

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
December 9, 2004

Present: Chairperson Anne Sheehan
Representative of the Director of the Department of Finance
Member John Hiber
Representative of the State Treasurer
Member Walter Barnes
Representative of the State Controller
Member Jan Boel
Acting Director of the Office of Planning and Research
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Vice Chairperson Hiber called the meeting to order at 9:34 a.m.

The Commission conducted an election because the chairperson position was vacant. Member Boel nominated Mr. Tom Campbell, the Director of the Department of Finance, as Chairperson. Mr. Campbell was unanimously elected.

APPROVAL OF MINUTES

Item 1 September 30, 2004

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

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

Chairperson Sheehan announced that the Commission would meet 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 filing in the Los Angeles County Superior Court, titled case number BS091246, *CSAC-Excess Insurance Authority v. the Commission on State Mandates*, which was served on the Commission on December 2, 2004, and to confer with and receive advice from legal counsel regarding potential litigation.

The Commission reconvened in public session at 9:51 a.m.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the filing in the Los Angeles County Superior Court, titled case number BS091246, *CSAC-Excess Insurance Authority v. the Commission on State Mandates*, and to confer with and receive advice from legal counsel regarding potential litigation.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS

- Item 11 *Mandate Reimbursement Process*, CSM-4485
Statutes 1975, Chapter 486 (AB 1375); Statutes 1984, Chapter 1459 (SB 2337); Statutes 1995, Chapter 303 (AB 903 - Budget Act of 1995); Statutes 1996, Chapter 162 (SB 1393 - Budget Act of 1996); Statutes 1997, Chapter 282 (AB 107 - Budget Act of 1997); Statutes 1998, Chapter 324 (AB 1656 - Budget Act of 1998); Statutes 1999, Chapter 50 (SB 160 - Budget Act of 1999); Statutes 2000, Chapter 52 (AB 1740 - Budget Act of 2000); Statutes 2001, Chapter 106 (SB 739 - Budget Act of 2001); Statutes 2002, Chapter 379 (AB 425 - Budget Act of 2002); Statutes 2003, Chapter 157 (AB 1765 - Budget Act of 2003); Statutes 2004, Chapter 208 (SB 1113 - Budget Act of 2004)

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 13 *Administrative License Suspension – Per Se*, 98-TC-16
City of Newport Beach, Claimant
Vehicle Code Sections 13202.3, 13353, 13353.1, 13353.2, 14100, 23136, 23137, 23157, 23158.2, 23158.5
Statutes 1989, Chapter 1460 (SB 1623); Statutes 1990, Chapter 431 (SB 1150); Statutes 1992, Chapter 1281 (AB 3580); Statutes 1993, Chapters 899 and 1244 (SB 689 and SB 126); Statutes 1994, Chapter 938 (SB 1295), and Statutes 1997, Chapter 5 (AB 74)

Member Lazar moved for adoption of the consent calendar, which consisted of items 11 and 13. With a second by Member Hiber, the consent calendar was unanimously adopted.

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

- Item 2 Staff Report on Appeals Related To Current Agenda Items (if necessary)

No appeals were filed.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Paula Higashi, Executive Director, swore the parties and witnesses participating in the hearing of agenda items 3 through 10.

TEST CLAIMS AND PROPOSED STATEMENTS OF DECISION

- Item 3 *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25
CSAC-EIA & County of Tehama, Claimants
Labor Code Section 3213.2
Statutes 2001, Chapter 834 (SB 424)

Katherine Tokarski, Commission Counsel, presented this item. She stated that in 2001, the Legislature added Labor Code section 3213.2. For the first time, certain local agency and state peace officers with at least five years of full-time service who wore a duty belt were granted a rebuttable presumption that lower back impairment developing or manifesting itself in the peace officer shall be presumed to arise out of and in the course of employment. Employers may offer evidence disputing the presumption under the statute.

The claimants allege that the legislation causes an increase in workers' compensation claims for lower back injury and decreases the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the claimants believe that the total costs of these claims, from initial presentation to ultimate resolution, are reimbursable.

Ms. Tokarski noted that CSAC-EIA is a joint powers authority established by contracting counties for insurance and risk management purposes. She added that it does not employ peace officers and is not a party to a workers' compensation claim filed by a peace officer against the local agency employer. Moreover, CSAC-EIA does not have authority to raise tax revenue and is not bound by the spending limitations of article XIII B. Further, Ms. Tokarski indicated that the claimants submitted a late filing requesting an indefinite postponement of the test claim hearing until the litigation on the *Cancer Presumption for Law Enforcement and Firefighters* test claim was resolved.

Staff recommended that the Commission deny the test claim, finding that CSAC-EIA does not have standing and is not a proper claimant for this test claim, and that Labor Code section 3213.2 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

Parties were represented as follows: Juliana Gmur, on behalf of the claimants; Gina Dean, with the CSAC-Excess Insurance Authority; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Ms. Gmur stated that before the Commission was one of six workers' compensation presumption test claims. The first, which was filed and heard in May, was denied and is now the subject of a writ. She indicated that although it involved a different statute, the legal issues were identical in each of the claims. Therefore, she asked the Commission whether it would like to continue with the proceeding or wait for the court's review in order to possibly resolve all six matters at once.

Member Boel made a motion to proceed with the hearing.

Member Lazar requested the chief legal counsel's recommendation. Mr. Paul Starkey requested the Commission to ask the other parties' positions.

Ms. Geanacou stated that the Department of Finance had no particular position on the late filing. She indicated that they supported the Commission moving forward with the hearing.

Mr. Starkey stated that under the statute and regulations, the Commission had the discretion to decide how to proceed in this matter and that there was no legal impediment to proceeding.

Member Hiber seconded Member Boel's motion to proceed. The motion carried unanimously.

Ms. Gmur addressed two issues – whether CSAC-EIA was a proper claimant, and whether a reimbursable state mandate existed. As to the first issue, she argued that the Commission staff's reliance on a redevelopment agency case was misplaced. She stated that there was no existing case law on joint powers authorities and whether they would be proper parties. Rather she argued that the statute, on its face, says that the joint powers authority is a proper party as a special district that can file a test claim.

Regarding the second issue, Ms. Gmur provided background about workers' compensation law. She asserted that staff relied on only the second sentence of the statute, which involves the rebuttable presumption. She argued that it was the first sentence, which states that "it shall be presumed..." that creates the mandate, and the second sentence limits the mandate but does not cancel it out. She further argued that the *Kern High School* and *City of Merced* cases were not controlling.

Member Lazar requested the claimant respond to the Department of Industrial Relations position that local governments are not required to accept all workers' compensation claims. Ms. Gmur reiterated that the ability to defend against the presumption was a limitation that does not negate the existence of the mandate.

Chairperson Sheehan asked that Ms. Gmur address the other two points made by the Department of Industrial Relations. Ms. Gmur responded that the test claim legislation was a new program because it created a presumption that otherwise did not exist, and even though there was no shift of a financial burden from the states to local governments, a mandate can still exist.

Ms. Geanacou supported the staff analysis.

Member Lazar asked Ms. Tokarski to respond to the claimant's comments. Ms. Tokarski explained that not every piece of statutory language creates a new program or higher level of service. In this case, the statute is new, but the presumption is part of the underlying claim for an injury occurring on the job, which predates the presumption. Therefore, staff found that the excess costs that would result from a presumption in favor of the employee are not reimbursable costs because the presumption itself is not a new program or higher level of service as defined by the courts. Moreover, Ms. Tokarski indicated that the "shall" language was not referring to something that local agencies must do proactively, but rather that the workers' compensation courts shall presume, for purposes of the claims, that the injury occurred on the job.

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

Item 4 Proposed Statement of Decision: *Lower Back Injury Presumption for Law Enforcement*, 01-TC-25.

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

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

Item 5 *Skin Cancer Presumption for Lifeguards*, 01-TC-27
City of Newport Beach, Claimant
Labor Code Section 3212.11
Statutes 2001, Chapter 846 (AB 663)

Katherine Tokarski, Commission Counsel, presented this item. She stated that in 2001, the Legislature added Labor Code section 3212.11. For the first time, publicly-employed lifeguards were granted a rebuttable presumption that skin cancer developing or manifesting itself during or for a defined period immediately following employment shall be presumed to arise out of and in the course of employment. Employers may offer evidence disputing the presumption under the statute.

The claimant, City of Newport Beach, alleges that the legislation causes an increase in workers' compensation claims for skin cancer and decreases the possibility that any defenses can be raised by the employer to defeat the claims. Thus, the claimant believes that the total costs of these claims, from initial presentation to ultimate resolution, are reimbursable.

Ms. Tokarski indicated that the claimant submitted a late filing requesting an indefinite postponement of the test claim hearing until pending litigation was resolved.

Staff recommended that the Commission deny the test claim, finding Labor Code section 3212.11 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on local agencies.

Parties were represented as follows: Juliana Gmur and Glen Everroad, on behalf of the City of Newport Beach; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Ms. Gmur stated that before the Commission was one of six workers' compensation presumption test claims. The first, which was filed and heard in May, was denied and is now the subject of a writ. Therefore, she asked the Commission whether it would like to continue with the proceeding or wait for the court's review in order to possibly resolve all six matters at once.

Member Lazar stated that he would like to move forward with the hearing. Member Boel agreed and Chairperson Sheehan indicated that there were no objections.

Mr. Starkey explained that procedurally, counsel may incorporate her comments from the previous item and apply them to this case if, in fact, the type of testimony and discussion are exactly the same. Ms. Gmur stated her hesitation to simply incorporate her comments because this case involved a different claimant, a different source of a possible writ.

Member Lazar asked Mr. Everroad for his thoughts. Mr. Everroad deferred to his counsel on the issue. Member Lazar maintained that he would like the item to proceed, and that the Commission should allow the claimant to state their comments into the record. The members did not object.

Ms. Gmur provided background about workers' compensation law. She noted that staff points to the *City of Merced* case, which was decided on the avoidance doctrine. However, she argued that in the present case, the employer has no way to avoid the mandate. Therefore, she requested that the Commission find a reimbursable state mandate.

Ms. Geanacou supported the staff analysis.

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

Item 6 Proposed Statement of Decision: *Skin Cancer Presumption for Lifeguards*, 01-TC-27.

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

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

Item 7 *Lifeguard Skin Cancer Presumption (K-14)*, 02-TC-16
Santa Monica Community College District, Claimant
Labor Code Section 3212.11
Statutes 2001, Chapter 846 (AB 663)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the Commission received a local agency test claim on *Skin Cancer Presumption for Lifeguards* in 2002. On February 27, 2003, a second test claim on Labor Code section 3212.11 was filed by the Santa Monica Community College District, alleging a reimbursable state mandate imposed on kindergarten through grade 14 school districts. However, the two claims were not consolidated.

Ms. Tokarski stated that the activities or costs alleged by the claimant include all of the costs associated with the payment of claims caused by presumption, or payment of the additional costs of insurance premiums to cover such claims; physical exams to screen lifeguard applicants for preexisting skin cancer; and training lifeguards to take precautionary measures to prevent skin cancer on the job.

Staff recommended that the Commission deny the test claim, and find that Labor Code section 3212.11 is not subject to article XIII B, section 6 of the California Constitution because it does not mandate a new program or higher level of service on school districts.

Parties were represented as follows: Keith Petersen, on behalf of the claimant; and Susan Geanacou and Jaci Thompson, with the Department of Finance.

Mr. Petersen stood by the administrative record for the test claim.

Ms. Geanacou supported the staff analysis.

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

Item 8 Proposed Statement of Decision: *Lifeguard Skin Cancer Presumption (K-14)*, 02-TC-16.

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. She noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

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

Item 9 *Domestic Violence Arrests and Victim Assistance, 98-TC-14*
County of Los Angeles, Claimant
Penal Code Sections 264.2, 13701, and 13519
Statutes 1998, Chapters 698, 701 & 702 (AB 1201, AB 2172, AB 2177)

Eric Feller, Commission Counsel, presented this item. Mr. Feller outlined the requirements of the test claim statutes:

1. One test claim statute amended Penal Code section 264.2 to add two crimes for which a victim of domestic violence receives a card: victims of spousal battery, and victims of corporal injury on a spouse or other specified victim.
2. Another statute amended Penal Code section 13519 to add the signs of domestic violence to the Commission on Peace Officer Standards and Training's domestic violence training course and response guidelines.
3. A third statute amended Penal Code section 13701, law enforcement's Domestic Violence policy, to add transportation to a hospital and safe passage out of a victim's residence, and providing contact information for the California Victims Compensation Program. Moreover, this statute adds to the card the phone number or county hotlines for battered women's shelters and a statement that domestic violence or assault by a person known to the victim is a crime. Further, this statute amends subdivision (b) by adding orders issued by other states, tribes, or territories to a list of enforceable protective orders in the domestic violence arrest policy.

Staff found that Penal Code sections 13701, subdivisions (c)(9)(D) and (c)(9)(H), and section 264.2, subdivision (a), as amended by the test claim statutes, impose a reimbursable state-mandated program for specific activities.

Parties were represented as follows: Leonard Kaye, on behalf of the County of Los Angeles; and Susan Geanacou and Brendan Murphy, with the Department of Finance.

