



**PUBLIC HEARING**  
**COMMISSION ON STATE MANDATES**



**ORIGINAL**

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



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



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

COMMISSIONERS PRESENT

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

CYNTHIA BRYANT  
Director  
State Office of Planning and Research

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

SARAH OLSEN  
Public Member

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



A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director  
(Item 23)

NANCY PATTON  
Assistant Executive Director  
(Item 21)

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

DEBORAH BORZELLERI  
Senior Commission Counsel  
(Items 9 and 10)

ERIC FELLER  
Senior Commission Counsel  
(Items 17 and 18)

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



A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 7:**

For Department of Finance:

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

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

**Appearing Re Item 9:**

For Claimant Sacramento Metropolitan Fire District:

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

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

For California State Association of Counties SB-90  
Service:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 9:** *continued*

For Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

**Appearing Re Item 11:**

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

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

For Department of Finance:

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

JONATHAN LEE  
Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 13:**

For Claimant County of Tehama and CSAC-EIA:

JULIANA F. GMUR  
Manager, Cost Services  
MAXIMUS

For Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

DONNA FEREBEE  
Staff Counsel III  
Department of Finance

**Appearing Re Item 15:**

For Claimant Santa Monica Community College District:

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

For Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

DONNA FEREBEE  
Staff Counsel III  
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 17:**

For Claimant County of Los Angeles:

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

SUZIE FERRELL  
County of Los Angeles  
Sheriff's Department

For Department of Finance:

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance

DONNA FEREBEE  
Staff Counsel III  
Department of Finance

**Appearing Re Item 21:**

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
California State Association of Counties  
SB 90 Service





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

6 --oOo--

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

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

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

13 MS. HIGASHI: Ms. Bryant?

14 MEMBER BRYANT: Here.

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

16 Mr. Glaab?

17 MEMBER GLAAB: Present.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Here.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Here.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: And Mr. Sheehy?

25 CHAIR SHEEHY: Here.

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1 (Mr. Chivaro entered the hearing room.)

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

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

6 MEMBER CHIVARO: Great.

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

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

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

15 MEMBER BRYANT: Ditto for me.

16 CHAIR SHEEHY: Anyone else?

17 (No audible response)

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

21 MS. HIGASHI: Okay.

22 Ms. Bryant?

23 MEMBER BRYANT: Abstain.

24 MS. HIGASHI: Mr. Chivaro?

25 MEMBER CHIVARO: Aye.

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

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1 MEMBER OLSEN: Second.

2 CHAIR SHEEHY: Call the roll, please.

3 MS. HIGASHI: Mr. Chivaro?

4 MEMBER CHIVARO: Aye.

5 MS. HIGASHI: Mr. Glaab?

6 MEMBER GLAAB: Aye.

7 MS. HIGASHI: Mr. Lujano?

8 MEMBER LUJANO: Aye.

9 MS. HIGASHI: Ms. Olsen?

10 MEMBER OLSEN: Aye.

11 MS. HIGASHI: Mr. Worthley?

12 MEMBER WORTHLEY: Aye.

13 MS. HIGASHI: Ms. Bryant?

14 MEMBER BRYANT: Aye.

15 MS. HIGASHI: Mr. Sheehy?

16 CHAIR SHEEHY: Aye.

17 MS. HIGASHI: Thank you.

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

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

23 *(Several persons stood up.)*

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

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

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

4 MS. HIGASHI: Thank you.

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

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

8 MS. SHELTON: Good morning.

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

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

25 On December 20th, 2006, the Second District

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

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

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

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

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

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

25 CHAIR SHEEHY: Finance, please continue.

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

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

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

8 CHAIR SHEEHY: Okay, very good.

9 Is there a motion?

10 MEMBER LUJANO: Move approval.

11 MEMBER CHIVARO: Second.

12 CHAIR SHEEHY: Call the roll please.

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

15 CHAIR SHEEHY: Staff's recommendation.

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

18 Mr. Glaab?

19 MEMBER GLAAB: Aye.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Reluctantly, aye.

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1 MS. HIGASHI: Ms. Bryant?

