

# MINUTES

## COMMISSION ON STATE MANDATES

Department of Finance  
Redwood Room  
915 L Street  
Sacramento, California  
January 31, 2008

- Present: Member Anne Sheehan, Chairperson  
Representative of the Director of the Department of Finance  
Member Francisco Lujano, Vice Chairperson  
Representative of the State Treasurer  
Member Richard Chivaro  
Representative of the State Controller  
Member Cynthia Bryant  
Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor
- Absent: Member Sarah Olsen  
Public Member  
Member Paul Glaab  
City Council Member

### CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:40 a.m. Executive Director Higashi noted that Member Glaab was absent due to a family emergency, and Member Olsen was absent due to illness.

### ELECTION OF OFFICERS

#### Item 1 Staff Report

Ms. Higashi asked for nominations for chairperson. Member Bryant nominated Director of Finance, Mike Genest. With a second by Member Chivaro, Department of Finance Director Mike Genest was unanimously elected chairperson. Chairperson Sheehan asked for nominations for vice-chairperson. Member Bryant nominated California State Treasurer Bill Lockyer. With a second by Member Worthley, Treasurer Lockyer was unanimously elected vice-chairperson.

### APPROVAL OF MINUTES

#### Item 2 December 6, 2007

The December 6, 2007 hearing minutes were adopted 5-0.

### APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (c)

#### Item 3 Staff Report (if necessary)

There were no appeals to consider.

## PROPOSED CONSENT CALENDAR

### INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)

#### DISMISSAL OF INCORRECT REDUCTION CLAIMS

- Item 5     *Graduation Requirements*  
Statutes 1983, Chapter 498 (SB 813)
1. Castro Valley Unified School District, 03-4435-I-47  
Fiscal Years 1999-2000, 2000-2001, 2001-2002
  2. Fullerton Joint Union High School District, 03-4435-I-48  
Fiscal Years 1999-2000, 2000-2001, 2001-2002
  3. Grossmont Union High School District, 03-4435-I-44  
Fiscal Year 1999-2000
  4. San Jose Unified School District, 03-4435-I-46  
Fiscal Years 1999-2000, 2000-2001, 2001-2002
  5. Sweetwater Union High School District, 05-4435-I-51  
Fiscal Years 1999-2000, 2000-2001

#### PARAMETERS AND GUIDELINES

- Item 6     *Mentally Disordered Offenders: Treatment as a Condition of Parole* - 00-TC-28, 05-TC-06  
Penal Code Section 2966  
Statutes 1985, Chapter 1419(SB 1296); Statutes 1986, Chapter 858 (SB 1845); Statutes 1987, Chapter 687 (SB 425); Statutes 1988, Chapter 658 (SB 538); Statutes 1989, Chapter 228 (SB 1625); Statutes 1994, Chapter 706 (SB 1918)  
County of San Bernardino, Claimant

Member Worthley made a motion to adopt items 5 and 6 on the consent calendar. With a second by Member Bryant, the items were unanimously adopted.

#### IMPLEMENTATION OF AB 1222

- Item 4     Staff Report

Assistant Executive Director Nancy Patton presented this item. Ms. Patton stated that at the Commission's September 2007 hearing, staff committed to completing several steps to implement AB 1222, including conducting training for members, staff, and interested parties. Ms. Patton began the training by reviewing the existing parameters and guidelines processes including the existing process for adopting a reasonable reimbursement methodology. Ms. Patton then discussed AB 1222's revised criteria for adopting a reasonable reimbursement methodology, and provided the Commission with a document that compared the existing and new processes.

Chief Legal Counsel Camille Shelton compared the definitions and criteria of the reasonable reimbursement methodology under prior law and under AB 1222. Ms. Shelton clarified that

under prior law, a reasonable reimbursement methodology could not be adopted because the statutory criteria could not be met. Therefore, AB 1222 was enacted to revise those criteria so that methodologies could be adopted while still considering variations of costs among local entities and meeting cost-efficient standards. Ms. Shelton also noted that the Commission will be able to apply these new standards for the first time at the March 2008 hearing.

Ms. Patton reviewed the second process enacted under AB 1222: a streamlined process where the claimants and Department of Finance negotiate a reimbursement methodology and propose this methodology and a statewide estimate of costs for adoption by the Commission. This process would be in lieu of the Commission adopting parameters and guidelines and statewide cost estimates. Ms. Patton pointed out the differences between the two processes, including the fact that the Commission's review is limited to determining whether the proposed methodology meets the revised statutory criteria.

Ms. Patton introduced Carla Castaneda with Department of Finance. Ms. Castaneda discussed the progress of reasonable reimbursement methodologies that are currently being negotiated between Finance and local agencies, and a school district. Ms. Castaneda also presented an overview of the final section of AB 1222: legislatively determined mandates. This is a process where the claimant and Finance jointly propose a reimbursement methodology to the Legislature for adoption. This process does not include Commission participation.

Ms. Patton added that this process will probably not be used much. It is intended to be used when all parties agree that a statute is probably a mandate. And, legislatively determined mandates may free up the Commission to work on the more complex pending test claims. Ms. Patton stated that Commission staff will monitor proposals for legislatively determined mandates because under this process, a claimant may reject the amount adopted by the Legislature and return to the existing test claim process.

Member Worthley suggested that the Legislative Analyst's Office (LAO) could help with this process, by providing analysis of the joint proposals, and asked if they would be able to assist. Ms. Castaneda responded that while LAO participation is not statutorily required, they participated in drafting AB 1222, and offered to participate in the joint negotiations.

Ms. Higashi added that the Commission is completing a rulemaking package to implement regulations regarding AB 1222. This package will be on the March 2008 hearing agenda. Chairperson Sheehan asked if public comments were filed on the package. Ms. Higashi responded that no comments were received.

Member Worthley thanked staff for the report.

Ms. Higashi asked Allan Burdick, CSAC-SB 90 Group, to come forward. Mr. Burdick provided the Commission with a list and discussed possible ideas for further mandate reform. He noted that representatives from counties, cities, and school districts met to discuss possible changes to the mandates process for potential introduction in the Legislature in 2008. This meeting was also attended by representatives from state agencies and legislative staff.

Mr. Burdick reported that participants have not identified any needed cleanup provisions for AB 1222, but recognized that it was probably too soon, since AB 1222 has not been fully tested.

Mr. Burdick discussed other pending legislation that could be used this year for further reforms: AB 1170 (Krekorian) and AB 1576 (Silva). Mr. Burdick discussed several ideas, including providing alternates on the Commission for the local government members; and imposing a deadline for completing incorrect reduction claims. Mr. Burdick noted however, that given the

state's current budget crisis, there does not seem to appear to be significant support to pursue major mandate reform this year.

Member Bryant stated that she was opposed to his proposal to remove the Director of the Office of Planning and Research from the Commission. Mr. Burdick responded that it wasn't personal, but an attempt to even the membership on the Commission by reducing the number of state members and increasing the number of local government members.

Mr. Burdick also noted that they are working with the Controller's Office on possible reforms to the reimbursement process.

Chairperson Sheehan commented that the training session was informative and helpful and is looking forward to the successful implementation of AB 1222.

## **INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (ACTION)**

### **AMENDMENTS TO PARAMETERS AND GUIDELINES**

- Item 7      *Notice of Truancy*, 4133  
Education Code Section 48260.5,  
Statutes 1983, Chapter 498 (SB 813);  
As Directed by the Legislature  
Statutes 2007, Chapter 69 (AB 1698)

Ms. Patton also presented this item. The *Notification of Truancy* program requires school districts, upon a pupil's initial classification as a truant, to notify the pupil's parent that the pupil is truant and other information regarding truancy. The initial classification as truant occurred when the pupil was absent without valid excuse more than three days in one school year. The program was amended twice to add new information to the notice, and to revise the classification as truant so that a truancy designation now occurs when a student is absent without valid excuse three days rather than more than three days. However, no party requested that the parameters and guidelines be amended. This revised definition caused confusion to claimants and the State Controller's Office regarding when school districts are eligible for reimbursement.

Therefore, the State Controller's Office sponsored AB 1698 to require the Commission, by January 31, 2008, to amend the parameters and guidelines to clarify that truancy begins, and the notice is sent out when a student has been absent three days rather than more than three days without valid excuse. This item makes the amendments to the parameters and guidelines as required under AB 1698.

Keith Petersen, SixTen and Associates, a school district representative, stated procedural concerns regarding the Legislature requiring the Commission to amend parameters and guidelines. He was also concerned that the phrase "at that time" in the proposed parameters and guidelines could be misinterpreted to require school districts to immediately send the notice. Mr. Petersen stated that the program statutes do not require immediate notification. This process may take many days during which subsequent truanancies can occur. Removal of the phrase would ensure that it is not misinterpreted to mean that schools must provide notice immediately upon the third truancy. Ms. Patton indicated that staff removed the phrase, and provided the Commission with revised proposed parameters and guidelines that included this revision.

Patrick Day, San Jose Unified School District, agreed with Mr. Petersen. Ginny Brummels,

State Controller's Office, concurred with the staff analysis.

Chairperson Sheehan and Member Worthley acknowledged Mr. Petersen's procedural concerns. Member Bryant expressed support for completing this legislative requirement on time. With a motion by Member Worthley and a second by Member Chivaro, the proposed amendment to the parameters and guidelines, as modified, was adopted by a vote of 5-0.

#### STATEWIDE COST ESTIMATE

- Item 8      *Enrollment Fee Collection and Waivers*,  
99-TC-13 and 00-TC-15  
Education Code Section 76300, Subdivisions (a), (b), (g), (h)  
Statutes 1984xx, Chapter 1 (AB 1xx); Statutes 1984, Chapters 274  
(AB 207) and 1401 (AB 3776); Statutes 1985, Chapters 920 (AB 602)  
and 1454 (AB 2262); Statutes 1986, Chapters 46 (AB 2352) and 394  
(SB 993); Statutes 1987, Chapter 1118 (AB 2336); Statutes 1989,  
Chapter 136 (SB 653); Statutes 1991, Chapter 114 (SB 381); Statutes  
1992, Chapter 703 (SB 766); Statutes 1993, Chapters 8 (AB 46), 66  
(SB 399), 67 (SB 1012), and 1124 (AB 1561); Statutes 1994, Chapters  
153 (AB 2480) and 422 (AB 2589); Statutes 1995, Chapter 308 (AB 825);  
Statutes 1996, Chapter 63 (AB 3031); and Statutes 1999, Chapter 72  
(AB 1118)  
California Code of Regulations, Title 5, Sections 58501-58503, 58611-  
58613, 58620, and 58630, Subdivision (b)  
Los Rios and Glendale Community College Districts, Claimants

Ms. Higashi presented this item. The Commission approved the *Enrollment Fee Collection and Waivers* program, and adopted the parameters and guidelines in 2006. Reimbursement claims were due in 2007. This item was postponed from the December 6, 2007 hearing in order to allow the Community College Chancellor's Office to submit additional revenue data. Commission staff forwarded this data to the State Controller's Office so it could compare the data with the offsets listed in the claimants' reimbursements claims. Commission staff reviewed this information and accordingly reduced the proposed statewide cost estimate by \$30,887,000. Ms. Higashi clarified that staff did not reduce the proposed estimate by the Board of Financial Assistance Program (BFAP) 2 percent administrative allowance, because it is not clear at this point whether this is a voluntary or mandatory offset. Ms. Higashi explained that the Department of Finance is opposed to the proposed estimate because staff did not reduce the proposal an additional 2 percent for the BFAP allowance. Staff recommended that the Commission adopt the proposed statewide cost estimate of \$162,128,285 for fiscal years 1998-99 through 2007-08.

