

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
January 29, 2004

Present: Chairperson James Tilton
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Walter Barnes
Representative of the State Controller
Member Jan Boel
Acting Director of the Office of Planning and Research
Member John Lazar
City Council Member

Vacant: Local Elected Official
Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Tilton called the meeting to order at 9:35 a.m.

Chairperson Tilton welcomed Jan Boel to the Commission.

ELECTION OF CHAIRPERSON

Item 1 Staff Report

Paula Higashi, Executive Director, conducted the election of officers. Member Sherwood nominated Ms. Donna Arduin, the Director of the Department of Finance, as Chairperson. With a second by Member Lazar, Ms. Arduin was unanimously elected. Member Lazar nominated Mr. Philip Angelides, State Treasurer, as Vice Chairperson. With a second by Member Barnes, Mr. Angelides was unanimously elected.

APPROVAL OF MINUTES

Item 2 December 2, 2003

Upon motion by Member Sherwood and second by Member Lazar, the minutes were adopted. Member Boel abstained.

PROPOSED 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 14 *Teacher Incentive Program, 99-TC-15*
San Diego Unified School District, Claimant
Education Code Sections 44395 and 44396
Statutes 1998, Chapter 331 (AB 858)

Member Sherwood moved for adoption of the consent calendar, which consisted of item 14. With a second by Member Lazar, the consent calendar was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

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

- Item 3 Staff Report

No appeals were filed.

TEST CLAIM

- Item 4 *School Safety Officer Training, 01-TC-05, amended by 01-TC-10*
San Diego Unified School District, Claimant
Business and Professions Code Section 7583.45;
Education Code Sections 35021.5, 38001.5, subdivision (b),
39672 subdivision (a), 72330.2, subdivision (a), and 72330.5, subdivision (b);
Penal Code Sections 830.32, 832.2, and 832.3
As added or amended by Statutes 1998, Chapter 745 (SB 1626)
Statutes 1998, Chapter 746 (SB 1627)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that the test claim legislation requires school districts and community college districts employing school police officers and security officers or contracting with a private security company to ensure that new and existing officers complete a required course of training, obtain fingerprint cards from the officers, forward the cards to the Department of Justice, and determine if the employee is a person who is not prohibited from employment.

Staff found that the test claim legislation was not subject to article XIII B, section 6 of the California Constitution. Ms. Shelton stated that state law did not mandate school districts or community college districts to maintain a campus police department or hire police officers, security officers, or reserve officers. Therefore, pursuant to the Supreme Court’s holding in the *Department of Finance v. Commission on State Mandates* case, staff found that the statutory duties imposed by the test claim legislation that follow from the discretionary decision to hire police officers did not impose a reimbursable state-mandated program.

Staff recommended that the Commission adopt the final staff analysis, which denied the *School Safety Officer Training* test claim.

Parties were represented as follows: Art Palkowitz, on behalf of the San Diego Unified School District; and Susan Geanacou and Matt Aguilera, with the Department of Finance.

Mr. Palkowitz explained that the test claim legislation required school district security and peace officers to complete additional training. This requirement emerged from a recommendation by the Commission on Peace Officer Standards and Training after a study was conducted in 1997. Thus, he contended that this constituted a reimbursable state mandate for two reasons: 1) training was not previously required, and 2) training is necessary to comply with the constitutional requirement that schools ensure a safe and peaceful environment. He added that the Commission previously approved test claims involving training, such as the *Law Enforcement Sexual Harassment Training* and *Sudden Infant Death Syndrome* programs.

Mr. Palkowitz also provided argument regarding the Supreme Court case cited by Commission staff. Whereas eight of the programs involved in the case were being funded, no funding was being provided here. Therefore, he argued that staff's reference to the case was misplaced.

Member Barnes requested Mr. Palkowitz comment on staff's reference to another case, *Leger v. Stockton Unified School District*. Mr. Palkowitz discussed the case, in which a student was assaulted in a school restroom. He noted that there was dictum about the constitutional requirement that schools had to ensure a safe environment; however, he contended that schools were not guarantors and could not be held civilly liable for a criminal act.

Ms. Shelton added that the plaintiff in the case brought three causes of action before the court. The first two were based on the constitutional provision about the right to safe schools, and the plaintiff sought declaratory relief and damages from that provision. The third cause of action was torts, in which the plaintiff argued that the school district did not act reasonably in preventing the incident. The court found that there was no mandatory duty under the Constitution because the provision was not self-executing. Here, with regard to peace officers, Ms. Shelton maintained that there was no state mandate either from the Constitution or the Legislature requiring school districts to have a police force.

Mr. Aguilera concurred with staff's findings.

Ms. Geanacou noted that the claimant's interpretation of the *Department of Finance v. Commission on State Mandates* case was too narrow. She clarified that eight of the nine programs at issue focused on the underlying voluntary nature of the programs, and the ninth program was the one in which the court found program funds available for the claimed Brown Act activities.

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

PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 9 *School Safety Officer Training*, 01-TC-05, amended by 01-TC-10
San Diego Unified School District, Claimant
See Item 4 Above

Camille Shelton, Senior Commission Counsel, presented this item. She stated that the sole issue before the Commission was whether the proposed Statement of Decision accurately reflected the decision just made in item 4. Staff recommended that the Commission adopt the proposed Statement of Decision, noting that changes would be made to the document to indicate the vote count and to include the witnesses that were present.

Member Lazar made a motion to adopt the proposed Statement of Decision. With a second by Member Sherwood, the motion carried unanimously.

Member Sherwood noted that the Commission had a tremendous amount of backlogged test claims and acknowledged that changing the process to adopt Statements of Decision at the same hearing when the test claim was being determined was an attempt to keep things moving. He also expressed the importance of being prepared to move items forward properly and expediently. Ms. Higashi clarified that the Commission was operating within the structure of the current procedures and had significant changes been made to the staff recommendation, it would have been recommended that the proposed Statement of Decision be continued.

TEST CLAIM

- Item 5 *False Reports of Police Misconduct (K-14)*, 02-TC-09
Santa Monica Community College District, Claimant
Penal Code Section 148.6
Statutes 1995, Chapter 590 (AB 1732)
Statutes 1996, Chapter 586 (AB 2637)
Statutes 2000, Chapter 289 (SB 2133)

Katherine Tokarski, Commission Counsel, presented this item. She indicated that two test claims were filed on Penal Code section 148.6. This section specifies that any law enforcement agency accepting allegations of police officer misconduct must require the complainant to read and sign a specific advisory. The County of San Bernardino filed the first test claim in 2001, and the second was filed in September 2002 by the Santa Monica Community College District. Although the same statutory provisions are involved, these claims were not consolidated.

Ms. Tokarski restated the Department of Finance's contention that the additional costs incurred by school districts were not reimbursable based on the observation that the establishment of school district police departments was undertaken at the discretion of the district's governing board. Staff agreed with the Department of Finance's conclusions given the Supreme Court's holding in the *Department of Finance v. Commission on State Mandates* case. Staff found that pursuant to state law, school districts and community college districts remain free to discontinue providing their own police department and employing peace officers, and thus, any statutory duties imposed by Penal Code section 148.6 that follow from such discretionary activities do not impose a reimbursable state mandate.

Staff recommended that the Commission adopt the final staff analysis, which denied the *False Reports of Police Misconduct* test claim as filed on behalf of kindergarten through grade 14 school districts.

Parties were represented as follows: Keith Petersen, on behalf of the Santa Monica Community College District; and Susan Geanacou, with the Department of Finance.

Mr. Petersen stated that he was going to stand on his written submissions.

Ms. Geanacou concurred with the staff analysis.

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

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 10 *False Reports of Police Misconduct (K-14)*, 02-TC-09
Santa Monica Community College District, Claimant
See Item 5 Above

Katherine Tokarski, Commission Counsel, presented this item. She noted that changes would be made to the document to indicate the vote count and to include the witnesses that were present. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the decision just made in item 5.

Member Sherwood made a motion to adopt the proposed Statement of Decision. With a second by Member Barnes, the motion carried unanimously.

TEST CLAIM

- Item 6 *Healthy Schools Act of 2000*, 00-TC-04
Alum Rock Union Elementary School District, Claimant
Education Code Sections 17608-17613 and 48980.3
Food and Agricultural Code Sections 13181-13188
Statutes 2000, Chapter 718 (AB 2260)

Camille Shelton, Senior Commission Counsel, presented this item. She noted that the legislation encourages school districts to adopt and implement the integrated pest management program established by the Department of Pesticide regulation, which also requires school districts to provide notification, post warning signs, and maintain and make available records of pesticide use when a district decides that pesticides are necessary.

Staff found that the test claim legislation was not subject to article XIII B, section 6 of the California Constitution, and that it did not mandate school districts to adopt an integrated pest management program. Thus, Ms. Shelton explained that once a school district decides to use a pesticide, the downstream activities of providing notice, posting warning signs, and maintaining and making available records of pesticide use do not constitute a reimbursable state-mandated program pursuant to the Supreme Court's decision in the *Department of Finance v. Commission on State Mandates* case.

Staff recommended that the Commission adopt the final staff analysis, which denied the *Healthy Schools Act of 2000* test claim.

Ms. Shelton noted that two late filings were received. One was from the Department of Finance agreeing with the staff recommendation, and the second was a signed authorization from the claimant designating the Schools Mandate Group as their representative. Therefore, she stated that the comments to the draft staff analysis prepared by the Schools Mandate Group could now be considered the claimant's comments.

Parties were represented as follows: David Scribner, on behalf of the Alum Rock Union Elementary School District; and Susan Geanacou and Matt Aguilera, with the Department of Finance.

Mr. Scribner stated that while the *Department of Finance v. Commission on State Mandates* case will apply, the real issue was whether the Commission as a body could find that there was either a legal compulsion or practical compulsion to use a pesticide at a school site. He argued that the issues in the court case were different from the issues here regarding pesticide use since the districts did not receive funding. Further, he asserted that in those cases where a district has an

integrated pest management program to address pest problems or other vector issues that might arise at a school site and that program fails, the district, being legally or practically compelled to use the pesticide to ensure a healthy and safe school environment, should be reimbursed under the rules of the Healthy Schools Act of 2000.

