

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
September 27, 2007

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

CALL TO ORDER AND ROLL CALL

Chairperson Sheehy called the meeting to order at 9:38 a.m.

APPROVAL OF MINUTES

Item 1 July 26, 2007

The July 26, 2007 hearing minutes were adopted 4-0. Member Bryant, Member Glaab, and Chairperson Sheehy abstained.

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.

PROPOSED CONSENT CALENDAR

ORDERS TO SET ASIDE ORDERS DENYING APPEAL OF EXECUTIVE DIRECTOR'S DECISIONS TO RETURN TEST CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181, SUBDIVISION (C). (ACTION)

- Item 3 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Transit Trash Receptacles*, 03-TC-04
California Regional Water Quality Control Board
Executive Order Number 01-182 (December 13, 2001), Permit Number CAS004001, Part 4, Section F.5.c.3
County of Los Angeles, Claimant
- Item 4 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Inspection of Industrial/Commercial Facilities*, 03-TC-19
California Regional Water Quality Control Board Executive Order
Number 01-182 (December 13, 2001), Permit Number CAS004001, Part 4, Section C.2.a., b.
County of Los Angeles, Claimant
- Item 5 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Waste Discharge Requirements*, 03-TC-20
California Regional Water Quality Control Board Executive Order Number 01-182 (December 13, 2001), Permit Number CAS004001, Parts 4.B.4, 4.C.2.a, 4.C.2.b, 4.C.2.c, D, E, F, and G
Cities of Artesia, Beverly Hills, Carson, La Mirada, Monrovia, Norwalk, Rancho Palo Verdes, San Marino, and Westlake Village, Claimants
- Item 6 Order To Set Aside Order Denying Appeal Of Executive Director's Decision To Return Test Claim (Pursuant to Peremptory Writ of Mandate Issued by the Los Angeles County Superior Court, Case Nos. BS089769 and BS089785, and Affirmed in *County of Los Angeles v. Commission on State Mandates* (2007) 150 Cal.App.4th 898)
- Stormwater Pollution Control Requirements*, 03-TC-21
California Regional Water Quality Control Board Executive Order Number 01-182 (December 13, 2001), Permit Number CAS004001, Parts 1 & 2, Pages 16-18; Part 4C & E, Pages 27-34 and 42-45; and Part 4F(5) & (6), Pages 48-51
Cities of Baldwin Park, Bellflower, Cerritos, Covina, Downey, Monterey Park, Pico Rivera, Signal Hill, South Pasadena, and West Covina, Claimants

HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551) (ACTION)

DISMISSAL OF WITHDRAWN TEST CLAIM

- Item 19 *Domestic Violence Defendant Investigation*, 04-TC-04
Penal Code Section 273.75 as added or amended by Statutes 2001, Chapter 572 (SB 66)
County of San Bernardino, Claimant

Member Glaab made a motion to adopt items 3, 4, 5, 6, and 19 on the consent calendar. With a second by Member Olsen, the items were unanimously adopted.

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.

RECONSIDERATION OF PRIOR FINAL DECISIONS DIRECTED BY STATUTES 2006, CHAPTER 78, SECTION 8 (AB 1805)

- Item 7 *Peace Officers & Firefighters' Cancer Presumption*, 06-RL-4081/4416-01
Labor Code Section 3212.1, as added by Statutes 1982, Chapter 1568 (AB 3011) and amended by Statutes 1989, Chapter 1171 (SB 89)

Camille Shelton, Chief Legal Counsel, presented this item. She noted that in 2006, the Legislature enacted a statute directing the Commission to reconsider the Statements of Decision and parameters and guidelines in *Peace Officers & Firefighters' Cancer Presumption* "no later than six months after a final court decision is issued in the case of *CSAC Excess Insurance Authority and the City of Newport Beach v. the Commission on State Mandates*." Ms. Shelton stated that the Statements of Decision and the *CSAC Excess Insurance Authority* case address the issue of whether Labor Code section 3212.1 constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6. She explained that the statute provides an evidentiary presumption of industrial causation to certain firefighters and peace officers in workers compensation cases for cancer-related injuries.

Ms. Shelton indicated that on December 20, 2006, the Second District Court of Appeal issued its decision finding that Labor Code section 3212.1 does not mandate a new program or higher level of service. Consistent with prior case law, the court held that simply because a statute that establishes an employee benefit program may increase the cost to the employer, the statute does not increase the level of service provided to the public within the meaning of article XIII B, section 6.

Staff recommended that the Commission adopt the staff analysis finding that the test claim statutes at issue in the prior decisions do not impose a reimbursable state-mandated program on local agencies, and thus, beginning July 1, 2008, reimbursement is not required for the activities and costs in the parameters and guidelines for these programs.

Parties were represented as follows: Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Castaneda stated no objections and Ms. Geanacou supported the staff analysis.

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

- Item 8 Proposed Statement of Decision
Peace Officers & Firefighters' Cancer Presumption, 06-RL-4081/4416-01
See Above

Camille Shelton, Chief Legal Counsel, presented this item. She noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the motion carried unanimously.

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

PARAMETERS AND GUIDELINES AMENDMENT AS DIRECTED BY
STATUTES 2006, CHAPTER 78, SECTION 8 (AB 1805)

- Item 20 *Peace Officers & Firefighters' Cancer Presumption*, 06-RL-4081/4416-01
Labor Code Section 3212.1, as added by Statutes 1982, Chapter 1568
(AB 3011) and amended by Statutes 1989, Chapter 1171 (SB 89)

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the proposed amendments to the parameters and guidelines would end reimbursement for these programs beginning July 1, 2008. Staff recommended that the Commission adopt the proposed amendments to the parameters and guidelines.

Parties were represented as follows: Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Castaneda stated no objections and Ms. Geanacou supported the staff analysis.

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

HEARINGS AND DECISIONS ON CLAIMS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551) (ACTION)

TEST CLAIMS

- Item 9 *Local Agency Formation Commissions*, 02-TC-23
Government Code Sections 56001, 56326.5, 56381, 56381.6, 56425, 56426.5,
and 56430
Statutes 1991, Chapter 439 (AB 748); Statutes 2000, Chapter 761
(AB 2838); Statutes 2002, Chapter 493 (AB 1948)
LAFCO Municipal Service Review Guidelines (Final Draft, October 3, 2002);
LAFCO Municipal Service Review Guidelines Appendices
(Final Draft, October 3, 2002), Governor's Office of Planning & Research
Sacramento Metropolitan Fire District, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the test claim statutes address changes to the operation of and funding for local agency formation commissions, or LAFCOs, which are statutorily created local administrative bodies that make

determinations regarding formation and development of local agencies and local boundaries. She added that the test claim statutes modify representation on the Sacramento County LAFCO, mechanisms for funding LAFCO operations when independent special districts are represented on the LAFCO, and the process for LAFCOs to adopt and update the sphere of influence for each local agency within California counties.

Ms. Borzelleri stated that because the claimant is an independent special district, the findings of this test claim apply to independent special districts only, not to LAFCOs or any other local government agency. In addition, Ms. Borzelleri noted that only independent special districts that are subject to the tax-and-spend limitations of articles XIII A and B are eligible claimants.

Staff found that the test claim statutes impose a partially reimbursable state-mandated program for the activities specified in the staff analysis, and recommended that the Commission adopt the analysis to partially approve the test claim.

Parties were represented as follows: Juliana Gmur and Joe Chavez, on behalf of the Sacramento Metropolitan Fire District; Allan Burdick, on behalf of the California State Association of Counties; and Carla Castaneda and Susan Geanacou, with the Department of Finance.

Ms. Gmur discussed the applicability of the *City of San Jose* case. She noted that the court was looking for a shift of fiscal responsibility from the state to local agencies, but found a shift from one local agency to another local agency, and therefore, the test claim failed. She contended that the legislation in this case was different because the bill not only spread the costs of the LAFCO amongst many parties, but it also expanded the program. The program got bigger and it was apportioned; thus, the *City of San Jose* could not apply because the state shifted a financial responsibility by increasing the level of service. She argued that without the apportionment of the LAFCO costs, the county could have properly filed a test claim on this subject. The district should not be prohibited from similarly coming forward on the larger program because the county could have done so.

Member Worthley agreed with Ms. Gmur, noting that staff already concluded that there was an enhancement. He stated that there was no shifting of actual state dollars to this program, but the expansion of the program, in and of itself, should constitute a reimbursable mandate.

Ms. Borzelleri stated that because LAFCOs are not the claimant, staff was not able to make a finding about the allegation that LAFCOs have additional requirements. She clarified that Government Code sections 56381 and 56381.6 do not impose any activities; however, analyzing the *City of San Jose* case allows for the shift of cost in funding. Ms. Borzelleri explained that the *City of San Jose* is applicable because it talks about shifting funds from one local to another, in which case there is no prohibition under article XIII B, section 6. She indicated that the *Lucia Mar* case is not applicable.

Ms. Gmur maintained that the *City of San Jose* case does not apply because of the expansion of the program and because it is factually different. Therefore, the facts of the case, in which the costs have been shifted to a local through the expansion of the program by the Legislature, is more akin to *Lucia Mar*.

Mr. Burdick commented that a recently adopted rule of the Commission was being applied to this test claim, such that it was being narrowly applied only to independent special districts. He contended that the test claim was filed with the understanding that Sacramento Metropolitan Fire District would be representing all local agencies.

Ms. Borzelleri responded that due to the way the test claim was filed, the particular statutes involved, and the fact that special districts in many cases are totally funded by fees, staff had to carefully narrow its finding, especially because there were no statements in the record as to what the cities might claim.

Regarding Mr. Burdick's comments, Ms. Higashi clarified that an amendment to the test claim was filed the day before. She noted that Commission staff had not deemed it complete yet and that she severed it from this test claim so that the hearing could proceed on this matter. She stated that the issues were separate and the findings here were limited to independent special districts.

Mr. Chavez expressed the importance of the issue for the Sacramento Metropolitan Fire District. He submitted that the LAFCO requirements took up their time and resources, and impacted their day-to-day operations.

Ms. Geanacou asked a technical question regarding the test claim amendment, to which Ms. Higashi responded.

Member Worthley raised an issue concerning municipal service reviews. As chairman of the Tulare County LAFCO, he was concerned about the finding that the responsibility of the municipal service reviews falls on LAFCO as opposed to the special district. He maintained that without the assistance of the local commissions or local agencies, the reviews could not be done. He believed there to be a practical compulsion resulting from these reviews.

Member Bryant commented that special districts were already required to comply with LAFCOs' needs in terms of working on the municipal service reviews, and thus, the test claim statute does not add any new responsibilities.

Member Worthley noted that they were required to receive more information than before.

Ms. Borzelleri stated that the municipal service review is something new, but acknowledged that prior to the test claim, LAFCO could get information from districts and cities when necessary.

Member Worthley maintained that municipal service reviews constituted an enhanced service level.

Member Lujano made a motion to adopt the staff recommendation, which was seconded by Member Chivaro. The motion carried 4-3, with Member Worthley, Member Bryant, and Member Glaab voting "No."

Item 10 Proposed Statement of Decision
Local Agency Formation Commissions, 02-TC-23
See Above

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. She added that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Chivaro, the motion carried unanimously.

Item 11 *Reporting Improper Governmental Activities, 02-TC-24*
Education Code Sections 44110 - 44114, and 87160 – 87164;
Statutes 2000, Chapter 531 (AB 2472); Statutes 2001, Chapter 159
(SB 662); Statutes 2001, Chapter 416 (AB 647); Statutes 2002, Chapter 81
(AB 2034)
San Juan Unified School District and Santa Monica Community College
District, Claimants

Kenny Louie, Commission Counsel, presented this item. He stated that the test claim addresses the procedures available to protect K-12 and community college employees and applicants for employment from intentional acts of reprisal or coercion resulting from the employee's or applicant's disclosure of improper governmental services. The test claim statute also allows K-12 and community college employees or applicants that were subject to retaliatory acts to file a complaint with local law enforcement and bring a civil suit. He explained that where a "person" has engaged in retaliatory activities, that "person" is subject to disciplinary actions, civil and criminal liability, and punitive damages. As defined by the test claim statutes, "person" includes K-12 school districts and community college districts.

Mr. Louie also stated that community college district employees and applicants are provided the additional protection of being allowed to file a complaint with the State Personnel Board, which must then conduct a hearing or investigation into the complaints. The State Personnel Board is also given the authority to order appropriate relief upon a finding of misconduct.