Jonathan Lee, Department of Finance, agreed that they were opposed to not taking a further 2 percent reduction, because the governing statute expressly states it is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every eligible student.

Tim Bonnel, California Community College Chancellor's Office, stated that historically, these funds have been provided to the colleges on an unrestricted basis, meaning that they can spend the money anywhere. The 2 percent funding was intended to back-fill the amount a college would retain on any fees collected, had they collected those fees. In 1984, AB 1XX provided

that colleges only had to report 98 percent of the funding that they actually collected to be offset against apportionment. The other 2 percent went unreported and could be used for whatever purposes the schools chose. Therefore, the Chancellor's Office doesn't see it as an offset to the claims made under the mandates process.

Mr. Lee provided the Education Code statute for the Commission members to review. Chief Legal Counsel Camille Shelton stated that the statute shows that the 2 percent offset is unrestricted and can go to the entity's general fund. In addition, the Chancellor's Office issued a manual interpreting this language to exclude the 2 percent. Therefore, to the extent a school district did use this 2 percent for this program; they would be required to offset it from their reimbursement claims.

Chairperson Sheehan asked if some districts do use some of the 2 percent funding for the *Enrollment Fee Collection and Waiver* program. Mr. Bonnel responded that there may be some that choose to use this funding for this program, but for the most part, the funding is designated for general purpose use.

Member Worthley moved the staff recommendation. With a second by Member Chivaro, the item was adopted by a vote of 5-0.

## STAFF REPORTS

- Item 9 Chief Legal Counsel's Report (info)  
Recent Decisions, Litigation Calendar

Ms. Shelton stated that there is a hearing before the Sacramento County Superior Court on February 29 on the *Integrated Waste Management Board* case, and a hearing in San Diego County Superior Court on April 3 on the *Emergency Procedures Act*.

- Item 18 Executive Director's Report (info/action)  
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi introduced our new analyst Sonny Leung. Ms. Higashi provided updates on budget hearings, and explained that, like other state agencies, the Commission's budget will take a 10 percent reduction under the Governor's budget proposal.

Ms. Higashi asked the Commission to take action on the 2008 Rulemaking Calendar. Member Lujano moved the staff recommendation to approve the 2008 Rulemaking Calendar. With a second by Member Chivaro, the item was adopted by a vote of 5-0.

Ms. Higashi also proposed moving Commission hearings to Fridays to accommodate budget hearings and member schedules. She discussed the proposed hearing dates<sup>1</sup> and recommended that the Commission adopt the revised dates. Member Worthley moved the staff recommendation. With a second by Member Bryant, the item was adopted by a vote of 5-0.

## PUBLIC COMMENT

There was no public comment.

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<sup>1</sup> March 28, May 29, June 27 (tentative), August 1, September 26, October 31 (tentative), and a date to be determined in December.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)**

PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
2. *County of San Bernardino v. Commission on State Mandates, et al.*, Los Angeles County Superior Court, Case No. BS106052; San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMS)*]
3. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; *Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II*; and *School Accountability Report Cards (SARC) I and II*]
4. *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 07CS00079, CSM 06-L-02, [*Peace Officer Procedural Bill of Rights*]
5. *Department of Finance and California Integrated Waste Management Board v. Commission on State Mandates, Santa Monica Community College District, and Lake Tahoe Community College District*, Sacramento County Superior Court, Case No. 07CS00355, CSM 06-L-03 [*Integrated Waste Management*]
6. *San Diego Unified School District v. Commission on State Mandates and California Department of Finance*, San Diego County Superior Court, Case No. 37-2007-00064077-CU-PT-CTL, CSM 06-04 [*Emergency Procedures: Earthquake Procedures and Disasters*]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice

from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### **REPORT FROM CLOSED EXECUTIVE SESSION**

At 11:14 a.m., Chairperson Sheehan reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### **PERSONNEL**

- Item 11      Salary Adjustment: Attorney to the Commission/Chief Legal Counsel (CEA IV), pursuant to Government Code Section 17529

Chairperson Sheehan stated that under existing procedures the Commission may adjust the salary of the chief legal counsel up to the maximum of 10 percent beginning December 1, 2007. Member Chivaro moved to adjust the Chief Legal Counsel's salary by 10 percent effective December 1, 2007. With a second by Member Bryant, this item was adopted by a vote of 5-0.

#### **ADJOURNMENT**

Hearing no further business, Chairperson Sheehan adjourned the meeting at 11:16 a.m.

  
PAULA HIGASHI  
Executive Director



**PUBLIC HEARING**  
**COMMISSION ON STATE MANDATES**



TIME: 9:39 a.m.

DATE: Thursday, January 31, 2008

PLACE: State of California  
Department of Finance  
915 L Street, Redwood Room  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus  
California Certified Shorthand Reporter #6949  
Registered Diplomat Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN  
(Commission Chair)  
Representative for MICHAEL GENEST  
Director, State Department of Finance

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

CYNTHIA BRYANT  
Director  
Office of Planning & Research

FRANCISCO LUJANO  
(Commission Vice Chair)  
Representative for PHILIP ANGELIDES  
State Treasurer

J. STEVEN WORTHLEY  
Supervisor and Chairman of the Board  
County of Tulare



COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
(Item 8 and 10)

NANCY PATTON  
Assistant Executive Director  
(Items 4 and 7)

CAMILLE SHELTON  
Chief Legal Counsel  
(Item 9)



A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re: Item 4**

For Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
California State Association of Counties  
SB 90 Service  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

**Appearing Re Item 7:**

For the State Controller:

GINNY BRUMMELS  
Manager, Local Reimbursements Section  
Accounting & Reporting Division  
State Controller  
3301 C Street, Suite 500  
Sacramento, California 95816

For SixTen and Associates:

KEITH B. PETERSEN, MPA, JD  
President  
SixTen and Associates  
5252 Balboa Avenue, Suite 900  
San Diego, California 92117

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 7:** *continued*

For San Jose Unified School District

PATRICK DAY  
San José Unified School District

**Appearing Re Item 8:**

For Department of Finance:

JONATHAN LEE  
Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

For California Community College Chancellor's Office:

TIMOTHY BONNEL  
Coordinator  
Student Financial Assistance Programs  
California Community Colleges System Office  
1102 Q Street  
Sacramento, California 95811



ERRATA SHEET

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Commission on State Mandates – January 31, 2008

1 BE IT REMEMBERED that on Thursday, January 31,  
2 2008, commencing at the hour of 9:40 a.m., thereof, at  
3 the State of California, Department of Finance,  
4 915 L Street, Redwood Room, Sacramento, California,  
5 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
6 the following proceedings were held:

7 --oOo--

8 CHAIR SHEEHAN: I would like to call the  
9 January 31st meeting of the Commission on State Mandates  
10 to order.

11 Would the clerk call the roll, please?

12 MS. HIGASHI: Ms. Bryant?

13 MEMBER BRYANT: Here.

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Here.

16 MS. HIGASHI: Mr. Glaab is absent due to a  
17 personal family emergency.

18 Mr. Lujano?

19 MEMBER LUJANO: Here.

20 MS. HIGASHI: Ms. Olsen is absent due to  
21 illness.

22 And Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: And Ms. Sheehan?

25 CHAIR SHEEHAN: Here.

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1           It's nice to be back, all, after having spent  
2 the last year on the pension commission work. Now, it's  
3 back to my regular job on some of these.

4           So I appreciate my colleagues in Finance  
5 filling in while I was off doing other types of work on  
6 that.

7           Anyway, I guess the first item you need to --

8           MS. HIGASHI: Yes. The first item is the  
9 annual election of officers which is held in January of  
10 each year.

11           Are there any nominations for chairperson?

12           MEMBER BRYANT: I'd like to nominate the  
13 Director of Finance, Michael Genest, as chairman.

14           MEMBER CHIVARO: Second.

15           MS. HIGASHI: It has been move and seconded  
16 that Michael Genest, Director of Finance, be elected  
17 chairperson.

18           All those in favor, signify by saying "aye."

19           *(A chorus of "ayes" was heard.)*

20           CHAIR SHEEHAN: Do I get to vote "no"?

21           We should go get Mike and get him over here.

22           MS. HIGASHI: Should the record reflect that  
23 was a unanimous vote?

24           CHAIR SHEEHAN: Okay, yes.

25           MS. HIGASHI: Madam Chairperson, I'll turn it

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1 over to you for election of vice-chair.

2 CHAIR SHEEHAN: We need to open up the  
3 nominations for vice-chair.

4 MEMBER BRYANT: I'd like to nominate State  
5 Treasurer Bill Lockyer as vice-chair.

6 MEMBER WORTHLEY: Second.

7 CHAIR SHEEHAN: Any other nominations?

8 *(No response)*

9 CHAIR SHEEHAN: If not, the nominations have  
10 been closed.

11 All those in favor of the State Treasurer being  
12 the vice-chair?

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

14 CHAIR SHEEHAN: Any opposed?

15 *(No response)*

16 CHAIR SHEEHAN: Congratulations.

17 Okay, next.

18 MS. HIGASHI: This brings us to Item 2,  
19 approval of minutes from our December meeting.

20 CHAIR SHEEHAN: Okay, any changes or edits on  
21 the minutes or corrections that any of the members have?

22 *(No response)*

23 CHAIR SHEEHAN: Does anyone in the audience  
24 have any corrections to our minutes?

25 *(No response)*

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1 CHAIR SHEEHAN: If not, we'll entertain a  
2 motion to approval.

