

# MINUTES

## COMMISSION ON STATE MANDATES

Department of Finance  
915 L Street, Redwood Room  
Sacramento, California  
May 29, 2009

**Present:** Member Tom Sheehy, Chairperson  
Representative of the Director of the Department of Finance  
Member Richard Chivaro, Vice Chairperson  
Representative of the State Controller  
Member Francisco Lujano  
Representative of the State Treasurer  
Member Anne Houston Schmidt  
Representative of the Director of the Office of Planning and Research  
Member Sarah Olsen  
Public Member  
Member Paul Glaab  
City Council Member

**Absent:** Member J. Steven Worthley  
County Supervisor

### CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 10:30 a.m. Executive Director Paula Higashi called the roll, and noted that Member Worthley was absent.

### APPROVAL OF MINUTES

Item 1 March 27, 2009

The March 27, 2009 hearing minutes were adopted by a vote of 6-0.

### PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIM AND STATEMENT OF DECISION,  
PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5,  
ARTICLE 7 (GOV. CODE, § 17551) (action)

#### DISMISSAL OF WITHDRAWN TEST CLAIM

Item 7\* *Ferry Assets, 07-TC-07*  
Government Code Sections 66540 through 66540.69  
Streets and Highway Code Sections 30913 and 30914  
Statutes 2007, Chapter 734 (SB 976)  
City of Vallejo, Claimant

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

PARAMETERS AND GUIDELINES

- Item 8\* *Local Government Employment Relations*, 01-TC-30  
Government Code Sections 3502.5 and 3508.5  
Statutes 2000, Chapter 901 (SB 739)  
California Code of Regulations, Title 8, Sections 32132, 32135, 32140, 32149, 32150, 32160, 32168, 32170, 32175, 32176, 32180, 32190, 32205, 32206, 32207, 32209, 32210, 32212, 32310, 32315, 32375, 32455, 32620, 32644, 32649, 32680, 32980, 60010, 60030, 60050, 60070, Register 2001, Number 49  
County of Sacramento and City of Sacramento, Claimants

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 10\* *National Norm-Referenced Achievement Test*, 08-PGA-01 (05-PGA-03, 04-RL-9723-01, 97-TC-23)  
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, and 60641, Statutes 1997, Chapter 828 (SB 376)  
California Code of Regulations, Title 5, Sections 851, 852, 853, 855, 857, 858, 859, 861, 862, 863, 864, 865, 867, and 868  
Department of Finance, Requestor

PROPOSED STATEWIDE COST ESTIMATE

- Item 11\* *Local Recreation Areas: Background Screenings*, 01-TC-11  
Public Resources Code Section 5164, Subdivisions (b) (1) and (2);  
Statutes 2001, Chapter 777 (AB 351)  
City of Los Angeles, Claimant

Member Lujano made a motion to adopt items 7, 8, 10 and 11 on the consent calendar. With a second by Member Glaab, the consent calendar was adopted by a vote of 6-0.

Executive Director stated that Items 5, 6 and 9 have been postponed at the request of claimant representatives.

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

- Item 2 Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)**

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing.

## TEST CLAIMS

- Item 3     *Student Records, 02-TC-34*  
Education Code Sections 49062, 49065, 49067, 49068, 49069.3, 49069.5, 49076.5, 49077, 49078, 76220, 76223, 76225, 76234, 76244, 76245, 76246  
Statutes 1975, Chapter 816 (S.B. 182); Statutes 1976, Chapter 1010 (A.B. 3100); Statutes 1976, Chapter 1297 (S.B. 1493); Statutes 1980, Chapter 1347 (A.B. 2168); Statutes 1983, Chapter 498 (S.B. 813); Statute 1989, Chapter 593 (S.B. 1546); Statutes 1993, Chapter 561 (A.B. 1539); Statutes 1995, Chapter 758 (A.B. 446); Statutes 1996, Chapter 879 (A.B. 1721); Statutes 1998, Chapter 311 (S.B. 933); Statutes 1998, Chapter 846 (S.B. 1468); Statutes 2000, Chapter 67 (A.B. 2453)  
Riverside Unified School District and Palomar Community College Districts, Claimants

Kenny Louie, Commission Counsel presented this item. Mr. Louie stated that this test claim addresses issues of pupil and student record management by school districts and community-college districts, such as the establishment, maintenance, and destruction of records; transfer of pupil and student records; release of information to peace officers; release of information in compliance with a court order or subpoena; and notice to others concerning a student's disciplinary records.

Staff received comments on the draft staff analysis only from the claimant, Riverside Unified School District, which were addressed in the final staff analysis.

Staff finds that some of the test claim statutes are not reimbursable state-mandated programs because they are federal mandates and/or court mandates or not new programs or higher levels of service. However, staff finds that some of the test claim statutes impose reimbursable state-mandated activities on school districts for providing access to or transferring pupil records to foster families, new districts, or peace officers.

Staff also finds that the test claim imposes a reimbursable state-mandated activity on community college districts relating to informing alleged victims of sexual assault or physical abuse about any disciplinary action taken by a community college concerning the sexual assault or physical abuse.

Staff recommends one modification to the staff analysis. The fee authority in Education Code section 76223 for furnishing copies of records for community college students does not apply to the reimbursable state-mandated activity on community college districts to inform a victim of sexual assault or physical abuse of the results of any disciplinary action against another student.

Staff recommends that references to the fee authority in the staff analysis, pages 3, 57, and 58, and the proposed Statement of Decision, pages 5, 57, 58, be deleted. With this modification, staff recommends that the Commission adopt the staff analysis to partially approve the test claim for the activities listed on pages 57 and 58.

Parties were represented as follows: Art Palkowitz representing Riverside Unified School District and Susan Geanacou representing the Department of Finance.

Art Palkowitz stated that, in the staff analysis, Commission staff recommended that certain records activities be reimbursed. Those records pertain to individualized education plans under the jurisdiction of foster-family agencies. The records also deal with probation type of requests, other types of foster care, and with certain things that relate to specific peace officers.

Mr. Palkowitz agreed with the staff on the analysis and urged the Commission to affirm that recommendation.

Mr. Palkowitz explained that the group of records that the Commission staff is recommending not be approved as reimbursable activities refers to transfer of a pupil's permanent record or a copy of the permanent record to the K-12 school district or private school where the pupil intends to enroll, upon the request of the K-12 school district or private school where a pupil intends to transfer. A student is making a change and the new school is requesting the records from the old school. This happens quite often.

The analysis by the Commission staff refers to an Education Code section from 1959, 50 years ago. That code section, very similar to these activities, refers to a "*cumulative record*." The language in the current statute refers to a "*permanent record*." There is an analysis of "*cumulative*" and "*permanent*" record. Staff concludes that the cumulative record was already requested by a previous statute; so this is not really a new statute, or a new program and, therefore, should not be reimbursed.

Mr. Palkowitz asked if a cumulative record is the same as a permanent record, then why did the Legislature pass this bill. He noted that the older section was eventually repealed. Mr. Palkowitz stated that the intent of the Legislature was that permanent records should be reimbursed under this statute. The Legislature has defined a permanent record different than a cumulative record and, therefore, should be reimbursable.

Mr. Louie stated that the cumulative record was not the same as the permanent record; rather, the permanent record is inclusive of the cumulative record. So technically, it was a decrease in terms of what is being referred to in the prior code section.

Member Glaab asked if electronic records are acceptable in this instance.

Mr. Palkowitz responded that these statutes are from 1998, so we may not have been thinking in that line back then as we would today. It seems that if they are going to accept a copy, then an electronic version should be acceptable.

Susan Geanacou for the Department of Finance commented about the final staff analysis on two specific code sections.

The first is Education Code section 49069.3 regarding a school district's response to a foster-family agency request for access to student records under their jurisdiction. Finance acknowledged that the Commission staff considered the plain-language issue on pages 42 and 43 of the final staff analysis. Nonetheless, Finance disagreed with the analysis in that regard. Finance asserted that staff is, and should not be, reading into the plain language of Education Code section 49069.3, a school district requirement that isn't there to provide the records in response to the foster-family agency request. Accordingly, Finance asked that this activity be denied reimbursement.

The second comment is regarding community college districts and Education Code section 76234, on page 53 of the final staff analysis. It involves the activity of informing the alleged victim of sexual assault or physical abuse within three days of the results of any disciplinary action by the community college and the results of any appeal.

Finance asserted that this activity is already being reimbursed under another community college mandate called *Sexual-Assault Response Procedure* (99-TC-12). In that mandate, the Commission found that it was reimbursable for each community college district to adopt and to implement written procedures or protocol for several pieces of information, one of which is procedures for ongoing case management. It specifically includes keeping the victim informed of the status of disciplinary proceedings in connection with the assault and the results of any other disciplinary action or appeal.

And to the extent that the same activity is being recommended for reimbursement here, Finance argued that community college districts should not be reimbursed twice for the same or very similar activity.

