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**COMMISSION ON
STATE MANDATES**

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PUBLIC HEARING

COMMISSION ON STATE MANDATES



TIME: 10:30 a.m.

DATE: Friday, May 29, 2009

PLACE: Department of Finance
915 L Street, Redwood Room
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHAEL SHEEHY
(Commission Chair)
Representative for MICHAEL GENEST
Director, State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

ANNE HOUSTON SCHMIDT
Representative for CYNTHIA BRYANT
Director, Office of Planning & Research



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 15)

KENNY LOUIE
Commission Counsel
(Items 3 and 4)

LAUREN MANNING
Summer Intern

A P P E A R A N C E S

COMMISSION STAFF PRESENT

continued

NANCY PATTON
Assistant Executive Director
(Item 13)

CAMILLE SHELTON
Chief Legal Counsel
(Item 14)



PUBLIC TESTIMONY

Appearing Re Items 3 & 4 (Student Records):

For Claimant Riverside Unified School District:

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

For Department of Finance:

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

Appearing Re Item 15 (Executive Director's Report):

For the Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 15 (Executive Director's Report):
continued

For CSAC and League of Cities:

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

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1 BE IT REMEMBERED that on Friday, May 29, 2009,
2 commencing at the hour of 10:30 a.m., thereof, at the
3 Department of Finance, Redwood Room, 915 L Street,
4 Sacramento, California, before me, DANIEL P. FELDHAUS,
5 CSR #6949, RDR and CRR, the following proceedings were
6 held:

7 --oOo--

8 CHAIR SHEEHY: Okay, we will convene the
9 Commission on State Mandates.

10 Please call the roll for purposes of
11 establishing a quorum.

12 MS. HIGASHI: Mr. Chivaro?

13 MEMBER CHIVARO: Here.

14 MS. HIGASHI: Mr. Glaab?

15 MEMBER GLAAB: Here.

16 MS. HIGASHI: Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Ms. Schmidt?

21 MEMBER SCHMIDT: Here.

22 MS. HIGASHI: Mr. Worthley is absent today.

23 His son is graduating from high school.

24 And Mr. Sheehy?

25 CHAIR SHEEHY: Here.

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1 Okay, so we have a quorum. We are set to
2 conduct business.

3 MS. HIGASHI: The first item on our agenda is
4 adoption of the minutes from March 27th.

5 MEMBER GLAAB: Move it.

6 MEMBER OLSEN: Second.

7 MEMBER CHIVARO: Second.

8 CHAIR SHEEHY: We have a motion and a second in
9 approving the minutes.

10 All in favor?

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

12 CHAIR SHEEHY: The minutes are approved.

13 MS. HIGASHI: The next item is the *Proposed*
14 *Consent Calendar*. It's on a blue sheet that all of you
15 should have.

16 And I'll read the items:

17 Item 7, Dismissal of withdrawn test claim,
18 *Ferry Assets*.

19 Item 8, Parameters and guidelines, *Local*
20 *Government Employment Relations*.

21 Item 10, Proposed amendments to parameters and
22 guidelines, *National Norm-Referenced Achievement Test*.

23 Item 11, Proposed statewide cost estimate,
24 *Local Recreation Areas: Background Screenings*.

25 CHAIR SHEEHY: Are there any questions or

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1 comments from members of the Commission on the Consent
2 Calendar?

3 MEMBER LUJANO: Move approval.

4 MEMBER GLAAB: Second.

5 CHAIR SHEEHY: We have a motion to approve and
6 a second.

7 All in favor?

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

9 MS. HIGASHI: And just --

10 CHAIR SHEEHY: The Consent Calendar is
11 approved.

12 Yes, Paula?

13 MS. HIGASHI: Just for the record, I'd like to
14 note that Items 5, 6, and 9 have been postponed at the
15 request of claimant representatives.

16 CHAIR SHEEHY: Items 5, 6, and 9 have been
17 postponed.

18 MS. HIGASHI: This brings us to the hearing
19 portion of our meeting. And I'd like to ask that all of
20 the parties and representatives who intend to speak on
21 our test claim set for hearing, Item 3, *Student Records*,
22 I'd like to ask them to please stand.

23 *(Art Palkowitz and Susan Geanacou were*
24 *duly sworn.)*

25 MS. HIGASHI: Item 3 will be presented by

1 Commission Counsel Kenny Louie.

2 MR. LOUIE: Thank you, Paula.

3 Item 3 is *Student Records*. This test claim
4 addresses issues of pupil and student record management
5 by school districts and community-college districts, such
6 as the establishment, maintenance, and destruction of
7 records; transfer of pupil and student records; release
8 of information to peace officers; release of information
9 in compliance with a court order or subpoena; and notice
10 to others concerning a student's disciplinary records.

11 Staff received comments on the draft staff
12 analysis only from Claimant Riverside Unified School
13 District, which were addressed in the final staff
14 analysis.

15 Staff finds that some of the test-claim
16 statutes are not reimbursable state-mandated programs
17 because they are federal mandates and/or court mandates
18 or not new programs or higher levels of service.
19 However, staff finds that some of the test-claim statutes
20 impose reimbursable state-mandated activities on school
21 districts for providing access to or transferring pupil
22 records to foster families, new districts, or peace
23 officers.

24 Staff also finds that a test-claim statute
25 imposes a reimbursable state-mandated activity on

1 community-college districts relating to informing alleged
2 victims of sexual assault or physical abuse about any
3 disciplinary action taken by a community college
4 concerning the sexual assault or physical abuse.

5 We recommend one modification to the staff
6 analysis, however. The fee authority in Education Code
7 section 76223 for furnishing copies of records for
8 community-college students does not apply to the
9 reimbursable state-mandated activity on community-college
10 districts to inform a victim of sexual assault or
11 physical abuse of the results of any disciplinary action
12 against another student.