3 MEMBER LUJANO: Move approval.

4 MEMBER CHIVARO: Second.

5 CHAIR SHEEHAN: We have a motion and a second  
6 to approve the minutes from the December meeting.

7 All those in favor, say "aye."

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

9 CHAIR SHEEHAN: Any opposed?

10 (No response)

11 CHAIR SHEEHAN: The minutes are approved.

12 MS. HIGASHI: This brings us to the proposed  
13 Consent Calendar.

14 You have a blue sheet before you which lists  
15 Items 5 and 6 on the Consent Calendar.

16 CHAIR SHEEHAN: Okay, any comment on the  
17 Consent Calendar?

18 (No response)

19 CHAIR SHEEHAN: If not, we'll entertain a  
20 motion to approve the Consent Calendar.

21 MEMBER WORTHLEY: So moved.

22 CHAIR SHEEHAN: We have a motion.

23 MEMBER BRYANT: Second.

24 CHAIR SHEEHAN: And a second.

25 All in favor, say "aye."

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

2                   CHAIR SHEEHAN: Any opposed?

3                   (No response)

4                   CHAIR SHEEHAN: The Consent Calendar is  
5 approved.

6                   Okay, the next is AB 1222.

7                   MS. HIGASHI: Item 4, staff report on  
8 implementation of AB 1222.

9                   I'd like to turn the meeting and program on  
10 this informational session over to Assistant Executive  
11 Director Nancy Patton.

12                  MS. PATTON: Good morning.

13                  CHAIR SHEEHAN: Good morning, Nancy.

14                  MS. PATTON: As you know, on October 8th, 2007,  
15 AB 1222 was enacted to make three substantive changes to  
16 the mandates process. And we're here this morning to go  
17 over those changes.

18                  And at the Commission's September hearing,  
19 staff committed to completing several steps to implement  
20 AB 1222. One of them was conducting this training at the  
21 hearing this morning.

22                  We have also proposed a regulatory package to  
23 establish regs to implement the bill.

24                  So the first thing I want to do is talk about  
25 the existing parameters and guidelines process. And we

1 have two ways right now -- for everybody's information,  
2 I'm working off of this multi-colored form.

3 The first section we're going to be talking  
4 about is comparing our two existing P's & G's processes.

5 Once the Commission adopts a SOD, within ten  
6 days we issue the SOD. And claimants are then required  
7 to propose P's & G's within 30 days of that issuance.

8 The claimant can also propose a reasonable  
9 reimbursement methodology at that time.

10 State agencies and interested persons are  
11 generally given two weeks to file comments on the  
12 proposed P's & G's, and the claimant is then given two  
13 weeks to rebut any state agency comments.

14 Staff reviews those comments. It may modify  
15 the proposed P's & G's, and it issues a draft staff  
16 analysis and proposed P's & G's eight weeks prior to the  
17 hearing.

18 All parties then have three weeks to comment on  
19 the draft staff analysis and the proposed P's & G's.

20 Any comments that come in following the  
21 issuance of the draft staff analysis, Commission staff  
22 then reviews those comments. It may further modify the  
23 P's & G's, and it issues its final staff analysis two  
24 weeks before the Commission hearing.

25 So that, for many years, has been our process

1 for P's & G's.

2 A few years ago, we also implemented what we  
3 call an expedited process. And under that process,  
4 instead of the claimant submitting P's & G's within  
5 thirty days, when we issue the SOD within ten days of the  
6 hearing, we also include the proposed P's & G's, meaning,  
7 that staff drafts them rather than the claimant.

8 And we send those out to everyone for comment,  
9 and we give them two weeks for comments. So you're  
10 getting comments back in from the claimant and the state  
11 agencies at the same time.

12 That is also considered our draft staff  
13 analysis.

14 So from there, we can review the comments,  
15 prepare a final staff analysis, and send it to hearing.

16 Theoretically, it's supposed to reduce the  
17 amount of time it takes.

18 Not all claimants use this process. It's not  
19 user-friendly for all sets of P's & G's. In some  
20 instances, claimants, you know, are the expert on a  
21 particular program, and it's more important for them to  
22 prepare the P's and G's. But some claimants do use this  
23 process.

24 In either case, once the P's & G's are adopted,  
25 using either one of these processes, the Commission then

1 adopts the statewide cost estimate. So once the  
2 P's & G's are adopted, the claimants file reimbursement  
3 claims, and we use that claiming data -- staff -- to  
4 develop a statewide cost estimate. And it's the same  
5 process: We develop it, we send it out for comment.  
6 Eight weeks before the hearing, comment is allowed. We  
7 can further amend the statewide cost estimate, send it  
8 out again, and then it comes to the Commission for  
9 adoption.

10 So part of AB 1222 was what we realized in this  
11 process when we talk about a reasonable reimbursement  
12 methodology, is that the definition that was in existing  
13 law was not working, and it wasn't allowing us or the  
14 claimants, state agencies, to come up and to develop a  
15 reimbursement methodology that would meet the definition  
16 in statute.

17 So that was the first part of AB 1222, was to  
18 redefine a reasonable reimbursement methodology.

19 And Camille is going to talk about that.

20 MS. SHELTON: And that's reflected on your  
21 section 2 blue sheet there.

22 In the old definition, it was difficult to  
23 apply. It did have two requirements: One, that it had  
24 the formula, or the proposed RRM, had to implement the  
25 mandate in a cost-efficient manner. And the second



1 requirement, that for 50 percent or more of the eligible  
2 claimants, it had to implement the mandate in a  
3 cost-efficient manner.

4 And the problem was that was that, oftentimes,  
5 you could not get participation of 50 percent of all  
6 eligible claimants in the state. It proved very  
7 difficult with proposals that may be affected, in  
8 particular one or two large counties or, you know, where  
9 particular problems were occurring with the program.

10 So we weren't able to adopt any RRM's using  
11 that formula.

12 So AB 1222 did lower the standard a bit; and  
13 it's on the right-hand side of that page. And basically,  
14 it allows proposal of an RRM; and it can be based on,  
15 "Any cost information from a representative sample of  
16 eligible claimants or information provided by  
17 associations of local agencies and school districts, or  
18 any other projection of local costs."

19 And it does still have to consider a variation  
20 of costs among local agencies and school districts, and  
21 it still has to meet the cost-efficient standard.

22 And that's it for that.

23 MS. PATTON: Okay, the second part --

24 MS. SHELTON: Oh, I was going to say, I will  
25 say that the first time the Commission will be able to

1 apply that new definition probably will be in March.

2 MS. PATTON: The second piece of AB 1222, which  
3 is on section 3 on your paper, set up a negotiated  
4 process for developing a reasonable reimbursement  
5 methodology, and that a statewide estimate, an estimate  
6 of costs in lieu of the Commission adopting P's & G's and  
7 a statewide cost estimate.

8 So under this new process, the claimant and the  
9 Department of Finance, within 30 days of the issuance of  
10 the SOD, can notify the Commission in writing of their  
11 intent to develop this RRM and the statewide estimate of  
12 cost in lieu of the proposed P's & G's.

13 They need to inform the Commission of the date  
14 they will submit a plan that ensures that the costs from  
15 a representative sample of eligible claimants are  
16 considered in the development of the methodology.

17 The plan must also include the date they will  
18 provide the Commission with updates regarding their  
19 progress on negotiations, and the date they will submit  
20 the draft methodology and the proposed statewide estimate  
21 of costs.

22 And this, they have 180 days after they send  
23 their letter of intent to complete this process.

24 Upon the request of the claimant or Finance,  
25 the executive director may provide up to four extensions

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1 of that 180-day deadline.

2 CHAIR SHEEHAN: Four 180-day extensions?

3 MS. SHELTON: Well --

4 MS. HIGASHI: We're not quite sure.

5 MS. SHELTON: It will be subject to  
6 interpretation.

7 MEMBER WORTHLEY: It's not supposed to be  
8 F-O-R; it's supposed to be F-O-U-R.

9 MS. PATTON: Once the claimant --

10 CHAIR SHEEHAN: I'm not sure that's going to  
11 expedite things.

12 MS. PATTON: Carla is going to be asking for  
13 a 180-day extension.

14 Once the claimant and Finance have begun this  
15 process, at any time they can notify the Commission that  
16 they no longer need to pursue this renegotiated RRM. And  
17 in that case, the Commission notifies them that then our  
18 existing P's & G's process begins, and they have 30 days  
19 to file their P's & G's.

20 Once the claimant and Finance have no later  
21 than 60 days before Commission hearings, submit their  
22 joint proposal, and the proposal must have broad support  
23 from a wide range of local agencies or school districts,  
24 the claimant and Finance may demonstrate that broad  
25 support in different ways, including obtaining

1       endorsements by one or more statewide associations of  
2       local agencies or school districts and securing letters  
3       of approval from local agencies and school districts.

4               Their joint proposal must include the draft  
5       methodology, the proposed statewide estimate of cost,  
6       a description of the steps taken to determine the level  
7       of support for the draft methodology, an agreement that  
8       the methodology shall be in effect for a period of five  
9       years, unless they set a different term, and an agreement  
10      that at the conclusion of the term, they will consider  
11      jointly whether amendments to the methodology are  
12      necessary.

13              Once this is submitted, parties are authorized  
14      to file comments on the proposed methodology.

15              There is no draft staff analysis procedure  
16      under this. It goes straight to final analysis. And our  
17      review is different than it is now.

18              The Commission's review is limited to review of  
19      the information they submitted, and to make sure that it  
20      meets all the criteria that I described above.

21              The Commission is then required to approve the  
22      draft methodology if they review the information  
23      submitted and it demonstrates that it did meet the  
24      criteria in the definitions and statute.

25              If they make that finding, once they adopt the

1 methodology, then they adopt the proposed statewide  
2 estimate of costs. So you're adopting a methodology for  
3 reimbursement and a statewide estimate at the same time.

4 We then, like the normal process, issue the  
5 methodology, submit it to the State Controller; and, if  
6 necessary, they issue claiming instructions so that the  
7 claimants can file for reimbursement. And like the  
8 existing process, once that statewide estimate is  
9 adopted, we report it to the Legislature.

10 There's also provisions for termination of the  
11 methodology. Like I said before, it has a five-year  
12 life, unless a different term is set when it's adopted.  
13 And the claimant and Finance may jointly request the  
14 early termination of the methodology.

15 The Commission shall approve this request if it  
16 has broad support from a wide range of local agencies or  
17 school districts. And if it's approved, the executive  
18 director notifies them that the P's & G's process  
19 commences. So once it is terminated, we go back to our  
20 P's & G's process.

21 At least one year before the expiration of the  
22 methodology, the Commission shall notify the claimant and  
23 Finance that they may jointly propose amendments to the  
24 methodology, jointly propose that it remain in effect, or  
25 allow it to expire and submit proposed P's & G's to

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1 replace the methodology.

2 CHAIR SHEEHAN: Okay, question: If they want  
3 to terminate the agreement, so they come to us and ask us  
4 to terminate, we have to formally vote --

5 MS. PATTON: Yes.

6 CHAIR SHEEHAN: -- to terminate it? Okay.

7 And then we kick in the P's & G's process?

8 All right, so with that, I assume if there's  
9 some people who don't want it terminated, then we sort of  
10 have a discussion about the rationale for that?

11 MS. HIGASHI: *(Nodding head.)*

12 MS. PATTON: *(Nodding head.)*

13 CHAIR SHEEHAN: All right, go ahead.

14 So one year before the --

15 MS. PATTON: Because here, the Commission shall  
16 approve the joint request for early termination if the  
17 request has broad support.