Chairperson Sheehy asked Ms. Geanacou if Finance had previously shared the analysis that these activities are already being covered under another reimbursable mandate with the Commission and staff.

Ms. Geanacou stated that Finance submitted a "very late" (either yesterday or this morning) filing of the analysis and didn't believe members or staff had time to process the analysis.

Chairperson Sheehy noted that Finance did not give the Commission and staff sufficient time to analyze the late filing.

Mr. Louie responded that in the activity approved in that prior test claim, there were discussions in the parameters and guidelines phase. The approved activity was for a one-time activity of adopting policies and distributing those policies to the districts, and not actually informing the victim. In this test claim, the activity is informing the victim. So it is a different activity.

On a motion by Member Chivaro to adopt the staff recommendation, and a second by Member Glaab, the staff recommendation to partially approve the test claim was adopted by a vote of 6-0.

Item 4 Proposed Statement of Decision: *Student Records*, 02-TC-34  
[See Item 3]

Mr. Louie also presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision, as modified, accurately reflected the Commission's decision to partially approve the *Student Records* test claim. Staff recommended that the Commission adopt the proposed Statement of Decision including minor changes reflecting the witnesses' hearing testimony and vote count.

Member Olsen asked if the Statement of Decision will reflect the earlier comments.

Ms. Shelton, Chief Legal Counsel, stated that the recommendation would be to adopt the proposed Statement of Decision as modified.

Member Chivaro made a motion to adopt the proposed Statement of Decision. With a second by Member Lujano, the Statement of Decision was adopted by a vote of 6-0.

## STAFF REPORTS

Item 13 Report on 2009 Legislation

Ms. Patton reported that the number of mandate bills is dwindling. There is AB 349 by Member Silva. This would provide that if any mandated program is suspended for three concurrent years,

the Department of Finance would be required to submit language in the Governor's proposed budget to repeal the suspended mandates. It passed through the Assembly by a vote of 77-0, and is pending committee assignment in the Senate. So it went through the Legislature and the Assembly with no "no" votes.

Chairperson Sheehy asked who sponsored the bill.

Ms. Patton replied that it is sponsored by the author. It is not an administration bill.

Member Olsen asked what it meant to have three *concurrent* years as opposed to *consecutive* years.

Ms. Higashi replied that it should be *consecutive*.

Chairperson Sheehy asked if the Commission staff has a position on that bill.

Ms. Patton replied no. Ms. Higashi stated that Commission staff does not take a position on a bill if it does not impact our workload. This bill would impact Finance's workload.

Ms. Patton continued that the next bill is AB 548 by Member Krekorian. This bill would require the audits the State Controller completes on mandate reimbursement claims to be done within three years from the time the claim was filed rather than three years from the time reimbursement for the claim was made by the state. The author's office reported, by e-mail this morning, that they amended the bill yesterday to say the audits be completed within four years rather than three. Ms. Patton stated she had not seen that language yet. But with that amendment, it did pass out of Assembly Appropriations yesterday, so it's on the floor.

The final bill is AB 661. This bill would implement the settlement agreement between the Department of Finance and the schools on the BIPS program. That bill, due to its high cost, was held in suspense yesterday in Appropriations. The author's office reports this morning they do not think it is going to move.

#### Item 14 Chief Legal Counsel's Report (info)

Ms. Shelton reported that the court set a December 11<sup>th</sup> hearing date on BIPs. If the situation of the settlement agreement is not taken care of and an appropriation is not made, that date is set for hearing. So we will be possibly attending a hearing date on the merits of that claim at that point.

Chairperson Sheehy asked Ms. Shelton to explain why there is legislation (AB 661) and a court case.

Ms. Shelton explained that there was a settlement agreement that required agreement from a majority of the school districts. Ninety-five percent of the school districts in the state agreed to sign a waiver of the right to file reimbursement claims with the State Controller's Office. The agreement also would have a court enjoin the Commission from adopting parameters and guidelines and a statewide cost estimate because we had not reached that stage yet. The Commission had only adopted a Statement of Decision approving the claim. The third prong of the agreement was legislation (AB 661) providing an appropriation based on the Department of Finance and the school districts' settlement agreement. The parties went to court in March to try to get the judge to sign off on this agreement; however, the court would not sign off until an appropriation had actually been made. The judge, with the agreement of the parties, pushed the hearing date to December 11 for a trial on the merits if the appropriation is not made.

Chairperson Sheehy asked how, if this bill stopped in the Legislature, it will impact the process.

Ms. Shelton explained that would be up to the Department of Finance and the school districts to try to renegotiate another agreement, or just have a hearing on the merits. It would go through the litigation process. The court is maintaining jurisdiction.

Ms. Shelton continued with a list of cases of interest. The first one was dealing with Grossmont Union High School District on a Handicapped and Disabled Students program. The Commission is not a party to that case. The school districts sued the Department of Education directly to try to get reimbursement for their costs of performing that program.

The Supreme Court denied the petition for review. The ruling in this case was that the school districts did not exhaust their administrative remedies by filing a test claim with the Commission. So it is possible we could receive a test claim from school districts on that case.

The second case of interest is a lawsuit by school districts against the State Controller's Office. It is now on appeal. The Commission is not a party to that action. It is a challenge to reductions the State Controller made on reimbursement claims on the ground that the school districts did not have contemporaneous source documents.

The trial court ruled that to the extent that the Commission's parameters and guidelines require contemporaneous source documents, it would be valid for the Controller to reduce on that ground. But to the extent the parameters and guidelines did not include that language, there was a ruling in favor of the school districts. Both parties have appealed.

Ms. Shelton stated that the Commission has a request on file from the State Controller's Office to go back and amend every set of parameters and guidelines to include that language. We have not yet set that for hearing. A lot of the issues the request raises are issues involved in this lawsuit.

Mr. Palkowitz asked to clarify what the Commission's process is going to be when the appeal is over.

Ms. Higashi stated that the request to amend the parameters and guidelines is just for the mandates that do not currently have the updated language. Ms. Shelton explained that the language is already included in all parameters and guidelines adopted since 2004. Ms. Higashi stated that there are different variations of the boilerplate language and the Controller's request brings that language up to what has been currently adopted.

Mr. Palkowitz asked that if there were parameters and guidelines being approved now, would they have the new language.

Ms. Higashi responded with a yes. Staff has been reviewing it and trying to determine if we can proceed on any of the proposed amendments. We have not heard specifically from any of the parties that they wish for us to postpone it. We had planned to have a prehearing conference to discuss the pros and cons of going forward immediately or holding it until the litigation is completed. But there are also related incorrect reduction claims on all of these cases pending before the Commission; the ones that are subject to the litigation and others that are not in the litigation.

Ms. Shelton introduced, Lauren Manning. Ms. Manning is the Commission's new law clerk who, as a second-year student from McGeorge School of Law, is interning for credit this summer.

#### Item 15 Executive Director's Report (info)

Ms. Higashi reported that the pending caseload is at 58. She noted that this is the first time that the caseload has been below 60 in many years.

Ms. Higashi stated that this summer or during conference committee, Assembly Budget Subcommittee Number 4 may consider giving the Commission jurisdiction over some form of reconsideration procedure. This decision has been precipitated by the recent ruling in the CSBA case, which basically said that the Legislature cannot direct the Commission to reconsider prior decisions. With that decision, there is serious interest in making sure that the Commission has jurisdiction to change prior Statements of Decision when there is a material change in facts or law that occurs after that decision.

In response to the request for Commission comment, Ms. Higashi reported that she testified before the Assembly Budget Subcommittee. The background material distributed to the subcommittee was included in the agenda item. At the end of the hearing, the subcommittee requested that the parties provide proposals and ideas.

In response to the subcommittee's request, staff developed a proposal based on how we read the CSBA ruling. Instead of calling it "*reconsideration*," the staff draft is a procedure which allows the Commission to amend a test claim decision, much like the courts consider in terms of amendment of an injunction. It is not drafted as a Commission proposal but, as an example of a workable alternative. There are, however, a number of variables in this proposal that obviously are subject to negotiation and discussion.

Ms. Higashi reported that the parties have been notified of this process that is underway and were encouraged to think about this issue and develop a proposal. CSBA and League of Cities and CSAC sent a letter to the committee consultants and committee members requesting that they be involved in this process. Staff hopes that if this process does pick up again, we will have a full discussion and cover all of the issues. The following issues were identified by Ms. Higashi:

- Authority to File a Request for Amendment of a Statement of Decision. We are recommending that it be the parties to the test claim proceeding. There is interest in the Capitol for legislators to have the right to request amendment of the Statement of Decision.
- Effective Date of Amendment. The staff draft suggests that it be the next fiscal year; the fiscal year after the decision is changed, if it is changed. It also would give the Commission the authority to amend the parameters and guidelines, prepare a new statewide cost estimate and do whatever needs to be done to update what we know about the mandate.
- Statute of Limitations. For the first year of operation, a request could be filed on any prior decision based on a subsequent change that occurred after that decision was rendered. After that one year period, there would be, for all the decisions that are issued by the Commission, a provision that says that one year after a change occurs there is a window in which a proposal can be filed to request an amendment of that decision.