Ms. Shelton indicated that Mr. Scribner’s testimony described a tort standard, which applies to all owners of property. The standard requires the property owner to act reasonably and to post proper notifications and warnings in the event of problems such as pests or crime. She maintained that the standard in a mandates case was not the same as a torts case. Rather, mandates is analyzed strictly under the Constitution. She noted the Supreme Court’s decision that a mandate had to be from the state through either the Constitution or a statute that requires a local agency to do something. In this case, nothing in the Constitution or statutes mandate schools to apply a pesticide.

Regarding Mr. Scribner’s practical compulsion argument, Ms. Shelton noted that the issue had been considered by the Supreme Court in the *City of Sacramento* case that dealt with federal unemployment tax issues. However, in that case, penalties for failure to comply with the legislation were listed in the statutes. Ms. Shelton believed that the practical compulsion standard described by the court in the *Department of Finance* case did not apply to the fact pattern here because no penalties were listed in the statutes.

Mr. Aguilera concurred with the staff recommendation. He noted that schools did receive general purpose funding and some deferred maintenance funding that could be used to ensure safe facilities.

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

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 11 *Healthy Schools Act of 2000*, 00-TC-04
Alum Rock Union Elementary School District, Claimant
See Item 6 Above

Camille Shelton, Senior Commission Counsel, presented this item. She noted that changes would be made to the document to indicate the vote count and to include the witnesses that were present. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the decision just made in item 6.

Member Sherwood made a motion to adopt the proposed Statement of Decision. With a second by Member Barnes, the motion carried unanimously.

TEST CLAIM

- Item 7 *Integrated Waste Management*, 00-TC-07
Santa Monica and Lake Tahoe Community College Districts, Co-Claimants
Public Resources Code Sections 40148, 40196.3, and 42920-42928
Public Contract Code Sections 12167 and 12167.1
Statutes 1992, Chapter 1116 (AB 3521)
Statutes 1999, Chapter 764 (AB 75)
Manuals of the California Integrated Waste Management Board

PROPOSED STATEMENT OF DECISION – TEST CLAIM

- Item 12 *Integrated Waste Management*, 00-TC-07
Santa Monica and Lake Tahoe Community College Districts, Co-Claimants
See Item 7 Above

Items 7 and 12 were postponed.

TEST CLAIM

- Item 8 *False Reports of Police Misconduct*, 00-TC-26
County of San Bernardino, Claimant
Penal Code Section 148.6
Statutes 1995, Chapter 590 (AB 1732)
Statutes 1996, Chapter 586 (AB 2637)
Statutes 2000, Chapter 289 (SB 2133)

Katherine Tokarski, Commission Counsel, presented this item. She noted that the claimant, County of San Bernardino, alleged that Penal Code section 148.6 requires a local government to engage in the following reimbursable state mandated activities: 1) warn all citizens making a complaint against a peace officer and advise that a false report can be a misdemeanor; 2) make the advisory available in the language of the complainant; and 3) explain the form to the citizen. The claimant alleged costs from spending approximately 15 minutes explaining the form to each complainant.

Ms. Tokarski restated the Department of Finance's argument that there was no reimbursable state mandate stemming from the test claim legislation. Staff concluded that Penal Code section 148.6, subdivisions (a)(2) and (a)(3), constitute a state mandate for the enforcement agency to require the complainant to read and sign the advisory prescribed and to make the advisory available in multiple languages utilizing the translations available from the State. Staff recommended denial of any remaining alleged activities or costs.

Staff recommended that the Commission adopt the final staff analysis, which partially approved the *False Reports of Police Misconduct* test claim for cities and counties.

Parties were represented as follows: Bonnie Ter Keurst, on behalf of the County of San Bernardino; Allan Burdick and Pam Stone, with the California State Association of Counties; and Susan Geanacou, with the Department of Finance.

Ms. Ter Keurst addressed two issues: the activity of explaining the form to the citizen, and training. Regarding the activity of explaining the form, she agreed that there was no directive, but argued that the primary goal of the police is to serve the public. Thus, they have a legal and moral responsibility to ensure that the complainant understands what needs to be signed. She also asked what would happen if the complainant refused to sign. As to the issue of training, Ms. Ter Keurst stated that training within the sheriff's department or the district attorney's office was necessary to comply with the program.

Mr. Burdick agreed with staff's primary findings. However, he suggested that the last paragraph in the conclusion, in which staff recommends denial of any remaining alleged activities or costs, be deleted because these items should be looked at during the parameters and guidelines stage where people have the opportunity to discuss the issues.

Ms. Tokarski stated that several of the activities stemming from Penal Code section 148.6 that the claimant specifically alleged were not required by the legislation, including the activity to explain the form. She added that subdivisions (a)(1) and (b) of Penal Code section 148.6 were misdemeanor provisions and were not reimbursable.

Ms. Geanacou agreed with the staff analysis. She expressed concern about removing the provision referred to by the claimant because it could potentially open the door for activities already found not to be reimbursable.

Chairperson Tilton believed that the law was intended to reduce workload when a claim was filed against a peace officer, leading to some savings. He noted that there was not enough information before the Commission to conclude that the program resulted in an increased cost and that more work needed to be done.

Camille Shelton, responding as acting Chief Legal Counsel,¹ commented that the Commission had to make a finding at this stage as to whether there were increased costs mandated by the state. She noted Government Code section 17556, subdivision (e), states that the Commission shall not find costs mandated by the state if the statute or executive order provides for offsetting savings to local agencies or school districts that result in no net cost. In this case, Ms. Shelton maintained that the legislation imposed two requirements, and though there may be savings in the long run, there was no evidence in the record to show that the claimant had not incurred increased costs for those two activities. She added that the Commission had the option to continue the item so that substantial evidence could be entered into the record.

Ms. Ter Keurst asserted that Assemblywoman Boland's stated intent with the bill, from a letter to former Governor Pete Wilson dated September 5, 1995, was not to use the money to finance the legislation, but instead to put more officers on the street to enhance public safety.

Chairperson Tilton responded that his general conclusion that there were net savings was supported.

Ms. Ter Keurst contended that any savings achieved was to the state, whereas costs were borne by local agencies.

Addressing the issue of cost savings, Ms. Stone contended that there would be a reduction in the total number of claims filed for the *Peace Officer Bill of Rights* program, rather than an actual savings in the *False Reports of Police Misconduct* program itself.

Mr. Burdick reiterated his argument that any remaining alleged activities or costs should be discussed at the parameters and guidelines stage.

Member Barnes commented that the provision should not be removed because it would provide vague guidance to staff in developing the parameters and guidelines. He added that staff could be directed to look into the issue of offsetting savings in connection to this mandate.

Member Barnes asked what would happen if the complainant did not sign the form. Ms. Tokarski responded that there was no reference in the advisory language as to the consequences. However, she maintained that this did not change the fact that the law enforcement agency was required to give the complainant the form and attempt to have the person sign.

Distinguishing between the test claim and the parameters and guidelines, Ms. Shelton explained that the activities recommended for approval are those expressly required by statute. These were

¹ Mr. Paul Starkey, Chief Legal Counsel to the Commission, was unable to attend this hearing.

legal findings. If the Commission adopts the staff recommendation, the activities would be included in the parameters and guidelines. However, other activities may also be included if they are reasonably necessary to comply with the mandate.

As to the issue of savings, Ms. Shelton explained that to approve the test claim, the Commission must find that there are increased costs mandated by the state. If there were questions as to the possibility of overall net savings resulting from the mandate, she noted that the item would need to be continued because once it moves to the parameters and guidelines stage, then a finding is made that there are increased costs and the Commission loses jurisdiction over the issue.

Member Barnes stated that any associated savings would not be known until claims were filed, and claims were filed based on the parameters and guidelines and claiming instructions. He asked if staff thought the issue should be dealt with here. Ms. Shelton responded that there was absolutely no evidence in the record of any cost savings, and there was testimony that there were two overlapping programs.

Ms. Higashi reviewed the cost savings claims process, which was enacted in the Commission's original statutory scheme. She noted that when that statute was repealed, Government Code section 17556 was not amended.

After further discussion about the process and relation to the *Peace Officer Bill of Rights* program, Member Barnes made a motion to approve the staff recommendation with the direction that in developing the parameters and guidelines, the effect on the *Peace Officer Bill of Rights* program be taken into account. With a second by Member Sherwood, the motion carried 4-1, with Chairperson Tilton voting "No."

PROPOSED STATEMENT OF DECISION – TEST CLAIM

Item 13 *False Reports of Police Misconduct*, 00-TC-26
County of San Bernardino, Claimant
See Item 8 Above

Katherine Tokarski, Commission Counsel, presented this item. She noted that changes would be made to the document to reflect the hearing testimony, direction from the Commission members regarding the parameters and guidelines, and to indicate the vote count. Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflected the decision just made in item 8.

Member Barnes made a motion to adopt the proposed Statement of Decision, consistent with the guidance given in connection with the test claim. With a second by Member Sherwood, the motion carried unanimously.

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

PROPOSED 2004 RULEMAKING CALENDAR

Item 15 Staff Report

Paula Higashi, Executive Director, presented this item. She noted that the annual rulemaking calendar was submitted to the Office of Administrative Law. As presented, it includes three potential rulemaking actions: 1) implementation of the Bureau of State Audits audit recommendations in the *Peace Officer Bill of Rights* and *Animal Adoption* programs; 2) streamlining of the Commission's internal processes and procedures; and 3) development of a

procedure for appeals of executive director decisions. Ms. Higashi recommended that the Commission adopt the rulemaking calendar as presented.

Member Barnes made a motion to adopt the 2004 rulemaking calendar. With a second by Member Boel, the motion carried unanimously.

STAFF REPORTS

Item 16 Chief Legal Counsel's Report Recent Decisions, Litigation Calendar

Camille Shelton, acting Chief Legal Counsel, reported the following:

- *New Filings.* There were several new filings related to the *Graduation Requirements* program. Six cases were now pending in the Sacramento County Superior Court.
- *Recent Decisions.* The Second District Court of Appeal issued their unpublished decision in the *County of San Bernardino v. the Commission on State Mandates* case concerning property tax administration. Also, the Sacramento County Superior Court heard the *Department of Finance v. Commission on State Mandates (School Bus Safety II)* case, granted the writ in part, and remanded a portion back to the Commission. The court agreed that school bus transportation was a discretionary activity on the part of the school districts, but remanded the issue back with respect to special education students. Moreover, in an unpublished decision, the Fourth District Court of Appeal granted the writ in the *County of San Diego v. Commission on State Mandates* case that dealt with the *Medically Indigent Adult* program.