13 Staff recommends that the references in the
14 staff analysis, pages 3, 57, and 58, and the proposed
15 statement of decision's pages 5, 57, 58, to the fee
16 authority in Education Code 76223 be deleted.

17 With this modification, staff recommends that
18 the Commission adopt the staff analysis to partially
19 approve the test claim for the activities listed on
20 pages 57 and 58.

21 Will the parties and witnesses state their
22 names for the record?

23 MR. PALKOWITZ: Good morning. Art Palkowitz on
24 behalf of the claimant.

25 MS. GEANACOU: Susan Geanacou for the

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1 Department of Finance.

2 CHAIR SHEEHY: Great.

3 Mr. Palkowitz, do you want to comment?

4 MR. PALKOWITZ: Yes, thank you.

5 Good morning. This test claim involves various
6 types of records pertaining to pupils.

7 The Commission has recommended in their staff
8 analysis that certain activities be reimbursed. Briefly,
9 those records pertain to individualized education plans
10 under the jurisdiction of foster-family agencies. They
11 also deal with probation type of requests, other types of
12 foster care, and dealing with certain things that relate
13 to specific peace officers.

14 What I'd like to say is, first of all, we agree
15 with the Commission on that type of analysis, and we
16 would hope the Commission would affirm that
17 recommendation.

18 There is a group of records, though, that the
19 Commission staff is recommending not be approved as
20 reimbursable activity, and that refers to transfer of
21 pupil's permanent record or a copy of the permanent
22 record to the K-12 school district or private school
23 where the pupil intends to enroll, upon the request of
24 the K-12 school district or private school where a pupil
25 intends to transfer.

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1 So this is an instance where a student is
2 making a change, the new school is requesting the records
3 from the old school. It happens quite often.

4 The analysis by the Commission staff goes
5 through in great detail and starts off with referring to
6 an Ed. Code section back from 1959, 50 years ago. And
7 that code section, very similar to these activities,
8 refers to a "*cumulative record*." The language in the
9 current statute refers to a "*permanent record*." And so
10 there's an analysis of "*cumulative*" and "*permanent*"
11 record. And the conclusion of the staff is that that
12 cumulative record is a permanent record and, therefore,
13 it was already requested by a previous statute, so this
14 is not really a new statute, a new program and,
15 therefore, shouldn't be reimbursed.

16 I guess the logical question is, if it's the
17 same, a cumulative record or a permanent record, why did
18 the Legislature pass this bill if the record is exactly
19 the same, cumulative or permanent? And that older
20 section was eventually repealed.

21 So, to me, I think there was an intent of the
22 Legislature that permanent records should be reimbursed
23 under this statute. And the language that was in the
24 other one, for whatever reason, the way logically I look
25 at it, they wouldn't be asking us to do the same thing,

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1 creating a new statute, with the same activity. So they
2 have defined that a permanent record is different than a
3 cumulative and, therefore, should be reimbursable.

4 CHAIR SHEEHY: Thank you, Mr. Palkowitz.

5 Does Commission staff counsel want to respond?

6 MR. LOUIE: The analysis is actually on page 41
7 of the final staff analysis.

8 CHAIR SHEEHY: All right.

9 MR. LOUIE: In essence, it wasn't actually that
10 the cumulative record was the same as the permanent
11 record; rather, the permanent record is inclusive of the
12 cumulative record. So technically, it was more of a
13 decrease. It would be considered as more of a decrease
14 in terms of what is being referred to in that code
15 section.

16 CHAIR SHEEHY: Questions or comments from the
17 board members? Commission members?

18 MEMBER GLAAB: I have a question, if I may.

19 CHAIR SHEEHY: Mr. Glaab?

20 MEMBER GLAAB: Are these records, are they in
21 statute that they have to be hard copies, or can they be
22 done electronically? Because I read here where within
23 five days a permanent record needs to be transferred.
24 And my question is, have we transitioned over to the
25 electronic age, I guess?

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1 MR. PALKOWITZ: The way I read the statute,
2 sir, it says "the record" or "a copy of." I think some
3 of these statutes are 1998. So we may not have been
4 thinking in that line back then as we would today. So
5 I don't really know if that's a substitute. It seems to
6 me that if they're going to accept a copy, then an
7 electronic version should be equally acceptable.

8 MEMBER GLAAB: Thank you.

9 CHAIR SHEEHY: All right, additional comments
10 from Commission members?

11 *(No response)*

12 CHAIR SHEEHY: Does anybody from the public
13 here today want to comment on this item?

14 *(No response)*

15 CHAIR SHEEHY: Finance?

16 MS. GEANACOU: Yes, thank you.

17 Good morning. Susan Geanacou for the
18 Department of Finance.

19 I have two, hopefully, brief comments about the
20 final staff analysis on two specific code sections.

21 The first is Education Code section 49069.3
22 regarding a school district's response to foster-family
23 agency request for access to student records under their
24 jurisdiction.

25 We acknowledge that the Commission staff

1 considered the plain-language issue on pages 42 and 43 of
2 the final staff analysis. Nonetheless, Finance disagrees
3 with the analysis in that regard, and thinks that the
4 staff is, and should not be, reading into the plain
5 language of Ed. Code section 49069.3 a requirement of the
6 school districts that isn't there to provide the records
7 in response to the foster-family agency request. And
8 accordingly, we ask that this activity be denied
9 reimbursement.

10 The second comment is regarding the
11 community-college districts and Education Code
12 section 76234. It involves the activity of informing
13 the alleged victim of sexual assault or physical abuse
14 within three days of the results of any disciplinary
15 action by the community college and the results of any
16 appeal. It's on page 53 of the final staff analysis.