Chairperson Sheehy asked if the Assembly Sub 4 has taken any action specifically on this issue.

Ms. Higashi responded that the committee chair directed the participants to form a working group to develop a proposal and bring it back to the subcommittee.

Chairperson Sheehy asked what problem they are trying to solve with this budget trailer bill language.

Ms. Higashi responded if a change in case law would change the outcome of an old decision if it were to be decided today, they would like to see that decision reconsidered.



In the past, only those cases that the Legislative Analyst's Office identified as potential denied mandates were the subject of reconsideration. The Commission was directed to reconsider those cases based on current law in the hope that the state would reduce its liability. We have decisions that are from the Board of Control and the Commission, before much of our case law was issued. We also have changes to the definition of "costs mandated by the state" that have occurred since those prior decisions were issued.

Chairperson Sheehy commented that he is a little uncomfortable in hearing that they are trying to do this as a trailer bill. This is a complicated subject that needs a lot of review and public input.

Staff's draft proposal, described as a starting point, has been circulated to LAO, Budget Subcommittee, and Finance staff and will be sent out to other interested parties. The draft was also made available on the Commission's website through this agenda item.

Member Glaab stated that he understands what they are trying to do by bringing everything into compliance with current law. However, it seems that it is going to open up a Pandora's Box and the Commission's workload could explode. Mr. Glaab concurred with Chairperson Sheehy in that this needs and calls for a vote in a full public hearing, weighing everything.

Chairperson Sheehy directed his comments to Carla Castañeda from the Department of Finance. He asked her, as Finance's mandates principal, to follow this issue closely and report up through her chain of command what is going on to ensure that this is not something that is done in a vacuum.

Mr. Allan Burdick, staff to the California State Association of Counties and League of California Cities Advisory Committee on State Mandates, commented on the importance of full participation in open and fair discussions on these very complicated, legal issues. On behalf of the League and CSAC, Mr. Burdick thanked the Commission for their interest in this and encouraged participation in a fair and open deliberation of this and not a budget-trailer-bill fix.

Ms. Higashi continued that CSBA wants to comment and participate as well, especially in light of the litigation that, after having completed that case, there is certainly a concern that whatever process is developed, it meets their concerns as well.

Chairperson Sheehy commented that it was not clear to him how the budget process was going to play out in June, as far as amendments to the adopted State budget. He asked whether or not the Senate has taken any action on this item, and is this an item that has actually been queued up for review and discussion by the current ten-member conference committee that is taking place on the State budget?

Ms. Higashi directed the questions to Carla Castañeda, Department of Finance. Ms. Castañeda stated that both houses closed without any reconsideration or adoption of any of this language so it has not come up yet. Finance has not yet seen anything on the conference agenda. However, with the Assembly chairing them, it may come up because the issue was before the Assembly.

Ms. Higashi asked for two members to work as a subcommittee to share ideas, drafts or comments.

Chairperson Sheehy suggested Member Glaab because of his local government and state government executive background and Member Olsen because of her expertise in the state budget process. Both members agreed to form the subcommittee. Chairperson Sheehy and Member Schmidt both offered support and help in their areas of expertise, as well.

Ms. Higashi reviewed the tentative agenda for the next meeting on July 31, 2009 and reminded members that the September meeting is set for September 25, 2009.

## **PUBLIC COMMENT**

There was no public comment.

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

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, [Behavioral Intervention Plans]
2. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Third District Court of Appeal, Case No. C055700; [AB 138; Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II]
3. *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833, [Peace Officer Procedural Bill of Rights]
4. *California School Boards Association, Education Legal Alliance, and Sweetwater Union High School Dist. v. State of California, Commission on State Mandates, and John Chiang, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 07CS01399, [School Accountability Report Cards, SARC]

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

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

Hearing no further comments, Chairperson Sheehy adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

## **REPORT FROM CLOSED EXECUTIVE SESSION**

At 11:42 a.m., Chairperson Sheehy reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice

and agenda, and pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

**ADJOURNMENT**

Hearing no further business, Chairperson Sheehy adjourned the meeting at 11:42 a.m.

A handwritten signature in cursive script that reads "Paula Higashi". The signature is written in black ink and is positioned above the printed name and title.

PAULA HIGASHI  
Executive Director

**RECEIVED**

**JUN 15 2009**

**COMMISSION ON  
STATE MANDATES**

**CERTIFIED  
COPY**

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**



TIME: 10:30 a.m.

DATE: Friday, May 29, 2009

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



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomate Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHAEL SHEEHY  
*(Commission Chair)*  
Representative for MICHAEL GENEST  
Director, State Department of Finance

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for BILL LOCKYER  
State Treasurer

SARAH OLSEN  
Public Member

ANNE HOUSTON SCHMIDT  
Representative for CYNTHIA BRYANT  
Director, Office of Planning & Research



COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
*(Item 15)*

KENNY LOUIE  
Commission Counsel  
*(Items 3 and 4)*

LAUREN MANNING  
Summer Intern

A P P E A R A N C E S

COMMISSION STAFF PRESENT

*continued*

NANCY PATTON  
Assistant Executive Director  
(Item 13)

CAMILLE SHELTON  
Chief Legal Counsel  
(Item 14)



PUBLIC TESTIMONY

**Appearing Re Items 3 & 4 (Student Records):**

For Claimant Riverside Unified School District:

ART PALKOWITZ  
Manager, Office of Resource Development  
San Diego City Schools Finance Division  
4100 Normal Street, Room 3209  
San Diego, California 92103-2682

For Department of Finance:

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

**Appearing Re Item 15 (Executive Director's Report):**

For the Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 15 (Executive Director's Report):  
*continued*

For CSAC and League of Cities:

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

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**ERRATA SHEET**

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Correction

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**Commission on State Mandates – May 29, 2009**

1 BE IT REMEMBERED that on Friday, May 29, 2009,  
2 commencing at the hour of 10:30 a.m., thereof, at the  
3 Department of Finance, Redwood Room, 915 L Street,  
4 Sacramento, California, before me, DANIEL P. FELDHAUS,  
5 CSR #6949, RDR and CRR, the following proceedings were  
6 held:

7 --oOo--

8 CHAIR SHEEHY: Okay, we will convene the  
9 Commission on State Mandates.

10 Please call the roll for purposes of  
11 establishing a quorum.

12 MS. HIGASHI: Mr. Chivaro?

13 MEMBER CHIVARO: Here.

14 MS. HIGASHI: Mr. Glaab?

15 MEMBER GLAAB: Here.

16 MS. HIGASHI: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Ms. Schmidt?

21 MEMBER SCHMIDT: Here.

22 MS. HIGASHI: Mr. Worthley is absent today.

23 His son is graduating from high school.

24 And Mr. Sheehy?

25 CHAIR SHEEHY: Here.

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1           Okay, so we have a quorum. We are set to  
2           conduct business.

3           MS. HIGASHI: The first item on our agenda is  
4           adoption of the minutes from March 27<sup>th</sup>.

5           MEMBER GLAAB: Move it.

6           MEMBER OLSEN: Second.

7           MEMBER CHIVARO: Second.

8           CHAIR SHEEHY: We have a motion and a second in  
9           approving the minutes.

10          All in favor?

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

12          CHAIR SHEEHY: The minutes are approved.

13          MS. HIGASHI: The next item is the *Proposed*  
14          *Consent Calendar*. It's on a blue sheet that all of you  
15          should have.

16          And I'll read the items:

17          Item 7, Dismissal of withdrawn test claim,  
18          *Ferry Assets*.

19          Item 8, Parameters and guidelines, *Local*  
20          *Government Employment Relations*.

21          Item 10, Proposed amendments to parameters and  
22          guidelines, *National Norm-Referenced Achievement Test*.

23          Item 11, Proposed statewide cost estimate,  
24          *Local Recreation Areas: Background Screenings*.

25          CHAIR SHEEHY: Are there any questions or

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1 comments from members of the Commission on the Consent  
2 Calendar?

3 MEMBER LUJANO: Move approval.

4 MEMBER GLAAB: Second.

5 CHAIR SHEEHY: We have a motion to approve and  
6 a second.

7 All in favor?

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

9 MS. HIGASHI: And just --

10 CHAIR SHEEHY: The Consent Calendar is  
11 approved.

12 Yes, Paula?

13 MS. HIGASHI: Just for the record, I'd like to  
14 note that Items 5, 6, and 9 have been postponed at the  
15 request of claimant representatives.

16 CHAIR SHEEHY: Items 5, 6, and 9 have been  
17 postponed.

18 MS. HIGASHI: This brings us to the hearing  
19 portion of our meeting. And I'd like to ask that all of  
20 the parties and representatives who intend to speak on  
21 our test claim set for hearing, Item 3, *Student Records*,  
22 I'd like to ask them to please stand.

