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COMMISSION ON
STATE MANDATES

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PUBLIC HEARING

COMMISSION ON STATE MANDATES

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TIME: 10:00 a.m.

DATE: Wednesday, April 26, 2006

PLACE: Department of Social Services
744 P Street, First Floor Auditorium
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ORIGINAL

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ANNE SHEEHAN
(Commission Chair)
Representative for MICHAEL GENEST
Director
Department of Finance

SEAN WALSH
Director
State Office of Planning and Research

FRANCISCO LUJANO
Representative for PHILIP ANGELIDES
State Treasurer

SARAH OLSEN
Public Member

NICHOLAS SMITH
Representative for STEVE WESTLY
State Controller

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

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1 we understand the issues that are coming before all of
2 you and trying to resolve it. So let's just do that.
3 We'll direct staff to pull it together.

4 MS. HIGASHI: All right.

5 CHAIR SHEEHAN: And any members who would like
6 to participate in that, we would certainly -- the staff
7 will certainly make you aware of when those meetings are.

8 So, okay.

9 MS. HIGASHI: Would you like to take a
10 five-minute break?

11 CHAIR SHEEHAN: That would be wonderful.

12 *(A recess was taken from 11:27 a.m.*
13 *to 11:36 a.m.)*

14 CHAIR SHEEHAN: All right, why don't we
15 reconvene at the April 26th meeting of the Mandates
16 Commission?

17 And we'll move on to Item Number 8. Item
18 Number 8, the *Charter Schools*.

19 MS. HIGASHI: Item 8 will be presented by
20 Commission Counsel Eric Feller.

21 CHAIR SHEEHAN: Great.

22 MR. FELLER: Good morning -- it's still
23 morning. The *Charter Schools III* test claim statutes
24 make various changes to the charter school funding and
25 accountability laws. Claimants seek reimbursement for

1 charter school, as well as school district activities.

2 For reasons explained in the analysis, staff finds first
3 that charter schools are not eligible claimants.

4 Basically, three reasons for that:

5 First, that they're voluntarily created.

6 Second, that they're not part of the definition
7 of "school districts" in the Commission's statutory
8 scheme, that's Government Code 17519.

9 And third, this is perhaps not emphasized
10 enough in the analysis, is because Education 47610 says
11 that charter schools are exempt from laws governing
12 school districts, which includes exemption from the
13 Commission's reimbursement statutes.

14 The second finding in the analysis is that the
15 Commission does not have jurisdiction over some of the
16 statutes that were already pled and decided in the
17 *Charter Schools II* test claim as specified.

18 Third, as to Education Code section 47640
19 through 47647 regarding plans for pupils with
20 disabilities, the findings are that these statutes are
21 federal mandates and therefore are notable.

22 Fourth, various other test claim statutes are
23 not reimbursable because they do not require an activity
24 of school districts.

25 So for reasons stated in the analysis, staff

1 finds the following are reimbursable:

2 First, making written findings on denial of a
3 charter school petition, for reasons specified in
4 statute.

5 Second, except for local education agencies
6 that charge fees under Ed. Code section 47613,
7 subdivision (c), transferring funds in lieu of property
8 taxes to a charter school.

9 And third, for school districts or county
10 offices of education that are chartering authorities,
11 including the revenue and expenditures generated by the
12 charter school in the school district or county office of
13 education's annual statement, in Department of Education
14 specified format for the period of May 22nd, 2000, to
15 July 30th, 2001, only.

16 The Department of Finance, based on their
17 comments, disagrees that these last two activities are
18 reimbursable: Specifically, transferring funds in lieu
19 of property taxes, and including revenues and
20 expenditures in the school district or county office of
21 ed's annual statement.

22 No other parties commented on the draft staff
23 analysis. Staff recommends the Commission adopt this
24 analysis that partially approves the test claim for the
25 specified activities.

1 Would the parties and witnesses please state
2 your names for the record?

3 MR. SCRIBNER: Good morning -- soon to be
4 afternoon. David Scribner representing claimants.
5 Actually, I'd like to yield the mike to Eric Premack, to
6 begin the testimony this morning on this test claim, if I
7 might.