18 CHAIR SHEEHAN: Yes, that's fine. It's  
19 unchartered water. Okay.

20 MS. PATTON: So that's how it works on paper.

21 CHAIR SHEEHAN: And that was the process,  
22 right?

23 MS. PATTON: Carla Castañeda with the  
24 Department of Finance has been working with local  
25 governments, and she's going to talk to you about how

1 they are really --

2 MEMBER WORTHLEY: Where the rubber meets the  
3 road?

4 MS. PATTON: Yes.

5 MS. CASTAÑEDA: When we were drafting the  
6 language for AB 1222, we had already begun the process of  
7 trying to develop RRM's, finding what didn't work with  
8 the language at the current definition. And as we were  
9 making mistakes there, crafted the language around that.

10 So there are areas that are kind of broad and  
11 vague intentionally, and then there are requirements for  
12 statutes, executive orders, numbers, eligible claimants,  
13 expiration dates, to give us an option to come back and  
14 revisit these.

15 There are at least three, both combined for  
16 education and political agencies, in the process right  
17 now. And those are starting with surveys. Once we work  
18 up a few surveys, we'll have a better idea of  
19 representative samples of the population, and probably do  
20 something a little different, like the other cost  
21 information projections. But there are three currently  
22 underway --

23 UNIDENTIFIED FEMALE: We can't hear her back  
24 here.

25 MS. CASTAÑEDA: I'm sorry about that.

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1 MR. BURDICK: I really can't hear anyone back  
2 here.

3 MS. CASTAÑEDA: There are approximately three  
4 reimbursement methodologies in the process --

5 CHAIR SHEEHAN: There's a mike right here.

6 For those of us on the Commission, we'll have  
7 to make sure we speak loudly when we do.

8 MS. CASTAÑEDA: Three reasonable reimbursement  
9 methodologies --

10 MR. BURDICK: You've got to turn it on.

11 MS. SHELTON: It is on.

12 MS. CASTAÑEDA: We have three reasonable  
13 reimbursement methodologies already in process: One for  
14 education, two for local agencies.

15 There are several additional ones under  
16 consideration.

17 Initially, we're working with surveys, both  
18 in education and local agencies, until we can determine  
19 which agencies are representative samples. And then we  
20 may not have to be bothering every agency, every time.

21 From the negotiated P's & G's process, we have  
22 developed the legislatively determined mandate in that  
23 section 4 of the yellow pages.

24 The information that's required in the  
25 statutes -- in the proposal we submit to the



1 Legislature -- is identical to the negotiated P's & G's.  
2 The difference here is, rather than having a Statement of  
3 Decision from the Commission, we're asking the  
4 Legislature to make that determination, that there is a  
5 state reimbursable mandate in the statute or executive  
6 order.

7 So this is when there is agreement as to which  
8 statutes and what activities are the mandate; and from  
9 there, work on the activities that are reimbursable, and  
10 develop the costs, the methodology, the term.

11 There are notification requirements in statute  
12 to keep the Commission informed of which statutes are  
13 being reviewed or which are going through the  
14 legislatively determined process because that does --  
15 there are provisions to toll the statutes to protect  
16 the claimant's rights. Under the Commission process,  
17 there's a one-year statute of limitations. We didn't  
18 want to eliminate that. There's also a provision that  
19 if anyone is not happy with the legislatively determined  
20 mandate, they have the option to reject the funding  
21 that's proposed in the statute, making that  
22 determination, and can file a test claim with the  
23 Commission again.

24 Whether this is an original test claimant or  
25 taking over a withdrawn test claim or there was no test

1 claim before the Commission before and they're starting  
2 something brand-new.

3 There's a six-month window to file these test  
4 claims, either once there's an option of a legislatively  
5 determined mandate or the term has expired on that  
6 legislatively determined mandate, or the Legislature has  
7 amended that in a way that the local agency is not happy  
8 with.

9 That six-month window does not apply to the  
10 statute of limitations that would have already expired  
11 under the Commission process before the legislatively  
12 determined mandate.

13 MS. SHELTON: So old statutes, you get a  
14 one-time agreement.

15 CHAIR SHEEHAN: Okay, got it.

16 MS. CASTAÑEDA: We have also already considered  
17 working on a few current statutes that this process may  
18 work for.

19 We don't anticipate an increased workload for  
20 the Commission staff because this does require agreement  
21 from the very beginning on the statute, all the way  
22 through the reimbursable activities.

23 MS. PATTON: I think the part on the  
24 legislatively determined mandate process, you know, it's  
25 the third piece of AB 1222, I'm not sure anyone thinks

1 that it will be used a lot, but I think there are cases  
2 when everyone sort of agrees at the beginning, there are  
3 some cases that it's a mandate; and those might be a good  
4 opportunity for them to go off and negotiate.

5 And I think one of the things that was  
6 discussed when AB 1222 was going through, in those cases  
7 where everyone agrees that it's a mandate and they go off  
8 and negotiate an amount when they go to the Legislature,  
9 that frees us up to work on the more complex mandates  
10 that are on file right now.

11 So, I mean, we will monitor -- you know, there  
12 are provisions about the Commission in here. We can  
13 stay our proceedings on pending test claims during this  
14 process; and there's a process for taking over withdrawn  
15 claims when the claimants reject -- that's the thing,  
16 they can go through the whole process, and a claimant  
17 can, under this, reject the amount that the Legislature's  
18 adopted, and come back and still do the test-claim  
19 process.

20 MEMBER WORTHLEY: Question. It seems like the  
21 LAO's office might be helpful in this regard, I mean, as  
22 far as proposed legislation, submitted to the LAO's  
23 office, it's coming back with an analysis of this kind of  
24 information so that the legislative body is confronted  
25 with the impacts of the proposed legislation.

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1           Is that kind of how we anticipate this will  
2 work? Will they be able to help assist in this process?

3           MS. CASTAÑEDA: Yes. They have already offered  
4 to participate, either in site visits or in reviewing  
5 information. They're not specifically identified in  
6 statute as the party responsible, but they are --

7           MEMBER WORTHLEY: They're just a logical --

8           MS. CASTAÑEDA: Yes.

9           MS. SHELTON: And they were active in the  
10 preparation and the crafting of this language. They were  
11 at every meeting.

12          CHAIR SHEEHAN: Okay, anything else?

13          MS. PATTON: The last of what I want to say  
14 about this section, is that these legislatively  
15 determined mandates are not binding on the Commission  
16 when it is making test claim determinations. I just  
17 wanted to let you know that.

18          CHAIR SHEEHAN: Go ahead.

19          MS. HIGASHI: Let me just add that we are in  
20 the midst of a rulemaking procedure for the more fine  
21 detail about letters and filings and all of the  
22 procedural processes. And we issued that package for  
23 public comment, and we did not receive any public  
24 comment. So they will be on the Commission's next agenda  
25 for adoption.

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1 CHAIR SHEEHAN: Okay, all right. And that's  
2 what is Exhibit B here?

3 MS. HIGASHI: Yes.

4 CHAIR SHEEHAN: Your regulations?

5 MS. HIGASHI: Yes.

6 CHAIR SHEEHAN: Okay, all right. So we have  
7 not received any --

8 MS. HIGASHI: We have not received any  
9 comments.

10 CHAIR SHEEHAN: Comments on this?

11 MS. HIGASHI: And the comment period is closed.

12 CHAIR SHEEHAN: Okay.

13 MS. HIGASHI: So that would be on the next  
14 agenda.

15 CHAIR SHEEHAN: Okay.

16 MS. HIGASHI: Are there any questions or  
17 discussion based on this report?

18 MEMBER WORTHLEY: I just wanted to say that  
19 I appreciate the report. I thought it was very helpful,  
20 the comparison, side by side. And I'm still fairly new  
21 at this position, and it certainly helps me to understand  
22 the process before and what we're going to.

23 MS. HIGASHI: At this time, I'd like to ask  
24 Mr. Burdick if he'd like to come forward.

25 Yesterday, we participated in a meeting

1 convened by CSAC SB-90 group, including school district  
2 representatives, city representatives. And the  
3 discussion topic was mandates and possible legislation.  
4 And I just thought it might be appropriate for  
5 Mr. Burdick to give a report at this time.

6 CHAIR SHEEHAN: So new legislation? The ink is  
7 barely dry.

8 MS. PATTON: Allan, do you want me to pass this  
9 out?

10 MR. BURDICK: Yes, I have some copies.

11 What is being passed out by Nancy is just, we  
12 put together a quick list, some ideas for people to kind  
13 of generate thoughts about things that might be done.

14 And I appreciate the opportunity to address  
15 you, Madam Chair and Members.

16 CHAIR SHEEHAN: Yes.

17 MR. BURDICK: CSAC and the League yesterday  
18 decided that they would like to bring in the school  
19 district community, and we invited the Five Star  
20 Education Coalition, the Education Mandated Cost Network,  
21 a number of state agencies, the Controller's office,  
22 Department of Finance, Legislative Analyst, and members  
23 of the Legislature -- Mr. Laird and Mr. Silva sent  
24 staff -- to talk about if there's anything we want to do  
25 in the mandate area this year.

1           And we had a couple of things -- you know, we  
2 started off, really, with the topic of AB 1222. Was  
3 there any need for any clean up?

4           That's one thing Mr. Laird wanted to know is:  
5 "Should I carry a clean up bill?," which very often  
6 happens.

7           With the exception of the fact that Nancy just  
8 identified maybe a little clean up in the 180-day, how do  
9 you clarify that, nobody yesterday was able to identify  
10 any issues related to 1222. They felt that it was  
11 relatively new. And it was intentionally that process  
12 was left open, in a sense, with a few statutory  
13 restrictions, so that we would not have to be coming back  
14 to the Legislature as this process worked out and say we  
15 need to amend the statute.

16           Secondly, I wanted to talk to the school  
17 community. They have a bill, Assembly bill 1170 by  
18 Mr. Krekorian, which was on the Senate floor. And that  
19 bill, their interest is whether they want to do that bill  
20 this year or not. And there are some other things that  
21 could be done, and were they looking at something  
22 substantive, something relatively minor, what did they  
23 want to do.

24           And I think the general agreement was, whatever  
25 it is, they want to get a signature. So that's obviously

1 going to be key. I think locals felt pretty good they  
2 have opportunities to pass some things through the  
3 process, but they also need a signature.

4 So that was key in mind.

5 And the other part was to come in and say,  
6 well, we also have another vehicle that in the  
7 Legislature, Mr. Silva, Assemblyman Silva, who was the  
8 co-author of 1222, was very interested in the mandate  
9 process, and would like to see some improvements made,  
10 particularly on behalf of local government, which is very  
11 refreshing to see somebody who came from local  
12 government, still remembers they came from local  
13 government. And so he has a bill in Senate local  
14 government. So we have some vehicles available.

15 So the issue at this point was that last year,  
16 most of the focus was pretty much on 1222, and most of  
17 the other things were kind of off the table.