23 *(Art Palkowitz and Susan Geanacou were*  
24 *duly sworn.)*

25 MS. HIGASHI: Item 3 will be presented by

1 Commission Counsel Kenny Louie.

2 MR. LOUIE: Thank you, Paula.

3 Item 3 is *Student Records*. This test claim  
4 addresses issues of pupil and student record management  
5 by school districts and community-college districts, such  
6 as the establishment, maintenance, and destruction of  
7 records; transfer of pupil and student records; release  
8 of information to peace officers; release of information  
9 in compliance with a court order or subpoena; and notice  
10 to others concerning a student's disciplinary records.

11 Staff received comments on the draft staff  
12 analysis only from Claimant Riverside Unified School  
13 District, which were addressed in the final staff  
14 analysis.

15 Staff finds that some of the test-claim  
16 statutes are not reimbursable state-mandated programs  
17 because they are federal mandates and/or court mandates  
18 or not new programs or higher levels of service.  
19 However, staff finds that some of the test-claim statutes  
20 impose reimbursable state-mandated activities on school  
21 districts for providing access to or transferring pupil  
22 records to foster families, new districts, or peace  
23 officers.

24 Staff also finds that a test-claim statute  
25 imposes a reimbursable state-mandated activity on



1 community-college districts relating to informing alleged  
2 victims of sexual assault or physical abuse about any  
3 disciplinary action taken by a community college  
4 concerning the sexual assault or physical abuse.

5 We recommend one modification to the staff  
6 analysis, however. The fee authority in Education Code  
7 section 76223 for furnishing copies of records for  
8 community-college students does not apply to the  
9 reimbursable state-mandated activity on community-college  
10 districts to inform a victim of sexual assault or  
11 physical abuse of the results of any disciplinary action  
12 against another student.

13 Staff recommends that the references in the  
14 staff analysis, pages 3, 57, and 58, and the proposed  
15 statement of decision's pages 5, 57, 58, to the fee  
16 authority in Education Code 76223 be deleted.

17 With this modification, staff recommends that  
18 the Commission adopt the staff analysis to partially  
19 approve the test claim for the activities listed on  
20 pages 57 and 58.

21 Will the parties and witnesses state their  
22 names for the record?

23 MR. PALKOWITZ: Good morning. Art Palkowitz on  
24 behalf of the claimant.

25 MS. GEANACOU: Susan Geanacou for the

1 Department of Finance.

2 CHAIR SHEEHY: Great.

3 Mr. Palkowitz, do you want to comment?

4 MR. PALKOWITZ: Yes, thank you.

5 Good morning. This test claim involves various  
6 types of records pertaining to pupils.

7 The Commission has recommended in their staff  
8 analysis that certain activities be reimbursed. Briefly,  
9 those records pertain to individualized education plans  
10 under the jurisdiction of foster-family agencies. They  
11 also deal with probation type of requests, other types of  
12 foster care, and dealing with certain things that relate  
13 to specific peace officers.

14 What I'd like to say is, first of all, we agree  
15 with the Commission on that type of analysis, and we  
16 would hope the Commission would affirm that  
17 recommendation.

18 There is a group of records, though, that the  
19 Commission staff is recommending not be approved as  
20 reimbursable activity, and that refers to transfer of  
21 pupil's permanent record or a copy of the permanent  
22 record to the K-12 school district or private school  
23 where the pupil intends to enroll, upon the request of  
24 the K-12 school district or private school where a pupil  
25 intends to transfer.

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1           So this is an instance where a student is  
2 making a change, the new school is requesting the records  
3 from the old school. It happens quite often.

4           The analysis by the Commission staff goes  
5 through in great detail and starts off with referring to  
6 an Ed. Code section back from 1959, 50 years ago. And  
7 that code section, very similar to these activities,  
8 refers to a "*cumulative record*." The language in the  
9 current statute refers to a "*permanent record*." And so  
10 there's an analysis of "*cumulative*" and "*permanent*"  
11 record. And the conclusion of the staff is that that  
12 cumulative record is a permanent record and, therefore,  
13 it was already requested by a previous statute, so this  
14 is not really a new statute, a new program and,  
15 therefore, shouldn't be reimbursed.

16           I guess the logical question is, if it's the  
17 same, a cumulative record or a permanent record, why did  
18 the Legislature pass this bill if the record is exactly  
19 the same, cumulative or permanent? And that older  
20 section was eventually repealed.

21           So, to me, I think there was an intent of the  
22 Legislature that permanent records should be reimbursed  
23 under this statute. And the language that was in the  
24 other one, for whatever reason, the way logically I look  
25 at it, they wouldn't be asking us to do the same thing,

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1 creating a new statute, with the same activity. So they  
2 have defined that a permanent record is different than a  
3 cumulative and, therefore, should be reimbursable.

4 CHAIR SHEEHY: Thank you, Mr. Palkowitz.

5 Does Commission staff counsel want to respond?

6 MR. LOUIE: The analysis is actually on page 41  
7 of the final staff analysis.

8 CHAIR SHEEHY: All right.

9 MR. LOUIE: In essence, it wasn't actually that  
10 the cumulative record was the same as the permanent  
11 record; rather, the permanent record is inclusive of the  
12 cumulative record. So technically, it was more of a  
13 decrease. It would be considered as more of a decrease  
14 in terms of what is being referred to in that code  
15 section.

16 CHAIR SHEEHY: Questions or comments from the  
17 board members? Commission members?

18 MEMBER GLAAB: I have a question, if I may.

19 CHAIR SHEEHY: Mr. Glaab?

20 MEMBER GLAAB: Are these records, are they in  
21 statute that they have to be hard copies, or can they be  
22 done electronically? Because I read here where within  
23 five days a permanent record needs to be transferred.  
24 And my question is, have we transitioned over to the  
25 electronic age, I guess?

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1 MR. PALKOWITZ: The way I read the statute,  
2 sir, it says "*the record*" or "*a copy of.*" I think some  
3 of these statutes are 1998. So we may not have been  
4 thinking in that line back then as we would today. So  
5 I don't really know if that's a substitute. It seems to  
6 me that if they're going to accept a copy, then an  
7 electronic version should be equally acceptable.

8 MEMBER GLAAB: Thank you.

9 CHAIR SHEEHY: All right, additional comments  
10 from Commission members?

11 *(No response)*

12 CHAIR SHEEHY: Does anybody from the public  
13 here today want to comment on this item?

14 *(No response)*

15 CHAIR SHEEHY: Finance?

16 MS. GEANACOU: Yes, thank you.

17 Good morning. Susan Geanacou for the  
18 Department of Finance.

19 I have two, hopefully, brief comments about the  
20 final staff analysis on two specific code sections.

21 The first is Education Code section 49069.3  
22 regarding a school district's response to foster-family  
23 agency request for access to student records under their  
24 jurisdiction.

25 We acknowledge that the Commission staff

1 considered the plain-language issue on pages 42 and 43 of  
2 the final staff analysis. Nonetheless, Finance disagrees  
3 with the analysis in that regard, and thinks that the  
4 staff is, and should not be, reading into the plain  
5 language of Ed. Code section 49069.3 a requirement of the  
6 school districts that isn't there to provide the records  
7 in response to the foster-family agency request. And  
8 accordingly, we ask that this activity be denied  
9 reimbursement.

10 The second comment is regarding the  
11 community-college districts and Education Code  
12 section 76234. It involves the activity of informing  
13 the alleged victim of sexual assault or physical abuse  
14 within three days of the results of any disciplinary  
15 action by the community college and the results of any  
16 appeal. It's on page 53 of the final staff analysis.

17 Finance asserts that this activity is already  
18 being reimbursed under another community-college mandate  
19 called *Sexual-Assault Response Procedures*. It's '99 test  
20 claim 12, 99-TC-12. And in that mandate, the Commission  
21 found that it was reimbursable for each community-college  
22 district to adopt and to implement written procedures or  
23 protocol for several pieces of information, one of which  
24 is procedures for ongoing case management. And  
25 specifically, including keeping the victim informed of

1 the status of disciplinary proceedings in connection with  
2 the assault and the results of any other disciplinary  
3 action or appeal.

4 And to the extent we think that is the same  
5 activity being recommended for reimbursement here,  
6 community-college districts should not be reimbursed  
7 twice for the same or very similar activity.

8 CHAIR SHEEHY: Ms. Geanacou, have you  
9 previously shared that analysis that you just presented  
10 and, specifically, that you feel that these activities  
11 are already being covered under another reimbursable  
12 mandate, shared that with the Commission and staff?

13 MS. GEANACOU: In a very late filing, yes,  
14 Finance did do it. And by "very late," I believe it was  
15 either yesterday or this morning. So I don't believe  
16 members or staff have had time to process that analysis.  
17 And I fully recognize that.

