

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
September 27, 2005

Present: Chairperson Anne Sheehan
Representative of the Director of the Department of Finance
Member Nicholas Smith
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Jan Boel
Representative of the Director of the Office of Planning and Research
Member Paul Glaab
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:34 a.m. She stated that the Commission should have a full contingency by the next meeting.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

PENDING LITIGATION

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

New Cases

1. *Yuba City Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01237, CSM Case No. 05-L-01 [*Graduation Requirements IRC*]
2. *John Swett Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01262, CSM Case No. 05-L-02 [*Graduation Requirements, IRC*]
3. *West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01253 CSM Case No. 05-L-03 [*Graduation Requirements, IRC*]
[Filed on behalf of 12 school districts: West Contra Costa USD, Anderson Union High School District, Center USD, Lake Tahoe USD, Lincoln USD, Linden USD, Novato USD, Ojai USD, Placer Union High School District, San Juan USD, Stockton USD, Vallejo City USD]

Other Cases

4. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
5. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
6. *San Diego Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01401, CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
7. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01568, CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
8. *San Jose Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01569, CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
9. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01570, CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
10. *Clovis Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01702, CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
11. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 04CS00028, CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
12. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
13. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
14. *Southern California Association of Governments, et al. v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS00956, CSM Case No. 04-L-04 [*Regional Housing Needs Determination-Councils of Government*]

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).)

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526. Discussion and action, if appropriate, on recommendation of Personnel Sub-Committee on:

- Appointment of Interim Chief Legal Counsel
- Testing, Selection and Appointment of Chief Legal Counsel (CEA IV)

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

REPORT FROM CLOSED EXECUTIVE SESSION

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

Chairperson Sheehan noted that this was Paul Starkey's last hearing as Chief Legal Counsel. Thus, effective October 1, 2005, the Commission appointed Senior Commission Counsel, Camille Shelton, as acting Chief Legal Counsel until appointment of a new counsel.

APPROVAL OF MINUTES

Item 1A July 28, 2005

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

Item 1B August 23, 2005

Upon motion by Member Smith and second by Member Lujano, the minutes were adopted. Member Boel abstained.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS TO PARAMETERS AND GUIDELINES

- Item 7 *The Stull Act, 98-TC-25*
Denair Unified School District and Grant Joint Union High School District,
Claimants
Education Code Sections 44660 – 44665 (formerly Ed. Code §§ 13485-13490)
Statutes 1975, Chapter 1216 (SB 777); Statutes 1983, Chapter 498 (SB 813);
Statutes 1986, Chapter 393 (AB 3878); Statutes 1995, Chapter 392 (AB 729);
Statutes 1999, Chapter 4 (SB 412)
- Item 8 *Mandate Reimbursement Process, CSM-4485*
Statutes 1975, Chapter 486 (AB 1375), Statutes 1984, Chapter 1459 (SB
2337); Statutes 1995, Chapter 303 (AB 903 - Budget Act of 1995); Statutes
1996, Chapter 162 (SB 1393 - Budget Act of 1996); Statutes 1997, Chapter
282 (AB 107 - Budget Act of 1997); Statutes 1998, Chapter 324 (AB 1656 -
Budget Act of 1998); Statutes 1999, Chapter 50 (SB 160 - Budget Act of
1999); Statutes 2000, Chapter 52 (AB 1740 - Budget Act of 2000); Statutes
2001, Chapter 106 (SB 739 –Budget Act of 2001); Statutes 2002, Chapter 379
(AB 425 - Budget Act of 2002); Statutes 2003, Chapter 157 (AB 1765 -
Budget Act of 2003); Statutes 2004, Chapter 208 (SB 1113 - Budget Act of
2004); Statutes 2005, Chapter 38 (SB 77 - Budget Act of 2005)

SET ASIDE PARAMETERS AND GUIDELINES, AS DIRECTED BY THE LEGISLATURE, STATUTES 2004, CHAPTER 72, (AB 138)

- Item 9 *Brown Act Reform, 04-PGA-08 (CSM-4469) and*
Open Meetings Act (CSM-4257)
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7
Statutes 1993, Chapters 1136 (AB 1426), 1137 (SB 36), and 1138
(SB 1140); Statutes 1994, Chapter 32 (SB 752); and
Statutes 1986, Chapter 641 (AB 2674)
- Item 10 *Redevelopment Agencies – Tax Disbursement Reporting, 99-TC-06*
Health and Safety Code Section 33672.7
Statutes 1998, Chapter 39 (SB 258)

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004, CHAPTER 889, (AB 2853) AND REQUEST OF THE STATE CONTROLLER'S OFFICE

- Item 12 *Involuntary Lien Notices, 04-PGA-15 (SB 90-3891)*
Statutes 1980, Chapter 1281 (AB 481)
- Item 13 *Property Tax: Family Transfers, 04-PGA-16 (CSM-4320)*
Statutes 1987, Chapter 48 (AB 47)

- Item 14 *County Treasury Oversight Committees*, 04-PGA-17 (CSM 96-365-03)
Government Code Sections 27130, 27131, 27132, 27132.1, 27132.2,
27132.3, 27132.4, 27133, 27134, 27135, 27136, 27137
Statutes 1995, Chapter 784 (SB 866); Statutes 1996, Chapter 156 (SB 864)
- Item 15 *Investment Reports*, 04-PGA-18 (CSM 96-358-02)
Government Code Section 53646, Subdivisions (a), (b), and (e)
Statutes 1995, Chapter 783 (SB 564) Statutes 1996, Chapter 156 (SB 864)
Statutes 1996, Chapter 749 (SB 109)
- Item 16 *Two-Way Traffic Signal Communications*, 04-PGA-19 (CSM-4504)
Vehicle Code Section 2140
Statutes 1994, Chapter 1297 (AB 3418), Statutes 2004, Chapter 889 (AB 2853)

**SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
AMENDMENTS BY STATUTES 2004, CHAPTER 227 (SB 1102)**

- Item 19 *Senior Citizens' Mobilehome Property Tax Deferral Program*, 04-PGA-31
(SB 90-1623)
Statutes 1983, Chapter 1051 (AB 800)

Member Glaab moved for adoption of the consent calendar, which consisted of items 7, 8, 9, 10, 12, 13, 14, 15, 16, and 19. With a second by Member Boel, the consent calendar was unanimously adopted.

**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.

**RECONSIDERATION OF PRIOR STATEMENT OF DECISION AS DIRECTED
BY THE LEGISLATURE IN STATUTES 2004, CHAPTER 316 (AB 2851) AND
CHAPTER 895 (AB 2855)**

- Item 4 *Sex Offenders: Disclosure by Law Enforcement Officers*, 04-RL-9715-06
Penal Code Sections 290 and 290.4, as amended by Statutes 1996, Chapters 908
(AB 1562) and 909 (SB 1378); Statutes 1997, Chapters 17 (SB 947), 80
(AB 213), 817 (AB 59), 818 (AB 1303), 819 (SB 314), 820 (SB 882), 821
(AB 290) and 822 (SB 1078); and, Statutes 1998, Chapters 485 (AB 2803), 550
(AB 2799), 927 (AB 796), 928 (AB 1927), 929 (AB 1745) and 930 (AB 1078)

Eric Feller, Commission Counsel, presented this item. He noted that the test claim consists of 16 amendments to Penal Code sections 290 and 290.4, which the Commission originally found to impose various requirements on local law enforcement pertaining to registering sex offenders. He stated that staff analyzed the Commission's prior decision in light of the 2004 California Supreme Court case, *San Diego Unified School District v. Commission on State Mandates*, in which the court ruled that if a state law was intended to implement a federal law and imposed costs that are, in context, de minimus, then the provision was not reimbursable.

Accordingly, staff found that the following three activities are no longer reimbursable:

1. submitting sex offender registrations from the local jurisdictions to the Department of Justice Violent Crime Information Network;
2. ensuring that the signed statement an offender fills out upon registration contains the name and address of the offender's employer, and the address of the place of employment if different than the employer's main address; and
3. ensuring that the convicted offender has adequate proof of residence as specified.

Staff also found that notifying offenders of a reduction in the time to register is a one-time activity that has already been performed.

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

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing of agenda items 4 and 6.

Parties were represented as follows: Nicholas Schweizer, with the Department of Finance.

Mr. Schweizer requested that the parameters and guidelines be modified to specifically exclude community college districts because they are not required to establish a police force.

Member Smith asked Mr. Feller if the court provided guidance on the definition of "de minimus." Mr. Feller responded that the court did not define "de minimus" in terms of dollars. However, he stated that in a prior case, the court determined that the activities would have to be complied with anyway in order to comply with federal law. In this case, Mr. Feller noted that the activities are required under the federal Megan's Law.

Member Glaab made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

Item 5 Proposed Statement of Decision
 Sex Offenders: Disclosure by Law Enforcement Officers, 04-RL-9715-06
 See Above

Eric Feller, Commission Counsel, presented this item. He stated that unless there was objection, staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the decision on the test claim. 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. With a second by Member Boel, the motion carried unanimously.

SET ASIDE OF PRIOR STATEMENTS OF DECISION, AND DISMISSAL OF RECONSIDERATION AS DIRECTED BY THE LEGISLATURE IN STATUTES 2005, CHAPTER 72 (AB 138)

- Item 6 *Brown Act Reform*, 04-RL-4469-08, CSM-4469 and *Open Meetings Act*, CSM 4257
Government Code Sections 54952, 54954.2, 54954.3, 54957.1, and 54957.7
Statutes 1993, Chapters 1136 (AB 1426), 1137 (SB 36), and 1138 (SB 1140);
Statutes 1994, Chapter 32 (SB 752); and Statutes 1986, Chapter 1994 (AB 2674)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that the item related to two prior test claim decisions addressing the *Brown Act* – the *Open Meetings Act* test claim and the *Brown Act Reform* test claim. She stated that recent urgency legislation enacted by Assembly Bill 138 requires the Commission to set aside these test claim decisions. Moreover, staff found that Assembly Bill 138 requires the Commission to dismiss the pending reconsideration of the *Brown Act Reform* decision directed by the Legislature in 2004.

Parties were represented as follows: Allan Burdick and Juliana Gmur, on behalf of the California State Association of Counties.