Mr. Kaye concurred with the reimbursable activities as identified by Mr. Feller. However, because domestic violence was the subject of numerous test claims, he commented that it would be exceptionally difficult for anyone to ascertain what exactly was reimbursable under a particular program for a particular fiscal year. As a practical matter, Mr. Kaye believed that the parameters and guidelines must relate back to the Statement of Decision. Therefore, he announced his intent to include clarifying language regarding suspended statutes into the proposed parameters and guidelines to provide guidance to the claimants and auditors.

Mr. Murphy concurred with the staff analysis.

Mr. Feller disagreed with Mr. Kaye. He stated that the activities Mr. Kaye was referring to were either encompassed in a prior domestic violence test claim or were discretionary. He also clarified that only one program involving Statutes 1984, chapter 1609 and Statutes 1985, chapter 668 was suspended through fiscal year 2002-2003.

Ms. Higashi asked if the claimant was proposing to consolidate parameters and guidelines.

Mr. Kaye said no and that his intent was just to indicate that should a suspension not be enforced in a particular year, that those activities would be mandated.

Member Barnes noted that the consideration of what goes into the parameters and guidelines is a separate issue, and would be addressed at that phase. He also suggested that in the Controller's

claiming instructions there be some references to the other programs. He encouraged the claimant to contact the Division of Accounting and Reporting to work out the issues.

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

Item 10 Proposed Statement of Decision: *Domestic Violence Arrests and Victim Assistance*, 98-TC-14.

Eric Feller, Commission Counsel, presented this item. He stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision. Staff recommended that the Commission adopt the proposed Statement of Decision. He noted that minor changes to reflect the hearing testimony and vote count would be included with the final decision.

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

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND AMENDMENTS

Item 12 *Pupil Health Screenings*, 01-PGA-09
Clovis Unified School District, Requestor
Health and Safety Code Sections 324.2 and 324.3
Statutes 1976, Chapter 1208 (AB 4284); Statutes 1991, Chapter 373 (AB 52);
Statutes 1992, Chapter 759 (AB 1248)

Cathy Cruz, Program Analyst, presented this item. She stated that on May 6, 2002, the Clovis Unified School District requested an amendment to the original parameters and guidelines in order to establish a uniform cost allowance for the *Pupil Health Screenings* program. Staff proposed separate uniform allowances for each reimbursable component to limit the rates to the applicable portion of the population of enrolled kindergarteners and new first-grade pupils for each component. The proposed allowances cover all the direct and indirect costs of performing the activities described in the reimbursable activities section. Moreover, Ms. Cruz explained that the proposed allowances were based on the Controller's claims data for fiscal year 1998-1999 through 2000-2001.

Ms. Cruz also stated that on September 29, 2004, Governor Schwarzenegger signed Assembly Bill 2855, which, operative January 1, 2005, eliminates the statistical reporting requirement. Accordingly, staff limited the reimbursement period for this activity.

The final staff analysis for this item was issued on November 4, 2004. Ms. Cruz indicated that no comments were received. However, the Department of Finance requested that this item be removed from the consent calendar so that they could read their comments into the record. Staff recommended that the Commission adopt the proposed amendment and authorize staff to make any non-substantive technical corrections following the hearing.

Parties were represented as follows: Nelson Cayago, with the Department of Finance.

Mr. Cayago stated that the Department of Finance preferred that uniform costs be based on audited claims rather than unaudited claims.

Ms. Cruz responded that the Department of Finance previously raised this argument, which staff addressed in the analysis. She stated that use of unaudited claims had been the practice even when claims were requested to be placed in the State Mandates Apportionment System. She added that unaudited claims were the best information available.

Member Barnes commented that there was insufficient time to go out and conduct field audits of all claims prior to developing a cost estimate, given the thousands of claims that are filed. He stated that as a conceptual idea, we would all like to see estimates based on audited claims. However, as a practical matter, it just was not feasible. Chairperson Sheehan agreed.

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

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 14 *Pupil Promotion and Retention*, 98-TC-19
San Diego Unified School District, Claimant
Education Code Sections 37252, 37252.5, 48070 and 48070.5
Statutes 1998, Chapters 742 and 743, et al. (AB 1626 and AB 1639)

Item 14 was postponed.

Member Barnes asked what the reason was for postponing the item. Ms. Higashi clarified that one of the claimant representatives indicated that there was a plan to amend claims previously filed, which would affect the proposed estimate.

- Item 15 *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Former Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8
Statutes 1997, Chapter 736 (SB 187) and Statutes 1999, Chapter 996 (SB 334)
[Amended and Re-numbered as Education Code Sections 32280, 32281, 32282, 32286, 32288 by Statutes 2003, Chapter 828 (SB 719)]

Nancy Patton, Assistant Executive Director, presented this item. She noted that the test claim legislation requires each school district and county office of education to develop, adopt, and update comprehensive school safety plans that are relevant to the safety needs of each school.

Ms. Patton explained that staff developed the proposed statewide cost estimate using summary claims data submitted by the claimants and compiled by the Controller's Office. For fiscal years 1997-1998 through 2002-2003, 381 school districts claimed costs. The proposed estimate included eight fiscal years for a total of over \$37 million.

The final staff analysis for this item was issued on November 22, 2004. Ms. Patton indicated that no comments were filed on the proposed estimate. However, the Department of Finance requested that the item be removed from the consent calendar so that they could read their concerns regarding the methodology into the record. Staff recommended that the Commission adopt the proposed estimate.

Parties were represented as follows: Nelson Cayago and Matt Aguilera, with the Department of Finance; Dr. Carol Berg, with Education Cost Mandated Network; and Art Palkowitz, with the

San Diego Unified School District.

Mr. Cayago stated that the Department of Finance preferred that the statewide cost estimate be based on audited claims rather than unaudited claims.

Dr. Berg requested that the Department of Finance's application to remove an item from the consent calendar at the last minute when they do not submit written comments be denied in the future. Mr. Palkowitz agreed.

Mr. Aguilera explained that they were just taking the opportunity to articulate their concerns via the public hearing.

Dr. Berg argued that they should follow the protocol that the claimants were required to follow, which is to file written comments in a proper and timely manner.

Chairperson Sheehan appreciated the comments and indicated that the Commission would take them into consideration.

Member Lazar inquired what was a timely time frame. Mr. Starkey responded that there were time frames for various proceedings. He suggested that if a party objects to a scheduled action, that they notify the Executive Director right away.

Ms. Higashi noted Ms. Patton's statement that no party filed comments during the normal comment period for this matter.

Mr. Aguilera maintained that although the Department of Finance did not file comments, it was just continuing to articulate its same concerns.

Chairperson Sheehan suggested that they work to submit comments for the record so that the Department of Finance's position is reflected.

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

STAFF REPORTS

Item 16 Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Paul Starkey, Chief Legal Counsel, reported that there was one new filing – the *CSAC-Excess Insurance Authority* case. There were no recent decisions to report.

Regarding the litigation calendar, Mr. Starkey stated that the *County of Los Angeles and Los Angeles County Flood Control District* case and the *City of Artesia* case have been consolidated and will appear as one agenda item in the future. There will be a status conference on January 31, 2005.

Item 17 Staff Report: Implementation of AB 2856 (info)

Nancy Patton, Assistant Executive Director, reported that the governor signed Assembly Bill 2856 on September 29, 2004. Since that time, the Commission staff began implementing the provisions of the bill:

- The first workshop was conducted on December 8 with the Department of Finance, State Controller's Office, Department of Education, and numerous claimant representatives.
- A second workshop is planned for January 27, 2005.

- A new test claim submission form has been proposed and staff is requesting that comments be submitted by December 22, 2004.
- Staff is planning a rulemaking calendar and is in the process of comparing new law with existing law, and its effect on the Commission's regulations. The proposed rulemaking calendar for 2005 will be before the Commission at the January hearing.

Item 18 Executive Director's Report (info/action)
Workload, Implementation of Legislation, Meetings, and Next Hearing

Ms. Higashi reported the following:

- *Workload.* Because of the reconsiderations mandated by the Legislature, the Commission's workload greatly increased. As reconsiderations have a statutory timeline for completion, they have become a priority workload matter, not including matters already in progress.
- *Budget and Legislation.* Ms. Higashi provided brief updates about meetings she attended. The Commission submitted a budget change proposal that is pending approval.
- *Next Hearing Agenda.* There will be modifications made to the next agenda.

Member Barnes asked if there was a filing from Butte County. Ms. Patton responded that the county now plans to file its SB 1033 application in mid-January.

PUBLIC COMMENT

There was no public comment.

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

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. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01 [*Animal Adoption*]
3. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
4. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
5. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]

6. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
7. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
8. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
9. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Case Number 04CS00028 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
10. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS087959, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-11 [*Animal Adoption*]
11. *County of Los Angeles and Los Angeles County Flood Control District v. State of California, Commission on State Mandates, et al.*, Case Number BS089769, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-12 [*Transit Trash Receptacles, et al.*]
12. *City of Artesia, et al. v. State of California, Commission on State Mandates, et al.*, Case Number BS089785, in the Superior Court of the State of California, County of Los Angeles. CSM Case No. 03-L-13 [*Waste Discharge Requirements*]

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

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

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

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

REPORT FROM CLOSED EXECUTIVE SESSION

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

ADJOURNMENT

Regarding the 2005 hearing schedule, Member Barnes suggested an early December hearing rather than a November hearing. The other members agreed. Ms. Higashi stated that she would check with the parties and report back to the Commission.

Hearing no further business, and upon motion by Member Boel and second by Member Lazar, Chairperson Sheehan adjourned the meeting at 11:31 a.m.



PAULA HIGASHI
Executive Director

RECEIVED
DEC 30 2004
COMMISSION ON
STATE MANDATES

ORIGINAL

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PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:34 a.m.

DATE: Thursday, December 9, 2004

**PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California**

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Daniel P. Feldhaus

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for TOM CAMPBELL
Director
Department of Finance

JOHN HIBER
Representative for PHILIP ANGELIDES
State Treasurer

WALTER BARNES
Representative for STEVE WESTLY
State Controller

JAN BOEL
Acting Director
State Office of Planning and Research

JOHN S. LAZAR
City Council Member
City of Turlock

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

PAUL M. STARKEY
Chief Legal Counsel

CATHY CRUZ
Program Analyst

ERIC FELLER
Commission Counsel

NANCY PATTON
Assistant Executive Director

KATHERINE TOKARSKI
Commission Counsel

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3:

For CSAC-Excess Insurance Authority and County of Tehama:

JULIANA GMUR
Maximus

For CSAC-Excess Insurance Authority:

GINA C. DEAN, ARM, WCCP
CSAC Excess Insurance Authority
3017 Gold Canal Drive, Suite 300
Rancho Cordova, CA 95670

For the Department of Finance:

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

JACI THOMPSON
Department of Finance

Appearing Re Item 5:

For City of Newport Beach:

JULIANA GMUR
Maximus

GLEN EVERROAD
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

A P P E A R A N C E S

PUBLIC TESTIMONY

continued

Appearing Re Item 5: *continued*

For the Department of Finance:

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

JACI THOMPSON
Department of Finance

Appearing Re Item 7:

For Santa Monica Community College District:

KEITH B. PETERSEN, MPA, JD
President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

For the Department of Finance:

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

JACI THOMPSON
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

(continued)

Appearing Re Item 9:

For the County of Los Angeles:

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

For the Department of Finance:

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

BRENDAN A. MURPHY
Budget Analyst
Department of Finance

Appearing Re Item 12:

For the Department of Finance:

NELSON CAYAGO
Finance Budget Analyst
Department of Finance

Appearing Re Item 15:

For the Department of Finance:

NELSON CAYAGO
Finance Budget Analyst
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

(continued)

Appearing Re Item 15: *continued*

For the Department of Finance:

MATT AGUILERA
Principal Program Budget Analyst
Department of Finance

For Education Cost Mandated Network:

Carol A. Berg, Ph.D.
Director
School Services of California, Inc.
1121 L Street, Suite 1060
Sacramento, CA 95814

For San Diego Unified School District:

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

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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>17</u>	<u>17</u>	change reimbursement to reimbursable
<u>20</u>	<u>10</u>	change claim to claimant
<u>43</u>	<u>25</u>	added the word analysis
<u>58</u>	<u>3</u>	changed the name Mr. Leonard to Mr. Kaye
<u>58</u>	<u>14</u>	changed the word name Mr. Leonard to Mr. Kaye
<u>59</u>	<u>8</u>	changed the name Mr. Leonard to Mr. Kaye
<u>66</u>	<u>11</u>	added the word signed
<u>67</u>	<u>8</u>	change the word audited to unaudited
<u>69</u>	<u>19</u>	changed the word member to Ms.
<u>70</u>	<u>14</u>	changed the # 37,96,034 to 37,096,034

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1 BE IT REMEMBERED that on Thursday, December 9, 2004,
2 commencing at the hour of 9:34 a.m., thereof, at the
3 State Capitol, Room 126, Sacramento, California, before
4 me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
5 following proceedings were held:

6 --oOo--

7 MEMBER HIBER: Good morning. The meeting of the
8 Commission on State Mandates will come to order.

9 Paula, will you call the roll, please?

10 MS. HIGASHI: Mr. Barnes?

11 MEMBER BARNES: Here.

12 MS. HIGASHI: Ms. Boel?

13 MEMBER BOEL: Here.

14 MS. HIGASHI: Mr. Lazar?

15 MEMBER LAZAR: Here.

16 MS. HIGASHI: Ms. Sheehan?

17 CHAIR SHEEHAN: Here.

18 MS. HIGASHI: Mr. Hiber?

19 MEMBER HIBER: Here.

20 The annual election of officers is usually held in
21 January. However, since the office of the chairperson is
22 now vacant, our regulations require that a new
23 chairperson be elected as soon as practical for the
24 remainder of the 2004 term.

