

## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
January 26, 2006

Present: Member Anne Sheehan, Chairperson  
Representative of the Director of the Department of Finance  
Member Nicholas Smith, Vice Chairperson  
Representative of the State Controller  
Member Francisco Lujano  
Representative of the State Treasurer  
Member Jan Boel  
Representative of the Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Paul Glaab  
City Council Member  
Member Sarah Olsen  
Public Member

#### CALL TO ORDER AND ROLL CALL

Vice Chairperson Smith called the meeting to order at 9:36 a.m.

#### ELECTION OF OFFICERS

Item 1 Election of Chairperson and Vice Chairperson

Paula Higashi, Executive Director, stated that the Commission's regulations authorized the executive director to conduct the annual election of officers. She opened the floor to nominations.

Member Boel nominated Michael Genest, Director of the Department of Finance. With a second by Member Worthley, Mr. Genest was unanimously elected.

Member Boel nominated Mr. Steve Westly, State Controller, as Vice Chairperson. With a second by Member Olsen, Mr. Westly was unanimously elected.

#### APPROVAL OF MINUTES

Item 2 December 9, 2005

Upon motion by Member Boel and second by Member Lujano, the minutes were unanimously adopted.

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

Item 4 Staff Report (if necessary)

No appeals were filed.

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

**RECONSIDERATION OF PRIOR STATEMENTS OF DECISION AND PARAMETERS AND GUIDELINES, AS DIRECTED BY THE LEGISLATURE IN STATUTES 2004, CHAPTER 895 (AB 2855) AS AMENDED BY STATUTES 2005, CHAPTER 677 (SB 512) (action)**

Item 5      *School Accountability Report Cards*, 04-RL-9721-11, 05-RL-9721-03  
Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3  
Statutes 1989, Chapter 1463 (SB 280); Statutes 1992, Chapter 759 (AB 1248);  
Statutes 1993, Chapter 1031 (AB 198); Statutes 1994, Chapter 824 (SB 1665);  
Statutes 1997, Chapters 912 (AB 572) and 918 (AB 568)  
Reconsideration Directed By Statutes 2004, Chapter 895, Section 18  
(AB 2855) as amended by Statutes 2005, Chapter 677, Section 53 (SB 512)

Camille Shelton, Chief Legal Counsel, presented this item. She noted that this reconsideration was directed by Senate Bill 512.

Ms. Shelton reported that in July 2005, the Commission reconsidered the *School Accountability Report Cards* test claim as directed by Assembly Bill 2855. However, Assembly Bill 2855 did not include Statutes 1997, chapter 912, which amended Education Code section 33126; thus, the Commission determined that it did not have jurisdiction to reconsider the 1997 test claim statute. Ms. Shelton stated that in October 2005, Senate Bill 512 was enacted to amend Assembly Bill 2855, requiring the Commission to reconsider the test claim with respect to the 1997 test claim statute. It also specified that the Commission's decisions on both reconsiderations of the *School Accountability Report Cards* test claim apply retroactively to January 1, 2005.

Staff found that Statutes 1997, chapter 912 does not constitute a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution because it does not impose a new program, a higher level of service, or a cost mandated by the state. Therefore, staff recommended that the Commission adopt the staff analysis to deny as a reimbursable state-mandate program Statutes 1997, chapter 912, as it amended Education Code section 33126. Based on the plain language of Senate Bill 512, staff also recommended that the Commission apply retroactively to January 1, 2005, the July 28, 2005 Statement of Decision adopted pursuant to Assembly Bill 2855 and the decision adopted pursuant to this reconsideration.

Parties were represented as follows: Lenin Del Castillo, with the Department of Finance.

Mr. Del Castillo supported the conclusions in the staff analysis.

Member Smith questioned whether the additions to the report card were intended by the voters. He was concerned about the piecemeal additions of statutes because if it continues thirty years from now, the report card could look completely different than what the voters intended.

Ms. Shelton explained that Proposition 98 required school accountability report cards and also added statutes that listed the conditions that had to be in the report card. She noted that this legislation only clarified some of the elements that needed to be included; there were no additional activities. She maintained that staff applied the plain language of Government Code section 17556, subdivision (f), which says that the additional language has to be necessary to implement a voter initiative, or it has to be reasonably within the scope of the voter initiative. Staff found both parts to apply here.

Member Smith stated that in looking at what was added, school districts would incur additional costs. Ms. Shelton responded that additional costs alone do not equate to a reimbursable state-mandated program, as there has to be a finding of a new program and a higher level of service. She noted that the language of Government Code section 17556 changed and the Commission cannot determine that the language is inappropriate or unconstitutional. She stated that the Commission has to follow the plain language of the statute.

Member Smith indicated that at the end of the analysis, staff notes that the schools have not demonstrated that local property tax revenues were used versus Proposition 98 funding, which he believed implied that even if a state-mandated program were found, it still would not be reimbursable.

Ms. Shelton explained that this particular mandate results from Proposition 98, which has a funding formula and required audits and a school accountability report card. She maintained that the finding is tied with the mandate directly; thus, the argument would not apply generally to every education claim.

Member Worthley noted a reference in the analysis to Proposition 98, section 13, that: "No provision of this Act may be changed except to further its purposes by bill." It occurred to him that this should not be a mandate. He asked Ms. Shelton if it would be incumbent upon the parties to actually appeal the decision in court as being unconstitutional, as opposed to seeking mandate reimbursement.

Ms. Shelton responded that there are specific requirements in the Constitution, but it was one possible legal strategy. In response to another question by Member Worthley, Ms. Shelton stated that school districts do not have to exhaust the administrative remedies by challenging the legislation in court before coming to the Commission.

Member Boel made a motion to adopt the staff analysis and recommendation, which was seconded by Member Olsen. The motion carried 5-2, with Member Smith and Member Lujano voting "No."

Item 6      Proposed Statement of Decision  
*School Accountability Report Cards*, 04-RL-9721-11, 05-RL-9721-03  
See Above

Camille Shelton, Chief Legal Counsel, presented this item. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the staff analysis and decision on the reconsideration. She stated that minor changes for the vote count and hearing testimony would be included in the final Statement of Decision.

Ms. Shelton added that legislative staff requested that the Statements of Decision now include a summary of the Commission's findings on the first page. Thus, Ms. Shelton requested authority to insert a summary of the decision, to be taken from the executive summary on the test claim analysis, before the background section.

Member Glaab made a motion to adopt the proposed Statement of Decision, which was seconded by Member Boel. The motion carried 5-2, with Member Smith and Member Lujano voting "No."

- Item 7 Proposed Order to Set Aside Parameters and Guidelines,  
*School Accountability Report Cards*, 97-TC-21  
Education Code Sections 33126, 35256, 35256.1, 35258, 41409, 41409.3  
Statutes of 1989, Chapter 1463 (SB 280); Statutes of 1992, Chapter 759  
(AB 1248); Statutes of 1993, Chapter 1031 (AB 198); Statutes of 1994,  
Chapter 824 (SB 1665); Statutes of 1997, Chapters 912 (AB 572) and 918  
(AB 568)  
As directed by Statutes 2004, Chapter 895, Section 18 (AB 2855) as amended  
by Statutes 2005, Chapter 677, Section 53 (SB 512)

Camille Shelton, Chief Legal Counsel, presented this item. She stated that the Commission reconsidered the *School Accountability Report Cards* test claim as directed by Assembly Bill 2855 and Senate Bill 512, finding that the test claim legislation in its entirety does not constitute a reimbursable state-mandated program. Pursuant to the express language of Senate Bill 512, Ms. Shelton indicated that the proposed order to set aside the Parameters and Guidelines is operative January 1, 2005.

Staff recommended that the Commission adopt the proposed order to set aside the Parameters and Guidelines.

Member Boel made a motion to adopt the staff recommendation, which was seconded by Member Worthley. The motion carried 5-2, with Member Smith and Member Lujano voting "No."

#### **REVISED CONSENT CALENDAR**

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

##### ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 8 *DNA Database and Amendment to Postmortem Examinations: Unidentified Bodies*, 00-TC-27 and 02-TC-39  
Penal Code Section 14250  
Statutes 2000, Chapter 822 (SB 1818); Statutes 2001, Chapter 467 (SB 297)  
Counties of San Bernardino and Los Angeles, Claimants

##### ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AND PROPOSED ORDER TO SET ASIDE PARAMETERS AND GUIDELINES BASED ON STATUTES 2004, CHAPTER 493 (SB 1895)

- Item 10 PROPOSED PARAMETERS AND GUIDELINES  
*Reconsideration of Handicapped and Disabled Students* (04-RL-4282-10)  
Government Code Sections 7570-7588  
Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274 (AB 882)  
California Code of Regulations,<sup>1</sup> Title 2, Sections 60000-60610 (Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))

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<sup>1</sup> When the test claim was originally filed, the California Code of Regulations was known as the California Administrative Code.

and

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES  
*Handicapped and Disabled Students* (CSM 4282)

Government Code Sections 7570-7588

Statutes 1984, Chapter 1747 (AB 3632); Statutes 1985, Chapter 1274  
(AB 882)

California Code of Regulations,<sup>2</sup> Title 2, Sections 60000-60610 (Emergency  
Regulations filed December 31, 1985, designated effective January 1, 1986  
(Register 86, No. 1) and re-filed June 30, 1986, designated effective  
July 12, 1986 (Register 86, No. 28))

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

Item 11 *Animal Adoption*, 04-PGA-01 and 04-PGA-02 (98-TC-11)

State Controller's Office, Requestor

Civil Code Sections 1834, 1846; Food and Agriculture Code Sections 31108,  
31752, 31752.5, 31753, 32001, and 32003

Statutes 1998, Chapter 752 (SB 1785)

AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004,  
CHAPTER 895 (AB 2855) AND/OR STATUTES 2005, CHAPTER 677  
(SB 512) AND REQUEST OF THE STATE CONTROLLER'S OFFICE

Item 12 *Physically Handicapped Voter Accessibility*, 05-PGA-14 (4363)

Statutes 1979, Chapter 494 (AB 745)

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES (action)

Item 14 *False Reports of Police Misconduct*, 00-TC-26

County of San Bernardino, Claimant

Penal Code Section 148.6, Subdivisions (a)(2) and (a)(3)

Statutes 1995, Chapter 590 (AB 1732)

Statutes 2000, Chapter 289 (SB 2133)

STAFF REPORTS (action/info)

Item 15 Adoption of 2006 Rulemaking Calendar (action)

Member Boel moved for adoption of the revised consent calendar, which consisted of items 8, 10, 11, 12, 14, and 15. With a second by Member Olsen, the revised consent calendar was unanimously adopted.

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<sup>2</sup> When the test claim was originally filed, the California Code of Regulations was known as the California Administrative Code.

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

**ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES**

- Item 9 *Enrollment Fee Collection and Enrollment Fee Waivers*, 99-TC-13, 00-TC-15  
Los Rios and Glendale Community College Districts, Claimants  
Education Code Section 76300;  
California Code of Regulations, Title 5, Sections 58500-58508; 58600, 58601, 58610 – 58613, 58620, 58630  
Statutes 1984xx, Chapter 1 (AB 1xx); Statutes 1984, Chapters 274 (AB 207) and 1401 (AB 3776); Statutes 1985, Chapters 920 (AB 602) and 1454 (AB 2262); Statutes 1986, Chapters 46 (AB 2352) and 394 (SB 993); Statutes 1987, Chapter 1118 (AB 2336); Statutes 1989, Chapter 136 (SB 653); Statutes 1991, Chapter 114 (SB 381); Statutes 1992, Chapter 703 (SB 766); Statutes 1993, Chapters 8 (AB 46), 66 (SB 399), 67 (SB 1012), and 1124 (AB 1561); Statutes 1994, Chapters 153 (AB 2480) and 422 (AB 2589); Statutes 1995, Chapter 308 (AB 825); Statutes 1996, Chapter 63 (AB 3031); and Statutes 1999, Chapter 72 (AB 1118)

Tina Poole, Program Analyst, presented this item. She noted that on April 24, 2003, the Commission adopted its Statement of Decision finding the following reimbursable activities for the *Enrollment Fee Collection and Waivers* program:

1. calculating and collecting student enrollment fees,
2. waiving certain student fees,
3. reporting to the Community Colleges Chancellor the number of and amounts provided for fee waivers, and
4. adopting procedures that document all financial assistance provided to students.

Ms. Poole stated that there was one outstanding issue related to training. She noted that training was currently offered by the Chancellor's office and the manual states that directors, managers, coordinators, and officers are required to attend the Chancellor's training while other management and professional staff are encouraged to attend. Staff found that due to the complexity of the program, reimbursement for training is warranted. On the other hand, the Department of Finance recommended that training be limited as specified in the Chancellor's manual. Because other personnel may also be implementing the mandate, staff proposed that training be reimbursable for all employees who implement the mandate.

Parties were represented as follows: Keith Petersen, representing the claimants; and Thomas Todd, with the Department of Finance.

Mr. Todd opposed staff's proposed language because it broadened the provision of training to "all employees." He explained that Finance's proposal assumed that directors, managers, coordinators, and officers had substantial day-to-day involvement in the operations of the financial aid programs, and thus, they are the only ones that need the training.

Mr. Petersen commented that there was nothing in statute or the Statement of Decision, and no facts to support limiting training to supervisors and directors.

Member Worthley felt it was appropriate to train people implementing the program.

Member Boel asked Mr. Todd if training was limited in other programs. Mr. Todd responded that he could only speak to this particular claim. He added that their proposed language came specifically from the Chancellor's office administrative manual, and thus, it was an appropriate limitation.

Chairperson Sheehan clarified that staff's proposed language covers those involved in implementing the mandate, which may include supervisors and directors. She maintained that anyone involved in the implementation should be covered and the costs should be reimbursed.

Mr. Todd stated that the language "all employees who would implement the mandate" does not ensure that only those intimately involved in financial aid operations would be trained.

Chairperson Sheehan responded that in filing claims, districts must demonstrate why an employee is being trained. Thus, she noted that there was still a mechanism in place to make sure that only those that should be trained receive training.