Ms. Gmur commented on the Legislature's ability to direct the Commission to decide a case in a particular manner. She understood the Commission's position but stated for the record that the Legislature's action is outside their scope of jurisdiction and added that it raises constitutional issues of separation of powers and checks and balances.

Mr. Burdick objected to the whole process of the Legislature being able to direct the Commission to set aside prior decisions.

Member Smith requested that staff respond to the issues raised. Mr. Starkey responded that Ms. Gmur and Mr. Burdick were raising legal arguments for potential litigation, and therefore, staff could not respond because it may later have to render an opinion to the Commission on those issues.

Ms. Shelton agreed with Mr. Starkey. With respect to this case, she stated that the Commission was prohibited from determining whether a statute is invalid or unconstitutional. She added that the bill did several things in this case and it was not a straight set aside. She noted that it was supported by the law enacted by the Legislature in the last year.

Member Glaab made a motion to adopt the staff analysis. With a second by Member Boel, the motion carried unanimously.

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

SET ASIDE PARAMETERS AND GUIDELINES BASED ON STATUTES 2004, CHAPTER 316 (AB 2851)

- Item 11 *Residential Care Services*, 04-PGA-12 (CSM-4292) (Tentative)
Welfare and Institutions Code Sections 4075, 4076, and 5705.6
Statutes 1985, Chapter 1352 (SB 155); Title 9, California Code of Regulations,
Section 549, DMH Letters No. 85-40, 86-14, 86-26, 86-30, 87

Item 11 was postponed to the December hearing.

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2004, CHAPTER 889, (AB 2853) AND REQUEST OF THE STATE
CONTROLLER'S OFFICE

- Item 17 *Misdemeanors: Booking and Fingerprinting*, 04-PGA-20 (CSM-4436)
Penal Code Section 853.6
Statutes 1992, Chapter 1105 (AB 3156)

Nancy Patton, Assistant Executive Director, presented this item. She stated that on February 24, 1994, the Commission on State Mandates adopted its Statement of Decision finding a reimbursable state mandate for the *Misdemeanors: Booking and Fingerprinting* program. The Commission adopted parameters and guidelines for the program on November 17, 1994.

Ms. Patton noted that in 2004, Assembly Bill 2853 amended the test claim statute to narrow the mandated activities, and the State Controller's Office requested that the parameters and guidelines be amended to conform to Assembly Bill 2853. Therefore, staff modified the parameters and guidelines as follows:

1. The reimbursement period was capped effective September 29, 2004, for the activity deleted by Assembly Bill 2853.
2. The activity deleted by Assembly Bill 2853 was deleted from the reimbursable activities section.
3. Other sections were updated to make the parameters and guidelines consistent with language in recently adopted parameters and guidelines and to conform to statutes enacted since 1994.

Staff recommended that the Commission adopt the proposed amendments to the parameters and guidelines and authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Parties were represented as follows: Nicholas Schweizer, with the Department of Finance.

Mr. Schweizer requested that the parameters and guidelines be modified to specifically exclude K-12 schools and community college districts from being able to file reimbursement.

Ms. Patton stated that the Commission did not make a finding for school districts in this program, thus it is limited to local agencies. She noted that staff contacted the State Controller's Office, and they verified that there has been no school district that has filed a claim on this program. Therefore, she did not feel that it was necessary to exclude school districts under the eligible claimants section. However, she agreed, that the parameters and guidelines can be clarified by removing any general references to school districts.

There was further discussion about the areas where the term school district needs to be deleted.

Member Boel made a motion to adopt the staff analysis with the modification to delete references to school districts in the bulleted paragraphs in Section III, Period of Reimbursement. With a second by Member Glaab, the motion carried unanimously.

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2004, CHAPTER 895 (AB 2855)

- Item 18 *Pupil Exclusions*, 04-PGA-28 (CSM-4457 & 4477) (Tentative)
Statutes 1978, Chapter 668 (AB 2191)

Item 18 was postponed to the December hearing.

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5

- Item 20 Adoption of Proposed Regulatory Action: Appeal of Executive Director
Decisions; Amendments to California Code of Regulations, Title 2,
Chapter 2.5, Article 1. General, Section 1181

Cathy Cruz, Program Analyst, presented this item. She stated that the purpose of the rulemaking is to implement Government Code section 17530 and establish procedures for appeal of Executive Director decisions. She indicated that the notice of proposed rulemaking was mailed on July 1, 2005, and that the proposed text was made available to the public from July 1 through August 15, 2005. The County of Los Angeles and the City of Newport Beach submitted written comments.

Ms. Cruz noted that the County of Los Angeles requested a public hearing, which Commission staff conducted on August 24, 2005. She said that representatives of the City of Newport Beach and the County of Los Angeles provided oral testimony. Staff responded to oral and written comments in the final statement of reasons.

Staff found that no alternatives would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations. Therefore, staff recommended that the Commission:

1. Find that no alternative would be more effective in carrying out the purpose for which the regulation is proposed or would be less burdensome to affected private persons than the proposed regulation.
2. Adopt the proposed amendments to section 1181 of the California Code of Regulations, title 2, division 2, chapter 2.5, as originally proposed.
3. Authorize staff to make any non-substantive, technical corrections requested by the Office of Administrative Law or Barclays Official California Code of Regulations prior to publication.

Member Glaab made a motion to adopt the staff recommendation. With a second by Member Boel, the motion carried unanimously.

MEETING AND HEARING CALENDAR

- Item 21 Adoption of 2006 Meeting and Hearing Calendar

Paula Higashi, Executive Director, presented this item. She noted that while the Commission is only required to meet at least every two months, the Commission's budget this year included additional funding for a couple of extra meetings if necessary. She stated that assuming a full complement of staff in a short time, she expected that there would be more agenda items. Because long one-day hearings may not be desirable, staff proposed as a contingency, a couple of tentative hearing dates.

Chairperson Sheehan commented that having a few more hearings would help make the workload flow more evenly.

Member Smith stated that the State Controller is concerned about the backlog of cases and the Commission workload. Thus, he agreed with putting more meetings on the Commission's calendar.

After some discussion, the Commission members chose December 7 for their meeting in December 2006.

Member Glaab made a motion to adopt the proposed 2006 meeting and hearing calendar with December 7 being the December 2006 hearing date. With a second by Member Smith, the motion carried unanimously.

STAFF REPORTS

Item 22 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, reported that another case was filed – *East Side Union High School District v. Commission on State Mandates*. He noted that it was in Sacramento.

Item 23 Executive Director's Report (info/action)
Workload, Legislation, and Mandate Reform

Ms. Higashi reported the following:

- *Workload.* The past year was very productive and she acknowledged the work done by all Commission staff. She noted that the first rulemaking package started this year is now in effect. She also said that there is a major prehearing conference for the *Handicapped and Disabled Students* program at the Commission's office the next day.
- *Legislation.* There are two bills pending on the Governor's desk – a bill regarding reports to the Legislature and an education bill that amends the 2004 reconsideration statute on *School Accountability Report Cards* and also directs the Commission to reconsider its reconsideration.
- *Legislative Proposals.* Nancy Patton, Assistant Executive Director, noted that any legislative proposals that the Commission wants to proceed with need to be in the Governor's Office for approval by November 10. She outlined the following ideas:
 1. modifying the incorrect reduction claim process so that it is similar to the test claim process, and reducing the statute of limitations for filing an incorrect reduction claim; and
 2. eliminating the SB 1033 process.

Regarding the SB 1033 process, Ms. Patton noted that it could the Commission more to make SB 1033 determinations than the savings that the County realizes. Chairperson Sheehan suggested bringing together some of the parties, including CSAC and legislative staff to discuss alternatives.

Leonard Kaye, on behalf of the County of Los Angeles, commented that his county had an SB 1033 hearing a few years ago and in their case, the savings was far greater than the cost of the hearing.

Chairperson Sheehan agreed that cost and savings would absolutely depend on the county that was at issue, and added that as Commission members, they must confront whether this is the best way to address the issue. Are there some other alternatives? Member Smith acknowledged that the county savings should not be less than the cost to complete the process.

Ms. Higashi added that another issue is the concern of the organizations that represent the welfare rights groups that the remedy for relieving county fiscal distress is allowing counties to reduce general assistance. Chairperson Sheehan agreed, adding that interested parties need to get together to have the discussion. She also stated that since the program has existed for approximately 10 years, it is time to revisit the process and look at options. Member Smith concurred about having the discussion with interested parties, and Member Boel agreed that alternatives other than reducing General Assistance should be discussed.

After further discussion, Ms. Higashi asked the Commission members if they wished to form a legislative subcommittee. Member Glaab, Member Smith, and Member Boel were interested. Chairperson Sheehan directed Commission staff to submit a proposal for a spot bill to the Governor's Office, then conduct preliminary discussions and return to the Commission with suggestions for other options. Member Smith agreed with the Chairperson. He stated that from the beginning of the process for determining Butte County's recent application, he questioned the savings from cutting General Assistance payments each month.

Members also discussed whether to convene a legislative subcommittee or to hold a full Commission hearing to discuss legislative proposals.

Chairperson Sheehan and Member Boel agreed and directed staff to hold discussions with interested parties about the incorrect reduction claim process. Member Smith indicated his understanding that the Department of Finance is reviewing the entire mandate reimbursement process. Chairperson Sheehan stated that Finance staff was looking at the process, and continues to look at Finances' in-house mandates process. Member Smith suggested that if the Commission was going to form a legislative subcommittee, it should widen the scope and listen to and consider all suggestions offered by the stakeholders. Chairperson Sheehan discussed the possibility of conducting statewide hearings on mandate reform. Ms. Higashi stated that informational hearings were conducted by the Assembly Special Committee on State Mandates, and that the Committee made modest changes to the process. She also indicated that the State Controller now has new auditor positions to conduct audits on mandated programs. Chairperson Sheehan and Member Smith agreed that any efforts to reform the process should be consolidated when possible.

- *Next Agenda.* The next meeting is scheduled for December 8 and the proposed agenda is subject to changes.

PUBLIC COMMENT

There was no public comment.

Because it was his last meeting, Chairperson Sheehan presented Mr. Starkey with a resolution from the Commission members. Mr. Starkey thanked the Commission members and staff.

Member Glaab commended staff for their work in getting him up to speed, as a new Commission member.

