

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



TIME: 9:39 a.m.  
DATE: Thursday, July 26, 2007  
PLACE: State Capitol, Room 126  
Sacramento, California



**REPORTER'S TRANSCRIPT OF PROCEEDINGS**



**ORIGINAL**

Reported by:  
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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

RICHARD CHIVARO  
Representative for JOHN CHIANG  
State Controller

JOHN FILLMORE  
Representative for SEAN WALSH  
Director, Office of Planning & Research

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 14)

NANCY PATTON  
Assistant Executive Director  
(Item 12)

CAMILLE SHELTON  
Chief Legal Counsel  
(Item 13)

ERIC FELLER  
Senior Commission Counsel  
(Items 5 and 6)

KATHERINE TOKARSKI  
Commission Counsel  
(Item 9)

KENNY LOUIE  
Commission Counsel  
(Items 7 and 8)



PUBLIC TESTIMONY

**Appearing Re Item 5:**

For Claimant County of Alameda:

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

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

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

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 7:**

For Berkeley Unified School District

DAVID E. SCRIBNER  
President/CEO  
Scribner Consulting Group, Inc.  
3840 Robin Court, Suite 190  
Sacramento, California 95834

For Department of Finance:

RUSS EDWARDS  
Department of Finance  
915 L Street  
Sacramento, California 95814

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

**Appearing Re Item 9:**

For Department of Social Services

JEANLAURIE AINSWORTH  
Department of Social Services  
744 P Street, MS 4-161  
Sacramento, California 94814

For California State Association of Counties SB-90  
Service:

ALLAN BURDICK  
California State Association of Counties  
SB 90 Service

A P P E A R A N C E S

PUBLIC TESTIMONY

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

For Department of Finance:

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance

CARLA CASTAÑEDA  
Principal Program Budget Analyst  
Department of Finance





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Commission on State Mandates – July 26, 2007

1 BE IT REMEMBERED that on Thursday, July 26,  
2 2007, commencing at the hour of 9:39 a.m., thereof, at  
3 the State Capitol, Room 126, Sacramento, California,  
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
5 the following proceedings were held:

6 --oOo--

7 CHAIR GENEST: Okay, the meeting is called to  
8 order. Let's have roll call.

9 MS. HIGASHI: Mr. Chivaro?

10 MEMBER CHIVARO: Present.

11 MS. HIGASHI: Mr. Fillmore?

12 MR. FILLMORE: Present.

13 MS. HIGASHI: Mr. Lujano?

14 MEMBER LUJANO: Present.

15 MS. HIGASHI: Ms. Olsen?

16 MEMBER OLSEN: Here.

17 MS. HIGASHI: Mr. Worthley?

18 MEMBER WORTHLEY: Here.

19 MS. HIGASHI: Mr. Genest?

20 MEMBER GENEST: Here.

21 MS. HIGASHI: Mr. Glaab was unable to be here  
22 today.

23 CHAIR GENEST: Okay.

24 MS. HIGASHI: The first item on the agenda is  
25 Adoption of the Minutes.

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1 CHAIR GENEST: Are there any objections or  
2 corrections?

3 MEMBER WORTHLEY: Move approval, Mr. Chairman.

4 MEMBER CHIVARO: Second.

5 CHAIR GENEST: Without objection, those are  
6 adopted.

7 MS. HIGASHI: The next item is the proposed  
8 Consent Calendar. That is a blue sheet of paper that you  
9 have before you.

10 The items on the Consent Calendar are: Item 4,  
11 Dismissal of a Withdrawn Test Claim on *In-Home Support*  
12 *Services*; Item 10, Adoption of a Parameters and  
13 Guidelines Amendment -- it's a correction, actually, for  
14 *Law Enforcement Agency Notifications* -- and Item 11,  
15 Adoption of Proposed Regulatory Action, Parameters and  
16 Guidelines, Reasonable Reimbursement Methodologies and  
17 Statewide Cost Estimates.

