

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
December 9, 2005

Present: Member Anne Sheehan
Representative of the Director of the Department of Finance
Member Windie Scott
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Jan Boel
Representative of the Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member

Absent: Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Vice Chairperson Scott called the meeting to order at 10:32 a.m., and yielded the chair to Member Sheehan. She welcomed the Commission's two new members, Sarah Olsen and Steve Worthley, and indicated that Member Glaab would be absent due to family illness.

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

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526. Discussion and action, if appropriate, on recommendation of Personnel Sub-Committee on selection and appointment of Chief Legal Counsel. The Commission may conduct interviews.

Member Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Member Sheehan reported that the Commission met in closed executive session pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

Member Sheehan announced that the Commission appointed Ms. Camille Shelton as the new Chief Legal Counsel. She again welcomed and introduced Member Worthley, Vice-Chair of the Tulare County Board of Supervisors, and Member Olsen, public member, and stated that Member Glaab was absent due to family illness. Members Worthley and Olsen both stated that

they look forward to serving on the Commission.

APPROVAL OF MINUTES

Item 1 September 27, 2005

Upon motion by Member Boel and second by Member Scott, the minutes were unanimously adopted. Member Worthley and Member Olsen abstained.

PROPOSED CONSENT CALENDAR

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

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

- Item 8 *Crime Victim's Domestic Violence Incident Reports*, 99-TC-08
County of Los Angeles, Claimant
Family Code Section 6228
Statutes 1999, Chapter 1022 (AB 403)
- Item 9 *Peace Officer Personnel Records: Unfounded Complaints Against Peace Officers, and Discovery of Peace Officer Personnel Records*, 00-TC-24 and 00-TC-25
Cities of Hayward and San Mateo, Claimants
Education Code Section 1043, Subdivision (a); Penal Code Sections 832.5, Subdivisions (b) and (c), and 832.7, Subdivisions (b) and (e)
Statutes 1978, Chapter 630 (SB 1436); Statutes 1994, Chapter 741 (SB 2058)
- Item 11 *Handicapped and Disabled Students II*, 02-TC-40, 02-TC-49
Counties of Los Angeles and Stanislaus Counties, Claimants
Government Code Sections 7572.55 and 7576
California Code of Regulations, Title 2, Sections 60000 et seq.
(Emergency Regulations Effective July 1, 1998 [Register 98, No. 26],
Final Regulations Effective August 9, 1999 [Register 99, No. 33])
Statutes 1994, Chapter 1128 (AB 1892), Statutes 1996, Chapter 654 (AB 2726)

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

- Item 12 *Photographic Record of Evidence*, 04-PGA-09 (04-RL-9807-09)
Penal Code Section 1417.3
Statutes 1985, Chapter 875 (AB 556); Statutes 1986, Chapter 734 (AB 2715);
and Statutes 1990, Chapter 382 (AB 3408)
- Item 13 *Residential Care Services*, 04-PGA-12 (CSM-4292)
Welfare and Institutions Code Sections 4075, 4076, and 5705.6
Statutes 1985, Chapter 1352 (SB 155); Title 9, California Code of Regulations,
Section 549, DMH Letters No. 85-40, 86-14, 86-26, 86-30, 87

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2004, CHAPTER 895 (AB 2855) AND STATUTES 2005, CHAPTER 677
(SB 512)

- Item 14 *Pupil Suspension: Parent Classroom Visits*, 04-PGA-17 (CSM-4474)
Education Code Section 48900.1
Statutes 1988, Chapter 1284; Statutes 1989, Chapter 213
- Item 15 *Pupil Classroom Suspensions: Counseling*, 04-PGA-23 (CSM-4458)
Education Code Sections 48900.1 and 48910
Statutes 1977, Chapter 965 (AB 530), Statutes 1983, Chapter 498 (SB 813),
Statutes 1988, Chapter 1284 (AB 3535)
- Item 16 *School Crimes Reporting, Statistics and Validation and School Crimes
Reporting II*, 05-PGA-11 (97-TC-03)
Penal Code Sections 628.2 and 628.6
Statutes 1984, Chapter 1607 (AB 2483); Statutes 1988, Chapter 78 (AB 2583)
Statutes 1989, Chapter 1457 (SB 271); Statutes 1992, Chapter 759 (AB 1248)
Statutes 1995, Chapter 410 (SB 882)
California Department of Education's
"Standard School Crime Reporting Forms" and
Title 5, California Code of Regulations sections 700-704
California Department of Education Guidelines for School Crimes Reporting
- Item 17 *Caregiver Affidavits*, 04-PGA-26 (CSM-4497)
Education Code Section 48204, Subdivision (d)
Family Code Sections 6550 and 6552
Statutes of 1994, Chapter 98 (SB 592)
- Item 18 *Pupil Exclusions*, 04-PGA-28 (CSM-4457 & 4477)
Education Code Sections 48213 and 48214
Statutes 1978, Chapter 668 (AB 2191)
- Item 19 *Graduation Requirements*, 04-PGA-30, (CSM-4435)
Education Code Section 51225.3
Statutes 1983, Chapter 498 (SB 813)
- Item 20 *National Norm-Referenced Achievement Test*, 05-PGA-03 (04-RL-9723-01)
(formerly *Standardized Testing and Reporting (STAR)*)
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630,
60640, and 60641
Statutes 1997, Chapter 828 (SB 376)
California Code of Regulations, Title 5, Sections 850-870

SET ASIDE OR AMEND PARAMETERS AND GUIDELINES BASED ON
STATUTES 2005, CHAPTER 72 (AB 138)

- Item 21 *Presidential Primaries 2000*, 05-PGA-02 (99-TC-04)
Elections Code Sections 15151 and 15375
Statutes 1999, Chapter 18 (SB 100)

Member Boel moved for adoption of the consent calendar, which consisted of items 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21. With a second by Member Worthley, the consent calendar was unanimously adopted.

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

Item 3 Staff Report (if necessary)

No appeals were filed.

Paula Higashi, Executive Director, swore in the parties and witnesses participating in the hearing on agenda items 4, 5, 6, and 7.

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

Item 4 *Local Recreational Areas: Background Screenings, 01-TC-11*
City of Los Angeles, Claimant
Public Resources Code Section 5164, Subdivisions (b) (1) and (2),
Statutes 2001, Chapter 777 (AB 351)

Eric Feller, Commission Counsel, presented this item. He stated that this test claim statute originally prohibited cities, counties, or special districts from hiring volunteers or employees in positions having supervisory or disciplinary authority over minors in specified recreational areas if the candidate had been convicted of certain offenses. Mr. Feller noted that in 2001, the statute was amended to require the specified prospective employees or volunteers to fill out applications and inquire after any past offenses, and to be screened by the Department of Justice.

Staff found that the activities of screening prospective employees or volunteers who meet the criteria in the statute and inquiring after their criminal histories are reimbursable. Staff recommended that the Commission adopt the staff analysis, which approves the test claim.

Parties were represented as follows: Harold Fujita, on behalf of the City of Los Angeles, Department of Recreation and Parks; Allan Burdick, on behalf of the California State Association of Counties; and Susan Geanacou, with the Department of Finance.

Mr. Fujita supported staff's conclusions and requested that the Commission adopt the staff recommendation.

Member Boel requested confirmation that the cost of doing the analysis of the employees, for fiscal year 2001-2002, was approximately \$32,000. Mr. Fujita affirmed.