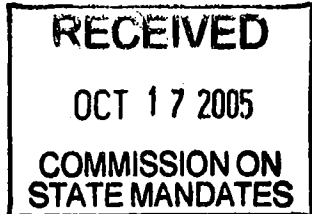
ADJOURNMENT

Hearing no further business, Chairperson Sheehan adjourned the meeting at 11:07 a.m.



PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



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ORIGINAL

TIME: 9:34 a.m.
DATE: September 27, 2005
PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

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A P P E A R A N C E S

COMMISSION MEMBERS

ANNE SHEEHAN, Chairperson
Representative of Tom Campbell, Director
State Department of Finance

NICHOLAS SMITH
Representative of Steve Westly
State Controller

JAN BOEL
Deputy Director, Office of Planning and Research

PAUL GLAAB
City Council Member
Laguna Niguel City Council

FRANCISCO LUJANO
Representative of Philip Angelides
State Treasurer

COMMISSION STAFF

PAULA HIGASHI, Executive Director

CATHERINE M. CRUZ, Program Analyst

ERIC FELLER, Commission Counsel

NANCY PATTON, Assistant Executive Director

CAMILLE SHELTON, Senior Commission Counsel

KATHERINE TOKARSKI, Commission Counsel

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PUBLIC PRESENTATIONS

ALAN BURDICK
California Association of Counties

JULIANA F. GMUR, ESQ., Manager Cost Services
Maximus

LEONARD KAYE
County of Los Angeles

NICHOLAS SCHWEIZER
State of California, Department of Finance

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--o0o--

1 BE IT REMEMBERED that on Tuesday, the 27th
2 day of September 2005, commencing at the hour of
3 9:34 a.m., thereof, at the State Capitol, Room 126,
4 Sacramento, California, before me, Yvonne K. Fenner,
5 a Certified Shorthand Reporter in the State of
6 California, the following proceedings were had:

7 --o0o--

8 CHAIRPERSON SHEEHAN: The Commission on State
9 Mandates meeting of September 27th, 2005, is called to
10 order. Paula, will you please call the roll.

11 MS. HIGASHI: Ms. Boel.

12 MS. BOEL: Here.

13 MS. HIGASHI: Mr. Glaab.

14 MR. GLAAB: Here.

15 MS. HIGASHI: Mr. Lujano.

16 MR. LUJANO: Here.

17 MS. HIGASHI: Mr. Smith.

18 MR. SMITH: Here.

19 MS. HIGASHI: Ms. Sheehan.

20 CHAIRPERSON SHEEHAN: Thank you. We have a
21 quorum.

22 And now we are going to recess into executive
23 session, but before we do, I want to let the members know
24 that shortly it's my hope that we will have a full
25 contingent of members. We are expecting a couple of more

1 appointments, a public member and another elected --
2 local elected official. So hopefully that will be in
3 time for our next meeting. So that will make our life a
4 little easier.

5 Anyway, so the Commission will now go into closed
6 executive session pursuant to Government Code section
7 11126 subdivision E to confer with and receive advice
8 from legal counsel for consideration and action as
9 necessary and appropriate upon the pending litigation
10 listed on the published notice and agenda and to confer
11 with and receive advice from legal counsel regarding
12 potential litigation and pursuant to Government Code
13 section 11126 subdivision A and 17526. The Commission
14 will also confer on personnel matters listed on the
15 published notice and agenda, and we will reconvene in
16 open session at this location in approximately 30
17 minutes. Thank you.

18 (Whereupon the Commission met in closed executive
19 session.)

20 CHAIRPERSON SHEEHAN: We'd like to call the
21 September 27th meeting of the Commission on State
22 Mandates to order. We're back in open session. The
23 Commission met in closed executive session pursuant to
24 Government Code section 11126 subdivision E to confer
25 with and receive advice from legal counsel for

1 consideration and action as necessary and appropriate
2 upon the pending litigation listed on the published
3 notice and agenda and any potential litigation and
4 Government Code section 11126 subdivision A and 17526 to
5 confer on personnel matters listed on the published
6 notice and agenda.

7 Since this is Chief Counsel Paul Starkey's last
8 hearing, effective October 1st, 2005, the Commission has
9 appointed Senior Commission Counsel Camille Shelton as
10 acting chief legal counsel until appointment of the next
11 legal counsel.

12 Item 1, Paula, first item of business is approval
13 of the minutes.

14 MS. HIGASHI: The first item is adoption of the
15 minutes. Item 1A, the minutes of July 28th.

16 MS. BOEL: I move that we adopt the minutes.

17 MR. SMITH: Second.

18 CHAIRPERSON SHEEHAN: We have a motion and a
19 second.

20 MR. SMITH: Oh, wait a second, I can't -- I don't
21 think I was there.

22 MS. HIGASHI: The January meeting --

23 MR. SMITH: I'll move approval.

24 MS. HIGASHI: -- you were present.

25 MR. GLAAB: Second.

1 MS. HIGASHI: I mean the July meeting.

2 CHAIRPERSON SHEEHAN: We have a motion and a
3 second. The Treasurer's Office seconded and the
4 Controller's Office made the motion on the adoption of
5 the August minutes.

6 MS. HIGASHI: The July.

7 CHAIRPERSON SHEEHAN: Oh, the July minutes.

8 MS. HIGASHI: Ms. Boel was at the July meeting.

9 MS. BOEL: I was at the July meeting.

10 CHAIRPERSON SHEEHAN: So you'll move the July
11 minutes.

12 MS. BOEL: I move the July minutes.

13 CHAIRPERSON SHEEHAN: And the Controller's Office
14 seconded those. All those in favor of approving the July
15 minutes say "aye."

16 MULTIPLE SPEAKERS: Aye.

17 CHAIRPERSON SHEEHAN: Any opposed?

18 (No audible response.)

19 CHAIRPERSON SHEEHAN: Those are approved.

20 MS. HIGASHI: Thank you.

21 CHAIRPERSON SHEEHAN: And now we have a motion
22 from the Controller's Office --

23 MS. HIGASHI: Item 1B.

24 CHAIRPERSON SHEEHAN: -- on the August minutes
25 seconded by the Treasurer's Office for adoption of the

1 August minutes. All those in favor say "aye."
2 MULTIPLE SPEAKERS: Aye.
3 CHAIRPERSON SHEEHAN: Any opposed?
4 (No audible response.)
5 CHAIRPERSON SHEEHAN: Those are adopted
6 unanimately.
7 MS. HIGASHI: And Ms. Boel I'll list as
8 abstention.
9 MS. BOEL: Yes, I abstain.
10 CHAIRPERSON SHEEHAN: Okay. Next item, the
11 consent calendar. Any changes to the calendar?
12 MS. HIGASHI: We have no changes to the proposed
13 consent calendar. You should have it before you. It is
14 the blue sheet.
15 CHAIRPERSON SHEEHAN: It is changed, though, from
16 what had gone out earlier.
17 MS. HIGASHI: It's changed from the original
18 agenda. Let me read the items just so it's clear.
19 Item 7, item 8, item 9, item 10, item 12, 13, 14, 15, 16,
20 and 19.
21 CHAIRPERSON SHEEHAN: Yeah. And items 11 and 18
22 are continued to our next meeting.
23 MS. HIGASHI: Yes.
24 CHAIRPERSON SHEEHAN: Is that correct?
25 MS. HIGASHI: Those are not in your binders.

1 CHAIRPERSON SHEEHAN: Okay. All right. Are
2 there any objections to the proposed consent calendar?
3 (No audible response.)
4 CHAIRPERSON SHEEHAN: No? If not, we'll
5 entertain a motion.
6 MR. GLAAB: So moved.
7 CHAIRPERSON SHEEHAN: Mr. Glaab moves the consent
8 calendar.
9 MS. BOEL: I second.
10 CHAIRPERSON SHEEHAN: Ms. Boel seconds. All
11 those in favor say "aye."
12 MULTIPLE SPEAKERS: Aye.
13 CHAIRPERSON SHEEHAN: Any opposed?
14 (No audible response.)
15 CHAIRPERSON SHEEHAN: That is adopted
16 unanimously.
17 MS. HIGASHI: Thank you.
18 CHAIRPERSON SHEEHAN: Item No. 3, Paula.
19 MS. HIGASHI: There are no appeals under item
20 No. 3.
21 CHAIRPERSON SHEEHAN: Okay.
22 MS. HIGASHI: This brings us to item No. 4, which
23 is our reconsideration, Sex Offenders: Disclosure by Law
24 Enforcement Officers. This item will be presented by
25 Commission Counsel Eric Feller.

1 CHAIRPERSON SHEEHAN: All right. Do we need to
2 swear in --

3 MS. HIGASHI: When they come up.

4 CHAIRPERSON SHEEHAN: All right.

5 MR. FELLER: Good morning.

6 CHAIRPERSON SHEEHAN: Good morning.

7 MR. FELLER: The Sex Offenders or Megan's Law
8 test claim consists of 16 amendments to Penal Code
9 section 290 and 290.4, which were originally found by the
10 Commission to impose various requirements on local law
11 enforcement pertaining to registering sex offenders.

12 Staff analyzed the Commission's prior decision in
13 light of the 2004 California Supreme Court case San Diego
14 Unified School District versus Commission on State
15 Mandates. The San Diego Unified case ruled that if a
16 state law was intended to implement a federal law and
17 imposed costs that are, in context, de minimus, then the
18 provision was not reimbursable.

19 In applying this rule to the various activities
20 found reimbursable in the original test claim, staff
21 found that three activities are no longer reimbursable:
22 First, submitting sex offender registrations from the
23 local jurisdictions to the Department of Justice Violent
24 Crime Information Network; second, ensuring that the
25 signed statement an offender fills out upon registration

1 contains the name and address of the offender's employer
2 and the address of the place of employment if different
3 than the employer's main address; and third, ensuring
4 that the convicted offender has adequate proof of
5 residence as specified.

6 As to a fourth activity regarding notifying
7 offenders of a reduction in the time to register, staff
8 finds that this is a one-time activity that has already
9 been performed. Therefore, staff recommends that the
10 Commission adopt the analysis that partially approves the
11 test claim as outlined.

