

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

May 25, 2006

Present: Member Anne Sheehan, Chairperson
Representative of the Director of the Department of Finance
Member Nicholas Smith, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Terry Roberts
Representative of the Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member
Member Sarah Olsen
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:33 a.m.

APPROVAL OF MINUTES

Item 1 March 29, 2006

Upon motion by Member Smith and second by Member Glaab, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

There were no items on the consent calendar.

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

Item 3 Staff Report (if necessary)

No appeals were filed.

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing of the test claim agenda items.

RECONSIDERATION OF PRIOR STATEMENT OF DECISION, AS DIRECTED BY THE LEGISLATURE IN STATUTES 2005, CHAPTER 72 (AB 138) (action)

Item 4 *Mandate Reimbursement Process*, 05-RL-4204-02 (CSM 4204 & 4485)
Statutes 1975, Chapter 486 (AB 1375)
Statutes 1984, Chapter 1459 (SB 2337)

Eric Feller, Senior Commission Counsel, presented this item. He stated that the test claim was a reconsideration ordered by the Legislature in last year's Assembly Bill 138. Staff made the following findings:

- Statutes 1975, chapter 486 is not subject to article XIII B, section 6 because it was repealed in 1986.
- Statutes 1984, chapter 1459, which is the Commission's statutory scheme, does not constitute "costs mandated by the state" because it falls within the exception of Government Code section 17556, subdivision (f), which prohibits finding "costs mandated by the state" if the statute "imposes duties that are necessary to implement reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election." Staff found that Statutes 1986, chapter 879 falls within the prohibition of finding costs mandated by the state because it was enacted to implement Proposition 4.

Mr. Feller noted that the County of Los Angeles, City of Newport Beach, and the Grant Joint Union High School District disagreed with staff's findings.

Staff recommended that the Commission adopt the staff analysis, which denies reimbursement on the test claim effective July 1, 2006.

Parties were represented as follows: Abe Hajela, with School Innovations and Advocacy; Julianna Gmur, representing the City of Newport Beach; Leonard Kaye and Dan Wall, on behalf of the County of Los Angeles; Allan Burdick, on behalf of the California State Association of Counties, SB 90 Service; David Scribner, representing the Grant Joint Union High School District; and Susan Geanacou, with the Department of Finance.

Mr. Hajela urged the Commission to postpone its vote and raised the following three arguments:

1. The Education Budget Subcommittee is taking action to repeal sections 7 and 17 of Assembly Bill 138 that directed reconsideration of this matter. There will be conference committee action and the issue will not be decided until the budget is adopted.
2. The June 30th deadline for the Commission to reconsider its decision for the *Mandate Reimbursement Process* program is not a substantive deadline. There are no legal or practical ramifications if the Commission postpones the item.

Member Smith agreed with Mr. Hajela's comments and moved to defer the item to a later time. Chairperson Sheehan acknowledged that the Legislature was discussing the issue, but stated that there was definite disagreement. Noting that the item was already postponed once, she opposed the motion to defer and wanted to continue hearing testimony from other individuals.

3. There are serious concerns about the constitutionality of section 7 of Assembly Bill 138 because it broadly expands the exemption for non-reimbursable mandates. Mr. Hajela urged the Commission to have a full staff analysis on the issue before moving forward.

Camille Shelton, Chief Legal Counsel, stated that statutes are presumed constitutional. She explained that article III, section 3.5 of the Constitution prohibits any administrative agency, including the Commission, from determining that a statute is unconstitutional. Thus, she said the Commission could not engage in the kind of analysis suggested by Mr. Hajela.

Mr. Burdick supported the motion to continue the item because he believed that the matter had not been given the opportunity to be heard before with free and open legislative discussion.

Ms. Gmur disagreed with how the staff analysis looked to Government Code section 17556, subdivision (f), to conclude that there was no mandate. She asked whether the application of subdivision (f) was going to create a fundamentally fair or just result. Ms. Gmur pointed to the court's ruling in the *City of Merced*, in which the court cautioned the Commission to look whether the result was consistent with what the voters or the Legislature intended.

In this case, Ms. Gmur contended that with Proposition 4, the voters intended to create a flow of monies back to local agencies to ensure that programs are funded and that services continue. She argued that the application of subdivision (f) thwarts the voters' intent.

Regarding the application of Government Code section 17556, subdivision (f), Mr. Kaye asserted that all mandates would become non-reimbursable and he believed that the constitutional provision providing a remedy would be written out of the law. He believed that, as an alternative, safeguards could be built into the process to correct any deficiencies. He contended that denial of this test claim would hurt large counties, such as Los Angeles County, as they would have to divert certain service money to program administration. Mr. Kaye urged the Commission to defer this item.

Mr. Burdick commented that over time, the reimbursement process had become extremely more complicated, time-consuming, and costly for everyone involved at the state and local level. He noted that when a local entity files a test claim to begin the reimbursement process, costs are only reimbursed if the party is successful.

Mr. Scribner supported all the comments that had been made. He urged the Commission to look at the potential of the burden that would be imposed upon local government if it took action now, given that there were positive signs in the Legislature. He agreed that there was disagreement in the Legislature, but he noted that the June 30 deadline was a soft deadline. He asserted that Commission action today would only result in an increase in costs if the Legislature overturned sections 7 and 17. He urged the Commission to postpone this item to get direction from the Legislature.

Mr. Scribner argued his points, referencing the *Eastview Optional Attendance Area* claim. He stressed that he was not trying to limit the Legislature's authority. He also stressed that the Commission would not be restricting legislative power if it upheld the *Mandate Reimbursement Process* program. He encouraged the Commission to look back to what the electorate promised local government – no more new programs or higher levels of service without full funding. He asked the Commission to hold the Legislature accountable.

Ms. Geneacou deferred the issue of the postponement requests to the Commission and the staff's advice, but suggested that the Commission look at the law in place at the time the matter was

before them, not at what may be pending. She also commented that the Commission is not an equitable forum. Rather, it is a quasi-judicial forum, in which decisions are based on current law. At the time voters were faced with Proposition 4, there were preexisting provisions in the Revenue and Tax Code that provided for a reimbursement process. Thus, she contended that voters are deemed aware of it at the time they voted. She stated that this flows through to the Commission's analysis of Government Code section 17556, subdivision (f), that the reimbursement process is within the scope of the measure that the voters considered. Moreover, regarding Mr. Scribner's reference to the *Eastview Optional Attendance Area* claim, she noted that the Commission's decision to decline reimbursement was affirmed by the trial court.

Ms. Geanacou supported the staff analysis.

In response to Ms. Geanacou's comments, Mr. Burdick asserted that there was no similarity between the process in place at the time voters were faced with Proposition 4 and the current process, and that previously, the Controller's instructions were not mandatory.

Mr. Scribner argued that in light of the existing statutes in the Revenue and Taxation Code, article XIII B, section 6 of the Constitution only speaks to the state's activities that are necessary to provide a subvention of funds; it says nothing about what locals should do.

Regarding the motion he made, Member Smith stated that Assemblyman Dymally, chair of the Assembly budget Committee on school finance, asked that the Commission defer action on this item until they were able to straighten the matter out. Assemblyman Dymally's concern was that this could fundamentally change the way schools are reimbursed for state-mandated programs. He asked the Commission to address his motion to allow the Legislature the time to debate and discuss the matter and to avoid creating an administrative nightmare.

Chairperson Sheehan stated her wish to give staff the opportunity to respond to the comments.

Member Worthley asked what the impact would be if the Commission were to delay its action. Ms. Shelton responded that there was no penalty imposed for non-compliance with a directory statute, whereas there were penalties for non-compliance with mandatory statutes. She stated that on its face, this statute did not have a penalty imposed; however, it was a question of law as to whether or not the statute was mandatory or directory.

Member Smith asked if there was ever any action against the Commission for failing to hear a test claim in the matter of one year. Ms. Shelton said no.

Mr. Scribner asked whether the reimbursement period would be similar if the item were postponed. Mr. Feller responded that it could change depending on what the Legislature put in another reconsideration statute.

Member Olsen asked what the consequence would be if the Commission acted to adopt the staff recommendation and later the Legislature takes action. Ms. Shelton responded that it would depend on what the subsequent statute stated.

Chairperson Sheehan stated that the Legislature could act on any of the items the Commission decides. Thus, she believed that it was an abrogation of their responsibility as Commission members to postpone a matter because of speculation that the Legislature may or may not act. She agreed with Ms. Geanacou's statement that the Commission was not an equitable forum. She believed that they had an obligation and she was concerned about the precedent that would be set if the Commission postponed an item because of discussion occurring in the Legislature.

Member Smith reiterated that this decision would fundamentally change the mandate reimbursement process. He stated his belief that the consequence of acting was greater than not acting.

Member Worthley seconded Member Smith's motion to defer the item to a subsequent Commission hearing. He stated that he supported the motion due to the concept of judicial economy. If this matter can be resolved in the interim period of time, then the Commission is saving extra trouble. Therefore, he stated that if there was no real consequence to delaying the item, he supported the action.

Member Smith's motion failed 2-4, with Member Glaab, Member Olsen, Member Roberts, and Chairperson Sheehan voting "No." Member Lujano abstained.

Ms. Geanacou asked how the administrative reconsideration of a Commission's decision could figure into this discussion. Ms. Shelton responded that statutes allow any party to request the Commission to reconsider its action within 30 days of adoption of the Statement of Decision. There was further discussion to clarify this procedure.

Ms. Higashi assured the Commission that if it acted today, subsequent action by the Legislature would not create an administrative nightmare. Even though there were no official sanctions, Ms. Higashi noted that the Commission's budget was still in conference and expressed concern about the Commission not acting because a conference committee bill directed the Commission to act before July 1.

Mr. Feller addressed the comments made. Regarding Mr. Scribner's question as to the proper analysis of Government Code section 17556, Mr. Feller stated that there was no further analysis needed because the Legislature declared in Government Code section 17500 that the statutory scheme was enacted to implement Proposition 4, especially article XIII B, section 6. In addition, the courts have said that Government Code section 17556 was expressly enacted to implement article XIII B, section 6. Based on these statements in law, Mr. Feller maintained that the purpose of the statutory scheme was to implement a ballot initiative and there is no reason to question the Legislature. Further, Mr. Feller reiterated Ms. Geanacou's comment about the Commission not being a forum for equity. He maintained that the Commission must follow the law. He also disagreed with the comment that staff's analysis could be applied to any test claim.

Member Smith asked how many times the mandate reimbursement process had been amended since Proposition 4 to determine whether the current process was reasonably within the scope of Proposition 4. There was further discussion about this issue in which the parties continued to disagree.

Ms. Higashi swore in Dan Wall, lobbyist for the County of Los Angeles.

Mr. Wall commented that the previous discussion was invalid because article XIII B, section 6 was reenacted by the Legislature, and thus, the section 6 that existed and was put into the Constitution by the voters no longer existed. He stated it was unfortunate that the motion to defer failed as he thought it was a prudent course of action.

Mr. Feller noted that article XIII B, section 6 was reenacted by the Legislature but again reenacted by the voters in Proposition 1A.

Member Worthley asked if the Commission had the authority to evaluate the necessity of implementation. Ms. Shelton responded that it was a question of law already answered by the Legislature and the courts, and staff was only applying the plain language of the statute.

After further discussion, Member Roberts made a motion to adopt the staff recommendation, which was seconded by Member Glaab.

Member Worthley opposed the motion believing that they had a responsibility to determine whether the process was legal in terms of being reasonably necessary to accomplish the objective. He maintained that there were simpler ways of accomplishing the objective, and that the current way was not necessary. Member Smith agreed.

Member Glaab was sensitive to all the arguments put forth. He acknowledged that the system was broken and that they must work to make it better. However, he did not believe the Commission had the latitude to make the fix.

Member Roberts' motion carried 4-3, with Member Smith, Member Worthley, and Member Lujano voting "No."

- Item 5 Proposed Statement of Decision
Mandate Reimbursement Process, 05-RL-4204-02 (CSM 4204 & 4485)
See Above

Eric Feller, Senior Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision. Staff also recommended that the Commission allow minor changes to be made to the final Statement of Decision, including hearing testimony and vote count.

Member Glaab made a motion to adopt the proposed Statement of Decision, which was seconded by Member Roberts. The motion carried 4-3, with Member Smith, Member Worthley, and Member Lujano voting "No."

HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, § 17551) (action)

- Item 8 *Charter Schools III*, 99-TC-14
Education Code Sections 41365, 47605, Subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, Subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664; Statutes 1996, Chapter 786 (AB 3384), Statutes 1998, Chapter 34 (AB 544), Statutes 1998, Chapter 673 (AB 2417), Statutes 1999, Chapter 162 (SB 434), Statutes 1999, Chapter 736 (SB 267), Statutes 1999, Chapter 78 (AB 1115)
California Department of Education Memo (May 22, 2000)
Western Placer Unified School District and Fenton Avenue Charter School, Claimants

Eric Feller, Senior Commission Counsel, presented this item. He stated that the test claim statutes make various changes to the charter school funding and accountability laws and claimants sought reimbursement for charter school and school district activities. Mr. Feller outlined staff's findings:

- Charter schools are not eligible claimants because: 1) they are voluntarily created; 2) they are not part of the definition of school districts in the Commission's statutory scheme; and 3) Education Code section 47610 states that they are exempt from laws governing school districts, which staff interpreted to include the Commission's governing statutes.
- The Commission does not have jurisdiction over some statutes that were already pled and decided under *Charter Schools II*.
- Education Code sections 47640 through 47647 are federal mandates, and therefore, are not reimbursable.
- Other test claim statutes are not reimbursable because they do not require school districts to perform any new activities, or a higher level of service.
- The following activities are reimbursable: 1) making written findings on denial of a charter school petition; 2) transferring funds in lieu of property taxes to a charter school (except for local education agencies that charge fees under Education Code section 47613); and 3) for school districts or county offices of education that are chartering authorities, including the revenues and expenditures generated by the charter school in the school district's or county office of education's annual statement, as specified for May 22, 2001 through June 30, 2001, only.

Mr. Feller noted that the Department of Finance disagreed that some of the activities are reimbursable, and that the claimant and Assemblyman Mark Wyland opposed staff's finding that charter schools are not eligible claimants. Mr. Feller also noted that at the last hearing, the California Teachers Association supported the staff analysis.

Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: David Scribner, on behalf of the claimants, Western Placer Unified School District and Fenton Avenue Charter School; Eric Premack, with CharterVoice, representing charter schools; and Dan Troy, with the Department of Finance.

Mr. Scribner announced that he had a letter from Assemblyman Bob Huff supporting charter schools' right to reimbursement under the mandates process. He continued to disagree with staff's finding that charter schools are ineligible claimants, arguing that charter schools have been receiving payments ever since the mandates process began. He added that charter schools received claimant identification numbers from the State Controller's Office.

Mr. Scribner believed that the statement in the staff analysis that the Legislature did not mean to include charter schools for mandate reimbursement purposes was false. Rather, he stated that the Legislature failed to properly amend the Government Code to bring it current with its practice of reimbursing charter schools annually for mandated programs.

Mr. Premack contended that charter schools were no more or less voluntary than school districts because the processes for formation and dissolution are very similar for both school districts and charters. He acknowledged that charters are not part of the definition of school districts in the Commission's statutory scheme, but asserted that the Education Code sections governing charter schools were amended last year such that, "for the purposes of determining eligibility for and allocation of state and federal categorical aid, a charter school shall be deemed a school district." Thus, Mr. Premack believed it was clear that charter schools are eligible claimants under the

Government Code. Moreover, he quoted Assemblyman Bob Huff's letter, in which he stated that the changes approved in Assembly Bill 740 demonstrated that charter schools were school districts with regard to mandate claims. Mr. Premack urged the Commission to reject the staff recommendation.

Mr. Troy supported the staff recommendation as to the finding that charter schools are not eligible claimants. He noted that Assembly Bill 740 was silent on the issue of mandates.

Mr. Feller explained that the Education Code deems charter schools as school districts for purposes of Proposition 98, among other things, but never for the purposes of article XIII B, section 6. Thus, until the Legislature indicates its intent in the Education Code or the Government Code to make charters subject to article XIII B, section 6, he maintained that they are not eligible claimants.

Member Smith asked if this was the first time the issue about charter schools' eligibility had been before the Commission. Ms. Shelton responded that it was the first time it was raised in a test claim.

Member Olsen asked for an update as to what happened after the Commission directed staff to send a letter to the Legislative leadership (policy and fiscal) notifying them of the pending test claim analysis. Ms. Higashi stated that the letters were sent, along with follow-up emails, and no replies were received. Chairperson Sheehan noted that Assemblyman Huff and Assemblyman Wyland submitted their letters of opinion on the issues.

Chairperson Sheehan commented that she was sympathetic to the issue from a policy perspective and that the issue was appropriate for the Legislature to decide. However, she believed that the Commission was bound by its governing statutes. She asserted that the Legislature could easily add charter schools as an eligible claimant in statute, but until that was done, the Commission would be overstepping its bounds by presuming something that is not currently in statute.

Mr. Scribner agreed with Chairperson Sheehan's comments but indicated his belief that the Legislature showed its intent to make charter schools eligible claimants by providing them reimbursement.

Member Olsen stated her understanding that charter schools are held to the same standards and requirements as school districts. She asked what requirements are imposed on school districts and not charters. Mr. Premack responded that the Education Code did not apply the employment-related requirements. He added that charters had more flexibility in terms of choosing the curriculum and staffing, as well as state-funded categorical programs.

Mr. Troy commented that charters had far fewer obligations and powers than school districts; they are different entities. He asserted that charters are creatures of their chartering authorities and by choosing to create their petition, they are also buying in to the laws that apply to charter schools.

Mr. Scribner argued that cities, counties, and school districts also evolve voluntarily.

Mr. Premack agreed. Mr. Troy pointed out that when a charter school is formed, it is released of several rules that apply to school districts, and thus, he believed there was an exchange aspect.

Member Worthley asked a question related to the "voluntary" argument with regard to all types of local government entities. Mr. Feller stated that the difference between charter schools and other voluntarily created government entities was that other government entities existed when

Proposition 4 was enacted and were expressly intended to be reimbursed. He also clarified that the California Supreme Court said, in the *Kern* case, that if the underlying programs are voluntary, then the costs incurred from the downstream activities are also incurred voluntarily. He maintained that staff came to its conclusion because there is no express opt-in language in statute for charter schools. There was further discussion about the issue, after which Member Glaab stated his belief that the Commission did not have the ability to make an interpretation. Member Olsen, on the other hand, stated that because of the absence of speech, the Commission did have the latitude to interpret the issue.

Member Smith agreed with Member Olsen and made a motion to reject the staff finding that charter schools are not eligible claimants, which Member Olsen seconded. Member Worthley noted that the Legislature knew how to fix the issue but simply had not done so, and therefore, he did not support the motion. The motion failed 2-5, with Member Worthley, Member Glaab, Member Roberts, Member Lujano, and Chairperson Sheehan voting "No."

Member Worthley made a motion to adopt the staff analysis, which was seconded by Member Glaab. The motion carried 5-2, with Member Smith and Member Olsen voting "No."

Mr. Scribner asked a procedural question to which Ms. Shelton and Ms. Higashi responded.

Item 9 Proposed Statement of Decision
 Charter Schools III, 99-TC-14
 See Above

Item 9 is the proposed Statement of Decision on the *Charter Schools III* test claim.

Member Glaab made a motion to adopt the proposed Statement of Decision, which was seconded by Member Roberts. Eric Feller, Senior Commission Counsel, requested that the motion also allow minor changes to be made to the final Statement of Decision, including hearing testimony and vote count. Chairperson Sheehan incorporated the request as part of the motion.

The motion carried 5-2, with Member Smith and Member Olsen voting "No."

Item 6 *Charter School Collective Bargaining*, 99-TC-05
 Education Code Sections 47605, Subdivision (b)(5)(O) and 47611.5,
 Government Code Section 3540, et seq., Statutes 1999, Chapter 828
 (AB 631)
 Western Placer Unified School District, Claimant

Eric Feller, Senior Commission Counsel, presented this item. He stated that the test claim statutes make charter schools subject to the Educational Employment Relations Act and claimants sought reimbursement for charter school and school district activities. Mr. Feller outlined staff's findings:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the Constitution.
- The test claim statutes do not mandate an activity on county boards of education.