Mr. Burdick also supported the staff recommendation. He commented on behalf of the local government education community, that they were thankful for having a full Commission.

Ms. Geanacou supported the staff analysis.

Member Boel asked staff how much time was spent completing the test claim analysis.

Mr. Feller estimated approximately 20 to 30 hours. Member Boel commented that this was a relatively small amount of money for a large use of state resources. She noted that later in the hearing, there would be some discussion about changing the mandates process. She stated that this was an ideal example of why the current process is an inefficient one for reimbursing locals.

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

Item 5 Proposed Statement of Decision
Local Recreational Areas: Background Screenings, 01-TC-11
See Above

This item is the proposed Statement of Decision for the previously heard test claim.

Member Boel made a motion to adopt the proposed Statement of Decision, which was seconded by Member Worthley.

Eric Feller, Commission Counsel, noted staff's recommendation that the Commission allow minor changes to be made to the final Statement of Decision, including hearing testimony and vote count.

The motion carried unanimously.

Item 6 *Agency Fee Arrangements, 00-TC-17, 01-TC-14*
Clovis Unified School District, Claimant
Government Code Sections 3543, 3546, and 3546.3
Statutes 1980, Chapter 816 (SB 230); Statutes 2000, Chapter 893 (SB 1960)
Statutes 2001, Chapter 805 (SB 614)

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the test claim addresses the statutory requirement for the payment of fair-share service fees or agency fees paid by school districts or community college districts to the exclusive representative organization. Under prior law, Ms. Shelton explained that the payment of agency fees was the subject of collective bargaining under the Educational Employment Relations Act. The test claim legislation created the statutory requirement for the payment of such fees, thus removing the issue from the collective bargaining process.

Staff found that a portion of the test claim statutes and regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution. Staff recommended that the Commission adopt the staff analysis, which partially approved this test claim.

Parties were represented as follows: Keith Petersen, on behalf of Clovis Unified School District; and Susan Geanacou, with the Department of Finance.

Mr. Petersen stood on the written record, noting that although he did not agree, all the issues of concern were addressed.

Ms. Geanacou recommended that the Commission adopt the staff analysis.

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

Item 7 Proposed Statement of Decision
Agency Fee Arrangements, 00-TC-17, 01-TC-14
See Above

Camille Shelton, Chief Legal Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, and give staff the authority to make minor changes for the vote count and hearing testimony.

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Worthley, 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 TO PARAMETERS AND GUIDELINES

Item 10 *Enrollment Fee Collection and Enrollment Fee Waivers*, 99-TC-13, 00-TC-15 Los Rios and Glendale Community College Districts, Claimants Education Code Section 76300; California Code of Regulations, Title 5, Sections 58500-58508; 58600, 58601, 58610 – 58613, 58620, 58630 Statutes 1984xx, Chapter 1 (AB 1xx); Statutes 1984, Chapters 274 (AB 207) and 1401 (AB 3776); Statutes 1985, Chapters 920 (AB 602) and 1454 (AB 2262); Statutes 1986, Chapters 46 (AB 2352) and 394 (SB 993); Statutes 1987, Chapter 1118 (AB 2336); Statutes 1989, Chapter 136 (SB 653); Statutes 1991, Chapter 114 (SB 381); Statutes 1992, Chapter 703 (SB 766); Statutes 1993, Chapters 8 (AB 46), 66 (SB 399), 67 (SB 1012), and 1124 (AB 1561); Statutes 1994, Chapters 153 (AB 2480) and 422 (AB 2589); Statutes 1995, Chapter 308 (AB 825); Statutes 1996, Chapter 63 (AB 3031); and Statutes 1999, Chapter 72 (AB 1118)

Item 10 was postponed to the January hearing.

AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004, CHAPTER 313 (AB 2224)

Item 22 *Animal Adoption*, 04-PGA-01 and 04-PGA-02 (98-TC-11) State Controller's Office, Requestor Civil Code Sections 1834, 1846; Food and Agriculture Code Sections 31108, 31752, 31752.5, 31753, 32001, and 32003 Statutes 1998, Chapter 752 (SB 1785)

Item 22 was postponed to the January hearing.

STAFF REPORTS

Item 23 Acting Chief Legal Counsel's Report (info) Recent Decisions, Litigation Calendar

Camille Shelton, Chief Legal Counsel, had nothing further to add to her report.

Item 24 Executive Director's Report (info/action) Workload, Staffing, Legislation, and Mandate Reform

Ms. Higashi reported the following:

- *Workload.* There are 109 test claims and 103 incorrect reduction claims pending hearing and determination. The second rulemaking will be published and in effect on December 18.
- *Mandate Reform.* Commission staff conducted a workshop on mandate reform legislation on December 8. Nancy Patton, Legislative Coordinator, noted that Members Jan Boel and Francisco Lujano were present, as well as representatives of the California State Association

of Counties, the SB-90 Service, the Legislative Analyst's Office, the Assembly Budget Committee, the State Controller's Office, school districts, and cities and counties. She stated that the Department of Finance staff was unable to attend the meeting because they were completing the Governor's proposed budget, and thanked the participants for attending the workshop.

Ms. Patton reported that Commission staff presented a list of concepts ranging from substantive to technical changes to the existing process. Parties recommended that a common goal be formulated and more global reforms be discussed. Participants agreed that they were more interested in creating a new, more streamlined process for approving and funding mandates.

At this workshop, Commission members stated their belief that the Commission was also interested in addressing global changes. Some participants, however, questioned whether the Administration and the Legislature were committed to large-scale mandate reform this year, cautioning that without their express interest, it would be extremely difficult to go forward with the discussions.

Ms. Patton indicated that other participants were also interested in addressing reforms to the existing process, such as the incorrect reduction claim process and the state mandates apportionment system. Member Boel requested that the parties submit both large-scale reform proposals and proposals to the existing process for Commission review. Staff will issue a letter requesting proposals.

Overall, participants agreed that the mandates process and reimbursement process must take less time and that there needs to be discussion with the entire Commission as to whether meetings to discuss large-scale mandates reform should commence. However, Ms. Patton cautioned that the key stakeholders must be present at these meetings in order for them to be successful. She added that there must be give and take in negotiations, participants must be willing to compromise, and revisions to the existing process may be necessary in some cases.

Member Boel commented that there would be greater chance of success with a package where everybody got a little and gave a little. However, she was concerned about staff spending too much time on this and there not being real movement and interest in the effort.

Member Lujano stated that Ms. Patton's report was an accurate summary of the workshop.

Member Worthley commented that the goal of government should always be to make improvements. He supported whatever the Commission could do.

Member Boel added that one of the problems with the process is that much of the Legislature has moved on by the time the Commission decides a mandate. Therefore, legislators do not realize the fiscal impact of their decisions. She referenced a proposal mentioned by Steve Keil, with the California State Association of Counties, at the workshop.

Member Sheehan noted that as a newcomer to mandates, it struck her that there had to be a more efficient process. She suggested that all parties get together to discuss possible areas of agreement.

Steve Keil, on behalf of the California State Association of Counties and the League of California Cities, appreciated that the Commission was willing to step up and attempt to facilitate some kind of discussion. He outlined two approaches: 1) find individual changes in the system that may have some consensus; or 2) start out with a common objective and agree

to mutually give up things in order to accommodate that goal. If all parties are willing to participate, he urged the Commission to continue to devote staff time to trying to reach consensus.