12 Would the parties and witnesses please state
13 their names for the record.

14 CHAIRPERSON SHEEHAN: Do we have anyone who would
15 like to testify on this matter?

16 MS. HIGASHI: At this time let me just note we're
17 also going to call item 6, which is the Brown Act Reform
18 item, and so could all of the other witnesses that are in
19 the audience who may testify on item 6 all stand as well.

20 MR. SCHWEIZER: Item 6?

21 MS. HIGASHI: All the witnesses.

22 MR. SCHWEIZER: Okay.

23 MS. HIGASHI: Do you solemnly swear or affirm
24 that the testimony which you are about to give is true
25 and correct based upon your personal knowledge,

1 information, or belief?

2 MULTIPLE SPEAKERS: Yes.

3 MS. HIGASHI: Thank you.

4 MR. SCHWEIZER: Nicholas Schweizer, Department of
5 Finance. On the mandate in question, we had sent a
6 letter a little while ago requesting that the Ps and Gs
7 be modified on this mandate because they allow community
8 college districts to claim reimbursement. From
9 discussion with your staff, we understand that -- that
10 the Ps and Gs -- that the issue with the Ps and Gs will
11 be addressed at a later hearing, but I just wanted to
12 state for the record that we do not believe that
13 community college districts should be eligible to claim
14 reimbursement for this mandate because they have --
15 establishing a police force is an option for them, it's
16 not a required activity.

17 CHAIRPERSON SHEEHAN: And the staff had said that
18 they will address those issues during the Ps and Gs --

19 MR. SCHWEIZER: Phase. Yes, that's -- that's
20 what they informed me.

21 CHAIRPERSON SHEEHAN: All right. Any questions?
22 Any other questions from Commission members?

23 MR. SMITH: Yeah, just a quick question for
24 Mr. Feller.

25 Did this court provide -- or any court provide

1 any guidance on the definition of de minimus, out of
2 curiosity?

3 MR. FELLER: No.

4 MR. SMITH: I know we've had this issue before,
5 what is de minimus.

6 MR. FELLER: Yeah, it seemed to be a qualitative
7 assessment. They didn't define it in terms of dollars in
8 the case, so we didn't, likewise, define it that way in
9 this analysis.

10 One of the things that the court did seem to rely
11 on was the fact that in a prior case they would have had
12 to do these things anyway under the federal law. And
13 those are largely true in this analysis as well. These
14 are things that they would have had to have done to
15 comply with the federal Megan's Law anyway. And when we
16 looked at the activities, they appeared to be de minimus.

17 MR. SMITH: Thank you.

18 CHAIRPERSON SHEEHAN: Okay. Seeing that there
19 are no other witnesses to testify, what is the will of
20 the Commission?

21 MR. GLAAB: Move the item.

22 CHAIRPERSON SHEEHAN: Move to adopt the staff
23 recommendation, Mr. Glaab moves the staff recommendation.

24 MS. BOEL: I second.

25 CHAIRPERSON SHEEHAN: Ms. Boel seconds. Any

1 further discussion?

2 (No audible response.)

3 CHAIRPERSON SHEEHAN: If not, all those in favor
4 signify by saying "aye."

5 MULTIPLE SPEAKERS: Aye.

6 CHAIRPERSON SHEEHAN: Any opposed?

7 (No audible response.)

8 CHAIRPERSON SHEEHAN: That passes.

9 Item --

10 MS. HIGASHI: Item 5.

11 CHAIRPERSON SHEEHAN: -- 5. Mr. Feller.

12 MR. FELLER: Right. Unless there's objection,
13 staff recommends that the Commission adopt the proposed
14 statement of decision, which accurately reflects the
15 decision on the test claim.

16 Staff also recommends the Commission allow minor
17 changes to be made to the SOD, including reflecting the
18 hearing testimony and vote count will be included in the
19 final statement of decision.

20 CHAIRPERSON SHEEHAN: Okay. Any questions for
21 Mr. Feller?

22 (No audible response.)

23 CHAIRPERSON SHEEHAN: If not, the chair will
24 entertain a motion.

25 MR. GLAAB: So moved.

1 CHAIRPERSON SHEEHAN: Will move the statement of
2 decision. There's a motion. Is there --

3 MS. BOEL: I second.

4 CHAIRPERSON SHEEHAN: And a second by Ms. Boel.
5 All those in favor say "aye."

6 MULTIPLE SPEAKERS: Aye.

7 CHAIRPERSON SHEEHAN: Any opposed?

8 (No audible response.)

9 CHAIRPERSON SHEEHAN: That is adopted. Thank
10 you.

11 Next item.

12 MS. HIGASHI: Item 6, Senior Commission -- I
13 should say Senior Commission Counsel Camille Shelton --

14 CHAIRPERSON SHEEHAN: Soon she'll be acting.

15 MS. HIGASHI: -- soon to be acting counsel, will
16 introduce item 6.

17 CHAIRPERSON SHEEHAN: Thanks. Ms. Shelton.

18 MS. SHELTON: This item relates to two prior test
19 claim decisions addressing the Brown Act, and the test
20 claims were Open Meetings Act test claim and the Brown
21 Act Reform test claim. Recent urgency legislation
22 enacted by Assembly Bill 138 requires the Commission to
23 set aside these test claim decisions. The proposed
24 orders to set aside the two statements of decision are in
25 Exhibits A and B.

1 Staff further finds that AB 138 requires the
2 Commission to dismiss the pending reconsideration
3 directed by the legislature in 2004 of the Brown Act
4 Reform decision. The proposed order to dismiss the
5 reconsideration is in Exhibit C.

6 Will the parties and their representatives please
7 state your names for the record.

8 MR. BURDICK: Alan Burdick on behalf of the
9 California State Association of Counties.

10 CHAIRPERSON SHEEHAN: I'm sorry, what was the
11 name again, sir?

12 MR. BURDICK: Alan Burdick.

13 CHAIRPERSON SHEEHAN: Thanks.

14 MS. GMUR: Juliana Gmur on behalf of the
15 California State Association of Counties as well.

16 CHAIRPERSON SHEEHAN: Okay. Go ahead.

17 MS. GMUR: I just wanted to make a general
18 comment, not specifically with regard to this case, but
19 with regard to the ability of the legislature to command
20 set-asides. I understand the position of this Commission
21 and that they must act as directed; however, we wanted to
22 make the record.

23 It is one thing for the legislature to say that
24 you need to reconsider a prior decision in light of new
25 law; however, it is an entirely different situation for

1 the legislature to tell this, a quasi-judicial body, that
2 it must decide a case in a particular manner. This
3 action by the legislature is ultra vires. It is outside
4 their scope of jurisdiction, beyond their purview. It
5 raises constitutional issues of separation of powers and
6 checks and balances. And we just wanted to point that
7 out and make the record.

8 CHAIRPERSON SHEEHAN: Thank you.

9 MR. BURDICK: Thank you, yes, Alan Burdick on
10 behalf of the California State Associations. Madame
11 Chair and Members of Commission, giving the layman's
12 version, if you will, and that's essentially --

13 CHAIRPERSON SHEEHAN: We got the procedural
14 viewpoint in terms of what they thought of it.

15 MR. BURDICK: The whole purpose that we have the
16 Commission is because its job is to arbitrate between
17 local government and state agencies, one of those being
18 the legislature as well. One of the real concerns or
19 probably the primary concern of the authors of Prop 4 was
20 that the legislature would continue to make statements in
21 legislation which was not true and correct. You know,
22 they would define anything they wanted and say that's not
23 a reimbursable mandate, or they'd say some state program
24 they created was a federal program and many of these have
25 been litigated and in favor of local government.

1 And so we see the whole purpose is to look at the
2 decisions that are made by the legislature and the
3 decisions that you made are to be considered by this
4 Commission, and the legislature does not have authority
5 to tell you what to do. So we take objection to, I
6 think, the whole process that the -- the legislature
7 having the right to set aside decisions that were made.

8 Thank you.

9 CHAIRPERSON SHEEHAN: Thank you. Questions?
10 Mr. Smith.

11 MR. SMITH: Thank you.

12 Thanks for coming today. I appreciate the
13 comments.

14 I was wondering if we could have staff just
15 respond to some of the questions that were raised there
16 about the legislature having the legal issues.

17 MR. STARKEY: Let me jump in. We really, really
18 can't because what they're -- what they're raising are
19 issues that are for potential litigation, legal arguments
20 that at some time may or may not be addressed in the
21 courts or may or may not come before this Commission in
22 some type of legal proceeding format.

23 So to the extent that there are legal issues
24 raised, I really don't think we can comment because staff
25 might have to later come back and render an opinion to

1 the Commission on that, and we certainly can't do that
2 today.

3 MS. SHELTON: Let me just mention I agree with
4 Mr. Starkey with respect to a general response to a
5 general argument, but with respect to this case, you
6 know, of course, the Commission is prohibited from
7 determining whether a statute is invalid or
8 unconstitutional. You don't have the authority to do
9 that.

10 But in this case, it's not just a straight
11 set-aside. This bill did several things. First, it
12 changed the definition of 17556(F), which says the
13 Commission shall not find costs mandated by the State at
14 any time -- let's see -- when the statute imposes duties
15 that are necessary to implement reasonably within the
16 scope of or expressly included in a ballot measure
17 approved by the voters in a statewide election, and the
18 ballot measure could be approved either before or after
19 the statute.

20 Secondly, this bill added language to the Brown
21 Act statutes which said that these statutes are necessary
22 to interpret and are reasonably within the scope of the
23 ballot measure which was adopted by the voters in 2004,
24 which is Proposition 59.

25 So this is not just a straight set-aside in this

1 particular case. It is supported by the law that was
2 enacted by the legislature this last year.

3 MR. SMITH: Thank you.

4 I just -- thanks for coming today. I can see how
5 it's a frustrating process, and so we'll stay tuned.

6 CHAIRPERSON SHEEHAN: I'm sure they're looking at
7 other options they have on this issue.

8 All right. Any other discussions or anyone else
9 who would like to testify on this?

10 (No audible response.)

11 CHAIRPERSON SHEEHAN: All right. If not, what is
12 the will of the Commission?

13 MR. GLAAB: Move the item.

14 CHAIRPERSON SHEEHAN: All right.

15 MS. BOEL: Second.

16 CHAIRPERSON SHEEHAN: We have a motion and a
17 second to move the staff analysis and recommendation.

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

19 MULTIPLE SPEAKERS: Aye.

20 CHAIRPERSON SHEEHAN: Any opposed?

21 (No audible response.)