2 MEMBER BRYANT: Aye.

3 MS. HIGASHI: Mr. Chivaro?

4 MEMBER CHIVARO: Aye.

5 MS. HIGASHI: And Mr. Sheehy?

6 CHAIR SHEEHY: Aye.

7 MS. HIGASHI: This motion carries.

8 Item 8.

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

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

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

19 *(No audible response)*

20 CHAIR SHEEHY: Is there a motion?

21 MEMBER OLSEN: So moved.

22 MEMBER GLAAB: Second.

23 CHAIR SHEEHY: Call the roll, please.

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

1 and seconded.

2 Could you call the roll, please?

3 MS. HIGASHI: Mr. Lujano?

4 MEMBER LUJANO: Aye.

5 MS. HIGASHI: Ms. Olsen?

6 MEMBER OLSEN: Aye.

7 MS. HIGASHI: Mr. Worthley?

8 MR. WORTHLEY: Aye.

9 MS. HIGASHI: Ms. Bryant?

10 MEMBER BRYANT: Aye.

11 MS. HIGASHI: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MS. HIGASHI: Mr. Glaab?

14 MEMBER GLAAB: Aye.

15 MS. HIGASHI: Mr. Sheehy?

16 CHAIR SHEEHY: Aye.

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

18 MS. SHELTON: Item 20 is the proposed  
19 amendments to the parameters and guidelines that would  
20 end reimbursement for these programs beginning July 1st,  
21 2008.

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

25 CHAIR SHEEHY: Finance, would you like to

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

3 Finance?

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

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

8 CHAIR SHEEHY: Ms. Geanacou?

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

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

13 *(No audible response)*

14 CHAIR SHEEHY: Is there a motion?

15 MEMBER WORTHLEY: So moved.

16 MEMBER GLAAB: Second.

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

20 Paula, can you call the roll, please?

21 MS. HIGASHI: Sure.

22 Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

1 MS. HIGASHI: Ms. Bryant?

2 MEMBER BRYANT: Aye.

3 MS. HIGASHI: Mr. Chivaro?

4 MEMBER CHIVARO: Aye.

5 MS. HIGASHI: Mr. Glaab?

6 MEMBER GLAAB: Aye.

7 MS. HIGASHI: Mr. Lujano?

8 MEMBER LUJANO: Aye.

9 MS. HIGASHI: Mr. Sheehy?

10 CHAIR SHEEHY: Aye.

11 MS. HIGASHI: The motion is adopted.

12 This brings us now to our first test claim.

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

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

17 MS. BORZELLERI: Thank you, Paula.

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

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

25 The test-claim statutes modify representation

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

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

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

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

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

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

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

25 CHAIR SHEEHY: Ms. Gmur?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 Any questions?

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

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

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

5 MS. GMUR: Yes.

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

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

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

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

25 MEMBER LUJANO: Could I hear from our general

1 counsel?

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

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

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

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

1 *Lucia Mar* is absolutely not applicable here.

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

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

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

13 MS. SHELTON: No.

14 MS. BORZELLERI: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Those issues are not before you today.

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

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

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

25 MS. HIGASHI: Correct.

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

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

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

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

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

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

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1 CHAIR SHEEHY: Thank you, Mr. Chavez.

2 Finance, do you have any comments?

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

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

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

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

16 MS. GEANACOU: Thank you.

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

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

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

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

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

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

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

9 CHAIR SHEEHY: Thank you, Mr. Worthley.

10 Ms. Bryant?

11 MEMBER BRYANT: Can I respond to that?

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

17 I think there was already --

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

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

1 everything.

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

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

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

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

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

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

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

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

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

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

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

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

25 *(No audible response)*

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

4 MEMBER LUJANO: Move approval.

5 MEMBER CHIVARO: Second.

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

8 MS. HIGASHI: Certainly.

9 Mr. Worthley?

10 MEMBER WORTHLEY: No.

11 MS. HIGASHI: Ms. Bryant?

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

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: No.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HIGASHI: And Mr. Sheehy?