- Subjecting charter schools to the Educational Employment Relations Act is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that school districts incur increased costs mandated by the state to make written findings of fact when denying a charter petition.

Mr. Feller noted that neither the claimant nor any state agency commented on the draft staff analysis. Staff recommended that the Commission adopt the staff analysis to deny the test claim.

Parties were represented as follows: David Scribner, representing the claimant, Western Placer Unified School District; Erick Premack, with CharterVoice; and Susan Geanacou, with the Department of Finance.

Mr. Scribner disagreed with the staff analysis as to the issues of voluntariness and legislative intent. He incorporated by reference his comments under the *Charter Schools III* testimony.

Mr. Premack asserted that this was the single largest mandate within the K-12 sector and urged that the item be deferred until the Legislature decided the issue.

Ms. Geanacou supported the staff analysis. She added that the Department of Finance did not believe that a school district had standing to raise charter school activities.

Member Glaab asked what the implications would be of deferring the item. Ms. Shelton responded that it was within the Commission's discretion to postpone the item. She cautioned that there was legislation that affected almost every program that staff analyzes, and thus, the practice of deferring items would delay everything continually.

Mr. Scribner explained that the reason why a charter school was not originally included as a claimant was because the Commission just recently required a specific entity to be represented on a test claim for each individual type of body. He stated that he could get a charter school claimant if the item were postponed.

Ms. Shelton responded that a claim could not be amended after a hearing is set. She also maintained that school districts are not aligned with charter schools, and thus, it would be inappropriate for a school district to stand in the shoes of a charter when the interests are very different.

Mr. Scribner disagreed, arguing that the amendment would be a procedural addition of a charter school and that the staff analysis would not change. Ms. Shelton maintained that the amendment was substantive because there was no evidence in the record to show that charters incurred increased costs.

Ms. Higashi clarified that there was a period of time in the process where the claimant could request a postponement or amend a claim, but there were no previous indications from the claimant that this was the intent.

Allan Burdick, on behalf of the California State Association of Counties, requested clarification about test claim filings such that when a city files a test claim, it would be sufficient to cover the interests of cities, counties, and special districts as well. Ms. Shelton affirmed, explaining that the Government Code's definition of a "local agency" included all those bodies.

Chairperson Sheehan indicated that most of the Commission members were sympathetic to the issue before the Legislature. However, she stated that until the threshold action is taken in the Legislature, the Commission is bound by its governing statutes in terms of eligible claimants.

Member Smith noted that there was no compelling reason to take action at this hearing, and that the Legislature should be given the opportunity to figure it out.

Member Smith made a motion to defer the item to the July meeting. After a couple of technical questions from Member Worthley and Member Lujano, the motion was seconded by Member Olsen. The motion carried unanimously.

- Item 7 Proposed Statement of Decision
 Charter School Collective Bargaining, 99-TC-05
 See Above

Item 7 was postponed.

- Item 10 *Binding Arbitration, 01-TC-07*
 Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3
 1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9
 Statutes 2000, Chapter 906 (SB 402)
 City of Palos Verdes Estates, Claimant

- Item 11 Proposed Statement of Decision
 Binding Arbitration, 01-TC-07
 See Above

Items 10 and 11 were postponed.

STAFF REPORTS

- Item 12 Mandate Reform Update

Nancy Patton, Assistant Executive Director, presented this item. She stated that the week before, Senate Budget Subcommittee #4, in effect, rejected the Commission's request for budget augmentation by electing not to discuss the request for funding. She noted that legislative staff from the Senate and Assembly indicated their intent to initiate their own mandate reform discussions once the budget was adopted this year.

Chairperson Sheehan clarified that there was interest in pursuing mandate reform; however, the Legislature would just rather convene the discussions themselves rather than paying an outside facilitator.

Member Smith was disappointed that the budget subcommittee did not take action to fund the collaborative process. He stated the State Controller's commitment to comprehensive mandate reform and his willingness to work with the Legislature and the Commission to achieve that end.

Allan Burdick, on behalf of the California State Association of Counties, requested clarification regarding timing. Chairperson Sheehan responded that there was no definitive answer as to when it would happen, just that there was definite commitment to have the discussions.

Ms. Higashi noted that there may be technical issues to address.

Item 13 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton reported that on the *Graduation Requirements* lawsuits on the incorrect reduction claims, the parties entered into a stipulation to avoid litigation whereby the Commission would set aside the Statements of Decision and the State Controller's Office would reevaluate the claims. The order was signed by Judge Connolly.

Ms. Shelton also introduced the summer law clerks, Kyle Hampton and Jared Mueller.

Item 14 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported that the July Commission hearing was moved to Friday, July 28, at 10:00 a.m. She also announced that there was a prehearing conference at 2:00 p.m. to develop a reasonable reimbursement methodology for the *Peace Officers Bill of Rights* program.

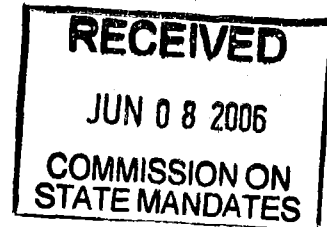
PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

Hearing no further business, Member Sheehan adjourned the meeting at 11:56 a.m.


PAULA HIGASHI
Executive Director



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PUBLIC HEARING

COMMISSION ON STATE MANDATES

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TIME: 9:33 a.m.

DATE: Thursday, May 25, 2006

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ORIGINAL

Reported by: Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate 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
Department of Finance

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

TERRY ROBERTS
Representative for SEAN WALSH
Director
State Office of Planning and Research

NICHOLAS SMITH
Representative for STEVE WESTLY
State Controller

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

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A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

CAMILLE SHELTON
Chief Legal Counsel

ERIC FELLER
Commission Counsel
(Items 4 & 5, 6 & 7, and 8 & 9)

NANCY PATTON
Deputy Executive Director
(Item 12)

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PUBLIC TESTIMONY

Appearing Re Item 4:

For a number of counties and districts:

ABE HAJELA
Chief Counsel
School Innovation and Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670-6112

For the City of Newport Beach:

JULIANA F. GMUR, Esq.
Manager, Cost Services
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing Re Item 4:

For County of Los Angeles:

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

DAN WALL
Lobbyist for County of Los Angeles

For Department of Finance:

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

For California State Association of Counties:

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

For Grant Joint Union High School District:

DAVID E. SCRIBNER, Esq.
President/CEO
Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, California 95834

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing Re Item 6:

For Western Placer Unified School District:

DAVID E. SCRIBNER, Esq.
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For CharterVoice:

ERIC PREMACK
CharterVoice
7750 College Town Drive,
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Appearing Re Item 8:

For Western Placer Unified School District and
Fenton Avenue Charter School:

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For Department of Finance:

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Department of Finance
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A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing Re Item 8: *Continued*

For CharterVoice:

ERIC PREMACK
CharterVoice

For California State Association of Counties:

ALLAN BURDICK
Director
California State Association of Counties
SB 90 Service

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Commission on State Mandates - May 25, 2006

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1 BE IT REMEMBERED that on Thursday, May 25, 2006,
2 commencing at the hour of 9:33 a.m., thereof, at the
3 State Capitol, Room 126, Sacramento, California, before
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
5 following proceedings were held:

6 --oOo--

7 CHAIR SHEEHAN: I would like to call the
8 May 25th meeting of the Commission on State Mandates to
9 order.

10 Could we call the roll?

11 MS. HIGASHI: Mr. Glaab?

12 MEMBER GLAAB: Present.

13 MS. HIGASHI: Mr. Lujano?

14 MEMBER LUJANO: Present.

15 MS. HIGASHI: Ms. Olsen?

16 MEMBER OLSEN: Here.

17 MS. HIGASHI: Ms. Roberts?

18 MEMBER ROBERTS: Here.

19 MS. HIGASHI: Mr. Smith?

20 MEMBER SMITH: Nick Smith representing the State
21 Controller, Steve Westly.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: Ms. Sheehan?

25 CHAIR SHEEHAN: Here.

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1 We have a quorum.

2 Okay, the first item of business?

3 MS. HIGASHI: The first item is approval of
4 the minutes from our last meeting on April 26th.

5 CHAIR SHEEHAN: All right. Are there any
6 changes or additions to the minutes that the members have
7 before we --

8 MEMBER SMITH: Move approval.

9 MEMBER GLAAB: Second.

10 CHAIR SHEEHAN: All right, we have a motion and
11 a second to approve the minutes.

12 All those in favor, say "aye."

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

14 CHAIR SHEEHAN: Any opposed?

15 *(No audible response.)*

16 CHAIR SHEEHAN: The minutes are approved.

17 MS. HIGASHI: There are no items for today's
18 Consent Calendar and there are also no appeals to
19 consider, so we can move on to the hearing portion of our
20 meeting.

21 CHAIR SHEEHAN: Very good.

22 MS. HIGASHI: And as is customary, I would like
23 to ask all of the parties and witnesses for all of the
24 test-claim items on the agenda today -- 4, 5, 6, 7, 8,
25 9 -- to please rise.

1 Do you solemnly swear or affirm that the
2 testimony which you are about to give is true and
3 correct, based upon your personal knowledge, information,
4 or belief?

5 (A chorus of "I dos" was heard.)

6 MS. HIGASHI: Thank you very much.

7 CHAIR SHEEHAN: Great.

8 All right, Eric, are you presenting this item?

9 MR. FELLER: Yes. Good morning.

10 CHAIR SHEEHAN: Good morning.

11 MR. FELLER: Item 4. This is the *Mandate*
12 *Reimbursement Process* test claim that was a
13 reconsideration ordered by the Legislature in last year's
14 AB 138. As indicated in the analysis, staff finds that
15 the statutes 1975, chapter 486, is not subject to
16 Article XIII B, Section 6, because it was repealed in
17 1986.

18 Staff also finds that statutes 1984,
19 chapter 1459, which is the Commission's statutory scheme,
20 does not constitute "costs mandated by the State" because
21 it falls within the exception of Government Code
22 section 17556(f), which prohibits finding "costs mandated
23 by the State," if the statute "imposes duties that are
24 necessary to implement reasonably within the scope of, or
25 expressly included in a ballot measure approved by the

1 voters in a statewide or local election." Since
2 statutes 1986, chapter 879 was enacted to implement
3 Proposition 4, staff finds it falls within the
4 prohibition of finding costs mandated by the State.

5 The County of Los Angeles, City of Newport
6 Beach, and the Grant Joint Union High School District all
7 filed comments that disagree with these findings for
8 various reasons, as indicated in the analysis and the
9 exhibits before you.

10 Staff recommends that the Commission adopt this
11 analysis that denies reimbursement on the test claim
12 effective July 1, 2006.

13 Would the parties and witnesses please come
14 forward and state your names for the record?

15 MR. HAJELA: Abe Hajela, School Innovation and
16 Advocacy, representing a number of counties and
17 districts.

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

20 MS. GMUR: Juliana Gmur on behalf of the City of
21 Newport Beach.

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

23 MR. BURDICK: Allan Burdick on behalf of the
24 California State Association of Counties, SB 90 Service.

25 MR. SCRIBNER: David Scribner, representing

Commission on State Mandates - May 25, 2006

1 Grant Joint Union High School District.

2 CHAIR SHEEHAN: Okay, go ahead.

3 MR. HAJELA: May I be begin? I'll be brief, and
4 I'll scoot out so others can speak.

5 CHAIR SHEEHAN: Sure.

6 MR. HAJELA: I would like to urge the Commission
7 to postpone their vote, and I have three arguments that
8 I'd like to make. But I'd like to start with thanking
9 the administration and Department of Finance. We had a
10 meeting yesterday with folks in the administration that
11 recognized that districts are spending money in a
12 mandate-reimbursement process. It's not just filling out
13 forms; it's the entire test-claim process and all of the
14 activities related to mandate process.

15 So we had a meeting where we explained our
16 concerns. They told us that there's money in the budget
17 right now that would be used for MRP, if it was still in
18 existence. If it's voted down today, they committed to
19 finding a way to get that money out to districts. And so
20 we're very appreciative of that. So there's some
21 \$16 million in this year's budget. If that money goes
22 out through some other way through a categorical program
23 or some other way to get the money out to districts for
24 the work they're doing, that would be much appreciated.

25 The problem with that is, that is extremely

1 complicated and it will be disruptive. And so I want to
2 make an argument here for why perhaps you can hold off on
3 your vote, because we think we're fixing this in the
4 Legislature.

5 So let me raise my three issues.

6 The first is the Education Budget Subcommittee
7 took action a couple nights ago to repeal sections 7
8 and 17 of AB 138. Now, there's an issue with that that
9 some of you may be aware of. There's some staff in the
10 building that are saying, "Well, we're not sure they had
11 the authority to take that action."

12 My response to that is, we've gone back to the
13 members; and if members don't have the jurisdiction to
14 take a vote they've taken, that's settled by members,
15 either in the conference committee or by the rules
16 committee. Staff of the Budget Subcommittee doesn't get
17 to tell the members their vote didn't count. So we
18 believe right now that there is a valid motion to repeal
19 sections 7 and 17 of AB 138.

20 And that issue, to be clear, won't be decided
21 until the budget goes. So the motion is to send it to
22 conference committee. There will be conference committee
23 action on it; and maybe it will be in the budget, maybe
24 it won't. But everybody is expecting a budget quickly
25 this year, perhaps by the middle of June.

1 And so this issue of whether they're going to
2 say, "We didn't mean what we said in AB 138; we want to
3 repeal it," and -- sections 7 and 17 retroactively, that
4 issue will be decided very quickly. And so if you could
5 hold off on your vote until that's decided, it would be
6 very helpful.

7 Now, there's a statutory deadline, which I'm
8 sure folks are going to tell me about, so I want to
9 address that issue.

10 The deadline says you're supposed to vote by,
11 I believe, it was July 1st.

12 CHAIR SHEEHAN: June 30th.

13 MR. HAJELA: June 30th, sorry.

14 There are two types of deadlines. There are
15 procedural deadlines and substantive deadlines.
16 Procedural deadlines are -- I'm most familiar with the
17 ones related to election law -- so budget pamphlet has to
18 come out on this date, things of that sort.

19 Courts have routinely said those are procedural,
20 nobody's substantive rights are at risk here, nobody's --
21 an entity's jurisdiction is not at risk here; the
22 deadlines are meant to be followed by agencies, but there
23 is essentially nothing earth-shattering that happens if
24 you don't meet that deadline.

25 There are other types of deadlines that are

1 substantive that you just can't miss. So statutes of
2 limitations are an example of substantive deadlines,
3 so if you miss a statute of limitations, an entity no
4 longer has jurisdiction over an issue or a person no
5 longer has a right to bring an action.

6 So there are two types of deadlines. This is
7 not a substantive deadline. It doesn't make a whole lot
8 of difference whether this decision is made today or a
9 month from now. And because the Legislature is taking
10 action on this right now, I think it would be very
11 helpful if you held off until July. And I don't see any
12 ramifications, legal or practical, from holding off.

13 CHAIR SHEEHAN: Go ahead, Nick.

14 MEMBER SMITH: In your opinion, what kind of
15 deadline is the requirement that we hear test claims in
16 one year?

17 Don't answer that question.

18 Actually, I just agree with the comments that
19 were made, and I understand there's significant action
20 being taken upstairs on this issue, and would move to
21 defer this item to a later time.

22 CHAIR SHEEHAN: Yes, I have to say, I know of
23 the action upstairs. I've talked to the Assembly Budget
24 chair.

25 MR. HAJELA: Yes.

1 CHAIR SHEEHAN: There is definite disagreement.
2 I don't think with us taking an action today precludes
3 anything from the Legislature to taking action if they'd
4 like to change that.

5 MR. HAJELA: That's correct.

6 CHAIR SHEEHAN: So I would have to say, the
7 Legislature can decide to resolve this. I know there is
8 much disagreement amongst members upstairs.

9 We did postpone this once. We're not meeting
10 again until July, and I would oppose the motion to defer
11 it and would like to continue to hear the testimony from
12 the other individuals.

13 MR. HAJELA: Okay. Can I just bring up my last
14 point?

15 CHAIR SHEEHAN: Absolutely.

16 MR. HAJELA: Which is an issue that has not yet
17 been fully briefed by the staff analysis -- and not that
18 it should have been. But there is another issue that
19 you're probably aware of, of serious concerns about the
20 constitutionality of Section 7 of AB 138, okay. I'm not
21 talking now of 17 that said the Commission ought to
22 reconsider it. But Section 7 is the section that broadly
23 expands the exemption for things that are mandates but
24 are not reimbursable. Existing law was, if it's
25 expressly included in a ballot measure, it's not a

1 reimbursable mandate. Every other mandate is
2 reimbursable.

3 Section 7 says we have broadened that and
4 created a whole new category of things that aren't
5 reimbursable: Anything that is reasonably within the
6 scope of the ballot measure or necessary to implement it.
7 That broad expansion contradicts what's in the
8 Constitution. The Legislature doesn't have the authority
9 to say, "The Constitution says pay local districts for
10 actual costs, except when we say we don't want to pay
11 it." There's no authority to -- and that issue has not
12 been fully briefed. We've been trying to deal with it in
13 the Legislature. We hope to deal with it there. I guess
14 it could be dealt with in the courts. But it seems like
15 an issue that we ought to wrestle with here first,
16 because it's a fundamental issue of whether there is
17 authority to do this or not. And I would argue, you
18 cannot broadly expand what's reimbursable.

19 And I'll give you some examples. It gives the
20 Commission discretion, and it puts a burden on you that

21 I don't think you want to have. Every time a
22 mandate comes before you, you've got to look at all the
23 ballot measures and say, "Is this somehow reasonably
24 related to one of these ballot measures?"

25 Let's say *Preschool* passes in November. You

1 could mandate all sorts of things from the Legislature
2 on school districts about what they do with kids
3 pre-kindergarten.

4 Are those things reasonably within the scope of
5 the preschool initiative or are they all wiped out?

6 I think you're wiping out whole categories of
7 mandates in a way that contradicts the Constitution. So
8 I'd urge you to have a full sort of staff analysis on
9 that issue before you go forward.

10 CHAIR SHEEHAN: Okay. Do you want to respond --
11 do you want to hear from everyone, or do you want to
12 respond now to that issue?

13 MS. SHELTON: Just one point on that issue.

14 CHAIR SHEEHAN: Okay.

15 MS. SHELTON: Statutes are presumed
16 constitutional. And by Article III, section 3.5 of the
17 Constitution, any administrative agency, including the
18 Commission, is prohibited from determining that a statute
19 is unconstitutional. That's for the Court of Appeal to
20 do. So the Commission cannot engage in that kind of an
21 analysis.

22 MR. HAJELA: I wasn't asking you to declare the
23 statute unconstitutional, just to be clear.

24 CHAIR SHEEHAN: All right, what I would like to
25 do is hear the rest of the witnesses. I know Mr. Smith

1 has a motion. And then once we do, we can decide -- the
2 Commission can decide how they want to proceed on acting.
3 But I'd like to hear the rest of the testimony.

4 So who would like to be next?

5 MR. BURDICK: Can I speak to the issue, I think,
6 before we get back to the basic?

7 CHAIR SHEEHAN: Yes.

8 MR. BURDICK: Essentially, I think what is being
9 requested is that the provision in Assembly Bill 138 last
10 year was a budget trailer bill. That language was placed
11 in the trailer bill just before the budget was adopted,
12 along with the rest of the budget. There was no
13 discussion or public comment on that legislation. The
14 legislation just became part of the huge budget package
15 and budget trailer bills.

16 This is the first time when this legislation and
17 discussion has been taking place with a legislature that
18 there has been open discussion on this issue.

19 *(Cell phone sounded.)*

20 MR. BURDICK: That's probably my phone. I got a
21 new phone. I can't figure it out. I thought I had it
22 shut off, but now it's beeping. So maybe I should just
23 set it outside or something. It's very embarrassing, and
24 I apologize to the Commission and the members.

25 CHAIR SHEEHAN: That's all right.

1 MR. BURDICK: And so this is the first time
2 there has been any discussion. There is no question it
3 is a controversial issue.