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

AMEND PARAMETERS AND GUIDELINES BASED ON STATUTES 2004,  
CHAPTER 895 (AB 2855) AND/OR STATUTES 2005, CHAPTER 677  
(SB 512) AND REQUEST OF THE STATE CONTROLLER'S OFFICE

- Item 13     *Emergency Procedures, Earthquake Procedures, and Disasters and Comprehensive School Safety*, 04-PGA-24 (CSM-4241, 98-TC-01, 99-TC-10) Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8, 35295, 35296, 35297, 40041.5 and 40042, Statutes 1984, Chapter 1659 (AB 2786), Statutes 1997, Chapter 736 (SB 187), Statutes 1999, Chapter 996 (SB 408)

Item 13 was postponed.

**STAFF REPORTS**

- Item 16     Staff Proposal for Conducting Mandate Reform Discussions (discussion and action)

Nancy Patton, Assistant Executive Director, presented this item. She noted that at the last Commission hearing, members agreed that large-scale mandate reform should be pursued in 2006. She reported that following the hearing, Chairperson Sheehan discussed mandate reform with Assembly Budget Committee Chair John Laird, Legislative Analyst Elizabeth Hill, and key policy and budget legislative staff and officials from the Administration, and determined that there is significant interest in pursuing mandate reform in 2006.

Ms. Patton also noted that members agreed that hiring a facilitator may be helpful in mandate reform discussions, and requested that staff develop a proposal for using a facilitator. She reported that staff is contracting with the Center for Collaborative Policy at Sacramento State University to conduct an initial assessment to determine the feasibility of using a collaborative process for addressing mandate reform. The Center will interview 25 to 30 individuals with expertise in the mandates process to make the determination, which will also include the scope of reform issues to be discussed. The Center will issue a report on its findings for presentation at the March hearing.

Ms. Patton introduced Susan Sherry, Executive Director of the Center for Collaborative Policy.

Ms. Sherry provided background information about the Center and its staff, noting that it was founded in 1992. She stated that the Center has worked with federal, state, and local governments on a wide range of public policy problems, and its consultants and mediators have grounded public policy experience and understand the political dynamics.

Member Smith thanked staff, noting that this was a good way to proceed. He stated that the Controller was very interested in working with staff and all the stakeholders to look at all the issues. He added that the State needs to work better with its government partners and treat them as partners.

Member Boel also commended staff for moving on the process, and felt there were possibilities. She asked Ms. Sherry for more information about how the process would be carried out.

Ms. Sherry explained that the first leg of the journey was to conduct an assessment. The Center will conduct individual, private interviews using a standardized interview protocol.

Member Smith asked how the interviewees are selected because he wanted to make sure that all stakeholders were included. Ms. Sherry responded that they worked very closely with Commission staff in developing the list of interviewees.

Member Glaab commented that partnership with other levels of government could not be emphasized too heavily. He was supportive of the process.

Art Palkowitz, on behalf of the San Diego Unified School District, welcomed the opportunity. He suggested that staff set meetings close to the Commission hearings to allow people from out-of-town to travel to Sacramento for a dual purpose.

Robert Miyashiro, with the Education Mandated Cost Network, appreciated the effort being undertaken.

Allan Burdick, on behalf of the League of California Cities and the California State Association of Counties' advisory committee on state mandates, was pleased that the process was being driven by a non-stakeholder, but was concerned that cities and counties were not represented at the first workshop conducted by the Commission. He also invited the Center for Collaborative Policy to one of their meetings.

Ms. Higashi clarified that the first discussions occurred at one legislative subcommittee workshop where all cities and counties were represented.

Chairperson Sheehan noted the importance of making sure people were aware of future meetings and workshops.

Item 17 Chief Legal Counsel's Report (info)  
Recent Decisions, Litigation Calendar

Camille Shelton, Chief Legal Counsel, stated that her report included two recent decisions that had been issued by the courts. She noted that the second decision, *Long Beach Unified School District*, was included for information only. She explained that the Commission was not a party to the action, but in this case, Long Beach Unified School District attempted to get reimbursed from the Commission's budget directly, which the Court denied, finding a problem with the Separation of Powers Doctrine.



Item 18 Executive Director's Report (info/action)  
Workload, Budget and Staffing, Legislation

Ms. Higashi reported the following:

- *Workload.* There are still two legislatively-directed reconsiderations pending.
- *Budget.* The Governor's proposed budget includes significant proposals for appropriations to repay the mandate debt. The Department of Finance has a budget change proposal to set up a mandates unit with four positions.

Chairperson Sheehan invited Jesse McGuinn from the Department of Finance to explain the budget change proposal. Ms. McGuinn explained that the mandates unit would develop processes necessary to help streamline the process, develop policy issue papers, and participate in reform. More importantly, the unit would develop a method to estimate mandated costs at the time a bill is going through the legislative process, rather than afterwards. Ms. Guinn also identified a few policy and procedural issues for the mandates unit.

In response to Ms. Higashi's questions, Ms. McGuinn stated that at this time the unit would only work on local agency mandates, and that it would be a part of the administration unit at Finance. However, Chairperson Sheehan clarified that they would still call upon experts from other program areas.

- *Legislation.* Two legislative proposals were submitted to the Governor's office, and were approved. At this point they are spot bills – one for mandate reform and the other for SB 1033 reform.
- *Next Hearing.* The March hearing was rescheduled for March 29 instead of March 30. Staff is still looking for a meeting room.

#### **PUBLIC COMMENT**

Sandra Thornton, with the California Teachers Association, stated that she had a difficult time hearing from the back of the room and requested that voices be projected into the microphones.

Robert Miyashiro, with the Education Mandated Cost Network, acknowledged the Commission's pending workload, but expressed his network's interest in the Commission placing a high priority on the *Williams Case Implementation* test claim. He argued that the lag between the legislative effective date and the issuance of reimbursement claiming instructions poses problems for districts as they are incurring costs.

Ruben Rojas, with the Los Angeles Unified School District, echoed Mr. Miyashiro's comments and appealed to the Commission to expedite the hearing of the *Williams Case Implementation* test claim. He added that he would be happy to oblige by any process necessary.

Ms. Higashi indicated that the Commission could not take action on this matter as it was not an agenda item.

Member Smith inquired as to where the test claim was in the queue. Ms. Higashi responded that it was only filed in the previous year so it was near the bottom. She noted that if all the claimants that have other test claims ahead of the *Williams Case* were willing to stipulate that the *Williams Case* would go first, then there would not be as big of a problem.

Keith Petersen, with SixTen & Associates, indicated that he would be willing to stipulate.

Ms. Higashi stated that she would talk with the parties more about the issues.

Mr. Rojas noted that the *Williams* settlement impacts about 90 percent of the school districts throughout the state.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTION 11126.**

**PERSONNEL**

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

**PENDING LITIGATION**

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

1. *Yuba City Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01237, CSM Case No. 05-L-01 [*Graduation Requirements IRC*]
2. *John Swett Unified School District v. State of California, et al.*, Sacramento Superior Court Case No. 05CS01262, CSM Case No. 05-L-02 [*Graduation Requirements, IRC*]
3. *Eastside Unified High School District v. Commission on State Mandates, et al.* Sacramento Superior Court Case No. 05CS01256 CSM Case No. 05-L-03 [*Graduation Requirements, IRC*]
4. *West Contra Costa Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01253 CSM Case No. 05-L-04 [*Graduation Requirements, IRC*]  
[Filed on behalf of 12 school districts: West Contra Costa USD, Anderson Union High School District, Center USD, Lake Tahoe USD, Lincoln USD, Linden USD, Novato USD, Ojai USD, Placer Union High School District, San Juan USD, Stockton USD, Vallejo City USD]
5. *Woodland Joint Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 05CS01401 CSM 05-L-05 [*Graduation Requirements, IRC*]
6. *California Department of Finance, et al. v. CSAC Excess Insurance Authority, et al.*, Second District Court of Appeal Case No. B188169, CSM Case No. 05-L-06 [*CSAC-EIA Presumptions*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]

8. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
9. *San Diego Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01401, CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
10. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01568, CSM Case No. 03-L-04 [*Graduation Requirements IRC*]
11. *San Jose Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01569, CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
12. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01570, CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
13. *Clovis Unified School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01702, CSM Case No. 03-L-09 [*Graduation Requirements IRC*]
14. *Grossmont Union High School District v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 04CS00028, CSM Case No. 03-L-10 [*Graduation Requirements IRC*]
15. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
16. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
17. *Southern California Association of Governments, et al. v. Commission on State Mandates*, Sacramento Superior Court Case No. 05CS00956, CSM Case No. 04-L-04 [*Regional Housing Needs Determination-Councils of Government*]

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

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

Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### **REPORT FROM CLOSED EXECUTIVE SESSION**

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice and agenda; and Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

#### **CONTINUATION OF PUBLIC COMMENT AND EXECUTIVE DIRECTOR'S REPORT**

The Commission discussed the issue raised during the Public Comment period regarding the *Williams Case Implementation* test claim. Chairperson Sheehan asked about the history of reprioritizing test claims such that one jumps ahead of those filed years before it, or whether the Commission had taken such action before.

Ms. Higashi reported that there had been some test claims expedited due to age, a request by the Department of Finance, and association with a particular Administration. There was great discussion among the members, Ms. Higashi, and Ms. Shelton about the history and consequences of expediting test claims, as well as the possible processes for doing so, and scheduling test claims for hearing. Chairperson Sheehan requested an overview of the issues involved with the *Williams Case Implementation* test claim.

There was also discussion about workload and staffing issues. Based on the Commission's workload, the members supported requesting approval to convert the existing limited-term positions to permanent status.

#### **ADJOURNMENT**

Hearing no further business, Member Sheehan adjourned the meeting at 11:10 a.m.

  
PAULA HIGASHI  
Executive Director

**RECEIVED**

FEB 14 2006

COMMISSION ON  
STATE MANDATES

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**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

**ORIGINAL**

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**TIME:** 9:36 a.m.

**DATE:** Thursday, January 26, 2006

**PLACE:** State Capitol, Room 126  
Sacramento, California

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**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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

**Daniel P. Feldhaus, C.S.R., Inc.**  
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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

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

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

SARAH OLSEN  
Public Member

NICHOLAS SMITH  
Representative for STEVE WESTLY  
State Controller

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

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A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI  
Executive Director

CAMILLE SHELTON  
Chief Legal Counsel

ERIC FELLER  
Commission Counsel

NANCY PATTON  
Assistant Executive Director

TINA POOLE  
Program Analyst

--oOo--

PUBLIC TESTIMONY

**Appearing re Item 5:**

For the Department of Finance:

LENIN DEL CASTILLO  
Finance Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

**Appearing re Item 9:**

For the Department of Finance:

THOMAS TODD  
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 9:** *continued*

For the Los Rios and Glendale Community College Districts  
(Claimants):

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

**Appearing re Item 16:**

SUSAN SHERRY  
Executive Director  
Center of Collaborative Policy

For Education Cost Mandated Network:

ROBERT MIYASHIRO

For San Diego Unified School District:

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

For League of California Cities and California State  
Association Counties Advisory Committee on State  
Mandates:

ALLAN BURDICK  
Director  
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 18:

JESSE MCGUINN  
Budget Analyst  
Department of Finance  
915 L Street  
Sacramento, California 95814

Appearing re Public Comment:

For California Teachers Association:

SANDRA THORNTON  
California Teachers Association

For Education Cost Mandated Network:

ROBERT MIYASHIRO

For the Los Angeles Unified School District:

RUBEN ROJAS  
Los Angeles Unified School District

--o0o--

ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>23</u>	<u>11</u>	<u>change recommendation to recommends</u>
<u>24</u>	<u>14</u>	<u>change Lujano to Garcia</u>
<u>52</u>	<u>16</u>	<u>change to want if to if you want</u>
<u>78</u>	<u>19</u>	<u>chang the ruling to rulemaking</u>
<u>81</u>	<u>12</u>	<u>insert education between the words</u> <u>special and settlement</u>
<u>81</u>	<u>21</u>	<u>change the second the to this</u>
<u>81</u>	<u>22</u>	<u>change juxtaposition to issue</u>
<u>88</u>	<u>8</u>	<u>change an unpublished decision to</u> <u>a published decision</u>
<u>88</u>	<u>12</u>	<u>change his to this</u>

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**Commission on State Mandates - January 26, 2006**

BE IT REMEMBERED that on Thursday, January 26,  
1 2006, commencing at the hour of 9:36 a.m., thereof, at  
2 the State Capitol, Room 126, Sacramento, California,  
3 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,  
4 the following proceedings were held:

5 --oOo--

6 MEMBER SMITH: Good morning, everyone. The  
7 meeting of the Commission on State Mandates will  
8 come order.

9 Paula, will you call the roll, please?

10 MS. HIGASHI: Ms. Boel?

11 MEMBER BOEL: Here.

12 MS. HIGASHI: Mr. Glaab?

13 MEMBER GLAAB: Here.

14 MS. HIGASHI: Mr. Lujano?

15 MEMBER LUJANO: Here.

16 MS. HIGASHI: Ms. Olsen?

17 MEMBER OLSEN: Here.

18 MS. HIGASHI: Ms. Sheehan?

19 CHAIR SHEEHAN: Here.

20 MS. HIGASHI: Mr. Smith?

21 MEMBER SMITH: Here.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: Thank you.

Commission on State Mandates - January 26, 2006

1           The first order of business today, because it is  
2           our January meeting, is the election of officers; and  
3           this is held every January. And our regulations provide  
4           for the executive director to conduct the election of  
5           officers. So I just wanted to open nominations for  
6           election of officers.

7           Are there any nominations for chairperson?

8           MEMBER BOEL: Yes, I would like to nominate the  
9           Director of Finance, Michael Genest.

10          MS. HIGASHI: Is there a second?

11          MEMBER WORTHLEY: Second.

12          MS. HIGASHI: It's been moved and seconded that  
13          Mike Genest, Director of Finance, be elected chairperson.

14          All those in favor of the motion?

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

16          MS. HIGASHI: Any opposed?

17          *(No audible response.)*

18          MS. HIGASHI: Congratulations, Ms. Sheehan.

19          CHAIR SHEEHAN: We'll get Mike.

20          MEMBER BOEL: Anne knows how to run these  
21          meetings.

22          CHAIR SHEEHAN: All right, then the next order  
23          would be the vice-chair.

24          MS. HIGASHI: Correct.

25          CHAIR SHEEHAN: Are there nominations for



1 vice-chair?