22 CHAIRPERSON SHEEHAN: That motion carries.

23 MS. HIGASHI: Thank you.

24 CHAIRPERSON SHEEHAN: All right.

25 MS. HIGASHI: This brings us to item 17, which is

1 way towards the back of your binder. These are
2 proposed -- this a proposed parameters and guidelines
3 amendment to Misdemeanors: Booking and Fingerprinting.
4 Nancy Patton, assistant executive director, will
5 introduce this item.

6 CHAIRPERSON SHEEHAN: Ms. Patton.

7 MS. PATTON: Good morning.

8 On February 24th, 1994, the Commission on State
9 Mandates adopted its statement of decision finding a
10 reimbursable state mandate for the Misdemeanors: Booking
11 and Fingerprinting program. On November 17th, 1994, the
12 Commission adopted parameters and guidelines for this
13 program.

14 In 2004, AB 2853 amended the test claim statute
15 to narrow the mandated activities, and the State
16 Controller's Office requested the parameters and
17 guidelines be amended to conform to AB 2853. Therefore,
18 staff modified the parameters and guidelines as follows:
19 The period of reimbursement was amended to cap
20 reimbursement for the activity deleted by AB 2853
21 effective September 29th, 2004. The reimbursable
22 activities section was amended to remove the activity
23 deleted by AB 2853.

24 The remaining sections were updated to make these
25 parameters and guidelines consistent with the language in

1 other recently adopted Ps and Gs and to conform to
2 statutes enacted since the Ps and Gs were adopted in
3 1994.

4 Staff recommends the Commission adopt the
5 proposed amendments to the Ps and Gs for the
6 Misdemeanors: Booking and Fingerprinting program
7 beginning on page 5. Staff also recommends that the
8 Commission authorize staff to make any nonsubstantive,
9 technical corrections to the parameters and guidelines
10 following the hearing.

11 CHAIRPERSON SHEEHAN: Do we have any individuals
12 who would like to testify? Department of Finance?
13 Welcome back, Nick.

14 MR. SCHWEIZER: Thank you. Nicholas Schweizer,
15 Department of Finance.

16 And, we sent a letter on this one as well to
17 request that the Ps and Gs be clarified for a similar
18 issue to exclude K-12 schools and community college
19 districts from claiming reimbursement. We understand --
20 we've had some discussion with Commission staff since
21 that time, and we understand that the language under
22 eligible claimants is interpreted to exclude them and has
23 been by the Controller's Office and others.

24 However, under section 3, period of
25 reimbursement, subparagraph 1, it says a local agency or

1 school district may file. We request that it -- the Ps
2 and Gs just be clarified and cleaned up in that, "or
3 school district" be stricken just to be clear that they
4 are not eligible to claim.

5 CHAIRPERSON SHEEHAN: Tell me again which
6 section.

7 MR. SCHWEIZER: It's under period of
8 reimbursement. Sorry, I don't have the page numbers --

9 MS. HIGASHI: Page 6.

10 MR. SCHWEIZER: -- for you.

11 CHAIRPERSON SHEEHAN: Oh, here. Okay. Oh, I
12 see.

13 And Ms. Patton, did you have those discussions?

14 MS. PATTON: I talked to Nick yesterday. The
15 Commission did not make a finding for school districts on
16 this program. It is limited to local agencies. And, you
17 know, just to be safe, we contacted the State
18 Controllers' Office yesterday, and they verified that no
19 school district has ever filed a claim on this program,
20 so therefore, I don't think it's necessary that we use
21 the language he's proposing under eligible claimants to
22 exclude school districts because they were never
23 included.

24 But I would agree that we could remove this
25 general school district language under his second change

1 that he's proposing.

2 CHAIRPERSON SHEEHAN: Okay. All right. So your
3 feeling is under the definition of eligible claimants --

4 MS. PATTON: There never was a finding for school
5 districts. The Commission never made a school district
6 finding, that they were an eligible claimant, so it's not
7 necessary to exclude them here.

8 CHAIRPERSON SHEEHAN: Well, why would you include
9 them?

10 MR. LUJANO: Why wouldn't we?

11 CHAIRPERSON SHEEHAN: Well, no, he's saying --

12 MS. PATTON: He's asking us to add language that
13 excludes school districts.

14 CHAIRPERSON SHEEHAN: Yeah. Two suggestions.
15 She's saying this one is fine, to take that one out.

16 MS. BOEL: Oh, okay. I thought she was saying --

17 CHAIRPERSON SHEEHAN: But that first one --

18 MS. PATTON: Is unnecessary.

19 CHAIRPERSON SHEEHAN: Yeah. The issue would be
20 do you have to list people who clearly are not eligible?

21 MS. BOEL: Okay.

22 MS. PATTON: But the second change that they're
23 proposing, it's general boilerplate language, but, you
24 know, it's fine to take school districts out of that.

25 CHAIRPERSON SHEEHAN: All right. Because the one

1 issue would be on the first one. If we went about
2 listing everybody who is not eligible --

3 MS. BOEL: We'd have to say everything.

4 MR. SCHWEIZER: We're okay with that.

5 CHAIRPERSON SHEEHAN: That could be a very
6 exhaustive list on any given claim. It could be a
7 problem.

8 MR. SMITH: Just to clarify, the Commission made
9 a finding that this is a local agency --

10 CHAIRPERSON SHEEHAN: Yes.

11 MR. SMITH: -- mandate only?

12 CHAIRPERSON SHEEHAN: Only. It never included
13 school districts.

14 MR. SMITH: So there's no way a school district
15 could even submit.

16 CHAIRPERSON SHEEHAN: They're not -- right. And
17 the Controller, it's outside your office --

18 MS. PATTON: Verified no school district --

19 CHAIRPERSON SHEEHAN: -- confirmed they never --

20 MS. PATTON: -- filed a claim --

21 CHAIRPERSON SHEEHAN: -- filed a claim.

22 MS. PATTON: -- ever.

23 CHAIRPERSON SHEEHAN: Okay. 50 percent, Nick.

24 MR. SCHWEIZER: That's fine. That's good.

25 CHAIRPERSON SHEEHAN: Okay. So it takes out

1 that. But as I say, the other one just would concern me
2 because then, you know, the precedent could be not great.

3 Okay. All right. Any other questions?

4 (No audible response.)

5 CHAIRPERSON SHEEHAN: So with that change,
6 striking school --

7 MR. SMITH: So we have to move to strike that?

8 MR. SCHWEIZER: Strike that and there's also very
9 similar language under one and two.

10 MS. PATTON: Right. I'm saying we'd make all
11 your No. 2 changes.

12 MR. SCHWEIZER: Right.

13 CHAIRPERSON SHEEHAN: Where the --

14 MR. SCHWEIZER: Okay.

15 CHAIRPERSON SHEEHAN: Where it had school
16 district.

17 MR. SCHWEIZER: Right.

18 CHAIRPERSON SHEEHAN: All right. And those,
19 paragraph one and two on page 6, I think is what -- is
20 that it?

21 MR. SCHWEIZER: Yes.

22 MS. PATTON: And three.

23 CHAIRPERSON SHEEHAN: One, two, and three.

24 MR. SCHWEIZER: And three also, sorry. We must
25 have missed three.

1 CHAIRPERSON SHEEHAN: Oh, right there. Yes.

2 Yes, okay.

3 All right. So that would be the suggestion. All
4 right.

5 MS. BOEL: Well, as -- now we're dealing with
6 this --

7 CHAIRPERSON SHEEHAN: As amended.

8 MS. BOEL: As amended, okay.

9 CHAIRPERSON SHEEHAN: Proposed to be amended,
10 yes.

11 MS. BOEL: I'd move that we -- as amended, we
12 adopt the staff analysis.

13 MR. GLAAB: Second.

14 CHAIRPERSON SHEEHAN: And the amendment being the
15 deletion of "school district" in those three paragraphs,
16 the term "or school district."

17 Okay. All right. So we have a motion from
18 Ms. Boel and a second from Mr. Glaab. Any further
19 discussion on this issue?

20 (No audible response.)

21 CHAIRPERSON SHEEHAN: If not, all those in favor
22 say "aye."

23 MULTIPLE SPEAKERS: Aye.

24 CHAIRPERSON SHEEHAN: Any opposed?

25 (No audible response.)

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CHAIRPERSON SHEEHAN: That's adopted.

Okay. Thank you. Okay.

MS. HIGASHI: This --

CHAIRPERSON SHEEHAN: Item 20, is that --

MS. HIGASHI: Item 20. We're now at our proposed rulemaking.

CHAIRPERSON SHEEHAN: Regulation, okay.

MS. HIGASHI: And this will be presented by Cathy Cruz.

MS. CRUZ: Good morning.

CHAIRPERSON SHEEHAN: Good morning.

MS. CRUZ: The purpose of this rulemaking is to implement Government Code section 17530 and establish procedures for appeal of executive director decisions. The notice of proposed rulemaking was mailed on July 1, 2005. The proposed text was made available to the public from July 1 through August 15, 2005. The County of Los Angeles and the City of Newport Beach submitted written comments.

On July 29th, the County of Los Angeles requested a public hearing, and the hearing was held on August 24th at the offices of the Commission on State Mandates. Representatives of the City of Newport Beach and the County of Los Angeles provided oral testimony. Staff responded to the oral and written comments in the final

1 statement of reasons, which is Exhibit F in front of us.

2 Staff finds that no alternative would be more
3 effective in carrying out the purpose for which the
4 regulation is proposed or would be as effective and less
5 burdensome to affected private persons than the proposed
6 regulations.

7 Therefore, staff recommends that the Commission
8 find that no alternative would be more effective in
9 carrying out the purpose for which the regulation is
10 proposed or would be as effective and less burdensome to
11 affected private persons than the proposed regulation.

12 Also, staff recommends that the Commission adopt
13 the proposed amendments to section 1181 of the California
14 Code of Regulations, title 2, division 2, chapter 2.5, as
15 originally proposed, and also to authorize staff to make
16 any nonsubstantive technical corrections requested by the
17 Office of Administrative Law or Barclays Official
18 California Code of Regulations prior to publication.

19 CHAIRPERSON SHEEHAN: Thanks.

20 Are there any members of the public who would
21 like to testify on this?

22 (No audible response.)