Item 17 Executive Director's Report Budget, Workload, Legislation, Next Hearing

Ms. Higashi noted the following:

- *Workload.* The Commission currently had 131 test claims to be heard and determined.
- *Budget.* The Commission's budget was reduced by one and a half positions for a savings of \$102,000.
- *Legislation.* The Commission was not carrying a local government claims bill for the third consecutive year. During the last couple of weeks, the Assembly Special Committee on Mandates, chaired by Assembly Member Laird, will be sponsoring legislation to repeal some old mandates that have been suspended for many years. The committee will also be taking on some recommendations to direct some of the Commission's prior decisions back to the Commission for reconsideration. It is also expected that a special committee or task force will be created within the state Senate.

The report to the Legislature detailing the denied mandates was filed in January. A report on the approved mandates will be submitted once statewide cost estimates are adopted in the spring.

PUBLIC COMMENT

Allan Burdick, on behalf of the California State Association of Counties, asked if there was additional information as to why the Commission was not submitting a claims bill to the Legislature.

Ms. Higashi clarified that the statutes required the Commission to report statewide cost estimates to the Legislature, and the Legislature introduces the claims bill. She noted that the Legislature received the information.

Ms. Higashi announced that Nancy Patton was now the Assistant Executive Director. She also introduced three law clerks: Sigrid Asmundson, Shela Barker, and Micah Martin.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

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. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 02CS00994, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-01 [*School Bus Safety II*]
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number S109125, in the Supreme Court of the State of California. CSM Case No. 02-L-02 [*Pupil Expulsions*]
3. *County of San Bernardino v. Commission on State Mandates of the State of California, et al.*, Case Number B163801, in the Appellate Court of the State of California, Second Appellate District. CSM Case No. 02-L-04 [*Property Tax Administration*]
4. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number C044162, in the Appellate Court of the State of California, Third Appellate District. CSM Case No. 02-L-05 [*Physical Performance Tests*]
5. *Palos Verdes Peninsula Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS00897, in the Superior Court of the State of California, County of Sacramento. CSM Case No. 02-L-06. [*Eastview Optional Attendance Area*]
6. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01069 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-01. [*Animal Adoption*]
7. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Case Number 03CS01432 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-02. [*Behavioral Intervention Plans*]
8. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01401 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-03 [*Graduation Requirements IRC*]
9. *Castro Valley Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01568 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-04 [*Graduation Requirements IRC*]

10. *San Jose Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01569 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-05 [*Graduation Requirements IRC*]
11. *Sweetwater Union High School District v. Commission on State Mandates, et al.*, Case Number 03CS01570 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-06 [*Graduation Requirements IRC*]
12. *San Diego County v. Commission on State Mandates, et al.*, Case Number S120209, petition for review, in the Supreme Court of the State of California. CSM Case No. 03-L-07 [*San Diego MIA*]
13. *Clovis Unified School District v. Commission on State Mandates, et al.*, Case Number 03CS01702 in the Superior Court of the State of California, County of Sacramento. CSM Case No. 03-L-09 [*Graduation Requirements IRC*]

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).)

PERSONNEL

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

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

Hearing no further comments, Chairperson Tilton 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 Tilton 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.

ADJOURNMENT

Hearing no further business, and with a motion by Member Barnes and second by Member Sherwood, Chairperson Tilton adjourned the meeting at 11:25 a.m.



PAULA HIGASHI
Executive Director

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PUBLIC HEARING
COMMISSION ON STATE MANDATES

RECEIVED
FEB 20 2004
**COMMISSION ON
STATE MANDATES**

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ORIGINAL

TIME: 9:30 a.m.
DATE: January 29, 2004
PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: YVONNE K. FENNER, CSR License #10909, RPR

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A P P E A R A N C E S

COMMISSION MEMBERS

JAMES TILTON, Chairperson

Representative of Donna Arduin, Director
State Department of Finance

WALTER BARNES

Representative of Steve Westly
State Controller

JAN BOEL

Acting Director, Office of Planning and Research

JOHN S. LAZAR

City Council Member
Turlock City Council

WILLIAM SHERWOOD

Representative of Philip Angelides
State Treasurer

COMMISSION STAFF

PAULA HIGASHI, Executive Director

NANCY PATTON, Assistant Executive Director

CAMILLE SHELTON, Senior Commission Counsel

KATHERINE TOKARSKI, Commission Counsel

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PUBLIC PRESENTATIONS

MATT AGUILERA
State of California, Department of Finance

ALLAN BURDICK, Director
California State Association of Counties

SUSAN S. GEANACOU, Senior Staff Attorney
State of California, Department of Finance

ARTHUR M. PALKOWITZ, Manager
Office of Resource Development
San Diego City Schools

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

DAVID E. SCRIBNER, Executive Director
Schools Mandate Group

PAM STONE
CSAC SB 90 Committee

BONNIE TER KEURST
County of San Bernardino

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1 BE IT REMEMBERED that on Thursday, the 29th
2 day of January, 2004, commencing at the hour of
3 9:35 a.m., thereof, at the State Capitol, Room 126,
4 Sacramento, California, before me, Yvonne K. Fenner,
5 a Certified Shorthand Reporter in the State of
6 California, the following proceedings were had:

7 --oOo--

8 CHAIRPERSON TILTON: It's now after 9:30, so I'd
9 like to set up and establish, open up the meeting of the
10 Commission on State Mandates.

11 Paula, would you call the roll, please.

12 MS. HIGASHI: Mr. Barnes.

13 MR. BARNES: Here.

14 MS. HIGASHI: Ms. Boel.

15 MS. BOEL: Here.

16 MS. HIGASHI: Mr. Lazar.

17 MR. LAZAR: Here.

18 MS. HIGASHI: Mr. Sherwood.

19 MR. SHERWOOD: Here.

20 MS. HIGASHI: Mr. Tilton.

21 CHAIRPERSON TILTON: Here.

22 Before we get into the agenda, I'd like to take
23 the opportunity to welcome Jan Boel, who's acting
24 director of the Governor's Office of Planning and
25 Research, to the Commission.

1 Jan, we welcome your participation. I know
2 you'll be a good asset to us, an independent and outside
3 objective. I think one of the issues with the Commission
4 is to provide the independent assessment of the these
5 mandates, so I appreciate your involvement with the
6 Commission.

7 MS. BOEL: Thank you.

8 CHAIRPERSON TILTON: Any comments you'd like to
9 make about your background?

10 MS. BOEL: Well, I'm still pretty new at state
11 government, so I'm learning. And I really found this fun
12 reading, I want you to know. I'm looking forward to my
13 first meeting. Maybe it will all lighten up for me a
14 little bit.

15 CHAIRPERSON TILTON: Welcome aboard.

16 With that, Paula, we have the need to elect
17 officers. I wonder if you'd run that for us.

18 MS. HIGASHI: Certainly.

19 The Commission statute and regulations provide
20 for an election of officers each year, and it's typically
21 the January meeting when that occurs. So basically we
22 need to elect a chairperson and the vice chairperson.
23 And the regulations also provide that I can conduct the
24 election, if that's how you wish it to be handled.

25 CHAIRPERSON TILTON: Why don't you go ahead and

1 do that.

2 MS. HIGASHI: Okay. Are there any nominations
3 for chairperson of the Commission on State Mandates?

4 MR. SHERWOOD: Mr. Chair, I'd like to nominate
5 the director of the Department of Finance, Donna Arduin,
6 as chair.

7 MR. LAZAR: I'll second that.

8 MS. HIGASHI: Are there any further nominations?

9 (No audible response.)

10 MS. HIGASHI: It has been moved and seconded that
11 Donna Arduin, director of the Department of Finance, be
12 elected chairperson of the Commission on State Mandates.
13 All those in favor please signify by saying aye.

14 MULTIPLE SPEAKERS: Aye.

15 MS. HIGASHI: Any opposed?

16 (No audible response.)

17 MS. HIGASHI: Motion is carried. Donna Arduin is
18 elected chairperson.

19 Mr. Tilton.

20 CHAIRPERSON TILTON: Thank you. With that, why
21 don't we open up nominations for the vice chair.

22 MR. LAZAR: I move that we nominate Phil
23 Angelides for vice chair.

24 CHAIRPERSON TILTON: Do I have a second?

25 MR. BARNES: I'll second.

1 CHAIRPERSON TILTON: We have a nomination and a
2 second. Any other nominations?

3 (No audible response.)

4 CHAIRPERSON TILTON: All those in favor say aye.

5 MULTIPLE SPEAKERS: Aye.

6 CHAIRPERSON TILTON: Opposed?

7 (No audible response.)

8 CHAIRPERSON TILTON: Motion carries.

9 Congratulations.

10 MS. HIGASHI: This brings us to item 2, adoption
11 of the minutes of our last meeting.

12 CHAIRPERSON TILTON: Are there any corrections or
13 amendments to the last meeting minutes?

14 (No audible response.)

15 CHAIRPERSON TILTON: Hearing none, do I have a
16 motion to approve the minutes?

17 MR. SHERWOOD: Move for approval.

18 MR. LAZAR: Second.

19 CHAIRPERSON TILTON: I have a motion and a
20 second. Any further discussion?

21 (No audible response.)

22 CHAIRPERSON TILTON: All those in favor of
23 approving minutes from the last meeting as presented by
24 staff, signify by saying aye.

25 MULTIPLE SPEAKERS: Aye.

1 CHAIRPERSON TILTON: Opposed?
2 (No audible response.)
3 CHAIRPERSON TILTON: Minutes are approved.
4 MS. BOEL: And I would abstain.
5 CHAIRPERSON TILTON: Very good.
6 MS. HIGASHI: The next item on the agenda is the
7 proposed consent calendar. The proposed consent calendar
8 is identified on the blue sheet that we handed out to
9 you. It is item 14, adoption of proposed parameters and
10 guidelines, Teacher Incentive Program.
11 CHAIRPERSON TILTON: Are there any objections to
12 the proposed consent calendar?
13 (No audible response.)
14 CHAIRPERSON TILTON: Do I have a motion?
15 MR. SHERWOOD: Move for approval.
16 CHAIRPERSON TILTON: Second?
17 MR. LAZAR: Second.
18 CHAIRPERSON TILTON: I have a motion to approve
19 the consent calendar and a second. Any further
20 discussion?
21 (No audible response.)
22 CHAIRPERSON TILTON: All those in favor of
23 approving the consent calendar signify by saying aye.
24 MULTIPLE SPEAKERS: Aye.
25 CHAIRPERSON TILTON: Opposed?