4 I know that the author of the bill, Assemblyman
5 John Laird, his staff, particularly, and I think he had
6 some personal support for that and may have some concerns
7 about any repeal, obviously, of his bill, and I know some
8 of his staff members. But I don't think there's been a
9 full open discussion on this, and I think this is what is
10 being proposed to take place.

11 So, you know, that is why I would like to
12 support the motion to continue this matter simply because
13 this matter has really not been given the opportunity to
14 be heard before and have free, open, legislative
15 discussion.

16 Thank you very much.

17 CHAIR SHEEHAN: Thank you.

18 Go ahead.

19 MS. GMUR: Yes, all right then. Good morning,
20 Members of the Commission, Madam Chairman. Juliana Gmur
21 on behalf of City of Newport Beach.

22 The staff analysis makes a rather uncomplicated
23 statement. They ask you to look to Government Code
24 section 17556(f). They ask you to apply it; and if you
25 apply it, they ask that you conclude that there is no

1 mandate.

2 But, unfortunately, it's not that simple.
3 Because to look at it as such a simple question is to
4 overlook one basic tenet of adjudication. We look to our
5 courts, we look to our quasi-judicial bodies to dispense
6 justice, to come up with a fundamentally fair resolution
7 to the questions before it. So I ask you, is the
8 application of subdivision (f) going to create a
9 fundamentally fair or just result?

10 This is not a revolutionary concept. In fact,
11 it follows a directive by the Supreme Court in a recent
12 case that cautioned this Commission to look at the result
13 before applying the rule. In that case, the rule was the
14 City of Merced. But there's no change here. We must
15 look to see if the result is what the voters intended or
16 the Legislature intended.

17 So, let's see, what did the voters intend when
18 they put forward Proposition 4 and created SB 90, as we
19 know it today, and does application of subdivision (f)
20 further that voter's intent?

21 The intention, I think we all understand, is to
22 create a flow of monies back to local agencies, to
23 protect the local fisc., to ensure that programs are
24 funded, and that they continue and services are
25 maintained.

1 If we apply subdivision (f) at this time, then
2 the intent of the voters is thwarted.

3 If you look at 17556 and you look at the
4 characterization of the law, it creates exceptions.
5 Fairly logical exemptions. If a court creates a mandate,
6 it's a court-created mandate, not a state mandate. If
7 the voters create the mandate, it's a voter mandate, not
8 a state mandate.

9 But in this case, the voter mandate was actually
10 Proposition 4. It is the constitutional protection of
11 monies. And to say that we're going to look back towards
12 the voters' intent and the Legislature's intent engages
13 in circular reasoning and we get nowhere.

14 You have to take a step back and look at what is
15 fundamentally fair, what creates the just result. And I
16 submit that the just result is created when you support
17 what the voters originally intended, which is
18 reimbursement.

19 And with those comments, I will remain here for
20 questions. But we have a lot of people to speak. And so
21 I think that I would like to pass it on to Mr. Leonard
22 Kaye, Los Angeles County.

23 CHAIR SHEEHAN: Mr. Kaye?

24 MR. KAYE: It's not a good day for electronics.

25 MR. BURDICK: Do you want to borrow my cell

1 phone?

2 MR. KAYE: Okay, thanks. I wasn't really
3 expecting the tremendous excitement of hearing this new
4 information which was just relayed. But I think it ties
5 in with many of my written comments. But I'm going to
6 cut them short in order to allow more time for the
7 Commission to consider what I think is a very
8 interesting, if not dispositive, argument before you for
9 postponing the matter, or in the alternative, of asking,
10 with all due respect, Commission staff to reconsider
11 their reconsideration. Because, to me, it appears
12 almost -- not so much a legal issue, but a policy issue.
13 That you can use this section of the law, 17556(f), to
14 disqualify any state-mandated program. Why pick on
15 *Mandate Reimbursement* program?

16 If you apply it in a logical fashion, nothing
17 becomes reimbursable and the constitutional provision
18 that provides a remedy to us is basically written out
19 of the law. And I think what we sincerely feel is that
20 there may have been abuses in the mandate-reimbursement
21 process, but we believe that you can build in
22 safeguards to that and we believe that any deficiencies
23 can be corrected. But to throw out the baby with the
24 bath water is going to hurt large counties, like
25 Los Angeles County, where we have to divert certain

1 service money, which will now be diverted towards the
2 administration of the program which, as we know, is
3 very thorough. The State Controller's Office has an
4 eight-hundred-and-some-odd-page manual that we must
5 follow. We must provide all kinds of documentation and
6 so forth.

7 And as you know, it's simple mathematics, that
8 if you have a sum certain, and you subtract the amount
9 for services, and then you have to provide a certain
10 amount to claim reimbursement for those services.

11 So we ask you to come up with perhaps an
12 alternative process, but not to grind it to a halt.
13 Because I think for us, as I said, it would be
14 burdensome; but for small counties, small cities, many
15 school districts, it would be absolutely devastating.
16 And so we would implore you to do that.

17 Now, I have a number of other points. But I
18 think that's the main point. And I think that the matter
19 before you this morning is a very heavy one. And I would
20 urge you to vote to defer this, to get more information
21 before you make this very critical decision.

22 Thank you.

23 CHAIR SHEEHAN: Okay.

24 MR. BURDICK: Again, Allan Burdick on behalf of
25 the California State Associations, or "CSAC," SB 90

1 Service.

2 Just a couple of comments I wanted to make.
3 First was, I'd like to go back to the first seven years
4 of the program, prior to the establishment of the
5 Commission on State Mandates. And at that time, we had a
6 complicated system that was out there. And I remember a
7 meeting when then-Controller Ken Cory held out a diagram
8 of the process and said to a group of county officials,
9 "If the State had ever intended to pay you, they wouldn't
10 have created a process like that."

11 Since the establishment of the Commission on
12 State Mandates, we have established in the legislation in
13 1985, we have placed several layers of what I would call
14 of legal and administrative layers on top of that
15 particular process to make it extremely more complicated,
16 time-consuming, and costly for everybody at the state and
17 local level.

18 So I think part of the issue is that under the
19 mandate-reimbursement process, the thing was always,
20 "Well, if you want to continue to complicate it, State, I
21 guess that's your call; but you're paying for it." And
22 so there were efforts that were made to try to restrict
23 some things that -- proposals people wanted to make to
24 even make the process more complicated.

25 The last thing I'd like to comment on are test

1 claims. And just to bring to your attention the fact
2 that when a party files a test claim and goes through the
3 process, costs are only reimbursed if you're successful.

4 So this is a particular case of kind of like
5 getting your court costs back, if you're successful. If
6 you're not successful and local agencies go through this
7 process and have taken their chances, then they're only
8 reimbursed again if they're successful.

9 If they're not successful, and as you know, as
10 there are a number of court cases against you, there were
11 a number of cases that weren't; and obviously you know
12 there were many others that never went to court.

13 So this one issue I wanted to raise and remind
14 you about is the whole test-claim process and the fact
15 that -- you know, that seems like a process that is, if
16 you will, almost to me like common law, if you will, as a
17 non-attorney, in the sense that the prevailing party
18 should be paid.

19 Thank you very much.

20 CHAIR SHEEHAN: Thanks.

21 Go ahead.

22 MR. SCRIBNER: Good morning. David Scribner,
23 representing Grant Joint Union High School District.

24 I'd like to echo and obviously support all the
25 comments that we've heard this morning.

1 I'd also like to echo what Abe said this morning
2 about postponing this item. I think it's important to
3 recognize one thing that's going on here this morning
4 when you look at the people that are here this morning.
5 This is a cost. This is a time involved for us having to
6 come forward before you to argue this issue, hopefully in
7 our favor.

8 If you vote today and it goes against us, and
9 the Legislature comes back and says, "Nope, you're
10 wrong," you come back and we do this again in some other
11 format, a format we obviously don't know what that will
12 be because there are no processes in place in the
13 Government Code or the regulations to actually address
14 the overturning of a reconsideration that you have
15 overturned a test claim. So we're not sure even the
16 process that we'll have to go through months from now if
17 you decide in staff's favor this morning and the
18 Legislature decides in local government school districts'
19 favor months from now, when the budget is finally
20 approved.

21 That's additional costs. We're doing this again
22 over and over. And I would urge you to take a look at
23 the potential of the burden that you are imposing upon
24 local government and school districts by making an action
25 here today, when there are positive signs in the

1 Legislature.

2 And I agree that there is disagreement as to
3 what will happen. It may not be overturned; it may
4 stand. But this is a soft deadline. This is a soft
5 deadline. June 30th, nothing happens. The world doesn't
6 end. The Capitol doesn't get flooded. The only thing
7 that would happen if you pressed this today is an
8 increase in costs, again, if the Legislature moves
9 forward and overturns those sections of the Constitution.

10 And I think that I would like to ask you just to
11 keep that in mind. It's not cheap for us to come up here
12 and do this every single month, and it's obviously not
13 cheap for your agencies, either, to have you come and
14 argue these issues every single month. And if you do it
15 again, you're doubling your costs.

16 We have the ability to get direction from the
17 Legislature on this very, very vital issue for school
18 districts and local government. And I would urge that
19 you would postpone that this morning.

20 Having said that, I can move into my substantive
21 comments, if you have no discussion on your postponement
22 issue, or motion.

23 CHAIR SHEEHAN: Yes, okay.

24 MR. SCRIBNER: Okay, I just would like to start
25 with a simple overview, and then I'll actually go into --

1 really, there's one page that addressed the comments that
2 Grant filed on the MRP. And I will just give you an
3 overview of how we view this issue. Essentially, this
4 issue is just circular reasoning. It's not unlike
5 someone coming to you this morning and asking you, "Why
6 is the sky blue?" And you say, "Well, because it is."

7 The call here is to look at Government Code
8 section 17556(f) and to determine whether or not these
9 activities can be found within the proposition, within
10 the pact, the promise that was made between the
11 electorate in Proposition 4 and local government and
12 school districts. Because let's be clear what
13 Proposition 4 said. It promised local government and
14 school districts: "We will not allow the State to impose
15 new programs or higher levels of service on you without
16 providing money. We promise. Let's pass this, and
17 you'll be protected."

18 Now, instead of going back to the proposition to
19 figure out exactly does this series of sections,
20 statutes, and codes in the Government Code fall within
21 the proposition, staff goes back to the Government Code,
22 17500, what the Legislature says was the intent. But the
23 call was to determine what the proposition did. So they
24 go from the Government Code to the Government Code. They
25 go to self-serving legislative-intent language in the

1 Government Code to answer what the electorate wanted to
2 have happen.

3 We feel that there's an analysis missing, and
4 we're going to walk you through that analysis this
5 morning.

6 I think one other general comment here -- and it
7 appears on -- well, it appears throughout the analysis,
8 actually; but it's really listed on page 12 of the
9 analysis. Staff has said numerous times, not only citing
10 other sections of the code, but also case law, they say
11 that legislative enactments are meant to be given the
12 weight of the Legislature, and it should be in the favor
13 of the Legislature, and we're not here to -- we can't
14 restrict or limit or eliminate portions of what the
15 Legislature has done.

16 And let's make one thing clear this morning:
17 That is not what you would do this morning if you voted
18 down the staff analysis. We are in no way attempting to
19 limit the Legislature's power, authority, or right to
20 enact statutes in response to Proposition 4.

21 If the Legislature wanted to require us to file
22 claims in a dress on Thursdays, I'd be out there buying
23 a dress and filing them on Thursdays. But I'd be
24 submitting that dress cost as reimbursement.

25 They have the right to do whatever they want in

1 the Government Code. They can do that. We're not
2 calling that into question.

3 What we're asking to be done is to hold them
4 accountable for the increased levels of service that this
5 legislation has imposed upon local government and school
6 districts. It's a completely different issue. And I
7 think that this analysis misses that point, because it
8 is stressed over and over in this analysis that the
9 Legislature has the authority to do what it did. We
10 agree. And this body can determine that it overstepped
11 its mandate bounds -- it actually mandated increased
12 levels of service -- without saying that what they did
13 was wrong, without trying to invalidate the Legislature's
14 action.

15 This is a wonderful day because you can have
16 your cake and eat it, too.

17 I think if you could turn to page 13, at the
18 bottom of 13, where the paragraph begins, "Staff
19 disagrees." That's where we're going to start with our
20 disagreement with staff's disagreement. I hope that
21 doesn't cause, like, a double negative and that means we
22 agree. I'm sorry.

23 That paragraph talks about the -- it says that
24 we misinterpret strict construction of the Constitution.
25 And I think that they misunderstood what we were trying

1 to accomplish in our comments.

2 Again, there is a quote there that says, "The
3 rules of constitutional interpretation require strict
4 construction of Section 6 because constitutional
5 limitations and restrictions on legislative powers are
6 not to be extended to include matters not covered by the
7 language used."

8 Exactly.

9 What does the Constitution say? It says, "The
10 State shall provide a subvention of funds."

11 What does the Government Code do? It imposes
12 activities upon the state and local government. It
13 expands on the pact, the promise that was made under
14 Proposition 4. It goes beyond what's in the
15 Constitution. It clearly goes beyond what's in the
16 Constitution.

17 So when we're talking about a strict
18 construction, we're not attempting to limit -- again, we
19 are not attempting to limit what the Legislature can do
20 in the Government Code as it relates to mandates. We
21 are only asking that they be held accountable for those
22 portions that go beyond the original call of the
23 electorate in Proposition 4, that the State must enact,
24 or must do something to make sure that we are reimbursed.
25 It says nothing of what locals should do.

1 And if you turn to page 14, the top of that
2 page, staff points to Proposition 4 and the prior Revenue
3 and Taxation Code. This is an interesting point. It's
4 an interesting point because it supports what we have to
5 say. The prior Revenue and Taxation Code essentially
6 said that if there is a ballot proposition that includes
7 a mandate, it shall not be reimbursed. And that makes
8 perfect sense.

9 So having presumed that the electorate knows
10 this limitation that if Article XIII B, section 6 in any
11 way includes language that local government must do
12 something, then they can't be reimbursed for it, they
13 enacted exactly what we have: A very precise, limited
14 piece of the Constitution that requires the State to act.

15 And I'd like to talk about a test claim -- I
16 don't think anyone on the dais was here while -- other
17 than staff -- was here. And it was the *Eastview Optional*
18 *Attendance Area* test claim. And this really is the
19 mirror image of what we have here this morning. The
20 *Eastview Optional Attendance Area* is essentially an area
21 that is lumped between the L.A. Unified School District,
22 the Palos Verdes Peninsula Unified School District. It's
23 the only one in the state. What it does is it permits
24 parents within that optional attendance area to determine
25 which district they would send their children to every

1 single year. And they can make an annual election.
2 They either go to L.A. Unified or they go to Palos
3 Verdes.

4 For most parents, there was not much of a
5 choice. They were shifting all of their kids over to
6 Palos Verdes.

7 Now, to meet their obligations under the
8 Education Code, Palos Verdes had to actually open up two
9 new schools, or two old schools that they had closed
10 down, or were being used for their mixed purposes, had to
11 make sure that they were meeting the Field Act and ADA
12 and fire and health and safety. They had to staff them
13 up. They had to get textbooks. They had used all of
14 this. And they did it in response to a small statement
15 in the statute that said that the Legislature finds that
16 this is a mandate and shall be reimbursed.

17 Palos Verdes comes before the Commission, and
18 the Commission says, "No, it's not reimbursable."

19 Why? Because that portion of the statute that
20 created the Eastview Optional Attendance Area only
21 imposed activities upon the parents. The only thing it
22 said was that the parents have the right to choose where
23 to send their children. It said absolutely nothing about
24 the downstream activities that Palos Verdes will have to
25 do to actually educate the kids. And the Commission

1 wasn't interested in the clear connections between having
2 the children appear at Palos Verdes' doorstep and the
3 Education Code that's compulsive for certain ages to be
4 educated. They didn't care about that. The Commission
5 at that time and staff said, "It doesn't matter. The
6 statute says what it says. Only parents have activities
7 here. Palos Verdes, you have nothing." And they lost.

8 The mirror image is what you have this morning.
9 You have the Constitution that says the State must
10 provide a subvention of funds. The State.

11 It says nothing of what locals should do. It
12 says nothing of this 800-page manual that we have to
13 filter through every single year, the hours of logging
14 and supporting and documenting claims, fighting audits,
15 filing test claims, following the legislation, going to
16 court, if need be. It says nothing of that.

17 Where did that come from? Did that come from
18 the proposition? That came from the Legislature,
19 clearly.

20 And it's another interesting note that time and
21 time again, this body has essentially not taken into
22 account legislative intent that is in statute.

23 There have been many test claims that have been
24 not approved, even though the claimant is here with a
25 piece of paper, waving, saying, "The Legislature says

1 it's a mandate. The Legislature says it's a mandate. We
2 win." And the Commission says, "No."

3 Why do you say "no"? Because it's your job to
4 say "yes" or "no" based on the law and the facts. No
5 amount of legislative intent can tell you what is a
6 mandate. Your job is to make an independent
7 determination outside of that language. And you do it
8 time and time again.

9 Government Code 17500 is nothing more than
10 legislative intent language, saying, "It is because it
11 is." But your job, your call this morning is to look
12 beyond that, to see, is there a connection between what
13 the electorate wanted under Proposition 4 and what we
14 have today as it relates to the mandate reimbursement
15 process.

16 And you can do that, because you've done it on a
17 regular basis. You did it with Palos Verdes Peninsula
18 Unified School District. This body looked them in the
19 face and said, "We understand you have 1,200 new kids to
20 your district, but legislative intent doesn't mean
21 anything here. I'm sorry." And they had to eat those
22 costs.

23 I would like to go --

24 CHAIR SHEEHAN: A couple other -- because I want
25 to make sure Susan also has time to testify. But go

1 ahead.

2 MR. SCRIBNER: Okay, I just think that this is a
3 vital, vital issue. I'd like to be able to get through
4 my comments this morning. I appreciate the time.

5 And I'm wrapping up, actually.

6 CHAIR SHEEHAN: All right.

7 MR. SCRIBNER: I'm running out of steam -- which
8 is bad. I've got two more items this morning.

9 Yes, you should let me get it all out now, then
10 it will be a lot quicker at the end.

11 Staff does cite to the 17556 exception language
12 in the analysis here that talks about "necessary to
13 implement," "reasonably within" or "expressly stated."
14 But then there's no analysis of those three things. I
15 was expecting to see an analysis of: Is this necessary
16 to implement? Is this reasonably within? Is this
17 expressly within?

18 Now, the last two questions we can answer
19 clearly, no, this was not what the electorate intended,
20 this is not what is clearly in Proposition 4 of the
21 statute -- or of the Constitution. So the question is,
22 is this necessary to implement? And I would say no.

23 Is this necessary? There are a whole range of
24 options. And staff cites the fact that whatever
25 alternatives the Legislature had when enacting the test

1 claim statutes are irrelevant.

2 Really? Really? Can we honestly say that it's
3 irrelevant, when you're looking at a call to ask what's
4 necessary here?

5 The Revenue and Taxation Code was already in
6 place. Was it necessary, years later, to come to this
7 process?

8 Here's an option: Why didn't the Legislature
9 say, "You know what? We're going to fully fund every
10 program that comes out, and there will be no mandates."
11 There's an option. We wouldn't be here today.

12 Fully fund Casey, fully fund STAR, fully fund
13 any mandate before it comes out. That's an option.

14 So it sounds to me like this particular option
15 isn't necessary. It isn't necessary because there was a
16 process in place when they changed it, and they had
17 alternatives when they did what they did. They chose
18 this path. And let's make that clear: Claimants lose
19 every month here because we've been told we have a choice
20 to do something. If you have a choice, it's not a
21 mandate. If you have a choice, you don't get paid.

22 The Legislature chose this path.

23 Staff says it's irrelevant that they made the
24 choice out of any number of choices. I don't agree.
25 What's good for the goose has got to be good for the

1 gander.

2 If we have a choice as to how we implement
3 programs and we can't get paid for it and the Legislature
4 has a choice on what type of program to impose and it
5 results in increased costs or higher level of service
6 outside of the Constitution, the Legislature should pay
7 for it. It made its choice. Hold them accountable to
8 that choice.