Ms. Higashi stated that staff needed guidance from the Commission in terms of how to proceed. She noted that there is major concern that if this was not high on the priority list for the Department of Finance and the Administration this year, any tinkering would be unproductive.

Member Sheehan stated that she would very much like mandates reform to be high on the priority list. Between now and the next hearing, Member Sheehan committed to speaking with representatives of the Governor's Office, the Director of the Department of Finance, the leadership on both sides of the Legislature, and the claimants to discuss convening a working group to identify some of the issues and to get their commitment. She asked staff to propose a process for facilitating discussions on mandate reform at the January hearing. She believes that the issues were too important not to spend the time addressing them. She encouraged those interested in participating to contact Commission staff.

Marianne O'Malley, with the Legislative Analyst's Office, noted that a copy of the Legislative Analyst's Office perspective on the mandate problem and its recommendations would be submitted.

Ms. Higashi stated that the SB 1033 process issue may require a separate working group, that a separate subcommittee on this issue may be helpful, and suggested that Member Worthley may be interested in participating. Member Worthley expressed his interest in participating. Member Sheehan also suggested that Member Olsen may want to participate. Member Olsen responded that she is really interested in the SB 1033 process.

- *New Personnel.* Deborah Borzelleri, Commission Counsel, and Lorenzo Duran, Office Technician, were introduced.
- *Next Agenda.* Tentative items for the January agenda were noted.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126.

PENDING LITIGATION

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

New Cases

1. *Eastside Unified High School District v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS01256
CSM Case No. 05-L-03 [*Graduation Requirements, IRC*]
2. *Woodland Joint Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01401
CSM 05-L-05 [*Graduation Requirements, IRC*]

Other Cases

3. *Yuba City Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01237, CSM Case No. 05-L-01 [*Graduation Requirements IRC*]
4. *John Swett Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01262, CSM Case No. 05-L-02 [*Graduation Requirements, IRC*]
5. *West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01253 CSM Case No. 05-L-04 [*Graduation Requirements, IRC*]
[Filed on behalf of 12 school districts: West Contra Costa USD, Anderson Union High School District, Center USD, Lake Tahoe USD, Lincoln USD, Linden USD, Novato USD, Ojai USD, Placer Union High School District, San Juan USD, Stockton USD, Vallejo City USD]
6. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01401, CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
9. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01568, CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
10. *San Jose Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01569, CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
11. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01570, CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
12. *Clovis Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01702, CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
13. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 04CS00028, CSM Case No. 03-L-10 [*Graduation Requirements IRC*]

14. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
15. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
16. *Southern California Association of Governments, et al. v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS00956, CSM Case No. 04-L-04 [*Regional Housing Needs Determination-Councils of Government*]

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

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


Hearing no further comments, Member 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.

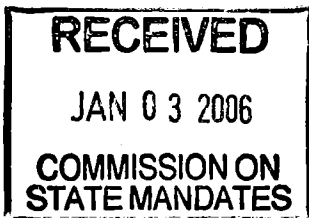
REPORT FROM CLOSED EXECUTIVE SESSION

Member 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.

ADJOURNMENT

Hearing no further business, Member Sheehan adjourned the meeting at 11:41 a.m.


PAULA HIGASHI
Executive Director



ORIGINAL

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PUBLIC HEARING

COMMISSION ON STATE MANDATES

--oOo--

TIME: 10:32 a.m.

DATE: Friday, December 9, 2005

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported by: Daniel P. Feldhaus
California Certified Shorthand Reporter #6949
Registered Diplomate Reporter, Certified Realtime Reporter

Daniel P. Feldhaus, C.S.R., Inc.
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FeldhausDepo@aol.com

A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
Representative for MICHAEL GENEST
Director
Department of Finance

JAN BOEL
Representative for SEAN WALSH
Director
Office of Planning and Research

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

WINDIE SCOTT
Representative for STEVE WESTLY
State Controller

J. STEVEN WORTHLEY
Supervisor
County of Tulare

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director

CAMILLE SHELTON
Chief Legal Counsel

NANCY PATTON
Assistant Executive Director

ERIC FELLER
Commission Counsel

A P P E A R A N C E S

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10:53

Appearing Re Item 4:

On Behalf of City of Los Angeles:

HAROLD T. FUJITA, IPMA-CP
City of Los Angeles
Department of Recreation and Parks
1200 W. Seventh Avenue, Suite 310
Los Angeles, CA 90017

On Behalf of CSAC SB 90 Service:

ALLAN BURDICK
CSAC SB 90 Service

On Behalf of Department of Finance:

SUSAN S. GEANACOU
Department of Finance
915 L Street
Sacramento, California

Appearing Re Item 6:

On Behalf of Clovis Unified School District:

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

On Behalf of Department of Finance:

SUSAN S. GEANACOU
Department of Finance

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Commission on State Mandates - December 9, 2005

1 BE IT REMEMBERED that on Friday, December 9,
2 2005, commencing at the hour of 10:32 a.m., thereof, at
3 the State Capitol, Room 126, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

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

9 And at this time I'd like to yield the chair to
10 Anne Sheehan.

11 CHAIR SHEEHAN: Thank you.

12 The meeting of the Commission on State Mandates
13 for December 9th has come to order.

14 I would like to welcome our new members, Sarah
15 Olsen and Steve Worthley, to the Commission.

16 Welcome.

17 MEMBER WORTHLEY: Thank you.

18 CHAIR SHEEHAN: And I think when we go in open
19 session with the audience, we'll give you an opportunity
20 to introduce yourself and give a little bit of
21 background.

22 You're welcome to do it for all of us here, if
23 you'd like to.

24 MEMBER WORTHLEY: Once will be plenty, I'm
25 sure.

1 CHAIR SHEEHAN: Right. But we are very grateful
2 to have you here.

3 MEMBER WORTHLEY: Thank you.

4 CHAIR SHEEHAN: It is great.

5 Now, I assume both of you have done all of that?

6 MEMBER OLSEN: Yes.

7 CHAIR SHEEHAN: All right. Let' see --

8 MS. HIGASHI: I should do roll call.

9 CHAIR SHEEHAN: Yes, why don't you call the
10:33 10 roll, and then we'll go into closed session?

11 MS. HIGASHI: Ms. Boel?

12 MEMBER BOEL: Here.

13 MS. HIGASHI: Mr. Glaab is absent today due to
14 family illness.

15 Mr. Lujano?

16 MEMBER LUJANO: Here.

17 MS. HIGASHI: Ms. Olsen?

18 MEMBER OLSEN: Here.

19 MS. HIGASHI: Ms. Scott?

10:33 20 MEMBER SCOTT: Windie Scott for Steve Westly.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: And Ms. Sheehan?

24 CHAIR SHEEHAN: Here.

25 MS. HIGASHI: We have a quorum.

1 CHAIR SHEEHAN: Yes. All right, so the
2 Commission will now meet in closed executive session
3 pursuant to Government Code section 11126,
4 subdivision (a) and 17526, to confer on personnel matters
5 listed on the published notice and agenda. And we will
6 reconvene in open session at this location, hopefully in
7 less than 30 minutes. In ten, fifteen minutes at the
8 most. So we are now in closed session.

9 *(The Commission met in closed executive*
10 *session from 10:34 a.m. to 10:47 a.m.)*

10:46 10 CHAIR SHEEHAN: I'd like to call the meeting of
11 Commission on State Mandates back into public session.