23 CHAIR SHEEHY: Aye.

24 MS. HIGASHI: The motion is adopted.

25 CHAIR SHEEHY: Okay, so we have a motion

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

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

5 Ms. Borzelleri?

6 MS. BORZELLERI: Thank you.

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

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

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

16 MEMBER BRYANT: Yes.

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

19 MEMBER OLSEN: So moved.

20 MEMBER CHIVARO: Second.

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

23 MS. HIGASHI: Ms. Bryant?

24 MEMBER BRYANT: Aye.

25 MS. HIGASHI: Mr. Chivaro?

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1 MEMBER CHIVARO: Aye.  
2 MS. HIGASHI: Mr. Glaab?  
3 MEMBER GLAAB: Aye.  
4 MS. HIGASHI: Mr. Lujano?  
5 MEMBER LUJANO: Aye.  
6 MS. HIGASHI: Ms. Olsen?  
7 MEMBER OLSEN: Aye.  
8 MS. HIGASHI: Mr. Worthley?  
9 MEMBER WORTHLEY: Aye.  
10 MS. HIGASHI: Mr. Sheehy?  
11 CHAIR SHEEHY: Aye.  
12 MS. HIGASHI: Thank you.  
13 MS. GMUR: Thank you, Commissioners.  
14 MS. HIGASHI: The Motion is adopted.  
15 This brings us to our next test claim, Item 11.  
16 Item 11 will be presented by Commission Counsel  
17 Kenny Louie.  
18 MR. LOUIE: Thank you.  
19 This is *Reporting Improper Governmental*  
20 *Activities*. This test claim addresses the procedures  
21 available to protect K-through-12 and community-college  
22 employees and applicants for employment from intentional  
23 acts of reprisal or coercion resulting from the  
24 employee's or applicant's disclosure of improper  
25 governmental activities.

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

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

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

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

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

25           However, staff finds that the test-claim

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

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

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

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

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

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

19 CHAIR SHEEHY: Mr. Petersen?

20 MR. PETERSEN: Thank you. Good morning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 MR. LOUIE: A couple points.

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

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

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

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

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

10 CHAIR SHEEHY: Please, Mr. Petersen.

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

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

18 MS. SHELTON: A couple of issues.

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

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

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

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

18           MS. FEREBEE: Yes, thank you.

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

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

25           Thank you.

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

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

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

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

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

18 CHAIR SHEEHY: Thank you, Mr. Worthley.

19 Did you want to respond, Camille?

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

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

10           There, there were certain and severe penalties.

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

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

15           *(No audible response)*

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

18           MEMBER LUJANO: Move approval.

19           MEMBER CHIVARO: Second.

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

22           Could you please call the roll?

23           MS. HIGASHI: Mr. Chivaro?

24           MEMBER CHIVARO: Aye.

25           MS. HIGASHI: Mr. Glaab?

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1 MEMBER GLAAB: No.

2 MS. HIGASHI: Mr. Lujano?

3 MEMBER LUJANO: Aye.

4 MS. HIGASHI: Ms. Olsen?

5 MEMBER OLSEN: Aye.

6 MS. HIGASHI: Mr. Worthley?

7 MEMBER WORTHLEY: No.

8 CHAIR SHEEHY: Mr. Worthley?

9 MEMBER WORTHLEY: Sorry, no.

10 MS. HIGASHI: Ms. Bryant?

11 MEMBER BRYANT: Aye.

12 MS. HIGASHI: Mr. Sheehy?

13 CHAIR SHEEHY: Aye.

14 MS. HIGASHI: The motion is carried.

15 This brings us to Item 12, the proposed

16 Statement of Decision.

17 MR. LOUIE: The only issue before the

18 Commission is whether the proposed Statement of Decision

19 accurately reflects the Commission's decision on

20 *Reporting Improper Governmental Activities* test claim.

21 Staff will update the final Statement of

22 Decision reflecting the witnesses testifying and vote

23 count.

24 CHAIR SHEEHY: Are there additional -- any

25 further or any additional comments from any of the

1 parties on Item Number 12?

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

7 Is that correct or was that just an error?

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

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

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

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

17 Are you looking at Item 12?

18 MS. SHELTON: I can help.

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

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

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1 CHAIR SHEEHY: Additional comments on this  
2 item?