8 So next up will be Eric Premack.

9 MR. PREMACK: Good morning. My name is Eric
10 Premack with the Charter Schools Development Center and
11 Charter Voice. Charter Voice is an advocacy organization
12 representing charter schools through the state.
13 I'm here on behalf of my colleague, Jennifer McQuarrie,
14 our real lobbyist, who is over in the building, working
15 some bills.

16 This issue is a very, very important
17 fundamental threshold issue for charter schools.
18 We take issue with both of the points in the written
19 analysis and the third point that was just brought up
20 verbally.

21 We believe that charter schools are an eligible
22 claimant. With regard to the staff analysis argument
23 that charter schools are created voluntarily and,
24 therefore, are not eligible claimants. I would point out
25 that school districts are also created voluntarily

1 through a process that looks and feels very similar to
2 the process by which one creates a charter school.
3 There's a petition. You present it to a local authority
4 for consideration. They have a set of criteria by which
5 they judge the petition. They can either grant or deny
6 the petition. If the petition is not granted, you can
7 appeal to the State Board.

8 The same thing happens with regard to how
9 school districts are formed and created and dissolved and
10 unified. The same thing happens with regard to charter
11 schools.

12 Therefore, we think that that argument is sort
13 of a red herring and sort of absurd on its face. It's
14 sort of like saying, well, you opted to get up in the
15 morning, therefore, it's not a mandate.

16 With regard to whether the charter schools are
17 deemed to be an eligible claimant under the Government
18 Code, the Charter Schools Act was amended last year to
19 clarify this point in part. And it says, "For purposes
20 of determining eligibility for, and allocation of, state
21 and federal categorical aid, a charter school shall be
22 deemed a school district."

23 So we think that in terms of both the
24 constitutional analysis, as well as the statutory
25 analysis, that charter schools clearly are deemed to be a

1 school district and are, therefore, an eligible claimant.

2 With regard to the exemption issue, charter
3 schools are exempted from a broad range of statutes that
4 normally govern school districts. There are, however,
5 a growing list of statutes from which we are not exempt.
6 And the costs associated with those, in complying with
7 those can be staggering, and can profoundly upset the
8 financial planning and operations of charter schools.
9 And to us, that just relates to the fundamental purpose
10 of why is this provision in the Constitution in the first
11 place?

12 The courts have repeatedly found that the
13 purpose of this is to preclude the state from shifting
14 responsibility of the local agencies that are
15 ill-equipped to assume those burdens. The charter
16 schools, many of the ones we work with, operate on very
17 thin financial margins; and for the state to be able to
18 impose additional costs on them, in our view,
19 fundamentally upsets this primary constitutional purpose
20 on which all of these statutes rest.

21 Moreover, we think that just common sense and
22 fairness demands this as well. The negative impact on a
23 charter school of imposing some of these costs is huge.
24 Many of these schools have long-term multi-year financial
25 commitments that they have to make. Being able to

1 fulfill those commitments is very difficult. Potential
2 lenders look at you and think, "Well, if the state just
3 heaped all those costs on you last year, what are they
4 going to heap on you next year? And how much higher
5 interest rate do we have to put on your facility's loan?"
6 Or this or that? When you're out there trying to hire
7 teachers and staff, they wonder, "Are you going to be
8 around two or three or four years from now, or is the
9 state just going to eat away at you?"

10 We appeal to you both on a constitutional
11 basis, statutory basis, commonsense basis. We think it's
12 a very important fundamental policy issue in front of you
13 here today. We would urge you to reject the staff
14 analysis on these points.

15 Any questions?

16 CHAIR SHEEHAN: Questions for Mr. Premack?

17 *(No audible response)*

18 CHAIR SHEEHAN: Thank you.

19 Eric, you'll respond and -- let's -- we'll give
20 you a chance to respond on those after people testify.

21 Go ahead.

22 MR. SCRIBNER: Sure, thank you.

23 I would just like to mirror a lot of the
24 comments that Mr. Premack had made. I think there was an
25 interesting statement that was made in this test-claim

1 analysis that relates to the discretionary ability to
2 establish a charter school. And yet you approve
3 education mandates every single month -- well, not every
4 month -- every once in a while.