23 CHAIRPERSON SHEEHAN: Okay. What's the will of
24 the Commission?

25 MR. GLAAB: Move the item.

1 CHAIRPERSON SHEEHAN: We have a motion from
2 Mr. Glaab.

3 MS. BOEL: I second.

4 CHAIRPERSON SHEEHAN: And a second from Ms. Boel
5 to move the item and adopt the proposed regulatory action
6 regarding the appeal of the executive director's
7 decisions. Any further discussion or questions?

8 (No audible response.)

9 CHAIRPERSON SHEEHAN: If not, all those in favor
10 signify by saying "aye."

11 MULTIPLE SPEAKERS: Aye.

12 CHAIRPERSON SHEEHAN: Any opposed?

13 (No audible response.)

14 CHAIRPERSON SHEEHAN: That passes unanimously.
15 All right.

16 MS. HIGASHI: Thank you very much.

17 Now, this brings us to a very difficult item.
18 This is our proposed 2006 meeting and hearing calendar.
19 This is item 21.

20 CHAIRPERSON SHEEHAN: We all have to get our
21 schedules out?

22 MS. HIGASHI: As you may know, the Commission is
23 required to meet at least every two months. However, in
24 this year's budget, we did receive additional funding to
25 authorize a couple of extra meetings if necessary. And

1 assuming we have a full complement of staff in a short
2 time, we expect that there will end up being more agenda
3 items produced and having a long, one-day hearing may not
4 necessarily be desirable to you if you're having three
5 boxes of documents delivered.

6 So we have added as a contingency a couple of
7 tentative dates here. And generally speaking, the
8 Commission has tried to issue its hearing calendar early
9 to notify all the parties. As people build their
10 budgets, they need to know when they might have to come
11 to Sacramento. And the other is just because we're
12 trying to get ahead of all those other boards and
13 commissions that some of you sit on.

14 And we always --

15 CHAIRPERSON SHEEHAN: That was for me.

16 MS. HIGASHI: Yes.

17 And we're generally trying for Thursdays and at
18 the end of the month. The only deviations are for
19 December. And typically we've met either the first or
20 second week in December, depending on when various annual
21 meetings are scheduled. So whatever feedback --

22 CHAIRPERSON SHEEHAN: Well, I think it's helpful
23 to put them on. If we find we don't need one of the
24 scheduled ones, we can pull it off depending on the
25 workload. But I know at least speaking for myself I

1 think it's helpful to have a few more. I think it will
2 make the workload flow on a more even basis than having
3 some terribly long meetings.

4 Mr. Smith.

5 MR. SMITH: Thank you, Madame Chair.

6 I just want to state for the record that the
7 Controller, you know, is concerned about the backlog of
8 cases and the workload that we get every month, so we
9 agree with putting more meetings for the Commission on
10 the calendar, and it may even need more. Just as fast as
11 staff can produce agenda items and give us the analysis,
12 we would be fine meeting every couple weeks if we could
13 turn out the work, just to get these --

14 MS. BOEL: Paula just fainted.

15 MR. SMITH: -- these going as soon as we --

16 MS. HIGASHI: Don't scare Camille.

17 CHAIRPERSON SHEEHAN: Well, and filling the
18 positions, the new positions in the office, will help in
19 terms of the workload.

20 MS. HIGASHI: Right.

21 CHAIRPERSON SHEEHAN: And you can --

22 MS. HIGASHI: And I think once we release all of
23 the test claim analyses eight to ten weeks in advance,
24 we're factoring in when would new people start, how long
25 would it take them to produce their first analysis. So

1 we're thinking we're not going to really see the
2 increased workflow probably until spring.

3 CHAIRPERSON SHEEHAN: All right. Any other
4 comments from the members? So I think there is general
5 consensus that the schedule is good to go ahead.

6 Do you need us to formally adopt this?

7 MS. HIGASHI: I do need you to formally adopt it
8 and then also whether -- to make a choice for December.

9 MS. BOEL: That's a long ways away.

10 CHAIRPERSON SHEEHAN: Pearl Harbor Day is always
11 a nice day to meet.

12 MS. BOEL: Yes.

13 CHAIRPERSON SHEEHAN: Yeah, I would say the
14 7th --

15 MS. HIGASHI: Okay.

16 CHAIRPERSON SHEEHAN: -- would be my preference
17 in terms of versus the fourth Thursday, which would be,
18 what, the 29th or something.

19 MR. GLAAB: That would be a lonely meeting.

20 CHAIRPERSON SHEEHAN: Exactly.

21 All right. So do we have a motion on the
22 proposed meeting calendar for 2006?

23 MR. GLAAB: Move staff recommendation.

24 CHAIRPERSON SHEEHAN: All right.

25 MR. SMITH: Second that.

1 CHAIRPERSON SHEEHAN: And that would have
2 December 7th. So we have Mr. Glaab made a motion,
3 seconded by Mr. Smith. All those in favor say "aye."

4 MULTIPLE SPEAKERS: Aye.

5 CHAIRPERSON SHEEHAN: Any opposed?

6 (No audible response.)

7 CHAIRPERSON SHEEHAN: All right. We've got our
8 schedule for next year.

9 MS. HIGASHI: Great.

10 CHAIRPERSON SHEEHAN: Okay. Item --

11 MS. HIGASHI: Item 22. This is Mr. Starkey's
12 report.

13 MR. STARKEY: Good morning. Just one --

14 CHAIRPERSON SHEEHAN: Mr. Starkey's last report,
15 for the record.

16 MR. STARKEY: The final report.

17 CHAIRPERSON SHEEHAN: Exactly.

18 MR. STARKEY: And nothing good to report.

19 Another case has been filed. There is a case that was
20 filed after this report was provided. Again, this report
21 is provided for public information. This case is East
22 Side Union High School District versus Commission on
23 State Mandates. It's in Sacramento, case No. 05CS01256.
24 Our number is CSM No. 05L04. And that will appear on the
25 next report.

1 And there are no other updates.

2 CHAIRPERSON SHEEHAN: All right. Questions for
3 Mr. Starkey?

4 (No audible response.)

5 CHAIRPERSON SHEEHAN: No? Okay.

6 MS. HIGASHI: This brings us to item 23, which is
7 my report. And I just wanted to note that I've provided
8 you with an overview of what the Commission's
9 decision-making has looked like over the last several
10 fiscal years by types of items adopted and given you some
11 detailed information as to staffing at those points in
12 time and -- just to give you a rough idea of what it
13 looks like.

14 On the second page of my report, I've displayed
15 the pending workload. And as most of you recall, the
16 last year we've done a lot of reconsiderations. And
17 because of that, it seems as if the test claim workload
18 never really seems to change, unfortunately, but we are
19 making progress. We've done a lot more decision-making
20 than we originally thought before I started to compile
21 the numbers.

22 And I just wanted to acknowledge the tremendous
23 effort put forth by all of Commission staff and including
24 Mr. Starkey, who also has to review every single item in
25 the office, as does Ms. Sheldon and as does Ms. Patton

1 and I before they make it to the agenda.

2 And this past year has been very productive. We
3 have had tremendous issues before the Commission. The
4 work has been difficult. We've had to look at records
5 going back to the Board of Control. And I just wanted to
6 acknowledge the work done by all of the Commission staff.

7 CHAIRPERSON SHEEHAN: Thank you.

8 MS. HIGASHI: Thank you.

9 CHAIRPERSON SHEEHAN: Absolutely.

10 MS. HIGASHI: And I'd like to report that our
11 first rulemaking that we started this year is now in
12 effect, and the regulations were filed with the Secretary
13 of State. We are now waiting for Barclays to actually
14 publish the regulations, but we have mailed the
15 amendments out to all of the parties so that we would all
16 be on the same page in terms of the amended sections.

17 We have a major prehearing conference tomorrow
18 related to the handicapped and disabled students
19 programs, and that will be at our offices tomorrow
20 afternoon.

21 I wanted to report that during the end of session
22 that we had a number of legislative contacts that were
23 being made. Primarily it was necessary for us to report
24 to Leg. staff as to the impact of the litigation on the
25 Graduation Requirements incorrect reduction claims.

1 During our budget hearings, we had had some
2 preliminary discussions during the public hearings about
3 what we perceived to be an increased workload coming
4 based on either litigation or the increased number of
5 auditors being hired by the State Controller's Office.
6 And we had been asked to keep them updated, so it seemed
7 an appropriate time.

8 Although consideration was given to trying to
9 come up with a legislative solution that would, I should
10 say, make our workload a little easier, as well as the
11 positions of the parties and all the pending Graduation
12 Requirements cases easier in terms of how the Commission
13 could potentially assist them in resolving the cases
14 rather than to have everything through court, we weren't
15 really able to proceed with legislation because all of
16 this happened just way too late at the end of session in
17 terms of the court orders and the final rulings.

18 So we would like to continue pursuing discussions
19 and issues, and Ms. Patton will talk about that a little
20 bit later in my report.

21 I also wanted to just update you. There are two
22 bills pending on the Governor's desk. One of them is the
23 reports to the legislature bill, and that's one where for
24 future reports, if this bill is signed, I would be
25 signing a statement --

1 CHAIRPERSON SHEEHAN: Under penalty of perjury.

2 MS. HIGASHI: -- under penalty of perjury
3 regarding the report we're submitting.

4 The second bill that's pending is an education
5 bill that's one of those huge consolidated bills that has
6 a number of issues in it. One of the issues in that bill
7 is language directing -- that amends the 2004
8 reconsideration statute on School Accountability Report
9 Cards, and it directs the Commission to reconsider its
10 reconsideration. So just --

11 CHAIRPERSON SHEEHAN: Those bills have not been
12 acted on as of today.

13 MS. HIGASHI: As of today they are -- according
14 to Leg. Info. I have not checked today's press releases.

15 And at this point I'd like to turn it over to
16 Nancy Patton who is responsible for development of leg.
17 proposals in our office and monitoring legislation --

18 CHAIRPERSON SHEEHAN: Great. Thanks.

19 MS. HIGASHI: -- to lead the discussion.

20 MS. PATTON: Any legislative proposals that we
21 might want to go forward with need to be in the
22 Governor's Office for approval by November 10th, I
23 believe. And so it was thought maybe we could have a
24 discussion about a couple of ideas that we've been
25 talking about.