18 Secondly, as this Commission knows, about a  
19 year and a half ago, your effort to put together a  
20 collaborative process was kind of torpedoed by the  
21 legislative staff who decided that they could do it  
22 better than an outside person through a collaborative  
23 process.

24 So this meeting was designed to bring people  
25 together to say, "Do we want to do something in any



1 respects to the process, given the fact that last year  
2 there was no focus whatsoever on the reform to the  
3 commission process as it exists. And I was chastised  
4 yesterday by the fact that I didn't say that 1222 was a  
5 major reform, which it clearly was, but it was outside  
6 our normal process.

7 So there are other things that we should look  
8 at that people had suggested last year.

9 Now, in terms of things that would affect the  
10 Commission more directly at this point, that people that  
11 are kind of still on the table to say, "Let's talk  
12 about," one was an alternate member for local government,  
13 and that's something local government would like to have,  
14 whether this goes forward or not. But at least I think  
15 we're feeling that this would allow a city, county, and  
16 school person. So it will probably require amending the  
17 statute to be specific that we have a city, county,  
18 school person, one from each.

19 The alternate would not be able to vote.  
20 Obviously, we don't want to change the balance of power  
21 from the state to something more reasonable, but they  
22 could participate in a discussion -- or in a situation  
23 like today, where Mr. Glaab had an emergency, that if  
24 there was a need for another vote, you could have another  
25 person there who could vote. So that was the issue

1 there.

2           There were still some other -- there was some  
3 discussion about we have a couple of deadlines on  
4 reimbursement claims. This doesn't affect the  
5 Commission, but that we have two different deadlines on  
6 what are called "initial claims" and "reimbursement  
7 claims." And locals would like to see a more uniform  
8 definition, obviously the least-intrusive definition as  
9 possible.

10           The only other thing that I think really  
11 affects the Commission process is a possible deadline for  
12 incorrect reduction claims. As many of you may know or  
13 may not know, is that there is no deadline for an  
14 incorrect reduction claim. And so it goes to the bottom  
15 of the box. Your regulations call for hearing test  
16 claims within 12 months or 18 months, depending on the  
17 circumstances.

18           1170 proposes that if decisions are made in --  
19 three years, I think?

20           MS. HIGASHI: Yes.

21           MR. BURDICK: -- in three years, then Paula is  
22 required to report to the Legislature and the Commission  
23 in terms of what's going on. Which we also agree it is  
24 sometimes local government's fault that those claims  
25 haven't been heard. It's not always the Commission's.

1           So those are the kinds of things that were  
2           discussed.

3           I think the bottom line was that it does not  
4           seem that -- and there is, given what the state is going  
5           through now with its budget crisis and everything else  
6           going on, that there's a lot of interest in trying to  
7           push for major reform at this point.

8           It hasn't been totally concluded, but I think  
9           the school community made it clear that their approach at  
10          this point is to litigate, get some better laws, and then  
11          hopefully focus back on the process. That no matter how  
12          good the process, no matter how fair and equitable it may  
13          be, if court decisions are such that they're getting  
14          limitations on where they feel incorrect interpretations  
15          of constitutional provisions are, that that comes first.

16          Local agencies still need to meet again,  
17          because the meeting was just yesterday afternoon. So  
18          after today, there will be some more discussions.

19          So, anyway, that's where I would expect to see,  
20          you know, some, as I would call it, kind of minor  
21          proposals going forward. Hopefully, if we push an  
22          alternate member, we'd get support from the Commission  
23          to say that's something reasonable. Local government  
24          people have to travel a long ways to get here. And it  
25          would be nice to have at least one person that could be

1 kind of a back-up or an alternate when somebody doesn't  
2 appear.

3 So that's kind of where we are.

4 And we are very appreciative that your staff  
5 was able to join us and participation from your people.  
6 And we can keep you apprised of what's going on and what  
7 the future plans are.

8 At this point, it was, "Let's get everybody  
9 together," there's going to be no legislative discussions  
10 of substance until March due to the special session. And  
11 so that gave us a little window to say we're going to get  
12 together and do something, let's put our proposals  
13 together, we have two vehicles. And, you know, that's  
14 kind of, we're glad to be here.

15 CHAIR SHEEHAN: The question I have -- so this  
16 is sort of the -- I don't know if I want to say wish  
17 list, but the collection of all the ideas that have been  
18 floating around?

19 MR. BURDICK: Well, what that was, is I talked  
20 with Carla at the Department of Finance about a couple of  
21 ideas, and I said, "We'll get into discussion," and she  
22 said, "We could put some stuff down."

23 So very quickly, I just went through and --

24 CHAIR SHEEHAN: Some of the issues? Right.

25 MR. BURDICK: -- some stuff, you know, over the

1 last seven or eight years that I could remember that.

2 CHAIR SHEEHAN: Right.

3 MR. BURDICK: And as an example, there's one  
4 there, like, on the state mandate apportionment system,  
5 which would allow, you know, one agency to pull a claim  
6 out without having to pull claims off for all agencies.

7 Well, there are a few programs left in the  
8 state-mandated apportionment system that it probably is  
9 not of substance enough. Although that was the system  
10 that was designed by the Department of Finance, the local  
11 government still thinks is a very good system. But it  
12 hasn't been used for a long time.

13 MEMBER BRYANT: Would you mind if I just, early  
14 on, registered my strenuous objection to Number 2 under,  
15 "Commission Make-up and Process"?

16 MR. BURDICK: What's that one?

17 MEMBER BRYANT: That would be the one that  
18 says, "Change the Commission membership to provide the  
19 better balance, such as delete the OPR member."

20 MR. BURDICK: Yes, and don't take that  
21 personally. I was just trying to figure out -- I think  
22 when the locals looked at it and discussed it at that  
23 point and said, "Well, if we're only going to have three  
24 state members," it was easier to pick on you than the  
25 constitutional officers and the Director of Finance.

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1 MEMBER BRYANT: I'm happy to hand this over...

2 MR. BURDICK: Now, if we were going to have our  
3 choice of picking members...

4 CHAIR SHEEHAN: There's members and then  
5 there's personalities.

6 MR. BURDICK: I'd say these were essentially  
7 things that had been discussed, you know, probably over  
8 the last seven or eight years, and there has -- some of  
9 them came from the reports and discussions. And it was  
10 essentially to try to -- people say, "Okay, does this  
11 trigger any ideas or anything on membership," or  
12 whatever.

13 CHAIR SHEEHAN: It seemed to just be the  
14 collection of a lot of stuff?

15 MR. BURDICK: Yes, the majority of things were  
16 what we call "dead on arrival," but we'd put them out  
17 there to see if that would generate interest.

18 And I may make one additional comment. We  
19 talked to the representative of the Controller's office,  
20 that was kind of the lead person there, I think  
21 yesterday, about getting together and working with them  
22 closer on some of the audit issues and some of the other  
23 issues. And they were pretty responsive. So we're  
24 hoping that that's going to work out; that we'll be able  
25 to, as a result of an earlier effort we had that was

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1 essentially endorsed by the Commission several years ago  
2 when the Commission adopted the parameters and guidelines  
3 proposed by the Controller that is your boilerplate, we  
4 requested at that time, from the Controller's  
5 representative or from the Commission, that we be allowed  
6 to look at alternatives.

7 At that time, the Controller volunteered to  
8 work with local government of the development of the time  
9 study process which is now in place and in use. And at  
10 that time, the Commission felt that the Controller had  
11 the authority to do that, and I think many locals feel  
12 that has been beneficial. And so we're hoping for some  
13 additional close working relationships with the  
14 Controller's office.

15 CHAIR SHEEHAN: Okay, any questions?

16 No?

17 MR. BURDICK: Thank you very much.

18 CHAIR SHEEHAN: Thank you.

19 Any other comments from the public? Does  
20 anybody else want to address anything on this?

21 *(No response)*

22 CHAIR SHEEHAN: Anything else, Nancy, on this  
23 one?

24 *(No response)*

25 CHAIR SHEEHAN: No?

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1 Questions from the Commission members?

2 (No response)

3 CHAIR SHEEHAN: Okay, thank you. This was very  
4 helpful, very informative, especially for this member who  
5 has not been paying as much attention on this issue as I  
6 know everybody here has over the past year. So hopefully  
7 we look forward to the success of this new process to  
8 help expedite the reasonable reimbursement methodology  
9 process. So let's see if we can put it to good use.

10 Okay.

11 MS. HIGASHI: With that, this brings us to  
12 Item 7.

13 CHAIR SHEEHAN: Okay.

14 MS. HIGASHI: And Nancy Patton will also  
15 present this item.

16 CHAIR SHEEHAN: Great.

17 And we've got -- come on down, as they say.

18 MS. PATTON: The notification of truancy  
19 program requires school districts, upon a pupil's initial  
20 classification as a truant, to notify the pupil's parent  
21 that the pupil is truant and other related information  
22 regarding truancy.

23 The program specified that a truancy occurred  
24 when a pupil was absent from school without valid excuse  
25 more than three days in one school year.



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1           The program was amended in 1994 and 1995 to add  
2 new information to the notification of truancy, and to  
3 change the definition of a pupil considered truant, so  
4 that notification would be provided after a pupil was  
5 truant three days rather than more than three days.

6           There was some confusion regarding when  
7 claimants were eligible for reimbursement, when the  
8 notice of truancy was sent after the pupil was truant  
9 three days or more than three days. Therefore, in 2007,  
10 the State Controller's Office sponsored AB 1698 to  
11 clarify this issue. AB 1698 requires the Commission by  
12 January 31st, 2008, to amend the parameters and  
13 guidelines for the notification of truancy program to  
14 modify the definition of a truant to conform reimbursable  
15 activities to the '94 and '95 amendments.

16           Staff proposed amendments to comply with  
17 AB 1698, issued them for comment and proposed adoption on  
18 the Consent Calendar.

19           The claimant questioned the procedures  
20 Commission staff followed -- well, let me repeat that  
21 because you're not the claimant.

22           Mr. Petersen questioned the procedures. The  
23 Commission staff followed to meet the requirements of  
24 AB 1698 and requested that this item be removed from the  
25 Consent Calendar so changes could be made to the staff's

1 proposed amendments.

2 Claimant states that the amendment of the  
3 parameters and guidelines is being accomplished without  
4 the due process of a test claim reconsideration which was  
5 the previous practice of the Commission.

6 Staff notes that this process is not a practice  
7 of the Commission. The Commission is a creature of the  
8 Legislature and it implements legislation when it is  
9 directed to do so. So while the Legislature has  
10 previously directed the Commission to reconsider certain  
11 mandated programs, in this case, the Legislature only  
12 directed the Commission in AB 1698 to amend the  
13 parameters and guidelines.

14 The claimant comments that this hearing item  
15 was only noticed a week before the hearing, and questions  
16 this practice.