5 CHAIR SHEEHAN: Just when we feel like it.

6 MR. SCRIBNER: You've approved education
7 mandates in the past, and yet you don't look at whether
8 or not portions of those districts have actually been
9 discretionarily established or whether there will be new
10 schools that come on, on an annual basis, that the school
11 has chosen to open a new school site for any number of
12 reasons, whether or not they've decided to unify.

13 And yet charters are getting hit because charters are a
14 new entity. They're created and established now on a
15 regular basis, and they are challenging the districts.

16 As Mr. Premack said, districts were not required to
17 have -- whether they be unified or whether they be
18 elementary only or high school only, that is a choice
19 that's being made on a site-by-site basis. And, again,
20 opening new sites is a choice-by-choice basis.

21 But yet you do not distinguish in education
22 mandate determinations whether or not this will be
23 limited to a point in time. Only the sites that are in
24 effect at the time of this decision shall be deemed
25 reimbursable because any new sites that come afterwards

1 are discretionary. That doesn't occur; but that's
2 occurring here with the charter mandate. You're saying
3 that you've decided to do it, it's discretionary.

4 It needs to be the same then for school
5 districts on every single education mandate that may be
6 approved in the future, that it must be a point in time,
7 because then have you would have to make a determination
8 whether the new sites that come on line are mandated or
9 discretionary. And turning a blind eye to that then
10 creates two different decisions being made: Creating
11 charters, holding them out differently than districts.
12 As far as the Government Code goes, unfortunately, I
13 don't have anything to say about the Government Code
14 section. It says what it says. The only distinction
15 that can be made is that the Government Code was
16 established well before charter schools came into play.
17 Charters are now getting more recognition as related to
18 funding and their position in the state and state
19 government as it relates to finances and the necessary
20 facilities issues that are being raised. And that is an
21 evolving process.

22 Again, I would like to back up Eric Premack's
23 statements as it relates to the exception portions of the
24 Education Code. That, again, is really not an issue
25 here. The fact that charters can be excepted from

1 programs does not mean that they're excepted from the
2 Education Code as a whole. They are not. It's clear
3 that they are not. They still have to do testing. They
4 still have to do a lot of the things that schools do.
5 The only way that this exception language that was
6 brought up this morning would apply is whether or not
7 they are excepted to the activities that we are seeking
8 in the test claim, and there is no exception to those
9 activities in the Education Code. They have to perform
10 those.

11 We're not seeking discretionary activities from
12 some other program. We are seeking activities that are
13 required to establish just the genesis of the school. It
14 must be followed.

15 So citing the broad waiver language in the
16 Ed. Code means nothing in this decision and really should
17 not even be considered because that doesn't apply to what
18 we're seeking this morning.

19 Thank you.

20 CHAIR SHEEHAN: Thanks.

21 No questions?

22 *(No audible response)*

23 CHAIR SHEEHAN: Okay.

24 Why don't you go ahead; and then, Eric, we'll
25 have you respond.

1 MR. TROY: Dan Troy with the Department of
2 Finance. I'm going to raise issues that are a little bit
3 different from the prior testifiers.

4 Would you like staff to --

5 CHAIR SHEEHAN: Okay.

6 MR. FELLER: Mr. Premack said that school
7 districts are also voluntarily created. I think the same
8 could be said for cities and counties. They're also
9 voluntarily created.

10 What you have -- the differences for charter
11 schools is that they're a new animal that didn't exist in
12 1979, when Prop. 4 was adopted, whereas school districts,
13 cities and counties did exist in 1979; and, therefore,
14 the voter intent is obvious that those were
15 reimbursable -- are reimbursable entities, as the
16 definitions in the Government Code make clear -- 17519 --
17 expressly the definition of a school district.

18 The charter is somewhat analogous to an earlier
19 contract between the district and the charter school.
20 And there's actually cases in other jurisdictions, not in
21 California, on this point. It's in the nature of a
22 contract, in that it's voluntarily entered into by the
23 parties with the school district to provide certain
24 services to students there.