18 CHAIR SHEEHY: Well, it's a little late in the  
19 game then to have that incorporated into this decision.  
20 You really haven't given us sufficient time to analyze  
21 that.

22 MS. GEANACOU: I understand that.

23 CHAIR SHEEHY: Does the Commission staff want  
24 to respond?

25 Mr. Louie?

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1 MR. LOUIE: Yes. We are actually able to  
2 respond to that.

3 The activity approved in that prior test claim,  
4 there was discussions in the P's & G's stage. The  
5 activity was really for a one-time activity of adopting  
6 policies and distributing those policies to the  
7 districts, and not actually informing the victim. In  
8 this test claim, the activity is informing the victim.  
9 So it is a different activity.

10 CHAIR SHEEHY: All right. Any additional  
11 comments or questions by members of the Commission?

12 *(No response)*

13 CHAIR SHEEHY: Mr. Palkowitz and Ms. Geanacou,  
14 have you concluded your comments?

15 MS. GEANACOU: I have, yes.

16 CHAIR SHEEHY: I think at this point, we could  
17 entertain a motion.

18 Is there somebody here that would like to make  
19 a motion on Item 3?

20 MEMBER CHIVARO: I'll move the staff  
21 recommendation.

22 MEMBER GLAAB: Second.

23 CHAIR SHEEHY: Mr. Chivaro moves, Mr. Glaab  
24 seconds.

25 Is there any request for roll-call vote?



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1 (No response)

2 CHAIR SHEEHY: All in favor?

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

4 CHAIR SHEEHY: That item is approved.

5 So we're going to move to Item 4.

6 MS. HIGASHI: Mr. Sheehy?

7 CHAIR SHEEHY: Yes?

8 MS. HIGASHI: You should call for the noes,  
9 just in case.

10 CHAIR SHEEHY: I'm sorry?

11 MS. HIGASHI: Did everybody vote "aye"?

12 CHAIR SHEEHY: I asked if anybody objected to a  
13 unanimous --

14 MS. HIGASHI: Oh, okay.

15 CHAIR SHEEHY: I didn't hear any objections.  
16 But I'm happy to have the roll call. Is that preferable?

17 MS. HIGASHI: No, that's okay. I just wanted  
18 to confirm it was unanimous.

19 CHAIR SHEEHY: I apologize.

20 Is there anybody here that wanted to abstain or  
21 vote "no"?

22 (No response)

23 CHAIR SHEEHY: Hearing none, such shall be the  
24 order.

25 MS. HIGASHI: Okay. Item 4 --

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1 CHAIR SHEEHY: Item 4.

2 MS. HIGASHI: -- is the Proposed Statement of  
3 Decision on your prior action.

4 Mr. Louie will present this.

5 CHAIR SHEEHY: Thank you, Paula.

6 MR. LOUIE: The only issue before the  
7 Commission is whether the Proposed Statement of Decision  
8 accurately reflects the Commission's decision on the  
9 *Student Records* test claim.

10 Staff will update the final Statement of  
11 Decision reflecting the witnesses testifying, vote count,  
12 and modifications to the Statement of Decision addressed  
13 in that brief.

14 CHAIR SHEEHY: Okay, are there any additional  
15 comments from the parties here today?

16 *(No response)*

17 CHAIR SHEEHY: Is there a motion?

18 MEMBER CHIVARO: Move adoption.

19 MEMBER OLSEN: I have a question.

20 CHAIR SHEEHY: Ms. Olsen?

21 MEMBER OLSEN: I have a question, and that is,  
22 I take it, all of this will reflect the comments you made  
23 earlier?

24 MR. LOUIE: Yes.

25 MEMBER OLSEN: Because we didn't actually, in

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1 our prior motion, incorporate his comments into what we  
2 have in front of us.

3 CHAIR SHEEHY: That's a good point.

4 MS. SHELTON: Except the staff recommendation  
5 was as modified by his opening. And it's just to strike  
6 that one fee authority statute that really does not  
7 apply. So this would be -- the recommendation would be  
8 to adopt the proposed Statement of Decision as modified.

9 CHAIR SHEEHY: As modified.

10 MEMBER OLSEN: Thank you.

11 CHAIR SHEEHY: Thanks, Camille.

12 MEMBER CHIVARO: I made the motion.

13 CHAIR SHEEHY: Okay, so we have a motion from  
14 Mr. Chivaro.

15 MEMBER LUJANO: Second.

16 CHAIR SHEEHY: We have a second from  
17 Mr. Lujano.

18 Does anybody want to abstain or vote "no"?

19 *(No response)*

20 CHAIR SHEEHY: Seeing none, all in favor?

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

22 CHAIR SHEEHY: Good. Okay, such will be the  
23 order.

24 MS. HIGASHI: Thank you very much.

25 CHAIR SHEEHY: So we're taking care of our

1 business.

2 Paula, where are we now?

3 MS. HIGASHI: Now, we just move all the way  
4 through the binder. And we stop at -- and we even pass  
5 Item 12 -- but we go to Item 13.

6 Assistant Executive Director Nancy Patton will  
7 give us a leg. update.

8 CHAIR SHEEHY: Okay, Nancy, let us know how  
9 we're doing in the Legislature.

10 MS. PATTON: Well, our mandate bills are  
11 dwindling, maybe right now, as we speak.

12 What we have is AB 349 by Member Silva. This  
13 would provide that if any mandated program is suspended  
14 for three concurrent years, the Department of Finance  
15 would be required to submit language in the Governor's  
16 proposed budget to repeal the suspended mandates.

17 It passed through the Assembly, 77 to zero, and  
18 it's pending committee assignment in the Senate. So it  
19 went through the Legislature, the Assembly with no "no"  
20 votes.

21 CHAIR SHEEHY: Is this -- who sponsored that  
22 bill?

23 MS. PATTON: It's sponsored by the author.  
24 It's not an administration bill.

25 CHAIR SHEEHY: All right.

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1 MEMBER OLSEN: I do have a question about it.

2 CHAIR SHEEHY: Sure. Certainly.

3 MEMBER OLSEN: What does it mean to have three  
4 concurrent years? Don't they mean consecutive years? Am  
5 I just out of it?

6 The years would be having to run together to be  
7 concurrent.

8 MS. PATTON: Three fiscal years.

9 MEMBER OLSEN: Consecutive.

10 MS. HIGASHI: It should be "consecutive."

11 MEMBER OLSEN: Thank you.

12 CHAIR SHEEHY: So did Commission staff have a  
13 position on that bill?

14 MS. PATTON: No.

15 CHAIR SHEEHY: You don't take positions on  
16 bills?

17 MS. HIGASHI: Not if it doesn't impact our  
18 workload.

19 This would impact Finance's workload, most of  
20 all.

21 It would, if the bills are badly drafted.

22 CHAIR SHEEHY: Okay. Please, Ms. Patton,  
23 continue.

24 MS. PATTON: The next bill is AB 548 by Member  
25 Krekorian. This bill would require the audits the State

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1 Controller completes on mandate reimbursement claims to  
2 be done within three years from the time the claim was  
3 filed rather than three years from the time reimbursement  
4 for the claim was made by the State.

5 The author's office reports, by e-mail this  
6 morning, that they amended the bill yesterday to,  
7 instead, saying the claims be done -- the audits be  
8 completed within four years rather than three.

9 I haven't seen that language yet. That just  
10 happened yesterday. But with that amendment, it did pass  
11 out of Assembly Appropriations yesterday, so it's on the  
12 floor.

13 And the final bill is AB 661. This is the bill  
14 that would implement the settlement agreement between the  
15 Department of Finance and the schools on the BIPS  
16 program. That bill, due to its high cost, was held in  
17 suspense yesterday in Appropriations.

18 CHAIR SHEEHY: Okay.

19 MS. PATTON: The author's office reports this  
20 morning they don't think it's going to move.

21 And that's it.

22 CHAIR SHEEHY: Thank you, Ms. Patton.

23 MS. HIGASHI: Item 14, Chief Legal Counsel's  
24 report.

25 CHAIR SHEEHY: Ms. Shelton?

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1 MS. SHELTON: Good morning. Nancy's report  
2 just flows right into mine.

3 If you notice, in the middle of the page, the  
4 Court did set a December 11<sup>th</sup> hearing date on BIPs. And  
5 if the situation of the settlement agreement is not taken  
6 care of and an appropriation is not made, that date is  
7 set for hearing. So we will be possibly attending a  
8 hearing date on the merits of that claim at that point.

9 CHAIR SHEEHY: So this is directly connected  
10 with this bill that was just held?

11 MS. SHELTON: Yes.

12 CHAIR SHEEHY: So I'd like to understand that  
13 better. What's happening? There's a bill going  
14 through --

15 MS. SHELTON: There was a settlement agreement  
16 that required a buy-off on the majority of the school  
17 districts. Actually, 95 percent of the school districts  
18 bought in and agreed to sign a waiver of the right to  
19 file reimbursement claims from the State Controller's  
20 Office.