2 MEMBER BOEL: Should I do it?

3 Why don't you do it?

4 MEMBER LUJANO: Go ahead.

5 MEMBER BOEL: Okay, I would like to nominate the  
6 Controller's Office.

7 CHAIR SHEEHAN: Do we have a second?

8 MEMBER OLSEN: Second.

9 CHAIR SHEEHAN: All right. Any other  
10 nominations?

11 MS. HIGASHI: For clarification, so that would  
12 be a nomination of Mr. Steve Westly --

13 MEMBER BOEL: Mr. Steve Westly.

14 MS. HIGASHI: -- State Controller as vice-chair,  
15 and his designee is Mr. Smith.

16 CHAIR SHEEHAN: Okay. Any other?

17 MEMBER WORTHLEY: Second.

18 CHAIR SHEEHAN: Okay, so we have a motion and a  
19 second.

20 All those in favor of the motion, signify by  
21 saying "aye."

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

23 CHAIR SHEEHAN: Any opposed?

24 *(No audible response)*

25 CHAIR SHEEHAN: Congratulations.

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1 VICE CHAIR SMITH: Thank you. We'll get Steve,  
2 too, now.

3 CHAIR SHEEHAN: Exactly. We'll bring those guys  
4 over here, so they can go through this.

5 MS. HIGASHI: Let us know if we need to change  
6 the hearing calendar or anything.

7 MEMBER BOEL: We do that all the time.

8 CHAIR SHEEHAN: Exactly. Okay.

9 MS. HIGASHI: The next item is Item 2, Proposed  
10 Minutes, from our last meeting on December 9th.

11 MEMBER BOEL: I propose we adopt the minutes as  
12 written.

13 MEMBER LUJANO: Second.

14 CHAIR SHEEHAN: No changes, corrections that  
15 anybody had?

16 *(No audible response)*

17 CHAIR SHEEHAN: All right, so we have a motion  
18 and a second. All those in favor, signify by saying  
19 "aye."

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

21 CHAIR SHEEHAN: Any opposed?

22 *(No audible response)*

23 CHAIR SHEEHAN: The minutes are adopted.

24 MS. HIGASHI: This brings us to the Proposed  
25 Consent Calendar. We are going to do it a little bit

Commission on State Mandates - January 26, 2006

1 later in the meeting because we're having some  
2 discussions on one of the proposed items.

3 CHAIR SHEEHAN: Hopefully, which will be  
4 successful.

5 MS. HIGASHI: Yes.

6 CHAIR SHEEHAN: Very good.

7 MS. HIGASHI: All right.

8 CHAIR SHEEHAN: So we'll wait on that. Okay.

9 MS. HIGASHI: So we'll move to the hearing  
10 portion of our meeting. And we have Items 5 and 6. And  
11 I'd just like to ask for the -- and 7.

12 CHAIR SHEEHAN: Right.

13 MS. HIGASHI: I would like the parties,  
14 witnesses, and representatives on any of those items to  
15 please come forward.

16 You might as well come up.

17 CHAIR SHEEHAN: "Come on down," as they say.

18 *(Parties came forward to be sworn.)*

19 MS. HIGASHI: Do you solemnly swear or affirm  
20 that the testimony which you are about to give is true  
21 and correct, based upon your personal knowledge,  
22 information or belief?

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

24 MS. HIGASHI: Thank you.

25 These items related to the *School Accountability*

Commission on State Mandates - January 26, 2006

1      *Report Cards'* reconsideration will be presented by Chief  
2      Counsel Camille Shelton.

3                 MS. SHELTON: Good morning.

4                 This item is the reconsideration directed by  
5      Senate Bill 512.

6                 In July 2005, the Commission reconsidered this  
7      test claim as directed by Assembly Bill 2855. Assembly  
8      Bill 2855 did not, however, include Statutes 1997,  
9      Chapter 912, which amended Education Code section 33126.  
10     Thus, the Commission determined in July that it did not  
11     have jurisdiction to reconsider the 1997 test claim  
12     statute.

13                In October 2005, Senate Bill 512 was enacted to  
14     amend Assembly Bill 2855; and it requires the Commission  
15     to reconsider the *School Accountability Report Cards* test  
16     claim with respect to the 1997 test claim statute.

17                Senate Bill 512 also specifies that the  
18     Commission's decisions on both reconsiderations of this  
19     claim apply retroactively to January 1, 2005.

20                Staff finds that Statutes 1997, Chapter 912,  
21     does not constitute a reimbursable state-mandated program  
22     within the meaning of Article XIII B, Section 6, of the  
23     California Constitution because it does not impose a new  
24     program, a higher level of service, or a cost mandated by  
25     the State.

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1 Staff recommends that the Commission adopt  
2 the Staff Analysis to deny statutes 1997, Chapter 912,  
3 as it amended Education Code Section 33126, as a  
4 reimbursable state-mandated program.

5 Staff also recommends, based on the plain  
6 language of Senate Bill 512, that the Commission apply  
7 the July 28th, 2005, Statement of Decision adopted  
8 pursuant to Assembly Bill 2855, and the decision adopted  
9 pursuant to this reconsideration retroactively to  
10 January 1, 2005.

11 Will the parties and witnesses please state your  
12 names for the record, if anybody wishes to appear?

13 CHAIR SHEEHAN: Whoever wants to testify, come  
14 forward on this.

15 Thanks.

16 MR. CASTILLO: Lenin Del Castillo with the  
17 Department of Finance.

18 CHAIR SHEEHAN: Okay.

19 MR. CASTILLO: We support the conclusions  
20 reached in the staff analysis.

21 CHAIR SHEEHAN: Okay, is there anyone else who  
22 would like to make any statements on this?

23 VICE CHAIR SMITH: Is it appropriate now?

24 CHAIR SHEEHAN: Yes.

25 VICE CHAIR SMITH: Okay, my problem with this --

1 and then, Camille, you can correct me -- is that I think  
2 the way I look at it, that the voters passed sort of a --  
3 Prop. 98, which let's us use a Lego house sort of thing.  
4 And we're saying that, you know, as we add kind of pieces  
5 sporadically, "Yeah, it still resembles a house," you  
6 know, but every year we do it. Thirty years from now, it  
7 could look like something other than a house.

8 So are you basically saying that because the  
9 additions to the report card apply to the report card,  
10 that it's what the voters intended to do? I mean, I'm  
11 just a little bit worried about the piecemeal sort of  
12 adding of little statutes here and there. Yeah, it still  
13 resembles a report card. Thirty years from now, we keep  
14 doing that, it could be something -- could look like  
15 something completely different than what voters intended.

16  
17 MS. SHELTON: Prop. 98 required the *School*  
18 *Accountability Report Cards*, and also added statutes that  
19 listed the conditions that had to be in the report card.  
20 And this is legislation that just clarified what  
21 needed -- some of the elements needed to be included.  
22 They weren't new additional activities, we found. They  
23 were just clarifications of existing law through the  
24 voter initiative. And then we applied the plain  
25 language of 17556(f), which says that the additional

1 language has to be necessary to implement a voter  
2 initiative, or it has to be reasonably within the scope  
3 of the voter initiative. And those two pieces we found  
4 to apply here.

5 CHAIR SHEEHAN: Does that answer your question?

6 VICE CHAIR SMITH: Yes, sort of. But it's  
7 troublesome that -- I mean, when you specify sort of  
8 what -- and in looking at what was added, they look like  
9 they're going to cost the schools more, do they not?

10 MS. SHELTON: But additional costs alone don't  
11 equate to a reimbursable state-mandated program.

12 VICE CHAIR SMITH: I understand.

13 MS. SHELTON: You have to find a new program, a  
14 higher level of service; and you have to comply with  
15 17556.

16 You know, the language of 17556 changed. And  
17 the Commission can't determine that that language is  
18 inappropriate or unconstitutional. It has to follow the  
19 plain language of that statute.

20 VICE CHAIR SMITH: Okay, and then at the end of  
21 the analysis, it throws in there that, you know, "Hey, by  
22 the way, the schools have not demonstrated, even if --  
23 that they haven't used local property tax revenue versus  
24 Prop. 98." That is thrown in there as a "just because"  
25 or another -- if we did find a higher level of service

1 and reimbursable activity, it still wouldn't be  
2 reimbursable because the schools have not proven that  
3 they've used local property tax revenue versus Prop. 98  
4 funding.

5 MS. SHELTON: As you recall from the whole  
6 discussion we had on this item in July, this particular  
7 mandate results from Prop. 98. Prop. 98 had a funding  
8 formula; but also required audits and a *School*  
9 *Accountability Report Card*. So the finding is tied with  
10 the mandate directly.

11 That argument would not apply generally to every  
12 single education claim out there. It's really specific  
13 to the facts of this case.

14 VICE CHAIR SMITH: Okay.

15 MEMBER WORTHLEY: I have a question.

16 MS. SHELTON: Yes?

17 MEMBER WORTHLEY: I did have a question. I  
18 noticed that in the analyses, it talks about -- it  
19 references Prop. 98, Section 13, that: "No provision of  
20 this Act may be changed except to further its purposes  
21 by bill."

22 MS. SHELTON: Right.

23 MEMBER WORTHLEY: The thought that came to my  
24 mind is, if that's the case, then it would not be  
25 considered a mandate. In any event, the legislation



1 would have passed a bill, which would arguably not be in  
2 furtherance of the particular proposition, would it be  
3 incumbent upon the parties then to actually appeal that  
4 decision in the court as being unconstitutional, as  
5 opposed to come to the mandate to seek funding?

6 MS. SHELTON: They could, sure. I mean, there  
7 are specific requirements in the Constitution that they  
8 needed a two-thirds vote, plus there has to be an express  
9 finding that it furthers the purpose of the voter  
10 initiative. So that would be, you know, to their own  
11 legal strategy, and that would be one way of doing it,  
12 sure.

13 MEMBER WORTHLEY: I didn't know whether there  
14 was some requirement of administrative remedy that they  
15 would have to exhaust that, before they come to the  
16 Commission.

17 MS. SHELTON: No, they don't have to exhaust the  
18 administrative remedies before coming to the Commission.  
19 They're actually two separate issues.

20 MEMBER WORTHLEY: Thank you.

21 CHAIR SHEEHAN: Any further questions on this  
22 one from the Members?

23 *(No audible response)*

24 CHAIR SHEEHAN: No one else seeking to comment  
25 one way or the other?

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1 MEMBER BOEL: I guess I would have a question.

2 CHAIR SHEEHAN: Yes.

3 MEMBER BOEL: If we move these, we move each one  
4 separately; right?

5 CHAIR SHEEHAN: Yes -- go ahead.

6 MS. HIGASHI: We are on the first item right  
7 now, Item 5.

8 CHAIR SHEEHAN: Yes, because there were changes  
9 to the previous one as a result of this legislation.

10 MEMBER BOEL: Yes.

11 CHAIR SHEEHAN: Exactly.

12 Okay, so do we have a motion?

13 MEMBER BOEL: I make a motion we adopt the Staff  
14 Analysis on Item Number 5.

15 CHAIR SHEEHAN: Is there a second?

16 MEMBER OLSEN: Second.

17 CHAIR SHEEHAN: All right, we have a motion and  
18 a second.

19 All those in favor, signify by saying "aye."

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

21 CHAIR SHEEHAN: Opposed?

22 VICE CHAIR SMITH: No.

23 MEMBER LUJANO: No.

24 CHAIR SHEEHAN: So the Treasurer's office and  
25 the Controller's office will be reflected as voting "no."

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1 Is that correct?

2 VICE CHAIR SMITH: That's correct.

3 MS. HIGASHI: The motion is carried.

4 CHAIR SHEEHAN: Okay. I just want to make sure.

5 This brings us to --

6 MS. HIGASHI: Item 6.

7 CHAIR SHEEHAN: All right, moving on to Item

8 number 6.

9 Camille?

10 MS. SHELTON: Item 6 is the proposed Statement

11 of Decision on this reconsideration on *School*

12 *Accountability Report Cards*. Staff recommendation that

13 the Commission adopt the proposed Statement of Decision

14 which accurately reflects the Staff Analysis and

15 recommendation on the reconsideration.

16 Minor changes, including those that reflect the

17 hearing testimony and the vote count, will be included.

18 In addition, the legislative staff has requested

19 that -- if you turn to page 3 of the Statement of

20 Decision -- that our Statements of Decision include a

21 summary of the Commission's findings on page 1, so it's

22 easier for them to see. So I am requesting authority to

23 put in a summary of the decision before the background,

24 which would just be taken from the executive summary on

25 the test claim.

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1 CHAIR SHEEHAN: They don't want to share our  
2 experience?

3 MS. SHELTON: They don't want to read  
4 everything.

5 CHAIR SHEEHAN: Oh, how could they say that?

6 MS. SHELTON: I forgot to include it in this  
7 one.

8 CHAIR SHEEHAN: That's fine. I don't think  
9 there are any objections to making that change, even  
10 though we'd like them to share our experience -- I mean,  
11 to do it. But I certainly understand.

12 All right, any discussion?

13 *(No audible response)*

14 CHAIR SHEEHAN: Is there a motion on this?

15 MEMBER LUJANO: So moved.

16 MEMBER BOEL: Second.

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

18 Why don't we call the roll on this one then?

19 MS. HIGASHI: Okay.

20 Ms. Boel?

21 MEMBER BOEL: Aye.

22 MS. HIGASHI: Mr. Glaab?

23 MEMBER GLAAB: Aye.

24 MS. HIGASHI: Mr. Lujano?

25 MEMBER LUJANO: No.

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1 MS. HIGASHI: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HIGASHI: Mr. Smith?

4 VICE CHAIR SMITH: No.

5 MS. HIGASHI: Mr. Worthley?

6 MEMBER WORTHLEY: Aye.

7 MS. HIGASHI: And Ms. Sheehan?

8 CHAIR SHEEHAN: Aye.

9 MS. HIGASHI: The motion is carried.

10 CHAIR SHEEHAN: All right.

11 MS. HIGASHI: The next item is Item 7.

12 MS. SHELTON: Item 7 is the Proposed Order to  
13 set aside the Parameters and Guidelines for the *School*  
14 *Accountability Report Cards* Program. As directed by  
15 Assembly Bill 2855 and Senate Bill 512, the Commission  
16 has reconsidered this test claim, finding that the test  
17 claim legislation in its entirety does not constitute a  
18 reimbursable state-mandated program.

19 Pursuant to the express language of Senate Bill  
20 512, this order, proposed order, is operative January 1,  
21 2005. Staff recommends that the Commission adopt the  
22 proposed order to set aside these Parameters and  
23 Guidelines.