1 (No audible response.)

2 CHAIRPERSON TILTON: Motion carries.

3 MS. HIGASHI: Thank you. I'd just note that
4 item 7 and item 12 have been postponed, and we've also
5 listed those on your blue sheet.

6 With that, we move to the hearing portion of our
7 meeting. And we have a number of test claims and
8 proposed statements of decision possibly on the agenda.

9 At this time I'd like to ask all of the witnesses
10 and parties who will be coming forward on these items to
11 please stand. Your hands are all up. Do you solemnly
12 swear or affirm that the testimony which you're about to
13 give is true and correct based upon your personal
14 knowledge, information, or belief?

15 MULTIPLE SPEAKERS: (Various affirmative
16 answers.)

17 MS. HIGASHI: Thank you very much.

18 The first item to be presented will be presented
19 by Camille Shelton. It's item 4. Will the parties and
20 representatives for item 4 please come forward.

21 CHAIRPERSON TILTON: I wonder if the witnesses
22 could please identify yourselves and let know us know who
23 you represent.

24 MR. PALKOWITZ: Good morning. My name is Art
25 Palkowitz on behalf of San Diego Unified School District,

1 the claimant.

2 MR. AGUILERA: Matt Aguilera, Department of
3 Finance.

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

6 CHAIRPERSON TILTON: Thank you.

7 MS. SHELTON: Thank you. This test claim
8 addresses the School Safety Officer Training program.
9 The test claim legislation requires school districts and
10 community college districts that employ school police
11 officers and security officers or contract with a private
12 security company to ensure that new and existing officers
13 complete a required course of training, obtain
14 fingerprint cards from the officers and forward the cards
15 to the Department of Justice, and determine if the
16 employee is a person who is not prohibited from
17 employment.

18 Staff finds that the test claim legislation is
19 not subject to article XIII B, section 6, of the
20 California Constitution. State law does not mandate
21 school districts or community college districts to
22 maintain a campus police department or hire police
23 officers, security officers, or reserve officers. Thus,
24 pursuant to the Supreme Court's holding in the Department
25 of Finance versus Commission on State Mandates case,

1 staff finds that the statutory duties imposed by the test
2 claim legislation that follow from the discretionary
3 decision to hire police officers do not impose a
4 reimbursable state-mandated program.

5 Staff recommends that the Commission adopt the
6 final staff analysis and deny this test claim.

7 CHAIRPERSON TILTON: Mr. Palkowitz, do you want
8 to state your perspective on the issue?

9 MR. PALKOWITZ: Sure. Thank you very much.

10 As a little background, this test claim involves
11 a requirement by the legislation for school security
12 officers and school peace officers to have additional
13 training. This came about in 1997 when the legislature
14 required POST, Peace Officer Standard and Training
15 Commission, to do a study.

16 And what they found from the study is that there
17 was a tremendous difference from the districts on how
18 much training their security officers and their peace
19 officers had. I think the study revealed that the
20 training would be anywhere between 96 hours and
21 664 hours.

22 As a result, POST came back to the legislature
23 and recommended standardized training. And accordingly,
24 the legislature passed this legislation in 1998.

25 It's our contention that this qualifies as a

1 reimbursable mandate. And the reasons are -- is that
2 first of all it's a new program. This type of training
3 was not required before. As you read through the
4 legislation, and I'd like to just quote a couple places
5 where it states:

6 "It is the intent of the legislature to
7 ensure the safety of pupils, staff, and the
8 public on or near the schools by providing
9 security officers with training that will
10 enable them to deal with the increasingly
11 diverse and dangerous situations they
12 encounter."

13 In the Constitution of California, it states that
14 schools are to ensure a safe and peaceful environment.
15 The -- this is indicated in the footnote by staff on
16 page 9.

17 "All students and staff of public
18 primary, elementary, junior high, and senior
19 high, have the inalienable right to attend
20 campuses which are safe, secure, and peaceful."

21 So consequently we have legislation that is
22 passed in order to follow through what's required in the
23 Constitution.

24 Twice before, this Commission has approved test
25 claims that involve additional training. There was one

1 referred to previous years called Law Enforcement Sexual
2 Harassment Training. Like this mandate or this test
3 claim, that required additional training for the people
4 that were already employed. Also, there was a mandate
5 referred to as SIDS, Sudden Infant Death Syndrome. And
6 in that mandate, that required firefighters to have a
7 additional training. So as in those two mandates that
8 have been approved by this Commission, this mandate also
9 requires additional training.

10 Staff has cited as authority the recent Supreme
11 Court case, and it seems this case is getting a lot of
12 exposure in most of the documentation coming from staff
13 on various test claims and other items. I've read this
14 decision many times. I was there when the Supreme Court
15 decided it. And I just wanted to take a few moments and
16 make sure the Commission is aware of what this case holds
17 and therefore you can decide whether it really applies to
18 this test claim.

19 That Supreme Court case involved approximately
20 eight voluntary educated funding programs. These include
21 program improvement, migrant children, bilingual, and
22 American Indian for a few. And what this case held was
23 the Supreme Court said here we have programs that are
24 already funded, and what the claimants were asking for
25 was that we have to incur expenses relating to agenda and

1 notice under the Brown Act. And so the claimant said we
2 would like to get reimbursed for those activities, those
3 increased costs, relating to these programs.

4 And the Supreme Court said you're already getting
5 funding for these programs. There's no prohibition from
6 using that funding for these agenda item costs. And
7 therefore you're not required to get reimbursed.

8 Now, in this case, there is no funding program.
9 In this case there is no notice and agenda requirements.
10 So I really feel that the attempt to use precedent of
11 that Supreme Court case to defeat this test claim is
12 inappropriate since we're not dealing with a funded
13 program, none of the training has been funded, and then
14 the schools or the community colleges have an opportunity
15 to get reimbursed. And it does not involve notice and
16 agenda, so I don't feel that this is an appropriate
17 precedent.

18 At this point I have nothing to add, and I would
19 welcome any questions or comments you might have.

20 CHAIRPERSON TILTON: Any questions of Members of
21 the witness?

22 MR. BARNES: Yeah. You quoted the footnote on
23 page 9, but page 9 is a footnote that you quoted from the
24 California Constitution. There's a subsequent paragraph
25 that the staff have devoted to another court trial, Leger

1 versus Stockton Unified School District --

2 MR. PALKOWITZ: Yes.

3 MR. BARNES: -- which seems to add onto, you
4 know, and interpret this particular provision of the
5 Constitution. So I wonder, do you have any comments
6 about that as well?

7 MR. PALKOWITZ: Well, I do, thank you. That
8 case, you referred to the Leger versus Stockton; correct?

9 MR. BARNES: Yes. Right.

10 MR. PALKOWITZ: What that case involves was a
11 student was in the bathroom changing for an upcoming
12 wrestling match and was assaulted. And what the court
13 held was that those schools have an obligation under the
14 Constitution to keep a safe environment. They cannot be
15 guarantors of that, and therefore under civil law they
16 were not responsible for his damages. And that case
17 commented on the Constitution stating about the safe
18 environment, but what that case held, which was a civil
19 case, that there is no liability for the school because
20 of this -- really what it was, it was a criminal act, and
21 that's consistent with civil law, is that a criminal act
22 will not allow a person to be found liable because it
23 happened on their premises or somewhere they were
24 involved.

25 I don't know if that answers your question, but

1 for the most part, that case had dictum language
2 regarding the Constitution saying you need a safe and --
3 to ensure safe environment. And to me what that case is
4 saying is, yes, there is that requirement, but schools
5 are not guarantors and cannot be held liable civilly --
6 civil for the criminal act.

7 MR. BARNES: Is it appropriate to ask for your
8 comments at this time?

9 MS. SHELTON: Sure. Let me just first say that
10 the Leger case is on Bates page 252, if you do want to
11 refer to that case, but in that case, the facts as
12 presented by Mr. Palkowitz were correct. And the
13 plaintiff brought three causes of action before the
14 court. The first two were based on the constitutional
15 provision and the right to safe schools, and he was
16 seeking declaratory relief and damages strictly from that
17 constitution provision.

18 The third cause of action was a torts, you know,
19 damages case arguing that the school district did not act
20 reasonably in preventing this incident, and he was
21 seeking damages based on that third cause of action as
22 well.

23 The court found that under the first two causes
24 of action for the Constitution that there is no mandatory
25 duty under the Constitution, because that constitutional

1 provision is not self-executing. In other words, you
2 have -- the legislature has to implement it. And in this
3 case with regard to peace officers, the school
4 districts -- or the legislature has passed two statutes,
5 one for school districts and one for community college
6 districts that authorizes them to establish a police
7 department and hire police officers, but there's not a
8 state mandate either from the Constitution or from the
9 legislature that requires the school districts to have a
10 police force.

11 MR. BARNES: Thank you.

12 CHAIRPERSON TILTON: Can we hear from the
13 Department of Finance?

14 MR. AGUILERA: We concur with the staff's
15 findings for the same reasons.

16 MS. GEANACOU: I have an additional comment, if I
17 may. I think Claimant is perhaps misinterpreting --

18 CHAIRPERSON TILTON: Susan, would you identify
19 yourself?

20 MS. GEANACOU: Oh, yes. Of course. Susan
21 Geanacou, Department of Finance. Thank you.

22 I think the Claimant's interpretation of the
23 recent Department of Finance versus Commission on State
24 Mandates School Site Council case is too narrow. I think
25 the court in eight of the nine educational programs that

1 were at issue there was focusing on the underlying
2 voluntary nature of the program and not so much on the
3 issue of that it happened to be related to the Brown Act.
4 It was the voluntariness of the eight of the nine
5 programs.