Staff found that the plain language of the test claim statutes do not impose any state-mandated activities on K-12 school districts. Thus, K-12 school districts are not entitled to reimbursement for the activities in the test claim. However, staff found that the test claim statutes do impose reimbursable state-mandated activities on community college districts relating to the State Personnel Board hearings. Staff recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Keith Petersen, on behalf of the claimants; and Donna Ferebee and Jonathan Lee, with the Department of Finance.

Mr. Petersen stated that the legislation clearly created a multi-tiered, complex response process involving administrative procedures to respond to the complaint, and judicial relief. He noted that the staff recommendation hinged on the plain meaning of the statute; however, he argued that it does not effectuate the purpose of the statute, which is to provide an administrative and judicial relief for employees and potential employees alleging improper governmental activities. He added that the staff recommendation did not rely on any specific court cases and that it turns on the plain meaning of the statute – that there should be a process. Mr. Petersen contended that the process requires the participation of both parties. He added that the risk of civil, criminal, and monetary damages against employees of a district is a compelling reason for the parties to defend themselves.

Mr. Louie clarified that there were no cases regarding the test claim statutes. Regarding the participation of the school districts, he noted that while it may be the policy and practice of the districts to respond to a claim, the plain language of the statute does not mandate a response. Moreover, Mr. Louie maintained that an employee or applicant's right to file a claim, to file a lawsuit, and to receive a judgment for that lawsuit does not hinge on the participation of the school districts. He explained that the intent of the Legislature is to protect employees and applicants.

Mr. Petersen maintained that there is a duty to defend oneself and to participate in the process.

Ms. Shelton responded that *San Diego Unified School District*, a California Supreme Court case, stated that when a decision is left to the state, then it is a state mandate; however, when the decision is made by the local entity, it is not a state-mandated program. She added that the Legislature knows how to direct a response or an activity when it wants to, and it was not done in this case because there is no directive language in the statute to require a school district to participate in litigation.

Consistent with the staff recommendation, Ms. Ferebee stated that the test claim statutes do not legally compel K-12 school districts to engage in any state-mandated activities.

Member Worthley agreed with Mr. Petersen that there is a practical compulsion created by the statute.

Ms. Shelton indicated that the courts, with respect to interpreting mandates, have narrowly applied the practical compulsion standard to instances when the state or the federal government has imposed certain and severe penalties and other draconian consequences.

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

Item 12 Proposed Statement of Decision
Reporting Improper Governmental Activities, 02-TC-24
See Above

Kenny Louie, Commission Counsel, presented this item. He noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. He added that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

Member Worthley requested clarification regarding the dates, which was provided by Ms. Shelton.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Bryant, the motion carried unanimously.

Item 13 *Presumption of Causation in Workers' Compensation Claims: Tuberculosis, Hepatitis and Other Blood-Borne Infectious Diseases, and Meningitis, 01-TC-20, 01-TC-23, 01-TC-24*
Labor Code Sections 3212.6, 3212.8, and 3212.9
Statutes 1995, Chapter 683 (SB 658); Statutes 1996, Chapter 802 (AB 521);
Statutes 2000, Chapter 883 (AB 2043); Statutes 2000, Chapter 490 (SB 32);
Statutes 2001, Chapter 833 (AB 196);
County of Tehama and California State Association of Counties-Excess
Insurance Authority (CSAC-EIA), Claimants

Kenny Louie, Commission Counsel, presented this item. He stated that the test claim statutes provide evidentiary presumptions to certain members of law enforcement and fire departments that develop or manifest tuberculosis, hepatitis or other blood-borne infectious diseases, or meningitis during the period of employment. In these situations, the diseases are presumed to have arisen out of and during the course of employment, shifting the burden of proof to the local agency employer if the employer decides to dispute the claim.

Staff found that the express language of the test claim statutes do not impose any state-mandated requirements on local agencies. Moreover, no court has found that the payment of benefits to local employees provides an increased level of governmental service to the public, a finding that is required to constitute a new program or higher level of service. Therefore, staff recommended that the Commission adopt the staff analysis to deny the test claims.

Parties were represented as follows: Juliana Gmur, on behalf of the County of Tehama and the California State Association of Counties – Excess Insurance Authority; and Carla Castaneda and Donna Ferebee, with the Department of Finance.

Ms. Gmur stated that the staff analysis accurately reflects the decision of the Second District Court of Appeal.

Ms. Castaneda concurred with the staff analysis.

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

- Item 14 Proposed Statement of Decision
Presumption of Causation in Workers' Compensation Claims: Tuberculosis, Hepatitis and Other Blood-Borne Infectious Diseases, and Meningitis,
01-TC-20, 01-TC-23, 01-TC-24
See Above

Kenny Louie, Commission Counsel, presented this item. He noted that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. He added that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

Member Worthley made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the motion carried unanimously.

- Item 15 *Hepatitis Presumption (K-14),* 02-TC-17
Labor Code Section 3212.8
Statutes 2000, Chapter 490 (SB 32); Statutes 2001, Chapter 833 (AB 196)
Santa Monica Community College District, Claimant

Kenny Louie, Commission Counsel, presented this item. He stated that the test claim addresses one of the same statutes pled in Item 13 and raises the same issues discussed in Item 13, as applicable to certain members of school district police departments. For the same reasons discussed in Item 13, staff found that the test claim statutes do not impose any state-mandated activities on K-12 school districts and community college districts. Staff recommended that the Commission adopt the staff analysis to deny the test claim.

Parties were represented as follows: Keith Petersen, on behalf of the test claimants; and Carla Castaneda and Donna Ferebee, with the Department of Finance.

Mr. Petersen stated that the staff analysis accurately reflected the litigation.

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

Item 16 Proposed Statement of Decision
Hepatitis Presumption (K-14), 02-TC-17
See Above

Item 16 is the Statement of Decision for the *Hepatitis Presumption (K-14)* test claim.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Chivaro, the motion carried unanimously.

Item 17 *Crime Victims' Domestic Violence Incident Reports II*, 02-TC-18
Family Code Section 6228
Penal Code Sections 12028.5 and 13730
Statutes 1984, Chapter 901 (AB 3436); Statutes 2001, Chapter 483
(AB 469); Statutes 2002, Chapters 377 (SB 1265), 830 (AB 2695) and
833 (SB 1807)
County of Los Angeles, Claimant

Eric Feller, Senior Commission Counsel, presented this item. He stated that the test claim statutes add information regarding firearms or weapons to the domestic violence incident report form and require giving a copy of the incident report or the face sheet to a representative of the domestic violence victim, if the victim is deceased. In addition, the statutes require officers at the scene of a domestic violence incident involving a threat to human life or a physical assault to take temporary custody of firearms or weapons in plain sight or discovered pursuant to consensual or other lawful search and provide a procedure for return or disposal of the weapon.

Mr. Feller noted that the claimant agreed with the staff analysis, but the Department of Finance disagreed with two of staff's findings. First, the Department of Finance disagreed that Penal Code section 13730, subdivision (c)(3), is a mandate to include firearms and weapons information on the domestic violence incident report form, as required by the 2001 amendment to this section. However, staff found that the plain language of the 1993 amendment to Penal Code section 13730, subdivision (a), requires a written incident report for all domestic violence related calls and has not been suspended.

Secondly, the Department of Finance disagreed that filing an order of default under Penal Code section 12028.5, subdivision (f), is a mandate because it states, "A local agency may file one to dispose of the firearm." However, staff found that filing this default petition is a mandate because once the petition to determine if the firearm or other deadly weapon has been filed, the court has jurisdiction over the weapon and it cannot be disposed of until the court decides its fate.

Overall, staff found that the activities specified in the analysis that are based on Penal Code sections 12028.5 and 13730, subdivision (c), are reimbursable state mandates and recommended that the Commission adopt the staff analysis to partially approve the test claim.

Parties were represented as follows: Hasmik Yaghobyan and Suzie Ferrell, on behalf of the County of Los Angeles; and Carla Castaneda and Donna Ferebee, with the Department of Finance.

Ms. Yaghobyan and Ms. Castaneda concurred with the staff analysis.

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

Item 18 Proposed Statement of Decision
Crime Victims' Domestic Violence Incident Reports II, 02-TC-18
See Above

Eric Feller, Senior Commission Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the Commission's decision to partially approve the test claim. Staff also recommended that the Commission allow minor changes to be made to include the hearing testimony and vote count before issuing the final Statement of Decision.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Glaab, the motion carried unanimously.

STAFF REPORTS

Item 21 Updates on Pending Mandate Reform Legislation
(AB 1222 and AB 1170)

Nancy Patton, Assistant Executive Director, presented this item. She reported that there were two pending bills that included mandate reform provisions:

- AB 1170 would require the Commission to complete test claims filed between 2009 and 2013 within three years. This bill was held on the Senate Appropriations Committee Suspense File. It is now a two-year bill.
- AB 1222 is carried by Assembly Member Laird and is the mandate reform proposal developed by staff of the Commission, Department of Finance, State Controller, Legislature, and local government representatives. This bill includes three components: 1) amends the definition of "reasonable reimbursement methodology (RRM)" by eliminating conditions that have made it impossible for the adoption of an RRM; 2) authorizes local governments and Department of Finance to negotiate an RRM for submittal to the Commission instead of proposed parameters and guidelines and statewide cost estimates; and 3) codifies a procedure for the Department of Finance, and local governments or statewide associations of local governments to request a legislatively determined mandate, a reimbursement methodology, and appropriation.

Ms. Patton stated that all parties agreed that these components would provide local agencies, school districts, and the state with the ability to expedite the mandate reimbursement process and to implement Proposition 1A. AB 1222 is supported by the Commission, Department of Finance, and several local agency representative organizations. It is now pending before the Governor.

Ms. Patton reported that if AB 1222 is signed, Commission staff will:

1. establish an advisory working group consisting of state and local representatives to plan for joint implementation, including developing regulations;
2. initiate the rulemaking process at the Commission's December 6 hearing so that adoption of the final regulations can be tentatively scheduled for the March 2008 hearing; and
3. together with the Department of Finance, conduct workshops and training to brief local agencies, school districts, legislative staff, and the Commission members on

implementation of AB 1222.

Allan Burdick, on behalf of the California State Association of Counties, commented on the outstanding contribution by the Commission staff and Department of Finance Mandates Unit on this matter. He noted that the California State Association of Counties and California League of Cities would be happy to participate.

Member Glaab expressed appreciation for the opportunity to participate in the process.

Ms. Higashi thanked the author, Assembly Member Laird, and coauthor, Assembly Member Silva.

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

Ms. Shelton reported that the Department of Finance case against the Commission with regard to the *Integrated Waste Management* program was set for hearing on January 25, 2008 before Judge Connolly in the Sacramento County Superior Court.

Item 23 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported that the Commission's budget was adopted intact. However, other provisions in the adopted budget bills require additional cuts to be made. Staff is in the process of building the 2008-09 budget.

Chairperson Sheehy clarified that those provisions applied to all general-funded entities within state government.

Ms. Higashi acknowledged Tom Dithridge, a representative of the Department of Finance, for his work on mandates over the years. Mr. Dithridge announced his retirement at the end of the year.

PUBLIC COMMENT

There was no public comment.

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

PERSONNEL

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

PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
2. *County of San Bernardino v. Commission on State Mandates, et al.*, Los Angeles County Superior Court, Case No. BS106052; San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]

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

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

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

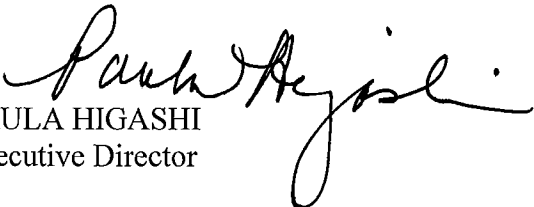
Hearing no further comments, Chairperson Sheehy adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the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

Chairperson Sheehy 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.

ADJOURNMENT

Hearing no further business, and with a motion by Member Olsen and second by Member Glaab, Chairperson Sheehy adjourned the meeting at 11:00 a.m.