18 CHAIR GENEST: Are there any objections or  
19 corrections?

20 MS. OLSEN: Move adoption.

21 MEMBER CHIVARO: Second

22 CHAIR GENEST: Without objection, those are  
23 adopted.

24 MS. HIGASHI: This brings us to the hearing  
25 portion of the meeting.

1           And I'd like to ask all of the parties and  
2 witnesses and their representatives who intend to testify  
3 on these items, please stand for the swearing in of  
4 witnesses.

5           *(Several persons stood.)*

6           MS. HIGASHI: Do you solemnly swear or affirm  
7 that the testimony which you are about to give is correct  
8 based upon your personal knowledge, information or  
9 belief?

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

11           MS. HIGASHI: Thank you very much.

12           Our first test claim item will be presented by  
13 Senior Commission Counsel Eric Feller. That is Item 5.

14           MR. FELLER: Good morning. This is the  
15 *Domestic Violence Background Checks* test claim, which  
16 alleges reimbursable state-mandated activities for  
17 courts, district attorneys, and prosecuting city  
18 attorneys to perform database searches on backgrounds of  
19 persons who are charged with domestic violence or when  
20 considering domestic-violence restraining orders.

21           Staff finds that the test claim legislation  
22 imposes a reimbursable state mandate for the following  
23 activities upon any charge involving acts of domestic  
24 violence:

25           First, perform or cause to be performed, in

1 specified electronic databases, a thorough investigation  
2 of the defendant's history, including, but not limited  
3 to, prior convictions for domestic violence, other forms  
4 of violence, or weapons offenses and any current  
5 protective or restraining order issued by any civil or  
6 criminal court.

7 Second, present the information for  
8 consideration by the court when setting bond or when  
9 releasing a defendant on his or her own recognizance at  
10 the arraignment if the defendant is in custody and upon  
11 any consideration of any plea agreement.

12 And, third, if a protective or restraining  
13 order is issued in the current criminal proceeding and if  
14 the investigation reveals a current civil protection or  
15 restraining order issued by another criminal court  
16 involving the same or related parties, the district  
17 attorney and prosecuting city attorney sends relevant  
18 information regarding the contents of the order issued in  
19 the current criminal proceeding and any other information  
20 regarding the conviction of the defendant to the other  
21 court immediately after the order has been issued.

22 As indicated on pages 16 and 17 of the  
23 analysis, staff also found that Penal Code 273.75 does  
24 not create a new crime or infraction, eliminate a crime  
25 or infraction, or change the penalty for a crime or

1 infraction. So Government Code 17556 does not preclude  
2 reimbursement.

3 Both claimant and the Department of Finance  
4 have submitted letters concurring with the draft staff  
5 analysis, which is substantively the same as the final  
6 staff analysis before you.

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

9 MS. GMUR: Juliana Gmur on behalf of the County  
10 of Alameda.

11 MR. BURDICK: Allan Burdick on behalf of the  
12 CSAC SB 90 Service.

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

15 MS. CASTAÑEDA: Carla Castañeda, Department of  
16 Finance.

17 CHAIR GENEST: Mr. Burdick, do you want to  
18 start?

19 MR. BURDICK: Actually, Ms. Gmur will start.

20 MS. GMUR: Good morning, Commissioners. The  
21 County of Alameda is pleased with what the staff has done  
22 in its analysis. They concur with and support the  
23 staff's analysis.

24 MR. BURDICK: CSAC would like also -- Mr. Chair  
25 and Members, Allan Burdick on behalf of the California

1 State Association of Counties, and we'd like to concur  
2 with the staff analysis and urge your support.

3 Thank you.

4 MS. CASTAÑEDA: Carla Castañeda, Department of  
5 Finance. We also concur with the Staff Analysis.

6 CHAIR GENEST: Any questions from the members?

7 MEMBER WORTHLEY: Move approval, Mr. Chairman.

8 MEMBER CHIVARO: I second.

9 CHAIR GENEST: All those in favor?

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

11 CHAIR GENEST: Okay, that's adopted. The staff  
12 analysis is adopted.

13 MS. HIGASHI: Item 7 is the proposed Statement  
14 of Decision.

15 MR. FELLER: Right. Unless there's objection,  
16 staff recommends that the Commission adopt the Proposed  
17 Statement of Decision --

18 MS. HIGASHI: I mean, Item 6.

19 MR. FELLER: Thank you -- Item 6, which  
20 accurately reflects the Commission's decision to  
21 partially approve the test claim.