1 The first one is our incorrect reduction claim
2 process. We currently have over 90 IRCs on file. And
3 with the budget this year, it gave the State Controller
4 additional staff to do audits, so it's likely that we
5 will see an increase in that workload in the next year or
6 more. And we haven't really looked at the IRC process
7 for years about changing it. So one of the things we'd
8 like to talk about is possibly changing the process so
9 it's more like a test claim.

10 So rather than under the current process where
11 each claimant files an individual IRC and we have to
12 analyze them separately and issue separate statements of
13 decision, maybe changing it to a process where we could
14 file a test IRC, you know. The issues would have to be
15 the same for claimants to share, but we thought that that
16 might step up the process, reduce some of the work.

17 Also, we thought about reducing the statute of
18 limitations for filing an IRC. Currently they have three
19 years to file them from the date they are notified that
20 their claim has been adjusted. And we were thinking
21 maybe a one-year statute of limitations could reduce the
22 amount of time it takes to complete IRCs.

23 So those are the two proposals for incorrect
24 reduction claims that we haven't developed. We just
25 wanted to talk to you about.

1 CHAIRPERSON SHEEHAN: Okay.

2 MS. PATTON: The second proposal we were looking
3 at is possibly eliminating the SB 1033 process. I know
4 that's controversial.

5 CHAIRPERSON SHEEHAN: We don't want to go back to
6 Butte next fall?

7 MS. PATTON: On this last go-round we filed, it
8 cost the Commission almost \$120,000. And it's a lot of
9 work and a lot of money for -- and we were only able to
10 get to a one-year determination. I mean, it's getting to
11 the point where it's costing the Commission more than the
12 savings that the County realizes, so --

13 CHAIRPERSON SHEEHAN: Yes.

14 MS. PATTON: -- we're raising the issue of --
15 about maybe proposing that we eliminate it.

16 CHAIRPERSON SHEEHAN: Yeah, or some other
17 alternative. That has been discussed. Maybe bringing
18 together some of the parties, having a discussion with
19 CSAC and some of the interested folks from upstairs who
20 have been involved in this process to see -- now that
21 we've been -- we've had it for ten, 12 -- how long? --
22 '92?

23 MS. HIGASHI: I think ten years.

24 MS. PATTON: Twelve years.

25 CHAIRPERSON SHEEHAN: You know --

1 MR. KAYE: Could I?

2 CHAIRPERSON SHEEHAN: Absolutely.

3 MR. KAYE: Leonard Kaye, with the County of Los
4 Angeles, and I just want to add a comment to the record.

5 CHAIRPERSON SHEEHAN: Absolutely.

6 MR. KAYE: When you indicated the SB 1033
7 hearings so that the cost and the benefit and so forth.
8 In the case of Los Angeles County, I believe we did have
9 a hearing many years ago. And if memory serves me
10 correct, I think the cost of the hearing was probably
11 somewhere along the lines that you were suggesting, but
12 the savings was far greater than the cost. So I'd just
13 like to add that for the record.

14 CHAIRPERSON SHEEHAN: And that would be --
15 depending on the county that was at issue, absolutely it
16 would be.

17 MR. KAYE: Yes.

18 CHAIRPERSON SHEEHAN: And I know L.A. was one of
19 the first counties --

20 MR. KAYE: Yes, we were.

21 CHAIRPERSON SHEEHAN: -- that had gone through
22 this. And I think the issue that at least we confronted
23 as Commission members is, you know, is this the best way
24 to go about addressing that? Is the one size fits all --
25 does it make sense? Are there some other alternatives

1 that we could look at for some of this?

2 But, yes, we certainly understand in the case of
3 Los Angeles the impact would be very different than it
4 was in the smaller counties.

5 MR. KAYE: Thank you.

6 MR. SMITH: The savings shouldn't be less than
7 the staff time it took to produce the stuff to get the
8 savings.

9 MS. HIGASHI: Well, there's a -- if I may just
10 add?

11 CHAIRPERSON SHEEHAN: Uh-huh.

12 MS. HIGASHI: There's also another concern that
13 certainly surfaces in the Capitol whenever we start
14 talking about SB 1033, and that is the concern of the
15 organizations that represent the welfare rights groups.
16 And the concern is that, one, everyone acknowledges the
17 counties could be in fiscal distress, but, two, I think
18 the concern is that why should we focus on the option of
19 allowing them to reduce general assistance? Why isn't it
20 another program or why isn't it a special bill that helps
21 the county and puts in the kinds of controls that might
22 be necessary if there are controls that are necessary for
23 that particular situation.

24 But by having the Commission proceed with the
25 current process, we're not necessarily doing anything to

1 help the situation, and so there have to be other options
2 that could be perceived.

3 CHAIRPERSON SHEEHAN: Yeah. And I think that's
4 really the issue, is having the discussion with the
5 interested parties what else could be done, you know. It
6 has been in existence, I think a little over ten years.
7 It's been -- you know, we've had large counties, we've
8 had small counties, you know, rural counties have used
9 it. Just having gone through it, you know, not having
10 been involved in the L.A. or I think Sacramento has gone
11 through it --

12 MS. HIGASHI: Sacramento has been through it.

13 CHAIRPERSON SHEEHAN: It just seemed there has to
14 be a better way to address these issues where counties
15 are having problems. So, you know, at least speaking for
16 myself, I think it's helpful to have this discussion, you
17 know, begin to draft some legislation, pull together the
18 interested parties and see what else could be done.

19 I think this process was the result of somewhat
20 of a compromise back, you know, from way back when. But
21 I think maybe we have learned some stuff over the past
22 ten or 12 years, figured out some ways, maybe, to do some
23 other things.

24 Special legislation is one option. As I recall
25 from talking to some of the people who have been around,

1 I mean, that was one of the problems -- they always got
2 confronted with pressure on special legislation -- so
3 they wanted to figure out some alternative.

4 But nonetheless, I think it's time to have the
5 discussion again, get all the parties together, put our
6 heads together, and see if there is another way or
7 another option or some other ideas that may emerge from
8 that, so at least --

9 MR. SMITH: I absolutely agree with the Chair on
10 that item.

11 MS. BOEL: How would we proceed in that? Would
12 you -- would it be up to us, to you, to gather the
13 parties together or would the --

14 MS. PATTON: We could --

15 MS. BOEL: -- Governor's Office do that?

16 MS. PATTON: We can hold meetings --

17 MS. BOEL: You could hold a meeting in the --

18 MS. PATTON: -- talk to everyone and come up with
19 a proposal.

20 MS. BOEL: As far as a proposal on -- I was
21 interested in what Paula said and why it's just the
22 assistance that is -- would that be something that we
23 would look at too --

24 MS. PATTON: Right.

25 MS. BOEL: -- whether that's the --

1 MS. PATTON: Right. Not necessarily eliminated,
2 but come up with an alternative.

3 MS. BOEL: Other alternatives. That always
4 bothered me as well.

5 MS. HIGASHI: Because when we examined other
6 states' statutes, you know, some of the other states had
7 very, very specific criteria as to what constituted
8 significant financial distress and more akin to a
9 bankruptcy-type situation and not just what we've been --
10 what we're faced with in SB 1033, which is a little gray,
11 I would say.

12 So there are other models out there that we want
13 to look at, but I think, you know, there are some major
14 policy considerations that need to be addressed. But we
15 just need to find out, in order for us to proceed to meet
16 the administration's deadlines and due dates for
17 proposals being submitted, whether or not the Commission
18 membership is amenable to having us proceed with the --

19 MS. BOEL: Would you need a subcommittee to work
20 with you or would we just -- because we couldn't -- there
21 wouldn't be enough time to come back. What's our next
22 meeting?

23 CHAIRPERSON SHEEHAN: December.

24 MS. BOEL: So we need -- we really couldn't get
25 us to --

1 MS. HIGASHI: At this point there is not a
2 subcommittee. That's certainly an option that the
3 Commission could --

4 CHAIRPERSON SHEEHAN: If we could do that.

5 MS. HIGASHI: If you want it done that way, we
6 can do it that way.

7 CHAIRPERSON SHEEHAN: I guess one of the things
8 in terms of -- I mean a couple of options on bills. We
9 can appeal the SB 1033 or, you know, direct the staff to
10 come back with some suggestions for improving that
11 process.

12 So it may be that as you have some preliminary
13 discussions, you know, come back with this. Do a spot
14 bill to say we would like to address -- you know, just a
15 holding place. We would like to address this issue, have
16 discussions. We don't know if we're going to completely
17 repeal it, but we'd like to at least have discussions and
18 see what other options are out there. Because I think --
19 I don't want to lock us into only that without something
20 substituting for the SB 1033.

21 MR. SMITH: Yeah, I would just say on behalf of
22 the Controller that we're not necessarily -- I mean,
23 there's no doubt that by and large every county in the
24 state could probably claim financial distress, and they
25 are. It's more looking at alternatives. Is cutting

1 general assistance the best way?

2 From the beginning of the process with Butte
3 County, we said at the beginning we questioned the
4 savings when you're cutting a significant portion of what
5 those on general assistance are getting each month, it's
6 sort of silly to me to assume that they're not going to
7 resurface somewhere else in public assistance and skew
8 the savings. So I think just looking at alternatives
9 would be what we'd be most interested in, not necessarily
10 repealing options for counties.

11 MS. PATTON: Okay.

12 CHAIRPERSON SHEEHAN: Okay. Does that --

13 MS. HIGASHI: That -- that helps us. Does the
14 Commission wish to form a legislative subcommittee?

15 CHAIRPERSON SHEEHAN: What's the -- how do you
16 feel?

17 MS. BOEL: I personally would like to be involved
18 in these discussions and work with you. If anyone else
19 would like to be involved, I think it would be --

20 CHAIRPERSON SHEEHAN: You've got at least the
21 three. And then you can keep us, you know --

22 MS. HIGASHI: Okay.

23 CHAIRPERSON SHEEHAN: If you have meetings and
24 all, with three you'd have to have public notice.

25 MS. HIGASHI: Right. If three members were to

1 come to a meeting, we'd need to have it noticed as a
2 Commission meeting.