 PAULA HIGASHI
 Executive Director

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COMMISSION ON
STATE MANDATES

PUBLIC HEARING
COMMISSION ON STATE MANDATES



ORIGINAL

TIME: 9:39 a.m.
DATE: Thursday, September 27, 2007
PLACE: State Capitol, Room 126
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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California Certified Shorthand Reporter #6949
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A P P E A R A N C E S

COMMISSIONERS PRESENT

TOM SHEEHY
(Commission Chair)
Representative for Michael Genest
Director, State Department of Finance

CYNTHIA BRYANT
Director
State Office of Planning and Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

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



A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 23)

NANCY PATTON
Assistant Executive Director
(Item 21)

CAMILLE SHELTON
Chief Legal Counsel
(Items 7, 8, and 22)

DEBORAH BORZELLERI
Senior Commission Counsel
(Items 9 and 10)

ERIC FELLER
Senior Commission Counsel
(Items 17 and 18)

KENNY LOUIE
Commission Counsel
(Items 11, 12, 13, 14, 15, and 16)



A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 7:

For Department of Finance:

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

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

Appearing Re Item 9:

For Claimant Sacramento Metropolitan Fire District:

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

JOE CHAVEZ
Associate General Counsel
Sacramento Metropolitan Fire District
2101 Hurley Way
Sacramento, California 95825-3208

For California State Association of Counties SB-90
Service:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 9: *continued*

For Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

Appearing Re Item 11:

For Claimants San Juan Unified School District and
Santa Monica Community College District

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

For Department of Finance:

DONNA FEREBEE
Staff Counsel III
Department of Finance
915 L Street
Sacramento, California 95814

JONATHAN LEE
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 13:

For Claimant County of Tehama and CSAC-EIA:

JULIANA F. GMUR
Manager, Cost Services
MAXIMUS

For Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance

DONNA FEREBEE
Staff Counsel III
Department of Finance

Appearing Re Item 15:

For Claimant Santa Monica Community College District:

KEITH B. PETERSEN, MPA, JD
President
SixTen and Associates

For Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance

DONNA FEREBEE
Staff Counsel III
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 17:

For Claimant County of Los Angeles:

HASMIK YAGHOBYAN, JD
Assistant SB90 Coordinator
Department of Auditor-Controller
County of Los Angeles

SUZIE FERRELL
County of Los Angeles
Sheriff's Department

For Department of Finance:

CARLA CASTAÑEDA
Principal Program Budget Analyst
Department of Finance

DONNA FEREBEE
Staff Counsel III
Department of Finance

Appearing Re Item 21:

For California State Association of Counties SB-90
Service:

ALLAN BURDICK
California State Association of Counties
SB 90 Service



ERRATA SHEET

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Commission on State Mandates -- September 27, 2007

1 BE IT REMEMBERED that on Thursday,
2 September 27, 2007, commencing at the hour of 9:38 a.m.,
3 thereof, at the State Capitol, Room 126, Sacramento,
4 California, before me, DANIEL P. FELDHAUS, CSR #6949, RDR
5 and CRR, the following proceedings were held:

6 --oOo--

7 *(The following proceedings commenced with*
8 *Mr. Chivaro absent from the hearing room.)*

9 CHAIR SHEEHY: I'll go ahead and call the
10 meeting to order.

11 Paula, could you go ahead and help us establish
12 a quorum?

13 MS. HIGASHI: Ms. Bryant?

14 MEMBER BRYANT: Here.

15 MS. HIGASHI: Mr. Chivaro is on his way.

16 Mr. Glaab?

17 MEMBER GLAAB: Present.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Here.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Here.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: And Mr. Sheehy?

25 CHAIR SHEEHY: Here.

Commission on State Mandates – September 27, 2007

1 *(Mr. Chivaro entered the hearing room.)*

2 CHAIR SHEEHY: First of all -- oh, here's
3 Mr. Chivaro.

4 We just established a quorum, so you haven't
5 missed anything.

6 MEMBER CHIVARO: Great.

7 MS. HIGASHI: The first item on our agenda
8 today is adoption of the proposed minutes,
9 Item 1, minutes from July 26th.

10 CHAIR SHEEHY: Are there any objections,
11 corrections, or additional information that anybody wants
12 to comment on the minutes?

13 MEMBER GLAAB: Mr. Chairman, I will be
14 abstaining since I was absent from that meeting.

15 MEMBER BRYANT: Ditto for me.

16 CHAIR SHEEHY: Anyone else?

17 *(No audible response)*

18 CHAIR SHEEHY: Why don't you go ahead, and
19 since we have a couple of abstentions, why don't we call
20 the roll on adoption of the minutes?

21 MS. HIGASHI: Okay.

22 Ms. Bryant?

23 MEMBER BRYANT: Abstain.

24 MS. HIGASHI: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.

Commission on State Mandates – September 27, 2007

1 MS. HIGASHI: Mr. Glaab abstains.
2 Mr. Lujano?
3 MEMBER LUJANO: Aye.
4 MS. HIGASHI: Ms. Olsen?
5 MEMBER OLSEN: Aye.
6 MS. HIGASHI: Mr. Worthley?
7 MEMBER WORTHLEY: Aye.
8 MS. HIGASHI: And Mr. Sheehy?
9 CHAIR SHEEHY: Do we have four votes?
10 MS. HIGASHI: Yes, we do.
11 CHAIR SHEEHY: I'm going to abstain.
12 MS. HIGASHI: The motion is adopted.
13 CHAIR SHEEHY: Okay, the minutes have been
14 adopted.
15 MS. HIGASHI: This brings us next to the
16 *Proposed Consent Calendar*.
17 CHAIR SHEEHY: Are there any objections to the
18 Proposed Consent Calendar today?
19 MS. HIGASHI: Let me read the list. It's
20 Items 3, 4, 5, 6, and Item 19.
21 CHAIR SHEEHY: Are there any objections to the
22 Proposed Consent Calendar today?
23 *(No audible response)*
24 CHAIR SHEEHY: If not, is there a motion?
25 MEMBER GLAAB: So moved.

Commission on State Mandates – September 27, 2007

1 MEMBER OLSEN: Second.

2 CHAIR SHEEHY: Call the roll, please.

3 MS. HIGASHI: Mr. Chivaro?

4 MEMBER CHIVARO: Aye.

5 MS. HIGASHI: Mr. Glaab?

6 MEMBER GLAAB: Aye.

7 MS. HIGASHI: Mr. Lujano?

8 MEMBER LUJANO: Aye.

9 MS. HIGASHI: Ms. Olsen?

10 MEMBER OLSEN: Aye.

11 MS. HIGASHI: Mr. Worthley?

12 MEMBER WORTHLEY: Aye.

13 MS. HIGASHI: Ms. Bryant?

14 MEMBER BRYANT: Aye.

15 MS. HIGASHI: Mr. Sheehy?

16 CHAIR SHEEHY: Aye.

17 MS. HIGASHI: Thank you.

18 This brings us next to the hearing portion of
19 the meeting.

20 And at this time, I'd like the parties,
21 witnesses, representatives who will be testifying during
22 the hearing to please stand.

23 *(Several persons stood up.)*

24 MS. HIGASHI: Do you solemnly swear or affirm
25 that the testimony which you are about to give is true

1 and correct, based upon your personal knowledge,
2 information or belief?

3 (A chorus of "I do's" was heard.)

4 MS. HIGASHI: Thank you.

5 At this time, we're now on Item 7.

6 This item will be presented by Chief Counsel
7 Camille Shelton.

8 MS. SHELTON: Good morning.

9 In 2006, the Legislature enacted a statute
10 directing the Commission to reconsider the Statements of
11 Decision and parameters and guidelines in *Firefighters*
12 *Cancer Presumption* and *Cancer Presumption for Peace*
13 *Officers*, "no later than six months after a final court
14 decision is issued in the case of *CSAC Excess Insurance*
15 *Authority and the City of Newport Beach versus the*
16 *Commission on State Mandates.*"

17 The Statements of Decision and the *CSAC Excess*
18 *Insurance Authority* case address the issue whether
19 Labor Code section 3212.1 constitutes a reimbursable
20 state-mandated program pursuant Article XIII B,
21 section 6. That statute provides an evidentiary
22 presumption of industrial causation to certain
23 firefighters and peace officers in workers' compensation
24 cases for cancer-related injuries.

25 On December 20th, 2006, the Second District

1 Court of Appeal issued a decision finding that Labor Code
2 section 3212.1 does not mandate a new program or higher
3 level of service. The Court, consistent with prior case
4 law, held that simply because a statute that establishes
5 an employee benefit program may increase the cost to the
6 employer, the statute does not increase the level of
7 service provided to the public within the meaning of
8 Article XIII B, Section 6.

9 Staff recommends that the Commission adopt the
10 staff analysis and find that the test-claim statutes at
11 issue in the prior decisions do not impose a reimbursable
12 state-mandated program on local agencies. Thus,
13 beginning July 1st, 2008, reimbursement is not required
14 for the activities and costs listed in the parameters and
15 guidelines for the *Firefighter Cancer Presumption* and
16 *Cancer Presumption for Peace Officer* claims.

17 Are there any parties or representatives that
18 want to testify for the record?

19 CHAIR SHEEHY: Please come forward if you would
20 like to testify.

21 MS. GEANACOU: Good morning. Susan Geanacou,
22 Department of Finance.

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

25 CHAIR SHEEHY: Finance, please continue.

Commission on State Mandates – September 27, 2007

1 MS. CASTAÑEDA: We were just going to state, we
2 had no objections. This was consistent with the court
3 decision, as well as recent Commission determinations.

4 CHAIR SHEEHY: Ms. Geanacou, do you have
5 anything further to add?

6 MS. GEANACOU: Nothing further. We support the
7 staff's analysis in this matter.

8 CHAIR SHEEHY: Okay, very good.

9 Is there a motion?

10 MEMBER LUJANO: Move approval.

11 MEMBER CHIVARO: Second.

12 CHAIR SHEEHY: Call the roll please.

13 MS. HIGASHI: The motion is to move approval
14 of --

15 CHAIR SHEEHY: Staff's recommendation.

16 MS. HIGASHI: -- the Commission Staff's
17 recommendation and analysis.

18 Mr. Glaab?

19 MEMBER GLAAB: Aye.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Reluctantly, aye.

Commission on State Mandates – September 27, 2007

1 MS. HIGASHI: Ms. Bryant?

2 MEMBER BRYANT: Aye.

3 MS. HIGASHI: Mr. Chivaro?

4 MEMBER CHIVARO: Aye.

5 MS. HIGASHI: And Mr. Sheehy?

6 CHAIR SHEEHY: Aye.

7 MS. HIGASHI: This motion carries.

8 Item 8.

9 MS. SHELTON: Item 8 is the proposed Statement
10 of Decision. And the sole issue before the Commission is
11 whether the proposed Statement of Decision accurately
12 reflects the decision adopted today.

13 If the Commission adopts the Statement of
14 Decision on reconsideration, the Commission can proceed
15 to Item 20.

16 CHAIR SHEEHY: Are there any additional
17 comments from any parties here that would like to comment
18 on Item Number 8?

19 *(No audible response)*

20 CHAIR SHEEHY: Is there a motion?

21 MEMBER OLSEN: So moved.

22 MEMBER GLAAB: Second.

23 CHAIR SHEEHY: Call the roll, please.

24 Oh, excuse me, there has been a motion to adopt
25 this proposed Statement of Decision, and it's been moved

1 and seconded.

2 Could you call the roll, please?

3 MS. HIGASHI: Mr. Lujano?

4 MEMBER LUJANO: Aye.

5 MS. HIGASHI: Ms. Olsen?

6 MEMBER OLSEN: Aye.

7 MS. HIGASHI: Mr. Worthley?

8 MR. WORTHLEY: Aye.

9 MS. HIGASHI: Ms. Bryant?

10 MEMBER BRYANT: Aye.

11 MS. HIGASHI: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MS. HIGASHI: Mr. Glaab?

14 MEMBER GLAAB: Aye.

15 MS. HIGASHI: Mr. Sheehy?

16 CHAIR SHEEHY: Aye.

17 MS. HIGASHI: Item 20. The motion was adopted.

18 MS. SHELTON: Item 20 is the proposed

19 amendments to the parameters and guidelines that would
20 end reimbursement for these programs beginning July 1st,
21 2008.

22 Staff recommends that the Commission adopt
23 these proposed amendments to the parameters and
24 guidelines.

25 CHAIR SHEEHY: Finance, would you like to

Commission on State Mandates – September 27, 2007

1 comment on Item Number 20? Or is there anyone else that
2 would like to comment on Item Number 20?