17 Finance asserts that this activity is already
18 being reimbursed under another community-college mandate
19 called *Sexual-Assault Response Procedures*. It's '99 test
20 claim 12, 99-TC-12. And in that mandate, the Commission
21 found that it was reimbursable for each community-college
22 district to adopt and to implement written procedures or
23 protocol for several pieces of information, one of which
24 is procedures for ongoing case management. And
25 specifically, including keeping the victim informed of

1 the status of disciplinary proceedings in connection with
2 the assault and the results of any other disciplinary
3 action or appeal.

4 And to the extent we think that is the same
5 activity being recommended for reimbursement here,
6 community-college districts should not be reimbursed
7 twice for the same or very similar activity.

8 CHAIR SHEEHY: Ms. Geanacou, have you
9 previously shared that analysis that you just presented
10 and, specifically, that you feel that these activities
11 are already being covered under another reimbursable
12 mandate, shared that with the Commission and staff?

13 MS. GEANACOU: In a very late filing, yes,
14 Finance did do it. And by "very late," I believe it was
15 either yesterday or this morning. So I don't believe
16 members or staff have had time to process that analysis.
17 And I fully recognize that.

18 CHAIR SHEEHY: Well, it's a little late in the
19 game then to have that incorporated into this decision.
20 You really haven't given us sufficient time to analyze
21 that.

22 MS. GEANACOU: I understand that.

23 CHAIR SHEEHY: Does the Commission staff want
24 to respond?

25 Mr. Louie?

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1 MR. LOUIE: Yes. We are actually able to
2 respond to that.

3 The activity approved in that prior test claim,
4 there was discussions in the P's & G's stage. The
5 activity was really for a one-time activity of adopting
6 policies and distributing those policies to the
7 districts, and not actually informing the victim. In
8 this test claim, the activity is informing the victim.
9 So it is a different activity.

10 CHAIR SHEEHY: All right. Any additional
11 comments or questions by members of the Commission?

12 *(No response)*

13 CHAIR SHEEHY: Mr. Palkowitz and Ms. Geanacou,
14 have you concluded your comments?

15 MS. GEANACOU: I have, yes.

16 CHAIR SHEEHY: I think at this point, we could
17 entertain a motion.

18 Is there somebody here that would like to make
19 a motion on Item 3?

20 MEMBER CHIVARO: I'll move the staff
21 recommendation.

22 MEMBER GLAAB: Second.

23 CHAIR SHEEHY: Mr. Chivaro moves, Mr. Glaab
24 seconds.

25 Is there any request for roll-call vote?

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(No response)

CHAIR SHEEHY: All in favor?

(A chorus of "ayes" was heard.)

CHAIR SHEEHY: That item is approved.

So we're going to move to Item 4.

MS. HIGASHI: Mr. Sheehy?

CHAIR SHEEHY: Yes?

MS. HIGASHI: You should call for the noes,
just in case.

CHAIR SHEEHY: I'm sorry?

MS. HIGASHI: Did everybody vote "aye"?

CHAIR SHEEHY: I asked if anybody objected to a
unanimous --

MS. HIGASHI: Oh, okay.

CHAIR SHEEHY: I didn't hear any objections.
But I'm happy to have the roll call. Is that preferable?

MS. HIGASHI: No, that's okay. I just wanted
to confirm it was unanimous.

CHAIR SHEEHY: I apologize.

Is there anybody here that wanted to abstain or
vote "no"?

(No response)

CHAIR SHEEHY: Hearing none, such shall be the
order.

MS. HIGASHI: Okay. Item 4 --

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CHAIR SHEEHY: Item 4.

MS. HIGASHI: -- is the Proposed Statement of Decision on your prior action.

Mr. Louie will present this.

CHAIR SHEEHY: Thank you, Paula.

MR. LOUIE: The only issue before the Commission is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Student Records* test claim.

Staff will update the final Statement of Decision reflecting the witnesses testifying, vote count, and modifications to the Statement of Decision addressed in that brief.

CHAIR SHEEHY: Okay, are there any additional comments from the parties here today?

(No response)

CHAIR SHEEHY: Is there a motion?

MEMBER CHIVARO: Move adoption.

MEMBER OLSEN: I have a question.

CHAIR SHEEHY: Ms. Olsen?

MEMBER OLSEN: I have a question, and that is, I take it, all of this will reflect the comments you made earlier?

MR. LOUIE: Yes.

MEMBER OLSEN: Because we didn't actually, in

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1 our prior motion, incorporate his comments into what we
2 have in front of us.

3 CHAIR SHEEHY: That's a good point.

4 MS. SHELTON: Except the staff recommendation
5 was as modified by his opening. And it's just to strike
6 that one fee authority statute that really does not
7 apply. So this would be -- the recommendation would be
8 to adopt the proposed Statement of Decision as modified.

9 CHAIR SHEEHY: As modified.

10 MEMBER OLSEN: Thank you.

11 CHAIR SHEEHY: Thanks, Camille.

12 MEMBER CHIVARO: I made the motion.

13 CHAIR SHEEHY: Okay, so we have a motion from
14 Mr. Chivaro.

15 MEMBER LUJANO: Second.

16 CHAIR SHEEHY: We have a second from
17 Mr. Lujano.

18 Does anybody want to abstain or vote "no"?

19 *(No response)*

20 CHAIR SHEEHY: Seeing none, all in favor?

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

22 CHAIR SHEEHY: Good. Okay, such will be the
23 order.

24 MS. HIGASHI: Thank you very much.

25 CHAIR SHEEHY: So we're taking care of our

1 business.

2 Paula, where are we now?

3 MS. HIGASHI: Now, we just move all the way
4 through the binder. And we stop at -- and we even pass
5 Item 12 -- but we go to Item 13.

6 Assistant Executive Director Nancy Patton will
7 give us a leg. update.

8 CHAIR SHEEHY: Okay, Nancy, let us know how
9 we're doing in the Legislature.

10 MS. PATTON: Well, our mandate bills are
11 dwindling, maybe right now, as we speak.

12 What we have is AB 349 by Member Silva. This
13 would provide that if any mandated program is suspended
14 for three concurrent years, the Department of Finance
15 would be required to submit language in the Governor's
16 proposed budget to repeal the suspended mandates.