3 CHAIRPERSON SHEEHAN: As a Commission meeting for
4 the legislative subcommittee. But as long as you're
5 doing it in advance and pull together, and it may be
6 that -- very beneficial for the Commission members to be
7 there and hear from --

8 MS. BOEL: To hear the interested parties --

9 CHAIRPERSON SHEEHAN: -- the interested parties.

10 MS. BOEL: -- particularly from the public.

11 CHAIRPERSON SHEEHAN: Very helpful.

12 MS. HIGASHI: Is there any other feedback on the
13 incorrect reduction claims process?

14 CHAIRPERSON SHEEHAN: I mean I think that --

15 MS. BOEL: We could do the same thing --

16 CHAIRPERSON SHEEHAN: Exactly.

17 MS. BOEL: -- look at it.

18 CHAIRPERSON SHEEHAN: The same thing.

19 MS. BOEL: Come up with a proposal.

20 CHAIRPERSON SHEEHAN: There is an issue. How can
21 you make it -- you know, sort of vet the statute of
22 limitations issue. There again, work with the interested
23 parties in terms of how we can make this process go
24 better from their perspective and our perspective. I
25 mean I think all the way around making it more efficient

1 would be beneficial.

2 So I think the same type of approach would be
3 good. And certainly if you, you know, want to do the two
4 issues together in meetings, you know, first part talk
5 about one issue and the second part talk about the other
6 and then open it up and see if they have any other ideas
7 that they may want to bring forward, other than stopping
8 the legislature from redirecting us. That may be outside
9 of our purview.

10 MR. SMITH: And just to bring up, it's my
11 understanding the Department of Finance is actually
12 reviewing the entire mandate reimbursement process. Am I
13 correct in that?

14 CHAIRPERSON SHEEHAN: Well, they -- they are
15 looking at that. Some of the staff, you know, from each
16 of the divisions are looking at that process and how --
17 but we're constantly looking at this process within
18 Finance.

19 MR. SMITH: I just was looking at other
20 opportunities. If we're going to form a legislative
21 committee, we ought to really widen the scope and look at
22 things that -- I think that in many cases we have
23 stakeholders, important stakeholders, who have interests
24 aligned with ours to make the process as simple as
25 possible and to speed it up. And I would say that, you

1 know, we should really listen to any suggestions that the
2 stakeholders, local governments, community colleges and
3 school districts, have that the legislative subcommittee
4 may want to take into consideration too.

5 I'm, you know, just pretty new on the Commission
6 and I don't know if we've ever had sort of a strategic
7 plan on how we'd like to make this work. You know,
8 there's tons of reports and studies across the board from
9 almost every department.

10 CHAIRPERSON SHEEHAN: Yeah, the sense -- because
11 I've had this discussion with the staff in terms of sort
12 of convening just general, you know -- a meeting north
13 and south in terms of the process, how does it work, how
14 can it be improved upon. The sense I get, as a fairly
15 newcomer to this process, is we have so much -- there's
16 so much workload that's churning through and so many
17 cases that are backlogged and issues that we have to deal
18 with, sometimes we don't have the opportunity to take a
19 step back and look at the entire process, you know,
20 because we are so busy both with the members as well as
21 the staff in terms of the work that's involved to take a
22 step back and convene some discussions about the whole
23 process. And I think possibly this will give us the
24 opportunity to do that.

25 MS. HIGASHI: The last time we were involved in a

1 process was during the Assembly Special Committee on
2 State Mandates when Mr. Laird chaired the committee and
3 all of the stakeholders and parties, many of whom are
4 here today, we had regular meetings before hearings,
5 during hearings, after hearings, to talk about various
6 ways of looking at the mandate reimbursement process.

7 And that committee made some modest changes, and
8 those are the ones that were evidenced in AB 2856.

9 Mr. Laird continues to be very interested in mandate
10 reform issues. This year, as you know, he assumed the
11 chairmanship of the Assembly budget committee, so his
12 time is limited. But there were various mandate reform
13 working groups convened in the Capitol, some of which we
14 participated in, some of which we did not, depending on
15 the topics.

16 So they do continue on a much more of an ad hoc
17 basis. And I think the budget language directing the
18 Department of Finance to do this study and
19 recommendations was the one step that was taken this
20 year.

21 CHAIRPERSON SHEEHAN: Correct. To begin to look
22 at that.

23 MS. HIGASHI: I believe there were also some
24 steps taken regarding the Controller's new auditor
25 positions that reports back to the legislature required

1 from the Controller's Office on the outcome of those
2 audits.

3 CHAIRPERSON SHEEHAN: But I think we can also
4 work with the staff of Finance, who is looking at this
5 process as part of the overall process. And some of the
6 issues that we're looking at I think would be very
7 beneficial to have those discussions.

8 MR. SMITH: That was my suggestion, Madame Chair,
9 that if -- instead of having, you know --

10 CHAIRPERSON SHEEHAN: Two different --

11 MR. SMITH: -- everybody look independently, I
12 know the legislature is doing their own thing. I don't
13 want to create more work for the stakeholders, who are
14 already convening and advising the legislature that they
15 have CSAC and the schools already have things they put
16 together to sort of sift through the work they've already
17 done and not create a whole new process, but just --

18 CHAIRPERSON SHEEHAN: And to the extent that we
19 can consolidated some of those efforts, I think you're
20 exactly right. Yeah.

21 MS. HIGASHI: Is there a person in the Department
22 of Finance who's been assigned responsibility for the
23 project?

24 CHAIRPERSON SHEEHAN: Well, I know Mr. Tilton's
25 unit has been working on this, so I will get back to you

1 in terms of who is helping to oversee the whole. He was
2 very much involved during some of the budget process
3 stuff.

4 Okay. Does that --

5 MS. PATTON: Thank you.

6 CHAIRPERSON SHEEHAN: Okay. All right.

7 MS. HIGASHI: And I'd like to go over on page 4
8 the next hearing agenda. The next meeting is scheduled
9 for December 8th. And there's a proposed agenda there
10 that's tentative, subject to changes. We have some
11 litigation dates that may be coming up as well. And with
12 Mr. Starkey's departure, it will -- it could have an
13 impact on the agenda for December.

14 CHAIRPERSON SHEEHAN: Okay. All right. So looks
15 like three test claims.

16 MS. HIGASHI: Are there any questions regarding
17 the next agenda?

18 CHAIRPERSON SHEEHAN: I do not have any.

19 Any questions from the members?

20 (No audible response.)

21 CHAIRPERSON SHEEHAN: Okay.

22 MS. HIGASHI: That's pretty much all that I have
23 to report.

24 CHAIRPERSON SHEEHAN: Okay.

25 MS. HIGASHI: Unless there are any other member

1 questions.

2 CHAIRPERSON SHEEHAN: Questions for Paula on
3 this?

4 (No audible response.)

5 CHAIRPERSON SHEEHAN: No?

6 Next we will go to public comment. If there --
7 are there any public comments on issues that were not on
8 the agenda?

9 (No audible response.)

10 CHAIRPERSON SHEEHAN: No?

11 Then before we adjourn, what I'd like to do is,
12 since this is Mr. Starkey's final meeting of the -- in
13 his role as the chief counsel, I would like to present
14 you with a resolution from the members. I can read this
15 as I present it.

16 Whereas Mr. Starkey -- can you all hear me?
17 Okay.

18 Whereas Paul Starkey has distinguished himself as
19 chief legal counsel of the Commission of State Mandates;

20 Whereas he has advised, counseled and represented
21 the Commission in determining if cities, counties and
22 school districts should be reimbursed pursuant to
23 section 6, article XIII B of the California Constitution
24 and section 17514 of the Government Code;

25 Whereas he has successfully and effectively

1 managed the legal staff and established the clinical
2 program with McGeorge School of Law;

3 Whereas he has effectively organized and managed
4 Commission litigation and argued before the trial courts,
5 courts of appeal, and the California Supreme Court;

6 Whereas Paul Starkey is being honored by the
7 members and staff of the Commission on State Mandates in
8 appreciation of his outstanding dedication, leadership
9 and service to the State of California;

10 Now therefore be it resolved that the Commission
11 on State Mandates formally congratulates Paul Starkey
12 upon his new position as Labor Relations Counsel IV with
13 the Department of Personnel Administration, and done this
14 27th day of September 2005.

15 So thank you.

16 (Applause.)

17 MR. STARKEY: Well, the staff knows that I'm a
18 toastmaster, so I couldn't let the opportunity go.

19 I want to say that it has been my privilege to
20 work with the Commission on State Mandates staff. They
21 are dedicated professionals, and we have had a
22 roller-coaster ride of budget cuts and staff reductions,
23 and we still have produced great quality work, which the
24 people in black robes have said were pretty darn close.
25 So that's been great.

1 It is a special honor for an attorney to have a
2 statute that say you go to work in the morning. I have a
3 statute that appoints me to represent the Commission, and
4 it has been an absolute privilege and honor to have that
5 statutory role.

6 And all of the Commission members have just been
7 fantastic. They have executed their duties in such a way
8 that frankly makes my job easy. And so thank you all
9 very much.

10 Thank you.

11 CHAIRPERSON SHEEHAN: Thank you.

12 (Applause.)

13 CHAIRPERSON SHEEHAN: All right.

14 MR. GLAAB: Madame Chairman and Members, as the
15 new Commissioner, the newest Commissioner on board, I
16 just want to commend staff for all the fine work they've
17 done in getting the new kid on the block up to speed.
18 And certainly they've done a great job. I know staff
19 would probably respond saying, "Well, we were just doing
20 our job."

21 But all of us come from previous lives, and I've
22 been very, very impressed with not only the completeness
23 of the work, but the availability at a moment's notice
24 for questions and some of the new kid on the block
25 questions. So I just wanted to commend staff for all the

1 fine work they've done in getting me up to speed. So
2 thank you very much.

3 CHAIRPERSON SHEEHAN: Thank you.

4 All right. Is there any other business before
5 the Commission?

6 (No audible response)

7 CHAIRPERSON SHEEHAN: If not, we are adjourned.

8 (Whereupon the hearing concluded at 11:07 a.m.)

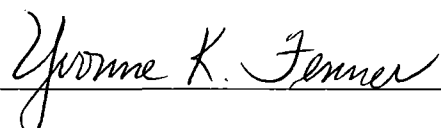
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REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 17th day of October, 2005.



Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909