24 CHAIR SHEEHAN: So is there any discussion on  
25 that?

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1 (No audible response)

2 CHAIR SHEEHAN: If not, we'll entertain a  
3 motion.

4 MEMBER BOEL: I move that we adopt the proposed  
5 staff recommendations.

6 MEMBER GLAAB: Second.

7 CHAIR SHEEHAN: We have a motion and a second.  
8 Paula, can you call the roll?

9 MS. HIGASHI: Mr. Glaab?

10 MEMBER GLAAB: Aye.

11 MS. HIGASHI: Mr. Lujano?

12 MEMBER LUJANO: No.

13 MS. HIGASHI: Ms. Olsen?

14 MEMBER OLSEN: Aye.

15 MS. HIGASHI: Mr. Smith?

16 VICE CHAIR SMITH: No.

17 MS. HIGASHI: Mr. Worthley?

18 MEMBER WORTHLEY: Aye.

19 MS. HIGASHI: Ms. Boel?

20 MEMBER BOEL: Aye.

21 MS. HIGASHI: And Ms. Sheehan?

22 CHAIR SHEEHAN: Aye.

23 MS. HIGASHI: The motion is carried.

24 CHAIR SHEEHAN: Okay.

25 MS. HIGASHI: At this time I'd like to go back

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1 to the Proposed Consent Calendar, which is numbered as  
2 Item 3. All of you should have a pink sheet. And this  
3 itemizes what is on the Consent Calendar. Items 8, 10,  
4 11, 12, 14 and 15 are before you on the proposed Consent  
5 Calendar.

6 CHAIR SHEEHAN: Okay, so 8, 10, 11, 12 --

7 MS. HIGASHI: -- 14 and 15.

8 CHAIR SHEEHAN: 14 and 15.

9 Item 13 was put over to the next meeting?

10 MS. HIGASHI: Yes.

11 CHAIR SHEEHAN: All right.

12 MS. HIGASHI: That would be moved to the  
13 March agenda.

14 CHAIR SHEEHAN: And then Item 9, we will have a  
15 discussion.

16 THE CLERK: We will be calling Item 9 after this  
17 vote.

18 CHAIR SHEEHAN: Okay, so everyone has the  
19 revised Consent Calendar.

20 MEMBER BOEL: I move that we adopt the Consent  
21 Calendar.

22 CHAIR SHEEHAN: Okay.

23 MEMBER OLSEN: Second.

24 CHAIR SHEEHAN: We have a motion and a second.  
25 Any further discussion?

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1 (No audible response)

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

3 (A chorus of "ayes" was heard.)

4 CHAIR SHEEHAN: Any opposed?

5 (No audible response)

6 CHAIR SHEEHAN: All right, the revised Consent  
7 Calendar is adopted.

8 That takes us to --

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

10 CHAIR SHEEHAN: Right.

11 MS. HIGASHI: Item 9 will be presented by Tina  
12 Poole, Commission staff.

13 MS. POOLE: Good morning.

14 CHAIR SHEEHAN: Good morning.

15 MS. POOLE: On April 24, 2003, the Commission  
16 adopted the Statement of Decision for *Enrollment Fee*  
17 *Collection and Waivers* for: calculating and collecting  
18 student enrollment fees for community-college students,  
19 waiving certain student fees, reporting to the Community  
20 Colleges Chancellor the number of and amounts provided  
21 for fee waivers, and adopting procedures that document  
22 all financial assistance provided to students.

23 There is one outstanding issue: Staff finds  
24 that due to the complexity of this program, reimbursement  
25 for training is warranted. Currently, training is



1 offered by the Chancellor's office. The Chancellor's  
2 manual states that directors, managers, coordinators, and  
3 officers are required to attend the Chancellor's  
4 training; and other management and professional staff are  
5 encouraged to attend.

6 Department of Finance recommended that the  
7 training language be narrowed to only allow directors,  
8 managers, and coordinators to be trained. However,  
9 personnel, other than directors and managers, implement  
10 this mandate. By limiting training, as the Department of  
11 Finance recommends, reimbursement for employees who  
12 actually implement the mandate would not be allowed.  
13 Therefore, we drafted language to clarify that training  
14 reimbursement is allowed for those employees who  
15 implement the mandate.

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

18 MR. TODD: Thomas Todd, Department of Finance.

19 MR. PETERSEN: Keith Petersen, representing the  
20 test claimants.

21 CHAIR SHEEHAN: Okay, Mr. Todd, do you want to  
22 go first?

23 MR. TODD: Yes, we had this item pulled from  
24 consent because we wanted to articulate some concerns  
25 with staff's recommendation. Specifically, we are

1       opposed to the revised language that would essentially  
2       broaden the provision of training to "all employees."

3               When we had proposed the original language that  
4       staff noted, that would restrict training to new  
5       directors, managers, coordinators, and officers of  
6       financial aid offices, it was with the assumption or  
7       the idea that these folks had substantial day-to-day  
8       involvement in the operations of the financial aid  
9       programs.

10              And as far as we're concerned, to align with the  
11       spirit and the intent of the Statement of Decision, these  
12       are really the only folks that need this training.

13              The language right now that says "all employees  
14       who implement the mandate shall receive training," and  
15       obviously the districts would be reimbursed for the costs  
16       associated with that training. We think that that's too  
17       broad. I mean, I think there are some cases out there  
18       where you might have folks with very ancillary  
19       connections to financial aid offices who could be argued  
20       by claimants to need the training, or the full complement  
21       of training. And we don't think that that is  
22       appropriate.

23              So for the record, we would continue to support  
24       the language that would limit it specifically to new  
25       directors, managers, coordinators and officers in charge

1 of the day-to-day operations of the financial aid office.

2 CHAIR SHEEHAN: Okay.

3 MR. PETERSEN: Well, it's their issue. But  
4 essentially, there is nothing in the statute, there's  
5 nothing in the Statement of Decision, and there are no  
6 facts that would support limiting training to supervisors  
7 and directors.

8 The traditional training reimbursement for the  
9 17 years I've been doing this does not limit it to  
10 specific employees. I don't know why the Department of  
11 Finance just picked those people.

12 I used to work for a state agency; and at the  
13 state agency I worked at, I was trained when I wasn't a  
14 manager. Maybe the Department of Finance doesn't train  
15 its managers on new programs. But I think local  
16 government trains whoever has to work on something new.  
17 As a practical matter, you train people or do something  
18 new.

19 I understand the need not to retrain people;  
20 that only the first training should be reimbursed. But  
21 there's no reason to limit it just to the supervisors.

22 CHAIR SHEEHAN: Any other -- yes?

23 MEMBER WORTHLEY: Well, I just think that it's a  
24 continuing mandate that as new employees comes along to  
25 implement it this program, and you have the additional

1 costs of having to train them. That makes sense. We're  
2 not asking to have the janitors trained, but we're  
3 talking about with people working on the program, I think  
4 that is appropriate, as reimbursable costs.

5 MEMBER BOEL: Could we get a statement back from  
6 the Department of Finance? Have we done this before, to  
7 limit this?

8 MR. TODD: I can only speak to this particular  
9 test claim in terms of how we crafted some language to  
10 limit it. To the rationale, to get to Mr. Petersen's  
11 question, "new directors, managers, coordinators, and  
12 officers in charge of the day-to-day operations of the  
13 financial aid office" came specifically from the  
14 Chancellor's office administrative manual, you know,  
15 governing this. So we thought that that was  
16 appropriate -- that was an appropriate limitation. It  
17 was drawn directly, you know, from their own board  
18 fee-waiver program manual, as listing the people that  
19 would be required to receive this training.

20 We understand and acknowledge that staff pointed  
21 out the manual goes on to encourage other people to  
22 attend this training. We just think that, you know, the  
23 proper scope of training would be involving folks that  
24 have substantial operations in financial aid programs.  
25 And that's the rationale for the language.

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1 CHAIR SHEEHAN: But, Tina, the language that we  
2 have is to reimburse for the training for the people who  
3 are actually going to be doing this. So it could be some  
4 of those people.

5 MR. TODD: Right.

6 CHAIR SHEEHAN: And I guess the issue is, we  
7 want to make sure whoever is on the line doing that is  
8 covered. I mean, it may be the list that you're talking  
9 about; but I guess the issue is, if there's someone else  
10 who needs that --

11 MR. PETERSEN: Yes, that's the point exactly.

12 CHAIR SHEEHAN: -- they should be rightfully  
13 reimbursed.

14 And it may be the list. But I think, you know,  
15 we're not -- somebody said "everybody to be trained on  
16 this."

17 MR. TODD: Well, our only concern is, it says,  
18 "all employees who would implement the mandate." And,  
19 you know, that doesn't necessarily give us the comfort  
20 level that this is going to be restricted, you know,  
21 specifically to folks that are really intimately involved  
22 in financial aid operations.

23 CHAIR SHEEHAN: But I guess the other issue is,  
24 as they file claims, they are going to have to  
25 demonstrate why that employee is the one who is doing the

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1 work. So there is still that mechanism to make sure that  
2 we are not just training everyone.

3 MR. TODD: Okay. It's just a concern.

4 CHAIR SHEEHAN: Okay.

5 Anybody else have any questions?

6 *(No audible response)*

7 CHAIR SHEEHAN: Anything else you want to add on  
8 this?

9 *(No audible response)*

10 CHAIR SHEEHAN: Okay.

11 MEMBER WORTHLEY: Madam Chair, I would move  
12 approve.

13 MEMBER GLAAB: Second.

14 CHAIR SHEEHAN: We have a motion and a second to  
15 approve the staff recommendation.

16 All those in favor, say "aye."

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

18 CHAIR SHEEHAN: Any opposed?

19 *(No audible response)*

20 CHAIR SHEEHAN: Okay, thank you all.

21 MR. PETERSEN: Thank you very much.

22 MS. HIGASHI: This brings us to Item 16. And  
23 we'll turn all the way to the back.

24 Item 16 is our staff report on mandate reform  
25 issues discussion. Assistant Executive Director Nancy

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1 Patton will present this report.

2 MS. PATTON: Good morning. At the last  
3 Commission hearing, the Members agreed that large-scale  
4 mandate reform should be pursued in 2006. Following the  
5 hearing, Chairperson Sheehan discussed mandate reform  
6 with Assembly Budget Committee Chair Laird, Legislative  
7 Analyst Elizabeth Hill, key policy and budget legislative  
8 staff and officials from the administration, and  
9 determined that there is significant interest in pursuing  
10 mandate reform in 2006.

11 During the last hearing, Members agreed that  
12 hiring a facilitator may be helpful in mandate reform  
13 discussions and requested that staff develop a proposal  
14 for using a facilitator.

15 We are contracting with the Center for  
16 Collaborative Policy at CSUS to conduct an initial  
17 assessment to determine the feasibility of using a  
18 collaborative or facilitative process for addressing  
19 mandate reform.

20 The Center will interview 25 to 30 individuals  
21 with expertise in the mandates process to make this  
22 determination and to determine the scope of mandate  
23 reforms to be discussed.

24 The Center will complete this assessment and  
25 issue a report on its findings for presentation at our

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1 March 29th hearing.

2 Commission Staff Cathy Cruz will be working with  
3 staff from the Center on this project.

4 And Ms. Susan Sherry, executive director and  
5 founder for the Center of Collaborative Policy, is with  
6 us this morning to provide information on the Center and  
7 the process and to answer any questions.

8 CHAIR SHEEHAN: Great.

9 Do you want to come forward?

10 MS. SHERRY: Would you like me to make a  
11 statement?

12 CHAIR SHEEHAN: That would be great.

13 MS. SHERRY: Hello, good morning.

14 Yes, I am an executive director. And the Center  
15 was founded in 1992, after the minority and majority  
16 leaders of both the Senate and the Assembly brought us  
17 forward to bring all the stakeholders together that would  
18 be pretty much the same crew of folk to talk about growth  
19 management policies. We have worked since 1992 with  
20 federal, state, local governments, crafting collaborative  
21 solutions to gnarly -- we call them "wicked" -- public  
22 policy problems. And we bring the diverse folks together  
23 and engage them in a very disciplined and very rigorous  
24 process to try to reach consensus. And we have done  
25 hundreds of projects in California, ranging from water



1 policy, environmental policy, education policy. I am  
2 working right now on the Ocean Protection Council with  
3 the State Conservation Commission. Just in all areas.  
4 And the issue is that we bring diverse issues -- folks  
5 together to resolve problems.

6 I think we don't really consider ourselves just  
7 facilitators. All of our folks have grounded public  
8 policy experience and really understand the political  
9 dynamics. We don't hire process people. We hire people  
10 who are grounded in policy, who understand how to get  
11 people to "yes."

12 And the stakeholders that we will be dealing  
13 with in the state mandates process are stakeholders who  
14 we have had a long history with, like us -- know we mean  
15 business; know we know our stuff. And we'll see.

16 I mean, this is a wicked problem. And I can't  
17 promise outcomes, but I can promise you that if there is  
18 any chance of a consensus, we will get it out of them.  
19 And if not, that would be because they won't budge.

20 So I'll just tell you a funny story:

21 When we completed the growth management project,  
22 the Irvine company that was at the table printed up  
23 T-shirts that said "I Survived the Susan Sherry Death  
24 March."

25 So we do mean business, and people enjoy that we

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1 mean business. And it's not this facilitator flipchart  
2 stuff. It's: Get down to it, know the public policy  
3 issues, come prepared, know your public policy, sit in a  
4 room, put other things aside, leave your weapons outside  
5 the door, and come to consensus.

6 CHAIR SHEEHAN: Right.

7 Questions?

8 VICE CHAIR SMITH: Madam Chair? I wanted to  
9 thank staff. I think this is a real good way to proceed.  
10 And I know that the Controller is very interested in  
11 working together with you and with staff and with all the  
12 stakeholders to not look at only the low-hanging fruit  
13 items that are out there, but I think also the bigger  
14 picture.

15 The bottom line is the State needs to work  
16 better with our government partners and treat them as  
17 partners, and not like special interests. This shouldn't  
18 be an "us-against-them"; but I think it's something that  
19 we should do; and reform proposals coming from the  
20 Commission on State Mandates, I think, is revolutionary  
21 for the Commission. I don't think -- have we ever  
22 proposed reforms from this body?

23 MS. HIGASHI: We haven't been in the position  
24 where we have been encouraged to do so.

25 VICE CHAIR SMITH: Yeah, so I think this is

1       terrific. So thank you.