25 As far as Ed. Code 47610 and the applicability

1 here, obviously, I disagree with Mr. Scribner. Charter
2 schools, it says, expressly are generally excepted from
3 the laws of governing school districts. Of course, the
4 Legislature opts them in when it believes that certain
5 laws should apply to charter schools. STAR testing, for
6 example, recently hiring credentialed teachers, I think
7 was actually something pointed out in this test claim.
8 If they exist, those are things that they have to do.
9 The difference is -- and the Legislature has opted them
10 in for purposes of Prop. 98 funding and for purposes of
11 categorical aid. And that, to me, kind of emphasizes the
12 point that the Legislature has not opted them in to
13 reimbursement funding under Article XIII B, section 6, of
14 the State Constitution. The fact that the Legislature
15 opts them in to certain programs and defines them as a
16 school district for obviously certain purposes, including
17 in this test claim, one that was discussed, Students with
18 Disabilities, which is a federal program. But the
19 Legislature has not expressly done so for purposes of
20 mandate reimbursement.

21 That was all the comments I had, unless there's
22 any questions.

23 CHAIR SHEEHAN: Okay, any questions for
24 Mr. Feller?

25 *(No audible response)*

1 CHAIR SHEEHAN: Okay, come on back up, Dan.

2 MR. SCRIBNER: I'll work backwards.

3 CHAIR SHEEHAN: Okay.

4 MR. SCRIBNER: Mr. Feller spoke of the
5 Legislature's ability to add charters where it deems
6 necessary. That's actually not true. In both bills that
7 have brought forth money -- small amounts of money -- for
8 reimbursement of the oldest of the old claims, school
9 districts have been defined to include community-college
10 districts and charter schools. So the \$56 million two
11 years ago, \$60 million last year, charter schools have
12 been included in the definition of a school district so
13 that they can receive reimbursement money through the
14 mandate-reimbursement process.

15 Now -- so that, again, puts us in a strange
16 position I guess, because what Mr. Feller said as it
17 relates to charters and the 1979 enactment of Prop. 4 and
18 then the changes in 1984 to the Government Code do create
19 a bit of a duality. Charter schools don't show up in the
20 Government Code as far as a definition for an eligible
21 claimant, and yet they are being treated as one by the
22 Legislature.

23 CHAIR SHEEHAN: In certain places.

24 MR. SCRIBNER: For reimbursement of mandated
25 programs. They have been treated by the Legislature as

1 an eligible claimant because they have been listed in the
2 funding mechanism to get paid for mandates.

3 So when Mr. Premack said that this is a
4 commonsense kind of thing, it actually is because you
5 have all of these actions that are taking place for
6 charters as it relates to funding for mandates, and yet
7 you have one entity that's saying, "No, that's not the
8 case." But the Legislature, the Controller are moving in
9 a different direction. And there's a little hitch in our
10 giddyup for some reason.

11 The point that Mr. Feller raises as far as this
12 being a contract, that's an interesting point. I think
13 that he may have not stressed enough the point that I
14 would like to stress, and that is there are no California
15 cases that show that this is a contract in that sense.
16 These are all other jurisdictions; and that has not been
17 raised here in California at this point.

18 And to the fact that charters weren't in
19 existence in '79 or in '84, that's true. But the
20 Legislature amends the Government Code constantly. And
21 it has always applied retroactively to everything. You
22 are going to have an item today that tinkered with the
23 section to eliminate a program that was established by
24 the electorate in 1979. But you were going to go forward
25 and apply it now, even though decisions were made without

1 any knowledge of what happened here in 2005.

2 The same thing with charters. Charters came on
3 after, yes, they did. But that does not mean that they
4 are somehow waiving their right to get reimbursed for the
5 mandated activities that they have they have to do on a
6 daily basis.

7 Thank you.

8 CHAIR SHEEHAN: Thanks.

9 MEMBER SMITH: A question for Eric.

10 Have charter schools ever been through this
11 process here at the Commission for any other mandate,
12 special ed. or instructional minutes?