25 Are there nominations to the chairperson, or is

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1 there a nomination for election of the new chairperson?

2 MEMBER BOEL: Yes, I'd like to nominate Anne
3 Sheehan -- oh, Tom Campbell, I'm sorry. I'd like to
4 nominate Tom Campbell.

5 MEMBER HIBER: Hearing no objection, we'll close the
6 nominations.

7 And we'll have a vote. All those in favor?

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

9 MEMBER HIBER: All those opposed?

10 *(No audible response was heard.)*

11 MEMBER HIBER: Any abstentions?

12 *(No audible response was heard.)*

13 MS. HIGASHI: So Mr. Campbell is elected chairperson
14 of the Commission on State Mandates.

15 MEMBER HIBER: Very good. Thank you.

16 MS. HIGASHI: Thanks.

17 CHAIR SHEEHAN: Thank you, Paula.

18 It's nice to be here at my first meeting.

19 Do you want to go ahead and introduce the first
20 action item?

21 MS. HIGASHI: Certainly. The first action item,
22 Item 1, is approval of the minutes of September 30, 2004.

23 CHAIR SHEEHAN: Okay. Are there any objections or
24 corrections to the minutes from the members?

25 MEMBER HIBER: Move approval.

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1 MEMBER BOEL: Second.

2 CHAIR SHEEHAN: So we have a motion and a second for
3 adoption of the minutes.

4 All those in favor of adopting the minutes?

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

6 CHAIR SHEEHAN: Any opposed?

7 The minutes are adopted.

8 And then moving to the next item.

9 The Commission will now meet in closed executive
10 section pursuant to Government Code section 11126(e), to
11 confer with and receive advice from legal counsel for
12 consideration and action, as necessary and appropriate,
13 upon the filing in the Los Angeles County Superior Court,
14 titled case number BS091246, CSAC-Excess Insurance
15 Authority versus the Commission on State Mandates, which
16 was served on the Commission on December 2nd, 2004, and
17 to confer with and receive advice from legal counsel
18 regarding potential litigation. So we will reconvene at
19 this location in approximately 15 minutes.

20 *(The Commission met in closed executive session*
21 *from 9:37 a.m. to 9:51 a.m.)*

22 CHAIR SHEEHAN: The public meeting of the State
23 Mandates Commission is now in order.

24 The Commission met in closed executive is section
25 pursuant to Government Code section 11126(e), to confer

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1 with and receive advice from legal counsel for
2 consideration and action, as necessary and appropriate,
3 upon the filing in the Los Angeles County Superior Court
4 titled case number BS091246, CSAC-Excess Insurance
5 Authority versus Commission on State Mandates, and to
6 confer with and receive advice from legal counsel
7 regarding potential litigation.

8 Paula, will you introduce the next item, please?

9 MS. HIGASHI: The next item on our agenda is the
10 proposed consent calendar. And you should have that
11 before you. It's a green sheet.

12 CHAIR SHEEHAN: Right. We have a revised consent
13 calendar?

14 MS. HIGASHI: Yes. Our consent calendar now
15 consists of Item 11 and Item 13. Item 14 has been
16 postponed. And the other matters that originally had
17 been proposed, will be called up in order.

18 CHAIR SHEEHAN: Okay. So are there any objections
19 to the newly-proposed consent calendar?

20 *(No audible response was heard.)*

21 CHAIR SHEEHAN: Okay, do I have a motion?

22 MEMBER LAZAR: I'll move adoption.

23 MEMBER HIBER: Second.

24 CHAIR SHEEHAN: All those in favor of adopting the
25 consent calendar?

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1 (A chorus of "ayes was heard.)

2 MEMBER LAZAR: Aye.

3 CHAIR SHEEHAN: Any opposed?

4 (No audible response was heard.)

5 CHAIR SHEEHAN: That is done.

6 So the next item?

7 MS. HIGASHI: There are no appeals pending, so we
8 won't have an Item 2.

9 And this brings us to the test claim portion of our
10 hearing today. And what I'd like to do, is, first,
11 request that all the parties and witnesses who would be
12 coming forward on Items 3 through 10, to please stand,
13 and we'll administer the swearing in.

14 (Parties and witnesses stood up.)

15 MS. HIGASHI: Please raise your right hand.

16 Do you solemnly swear or affirm that the testimony
17 you are about to give is true and correct based upon your
18 personal knowledge or belief?

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

20 MS. HIGASHI: Thank you.

21 Our first item is Item 3. Commission Counsel
22 Katherine Tokarski will present this test claim.

23 MS. TOKARSKI: Good morning. This test claim is
24 *Lower Back Injury Presumption for Law Enforcement.*

25 In 2001, the Legislature added section 3213.2 to the

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1 Labor Code. For the first time, certain local agency and
2 state peace officers with at least five years of
3 full-time service wearing a duty belt were granted a
4 rebuttable presumption that lower back impairments so
5 developing or manifesting itself in the peace officer
6 shall be presumed to arise out of and in the course of
7 employment. Under the statute, the employer may offer
8 evidence disputing the presumption.

9 The test claim was filed by the California State
10 Association of Counties - Excess Insurance Authority, or
11 "CSAC-EIA," and the County of Tehama, and alleges that
12 the net effect of this legislation is to cause an
13 increase in workers' compensation claims for lower back
14 injury and decrease the possibility that any defenses can
15 be raised by the employer to defeat the claims. Thus,
16 the total cost of these claims from initial presentation
17 to ultimate resolution are reimbursement^{able}ment.

18 CSAC-EIA is a joint powers authority established
19 by contracting counties for insurance and risk management
20 purposes. CSAC-EIA does not employ peace officers and is
21 not a party to a workers compensation claim filed by a
22 peace officer against the local agency employer. In
23 addition, CSAC-EIA does not have the authority to raise
24 tax revenue and is not bound by the spending limitations
25 of Article XIII B.

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1 A late filing was received from the claimant
2 requesting an indefinite postponement of the test claim
3 hearing until the litigation on *Cancer Presumption for*
4 *Law Enforcement and Firefighters*, Test Claim Number
5 01-TC-19, is resolved.

6 Staff recommends that the Commission deny this test
7 claim, finding that CSAC-EIA does not have standing and
8 is not a proper claimant for this test claim, and
9 that Labor Code section 3213.2 is not subject to
10 Article XIII B, section 6 of the California Constitution
11 because it does not mandate a new program or higher level
12 of service on local agencies.

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

15 MS. GMUR: Juliana Gmur on behalf of the County of
16 Tehama and CSAC-EIA.

17 MS. DEAN: Gina Dean, CSAC-Excess Insurance
18 Authority.

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

21 MS. THOMPSON: Jaci Thompson, Department of Finance.

22 CHAIR SHEEHAN: Okay, Ms. Gmur, do you want to go
23 first?

24 MS. GMUR: Yes, I would. Thank you so much. Good
25 morning Madam Chairwoman, Commissioners.

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1 What we have before you today is one of six workers'
2 compensation presumptions test claims. The first, as you
3 may recall, and was just discussed, was filed in May --
4 and was filed and heard in May, and was denied. That is
5 now the subject of a writ. And although it is a
6 different statute, therefore, different test claim for
7 each one and a different injury, the legal issues are
8 identical in each of these test claims. This places the
9 Commission at a crossroad. And so the question today
10 before the Commission is to proceed or to wait for the
11 court review. If one waits, we have the ability to
12 resolve all six, since they have identical issues at
13 once. Otherwise, you're probably facing multiple writs
14 and appeals on these issues.

15 I understand you've had an opportunity to speak with
16 counsel, so I would ask the Commission now, if they would
17 like to proceed at this time or stay the proceeding.

18 CHAIR SHEEHAN: Would any of the commissioners like
19 to --

20 MEMBER BOEL: I would like to move to proceed.

21 MEMBER HIBER: Second.

22 CHAIR SHEEHAN: So I think the Commission would like
23 to proceed at this time.

24 MS. GMUR: Very good.

25 MEMBER LAZAR: At this time, I'd ask what legal

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1 counsel's recommendation is, just for the record.

2 MR. STARKEY: If I may, what I would request that
3 the Commission -- for the purposes of the record, since
4 this is a formal motion before the Commission, to ask for
5 the positions of the other parties as well.

6 CHAIR SHEEHAN: Okay.

7 MR. STARKEY: And then if the Commission -- if they
8 want a recommendation, I can provide one.

9 CHAIR SHEEHAN: Ms. Dean, would you like to --

10 MS. GEANACOU: She's the test claimant.

11 CHAIR SHEEHAN: Okay. Finance?

12 MS. GEANACOU: Susan Geanacou, Department of
13 Finance.

14 I do not believe the Department had seen the late
15 filing, requesting a stay of this, until this morning.
16 I don't think we have a particular position on it. But
17 if the Commission feels prepared to go forward today, we
18 would support that position.

19 CHAIR SHEEHAN: Okay. I think it was unanimous from
20 the Commission that we would like to proceed today.

21 MS. GMUR: Excellent. Very well.

22 CHAIR SHEEHAN: Paula?

23 MS. HIGASHI: Ms. Boel made a motion, and then there
24 wasn't a second, so --

25 CHAIR SHEEHAN: So we have a motion.

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1 MS. HIGASHI: Just for purposes of procedure, we
2 should probably vote.

3 CHAIR SHEEHAN: Do you want a formal --

4 MS. HIGASHI: If there is going to be a vote.

5 CHAIR SHEEHAN: You have a question?

6 MEMBER LAZAR: I just wanted -- for the record, I'd
7 like the legal counsel's statement as to what his
8 recommendation is in terms of proceeding.

9 MR. STARKEY: Under the statute and the regulations,
10 the Commission has the discretion to decide how to
11 proceed in this matter. And so basically staff does not
12 have a recommendation as to the request, but believes
13 that the Commission has full discretion. There's no
14 legal impediment to proceeding.

15 MEMBER LAZAR: Thank you.

16 CHAIR SHEEHAN: Okay. Anything else? Okay, so --

17 MEMBER BOEL: We have a motion.

18 CHAIR SHEEHAN: -- we have a motion?

19 Do I have a second on the motion?

20 MEMBER HIBER: Second.

21 CHAIR SHEEHAN: All those in favor, indicate by
22 saying "aye."

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

24 CHAIR SHEEHAN: Any opposed?

25 *(No audible response was heard.)*

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1 CHAIR SHEEHAN: So that is unanimous.

2 MS. GMUR: Moving on then to the test claim itself,
3 there have been two issues that have been presented. The
4 first is, is CSAC-EIA a proper party to be bringing a
5 test claim for this Commission? Staff finds that they
6 are not. Staff relies on a particular case that
7 discusses redevelopment agencies. Much of what I have
8 to say has already been explained fully in my responses
9 and briefs on the issue. But just to clarify this point,
10 CSAC-EIA is a joint powers authority. This is a
11 different entity. This is not anything like a
12 redevelopment agency. There is no case law out there at
13 this time on JPA's and whether they would be proper
14 parties.

15 What we have is the statute itself, which, on its
16 face, says that the JPA is a proper party as a special
17 district who can bring a test claim.

18 The staff reliance on the redevelopment agency case
19 is misplaced because it is actually comparing, well,
20 oranges to orangutans. A JPA is not anything like a
21 redevelopment agency. Redevelopment agencies are
22 statutory creatures. A JPA is more a contractual
23 relationship amongst individuals to allow an agency that
24 they create to act on their behalf.

25 So in this case, we have the counties joining

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1 together, counties who have the authority to tax and
2 spend, creating an agency to act on their own behalf.

3 I have Gina Dean here from CSAC-EIA, who can explain
4 any questions that you may have as to their operations
5 and how they came into being and what it is precisely
6 that they do.

7 CHAIR SHEEHAN: Ms. Dean, would you like to add
8 anything?

9 MS. GMUR: Are there any questions?

10 CHAIR SHEEHAN: Do you want to add anything?

11 MS. DEAN: I can answer any questions that you may
12 have on how our programs are funded and the history of
13 the CSAC-Excess Insurance Authority, if you have any
14 questions.

15 CHAIR SHEEHAN: Do any of the Commission members
16 have any questions of Ms. Dean?

17 *(No audible response was heard.)*

18 CHAIR SHEEHAN: All right.

19 MS. GMUR: Very good. Moving on, looking at the
20 statute itself, the question becomes, is it a
21 reimbursable state mandate? Let us look for a moment at
22 a workers' compensation case. I'm not aware of if the
23 Members have had an opportunity to become involved in a
24 workers' compensation case. I would like to explain it
25 the way that you might compare it to, say, a traffic

1 accident case. If you're involved in a traffic
2 collision, a lawsuit will be brought; and at court, one
3 will not only have to prove their injury but that the
4 accident was the cause of the injury, and it was the
5 fault of the other party.

6 It was recognized early on in American history that
7 if a worker was placed in the position of having to sue
8 their employer, it would be very difficult for that
9 worker to show the causation and the fault of the
10 employer.

11 The employer was in a better position, a superior
12 position. And, therefore, it was decided, as a matter of
13 public policy, that the law should be slanted, biased in
14 favor of the worker; and, thus, our workers' compensation
15 law came into being.

16 What workers' compensation law does is it makes it
17 easy for the worker to prove their case. The important
18 thing, our public policy says, is that the money flows to
19 injured workers who are properly injured on the job and
20 that require the money to continue their livelihood.