3 Finance?

4 MS. CASTAÑEDA: Carla Castañeda, Department of
5 Finance.

6 We have no objections. That is the date that
7 was required in the reconsideration legislation.

8 CHAIR SHEEHY: Ms. Geanacou?

9 MS. GEANACOU: No, nothing further. We support
10 the staff's analysis.

11 CHAIR SHEEHY: Are there any questions from the
12 members or further discussion on Item Number 20?

13 *(No audible response)*

14 CHAIR SHEEHY: Is there a motion?

15 MEMBER WORTHLEY: So moved.

16 MEMBER GLAAB: Second.

17 CHAIR SHEEHY: Paula, there has been a motion
18 and a second to adopt Item 20 to adopt the staff
19 recommendation.

20 Paula, can you call the roll, please?

21 MS. HIGASHI: Sure.

22 Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

1 MS. HIGASHI: Ms. Bryant?

2 MEMBER BRYANT: Aye.

3 MS. HIGASHI: Mr. Chivaro?

4 MEMBER CHIVARO: Aye.

5 MS. HIGASHI: Mr. Glaab?

6 MEMBER GLAAB: Aye.

7 MS. HIGASHI: Mr. Lujano?

8 MEMBER LUJANO: Aye.

9 MS. HIGASHI: Mr. Sheehy?

10 CHAIR SHEEHY: Aye.

11 MS. HIGASHI: The motion is adopted.

12 This brings us now to our first test claim.

13 Item 9 is the staff analysis on the LAFCO test
14 claim.

15 Senior Commission Counsel Deborah Borzelleri
16 will be presenting this item.

17 MS. BORZELLERI: Thank you, Paula.

18 This test claim addresses changes to the
19 operation of and the funding for local agency formation
20 commissions, otherwise known as LAFCOs.

21 LAFCOs are statutorily created local
22 administrative bodies that make determinations regarding
23 formation and development of local agencies and local
24 boundaries.

25 The test-claim statutes modify representation

1 on the Sacramento County LAFCO, mechanisms for funding
2 LAFCO operations when independent special districts are
3 represented on the LAFCO, and the process for LAFCOs to
4 adopt and update the sphere of influence for each local
5 agency within California counties.

6 The claimant here is an independent special
7 district. Thus, the findings of this test claim apply to
8 independent special districts only, and not to LAFCOs or
9 any other local government agency.

10 Furthermore, only independent special districts
11 that are subject to the tax-and-spend limitations of
12 Articles XIII A and B are eligible claimants.

13 Staff find that the test-claim statutes impose
14 a partially reimbursable state-mandated program for the
15 activities listed on page two of the staff's analysis,
16 and recommend the Commission adopt the analysis to
17 partially approve the test claim.

18 Will the parties please state your name for the
19 record?

20 MS. GMUR: Juliana Gmur on behalf of the
21 Sacramento Metropolitan Fire District.

22 MR. CHAVEZ: Good morning. Joe Chavez,
23 Associate General Counsel for the Sacramento Metropolitan
24 Fire District.

25 CHAIR SHEEHY: Ms. Gmur?

1 Oh, excuse me. Go ahead, Mrs. Castañeda.

2 MS. CASTAÑEDA: Carla Castañeda, Department of
3 Finance.

4 MS. GEANACOU: Susan Geanacou, Department of
5 Finance.

6 CHAIR SHEEHY: Ms. Gmur, would you like to
7 testify on this matter?

8 MS. GMUR: Yes, I would. Thank you so very
9 much.

10 First, I would like to commend staff for their
11 analysis. I found it to be very thoughtful and
12 responsive to the comments that we have filed. And all
13 in all, it is an excellent analysis.

14 There is one point, however, that I would like
15 to discuss. And I would like to direct your attention,
16 if I may, to page 23 of the final staff analysis.

17 I'm making a special moment to talk about this
18 because I have to say, when I first went through the
19 analysis, I didn't catch this little nuance of law. And
20 it took me a couple of times to notice it and to bring
21 the analysis around. So I would like to take a moment to
22 talk about the applicability of the *City of San José*.

23 Let's talk for a moment about this case.

24 In the *City of San José* case, what the court
25 was looking at was a concept of shift.

1 Now, I know that the commissioners -- and, of
2 course, the staff -- that have talked a lot about this
3 concept of shift. Because it is an important -- you
4 know, it's the *sine qua non* of any mandate that you're
5 going to be looking for. You want to see a shift of
6 fiscal responsibility from the state onto the locals.

7 In the *City of San José*, the test claim was
8 concerning jail booking fees. The statute had authorized
9 counties who had been paying for the booking fees up
10 until that point to be able to charge the cities and
11 other agencies who made use of the jail for the booking
12 fees.

13 And the Court said, you know, "We don't find
14 the shift here because it is not a shift from the state
15 to the local agency. It is, indeed, a shift from one
16 local agency -- a county -- to another local agency -- a
17 city -- and, therefore, the test claim fails."

18 Now, you may think I've just painted myself
19 into a corner. You may think, well, you've just
20 described LAFCO. But the bill in LAFCO is different.
21 And in the examination of law, one of the questions that
22 is constantly coming up is: Does the change in one fact
23 change the outcome, the decision that was made?

24 And we have a factual change here. The bill
25 not only spread the costs of the LAFCO amongst many

1 parties -- it had originally been borne by counties
2 only -- but it also expanded the program.

3 So think, if you will, for the moment if a
4 county were sitting here. The county would come, they
5 would bring their test claim, and they would say, "The
6 program has gotten bigger." And that would be an
7 appropriate basis. We have an increased level of
8 service, we have increased costs. This would be an
9 appropriate basis for a test claim.

10 So what we have here are two things happening
11 at once: We have the apportionment, which if the program
12 had not changed, if it had been simply what it was before
13 but now it was apportioned, clearly *San José* would apply.

14 But in this case, the program has gotten
15 bigger, and it has been apportioned. And I argue, in
16 that case, the *City of San José* cannot apply because it
17 is, indeed, the state that is shifting a financial
18 responsibility by increasing the level of service.

19 I know I've kind of confused you. I'm going to
20 keep going.

21 Now, if you take that out of the mix, if
22 *San José* does not apply, then the Commission staff will
23 then turn to me and say, "Well, wait, where is your
24 higher level of service?"

25 We have to go back to what happened in *San José*

1 because those test claims relied on *Lucia Mar*, another
2 case talking about the costs, the increased costs of a
3 program. In that case, it was the *Handicapped Children*
4 program. And in that case, the State had apportioned a
5 cost to the local school districts to pay for the
6 program. And that was upheld.

7 So if you are looking at this, what you're
8 seeing is that there's a larger program, so there is a
9 shift -- there is an apportionment, but the apportionment
10 would -- but for the fact of the apportionment, it would
11 have been borne by the county, anyway, and it would have
12 been the proper subject for a test claim.

13 So why should the district be denied the
14 ability to come forward when the county, without the
15 apportionment, could have come forward on a test claim?

16 Any questions?

17 CHAIR SHEEHY: Are there questions from the
18 committee members on Ms. Gmur's testimony?

19 MEMBER WORTHLEY: Mr. Chairman, I don't have a
20 question. I agree with you. I think that -- I notice
21 that also -- and I find in the staff analysis that
22 they've already concluded that there is an enhancement.
23 On page 22, the middle paragraph, it says, "The new
24 requirement of having independent special district
25 representation on the Sacramento LAFCO provides an

1 enhanced service to the public." So a conclusion has
2 been drawn that by adding these additional members and
3 mandating that they be on there, there is an enhanced
4 service level. That's what you're speaking to.

5 MS. GMUR: Yes.

6 MEMBER WORTHLEY: So by enhancing the service,
7 making it bigger, if you will -- it goes again to there's
8 another discussion about the fact that as LAFCO members,
9 they're entitled to be paid for their actual costs and
10 there can be per-diem costs.

11 And then the discussion is, well, LAFCO can
12 charge a fee. Where does LAFCO get its fee but from the
13 special district that's participating in it. So it's a
14 circuitous argument. The money still has to come from
15 the special district to pay for these positions because,
16 in fact, that's where the fees come from.

17 So I agree with you, this is an expanded
18 service. It's a hybrid, if you will. You have, in fact,
19 no shifting of actual state dollars to this program, but
20 you have expansion of the program, and that expansion in
21 and of itself should constitute a reimbursable mandate.

22 MS. GMUR: And this is very technical kind and
23 piecemeal, looking at this, and it is a lot of case law.
24 It is a rather intensive legal analysis.

25 MEMBER LUJANO: Could I hear from our general

1 counsel?

2 MS. SHELTON: I'm going to let Ms. Borzelleri
3 respond to this because she does have the analysis in the
4 document.

5 MS. BORZELLERI: Yes. And if you would look at
6 page 23, as Ms. Gmur pointed out, this is a very strict
7 legal analysis of the point. The problem that we have is
8 that the claim is that LAFCOs have additional services
9 under this, but LAFCOs are not the claimant in this
10 claim. So we're not able to draw that conclusion.

11 The section that we're talking about is
12 Government Code sections 56381 and 56381.6. Those
13 statutes do not impose any kind of activities on anyone.
14 They simply require that the payment for the LAFCO which,
15 since 1963, was completely covered by the counties, be
16 split evenly between the cities, the counties, and the
17 special districts that are on the LAFCO. So what we have
18 is no test-claim statute that actually imposes any
19 activities, because that is the one we're analyzing here.
20 And we have no activities associated with it.

21 When we do that analysis, the only possible way
22 they could get any reimbursement is by analyzing the *City*
23 *of San José* and the *Lucia Mar* cases. Those allow for a
24 shift of cost in funding, if you will. But they do focus
25 on the State shifting the costs to the locals. So

1 *Lucia Mar* is absolutely not applicable here.

2 The *City of San José* is applicable because it
3 talks about shifting funds from one local to another, in
4 which case there's no prohibition under Article XIII B,
5 Section 6, for that to occur, such that it requires
6 reimbursement.

7 So, you know, it is sort of a convoluted
8 situation; but by the same token, we can only look at the
9 statute that we're talking about, which is sections 56381
10 and 56381.6, do not impose any activities.

11 Camille, would you like to add anything to
12 that?

13 MS. SHELTON: No.

14 MS. BORZELLERI: Okay.

15 CHAIR SHEEHY: Is there a further discussion on
16 these points from the Members of the Commission?

17 MS. GMUR: And if I may, it was a
18 clarification. I'm taking actually the opposite tact.
19 The *City of San José* does not apply because of the
20 expansion of the program. There's a change in facts.

21 Although this looks similar to the *City of*
22 *San José*, it is actually factually different. And it is
23 factually different in such a way because of the
24 expansion of the program, that the *City of San José*
25 cannot apply. We would get a different result. And,

1 therefore, that leaves *Lucia Mar* applying, and the end
2 result then is a finding -- this is more akin to
3 *Lucia Mar* because it is the expansion of a program in
4 which the costs have been shifted to a local through the
5 expansion of the program by the Legislature.

6 MR. BURDICK: Mr. Chairman and Members, thank
7 you for allowing me to speak. Allan Burdick on behalf of
8 the California State Association of Counties.

9 CHAIR SHEEHY: Thank you, Mr. Burdick. Please
10 continue.

11 MR. BURDICK: One thing I'd like to point out
12 is, as we're getting into this, we're now applying, I
13 think, a recently adopted rule of the Commission to this
14 test claim. And that is, when this test claim was filed,
15 and previously up until recently a test claim was
16 normally felt to be either filed by a local agency, which
17 is a city, county or school district, on behalf of all
18 local agencies, or a school district.

19 Now, this is being narrowed to the fact that
20 this applies to an independent special district.

21 At the time of filing, the intention was
22 Sacramento Metropolitan wanted to step up. It's a local
23 agency. The Commission is always interested in having a
24 single test claimant, a legislative change that was not
25 agreed to or was not felt it was supported by local

1 agencies a long time ago. And as a result now, we're
2 getting back to narrowing this to the point of saying
3 that this is applying only to that independent special
4 district.

5 And I contend that when this was filed back in
6 2000, I believe it was, when we filed this test claim --
7 when this test claim was filed, it was filed with the
8 understanding at that time that Sacramento Metro, as a
9 special district, was representing all local agencies.

10 And so I think that, you know -- and I'm
11 probably going to get in trouble with Carla and Paula for
12 raising this issue and not raising it ahead of time, but
13 it kind of dawned on me as we were listening to this out
14 there that, you know, now, I think it's a requirement
15 that what you would have had to have done is now if this
16 was filed, as an example, newly by Sacramento
17 Metropolitan Fire District, the cities and counties want
18 to be involved, we probably would have gotten
19 declarations included to say to allow for the expansion.

20 You know, so it's -- but at the time, I believe
21 that when this was filed, the feeling was that it was
22 intended to cover all local agencies. It's just that the
23 facts and the arguments from their standpoint, from
24 Sacramento Metropolitan, had to be limited to their
25 particular situation. But, you know, when it was filed,

1 it was not intended to preclude and be limited to an
2 independent special district.

3 So I think in terms of the ruling of saying
4 that it's limited to independent special districts, I
5 mean, this situation has now been bifurcated and it can
6 be only discussed later; but I still think that that
7 is -- that this should have been allowed originally to
8 include all cities, counties -- any local agency under
9 the definition of a local agency under the Commission's
10 regulations.