17 It passed through the Assembly, 77 to zero, and
18 it's pending committee assignment in the Senate. So it
19 went through the Legislature, the Assembly with no "no"
20 votes.

21 CHAIR SHEEHY: Is this -- who sponsored that
22 bill?

23 MS. PATTON: It's sponsored by the author.
24 It's not an administration bill.

25 CHAIR SHEEHY: All right.

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1 MEMBER OLSEN: I do have a question about it.

2 CHAIR SHEEHY: Sure. Certainly.

3 MEMBER OLSEN: What does it mean to have three
4 concurrent years? Don't they mean consecutive years? Am
5 I just out of it?

6 The years would be having to run together to be
7 concurrent.

8 MS. PATTON: Three fiscal years.

9 MEMBER OLSEN: Consecutive.

10 MS. HIGASHI: It should be "consecutive."

11 MEMBER OLSEN: Thank you.

12 CHAIR SHEEHY: So did Commission staff have a
13 position on that bill?

14 MS. PATTON: No.

15 CHAIR SHEEHY: You don't take positions on
16 bills?

17 MS. HIGASHI: Not if it doesn't impact our
18 workload.

19 This would impact Finance's workload, most of
20 all.

21 It would, if the bills are badly drafted.

22 CHAIR SHEEHY: Okay. Please, Ms. Patton,
23 continue.

24 MS. PATTON: The next bill is AB 548 by Member
25 Krekorian. This bill would require the audits the State

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1 Controller completes on mandate reimbursement claims to
2 be done within three years from the time the claim was
3 filed rather than three years from the time reimbursement
4 for the claim was made by the State.

5 The author's office reports, by e-mail this
6 morning, that they amended the bill yesterday to,
7 instead, saying the claims be done -- the audits be
8 completed within four years rather than three.

9 I haven't seen that language yet. That just
10 happened yesterday. But with that amendment, it did pass
11 out of Assembly Appropriations yesterday, so it's on the
12 floor.

13 And the final bill is AB 661. This is the bill
14 that would implement the settlement agreement between the
15 Department of Finance and the schools on the BIPS
16 program. That bill, due to its high cost, was held in
17 suspense yesterday in Appropriations.

18 CHAIR SHEEHY: Okay.

19 MS. PATTON: The author's office reports this
20 morning they don't think it's going to move.

21 And that's it.

22 CHAIR SHEEHY: Thank you, Ms. Patton.

23 MS. HIGASHI: Item 14, Chief Legal Counsel's
24 report.

25 CHAIR SHEEHY: Ms. Shelton?

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1 MS. SHELTON: Good morning. Nancy's report
2 just flows right into mine.

3 If you notice, in the middle of the page, the
4 Court did set a December 11th hearing date on BIPs. And
5 if the situation of the settlement agreement is not taken
6 care of and an appropriation is not made, that date is
7 set for hearing. So we will be possibly attending a
8 hearing date on the merits of that claim at that point.

9 CHAIR SHEEHY: So this is directly connected
10 with this bill that was just held?

11 MS. SHELTON: Yes.

12 CHAIR SHEEHY: So I'd like to understand that
13 better. What's happening? There's a bill going
14 through --

15 MS. SHELTON: There was a settlement agreement
16 that required a buy-off on the majority of the school
17 districts. Actually, 95 percent of the school districts
18 bought in and agreed to sign a waiver of the right to
19 file reimbursement claims from the State Controller's
20 Office.

21 The agreement also would have a court enjoin
22 the Commission from adopting any parameters and
23 guidelines in the statewide cost estimate because we had
24 not reached that stage yet. The Commission had only
25 adopted a Statement of Decision approving the claim.

1 And then the third prong of this was, an
2 appropriation would be made based on the Department of
3 Finance and the school districts' settlement agreement.
4 And AB 661 was a vehicle that would have appropriated
5 that money to settle the case.

6 And the parties went to court in March, during
7 our last hearing, to try to get the judge to sign off on
8 this agreement; and the Court would not sign off until an
9 appropriation had actually been made. And so at that
10 point, we're way past the five-year deadline for hearing
11 cases in the trial court; but the judge, with the
12 agreement of the parties, pushed it forward because they
13 essentially had an agreement -- pushed it forward and
14 agreed to set it for December 11th for a trial on the
15 merits if the appropriation is not made.

16 CHAIR SHEEHY: Well, so if this bill is held up
17 and stopped in the Legislature, how does that impact the
18 process?

19 MS. SHELTON: That would be up to the parties
20 and up to the Department of Finance and the school
21 districts, maybe trying to renegotiate another agreement,
22 possibly, or you just have a hearing on the merits. It
23 would go through the litigation process.

24 CHAIR SHEEHY: Okay.

25 MS. SHELTON: The court is maintaining

1 jurisdiction, so it would just proceed.

2 CHAIR SHEEHY: Is that it, Ms. Shelton?

3 MS. SHELTON: That's it. And then I do list
4 some cases of interest.

5 The first one, it was an update from last
6 month's report. This was dealing with Grossmont Union
7 High School District on a handicapped and disabled
8 student program. The Commission is not a party to that
9 case; but in this case, the school districts sued the
10 Department of Education directly to try to get
11 reimbursement for their costs of performing that program.

12 The Supreme Court denied the petition for
13 review. So basically, the ruling in this case was that
14 the school districts did not exhaust their administrative
15 remedies by filing a test claim with the Commission. So
16 it's possible we could be getting a test claim from
17 school districts on that case.

18 The second case of interest is a lawsuit by
19 school districts against the State Controller's office.
20 It's now on appeal. In that case, the Commission is not
21 a party to that action, but it was a challenge to
22 reductions made on reimbursement claims on the ground
23 that the school districts did not have contemporaneous
24 source documents.