22 Staff also recommends the Commission allow  
23 minor changes to be made to the Statement of Decision,  
24 including reflecting the witnesses, hearing testimony,  
25 and the vote count that we included in the final



1 Statement of Decision.

2 CHAIR GENEST: Do we have a motion on that?

3 MEMBER LUJANO: Move approval.

4 CHAIR GENEST: And a second?

5 MR. WORTHLEY: Second.

6 CHAIR GENEST: So without objection, that's  
7 adopted unanimously

8 Now, we can go to Item 7.

9 MS. HIGASHI: This brings us to Item 7.

10 MS. GMUR: Thank you, Commissioners. Thank you  
11 very much.

12 CHAIR GENEST: Commission Counsel Kenny Louie  
13 will present the test claim on Item 7.

14 MR. LOUIE: This is *Adult Education Enrollment*  
15 *Reporting*. This test claim addresses statutes and  
16 executive orders --

17 CHAIR GENEST: Is your microphone on?

18 MR. LOUIE: I believe so.

19 CHAIR GENEST: I couldn't hear you.

20 MR. LOUIE: This is *Adult Education Enrollment*  
21 *Reporting*. This test claim addresses statutes and  
22 executive orders that require K through 12 school  
23 districts which provides state and federally funded adult  
24 education programs to collect and report certain adult  
25 education data, and to report it to the Department of

1 Education, and to implement TOPSpro, a data and  
2 accountability system used to collect and report this  
3 information.

4 In general, the provision of adult education by  
5 K through 12 school districts is not required by law.  
6 As a result, the test claim statutes and executive order  
7 establish requirements that flow from the discretionary  
8 decision of school districts to provide adult education.  
9 In specified situations, however, K through 12 school  
10 districts are required to provide adult English and  
11 citizenship classes. In these situations, the test-claim  
12 statutes require school districts to collect and report  
13 adult education data and the executive order requires the  
14 implementation of the TOPSpro system.

15 However, prior to the enactment of the  
16 test-claim statutes, school districts were required to  
17 collect and report adult education data. In addition,  
18 school districts have had available state funds to pay  
19 for required adult education program expenses. And there  
20 is no evidence in the record that this amount is not  
21 enough to cover the costs of implementing the TOPSpro  
22 system.

23 On May 29th, 2007, staff issued the draft staff  
24 analysis and notice of hearing. And to date, staff has  
25 received no written comments from the State or claimants.

1           As a result, staff recommends the Commission  
2 deny this test claim because it does not constitute a  
3 reimbursable state-mandated program within the meaning of  
4 Article XIII B, Section 6 of the California Constitution.

5           Will the parties and witnesses state their  
6 names for the record?

7           MR. SCRIBNER: Good morning. David Scribner  
8 for Berkeley Unified School District.

9           MR. EDWARDS: Russell Edwards, Department of  
10 Finance.

11          MS. FEREBEE: Donna Ferebee, Department of  
12 Finance.

13          CHAIR GENEST: Mr. Scribner, do you want to  
14 start?

15          MR. SCRIBNER: Well, you're going to be happy  
16 to know that we're going to stand on our pleadings as  
17 submitted and move on.