12 The Commission met in closed executive session
13 pursuant to Government Code section 11126,
14 subdivision (a), and 17526, to confer on personnel
15 matters listed on the published notice and agenda. And
16 the Commission appointed Camille Shelton as our new Chief
17 Legal Counsel. And we are very pleased to welcome
18 Camille in her new position.

10:48 20 MS. SHELTON: Thank you very much.

21 CHAIR SHEEHAN: Thank you.

22 *(Applause)*

23 CHAIR SHEEHAN: Okay, back to the regular, we
24 would like to welcome our two new members, Steve Worthley
25 and Sarah Olsen, to the Commission on State Mandates.

1 Mr. Worthley was appointed as the new local
2 government representative. He currently serves as the
3 vice-chair of the Tulare County Board of Supervisors.
4 Previously, he was an associate at the law firm of
5 Carlson and Stouffer, and served as legal counsel to the
6 Sequoia Forest Industries and Product Service Network.

7 Welcome, Mr. Worthley.

8 Would you like to --

9 *(Applause)*

10:49 10 MEMBER WORTHLEY: Well, I just want to say,
11 thank you for welcoming me here today, and to the staff,
12 who have been very kind, and I've had a chance to visit
13 with them previous to this meeting, so I would get some
14 feel for the lay of the land. And so I look forward to
15 serving on this Commission.

16 Thank you.

17 CHAIR SHEEHAN: Well, welcome. We're happy to
18 have you.

19 And then also Sarah Olsen, who has been recently
10:49 20 appointed as our public member. Sarah is not new to this
21 building, as some of you may know. She served as the
22 staff director and principal consultant for the
23 Republican fiscal consultants in the State Assembly, and
24 was a policy and fiscal advisor to the Legislative
25 Analyst's Office for twelve years. So welcome. It's

1 nice to have you back.

2 And I don't know if you'd like to say a few
3 things.

4 MEMBER OLSEN: Well, I'd just like to reiterate
5 what Steve said. It's a pleasure to be here. It's a
6 pleasure to be back in the building, at least
7 intermittently; and I'm looking forward to serving.

8 CHAIR SHEEHAN: Great. Thank you. Welcome.
9 Okay, now, on to the regular business.

10:50 10 Paula, would you like to --

11 MS. HIGASHI: The first item of business is
12 adoption of the minutes from our last meeting.

13 CHAIR SHEEHAN: Okay.

14 MS. HIGASHI: Item 1.

15 CHAIR SHEEHAN: I would entertain a motion.

16 MEMBER BOEL: I'd like to move that we adopt
17 the minutes as stated.

18 CHAIR SHEEHAN: All right, do we have a second?

19 MEMBER SCOTT: I second.

10:50 20 CHAIR SHEEHAN: So we have a motion and a
21 second. Any further discussion?

22 *(No audible response.)*

23 CHAIR SHEEHAN: All those in favor, say "aye."

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

25 CHAIR SHEEHAN: Any opposed?

1 (No audible response.)

2 CHAIR SHEEHAN: There we go.

3 MEMBER WORTHLEY: I would abstain.

4 MEMBER OLSEN: Abstain.

5 CHAIR SHEEHAN: All right, so the record will
6 reflect that we have two abstentions from our two new
7 members, since they obviously weren't here at our last
8 meeting.

9 MS. HIGASHI: We now have the Proposed Consent
10:50 10 Calendar, Item 2. And all of you should have that before
11 you. It's a yellowish, golden-colored document.

12 CHAIR SHEEHAN: And no changes from the
13 published agenda; is that correct?

14 MS. HIGASHI: Let me just read through the item
15 numbers.

16 Items 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19,
17 20, 21. That is the proposed consent calendar.

18 CHAIR SHEEHAN: Okay, so 22 we know has been
19 moved.

10:51 20 You did not -- and 10 -- both of those items are
21 continued to our January meeting?

22 MS. HIGASHI: Yes, that's correct.

23 CHAIR SHEEHAN: Okay, all right. So do we have
24 any discussion on the consent? Anything that -- any
25 changes?

1 If not, the Chair will entertain a motion.

2 MEMBER BOEL: I move that we adopt the Consent
3 Calendar.

4 MEMBER WORTHLEY: Second.

5 CHAIR SHEEHAN: We have a motion and a second.
6 All those in favor?

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

8 CHAIR SHEEHAN: Any opposed?

9 *(No audible response.)*

10:51 10 CHAIR SHEEHAN: All right. Motion carries on
11 the consent.

12 MS. HIGASHI: There are no items to consider
13 under -- issues to consider under Item 3.

14 CHAIR SHEEHAN: All right.

15 MS. HIGASHI: And this brings us to the hearing
16 portion of our meeting.

17 At this time I would like to ask the parties and
18 witnesses that are here today, that intend to come to
19 testify for Items 4, 5, 6 or 7, to please stand for the
10:52 20 swearing in.

21 *(Parties and witnesses stood up for*
22 *swearing in.)*

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

1 or belief?

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

3 MS. HIGASHI: Thank you very much.

4 The first item is the test claim, Item 4, *Local*
5 *Recreation Areas: Background Screenings*. This item will
6 be introduced by Commission counsel, Eric Feller.

7 MR. FELLER: Good morning. This test claim
8 statute originally prohibited cities, counties, or
9 special districts from hiring volunteers or employees in
10:52 10 positions having supervisory or disciplinary authority
11 over minors in specified recreational areas if the
12 candidate had been convicted of certain offenses, as
13 noted in your analysis.

14 In 2001, the statute was amended to require the
15 specified prospective employees or volunteers to fill out
16 applications and inquire after any past offenses, and to
17 be screened by the Department of Justice. So for reasons
18 stated in the analysis, staff found that the activities
19 of screening prospective employees or volunteers who meet
10:53 20 the criteria in the statute and inquiring after their
21 criminal histories are reimbursable.

22 Staff recommends that the Commission adopt the
23 analysis that approves the test claim as outlined.

24 Would the parties and witnesses please state
25 your names for the record?

1 MR. FUJITA: Good morning. I'm Harold Fujita,
2 and I'm here representing the Department of Recreation
3 and Parks from the City of Los Angeles.

4 MR. BURDICK: Allan Burdick on behalf of the
5 CSAC SB 90 Service.

6 MS. GEANACOU: Susan Geanacou, Department of
7 Finance.

8 CHAIR SHEEHAN: Okay, go ahead.

9 MR. FUJITA: I would like to, first of all,
10:54 10 thank the Commission and Executive Director Higashi for
11 providing me the opportunity to appear before you this
12 morning on this matter.

13 I have had the opportunity to review the
14 analysis of staff in the matter, as well as the
15 conclusion. And the Department of Recreation and Parks,
16 City of Los Angeles, supports staff's conclusion and
17 would respectfully ask that you adopt the recommendation
18 put forth.

19 I'm happy to answer any questions you might
10:54 20 have.

21 CHAIR SHEEHAN: Okay, any questions for
22 Mr. Fujita? No?

23 MEMBER BOEL: Yes, I do have one question.

24 According to what I read in the summary, it says
25 that the cost of doing this analysis of these employees,

1 which would be for the year of 2001-2002, was
2 approximately \$32,000; is that correct?