6 As to the ninth program, the court was willing to
7 accept for purposes of argument that the ninth program
8 was required, and it was as to that ninth program that
9 the court found that there were funds available, program
10 funds available, for the Brown Act claimed activities.
11 But I think that case stands for a far greater
12 proposition than simply limiting it to Brown Act
13 activities.

14 CHAIRPERSON TILTON: Any more testimony on this
15 item?

16 (No audible response.)

17 CHAIRPERSON TILTON: What is the pleasure of the
18 Commission?

19 MR. LAZAR: I'll move for adoption of the staff
20 recommendation.

21 MR. SHERWOOD: I would like to do that also. I
22 think staff has made a good case here. I'm afraid the
23 recent Supreme Court decision has solidified maybe some
24 of my feelings on this issue over the years. And it is
25 the Supreme Court. And I think I have to agree with

1 staff on this matter, and I'll have to second that
2 motion.

3 CHAIRPERSON TILTON: I have a motion and a
4 second. Any other discussion?

5 (No audible response.)

6 CHAIRPERSON TILTON: Paula, could you do roll
7 call for us.

8 MS. HIGASHI: Mr. Barnes.

9 MR. BARNES: Aye.

10 MS. HIGASHI: Ms. Boel.

11 MS. BOEL: Aye.

12 MS. HIGASHI: Mr. Lazar.

13 MR. LAZAR: Aye.

14 MS. HIGASHI: Mr. Sherwood.

15 MR. SHERWOOD: Aye.

16 MS. HIGASHI: Mr. Tilton.

17 CHAIRPERSON TILTON: Aye.

18 MS. HIGASHI: Thank you.

19 CHAIRPERSON TILTON: Staff recommendation is
20 approved.

21 MS. HIGASHI: Will the parties remain at the
22 table. What we'd like to do at this point is move to the
23 proposed statement of decision for this matter, which is
24 item 9. Ms. Shelton will present this item.

25 MS. SHELTON: Yes. That is the proposed

1 statement of decision on that School Safety Officer
2 Training test claim. The sole issue before the
3 Commission is whether this proposed statement of decision
4 accurately reflects the decision that you just made.

5 Staff recommends that the Commission adopt the
6 proposed statement of decision beginning on page 2, which
7 accurately reflects the staff recommendation on the test
8 claim. Changes will be made to the document to indicate
9 your vote and to include the witnesses that were -- that
10 are present here today on this document.

11 CHAIRPERSON TILTON: Do I have a motion to
12 approve the staff's recommendation?

13 MR. LAZAR: So move.

14 MR. SHERWOOD: Second.

15 CHAIRPERSON TILTON: I have a motion and a second
16 to approve the staff recommendation on item number 9.
17 Any discussion?

18 (No audible response.)

19 CHAIRPERSON TILTON: Roll call for us, Paula.

20 MS. HIGASHI: Ms. Boel.

21 MS. BOEL: Aye.

22 MS. HIGASHI: Mr. Lazar.

23 MR. LAZAR: Aye.

24 MS. HIGASHI: Mr. Sherwood.

25 MR. SHERWOOD: Aye.

1 MS. HIGASHI: Mr. Barnes.

2 MR. BARNES: Aye.

3 MS. HIGASHI: Mr. Tilton.

4 CHAIRPERSON TILTON: Aye.

5 MR. SHERWOOD: Mr. Chair.

6 CHAIRPERSON TILTON: Motion passes.

7 MR. SHERWOOD: I'm sorry.

8 CHAIRPERSON TILTON: Go ahead.

9 MR. SHERWOOD: I might note too I think that we
10 have a tremendous amount of cases, I know, in backlog,
11 and I know part of what we're doing here is an attempt to
12 keep things moving, somewhat different than what we've
13 done in the past on many occasions, but -- so I think --
14 obviously, I think, we have a new member here also that
15 it makes us aware too that we need to be aware of what it
16 is here in writing. We need to have reviewed these items
17 in order to be willing to go forward. I know we all
18 have, but I'm just expressing the importance once again
19 to be totally prepared to move forward on these items and
20 to do it properly, expediently, but also properly.

21 MS. HIGASHI: Thank you. And what we're doing is
22 we are operating within the structure of the current
23 bylaws.

24 MR. SHERWOOD: No, I have no problem with that.

25 MS. HIGASHI: And so we're trying this out. And

1 we continue to list the items on the agenda as we have in
2 the past in separate sections, because there have been
3 instances where the staff analysis has been rejected or
4 changed. And so we give the Commission that opportunity
5 to make a decision.

6 CHAIRPERSON TILTON: Paula, maybe on that point,
7 the reason I'm voting for this is that we approved the
8 staff recommendations.

9 Had we made significant changes, I think, Bill, I
10 would have recommended --

11 MR. SHERWOOD: Yeah.

12 CHAIRPERSON TILTON: -- putting this off and make
13 sure we have further review before we actually vote on
14 it.

15 MR. SHERWOOD: That's a really important point.

16 MS. HIGASHI: Absolutely. And staff would have
17 made that recommendation. It would have changed the
18 recommendation.

19 CHAIRPERSON TILTON: Good.

20 MS. HIGASHI: This brings us to the next test
21 claim, which is item 5. Commission Counsel Katherine
22 Tokarski will present item 5.

23 MS. TOKARSKI: In 2001, the Commission received a
24 test claim filing on behalf of County of San Bernardino
25 entitled False Reports of Police Misconduct. This item

1 is later on this morning's agenda as item 8. In
2 September 2002, the Commission received a separate test
3 claim on the same legislation filed by Santa Monica
4 Community College District.

5 Both tests claims allege a reimbursable
6 state-mandated program for compliance with Penal Code
7 section 148.6, specifying that any law enforcement agency
8 accepting allegation of peace officer misconduct is to
9 require the complainant to read and sign a specific
10 advisory. Although the same statutory provisions are
11 involved, these two test claims were not consolidated.

12 Department of Finance commented that although the
13 test claim legislation may result in additional costs to
14 school districts, those costs are not reimbursable. This
15 conclusion is based on part on the observation that the
16 establishment of school district police departments is
17 undertaken at the discretion of the governing board of a
18 district, thus any costs imposed on a district as a
19 result of employing peace officers are not reimbursable.

20 Particularly in light of the California Supreme
21 Court's 2003 decision in Department of Finance versus
22 Commission on State Mandates and in conjunction with the
23 discretionary nature of the Education Codes permitting
24 but not requiring school districts to form police
25 departments, staff agrees with Department of Finance's

1 conclusions. Staff finds that pursuant to state law,
2 school districts and community college districts remain
3 free to discontinue providing their own police department
4 and employing peace officers, thus any statutory duties
5 imposed by Penal Code section 148.6 that follow from such
6 discretionary activities do not impose a reimbursable
7 state mandate.

8 Staff recommends that the Commission adopt the
9 final staff analysis denying this test claim as filed on
10 behalf of K through 14 school districts.

11 CHAIRPERSON TILTON: We have a witness.
12 Introduce yourself.

13 MR. PETERSEN: Keith Petersen, representing the
14 test claimant, Santa Monica Community College District.

15 The legal issues on this test claim are the same
16 as on the preceding one as well as the decision in
17 September regarding school peace officers, school police
18 officers, so I'm going to stand on the written
19 submissions. And there is additional -- there is no
20 additional argument to present.

21 CHAIRPERSON TILTON: Department of Finance, do
22 you have a comment?

23 MS. GEANACOU: Susan Geanacou, Department of
24 Finance. We concur with the staff analysis.

25 CHAIRPERSON TILTON: Any questions of the

1 Commission members?

2 (No audible response.)

3 CHAIRPERSON TILTON: Do I have a motion to
4 approve the staff recommendation?

5 MS. BOEL: I'll make that motion.

6 MR. SHERWOOD: I'll second.

7 CHAIRPERSON TILTON: Second? We have a motion
8 and a second to approve the staff recommendation.

9 Paula, will you call the roll, please.

10 MS. HIGASHI: Mr. Lazar.

11 MR. LAZAR: Aye.

12 MS. HIGASHI: Mr. Sherwood.

13 MR. SHERWOOD: Aye.

14 CHAIRPERSON TILTON: Mr. Barnes.

15 MR. BARNES: Aye.

16 MS. HIGASHI: Ms. Boel.

17 MS. BOEL: Aye.

18 MS. HIGASHI: Mr. Tilton.

19 CHAIRPERSON TILTON: Aye.

20 Motion carries.

21 MS. HIGASHI: We will now move to item 10,
22 proposed statement of decision.

23 MS. TOKARSKI: Again, this is the proposed
24 statement of decision on the item that you just adopted.
25 Staff recommends that the Commission adopt the proposed

1 statement of decision beginning on page 2, which
2 accurately reflects the staff recommendation on the test
3 claim. Minor changes to reflects any hearing testimony
4 and the vote count will be included when issuing the
5 final statement of decision.

6 CHAIRPERSON TILTON: Any further discussion?
7 Comments from witnesses?

8 (No audible response.)

9 CHAIRPERSON TILTON: Do I have a motion?

10 MR. SHERWOOD: Move for approval.

11 CHAIRPERSON TILTON: Do I have a second?

12 MR. BARNES: Second.

13 CHAIRPERSON TILTON: Do I have a second?

14 MR. LAZAR: Yes.

15 CHAIRPERSON TILTON: I have a motion and a
16 second.

17 Paula, call roll.

18 MS. HIGASHI: Mr. Sherwood.

19 MR. SHERWOOD: Aye.

20 MS. HIGASHI: Mr. Barnes.

21 MR. BARNES: Aye.

22 MS. HIGASHI: Ms. Boel.

23 MS. BOEL: Aye.

24 MS. HIGASHI: Mr. Lazar.

25 MR. LAZAR: Aye.

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MS. HIGASHI: Mr. Tilton.

CHAIRPERSON TILTON: Aye.

MS. HIGASHI: Motion is adopted.

This brings us to item 6, the test claim on Healthy Schools Act of 2000. This item will be presented by Senior Counsel Camille Shelton.

MS. SHELTON: This test claim addresses the Healthy Schools Act of 2000. The legislation encourages school districts to adopt and implement the integrated pest management program established by the Department of Pesticide Regulation. The regulation also requires school districts to provide notification, post warning signs, and maintain and make available records of pesticide use when a district decides that pesticides are necessary.