17 Staff issued the proposed amendments on  
18 January 17th, two weeks prior to the hearing.

19 Commission staff generally issues them eight  
20 weeks prior to the hearing. However, AB 1698 did not go  
21 into effect until January 1, 2008, and it required these  
22 to be completed by January 31st. So, therefore, we were  
23 prevented from issuing them eight weeks prior to the  
24 hearing.

25 Finally, claimant requests a technical

1 amendment to the parameters and guidelines. The program  
2 states that upon the student's initial classification as  
3 a truant, the student must, at that time, perform the  
4 mandated requirements.

5 Claimant is concerned that the phrase "at that  
6 time" may be misinterpreted to mean that the schools are  
7 immediately required to send the notice. Claimant states  
8 the notification process may take many days during which  
9 subsequent truancies can occur, and removing this phrase  
10 would ensure that the phrase is not misinterpreted to  
11 mean that schools must provide the notification  
12 immediately upon the third truancy.

13 Staff is proposing removal of this phrase.  
14 Although the intent of the statute is to provide  
15 notification to parents after the third full truancy  
16 date, there is no penalty to school districts if the  
17 notice does not go out until later. So removal of the  
18 phrase would eliminate the misinterpretation of the  
19 statutory language.

20 So the revised Proposed Parameters and  
21 Guidelines are in pink. And we've removed in that  
22 section those three words at the bottom of page 7.

23 And will the parties please state their names  
24 for the record?

25 MR. PETERSEN: Keith Petersen, SixTen and

1 Associates.

2 MR. DAY: Patrick Day, San José Unified School  
3 District.

4 MS. BRUMMELS: Ginny Brummels, State  
5 Controller's Office.

6 MR. PETERSEN: Let's leave aside the procedural  
7 peculiarities of having legislatures cram something down  
8 our throats. We'll just go on to the technical changes.

9 CHAIR SHEEHAN: Rest assured, you're not the  
10 only person who has at one point said that.

11 MR. PETERSEN: I'm sure we've all had that  
12 experience, yes.

13 The correction made yesterday is fine. I just  
14 wanted to make it absolutely clear, for significant  
15 reasons, that the notification, based on my experience  
16 with San José city schools -- and if there's any question  
17 on the process, he can speak to it currently on his  
18 district -- one of the problems we have is people use the  
19 word "truancy" and "unexcused absences" interchangeably.  
20 The law says three unexcused absences is the first  
21 truancy. The fourth unexcused absence is the second  
22 truancy. And the fifth or sixth -- it depends on how you  
23 read it -- unexcused absence becomes a habitual truant,  
24 which is another mandate.

25 So although we use the terms interchangeably, a

1 student is not truant until there are three unexcused  
2 absences. And an absence is not unexcused until it's  
3 uncleared, which is to say if a student doesn't show up  
4 for three days in a row, you don't know until the student  
5 comes back that the student was sick, and that makes it  
6 excused, but not an unexcused absence. So it's not a  
7 tardy.

8 So if anybody had any expectations that upon  
9 the third unexcused absence the notice would be out,  
10 that's not going to happen.

11 There may be six, seven, eight, nine, ten  
12 unexcused absences before the mechanism to clear the  
13 first three occurs.

14 Do you see what I mean?

15 CHAIR SHEEHAN: Yes.

16 MR. PETERSEN: Until the student comes back and  
17 is reached by phone, you don't know why the student is  
18 out.

19 CHAIR SHEEHAN: Right.

20 MR. PETERSEN: There are situations, too, where  
21 if the school bus is late, you might have 30 students  
22 getting period tardies as unexcused late, and that will  
23 be cleared later.

24 So it's not that the third unexcused absence is  
25 automatically a tardy, and that's why it takes time.

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1 CHAIR SHEEHAN: All right. Any --

2 MR. DAY: Yes, the parents have three days to  
3 clear an absence.

4 CHAIR SHEEHAN: Sure.

5 MR. DAY: So it's just through the mechanism.  
6 Parents don't like getting letters if the kid's truant  
7 when they send something in and it all got lost in the  
8 mail -- or crossed in the mail.

9 CHAIR SHEEHAN: Okay. Did you want to say  
10 anything?

11 MS. BRUMMELS: And the State Controller's  
12 Office concurs with the amendment to the proposed  
13 parameters and guidelines to wait at that time.

14 At that takes -- it clearly then identifies  
15 after it has been established that the third  
16 consecutive -- or not the consecutive, but the --

17 MR. PETERSEN: The third unexcused.

18 CHAIR SHEEHAN: The third unexcused.

19 MS. BRUMMELS: -- the third unexcused absence  
20 is at the time when they would need to be sending that  
21 notification to the parents to notify them of truancies.

22 CHAIR SHEEHAN: Great.

23 Questions from the Commission members?

24 MEMBER WORTHLEY: Am I to understand then that  
25 the other issues that are raised about process are not

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1 being --

2 MR. PETERSEN: You can't do anything about it?

3 CHAIR SHEEHAN: You could go across the street  
4 and tell them.

5 So, yes, I think it's just a process -- I mean,  
6 I understand your concern. But we're sort of also --

7 MR. PETERSEN: Someday we'd like to have the  
8 same thing. If we get something passed, we'll just show  
9 up and say, "It's a mandate."

10 MS. SHELTON: That's a legislatively determined  
11 mandate.

12 MR. PETERSEN: Yes, and they will give us an  
13 RRM to go.

14 MS. PATTON: There you go.

15 CHAIR SHEEHAN: But your comments and concerns  
16 about the process are on the record.

17 MEMBER BRYANT: I'd like to add that I'm really  
18 glad that staff got this done and we're meeting our  
19 statutory obligation to get it done by the end of the  
20 month.

21 CHAIR SHEEHAN: With no time to spare.

22 MEMBER BRYANT: If we talk too long, it might  
23 be tomorrow.

24 MR. DAY: Excuse me, but before I leave the  
25 chair, on behalf of the back row, anything you can do to

1 speak up would be much appreciated.

2 CHAIR SHEEHAN: Yes, yes. And we'll remember  
3 that.

4 With our room change, we don't have quite the  
5 same --

6 MR. DAY: Sure.

7 CHAIR SHEEHAN: -- public address system as in  
8 the Capitol.

9 MR. PETERSEN: Do we need a vote or --

10 CHAIR SHEEHAN: Well, that's a question.

11 MS. HIGASHI: We do need a vote.

12 CHAIR SHEEHAN: Do I have a motion to approve  
13 the revised proposed amendments?

14 MEMBER WORTHLEY: So moved.

15 CHAIR SHEEHAN: We have a motion.

16 MEMBER CHIVARO: Second.

17 CHAIR SHEEHAN: And a second.

18 All those in favor, say "aye."

19 *(A chorus of "ayes" was heard.)*

20 CHAIR SHEEHAN: Any opposed?

21 *(No response)*

22 CHAIR SHEEHAN: It was unanimous.

23 MR. PETERSEN: Thank you very much.

24 CHAIR SHEEHAN: You don't need a roll call?

25 MS. HIGASHI: No.



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1           This brings us to Item 8. This is a proposed  
2 statewide cost estimate for the *Enrollment Fee Collection*  
3 *and Waivers* program.

4           And I'm presenting this item.

5           CHAIR SHEEHAN: Do we have witnesses who want  
6 to come forward on this?

7           MS. HIGASHI: Is anyone here from the  
8 Chancellor's office?

9           CHAIR SHEEHAN: All witnesses come forward.  
10 If someone is here from the Chancellor's office, please  
11 come forward.

12          Great. Have a seat.

13          MS. HIGASHI: The Commission on State Mandates  
14 determined that the Enrollment Fee Collection and Waivers  
15 test claim statutes and executive orders imposed a  
16 reimbursable state-mandated program on community  
17 colleges. The Commission adopted the parameters and  
18 guidelines on January 26th, 2006; and eligible claimants  
19 filed initial reimbursement claims with the State  
20 Controller's Office until August 1, 2007.

21          Since August 1, the Commission staff has worked  
22 on putting a statewide cost estimate together for this  
23 program. And we've gone through a couple different  
24 drafts, we've set this matter for hearing a couple of  
25 times, and it has most recently been postponed from the

1 December hearing in order to allow the Chancellor's  
2 office to submit additional documentation to the  
3 Commission.

4 On January 7, the Chancellor's office did  
5 submit the additional revenue data on the student fee  
6 collection and waiver program. This information was  
7 compiled by fiscal year, and it was also compiled with  
8 the input from the Department of Finance. And it  
9 consists of spreadsheets detailing all of the  
10 community-college districts in the state, with dollar  
11 amounts in type that is very tiny, and fiscal years to  
12 show you how much revenue can be attributed to this  
13 program.

14 The Commission staff forwarded the new  
15 information to the State Controller's Office to review  
16 the actual reimbursement claims filed to determine what  
17 actual offsets were taken.

18 The Commission staff received the results of  
19 this review on January 17th.

20 We then reviewed the information from the  
21 Controller's office and the Chancellor's office and came  
22 up with a revised proposed statewide cost estimate. What  
23 we did was, we compared the data with who were the actual  
24 claimants and deleted the amounts for the school  
25 districts that did not file reimbursement claims for the

1 statewide cost estimate.

2 And as a result, the Commission staff came up  
3 with an adjustment totaling \$30,887,000 for the amount of  
4 the offset. And it's shown on page 2 of the staff  
5 analysis.

6 Page 3, there's a summary spreadsheet there.  
7 Staff adjusted the total amount claimed by two offsets  
8 identified in the P's & G's and claiming instructions.  
9 One offset was the 2 percent offsetting revenues reported  
10 by the Chancellor's office for enrollment fee  
11 collections, and that difference was \$5,834,838.

12 For the fee-waiver program, the Chancellor's  
13 office provided additional information on two different  
14 offsets. One was described as the BFAP, the Board  
15 Financial Assistance Program, administrative allowance,  
16 and that was .91 times the enrollment fee credit unit for  
17 each student for whom fees are waived.

18 Staff made an adjustment for that offset, and  
19 that amounted to about \$25 million.

20 However, staff did not make an offset  
21 adjustment based on the BFAP 2 percent fund.

22 Now, this fund was identified in the P's & G's  
23 as an offset. What is not clear at this point is whether  
24 it is a mandatory offset or if it's a voluntary offset;  
25 because in information provided by the Chancellor's

1 office, this money is earmarked for going into the  
2 college general fund, and is not specifically identified  
3 as money for the waiver program.

4 And so because of that information that was  
5 provided by the Chancellor's office, staff did not  
6 include that amount as an offset.

7 I'd like to note at this time that the  
8 Department of Finance disagrees with the staff analysis  
9 regarding this third offset. And if the Commission were  
10 to agree with the Department of Finance and if the same  
11 methodology were used, that offset would reduce the  
12 estimate by an additional \$23 million.