11 CHAIR SHEEHY: Mr. Burdick, I'm going to ask
12 our counsel to respond.

13 MS. BORZELLERI: Right. Actually, in this
14 case, we have not had that many claims from special
15 districts. And I think as maybe you can see from the
16 analysis, and if you had seen the test claim -- and it is
17 part of this package -- it really was focused on what
18 independent special districts have to do as a result of
19 the LAFCO statutes. And, you know, we do typically have
20 a broader approach; but in this case, because of the way
21 the test claim was filed, because of the particular
22 statutes that are involved that are very focused on what
23 happens with counties, what happens with cities, what
24 happens with special districts, in addition to the fact
25 that special districts in many cases are totally funded

1 by fees, so they're not even eligible for reimbursement
2 under Article XIII B, Section 6, we had to narrow this
3 very carefully. And it was very difficult to do, but we
4 did have to narrow it carefully with the findings,
5 especially since we did not have any declarations from
6 the cities, we had no statements in the test claim as to
7 what the cities might be claiming. So it was very narrow
8 to Sacramento County and Sacramento Metropolitan Fire
9 District and special districts in Sacramento County.

10 MS. HIGASHI: Let me just clarify some of the
11 comments that Mr. Burdick just made regarding the other
12 issues.

13 Those issues are not before you today.

14 Yesterday, an amendment was filed to this test
15 claim. We received the amendment, we accepted it. We
16 have not deemed it complete yet. But I severed it from
17 this test claim so that the hearing could proceed on this
18 matter because the issues are separate and the findings
19 here are limited to independent special districts.

20 So we will have ten days to do a completeness
21 review. And if it is complete, then we would send that
22 out for comment and follow our normal practice.

23 CHAIR SHEEHY: Accordingly, those issues are
24 going to be heard at a subsequent hearing --

25 MS. HIGASHI: Correct.

1 CHAIR SHEEHY: -- and won't affect the issue
2 that is before us today on this item; is that correct?

3 MS. HIGASHI: Correct, they are not before you
4 today.

5 MR. BURDICK: I apologize. I wanted to raise,
6 as I was sitting there listening to that, and it dawned
7 on me at that point in saying -- because if we go back to
8 many of the key cases, like *Carmel Valley* was a special
9 district and was filed by Carmel Valley on behalf, and
10 was intended to cover all fire districts and city or
11 county fire districts as well as special districts. So,
12 anyway, I look forward to discussing that at a subsequent
13 meeting.

14 CHAIR SHEEHY: Mr. Chavez, did you have
15 additional comments for the record?

16 MR. CHAVEZ: I just wanted to express to the
17 Commission that this is a very important issue for the
18 Sacramento Metropolitan Fire District. Without getting
19 into the specifics of the legal analysis, I can tell you
20 from firsthand experience that the LAFCO requirements do
21 take up our time, our resources. It does impact our
22 day-to-day operations. And I just want to express that
23 to the Commission.

24 And I want to thank the Commission for its
25 consideration in this matter.

1 CHAIR SHEEHY: Thank you, Mr. Chavez.

2 Finance, do you have any comments?

3 MS. GEANACOU: Susan Geanacou, Finance. I just
4 had a question for Ms. Higashi.

5 On the filing that was received by your office
6 yesterday, can you clarify if it's appropriate in this
7 forum what the filing was? Does it raise the issues that
8 Mr. Burdick addressed?

9 MS. HIGASHI: We have not read it
10 substantively, but it does contain a number of code
11 sections that are not before you in this matter.

12 And at the time that it is deemed complete,
13 then it will be sent out to all state agencies, including
14 the Department of Finance. And we'll have time to take a
15 look at it.

16 MS. GEANACOU: Thank you.

17 CHAIR SHEEHY: Is there any further discussion
18 on the item that is before us today in Item Number 9?

19 MEMBER WORTHLEY: Mr. Chairman, I'd like to
20 raise an issue. It has to do with the last part of the
21 analysis concerning municipal service reviews. And I
22 should have made a disclaimer at the beginning of this
23 particular proceeding, in addition to being the local
24 government from the Tulare County representative, I'm
25 also chairman of the Tulare County LAFCO -- that

1 commission. So my issue here has to do with municipal
2 service review and the analysis that indicates that the
3 responsibility of the municipal service review falls on
4 LAFCO as opposed to the special districts.

5 But I have to tell you, without the assistance
6 of the local commissions or the local agencies, the
7 LAFCO -- the service reviews cannot be done. It's
8 impossible for us to do them without their good-faith
9 efforts to provide the information that allows this
10 analysis to be done.

11 So I find there to be a -- what's the term I'm
12 looking for -- it's not expressed in the statute that
13 there's a requirement, but there is a compulsion, a
14 practical compulsion, if you will, that results from
15 creating these performance reviews. Without the
16 assistance of these special districts, they cannot be
17 done. And if we don't allow it to happen and find it to
18 be a reimbursable situation from the standpoint of
19 saying, "Well, they don't have to do it," and there's no
20 draconian measures, I would suggest there are draconian
21 measures. Because without the service reviews, LAFCO
22 could simply say, "We're not going to process your
23 applications." There could be litigation because failure
24 to provide the information and the inability to perform
25 these service reviews would then place the LAFCO in a

1 situation where they might be sued by environmentalists
2 or so forth.

3 So I just think in that situation, you have a
4 practical compulsion. And the concept that we are trying
5 to say that, "You don't have to participate, that's not
6 your responsibility," it is their responsibility because
7 otherwise it won't get done. And we know that LAFCO --
8 it is mandated on LAFCO that they do these reviews.

9 CHAIR SHEEHY: Thank you, Mr. Worthley.

10 Ms. Bryant?

11 MEMBER BRYANT: Can I respond to that?

12 I hear what you're saying, there's compulsion
13 here. But isn't there existing -- prior to this claim,
14 wasn't there existing Government Code statute that
15 required that special districts comply with this? Am I
16 correct about that?

17 I think there was already --

18 MEMBER WORTHLEY: I think there was a limited
19 requirement.

20 MEMBER BRYANT: I think they were already
21 required to comply with LAFCO's needs in terms of
22 working on the municipal services review. So to me, the
23 test-claim statute doesn't really add any new
24 responsibilities. They were already required to do that
25 under preexisting law that predates mandates, if I read

1 everything.

2 MEMBER WORTHLEY: If I read this appropriately,
3 and what you're referring to, it is an enhanced service
4 level because the information that was authorized to be
5 requested from those different agencies has been expanded
6 under the municipal services review, as I understand it.
7 So there's a requirement for a lot more information than
8 we were perhaps authorized to receive before.

9 MEMBER BRYANT: But I read it that the
10 requirement is placed on LAFCO to seek additional
11 information. That's how I read it.

12 I actually disagreed with the staff
13 recommendation on the second part of the analysis. I
14 think that the statute is telling LAFCO to go get that
15 information, and LAFCO had preexisting statute that
16 already requires all the local governments to comply with
17 their requests.

18 I'm happy to be corrected, but I read that that
19 way.

20 CHAIR SHEEHY: Deborah, did you want to comment
21 on that?

22 MS. BORZELLERI: Well, you know, without going
23 through detail, it's my general understanding that LAFCO
24 certainly had authority to require a lot of information
25 from -- they could adopt regulations, they had a lot of

1 authority to do what they needed to do to do a sphere of
2 influence.

3 The municipal service review I believe is
4 something new. But it still -- it's sort of a guideline
5 that OPR has adopted that, you know, explains how they
6 get there and the types of information they need. But
7 certainly there was information that LAFCO could get from
8 districts and cities and whoever they needed to prior to
9 the test claim.

10 MEMBER WORTHLEY: I would use the example,
11 Mr. Chairman, if I may. We used to require on LAFCO that
12 you would receive a will-serve letter from a water
13 district as a condition to an annexation.

14 Now, in a municipal services review, it's a
15 very extensive study that has to be done. Now, it not
16 only talks about will serve, but the capacity of the
17 system, what are the proven resources there. It's a very
18 extensive kind of a product. It is nothing like we had
19 before. And I believe it constitutes an enhanced service
20 level.

21 Anyway, I don't know if anybody else has a
22 response to that.

23 CHAIR SHEEHY: Further discussion on this
24 matter from members of the Commission or from staff?

25 *(No audible response)*

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1 CHAIR SHEEHY: At this point, I'd like to ask
2 if we do have a motion for the staff, to approve the
3 staff recommendation on Item Number 9.

4 MEMBER LUJANO: Move approval.

5 MEMBER CHIVARO: Second.

6 CHAIR SHEEHY: Paula, could you please call the
7 roll?

8 MS. HIGASHI: Certainly.

9 Mr. Worthley?

10 MEMBER WORTHLEY: No.

11 MS. HIGASHI: Ms. Bryant?

12 MEMBER BRYANT: I'm going to vote no, for
13 different reasons completely than Mr. Worthley.

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: No.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HIGASHI: And Mr. Sheehy?

23 CHAIR SHEEHY: Aye.

24 MS. HIGASHI: The motion is adopted.

25 CHAIR SHEEHY: Okay, so we have a motion

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1 adopted that adopts the staff recommendation on Item
2 Number 9.

3 MS. HIGASHI: And this takes us now to Item 10,
4 adoption of the proposed Statement of Decision.

5 Ms. Borzelleri?

6 MS. BORZELLERI: Thank you.

7 The only issue before the Commission on this
8 item is whether the Statement of Decision accurately
9 reflects the Commission's decision on Item 9.

10 The staff will make minor changes to the final
11 Statement of Decision to reflect the witnesses' testimony
12 and vote count when issuing the final.

13 CHAIR SHEEHY: Is there any objection to the
14 members of the Commission substituting the prior roll
15 call for the staff recommendation on Item Number 10?

16 MEMBER BRYANT: Yes.

17 CHAIR SHEEHY: Okay, is there a motion to
18 approve the staff recommendation on Item Number 10?

19 MEMBER OLSEN: So moved.

20 MEMBER CHIVARO: Second.

21 CHAIR SHEEHY: Paula, could you please call the
22 roll?

23 MS. HIGASHI: Ms. Bryant?

24 MEMBER BRYANT: Aye.

25 MS. HIGASHI: Mr. Chivaro?

1 MEMBER CHIVARO: Aye.

2 MS. HIGASHI: Mr. Glaab?

3 MEMBER GLAAB: Aye.

4 MS. HIGASHI: Mr. Lujano?

5 MEMBER LUJANO: Aye.

6 MS. HIGASHI: Ms. Olsen?

7 MEMBER OLSEN: Aye.

8 MS. HIGASHI: Mr. Worthley?

9 MEMBER WORTHLEY: Aye.

10 MS. HIGASHI: Mr. Sheehy?

11 CHAIR SHEEHY: Aye.

12 MS. HIGASHI: Thank you.

13 MS. GMUR: Thank you, Commissioners.

14 MS. HIGASHI: The Motion is adopted.

15 This brings us to our next test claim, Item 11.

16 Item 11 will be presented by Commission Counsel
17 Kenny Louie.

18 MR. LOUIE: Thank you.

19 This is *Reporting Improper Governmental*
20 *Activities*. This test claim addresses the procedures
21 available to protect K-through-12 and community-college
22 employees and applicants for employment from intentional
23 acts of reprisal or coercion resulting from the
24 employee's or applicant's disclosure of improper
25 governmental activities.

1 This test-claim statute allows K-through-12 or
2 community-college employees or applicants that were
3 subject to retaliatory acts to file a complaint with
4 local law enforcement and bring a civil suit.

5 Where a "person" has engaged in retaliatory
6 activities, that "person" is subject to disciplinary
7 actions, civil and criminal liability, and punitive
8 damages.

9 As defined by the test-claim statutes,
10 "person" includes K-through-12 school districts and
11 community-college districts.

12 Community-college employees and applicants are
13 provided the additional protection of being allowed to
14 file a complaint with the State Personnel Board, which
15 must then conduct a hearing or investigation into these
16 complaints. In addition, the State Personnel Board is
17 given the authority to order appropriate relief upon a
18 finding of misconduct.

19 Staff finds that the plain language of the
20 test-claim statutes applicable to the K-through-12 school
21 districts do not impose any state-mandated activities on
22 K-through-12 school districts. As a result, K-through-12
23 school districts are not entitled to reimbursement for
24 the activities claimed in the test claim.

25 However, staff finds that the test-claim

1 statutes, as applicable to the community-college
2 districts, impose reimbursable state-mandated activities
3 on state community-college districts relating to the
4 State Personnel Board hearings.