18          Thank you.

19          CHAIR GENEST: Very well.

20          MS. FEREBEE: The Department of Finance concurs  
21 with the final staff analysis to deny the test claim.

22          CHAIR GENEST: Are there any questions from the  
23 Members?

24          MEMBER WORTHLEY: I just have a comment,  
25 Mr. Chairman.

1 I concur with the ultimate conclusion. I  
2 continue to disagree with one portion of the analysis,  
3 and that has to do with the Kern County case application  
4 to this situation, where this is considered a  
5 discretionary act on the part of the school district.

6 In the Kern case, the issue there had to do  
7 with ancillary type services, advisory boards, and that  
8 sort of thing. Here, the purpose of schools is to  
9 educate. We treat that as discretionary. You don't have  
10 to educate adults, if you don't want to. To me, that  
11 just seems to fly in the face of what they exist to do.  
12 And other than that, the rest of the analysis in my mind  
13 makes perfectly good sense. But that's sort of an  
14 initial -- I'd be writing a concurring opinion if I were  
15 writing a decision on this sort of thing, but I would  
16 concur with the final analysis by staff.

17 CHAIR GENEST: Any other questions or comments?

18 *(No audible response)*

19 CHAIR GENEST: Can we get a motion on the staff  
20 recommendation?

21 MEMBER LUJANO: Move approval.

22 MEMBER CHIVARO: Second.

23 CHAIR GENEST: All those in favor?

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

25 CHAIR GENEST: That's unanimous.

1                   And we'll go to the decision.

2                   MS. HIGASHI: The Proposed Statement of  
3 Decision is Item 8.

4                   MR. LOUIE: The only issue before the  
5 Commission is whether the proposed Statement of Decision  
6 accurately reflects the Commission's decision on the  
7 *Adult Education Enrollment Reporting* test claim. Staff  
8 will make minor changes in the final Statement of  
9 Decision reflecting the witnesses testifying and the vote  
10 count.

11                  MS. OLSEN: Move approval.

12                  CHAIR GENEST: Second? Anybody have a second?

13                  MEMBER LUJANO: Second.

14                  CHAIR GENEST: All in favor?

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

16                  CHAIR GENEST: Okay, unanimous again.

17                  Number 9.

18                  MS. HIGASHI: This brings us to Item 9, a  
19 request for reconsideration. This item will be presented  
20 by Commission Counsel Katherine Tokarski.

21                  MS. TOKARSKI: The Department of Social  
22 Services timely filed a request for reconsideration on  
23 the *In-Home Supportive Services II* Statement of Decision.  
24 The test-claim statutes, in part, address the form in  
25 which the IHSS care providers are employed. Prior law

1 did not require the designation of an employer of record  
2 for individual providers.

3 The Commission heard this test claim on  
4 April 16th, 2007, and, by a vote of 4 to 3, partially  
5 approved the claim for one-time county administrative  
6 activities necessary to establish an employer of record  
7 and for an ongoing IHHS advisory committee. Activities  
8 and costs for increased provider wages, benefits, and  
9 collective bargaining were denied.

10 The law grants the Commission discretion to  
11 reconsider a prior final decision within the statutory  
12 time frames. A supermajority of five votes is required  
13 to grant the request for reconsideration.

14 At this hearing, the sole issue before the  
15 Commission is whether it will exercise its discretion to  
16 grant the request for reconsideration. If it does, a  
17 subsequent hearing on the merits will be required to  
18 determine if the earlier decision is contrary to law and  
19 to correct an error of law. Again, a supermajority of  
20 five votes is then required to change the prior final  
21 decision.

22 DSS requests that the Commission reconsider and  
23 amend a portion of its decision to clarify what costs are  
24 reimbursable and establish an equitable level of  
25 reimbursement.

1           Regarding the request to add cost-limiting  
2 language to one approved activity, the Commission is  
3 required to construe Article XIIIIB, Section 6, strictly  
4 and not extend its provisions to include matters not  
5 covered by the language used or as an equitable remedy  
6 to cure the perceived unfairness resulting from political  
7 decisions on funding priorities.

8           The legislation that required the counties to  
9 establish an employer of record did not require that the  
10 counties make their choice based on the least costly  
11 method, nor does any other statute require that the  
12 choice be made on the basis of cost alone.