13 And I have a green handout for you that I've  
14 provided. It's labeled Item 8.

15 What I've done is -- on the front page, where  
16 it says, Item 8, there is a recap of the staff  
17 recommendation for the statewide cost estimate amounting  
18 to \$162 million, essentially. And then if the Finance  
19 recommendation, as I understand it, would be that the  
20 2 percent offset would also be added in as a mandatory  
21 offset, and that would change the estimate to  
22 139 million.

23 And so I prepared the spreadsheet for you, just  
24 so you would have it for purposes of the discussion.

25 Staff still recommends that the Commission

1 adopt the proposed statewide cost estimate of 162,128,285  
2 for fiscal years 98, '99, through 2007-08.

3 At this time, will the parties and witnesses  
4 please state their names for the record?

5 MR. BONNEL: Tim Bonnel with the California  
6 Community College Chancellor's office.

7 MR. LEE: Jonathan Lee with the Department of  
8 Finance.

9 CHAIR SHEEHAN: Do you want to go ahead,  
10 Finance?

11 MR. LEE: As Paula stated, we do disagree with  
12 the exclusion of the BFAP 2 percent fund in calculating  
13 the offset in revenue.

14 We base this contention on looking at the  
15 language of Education Code section 76300, which is  
16 actually referred to in this test claim.

17 If you look to (m)(1) and (2), those are the  
18 specific sections which refer to the 2 percent and the  
19 91-cent credit.

20 (m)(1) expressly states the intent of the  
21 Legislature in regards to this funding, in which it  
22 states that, "It is the intent of the Legislature that  
23 sufficient funds be provided to support the provision of  
24 a fee waiver for every student who demonstrates  
25 eligibility pursuant to subdivisions (g) and (j),

1 inclusive.

2 It must be noted that in (2), there is no  
3 express statement which exempts the revenue from the  
4 91-cent or the 2 percent from this statement. So looking  
5 at this intent of the Legislature, it seems to be clear  
6 what that money was designed for. And this implies some  
7 type of priority for this money for this purpose.

8 CHAIR SHEEHAN: Okay.

9 MR. BONNEL: Historically -- and we do not have  
10 any regulatory or code citation for how this money has  
11 been implemented in the system -- it has been  
12 unrestricted funds that have been provided to colleges.  
13 And subregulatory guidances has provided information to  
14 colleges when requested that it is effectively  
15 unrestricted categorical funding, meaning, they can spend  
16 it anywhere else.

17 The other programs that we fund --  
18 specifically, the 91 cents -- is specifically for the  
19 administration of financial aid, determination of  
20 fee-waiver eligibility.

21 The 2 percent funding was intended to back-fill  
22 that amount that a college would retain on any fees  
23 collected, had they collected those fees.

24 Historically, back in '84, when fees were  
25 implemented in the community-college system, the bill

1 that implemented it -- and I think it was AB 1XX at the  
2 time -- provided that colleges only had to report  
3 98 percent of the funding that they actually collected to  
4 be offset against apportionment. The other 2 percent  
5 went unreported, and effectively would be used for  
6 whatever purposes that they chose to use it for.

7 And in many cases, it was used to do residency  
8 determination, it was used to underwrite the cost of  
9 actually collecting fees or making determinations, for  
10 example, of students if they were out of state, that they  
11 would be charged out-of-state fees and that type of  
12 thing.

13 So the 2 percent that we got through the  
14 funding formula -- or through the budget to backfill the  
15 2 percent on fees that were waived has always been  
16 provided to them unrestricted, and typically isn't used  
17 in financial aid offices at our college campuses, but  
18 often either underwrites general fund expenses on the  
19 campus or would be dedicated to commissions offices for  
20 underwriting admissions costs and for collection of fees  
21 and that type of thing.

22 CHAIR SHEEHAN: Okay.

23 MR. BONNEL: And we don't see it as an offset  
24 to the claims that have been made under this, so --

25 MR. LEE: I do have a copy of the ECS code, if

1 that's something you would like.

2 CHAIR SHEEHAN: That would be great.

3 MR. LEE: And it's on page 2 and 3, Item 1 and  
4 Item 2.

5 CHAIR SHEEHAN: (m)(1) is what you're saying;  
6 right?

7 MR. LEE: Right.

8 CHAIR SHEEHAN: On page 2?

9 MR. LEE: And that's where I put it.

10 MS. HIGASHI: And I also recommend you read  
11 (2).

12 CHAIR SHEEHAN: (2), right below that, you  
13 mean?

14 MS. HIGASHI: Yes.

15 CHAIR SHEEHAN: Questions?

16 Staff, did you have any response to the  
17 testimony?

18 MS. SHELTON: Just looking at subdivision  
19 (m)(2), you can see that the 2 percent fees waived  
20 doesn't have a restriction. You have a period there.

21 It says, you know, from funds allocated -- or  
22 "Provided in the Annual Budget Act, the Board of Governor  
23 shall allocate to community-college districts an amount  
24 equal to 2 percent of the fees waived," period.

25 And then, "From funds provided in the Annual



1 Budget Act, the Board of Governor shall allocate to the  
2 community college districts the 91-cent credit per unit  
3 waived pursuant to subdivisions (g) and (j) inclusive,  
4 for determination of financial need and delivery of  
5 student's financial aid services."

6 So there's a restriction on the 91 cents.

7 The Chancellor's office has issued a manual  
8 which is issued to all community-college districts  
9 interpreting this language.

10 If this were to go to court, the Chancellor's  
11 office is the agency that's responsible for implementing  
12 the program, and their interpretation of the statute is  
13 entitled to great weight. Therefore, we did not include  
14 that 2 percent based on the manual interpretation that it  
15 could go to the general fund.

16 CHAIR SHEEHAN: Paula?

17 MS. HIGASHI: And it's on the bottom of the  
18 page 11 of the staff analysis, where there's a quotation  
19 from the manual --

20 CHAIR SHEEHAN: You've got to speak louder.  
21 People in the back can't here you.

22 MS. HIGASHI: I'm sorry. On page 11 of the  
23 staff analysis, at the bottom of the page, the last  
24 paragraph there refers to the comments from the  
25 Chancellor's office regarding how that 2 percent may be

1 used by districts.

2 MS. SHELTON: To the extent community-college  
3 districts do use any of that 2 percent for this program,  
4 they would be required under the parameters and  
5 guidelines to identify that and deduct it from the claim.

6 CHAIR SHEEHAN: And do you believe some of  
7 them do use it for that?

8 MR. BONNEL: There may be some that choose to  
9 use that general-fund support that is provided through  
10 2 percent in their financial aid operating budgets as  
11 general-fund support. But for the most part, it's  
12 unrestricted, it's usually designated as general fund or  
13 designated specifically into other budgets as  
14 unrestricted categorical funding. Most frequently  
15 admissions. A very small percentage, if any, do spend it  
16 in financial aid.

17 CHAIR SHEEHAN: Okay, questions from the --

18 MEMBER WORTHLEY: I was going to move the staff  
19 recommendation.

20 MEMBER CHIVARO: I'll second.

21 CHAIR SHEEHAN: Any further discussion on this?

22 Ms. Bryant, do you have any questions?

23 MEMBER BRYANT: No.

24 CHAIR SHEEHAN: So the motion is to approve the  
25 staff recommendation.

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1 All those in favor, say "aye."

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

3 CHAIR SHEEHAN: Any opposed?

4 (*No response*)

5 CHAIR SHEEHAN: The staff recommendation is  
6 adopted.

7 Thanks.

8 MS. HIGASHI: This brings us to Item 9, Chief  
9 Legal Counsel's report.

10 MS. SHELTON: As you can see from the report,  
11 we do have a hearing before the Sacramento County  
12 Superior Court on February 29th on the Integrated Waste  
13 Management Board case.

14 I do have another hearing to report. We did  
15 just get notice of a hearing in San Diego Unified School  
16 District versus the Commission on State Mandates on  
17 Emergency Procedures Act. That's a P's & G's amendment  
18 challenge in San Diego County Superior Court on  
19 April 3rd.

20 MR. BURDICK: Could you repeat that date? We  
21 couldn't hear you.

22 MS. SHELTON: April 3rd.

23 MR. BURDICK: And the February 29th, what case  
24 was that?

25 MS. SHELTON: Integrated Waste Management.

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1 MR. PETERSEN: April 3rd is in San Diego.

2 CHAIR SHEEHAN: Right, the San Diego case.  
3 Anything else, Camille?

4 MS. SHELTON: That's it.

5 CHAIR SHEEHAN: Paula, have you got anything to  
6 report?

7 MS. HIGASHI: The first thing I would like to  
8 do is introduce a new member of our staff, Sonny Leong.

9 Would you please stand?

10 Sonny just recently joined our staff as an  
11 analyst, and he is in the midst of training. And he  
12 started right before the hearing, so you can imagine his  
13 training has been very sporadic. But he is here today.

14 CHAIR SHEEHAN: Welcome.

15 MS. HIGASHI: And he's getting a general sense  
16 of what we do.

17 CHAIR SHEEHAN: Welcome.

18 MS. HIGASHI: Thank you, Sonny.

19 We have an update on pending workload.

20 And as everyone knows, the state budget is out,  
21 and there are hearings that are starting.

22 We've already been to one informational hearing  
23 in the Assembly on our budget. And no votes have been  
24 taken yet.

25 The Senate has not yet --

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1 CHAIR SHEEHAN: So they have not acted on it?

2 MS. HIGASHI: No. They just had an  
3 informational hearing last week.

4 CHAIR SHEEHAN: Okay.

5 MS. HIGASHI: And we are proposed for a  
6 reduction. I think all state agencies are proposed for  
7 reductions. So we're not being treated any differently.

8 CHAIR SHEEHAN: Okay.

9 MS. SHELTON: There's just a brief overview on  
10 the other issues in terms of funding for mandates.

11 As all of you know from experience, this  
12 usually isn't finalized until after the May revision. So  
13 whatever is in the budget as initially proposed, is  
14 usually kind of place-holder information. But once the  
15 State Controller's report is issued, then those amounts  
16 will be finalized.

17 We have a rulemaking calendar for 2008 that  
18 I would like a vote taken on. It is in here.

19 What we have done is noticed kind of a general  
20 rulemaking, just to notify OAL that by the end of the  
21 year we will want to initiate some kind of cleanup  
22 process. We're thinking that as we do AB 1220 to  
23 implementation and we discover any bugs, that by the end  
24 of the year, we'll probably figure out what we need to  
25 fix. And so I would just ask for your approval of that

1 for submittal to OAL.