2               MEMBER BOEL: I'd like to commend staff as well.

3               First of all, I thought this was an excellent  
4       written document to summarize things, Nancy. And I was  
5       at that workshop on the 8th; and I do think there's  
6       possibilities here. And I commend you and commend staff  
7       for moving on this process.

8               I do have a question.

9               MS. SHERRY: Sure.

10              MEMBER BOEL: I'd like to know a little bit more  
11      about how you go about this process.

12              Do you do individual interviews and then bring  
13      people together?

14              MS. SHERRY: Now, what we're doing here, the  
15      first leg of the journey is an assessment. We never go  
16      into a process without assessing the whole context that  
17      we're working in, because that really affects how you  
18      design a process.

19              So the first step is an assessment to see: If  
20      you throw a party, will people come, and will they come  
21      in good faith? And what are their issues?

22              We like to come into it understanding the  
23      terrain, so that we start off really quickly.

24              So the first piece you'll be getting at the end  
25      of March is our assessment of what are people's issues,

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1       what are their interests, do we think that there's a  
2       chance here. We don't like to spend public money on  
3       things that we think are D.O.A., you know. And so we do  
4       an assessment. And there have been clients we do  
5       assessments for that we say, "Don't waste your money."

6               And so once we do that, then we have --

7               CHAIR SHEEHAN: Hopefully, that will not be the  
8       case.

9               MS. SHERRY: Right, right. And, of course, our  
10       interest is in having a solution. But we look at it very  
11       seriously, and don't --

12              MEMBER BOEL: But how do you do that assessment?  
13       Do you do it by questionnaire, or --

14              MS. SHERRY: No, we always do individual,  
15       private interviews where they have confidentiality; and  
16       so the interviews are typically an hour and a half. We  
17       have a standardized interview protocol, so that you know  
18       you're asking the same questions to everybody, so it's  
19       structured like that. Of course, if people want to go  
20       off on tangents, that's fine, too.

21              And we bring all the data together, along with  
22       our knowledge, which we have a lot of knowledge about  
23       state mandates and state government and local government.  
24       And we try to figure out, okay, where are the places  
25       where there is common ground.

1           Sometimes in the interviews, we can actually see  
2           common ground before they have their first meeting -- the  
3           people sort of agree on something, "Oh, my goodness" --  
4           and then where there are sticking points and where there  
5           are big sticking points. And then we try to figure out,  
6           based on not only the issues, but the personalities, what  
7           the sequence we should follow in terms of what issues you  
8           should take first.

9           There is a rhythm to these things, and you have  
10          to be very strategic about what you take up first. So we  
11          will present a process at the end of that assessment.

12          But typically, our processes go for first  
13          assessment, then organization, to make sure people are  
14          on the same page, they have ground rules, they know how  
15          to behave in the room, they know what the expectations  
16          are. We do education, so that people have at least  
17          access to the same information base; and then we move  
18          into negotiation.

19          And in negotiation, we always include  
20          implementation. You don't ever negotiate a solution  
21          without negotiating the implementation. You don't --  
22          otherwise, things fall apart when you sign the document.

23          So that's sort of an overview.

24          MEMBER BOEL: Interesting.

25          VICE CHAIR SMITH: And then just one quick

1 question: How do you select who you are going to  
2 interview?

3 MS. SHERRY: Well, as you know, if you are  
4 embedded in the public -- in the issue, the usual  
5 suspects pop out pretty easily.

6 VICE CHAIR SMITH: Okay, I just want to make  
7 sure that we are inclusive of all the stakeholders.

8 MS. SHERRY: Totally.

9 VICE CHAIR SMITH: I think everyone who has  
10 something to say ought to be heard, one way or the other.

11 MS. SHERRY: Right. You know, in a little --  
12 back of the envelope, we do deal makers, deal breakers,  
13 and folks who have information that has to be at the  
14 table. So that's how we sort of do it.

15 CHAIR SHEEHAN: Well, and I think in the  
16 discussions that we have had with staff, as many people  
17 that want to be included, we are open to anyone.

18 MS. SHERRY: Right. Within reason. You don't  
19 want 300 people within the room; but, yes.

20 CHAIR SHEEHAN: And at a certain point, the same  
21 issues --

22 MS. SHERRY: Right.

23 CHAIR SHEEHAN: -- and you'll see those themes  
24 emerging.

25 MS. SHERRY: Right. And we do the lists of who

1 we interview very closely with Nancy and Paula. I mean,  
2 very closely. We work collaboratively with the staff  
3 because they're the experts. And so it's a hand-in-glove  
4 relationship with the staff and with you and Anne.

5 CHAIR SHEEHAN: Yes. So if there are people  
6 that you feel -- you know, give names to Nancy or Paula  
7 in terms of that, that will get on the list.

8 MEMBER WORTHLEY: Question. But you're talking  
9 about assessment as opposed to actual remediation.

10 MS. SHERRY: Right.

11 MEMBER WORTHLEY: So you might have a more  
12 limited scope of people in your assessment, and then when  
13 you go to remediation, there might be more people of like  
14 interest --

15 MS. SHERRY: Right, right. Or opposite, or  
16 opposite. Sometimes you do more with the assessment.

17 MEMBER WORTHLEY: Oh, you do?

18 MS. SHERRY: It depends on where you are.  
19 Sometimes you want it from one interest, you want to  
20 interview three people. But when you realize that they  
21 all really think the same way. And not only that, but  
22 the other two feel that this person is good for them and  
23 they trust them to go to the mediation meetings.

24 CHAIR SHEEHAN: And that's what will emerge  
25 through this first phase. And hopefully, the areas of

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1 agreement are greater than we think, and there may be  
2 some areas where we really have disagreement.

3 MS. SHERRY: Right, yes.

4 CHAIR SHEEHAN: And that's what then it would be  
5 focused on.

6 MS. SHERRY: Right. It's a transparent process,  
7 right.

8 MEMBER GLAAB: Yes, Madam Chair, Members, I just  
9 want to echo our Vice-Chairman's comments relative to  
10 thanking staff for a fine document. But I also wanted to  
11 mention the partnership with other levels of government  
12 I think cannot be emphasized too heavily because all of  
13 us involved with government have many stories on how  
14 things --

15 MS. SHERRY: Oh, absolutely.

16 MEMBER GLAAB: -- go or don't go well.

17 And I think as it pertains to the Commission on  
18 State Mandates reform, I think we certainly can move the  
19 agenda and do some great things. So I certainly will be  
20 supportive of this.

21 MS. SHERRY: Oh, absolutely.

22 CHAIR SHEEHAN: Great.

23 Okay, any other questions on this?

24 So we will -- oh, yes?

25 Come on forward.



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1 Can you just identify yourselves for the record?

2 MR. MIYASHIRO: Yes, Robert Miyashiro with the  
3 Education Mandated Cost Network.

4 MR. PALKOWITZ: Art Palkowitz on behalf of  
5 San Diego Unified.

6 I just wanted to comment briefly. Yes, we  
7 welcome this opportunity and it sounds great. I just  
8 wanted to make sure everyone understands, this is about  
9 affecting thousands of districts throughout the state.

10 This last workshop in December, I really didn't  
11 get much notice and other school districts didn't,  
12 either. And it sounds like that won't be a problem in  
13 the future.

14 But also as Commission staff often does, they  
15 will set hearings or meetings close to the meetings,  
16 which allow people who travel here, to come up for a dual  
17 purpose. So that might work out. And also something  
18 like a Webcast might allow districts to participate, or  
19 at least find out what's going on in an effort so that  
20 everyone could be part of the collaboration.

21 Thank you.

22 CHAIR SHEEHAN: Great. Those are good  
23 suggestions.

24 Because, you're right, we want to make sure as  
25 many people who have a say or follow this are included.

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1 MR. MIYASHIRO: And I just wanted to echo the  
2 comments of Mr. Smith and Mr. Palkowitz, that, in fact,  
3 we very much appreciate the effort being undertaken here.  
4 And I can't recall the Commission on State Mandates  
5 actually taking the initiative on the reform issue. So  
6 I think it's very important, and it establishes a high  
7 degree of credibility for the product that eventually  
8 will come forth. And again, we certainly welcome  
9 participation in your effort here.

10 CHAIR SHEEHAN: Right. Thank you. Thank you.

11 *(Mr. Palkowitz and Mr. Miyashiro stepped down.)*

12 MR. BURDICK: My name is Allan Burdick, and I am  
13 here as staff to the League of California Cities,  
14 California State Association Counties advisory committee  
15 on state mandates. And since we're doing comments, we  
16 should get up and join and say, I think, from the local  
17 government standpoint, they are very pleased that we're  
18 having a non-stakeholder drive this process. We think  
19 that made a lot of sense for somebody looking for  
20 something.

21 I'm a little disappointed we didn't get invited  
22 to the workshop, so we could have gotten the details on  
23 this so we could speak specifically.

24 We haven't -- we don't know anybody that's got  
25 direct experience. It sounds very good. But, you know,

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1 we haven't had any chance to really get a real good  
2 understanding. I have been very impressed with the  
3 presentation and discussion this morning.

4 But we would like to thank -- and since the  
5 state is paying for it, I guess -- we do think it works  
6 well.

7 I guess the only other thing is, if we happen to  
8 make progress well enough --

9 CHAIR SHEEHAN: When we make progress.

10 MR. BURDICK: -- that we could actually reach  
11 agreement and come to consensus maybe this year, maybe we  
12 don't have to wait until 2007.

13 CHAIR SHEEHAN: Absolutely, if there is some  
14 stuff. And I know in some of the discussions with the  
15 members upstairs, they will also be very supportive of  
16 us.

17 MR. BURDICK: Secondly, we would like to invite  
18 the Center to one of our meetings that we could set up  
19 specifically of our group --

20 CHAIR SHEEHAN: That would be great.

21 MR. BURDICK: -- to be able to talk to them.  
22 They probably want to talk to people individually as well  
23 off the record, but I think they could gain a lot from a  
24 collaborative process.

25 CHAIR SHEEHAN: I think that would be wonderful.

1 And staff will help you facilitate that.

2 MS. SHERRY: Yes, that's right.

3 MR. BURDICK: Thank you very much.

4 MS. SHERRY: I talked to Chris McKenzie

5 [phonetic].

6 MR. BURDICK: Oh, okay. Great. We work with

7 them.

8 CHAIR SHEEHAN: Any other questions on this?

9 *(No audible response)*

10 CHAIR SHEEHAN: Thank you, Susan, for coming

11 here.

12 MS. SHERRY: Great.

13 CHAIR SHEEHAN: And we look forward to a

14 successful process.

15 MS. SHERRY: So do we.

16 MS. HIGASHI: I just wanted to clarify, based on

17 Mr. Burdick's comment, there was one workshop, a leg.

18 subcommittee. And certainly the cities and counties were

19 all represented at that workshop when the first

20 discussions occurred. There has not been one since that

21 date. And so there hasn't been a meeting that he has

22 missed.

23 CHAIR SHEEHAN: All right. But I think it helps

24 in terms of making sure, as we go forward, that we make

25 sure people know in terms of when we have additional

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1 meetings, workshops, whatever.

2 MS. HIGASHI: And what we can do, too, is we can  
3 establish a separate -- another e-mail list sign-up on  
4 the Web site; so that, as there are developments, that we  
5 can issue them to a mailing list.

6 CHAIR SHEEHAN: Yes, I think that's very  
7 helpful. So I encourage anyone who would like to --

8 MS. PATTON: I think we even talked about like  
9 sending a weekly update out to that mailing list, so that  
10 everybody will continually updated on where the process  
11 is.

12 CHAIR SHEEHAN: Perfect. So what I would say is  
13 look for something on the Web site in terms of adding to  
14 the list so that people can get the notices, keep updated  
15 on what's going on. I think that's a great way to  
16 communicate -- and very efficient in terms of that.

17 MEMBER BOEL: And you don't require any  
18 endorsements of this now? A vote?

19 CHAIR SHEEHAN: Well, we really discussed  
20 did last --

21 MEMBER BOEL: You did?

22 MS. HIGASHI: What will be happening, as Nancy  
23 indicated in her report and Susan indicated, we will be  
24 getting a report of the assessment, assuming that we can  
25 get this project rolling on the time line that we've

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1 projected. We would then have a report coming back to  
2 the next hearing.

3 CHAIR SHEEHAN: The March meeting?

4 MS. HIGASHI: In March.

5 CHAIR SHEEHAN: Which I know people were  
6 trying -- we've moved the date a little bit.

7 MS. HIGASHI: And it will be an assessment of  
8 the issues that are identified, and their recommendation  
9 in terms of what next steps might be.

10 CHAIR SHEEHAN: Yes, exactly. Great.

11 MS. HIGASHI: So we're looking forward to it.

12 CHAIR SHEEHAN: Great. Thank you. We look  
13 forward to it.

14 MS. SHERRY: Thanks.

15 MS. HIGASHI: This brings us to Item 17, Chief  
16 Legal Counsel's report.

17 MS. SHELTON: I included two recent decisions  
18 that have been issued by the courts in this report. The  
19 second decision is the Long Beach Unified School District  
20 case. And I included it in only for your information.  
21 The Commission is not a party to the action but in this  
22 case, the Long Beach Unified School District was trying  
23 to get reimbursed from the Commission's budget directly,  
24 and the Court denied that, finding a problem with the  
25 Separation of Powers Doctrine.

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1           So if you have any questions on the case, I  
2 would be happy to answer those questions.

3           CHAIR SHEEHAN: Any questions?

4           *(No audible response)*

5           CHAIR SHEEHAN: Okay.

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

7           CHAIR SHEEHAN: All right.

8           MS. HIGASHI: Item 18, this is my report.

9           I had given you the pending workload. And as  
10 you can see, we still have the same number of test claims  
11 and we still have about the same number of incorrect  
12 reduction claims pending. We are hoping to make much  
13 more of a dent in these numbers.

14           We still have two legislatively-directed  
15 reconsiderations pending that are major test claims that  
16 will be coming at the April meeting, we believe. That's  
17 what we're projecting.

18           And we continue to have some technical cleanup  
19 issues, the P's & G's amendments and obviously some  
20 statewide cost estimates from previously-approved  
21 mandates.

22           I have given you just some excerpts of  
23 highlights from the Governor's proposed budget that  
24 issued earlier this month. And the good news this year  
25 is that there are significant proposals for

1 appropriations to be made to repay the mandate debt down.  
2 And this is our second year with the effects of  
3 Proposition 1A on the local agency budgets. So these are  
4 major changes from what we have seen in the past.

