOR) mandate, and the
16 Animal Adoption mandate. The committee also authorized the
17 State Auditor to conduct audits on a sample of other state
18 mandates.

19 Commission staff and staff from the Bureau of
20 State Audits held our first meeting on March 25. Staff
21 with Bureau of State Audits reports that they will be
22 conducting the audits for POBOR and Animal Adoption
23 simultaneously. To date, no other mandates have been
24 selected for audit. The administrative records for both
25 programs have been given to the audit staff and after

1 review we will set up further meetings to discuss their
2 audit plans. A release date for their final report has not
3 been set, but they discussed a tentative release date in
4 late September or early October of this year.

5 We will provide you with further updates as the
6 audits proceed.

7 CHAIR MIYASHIRO: Thank you for that update.

8 Any questions of the Commissioners?

9 Okay. Paula?

10 MS. HIGASHI: Item 5 is an information item. It's
11 a list of all of the pending bills that we had identified
12 that would have some potential impact on manning mandated
13 reimbursement or test claim processes. As I indicated,
14 they're here for your information, so you can take a look
15 at them. Hearings have not been held on any of these bills
16 yet. They -- some of them are starting to get scheduled
17 for hearings, so we can at least have more of them to
18 report back to you next month.

19 If anyone is interested in seeing any of these
20 bills placed before the Commission, there's an action item
21 for the Commission to take a position. Please let me know
22 so I can schedule it accordingly on next month's agenda.

23 MR. LAZAR: I just had a question with regard to
24 the Harmon Bill, and that's the Cox Bill revisited from
25 last year. Is that correct?

1 MS. HIGASHI: Yes. Yes.

2 MR. LAZAR: Is that an item that staff might have
3 some comments to share with us?

4 MS. HIGASHI: Possibly.

5 MR. LAZAR: For us to make a decision with respect
6 to whether we have --

7 MS. HIGASHI: Anything you'd like us to, we could.

8 MR. LAZAR: Could I ask for that? Because that is
9 something that I know the Commissioners in the past have
10 not done that sort of thing, but --

11 CHAIR MIYASHIRO: Could we get a little background
12 on this for those of us who weren't here?

13 MS. HIGASHI: The Harmon Bill was the Cox Bill of
14 a couple years ago. It was vetoed in 2001. There are a
15 number of provisions of the Government Code that are
16 addressed, but there are a couple that are particularly of
17 interest to the Commission Members. One is the provision
18 to add another member to the Commission, to actually serve
19 as an alternate for only the local officials, in the event
20 the local officials are unable to attend the Commission
21 meeting. But the alternate member would come to all the
22 Commission meetings essentially, and it would be adding an
23 additional person for purposes of making agenda binders and
24 notification. But that person would only participate if
25 there was an absence.

1 Two, the part that most directly affects the
2 Commission is that the bill would prohibit CSM legal
3 representation and any court action from proceeding in
4 involving CSM decision. There are other provisions in the
5 bill that affect other processes -- reimbursement claim
6 filing, and also the State Mandates Apportionment System.
7 But the first two provisions are probably the most directly
8 related to how we function today. And previously, the
9 Commission did not take a position on the bill.

10 CHAIR MIYASHIRO: Any -- John, your thoughts were?

11 MR. LAZAR: I'd just like to have more background
12 and have staff suggestions as to how their day-to-day
13 operations would be impacted. I'm obviously interested in
14 the alternate issue. Right now we surely would welcome an
15 alternate, because we wouldn't have two public members, two
16 local members. But in any event, I'm kind of interested in
17 it, so --