9 And briefly, just to wrap up. I think it's
10 important, again, to stress that we're not here to limit
11 the Legislature's authority to do what it did. We don't
12 call that into question. We're in no way restricting
13 legislative power. And you, let's be very clear, will
14 not be restricting legislative power if you uphold the
15 MRP. All you're doing is saying that the Legislature
16 overstepped what the electorate said can be done under
17 the Constitution. A simple decision. No different than
18 when you approved the California High School Exit Exam,
19 saying, "Well, that's a mandate." They imposed a new
20 program of higher level of service. It's the same thing
21 here.

22 Look back to what the electorate said. Look
23 back to what the electorate promised local government and
24 school districts would occur. We promised no more new
25 programs or higher levels of service without fully

1 funding it.

2 And be very clear as well that when you leave
3 this room, if you support staff's analysis, be very clear
4 that you have now thwarted exactly what Proposition 4
5 promised would not happen and what Article XIII B,
6 section 6 says would not happen, that the State would
7 provide a subvention of funds for mandates, because we
8 are mandated to do this.

9 The Legislature says, "We have to do MRP to get
10 our money," despite the fact that the Constitution is
11 silent as to any activities that we should do to receive
12 funds from the State.

13 We just ask you to hold the Legislature
14 accountable this morning.

15 Thank you.

16 CHAIR SHEEHAN: Okay, Susan?

17 MS. GEANACOU: Good morning, Susan Geanacou,
18 Department of Finance.

19 Regarding the requests by the claimant community
20 to postpone this matter to a future session, I don't know
21 that I'm going to take a position on that. I will defer
22 to the wisdom of the Commission and the advice of your
23 staff as to how to proceed. I would just suggest that
24 the Commission members must look at the law in place at
25 the time the matter is before you. And if you vote

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1 today, look to that law, not what may be pending in the
2 Legislature or in any discussions that are not before us
3 at the present time.

4 Another comment I'd like to make is that the
5 Commission is not an equitable forum. It's not to remedy
6 perceived injustices in how money is allocated and so
7 forth. Again, it's a quasi-judicial forum in which you
8 are to look to the law in place at the time that you are
9 being asked to make a decision.

10 Regarding the central issue before you, at the
11 time the voters considered Proposition 4, they are deemed
12 aware of existing law, or law that existed prior to that
13 time, at the time they entered the ballot booth, so to
14 say. And there was preexisting --

15 *(Cell phone sounded.)*

16 MR. BURDICK: Thank you, Nancy.

17 CHAIR SHEEHAN: You've saved him from his
18 embarrassment.

19 MR. BURDICK: Probably need to make an
20 announcement at the beginning of each meeting.

21 CHAIR SHEEHAN: If anyone else has their phone
22 on, you may want to turn it off, or at least put it on
23 silent.

24 Okay, go ahead, Susan.

25 MS. GEANACOU: Yes, at the time the voters were

1 faced with Proposition 4, there were preexisting
2 provisions in the Revenue and Tax Code that provided for
3 a reimbursement process. So it was well within the
4 voters' contemplation at the time they approved
5 Proposition 4 that this was a system that local
6 governments would follow for claiming reimbursement from
7 the State. And as I said, voters are deemed aware of
8 that at the time they vote.

9 And that flows through to the Commission's
10 analysis as to Government Code 17556(f) that the matter
11 before you today is within the -- the reimbursement
12 process is within the scope of the measure that the
13 voters considered.

14 Lastly, as to the matter cited, *Eastview*
15 *Optional Attendance Area*. I'm not going to comment on
16 its relevance to the matter before you. I would only,
17 to the best of my recollection state that this matter
18 that the Commission did decline to find reimbursement
19 on was challenged in the trial court. And the
20 Commission's decision in that matter was affirmed by the
21 trial court. So just to add on to the prior testimony
22 in that matter.

23 And I'll be available for questions. Other than
24 that, I support your vote in support of the Staff
25 Analysis today.

1 CHAIR SHEEHAN: All right.

2 Okay, anyone else want to testify on this before
3 we go to questions?

4 Did you want to add something else?

5 MR. BURDICK: I just want to make a quick
6 comment on the Department of Finance's last comments, and
7 that I'm not sure whether she was addressing the 1972 or
8 the 1977 provisions in the Rev. & Tax. Code. But in
9 either case, I can tell you, there was no similarity
10 between working under those conditions and the process
11 that is in place now, having to admit that I was
12 participating in that process at that time.

13 CHAIR SHEEHAN: And I have to admit, I was not.

14 MR. BURDICK: And I might also point out at that
15 time that for a number of years, I think until additional
16 statute -- the Controller's position was always they
17 issued parameters -- or excuse me, claiming instructions
18 as guidelines. They were not required. There wasn't a
19 specific requirement on how you submit and prepare their
20 claims. The Controller would review them. They always
21 wanted to make it clear that they were simply guidelines
22 to assist you in how you may want to put your claim
23 together.

24 Thank you very much.

25 MR. SCRIBNER: Just a brief response to that.

1 I think that that makes our point, exactly what
2 I was trying to put forward earlier, that in light of the
3 existing statutes in the Revenue and Taxation Code, the
4 section 6 that you have before you only speaks of State's
5 activities that is necessary to provide a subvention of
6 funds. It says nothing about what locals should do.

7 CHAIR SHEEHAN: Thanks.

8 Questions for the panel members?

9 Yes.

10 MEMBER SMITH: Thank you, Madam Chair.

11 I wanted to make just one comment to ask that
12 the Commission address the motion that I made, just to
13 speak to my own motion real briefly.

14 CHAIR SHEEHAN: Okay.

15 MEMBER SMITH: What's going on upstairs right
16 now is the first time that there's been debate on an
17 amendment that was made very late at night on the last
18 day of the budget, the first sunshine that's on it. In
19 fact, most of the stakeholders didn't really even know
20 about it until these proceedings started here at the
21 commission. Assemblyman Dymally who chairs the Assembly
22 Budget Committee on school finance had asked that we
23 defer this action until they're able to straighten this
24 out upstairs. He is very concerned that this could
25 fundamentally change the way the schools are reimbursed

1 for state-mandated programs, i.e., not be reimbursed.
2 So, again, I just would ask that we address the motion,
3 allow the Legislature the time to debate and discuss a
4 little sunshine on this amendment that significantly
5 changed the mandate reimbursement process, and to not
6 create an administrative nightmare.

7 If we take action on this item today and they do
8 repeal Section 7 in the budget, what does that leave us
9 with? Then we have to take it back? Or we can't take it
10 back because we don't have the authority to. It would
11 have to be redirected. It just seems to me like we're
12 without -- taking action today would be a little
13 premature. We're just now getting the sunshine on this
14 amendment.

15 CHAIR SHEEHAN: What I would like to do is at
16 least give staff the opportunity to respond to some of
17 the comments, and see if they want to add anything before
18 we would take a motion.

19 But I would defer to my Commission members --

20 MEMBER WORTHLEY: Well, specifically, Madam
21 Chair, there have been discussions made about whether
22 this date -- what kind of date this is, this June 30th
23 date, whether it's some sort of hard and fast rule,
24 whether it's discretionary. What would be the impact if
25 we delayed this? What would be the enforcement mechanism

1 or what would be the consequences of that?

2 CHAIR SHEEHAN: Okay, Camille, would you like to
3 address that?

4 MS. SHELTON: Sure. Mr. Hajela and Mr. Scribner
5 both accurately described the state of the law with dates
6 and statutes. There are statutes that are mandatory and
7 statutes that are directory. The statutes that are
8 directory have a date, but there's no penalty imposed for
9 not complying. The statutes that are mandatory, you
10 know, there's a date. And if you don't comply with that
11 date, then there is a penalty for imposing.

12 Sometimes the case law on the issue is not
13 entirely clear. And if there is opposition to a
14 continuance but by not complying with a certain date,
15 then certainly the State could challenge, you know, the
16 Commission from not complying with the June 30th date.
17 It would be a question of law as to whether or not that
18 statute was mandatory or directory.

19 The statute on its face does not have a penalty
20 imposed.

21 CHAIR SHEEHAN: And we are scheduled to meet
22 again in July, not in late June.

23 MEMBER SMITH: I have a question.

24 CHAIR SHEEHAN: Yes.

25 MEMBER SMITH: Has the State ever taken action

1 against the Commission for not reviewing or hearing test
2 claims in the matter of one year, just out of curiosity?

3 MS. SHELTON: The State has not, no.

4 CHAIR SHEEHAN: Okay.

5 MR. SCRIBNER: I actually have a question for
6 staff, if I could.

7 If this were postponed, would the time frame
8 from when this would begin would be similar? For
9 example, you've said that your jurisdiction would -- and
10 MRP would end at a certain date. That would not change;
11 correct?

12 MR. FELLER: Can I address that?

13 That would depend on how the Legislature does
14 it. AB 138 said that this decision is going to be deemed
15 effective July 1, 2006. So depending on what the
16 Legislature put in another reconsideration statute, that
17 could change if they left that provision intact in it.

18 MR. SCRIBNER: So if they made no movement, that
19 would still stand?

20 MR. FELLER: That's the way I --

21 MR. SCRIBNER: It would be effective from the
22 same date? So if you waited until July, the effective
23 date would remain the same?

24 MR. FELLER: I believe so.

25 MR. SCRIBNER: Okay, thank you.

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1 CHAIR SHEEHAN: Ms. Olsen?

2 MEMBER OLSEN: This is just a practical
3 question. Were we to take action today, and without
4 prejudice to the action we would take, if, for instance,
5 we were to adopt the staff recommendation and then the
6 Legislature acts, what's the consequence? Does it have
7 to come back to us, or the Legislature has simply acted
8 and we go on from there?

9 MS. SHELTON: It depends on what any subsequent
10 statute would say. I can't answer that without knowing
11 what they're doing.

12 CHAIR SHEEHAN: Yes, would they, you know,
13 redirect us to reconsider it again, or what --

14 MEMBER SMITH: Reconsider the reconsideration.

15 CHAIR SHEEHAN: Exactly. And that is the issue.

16 And Sub 2 did act. I know, from what I've heard
17 from the chair of the Assembly Budget Committee, they see
18 it different. I know the Sub 2 folks see it differently
19 than the Sub 4 or the chair sees it.

20 And I guess one of the issues I have is not just
21 on this, but on many, I mean, the Legislature could act
22 on any of the items or the claims that we do. And so for
23 us to postpone because of speculation that they may or
24 may not act -- and I know there are strong feelings on
25 this -- I think we're abrogating our responsibility. At

1 that point, it's like, let's send it all back upstairs in
2 terms of that. So I do think we have an obligation -- we
3 did put it over once to come back. I know there has been
4 some activity upstairs; but it is not definitive.

5 And I guess one of the issues, regardless of
6 where people come down on this, I would say
7 Ms. Geanacou's comment was correct, this is not an
8 equitable forum in terms of if you have a substantive
9 issue in terms of some of those to go upstairs. But we
10 are bound by, you know, our oath and what we have to do
11 as a quasi-judicial remedy, and not in terms of the
12 equitable forum that may be better upstairs.

13 So as I say, I would be concerned -- we did, to
14 defer to some of the members, put it over the one time.
15 And I would be concerned about the precedent of just
16 every time putting something over because there's
17 discussion upstairs, that that is a concern of mine,
18 regardless of where people come out on the issue.

19 MEMBER SMITH: Madam Chair, I agree that there
20 is some disagreement upstairs; but there's discussion
21 going on and debate going on in sunshine on this
22 amendment. I think that this is not just passing
23 something back upstairs that has little significance.
24 This fundamentally changes the mandate reimbursement
25 process. So I think the consequence of acting is greater

1 than not acting.

2 CHAIR SHEEHAN: Well, I guess one -- seeing the
3 other side, perhaps action today would help spur some of
4 that discussion upstairs.

5 MEMBER SMITH: Well, I think the discussion is
6 happening. I just think we need to allow them some more
7 time.

8 CHAIR SHEEHAN: But I also think in terms of the
9 effective date is June 30th/July 1st. And so if they act
10 and we are optimistic, the budget will be done on time,
11 we will know dispositively by the time this takes effect
12 what's going to happen.

13 I do want -- well, I would defer to my --

14 MEMBER SMITH: I have the motion on the floor --

15 CHAIR SHEEHAN: You have a motion, okay.

16 MS. HIGASHI: There's a motion, but no second
17 yet.

18 CHAIR SHEEHAN: Correct.

19 MEMBER WORTHLEY: I'll second the motion.

20 MS. HIGASHI: Okay.

21 CHAIR SHEEHAN: Okay, why don't we call the roll
22 on the motion to defer the action until our next meeting?

23 Is that --

24 MEMBER SMITH: That's correct -- well, to defer
25 it to a time where we have some guidance from the

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1 Legislature on the budget.

2 I think that we can -- if we defer it for
3 another month, we might be back in the same shoes. I
4 think we should --

5 CHAIR SHEEHAN: Well, we're not meeting until
6 July.

7 MEMBER WORTHLEY: We're not meeting until July.

8 MEMBER SMITH: Okay, so can we say we're going
9 to defer it tentatively to July 28th?

10 CHAIR SHEEHAN: Yes.

11 MEMBER WORTHLEY: And if there's no budget, we
12 can --

13 CHAIR SHEEHAN: We can say to a subsequent
14 meeting.

15 MEMBER SMITH: To a subsequent meeting, that's
16 fine.

17 CHAIR SHEEHAN: Okay, all right. Any further
18 discussion on the motion?

19 MEMBER WORTHLEY: Just some discussion why I
20 would support the motion, is that I'm understanding the
21 concept of judicial economy here, and that is that if we
22 take action today and then have to come back and take
23 subsequent action because of what would happen in the
24 interim period of time, between our next meeting, we
25 might find ourselves engaging in more judicial conduct

1 than is necessary. And if this matter can be resolved in
2 the interim period of time, then we are just saving
3 ourselves that extra trouble. So I think if there's no
4 real consequence to delaying it, I would be in favor of
5 doing that, just so we don't have to end up hearing this
6 thing twice.

7 CHAIR SHEEHAN: Any other comments -- so we'll
8 call the question on the motion.

9 MEMBER SMITH: Can we have a roll call vote?

10 MS. HIGASHI: Mr. Glaab?

11 MEMBER GLAAB: No.

12 MS. HIGASHI: Mr. Lujano?

13 MEMBER LUJANO: I'll abstain.

14 MS. HIGASHI: Ms. Olsen?

15 MEMBER OLSEN: No.

16 MS. HIGASHI: Mr. Smith?

17 MEMBER SMITH: Aye.

18 MS. HIGASHI: Ms. Roberts?

19 MEMBER ROBERTS: No.

20 MS. HIGASHI: Mr. Worthley?

21 MR. WORTHLEY: Aye.

22 MS. HIGASHI: Ms. Sheehan?

23 CHAIR SHEEHAN: No.

24 MS. HIGASHI: The vote is 4 to 2, with one
25 abstention.

1 CHAIR SHEEHAN: Okay.

2 MS. GEANACOU: May I ask a question of the
3 Commission staff?

4 CHAIR SHEEHAN: The motion fails. For those who
5 did not hear, the motion fails.

6 MS. GEANACOU: How might the procedural option
7 of reconsideration -- administrative reconsideration of a
8 Commission's decision figure into the discussion here?
9 I believe there's the 30-day procedural window for
10 someone seeking an administrative reconsideration of a
11 decision. I'm just wondering whether that --

12 MS. SHELTON: Somebody can do that. The
13 statutes allow, you know, any party to request the
14 Commission to reconsider 30 days after the Statement of
15 Decision has been issued, and then the Commission would
16 have to hear it within 60 or 90 days -- I don't remember
17 what the statute says.

18 So a party can ask for a reconsideration of
19 whatever vote is taken today.

20 MR. KAYE: Okay. May I just make a point of
21 information?

22 So would that reconsideration be based upon the
23 law in effect today, or a subsequent repeal of AB 138?

24 MS. SHELTON: Well, we would maintain
25 jurisdiction over the case. And so I think whatever the

1 law -- it would depend on whatever statute becomes
2 enacted, what it would say, how it would affect things.
3 But I think it would -- as long as the Commission
4 maintains jurisdiction over an item, I believe that the
5 Commission could hear a new statute that's enacted as an
6 urgency statute. The Commission has done that before.

7 MR. KAYE: So your answer would be that if they
8 repeal AB 138 subsection (f), that the Commission can
9 reconsider the matter, in effect, de novo?

10 MS. HIGASHI: First, a request for
11 reconsideration would have to be filed. And you're
12 asking Ms. Shelton to respond to legal questions, when a
13 request for reconsideration hasn't been written. And I
14 think it is all speculative in terms of issues you're
15 raising. You would have to write the request for
16 reconsideration and state the reasons for
17 reconsideration.

18 MR. KAYE: Yes, thank you.

19 MR. BURDICK: Just a point of clarification for
20 the executive director.

21 If that request were made, then the Commission
22 would -- the first issue would be to sit down and decide
23 whether to grant reconsideration, hear testimony.

24 If it was granted, then the matter would be set,
25 assuming briefing and additional discussions subsequent

1 to that?

2 MS. HIGASHI: Correct. It's all in our
3 regulations what the procedure would be.

4 I just want to respond, just for the members'
5 information.

6 CHAIR SHEEHAN: Yes.

7 MS. HIGASHI: There were some comments made that
8 if the Commission acted today and something happened
9 later, it would create an administrative nightmare, and,
10 oh, my God, we wouldn't know what to do or how we would
11 proceed. I just want to assure the Commission that if
12 the Commission does act today, regardless of the action
13 taken today, and if something changes that it is not
14 going to create an administrative nightmare for staff in
15 terms of figuring out what to do next.

16 CHAIR SHEEHAN: Okay.

17 MS. HIGASHI: If the Commission doesn't act,
18 I think there is a possibility with our budget in
19 conference that I would be a bit concerned, since it was
20 a conference committee bill that directed us to act
21 before July 1, even though there are no sanctions
22 officially. It just makes me a bit uneasy.

23 MEMBER WORTHLEY: Thanks for thinking
24 politically.

25 CHAIR SHEEHAN: Okay, are there any of the

1 issues that have been raised by the witnesses that the
2 members would like the staff to address in terms of
3 substantive issues that you had -- or I guess Camille or
4 Eric, are there any that you would like to address that
5 may not have been addressed already, in terms of some of
6 the testimony that we took?

7 MR. FELLER: Sure.

8 Mr. Scribner -- I'll start backwards --
9 commented a question whether the 17556 was analyzed
10 properly, whether the duties are necessary to implement
11 reasonably within the scope of or expressly included in a
12 ballot measure, approved by the voters.

13 The reason that that wasn't analyzed or
14 scrutinized is because the Legislature said in 17500,
15 that they were enacting the statutory scheme in order to
16 implement Proposition 4, especially Article XIII B,
17 section 6.

18 In addition, not only the Legislature said that,
19 but the courts have said that 17556 expressly was enacted
20 to implement Article XIII B, section 6. Based on those
21 statements in the law, that the purpose of the statutory
22 scheme was to implement a ballot initiative, we felt that
23 the plain meaning of that applied and that there was no
24 reason to go in and second-guess the Legislature as to
25 what it could have done or what it should have done to

1 implement Article XIII B, section 6.

2 As far as -- I'd just like to reiterate what
3 Ms. Geanacou said about we've got two courts of appeal
4 that have said, "The Commission must strictly construe
5 Article XIII B, section 6, and not apply it as an
6 equitable remedy to cure and perceive unfairness
7 resulting from political decisions on funding
8 priorities." A lot of the comments that I heard about
9 whether any action today to adopt the staff
10 recommendation would be fundamentally fair or just, I
11 think that the Commission has to follow the law and can't
12 be swayed by equity.

13 As far as what Mr. Kaye said about how this
14 analysis could be applied to any test claim, I disagree.
15 This is the first one that I've seen. I've looked at
16 many, many test claims that has expressly applied
17 17556(f) to a ballot initiative. I haven't looked at any
18 other test claims that are based on --

19 MS. HIGASHI: SARC.

20 MR. FELLER: And I didn't work on SARC
21 personally. But, of course, the Commission has done SARC
22 and applied it there as well.

23 That's all the comments I had. If there are any
24 further questions, I can answer those.

25 MEMBER SMITH: A question for staff. Do we know

1 how many times the mandate reimbursement process has been
2 amended since Proposition 4? Just approximately. Like,
3 15? A hundred? A thousand?