5 In addition, there is one item that is related  
6 to mandates that I just wanted to mention, and that is  
7 that the Department of Finance has a budget change  
8 proposal to set up a Mandates unit with four positions.  
9 And I have excerpted the text that was in the Governor's  
10 budget documents in terms of what this unit would do.  
11 And if you have any questions about that, I would defer  
12 to the Department of Finance staff.

13 CHAIR SHEEHAN: Jesse is here.

14 MS. HIGASHI: Ms. McGuinn is here.

15 CHAIR SHEEHAN: Right. Jesse McGuinn from our  
16 staff is here.

17 I don't know to want if to take a minute or two  
18 and explain what it is we're proposing in the budget.

19 MS. MCGUINN: My name is Jesse McGuinn. I'm  
20 with the Department of Finance.

21 We put together a proposal to create a Mandates  
22 Unit within finance. There was one in the past, and then  
23 it was divested across the department. And then with  
24 mandate reform, that we've identified a number of policy  
25 issues that we need to have some dedicated resources to



1 developing.

2 This is a first step. And in our request, we  
3 laid the groundwork to seek additional resources, that  
4 the first step that we are doing with this proposal, if  
5 it continues to be included in the budget by the  
6 Legislature, would be a group of people to develop  
7 processes that are necessary to help streamline the  
8 process to get Mandates to move a little more quickly,  
9 to do some policy issue papers, to participate in reform  
10 by developing policy papers.

11 What we're including is within Finance, some  
12 workload associated with organization development,  
13 including developing a work plan, comprehensive list of  
14 policy issues to be addressed independently and in  
15 consultation with appropriate entities, such as the CSAC  
16 and the League of Cities. Develop a comprehensive list  
17 of procedural issues to be addressed independently and in  
18 consultation with appropriate entities. To establish  
19 consulting groups consisting of appropriate  
20 representatives.

21 We have engaged CSAC and the League of Cities at  
22 this point to garner their support for a unit, and lobby  
23 their participation.

24 And then one of the big issues is to develop a  
25 method to estimate mandated costs sooner than is being

1 done currently, and that we will be able to develop  
2 mechanisms that we will be able to hopefully come up with  
3 estimates at the time the bill is going through the  
4 process, rather than afterwards.

5 Some of the policy issues that -- and it is not  
6 an all-exclusive list, by any means. But looking at the  
7 basis for which we pay consultants, currently, we pay  
8 them on claims rather than allowable costs; looking at  
9 administrative costs and whether they should be capped;  
10 ensuring only eligible local government entities submit  
11 claims; reform claiming processes regarding content,  
12 timing, and frequency; payment for actual reimbursements  
13 and so on. I can go through the entire list, if you  
14 want. But that's just a little flavor.

15 Some of the procedure issues for the mandates  
16 unit to develop include the methodology for developing  
17 responses to test claims, methodologies for developing  
18 responses to Parameters and Guidelines and claiming  
19 instructions, and methodology for developing statewide  
20 costs estimates. This unit will also be looking at --  
21 in addition to program staff, but will also be looking at  
22 bills that are keyed "Mandate: Yes," by Leg. Counsel;  
23 and to do the budget development for the Commission,  
24 proposals to annually revise and repeal expired mandates  
25 and provide oversight of audit activities.

1 CHAIR SHEEHAN: All right.

2 MS. MCGUINN: And I'd be happy to answer any  
3 questions.

4 CHAIR SHEEHAN: Mr. Smith?

5 VICE CHAIR SMITH: No, I just wanted to -- yeah,  
6 a question, but not totally related to this.

7 Did the budget include any positions for the  
8 Commission staff?

9 MS. HIGASHI: No, it did not. I mean, it did  
10 not include additional positions; but we are in our first  
11 year of funding for our BCP. Last year, it was approved  
12 when we were given positions. And so the 2006-07 budget  
13 continues those new positions.

14 VICE CHAIR SMITH: No problem. It sounds like  
15 the just cause to streamline the process. But also, you  
16 know, we're not making any dent in our test claims to be  
17 determined. I know we still need to do some hiring. But  
18 it looks like --

19 CHAIR SHEEHAN: We're down four.

20 VICE CHAIR SMITH: We're down four. But if I'm  
21 right, I think the Commission has an obligation to hear  
22 test claims within a year of filing.

23 And what's our average now?

24 MS. HIGASHI: Several years.

25 VICE CHAIR SMITH: Okay.

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1 MS. HIGASHI: Yes.

2 VICE CHAIR SMITH: So my point is great about  
3 the Department of Finance extra positions. But please  
4 keep in mind that we need some --

5 CHAIR SHEEHAN: Our part, yes.

6 VICE CHAIR SMITH: Yeah, I'm willing to meet  
7 every week.

8 (Laughter)

9 VICE CHAIR SMITH: So if we can get geared up to  
10 be able to get through --

11 MEMBER BOEL: You might be here by yourself.

12 MS. HIGASHI: Mr. Smith, we would be happy to  
13 meet every week, too. We would need four times the staff  
14 in order to produce the next agenda items --

15 VICE CHAIR SMITH: That's right.

16 MS. HIGASHI: -- to justify --

17 VICE CHAIR SMITH: I would like -- and this is  
18 why we're doing the reform, but I'm hopeful that includes  
19 those resources.

20 MS. HIGASHI: That would take 12 more attorneys,  
21 and at least three or four more support staff.

22 VICE CHAIR SMITH: Fine. Whatever it takes.

23 MS. HIGASHI: If I may, and additional travel  
24 and per diem for our public members and elected  
25 officials.

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1 CHAIR SHEEHAN: I will share that with  
2 Mr. Genest.

3 MS. HIGASHI: If I may, we would support that --

4 CHAIR SHEEHAN: Yes, indeed.

5 MS. HIGASHI: -- if the department wanted to  
6 amend the budget.

7 CHAIR SHEEHAN: Indeed.

8 MS. McGUINN: If I may, the Commission received  
9 additional positions last year, as did the Controller's  
10 office.

11 CHAIR SHEEHAN: So we will be making some  
12 progress. But you're right, we do need to continue. And  
13 it's a matter of filling the positions. And I know we  
14 are working on it.

15 MS. HIGASHI: Correct. We have a vacancy in  
16 Ms. Shelton's former position, and we have one position  
17 that is from the BCP that we could not get it filled in  
18 time, by the end of the year. So it's gone off our  
19 books. But we need to readvertise and get it back  
20 again. But that was because of a number of other  
21 collective-bargaining-type delay issues.

22 CHAIR SHEEHAN: Okay, any other questions for  
23 Ms. McGuinn?

24 *(No audible response)*

25 CHAIR SHEEHAN: Thank you.

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1           Okay, anything else you want to highlight?

2           MS. HIGASHI: I just wanted to add one  
3 clarification. And it's my understanding that this unit  
4 is only going to work on local agency mandates and not on  
5 education mandates; correct?

6           MS. McGUINN: At this time. And once the  
7 processes are developed, then we will start looking at  
8 whether or not we should move education into it.

9           CHAIR SHEEHAN: All right, that's correct.

10          MS. HIGASHI: And also, it would be moved to a  
11 different section or program within Finance?

12          MS. McGUINN: At this point, it looks like it  
13 will be included in the administration unit at Finance.

14          CHAIR SHEEHAN: All right. As you know, now it  
15 is disbursed throughout, so they are collecting them in  
16 one place under that program budget manager. But we will  
17 still depend on the experts within each those of units,  
18 as we do whatever the -- you know, if it's a public  
19 safety issue, if it's mental health, whatever it is, in  
20 terms of the experts within those program areas of  
21 Finance.

22          MS. HIGASHI: And I just want to add, you know,  
23 that we have met with Mr. Deatherage, who is the head of  
24 the other section in Finance. And so we will probably  
25 continue to have discussions --

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1 CHAIR SHEEHAN: Absolutely.

2 MS. HIGASHI: -- as the budget goes through, and  
3 so that there's a smooth transition between the local  
4 government side.

5 CHAIR SHEEHAN: And what I can do, and Paula can  
6 remind me, as the budget goes through, make sure we keep  
7 the Commission informed of how this BCP is moving, and  
8 any changes, additions, as we go through the budget  
9 process.

10 MS. HIGASHI: We will.

11 CHAIR SHEEHAN: Great.

12 Thank you.

13 Anything else on the Executive Director's  
14 report?

15 MS. HIGASHI: Just a couple other things I  
16 wanted to mention.

17 On proposed legislation, we had submitted two  
18 legislative proposals to the Governor's office, and we  
19 have approval to proceed on both of them. At this point  
20 they are spot bills; and one was for mandate reform and  
21 one was for SB 1033 reform.

22 CHAIR SHEEHAN: Oh, yes.

23 MS. HIGASHI: And we have a willing subcommittee  
24 of two members who will be meeting with me after today's  
25 meeting so we can start planning how to approach SB 1033

1 reforms.

2 CHAIR SHEEHAN: This will be the year of mandate  
3 reforms on all fronts.

4 MS. HIGASHI: I wanted to just announce some  
5 changes regarding our next meeting. It will be on  
6 March 29th instead of on March 30.

7 CHAIR SHEEHAN: And is that posted already on  
8 our Web site?

9 MS. HIGASHI: I believe it is.

10 CHAIR SHEEHAN: Just so the people know.

11 MS. HIGASHI: And as we are issuing the draft  
12 agenda items, we are changing the dates and notifying  
13 them. We're still looking for a meeting room, though.  
14 Whenever we move a meeting from a Thursday to a  
15 Wednesday, we find ourselves in competition with every  
16 legislative committee that meets in this building. And  
17 so we're in the process of contacting every state agency  
18 that has a hearing room.

19 CHAIR SHEEHAN: Okay, let us know because -- let  
20 me know because I can talk to resources -- you know,  
21 various -- many of them have big auditoriums.

22 MS. HIGASHI: Right. And our staff is in the  
23 process of doing that right now.

24 CHAIR SHEEHAN: Okay.

25 MS. HIGASHI: For the next agenda, there are



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1 just a couple of changes. Item 13, which we postponed,  
2 the Proposed Parameters and Guidelines amendments for  
3 *Comprehensive School Safety and Emergency Procedures*.  
4 That will be on the next agenda.

5 The other is the statewide cost estimate for  
6 Integrated Waste Management is going to be moved to the  
7 May agenda.

8 We recently responded to a request for an  
9 extension of time for the state agency to respond and to  
10 review that estimate. So it is now rescheduled for May.

11 In addition, as I mentioned earlier, we'll have  
12 the mandate reform report.

13 CHAIR SHEEHAN: Right. We'll look forward to  
14 that.

15 MS. HIGASHI: Are there any other questions?

16 CHAIR SHEEHAN: Any questions for Paula?

17 *(No audible response)*

18 CHAIR SHEEHAN: Okay, that concludes the agenda  
19 items.

20 *Public Comment.* Is there anyone from the public  
21 who would like to address the Commission on any issues  
22 that -- come forward and identify yourselves.

23 MS. THORNTON: I'm Sandra Thornton, and I  
24 represent the California Teachers Association. And I've  
25 come to your meetings, and I have spoken with several of

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1 the people involved. It is very difficult for us to hear  
2 because you talk among yourselves.

3 CHAIR SHEEHAN: Oh, I'm sorry.

4 MS. THORNTON: You don't use your microphones  
5 and project so the rest of us can hear. So I hope that  
6 you would be respectful of our needs to hear. We are  
7 being sent here to represent agencies; and we do need to  
8 hear what you are saying.

9 CHAIR SHEEHAN: Absolutely. I appreciate that.

10 MS. THORNTON: Thank you.

11 CHAIR SHEEHAN: And don't be bashful for those  
12 in the back who can't hear us, to wave us down and remind  
13 us to use our microphones.

14 MR. MIYASHIRO: Yes, for the record, Robert  
15 Miyashiro, Education Mandated Network.

16 I want to express our appreciation and  
17 understanding of the workload that the Commission faces  
18 and the kind of backlogged number of cases that are  
19 pending. But if at all possible, I would express the  
20 interests of our network in having the Williams test  
21 claim brought up as a higher priority for staff to do an  
22 analysis on.

23 And I would suggest that this particular mandate  
24 is a good case study in how the overall reimbursement  
25 process, I consider it, as it breaks down. Because if

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1 I just might for a minute, this bill -- this law became  
2 effective last year, January. It requires a lot of  
3 duties on county offices of education and school  
4 districts with regard to the Williams settlement, the  
5 background on which is inadequate school facilities and  
6 teacher assignments and so forth.

7 School districts and county offices of education  
8 are currently implementing that new law. They are  
9 incurring costs to do that. And yet there is no decision  
10 on whether or not this is going to be a reimbursable  
11 mandate, let alone what costs would be reimbursable, what  
12 activities, and what would be the claiming instructions.

13 So if you think about the current law being  
14 imposed right now, districts incurring costs, and then  
15 what will occur if, indeed, the Commission finds this to  
16 be a reimbursable mandate according to the time line, two  
17 or three years from now, districts will be expected to  
18 document costs effective January 1 of '05, without ever  
19 having known that it would be reimbursable.

20 And one of the major issues that we have faced  
21 is the audits that are done by the Controller's Office  
22 and their general conclusion that the documentation is  
23 inadequate.

24 The reason it's inadequate is that when costs  
25 are being incurred, there is no determination that they

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1 will ever be reimbursed. There are no claiming  
2 instructions, there are no Parameters and Guidelines; and  
3 yet costs are being incurred now.

4 So to the extent that we can or we would impress  
5 upon the Commission and its staff to bring that  
6 particular mandate up to the top of the pile, so that we  
7 can move forward on this. And there is every intention  
8 on the part of the local agencies to comply. But, again,  
9 when there is such a lag between effective date of  
10 legislation and the reimbursement instructions, it just  
11 naturally poses problems.

12 CHAIR SHEEHAN: Thank you.

13 MR. ROJAS: Good morning. Ruben Rojas,  
14 Los Angeles Unified School District.

15 And I am here to echo and to confirm what was  
16 just shared by Mr. Miyashiro.

17 If there's anything that we can do -- I'm here  
18 to appeal to you to please expedite the hearing of the  
19 Williams test claim. If there is any process that we  
20 need to go through, we are happy to oblige by that. If  
21 there's anything that you could suggest to us that would  
22 help in your consideration, if you'd like to hear from  
23 other school districts, we're happy to make that happen.