18 CHAIR MIYASHIRO: Okay. So we're asking for a
19 report back from staff then in our next meeting.

20 MR. LAZAR: Yes. If that is possible. Yes.

21 CHAIR MIYASHIRO: Okay. Let's do that.

22 MS. HIGASHI: Okay. So noted.

23 CHAIR MIYASHIRO: Item 6?

24 MS. HIGASHI: Is my report with the detail on our
25 workload. And we have had four new test claims and the

1 test claim amendment filed during the last month. We
2 expect to have the pace pick up. We expect to have many
3 more test claims filed up to June 30th, and then the next
4 window would be the period of time up until about September
5 29th, because of the provisions from AB 3000. I'd like to
6 note that so far our budget has been reduced for this
7 fiscal year as part of the mid-year budget reduction
8 package that was produced by the Governor. And the next
9 action would be on the 03/04 budget, and as you know, we
10 will be taking a major hit with the Governor's proposed
11 budget, losing three positions, and also having our budget
12 reduced, so that we would only have six meetings a year
13 instead of the 12 meetings a year.

14 Our first budget hearings are going to be in
15 April. So far we have not been contacted by the committee
16 consultants or Legislative Analyst's Office to indicate if
17 there are any outstanding issues about our program budget.
18 However, as I've noted in prior meetings, as well as giving
19 copies of documents, budget analysts have reported and
20 identified areas absent Legislation's Educators Mandates,
21 and certainly some of the other mandates as well. And as
22 all of you know who have been watching the television
23 locally, you know that there have been various policy
24 committee meetings where the policy committee members and
25 the budget committee members have met together and have one

1 hearing so that they can review the budget and also look at
2 policy issues.

3 For example, on the Education Category California
4 Funding Proposals the word "mandates" comes up frequently.
5 And we continue to pay attention to what's happening
6 there. We are not direct participants; however, we have
7 provided copies of reports to the Legislature from prior
8 years to the Senate Office Research, and there is some kind
9 of analysis or a report being done there. And we'll find
10 out more as time goes on.

11 There is also the potential for mandate
12 reimbursement to become part of the alignment, and that's
13 something that I'm sure is farther down the road in terms
14 of deliberations for our future agendas. I just would like
15 to note that today we scheduled a pre-hearing conference on
16 the P's and G's Amendments that you've heard about, and
17 it's been noted in our agenda. We had scheduled that
18 meeting to start immediately following this hearing. But
19 because we're so close to the noon time hour, we would like
20 to note that that will be at 1:00 p.m. at the Commission
21 Offices, instead of immediately following the hearing. For
22 next month's agenda, the test claims that are noted on my
23 report will be on the agenda. The incorrect reduction
24 claims, as well as the parameters and guidelines that are
25 listed Standards Based on Accountabilities, and Pupil

1 Promotion and Retention.

2 I will be corresponding with the parties in the
3 next few days. We have some documentation questions that
4 we need to raise with them in order to help us complete
5 those parameters and guidelines. So they will not be on
6 the next month's agenda unless we get the information
7 really, really quickly. So they would be moved to the May
8 agenda where we have two test claims scheduled, and we have
9 three other parameters and guidelines.

10 I'd like to announce today that it's our intention
11 to cancel the June hearing. We are in the midst of trying
12 to put together a new proposal for moving to the bi-monthly
13 hearings, and that will take some coordinating and working
14 with the parties, in terms of scheduling issues and timing
15 issues for filing comments and getting responses back and
16 everything. And I will be working with staff, and I will
17 be setting up meetings with the claimants' representatives
18 over the next couple weeks, in order to put that proposal
19 together. So you'll have that proposal probably before the
20 May hearing. But by canceling the June hearing, that will
21 make it much easier for us to move into our new agenda
22 schedule.

23 CHAIR MIYASHRO: Okay.

24 MS. HIGASHI: And also, it's a very difficult
25 month for everybody -- everything that's going on certainly

1 regarding the budget issues.