13           Regarding the request to add time-limiting  
14 language to another activity, staff finds that the law  
15 requiring that activity has no statutory end date and  
16 remains valid law.

17           Staff recommends that the Commission deny the  
18 request for reconsideration, finding that the requestor  
19 has raised no errors of law that merit reconsideration at  
20 this time.

21           CHAIR GENEST: Do we have witnesses?

22           MR. BURDICK: Allan Burdick on behalf of the  
23 CSAC SB 90 Service.

24           MS. AINSWORTH: Jeanlaurie Ainsworth,  
25 Department of Social Services.

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1 MS. GEANACOU: Susan Geanacou, Department of  
2 Finance.

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

5 CHAIR GENEST: Mrs. Ainsworth?

6 MS. AINSWORTH: What we have requested is a  
7 small modification with regards to what is a state  
8 mandate. I know that this argument was made very briefly  
9 and very quickly during the hearing, which is that the  
10 state mandate is really the least -- since there's so  
11 much flexibility -- the least expensive way to achieve  
12 the result which is becoming the employer of record.

13 Our modification is -- it's in the pleadings --  
14 is a very minor one; and we think that it would be  
15 helpful since this is a test claim for future claims.

16 MR. BURDICK: Mr. Chairman and Members, Alan  
17 Burdick.

18 We should be here actually supporting the  
19 reconsideration, since we did not really support the  
20 finding of the Commission in this particular case,  
21 feeling that it was far too narrow. However, our  
22 analysis of the request, we find, is without merit and  
23 should be considered by the Commission. We urge you to  
24 reject it and to support the staff's analysis.

25 Thank you.



1 MS. CASTAÑEDA: Carla Castañeda, the Department  
2 of Finance.

3 We defer to the Department regarding the  
4 interpretation and administration of this particular  
5 Welfare and Institutions Code subdivision (a). The  
6 statute is clear in the time limitation for the  
7 establishment of an employer for the in-home supportive  
8 services, but we feel that it's reasonably interpreted to  
9 apply to the entire subdivision, since the piece limited  
10 to more than 500 is within the same subdivision.

11 With regards to the cost request, we believe  
12 the Department's request to include language limiting the  
13 reimbursement to the least costly mode has merit. And if  
14 the Commission decides to deny this request, we wish to  
15 pursue that issue during Parameters and Guidelines.

16 CHAIR GENEST: Do we have any questions from  
17 the Members?

18 *(No audible response)*

19 CHAIR GENEST: Now, do we need a motion to  
20 adopt the staff recommendation, or can we --

21 MS. HIGASHI: Yes.

22 CHAIR GENEST: We do?

23 MEMBER WORTHLEY: I would move adoption of the  
24 staff recommendation?

25 MEMBER LUJANO: Second.

1 CHAIR GENEST: All in favor?

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

3 CHAIR GENEST: Okay, that carries unanimously.

4 MS. HIGASHI: One quick question. I just  
5 wanted to be sure that this was a unanimous vote.

6 CHAIR GENEST: Yes, I think I said that just as  
7 I was coughing. It was unanimous.

8 MS. HIGASHI: Okay, thank you.

9 This brings us to Item 12. This is our Update  
10 on Mandate Reform.

11 Assistant Executive Director Nancy Patton will  
12 present this item.

13 MEMBER PATTON: Good morning.

14 I just wanted to update you since the release  
15 of the item in the binder.

16 Further amendments were drafted to the Mandate  
17 Reform Proposal to clarify the legislatively determined  
18 mandate sections in response to concerns raised last week  
19 by the education coalition. The latest amendments have  
20 been submitted to legislative counsel who must complete  
21 amendments by August 1 to meet the Senate Appropriations  
22 Committee deadline, and the bill is set for hearing in  
23 Senate Appropriations on August 20th.

24 And as soon as those amendments come back from  
25 leg. counsel, they will be posted on our Web site and we

1 can get them to you.