21 The agreement also would have a court enjoin  
22 the Commission from adopting any parameters and  
23 guidelines in the statewide cost estimate because we had  
24 not reached that stage yet. The Commission had only  
25 adopted a Statement of Decision approving the claim.

1           And then the third prong of this was, an  
2           appropriation would be made based on the Department of  
3           Finance and the school districts' settlement agreement.  
4           And AB 661 was a vehicle that would have appropriated  
5           that money to settle the case.

6           And the parties went to court in March, during  
7           our last hearing, to try to get the judge to sign off on  
8           this agreement; and the Court would not sign off until an  
9           appropriation had actually been made. And so at that  
10          point, we're way past the five-year deadline for hearing  
11          cases in the trial court; but the judge, with the  
12          agreement of the parties, pushed it forward because they  
13          essentially had an agreement -- pushed it forward and  
14          agreed to set it for December 11<sup>th</sup> for a trial on the  
15          merits if the appropriation is not made.

16          CHAIR SHEEHY: Well, so if this bill is held up  
17          and stopped in the Legislature, how does that impact the  
18          process?

19          MS. SHELTON: That would be up to the parties  
20          and up to the Department of Finance and the school  
21          districts, maybe trying to renegotiate another agreement,  
22          possibly, or you just have a hearing on the merits. It  
23          would go through the litigation process.

24          CHAIR SHEEHY: Okay.

25          MS. SHELTON: The court is maintaining



1 jurisdiction, so it would just proceed.

2 CHAIR SHEEHY: Is that it, Ms. Shelton?

3 MS. SHELTON: That's it. And then I do list  
4 some cases of interest.

5 The first one, it was an update from last  
6 month's report. This was dealing with Grossmont Union  
7 High School District on a handicapped and disabled  
8 student program. The Commission is not a party to that  
9 case; but in this case, the school districts sued the  
10 Department of Education directly to try to get  
11 reimbursement for their costs of performing that program.

12 The Supreme Court denied the petition for  
13 review. So basically, the ruling in this case was that  
14 the school districts did not exhaust their administrative  
15 remedies by filing a test claim with the Commission. So  
16 it's possible we could be getting a test claim from  
17 school districts on that case.

18 The second case of interest is a lawsuit by  
19 school districts against the State Controller's office.  
20 It's now on appeal. In that case, the Commission is not  
21 a party to that action, but it was a challenge to  
22 reductions made on reimbursement claims on the ground  
23 that the school districts did not have contemporaneous  
24 source documents.

25 The trial court ruled that to the extent that

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1 the Commission's parameters and guidelines require  
2 contemporaneous source documents, then those  
3 reductions -- it would be valid for the Controller to  
4 reduce on that ground. But to the extent the parameters  
5 and guidelines did not include that language, then there  
6 was a ruling in favor of the school districts.

7 Both parties have appealed.

8 We do have a request on file from the State  
9 Controller's Office to go back and amend every single set  
10 of parameters and guidelines to include that language.  
11 We have not yet set that for hearing. A lot of the  
12 issues that that request raises are issues involved in  
13 this lawsuit.

14 CHAIR SHEEHY: Okay, very good.

15 Questions of our Chief Counsel here?

16 *(No response)*

17 CHAIR SHEEHY: Seeing none, Paula, do you want  
18 to present the Executive Director's report?

19 MS. HIGASHI: Certainly.

20 MEMBER OLSEN: There's somebody in the back.

21 CHAIR SHEEHY: I'm sorry, Mr. Palkowitz.

22 MR. PALKOWITZ: Yes, sir. I'm sorry to bother  
23 you.

24 CHAIR SHEEHY: No, it's not a bother. This is  
25 a public meeting. Please come forward.

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1 MR. PALKOWITZ: I just wanted to clarify.

2 So is the Commission's process going to be,  
3 when that appeal is over with, that deal with the request  
4 to amend the P's & G's?

5 MS. SHELTON: Probably. The request has been  
6 filed, so the period of reimbursement is already  
7 preserved.

8 It doesn't -- you know, it would go back -- I  
9 don't remember what year -- Rick may remember -- it would  
10 go back to the fiscal year prior to the date they filed  
11 their request, if it's approved.

12 MR. PALKOWITZ: And the request is to amend  
13 P's & G's just for those --

14 MS. SHELTON: All of them. Every single  
15 mandate, at your local agency and for school districts.

16 MS. HIGASHI: That does not currently have the  
17 updated language.

18 MS. SHELTON: The language is already included  
19 in all the P's & G's, and has been included, I think,  
20 since 2004, something like that. It's been in the  
21 P's & G's for a while. So we're talking about the old  
22 group.

23 MS. PATTON: Which was filed in 2005.

24 MS. HIGASHI: But there are different  
25 variations of the so-called boilerplate language. And

1 the Controller's request brings that language up to  
2 what's been currently adopted.

3 MR. PALKOWITZ: So if today there was a P & G  
4 being approved, would they have the new language?

5 MS. HIGASHI: Exactly, yes. We have not  
6 received any comments -- I don't think we have any  
7 comments in that record. We've been reviewing it and  
8 trying to determine if we can proceed on any of the  
9 PGA's. We have not heard specifically from any of the  
10 parties that they wish for us to postpone it. And we had  
11 planned to have a prehearing conference to discuss the  
12 pros and cons of going forward immediately or holding it  
13 until the litigation is completed. But there are also  
14 related incorrect reduction claims on all of these cases  
15 pending before the Commission, the ones that are subject  
16 to the litigation and others that are not in the  
17 litigation.

18 MR. PALKOWITZ: Thank you.

19 CHAIR SHEEHY: Okay, are there any other  
20 questions or comments on this item?

21 MS. HIGASHI: Camille has one.

22 MS. SHELTON: You know, I forgot to mention.  
23 We have a new law clerk that is starting, she is  
24 interning from McGeorge for credit this summer, and her  
25 name is Lauren Manning.

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1 CHAIR SHEEHY: Lauren, do you want to stand up?  
2 MS. MANNING: Sure. Hi.  
3 CHAIR SHEEHY: Welcome aboard. Thank you.  
4 MS. MANNING: Thank you.  
5 MS. SHELTON: Lauren is a second-year student  
6 at McGeorge, and she's helping us out, doing a lot of  
7 research on some of these old test claims.  
8 CHAIR SHEEHY: Excellent.  
9 MS. HIGASHI: And as Camille noted, for credit.  
10 MS. SHELTON: For credit.  
11 MS. HIGASHI: So we're very grateful. She's  
12 with us for credit.  
13 MS. SHELTON: School credit. No pay.  
14 CHAIR SHEEHY: Well, I hope your credit doesn't  
15 get reduced by 5 percent.  
16 MS. MANNING: No.  
17 CHAIR SHEEHY: Okay, Paula?  
18 MS. HIGASHI: Back to Item 15.  
19 The first page, there is an overview of our  
20 pending caseload. We're now down to 59 test claims  
21 pending; and with your adoption today, 58.  
22 MS. PATTON: *Ferry Assets*.  
23 MS. HIGASHI: With *Ferry Assets*, we dismissed,  
24 down to 58.  
25 The first time we've been below 60 in many,

1 many years. Thank you.

2 I've given you just the briefest of overview on  
3 the budget issues because there seems no point in even  
4 trying to capture where we are. It changes on a  
5 minute-to-minute basis. But what is an important issue  
6 to note is that we believe that this summer, or during  
7 conference committee, at some point in time, Assembly  
8 Budget Subcommittee Number 4 is going to give serious  
9 consideration to giving the Commission jurisdiction over  
10 some form of reconsideration procedure. And this  
11 decision has been precipitated by the recent ruling in  
12 the CSBA case, which basically said that the Legislature  
13 can't tell us or direct us to do reconsiderations in the  
14 future.

15 So with that decision, there is serious  
16 interest in making sure that the Commission has  
17 jurisdiction to change prior statements of decision when  
18 there's a change -- a material change in facts or law  
19 that has occurred since the time of that decision.

20 So in response to the request for comment and  
21 our participation, I had to speak in the Assembly Budget  
22 Subcommittee, and I've given you copies in the agenda  
23 item of the background material that the subcommittee  
24 distributed, as well as what I handed out just to use as  
25 talking points. And then at the end of that hearing, a

1 request was made to all of us to provide proposals and  
2 ideas.

3           So what we did is, we put together a proposal  
4 based on how we read the CSBA ruling. And instead of  
5 calling it "*reconsideration*," the draft that I prepared  
6 for Camille is basically a procedure which allows the  
7 Commission to amend the test-claim decision, much like  
8 the court considered in terms of amendment of an  
9 injunction when there's a change. And it's drafted not  
10 as a Commission proposal, but as an example of one way  
11 we think would be workable. But there are a number of  
12 variables in this that obviously are subject to a lot of  
13 negotiation and discussion.