25 The trial court ruled that to the extent that

1 the Commission's parameters and guidelines require
2 contemporaneous source documents, then those
3 reductions -- it would be valid for the Controller to
4 reduce on that ground. But to the extent the parameters
5 and guidelines did not include that language, then there
6 was a ruling in favor of the school districts.

7 Both parties have appealed.

8 We do have a request on file from the State
9 Controller's Office to go back and amend every single set
10 of parameters and guidelines to include that language.
11 We have not yet set that for hearing. A lot of the
12 issues that that request raises are issues involved in
13 this lawsuit.

14 CHAIR SHEEHY: Okay, very good.

15 Questions of our Chief Counsel here?

16 *(No response)*

17 CHAIR SHEEHY: Seeing none, Paula, do you want
18 to present the Executive Director's report?

19 MS. HIGASHI: Certainly.

20 MEMBER OLSEN: There's somebody in the back.

21 CHAIR SHEEHY: I'm sorry, Mr. Palkowitz.

22 MR. PALKOWITZ: Yes, sir. I'm sorry to bother
23 you.

24 CHAIR SHEEHY: No, it's not a bother. This is
25 a public meeting. Please come forward.

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1 MR. PALKOWITZ: I just wanted to clarify.

2 So is the Commission's process going to be,
3 when that appeal is over with, that deal with the request
4 to amend the P's & G's?

5 MS. SHELTON: Probably. The request has been
6 filed, so the period of reimbursement is already
7 preserved.

8 It doesn't -- you know, it would go back -- I
9 don't remember what year -- Rick may remember -- it would
10 go back to the fiscal year prior to the date they filed
11 their request, if it's approved.

12 MR. PALKOWITZ: And the request is to amend
13 P's & G's just for those --

14 MS. SHELTON: All of them. Every single
15 mandate, at your local agency and for school districts.

16 MS. HIGASHI: That does not currently have the
17 updated language.

18 MS. SHELTON: The language is already included
19 in all the P's & G's, and has been included, I think,
20 since 2004, something like that. It's been in the
21 P's & G's for a while. So we're talking about the old
22 group.

23 MS. PATTON: Which was filed in 2005.

24 MS. HIGASHI: But there are different
25 variations of the so-called boilerplate language. And

1 the Controller's request brings that language up to
2 what's been currently adopted.

3 MR. PALKOWITZ: So if today there was a P & G
4 being approved, would they have the new language?

5 MS. HIGASHI: Exactly, yes. We have not
6 received any comments -- I don't think we have any
7 comments in that record. We've been reviewing it and
8 trying to determine if we can proceed on any of the
9 PGA's. We have not heard specifically from any of the
10 parties that they wish for us to postpone it. And we had
11 planned to have a prehearing conference to discuss the
12 pros and cons of going forward immediately or holding it
13 until the litigation is completed. But there are also
14 related incorrect reduction claims on all of these cases
15 pending before the Commission, the ones that are subject
16 to the litigation and others that are not in the
17 litigation.

18 MR. PALKOWITZ: Thank you.

19 CHAIR SHEEHY: Okay, are there any other
20 questions or comments on this item?

21 MS. HIGASHI: Camille has one.

22 MS. SHELTON: You know, I forgot to mention.
23 We have a new law clerk that is starting, she is
24 interning from McGeorge for credit this summer, and her
25 name is Lauren Manning.

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1 CHAIR SHEEHY: Lauren, do you want to stand up?
2 MS. MANNING: Sure. Hi.
3 CHAIR SHEEHY: Welcome aboard. Thank you.
4 MS. MANNING: Thank you.
5 MS. SHELTON: Lauren is a second-year student
6 at McGeorge, and she's helping us out, doing a lot of
7 research on some of these old test claims.
8 CHAIR SHEEHY: Excellent.
9 MS. HIGASHI: And as Camille noted, for credit.
10 MS. SHELTON: For credit.
11 MS. HIGASHI: So we're very grateful. She's
12 with us for credit.
13 MS. SHELTON: School credit. No pay.
14 CHAIR SHEEHY: Well, I hope your credit doesn't
15 get reduced by 5 percent.
16 MS. MANNING: No.
17 CHAIR SHEEHY: Okay, Paula?
18 MS. HIGASHI: Back to Item 15.
19 The first page, there is an overview of our
20 pending caseload. We're now down to 59 test claims
21 pending; and with your adoption today, 58.
22 MS. PATTON: *Ferry Assets*.
23 MS. HIGASHI: With *Ferry Assets*, we dismissed,
24 down to 58.
25 The first time we've been below 60 in many,

1 many years. Thank you.

2 I've given you just the briefest of overview on
3 the budget issues because there seems no point in even
4 trying to capture where we are. It changes on a
5 minute-to-minute basis. But what is an important issue
6 to note is that we believe that this summer, or during
7 conference committee, at some point in time, Assembly
8 Budget Subcommittee Number 4 is going to give serious
9 consideration to giving the Commission jurisdiction over
10 some form of reconsideration procedure. And this
11 decision has been precipitated by the recent ruling in
12 the CSBA case, which basically said that the Legislature
13 can't tell us or direct us to do reconsiderations in the
14 future.

15 So with that decision, there is serious
16 interest in making sure that the Commission has
17 jurisdiction to change prior statements of decision when
18 there's a change -- a material change in facts or law
19 that has occurred since the time of that decision.

20 So in response to the request for comment and
21 our participation, I had to speak in the Assembly Budget
22 Subcommittee, and I've given you copies in the agenda
23 item of the background material that the subcommittee
24 distributed, as well as what I handed out just to use as
25 talking points. And then at the end of that hearing, a

1 request was made to all of us to provide proposals and
2 ideas.