4 MR. FELLER: Are you talking about the
5 parameters and guidelines?

6 MEMBER SMITH: Just the process itself, right,
7 for the test claim process.

8 CHAIR SHEEHAN: So legislatively?

9 MEMBER SMITH: Legislatively, administratively.

10 MS. HIGASHI: There have been a few bills. The
11 one that enacted 17581, the one SB 11, the statute that
12 imposed the timelines. There have been at least a couple
13 of technical amendment bills that have passed.

14 The last, the most recent one, was AB 2856,
15 which we do have a test claim pending on.

16 MEMBER SMITH: Okay, my question, I guess, is --

17 MS. HIGASHI: Test claims were not filed on any
18 of those intervening amendments, but we do have one on
19 2856.

20 MEMBER SMITH: My question is procedurally. So
21 we're being asked today to -- well, let me step back.

22 Proposition 4 didn't include a description of
23 the process that we have today, i.e., you know, the
24 10- to 15-year process that it takes ten to 15 years for
25 locals, for schools and community colleges to be

1 reimbursed, 650 pages of claiming instructions involving,
2 I think, all three branches of state government and four
3 state agencies. So that process is not described in
4 Proposition 4. Proposition 4 was to ensure that local
5 governments, schools, and community colleges get the
6 money for state-mandated programs. So we're asked to
7 determine if this process that we have today is
8 reasonably within the scope of Proposition 4.

9 Is that the question?

10 MS. SHELTON: The standard is reasonably within
11 the scope of or necessary to implement. And the
12 Legislature has said, and the courts have said, that the
13 process that was established was necessary to implement
14 Article XIII B, section 6. We're just applying the plain
15 language in the court decisions.

16 MEMBER SMITH: So voters, in the Controller's
17 opinion, wouldn't wish this process on their worst enemy?
18 I mean, they're the ones at stake here, their education,
19 funds for local services.

20 My question is, this is the only option then?
21 This is the one -- this is necessary to implement?

22 MS. SHELTON: Those are all valid arguments
23 that you're making and that the claimants are making.
24 But it all comes back to whether or not 17556(f) is
25 constitutional and within what the voters intended.

1 That is the very nature of the question. And that is
2 something that the courts have to address and the
3 Commission cannot.

4 MR. KAYE: Could I beg to disagree?

5 I think that the Commission as triers of fact,
6 not as a court of equity, have the authority to determine
7 whether something is reasonable, reasonably implements.
8 But I do receive a request to the chair, and that Mr. Dan
9 Wall would like to address this group, if possible.

10 CHAIR SHEEHAN: Camille, did you want to
11 address --

12 MS. SHELTON: Can I just respond to that one
13 last point?

14 The Commission cannot determine what is
15 reasonable at a test-claim phase. The Commission is
16 required to determine whether there's a reimbursable
17 state-mandated program as a question of law, applying the
18 rules of statutory construction. And the very first
19 couple of rules is that, one, when the Legislature acts,
20 that act is presumed constitutional; and, two, that the
21 language has to be read based on the plain words of the
22 language used in the statute in order to interpret that.
23 And that's what the staff has said.

24 CHAIR SHEEHAN: Briefly, Mr. Scribner.

25 MR. SCRIBNER: I just wanted to add to

1 staff's -- staff quotes the Supreme Court about this
2 process. And what is quoted on page 14 is, "The State's
3 obligations under section 6 are to be determined" -- or,
4 I'm sorry, "The administrative procedures established by
5 the Legislature are the exclusive means by which the
6 State's obligations under section 6 are to be determined
7 and enforced."

8 From that quote, I don't see where they get that
9 this is the necessary implementation of that section.
10 What has been said by the California Supreme Court is
11 that 17500, et seq., is the way we go about making
12 mandate determinations and payments so that the State can
13 meet its obligations to provide a subvention of funds.
14 That's a little different than saying that this is the
15 absolute way that this has to be -- MRP has to be paid or
16 that funds have to be paid. This is a process that was
17 established that we do have to follow.

18 Given that, your call then is to determine that,
19 yes, this is the process that the Supreme Court and the
20 Legislature has determined that we must all follow. Your
21 call then is to determine, is that process in excess of
22 what the electorate said that we should be doing under
23 Proposition 4 and the Constitution?

24 The Constitution only speaks to State's
25 obligations, not locals'.

1 MS. SHELTON: Just to say, Mr. Scribner is
2 coming back to the very same point. If you're looking at
3 what the voters intended under the Constitution, you're
4 questioning what the Legislature did as being
5 constitutional. And, again, this body, as an
6 administrative body, cannot make that determination.

7 MR. SCRIBNER: That's not what I'm saying, no.

8 CHAIR SHEEHAN: I think we'll agree to disagree
9 on that point.

10 MR. SCRIBNER: I thought I was being clear. I'm
11 not calling into question their constitutional right to
12 do what they did. It's fine. It's okay for the
13 Legislature to enact 17500, et seq.

14 What I'm saying is that they have gone beyond
15 the call of the electorate; and, therefore, there should
16 be reimbursement for those sections of the Government
17 Code that impose a mandate.

18 It is proper, it is legal, I agree with you.
19 But what I'm saying is that the steps that went beyond
20 what the proposition said are reimbursable. It is a
21 mandate. It is a new program. It is a higher level of
22 service, and they should be reimbursed for that.

23 MS. HIGASHI: Ms. Sheehan, before Mr. Wall may
24 testify, we need to administer the oath.

25 CHAIR SHEEHAN: Oh, right.

1 MS. HIGASHI: Mr. Wall, do you solemnly swear or
2 affirm that the testimony which you are about to give is
3 true and correct, based upon your personal knowledge,
4 information or belief?

5 MR. WALL: I do.

6 MS. HIGASHI: Thank you.

7 MR. WALL: My name is Dan Wall. I'm the head
8 lobbyist for the County of Los Angeles.

9 And I appreciate your concern and your diligence
10 with regard to the duties expressed in AB 138. And
11 there's one thing that troubles me, however. And I think
12 this discussion that's been going on for the last
13 five minutes or so is a valid one if it were taking place
14 a little over a year ago. But it is, I think, no longer
15 valid because section 6 of Article XIII B was reenacted
16 by the Legislature. So that section 6, which existed and
17 was put into the Constitution by the voters is no more.
18 It simply does not exist. So the argument about whether
19 it's a voter-approved initiative and, therefore, not
20 reimbursable, I think is a moot point, number one.

21 Number two, on its merits, what you're saying to
22 the world by -- I mean, what the Legislature said -- you
23 folks are trying to do your duty, and I think that's fair
24 and appropriate, and I support you in that. But what the
25 Legislature said -- what the Legislature said here is

1 absolutely mind boggling. Because what they said was
2 back in 1979, the voters approved an initiative that
3 said, "Gosh, local governments, counties, and cities were
4 getting hammered, they no longer had revenue authority
5 because of Proposition 13. We need to give them a
6 redress, a mechanism of redress for costs imposed by the
7 State." Okay, so that was a constitutional amendment
8 approved by the voters.

9 To turn around some 20 -- you know, almost
10 30 years later and say, "Well, gee, the voters approved
11 that, and, you know, we've been paying them costs for
12 pursuing these mandate rights all along, but now we're
13 going to reverse that. And we're going to use as the
14 basis for that reversal, we're going to use the very
15 constitutional language that entitled them to
16 reimbursement."

17 So you're entitled to reimbursement but you're
18 not entitled to reimbursement -- you're not entitled to
19 the due-process access to get your costs. I mean, the
20 reasoning is troubling.

21 But I think the main point that I would like to
22 leave this body with -- and, I'm sorry, the motion to
23 defer failed because I thought that was a prudent course
24 of action, because the matter is certainly under
25 consideration by the Legislature. I think I've raised a

1 serious legal question, although the beauty of that is,
2 I'm not an attorney, so it's probably not worth the paper
3 it's written on.

4 CHAIR SHEEHAN: Unauthorized practice.

5 MR. WALL: Anyway, that's what I wanted to say.
6 Thank you very much for giving me a chance to address the
7 body.

8 CHAIR SHEEHAN: Camille, did you want to respond
9 or --

10 MS. SHELTON: *(Shaking head.)*

11 CHAIR SHEEHAN: Okay.

12 MR. FELLER: I have one comment.

13 CHAIR SHEEHAN: Sure.

14 MR. FELLER: Section 6 of Article XIII B was
15 reenacted by the Legislature, but it was also reenacted
16 by the voters in Proposition 1A. So the voters have
17 ratified that action.

18 And as far as the 20 years later revisiting the
19 original decision, again, that's a policy determination
20 that the Legislature has made.

21 CHAIR SHEEHAN: Right.

22 MR. FELLER: We're just implementing, following
23 the law.

24 CHAIR SHEEHAN: That's the first time we've had
25 to do it.

1 MEMBER WORTHLEY: A question.

2 CHAIR SHEEHAN: Yes.

3 MEMBER WORTHLEY: I think I know the answer,
4 because she said it, but I just want to be very clear
5 about it.

6 Is it within the jurisdiction of this body to
7 evaluate this process of filing a claim as necessary to
8 implement? In other words, the factual issue -- it's a
9 conclusionary statement. Necessary to implement -- it is
10 necessary to implement, that's what we're saying the
11 Legislature stated.

12 Do we have no authority to evaluate whether or
13 not it's necessary to implement?

14 MS. SHELTON: No, you can evaluate. It is a
15 question of law.

16 If 17500 and the case law wasn't there, that
17 did say that the whole scheme was to implement
18 Article XIII B, section 6, it might be a different case.
19 But the Legislature has already said, it's there to
20 implement, and so have the courts. And we're just
21 applying the plain language of that statute and the court
22 decisions that say that, that that is the sole and
23 exclusive way to file your test claim. And it was there
24 to implement Proposition 4, Article XIII B, Section 6.

25 MR. HAJELA: Can I respond to that very quickly?

1 CHAIR SHEEHAN: Briefly, yes.

2 MR. HAJELA: I mean, the word "necessary" means
3 something here, so we're choosing to read out the word
4 "necessary" there. Nobody is arguing that these statutes
5 do not implement the mandate process and implement the
6 constitutional provision. The question is, is it
7 necessary to implement?

8 MS. SHELTON: And my position on that is that
9 the Legislature found that it was necessary to implement
10 by the way they did it. And that's a policy call, and
11 it's a question of equity on how they did it, and it's a
12 question of law on how you interpret it.

13 MR. HAJELA: Then what are we all doing here
14 today?

15 MS. GMUR: I need to comment on that. I'm
16 sorry, I really do.

17 CHAIR SHEEHAN: Please identify yourself.

18 MS. GMUR: I'm sorry, Juliana Gmur on behalf of
19 Newport Beach.

20 I opened this with a call to justice, not a call
21 to equity. And I really --

22 CHAIR SHEEHAN: Disagree?

23 MS. GMUR: Yes. I'm sorry, but the word
24 "justice" comes to us from Greek law. It was the
25 Justinian law that set up the tribunals. Those were

1 courts of law. Courts of equity arose out of the
2 Catholic church, which then became the Anglican Church up
3 in England -- became courts of equity, came to the United
4 States and they were merged. This is not a court of
5 equity.

6 The United States does not have courts of
7 equity. We do have merged courts.

8 This group has, as a quasi-judicial body, a
9 limited scope of review. It is a court -- it is as a
10 court of law. You review facts, you are finders of
11 facts, you are determinations of law. There's been no
12 call to equity. There's been a call to justice.

13 And, I'm sorry, but when they say that there's
14 a call to equity here and that we must apply the law,
15 I must direct this group back to the most recent case,
16 San Diego School District, coming out of the Supreme
17 Court, which directed this specific Commission in what
18 I found to be an amazing decision coming out of the
19 Supreme Court in which they took the time in dicta to
20 spell out to this Commission what they must do before
21 they apply a rule of law. And that is, look at the end
22 result. Look at where you're going. If you need to look
23 back at what was the intent of the voters, that's what
24 you should do. And I'm telling you, what was the intent
25 of the voters with Proposition 1A, Proposition 4? I

1 don't care which one we look at. The reality of the
2 situation is, it's to protect the local fisc., to ensure
3 that services continue to flow, and to gain
4 constitutionally-protected reimbursement for local
5 agencies, period.

6 MS. SHELTON: Can I just respond?

7 CHAIR SHEEHAN: Okay, Ms. Shelton, and then
8 Mr. Smith and then --

9 MS. SHELTON: One comment just on the San Diego
10 case.

11 The Supreme Court in the San Diego case also
12 when comparing what a new program or higher level of
13 service was between prior law and the test claim
14 legislation, acknowledged that even though certain
15 activities were not expressly required in prior law, they
16 were part and parcel to the program. So they didn't --

17 MS. GMUR: And that's fine. That's a finding of
18 fact that is based on evidence.

19 If you all here cannot make a finding of fact,
20 why are we testifying? This is a question of law, once
21 again.

22 CHAIR SHEEHAN: Yes.

23 MS. GMUR: And you must make findings of fact in
24 order to ascertain the law.

25 CHAIR SHEEHAN: Mr. Smith?

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1 MEMBER SMITH: I guess that was my question,
2 too, is what exactly is our role in this? Because I'm
3 not understanding -- we're here today but -- let me
4 finish, Camille -- the Legislature you had already said
5 found it's reasonable to implement. So what are we all
6 doing here?

7 MS. SHELTON: The Legislature -- that's a good
8 point.

9 The Legislature has directed the Commission to
10 reconsider this test claim.

11 MEMBER SMITH: It said, "Here, reconsider this
12 conclusion"?

13 MS. SHELTON: Right. At the time the test claim
14 was decided, that provision in 17556(f) was not there.
15 Instead, that provision said that you can only not find
16 costs mandated by the State when the language was
17 expressly included in the voter initiative.

18 Now, we all have agreed that Proposition 4 and
19 1A doesn't contain a procedure by which to claim costs.
20 So under prior law, I believe that decision probably was
21 a valid decision.

22 But here, we have to apply the new law. And all
23 that we are doing, is applying the law based on the
24 express language of the statute, and that's it.

25 MEMBER ROBERTS: Madam Chairman, I would like to

1 make a motion, a motion to accept staff's recommendation.

2 CHAIR SHEEHAN: All right, we have a motion.

3 Is there a second?

4 MEMBER GLAAB: Second.

5 CHAIR SHEEHAN: Okay, all those in favor?

6 MEMBER WORTHLEY: Can we have a discussion on
7 the motion?

8 CHAIR SHEEHAN: Sure. Further discussion?

9 MEMBER WORTHLEY: I believe, from what I heard
10 our staff saying, that we do have a responsibility under
11 the legal principles of determining whether or not the
12 process is a legal process in terms of being reasonably
13 necessary to accomplish this objective.

14 I think, in that case, I will vote against the
15 motion. And the reason I say that is that everyone here
16 agrees that the mandate process, if not irretrievably
17 broken, it certainly needs to be fixed.

18 I would submit to you that if we were to take
19 the position of support of staff, what we are saying to
20 the Legislature is, "Don't fix it. Make it even more
21 Byzantine. Because if you want to avoid having to pay
22 back to local governments mandated costs, just make the
23 process so complicated that nobody will even dare try,
24 nor can they even afford to do so."

25 So I'm going to oppose the motion on the basis

1 that I do not think that there has been, legally -- this
2 is a proven necessary process by which to implement this;
3 because there would be many various ways of doing it that
4 could be much simpler than what we have currently. And
5 I just think it sends the wrong message when we say,
6 "Yeah, this is fine, this process which is broken can
7 just go right along and this is necessary." I don't
8 think it is necessary, as a matter of law.

9 MEMBER SMITH: And I would just agree with that,
10 Madam Chair, that I think that this is far from
11 necessary. I think there's quite a few more options that
12 we could have created that would treat our stakeholders
13 less like special interests and more like government
14 partners. I think this is the furthest thing from that,
15 and certainly not necessary.

16 CHAIR SHEEHAN: Okay, any other discussion on
17 the motion?

18 *(No audible response.)*

19 CHAIR SHEEHAN: All right.

20 MEMBER GLAAB: Madam Chair and Members, I just
21 wanted to comment. I'm sensitive to all the testimony
22 that the witnesses have given. And as an elected
23 official, I take seriously what the voters made us come
24 into office to do, and that is to resolve issues and
25 everything. So I'm compelled to want to do that.

1 However, having said that, I know that there are
2 other issues that are before us, jurisdictional issues,
3 legal issues, do we have the latitude. But I have to
4 tell you, I'm very sensitive to all the arguments that
5 have been put forth. And the system is broken, we must
6 work to fix it. I'm just not sure that we have the
7 latitude to do it right here.

8 Thank you.

9 CHAIR SHEEHAN: Thanks.

10 All right, so we'll do a roll call vote on the
11 motion.

12 And the motion is to accept -- just so we
13 understand -- accept the staff recommendation.

14 MS. HIGASHI: Okay, Mr. Smith?

15 MEMBER SMITH: No.

16 MS. HIGASHI: Ms. Roberts?

17 MEMBER ROBERTS: Yes.

18 MS. HIGASHI: Mr. Worthley?

19 MEMBER WORTHLEY: No.

20 MS. HIGASHI: Mr. Glaab?

21 MEMBER GLAAB: Yes.

22 MS. HIGASHI: Mr. Lujano?

23 MEMBER LUJANO: No.

24 MS. HIGASHI: Ms. Olsen?

25 MEMBER OLSEN: Yes.

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1 MS. HIGASHI: Ms. Sheehan?

2 CHAIR SHEEHAN: Yes.

3 MS. HIGASHI: The motion carries, 4-3.

4 CHAIR SHEEHAN: Okay, thank you, all.

5 I know it's a difficult issue, and I'm sure the
6 discussion will continue on this matter.

7 Thank you for the time.

8 CHAIR SHEEHAN: This brings us to the related
9 item for the Statement of Decision.

10 CHAIR SHEEHAN: Okay, let's do that, and then
11 we'll see if we need a break.

12 MR. FELLER: Where am I?

13 MS. HIGASHI: Item 5.

14 CHAIR SHEEHAN: All right, Item 5, Mr. Feller?

15 MR. FELLER: Unless there's an objection, staff
16 recommends the Commission adopt the proposed Statement of
17 Decision for --

18 CHAIR SHEEHAN: On Item Number 4?

19 MR. FELLER: -- on Item 4, which accurately
20 reflects the Commission's decision.

21 Staff also recommends the Commission allow minor
22 changes to be made to the Statement of Decision,
23 including reflecting the witnesses' hearing testimony and
24 vote count would be included in the final SOD.

25 CHAIR SHEEHAN: All right, is your microphone

1 on, Eric?

2 MR. FELLER: Yes.

3 CHAIR SHEEHAN: All right, so the action is to
4 accept the Statement of Decision on Item Number 4.

5 Is there a motion?

6 MEMBER GLAAB: So moved.

7 CHAIR SHEEHAN: Second?

8 MEMBER ROBERTS: Second.

9 CHAIR SHEEHAN: All right, all those in favor,
10 say "aye."

11 MEMBER ROBERTS: Aye.

12 MEMBER GLAAB: Aye.

13 MEMBER OLSEN: Aye.

14 CHAIR SHEEHAN: Aye.

15 Opposed?

16 MEMBER SMITH: No.

17 MEMBER WORTHLEY: No.

18 MEMBER LUJANO: No.

19 MS. HIGASHI: The same vote.

20 CHAIR SHEEHAN: All right.

21 MS. HIGASHI: The same vote, 4-3.

22 CHAIR SHEEHAN: The record will reflect the same
23 vote.

24 Before we move on, does our reporter need to
25 take a break?

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1 THE REPORTER: I'm fine. Thank you.

2 CHAIR SHEEHAN: You're okay? Okay, all right.

3 So moving on to Item --

4 MS. HIGASHI: We will be going to Item
5 Number 8.

6 CHAIR SHEEHAN: Item 8? All right.

7 MS. HIGASHI: Which is the item that we started
8 last month.

9 CHAIR SHEEHAN: Oh, on the charter schools?

10 MS. HIGASHI: *Charter Schools III*.

11 MR. FELLER: Good morning again.

12 CHAIR SHEEHAN: You're back?

13 MR. FELLER: Yes. *Charter Schools III*

14 test-claim statutes make various changes to the charter
15 school funding and accountability laws. Claimants seek
16 reimbursement for charter school, as well as school
17 district activities.