2 CHAIR SHEEHAN: Okay, so we need a motion on  
3 the 2008 rulemaking calendar.

4 MS. HIGASHI: Correct.

5 MEMBER LUJANO: So moved.

6 MEMBER CHIVARO: Second.

7 CHAIR SHEEHAN: We have a motion and a second  
8 to approve the proposed rulemaking calendar.

9 All those in favor, say "aye."

10 *(A chorus of "ayes" was heard.)*

11 CHAIR SHEEHAN: Any opposed?

12 *(No response)*

13 CHAIR SHEEHAN: The motion carries.

14 MS. HIGASHI: Thank you very much.

15 CHAIR SHEEHAN: All right.

16 MS. HIGASHI: And then our hearing calendar.

17 We've had some discussion with various members about what  
18 dates are best for meetings. And what always happens for  
19 us during a budget year that is as difficult as this  
20 year, is that Mondays through Thursdays tend to be very,  
21 very busy in terms of having to go to meetings and  
22 hearings in the Capitol just at a moment's notice,  
23 almost. So what we're proposing is to consider changing  
24 the hearing dates to Fridays. And there's a proposed  
25 calendar here.

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1           So far, the only objection that had registered  
2           for me was that for the May hearing, we had had one  
3           member say that that Friday would not work. But a  
4           preference was for it to be May 29th, the original  
5           Thursday date.

6           And I just wanted to find out if any of the  
7           other Commission members had any preferences or  
8           objections to any of the other dates that are proposed  
9           here?

10          CHAIR SHEEHAN: I don't.

11          I don't know if you've checked with my office  
12          on dates, whether this has been provided to them.

13          MS. HIGASHI: They're all good, so far.

14          CHAIR SHEEHAN: So other comments from members?

15          *(No response)*

16          CHAIR SHEEHAN: So the idea in May would be to  
17          leave it the 29th?

18          MS. HIGASHI: Yes. But for the March hearing,  
19          to go to the 28<sup>th</sup>, then go to May 29<sup>th</sup>. Then if we need a  
20          June hearing, it would be June 27<sup>th</sup>. And then the  
21          July hearing would not be in July, it would end up moving  
22          to August.

23          CHAIR SHEEHAN: August 1st? Okay.

24          MS. HIGASHI: And then September.  
25          September 26th. And then the October tentative date

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1 would be a Halloween hearing.

2 CHAIR SHEEHAN: There you go.

3 MEMBER BRYANT: We'll be in costumes.

4 MS. HIGASHI: And also, we've noted that  
5 there's a CSAC meeting, I believe, on the December dates.

6 CHAIR SHEEHAN: On the 5th of December -- both  
7 the 4th and the 5th?

8 MS. HIGASHI: That's what we had heard.

9 MEMBER WORTHLEY: I don't have my calendar. I  
10 don't know if that's possible.

11 MS. HIGASHI: Alan, do you know?

12 MR. BURDICK: I was trying to remember -- and I  
13 apologize, I didn't bring my calendar with me, but I  
14 think you're right.

15 MS. HIGASHI: So we wanted to note that if that  
16 is the case, we would not select those dates.

17 CHAIR SHEEHAN: Okay.

18 MS. HIGASHI: We would try to come up with  
19 alternate dates.

20 CHAIR SHEEHAN: For December?

21 MS. HIGASHI: Or maybe not even have a  
22 December hearing. We'll figure it out as we get closer.

23 CHAIR SHEEHAN: As we get closer, and see what  
24 the workload is? Okay.

25 So do we want to put in for December "to be



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1 determined," so that people know those dates are not --  
2 we are not even working with those dates? Because I hate  
3 to put it on the agenda, on our calendar, and people are  
4 still planning on that.

5 MS. HIGASHI: Why don't we put "TBD"?

6 CHAIR SHEEHAN: Yes, because it sounds like we  
7 know now, it for sure will not be those dates. So I  
8 don't want somebody out there to think it's going to  
9 be -- okay.

10 MS. HIGASHI: Okay.

11 CHAIR SHEEHAN: Do you need us to --

12 MS. HIGASHI: Yes, I do need a vote on this.

13 And the amendment is that the May hearing would  
14 stay on May 29th, and all of the other dates would move  
15 to Friday.

16 MEMBER WORTHLEY: So moved.

17 MEMBER BRYANT: So moved.

18 CHAIR SHEEHAN: Pardon?

19 MEMBER BRYANT: We're both moving it.

20 CHAIR SHEEHAN: Oh, both of you?

21 Okay, so we have a motion and a second -- we  
22 have two motions, but we'll count those -- to adopt the  
23 proposed hearing calendar for the calendar year 2008 with  
24 the changes that Paula had announced.

25 All right, questions, comments from the

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1 audience?

2 MR. PETERSEN: Could you specifically announce  
3 each month again?

4 CHAIR SHEEHAN: Sure. March 28th, May 29th,  
5 June 27th, August 1st, September 26th, October 31st, and  
6 December is to be determined.

7 MR. PETERSEN: Thank you.

8 CHAIR SHEEHAN: Got it.

9 MR. PALKOWITZ: Is that the same time?

10 CHAIR SHEEHAN: Same time in the morning, 9:30?

11 MS. HIGASHI: Yes.

12 CHAIR SHEEHAN: Unless you'd like to do 4:00 on  
13 a Friday afternoon.

14 I was thinking Friday morning is good.

15 Okay, so we have a motion and a second to adopt  
16 the proposed hearing calendar.

17 All those in favor, say "aye."

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

19 CHAIR SHEEHAN: Any opposed?

20 (No response)

21 CHAIR SHEEHAN: That is done.

22 MS. HIGASHI: Thank you very much.

23 CHAIR SHEEHAN: So we'll post that on our Web  
24 site so people will know well in advance.

25 MS. HIGASHI: Yes.

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1           And there was one other related issue. A  
2 couple of members noted that if it is Friday, do we want  
3 to have a different dress code for hearings? And I just  
4 wanted to raise that. It's up to the members, certainly,  
5 to decide if there's any dress code.

6           MEMBER WORTHLEY: Other than October 31st?

7           MEMBER BRYANT: Yes.

8           CHAIR SHEEHAN: That's fine. Certainly around  
9 the Capitol, Fridays are usually a little more casual.  
10 I'm not sure I would do shorts and flip-flops, but --  
11 business casual, I guess is the -- in August, you could  
12 try that.

13           So, yes, I think that's fine.

14           MS. HIGASHI: Okay. The tentative agendas,  
15 obviously the March hearing is now moved.

16           We have a list of proposed agenda items  
17 identified. We are still working on these items, so we  
18 expect to have some changes of what actually ends up on  
19 the calendar. We will advise you as soon as it's set.  
20 We will know by next week.

21           MR. PALKOWITZ: Excuse me, you said May 29th?

22           MS. SHELTON: Yes. That's a Thursday.

23           MEMBER WORTHLEY: That one doesn't change.

24           MS. HIGASHI: It does not change.

25           CHAIR SHEEHAN: The May does not change.

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1 CHAIR SHEEHAN: Okay, anything else?

2 MS. HIGASHI: No, that's it.

3 Are there any questions?

4 CHAIR SHEEHAN: Any questions for Paula, from  
5 other members or the public?

6 MEMBER WORTHLEY: Am I safe in assuming that  
7 will assure us of a greater likelihood of meeting in the  
8 Capitol as opposed to --

9 MS. HIGASHI: Yes.

10 CHAIR SHEEHAN: It definitely will help.

11 MS. HIGASHI: We were not sure why we were  
12 canceled. There were not hearings scheduled on the day  
13 they canceled us. But meetings are set up so suddenly,  
14 that it may be that they just wanted to have all the  
15 rooms free. But when it happens, it's very sudden.

16 CHAIR SHEEHAN: Okay, thank you for that.

17 Are there any comments from the members of the  
18 public on items not on the agenda today?

19 *(No response)*

20 CHAIR SHEEHAN: No?

21 Then we are going to recess into closed  
22 session.

23 I guess, once again, I have to read this.

24 The Commission will meet in disclosed executive  
25 session pursuant to Government Code section 11126,

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1 subdivision (e), to confer with and receive advice from  
2 legal counsel for consideration and action, as necessary  
3 and appropriate, upon the pending litigation listed on  
4 the published notice and agenda, and to confer with and  
5 receive advice from legal counsel regarding potential  
6 litigation, and pursuant to Government Code section  
7 11126, subdivision (a), and 17526, the Commission will  
8 also confer on personnel matters listed in the published  
9 notice and agenda.

10 We will reconvene in open session at this same  
11 location in approximately ten, 15 minutes, maybe?

12 MS. SHELTON: *(Nodding head.)*

13 MS. HIGASHI: However long it takes.

14 MS. SHELTON: However long it takes you.

15 CHAIR SHEEHAN: We'll reconvene when we're  
16 ready to reconvene. How about that?

17 *(The Commission met in closed executive*  
18 *session from 10:49 a.m. to 11:14 a.m.)*

19 CHAIR SHEEHAN: The Commission is now back on  
20 the public record.

21 We met in closed executive session pursuant to  
22 Government Code section 11126, subdivision (e), to confer  
23 with and receive advice from legal counsel for  
24 consideration and action, as necessary and appropriate,  
25 upon the pending litigation listed on the public notice

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

6 And we are now back in public session.

7 In closed session -- is it just Camille that we  
8 need to do?

9 MS. PATTON: Yes.

10 MS. HIGASHI: One item on 11.

11 CHAIR SHEEHAN: Okay, Item 11 is the Chief  
12 Legal Counsel's position. It's establishes a CEA 4  
13 level. And that policy sets the maximum rate for the CEA  
14 and the incumbent and the duties in that classification;  
15 and that we discussed adjusting the salary of our chief  
16 counsel up to the maximum of 10 percent for the fiscal  
17 year -- or for the year beginning December 1st, 2007.  
18 And that was the discussion.

19 I believe we have a motion?

20 MEMBER CHIVARO: Yes, I move to adjust the  
21 Chief Legal Counsel's salary by 10 percent effective  
22 12/1/07.

23 CHAIR SHEEHAN: Okay, is there a second?

24 MEMBER BRYANT: I'll second it.

25 MEMBER LUJANO: Second.

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1 CHAIR SHEEHAN: Okay, we have a motion and a  
2 second to adjust the salary for the chief counsel  
3 effective December 1st, 2007.

4 All those in favor, say "aye."

5 *(A chorus of "ayes" was heard.)*

6 CHAIR SHEEHAN: Any opposed?

7 *(No response)*

8 CHAIR SHEEHAN: The motion carries.

9 I believe that concludes our agenda for  
10 January 31st.

11 We are adjourned.

12 MS. HIGASHI: Thank you.

13 MS. SHELTON: Thank you.

14 *(The meeting concluded at 11:16 a.m.)*

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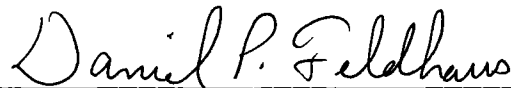
**REPORTER'S CERTIFICATE**

I hereby certify that the foregoing proceedings were duly reported by me at the time and place herein specified;

That the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

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

In witness whereof, I have hereunto set my hand on 21<sup>st</sup> day of February 2008.



---

Daniel P. Feldhaus  
California CSR #6949  
Registered Diplomate Reporter  
Certified Realtime Reporter