3 So what we did is, we put together a proposal
4 based on how we read the CSBA ruling. And instead of
5 calling it "*reconsideration*," the draft that I prepared
6 for Camille is basically a procedure which allows the
7 Commission to amend the test-claim decision, much like
8 the court considered in terms of amendment of an
9 injunction when there's a change. And it's drafted not
10 as a Commission proposal, but as an example of one way
11 we think would be workable. But there are a number of
12 variables in this that obviously are subject to a lot of
13 negotiation and discussion.

14 The parties have all been notified of this
15 process that's underway to think about this issue and to
16 develop a proposal. And CSBA and League of Cities and
17 CSAC have sent a letter to the committee consultants and
18 committee members, requesting that they be involved in
19 this process. So we're hopeful that if this process does
20 pick up again, that we could have a full discussion and
21 cover all of the issues.

22 Obviously, at issue are the questions of who
23 would have the authority to file a request for amendment
24 of a statement of decision. We're recommending that it
25 be the parties to the test claim proceeding currently.

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1 There's interest in the Capitol for legislators
2 to have the right to request amendment of the statement
3 of decision.

4 And also --

5 CHAIR SHEEHY: That doesn't sound like a good
6 idea to me.

7 MS. HIGASHI: I'm not going to comment, but
8 that is pending.

9 CHAIR SHEEHY: Well, certainly, I can get you
10 to go on the record; can't I?

11 MS. HIGASHI: You can say whatever you like.

12 The other is that -- the question is, well, how
13 far back would an amendment reach? And instead of
14 saying, you know, go back one fiscal year, this draft
15 just suggests that it be the next fiscal year, the
16 following fiscal year after the decision is changed, if
17 it's changed.

18 It also would give the Commission the authority
19 to amend the P's & G's, prepare a new statewide cost
20 estimate, do whatever needs to be done to update what we
21 know about the mandate, you know, if a decision were to
22 be amended.

23 And the other question is, what about statute
24 of limitations? How far back can you go?

25 This proposal sets up a process that, for the

1 first year of operation of this process, that a request
2 could be filed on any prior decision based on the
3 subsequent change that occurs after that decision was
4 rendered.

5 After that one-year period, there would be --
6 for all the decisions that would be issued by the
7 Commission, there would be a provision that says that one
8 year after the change occurs, there's a window in which
9 a proposal can be filed to request an amendment of that
10 decision. So we're not leaving it absolutely open-ended,
11 but requiring that it be one year after that change,
12 modification.

13 So in this case, it would be -- I mean, think
14 about it, it could be if the statutes that define
15 "reimbursement" change, and it would alter 20 prior
16 decisions that found in a different way. Requests could
17 be filed to amend those decisions, to change it so they
18 would be based on current law. The same thing if a case
19 law were issued, so...

20 CHAIR SHEEHY: Paula, has the Assembly Sub 4
21 taken any action specifically on this? What action --

22 MS. HIGASHI: The action that was taken is, the
23 committee chair directed us to form a working group to
24 work on a proposal and to bring proposals back to the
25 subcommittee.

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1 CHAIR SHEEHY: What type of proposal are you
2 looking for? A bill? A legislative proposal?

3 MS. HIGASHI: That's unclear. Budget-trailer
4 language is, you know, the direction LAO was moving.

5 CHAIR SHEEHY: And can you tell me more
6 succinctly, what is the problem here they're trying to
7 solve, with this budget trailer bill language?

8 MS. HIGASHI: The problem they're trying to
9 solve is, if there is a change in case law that, today,
10 would -- if an old decision had been decided today which
11 changed the outcome of that case and affect mandate
12 reimbursement, they'd like to see that case reconsidered.

13 In the past, what has happened is, only those
14 cases that LAO identified as potential denied mandates
15 were the subject of reconsideration, and we were directed
16 to reconsider those cases in the hope that by
17 reconsidering them based on current law, the State would
18 reduce its liability. Because we have decisions on the
19 books that are from the Board of Control, that are from
20 the Commission, before much of our case law that's
21 operative today had even been issued.

22 CHAIR SHEEHY: I see.

23 MS. HIGASHI: We also have changes to the
24 definition of costs mandated by the State that have
25 occurred since those prior decisions were issued.

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1 CHAIR SHEEHY: It just seems to me that an
2 issue like this ought to be moving through Policy
3 Committee where there can be full public input, debate;
4 not part of a budget trailer bill, "let's do something at
5 the last minute" type drill.

6 MS. HIGASHI: Exactly.

7 CHAIR SHEEHY: So I'm a little uncomfortable in
8 hearing that they're trying to do this as a trailer bill.
9 This is a complicated subject. I think it needs a lot of
10 review and public input.

11 MS. HIGASHI: And that's what I did say in my
12 testimony. But I put this draft together mainly as a
13 defensive move, because if we don't put something in
14 writing as a starting point, we don't know where it's
15 going to start from.

16 And this draft was on the Web with our agenda.
17 And I'll be sending it out to other interested parties,
18 just so we have it as a starting point. But it's gone to
19 LAO, it's gone to Budget subcommittee staff, it's gone to
20 Finance staff.

21 CHAIR SHEEHY: Mr. Glaab?

22 MEMBER GLAAB: I understand what they're trying
23 to do here, bring everything into compliance with current
24 law. But it seems to me -- correct me if I'm wrong, it's
25 going to open up Pandora's box -- and our workload could

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1 explode. I'm just guessing that that would be the case.

2 So I concur with you, Mr. Sheehy. I think this
3 needs and calls for a vote in a full public hearing,
4 weighing everything.

5 CHAIR SHEEHY: Thank you.

6 Paula, could you please keep the Commission
7 members apprised of how this develops?

8 MS. HIGASHI: Certainly.

9 CHAIR SHEEHY: And I'd like the Department of
10 Finance staff -- Ms. Castañeda, I'd like you also -- you
11 don't have to come say anything, if you don't want -- but
12 since you are the Department of Finance mandates
13 principal, I'd like to make sure that this is an issue
14 you follow closely and report up through your chain of
15 command what's going on. Because I want to make sure
16 that this is not something that's done in a vacuum.