2 CHAIR MIYASHIRO: Okay. People should note that
3 on their calendar. Make allowances. Very good. Now we'll
4 meet for a closed session or --

5 MS. HIGASHI: We have one scheduled. Yes.

6 CHAIR MIYASHIRO: Okay.

7 MR. STARKEY: I just would need a short period of
8 time, maybe five minutes.

9 CHAIR MIYASHIRO: Okay. And may I ask, for
10 purposes of public comment, does that follow the closed
11 session and/or --

12 MS. HIGASHI: We typically do it before we go into
13 closed session.

14 CHAIR MIYASHIRO: Okay. Well then, at this point
15 I'll ask whether there are members of the audience who
16 would like to provide any comments to the Commission.

17 Okay. Seeing none, then we will recess. "Recess"
18 is the correct word?

19 MS. HIGASHI: Read your script.

20 CHAIR MIYASHIRO: Okay. We'll meet in executive
21 session pursuant to Government Code Section 11126,
22 subdivision (e), to confer with and receive advice from
23 legal counsel for consideration and action as necessary
24 and appropriate upon the pending litigation listed on the
25 published notice and agenda and potential litigation

1 regarding potential legal actions, and Government Code
2 Section 11126 (a) and 17526 to confer on personnel matters
3 listed on the published notice and agenda. We will
4 reconvene in open session in approximately ten minutes.

5 MR. STARKEY: Yes.

6 CHAIR MIYASHIRO: In the same location.

7 Thank you.

8 (Off the record. Commission meets in closed
9 session.)

10 CHAIR MIYASHIRO: Okay. The Commission met in
11 closed executive session pursuant to Government Code
12 Section 11126, subdivision (e) to confer with and receive
13 advice from legal counsel for consideration and action as
14 necessary and appropriate upon the pending litigation
15 listed on the published notice and agenda, and potential
16 litigation, and Government Code Section 11126, subdivision
17 (a), and 17526 to confer on personnel matters listed on the
18 published notice and agenda. All required reports from the
19 closed session having been made, and with no further
20 business to discuss, this meeting may be adjourned.

21 And I would entertain a motion to adjourn.

22 MR. LAZAR: So moved.

23 MR. SHERWOOD: Second.

24 CHAIR MIYASHIRO: Thank you. The meeting is
25 adjourned.

(Proceeding concluded at 12:08 P.M.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, KAREN S. CHALLE, a Certified Shorthand Reporter, licensed by the state of California and empowered to administer oaths and affirmations pursuant to Section 2093 (b) of the Code of Civil Procedure, do hereby certify:

That the said proceedings were recorded stenographically by me and were thereafter transcribed under my direction via computer-assisted transcription;

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

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on April 4, 2003.



Karen S. Challe
Certified Shorthand Reporter No. 8244

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SACRAMENTO)

I, KAREN S. CHALLE, a Certified Shorthand Reporter, licensed by the state of California and empowered to administer oaths and affirmations pursuant to Section 2093 (b) of the Code of Civil Procedure, do hereby certify:

That the said proceedings were recorded stenographically by me and were thereafter transcribed under my direction via computer-assisted transcription;

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

That I am a disinterested person to said action.

IN WITNESS WHEREOF, I have subscribed my name on April 4, 2003.



Karen S. Challe

Certified Shorthand Reporter No. 8244

1 REPORTER'S CERTIFICATE

2 STATE OF CALIFORNIA)
3 COUNTY OF SACRAMENTO) ss.

4
5 I, KAREN S. CHALLE, a Certified Shorthand
6 Reporter, licensed by the state of California and empowered
7 to administer oaths and affirmations pursuant to Section
8 2093 (b) of the Code of Civil Procedure, do hereby certify:

9 That the said proceedings were recorded
10 stenographically by me and were thereafter transcribed
11 under my direction via computer-assisted transcription;

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

14 That I am a disinterested person to said action.

15 IN WITNESS WHEREOF, I have subscribed my name on
16 April 4, 2003.

17
18 

19
20 Karen S. Challe

21 Certified Shorthand Reporter No. 8244
22
23
24
25

ERRATA SHEET

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Page Line Correction

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____