5 As a result, staff recommends the Commission
6 partially approve this test claim because a portion of
7 the test-claim statutes impose a reimbursable state-
8 mandated program on community colleges districts within
9 the meaning of Article XIII B, Section 6, of the
10 California Constitution, for the activities listed on
11 page 30 of the staff analysis.

12 Will the parties and witnesses state their
13 names for the record?

14 MR. PETERSEN: Keith Petersen, representing the
15 test claimants.

16 MS. FEREBEE: Donna Ferebee, Department of
17 Finance.

18 MR. LEE: Jonathan Lee, Department of Finance.

19 CHAIR SHEEHY: Mr. Petersen?

20 MR. PETERSEN: Thank you. Good morning.

21 This mandate establishes a new cause of action,
22 a new right for employees and potential employees to file
23 a complaint alleging improper governmental activities
24 against employees of school districts and college
25 districts and against the districts themselves.

1 Staff concluded that there was no legal
2 compulsion or practical compulsion for the districts to
3 participate in that process or to respond or defend
4 themselves, perhaps because the word "shall" was absent.

5 The legislation clearly created a multi-tiered,
6 complex response process involving administrative
7 procedures to respond to the complaint, and judicial
8 relief.

9 If you look at page 13 of your decision, I just
10 want to show you one quote on plain meanings. This
11 entire staff recommendation seems to hinge on plain
12 meaning of the statute. Staff said they couldn't find
13 any compulsion at all, therefore, the districts weren't
14 required to defend themselves.

15 If you look in the middle of the page, under
16 Issue 1, "When analyzing statutory language, the rules of
17 statutory construction provide: In statutory
18 construction cases, our fundamental task is to ascertain
19 the intent of the lawmakers so as to effectuate the
20 purpose of the statute."

21 The staff recommendation does not effectuate
22 the purpose of the statute. The purpose of the statute
23 is to provide an administrative and judicial relief for
24 employees, potential employees, alleging improper
25 governmental activities, which the Legislature went to a

1 great deal of trouble to a create for school districts
2 and colleges.

3 This staff recommendation does not rely on any
4 specific court cases as some of the earlier cases today
5 have cited specific cases. This all turns on what the
6 plain meaning of the statute is. The plain meaning, of
7 course, I think we can all conclude -- objectively,
8 perhaps -- that there should be a process. And the
9 process requires the participation of both parties, just
10 like this process does. Any due process, judicial,
11 administrative, requires participation of the parties.

12 To construe the statute does not require the
13 participation of the defending party, I think is
14 ludicrous. We've been down this Kafkaesque road before
15 on previous test claims where there's a missing word to
16 trigger the compulsion. Whether or not there is a
17 missing word here, I think it's quite clear that the
18 Legislature wants the districts to participate in the
19 process they created.

20 What reason would you have a process if you
21 didn't want the parties to participate? Why would you
22 give employees the right to file these complaints, which
23 are in the public interest?

24 Now, if you're looking for a compelling,
25 practical reason, if you can't find a compelling legal

1 reason, I should think that the risk of civil, criminal,
2 and money damages against employees of the district would
3 be very compelling. If someone filed an action against
4 the district that could result in that outcome, I think
5 it's very compelling that the parties defend themselves.

6 Those damages can be expensive, and I would
7 think that would be quite compelling to avoid those costs
8 which would not be reimbursable.

9 So that's essentially it. All the staff has is
10 their reading of the plain meaning. And I think what you
11 have is an obvious attempt by the Legislature to create a
12 new process, a new due process which requires
13 participation of all the parties.

14 CHAIR SHEEHY: Mr. Louie, could you please
15 respond?

16 MR. LOUIE: A couple points.

17 I would like to clarify that there is no case
18 law stated because there are no cases in regards to these
19 statutes.

20 In regards to the participation of the
21 districts, although it might be the policy and practice
22 of school districts to respond to a claim, it is not
23 mandated by the statute to do so. And per the plain
24 language -- that is per the plain language.

25 In addition, a claimant's -- or an employee or

1 applicant's right to file a claim, to file a lawsuit, and
2 to receive a judgment for that lawsuit does not hinge on
3 the participation of the school districts.

4 The intent of the Legislature was to protect
5 employees and applicants. It was not necessarily to
6 provide specific activities of the claimants. And so to
7 assume or to put in activities or required activities for
8 the claimants is just not within the language or the
9 intent of the Legislature.

10 CHAIR SHEEHY: Please, Mr. Petersen.

11 MR. PETERSEN: I can't see a judge in civil
12 court letting a case go forward without the defendant. I
13 mean, they don't like defaulting cases. I think there's
14 a duty to defend yourself, to participate in the process.
15 And it's a brand-new cause of action.

16 CHAIR SHEEHY: Ms. Shelton, did you want to
17 comment?

18 MS. SHELTON: A couple of issues.

19 First, there is case law reflected in this
20 analysis. There are mandates cases, both from the
21 California Supreme Court. One is *San Diego Unified*
22 *School District*, which clearly says, "When the decision
23 is left to the state, then it's a state mandate. But
24 when the decision is made by the local entity, it is not
25 a state-mandated program."

1 The Legislature adds causes of action all the
2 time to statutes. It knows how to direct a response or
3 direct an activity when it wants to, and it hasn't done
4 that here. There is no directive language in the statute
5 to require a school district to participate in
6 litigation. That is clearly their own policy, practice,
7 and decision. It has not been made by the State.

8 Also, when you read the Education Code, at the
9 very beginning of the Education Code, it says when you're
10 interpreting these statutes, "may" means it's a
11 discretionary activity; "shall" means it's a mandatory
12 activity. And there's just simply no activity in the
13 first statute, anyway, with respect to K-12 school
14 districts that requires their participation from the
15 State.

16 CHAIR SHEEHY: Finance, would you like to
17 comment?

18 MS. FEREBEE: Yes, thank you.

19 Finance would just like to add that, consistent
20 with the staff recommendation, that test-claim statutes
21 do not legally or compel K-through-12 school districts to
22 engage in any state-mandated activities.

23 And beyond that, Finance has no additional
24 comments.

25 Thank you.

1 CHAIR SHEEHY: Is there further discussion on
2 these items from any members of the Committee?

3 MEMBER WORTHLEY: Mr. Chairman, I just have to
4 second what Mr. Petersen said.

5 I believe to separate out individuals from
6 under agency's principles, by doing that, you have to
7 bring in the governmental agency. They can't ignore the
8 situation, they have to respond to it.

9 In fact, I think this analysis could be used to
10 establish a cause of action for a school district to be
11 sued by somebody if they didn't go through different
12 processes. So I think there is a practical compulsion
13 created by the statute.

14 There are consequences to these kinds of
15 actions. And for the school to ignore it, which we say
16 they can do in this analysis, simply flies in the face of
17 reality.

18 CHAIR SHEEHY: Thank you, Mr. Worthley.

19 Did you want to respond, Camille?

20 MS. SHELTON: Just to indicate that the courts,
21 with respect to interpreting mandates, have narrowly
22 applied that practical compulsion standard. It's been
23 very narrow, and it's been applied only when the state
24 or the federal government has imposed certain and severe
25 penalties and other Draconian consequences.

1 And so far, it's only been applied when the
2 federal government was requiring, through a
3 carrot-and-stick participation, that the state employees
4 and private employees provide unemployment insurance to
5 their employees. And there, they said if they failed to
6 provide that unemployment insurance, then there would be
7 double-taxation to both public and private employers,
8 which would have affected the California economy
9 significantly.

10 There, there were certain and severe penalties.

11 But to date, that's been the only circumstance where
12 that application has been applied.

13 CHAIR SHEEHY: Is there further discussion on
14 this matter?

15 *(No audible response)*

16 CHAIR SHEEHY: Is there a motion to adopt the
17 staff recommendation on Item Number 11?

18 MEMBER LUJANO: Move approval.

19 MEMBER CHIVARO: Second.

20 CHAIR SHEEHY: Paula, we have a motion to
21 approve the staff recommendation, Item Number 11.

22 Could you please call the roll?

23 MS. HIGASHI: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HIGASHI: Mr. Glaab?

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1 MEMBER GLAAB: No.

2 MS. HIGASHI: Mr. Lujano?

3 MEMBER LUJANO: Aye.

4 MS. HIGASHI: Ms. Olsen?

5 MEMBER OLSEN: Aye.

6 MS. HIGASHI: Mr. Worthley?

7 MEMBER WORTHLEY: No.

8 CHAIR SHEEHY: Mr. Worthley?

9 MEMBER WORTHLEY: Sorry, no.

10 MS. HIGASHI: Ms. Bryant?

11 MEMBER BRYANT: Aye.

12 MS. HIGASHI: Mr. Sheehy?

13 CHAIR SHEEHY: Aye.

14 MS. HIGASHI: The motion is carried.

15 This brings us to Item 12, the proposed
16 Statement of Decision.

17 MR. LOUIE: The only issue before the
18 Commission is whether the proposed Statement of Decision
19 accurately reflects the Commission's decision on
20 *Reporting Improper Governmental Activities* test claim.

21 Staff will update the final Statement of
22 Decision reflecting the witnesses testifying and vote
23 count.

24 CHAIR SHEEHY: Are there additional -- any
25 further or any additional comments from any of the

1 parties on Item Number 12?

2 MEMBER WORTHLEY: Mr. Chairman, one question I
3 had. I noticed on the -- and I think because it's the
4 same here as it was earlier, but I just wanted -- the
5 other dates are January 1, 2003. But bullet point
6 Number 3 is January 1, 2002.

7 Is that correct or was that just an error?

8 MR. LOUIE: I'm sorry, what page are you
9 referring to?

10 MEMBER WORTHLEY: That's page 29. And it was
11 the same in the analysis. So I didn't know whether that
12 was just a typographical error or whether there was a
13 reason why it started earlier.

14 MR. LOUIE: Bullet point -- page --

15 MEMBER WORTHLEY: On page 29, bullet point
16 Number 3.

17 Are you looking at Item 12?

18 MS. SHELTON: I can help.

19 Those dates are there specifically there that
20 way because there was a subsequent amendment for the
21 statute, which is when they required that additional
22 activity. So the dates are different because the
23 Legislature was tinkering.

24 MEMBER WORTHLEY: That's fine. I just wanted
25 to make sure there wasn't an issue there.

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1 CHAIR SHEEHY: Additional comments on this
2 item?

3 *(No audible response)*

4 CHAIR SHEEHY: Is there a motion to approve the
5 staff recommendation on the Statement of Decision in Item
6 Number 12?

7 MEMBER OLSEN: I'll move adoption.

8 CHAIR SHEEHY: Do we have a second?

9 MEMBER BRYANT: Second.

10 CHAIR SHEEHY: Paula, could you please call the
11 roll?

12 MS. HIGASHI: Mr. Glaab?

13 MEMBER GLAAB: Aye.

14 MS. HIGASHI: Mr. Lujano?

15 MEMBER LUJANO: Aye.

16 MS. HIGASHI: Ms. Olsen?

17 MEMBER OLSEN: Aye.

18 MS. HIGASHI: Mr. Worthley?

19 MEMBER WORTHLEY: Aye.

20 MS. HIGASHI: Ms. Bryant?

21 MEMBER BRYANT: Aye.

22 MS. HIGASHI: Mr. Chivaro?

23 MEMBER CHIVARO: Aye.

24 MS. HIGASHI: And Mr. Sheehy?

25 CHAIR SHEEHY: Aye.

1 MS. HIGASHI: The motion is adopted.

2 Item 13 will also be presented by Commission
3 Counsel Kenny Louie.

4 MR. LOUIE: Thank you.

5 This is *Presumption of Causation in Workers'*
6 *Compensation Claims: Tuberculosis, Hepatitis and Other*
7 *Blood-Borne Infectious Disease and Meningitis*. These
8 test claims address evidentiary presumptions in workers'
9 compensation cases given to certain members of law
10 enforcement agencies and fire departments that develop
11 specified diseases during employment.

12 The test-claim statutes provide evidentiary
13 presumptions to certain members of law enforcement and
14 fire departments that develop or manifest tuberculosis,
15 hepatitis or other blood-borne infectious diseases or
16 meningitis during the period of employment.

17 In these situations, the diseases are presumed
18 to have arisen out of and during the course of
19 employment, shifting the burden of proof to the local
20 agency employer if the employer decides to dispute the
21 claim.

22 Staff finds the express language of the
23 test-claim statutes do not impose any state-mandated
24 requirements on local agencies.

25 Moreover, no court has found that the payment

1 of benefits to local employees provides an increased
2 level of governmental service to the public, a finding
3 that is required to constitute a new program or higher
4 level of service.