24 So I'd like to turn it back to you and ask,  
25 what, if anything, can be done?

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1 MS. HIGASHI: At this time, nothing can be done  
2 in terms of the Commission taking action because this is  
3 not an agenda item, first; and I'll let you know that.

4 What I would like to do is meet with the two  
5 of you after the meeting and talk with you more about the  
6 issues that you've raised.

7 VICE CHAIR SMITH: I have a question, Madam  
8 Chair.

9 CHAIR SHEEHAN: Uh-huh.

10 VICE CHAIR SMITH: Where is the test claim in  
11 the queue of the 109?

12 MS. HIGASHI: It was filed last year. So it's  
13 going to be pretty much at the bottom.

14 VICE CHAIR SMITH: Okay.

15 MS. HIGASHI: And the difficulty is that we have  
16 a number of test claims in the queue for the coming  
17 twelve -- the next twelve months. And others, for the  
18 next twelve months thereafter. And they're all going to  
19 be ahead of this test claim.

20 So if all of the claimants that have other test  
21 claims that stand in line ahead of this one, were willing  
22 to sign a stipulation, essentially to say that they're  
23 willing to stipulate that Williams goes first, then it's  
24 not going to be as big of a problem to move it up on the  
25 agenda.

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1 But there are a lot of other issues that are  
2 much older --

3 CHAIR SHEEHAN: He's coming forward to sign the  
4 stipulation right now.

5 (Laughter)

6 MS. HIGASHI: And Mr. Petersen represents the  
7 school district claimants on all of the school district  
8 claims that are in line ahead of the Williams case.

9 MR. PETERSEN: Yes, we can do what you just  
10 said.

11 MS. HIGASHI: But let's talk about it.

12 CHAIR SHEEHAN: Well, and in fairness, for the  
13 people who are here, who may be representing some of  
14 those other test claims, in fairness to those other  
15 claimants, we need to make them aware of it.

16 MR. PETERSEN: All but one are mine of those  
17 cases, yes.

18 CHAIR SHEEHAN: On all the --

19 MR. PETERSEN: All the test claims, all 61, all  
20 except one are mine.

21 MS. HIGASHI: Except for the ones that are  
22 Mr. Palkowitz's --

23 CHAIR SHEEHAN: Right.

24 VICE CHAIR SMITH: I think the point is that --

25 MS. HIGASHI: -- and Mr. Hendee and

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1 Mr. Scribner.

2 VICE CHAIR SMITH: If we're going to replace  
3 one, let's replace the school district one, not one that  
4 deals with CSAC and League. I think that's what we're  
5 talking about. But I think --

6 MS. HIGASHI: But what we would be doing  
7 essentially is saying that instead of taking up the next  
8 school district claim, this would be substituted and  
9 moved up.

10 CHAIR SHEEHAN: And that's the discussion we'll  
11 have with them.

12 MS. HIGASHI: And that would be the stipulation.  
13 And if everyone in between would be willing to --

14 CHAIR SHEEHAN: Be bumped back down?

15 MS. HIGASHI: -- be bumped back down.

16 MR. ROJAS: If I could add a little more fuel to  
17 the fire.

18 I think it's fair to say that the Williams  
19 settlement affects or impacts 90 percent of the school  
20 districts throughout the state.

21 MS. HIGASHI: Absolutely.

22 MR. ROJAS: So there's a lot of interest here.  
23 I think your suggestion is fair and I think it's doable.  
24 So we look forward to speaking.

25 MS. HIGASHI: Okay.

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1 CHAIR SHEEHAN: And, no, I certainly understand,  
2 as chair of the Allocation Board, we're dealing with the  
3 same issue in terms of their physical facilities at many  
4 of those school districts.

5 MR. ROJAS: Thank you.

6 CHAIR SHEEHAN: Okay, anyone else in terms of  
7 public comment who would like to address the Commission  
8 at this time?

9 *(No audible response)*

10 CHAIR SHEEHAN: If not, we will go into closed  
11 session.

12 Was there anything else in open?

13 *(No audible response)*

14 CHAIR SHEEHAN: All right. Do I need to read  
15 this?

16 MS. HIGASHI: Yes.

17 CHAIR SHEEHAN: The Commission will now meet  
18 in closed executive session pursuant to Government Code  
19 section 11126, subdivision (e), to confer with and  
20 receive advice from legal counsel for consideration and  
21 action, as necessary and appropriate, upon the pending  
22 litigation listed on the published notice and agenda, and  
23 to confer with and receive advice from legal counsel  
24 regarding potential litigation, and pursuant to  
25 Government Code sections 11126, subdivision (a), and



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1 17526. The Commission will also confirm personnel  
2 matters listed on the published notice and agenda.

3 We will reconvene in open session upon the  
4 conclusion.

5 (Closed execution session was held off the  
6 record from 10:36 a.m. to 10:48 a.m.)

7 CHAIR SHEEHAN: The Commission met in closed  
8 executive session pursuant to Government Code Section  
9 11126, subdivision (e) to confer with and receive advice  
10 from legal counsel for consideration and action, as  
11 necessary and appropriate, upon the pending litigation  
12 listed on the published notice and agenda and potential  
13 litigation; and Government Code sections 11126,  
14 subdivision (a) and 17526 to confer on personnel matters  
15 listed on the published notice and agenda.

16 We're reconvening in open session. We met in  
17 closed session; so we're back in open on the Williams.

18 What has been the history on the precedence  
19 before, when one group wants to jump ahead of everybody  
20 else? Has this been done before? What is the history?

21 MS. HIGASHI: There have been -- when *Special*  
22 *Ed.* came back on remand, there was generally agreement  
23 that everything connected with *Special Ed.* should be  
24 moved as quickly --

25 CHAIR SHEEHAN: Moved up?

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1 MS. HIGASHI: Moved up. Because it was such an  
2 old case.

3 There have been other situations where -- and  
4 I'm trying to think, we moved up *ERAF*, which Finance  
5 asked us to move up.

6 CHAIR SHEEHAN: But not this Finance?

7 MS. HIGASHI: No.

8 CHAIR SHEEHAN: It was a few years ago.

9 MS. HIGASHI: Under the Wilson Administration,  
10 we have the *ERAF* test claim, we had the *Three Strikes*  
11 test claim, we have *Sexually Violent Predators* test  
12 claims. They were all three high-visibility programs  
13 that were associated with the Wilson Administration; and  
14 there was a very significant interest in having those  
15 cases decided before the next administration started.

16 So we worked at coming up with briefing  
17 schedules and hearing schedules, so that it would happen  
18 during the last year of the Wilson Administration.

19 CHAIR SHEEHAN: But that came from within the  
20 Administration?

21 MS. HIGASHI: And the parties, too.

22 CHAIR SHEEHAN: Okay.

23 MS. HIGASHI: The parties wanted to do it; but,  
24 clearly, there was agreement, and direction to proceed.

25 CHAIR SHEEHAN: Because Williams -- you know,

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1 and certainly Williams is an issue for this -- I mean,  
2 this Administration settled Williams.

3 MS. HIGASHI: Right.

4 CHAIR SHEEHAN: But it has not come separately  
5 to me in terms of expediting Williams.

6 It doesn't sound like on the school side -- my  
7 view is, if the school people are the ones who would be  
8 jumped ahead or slowed down or -- fine. Then certainly  
9 the Commission could discuss that.

10 MEMBER BOEL: Would they have to go with  
11 every -- would everybody -- cities and stuff all have to  
12 be -- that were ahead all have to agree to this; or could  
13 they just do a switch in the schools, like move one?

14 MS. HIGASHI: I have a list of all of the  
15 pending cases, and we have it prioritized by: these are  
16 the code remands, these are the statutory remands, and  
17 these are the cases in the order of filing date of  
18 records -- I guess records closed date. And Camille and  
19 I go through this all the time after every hearing, when  
20 we readjust and try to figure out what can go forward.

21 Sometimes the complexity of the cases is such  
22 that we have to save them for when Camille has time  
23 to work on the case, given her litigation schedule and  
24 everything else; or if it's assigned to a different  
25 person, it might take longer. So we're constantly doing

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1 that adjustment, to try to figure out which are the ones  
2 we should be working on this week or next week, in order  
3 to bring you the agenda eight weeks out, because we have  
4 to have our drafts done ten to eight weeks before the  
5 hearing in order for it to make the agenda.

6 MEMBER WORTHLEY: Well, that was a concern that  
7 I had.

8 CHAIR SHEEHAN: How complicated is this?

9 MS. HIGASHI: And it can take weeks -- days,  
10 weeks to finish.

11 MEMBER WORTHLEY: Because I was thinking, we  
12 might have a simple education matter coming before the  
13 Commission next meeting, or two meetings from now, and  
14 then they want to bump. Well, you can't automatically  
15 just replace it with something which takes a lot of time  
16 to do the work.

17 MS. HIGASHI: No. Nothing can happen that  
18 quickly because we have everything in the queue, records  
19 close, statutory due dates, mandate reimbursement. And  
20 Camille has worked -- we have the SEMS reconsideration.  
21 And that one was a remand -- we still have pieces of  
22 *Expulsions* that are all --

23 CHAIR SHEEHAN: Hanging out there, right.

24 MS. HIGASHI: You know, there are about  
25 12 claims that are all related to the *Expulsions*

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1 decisions. It was a Supreme Court case that we're trying  
2 to bring up. And we still have two vacancies.

3 MS. SHELTON: And *Grad Requirements* that we  
4 absolutely --

5 MS. HIGASHI: And the *Grad Requirements*, we have  
6 six cases.

7 MEMBER OLSEN: Paula, in terms of workload,  
8 what's the earliest point at which the Williams case  
9 could jump ahead of everything, assuming that that was  
10 okay with everybody?

11 MS. HIGASHI: Even if it were okay with  
12 everybody, it's not going to come up until next fiscal  
13 year.

14 CHAIR SHEEHAN: At least this summer or fall.

15 MS. SHELTON: It would be July or August.

16 MEMBER OLSEN: And staff workload would allow  
17 that to happen? I mean, would it be possible to do that?

18 MS. HIGASHI: It's possible.

19 MEMBER WORTHLEY: Well, conceptually, could you  
20 not take --

21 MS. HIGASHI: Fall, winter, at the earliest.

22 CHAIR SHEEHAN: Because you figure out how much  
23 work the case is really going to --

24 MS. HIGASHI: Right, exactly.

25 CHAIR SHEEHAN: -- and what other things you're

1 up against.

2 MEMBER WORTHLEY: Conceptually, could you not  
3 take a similarly-situated case that's in the queue, that  
4 the only reason that this case would be behind it is  
5 because in terms of filing, and you could basically sort  
6 of replace that case?

7 MS. HIGASHI: Well, what I'm thinking is that  
8 right now, you know, we've been threatened many times by  
9 the claimants to go to court and just order us to take up  
10 their case because it is clearly the oldest case in the  
11 file; but they haven't done that. We've been very  
12 fortunate.

13 MS. SHELTON: And they can. Under the provision  
14 of the Code of Civil Procedure under 1085, they can say,  
15 you know, you have that one-year limitation in the  
16 Government Code to complete your test claims. And this  
17 one has been sitting around for five years. It's the  
18 oldest test claim. And they have threatened to do it,  
19 and they haven't done it. We really wouldn't have an  
20 argument, other than we don't have the staff to complete  
21 it.

22 VICE CHAIR SMITH: As far as I see, if it  
23 works -- I mean, if they have a school district issue,  
24 they can't take away from something in the queue from  
25 another stakeholder group, and only if it works. And if

1 they have maybe two -- if it takes two smaller issues to  
2 equal one big -- whatever. If you can work it out,  
3 great, you know, it sounds like it's important to them,  
4 they're willing to go through and get a stipulation  
5 signed saying we can do it. If it works, great. I think  
6 they're just asking that it be done sooner than --

7 MS. HIGASHI: Four years from now.

8 VICE CHAIR SMITH: -- like, four years. So if  
9 it's done in the fall, even a little bit later, I think  
10 if we work with them, we can kind of reach a compromise.

11 MS. HIGASHI: But there are a lot of claimants  
12 in line. And Keith Petersen acknowledged that he has  
13 a bunch of those test claims. And those are all school  
14 construction-case test claims, and prevailing wage,  
15 school construction, San Diego.

16 MS. SHELTON: And they would have to agree on  
17 the *Grad Requirements* IRC remands, too. Because I've  
18 already today received information.

19 VICE CHAIR SMITH: They're going to -- they  
20 don't know even what they asked for.

21 MS. SHELTON: They want to take it back to Judge  
22 Connolly and say, "It's been a year since you issued your  
23 decision, and this is not resolved yet."

24 And I said, "Well, we didn't get anything back  
25 from the Controller until August, and we have three

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1 attorneys, and we have statutory deadlines on  
2 reconsiderations that have to come first. And the writ  
3 didn't have a deadline."

4 CHAIR SHEEHAN: Go ahead.

5 MS. HIGASHI: And so basically --

6 CHAIR SHEEHAN: I walked into the building with  
7 him.

8 MS. HIGASHI: So we basically have a request  
9 that is verbal, that was made today before the hearing  
10 from San Diego, requesting that all of those -- at least  
11 their case be set for hearing on the May agenda.

12 MEMBER GLAAB: But, you know, I have a certain  
13 that, notwithstanding the educational community, I  
14 have that if we arbitrarily make a decision because we  
15 feel good about it, that it's a good idea, and there's  
16 not any set criteria for moving things up on the agenda,  
17 don't we expose ourselves to those others?

18 MS. HIGASHI: Which is why I said that if we had  
19 a stipulation where all of the parties with claims ahead  
20 of it in line agree that --

21 CHAIR SHEEHAN: Yes, then we're indemnified.

22 MEMBER GLAAB: Yes.

23 MEMBER OLSEN: But I'm so cautious on this issue  
24 that I think that you almost have to have the cities and  
25 the counties --



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1 MS. HIGASHI: Oh, absolutely.

2 MEMBER OLSEN: -- sign off, too, even if it's  
3 just flipping two school cases, because --

4 CHAIR SHEEHAN: Yes. It could impact them.

5 MEMBER OLSEN: -- of what could happen.

6 MS. SHELTON: Remember, there is a Government  
7 Code provision that allows the parties to stipulate to a  
8 waiver of some of the procedural requirements. So a  
9 stipulation is important because it does waive their  
10 right to argue about the one year.