2 CHAIR GENEST: Is there anyone else who wants  
3 to speak to this?

4 (No audible response)

5 CHAIR GENEST: Is this a report?

6 MEMBER PATTON: That's it.

7 CHAIR GENEST: Okay.

8 MS. HIGASHI: Very good.

9 CHAIR GENEST: Shall we hear from our  
10 legislative committee?

11 MS. HIGASHI: Sure.

12 CHAIR GENEST: As to their position on this or  
13 any other legislation?

14 MEMBER LUJANO: Well, actually we agreed with  
15 the staff. I just wanted to say that the work group  
16 meetings that I attended, they were very well run and  
17 they were very efficient and everyone cooperated. So it  
18 was really interesting watching this process.

19 CHAIR GENEST: Good.

20 I noted an amendment in there that I think has  
21 no actual meaning. I'm not sure why it was put there,  
22 but I guess I'm not raising an objection to it. But  
23 there's an amendment now in the bill that says that if a  
24 mandate has been suspended by operation of the new  
25 provisions that were put into the Constitution by

1 Proposition 1A, that local governments can, in any event,  
2 even so, file a test claim. And I don't know why you  
3 would file a test claim for a mandate that had been  
4 suspended. I'm not sure of the meaning of that. But I  
5 think we're -- in Finance, I think we're not objecting to  
6 it because we think it's essentially meaningless. It  
7 doesn't do anything.

8 Do you know what that's about, Nancy? Why that  
9 is in there?

10 MS. HIGASHI: Which version was that in?

11 CHAIR GENEST: Well, it's the version I last  
12 saw. If Mr. Dithridge is here, he can probably tell me  
13 what date that was.

14 I know the date that I saw it. I don't know  
15 the date of the amendment. The date I saw it was two  
16 days ago.

17 MS. HIGASHI: The drafts have been changed so  
18 often and so frequently.

19 CHAIR GENEST: Well, this was something I saw  
20 two days ago.

21 MS. CASTAÑEDA: Carla Castañeda, the Department  
22 of Finance.

23 That was the July 24th draft of the proposed  
24 amendments. And the proposed section 17574,  
25 subdivision (c), authorizes the alternative methods, or

1 situations when a test claim for statutes that have been  
2 approved by the Legislature as mandates would be eligible  
3 for filing at the Commission.

4 CHAIR GENEST: So it says you can file a test  
5 claim for a mandate that's no longer a mandate?

6 MS. CASTAÑEDA: Right. A legislatively  
7 determined mandate that has been suspended.

8 MS. HIGASHI: That doesn't sound familiar to  
9 me. I'll check into it, if it was read that way.

10 CHAIR GENEST: If I were a purist about  
11 statutory drafting, I would want to see that out. But  
12 since I don't see that it has any effect on anything and  
13 the bill is moving nicely through the process, I'm not  
14 going to worry about it.

15 MEMBER PATTON: We can check on that. The  
16 amendments are still being drafted over at leg. counsel,  
17 so I think there's opportunity to fix it, if it needs it,  
18 once we check it out.

19 MS. HIGASHI: It just doesn't sound familiar as  
20 something that was intended.

21 CHAIR GENEST: That seems odd to me, unless  
22 there's something about it that I'm not catching. But  
23 we've looked at it, and we don't really know what it  
24 means.

25 MS. HIGASHI: Okay.

1 CHAIR GENEST: With that aside, where do we go  
2 next?

3 MS. HIGASHI: We go to Ms. Shelton's report,  
4 Item 13.

5 MS. SHELTON: I do have a couple of things this  
6 morning.

7 First, we did receive the remittitur in the  
8 County of Los Angeles case. That was a case dealing with  
9 four test claims filed by the County of Los Angeles and  
10 cities within the Los Angeles region on permits that were  
11 issued by the Regional Water Quality Control Board down  
12 there.