5 As a result, staff recommends the Commission
6 adopt the staff analysis and deny these test claims.

7 Will the parties and witnesses state their
8 names for the record?

9 MS. GMUR: Juliana Gmur on behalf of the County
10 of Tehama and California State Association of Counties -
11 Excess Insurance Authority.

12 MS. CASTAÑEDA: Carla Castañeda, Department of
13 Finance.

14 MS. FEREBEE: Donna Ferebee, Department of
15 Finance.

16 CHAIR SHEEHY: Ms. Gmur, would you like to
17 comment?

18 MS. GMUR: Yes, the staff analysis accurately
19 reflects the decision of the Second District Court of
20 Appeal.

21 CHAIR SHEEHY: Is that the entirety of your
22 testimony this morning?

23 MS. GMUR: It is, indeed, yes.

24 CHAIR SHEEHY: I think you need to work on
25 being a bit more succinct in your comments.

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1 MS. GMUR: I will. Thank you, Mr. Chairman.

2 CHAIR SHEEHY: Okay. Next time.

3 Finance, do you have any comments on this item?

4 MS. CASTAÑEDA: Carla Castañeda.

5 No. No further comments. We also concur with
6 the staff analysis.

7 CHAIR SHEEHY: Is there additional discussion
8 from members of the Commission on this item this morning?

9 *(No audible response)*

10 CHAIR SHEEHY: Anyone additionally from the
11 public want to comment?

12 *(No audible response)*

13 CHAIR SHEEHY: Do we have a motion to adopt the
14 staff recommendation on Item 13?

15 MEMBER WORTHLEY: I'll move approval.

16 MEMBER GLAAB: Second.

17 CHAIR SHEEHY: Thank you, Paula.

18 Could you please call the roll? We have a
19 motion to approve the staff recommendation for Item
20 Number 13.

21 MS. HIGASHI: Ms. Bryant?

22 MEMBER BRYANT: Aye.

23 MS. HIGASHI: Mr. Chivaro?

24 MR. CHIVARO: Aye.

25 MS. HIGASHI: Mr. Glaab?

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1 MEMBER GLAAB: Aye.

2 MS. HIGASHI: Mr. Lujano?

3 MEMBER LUJANO: Aye.

4 MS. HIGASHI: Ms. Olsen?

5 MEMBER OLSEN: Aye.

6 MS. HIGASHI: Mr. Worthley?

7 MEMBER WORTHLEY: Aye.

8 MS. HIGASHI: Mr. Sheehy?

9 CHAIR SHEEHY: Aye.

10 MS. HIGASHI: The motion is adopted.

11 Item 14, Statement of Decision.

12 MR. LOUIE: The only issue before the

13 Commission is whether the proposed Statement of Decision

14 accurately reflects the Commission's decision on

15 *Presumption of Causation in Workers' Compensation Claims:*

16 *Tuberculosis, Hepatitis, and Other Blood-Borne Infectious*

17 *Diseases and Meningitis* test claim.

18 Staff will update the final Statement of

19 Decision to reflect the witnesses testifying and the vote

20 count.

21 MEMBER WORTHLEY: Move approval, Mr. Chairman.

22 MEMBER GLAAB: Second.

23 CHAIR SHEEHY: And before we go to a vote, I

24 just want to double-check, are there any comments from

25 anybody on Item Number 14?

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(No audible response)

CHAIR SHEEHY: We have a motion to approve the staff recommendation on 14.

Could you please call the roll?

MS. HIGASHI: Mr. Chivaro?

MEMBER CHIVARO: Aye.

MS. HIGASHI: Mr. Glaab?

MEMBER GLAAB: Aye.

MS. HIGASHI: Mr. Lujano?

MEMBER LUJANO: Aye.

MS. HIGASHI: Ms. Olsen?

MEMBER OLSEN: Aye.

MS. HIGASHI: Mr. Worthley?

MEMBER WORTHLEY: Aye.

MS. HIGASHI: Ms. Bryant?

MEMBER BRYANT: Aye.

MS. HIGASHI: Mr. Sheehy?

CHAIR SHEEHY: Aye.

MS. HIGASHI: The motion is adopted.

CHAIR SHEEHY: Thank you.

MS. GMUR: Thank you very much, Commissioners.

MS. HIGASHI: The next item is Item 15.

Commission Counsel Kenny Louie will present this item.

MR. LOUIE: This is *Hepatitis Presumption K-through-14*. This test claim addresses one of the same

1 statutes pled in Item 13 and raises the same issues
2 discussed in Item 13 as applicable to certain members of
3 school district police departments. For the same reasons
4 discussed in Item 13, staff recommends that the
5 test-claim statutes does not impose any state-mandated
6 activities on K-through-14 school districts.

7 As a result, staff recommends the Commission
8 adopt this analysis and deny this claim.

9 Will the parties and witnesses state their
10 names for the record?

11 MR. PETERSEN: Keith Petersen, representing the
12 test claimants.

13 MS. CASTAÑEDA: Carla Castañeda, the Department
14 of Finance.

15 MS. FEREBEE: Donna Ferebee, the Department of
16 Finance.

17 CHAIR SHEEHY: Thank you.

18 Mr. Petersen?

19 MR. PETERSEN: Yes. Staff is correct -- God,
20 and that hurts. It accurately reflects the litigation.

21 I'm pleased to see that they have a case that's
22 factually relevant that they can use. So often, we just
23 have cases that are legally relevant. But this one
24 actually has the same facts. So there's no -- I can't go
25 anywhere with this.

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1 CHAIR SHEEHY: When you said "it hurts," I saw
2 you clutching your heart. I was very nervous for a
3 moment.

4 MR. PETERSEN: Yes.

5 CHAIR SHEEHY: Any further discussion on Item
6 Number 15?

7 *(No audible response)*

8 CHAIR SHEEHY: Is there a motion to approve the
9 staff recommendation?

10 MEMBER BRYANT: I'll move the recommendation.

11 MR. CHIVARO: Second.

12 CHAIR SHEEHY: Paula, could you please call the
13 roll?

14 MS. HIGASHI: Certainly.

15 Mr. Glaab?

16 MEMBER GLAAB: Aye.

17 MS. HIGASHI: Mr. Lujano?

18 MEMBER LUJANO: Aye.

19 MS. HIGASHI: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Aye.

23 MS. HIGASHI: Ms. Bryant?

24 MS. BRYANT: Aye.

25 MS. HIGASHI: Mr. Chivaro?

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1 MEMBER CHIVARO: Aye.
2 MS. HIGASHI: And Mr. Sheehy?
3 CHAIR SHEEHY: Aye.
4 MS. HIGASHI: Motion is adopted.
5 Item 16. It's the Statement of Decision.
6 And you can go straight to a vote, if you'd
7 like.
8 CHAIR SHEEHY: Do we have a motion to approve
9 the staff recommendation?
10 MEMBER OLSEN: Move.
11 MEMBER CHIVARO: Second.
12 CHAIR SHEEHY: Paula, please call the roll.
13 MS. HIGASHI: Ms. Bryant?
14 MEMBER BRYANT: Aye.
15 MS. HIGASHI: Chivaro?
16 MEMBER CHIVARO: Aye.
17 MS. HIGASHI: Glaab?
18 MEMBER GLAAB: Aye.
19 MS. HIGASHI: Lujano?
20 MEMBER LUJANO: Aye.
21 MS. HIGASHI: Olsen?
22 MEMBER OLSEN: Aye.
23 MS. HIGASHI: Worthley?
24 MEMBER WORTHLEY: Aye.
25 MS. HIGASHI: And Sheehy?

1 CHAIR SHEEHY: Aye.

2 MS. HIGASHI: Thank you very much.

3 MR. PETERSEN: Good job.

4 MS. HIGASHI: Does anyone need to take a
5 five-minute break or can we just proceed?

6 CHAIR SHEEHY: Does anybody here need to take a
7 five-minute break or shall we proceed?

8 *(No audible response)*

9 CHAIR SHEEHY: Okay, let's proceed to Item
10 Number 17.

11 MS. HIGASHI: Item 17 will be presented by
12 Senior Commission Counsel Eric Feller.

13 MR. FELLER: Good morning. This is the *Crime*
14 *Victims Domestic Violence Incident Reports II* test claims
15 submitted by the County of Los Angeles in April 2003.
16 The test-claim statutes add information regarding
17 firearms or weapons to the domestic-violence incident
18 report form and require giving a copy of the incident
19 report or the face sheet to a representative of the
20 domestic-violence victim, if the victim is deceased.
21 They also require officers at the scene of a
22 domestic-violence incident involving a threat to human
23 life or a physical assault to take temporary custody of
24 firearms or weapons in plain sight or discovered pursuant
25 to consensual or other lawful search and provide a

1 procedure for return or disposal of the weapon.

2 Claimant's comments in the record indicate that
3 he agrees with the staff analysis.

4 The Department of Finance agrees the claim
5 should be partially reimbursed but disagrees with two of
6 the findings.

7 First, that Penal Code 13730(c)(3) is a mandate
8 to include firearms and weapons information on the
9 domestic-violence incident report form, as required by
10 the 2001 amendment to this section.

11 As explained on pages 16 and 17 of the
12 analysis, the plain language of the 1993 amendment to
13 Penal Code 13730(a) requires a written incident report
14 for all domestic violence related calls and has not been
15 suspended.

16 Second, Finance disagrees that filing an order
17 of default under Penal Code 12028.5(f) is a mandate
18 because it states, "A local agency may file one to
19 dispose of the firearm." As explained on page 33 of the
20 analysis, staff finds that filing this default petition
21 is a mandate because once the petition to determine if
22 the firearm or other deadly weapon has been filed, the
23 court has jurisdiction over the weapon and it cannot be
24 disposed of until the court decides its fate.

25 Overall, staff finds that the activities listed

1 on pages 1 through 4 of the executive summary and
2 pages 35 to 38 of the analysis based on Penal Code
3 12028.5 and 13730(c) are reimbursable state mandates and
4 recommends the Commission adopt the analysis to partially
5 approve the test claim for the activities listed on those
6 pages.

7 Would the parties and witnesses please state
8 your names for the record?

9 MS. YAGHOBYAN: Good morning. Hasmik
10 Yaghobyan on behalf of the County of Los Angeles.

11 MS. FERRELL: Suzie Ferrell, deputy sheriff,
12 LA County Sheriff's department.

13 MS. CASTAÑEDA: Carla Castañeda, Department of
14 Finance.

15 MS. FEREBEE: Donna Ferebee, Department of
16 Finance.

17 CHAIR SHEEHY: Ms. Yaghobyan?

18 MS. YAGHOBYAN: Thank you. Good morning.

19 I just would like to thank the staff for the
20 great analysis, and we concur with their findings.

21 CHAIR SHEEHY: Ms. Farrell?

22 MS. FERRELL: I have nothing to add.

23 CHAIR SHEEHY: Finance?

24 MS. CASTAÑEDA: Carla Castañeda.

25 The final staff analysis does adequately

1 address our initial concerns, and we concur with the
2 staff analysis.

3 CHAIR SHEEHY: Ms. Ferebee?

4 MS. FEREBEE: Nothing further.

5 CHAIR SHEEHY: Okay. Is there any further
6 discussion on this item with members?

7 *(No audible response)*

8 CHAIR SHEEHY: Do we have a motion to approve
9 the staff recommendation on Item Number 17?

10 MEMBER WORTHLEY: So moved.

11 MEMBER GLAAB: Second.

12 CHAIR SHEEHY: Thank you.

13 Please call the roll.

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: Aye.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Aye.

24 MS. HIGASHI: Ms. Bryant?

25 MEMBER BRYANT: Aye.

1 MS. HIGASHI: And Mr. Sheehy?

2 CHAIR SHEEHY: Aye.

3 MS. HIGASHI: The motion is adopted.

4 Item 18, Proposed Statement of Decision.

5 MS. YAGHOBYAN: Thank you.

6 MR. FELLER: Of course, we recommend that the
7 proposed Statement of Decision be adopted which
8 accurately reflects the Commission decision to partially
9 approve the test claim.

10 We also recommend that the Commission allow
11 minor changes to be made to the Statement of Decision,
12 including reflecting the witnesses, any hearing
13 testimony, and vote count that will be included in the
14 final SOD.

15 CHAIR SHEEHY: Is there a motion to approve the
16 staff recommendation on Item 18?

17 MEMBER OLSEN: So moved.

18 MEMBER GLAAB: Second.

19 CHAIR SHEEHY: Please call the roll.

20 MS. HIGASHI: Ms. Bryant?

21 MEMBER BRYANT: Aye.

22 MS. HIGASHI: Chivaro?

23 MEMBER CHIVARO: Aye.

24 MS. HIGASHI: Glaab?

25 MEMBER GLAAB: Aye.

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1 MS. HIGASHI: Lujano?