18 For reasons stated in the analysis, staff finds
19 first that charter schools are not eligible claimants.
20 There are three reasons for this finding.

21 First, that charter schools are voluntarily
22 created.

23 Second, that they're not part of the definition
24 of school districts in the Commission's statutory scheme,
25 17519.

1 And third, a reason perhaps not emphasized
2 enough in the analysis, because Education Code 47610 says
3 that charter schools are exempt from the laws governing
4 school districts, which we interpret to include the
5 Commission's reimbursement statutes.

6 The second finding is that the Commission does
7 not have jurisdiction over some statutes that were
8 already pled and decided in the *Charter Schools II* test
9 claim as specified in the analysis.

10 Third, as to Education Code sections 47640 to
11 47647 regarding plans for *Pupils with Disabilities*, that
12 that's statutes that are federal mandates and, therefore,
13 not reimbursable.

14 Fourth, as to various other test claim statutes
15 not -- are not reimbursable because they do not require
16 an activity of school districts or the activities are not
17 a higher level of service.

18 Also for reasons of the analysis, staff finds
19 the following are reimbursable. First, making written
20 findings on denial of a charter school petition for
21 reasons specified in the statute.

22 Second, except for local education agencies that
23 charge fees under section 47613 of the Ed. Code,
24 transferring funds in lieu of property taxes to a charter
25 school, and, third, for school districts -- or county

1 offices of ed. that are chartering authorities, including
2 the revenues and expenditures generated by the charter
3 school in the school districts or county offices annual
4 statement in the CDE-specified format for the period of
5 May 22nd through June 30th, 2001, only.

6 The Department of Finance disagrees that these
7 last two activities are reimbursable.

8 No other parties commented on the Draft Staff
9 Analysis, although the claimant made known its
10 disagreement with it at the last hearing.

11 The California Teachers Association supported
12 the staff analysis at the last hearing. And just today,
13 as you received Assembly Member Mark Wyland as on record
14 as opposing the finding that charter schools are not
15 eligible claimants.

16 Staff recommends that the Commission adopt this
17 analysis that partially approves the test claim for the
18 specified activities.

19 Would the parties and witnesses please state
20 your names for the record?

21 MR. SCRIBNER: Good morning. David Scribner,
22 representing the claimants.

23 MR. PREMACK: Good morning. Eric Premack with
24 CharterVoice, representing charter schools.

25 MS. TROY: Dan Troy with the Department of

1 Finance. Thank you.

2 CHAIR SHEEHAN: All right, do you want to
3 proceed?

4 MR. SCRIBNER: Sure.

5 Eric Premack just actually handed me -- we have
6 another letter from Bob Huff. Unfortunately, it just
7 came in this morning, that supports charter schools'
8 right to reimbursement under the mandate process.

9 As an attorney, I understand that these
10 statements of support by Assemblyman Huff and the other
11 received by the Commission are not determinative of what
12 the Legislature would want. I would have loved to have
13 had a last-second bill and -- wham, bam -- we're in the
14 Government Code. That didn't happen.

15 I do still take issue with some of the comments
16 that staff makes as relates to whether charter schools
17 are eligible claimants and whether the Legislature
18 determines them to be so.

19 Charter schools have been receiving payments as
20 long as mandate reimbursement has been out there and
21 they've been in place. They've been receiving claimant
22 ID numbers from the State Controller's Office. And the
23 last two bills that have provided a little bit of mandate
24 reimbursement money have included in the definition of a
25 school district to specifically include community-college

1 districts and charter schools. So a blanket statement
2 that the Legislature has intended to ignore charters as
3 eligibility claimants in the mandate process is actually
4 not true.

5 There have been multiple pieces of legislation
6 that have gone through over the years that have shown
7 that the Legislature actually, in fact, does intend to
8 pay charter schools for mandated activities.

9 Having said that, I do recognize the procedural
10 hurdle that we are faced, without having the definition
11 in the Government Code itself. But I would like the
12 record to be clear that the statement -- the broad
13 statement that is in this analysis that the Legislature
14 does not mean to include charters as reimbursement is
15 actually untrue. It is a false statement.

16 The correct statement is that the Legislature
17 has failed to properly amend the Government Code to catch
18 up with its current and past practices of reimbursing
19 charters on an annual basis for mandated programs.

20 And in that instance, we see it more as
21 oversight rather than a directive to this body simply
22 because funds continue to flow to charters on a regular
23 basis for mandate reimbursement.

24 If it were the case, charters would never be
25 seeing money. And that's not happening, and it has not

1 happened, though I do understand the difficulty of having
2 the definition drafted the way it is.

3 CHAIR SHEEHAN: Thanks.

4 Go ahead.

5 MR. PREMACK: Just to briefly reiterate -- I
6 think largely reiterate some of the arguments we've made
7 in the prior meeting. With regard to voluntary, charter
8 schools are no more or less voluntary than school
9 districts, the process under which school districts are
10 formed and dissolved and merged and unified is in many
11 ways very similar to the process of forming charter
12 schools, including a petition process and an approval by
13 public body in the case of charter schools. It's another
14 school district or county office or State Board of
15 Education. In the case of school district unifications
16 and mergers, it's a county committee on school district
17 organization, and a county board and a state board. Both
18 processes are voluntary in nature, arise out of citizens
19 wanting to create educational opportunities for the
20 students in the community.

21 While it is true that the words "charter school"
22 do not show up in the Government Code sections governing
23 the Commission's work, the Education Code sections
24 governing charter schools were amended last year to note
25 that, quote, unquote, "for the purposes of determining

1 eligibility for and allocation of state and federal
2 categorical aid, a charter school shall be deemed a
3 school district." We think that that, in combination
4 with everything that Mr. Scribner has mentioned, makes it
5 fairly clear that charter schools are an eligible
6 claimant under the Government Code.

7 If there's any dispute about the meaning of this
8 new statute, Assembly Member Huff, who I had hoped would
9 be able to join us today, unfortunately can't. They have
10 simultaneous, I gather, floor sessions and 170 bills up
11 in appropriations today, and he sits on that committee.
12 But he said that in his letter, "I believe that the
13 changes approved in AB 740 demonstrate that charter
14 schools are, in fact," quote, unquote, "'school
15 districts' regarding mandate claims." And I will share
16 that letter with you.

17 CHAIR SHEEHAN: Sure.

18 MR. PREMACK: It's kind of interesting to listen
19 to talk about law versus justice and courts of equity
20 versus whatnot here. I think you have an opportunity to
21 be both in line with the law as it reads literally, as
22 its authors say it was intended to be interpreted, and to
23 be just, all at the same time. We really hope that you
24 will reject the staff recommendation and support the
25 notion that charter schools are eligible claimants.

1 CHAIR SHEEHAN: Thanks.

2 Dan?

3 MS. TROY: Yes, thanks.

4 Once again, Dan Troy with the Department of
5 Finance.

6 We certainly support or are on record with our
7 response in 2000. And I'll reiterate again today that we
8 are in support of the staff recommendation in regard to
9 charter schools that they are not eligible claimants.
10 Nowhere in the Education Code, relevant Government Code
11 sections or in Article XIII B of the Constitution are
12 charter schools referenced as eligible claimants.

13 I would note for the record that AB 748 was
14 silent on the issue of mandates. It did not make
15 charters eligible claimants in that regard. And I think
16 the arguments that we've heard against the staff's
17 recommendation are simply policy arguments, and they
18 don't seem to be -- they're rather presumptions of
19 intent, rather than anything that's actually expressed
20 in the law. So we urge that you adopt the staff
21 recommendation in that regard.

22 Thank you.

23 CHAIR SHEEHAN: Thank you.

24 Did you want to address any of the issues that
25 were raised?

1 We did take quite a bit of testimony last time.
2 But in case there's anything that you wanted to address,
3 Eric?

4 MR. FELLER: Yes. I'll be brief.

5 The Legislature failed to properly amend the
6 Government Code. You could say that that was intentional
7 or not. The fact of the matter is the Education Code
8 deems charter schools as school districts for purposes
9 of Prop. 98 and for purposes of many other things. It
10 never deems them school districts for purposes of
11 Article XIII B, section 6. If it did, then my
12 recommendation wouldn't have gone the way it had.
13 So what we're relying on here is what the Legislature
14 has opted charter schools into, based on their general
15 exemption in the Ed. Code. And they've opted them into
16 Prop. 98 funding; they've opted them in -- even
17 categorical aid. I still don't see how that applies to
18 funding under Article XIII B, section 6, because
19 categorical aid and local government reimbursement aren't
20 the same thing.

21 So the Legislature can fund charter schools all
22 they want to, but they have to indicate some intent to
23 make them subject to Article XIII B, section 6, either in
24 the Ed. Code or in the Government Code. And both
25 statutory schemes have been amended in recent years; but

1 those amendments haven't been put into law.

2 That's all I had to say on that.

3 CHAIR SHEEHAN: Questions of the witnesses or
4 staff?

5 Mr. Smith?

6 MEMBER SMITH: Just to clarify. Is this the
7 first time we've had the question before the Commission
8 on whether charter schools are eligible claimants, just
9 to be clear?

10 MS. SHELTON: Yes, in a test claim.

11 But as we discussed last time, there are some
12 Parameters and Guidelines that are mandates imposed on
13 school districts. Not the individual schools, but the
14 school districts.

15 And in one set of parameters and guidelines,
16 there was a footnote that said, "Charter schools, like
17 the other schools within the district, could maybe
18 receive the funding." But they were mandates on the
19 school district, and at a time when the laws may have
20 been very different than they are as reflected in this
21 test claim.

22 CHAIR SHEEHAN: Okay.

23 MEMBER SMITH: Thank you.

24 CHAIR SHEEHAN: Ms. Olsen?

25 MEMBER OLSEN: When we were discussing this last

1 time, I think that ultimately we decided to put it off
2 this month and that staff were going to write some
3 letters, which are in our binders.

4 Can we have an update on what's happened since
5 those letters were sent?

6 MS. HIGASHI: I sent the letters -- I sent paper
7 copies of the letters to the legislators indicated on
8 those letters. I also sent e-mails -- follow-up e-mails
9 to the staffs for those committees, and asked them to
10 notify us if any changes were anticipated; and I have not
11 gotten any replies.

12 MEMBER OLSEN: So you got no replies in either
13 direction?

14 MS. HIGASHI: In either direction.

15 MEMBER OLSEN: Nobody said, "This is what we
16 meant" or "not what we meant"?

17 MS. HIGASHI: Exactly. And actually I had one
18 conversation with staff from Leg. Analyst's office, just
19 to confirm whether they had heard if there were any
20 activities. And at that point in time, this was not an
21 issue that had been identified by any of the parties that
22 I had contacted.

23 CHAIR SHEEHAN: We do have the two -- Mr. Huff,
24 I guess, sent a letter and Mr. Wyland. So at least -- on
25 their opinions of the issues.

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1 MS. HIGASHI: And just lastly, Sarah --
2 Ms. Olsen, it was also in the morning report for two days
3 running, that the Commission would be considering this
4 issue today.

5 CHAIR SHEEHAN: Right.

6 Yes?

7 MEMBER ROBERTS: Question. I see the copies of
8 the letters that were sent. They are dated May 1st.
9 Today is the 25th.

10 Do we know for a fact -- do we have any
11 indication that the recipients of the letters have
12 actually seen them and had -- was there any
13 acknowledgment -- is there any acknowledgment that we
14 received --

15 MS. HIGASHI: I've received no acknowledgment.

16 MEMBER ROBERTS: -- or is it completely no
17 response at all?

18 MS. HIGASHI: Completely no response. And the
19 conversations I've had have been conversations I've had
20 to initiate, and the response was no response, no action
21 pending, that staff were aware of.

22 MEMBER SMITH: Paula, do you think -- because
23 now is a busy time for the Legislature, so I understand
24 that they're trying to focus on several important issues.
25 But do you think given more time, that we may get more

1 responses or some interest? I mean, do you think we
2 should start maybe calling instead of letter-writing?

3 CHAIR SHEEHAN: I don't.

4 MEMBER SMITH: I'm not the guy who wants to
5 defer everything today. I'm just questioning.

6 CHAIR SHEEHAN: We have one more to go.

7 MS. HIGASHI: No, I really have not been
8 contacted, and I can't read the minds of the legislators.
9 I don't know what could happen in conference committee.
10 I'm not sure it would be a good policy for us to hold up
11 actions every time we think that there is a discussion on
12 any of the subjects before us, because all of our test
13 claim subjects have bills amending them every day.

14 CHAIR SHEEHAN: Yes, this is --

15 MS. TROY: May I add a comment?

16 CHAIR SHEEHAN: I would like to say a few
17 things.

18 Did you have something else you want to say,
19 Sarah?

20 MEMBER OLSEN: I didn't have any more questions.

21 CHAIR SHEEHAN: I guess -- this is a difficult
22 one because on the charter schools, from a policy
23 perspective, I am very sympathetic to this issue. And

24 I do think the issue is appropriate and really
25 does belong upstairs on this. We are, once again, as

1 Mr. Glaab said before, we are bound by what our
2 procedures are in our statutes.

3 The Legislature, I think, has demonstrated that
4 they know how to add charter schools for reimbursement,
5 and know also how to add them as an eligible claimant
6 under that statute. Whether they have been deliberately
7 chosen or just pick and choose, but it's difficult for us
8 to place ourselves in the shoes of those policy makers in
9 making that decision.

10 And as you know, much support for charter
11 schools -- you know, the Governor, who I was appointed
12 by, is a big proponent of charter schools. I know many
13 of the members who represent the other constitutional
14 officers here are very supportive. But the difficulty
15 for us is in us substituting our judgment and stepping
16 outside our legal bounds as we take the oath for this
17 Commission in becoming policy makers in that regard.

18 I do think it belongs upstairs. We did try and
19 get their attention. I think others -- many of us would
20 feel they need to take some action. But I'm not -- I
21 think it oversteps our bounds by presuming something that
22 is not in the statute currently. That's the part, that's
23 the concern that I have on this one.

24 MR. SCRIBNER: And I agree with everything that
25 you say and I agree.

1 I like member Smith's idea from last month to
2 go ahead and take a shot across the bow and find us as
3 eligible claimants and force their hand that way. I
4 think we would get a quicker response than a denial this
5 morning. And I just wanted to reiterate my comments that
6 I made earlier, that I think -- and I agree, I think
7 there is a huge groundswell of support for charters.
8 and I think that the Legislature is taking baby steps
9 to getting them to where they need to be. And,
10 unfortunately, this had been an obscure process up until
11 the last few years, when we're tagging on billions
12 of dollars to mandates. And hopefully now soon, we will
13 see a change to the Government Code. I respect the fact
14 that you are bound by what is in the Government Code.
15 I just wanted to make clear that the Legislature has
16 shown, I believe, its intent that charters shall be
17 eligible claimants because they are getting paid.

18 CHAIR SHEEHAN: Yes. Ms. Olsen?

19 MEMBER OLSEN: I guess it comes down, for me, to
20 this issue of, in many, many, many ways, for many kinds
21 of things, as I understand it, charter schools are held
22 to the same kinds of standards and the same requirements
23 as school districts. I mean, they have to do assessment.
24 They are involved in collective bargaining. I take it,
25 that private schools are not required to collect -- to

1 stay in collective bargaining; is that true?

2 MR. PREMACK: Correct.

3 MEMBER OLSEN: We only have two systems in this
4 state; right? We have public schools and we have private
5 schools?

6 MR. PREMACK: *(Nodding head.)*

7 MEMBER OLSEN: Teachers have to be credentialed
8 in charter schools?

9 MR. PREMACK: Yes.

10 MS. HIGASHI: Charter schools get Proposition 98
11 funding, so they're publicly funded?

12 MR. PREMACK: Correct.

13 MS. HIGASHI: Are they allowed to also charge
14 tuition?

15 MR. PREMACK: No.

16 MEMBER OLSEN: So they are wholly-funded --

17 MR. PREMACK: Expressly prohibited from charging
18 tuition.

19 MEMBER OLSEN: Okay, what other things -- this
20 is one of those Pandora's -- I'm a little worried about
21 opening this latch because I honestly don't know what's
22 coming out from it, but I'm going to open it, anyway.

23 MR. PREMACK: We'll try to be nice.

24 MEMBER OLSEN: What other kinds of things, in
25 the sort of global sense, are requirements are imposed on

1 public schools that are not imposed on charter schools?

2 MR. PREMACK: There are a variety of pieces
3 within the Education Code. For example, it did not apply
4 a lot of the employment-related requirements. Collective
5 bargaining is a Government Code section that, by
6 reference through the Charter Act, is incorporated to
7 apply to charter schools, much in the same way as we
8 think that the mandate laws have now been incorporated by
9 reference. But those provisions in the Education Code
10 generally governing things like employment matters, use
11 of state-adopted textbooks, those sorts of things, we
12 have a lot more flexibility in terms of choosing your
13 curriculum, how you do your staffing. Charter schools
14 also enjoy a much higher degree of flexibility with
15 regard to most, but not all state-funded categorical
16 programs. Those are the biggies.

17 MEMBER OLSEN: But, again, coming back to the
18 whole -- the charter schools are required to assess
19 students, using the same assessment tools as public
20 schools; correct?

21 MR. PREMACK: Yes.

22 MS. OLSEN: So they have to meet those
23 standards?

24 MR. PREMACK: They're ranked according to the
25 same API system and federal AYP system.

1 MEMBER OLSEN: So even though they have
2 flexibility on the one side as to how they're going to
3 get there, they have to meet the standard?

4 MR. PREMACK: How you get there is your business
5 as a charter school, but that you get there applies to
6 both.

7 MEMBER OLSEN: You have to get there?

8 You know, last month and this month -- and I'm
9 not one that goes for sort of quick equips, but I have
10 this sort of quacking that's going in the back of my
11 head. It just -- they just look like ducks, to me.
12 They're just more and more, the more we talk about them,
13 you know, if it looks like a duck and it quacks like a
14 duck, it's a duck.

15 So I understand, Madam Chair, your comments
16 about sort of the specific language. But, on the other
17 hand, at some point they are de facto ducks.

18 CHAIR SHEEHAN: And I appreciate exactly what
19 you're saying. That's the dilemma in terms of the
20 situation.

21 MS. TROY: May I speak to that?

22 I would suggest that it's not -- as Mr. Premack
23 detailed some of the instances by which the charter
24 schools have a lot more freedom, if you will, than
25 regular school districts do, essentially, charter schools

1 have far fewer obligations and powers and duties than do
2 school districts. For example, charter schools, they
3 can't levy taxes, they can't condemn land. They're a
4 different entity than our school districts. A charter
5 school can petition for their existence. They may not
6 self-generate it. They are creatures, essentially, of
7 their chartering authorizers. And by choosing to create
8 their petition, they are buying into the laws that apply
9 to charter schools, which I know are far fewer than the
10 laws that otherwise apply to school districts.

11 And the exchange in that regard is fewer
12 restrictions but greater accountability, as measured by
13 the oversight, as measured by the fact that they must
14 show measurable outcomes of their success, by the fact
15 that they must be renewed every five years.

16 And I would suggest that a charter school can
17 also -- if they don't like the laws that are applied to
18 them that are passed one day, they can close up shop.
19 They cannot choose to renew the petition when that comes
20 due at the time. So I do think that they are entities
21 that are distinct from school districts.

22 CHAIR SHEEHAN: Did you want to comment?

23 MR. SCRIBNER: Yes. I think that a little bit
24 of his comment was going into the choice aspect that was
25 in the staff analysis. And I think that every entity

1 that comes before you seeking reimbursement is a creature
2 of choice. And I'm not quite sure how you reconcile the
3 application of choice to one entity, one legal entity,
4 a charter school, and then not apply that equally to a
5 school district that files a test claim five years ago,
6 but then comes before you and they're unified. It was an
7 elementary district, and maybe now they're a K through
8 12. They made a choice to change. Maybe they added --
9 somehow grew by annexing another district.