Staff finds that the test claim legislation is not subject to article XIII B, section 6, of the California Constitution. The test claim legislation does not mandate school districts to adopt an integrated pest management program. Furthermore, once a school district decides to use a pesticide, the downstream activities of providing notice, posting warnings, and maintaining and making available records of pesticide use, although statutorily required, do not constitute a reimbursable state-mandated program pursuant to the Supreme Court's

1 decision in Department of Finance versus Commission on
2 State Mandates.

3 Staff recommends that the Commission adopt the
4 final staff analysis and deny this test claim.

5 Before you are two late filings in pink and
6 yellow. One is a late filing by the Department of
7 Finance agreeing with the staff recommendation. And the
8 yellow copy is a signed authorization from the claimant
9 designating the Schools Mandate Group as their
10 representative so that the comments to the draft staff
11 analysis prepared by the Schools Mandate Group can be
12 considered the claimant's comments.

13 Will the parties and representatives please state
14 your names for the record.

15 MR. SCRIBNER: Davis Scribner, finally
16 representing the claimants in this action.

17 MR. AGUILERA: Matt Aguilera, Department of
18 Finance.

19 MS. GEANACOU: Susan Geanacou, Department of
20 Finance.

21 CHAIRPERSON TILTON: Mr. Scribner, go ahead and
22 give us your testimony.

23 MR. SCRIBNER: Thank you. Good morning. It's a
24 pleasure to represent potential strike three for
25 education here this morning.

1 As we all know, the key case here that we're
2 dealing with is Kinlaw. It's Department of Finance. The
3 Department of Finance case will apply, and I think staff
4 has made their position known in their attempt to apply
5 the case under these facts and situation, but really at
6 issue here is whether you as a body can find that there
7 is either legal compulsion or practical compulsion to use
8 a pesticide at a school site. That's what's at issue.

9 First, some distinguishing facts between the test
10 claim before you this morning and those facts that were
11 outlined in the Finance case. Here we're not dealing
12 with a program. There's no program here. There's no
13 funding. School districts don't see a pesticide use
14 program and say, hey, that looks good. We're going to
15 get some funding from the State for using pesticides. A
16 key distinguishing factor.

17 The program and the issues in the Department of
18 Finance case and the nine separate programs were all
19 voluntary programs that had funding attached to them.
20 School districts opted in to doing those activities,
21 receiving the funding, and then new activities were
22 attached downstream. Different situation than what we
23 have here regarding pesticide use.

24 In the comments to the draft staff analysis, what
25 the claimant in response to the Department of Finance

1 case has attempted to do is limit the activities and the
2 situation in which someone would be reimbursed, the
3 district would be reimbursed, for essentially new rules
4 that were established by the Healthy Schools Act of 2000.
5 And as I said earlier, the Healthy Schools Act of 2000
6 legislation is not in itself a program. It is a set of
7 rules that must be followed when pesticides are used.

8 The claimant does agree with staff that every use
9 of a pesticide under the Department of Finance case would
10 not be reimbursable. But there is a specific instance
11 where this Commission can find that the claimant, that
12 the district would either be legally or practically
13 compelled to use the pesticide, and that is if a district
14 has an integrated pest management program or an IPM to
15 address pest problems or other vector issues that might
16 arise at a school site and that program fails and the
17 only alternative to the district is either let that pest
18 run rampant or choose to apply a pesticide to meet the
19 requirements under the Constitution for a healthy and
20 safe school site, that point in time is either legal
21 compulsion or practically compelled.

22 We'll go into the legal compulsion first, and if
23 you don't like that one, I'll give you the practical
24 compulsion as well. The legal compulsion here is
25 essentially the school districts are required to keep a

1 healthy school site. Article VII -- article I, section
2 7, of the Constitution requires that. It's a
3 long-standing requirement. It's something that we all
4 would agree with that they are continually attempting to
5 do, along with providing a safe environment, as the two
6 test claims before you have shown.

7 In those instances when a pest problem arises and
8 cannot be addressed by the integrated pest management,
9 they are required to do something. Now, staff says that
10 that's a choice, that they always have a choice to use a
11 pesticide or not, that if the cafeteria is overrun by
12 rodents, cockroaches, or ants or you have lice or fleas
13 at the school site, that regardless it's your choice to
14 apply that pesticide. And if you choose not to do it, so
15 be it. And if you choose to do it, great. And if you're
16 choosing to do it, then you have to apply the new rules
17 established by the Healthy Schools Act of 2000.

18 The claimant's position is we are legally
19 compelled under a very specific fact pattern to apply
20 that pesticide. We cannot allow pests to run rampant at
21 a school site. We don't have a choice. If the
22 integrated pest management program fails, the only thing
23 we are left to use is a pesticide. Staff says you still
24 have a choice.

25 As to the practical compulsion argument, staff

1 says, well, in the analysis, there aren't any certain or
2 substantial penalties. There's no Draconian consequences
3 if you choose not to do the pesticide. I don't think
4 that it's difficult to find any impact to a district if
5 the Health Department comes and closes the cafeteria
6 because it's infested because a school district chose to
7 avoid its legal responsibility to provide a healthy and
8 safe environment and said, you know what, we're not going
9 to do it. We don't want to expend our funds for the
10 activities that are outlined in the Healthy Schools Act
11 of 2000 legislation, so we're going to let it go.

12 The State can come in and do any number of
13 activities that are Draconian, certain, and severe. And
14 it's not hard to imagine that it would occur. Now, if
15 the position of the staff analysis is -- and I don't
16 think it is, but Camille will correct me if I'm
17 mistaken -- that the district has to incur those
18 Draconian consequences before they can come and file a
19 test claim would be a little silly. For a school
20 district to sit back and allow a portion of the building
21 to be closed by a state agency because it needs to be
22 fumigated and then that district having to shuttle kids
23 to another school site and incur those costs and then
24 come to you and say, see, we are practically compelled to
25 use a pesticide there. We had Draconian consequences

1 applied to us because we chose not to use the pesticide.

2 And again, I want to focus what the claimant is
3 looking for consistent with the Department of Finance
4 case. In those instances when a school site has an
5 integrated pest management plan that fails to address a
6 pest or other vector issue at the site and is therefore
7 compelled to use a pesticide to ensure a healthy and safe
8 school environment, the activities that are listed, the
9 new rules under the Healthy Schools Act of 2000, should
10 be reimbursable at that point in time.

11 Thank you.

12 CHAIRPERSON TILTON: Any questions of Members?

13 (No audible response.)

14 CHAIRPERSON TILTON: Camille, do you want to
15 respond?

16 MS. SHELTON: Thank you. I think Mr. Scribner is
17 confusing the standard for mandates. What his testimony
18 describes for you is a tort standard, which applies to
19 all owners of property whether it's a school, the
20 government, a private business owner. It requires that
21 the property owner act reasonably so if they are having
22 problems with pests or crime or anything of that nature,
23 they are under a duty to act reasonably and to put up
24 proper notifications and warnings under that standard.

25 Mandates is not a torts case. It is something

1 completely different. It has to be analyzed strictly
2 under the Constitution. In all of the cases, including
3 the Department of Finance case, the Supreme Court has
4 found that even though it's a decision a local agency
5 makes and it may feel that decision to necessary to make,
6 they have no other choice, that doesn't necessarily mean
7 it's a mandate. You need to find a mandate from the
8 State through either the Constitution, through -- or a
9 statute that forces them to do something. And here we
10 don't have anything in the Constitution or in the
11 statutes that mandate them to apply a pesticide.

12 Mr. Scribner does talk about the practical
13 compulsion argument, and the Supreme Court did consider
14 for the sake of argument that argument made by the school
15 districts in this case. What they did, they looked back
16 at their former decision in the City of Sacramento case
17 which dealt with federal unemployment tax issues, and
18 interestingly in that case it was the State that was
19 making the argument that a mandate is not just limited to
20 strict legal compulsion, but it really allows you to show
21 a practical compulsion situation.

22 And there the court said, well, here we
23 definitely have a practical compulsion. If they fail to
24 apply this federal legislation, then there would be
25 double taxation, which was severe and certain, because it

1 was listed in the legislation as a direct penalty for not
2 complying. We do not have any penalties here listed in
3 the statutes at all. So we do not believe that the
4 practical compulsion standard that was described by the
5 court in the Department of Finance case applies to this
6 fact pattern.

7 CHAIRPERSON TILTON: Thank you.

8 Any other questions of Members?

9 (No audible response.)

10 CHAIRPERSON TILTON: Department of Finance, do
11 you have a comment?

12 MR. AGUILERA: Yeah, we'd just like to note a
13 couple things. One, that most importantly we do concur
14 with the staff recommendation. We do believe that this
15 fundamentally is -- the use of pesticides is voluntary on
16 behalf of school districts.

17 And we would also note that schools do have some
18 fundamental responsibilities in terms of, you know,
19 ensuring that their facilities are, you know, safe, you
20 know, whether or not the State provides any funding. But
21 we would note that schools do receive general purpose
22 funding and some deferred maintenance funding that could
23 be used for these types of purposes. So that's not, you
24 know -- I think the underlying premise here is that this
25 is voluntary. We just wanted to note that the State does

1 provide funding to schools that they can use for these
2 types of activities.

3 CHAIRPERSON TILTON: Very good. Thank you.

4 Is there consensus of what's the sense of the
5 Members? Do I have a motion?

6 MR. BARNES: Move the staff recommendation.

7 MR. SHERWOOD: Second.

8 CHAIRPERSON TILTON: I have a motion and a second
9 to move staff recommendation. Any further comment?

10 (No audible response.)

11 CHAIRPERSON TILTON: Roll call.

12 MS. HIGASHI: Mr. Barnes.

13 MR. BARNES: Aye.

14 MS. HIGASHI: Ms. Boel.

15 MS. BOEL: Aye.

16 MS. HIGASHI: Mr. Lazar.

17 MR. LAZAR: Aye.

18 MS. HIGASHI: Mr. Sherwood.

19 MR. SHERWOOD: Aye.

20 MS. HIGASHI: Mr. Tilton.

21 CHAIRPERSON TILTON: Aye.

22 Motion carries.

23 MS. HIGASHI: This brings us to item 11, the
24 proposed statement of decision.

25 MS. SHELTON: This is the proposed statement of

1 decision on the adoption of the Healthy Schools Act
2 decision that you just made. Staff recommends that the
3 Commission adopt the proposed statement of decision
4 beginning on page 2 which accurately reflects the staff
5 recommendation on the test claim. Minor changes to
6 reflect the hearing testimony and the vote count will be
7 included when issuing the final statement of decision.