13 MR. FELLER: Not to my knowledge. Maybe
14 Ms. Higashi has more information on that.

15 MS. HIGASHI: This is the first test claim in
16 which a charter school was listed as a claimant, filing
17 the actual test claim.

18 There have been other test claims where at
19 different points in our Ed. Code history when charter
20 schools were more closely affiliated with the school
21 district, that when mandated activities were drafted or
22 that, in my recollection is we're talking about one that
23 Mr. Scribner worked on when he worked at the Commission
24 as a law student and as a staff counsel, that he is
25 talking about one that was on the Michelle Montoya

1 requirements for fingerprinting. And I think on that
2 particular one, there was a footnote in the P's and G's
3 or something that allowed school districts to claim costs
4 of fingerprinting for their charter schools that were
5 within their districts, or something to that effect.
6 But the umbilical cord was very tight back then. In more
7 recent times, the legislation, I believe, has changed the
8 relationship of charter schools to districts and to the
9 state; and there's much more independence and different
10 types of entities. And we haven't really looked at all
11 of those types of entities and other issues.

12 MEMBER SMITH: Is staff aware of any other
13 guidance from the Legislature? I mean, just -- are they
14 aware that they may or may not be excluded from the
15 Government Code, depending on interpretation? I mean,
16 would that be shocking to them?

17 MS. HIGASHI: The staff analyses that have
18 issued for this hearing are available, and we have folks
19 from the Capitol that are on the mailing lists, the
20 e-mail list for the documents. And certainly
21 Mr. Feller's analysis seems to be pretty clear on that
22 point. So I would guess they're aware. I have not had
23 any discussion specifically with --

24 MEMBER SMITH: I got it.

25 MS. HIGASHI: -- any Ed Committee members.

1 MEMBER SMITH: I would suggest, whatever
2 happens today, that we write a letter to the appropriate
3 legislators or committees, just to make them aware that,
4 you know, based on different interpretations, it could be
5 said that these folks are eligible or not eligible. That
6 kind of puts them in a weird spot that, to me, is just
7 beyond bizarre that the state would mandate something
8 that, no, you can't claim it back. I think there's
9 something missing here, and I don't know quite what it
10 is.

11 I think that the Legislature needs to give us
12 some guidance on what they intend to do with charter
13 schools. A lot of students go to charter schools. It's
14 important they get the money. The Controller supports
15 them. I just feel like we're in a position now like
16 we're trying to figure this all out without any guidance
17 from the Legislature.

18 MS. HIGASHI: We could certainly do that.

19 CHAIR SHEEHAN: Great.

20 Eric, did you want to --

21 MR. FELLER: I'm not familiar with the bills
22 that Mr. Scribner referred to, so I can't comment on
23 those.

24 The fact that the Government Code is amended
25 constantly, obviously it's been amended just last year.

1 Again, not with regards to charter schools. Likewise,
2 the charter school statute has not been amended to
3 declare themselves school districts for purposes of
4 Article XIII B, section 6, even though they are
5 considered school districts for many other purposes in
6 the law.

7 And then as to waiving the right to
8 reimbursement, a right has to exist before it's waived;
9 and I just don't see it here based on the statutes and
10 the way I read this -- the charter school statutory
11 scheme, as well as the Commission's statutory scheme.

12 CHAIR SHEEHAN: Did you want to add something?

13 Can you just identify yourself for the record?

14 MS. CONDON: Absolutely.

15 Hello. I'm Alexandra Condon. I'm a teacher,
16 CTA member, and I'm speaking on behalf of the CTA; and I
17 have a question and then a statement.

18 My first question will probably go to staff.
19 Charter schools that are completely dependent within the
20 district, are they covered currently under mandates? So
21 we have charter schools that are dependent, and we have
22 charter schools that are independent. There are charter
23 schools that are dependent.

24 MS. HIGASHI: I think that's the class of
25 charter school that I was thinking of, where the district

1 is still filing reimbursement claims because the school
2 is still within the district.