3 *(No audible response)*

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

7 MEMBER OLSEN: I'll move adoption.

8 CHAIR SHEEHY: Do we have a second?

9 MEMBER BRYANT: Second.

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

12 MS. HIGASHI: Mr. Glaab?

13 MEMBER GLAAB: Aye.

14 MS. HIGASHI: Mr. Lujano?

15 MEMBER LUJANO: Aye.

16 MS. HIGASHI: Ms. Olsen?

17 MEMBER OLSEN: Aye.

18 MS. HIGASHI: Mr. Worthley?

19 MEMBER WORTHLEY: Aye.

20 MS. HIGASHI: Ms. Bryant?

21 MEMBER BRYANT: Aye.

22 MS. HIGASHI: Mr. Chivaro?

23 MEMBER CHIVARO: Aye.

24 MS. HIGASHI: And Mr. Sheehy?

25 CHAIR SHEEHY: Aye.

1 MS. HIGASHI: The motion is adopted.

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

4 MR. LOUIE: Thank you.

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

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

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

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

25 Moreover, no court has found that the payment

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

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

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

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

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

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

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

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

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

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

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

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

2 CHAIR SHEEHY: Okay. Next time.

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

4 MS. CASTAÑEDA: Carla Castañeda.

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

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

9 *(No audible response)*

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

12 *(No audible response)*

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

15 MEMBER WORTHLEY: I'll move approval.

16 MEMBER GLAAB: Second.

17 CHAIR SHEEHY: Thank you, Paula.

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

21 MS. HIGASHI: Ms. Bryant?

22 MEMBER BRYANT: Aye.

23 MS. HIGASHI: Mr. Chivaro?

24 MR. CHIVARO: Aye.

25 MS. HIGASHI: Mr. Glaab?

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1 MEMBER GLAAB: Aye.  
2 MS. HIGASHI: Mr. Lujano?  
3 MEMBER LUJANO: Aye.  
4 MS. HIGASHI: Ms. Olsen?  
5 MEMBER OLSEN: Aye.  
6 MS. HIGASHI: Mr. Worthley?  
7 MEMBER WORTHLEY: Aye.  
8 MS. HIGASHI: Mr. Sheehy?  
9 CHAIR SHEEHY: Aye.  
10 MS. HIGASHI: The motion is adopted.  
11 Item 14, Statement of Decision.  
12 MR. LOUIE: The only issue before the  
13 Commission is whether the proposed Statement of Decision  
14 accurately reflects the Commission's decision on  
15 *Presumption of Causation in Workers' Compensation Claims:*  
16 *Tuberculosis, Hepatitis, and Other Blood-Borne Infectious*  
17 *Diseases and Meningitis* test claim.  
18 Staff will update the final Statement of  
19 Decision to reflect the witnesses testifying and the vote  
20 count.  
21 MEMBER WORTHLEY: Move approval, Mr. Chairman.  
22 MEMBER GLAAB: Second.  
23 CHAIR SHEEHY: And before we go to a vote, I  
24 just want to double-check, are there any comments from  
25 anybody on Item Number 14?

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1 (No audible response)  
2 CHAIR SHEEHY: We have a motion to approve the  
3 staff recommendation on 14.  
4 Could you please call the roll?  
5 MS. HIGASHI: Mr. Chivaro?  
6 MEMBER CHIVARO: Aye.  
7 MS. HIGASHI: Mr. Glaab?  
8 MEMBER GLAAB: Aye.  
9 MS. HIGASHI: Mr. Lujano?  
10 MEMBER LUJANO: Aye.  
11 MS. HIGASHI: Ms. Olsen?  
12 MEMBER OLSEN: Aye.  
13 MS. HIGASHI: Mr. Worthley?  
14 MEMBER WORTHLEY: Aye.  
15 MS. HIGASHI: Ms. Bryant?  
16 MEMBER BRYANT: Aye.  
17 MS. HIGASHI: Mr. Sheehy?  
18 CHAIR SHEEHY: Aye.  
19 MS. HIGASHI: The motion is adopted.  
20 CHAIR SHEEHY: Thank you.  
21 MS. GMUR: Thank you very much, Commissioners.  
22 MS. HIGASHI: The next item is Item 15.  
23 Commission Counsel Kenny Louie will present this item.  
24 MR. LOUIE: This is *Hepatitis Presumption*  
25 *K-through-14*. This test claim addresses one of the same

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

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

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

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

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

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

17 CHAIR SHEEHY: Thank you.

18 Mr. Petersen?

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

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

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

4 MR. PETERSEN: Yes.

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

7 *(No audible response)*

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

10 MEMBER BRYANT: I'll move the recommendation.

11 MR. CHIVARO: Second.

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

14 MS. HIGASHI: Certainly.

15 Mr. Glaab?

16 MEMBER GLAAB: Aye.

17 MS. HIGASHI: Mr. Lujano?

18 MEMBER LUJANO: Aye.

19 MS. HIGASHI: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Aye.

23 MS. HIGASHI: Ms. Bryant?

24 MS. BRYANT: Aye.

25 MS. HIGASHI: Mr. Chivaro?

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

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1 CHAIR SHEEHY: Aye.