21 We don't want to have employers who cause injury to
22 workers and then just basically kick them out on the
23 streets.

24 So in a workers' compensation action today, the
25 worker needs to prove the injury -- that is, the extent

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1 of the injury -- and what is called, by shorthand,
2 AOE/COE, and that is that the injury arose out of and in
3 the course of and in the scope of their employment. That
4 is, they were injured on the job.

5 If you have an injury that's obvious, the worker is
6 on the job and the box falls on their foot and their foot
7 is injured, then approving the injury is simple. You've
8 got your doctor reports. And proving the AOE/COE is
9 simple: You were at the job site, the box hit your foot.

10 However, when we're looking at cases like this,
11 where we have a lower back injury, that can be very
12 difficult to prove. How did the lower back injury occur?
13 Was the belt that you, as a peace officer, wear all the
14 time as part of your job? Or have you been lifting heavy
15 things? Did you injure it while you were moving
16 furniture at your home?

17 When this occurs, you have the public policy is
18 thwarted because it is difficult. In this case, things
19 like cancer, other cases, it's hard to prove that that
20 happened on the job. But again, we want to support our
21 public policy. We want to slant the law in favor of the
22 employee receiving benefits, and so this statute, the
23 statute before you today, was passed. And it creates a
24 presumption.

25 The statute uses the word "shall," the mandate

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1 language. "It shall be presumed that the injury arose
2 out of and in the course and scope of employment."

3 Therefore, in this case, all you need to do, if you're a
4 worker, is prove the injury, because the presumption
5 takes care of the AOE/COE portion of your case.

6 Staff relies on the second sentence which talks
7 about -- this is a rebuttable presumption within the law.
8 There are two kinds of presumptions: Rebuttable and
9 those that cannot be rebutted. Most are rebuttable
10 presumptions. But I look at that first statement. "This
11 shall be presumed." "Shall," there's a mandate.

12 In looking at that second question, staff relies on
13 the fact that it is voluntary to raise a defense,
14 bringing in the question of rebuttability. If you're
15 going to rebut it, then there needs to be a defense.
16 They say that this is voluntary, and they rely on case
17 law regarding the voluntary nature.

18 But let us, for a moment, take a look back at that
19 accident I was talking about. Sometimes in a traffic
20 collision, the injury, fault and causation are so
21 obvious, that the insurance company begins negotiations
22 and may even pay out before a lawsuit is filed. So, too,
23 with workers' compensation. The operation of the
24 presumption removes a factor, a factor that would
25 ordinarily have to be proved in a hearing.

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1 Even without the second sentence, even without the
2 raising of a defense, even by operation of that first
3 sentence alone that creates the presumption, workers are
4 being paid, employers are paying out on claims that,
5 prior to the passage of this law, without the
6 presumption, may not have been paid out on, may have
7 required hearing, may have been impossible to prove.

8 So as I see it, the first sentence creates the
9 mandate. The second sentence, at best, limits the
10 mandate; but it does not undo the mandate. The mandate
11 itself exists in creating the presumption. Whether it's
12 rebuttable or not is a limitation and a question as to
13 how much and how far that mandate goes.

14 Staff points to the Kern High School case and the
15 City of Merced regarding the voluntariness of that
16 defense. Interesting. The City of Merced is a case that
17 we have discussed often here. And the basis for the
18 holding is basically the avoidance doctrine. What the
19 court said to the City of Merced is, "You obtained land
20 by eminent domain. In so doing, it placed you within the
21 control of the statute that said if you do something --
22 collect land by eminent domain -- then you must pay for
23 business goodwill."

24 And the court says, "Look, City of Merced, you
25 didn't have to do that. You could have bought the

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1 property outright. You had an option where you could
2 have avoided the application of the law, avoided the
3 mandate," and they failed to avoid.

4 In this case, there is no way to avoid the
5 application of the mandate. What can employers do to not
6 fall within the control of this presumption? Can we not
7 mount a defense? That doesn't stop the presumption from
8 occurring and the monies being paid out due to that
9 presumption of what is left then? Fire all of our
10 employees? There is no way to avoid the operation of law
11 if you are you are an employer of peace officers in this
12 case. The City of Merced is not controlling. Kern High
13 School is not controlling. There is a mandate present
14 here, and we ask this Commission to find the existence of
15 that mandate.

16 CHAIR SHEEHAN: Thank you, Ms. Gmur.

17 Does anyone on the Commission or any Commission
18 members have any questions?

19 MEMBER LAZAR: I'd just like to ask a question.

20 What's your response to the position of the
21 Department of Industrial Relations, on page 5 of the
22 bullet, concerning their response that, "Local
23 governments are not required to accept all workers' comp
24 claims, they have an appeal before the Workers' Comp
25 Appeal Board? Is that an avenue that you could pursue?

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1 MS. GMUR: I'm sorry, could you read it again to me?
2 I don't have it in front of me.

3 MEMBER LAZAR: It's the position of the Department
4 of Industrial Relations in these three bullets --

5 MS. GMUR: The first bullet, you say?

6 MEMBER LAZAR: Yes.

7 MS. GMUR: Yes, we are not required -- we are
8 getting back to the second sentence. Let me read this
9 into the record.

10 Their second bullet is, "Local governments are not
11 required to accept all workers' compensation claims.
12 They have the option to rebut any claim before the
13 Workers' Compensation Appeals Board, by presenting a
14 preponderance of evidence showing the non-existence of
15 the industrial causation." That's the AOE/COE. It
16 creates the presumption in favor of the employee, but the
17 employer can prove that it did not happen.

18 Let's say that you have a workers' compensation
19 fraud case, and you have an investigator out, who is
20 showing that the individual is lifting heavy materials
21 and is not, indeed, injured. That is always an option.

22 However, the presumption creates cases, payment on
23 claims that would not ordinarily exist. So in this case,
24 we're talking about the second sentence, what happens if
25 you do go before the Appeals Board, which is the hearing

1 portion, and raising of the defense. What they're saying
2 here is: You can mount a defense. You don't have to
3 accept them all. You can go and have a hearing and
4 defend yourself.

5 What we're saying, is that that is a limitation, but
6 does not negate the existence of the mandate. The
7 mandate which exists in the first sentence, through the
8 establishment of the presumption itself. So our ability
9 to defend against the presumption is not at question, it
10 is a limitation. But the mandate is the creation of the
11 presumption.

12 CHAIR SHEEHAN: I'd like to follow up on that, the
13 other -- no, the other two points on there, if you could
14 address that.

15 MS. GMUR: Yes. Certainly.

16 The second point. "Statutes mandating a higher
17 level of compensation to local government employees, such
18 as workers' compensation benefits are not new programs
19 whose costs would be subject to reimbursement under
20 Article XIII B, section 6."

21 It actually -- it is a new program. It is a new
22 program because it creates a presumption that otherwise
23 did not exist.

24 So, yes, let's talk about the way things would have
25 worked before the statute existed. Someone came in, a

1 peace officer alleged that the belt that they had to wear
2 on the job created their injury, were seeking workers'
3 compensation benefits. The case would have gone forward.

4 This did not say that it did not create a new
5 injury. The injury existed before, has existed. Any
6 worker at any time could come in and allege injury on the
7 job -- of a variety of injuries on the job. This did not
8 create that as a new program.

9 The new program is the creation of the presumption,
10 which removes a factor that they would have to prove at
11 hearing, thus making it easier for them to win their
12 workers' compensation benefits, and more difficult for
13 the employer. The employer is placed in the position of
14 having to pay out on cases that they otherwise would not
15 have.

16 As to the third point, there is no shift of a
17 financial burden from the states to local governments
18 because local governments, by statute, have always been
19 solely liable for providing workers' compensation
20 benefits to their employees. The shift of the financial
21 burden is one of the factors to be considered but is not
22 the only factor.

23 In the cases where there is a shift of the financial
24 burden, that is pretty clear-cut evidence as to a
25 mandate. But that is one of the factors, not the entire

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1 pie, as it were. And so a mandate can exist, even
2 without the shifting of that burden.

3 CHAIR SHEEHAN: Thank you.

4 Do any of the other Commission members have any
5 questions?

6 *(No audible response was heard.)*

7 CHAIR SHEEHAN: Okay, Finance?

8 MS. GEANACOU: Susan Geanacou, Department of
9 Finance. The Department supports the staff analysis here
10 on this test claim. And we'd be glad to answer any
11 questions that you may have about the claim or our
12 position.

13 CHAIR SHEEHAN: Okay, are there any other -- anyone
14 else? No?

15 *(No audible response was heard.)*

16 CHAIR SHEEHAN: Any other questions?

17 MEMBER LAZAR: I'd like to ask Katherine, our
18 counsel, to comment on claimant's comments.

19 MS. TOKARSKI: Basically, I think there is a major
20 difference of opinion in whether or not a presumption is
21 a new program or higher level of service within the realm
22 of workers' compensation claims. Not every new piece of
23 statutory language is a new program or higher level of
24 service. This is clearly a new statute. The presumption
25 in favor of the worker is new to the statute, but it's

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1 all part of the underlying claim for an injury occurring
2 on the job, which that predates the presumption.

3 So the question is whether the excess costs that
4 likely result from a presumption in favor of the employee
5 are reimbursable costs; and staff's position is no,
6 because the presumption itself is not a new program or
7 higher level of service as defined by the courts.

8 The "shall" language there is not that the counties
9 shall do something proactively or pay for something
10 proactively, but that a presumption is granted, that the
11 courts that the workers' compensation courts shall
12 presume, for purposes of these claims, that the injury --
13 this particular type of injury occurred on the job.

14 The claims would have still been there, presumably,
15 without this presumption. And as the claimant pointed
16 out, it makes it more difficult for the county or the
17 employer to disprove the claim; because before, the
18 burden was on the employee. But that, in itself, is not
19 a new program or higher level of service to the public.
20 That's my position.

21 MEMBER LAZAR: Thank you.

22 CHAIR SHEEHAN: All right, any further questions
23 from the Members or any further discussion?

24 *(No audible response was heard.)*

25 CHAIR SHEEHAN: Is there a motion?

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1 MEMBER BARNES: I move that staff recommendation.

2 MEMBER BOEL: I second that.

3 CHAIR SHEEHAN: So we have a motion and a second to
4 move the staff recommendation.

5 Are we ready for the question?

6 All right, Paula, would you please call the roll?

7 MS. HIGASHI: Mr. Barnes?

8 MEMBER BARNES: Aye.

9 MS. HIGASHI: Ms. Boel?

10 MEMBER BOEL: Aye.

11 MS. HIGASHI: Mr. Hiber?

12 MEMBER HIBER: Aye.

13 MS. HIGASHI: Mr. Lazar?

14 MEMBER LAZAR: Aye.

15 MS. HIGASHI: Ms. Sheehan?

16 CHAIR SHEEHAN: Aye.

17 MS. HIGASHI: The motion carries.

18 CHAIR SHEEHAN: The motion carries.

19 Then we will proceed to the Proposed Statement of
20 Decision.

21 MS. HIGASHI: Item 4, Ms. Tokarski will present
22 this.

23 MS. TOKARSKI: This is the proposed Statement of
24 Decision on the claim you just heard, *Lower Back Injury*
25 *Presumption for Law Enforcement*, 01-TC-25. The sole

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1 issue before the Commission is whether the Proposed
2 Statement of Decision accurately reflects any decision
3 made by the Commission at today's hearing on the
4 above-named test claim.

5 Staff recommends that the Commission adopt the
6 Proposed Statement of Decision beginning on
7 page 2, which accurately reflects the staff
8 recommendation on the test claim. Minor changes to
9 reflect the hearing testimony and the vote count will
10 be included when issuing the final Statement of Decision.

11 CHAIR SHEEHAN: Great.

12 Any comments from the parties?

13 *(No audible response was heard.)*

14 CHAIR SHEEHAN: No?

15 Is there a motion?

16 MEMBER LAZAR: I move adoption.

17 MEMBER BOEL: I second.

18 CHAIR SHEEHAN: All right, there's been a motion to
19 adopt the final staff recommendation and it's been
20 seconded.

21 Are we ready for the question?

22 Paula, would you please call the roll?

23 MS. HIGASHI: Ms. Boel?

24 MEMBER BOEL: Aye.

25 MS. HIGASHI: Mr. Hiber?

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1 MEMBER HIBER: Aye.

2 MS. HIGASHI: Mr. Lazar?

3 MEMBER LAZAR: Aye.

4 MS. HIGASHI: Mr. Barnes?

5 MEMBER BARNES: Aye.

6 MS. HIGASHI: And Ms. Sheehan?

7 CHAIR SHEEHAN: Aye.

8 MS. HIGASHI: The motion is carried.

9 CHAIR SHEEHAN: The motion carries. All right.

10 MS. HIGASHI: This brings us to Item 5.

11 CHAIR SHEEHAN: Item 5.

12 MS. HIGASHI: And Ms. Tokarski will present this
13 item.

14 CHAIR SHEEHAN: Thanks.

15 MS. TOKARSKI: Item 5 test claim is *Skin Cancer*
16 *Presumption for Lifeguards*. In 2001, the Legislature
17 added 3212.11 to the Labor Code. For the first time
18 publicly-employed lifeguards were granted a rebuttable
19 presumption that skin cancer developing or manifesting
20 during or for a defined period immediately following
21 employment shall be presumed to arise out of and in the
22 course of employment. Under the statute, the employer
23 may offer evidence disputing the presumption.