3 MR. FUJITA: That is correct.

4 MEMBER BOEL: Okay, thank you.

5 CHAIR SHEEHAN: Any other questions?

6 *(No audible response.)*

7 CHAIR SHEEHAN: Mr. Burdick?

8 MR. BURDICK: Madam Chair, Members, thank you
9 very much for allowing us to attend today.

10:55 10 I want to be here to do kind of a "me, too" on
11 behalf of the counties that also support the staff
12 recommendation. And I'd also like to make one comment
13 while I'm up here, that it's been a long time since we
14 have had seven members. And I think, on behalf of all
15 the local government educational community, we are
16 particularly, I think, thankful that that's happened.
17 And personally, I can say that these two individuals --
18 we are very pleased at the quality -- the exceptional
19 quality of these two candidates.

10:55 20 Thank you very much.

21 CHAIR SHEEHAN: Thank you. I will pass your
22 comments on to the Governor's office.

23 Susan?

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

1 We at Finance have also read the final Staff
2 Analysis and support it, and urge the Commission to adopt
3 it today.

4 CHAIR SHEEHAN: Okay, any further questions or
5 comments?

6 MEMBER BOEL: I have a question of Eric, if this
7 is the appropriate time.

8 CHAIR SHEEHAN: Yes.

9 MEMBER BOEL: Eric, could you tell me
10:56 10 approximately -- I know this is a question you probably
11 don't normally get -- but approximately how much time did
12 you spend on this analysis?

13 MR. FELLER: Close to 20 or 30 hours, I would
14 say.

15 MEMBER BOEL: My point in saying this is that
16 we're talking about a relatively small amount of money.
17 We're talking about a large use of state resources. And
18 to me -- and this is an aside because this is not
19 directly related to what I will vote on this; but I do
10:56 20 think that later today we're going to discuss the need
21 for potentially reforming and making some changes in the
22 mandate process. And I think this is an ideal example of
23 why this is an inefficient manner of going about
24 reimbursing locals for their expense.

25 Thank you. I just had to make an editorial

1 comment.

2 CHAIR SHEEHAN: It's always welcome.

3 Okay, did you want to add anything, Paula?

4 MS. HIGASHI: No.

5 CHAIR SHEEHAN: Okay, if not, the Chair will
6 entertain a motion.

7 MEMBER LUJANO: Motion to approve.

8 MEMBER BOEL: I second.

9 CHAIR SHEEHAN: We have a motion to approve the
10 staff recommendation and a second.

11 Without any further discussion, all those in
12 favor, say "aye."

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

14 CHAIR SHEEHAN: Any opposed?

15 *(No audible response.)*

16 CHAIR SHEEHAN: The staff recommendation is
17 approved.

18 MS. HIGASHI: Item 5, the Proposed Statement of
19 Decision.

10:57 20 CHAIR SHEEHAN: Do we have a --

21 MEMBER BOEL: I move that we adopt the Proposed
22 Statement of Decision.

23 CHAIR SHEEHAN: Okay.

24 MEMBER WORTHLEY: Second.

25 CHAIR SHEEHAN: We have a motion and a second.

1 Mr. Feller, did you want to add anything?

2 MR. FELLER: Just the staff recommends that the
3 Commission allow minor changes to be made to the
4 Statement of Decision, including reflecting the
5 witnesses, hearing testimony, and vote count that will be
6 included in the final SOD.

7 CHAIR SHEEHAN: Right, without -- that will be
8 by unanimous consent.

9 All right, so we have a motion and a second.

10:58 10 All those in favor, say "aye."

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

12 CHAIR SHEEHAN: Any opposed?

13 *(No audible response.)*

14 CHAIR SHEEHAN: All right, Item 5 is adopted.

15 MR. BURDICK: Thank you very much.

16 MR. FUJITA: Thank you.

17 CHAIR SHEEHAN: Thank you.

18 Item 6?

19 MS. HIGASHI: Item 6, our next test claim, will
10:58 20 be presented by Camille Shelton, our new chief counsel.

21 MS. SHELTON: This test claim addresses the
22 statutory requirement for the payment of fair-share
23 service fees or agency fees paid by non-union members
24 employed by school districts or community college
25 districts to the exclusive representative organization.

1 Under prior law, the payment of agency fees was
2 the subject of collective bargaining under the
3 Educational Employment Relations Act. The test claim
4 legislation created the statutory requirement for the
5 payment of such fees, thus removing the issue from the
6 collective bargaining process.

7 For the reasons stated in the staff analysis,
8 staff finds that some of the test claims statutes and
9 regulations constitute a reimbursable state-mandated
10:59 10 program within the meaning of Article XIII B, section 6,
11 of the California Constitution.

12 Staff is recommending that the Commission adopt
13 the analysis and approve this test claim for the
14 activities listed on pages 1 and 2 of the executive
15 summary.

16 Will the parties and witnesses please state your
17 names for the record?

18 MR. PETERSEN: Keith Petersen, representing the
19 test claimant.

10:59 20 MS. GEANACOU: Susan Geanacou, the Department of
21 Finance.

22 CHAIR SHEEHAN: Still?

23 MS. GEANACOU: Still.

24 CHAIR SHEEHAN: All right, Mr. Petersen, would
25 you like to start?

1 MR. PETERSEN: Actually, I'm going to stand on
2 the written record. All the issues I was concerned about
3 were addressed by the Commission staff.

4 CHAIR SHEEHAN: Great.
5 Susan?

6 MR. PETERSEN: I don't agree, but they were
7 addressed.

8 *(Laughter)*

9 CHAIR SHEEHAN: That happens sometimes.

10:59 10 MS. GEANACOU: Susan Geanacou, Department of
11 Finance. We have also reviewed this final Staff
12 Analysis, and we recommend that it be adopted today as
13 well.

14 CHAIR SHEEHAN: Okay. Questions from members to
15 any of the witnesses?

16 *(No audible response.)*

17 CHAIR SHEEHAN: If not, we will entertain a
18 motion.

19 MEMBER WORTHLEY: Madam Chair, I would move
11:00 20 approval of the staff recommendation.

21 CHAIR SHEEHAN: Okay, we have a motion -- and a
22 second?

23 MEMBER BOEL: I'll second.

24 CHAIR SHEEHAN: A second by Ms. Boel to approve
25 the staff recommendation.

1 Any further discussion?

2 *(No audible response.)*

3 CHAIR SHEEHAN: All those in favor, say "aye."

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

5 CHAIR SHEEHAN: Any opposed?

6 *(No audible response.)*

7 CHAIR SHEEHAN: That motion carries.

8 MS. HIGASHI: Item 7.

9 CHAIR SHEEHAN: Camille?

11:00 10 MS. SHELTON: This is the Proposed Statement of
11 Decision for the last item that was just adopted. Staff
12 recommends that the Commission adopt this Proposed
13 Statement of Decision with the authority to make minor
14 changes for the vote count and the hearing testimony.

15 CHAIR SHEEHAN: Okay.

16 Any questions from the members?

17 *(No audible response.)*

18 CHAIR SHEEHAN: If not, we'll entertain a
19 motion.

11:00 20 MEMBER OLSEN: I'll so move.

21 CHAIR SHEEHAN: All right, we have motion --

22 MEMBER WORTHLEY: Second.

23 CHAIR SHEEHAN: -- and a second.

24 All those in favor, say "aye."

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

1 CHAIR SHEEHAN: Any opposed?

2 *(No audible response.)*

3 CHAIR SHEEHAN: Motion carries. Thank you both.

4 CHAIR SHEEHAN: Okay, we have adopted the
5 consent agenda.

6 MS. HIGASHI: Yes. So this brings us to
7 Item 23. Let me correct it, the Chief Legal Counsel's
8 report.

9 CHAIR SHEEHAN: Very good.

11:01 10 MS. SHELTON: I have nothing further to add,
11 than what's here.