2 MS. HIGASHI: Thank you very much.

3 MR. PETERSEN: Good job.

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

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

8 *(No audible response)*

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

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

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

1 procedure for return or disposal of the weapon.

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

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

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

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

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

25 Overall, staff finds that the activities listed

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

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

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

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

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

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

17 CHAIR SHEEHY: Ms. Yaghobyan?

18 MS. YAGHOBYAN: Thank you. Good morning.

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

21 CHAIR SHEEHY: Ms. Farrell?

22 MS. FERRELL: I have nothing to add.

23 CHAIR SHEEHY: Finance?

24 MS. CASTAÑEDA: Carla Castañeda.

25 The final staff analysis does adequately

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

3 CHAIR SHEEHY: Ms. Ferebee?

4 MS. FEREBEE: Nothing further.

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

7 *(No audible response)*

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

10 MEMBER WORTHLEY: So moved.

11 MEMBER GLAAB: Second.

12 CHAIR SHEEHY: Thank you.

13 Please call the roll.

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: Aye.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Aye.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Aye.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Aye.

24 MS. HIGASHI: Ms. Bryant?

25 MEMBER BRYANT: Aye.

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1 MS. HIGASHI: And Mr. Sheehy?

2 CHAIR SHEEHY: Aye.

3 MS. HIGASHI: The motion is adopted.

4 Item 18, Proposed Statement of Decision.

5 MS. YAGHOBYAN: Thank you.

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

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

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

17 MEMBER OLSEN: So moved.

18 MEMBER GLAAB: Second.

19 CHAIR SHEEHY: Please call the roll.

20 MS. HIGASHI: Ms. Bryant?

21 MEMBER BRYANT: Aye.

22 MS. HIGASHI: Chivaro?

23 MEMBER CHIVARO: Aye.

24 MS. HIGASHI: Glaab?

25 MEMBER GLAAB: Aye.

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1 MS. HIGASHI: Lujano?

2 MEMBER LUJANO: Aye.

3 MS. HIGASHI: Olsen?

4 MEMBER OLSEN: Aye.

5 MS. HIGASHI: Worthley?

6 MEMBER WORTHLEY: Aye.

7 MS. HIGASHI: Sheehy?

8 CHAIR SHEEHY: Aye.

9 MS. HIGASHI: The motion is adopted.

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

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

15 CHAIR SHEEHY: Thank you.

16 Ms. Patton?

17 MS. PATTON: Good morning.

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

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

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

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

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

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

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

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

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

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

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

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

16          Thank you.

17          CHAIR SHEEHY: Thank you, Ms. Patton.

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

21          *(No audible response)*

22          CHAIR SHEEHY: Thank you.

23          Mr. Burdick?

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

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

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

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

19 Thank you very much.

20 CHAIR SHEEHY: Thank you, Mr. Burdick.

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

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

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

7 CHAIR SHEEHY: Thank you.

8 MEMBER GLAAB: So thank you very much.

9 CHAIR SHEEHY: Thank you.

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

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

25 CHAIR SHEEHY: Okay, I think that concludes our

1 business on Item Number 21.

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

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

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

10 MS. HIGASHI: Item 23, my report.

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

19 MEMBER WORTHLEY: Job security, Paula.

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

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

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

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

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

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

17 MS. HIGASHI: Thank you.

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

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

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

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

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

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

1 warning disclaimer on all of this.

2 Are there any questions?

3 *(No audible response)*

4 MS. HIGASHI: Thank you very much.

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

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

12 CHAIR SHEEHY: Tom, could you stand up?

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

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

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

22 *(Laughter)*

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

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

4 MEMBER WORTHLEY: He sounds like a legislator.

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

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

17 And thank you, Tom, and congratulations.

18 *(Applause)*

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

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

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

1 closed session.

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

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

4 MS. HIGASHI: Yes.

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

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

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

17 Thank you.

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

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

1 litigation.

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

5 MEMBER OLSEN: So moved.

6 CHAIR SHEEHY: Is there a second?

7 MEMBER GLAAB: Second.

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

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

10 CHAIR SHEEHY: This meeting is adjourned.

11 MS. HIGASHI: Thank you.

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

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**REPORTER'S CERTIFICATE**

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

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

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

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



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