10 I think it's difficult when you're making this
11 "voluntary choice" argument, because cities and counties,
12 school districts are here out of choice. They make
13 choices to how they establish themselves. And that
14 argument could then be applied to everybody, and you now
15 can wipe away all mandates, essentially, because you can
16 always go back to how things were begun and say that
17 claimant, whatever district it may be, you chose to be
18 who you are today. And by making that choice, you now
19 have allowed yourself open to all of the mandated whims
20 of the Legislature for however long you've been in
21 existence.

22 And I think that this body needs to be very
23 careful to go down that road. Because if you are to be
24 consistent in the future, I don't see much hope for this
25 process at all.

1 MR. PREMACK: I think it's also important also
2 to realize that many of the other entities -- you take,
3 for example, most of the cities that come in front of
4 you -- are created through voluntary action of local
5 people filing a petition to incorporate a city, much in
6 the same way that local people putting together a charter
7 school put together a charter petition to form a charter
8 school. It's no more or less voluntary. And so I think
9 that argument just falls on its own weight.

10 MS. TROY: I think there is one big key
11 distinction.

12 CHAIR SHEEHAN: Go ahead, Dan.

13 MS. TROY: When you form a charter school,
14 however, you are being released of several of the rules
15 that are applicable to school districts. So there is an
16 exchange aspect that's not present in some of the
17 instances.

18 MR. PREMACK: And we're happy to forgo claiming
19 any costs associated with those mandates from which we
20 are leased of those burdens. And to us, that's the whole
21 reason that this process exists in the first place, is to
22 avoid having those mandates imposed --

23 CHAIR SHEEHAN: We appreciate that.

24 MR. PREMACK: -- unless the people imposing them
25 really think that they are worth --

1 CHAIR SHEEHAN: Necessary, yes.

2 MR. PREMACK: -- the money being spent.

3 The effect on the charter school is the same.
4 One of my clients just went out and has the very first
5 rated bond issue on charter schools in California. They
6 got a BBB- rating, which isn't the prettiest thing in the
7 world. But I can't help imagining that if I had told
8 Standard & Poor's that if we had protection from all of
9 these new mandates that are dragging on that school's
10 budget, that that might have been a BBB+ rating. And
11 that has a huge effect, just as it does on cities and
12 counties and special districts and other entities that
13 have to balance their budget, that have to find out ways
14 to finance their long-term debt in economical ways.

15 The practical effect here is the same. The
16 intent of the voters here was to prevent this kind of
17 stuff from being mandated thoughtlessly without careful
18 consideration of the costs.

19 To us, this is all: It looks like a duck, it
20 quacks like a duck, waddles like a duck, has a beak like
21 a duck, has feathers like a duck.

22 CHAIR SHEEHAN: Mr. Worthley?

23 MEMBER WORTHLEY: I did a have a question for
24 our staff, and that is the voluntary argument that's
25 being offered indicates that other jurisdictional

1 entities voluntarily come into existence. And I'm
2 thinking like in my own county, where we have mosquito
3 abatement districts, vector districts, and some areas are
4 not covered by them. So if they decided to build or
5 create a new vector district or expand the boundary of
6 another one, there's a voluntary aspect to that. But is
7 it not specifically provided for by statute? I mean, is
8 that the distinguishing factor? If it's specifically
9 stated, covered in the statute, then we know it qualifies
10 for the mandate. If it's not specifically stated, then
11 it does not qualify?

12 MR. FELLER: Yes. And the other difference is
13 that these special districts that you bring up were --
14 did exist at the time that Prop. 4 was enacted and were
15 addressed in the ballot initiative -- I think in the
16 comments of the ballot initiative it mentions special
17 districts.

18 So the voluntary argument -- I didn't make this
19 up. This came from the California Supreme Court.

20 CHAIR SHEEHAN: We know.

21 MR. FELLER: They applied it --

22 MEMBER WORTHLEY: They made it up.

23 MR. FELLER: Yes. But they can do that.

24 That came from the Kern case a few years ago, when the
25 court said that if the underlying programs were voluntary

1 in those cases -- I think those were school site
2 counselors -- then the added activities, like the Brown
3 Act activities were also incurred voluntarily. That
4 hasn't applied to -- all levels of government perhaps,
5 yes, our created voluntary cities and counties, as well
6 as school districts. The difference is that those were
7 expressly intended to be reimbursed by the electorate and
8 by the Legislature in Prop. 4 and in the statutory
9 scheme. So we have reimbursable entities and then we
10 have private entities and then we have this hybrid
11 charter school entity, which sometimes quacks like a
12 duck, I agree. But the fact that there's no express
13 opt-in for mandate reimbursement, I think is why we came
14 down on the side that we came down on in the analysis.

15 CHAIR SHEEHAN: Go ahead.

16 MEMBER ROBERTS: I'd like to make a comment.

17 In speaking about the voluntary nature of
18 charter schools, there is a difference that I see between
19 special districts, creation or incorporation of cities
20 and creation of charter schools, and that is, as I
21 understand it in each county, there is something called a
22 LAFCO, a Local Agency Formation Commission, which is a
23 creation of the statute, which is empowered to approve
24 the incorporation of a city or creation or amendment of
25 boundaries of special districts.

1 And I don't think that kind of approval process
2 is necessary for the creation of charter schools. To me,
3 that creates another distinction between charter schools
4 and other types of, quote, unquote, voluntarily-created
5 cities and districts.

6 MR. FELLER: I believe that's correct. They do
7 have their own process that they have to follow with the
8 school district, but the LAFCO is not part of that.

9 CHAIR SHEEHAN: Did you want to --

10 MS. HIGASHI: I just wanted to note for the
11 record that we do have a test claim pending on LAFCO
12 issues.

13 CHAIR SHEEHAN: All right.

14 MS. HIGASHI: So I'll just leave it at that.

15 CHAIR SHEEHAN: Okay. Did you want to
16 address that?

17 MR. PREMACK: Yes. While we're not subject to
18 LAFCO, neither are school districts.

19 CHAIR SHEEHAN: Right.

20 MR. PREMACK: Each has its own process. All of
21 them are -- if you drew a flow chart, they would
22 essentially have the same boxes and arrows. Somebody at
23 the local level puts together a petition, you bring it to
24 some governmental body. In the cases of cities,
25 counties, and special districts, it's LAFCO. In the case

1 of school districts, it's the county committee on school
2 district organization. In the case of charter schools,
3 it's the school district county office of education
4 and/or State board.

5 And so from that perspective, to me, it waddles
6 like a duck.

7 CHAIR SHEEHAN: Okay, now that we've had a
8 discussion on the ducks and whether it walks or quacks or
9 what they look like --

10 MEMBER WORTHLEY: It's a lovely discussion.

11 CHAIR SHEEHAN: Yes, exactly, exactly.

12 Any other comments before we'll entertain a
13 motion?

14 MEMBER GLAAB: Yes, Madam Chair and members.

15 Again, all this testimony is extremely
16 compelling. And under normal circumstances, I would be
17 voting against staff recommendation because as it's been
18 stated here, there's certain opinions out there that this
19 body is to act as an oversight to the Legislature, in
20 some cases, and to possibly interpret the spirit and
21 intent of rules, and things that -- unintended
22 consequences as a result of certain omissions. And I
23 would normally be inclined to do so. And letters from
24 the Legislature, such as this (*pointing*), and others that
25 we have received, would indicate that the Legislature --

1 certain members of the Legislature also think that this
2 is what this body's responsibilities and scope are.

3 However, absent anything to the contrary, I just
4 don't think that we have the ability to do that
5 interpretation. So I'm very troubled. I would normally
6 be voting against staff recommendation on this for that
7 reason. But absent anything more compelling, I just
8 think that we need to take a look at that.

9 MEMBER OLSEN: Well, I agree completely with
10 your analysis, and I come to exactly the opposite
11 conclusion.

12 I've been trying to think, well, why did I vote
13 one way on the last case and I'm going to vote,
14 potentially, the other way on this case?

15 And here's how I think about it. On the last
16 case, the Legislature has spoken. We may not like how
17 the Legislature spoke and we may think that it needs
18 changing, but they spoke.

19 On this case, we have an absence of speech on
20 the issue. And I think that's -- and in that situation,
21 I think the Commission, therefore, has the latitude to
22 interpret and to try and bring equity and justice to the
23 situation. So I am --

24 CHAIR SHEEHAN: Even though we're not an equity
25 forum.

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1 MEMBER OLSEN: Even though we're not an equity
2 forum, right.

3 And I think that the silence speaks very loudly
4 to me on this one.

5 CHAIR SHEEHAN: Mr. Smith?

6 MEMBER SMITH: I agree with Member Olsen's
7 comments, and I guess -- did you make a motion, or no?

8 MEMBER GLAAB: No, I did not.

9 MEMBER SMITH: Then I make a motion that we
10 reject the staff recommendation.

11 MEMBER OLSEN: Second.

12 CHAIR SHEEHAN: Okay, so the motion --

13 MS. SHELTON: I need to clarify.

14 If you make the motion to reject the staff
15 analysis, then it would also be sending the analysis back
16 to staff to do a new-program, higher-level-of-service
17 mandate and costs mandated by the state analysis for
18 *Charter Schools* on the substantive portions of the test
19 claim; right?

20 MEMBER SMITH: Okay. If you say so.

21 CHAIR SHEEHAN: That's what he was thinking,
22 exactly, when he made that motion, because you need
23 some -- well, direction in terms of staff. Because if
24 you're going to reject this, you'll need to --

25 MEMBER SMITH: I reject it on the grounds that

1 the --

2 MS. SHELTON: Yes, if you reject this, we still
3 haven't gotten to the legal determination whether there's
4 a reimbursable state-mandated program for charter
5 schools.

6 MEMBER SMITH: Well, let me start by saying that
7 I would reject the analysis that charter schools are not
8 eligible claimants.

9 MS. HIGASHI: Okay.

10 CHAIR SHEEHAN: Does that clarify it?

11 MS. SHELTON: Yes.

12 MS. HIGASHI: Sure.

13 CHAIR SHEEHAN: All right. So we have a motion
14 and a second to reject the staff analysis.

15 Any other comments or discussion on the motion?

16 MS. HIGASHI: On the issue of whether charter
17 schools are eligible claimants?

18 CHAIR SHEEHAN: Whether charter schools are
19 eligible claimants.

20 MEMBER WORTHLEY: Madam Chair, then I'll explain
21 why I will vote differently on this one than the last
22 one.

23 On the last one, I felt there was an issue of
24 fact for us to discuss about whether the plan is a
25 reasonably necessary way of enforcement or using --

1 getting to the claims process.

2 Here, I think it's very clear that the
3 Legislature knows how to fix this process. They simply
4 have not done so, and so they have spoken. And it would
5 be very easy for them to fix it. And perhaps our action
6 today will prompt them to do that.

7 But I think we are substituting our opinion for
8 the Legislature here when we say, "You forgot to put this
9 in. We think you should have, and so we're going to say
10 something to the contrary." I think that's a different
11 situation from the first one than what we voted on. So I
12 will not support the motion.

13 CHAIR SHEEHAN: Okay.

14 MEMBER ROBERTS: Question.

15 CHAIR SHEEHAN: Yes.

16 MEMBER ROBERTS: Just a follow-up question.

17 If we reject staff's recommendation, then we are
18 saying that charter schools are eligible for
19 reimbursement. Does that mean we have to take separate
20 action to then create procedures by which charter
21 schools --

22 MS. HIGASHI: I think what we would have to do
23 at that point is take the analysis back and bring it back
24 again for another hearing.

25 CHAIR SHEEHAN: Right.

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1 MS. HIGASHI: Because the whole analysis would
2 change. And it could potentially -- and then we also
3 have another agenda item, too.

4 MEMBER ROBERTS: Other things that need to be
5 done with a different recommendation?

6 MS. HIGASHI: But it's different, right.

7 CHAIR SHEEHAN: Okay, any other questions?

8 So the vote will be on the motion to reject the
9 staff analysis based on the fact that the maker of the
10 motion feels that charter schools are eligible claimants.

11 Did I state that correctly?

12 MEMBER SMITH: That's correct.

13 CHAIR SHEEHAN: Okay. So all those in favor --

14 MS. HIGASHI: Is there a second to the motion?
15 Yes?

16 MEMBER OLSEN: *(Raising hand.)*

17 CHAIR SHEEHAN: Yes.

18 MS. HIGASHI: All right, Sarah.

19 CHAIR SHEEHAN: All those in favor of the
20 motion, say "aye."

21 MEMBER SMITH: Aye.

22 MEMBER OLSEN: Aye.

23 CHAIR SHEEHAN: All those opposed?

24 MEMBER WORTHLEY: Nay.

25 MEMBER GLAAB: No.

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1 MEMBER ROBERTS: No.
2 MEMBER LUJANO: No.
3 CHAIR SHEEHAN: No.
4 The motion fails.
5 Is there another motion?
6 MEMBER WORTHLEY: Motion to support staff
7 analysis.
8 MEMBER GLAAB: Second.
9 CHAIR SHEEHAN: Okay, we have a motion to
10 support the staff recommendation.
11 Any further discussion on the motion?
12 All those in favor, say "aye."
13 MEMBER WORTHLEY: Aye.
14 MEMBER GLAAB: Aye.
15 MEMBER LUJANO: Aye.
16 MEMBER ROBERTS: Aye.
17 CHAIR SHEEHAN: Aye.
18 CHAIR SHEEHAN: Opposed?
19 MEMBER SMITH: No.
20 MEMBER OLSEN: No.
21 CHAIR SHEEHAN: All right, the same vote.
22 MS. HIGASHI: The same vote.
23 MR. SCRIBNER: May I ask a procedural question?
24 CHAIR SHEEHAN: Absolutely.
25 MR. SCRIBNER: We have another charter school

1 set of parameters and guidelines out there now, and now
2 we have part activities again related to charter schools.
3 Do we have any idea as to how we should go about moving
4 forward with -- it makes little sense to have these
5 bifurcated from the existing charter schools parameters
6 and guidelines?

7 MS. HIGASHI: That would be a subject that we
8 should talk about after we know we have a statement of
9 decision adopted.

10 MR. SCRIBNER: I mean, I would assume that was
11 happening.

12 Can we just get that direction next, without
13 having a separate agenda item? Is that --

14 MS. SHELTON: It's kind of a discussion on how
15 to develop proposed P's & G's. And there are ways to
16 consolidate P's & G's. And maybe we can have a
17 prehearing conference.

18 MR. SCRIBNER: Okay, that's all I was asking.
19 I didn't want to start drafting away and doing the wrong
20 thing.

21 MS. HIGASHI: No, we can certainly address those
22 issues if there's a statement of decision that we are
23 sending out.

24 CHAIR SHEEHAN: So the next action is Item 9.

25 MS. HIGASHI: Item 9.

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1 CHAIR SHEEHAN: To adopt the proposed Statement
2 of Decision on Item 8.

3 So do we have a motion?

4 MEMBER GLAAB: So moved.

5 CHAIR SHEEHAN: We have a motion -- and a
6 second?

7 MEMBER ROBERTS: I second.

8 CHAIR SHEEHAN: All right, any discussion on the
9 motion?

10 MR. FELLER: May I just request that the motion
11 include to allow minor changes to be made to the SOD,
12 including reflecting the witnesses' hearing testimony in
13 the vote count?

14 CHAIR SHEEHAN: Absolutely. We'll incorporate
15 that as part of the motion.

16 All right, so with that, all those in favor?

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

18 CHAIR SHEEHAN: Opposed?

19 MEMBER SMITH: No.

20 MEMBER OLSEN: No.

21 CHAIR SHEEHAN: Ms. Olsen and Mr. Smith are
22 reflected as voting "no."

23 Okay, and then we're going back?

24 MS. HIGASHI: Yes, we're going back to Item 6.
25 And this is the test claim on *Collective Bargaining*.

1 Mr. Feller will be --

2 CHAIR SHEEHAN: All right, you're just going to
3 stay at the table?

4 MR. SCRIBNER: I just sleep here today.

5 MR. FELLER: Yes, me, too.

6 The *Charter Schools Collective Bargaining* test
7 claim statutes make charter schools subject to the
8 Educational Employment Relations Act, or "EERA."
9 Claimants seek reimbursement for charter school, as well
10 as school district activities to comply with the
11 test-claim statutes.

12 For reasons explained in the analysis, staff
13 finds that a school district claimant does not have
14 standing to claim reimbursement for the activities
15 alleged to be mandated on a charter school.

16 Also, charter schools are not eligible claimants
17 subject to Article XIII B, Section 6 of the Constitution.

18 Third, the test claim statutes do not mandate an
19 activity on county boards of education.

20 Fourth, subjecting charter schools to the EERA
21 is not a new program or higher level of service for
22 school districts that are deemed the public school
23 employer.

24 And fifth, that there is no evidence in the
25 record that the school district incurs increased costs

1 mandated by the State to make written findings of fact
2 when denying a charter petition because the petition does
3 not contain a reasonably comprehensive description of --
4 I'll quote the statute here -- "A declaration whether or
5 not the charter school shall be deemed the exclusive
6 public school employer of the employees of the charter
7 school for purposes of the Educational Employment
8 Relations Act."

9 Neither the claimant nor any state agency has
10 commented on the draft staff analysis. The staff
11 recommends the Commission adopt this analysis to deny the
12 test claim.

13 Would the parties and witnesses please state
14 your names for the record?

15 MR. SCRIBNER: David Scribner, representing the
16 claimant.

17 MR. PREMACK: Eric Premack, CharterVoice.

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

20 CHAIR SHEEHAN: All right, go ahead.

21 MR. SCRIBNER: Is it fair to say, ditto?

22 Okay, actually, you know, a novel approach, is
23 it possible to put this over to seek legislative intent?

24 No? Okay.

25 CHAIR SHEEHAN: I don't know. A third time is

1 the charm.

2 MR. SCRIBNER: You never know. I agree that
3 maybe these letters were not read, possibly.

4 You run into the same fundamental question here,
5 and I'm not going to beleaguer some of the points in
6 here.

7 I disagree with some of the comments, again,
8 related to voluntariness, again, related to what truly is
9 legislative intent, and would just reference the comments
10 that we've made in the *Charter Schools III* testimony, and
11 have them apply equally here to a lot of the same issues.
12 Unfortunately, we can't get through a threshold
13 definitional question.

14 Thank you.

15 MR. PREMACK: I was an integral part of the
16 circle of folks who wrote the law that imposed the
17 collective bargaining laws on charter schools, and I can
18 assure you that it was fully contemplated that this would
19 come up in front of here because it's a very costly thing
20 to do. It's the single largest, if I recall correctly,
21 mandate that's within the K-12 sector.

22 I sit on the board of a charter school that is
23 going through the process of unit formation right now.
24 The practical effect on our school is devastating, if we
25 are going to have to dig into our very slim reserves to

1 pay tens of thousands of dollars in legal costs.

2 Other schools that have gone through this
3 process without professional counsel have gotten into
4 big trouble in front of PERB. One ran into a
5 quarter-of-a-million-dollar fine because they weren't
6 aware of how the collective bargaining process works and
7 what their obligations are in terms of bargaining in good
8 faith. It's a very serious problem and issue for us, and
9 we're very concerned about it. We think it would be a
10 good idea to put this item over.

11 I mean, it's only consistent -- if you're saying
12 that we don't have clear guidance on this issue of
13 whether charter schools that are an eligible claimant, we
14 think then we need to seek some guidance on it.

15 Frankly, though, when we go upstairs to talk to
16 them, the much bigger issues like you were talking about
17 this morning, they barely have enough time to deal with
18 those. And they say, "Well, why can't you go down to the
19 Commission, and they'll fix it for you?"

20 So if we're going to say that we don't have
21 clear guidance on this, in spite of the fact that we have
22 a signed letter from the author of legislation that is
23 directly on point, I think we need to leave this item
24 open until the Legislature resolves it.

25 CHAIR SHEEHAN: Susan?

1 MS. GEANACOU: Yes, thank you.

2 Susan Geanacou, Department of Finance.

3 The Department of Finance supports the staff
4 analysis in this matter.

5 I'd just like to draw to your attention that in
6 the prior matter, *Charter Schools III*, if I'm reading
7 correctly, the claimant in that matter did include a
8 charter school, whereas in this matter, as far as I can
9 read and in the staff analysis, the sole claimant is a
10 classically-defined school district and does not include
11 a charter school. So Finance doesn't believe that the
12 school district has standing to raise charter-school
13 activities here, which is kind of a threshold question.
14 But nonetheless, we support the staff analysis in its
15 entirety.