14           The parties have all been notified of this  
15 process that's underway to think about this issue and to  
16 develop a proposal. And CSBA and League of Cities and  
17 CSAC have sent a letter to the committee consultants and  
18 committee members, requesting that they be involved in  
19 this process. So we're hopeful that if this process does  
20 pick up again, that we could have a full discussion and  
21 cover all of the issues.

22           Obviously, at issue are the questions of who  
23 would have the authority to file a request for amendment  
24 of a statement of decision. We're recommending that it  
25 be the parties to the test claim proceeding currently.

1           There's interest in the Capitol for legislators  
2 to have the right to request amendment of the statement  
3 of decision.

4           And also --

5           CHAIR SHEEHY: That doesn't sound like a good  
6 idea to me.

7           MS. HIGASHI: I'm not going to comment, but  
8 that is pending.

9           CHAIR SHEEHY: Well, certainly, I can get you  
10 to go on the record; can't I?

11          MS. HIGASHI: You can say whatever you like.

12          The other is that -- the question is, well, how  
13 far back would an amendment reach? And instead of  
14 saying, you know, go back one fiscal year, this draft  
15 just suggests that it be the next fiscal year, the  
16 following fiscal year after the decision is changed, if  
17 it's changed.

18          It also would give the Commission the authority  
19 to amend the P's & G's, prepare a new statewide cost  
20 estimate, do whatever needs to be done to update what we  
21 know about the mandate, you know, if a decision were to  
22 be amended.

23          And the other question is, what about statute  
24 of limitations? How far back can you go?

25          This proposal sets up a process that, for the



1 first year of operation of this process, that a request  
2 could be filed on any prior decision based on the  
3 subsequent change that occurs after that decision was  
4 rendered.

5 After that one-year period, there would be --  
6 for all the decisions that would be issued by the  
7 Commission, there would be a provision that says that one  
8 year after the change occurs, there's a window in which  
9 a proposal can be filed to request an amendment of that  
10 decision. So we're not leaving it absolutely open-ended,  
11 but requiring that it be one year after that change,  
12 modification.

13 So in this case, it would be -- I mean, think  
14 about it, it could be if the statutes that define  
15 "reimbursement" change, and it would alter 20 prior  
16 decisions that found in a different way. Requests could  
17 be filed to amend those decisions, to change it so they  
18 would be based on current law. The same thing if a case  
19 law were issued, so...

20 CHAIR SHEEHY: Paula, has the Assembly Sub 4  
21 taken any action specifically on this? What action --

22 MS. HIGASHI: The action that was taken is, the  
23 committee chair directed us to form a working group to  
24 work on a proposal and to bring proposals back to the  
25 subcommittee.

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1 CHAIR SHEEHY: What type of proposal are you  
2 looking for? A bill? A legislative proposal?

3 MS. HIGASHI: That's unclear. Budget-trailer  
4 language is, you know, the direction LAO was moving.

5 CHAIR SHEEHY: And can you tell me more  
6 succinctly, what is the problem here they're trying to  
7 solve, with this budget trailer bill language?

8 MS. HIGASHI: The problem they're trying to  
9 solve is, if there is a change in case law that, today,  
10 would -- if an old decision had been decided today which  
11 changed the outcome of that case and affect mandate  
12 reimbursement, they'd like to see that case reconsidered.

13 In the past, what has happened is, only those  
14 cases that LAO identified as potential denied mandates  
15 were the subject of reconsideration, and we were directed  
16 to reconsider those cases in the hope that by  
17 reconsidering them based on current law, the State would  
18 reduce its liability. Because we have decisions on the  
19 books that are from the Board of Control, that are from  
20 the Commission, before much of our case law that's  
21 operative today had even been issued.

22 CHAIR SHEEHY: I see.

23 MS. HIGASHI: We also have changes to the  
24 definition of costs mandated by the State that have  
25 occurred since those prior decisions were issued.

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1 CHAIR SHEEHY: It just seems to me that an  
2 issue like this ought to be moving through Policy  
3 Committee where there can be full public input, debate;  
4 not part of a budget trailer bill, "let's do something at  
5 the last minute" type drill.

6 MS. HIGASHI: Exactly.

7 CHAIR SHEEHY: So I'm a little uncomfortable in  
8 hearing that they're trying to do this as a trailer bill.  
9 This is a complicated subject. I think it needs a lot of  
10 review and public input.

11 MS. HIGASHI: And that's what I did say in my  
12 testimony. But I put this draft together mainly as a  
13 defensive move, because if we don't put something in  
14 writing as a starting point, we don't know where it's  
15 going to start from.

16 And this draft was on the Web with our agenda.  
17 And I'll be sending it out to other interested parties,  
18 just so we have it as a starting point. But it's gone to  
19 LAO, it's gone to Budget subcommittee staff, it's gone to  
20 Finance staff.

21 CHAIR SHEEHY: Mr. Glaab?

22 MEMBER GLAAB: I understand what they're trying  
23 to do here, bring everything into compliance with current  
24 law. But it seems to me -- correct me if I'm wrong, it's  
25 going to open up Pandora's box -- and our workload could

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1 explode. I'm just guessing that that would be the case.

2 So I concur with you, Mr. Sheehy. I think this  
3 needs and calls for a vote in a full public hearing,  
4 weighing everything.

5 CHAIR SHEEHY: Thank you.

6 Paula, could you please keep the Commission  
7 members apprised of how this develops?

8 MS. HIGASHI: Certainly.

9 CHAIR SHEEHY: And I'd like the Department of  
10 Finance staff -- Ms. Castañeda, I'd like you also -- you  
11 don't have to come say anything, if you don't want -- but  
12 since you are the Department of Finance mandates  
13 principal, I'd like to make sure that this is an issue  
14 you follow closely and report up through your chain of  
15 command what's going on. Because I want to make sure  
16 that this is not something that's done in a vacuum.

17 I'm sorry, was there public comment?

18 MR. BURDICK: Yes, thank you.

19 Yes, Chairman Sheehy and Members, Allan  
20 Burdick. I serve as a special staff to the California  
21 State Association of Counties and League of California  
22 Cities advisory committee on state mandates.

23 And Paula referenced the letter sent on behalf  
24 of CSAC, the League, and California School Boards  
25 Association. In the letter, basically the bottom line

1 was we would like to have full participation in these  
2 discussions, and I think also an open and fair  
3 discussion. And I think we'd like to echo the  
4 recommendations of the Chairman and Member Glaab. I  
5 think this would be a better forum to have an open  
6 discussion of these issues. They are very complicated,  
7 legal issues related to this.

8 I know the Legislature, in moving forward on  
9 this, or the Analyst, was really the prime mover of this.  
10 Essentially, they're trying to look at it from the  
11 standpoint of, they would like to have consideration  
12 which would eliminate mandates. And I believe you have  
13 to see a reconsideration to suggest an expansion of  
14 mandates.

15 On the other side, local governments would  
16 clearly look at this from the standpoint of saying there  
17 may be times in which a prior decision then excluded  
18 something that now should be included. Was that included  
19 in a reconsideration or is that a new test claim?

20 So I think we'd just like to know that we  
21 want -- on behalf of the League and CSAC, we thank you  
22 for your interest in this, and I think I would encourage  
23 your participation in a fair and open deliberation of  
24 this and not a budget-trailer-bill fix.

25 CHAIR SHEEHY: Thank you, Mr. Burdick. I think

1 your comments are very appropriate.

2 MR. BURDICK: Thank you.

3 CHAIR SHEEHY: Is there any more public comment  
4 on this item?

5 *(No response)*

6 CHAIR SHEEHY: Paula, do you want to continue?

7 MS. HIGASHI: Oh, no, I'm pretty much done.

8 I have been in contact also with CSBA, and they  
9 have a desire to comment and participate as well,  
10 especially in light of the litigation that, after having  
11 completed that case, there's certainly a concern that  
12 whatever process is developed, that it meet their  
13 concerns as well.

14 CHAIR SHEEHY: You know, our budget process  
15 this year is -- our budget process for the last 12 months  
16 has been the strangest budget process I've experienced in  
17 my professional career. And I've been -- like others on  
18 this Commission, I've been in and around this process for  
19 at least two decades. My point being, that I'm not --  
20 it's not clear to me how this process is going to play  
21 out in June as far as amendments.

22 We actually do have a Budget Act that has been  
23 passed and approved by the Governor and is in place. So  
24 the good news is, the Controller will have a budget to  
25 work on, on July 1<sup>st</sup>. But I think as everybody here

1 knows that follows what's going on, that budget is no  
2 longer in balance because of the ongoing severity of the  
3 recession and the reduction in our state revenues, and  
4 the fact that we also have expenditure increases that we  
5 didn't anticipate when the package was put together in  
6 February. So it's not clear to me how this process is  
7 going to work.

8 Do you know, Paula, whether or not the Senate  
9 has taken any action on this item? And then more to the  
10 point, do you know whether this is an item that has  
11 actually been queued up for review and discussion by the  
12 current ten-member conference committee that is taking  
13 place on the State budget?