24 This claim was filed by the City of Newport Beach
25 and alleges that the "net effect of this litigation is

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1 to cause an increase in workers' compensation claims for
2 skin cancer and decrease the possibility that any
3 defenses can be raised by the employer to defeat the
4 claims. Thus, the total cost of these claims, from
5 initial presentation to ultimate resolution, are
6 reimbursable."

7 A late filing was also received in this case
8 requesting indefinite postponement, waiting for
9 litigation to be resolved.

10 Staff recommends that the Commission deny this test
11 claim, finding that Labor Code section 3212.11 is not
12 subject to Article XIII B of section 6 of the California
13 Constitution because it does not mandate a new program or
14 higher level of service on local agencies.

15 Will the parties and witnesses please state your
16 names?

17 MS. GMUR: Good morning. Juliana Gmur on behalf of
18 the City of Newport Beach.

19 MR. EVERROAD: Glen Everroad with the City of
20 Newport Beach.

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

23 MS. THOMPSON: Jaci Thompson, Department of Finance.

24 CHAIR SHEEHAN: All right, take it away.

25 MS. GMUR: Thank you so much.

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1 First, I would like to explain to the Commission
2 members that you've not entered The Twilight Zone, but
3 that you're going to hear me say everything I just pretty
4 much said one more time, from the top. These are two
5 separate test claims and they need to have two complete,
6 separate records.

7 So with your kind indulgence, we are going to be
8 very repetitive this morning. I apologize.

9 The Commission has before it my supplemental
10 pleading with regard to the fact that this is one of six
11 workers' compensation presumption test claims that were
12 filed together. The first of those was heard last May
13 and is now subject to a writ. Therefore, I am asking the
14 Commission whether they would, at this time, like to stay
15 the proceeding and handle all of the cases at once, or
16 whether they would like to go forward this morning on
17 this case.

18 CHAIR SHEEHAN: The sentiment of the Commission?

19 MEMBER LAZAR: I'd like to move forward with it.

20 MEMBER BOEL: I'll second.

21 CHAIR SHEEHAN: Do you need another formal motion on
22 this?

23 MS. HIGASHI: No, unless there's an objection.

24 CHAIR SHEEHAN: All right. Is there any objection
25 to moving forward?

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1 (No audible response was heard.)

2 CHAIR SHEEHAN: I think the Commission would like to
3 move forward.

4 MS. GMUR: Thank you. Thank you so much.

5 The question before the Commission today on this
6 case, which is *Skin Cancer Presumption for Lifeguards*, is
7 does this state a reimbursable state mandate? First, we
8 will look at a workers' compensation case.

9 Many of you may not have any familiarity, except for
10 my last explanation on the workers' compensation case, so
11 we will liken it to a traffic collision.

12 MR. STARKEY: Excuse me. Procedurally, Madam
13 Chairman, if, in fact, the type of testimony and
14 discussion will be exactly the same --

15 CHAIR SHEEHAN: Can we enter it into the record?

16 MR. STARKEY: -- counsel may incorporate -- may
17 incorporate her comments and apply them to this case.
18 And the effect of that would be as if, in fact, there was
19 a need to have the record developed, the record would
20 include this presentation, which incorporates the other
21 one; and those same arguments would then be part of the
22 record. But it's up to counsel how they want to proceed.

23

24 CHAIR SHEEHAN: I'm sorry, up to?

25 MR. STARKEY: It's up to counsel, in the first

1 instance, if the Commission doesn't object. But it is
2 possible to incorporate the exact, same testimony.

3 MS. GMUR: I hesitate to do so because this is the
4 City of Newport Beach. If we had CSAC-EIA back here
5 again, I would be more likely; but we're looking at two
6 different sources of a writ at this point.

7 If it were CSAC-EIA, they could probably do a
8 combined writ, on a combined record. So I hesitate to do
9 so, but --

10 CHAIR SHEEHAN: But for our record, we could do
11 it -- it could be entered in separately; couldn't it? Or
12 reflected separately?

13 MR. STARKEY: I believe that she can state to the
14 Commission that for purposes of this case, the legal
15 arguments and testimony that she would provide in this
16 matter would be identical to the other one, and that it
17 be incorporated into this record for this case.

18 CHAIR SHEEHAN: All right. Okay, then I have --

19 MEMBER LAZAR: I would like to know if the City of
20 Newport Beach would like that because I think --

21 CHAIR SHEEHAN: Just in terms of process, go ahead.

22 MR. EVERROAD: Well, for a matter of establishing
23 the record, I'm going to defer to our counsel on this.
24 I think that she knows best as to how we're going to be
25 proceeding with the courts. And I want the record to

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1 be clear, as it relates to this when it's filed.

2 MEMBER LAZAR: In all fairness, as far as moving
3 this along, I'd like to see it moved along. But I think
4 if they need that in the record and they want to provide
5 oral discussion, I think we should --

6 CHAIR SHEEHAN: Okay, any other commissioners have
7 any objection?

8 MEMBER HIBER: No objection.

9 CHAIR SHEEHAN: Proceed.

10 MS. GMUR: I'll try to make it as brief as I
11 possibly can.

12 So when looking at a normal case, as the case goes
13 to court, one must prove injury, causation and fault, as
14 you would in a traffic accident. It was recognized early
15 on, in support of public policy, that a worker is not in
16 a position to bring a case against their employer in such
17 a way that causation and fault would be very difficult to
18 prove. Therefore, the workers' compensation law was
19 borne, and it was biased, slanted in favor of the
20 employee.

21 In a normal workers' compensation action, the injury
22 has to be proved, and what is called AOE/COE, or that is
23 the injury arose out of and in the course and scope of
24 employment.

25 This is often difficult, especially in a case like

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1 this. Skin cancer, how does one prove where the skin
2 cancer came from? In recognition of this fact, the
3 Legislature passed a law creating a presumption, for
4 lifeguards who spend a particular amount of time out in
5 the sun, that if they do have skin cancer, it was as a
6 result of their employment as a lifeguard.

7 The language within the statute uses the "shall"
8 language. "It shall be presumed." Staff looks to the
9 second language, which is with regard to the fact that
10 the presumption is a rebuttable presumption and a defense
11 can be raised. However, it is the first statement, the
12 "shall be presumed" language that creates the mandate.

13 In looking back at my example of an accident, if
14 fault, causation and injury are obvious, then at times
15 the insurance company will go forward with payment or
16 negotiations without the filing of a lawsuit. So, too,
17 with workers' compensation. The presumption operates to
18 ensure payment for the injury and the claim may not
19 necessarily go to hearing. A lifeguard, who presents
20 with skin cancer prior to this law, would have to prove
21 that the skin cancer came from his employment.

22 Now, with the presumption acting in his favor, the
23 acquisition of benefits, workers' compensation benefits
24 is much easier for the employee and is more likely to be
25 paid out by the employer, without a hearing. Therefore,

1 the voluntariness of raising a defense never comes into
2 question.

3 Staff points to City of Merced. In City of Merced,
4 the case was decided on the avoidance doctrine. The
5 court explained that the City could have avoided
6 acquiring the property by eminent domain, and in so
7 doing, could have avoided having to pay out under the
8 statute.

9 In this case, the employer has no way to avoid this
10 mandate. They cannot not raise a defense if they are
11 placed in the position of saying, "Okay, fine, we're just
12 not going to defend ourselves." They will still be
13 paying out on the presumption of workers' compensation
14 claims. So they cannot avoid it. The only way to avoid
15 it would be to not employ lifeguards at all. And then in
16 that case, you wouldn't have to worry about the statute.

17 Therefore, we ask that the Commission find this is a
18 reimbursable state mandate.

19 CHAIR SHEEHAN: Mr. Everroad, would you like to add
20 anything?

21 MR. EVERROAD: Thank you. No.

22 CHAIR SHEEHAN: Okay. Department of Finance?

23 MS. GEANACOU: Susan Geanacou, Department of
24 Finance. As we stated on the prior record, we support
25 this test claim ^{analysis} and are available to answer any

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1 questions, should you have any.

2 CHAIR SHEEHAN: Okay. Counsel, would you like to
3 add anything at this point?

4 MS. TOKARSKI: I don't have anything to add, unless
5 there's questions.

6 CHAIR SHEEHAN: Okay, any further questions from the
7 Members?

8 *(No audible response was heard.)*

9 CHAIR SHEEHAN: Any further discussion?

10 *(No audible response was heard.)*

11 CHAIR SHEEHAN: Is there a motion?

12 MEMBER BOEL: I move that we adopt the final staff
13 analysis and deny the test claim.

14 MEMBER HIBER: Second.

15 CHAIR SHEEHAN: We have a motion and a second to
16 approve the staff analysis.

17 Paula, can you call the roll?

18 MS. HIGASHI: Mr. Hiber?

19 MEMBER HIBER: Aye.

20 MS. HIGASHI: Mr. Lazar?

21 MEMBER LAZAR: Aye.

22 MS. HIGASHI: Mr. Barnes?

23 MEMBER BARNES: Aye.

24 MS. HIGASHI: Ms. Boel?

25 MEMBER BOEL: Aye.

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1 MS. HIGASHI: And Ms. Sheehan?

2 CHAIR SHEEHAN: Aye.

3 MS. HIGASHI: The motion is carried.

4 This brings us to Item 6, and Ms. Tokarski will
5 present this item.

6 MS. TOKARSKI: This is the Proposed Statement of
7 Decision for the item you just heard, *Skin Cancer*
8 *Presumption for Lifeguards*, 01-TC-27. The sole issue
9 before the Commission is whether the Proposed Statement
10 of Decision accurately reflects any decision made by the
11 Commission at today's hearing on the above-named test
12 claim.

13 Staff recommends that the Commission adopt the
14 Proposed Statement of Decision beginning on page 2, which
15 accurately reflects the staff recommendation on the test
16 claim. Minor changes to reflect the hearing testimony
17 and the vote count will be included when issuing the
18 final Statement of Decision.

19 CHAIR SHEEHAN: Thanks.

20 Any questions?

21 *(No audible response was heard.)*

22 CHAIR SHEEHAN: No further comments?

23 *(No audible response was heard.)*

24 CHAIR SHEEHAN: Do I have a motion?

25 MEMBER LAZAR: I'll move adoption.

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1 MEMBER BARNES: I'll second.

2 CHAIR SHEEHAN: We have a motion and a second to
3 approve the final staff recommendation.

4 No further discussion. Paula, can you call the
5 roll?

6 MS. HIGASHI: Mr. Lazar?

7 MR. LAZAR: Aye.

8 MS. HIGASHI: Mr. Barnes?

9 MEMBER BARNES: Aye.

10 MS. HIGASHI: Ms. Boel?

11 MS. BOEL: Aye.

12 MS. HIGASHI: Mr. Hiber?

13 MEMBER HIBER: Aye.

14 MS. HIGASHI: And Ms. Sheehan?

15 CHAIR SHEEHAN: Aye.

16 MS. HIGASHI: The motion is carried.

17 CHAIR SHEEHAN: That motion carries.

18 And it takes us to Item 7.

19 MS. GMUR: Thank you, Commissioners.

20 CHAIR SHEEHAN: Thank you.

21 MS. HIGASHI: Commission Counsel Katherine Tokarski
22 will also present Items 7 and 8.

23 MS. TOKARSKI: Item 7 is *Lifeguard Skin Cancer*
24 *Presumption, K through 14*, Test Claim number 02-TC-16.

25 In 2002, the Commission received a local agency test

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1 claim filing, *Skin Cancer Presumption for Lifeguards*,
2 which you just heard as Item 5. On February 27, 2003,
3 the Commission received a second test claim on Labor Code
4 section 3212.11 from Santa Monica Community College
5 District, alleging a reimbursable state mandate is also
6 imposed on K through 14 school districts. The two test
7 claims were not consolidated.

8 The activities or costs alleged by the claimant
9 include all of the costs associated with the payment of
10 claims caused by presumption, or payment of the
11 additional costs of insurance premiums to cover such
12 claims, physical exams to screen lifeguard applicants for
13 preexisting skin cancer, and training lifeguards to take
14 precautionary measures to prevent skin cancer on the job.

15 Staff recommends that the Commission deny this test
16 claim, finding that Labor Code section 3212.11 is not
17 subject to Article XIII B, section 6 of the California
18 Constitution because it does not mandate a new program or
19 higher level of service on school districts.

20 Will the parties and witnesses please state your
21 names for the record.

22 MR. PETERSEN: Keith Petersen for the test claimant.

23 MS. GEANACOU: Susan Geanacou, Department of
24 Finance.

25 MS. THOMPSON: Jaci Thompson, Department of Finance.

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1 CHAIR SHEEHAN: Thanks.

2 Mr. Petersen, would you -- sorry.

3 MR. PETERSEN: Excuse me?

4 CHAIR SHEEHAN: Would you like to begin?

5 MR. PETERSEN: Oh, certainly. You've already said
6 "no" six or seven times, and even that catches my
7 attention. So I'm going to stand with the administrative
8 record, unless you have some questions.