13 As you recall, the court of appeal did find  
14 that Government Code section 17516 was unconstitutional.  
15 So we now are operating under the writ. And the writ  
16 directs the Commission to set aside the orders that  
17 return those test claims, and then to put those test  
18 claims back into the process for hearing on the merits.

19 So for September, we will have an item on the  
20 agenda to set aside those orders to return the claims.

21 Secondly, I wanted to introduce our law clerk  
22 for the summer. Ben Himust is from McGeorge. He is a  
23 second-year law student. Unfortunately, we're losing him  
24 tomorrow. He has to go back to school already. But he  
25 has been a large help this summer in a lot of the

1 research for these test claims. So we just wanted to  
2 thank him publicly.

3 CHAIR GENEST: We welcome you, thank you, and  
4 good-bye.

5 MS. SHELTON: That's all I've got.

6 MS. HIGASHI: Item 14 is my report. The very  
7 last couple pages of the binder.

8 I've given you a workload update for the  
9 workload that was completed during the last fiscal year.  
10 Thirty test claims were completed and one  
11 reconsideration, five Parameters and Guidelines,  
12 19 Parameters and Guidelines amendments, seven statewide  
13 cost estimates, and two rulemaking packages.

14 Even with all of that work, we still have  
15 70 pending test-claim decisions, and we still have  
16 118 incorrect-reduction claims.

17 And what we'll be doing is presenting plans to  
18 you for the next fiscal year, much more detailed work  
19 plans in terms of what we hope to achieve this year.

20 I'd like to also acknowledge that in my report,  
21 I have just a quick overview of some of the budget  
22 trailer-bill issues that affected mandates and mandate  
23 reimbursement. And they're contained in SB 86 for those  
24 who want to track this. But they have to do with the  
25 mandate-reimbursement process, filing dates. Also,

1 finally, language that has not been implemented for  
2 several years relating to the local government claims  
3 bill is finally being cleaned out and deleted from the  
4 Government Codes.

5 The tentative agendas for the September and  
6 December hearings include a variety of test claims.  
7 There is an emphasis in September on issues related to  
8 workers' compensation, and that's because we have a  
9 legislative order to reconsider two cases, and the  
10 September hearing is when they need to be scheduled in  
11 order to meet the deadline.

12 And then also we have a number of related cases  
13 on workers' comp presumptions. So we'll be taking all of  
14 those up at the same hearing.

15 We have a variety of other cases that we're  
16 working on. Drafts will be posted on our Web site as  
17 they're issued. So if members wish to get a preview of  
18 what's out there and what's coming, you can always go to  
19 our Web site and see what's up on the "for public  
20 comment" section.

21 But we have an ambitious agenda for the next  
22 year. And assuming that all of our positions are filled  
23 and that we don't receive any new litigation that takes  
24 time away from the test claim workload, we should be able  
25 to meet some of these projections.



1           The December hearing is set for December 6th.  
2           And just a reminder, we don't meet in November because of  
3           the holiday season. And with some of the statewide  
4           association meetings, it's been a difficult month to  
5           schedule.

6           Are there any questions or comments?

7           CHAIR GENEST: I just have a question.

8           Can you explain what an incorrect-reduction  
9           claim is, and why it seems to be a steady number there,  
10          as far as the number in-house?

11          MS. HIGASHI: An incorrect reduction claim --  
12          Mr. Chivaro can comment, too --

13          CHAIR GENEST: Is what?

14          MEMBER CHIVARO: It results from audits.

15          MS. HIGASHI: It's when the State Controller's  
16          Office audits or reviews a claim and reduces the amount  
17          claimed, and the claimant disagrees, then the claimant  
18          files what is termed an "incorrect-reduction claim,"  
19          alleging that the State Controller's reduction was  
20          incorrect.