17 I'm sorry, was there public comment?

18 MR. BURDICK: Yes, thank you.

19 Yes, Chairman Sheehy and Members, Allan
20 Burdick. I serve as a special staff to the California
21 State Association of Counties and League of California
22 Cities advisory committee on state mandates.

23 And Paula referenced the letter sent on behalf
24 of CSAC, the League, and California School Boards
25 Association. In the letter, basically the bottom line

1 was we would like to have full participation in these
2 discussions, and I think also an open and fair
3 discussion. And I think we'd like to echo the
4 recommendations of the Chairman and Member Glaab. I
5 think this would be a better forum to have an open
6 discussion of these issues. They are very complicated,
7 legal issues related to this.

8 I know the Legislature, in moving forward on
9 this, or the Analyst, was really the prime mover of this.
10 Essentially, they're trying to look at it from the
11 standpoint of, they would like to have consideration
12 which would eliminate mandates. And I believe you have
13 to see a reconsideration to suggest an expansion of
14 mandates.

15 On the other side, local governments would
16 clearly look at this from the standpoint of saying there
17 may be times in which a prior decision then excluded
18 something that now should be included. Was that included
19 in a reconsideration or is that a new test claim?

20 So I think we'd just like to know that we
21 want -- on behalf of the League and CSAC, we thank you
22 for your interest in this, and I think I would encourage
23 your participation in a fair and open deliberation of
24 this and not a budget-trailer-bill fix.

25 CHAIR SHEEHY: Thank you, Mr. Burdick. I think

1 your comments are very appropriate.

2 MR. BURDICK: Thank you.

3 CHAIR SHEEHY: Is there any more public comment
4 on this item?

5 *(No response)*

6 CHAIR SHEEHY: Paula, do you want to continue?

7 MS. HIGASHI: Oh, no, I'm pretty much done.

8 I have been in contact also with CSBA, and they
9 have a desire to comment and participate as well,
10 especially in light of the litigation that, after having
11 completed that case, there's certainly a concern that
12 whatever process is developed, that it meet their
13 concerns as well.

14 CHAIR SHEEHY: You know, our budget process
15 this year is -- our budget process for the last 12 months
16 has been the strangest budget process I've experienced in
17 my professional career. And I've been -- like others on
18 this Commission, I've been in and around this process for
19 at least two decades. My point being, that I'm not --
20 it's not clear to me how this process is going to play
21 out in June as far as amendments.

22 We actually do have a Budget Act that has been
23 passed and approved by the Governor and is in place. So
24 the good news is, the Controller will have a budget to
25 work on, on July 1st. But I think as everybody here

1 knows that follows what's going on, that budget is no
2 longer in balance because of the ongoing severity of the
3 recession and the reduction in our state revenues, and
4 the fact that we also have expenditure increases that we
5 didn't anticipate when the package was put together in
6 February. So it's not clear to me how this process is
7 going to work.

8 Do you know, Paula, whether or not the Senate
9 has taken any action on this item? And then more to the
10 point, do you know whether this is an item that has
11 actually been queued up for review and discussion by the
12 current ten-member conference committee that is taking
13 place on the State budget?

14 MS. HIGASHI: I don't know. The Senate -- let
15 me ask Carla.

16 I thought our budget was closed in the Senate.

17 MS. CASTAÑEDA: Right, both houses closed
18 without any reconsideration here. So it hasn't come up
19 yet.

20 CHAIR SHEEHY: I'm sorry, could you come
21 forward, Carla, and identify yourself for the record,
22 please? I'm not sure the court reporter knows who you
23 are, but the other folks here do.

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

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1 Both houses are closed and there was no
2 adoption of any of this language.

3 As far as showing up on the conference agenda,
4 we have not seen anything yet. However, with the
5 Assembly chairing them, it may come up because the issue
6 was before the Assembly.

7 CHAIR SHEEHY: I see.

8 MS. HIGASHI: One thing I would like to do is,
9 though, I would like to have two members work with me as
10 a subcommittee so that if I need folks that I can call
11 quickly and bounce ideas off of, share drafts with, or
12 comments, that I have a group.

13 CHAIR SHEEHY: Okay, you want two members -- a
14 two-member subcommittee?

15 MS. HIGASHI: Two members, yes.

16 CHAIR SHEEHY: Are there any members here that
17 volunteer?

18 MEMBER OLSEN: I'll volunteer, but I'm out of
19 town. Does that work for you?

20 MEMBER GLAAB: I'm out of town, too.

21 MS. HIGASHI: We can do conference calls.

22 CHAIR SHEEHY: I think Mr. Glaab's an excellent
23 choice because of his local government background and
24 because of his state government executive background.
25 And Ms. Olsen certainly was -- I don't know if she

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1 considers herself still -- an expert on the state budget
2 and the process. So I think she also would be --

3 MEMBER OLSEN: I'll consider myself a
4 historical expert on the state budget process.

5 CHAIR SHEEHY: It wasn't that many years ago
6 when you and I worked on the state budgets.

7 MEMBER OLSEN: Yes, it was a decade.

8 CHAIR SHEEHY: Well, it doesn't feel like it.
9 I think Sarah would be a great choice. So if that's
10 okay with the Board members, it will be Mr. Glaab and
11 Ms. Olsen.

12 MS. HIGASHI: Super. And what I will do is, as
13 we get new information, I'll share it with the entire
14 Commission. But when I need to have consultation, I'll
15 look to Sarah and Paul.

16 CHAIR SHEEHY: And finally, if you get the
17 sense, at the last minute, that some piece of legislation
18 that hasn't been fully thought out is going to be adopted
19 at the last minute, either Ms. Castañeda or Ms. Higashi
20 or somebody, please notify me directly. Because even
21 though I am not directly involved on a day-to-day,
22 hour-to-hour basis, on all the drama going on with the
23 budget, because of my other responsibilities, I do work
24 in the executive office, and I do have regular contact
25 with the Governor's staff on all these things from time

1 to time.