9 CHAIR SHEEHAN: Nothing new you want to share with
10 us?

11 MR. PETERSEN: No.

12 CHAIR SHEEHAN: All right, any questions from the
13 Commission members?

14 *(No audible response was heard.)*

15 CHAIR SHEEHAN: Finance?

16 MS. GEANACOU: Susan Geanacou, Department of
17 Finance. We support the staff analysis for this test
18 claim.

19 CHAIR SHEEHAN: Okay.

20 Katherine, any final -- anything to add?

21 MS. TOKARSKI: No.

22 CHAIR SHEEHAN: Okay. So since there are no further
23 comments from anyone, is there a motion?

24 MEMBER BARNES: I move the staff recommendation.

25 MEMBER BOEL: I second.

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1 CHAIR SHEEHAN: We have a motion and a second to
2 move the staff recommendation.

3 Paula?

4 MS. HIGASHI: Mr. Barnes?

5 MEMBER BARNES: Aye.

6 MS. HIGASHI: Ms. Boel?

7 MEMBER BOEL: Aye.

8 MS. HIGASHI: Mr. Hiber?

9 MEMBER HIBER: Aye.

10 MS. HIGASHI: Mr. Lazar?

11 MEMBER LAZAR: Aye.

12 MS. HIGASHI: Ms. Sheehan?

13 CHAIR SHEEHAN: Aye.

14 MS. HIGASHI: Item 8.

15 MS. TOKARSKI: Item 8 is the Proposed Statement of
16 Decision, the claim you just heard, *Lifeguard Skin Cancer*
17 *Presumption, K through 14, O2-TC-16*. The sole issue
18 before the Commission is whether the Proposed Statement
19 of Decision accurately reflects any decision made by the
20 Commission at today's hearing on the above-named test
21 claim.

22 Staff recommends that the Commission adopt the
23 Proposed Statement of Decision beginning on page 2, which
24 accurately reflects the staff recommendation on the test
25 claim. Minor changes to reflect the hearing testimony

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1 and the vote count will be included when issuing the
2 final Statement of Decision.

3 CHAIR SHEEHAN: Thanks.

4 Any comments from -- or questions from the
5 Commission members or comments from the party?

6 MEMBER HIBER: No comments.

7 CHAIR SHEEHAN: And do we have a motion?

8 MEMBER LAZAR: Move adoption.

9 MEMBER BOEL: I second.

10 CHAIR SHEEHAN: So we have a motion and a second to
11 adopt the staff recommendation.

12 Paula, can you call the roll?

13 MS. HIGASHI: Ms. Boel?

14 MEMBER BOEL: Aye.

15 MS. HIGASHI: Mr. Hiber?

16 MEMBER HIBER: Aye.

17 MS. HIGASHI: Mr. Lazar?

18 MEMBER LAZAR: Aye.

19 MS. HIGASHI: Mr. Barnes?

20 MEMBER BARNES: Aye.

21 MS. HIGASHI: Ms. Sheehan?

22 CHAIR SHEEHAN: Aye.

23 MS. HIGASHI: The motion is carried.

24 CHAIR SHEEHAN: The motion is carried, which takes
25 us to Item Number 9, a different issue.

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1 MS. HIGASHI: We will be changing subjects.

2 CHAIR SHEEHAN: Yes. Okay.

3 MS. HIGASHI: The Commission counsel, Eric Feller,
4 will present Item 9.

5 MR. FELLER: Good morning.

6 CHAIR SHEEHAN: Good morning.

7 MR. FELLER: Before you is the *Domestic Violence*
8 *Arrests and Victim Assistance* test claim. The test claim
9 statute amends Penal Code section 264.2 to add two crimes
10 for which a victim of domestic violence card is given.

11 First is victims of spousal battery, and second is
12 victims of corporal injury on a spouse or other specified
13 victim.

14 Another test claim statute amends Penal Code section
15 13519 to add the signs of domestic violence to the
16 Commission on Peace Officer Standards and Training's
17 domestic violence training course and response
18 guidelines.

19 A third test claim statute amends Penal Code section
20 13701, law enforcement's *Domestic Violence* policy, to
21 add, "Transportation to a hospital and safe passage out
22 of a victim's residence and contact information for the
23 California Victims Compensation Program." It also adds
24 two provisions to the content of the victim card: Phone
25 number or county hotlines for battered-women's shelters

1 and, second, a statement that domestic violence or
2 assault by a person known to the victim, including
3 domestic violence or assault by the victim's spouse, is a
4 crime.

5 This test claim statute also amends subdivision (b)
6 of section 13701 by adding orders issued by other states,
7 tribes or territories to list of enforceable protective
8 orders in the domestic violence arrest policy.

9 For reasons indicated in the analysis, staff finds
10 that sections 13701, subdivision (c) (9) (D) and (H) and
11 section 264.2, subdivision (a), as amended by the test
12 claim statutes, impose a reimbursable state-mandated
13 program for the following activities.

14 First is providing victim cards to victims of the
15 following two crimes:

16 Penal Code section 243(e), battery against a spouse,
17 a person with whom the defendant is cohabiting, a person
18 who is the parent of the defendant's child, former
19 spouse, fiancée or person with whom the defendant
20 currently has or previously had a dating engagement or
21 relationship.

22 And, second, Penal Code 273.5, willful infliction of
23 corporal injury on a spouse, former spouse, cohabitant,
24 former cohabitant, or the mother or father of his or her
25 child.

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1 The other activities, one-time cost of printing
2 victim cards to add new information, such as phone
3 numbers and/or the local county hotlines of
4 battered-women's shelters, a statement that domestic
5 violence or an assault by the person who is known to the
6 victim, including domestic violence or assault by a
7 person who is the spouse of a victim, is a crime.

8 And other activities: The one-time cost of adding
9 the domestic violence response policy -- adding to the
10 policy two new crimes. Those are in Penal Code 243(e)
11 and 273.5 to those for which a victim card is given out.
12 And the one-time cost of adding a description -- adding
13 to the description of the victim card and the domestic
14 violence response policy the phone numbers and/or local
15 county hotlines of battered-women's shelters and a
16 statement that domestic violence or assault by a person
17 who is known to the victim, including domestic violence
18 or assault by a person who is a spouse of a victim, is a
19 crime.

20 Would the parties and witnesses please state their
21 names for the record?

22 MR. KAYE: Leonard Kaye with the County of
23 Los Angeles.

24 MS. GEANACOU: Susan Geanacou, Department of
25 Finance.

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1 MR. MURPHY: Brendan Murphy, Department of Finance.

2 CHAIR SHEEHAN: Okay, Mr. Kaye, would you like to
3 proceed?

4 MR. KAYE: Thank you.

5 It's a pleasure being before you this morning.

6 What we have, as Mr. Feller correctly stated, is a
7 list of reimbursable activities. And the County of
8 Los Angeles concurs that such activities, as stated by
9 Mr. Feller, are substantially correct -- are correct, we
10 concur.

11 What we like to talk about is a somewhat esoteric
12 matter, and I will try to simplify it as much as
13 possible. As I believe Mr. Feller has indicated in his
14 analysis, the whole issue of providing domestic violence
15 services, which the County of Los Angeles provides, is a
16 complex matter which must meet numerous state
17 requirements. And this has been the subject of, I
18 believe, seven or eight test claims -- quite a few. And
19 some of these test claims, such as Chapter 1609 of '84
20 have been suspended, found to be optional. That requires
21 the county and police jurisdictions throughout the state
22 to prepare a domestic violence incident report, to report
23 certain statistical information to the State Attorney
24 General, and so forth.

25 Then we have other decisions on the Commission on

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1 State Mandates which require certain types of arrest
2 procedures be followed, certain types of procedures
3 regarding response and so forth, some of which have been
4 deemed to be suspended, as argued by Commission staff.

5 And what we are faced with in current law is we
6 are required, as the test claimant, to prepare the
7 Commission's first draft of the Parameters and
8 Guidelines, which are the rules and additions for
9 reimbursing this.

10 Now, these rules and conditions are, in turn, used
11 by the State Controller's office in auditing our programs
12 for specific periods of time, some periods of which may
13 or may not have suspended provisions in them. So that's
14 why I'm going into this area for clarification.

15 And Commission staff I believe correctly note on
16 page 13 -- and I'll try and be as succinct as possible by
17 focusing in on the specific language that I plan on
18 incorporating into our draft Parameters and Guidelines.
19 Because absent that language, I think it would be
20 exceptionally difficult for anyone, a few years from now,
21 to ascertain what is or is not reimbursable, under a
22 particular fiscal year for a particular thing.

23 What staff states, is that the Commission find that
24 for years in which the Legislature suspends the mandate
25 to develop, adopt and implement a domestic violence

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1 response policy, adding the provisions in (c) (7) and
2 (c) (9) (D) to the response is voluntary and not mandated
3 by the State. But for years -- except for the years when
4 the Legislature does not suspend the mandate to develop,
5 adopt and implement a domestic violence response policy,
6 the activity of adding the provisions in (c) (7) and
7 (c) (9) (D) to the response policy is mandated by the
8 state.

9 So I think, as a practical matter, the Parameters
10 and Guidelines, as I understand them, must relate back to
11 the Statement of Decision. So this is in the Statement
12 of Decision that is before you to adopt today. And I
13 plan on bringing it forward and highlighting it to
14 indicate and provide notice to claimants, as well as
15 auditors from the State Controller's Office, that should
16 certain suspensions not occur, that these also perhaps
17 would be reimbursable, either under these provisions or
18 prior provisions, and so forth. Or perhaps under
19 amendments to the Parameters and Guidelines. But at
20 least it would not be lost to history, as to that this
21 is a trail -- this would provide notice to folks to
22 follow up on and make sure that we got reimbursement for
23 these activities.

24 And what are these activities that I'm talking about
25 and I'm so concerned about? These are matters that are

1 not going to cost a lot of money to provide. But for the
2 victim of domestic violence, they're absolutely critical
3 that everyone understands that they are mandatory. And
4 they are specifically, transporting victims to a hospital
5 in a domestic violence situation, for treatment, when
6 necessary. And this is something that the county
7 sheriff, local police would be absolutely required to do,
8 if the underlying statutes are not suspended.

9 And for assisting victims in safe passage out of the
10 victim's residence. All this is pursuant to PC section
11 13701(c)(7), I believe.

12 And that is basically all I want to do today, is to
13 put everyone on notice that we plan on including this in
14 our Parameters and Guidelines simply for the sake of
15 clarifying it, to provide guidance to both claimants,
16 auditors and the state, as to what we're thinking here.

17 Thank you very much.

18 CHAIR SHEEHAN: Thanks.

19 Are there any questions from the Commission members?

20 *(No audible response was heard.)*

21 CHAIR SHEEHAN: The Department of Finance, do you
22 have anything to add?

23 MR. MURPHY: Brendan Murphy with the Department of
24 Finance. We'd just note that we concur with the staff
25 analysis.

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1 CHAIR SHEEHAN: All right. And do you have anything
2 more to add, Eric?

3 MR. FELLER: What Mr. ^{Kaye}~~Leonard~~ is proposing I don't
4 believe has a place in the Parameters and Guidelines for
5 this test claim. What was actually suspended -- and it's
6 in your record on pages 421 and 422 -- are the Parameters
7 and Guidelines that were adopted in 1987, based on
8 Statutes of 1984, Chapter 1974, and Statutes of 1985,
9 Chapter 668.

10 It was staff's position that those statutes were
11 already decided upon by the Commission. And in Issue 4,
12 we said that -- staff said that the Commission doesn't
13 have jurisdiction to change that decision without -- so
14 what Mr. ^{Kaye}~~Leonard~~ is proposing relate to this prior
15 *Domestic Violence* test claim, the analysis indicates that
16 the activities are basically encompassed on this item
17 already, in the old 1987 parameters and guidelines, the
18 activity that he's proposing putting in the current
19 Parameters and Guidelines.

20 So the one time actually we treated it separately
21 depending on the activity. The activity of actually
22 doing it, we said there's no jurisdiction over the
23 activity of putting it in the policy. Staff's position
24 was that that was something that the test claimant chose
25 to do during a time when the Legislature had suspended

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1 the activity, so they did that at their discretion, and
2 it wasn't mandated at the time that they did it. And
3 as a one-time activity, that's no longer reimbursable.
4 So those are the -- and this all has to do with Penal
5 Code -- the amendments to Penal Code 1307(c)(7) and
6 (c)(9)(D).

7 So the other thing that I wanted to correct, that
8 Mr. ~~Leonard~~^{Kaye} said, was that this is the only test claim
9 that was suspended. There haven't been any other
10 suspended. It was Statutes of '84, Chapter 1609 and
11 Statutes of '85, Chapter 668.

12 Let me correct what I said. The only one at issue
13 that was suspended in the budget. Every year, for the
14 last several years, except for the last fiscal year,
15 '03-04.

16 CHAIR SHEEHAN: Okay. Yes, Paula?

17 MS. HIGASHI: I just wanted to note a correction for
18 the record. When Mr. Feller referred to "Mr. Leonard,"
19 he meant "Mr. Leonard Kaye."