14 MS. HIGASHI: I don't know. The Senate -- let  
15 me ask Carla.

16 I thought our budget was closed in the Senate.

17 MS. CASTAÑEDA: Right, both houses closed  
18 without any reconsideration here. So it hasn't come up  
19 yet.

20 CHAIR SHEEHY: I'm sorry, could you come  
21 forward, Carla, and identify yourself for the record,  
22 please? I'm not sure the court reporter knows who you  
23 are, but the other folks here do.

24 MS. CASTAÑEDA: Carla Castañeda, Department of  
25 Finance.

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1 Both houses are closed and there was no  
2 adoption of any of this language.

3 As far as showing up on the conference agenda,  
4 we have not seen anything yet. However, with the  
5 Assembly chairing them, it may come up because the issue  
6 was before the Assembly.

7 CHAIR SHEEHY: I see.

8 MS. HIGASHI: One thing I would like to do is,  
9 though, I would like to have two members work with me as  
10 a subcommittee so that if I need folks that I can call  
11 quickly and bounce ideas off of, share drafts with, or  
12 comments, that I have a group.

13 CHAIR SHEEHY: Okay, you want two members -- a  
14 two-member subcommittee?

15 MS. HIGASHI: Two members, yes.

16 CHAIR SHEEHY: Are there any members here that  
17 volunteer?

18 MEMBER OLSEN: I'll volunteer, but I'm out of  
19 town. Does that work for you?

20 MEMBER GLAAB: I'm out of town, too.

21 MS. HIGASHI: We can do conference calls.

22 CHAIR SHEEHY: I think Mr. Glaab's an excellent  
23 choice because of his local government background and  
24 because of his state government executive background.  
25 And Ms. Olsen certainly was -- I don't know if she



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1 considers herself still -- an expert on the state budget  
2 and the process. So I think she also would be --

3 MEMBER OLSEN: I'll consider myself a  
4 historical expert on the state budget process.

5 CHAIR SHEEHY: It wasn't that many years ago  
6 when you and I worked on the state budgets.

7 MEMBER OLSEN: Yes, it was a decade.

8 CHAIR SHEEHY: Well, it doesn't feel like it.  
9 I think Sarah would be a great choice. So if that's  
10 okay with the Board members, it will be Mr. Glaab and  
11 Ms. Olsen.

12 MS. HIGASHI: Super. And what I will do is, as  
13 we get new information, I'll share it with the entire  
14 Commission. But when I need to have consultation, I'll  
15 look to Sarah and Paul.

16 CHAIR SHEEHY: And finally, if you get the  
17 sense, at the last minute, that some piece of legislation  
18 that hasn't been fully thought out is going to be adopted  
19 at the last minute, either Ms. Castañeda or Ms. Higashi  
20 or somebody, please notify me directly. Because even  
21 though I am not directly involved on a day-to-day,  
22 hour-to-hour basis, on all the drama going on with the  
23 budget, because of my other responsibilities, I do work  
24 in the executive office, and I do have regular contact  
25 with the Governor's staff on all these things from time

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1 to time.

2 And so if something really -- if something bad  
3 is going to happen, then let me know, and maybe I can  
4 help run some interference.

5 MEMBER SCHMIDT: I'm --

6 CHAIR SHEEHY: I just think these are issues  
7 that really need to be publicly discussed.

8 I'm sorry?

9 MEMBER SCHMIDT: I'd like to know, too, because  
10 I analyze legislation.

11 MS. HIGASHI: Okay. Happy to do so.

12 We appreciate all the help we can get.

13 CHAIR SHEEHY: Okay, anything further on this  
14 matter?

15 *(No response)*

16 CHAIR SHEEHY: All right.

17 MS. HIGASHI: Let me move to the issue of the  
18 tentative agendas for July.

19 Our July 31<sup>st</sup> hearing is going to be a huge  
20 hearing. Please reserve more than an hour. Several  
21 hours, maybe. There are a number of test claims.

22 And unless these items end up being postponed  
23 because of various reasons, right now, we have six test  
24 claims; we also have the potential for acting on the  
25 POBOR remand cases. And we also have statewide cost

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1 estimates for adoption, and we have the items that were  
2 postponed from this hearing. So, actually, it's eight.

3 MEMBER OLSEN: I just wanted to remind you that  
4 I will not be available then.

5 MS. HIGASHI: I know.

6 MEMBER OLSEN: I'm available up to the 28<sup>th</sup>.

7 MS. HIGASHI: Okay.

8 CHAIR SHEEHY: So July 31<sup>st</sup>. I think I'm okay  
9 with that; but if I'm not, I'll have an alternate.

10 How long is the hearing going to be? Several  
11 hours?

12 It sounds like a good job for Miriam Ingenito.

13 MS. SHELTON: Well, there are six test claims  
14 that have been issued.

15 MS. HIGASHI: Six or maybe seven.

16 MS. SHELTON: Seven are issued for draft.

17 MEMBER OLSEN: I timed this really well, didn't  
18 I?

19 MS. HIGASHI: Sarah, would you be available the  
20 28<sup>th</sup>?

21 MEMBER OLSEN: I think I can be available the  
22 28<sup>th</sup>.

23 CHAIR SHEEHY: The only problem -- just so you  
24 know, Paula, the only -- I want you to coordinate with  
25 all the Commission members, and let's pick the date and

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1 the time when we can maximize our participation. We  
2 certainly want Ms. Olsen to be there.

3 Just check because, you know, when you back  
4 up --

5 MEMBER OLSEN: Right.

6 CHAIR SHEEHY: -- then you're going to run into  
7 conflicts with Mr. Chivaro, Mr. Lujano, Mr. Sheehy, and  
8 others that are serving on multiple boards. And the one  
9 nice thing about this commission's schedule is it usually  
10 meets on Fridays. And I don't know about Mr. Lujano and  
11 Mr. Chivaro, but I think I can say that they probably  
12 don't have that many other board meetings on Fridays.

13 MEMBER CHIVARO: Right.

14 MS. HIGASHI: Well, the other question I would  
15 ask would be, when would be the next date in August that  
16 you would be available? Should we think about pushing  
17 this hearing to August?

18 MEMBER OLSEN: It's probably not until the  
19 third week of August.

20 MS. HIGASHI: Okay, then I think we're just  
21 leaving it. I think we're just leaving it.

22 CHAIR SHEEHY: Okay, we'll do what we can.

23 MS. HIGASHI: But we have a number of very  
24 interesting test-claim issues coming up, and it should be  
25 a very interesting hearing. We're looking forward to it.

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CHAIR SHEEHY: Okay.

MS. HIGASHI: So also, September will be a potentially challenging agenda.

CHAIR SHEEHY: All right.

MEMBER OLSEN: And what is the date of the September hearing?

MS. HIGASHI: September 25<sup>th</sup>.

Are there any other questions?

*(No response)*

CHAIR SHEEHY: Okay, so seeing no other questions, is it now time for us, Paula, to move into closed-session?

MS. HIGASHI: You can do *Public Comment*.

CHAIR SHEEHY: Is there anybody here that hasn't had a chance to comment on one of the items today that would like to come forward and comment at this time?

*(No response)*

CHAIR SHEEHY: Seeing none, the Commission on State Mandates will meet in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and also to confer with and receive advice from counsel regarding potential litigation. The

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1 Commission will also confer on personnel matters listed  
2 on the published notice and agenda.

3 We will reconvene in open session -

4 Is 15 minutes actually a good estimate, Paula?

5 MS. SHELTON: Or less.

6 MS. HIGASHI: Or less.

7 CHAIR SHEEHY: We plan to reconvene in open  
8 session in 15 minutes. So if you will now clear the  
9 room, unless you are Commission members or Commission  
10 staff, thank you.

11 *(The Commission met in executive closed*  
12 *session from 11:23 a.m. to 11:42 a.m.)*

13 CHAIR SHEEHY: The Commission on State Mandates  
14 met in closed executive session pursuant to Government  
15 Code section 11126(e) to confer with and receive advice  
16 from legal counsel for consideration and action, as  
17 necessary and appropriate, upon the pending litigation  
18 listed on the public notice and agenda and potential  
19 litigation, and also pursuant to Government Code section  
20 11126(a), and 17526, in order to confer on personnel  
21 matters listed on the published agenda.

22 The Commission on State Mandates now reconvenes  
23 in open session.

24 Is there any other business to come before the  
25 Commission today?

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*(No response)*

CHAIR SHEEHY: Seeing none, a motion to adjourn  
would be in order.

MEMBER OLSEN: So moved.

MEMBER GLAAB: Second.

CHAIR SHEEHY: All in favor?

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

CHAIR SHEEHY: This meeting is adjourned.

*(The meeting concluded at 11:42 a.m.)*

--oOo--

**REPORTER'S CERTIFICATE**

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

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

In witness whereof, I have hereunto set my hand on June 12<sup>th</sup>, 2009.



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