12 CHAIR SHEEHAN: All right. Did any members have
13 any questions on the written report from the counsel's
14 office?

15 *(No audible response.)*

16 CHAIR SHEEHAN: No?

17 All right.

18 MS. HIGASHI: This brings us to Item 24.
19 Item 24 is my report. And on the first page of my
11:01 20 report, there is a summary of the pending caseload. And
21 just to highlight, we have 109 test claims to be heard
22 and determined, and we have 103 incorrect reduction
23 claims pending, just for the record.

24 Our rulemaking efforts for the past year, we had
25 a rulemaking calendar that we proposed in January, and we

1 have completed both rulemakings, and our second
2 rulemaking will be published and in effect on
3 December 18th. So I'm happy to report that.

4 In January, we'll be proposing a new rulemaking
5 calendar, identifying those issues that need to be
6 addressed next year.

7 So if any of the members have any suggestions of
8 regulations that they would like us to add to that
9 calendar, we will do so.

11:02 10 Okay, yesterday we had a workshop, as Ms. Boel
11 indicated, on mandate reform legislation. And I have
12 asked Nancy Patton, our legislative coordinator, to
13 present a summary of the workshop to lead our discussion.

14 CHAIR SHEEHAN: All right.

15 MS. PATTON: Good morning.

16 CHAIR SHEEHAN: Good morning.

17 MS. PATTON: The Commission's Legislative
18 Subcommittee conducted a Mandate Reform Workshop
19 yesterday. Members Jan Boel and Francisco Lujano and
11:02 20 Commission staff attended the workshop. The meeting was
21 also attended by Steve Keil with CSAC, Jean Korinke and
22 Debbie Michel with the League of California Cities, Allan
23 Burdick and his staff with the SB 90 Service, Marianne
24 O'Malley with the LAO, Dan Rabovsky with Assembly Budget
25 Committee, Ginny Brummels and Jim Spano with the State

1 Controller, Ruben Rojas and Joe Rombold representing
2 school districts, and Bonnie Ter Keurst, Leonard Kaye,
3 Glen Everroad, and Annette Chin representing cities and
4 counties. Department of Finance staff were unable to
5 attend the meeting because they are completing the
6 Governor's proposed budget.

7 And we'd like to thank all those who attended
8 the workshop.

9 Commission staff presented a list of concepts
11:03 10 for discussion. And I left a copy for you next to your
11 seat.

12 Concepts ranged from substantive changes to how
13 claimants are reimbursed from mandated programs, to
14 technical amendments to the existing process.

15 Prior to discussing these concepts, city and
16 county representatives asked the staff to clarify what we
17 expected from the meeting. The representatives
18 recommended that we formulate a common goal, such as
19 reducing by half the time it takes to fund a new mandated
11:04 20 program, and discuss more global reforms that will
21 achieve that goal, rather than discussing reforms to the
22 existing process. Participants agreed that they were
23 interested in creating a new, more streamlined process
24 for approving and funding mandates.

25 Commission members stated that they believe the

1 Commission was also interested in addressing more global
2 changes, and that we should discuss this issue with the
3 entire commission.

4 Some participants, however, questioned whether
5 the Administration and the Legislature were committed to
6 large-scale mandate reform this year, and cautions that,
7 without express interest from the Administration and the
8 Legislature, it would be extremely difficult to go
9 forward with these discussions.

11:04 10 And other participants were interested in also
11 addressing reforms to the existing process, pointing out
12 that, while discussions on large-scale mandate reform may
13 ensue, revisions to the existing process are still
14 necessary. For example, staff pointed out that changes
15 to the existing incorrect reduction claim process are
16 still needed; and city and county representatives stated
17 that changes to the state mandates apportionment system
18 would be helpful.

19 Member Jan Boel then requested that the parties
11:05 20 submit both large-scale reform proposals and proposals to
21 the existing process for Commission review. Commission
22 staff clarified that they would issue a letter requesting
23 these proposals.

24 Overall, participants agreed that the mandates
25 process and reimbursement process must take less time.

1 Discussion should be had with the entire Commission
2 regarding whether or not Commission staff should commence
3 meetings to discuss large-scale mandate reform. Staff,
4 with Department of Finance, the State Controller's
5 office, the Legislature, the Commission and cities,
6 counties, and school districts must be present at these
7 meetings and authorized to make decisions for them to be
8 successful.

9 There must be give and take in negotiating a new
11:05 10 process. Participants should be willing to compromise.
11 And revisions to the existing process may be necessary,
12 in some cases.

13 At this point I'd like to ask Member Boel or
14 Member Lujano if they have anything to add about the
15 meeting yesterday?

16 MEMBER BOEL: I think it was an excellent
17 summary. And one of the things that was pointed out --
18 my inclination was to go with a larger scale of proposal.
19 And one of the members of the public suggested that they
11:06 20 felt there was much greater chance for compromise, in
21 that situation. That if we tried to take this piecemeal,
22 on one particular thing that was supported by one group,
23 would be opposed by another group, and so we would never
24 be able to get movement. But if we had an entire package
25 where everybody got a little and gave a little, we would

1 have more chance of success.

2 But our other concern was that -- I think you
3 mentioned this -- was that we didn't want the Commission
4 staff to get bogged down in spending a great deal of time
5 on this, if we didn't sense that there was a real
6 movement and interest in this. So I just felt we needed
7 an entire discussion by the Commission.

8 MEMBER LUJANO: I just want to say that Nancy
9 did a great job, summarizing it. Very accurate.

11:07 10 MS. PATTON: Thank you.

11 MEMBER LUJANO: And any time that we can improve
12 efficiencies and fairness in a process, it's a good
13 thing.

14 CHAIR SHEEHAN: Now, our new members who
15 haven't -- we'll have to put them on the spot, in terms
16 of, you know, any comments that maybe, Steve, you've
17 heard from some of the county folks who were there
18 yesterday?

19 MEMBER WORTHLEY: Actually, I have not had any
11:07 20 input from other members. But just, you know, in my
21 first take at this process, anytime we can -- there's
22 always room for improvement in efficiencies, I think, and
23 that ought to always be the goal of government. So just
24 listening to the backlog of cases that we have, I'm not
25 going to say it's a broken system, but it's certainly a

1 difficult one to try to do in a timely fashion, which
2 should always be our objective. So I certainly would
3 support whatever we can do.

4 It sounds like, in a way, we're talking about
5 short-term versus long-term goals. Perhaps that's the
6 general idea of things we can do now and maybe there's a
7 bigger picture.

8 But I do appreciate your comment that perhaps an
9 entirely new approach, or a big-case approach might allow
11:08 10 for some greater changes to be made as opposed to being
11 picked off one at a time.

12 MEMBER BOEL: One of the problems now with the
13 process being so delayed, that much of the Legislature
14 has moved on by the time we have a decision on the
15 mandates. So they don't even realize the fiscal impact
16 of the decision.