20 MR. FELLER: Thank you. I'm sorry.

21 MR. KAYE: Okay, yes, that --

22 CHAIR SHEEHAN: He was getting very familiar.

23 MR. KAYE: That clears up my first response. Thank
24 you. I appreciate that, Paula.

25 MS. HIGASHI: And then the other point I wanted to

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1 make is, I just have a question for Mr. Kaye. That is:
2 Are you telling us today that what you are going to do,
3 is propose to consolidate Parameters and Guidelines,
4 or --

5 MR. KAYE: No. Okay, maybe I can step forward. As
6 we just heard from Mr. Feller, the matter -- and I don't
7 know if you all followed along every aspect that he
8 mentioned, which is very, very complex, I think most
9 would agree on that -- but I plan on stating in plain
10 language, in the Parameters and Guidelines -- and
11 I will stipulate that such activities as we're talking
12 about, transporting the victims when, you know, they were
13 in this horrendous situation, and medical care is not
14 reimbursable as herein and so forth; but to indicate
15 that -- and we could argue it at great length, as to
16 whether it's implicated in suspended mandates or it's
17 actually been suspended or it is encompassed in suspended
18 mandates; but just in plain language, to indicate that
19 should this matter, as the Commission has correctly
20 stated, which I quoted -- should the suspension not be
21 enforced in a particular year, that these two services,
22 as the Commission has stated, would be mandated services.

23 Now, whether they're reimbursable or not is a
24 technical matter. But I would simply like to provide
25 notice to claimants and the State Controller's office,

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1 their auditors and so forth, that it is not a simple
2 matter; and that there's also been precedent for,
3 included in the Parameters and Guidelines, limitations
4 thereto. And so we can -- and it's been historical
5 practice to indicate what is not covered in the
6 Parameters and Guidelines. And I'd be happy to add in
7 that. But this is sort of going over into your
8 proceedings on Parameters and Guidelines.

9 So all I'd like to do at this point in time, so that
10 it doesn't appear strange and so forth, is to indicate
11 that this is my intent to cover this, and that we've
12 thought about this during the administrative proceedings
13 pursuant to this claim.

14 Thank you.

15 CHAIR SHEEHAN: Did you want to add anything, Paula?

16 MS. HIGASHI: No. I appreciated Mr. Kaye reminding
17 himself that we were talking about the test claim --

18 CHAIR SHEEHAN: Right.

19 MS. HIGASHI: -- instead of the Parameters and
20 Guidelines.

21 CHAIR SHEEHAN: Okay. Yes, Mr. Barnes?

22 MEMBER BARNES: I think you're right. The
23 consideration of what goes into the Parameters and
24 Guidelines is a separate issue, and we'll deal with that
25 when you submit that to us and when we have the item

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1 before us.

2 I would, just as a suggestion, this may actually be
3 more of an issue to be considered in the claiming
4 instructions that the Controller's office sets out, to
5 try and do some consolidation or some at least, you know,
6 referencing back and forth between the various matters
7 on this thing. So I would encourage you to contact the
8 Division of Accounting and Reporting. And I think we'd
9 be glad to sit down with you and talk to you about this,
10 and maybe we can make some clarifications in there that
11 would achieve the issue that you're looking for.

12 MR. KAYE: Yes, I appreciate that. And I think most
13 claimants, in trying to figure out what's reimbursable
14 for what periods, would also appreciate that very much.

15 Thank you.

16 CHAIR SHEEHAN: It sounds like you have a couple of
17 options to pursue.

18 MR. KAYE: Yes.

19 CHAIR SHEEHAN: Any other comments or questions from
20 the Commission members?

21 *(No audible response was heard.)*

22 CHAIR SHEEHAN: Do we have a motion?

23 MEMBER BOEL: I move that we adopt the staff
24 analysis.

25 MEMBER LAZAR: Yes.

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1 CHAIR SHEEHAN: We have a motion and a second to
2 adopt the staff analysis.

3 With no further discussion, Paula, will you call the
4 roll?

5 MS. HIGASHI: Mr. Hiber?

6 MEMBER HIBER: Aye.

7 MS. HIGASHI: Mr. Lazar?

8 MEMBER LAZAR: Aye.

9 MS. HIGASHI: Mr. Barnes?

10 MEMBER BARNES: Aye.

11 MS. HIGASHI: Ms. Boel?

12 MEMBER BOEL: Aye.

13 MS. HIGASHI: And Ms. Sheehan?

14 CHAIR SHEEHAN: Aye.

15 MS. HIGASHI: The motion is carried. Item 9.

16 CHAIR SHEEHAN: Now we move to Item 10. And
17 Mr. Feller will present.

18 MR. FELLER: Yes, this is the Proposed Statement of
19 Decision for the *Domestic Violence Arrest and Victim*
20 *Assistance* claim, 98-TC-14. The sole issue before the
21 Commission is whether the Proposed Statement of Decision
22 accurately reflects the decision made by the Commission
23 on this test claim.

24 Staff recommends that the Commission adopt the
25 Proposed Statement of Decision, which accurately reflects

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1 the staff recommendation on the claim. Minor changes
2 including those to reflect hearing testimony and vote
3 count will be included when issuing the final Statement
4 of Decision.

5 CHAIR SHEEHAN: Thank you.

6 Any questions for Mr. Feller?

7 *(No audible response was heard.)*

8 CHAIR SHEEHAN: Any further comments?

9 MR. KAYE: No comment.

10 CHAIR SHEEHAN: Do I have a motion?

11 MEMBER HIBER: Move the staff recommendation.

12 MEMBER BOEL: I second.

13 CHAIR SHEEHAN: We have a motion and a second to
14 move the staff recommendation.

15 No further discussion. Paula, can you call the
16 roll?

17 MS. HIGASHI: Mr. Lazar?

18 MEMBER LAZAR: Aye.

19 MS. HIGASHI: Mr. Barnes?

20 MEMBER BARNES: Aye.

21 MS. HIGASHI: Ms. Boel?

22 MEMBER BOEL: Aye?

23 MS. HIGASHI: Mr. Hiber?

24 MEMBER HIBER: Aye.

25 MS. HIGASHI: Ms. Sheehan?

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1 CHAIR SHEEHAN: Aye.

2 MS. HIGASHI: The motion is carried.

3 CHAIR SHEEHAN: That motion carries.

4 MR. KAYE: Thank you.

5 CHAIR SHEEHAN: Thank you.

6 That takes us to Item Number 12.

7 MS. HIGASHI: Change books.

8 CHAIR SHEEHAN: We have to get rid of the big book
9 and go to the other book. We killed a few trees at this
10 meeting.

11 Okay, so who will be --

12 MS. HIGASHI: We're now up to the items that will be
13 taken off of the consent calendar.

14 CHAIR SHEEHAN: Correct.

15 MS. HIGASHI: And Item 12 will be presented by Cathy
16 Cruz.

17 CHAIR SHEEHAN: Okay, Cathy, do you want to proceed?

18 And do we have any parties who would like to come
19 before us on this?

20 MR. CAYAGO: Nelson Cayago, Department of Finance.

21 CHAIR SHEEHAN: Go ahead.

22 MS. CRUZ: Good morning.

23 On May 6th, 2002, the Clovis Unified School District
24 requested an amendment to the original Parameters and
25 Guidelines in order to establish a uniform cost allowance

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1 for the *Pupil Health Screenings* program. Staff proposes
2 separate uniform allowances for each reimbursable
3 component. This approach limits the uniform rates to the
4 applicable portion of the population of enrolled
5 kindergartners and new first-time -- first-grade pupils
6 for each reimbursable component. The proposed allowances
7 cover all the direct and indirect costs of performing the
8 activities described in section IV, and are based on all
9 the Controller's claims data for fiscal years 1998-99
10 through 2000-2001. Moreover, on September 29, 2004,
11 Governor Schwarzenegger ^{signed} Assembly Bill 2855 which,
12 operative January 1st, eliminates the statistical
13 reporting requirement. Thus, staff limited the
14 reimbursement period for this activity to December 31,
15 2004.

16 A draft staff analysis was issued on February 2nd
17 of this year; and the final staff analysis was issued
18 on November 4th. The claimant filed comments on the
19 draft, but no other comments were received. The
20 Department of Finance has requested that this item be
21 removed from the consent calendar so that they can read
22 their comments into the record.

23 Staff recommends that the Commission adopt the
24 proposed amendment and authorize staff to make any
25 non-substantive technical corrections to the P's & G's,

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1 following the hearing.

2 Will the parties and representatives please state
3 your name for the record?

4 MR. CAYAGO: Nelson Cayago, Department of Finance.

5 CHAIR SHEEHAN: Why don't you go ahead?

6 MR. CAYAGO: Okay, just for the record, we wanted
7 to state our preference, that the reimbursable costs be
8 based on audited claims rather than ~~audited~~ ^{unaudited} -- that we do
9 understand that this isn't required by the Commission
10 policy.

11 CHAIR SHEEHAN: Well, you answered my question, why
12 it got pulled off.

13 All right, any comments?

14 *(No audible response was heard.)*

15 CHAIR SHEEHAN: Response?

16 MS. CRUZ: Well, this was argued when they filed
17 comments to the draft before. And staff found that using
18 unaudited claims data has been the practice, even when
19 claims were requested to be put into SMAS. So it's been
20 our practice to use what was the best information before
21 us.

22 CHAIR SHEEHAN: What we have?

23 MS. CRUZ: Unaudited claims.

24 CHAIR SHEEHAN: Would you like to comment on this?

25 MEMBER BARNES: I'll just comment. And, I mean, I

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1 think you know the background on this. We get thousands
2 and thousands of claims, and we have a short time frame
3 to help you with your estimate.

4 There is insufficient time to go out and do field
5 audits of all of those claims prior to developing this
6 estimate. There is a desk audit that is performed, which
7 I think you'll find in some cases here, in cooperation
8 with the staff, we've identified to help to identify a
9 couple of things that ought to be used to adjust this
10 estimate.

11 So I think as a conceptual idea, I think we'd all
12 like to see audited claims as part of the estimate. But
13 as a practical matter, it's just not feasible.

14 CHAIR SHEEHAN: Any other comments from the
15 Commissioners?

16 *(No audible response was heard.)*

17 CHAIR SHEEHAN: I think Mr. Barnes probably stated
18 it well, that in an ideal world, I think that's where we
19 would be.

20 All right, no further discussion?

21 *(No audible response was heard.)*

22 CHAIR SHEEHAN: Did we have a motion?

23 MEMBER HIBER: I move the staff recommendation.

24 MEMBER LAZAR: Second.

25 CHAIR SHEEHAN: All right, we have a motion and a

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1 second to move the staff recommendation.

2 No further discussion. Paula, can you call the
3 roll?

4 MS. HIGASHI: Mr. Barnes?

5 MEMBER BARNES: Aye.

6 MS. HIGASHI: Ms. Boel?

7 MEMBER BOEL: Aye.

8 MS. HIGASHI: Mr. Hiber?

9 MEMBER HIBER: Aye.

10 MS. HIGASHI: Mr. Lazar?

11 MEMBER LAZAR: Aye.

12 MS. HIGASHI: Ms. Sheehan?

13 CHAIR SHEEHAN: Aye.

14 CHAIR SHEEHAN: Thank you.

15 MR. CAYAGO: Thank you.

16 CHAIR SHEEHAN: Item 15.

17 MS. HIGASHI: Item 15. Nancy Patton will present
18 this item.

19 ~~MEMBER~~ ^{Ms.} PATTON: Good morning. The test claim
20 requires each school district and county office of
21 education to develop, adopt and update comprehensive
22 school safety plans that are relevant to the safety needs
23 of each school.

24 The claimant filed the test claim on July 10th,
25 1998. On July 30th, 2002, the Commission adopted

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1 amendments to the Statement of Decision that was adopted
2 on August 31st, 2001. In May 2003, the Commission
3 adopted the Parameters and Guidelines. In July of 2003,
4 the Commission adopted a consolidated Parameters and
5 Guidelines for the *Comprehensive School Safety Plans* with
6 the emergency procedures, earthquake procedures and
7 disasters program.

8 Staff developed the proposed statewide cost estimate
9 using summary claims data submitted by claimants and
10 compiled by the State Controllers office. Three hundred
11 eighty-one school districts claimed costs for fiscal
12 years 1997-98 through 2002-2003.

13 The proposed statewide cost estimate includes eight
14 fiscal years for a total of 37,096,034 dollars. This
15 averages to 4.2 million annually in costs to the state.

16 The proposed estimate was issued for comment on
17 August 24, 2004; and a prehearing conference was held on
18 September 30. The final staff analysis and proposed
19 estimates were issued on November 22nd, 2004. No
20 comments were filed on the proposed final estimate.

21 The Department of Finance requested that this item
22 be removed from the consent calendar so that their
23 concerns with the estimate methodology could be read into
24 the record.

25 Staff recommends that the Commission adopt the

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1 proposed estimate.

2 Will the parties and representatives please state
3 your names for the record?

4 MR. CAYAGO: Nelson Cayago, the Department of
5 Finance.

6 Just for the record, again, we wanted to state our
7 preference, that the cost estimates be based on audited
8 claims rather than unaudited.

9 DR. BERG: Hi, I'm Carol Berg, Education Cost
10 Mandated Network.

11 I need to come forward because this is a pattern
12 that has evolved in the last few meetings of the
13 Commission, where the Department of Finance does not
14 respond and then comes forward and pulls something off
15 the consent calendar just prior to the hearing. And I
16 respectfully request that their application to do this
17 at the last minute be denied in the future.

18 Thank you.

19 CHAIR SHEEHAN: Thank you.

20 MR. PALKOWITZ: Good morning. My name is Art
21 Palkowitz on behalf of San Diego Unified.

22 I agree with Ms. Berg. I'm not sure where in the
23 regulations or procedure there was a showing here that
24 would justify this being pulled from five o'clock notice
25 last night to this morning. So I would concur with

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1 Ms. Berg's comments.