8 MR. SHERWOOD: Move for approval.

9 CHAIRPERSON TILTON: I have a motion. Do I have
10 a motion -- a second?

11 MR. BARNES: I'll second.

12 CHAIRPERSON TILTON: I have a motion and a
13 second. Any further discussion?

14 (No audible response.)

15 CHAIRPERSON TILTON: Roll call.

16 MS. HIGASHI: Ms. Boel.

17 MS. BOEL: Aye.

18 MS. HIGASHI: Mr. Lazar.

19 MR. LAZAR: Aye.

20 MS. HIGASHI: Mr. Sherwood.

21 MR. SHERWOOD: Aye.

22 MS. HIGASHI: Mr. Barnes.

23 MR. BARNES: Aye.

24 MS. HIGASHI: Mr. Tilton.

25 CHAIRPERSON TILTON: Aye.

1 Motion carries.

2 MS. HIGASHI: This brings us to item 8, and
3 Commission Counsel Katherine Tokarski will present this
4 item.

5 MS. TOKARSKI: Claimant, County of San
6 Bernardino, alleges that Penal Code section 148.6
7 requires the claimant to engage in the following
8 reimbursable state-mandated activities: Warn all
9 citizens making a complaint against a peace officer and
10 advise that a false report can be a misdemeanor; make the
11 advisory available in the language of the complainant,
12 and explain the form to the citizen. Claimant alleges
13 costs from spending approximately 15 minutes explaining
14 the form to each complainant.

15 Department of Finance's initial response to the
16 test claim allegations argued that there was no
17 reimbursable state mandate stemming from the test claim
18 legislation.

19 Staff concludes that Penal Code section 148.6,
20 subdivision (a), sections (2) and (3), imposes a new
21 program or higher level of service for city and county
22 law enforcement agencies within the meaning of
23 article XIII B, section 6, of the California Constitution
24 and imposes costs mandated by the State pursuant to
25 Government Code section 17514 for the enforcement agency

1 to, one, require the complainant to read and sign the
2 advisory prescribed and, two, make the advisory available
3 in multiple languages utilizing the translations
4 available from the State.

5 Staff recommends denial of any remaining alleged
6 activities or costs. Staff recommends that the
7 Commission adopt the final staff analysis, which
8 partially approves this test claim for cities and
9 counties.

10 CHAIRPERSON TILTON: Will the witnesses introduce
11 themselves and give us your comments, please.

12 MS. TER KEURST: I am Bonnie Ter Keurst. I'm
13 representing the County of San Bernardino.

14 MR. BURDICK: Allan Burdick on behalf of the
15 California State Association of Counties.

16 MS. GEANACOU: Susan Geanacou, Department of
17 Finance.

18 CHAIRPERSON TILTON: Go ahead. Who wants to
19 start off?

20 MS. TER KEURST: Thank you for seeing me. I
21 looked at the claim. And basically when I received the
22 staff analysis, I agreed with it. As I thought about it,
23 I decided I really wanted to at least address two items
24 briefly as a matter of record.

25 The original test claim did, in fact, address

1 three issues: Presenting the advisory to complainants
2 for signature, explaining the form, and having it
3 available in the multiple languages. The piece I would
4 like to address is explaining the form.

5 The Department of Finance did reject that item,
6 claiming it was not reimbursable because the items are
7 discretionary. I agree with the staff comments on that
8 and the Department of Finance in that there is no
9 directive to read and explain the form. However, I think
10 there is an intent that goes without saying in that the
11 primary goal of the police force is to serve the public.

12 I took a scenario. I said if an out-of-country
13 visitor -- because these forms are available in lots of
14 languages. If an out-of-country visitor walks into the
15 police station to file a complaint, the first problem is
16 going to be to establish his or her language. The second
17 item is going to be to deal with the fact that we have to
18 provide the form in that language. Those two items are
19 by their very nature going to require some kind of time
20 element.

21 Then I think it is safe to assume that if that
22 person is from another country, there might be a need to
23 explain the legal terminology in the document that we're
24 giving them or at least explain why we're asking them to
25 sign it. So there is some time involved. While it might

1 be considered discretionary to explain the form to the
2 complainants, I do feel there is a legal responsibility,
3 and possibly a moral one, to make sure that the
4 complainant understands what it is that he is signing.

5 This law is in place, but in some regards there's
6 some holes because the law states that we are requiring a
7 signature. And my question was what happens if they
8 refuse to sign. And I haven't been able to find anybody
9 that has given me an answer yet. Or what happens if they
10 just don't sign the document? Do we still accept the
11 claim? What is the responsibility of the person who
12 perceives that they have an injustice? And if there is
13 that responsibility to that person which exists because
14 of the laws as they are today, do we have a
15 responsibility to make sure that they understand? And if
16 so, is that responsibility a direct result of this Penal
17 Code 148.6?

18 The second piece that I would like to have on
19 record is the fact that in the course of preparing this
20 claim, it becomes evident to me that there's going to
21 have to be some kind of training within the sheriff's
22 department, or the district attorneys is I think another
23 department that can hand out this form, just in knowing
24 that they have to keep a log or a record of the
25 responses, that there has to be proper record retention

1 distribution of documents. While it all well could be
2 very minimal, I think it still needs to be a part of the
3 process.

4 And those are my comments.

5 MR. BURDICK: Mr. Chairman, Members of the
6 Commission, thank you very much for allowing us to be
7 here today. Just a couple comments.

8 First of all, this is -- I think that we agree
9 with the primary findings of the Commission staff as
10 related to what are the mandated activities. I think the
11 issue is the last paragraph in the -- of their statement,
12 the conclusion which -- which talks about the limitation
13 of the -- of the activities, and the costs claimed by the
14 test claimant are included in the test claim.

15 I think that the concern is that those are
16 activities that probably would be better left to looking
17 at the parameters and guidelines in terms of, you know,
18 what are the costs. Whether San Bernardino's costs that
19 are included in the claim are eligible or not, I don't
20 think that's part of the test claim.

21 Secondly, I know very often we get to the
22 parameters and guideline stage, we sit down and look at
23 what is really required, what are people doing. This is
24 the first time that other law enforcement agencies are
25 brought in, and the people on the task really look at

1 this.

2 At this point there's been no discussion, I don't
3 think, amongst any of the professionals in the field what
4 takes place. There's just been exchange of some
5 documents amongst the various parties. And very often we
6 get into a discussion on parameters and guidelines about
7 an activity, and the Commission staff will say, well,
8 based on the statement of decision, even though that
9 may -- they may have agreed that might be allowable, they
10 say we can't consider that because the statement of
11 decision limits us from finding that in some way in terms
12 of looking at.

13 And that, I think, is what the concern is about
14 the last statement of the -- of the -- of the conclusion,
15 which recommends the denial of any remaining alleged
16 activities or costs and how that will be interpreted and
17 what it may be. It seems to me that the issue is you
18 found what the mandate is. Now the provision ought to be
19 to move forward, develop the parameters and guidelines,
20 and then for the staff to look at those and have an
21 opportunity for people to look at this, find out how do
22 we carry this out, what is really involved in this
23 process.

24 This is going to be a fairly small-dollar
25 mandate, obviously. It's probably going to limit it to

1 larger law enforcement agencies. I doubt very seldom if
2 a lot of the smaller, particularly rural agencies are
3 going to have these kinds of issues.

4 This statute was adopted and the intent of the
5 author is, in her statement, Assemblywoman ^{Boland}~~Bolin~~, on the
6 bill was that they are trying to discourage the filing of
7 false or unfounded reports of police misconduct. So
8 they're trying to get citizens who are filing things to
9 look at that, give a second thought, make sure that they
10 have some kind of an adequate case before they file it.
11 Because once it gets filed, very often it has -- even if
12 it's unfounded, it may show up in law enforcement
13 personnel's jacket, and they don't want that.

14 So that was the whole intent is to say, you know,
15 we're trying to discourage people from doing something
16 that may be unfounded later on or something else that
17 maybe be false. And so I think, you know, what the staff
18 tends to -- Commission staff tends to relay a lot onto a
19 case which talks about the usual and ordinary meaning of
20 the language that they read in the statute. And so part
21 of, I think, what San Bernardino and other people may be
22 arguing is, well, does that usual and ordinary meaning
23 mean when you have to give something to a person, have
24 them sign it. It says, you know, make sure they read it,
25 so you're supposed to make sure they do that. Does that

1 also mean understand it before they sign it or if they
2 have any questions -- I think those are questions that
3 are worth discussion amongst the people and what happens
4 in the real world.

5 So I think at this point I think what the test
6 claimant and the local agencies are requesting is that
7 you not put that limitation in the final paragraph, that
8 you leave that to the parameter and guideline process.
9 And then when we come back, if there is any question
10 about activities, whatever, that could be discussed and
11 evidence can be presented to you. So I think at this
12 point it would be just to delete that provision of the
13 recommendation and indicate that the specific activities
14 and possible potential costs that could be associated
15 with those would be left to the parameter and guideline
16 process and not be prevented from any discussion or
17 consideration because of the fact that this paragraph was
18 included as part of your action today.

19 Thank you very much.

20 CHAIRPERSON TILTON: Katherine, do you have a
21 comment?

22 MS. TOKARSKI: The reason -- well, there is
23 multiple reasons that's in there, but one of the reasons
24 is that the way that the claimant pled their allegations
25 was very specific, and a number of the activities that

1 they alleged stemming from the test claim statute was not
2 clearly part of the statute and the remaining one being
3 addressed today was being required to read and explain
4 the item to the claimant, and that is not required by the
5 legislation as I read it.