17 And then when I see decisions like today we made
18 that, you know, we don't even have discussion, and we've
19 spent all this inefficient time, of people -- one of
11:08 20 the --

21 MEMBER WORTHLEY: That's good staff work,
22 though.

23 MEMBER BOEL: Yes, good staff work.

24 There was a suggestion -- and Nancy, you
25 probably know who the individual was that made the

1 discussion -- that said there were earlier meetings going
2 on that the Department of Finance participated. And at
3 one time there was a proposal that they seemed very close
4 to, that would actually have the Department of Finance
5 making a lot of the decisions, with then an appeal to
6 either State Mandates or something, or to arbitration.

7 *(Laughter from the back)*

8 MEMBER WORTHLEY: That was a "no" vote in the
9 back.

11:09 10 MS. PATTON: That was, I believe, Steve Keil
11 with CSAC that mentioned that proposal.

12 CHAIR SHEEHAN: Yes, Steve, I don't know if you
13 want to -- not wanting to put you on the spot, of course,
14 but, yes -- no, because -- but I would like to say, sort
15 of as the Chair of the Mandates Commission, is that
16 since -- I know many of my fellow members know this,
17 since I came on this, you know, as a newcomer to
18 Mandates, it did strike me that there has to be a more
19 efficient way to do this. I mean, it's frustrating for
11:10 20 us, it's frustrating for the claimants, it gets
21 frustrating for the Legislature -- I think everyone who
22 is involved in this.

23 So I think one of the suggestions is if we can
24 roll up our shirt sleeves and figure out another way to
25 do this, or at least get everybody in the same room and

1 figure out what can we agree on. Some of it, we may not
2 agree on changing; but put something out there and begin
3 to get some response.

4 Go ahead, Steve.

5 MR. KEIL: Steve Keil, California State
6 Association of Counties. And I'd also like to welcome
7 the new Commission members here.

8 I think I'm speaking also on behalf of the
9 League of California Cities. They're not here now, but
11:10 10 we have acted in concert with them, so I think my
11 comments are for both organizations.

12 You just got an excellent summary of yesterday's
13 meeting. And we're very appreciative of the fact that
14 the Commission is willing to step up and at least try to
15 facilitate some kind of a discussion about this process.

16 We totally agree that -- well, there's really
17 two ways we can go. We can, on the one hand, try to look
18 at finding some individual, kind of "twicker" changes in
19 the system that may have some kind of consensus which
11:11 20 we'll have to have in order to get through the
21 legislative process and be signed into law, which may be
22 of some benefit. But it certainly won't have a
23 significant impact on the time situation we're now facing
24 and workload situation we're facing with the state staff
25 and resources.

1 The other approach which makes good sense to us
2 is probably the biggest-risk one in terms of likelihood
3 of success. But it would be one of -- as I think it was
4 very accurately characterized -- everybody start out with
5 the premise that we have a common objective. What seems
6 to be a win/win for everyone is just shortening the time
7 frame and reducing the amount of resources spent, in the
8 processing of claims.

9 And if we all start with that and we all agree
11:11 10 that we'll mutually give up things in order to
11 accommodate that -- and I absolutely agree, we have to
12 have the principals involved, we have to have the
13 caucus -- legislative caucus staff, as well as the
14 Administration actively involved in this, as well as the
15 local agencies and perhaps others.

16 There's potential for coming up with some kind
17 of consensus that could see significant changes. There
18 has already been one proposed in the Legislative
19 Analyst's Office that I think I somewhat cavalierly
11:12 20 referred to as "one everybody hated." But the fact is,
21 it would have cut the process time in about half. And
22 it's probably a good starting point if you're looking at
23 discussions, or others like that, that we might throw on
24 the table.

25 And if all parties are willing to participate,

1 we would urge you to continue to devote some of your
2 Commission staff time with trying to come up with a
3 consensus. And who knows? We might just pull it off
4 this time.

5 But thank you for your time on this. We really
6 appreciate the energy.

7 CHAIR SHEEHAN: All right. Any other comments?

8 Paula, I don't know if you want to add anything
9 at this point in terms of -- if we need to think about a
10 process to move forward.

11 MS. HIGASHI: Well, I think that's what -- as
12 staff, what we're looking for, is some guidance from the
13 Commission today in terms of how you would like us to
14 proceed in the future. We have a bill that we have
15 introduced. We are working with Assemblyman Laird on,
16 and at one point, we had hoped to have consensus
17 proposals considered for amendment into that bill. But
18 we haven't developed a new list of consensus proposals.
19 There are just a lot of issues out there.

11:13 20 And I think there is a major concern that if
21 this was not high on the priority list this year, that
22 tinkering on our own really wasn't going to be
23 productive. And the big question is just how high it
24 will be on the priority list for the Department of
25 Finance and for the Administration.

1 CHAIR SHEEHAN: Well, I can tell you as the
2 chair of this group, I would very much like this to be
3 high on the priority list, in terms of how we can improve
4 the process.

5 And what I can do is, between now and the time
6 of our next meeting, you know, speak with representatives
7 of the Governor's office; Mike Genest, the new director;
8 as well as have some discussions with the claimants, the
9 counties, the cities, the school districts, see if we can
11:14 10 convene a group, as well as the leadership in the
11 Legislature on both sides, that the Commission would be
12 happy to begin to convene a working group, to begin to
13 identify some of these issues in the process.

14 And you're right. I think we have to start
15 somewhere and just have people begin to have some
16 discussion around it. If nothing else, we can see where
17 we agree, disagree; but we've got to get started
18 somewhere.

19 I know the work that had been done by
11:14 20 Mr. Laird's staff two years ago -- I mean, we've got some
21 ideas that are out there, and as you say, the proposal
22 from the Legislative Analyst.

23 So I guess what I think I would like staff to do
24 is begin to put together a proposal to bring back to the
25 Commission for the next meeting, in terms of how we would

1 proceed, who we would want to involve.

2 I can commit on behalf of the Commission to
3 engage in discussions with the Administration, as well as
4 approaching the leadership upstairs about doing this.

5 It is a tough issue, we all are going to have to
6 roll up our shirt sleeves to really address this, because
7 it can be, with all due respect, mind-numbing to some
8 people who aren't involved in this process and trying to
9 understand. But the issues are too important not to
10 spend the time, and the quality time to address this.

11:15

11 So at least on behalf of this member, I would go
12 back to the Administration and see about engaging them in
13 getting their commitment, as well as the Legislature.

14 MS. HIGASHI: Thank you.

15 MR. KEIL: Thank you very much.

16 MEMBER BOEL: We don't need a motion on this, do
17 we?

18 MS. HIGASHI: No.

11:15

19 CHAIR SHEEHAN: And what I will say is that I
20 would love to engage our two new members on helping us in
21 this process, in bringing the expertise that you have.

22 And I know Mr. Glaab, who is not with us today,
23 I know also on behalf of the cities, would very much be.
24 So -- I know on the auditing side --

25 So maybe we should make the Treasurer's office

1 the Chair of this?

2 (Laughter)

3 CHAIR SHEEHAN: Just kidding.

4 Anyway, so what we can do is come back for our
5 next meeting with a proposal.

6 Those who are interested in participating, I
7 think what we can do is contact the Commission staff, so
8 that we can develop a list; so that when we do begin to
9 convene meetings and have discussions, we can have as
11:16 10 wide a range of participants, and get all the ideas out
11 there. And with all these -- there are no bad ideas.
12 We've got to put them all out there.

13 MS. HIGASHI: And what I'm happy to do, too, is
14 I have copies, I just brought briefing material that, at
15 various points in time has been given to Commission
16 members, on old agendas of documents that were produced
17 by the Laird Committee hearings and for other points in
18 time.