3 MS. CONDON: That's why I didn't know when you
4 were talking about the fingerprinting, I didn't know if
5 that was one specific thing or all mandates?

6 MS. HIGASHI: I think those are the types of
7 schools I was thinking of. Because at the time when that
8 decision was made, it was a different situation with
9 charter schools.

10 MS. CONDON: Correct, because it's dependent
11 and independent. I do want to make that clarification as
12 well.

13 And at CTA, we also would agree with the staff
14 analysis that charter schools are independent and should
15 not be reimbursed under the state mandates.

16 Thank you.

17 MEMBER OLSEN: Madam Chair?

18 CHAIR SHEEHAN: Yes, Ms. Olsen?

19 MEMBER OLSEN: I'd also like to delve into this
20 issue of dependent and independent.

21 My only personal experience with charter
22 schools are with what I think is being termed "dependent
23 charter schools" within the Los Angeles Unified School
24 District.

25 CHAIR SHEEHAN: Chartered by the district.

1 MEMBER OLSEN: And so I guess I just need more
2 clarification on what an independent charter school is,
3 and how the staff analysis applies to dependents versus
4 independents.

5 CHAIR SHEEHAN: Okay, Eric, do you want to
6 address that? And then if we need to get more
7 information, we can do that.

8 MR. FELLER: There's no distinction in the
9 analysis. A charter school is a charter school for
10 purposes of this analysis.

11 On your first question about the difference
12 between the two, I will defer to the charter school folks
13 on that. They have much more expertise on that.

14 CHAIR SHEEHAN: Do you want to address that?

15 MR. PREMACK: Sure. The concepts of dependent
16 versus independent, are not -- and you won't find the
17 words "dependent" or "independent" or even the concepts
18 in the code. It all has to do with what's the degree of
19 relationship between the school and the district. And
20 we, in practice, have a huge range of charter schools.
21 At one end of the spectrum, we have schools that function
22 largely as an arm of the district. They may rely on the
23 district for budget. The district manages their
24 finances, they might be located in district facilities,
25 their staff might be employees of the district. They may

1 rely on the district for a broad range of support is
2 services.

3 On the other end of the spectrum, we have
4 charter schools that are operated as more independent
5 corporations, where they have their own budgets, their
6 own staff, their own -- what have you, and everything in
7 between.

8 We think that this notion that somehow if you
9 have a closer relationship with the district, that you're
10 somehow more worthy of money, we just don't track with
11 that. We think the issue here is very fundamental. And
12 to say that kids that are served on this end of the
13 spectrum are worth less money and get disparate treatment
14 and are discriminated against versus ones that are in
15 this end of the spectrum. They're all the same kids, and
16 they all have the same needs.

17 And the financial effect on the institutions is
18 very similar, and, actually, can be much more painful on
19 this end because the level of reserves and flexibility to
20 absorb these costs is even lower.

21 So we would take issue with this notion that
22 these are somehow different. We think they're eligible
23 claimants throughout the spectrum.

24 CHAIR SHEEHAN: Regardless of how the -- okay.

25 MEMBER OLSEN: I'm not sure that answers my

1 question, though. I mean, that answers part of my
2 question.

3 The other part of my question is, based on your
4 comments, I could read it one of two ways. One way is,
5 okay, so the ones that are -- the more independent you
6 become, the less likely you are to have a successful
7 claim under the statute, given what we're being asked to
8 approve today, which, ergo, the more dependent you are,
9 the greater likelihood there is that you can, in fact,
10 claim either independently or through the school district
11 for these costs. Or, I mean, the other -- the
12 alternative interpretation is no charter school anywhere
13 can get reimbursed under this decision. And I guess
14 that's what I'm trying to get clarification on.

15 MS. SHELTON: Maybe I can help. Some of the
16 older test claims have been mandates on a school
17 district. So the school district is filing the
18 reimbursement claim. And they may -- you know, when they
19 get the money, they may be doling it out to their -- you
20 know, the activities that their individual schools and
21 then the district are performing.

22 But this is the first time the Commissioner has
23 had to deal directly with the issue whether or not a
24 charter school is an eligible claimant for the activities
25 they specifically perform, and in this case are trying to

1 get reimbursed to actually create the charter school.