16 MS. SHELTON: That's true, that's in the staff
17 analysis prepared by Eric. There is no charter school as
18 a claimant in this case.

19 CHAIR SHEEHAN: Questions for the witnesses?

20 MEMBER GLAAB: Yes, Madam Chairman, just a
21 question of staff.

22 What about with respect to the request to put
23 it over? What is the up side versus down side?

24 MS. SHELTON: Well, that would be within the
25 discretion of the Commission if you wanted to put it

1 over. You know, the record is closed; and we wouldn't
2 change our analysis to put it over.

3 MEMBER GLAAB: In order to seek legislation, you
4 can't --

5 MS. SHELTON: Well, it's kind of the same
6 comments that were raised earlier that there's
7 legislation effecting almost every single program that we
8 analyze. And if we waited to do things, it would just
9 delay everything continually.

10 CHAIR SHEEHAN: Well, but, I guess, also one of
11 the issues is, there is not a charter school as the
12 claimant in here. I mean, the claim would have to be
13 changed, even if the Legislature --

14 MR. SCRIBNER: Well, I think the reason why at
15 the time the charter schools were not included is because
16 that was a relatively recent change to how the Commission
17 operated, requiring a specific entity for each individual
18 type of body. So if you have a mandate that was imposed
19 upon cities, counties, school districts, and charter
20 schools, the Commission now would require every entity to
21 be represented.

22 For a long period of time, that was not the
23 requirement. In fact, there were decisions that were
24 made, and they have spoken on that, that charters have
25 been footnoted in as part of school district decisions,

1 and charter schools were not actually claimants.

2 In this case we have a difficult time getting
3 charter schools in the process simply because they are in
4 this: "Why?" Why are we spending so much time and
5 effort in this because we're just getting slapped around
6 consistently by the Commission, saying, "We're not
7 eligible claimants." It's difficult to get them to fight
8 the good fight here.

9 Having said that, you put this item over, and
10 I can get a -- I think I can get a charter school signed
11 up in no time, and it would be a simple amendment to --
12 it would actually require no work on the Commission's
13 part to add an eligible claimant here with a charter.

14 CHAIR SHEEHAN: Okay, I guess -- oh, Camille,
15 and then I'll --

16 MS. SHELTON: A couple of things.

17 One, a claim cannot be amended unless it's
18 amended before the hearing is set. So we've already
19 passed that point that it can be amended.

20 And secondly, maybe in the past there have been
21 situations where the test-claim legislation has treated
22 different entities alike, and we have analyzed it based
23 on the language of the legislation because it was equally
24 applicable to different types of entities. But here, the
25 school districts are not aligned with charter schools.

1 They have very different interests, different lobbying
2 groups. They represent different requests. And so it
3 wouldn't be appropriate to have a school district stand
4 in the shoes of a charter, when their interests are very
5 different. A court wouldn't take that. I mean, a court
6 wouldn't allow standing for charters with a school
7 district as the claimant.

8 MR. SCRIBNER: I would just -- as far as
9 amending this claim, I don't -- I disagree. This would
10 not be a substantive amendment. This would be a
11 procedural addition of a charter claimant. The analysis
12 would not change. Staff has already admitted to that
13 fact.

14 So if this item was, in fact, put over and we
15 were able to add a charter claimant, the only thing that
16 changes is the header that lists a charter school as a
17 claim. We're not making a substantive change, and the
18 analysis would not change.

19 MS. SHELTON: It is a substantive change because
20 we need -- when you file a test claim, you have to file a
21 declaration saying that you've incurred increased costs
22 mandated by the State, and you have to show what your
23 costs are.

24 We don't have any evidence in the record to show
25 that charter schools have incurred increased costs

1 mandated by the State here --

2 MR. SCRIBNER: Correct.

3 MS. SHELTON: -- so it is a substantive.

4 MR. SCRIBNER: That would be something that we
5 would provide, and would not change what the Commission
6 has done. For what would be before you this morning, it
7 would be two pieces of paper and a header change. I
8 don't see that as a substantive change. I don't see
9 there being a substantive change in the analysis
10 whatsoever.

11 MS. SHELTON: It is evidence in the record. The
12 Commission can't move ahead on a claim without having a
13 declaration of costs.

14 CHAIR SHEEHAN: Paula, did you want to say
15 something before --

16 MS. HIGASHI: I just wanted to indicate that
17 before this test claim was set for hearing, we issued a
18 draft staff analysis. And typically, what happens when a
19 claimant receives a draft staff analysis, if they've
20 discovered that there's an omission or something that is
21 brought to the attention through the analysis, they have
22 a time period where they can either, one, request a
23 postponement, they can amend a claim, whatever. And we
24 haven't had any indications until this moment that that
25 was his desire.

1 MR. SCRIBNER: The reason why there was no
2 indication is what I stated: It appeared to be a
3 foregone conclusion at that point in time. There seemed
4 to be no traction in the Legislature to make any kind of
5 changes.

6 We have now traction with this body. We have
7 several members who are obviously sympathetic to this
8 issue, as eligible claimants. And based on the current
9 environment, we might be able to pull someone forward.
10 But as the environment existed six years ago, six months
11 ago, it was completely different. And many charters just
12 felt, "Forget it. It's not worth the time and expense."
13 But if we are seeing positive changes, as we're seeing
14 today, it gives a slight bit of hope. And believe me,
15 charter operators, they operate on hope. And so I think
16 that we could pick one up with the help of Eric Premack's
17 group and the help of others, we could add a claimant.

18 It would not, again, create a procedural
19 nightmare for anybody. If anything, it just adds time on
20 our end -- very little time to staff or the Commission
21 itself.

22 MR. BURDICK: Yes, Madam Chair and Members of
23 the Commission, Allan Burdick on behalf of the CSAC SB 90
24 service.

25 I just want to clarify because I want to make

1 sure that this is not impacting cities and counties.
2 Originally, this process was intended, the people that
3 crafted it felt that there should be some multiple
4 agencies submitting test claims, so that you would have
5 large, small -- different kinds of jurisdictions to file.
6 You could look at -- for the debate, so you didn't
7 continually see the County of Los Angeles, the County of
8 San Bernardino. Just the larger agencies typical before
9 you.

10 The Commission had that changed. They changed
11 it so they wanted one claimant, and that was the
12 direction of the Commission. They felt that having
13 multiple parties confused the situation because of the
14 fact that, you know, you had different people that were
15 not reaching agreement, necessarily, on the same item.
16 So they said, "You know, we'd really like to have one
17 test claimant."

18 I want to be clear today that when a city files
19 a test claim that deals with, as an example, parks and
20 recreation mandate, as an example, that covers cities,
21 counties, and special districts, so that only one test
22 claim has to be filed. It's not that maybe there would
23 be an objection to going back to the original intent of
24 this. I just want to make it clear that, as we move
25 forward, that we're not saying that we have to have a

1 city, county, and special district to file a test claim,
2 on each test claim. I just want to be clear on that.

3 MS. SHELTON: Now, that's correct, because the
4 Government Code defines "local agency" to include all
5 those bodies. There's no definition of "charter school"
6 in the definition of school districts.

7 CHAIR SHEEHAN: Yes, the concern -- I mean, you
8 can file a subsequent test claim on this issue. The
9 concern -- going back to the issue on the previous one,
10 the concern is the threshold issue of charter in that
11 definition.

12 Yes, I think you have support, sympathy from
13 many members up here in terms of that issue upstairs.
14 And certainly, you know, feel free to go upstairs and
15 tell them how we wrestled with it. But the concern that
16 I have -- at least speaking as the member, not as the
17 chair -- until that threshold action is taken upstairs,
18 we are still bound by the statute in terms of who we can
19 look at as eligible.

20 MR. SCRIBNER: I understand.

21 CHAIR SHEEHAN: And, see, the problem that I
22 have -- I am extremely sympathetic to the case -- the
23 Legislature knows how to put in those activities for
24 reimbursement, and they know what to do. And it is a --
25 we cannot put ourselves in those shoes, despite -- I know

1 some of my colleagues feel differently. It's a hard one
2 for me because I'm extremely sympathetic and have seen
3 the growth of charters over the last ten, 12, whatever,
4 years. But I have to sort of set aside my personal
5 sentiment on that one, as I am sitting here as a member
6 of this Commission as the chair. That's the difficulty I
7 have and the dilemma. But I have to come down on what I
8 am bound by.

9 MR. SCRIBNER: Understood.

10 MEMBER SMITH: Thank you, Madam Chair.

11 Yes, I guess I just don't see a significant
12 downside of waiting. If the charter schools and school
13 districts think they go straighten this out in the
14 Legislature by next meeting, I just don't see -- I
15 understand what you're saying; but I just don't see that
16 we have a compelling reason to act today, other than it's
17 on the agenda and it's a little bit more of a hassle to
18 wait until next month.

19 But if they think they can straighten the issue
20 out -- I'm not convinced that they were purposely omitted
21 versus just having been thought of in the -- I don't
22 know. If you can figure it out in the Legislature, I
23 think we ought to give them the chance, too.

24 CHAIR SHEEHAN: Okay, so is that a motion?

25 MEMBER SMITH: That's a motion. Move to defer

1 to next meeting.

2 CHAIR SHEEHAN: So there is a move to postpone
3 the action on this item until our next meeting, which
4 would be July.

5 MEMBER WORTHLEY: Madam Chair, just a question,
6 sort of a procedural question.

7 CHAIR SHEEHAN: Yes.

8 MEMBER WORTHLEY: If we did that, would we then
9 be foreclosing further comments? Because I don't have a
10 problem continuing it, as long as we're not going to
11 reopen it and have a whole, new discussion about
12 something we've already plowed through before. I mean,
13 there's no need to do that again. So, I mean, if it's
14 just a matter of continuing it for the sole purpose of
15 finding out whether the Legislature is going to act on
16 this matter, then I would support the motion. I just
17 don't want to have to go through continual hearing after
18 hearing after hearing, and say, well --

19 CHAIR SHEEHAN: Yes. So no new claimant on it.
20 You can file a separate one, if you wish.

21 MEMBER LUJANO: I have a question for staff.

22 Let's say the Legislature does change the
23 Government Code and includes charter schools for purposes
24 of mandates. Would that clear up this issue? Or do we
25 still have the voluntary issue out there?

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1 And I know this is just your opinion.

2 MS. SHELTON: No, if the Legislature changed the
3 definition of "school districts" to include charter
4 schools, then the Commission would have to follow that.

5 MR. FELLER: The voluntariness there would be
6 as relevant then to school districts or cities and
7 counties.

8 CHAIR SHEEHAN: Exactly.

9 MEMBER OLSEN: Second.

10 CHAIR SHEEHAN: We have a motion and a second
11 just to postpone this claim until --

12 MEMBER WORTHLEY: July.

13 CHAIR SHEEHAN: The July meeting.

14 Camille, did you want to add?

15 MS. SHELTON: *(Shaking head.)*

16 CHAIR SHEEHAN: All right, all those in favor?

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

18 CHAIR SHEEHAN: Any opposed?

19 *(No audible response.)*

20 MR. SCRIBNER: Thank you.

21 MR. PREMACK: Thank you.

22 CHAIR SHEEHAN: See, one of them were postponed
23 or deferred.

24 All right, Paula, the next -- 10 and 11 are off
25 until next month; is that correct?

1 MS. HIGASHI: That's correct.

2 CHAIR SHEEHAN: *Binding Arbitration?* Okay.

3 MS. HIGASHI: It brings us to the update.

4 CHAIR SHEEHAN: Staff report on Mandate Reform.

5 MS. HIGASHI: On mandate reform.

6 Ms. Patton will present this.

7 MEMBER PATTON: As you know, last month we
8 requested that our budget be augmented to contract with
9 the Center for Collaborative Policy to facilitate
10 mandate reform discussions. Last week the Senate Budget
11 Number 4, in effect, rejected our request for budget
12 augmentation by electing not to discuss our request for
13 funding. And the legislative staff from the Senate and
14 the Assembly have indicated that once the budget has been
15 adopted this year that they intend to initiate their own
16 mandate reform discussions. So at this point, we do not
17 have funding to proceed with our project.

18 CHAIR SHEEHAN: Yes, one of the things on this
19 issue that I want to make sure people understand, it
20 should not -- or at least I do not see it from my
21 discussions with the staff upstairs and the chair of the
22 Assembly Budget Committee and staff on both sides, that
23 they do not want to pursue mandate reform. They very
24 much want to. The issue is, do we want to go outside and
25 hire a facilitator and do this? And they said, "No, we'd

1 rather convene the meetings ourselves, bring in the
2 interested parties and have those discussions."

3 So I want to make sure people do not read this
4 incorrectly, that they are against pursuing those
5 discussions on reform and continuing the debate on it.
6 It is really the how-to-proceed-to-do-that versus the
7 doing it itself. And that has been at least communicated
8 to this member from the staff upstairs and from the
9 members.

10 So I am taking them at their word. I know they
11 are still engaged in the budget discussions now, but the
12 staff on both sides said they do want to convene a group,
13 once they conclude that.

14 Mr. Smith?

15 MEMBER SMITH: Thank you, Madam Chair.

16 The Controller is disappointed that the Budget
17 Subcommittee didn't take this up. And just the
18 collaborative process seemed to make a lot of sense,
19 taking the politics out of the process and just kind of
20 hammering out some proposals.

21 But as the Chair said, I think that the
22 Commission has been successful, at least at bringing this
23 back to the discussion upstairs. So I think that we've
24 also heard that the Legislature is more interested in
25 mandate reform now than they were before we started this

1 process.

2 And the Controller, as a member of the
3 Commission and as -- well, as Controller, he is committed
4 to comprehensive mandate reform and will work with the
5 Legislature and the Commission by every means possible to
6 try to get some commonsense fixes into this system.

7 CHAIR SHEEHAN: Yes. So thank you.

8 Mr. Burdick?

9 MR. BURDICK: Thank you very much for allowing
10 me to just ask a question.

11 Allan Burdick again on behalf of the California
12 State Association of Counties, SB 90 Service.

13 I've heard differing views, and I just wonder if
14 it's clear, is the intent to have something done before
15 the Legislature adjourns in September; or is it intended
16 to have discussions and introduce legislation next
17 January?

18 CHAIR SHEEHAN: I cannot necessarily answer that
19 in terms of whether we think something will be done this
20 year.

21 I guess what I would say is if we can get
22 together in July, come up with something that could be
23 done and there is a consensus that we can do it, then I
24 think there would be support. If we feel that those
25 discussions, some things need to be worked -- further

1 discussions through the fall and then come back in
2 January. So I don't think there is a definitive answer
3 as to when. What I have seen is a definitive commitment
4 to having those discussions.

5 MS. HIGASHI: I think there might be some
6 technical issues that could come up in the context of
7 conference committee that the Senate Budget Subcommittee
8 had considered. There's some clarifying language in
9 terms of how Prop. 1A is implemented, in terms of which
10 statewide cost estimates adopted by the Commission would
11 be considered for the next budget and also on what date
12 reimbursement claims would be filed and estimated claims
13 would be filed. And those are mainly -- the first one,
14 I think, is still being discussed in terms of language
15 being prepared between Leg. Counsel and Leg. Analyst's
16 office.

17 CHAIR SHEEHAN: Okay.

18 MS. HIGASHI: And the second one is out there
19 for discussion.

20 MR. BURDICK: Thank you.

21 CHAIR SHEEHAN: But I see those as sort of -- I
22 don't know that they're technical --

23 MS. HIGASHI: They are very technical.

24 CHAIR SHEEHAN: -- you know, tweaks to the
25 process versus talking about the entire reform process or

1 alternatives.

2 MS. HIGASHI: Correct.

3 MEMBER SMITH: And I assume Sacramento State
4 didn't volunteer to work for free for the greater good
5 of --

6 CHAIR SHEEHAN: Mankind, personkind?

7 MS. HIGASHI: We're going to try.

8 CHAIR SHEEHAN: Okay, any other questions on
9 that?

10 MEMBER WORTHLEY: (*Shaking head.*)

11 CHAIR SHEEHAN: I do feel we have -- by
12 initiating this, we have helped prod this discussion.
13 So while this isn't the way it went, I am optimistic that
14 we can have those discussions.

15 MS. HIGASHI: Item 14.

16 CHAIR SHEEHAN: Yes.

17 MS. HIGASHI: Are there questions on my report?

18 The main change I wanted to be sure I announced
19 is that our next hearing date is being moved to
20 July 28th.

21 CHAIR SHEEHAN: Yes, which is --

22 MS. HIGASHI: Which is Friday. And we will
23 convene at 10:00 a.m., and I suspect it could be a longer
24 hearing than two hours.

25 CHAIR SHEEHAN: Okay, all right. And I

1 appreciate that. I have to say, that was done at the
2 request of the chair because I've got another board
3 meeting out of town on what would have been the Thursday.
4 All right.

5 MS. HIGASHI: I was so eager to get you out of
6 here, I skipped Camille's item. So let's go back to
7 Camille.

8 CHAIR SHEEHAN: Yes, I was looking at her.

9 MS. SHELTON: I actually do have one thing to
10 update on litigation.

11 On the *Graduation Requirement* lawsuits filed on
12 those incorrect reduction claims, the second round of
13 litigation, the parties did enter into a stipulation to
14 avoid litigation whereby the Commission would set aside
15 those statements of decision and the State Controller's
16 Office would reevaluate the claim.

17 We did get word yesterday that Judge Connolly
18 signed that order. So for the July hearing, you will be
19 seeing those proposed orders to set aside those
20 statements of decision. And they'll go off to the State
21 Controller's Office.

22 And then I also wanted to introduce you to our
23 two new law clerks for the summer. We have Kyle
24 Hampton -- if you can stand up -- and Jared Mueller.
25 Welcome.

1 *(Applause)*

2 MS. SHELTON: They are both from McGeorge,
3 second-year law students. Jared is here just for half
4 the summer. He's going off to Austria for the class with
5 Justice Kennedy. And Kyle will be here all summer. And
6 they have really helped out tremendously so far in their
7 two weeks they've been here.

8 CHAIR SHEEHAN: Welcome.

9 Okay, anything else that you had, Paula?

10 MS. HIGASHI: No. The proposed hearing agenda
11 will be amended because we've had some adjustments,
12 again, due to prehearings.

13 CHAIR SHEEHAN: All right.

14 MS. HIGASHI: Also, I wanted to report that this
15 afternoon at 2:00 p.m. we'll be convening our first
16 prehearing conference for developing a reasonable
17 reimbursement methodology for POBR, Peace Officers Bill
18 of Rights, in this room at 2:00 p.m.

19 CHAIR SHEEHAN: Very good. Yes, I saw some of
20 the e-mail on that, and I'm very hopeful that that
21 process will result in a good outcome. It will make all
22 of our lives much easier in terms of that.

23 MS. HIGASHI: So if all of you could take this
24 hearing calendar back home with you and let me know if
25 the proposed meeting dates for 2007 work for you, or if

1 any of the dates need to be changed.

2 I know we always do this, but we have some
3 conflicts with League of Cities or CSAC meetings. And I
4 just want to find out early.

5 CHAIR SHEEHAN: Well in advance.

6 Okay, and is it posted on our Web site also?

7 MS. HIGASHI: This will be.

8 CHAIR SHEEHAN: It will be? So that people who
9 are interested in the schedule also -- all right, very
10 good.

11 Is there anyone from the public who would like
12 to address the Commission before we adjourn, on issues
13 that were not on the agenda?

14 All right, do we need to go into closed session
15 or --

16 MS. HIGASHI: No.

17 CHAIR SHEEHAN: Not today?

18 All right, so then without further ado, we are
19 adjourned.

20 Thank you, all.

21 *(Proceedings concluded at 11:56 a.m.)*

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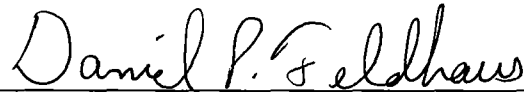
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In witness whereof, I have hereunto set my hand on June 8, 2006.



Daniel P. Feldhaus
California CSR #6949
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