11 MS. HIGASHI: Yes.

12 CHAIR SHEEHAN: Is that the only provision for,  
13 you know, our process of jumping ahead in the queue?  
14 Because I had the same question as Paul: Is that really  
15 mechanism?

16 MS. HIGASHI: If you want me to put it on the  
17 agenda --

18 CHAIR SHEEHAN: Yes, a legislative. Well, the  
19 other way, they could go upstairs and get a bill and tell  
20 us to do it by a certain time. But I didn't want to  
21 suggest that.

22 MEMBER GLAAB: But where I'm going with this is,  
23 can we -- or is it an idea to have at least some criteria  
24 agreed upon by the Commission, that when something  
25 presents itself, we at least have Commission approval?

1 It can be very vaguely written, or it can meet a certain  
2 criterion; or does that put us in the jeopardy situation  
3 that I'm talking about? It just seems that we should  
4 have something -- we shouldn't be just reacting.

5 MS. HIGASHI: We've tried to follow the  
6 oldest-claim rule or the oldest-record-closure rule. But  
7 sometimes it doesn't work because if the top ten cases  
8 are all going to take two months to do, we would have to  
9 stop meeting for two to three months in order to finish  
10 some of those cases.

11 The law clerks that we give the shorter cases  
12 to, to help us write up the cases. So we need the  
13 flexibility to be able to bring cases up that we can put  
14 on the agenda, that we can bring forward without tying  
15 our hands.

16 And the others -- you know, depending upon how  
17 much criteria, we could put criteria in the regs, if you  
18 wanted to put criteria in the regs; or if you wanted to  
19 clarify that one of the rulemaking sections, I guess  
20 Article I, which we've put in for the ruling this year,  
21 is the section that concerns my duties or delegation of  
22 duties to me and the appeals of my actions.

23 MEMBER WORTHLEY: I just think that that's a  
24 dangerous thing for us to get into, because, as you  
25 describe, you need flexibility. And any time we set

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1 rules, now you're going to be bound by rules which would  
2 impinge upon your flexibility, and we may bite ourselves  
3 back.

4 MEMBER GLAAB: Yes, my comment was only the  
5 jeopardy issue but still maintain that flexibility,  
6 because, clearly, that has to occur; otherwise, we could  
7 come to a grinding halt.

8 But my thought is that if we had even one  
9 sentence that attempted to establish a criterion by which  
10 we could --

11 MS. HIGASHI: Here's the other thing, too --

12 CHAIR SHEEHAN: Well, and that's why we -- we  
13 sort of have that stipulation.

14 MEMBER WORTHLEY: We have that.

15 MS. HIGASHI: We have that stipulation provision  
16 where the parties -- and the way we've done it in the  
17 past, we have had cases like -- when the Open Meetings  
18 Act and the incorrect reduction claims were filed, we had  
19 400 claimants filing IRCs. So we stipulated to set aside  
20 all of these filing requirements, because even with one  
21 copy being filed with just a face sheet and claim, we had  
22 about, what, 12, 15 archives boxes stacked up against the  
23 wall.

24 If we had required them to do the "X" number of  
25 copies, to bring in all that documentation, and then to

1 send them out to the Controller for comment, everything  
2 would have come to a screeching halt. And so we got  
3 stipulations signed with every one of the representatives  
4 in those cases; and that we would hold these until the  
5 lead case had been decided. And so we have used it  
6 before.

7 Sometimes, like, we have the Proposed Parameters  
8 and Guidelines amendment related to *Handicapped and*  
9 *Disabled Students*. That is an old request that the  
10 claimants took off calendar several years ago, once they  
11 realized -- when they saw the Staff Analysis, they  
12 requested that it be taken off calendar.

13 Well, now, the Commission has completed all  
14 these other actions. We had the parties to that claim  
15 sign a stipulation that they would agree to pull that  
16 claim from coming up for scheduling until after all of  
17 these other cases had been determined.

18 MS. SHELTON: And Paula has the authority under  
19 the regulations to do anything to expedite the process,  
20 like consolidating the actions and things of that nature.  
21 And we do that a lot. We try to consolidate two test  
22 claims together that are related, to try to get them all.  
23 In that sense, it takes that older one out of the queue  
24 and brings it up forward, because it just makes sense.

25 VICE CHAIR SMITH: All the work on that,

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1 Camille, just so it doesn't take any of your time, just  
2 say "Look, here's the draft stipulation. If you can get  
3 it signed by all of these people in front of you" --

4 MS. HIGASHI: Well, they would have to draft the  
5 stipulation first.

6 MS. SHELTON: Yes, we're not going to spend the  
7 time to draft it.

8 VICE CHAIR SMITH: If they can do all the work  
9 on it, they can do it, great, then we can hear it. If  
10 not --

11 MS. HIGASHI: And I think the last time there  
12 was a case where every party had to sign off on, it was  
13 with the special settlement agreement. Every school  
14 district in the state by a certain date had to pass a  
15 board resolution agreed to the settlement before it could  
16 be implemented. And every school district in the state  
17 passed a resolution in support of that settlement.

18 CHAIR SHEEHAN: That's a lot.

19 MS. HIGASHI: Yes. I guess my question is based  
20 on the issue that came up during the *Public Comment* and  
21 based on just this discussion, does anyone want me to put  
22 an agenda item on the next agenda that deals with the  
23 juxtaposition?

24 MEMBER BOEL: Not to cover the case.

25 CHAIR SHEEHAN: I'm comfortable with the

1 authority -- you answered my question about what the  
2 process is for people who have made this request and to  
3 protect us in terms of -- that was my concern. And so  
4 I am comfortable in terms of what you use on the  
5 stipulation, so that everybody -- we're sort of held  
6 harmless on that. So I am comfortable with the current  
7 process.

8 But I do think what would be helpful on this  
9 particular request for me is, either at the next meeting  
10 or you can call me and send e-mails, how complicated is  
11 this case? You know, what are the issues involved, what  
12 are -- what is going to be an idea of sort of the  
13 workload? Even if we get the stipulation, it would be  
14 helpful to me to see what is this one going to be like.

15 MEMBER WORTHLEY: And would it be possible --  
16 would it be appropriate to leave to their discretion  
17 to put on the calendar or on our agenda that in the  
18 event that you have problems, let's say, with the  
19 stakeholders -- because they're going to be back for  
20 another public comment period, so they would have to set  
21 a provisional item in that.

22 CHAIR SHEEHAN: Sure. An issue. Yes, it comes  
23 back up.

24 MEMBER GLAAB: But only if you please find it  
25 necessary. Because it sounds like, to me, you're going

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1 to have some informal discussions.

2 MS. HIGASHI: Well, one, I need to read it.

3 CHAIR SHEEHAN: Right. See, that's the thing.

4 MS. HIGASHI: I read it when it came in the  
5 door, and I have some thoughts about it --

6 CHAIR SHEEHAN: What are the issues, yes.

7 MS. HIGASHI: -- which I'm not going to say  
8 anything at this point. It would be inappropriate.

9 But, first, I have to check to see --

10 CHAIR SHEEHAN: Right.

11 MS. HIGASHI: -- how many issues are there.  
12 I need to look at the work in progress and determine, you  
13 know, what is so far enough along that it's moving, and  
14 it has to move. And if this were to be agreed to, when  
15 would it come up. Because I think that's critical.

16 VICE CHAIR SMITH: Those are the questions.

17 CHAIR SHEEHAN: Yes, because we don't have that  
18 information. I have no feel for that, at this point.

19 MS. HIGASHI: We don't have that information.  
20 But I'm happy to put the information together in every  
21 respect, except for the issues.

22 MEMBER LUJANO: Good.

23 CHAIR SHEEHAN: The issues in the claim. But I  
24 can certainly talk about staffing issues and workload and  
25 how many cases that would be bumped or whatever.

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1 CHAIR SHEEHAN: Yes, just understanding. Okay.  
2 Francisco?

3 MEMBER LUJANO: And regarding the workload, how  
4 is filling out the vacancies going? Are you having  
5 problems finding qualified people?

6 MS. HIGASHI: We have a very specific problem --  
7 and I'm glad you asked about that.

8 We've got four positions in the budget. Three  
9 of the positions were limited-term positions, which means  
10 in state employee talk, they're temporary. That they  
11 could disappear at any point in time. Well, any position  
12 could disappear from the next budget. So what happens is  
13 when you look at the "help wanted" ads on the attorney's  
14 Web site for state-employee attorneys, all of the current  
15 vacancies are all for permanent positions. Nobody is  
16 going to apply for a limited-term position unless they're  
17 close to retirement. So that has crippled us.

18 And then the other was, there was a limit in the  
19 collective bargaining agreements as to how many staff  
20 counsel-III's we could have. And we had to overcome a  
21 contract agreement provision in order to have an increase  
22 by a fraction, so that we could even advertise and make  
23 the offer.

24 By the time we had all of that done, the person  
25 we had offered the position to had accepted another



1 offer.

2 MS. SHELTON: A permanent position.

3 MS. HIGASHI: It was for a permanent position,  
4 but she knew she had the job. So it brought us to the  
5 end of the calendar year, which was the six-month rule  
6 where you lose the position if you haven't filled it.

7 VICE CHAIR SMITH: Yes.

8 MS. HIGASHI: And so that limited-term provision  
9 is really -- you know, I think that's really going to  
10 hurt us.

11 MEMBER LUJANO: Essentially, you have no people  
12 to fill it because no one qualified -- or a person who  
13 has a permanent position now doesn't want to apply.

14 MS. HIGASHI: They're not going to apply.

15 MEMBER LUJANO: For a limited term position, it  
16 just doesn't happen.

17 MS. HIGASHI: Unless they're close to  
18 retirement, or they can't get the promotion.

19 MEMBER LUJANO: Then it's workload that you're  
20 going to --

21 MS. HIGASHI: Right. So that's what's happened.  
22 Camille's position, we will just begin  
23 advertising for it soon.

24 VICE CHAIR SMITH: I think as far as I'm  
25 concerned, we're in desperate need of some people.

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1 MEMBER GLAAB: Yes.

2 VICE CHAIR SMITH: And whatever form that needs  
3 to come in -- I mean, we need permanent -- this is a  
4 growing problem, especially with the incorrect reduction  
5 claims, the amount of reconsiderations. I don't think  
6 three is going to get us down to an obligation of one  
7 year.

8 MS. HIGASHI: No.

9 VICE CHAIR SMITH: And I don't think that, you  
10 know, having some temporary resources is going to fix the  
11 problem, if we can't even get temporary resources. So I  
12 think that --

13 MS. SHELTON: We do have one limited-term  
14 attorney right now and she's working out great. And  
15 she'll have items before the Commission in March.

16 MS. HIGASHI: She has two agenda items in March.

17 MS. SHELTON: She is great. And if we could  
18 just duplicate her -- you know.

19 MEMBER WORTHLEY: Clone her.

20 MEMBER OLSEN: What is the possibility for  
21 converting limited-term -- I mean, I know there is a  
22 process, it's hard to make it happen.

23 MS. HIGASHI: It's a budget process.

24 VICE CHAIR SMITH: It's a budget issue.

25 CHAIR SHEEHAN: But you need to go -- I mean,

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1 I'm happy to sit and support, but you've got to go up  
2 through Finance.

3 MS. HIGASHI: I know.

4 MS. SHELTON: Yes.

5 CHAIR SHEEHAN: The other side of Finance.

6 VICE CHAIR SMITH: And we'll support you.

7 Can we support you?

8 MEMBER GLAAB: Yes.

9 VICE CHAIR SMITH: I mean, I would support -- I  
10 think the whole Commission would support that because  
11 109, 107 -- you know, the thing about the Williams case  
12 is that we do have exposure because it takes us four or  
13 five years to hear a claim. So no matter what process we  
14 have in place, anyone could sue us at any time and say  
15 that, you know, we're not following the law, which we're  
16 not.

17 MS. SHELTON: I do have to say that argument did  
18 come up one time in litigation. I don't remember which  
19 case it was. But they were arguing that they had a  
20 denial of due process because the process took a long  
21 time. Finance asked for an extension. And we gave it --  
22 apparently, the Commission gave Finance the extension,  
23 and the school districts were -- I don't remember who it  
24 was. It was a local agency was arguing that that was a  
25 violation of due process because it didn't -- it delayed

1 the process for them. And the Court just, essentially,  
2 shut it down.

3 *(Mr. Glaab left the hearing room.)*

4 MS. HIGASHI: And it's in the El Monte --

5 MEMBER BOEL: Nancy still hasn't come back in.

6 MS. SHELTON: I'm sorry.

7 MS. HIGASHI: It's the El Monte Redevelopment  
8 Agency case. But it was a suspended mandate case, and  
9 it's an unpublished decision.

10 VICE CHAIR SMITH: Maybe at some point we can  
11 talk about that, as a commission, about how do we support  
12 making those temporary positions permanent, so we can get  
13 some people on board and cut through his.

14 MS. HIGASHI: That's something we can initiate  
15 the discussion because we are not asking for any money.  
16 What we're asking for is the limitation to the budget.

17 CHAIR SHEEHAN: And I think to the extent that  
18 you can demonstrate you made every effort to fill the  
19 limited term unsuccessfully helps your argument with my  
20 colleagues at Finance.

21 MS. HIGASHI: Yes.

22 CHAIR SHEEHAN: That helps, you know, that we  
23 tried, and we lost out on this because of that.

24 MS. HIGASHI: And especially now with the  
25 proposed collective bargaining agreement moving ahead.

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CHAIR SHEEHAN: Yes, exactly. Exactly.

MS. HIGASHI: What it has done is created a situation where people aren't moving around.

CHAIR SHEEHAN: And then just work through Jim, and then when he gets up to Ben, so I can chat with him.

MS. HIGASHI: Thank you.

CHAIR SHEEHAN: Any other issues?

*(No audible response)*

CHAIR SHEEHAN: If not, we stand adjourned.

*(Proceedings concluded at 11:10 a.m.)*

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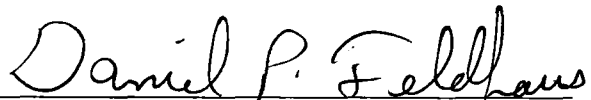
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I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

In witness whereof, I have hereunto set my hand on February 13, 2006.



Daniel P. Feldhaus  
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