2 MR. AGUILERA: Matt Aguilera, Department of Finance.

3 We just are taking the opportunity to articulate the
4 concerns via the public hearing, and that's why we're
5 here.

6 DR. BERG: I would, again, request that they follow
7 the protocol that the claimants are required to do, and
8 that is to file in a proper, timely manner.

9 CHAIR SHEEHAN: Thank you.

10 DR. BERG: Thank you.

11 CHAIR SHEEHAN: We appreciate the comments, and the
12 Commission will take that into consideration.

13 MEMBER LAZAR: Madam Chairman, what is the timely
14 time frame?

15 MR. STARKEY: There are normal time frames for the
16 various proceedings. But because this is an open
17 meeting, in fact, either party would have the ability to
18 come forward and pull things off the Consent Calendar.

19 The consent calendar actually is the exception, not
20 the rule. Things are generally noticed for an open
21 hearing. But for sake of convenience and when there are
22 no objections, then they do go on consent.

23 My suggestion would be, is -- and I appreciate the
24 concerns raised here -- procedurally, what would be
25 helpful if, in fact, rather than a standing objection,

1 if either party is requesting some variance from what
2 everyone thought was going to happen, that if a party
3 actually objects, that they let the Executive Director
4 know right away. Sometimes it's very difficult because
5 if you find out, as sometimes we do, at five o'clock
6 there's a late filing or something like that; but even,
7 you know, five o'clock or the next morning, then the
8 executive director is in a position to basically take
9 an action.

10 But in this case, for example, it's done, it's been
11 done in the past. And there is no objection to deal
12 with. So basically, it just goes forward. So an
13 objection at least gives the executive director something
14 to work with.

15 MS. HIGASHI: Just also for the record, I'd just
16 note that Ms. Patton did state for the record that no
17 comments had been filed during the original comment
18 period. We did have a prehearing conference. The actual
19 dollar amount of the statewide cost estimate has not
20 changed since it was originally issued in draft.

21 MR. AGUILERA: Madam Chair. Finance would just like
22 to note, too, that the comments that we are making are
23 consistent with what our position has been earlier in the
24 process. We're just continuing to articulate what our
25 concerns have been.

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1 CHAIR SHEEHAN: So you did file comments?

2 MS. HIGASHI: No, they didn't.

3 MR. AGUILERA: Not at this particular phase. But
4 with P's & G's, we raised the same issue. So at an early
5 point in the process --

6 CHAIR SHEEHAN: So holistically?

7 MR. AGUILERA: Yes.

8 CHAIR SHEEHAN: In this case or just --

9 MR. AGUILERA: I'd have to check the file.

10 CHAIR SHEEHAN: Okay. Because certainly in terms
11 of -- as we said, I think everybody, including Walt,
12 whose office has to do this, would love to be able to
13 have audited claims, but we're not always in that
14 position.

15 MR. AGUILERA: Right; right. We're just noting what
16 our Department's position has been.

17 MEMBER BOEL: Is this something you plan to continue
18 to do?

19 MR. AGUILERA: It is an ongoing concern for our
20 Department that we raised.

21 CHAIR SHEEHAN: Could we work to send comments in
22 for the record, so that --

23 MR. AGUILERA: Yes, we do.

24 CHAIR SHEEHAN: -- so that we could --

25 MR. AGUILERA: Yes.

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1 CHAIR SHEEHAN: You know, then the Department's
2 position is reflected then. And that may be a good way
3 to do it.

4 MR. AGUILERA: Right.

5 CHAIR SHEEHAN: And especially, unless there's an
6 additional substantive issue that you may want to raise.
7 And certainly, I understand that, and I think our counsel
8 is right. Normally, the consent calendar is just that.
9 And for anyone who has worked around this building,
10 things go on and off on consent calendars very quickly.
11 So, okay, thank you. That at least helps. Thank you for
12 the comments.

13 Okay, any further discussion on this matter?

14 *(No audible response was heard.)*

15 CHAIR SHEEHAN: Do I have a motion?

16 MEMBER LAZAR: I move to adopt the staff
17 recommendation.

18 MEMBER BOEL: I second.

19 CHAIR SHEEHAN: We have a motion and a second to
20 adopt the staff recommendation.

21 With no further discussion, Paula, can you call the
22 roll?

23 MS. HIGASHI: Ms. Boel?

24 MEMBER BOEL: Aye.

25 MS. HIGASHI: Mr. Hiber?

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1 MEMBER HIBER: Aye.

2 MS. HIGASHI: Mr. Lazar?

3 MEMBER LAZAR: Aye.

4 MS. HIGASHI: Mr. Barnes?

5 MEMBER BARNES: Aye.

6 MS. HIGASHI: Ms. Sheehan?

7 CHAIR SHEEHAN: Aye.

8 MS. HIGASHI: Thank you.

9 CHAIR SHEEHAN: What is next?

10 MS. HIGASHI: We're now with the informational staff
11 reports, at the end of the second binder, the small
12 binder. Item 16, Mr. Starkey's public report.

13 MEMBER BARNES: Excuse me.

14 CHAIR SHEEHAN: Mr. Barnes?

15 MEMBER BARNES: Can I just ask a question? I have
16 14 is postponed; is that correct?

17 CHAIR SHEEHAN: 14 was pulled off, yes.

18 MS. HIGASHI: Yes, 14 was postponed.

19 CHAIR SHEEHAN: It was put over.

20 MEMBER BARNES: What is the reason?

21 MS. HIGASHI: The reason for it is that we had been
22 contacted by one of the claimant's representatives,
23 indicating that there was a plan to consider amending
24 claims that had previously been filed. And in light of
25 that fact, we believed that the estimate would be

1 affected.

2 MEMBER BARNES: Okay, thank you.

3 MR. STARKEY: Item 16 is my Chief Counsel's report
4 for the public. These are filed well in advance of
5 litigation. Things sometimes happen faster than the
6 agenda will allow.

7 Just to note, of course, that the new filing is the
8 CSAC-Excess Insurance Authority case, which has already
9 been referenced. There are no recent decisions to
10 report.

11 And with respect to the litigation calendar, the two
12 matters that are listed -- the County of Los Angeles and
13 Los Angeles County Flood Control District case and the
14 City of Artesia case, these cases have been consolidated,
15 so they will appear in future agendas as one item, with
16 the case number "B," as in "boy," "S" as in "Sam,"
17 089769, being the case that will appear in the agenda.
18 But, in fact, it will be these two cases that the court
19 consolidated. And there will be a status conference in
20 those cases on January 31st of next year.

21 Thank you.

22 CHAIR SHEEHAN: Any questions?

23 Thank you.

24 Any questions from the Members?

25 Okay. The next item?

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1 MS. HIGASHI: Item 17 as a status update on AB 2856.
2 Ms. Patton will present this report.

3 MS. PATTON: On September 29th the Governor signed
4 AB 2856. And since that time, the Commission staff has
5 began implementing the provisions of the bill. We
6 conducted our first workshop yesterday with the
7 Department of Finance, the State Controller, the
8 Department of Education and numerous claimant
9 representatives. We thought it was a pretty productive
10 workshop. We had questions that were raised about how
11 we're going to continue to implement the bill. We're
12 planning to have our second workshop on January 27th,
13 which is our next hearing date.

14 We've also proposed a new test claim form, that's
15 the form that the claimants use to submit their test
16 claims. It's up on our Web site for anybody who wasn't
17 at the meeting yesterday. And we're asking for comments
18 on that proposed form to be submitted by December 22nd,
19 2004.

20 And also we are planning our rulemaking calendar.
21 Our staff is in the process of comparing what the new law
22 is with the existing law, and how that's going to affect
23 our regulations. We think it's going to mean substantive
24 changes to our regulations. And the proposed rulemaking
25 calendar for 2005 will be before you at the January

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1 hearing. And other than that, we'll just keep working on
2 it, and we'll keep you updated at the next meeting.

3 CHAIR SHEEHAN: Great.

4 Any questions for Nancy?

5 *(No audible response was heard.)*

6 CHAIR SHEEHAN: Thank you.

7 Paula?

8 MS. HIGASHI: Item 18 is my report.

9 I'd just like to make a couple of points. And if
10 any of you have any questions, please feel free to ask
11 me. But on our pending caseload report for the workload
12 display, I have added a couple of rows to this
13 traditional display. And the third row down is the test
14 claims to be reconsidered based on court action. And
15 then the next row, test claims to be reconsidered as
16 directed by the Legislature.

17 And as you can see, that's where we have had our
18 greatest increase in workload. And all of those
19 reconsiderations from the Legislature, as you're aware,
20 have a statutory time line for completion. And so they
21 have become our priority workload matter, except for
22 cases that were already in progress. So you will be
23 seeing records in the near future coming before you that
24 will be reconsiderations of decisions that were made
25 either by the Board of Control or by the Commission on

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1 State Mandates, at least a few years back.

2 The other matter that I wanted to update you on is,
3 during this last period of time, since the last meeting,
4 I attended a few meetings, and I started to include just
5 very brief updates as to what those meetings were about,
6 so that you would be aware of them, and just our
7 participation. And our budget, obviously, we submitted a
8 BCP. And like all state agencies, we're waiting to see
9 what the Governor's budget will include.

10 And the next hearing agenda, we expect some
11 modifications to be made there, based on the current
12 workload.

13 CHAIR SHEEHAN: Great. Thank you.

14 Any questions from Commission members?

15 Mr. Barnes?

16 MEMBER BARNES: It's my usual question. Any news
17 from Butte County?

18 MS. HIGASHI: Ms. Patton talked with them just
19 recently.

20 MEMBER PATTON: They are now saying they will file
21 their SB 1033 application mid-January.

22 MEMBER BARNES: Okay, thank you.

23 CHAIR SHEEHAN: Anything else from other members?

24 No other questions?

25 *(No audible response was heard.)*

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1 CHAIR SHEEHAN: We move to the public comment
2 period.

3 Is there any public comment? Anyone wishing to
4 address the Commission at this point?

5 *(No audible response was heard.)*

6 CHAIR SHEEHAN: No?

7 All right, then at this time we'll go back into
8 closed session. The Commission will now meet in closed
9 executive session pursuant to Government Code 11126(e),
10 to confer with and receive advice from legal counsel for
11 consideration and action, as necessary and appropriate,
12 upon pending litigation listed on the published notice
13 and agenda and to confer with and receive advice from
14 counsel regarding potential litigation pursuant to
15 Government Code section 11126(a) and 17526.

16 The Commission will also confer on personnel matters
17 list on the published notice and agenda.

18 We will reconvene in open session in approximately
19 15 to 20 minutes.

20 Thank you.

21 *(The Commission met in closed executive session*
22 *from 11:11 a.m. to 11:28 a.m.)*

23 CHAIR SHEEHAN: The Commission met in closed
24 executive session pursuant to Government Code section
25 11126(e), to confer with and receive advice from legal

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1 counsel for consideration and action, as necessary and
2 appropriate, upon the pending litigation listed on the
3 published notice and agenda and potential litigation, and
4 Government Code section 11126(a) and 17526, to confer on
5 personnel matters listed on the published notice and
6 agenda.

7 All of the required reports from the closed session
8 having been made and with no further business to discuss,
9 I will entertain a motion to adjourn.

10 MEMBER BARNES: Before you do that --

11 CHAIR SHEEHAN: Yes.

12 MEMBER BARNES: -- I have one question.

13 And I was looking at our 2005 hearing schedule.

14 MS. HIGASHI: Yes.

15 MEMBER BARNES: And I recall that we postponed the
16 November meeting because of the conflict. And I'm
17 wondering, is there likely to be another conflict because
18 of this date?

19 MS. HIGASHI: We will have to check with CSAC, to
20 see if they've set their dates. We can also check with
21 CSBA. Because sometimes they all seem to have their
22 meetings in the same period of time.

23 MEMBER BARNES: Right. I mean, to be real honest,
24 you know, having it moved to December, was actually kind
25 of nice, anyway.

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1 MS. HIGASHI: Okay.

2 MEMBER BARNES: So I don't know how you feel about
3 it or how the other members feel about it, but it might
4 be something that we'd want to consider. I guess what I
5 would ask is, if you could check into it and report back.

6 MS. HIGASHI: I'll check with all of the parties.
7 And if there is no objection from any of you regarding a
8 December date, then what I would do is, if I can get
9 agreement, that I will put it on the next agenda.

10 MEMBER BOEL: As long as it's earlier in December.
11 Yes, don't do it on the 23rd.

12 CHAIR SHEEHAN: Yes, we don't want the 23rd.

13 MS. HIGASHI: No, we are thinking about
14 approximately the same time.

15 MEMBER BARNES: We're thinking about the same
16 time --

17 CHAIR SHEEHAN: The first or second week.

18 MEMBER BARNES: -- the first or second week.

19 MS. HIGASHI: That works well for us.

20 MEMBER BARNES: Great.

21 CHAIR SHEEHAN: Sounds fine.

22 MS. HIGASHI: We're just following the bimonthly
23 calendar.

24 CHAIR SHEEHAN: All right, any other questions?

25 MEMBER BOEL: Motion to adjourn.

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1 MEMBER LAZAR: Second.

2 CHAIR SHEEHAN: So I have a motion to adjourn and a
3 second.

4 All those in favor?

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

6 CHAIR SHEEHAN: Any opposed?

7 *(No audible response was heard.)*

8 CHAIR SHEEHAN: We are adjourned.

9 MS. HIGASHI: Thank you very much.

10 *(Proceedings concluded at 11:31 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 testimony of said witnesses was 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 30th of December 2004.



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