19 CHAIR SHEEHAN: Great.

11:16 20 MS. HIGASHI: And we will certainly share those.
21 And we've asked CSAC and the League to certainly update
22 their papers because we have copies of all of their old
23 submissions that are all pre-Prop. 1A, I think.

24 CHAIR SHEEHAN: Well, that would be great. And
25 as you say, a lot of it was pre-1A.

1 MS. HIGASHI: Yes.

2 CHAIR SHEEHAN: And a lot of effort was done to
3 that; but let's get back to the work that we had before.

4 I would encourage, if we can, to post as much of
5 that on our Web site, so that individuals who may not
6 have copies of that, we can all come equally prepared
7 when we begin to have these discussions.

8 MS. HIGASHI: That would be great.

9 MR. KEIL: Thank you.

11:17 10 CHAIR SHEEHAN: Is there anyone else in the
11 audience who would like to address this?

12 MR. BURDICK: I would like to ask that Marianne
13 O'Malley come.

14 CHAIR SHEEHAN: Did you talk her into it?
15 Do you want to come forward, Marianne?

16 MR. BURDICK: She's the chief advisor to the
17 Legislature.

18 CHAIR SHEEHAN: Absolutely. Yes, we want to
19 hear you.

11:17 20 MS. O'MALLEY: Good morning, and welcome to the
21 Commission.

22 I'd be happy to answer any questions.

23 I believe in the documents that Paul will be
24 submitting to you, you'll have a copy of the Legislative
25 Analyst's Office perspective on the mandate problem and a

1 series of steps that we recommend that be considered in
2 terms of reforming the process and emphasizing a system
3 that will feel fair, both to the locals and to the state,
4 and one that works on a much more prompt basis.

5 CHAIR SHEEHAN: That is our goal in the end of
6 this.

7 Thank you.

8 If there is anyone else who would like to --
9 okay.

11:18 10 MS. HIGASHI: There are a couple of other -- I
11 should say, we should bring up the SB 1033 process issue
12 as well.

13 CHAIR SHEEHAN: I would put that on the agenda
14 for discussion.

15 MS. HIGASHI: We were thinking that this might
16 be a separate working group that we would like to have
17 a led subcommittee activity that is devoted solely to
18 talking about SB 1033. And we had hoped that
19 Mr. Worthley would be happy to be part of that group.

11:19 20 MEMBER WORTHLEY: "Happy" is the proper word.

21 MS. HIGASHI: And we've certainly spoken to
22 Mr. Keil before and other county organizations about
23 participating in a working group.

24 CHAIR SHEEHAN: That would be great. Thank you.

25 MEMBER WORTHLEY: Yes.

1 CHAIR SHEEHAN: Now, I don't know if any of the
2 other members -- we can talk to Mr. Glaab -- or I don't
3 know if, Sarah, if you're interested in the 1033.

4 MEMBER OLSEN: Actually, I am really interested
5 in the 1033 process.

6 MS. HIGASHI: That would be great.

7 CHAIR SHEEHAN: Okay. You were around when it
8 all came about. Yes, that would be great. That would be
9 terrific, yes.

11:19 10 So we will have -- it's going to be busy here
11 for us.

12 MS. HIGASHI: It will be a very busy year.

13 CHAIR SHEEHAN: It's an important issue, on both
14 the total reform as well as the 1033, because we need to
15 be able to do something, and something that really is
16 effective, you know, with the counties.

17 MS. HIGASHI: And the last item, just in the
18 spirit of reminding everyone that we did receive new
19 positions in the budget, I want to introduce two of our
11:20 20 new staff.

21 CHAIR SHEEHAN: Great.

22 MS. HIGASHI: We have new Commission counsel,
23 Deborah Borzelleri.

24 CHAIR SHEEHAN: Welcome.

25 *(Applause)*

1 MS. HIGASHI: And also Lorenzo Duran, who is on
2 our support staff.

3 (Applause)

4 CHAIR SHEEHAN: Very good. Welcome to the
5 Commission staff. We're going to keep you both very busy
6 this year.

7 MS. HIGASHI: And then lastly, I'd just like to
8 go over the hearing agenda for January.

9 CHAIR SHEEHAN: Great.

11:20 10 MS. HIGASHI: When we get back to the office,
11 we'll confer about scheduling further Leg. Subcommittee
12 meetings and workshop-type meetings to further refine
13 what we want to propose.

14 But in addition to the January hearing, we have
15 our election of officers, adoption of the rulemaking
16 calendar. We will have a reconsideration -- another
17 reconsideration of the *School Accountability Report Cards*
18 program that was directed by the Legislature.

19 We do not expect to have the *Standardized*
11:21 20 *Emergency Management Systems* on the January agenda. We
21 had originally hoped to. But that will be moved to a
22 future agenda.

23 CHAIR SHEEHAN: Okay.

24 MS. HIGASHI: And then we have a number of
25 parameters and guidelines. And I'd just like to correct

1 for the record that we will have the parameters and
2 guidelines on the reconsideration of the AB 3632, and not
3 on the P's & G's amendment that was also pending. And
4 we're taking them up in a sequential order.

5 CHAIR SHEEHAN: Okay.

6 MS. HIGASHI: And the other issues, we continue
7 to have clean-up of parameters and guidelines because of
8 all of the legislation.

9 CHAIR SHEEHAN: Right. Like today.

11:21 10 MS. HIGASHI: And only a couple of statewide
11 cost estimates coming forward.

12 CHAIR SHEEHAN: Okay, all right.

13 And we have a date for the next meeting?

14 MS. HIGASHI: Yes, January 26th.

15 CHAIR SHEEHAN: Great. All right.

16 MS. HIGASHI: And that's the end of my report.

17 If you have any questions?

18 CHAIR SHEEHAN: Any questions for staff on that?

19 All right, is there any other public comment on
11:22 20 the items that were not on the agenda or any other issues
21 individuals would like to bring before the Commission at
22 this time?

23 *(No audible response.)*

24 CHAIR SHEEHAN: No?

25 If not, then we will adjourn the public meeting

1 and convene in closed session.

2 Let's see -- the Commission will reconvene in
3 closed session pursuant to Government Code section 11126,
4 subdivision (e), to confer with and receive advice from
5 legal counsel, for consideration and action, as necessary
6 and appropriate, upon pending litigation published in the
7 notice and agenda, and to confer with and receive advice
8 from counsel regarding potential litigation.

9 And then we will reconvene in open session in
11:22 10 15 minutes, maybe -- 15, 20 minutes.

11 Okay, thank you, all. And we'll reconvene in a
12 few minutes.

13 *(The Commission met in closed session from*
14 *11:23 a.m. to 11:41 a.m.)*

15 CHAIR SHEEHAN: The Commission on State Mandates
16 will reconvene in open session.

17 The Commission met in closed executive session
18 pursuant to Government Code section 11126,
19 subdivision (e), to confer with and receive advice from
11:41 20 legal counsel for consideration and action, as necessary
21 and appropriate, upon the pending litigation listed in
22 the published notice and agenda and potential litigation.

23 Is there any further business before the
24 Commission today?

25 *(No audible response.)*

1 CHAIR SHEEHAN: If not, the meeting is
2 adjourned.

3 Thank you.

4 MS. HIGASHI: Thank you.

5 *(Proceedings concluded at 11:41 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 December 30, 2005.

Daniel P. Feldhaus

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