2 So that may be the difference. With the older ones, it's
3 because the mandate is on the district.

4 CHAIR SHEEHAN: In those statutes you were
5 talking about, you did refer back to, in the P's and G's,
6 that they would file on behalf of the charters in those?

7 MS. HIGASHI: In the ones that I'm recalling.
8 I don't have a copy of those particular P's and G's with
9 me.

10 The other comment I wanted to make is just that
11 the charter school laws evolve every year, and they
12 continue to change. So whatever decisions the Commission
13 has been making in the past several years are all
14 dependent on the law at that point in time.

15 CHAIR SHEEHAN: Right.

16 MS. HIGASHI: So the situation has changed, a
17 number of charter schools that exist today is much
18 higher -- I can't remember the exact number. And the
19 standards for establishing charter schools are much
20 broader than they were at the beginning. And so that's
21 also a very difficult question to answer, because we have
22 not necessarily -- unless a P's and G's amendment comes
23 in, unless a subsequent test claim is filed on changes in
24 statutes, it would not be before the Commission, and we
25 would not necessarily be aware of those changes, unless

1 they come up in the context of an agenda item.

2 CHAIR SHEEHAN: Do you want to -- I mean, I
3 think it sort of evolved, and we're backing into this.

4 MEMBER OLSEN: Right, I just think --

5 CHAIR SHEEHAN: Versus the Legislature says
6 they're eligible or defining them under the Government
7 Code.

8 MEMBER OLSEN: I guess I'm actually hoping that
9 Camille is going to save me here by saying: Well, it's a
10 really technical issue and we actually don't have the
11 ability to decide on it, and we are really only looking
12 at this part of it.

13 Because I think that this is really important.
14 The reason -- the whole reason for charter schools on
15 some level is that school districts were not providing
16 the services that a particular subset of their population
17 needed. And the charter school was a way of addressing
18 that and addressing it so all kids, regardless of their
19 economic status, could get an education.

20 And whether or not they're successful, that's
21 outside of this and that. You know, that's a different
22 debate.

23 But it seems to me that they're providing the
24 services on behalf of public school children. I mean,
25 that's just sort of elemental to me, unless somebody can

1 dispute that, which seems to me, therefore, that they are
2 acting like school districts. And that's --

3 MS. SHELTON: Can I respond?

4 MEMBER OLSEN: A barrier which I'm not able to
5 get past here.

6 MS. SHELTON: We don't disagree with your
7 policy arguments. We just think that it is for the
8 Legislature to determine. Because at this point, the
9 Legislature has specifically defined school districts,
10 very specifically, to include school districts, county
11 offices of education, and community college districts.
12 The list is specific. There is a rule of statutory
13 construction that says when the Legislature specifically
14 defines something and does not include something, that
15 means that they intended not to include it. And so at
16 this point the Commission cannot adopt something that
17 goes beyond the plain language of a statute. That's for
18 the Legislature to change or to amend.

19 And at this point, the Commission doesn't have
20 the authority to change that.

21 MEMBER OLSEN: That's what I was hoping you
22 were going to say.

23 CHAIR SHEEHAN: Although it would get their
24 attention.

25 MEMBER SMITH: Paula?

1 MS. HIGASHI: Yes?

2 MEMBER SMITH: How long -- is this a
3 reconsideration?

4 MS. HIGASHI: No, this is a new test claim.

5 MEMBER SMITH: Okay. A new test claim.

6 MS. HIGASHI: This is the first hearing on the
7 test claim.

8 MEMBER SMITH: Would it be wise to seek some
9 legislative guidance here before we make a decision?

10 MS. HIGASHI: That's a question I would leave
11 to the Commission members.

12 And let me also note just informationwise, we
13 have another charter-school-related test claim for the
14 May hearing, and that's on collective bargaining.