2 And so if something really -- if something bad
3 is going to happen, then let me know, and maybe I can
4 help run some interference.

5 MEMBER SCHMIDT: I'm --

6 CHAIR SHEEHY: I just think these are issues
7 that really need to be publicly discussed.

8 I'm sorry?

9 MEMBER SCHMIDT: I'd like to know, too, because
10 I analyze legislation.

11 MS. HIGASHI: Okay. Happy to do so.

12 We appreciate all the help we can get.

13 CHAIR SHEEHY: Okay, anything further on this
14 matter?

15 *(No response)*

16 CHAIR SHEEHY: All right.

17 MS. HIGASHI: Let me move to the issue of the
18 tentative agendas for July.

19 Our July 31st hearing is going to be a huge
20 hearing. Please reserve more than an hour. Several
21 hours, maybe. There are a number of test claims.

22 And unless these items end up being postponed
23 because of various reasons, right now, we have six test
24 claims; we also have the potential for acting on the
25 POBOR remand cases. And we also have statewide cost

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1 estimates for adoption, and we have the items that were
2 postponed from this hearing. So, actually, it's eight.

3 MEMBER OLSEN: I just wanted to remind you that
4 I will not be available then.

5 MS. HIGASHI: I know.

6 MEMBER OLSEN: I'm available up to the 28th.

7 MS. HIGASHI: Okay.

8 CHAIR SHEEHY: So July 31st. I think I'm okay
9 with that; but if I'm not, I'll have an alternate.

10 How long is the hearing going to be? Several
11 hours?

12 It sounds like a good job for Miriam Ingenito.

13 MS. SHELTON: Well, there are six test claims
14 that have been issued.

15 MS. HIGASHI: Six or maybe seven.

16 MS. SHELTON: Seven are issued for draft.

17 MEMBER OLSEN: I timed this really well, didn't
18 I?

19 MS. HIGASHI: Sarah, would you be available the
20 28th?

21 MEMBER OLSEN: I think I can be available the
22 28th.

23 CHAIR SHEEHY: The only problem -- just so you
24 know, Paula, the only -- I want you to coordinate with
25 all the Commission members, and let's pick the date and

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1 the time when we can maximize our participation. We
2 certainly want Ms. Olsen to be there.

3 Just check because, you know, when you back
4 up --

5 MEMBER OLSEN: Right.

6 CHAIR SHEEHY: -- then you're going to run into
7 conflicts with Mr. Chivaro, Mr. Lujano, Mr. Sheehy, and
8 others that are serving on multiple boards. And the one
9 nice thing about this commission's schedule is it usually
10 meets on Fridays. And I don't know about Mr. Lujano and
11 Mr. Chivaro, but I think I can say that they probably
12 don't have that many other board meetings on Fridays.

13 MEMBER CHIVARO: Right.

14 MS. HIGASHI: Well, the other question I would
15 ask would be, when would be the next date in August that
16 you would be available? Should we think about pushing
17 this hearing to August?

18 MEMBER OLSEN: It's probably not until the
19 third week of August.

20 MS. HIGASHI: Okay, then I think we're just
21 leaving it. I think we're just leaving it.

22 CHAIR SHEEHY: Okay, we'll do what we can.

23 MS. HIGASHI: But we have a number of very
24 interesting test-claim issues coming up, and it should be
25 a very interesting hearing. We're looking forward to it.

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CHAIR SHEEHY: Okay.

MS. HIGASHI: So also, September will be a potentially challenging agenda.

CHAIR SHEEHY: All right.

MEMBER OLSEN: And what is the date of the September hearing?

MS. HIGASHI: September 25th.

Are there any other questions?

(No response)

CHAIR SHEEHY: Okay, so seeing no other questions, is it now time for us, Paula, to move into closed-session?

MS. HIGASHI: You can do *Public Comment*.

CHAIR SHEEHY: Is there anybody here that hasn't had a chance to comment on one of the items today that would like to come forward and comment at this time?

(No response)

CHAIR SHEEHY: Seeing none, the Commission on State Mandates will meet in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and also to confer with and receive advice from counsel regarding potential litigation. The

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1 Commission will also confer on personnel matters listed
2 on the published notice and agenda.

3 We will reconvene in open session -

4 Is 15 minutes actually a good estimate, Paula?

5 MS. SHELTON: Or less.

6 MS. HIGASHI: Or less.

7 CHAIR SHEEHY: We plan to reconvene in open
8 session in 15 minutes. So if you will now clear the
9 room, unless you are Commission members or Commission
10 staff, thank you.

11 *(The Commission met in executive closed*
12 *session from 11:23 a.m. to 11:42 a.m.)*

13 CHAIR SHEEHY: The Commission on State Mandates
14 met in closed executive session pursuant to Government
15 Code section 11126(e) to confer with and receive advice
16 from legal counsel for consideration and action, as
17 necessary and appropriate, upon the pending litigation
18 listed on the public notice and agenda and potential
19 litigation, and also pursuant to Government Code section
20 11126(a), and 17526, in order to confer on personnel
21 matters listed on the published agenda.

22 The Commission on State Mandates now reconvenes
23 in open session.

24 Is there any other business to come before the
25 Commission today?

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(No response)

CHAIR SHEEHY: Seeing none, a motion to adjourn
would be in order.

MEMBER OLSEN: So moved.

MEMBER GLAAB: Second.

CHAIR SHEEHY: All in favor?

(A chorus of "ayes" was heard.)

CHAIR SHEEHY: This meeting is adjourned.

(The meeting concluded at 11:42 a.m.)

--oOo--

REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

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

In witness whereof, I have hereunto set my hand on June 12th, 2009.



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