2 MEMBER LUJANO: Aye.

3 MS. HIGASHI: Olsen?

4 MEMBER OLSEN: Aye.

5 MS. HIGASHI: Worthley?

6 MEMBER WORTHLEY: Aye.

7 MS. HIGASHI: Sheehy?

8 CHAIR SHEEHY: Aye.

9 MS. HIGASHI: The motion is adopted.

10 We've already gone through Items 19 and 20. So
11 this brings us to Item 21, which is the update on mandate
12 reform legislation.

13 Assistant Executive Director Nancy Patton will
14 present this item.

15 CHAIR SHEEHY: Thank you.

16 Ms. Patton?

17 MS. PATTON: Good morning.

18 There are two pending bills that contain
19 mandate reform provisions.

20 AB 1170 would require the Commission to
21 complete test claims filed between 2009 and 2013 within
22 three years. The bill was held on the Senate
23 Appropriations Committee Suspense File. So at this
24 point, it's now a two-year bill.

25 The other bill is AB 1222, and, as you know,

1 staff with the Commission, Finance, the Legislature, the
2 State Controller, and local government representatives
3 have been working together this year to develop a mandate
4 reform proposal. This proposal, which is found in
5 AB 1222, and carried by Assembly Member Laird, includes
6 three components.

7 It amends its definition of "reasonable
8 reimbursement methodology" or RRM, by eliminating
9 conditions that have made it impossible for the proposal
10 or adoption of an RRM.

11 It authorizes local governments and Finance to
12 negotiate an RRM for submittal to the Commission instead
13 of proposed parameters and guidelines.

14 And third, it codifies a procedure for the
15 Department of Finance and a local government or statewide
16 association of local governments to request a
17 legislatively determined mandate, a reimbursement
18 methodology, and appropriation.

19 All parties agree that these components will
20 provide local agencies, school districts, and the State
21 with the ability to expedite the mandate reimbursement
22 process and to implement Proposition 1A.

23 AB 1222 is supported by the Commission,
24 Finance, and several local agency representative
25 organizations. It is now pending before the Governor.

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1 If AB 1222 is signed, Commission staff will:
2 Establish an advisory working group consisting
3 of state and local representatives to plan for joint
4 implementation of AB 1222, including developing
5 regulations.

6 We will initiate the rulemaking process to
7 adopt the regulations at the Commission's December 6th
8 hearing. Adoption of final regulations would be
9 tentatively scheduled for the March 28th, 2008, hearing.

10 Together with Department of Finance, we will
11 conduct workshops and training to brief local agencies,
12 school districts, legislative staff, and the Commission
13 members on implementation of AB 1222, and we will keep
14 you updated on the progress of implementation as it
15 proceeds.

16 Thank you.

17 CHAIR SHEEHY: Thank you, Ms. Patton.

18 Are there any questions or comments about
19 mandate reform legislation as to the update from
20 Ms. Patton?

21 *(No audible response)*

22 CHAIR SHEEHY: Thank you.

23 Mr. Burdick?

24 MR. BURDICK: Yes, Mr. Chairman and Members,
25 Allan Burdick.

1 I would just like to, publicly, before you,
2 make a comment on the outstanding contribution by both
3 the Commission staff, as well as the Department of
4 Finance's Mandate Unit in the drafting and bringing
5 together of this legislation. And I know these people
6 are working hard and out there behind the scenes on
7 dealing with the issues.

8 But I think on behalf of local government, we
9 would like to make sure that they're duly recognized in
10 terms of their commitment and making sure that this bill
11 actually got to the point that it did in time for it to
12 be sitting on the Governor's desk, in which we hope the
13 Governor will sign this particular bill.

14 I would also indicate that if I'm doing these
15 workshops and there is any interest in requesting
16 assistance or participation from a local association, I'm
17 sure that both CSAC and the League of Cities would be
18 happy to participate.

19 Thank you very much.

20 CHAIR SHEEHY: Thank you, Mr. Burdick.

21 Is there further comment or questions on the
22 legislative report or mandate reform?

23 MEMBER GLAAB: Yes, Mr. Chairman. I just would
24 like to say how much I appreciated the opportunity to
25 participate in this process, and certainly thanks to

1 Ms. Higashi for the opportunity. I think this is a great
2 step in the right direction. And I think Mr. Burdick's
3 comments are on target. And I think that the more that
4 we can be out there with our cities, counties, and
5 special districts on mandate reform, I think we come off
6 looking much better.

7 CHAIR SHEEHY: Thank you.

8 MEMBER GLAAB: So thank you very much.

9 CHAIR SHEEHY: Thank you.

10 MS. HIGASHI: I just wanted to add, too, just
11 lastly, that we all owe a great deal of thanks to our
12 author, Assembly Member Laird, and his coauthor, Assembly
13 Member Silva.

14 We were allowed enough space to work through
15 issues and to negotiate, to work together, and then to
16 come together with legislative staff in working through
17 all of the proposed amendments that needed to be made.
18 And this bill, I believe at the end, never received a
19 "no" vote. In every hearing in which the bill was heard,
20 there were no questions, and it was always just
21 absolutely a friendly environment, everyone was so happy
22 that this was finally being done. And so I really want
23 to congratulate everybody who participated in this. It's
24 a big step in the right direction.

25 CHAIR SHEEHY: Okay, I think that concludes our

1 business on Item Number 21.

2 MS. HIGASHI: Item 22, Chief Counsel's Report.

3 MS. SHELTON: I just have one update to the
4 litigation calendar.

5 The Department of Finance case against the
6 Commission, with regard to the Integrated Waste
7 Management program, is set for hearing on January 25th
8 before Judge Connolly in the Sacramento County Superior
9 Court.

10 MS. HIGASHI: Item 23, my report.

11 At the very end of your second binder there are
12 a few pages detailing what our workload looks like. And
13 even though you've just passed what appeared to be an
14 ambitious agenda when you got your two binders, and we
15 think we're actually down a few test claims, I just want
16 to note that we do have two new filings, and we also have
17 the potential for four water-board filings coming back to
18 us. So it ends up becoming like a net loss of maybe one.

19 MEMBER WORTHLEY: Job security, Paula.

20 MS. HIGASHI: By one test claim. So mandate
21 reform will be welcome, if any of those can be negotiated
22 in terms of future reimbursement formulas.

23 I also want to call your attention to the fact
24 that we're in the midst of some budget drills that are
25 going on. The budget was adopted, the Commission's

1 budget was adopted intact. However, there are some other
2 provisions in the budget bills that were adopted that
3 requires additional cuts to be made. And we are in the
4 process right now of working with Department of Finance
5 staff to figure out exactly what that could end up
6 looking like.

7 And then also the process of going through the
8 building of the 2008-09 budget, and hoping to maintain as
9 much funding as we can.

10 CHAIR SHEEHY: I'd like to comment on that just
11 for the benefit of the members of the general public.

12 The provisions that Ms. Higashi was just
13 referring to, are provisions that applied to all
14 general-funded entities within state government, and in
15 no way reflects the Commission on State Mandates' budget
16 being singled out in any way.

17 MS. HIGASHI: Thank you.

18 Also attached to my report is what we call our
19 "Report to the Department of Finance." It's an annual
20 report that's required by the budget trailer bill. And
21 it's in here. It's a little more detailed in terms of
22 the Commission's workload.

23 And most important, what I want you to note as
24 you look through this report is just the detail of the
25 substantive matter before the Commission in the test

1 claims that are still pending. And as I make assignments
2 with Camille, we often comment, "Well, that's a test
3 claim that has a two-inch row, that's a test claim that
4 has a three-inch row in the Excel spreadsheet. So when
5 you take a look at this, you'll see that they're not all
6 going to be two or three bills that are being analyzed at
7 one time, but they could be 20 years of statutes, 20 code
8 sections, and 50 regulatory sections as well. So we are
9 having some difficulty in attempting to plan our hearing
10 calendars in the future because as we get into these, we
11 find more things. As was reflected in one of the test
12 claims today, the parties also discover things that were
13 either intended or unintended.

14 So during the next several months of hearings,
15 there could be changes in terms of the scheduling based
16 on as we get into them and the difficulty level changes.
17 We're not quite sure how long it will take.

18 And so the plan that we have set forth here is
19 the ideal plan of what we see for the next couple of
20 hearings. And already, we've had to make a couple of
21 adjustments.

22 And we've started to notify the parties because
23 we've had court dates set, briefing dates set. And we
24 also have one vacant staff counsel position that we're
25 currently recruiting to fill. And that's just kind of my

1 warning disclaimer on all of this.

2 Are there any questions?

3 *(No audible response)*

4 MS. HIGASHI: Thank you very much.

5 CHAIR SHEEHY: Was there any other items that
6 you wanted to discuss or anybody you wanted to recognize,
7 Ms. Higashi?

8 MS. HIGASHI: Well, I just wanted to
9 acknowledge one of the representatives from the
10 Department of Finance, Mr. Tom Dithridge, if he is still
11 here.

12 CHAIR SHEEHY: Tom, could you stand up?

13 MS. HIGASHI: Tom, would you come forward?

14 CHAIR SHEEHY: Let the record show that Tom
15 Dithridge from the Department of Finance is approaching
16 the witness table.

17 MS. HIGASHI: Tom has been a PBM with the
18 Department of Finance for -- I'm not sure how many years.
19 But recently, when he started -- as soon as he started to
20 work on mandates, he announced that he would retire at
21 the end of this year.

22 *(Laughter)*

23 MS. HIGASHI: So at every meeting that we
24 attended at the Department of Finance or in which Tom was
25 present, I have to note that he was the one at the table

1 who was very happy to make deals and to say, "I'm
2 retiring at the end of the year. You guys get to
3 implement this."

4 MEMBER WORTHLEY: He sounds like a legislator.

5 MS. HIGASHI: And so I know that many of you
6 here know that he is retiring; but I really wanted to
7 acknowledge the fact that his presence and his role and
8 his leadership in the area of mandates has really made a
9 difference for all of us at the Commission staff.

10 And since we're not sure if he's coming to the
11 December hearing -- because he's being cagey about what
12 his actual last day will be -- we wanted to acknowledge
13 him and just thank him for his work, his leadership, and
14 just his cooperation and willingness to talk with us as
15 well as I believe all of the parties to the mandates
16 process.

17 And thank you, Tom, and congratulations.

18 *(Applause)*

19 CHAIR SHEEHY: If anybody else would like to
20 comment about Mr. Dithridge, now would be a good time.

21 MEMBER BRYANT: I'm going to save mine for his
22 going-away party.

23 CHAIR SHEEHY: In that case, having gone
24 through the public items, I'd like to call a five-minute
25 recess, and then we're going to come back and go into

1 closed session.

2 MS. HIGASHI: You need to read your script.

3 CHAIR SHEEHY: Do I need to do that now?

4 MS. HIGASHI: Yes.

5 CHAIR SHEEHY: Excuse me, I have one more
6 statement to make.

7 The Commission will meet in closed executive
8 session pursuant to Government Code section 11126,
9 subdivision (e), in order to confer and receive advice
10 from legal counsel for consideration and action, as
11 necessary and appropriate, upon the pending litigation
12 on the published notice and agenda, and also to confer
13 with and receive advice from legal counsel regarding
14 potential litigation.

15 We will convene in open session at this
16 location in approximately ten minutes.

17 Thank you.

18 *(The Commission met in closed executive*
19 *session from 10:45 a.m. to 10:59 a.m.)*

20 CHAIR SHEEHY: The Commission met in closed
21 session pursuant to Government Code section 11126,
22 subdivision (e), to confer with and receive advice from
23 legal counsel for consideration and action, as necessary
24 and appropriate, upon the pending litigation listed on
25 the published notice and agenda and other potential

1 litigation.

2 All required reports from the closed session
3 having been made and with no further business to discuss,
4 I would entertain a motion to adjourn.

5 MEMBER OLSEN: So moved.

6 CHAIR SHEEHY: Is there a second?

7 MEMBER GLAAB: Second.

8 CHAIR SHEEHY: All in favor, say "aye."

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

10 CHAIR SHEEHY: This meeting is adjourned.

11 MS. HIGASHI: Thank you.

12 *(Proceedings concluded at 11:00 a.m.)*

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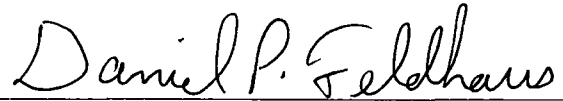
REPORTER'S CERTIFICATE

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

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

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

In witness whereof, I have hereunto set my hand on October 21, 2007.



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