15 MEMBER SMITH: Okay.

16 MR. PREMACK: I would note that the costs of
17 collective bargaining are absolutely staggering. I sit
18 on the board of a nonprofit, very independent charter
19 school. It used to be a Conservation Corps down in
20 Oakland. The costs of going through the collective
21 bargaining process, absolutely staggering. We measure
22 our legal bills in the tens of thousands of dollars.
23 We recognize fully our responsibility to go through the
24 bargaining process. But the costs -- you know, we have a
25 hard time managing our budget, to begin with. The costs

1 of going through that process are huge.

2 Part of the understanding that we reached with
3 the Davis Administration when that law went through is
4 that our costs would be covered when we went through that
5 process.

6 MEMBER SMITH: Well, we look forward to that
7 next month.

8 But I think for this meeting, all I see, any
9 action on this today is firing a shot over there saying,
10 "Hey, wake up, an issue is coming towards you that you're
11 ultimately to settle." So I just wonder if we shouldn't
12 do that more diplomatically by a letter or knock on their
13 doors and just say, "This is a -- we don't know if this
14 is something you intended to keep charter schools out or
15 not," but one could argue that they would never be
16 reimbursed by state-mandated activity. So I don't know
17 if we have the time on the schedule, but this would be a
18 good one to put over so we could seek some guidance.

19 CHAIR SHEEHAN: Yes, I think what's being
20 suggested is to postpone this a month, you know, send a
21 letter to the legislative leadership. It is bubbling
22 because it's coming. We've got other ones coming. You
23 know, what is the direction, the guidance, in terms of
24 that.

25 I think she addressed your issue.

1 MEMBER OLSEN: Right.

2 CHAIR SHEEHAN: It's sort of they pick and
3 choose; and we don't necessarily have the complete legal
4 authority, without some further direction from the
5 Legislature, to make that determination.

6 MS. HIGASHI: I'd be happy, if that's the
7 pleasure of the Commission, to continue this --

8 MEMBER SMITH: I would move to continue it.

9 CHAIR SHEEHAN: For another month?

10 MEMBER SMITH: Right.

11 MS. HIGASHI: -- and I'll send a letter to the
12 Ed. Committee --

13 CHAIR SHEEHAN: You know, that the other one is
14 coming.

15 MS. HIGASHI: -- Ed. Committee, Fiscal
16 Committee folks in leadership.

17 CHAIR SHEEHAN: Did you want to add something?

18 MR. SCRIBNER: No, no, we'll be patient. We
19 will wait. I think that's an excellent idea, and I do
20 agree that it would create more of a forceful effect if
21 you would vote today, rather than saying, "Give us
22 direction."

23 CHAIR SHEEHAN: At least we could put them on
24 notice that this issue is bubbling out there.

25 MR. SCRIBNER: That would be excellent. We

1 would agree wholeheartedly.

2 MEMBER WORTHLEY: Madam Chair, I would support
3 the motion.

4 My only comment is I think it's disingenuous
5 for the government to authorize and allow something to
6 exist and say you're exempt, and then turn around and put
7 burdens on you and then say, "We won't pay for it." I
8 mean, you can't have it both ways. I think it's
9 disingenuous on their part to do that. So I support the
10 motion.

11 CHAIR SHEEHAN: On any level. On many levels,
12 right?

13 MEMBER WORTHLEY: Right.

14 MEMBER SMITH: Okay, so does that need a
15 motion, Anne, for continuance?

16 CHAIR SHEEHAN: No, I think we'll continue it.
17 It's the sense the Commission that we will send a letter
18 to the Legislature. We will schedule it for next -- and
19 then we will have both and can consolidate and have
20 similar discussion on these issues and at least let them
21 know what is coming.

22 MR. SCRIBNER: Thank you.

23 CHAIR SHEEHAN: We'll put over 9, obviously.
24 And that brings us to Item 10.

25 MS. HIGASHI: It brings us to Item 10.

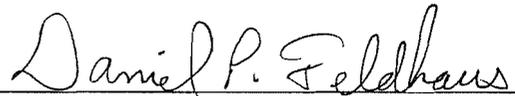
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In witness whereof, I have hereunto set my hand on May 2, 2006.



Daniel P. Feldhaus
California CSR #6949
Registered Diplomat Reporter
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