21          CHAIR GENEST: So is this a sort of constant  
22          flow and we always --

23                 *(Interruption by cell phone)*

24          CHAIR GENEST: They've landed.

25          Oh, it's your phone?

1 MS. OLSEN: It's my cell phone.

2 MEMBER CHIVARO: It's too close to the  
3 microphone, when it goes off.

4 CHAIR GENEST: So that's not the same claims?  
5 It's just we get about 115, 116 a year?

6 MS. HIGASHI: They are the same ones. We have  
7 not worked on them. We have a statutory mandate to work  
8 on test claims first. And so we do the test claims. And  
9 we're hoping to start working on these next fiscal year.

10 They tend to come in batches, though, because  
11 sometimes the Controller's office audits on the basis of  
12 a program. So if one program has several audits  
13 conducted, we could end up with several claimants for the  
14 same program, filing incorrect-reduction claims.

15 CHAIR GENEST: Well, that statistic sort of  
16 jumps out. It would be nice to find a way to knock those  
17 out.

18 MS. HIGASHI: Exactly. I absolutely agree with  
19 you, and we are working on putting a plan together for  
20 dealing with them.

21 CHAIR GENEST: Excellent.

22 Other questions?

23 Sarah?

24 MS. OLSEN: You specified that the  
25 December hearing is December 6th.

Commission on State Mandates – July 26 , 2007

1 Can you tell us when the September and  
2 October hearing dates are?

3 MS. HIGASHI: I'm sorry, September 27th. And  
4 there is no October hearing.

5 MS. OLSEN: There's no October hearing?

6 CHAIR GENEST: No October or November.

7 MS. HIGASHI: Correct. We are budgeted for  
8 seven or eight hearings a year.

9 CHAIR GENEST: I'm sure Mr. Dithridge knows  
10 that.

11 MS. HIGASHI: We used to be budgeted for  
12 monthly hearings, and we've cut that back.

13 CHAIR GENEST: Okay, is that it for the day?

14 MS. HIGASHI: Closed session.

15 CHAIR GENEST: We have to go to closed session.  
16 So I have to read this thing again. I'd like to delegate  
17 the reading of this sometime.

18 Can we have a rule that allows me to delegate  
19 the reading?

20 MS. HIGASHI: You can have the vice-chair read  
21 it.

22 CHAIR GENEST: Who is the vice-chair?

23 MS. HIGASHI: Mr. Lujano.

24 CHAIR GENEST: Do you care to read today?

25 I'll do it today. But be advised, I'm running

1 out of breath for this.

2 Maybe next time.

3 The Commission will meet in closed executive  
4 session pursuant to Government Code section 11126,  
5 subdivision (e), to confer with and receive advice from  
6 legal counsel for consideration and action, as necessary  
7 and appropriate, upon the pending litigation listed on  
8 the published notice and agenda; and to confer with and  
9 receive advice from legal counsel regarding potential  
10 litigation; and pursuant to Government Code sections  
11 11126, subdivision (a), and 17526, the Commission will  
12 also confer on personnel matters listed on the published  
13 notice and agenda.

14 We will reconvene in open session at this  
15 location in approximately ten minutes.

16 *(The Commission met in closed executive*  
17 *session from 10:05 a.m. to 10:12 a.m.)*

18 CHAIR GENEST: The Commission met in closed  
19 executive session pursuant to Government Code section  
20 11126, subdivision (e), to confer with and receive advice  
21 from legal counsel for consideration and action, as  
22 necessary and appropriate, upon the pending litigation  
23 published on the notice and agenda and potential  
24 litigation; and Government Code section 11126,  
25 subdivision (a), and 17526, to confer on personnel

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matters listed on the published notice and agenda.

All required reports from the closed session  
having been made and with no further business to discuss,  
we will now adjourn.

MS. HIGASHI: Thank you very much.

*(Proceedings concluded at 10:12 a.m.)*

--oOo--

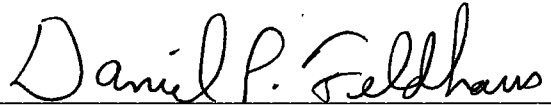
**REPORTER'S CERTIFICATE**

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

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 August 10, 2007.



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