6 And so that final paragraph, along with denying
7 any potential -- because it's pled as Penal Code statute
8 148.6, that has other sections to it besides the sub
9 (a)(2) and sub (a)(3) that were found to impose a
10 reimbursable state mandate. There's sub (a)(1) and
11 there's subdivision (b), which are misdemeanor
12 provisions, and those are not reimbursable. There's a
13 number of things that they were pleading that were found
14 to not be reimbursable, but you're free to change the --

15 CHAIRPERSON TILTON: Appreciate it.

16 MS. TOKARSKI: -- language.

17 CHAIRPERSON TILTON: Let me ask the Department of
18 Finance, and then I've got a couple questions.

19 MS. GEANACOU: We agree with the staff analysis,
20 and I'm concerned that removing the language from that
21 last paragraph would basically open up anew some of the
22 claimed activities that were found not to be reimbursable
23 in the analysis such as reading to and perhaps helping
24 the filer or the person filing the claim of misconduct to
25 understand what he or she is signing. And nothing on the

1 face of the statute suggests that that is a duty of the
2 law enforcement entity, and I think for that reason the
3 staff analysis as written is correct.

4 CHAIRPERSON TILTON: Okay. Let me make a
5 comment, if I can. I've got a question here in terms of
6 the fundamentals of whether this is an increased cost at
7 all. And given the number of claims we have stacked up,
8 Paula, I think it's appropriate for us to provide some
9 narrowing of the staff work that has to be done to
10 conclude what the costs are of these claims, so I feel
11 the staff recommendation is a solid one.

12 But also there's some comments in the analysis in
13 terms of -- that lead me to believe there's also a
14 possibility that this is a savings. Maybe it's the
15 comments you made about the intent. If, in fact, the
16 results of this law are -- is to reduce the number of
17 claims made against staff, there's a reduced workload
18 through the process of these claims. I think that was
19 made by Finance.

20 And, Finance, you have no documentation to
21 whether that's a savings or not. I think it's something
22 that ought be looked at. I don't think we have enough
23 information in front of us today to conclude either way,
24 to be honest, in terms of whether this is actually an
25 increased cost or not, but more work needs to be done.

1 So my belief is we ought to provide some clear
2 direction to staff. One of the things I want you to do
3 is see whether or not there is any information you can
4 obtain in terms of whether there are real savings to this
5 law and it's not a cost as part of your duties through
6 the P and G, I guess, is the proper process.

7 Paula, can you give me a response or comment to
8 that comment?

9 MS. HIGASHI: I think I'm going to -- I think on
10 the cost savings issue in terms of the legal
11 determination that would have to be made, I'm going to
12 defer to Ms. Shelton to respond because that a 17556
13 analysis that's part of the staff analysis.

14 MS. SHELTON: Well, first let me say that the
15 issue of whether there are increased costs mandated by
16 the State is a finding that you have to make on this test
17 claim. You can't delay that and make that finding at the
18 parameters and guidelines because that's a key element
19 for finding whether something is or is not reimbursable.
20 So you need to make that finding now.

21 The only provision that we have in statute is
22 17556, subdivision (e), and that says if -- the
23 Commission shall not find costs mandated by the State if
24 the statute or executive order provides for offsetting
25 savings to local agencies or school districts which

1 resulted in no net cost to the local agencies or school
2 districts. And in this case, we found that the
3 legislation did impose two new requirements. Even though
4 they may be saving in the long run, we do not have any
5 evidence in the record, none provided today, to show that
6 they have not incurred increased costs for those two new
7 activities.

8 If -- you have the option. If you wanted to
9 continue it, we would need to get substantial evidence in
10 the record from the Department of Finance and any
11 rebuttal from the claimant on that issue, which we can
12 do.

13 MS. TER KEURST: Can I comment that?

14 CHAIRPERSON TILTON: Please.

15 MS. TER KEURST: The initial claim or the initial
16 law when it was enacted by ~~Bolin~~^{Boland}, she sent a letter to
17 Governor Pete Wilson. Her intent was not to use the
18 money to finance this legislation. The intent, and I'm
19 quoting from her letter of September 5, 1995:

20 "By reducing the amount of frivolous
21 claims against peace officers, AB 1732 will
22 also save the State a substantial amount of
23 money. This cost savings could then be used
24 for putting more officers on the street,
25 thereby enhancing public safety."

1 So while I think there was an attempt to say,
2 yeah, we're spending a lot of money on these court cases,
3 but let's put it where it's needed, which is in public
4 safety, not in administrative costs.

5 CHAIRPERSON TILTON: Right. So that states
6 then -- that supports my -- I don't have the facts in
7 front of me, supports my general conclusion that there's
8 a high probability because the legislature thought so
9 when they passed bill, in fact, there are net savings out
10 of this -- this bill.

11 MS. TER KEURST: And I would agree with that, but
12 the legislature also recognized that there was a state
13 mandate in both the instances. It does recognize that
14 there are costs associated with this. There are
15 substantial savings. The two don't go together.

16 CHAIRPERSON TILTON: Why not?

17 MS. TER KEURST: Because the savings, according
18 to this, is -- her intent was to have a savings to the
19 State.

20 CHAIRPERSON TILTON: But I --

21 MS. TER KEURST: And it's the local agencies that
22 have got the cost.

23 CHAIRPERSON TILTON: Well, aren't there savings
24 to the local agency if you have to deal with adverse
25 actions against your employee based on a claim being made

1 by citizens in terms of --

2 MS. TER KEURST: And that I would -- from a
3 logical standpoint possibly, but I don't have any
4 documentation in front of me to support that.

5 CHAIRPERSON TILTON: That's my concern. Neither
6 do I. All I have is a sense that there -- the intent of
7 the bill was to provide -- to mitigate or reduce the
8 number of accusations made against staff, which the whole
9 process -- the county and the sheriff must process in
10 terms of those, but we don't have any data in front of us
11 to conclude that.

12 MS. STONE: Chairman Tilton, my name is Pam
13 Stone. I'm with the CSAC SB 90 Committee, and I'd like
14 to address the issue of cost savings. Obviously there
15 was an intent to cut down on the number of frivolous and
16 unfounded complaints against peace officers.
17 Mr. Chairman, and Members of the Commission, there have
18 been a lot of test claims revolving around the
19 investigation of officer -- of complaints against
20 officers.

21 If there are any cost savings, it would result in
22 a reduction in the total number of Peace Officer Bill of
23 Rights cases that is covered by that particular test
24 claim. Generally when there is a complaint -- and trust
25 me, I have spent more time on this than I ever wanted to

1 know having worked with the claimant on the POBOR test
2 claim.

3 When a complaint of police misconduct is given to
4 any law enforcement agency, whether it's local or even at
5 the state level, and it forms the basis of a Peace
6 Officer Bill of Rights investigation -- and there are
7 substantial privileges and safeguards that are given to
8 those officers. If there are any savings as a result of
9 the lack or the diminution in actual claims filed, you
10 will find that cost savings by fewer POBOR cases being
11 filed.

12 And therefore, although you're not going to be
13 able ever to estimate because it's purely speculative on
14 how many people would file unfounded complaints against
15 peace officers because they basically want leverage, you
16 will find your net savings in a reduction in the total
17 POBOR cases that are filed.

18 Thank you.

19 MR. BURDICK: Mr. Chairman, I think that what
20 this is showing us is that, as you're indicating and I
21 would agree, that there needs to be looked at all these
22 issues, but these are normally the kinds of things that
23 come up when we -- after you find a mandate and we get to
24 that point and then you sit down on the parameters and
25 guidelines and you can really then get the experts and

1 get into details and look at these issues of offsetting
2 savings and so forth. And that's what the parameters and
3 guidelines are intended to do is to specify that.

4 And that's what I'm saying is that I just feel
5 that, you know, in terms of trying to overly limit and --
6 and I know that some of the things that San Bernardino
7 probably said should not be considered as -- may not be
8 considered as mandates or not. I'm not sure. I
9 haven't -- am not totally as familiar with their
10 individual claim as maybe I should be. But I think at
11 this point I just didn't want to preclude when we get
12 into these discussions the staff coming back and saying,
13 well, the test claim limits us from talking about that or
14 considering that as part of this particular discussion,
15 but instead to say, okay, we found the mandates you found
16 under the provision, now how do you interpret those and
17 what are the costs associated with those?

18 And I don't think that the costs and activities,
19 if they're not -- that were in the test claim, if they're
20 not specified in your statement of decision do not
21 indicate that you found that you're supporting those or
22 there's any evidence of those. You just haven't -- you
23 just haven't put a limitation on the -- on what we can
24 look at when we do the parameters and guidelines. And I
25 think that all of the issues that are discussed -- have

1 been discussed are those kinds of things that are
2 parameter and guidelines issues.

3 So that's the only thing that we're trying to
4 say. Let's not limit it now. We have had, in the past,
5 situations where you've got to parameters and guidelines
6 and come back and said, well, the Commission's decision
7 seems to restrict us from going there, even though I
8 think at that point staff would have said those are
9 eligible costs, those are reasonable, but we can't go
10 there. And that's the only thing I'm trying to say is
11 don't prevent the locals and the staff from saying that
12 we can't go there if they think it's right.

13 CHAIRPERSON TILTON: Walter.

14 MR. BARNES: Sure. A couple of things. I
15 actually think the paragraph should stay in, and I say so
16 because I think the worst thing that we can do is provide
17 vague guidance with regard to the drafting of the
18 parameters and guidelines. And I think unless we feel
19 that there are some activities that, in fact, should be
20 approved that have been left out of this list, then I
21 think that giving the complete guidance to the staff and
22 to the claimants and to the stakeholders and the
23 Department of Finance and the Controller's Office is
24 really part of our job. And I think that we should do
25 that.

1 Having said that, I also think that we could go
2 ahead and approve this as it is today or vote on it as it
3 is today. I agree with you. I think the issue of
4 offsetting costs or offsetting savings is always on the
5 table. Every parameters and guidelines has reference to
6 that. And I think that we can give some direction to the
7 staff and again to the stakeholders associated with this
8 that we think that's a valid issue to take a look at in
9 terms of describing, you know, the offsetting savings in
10 connection with this particular mandate.

11 So I don't think we need to, you know, do more
12 than that in terms of changing the -- the recommendation,
13 because the recommendation itself would just identify
14 that, and the parameters and guidelines will always deal
15 with the offsetting costs or savings. I think it's
16 appropriate for us to pass on to the staff and to the
17 claimants that we're going to be looking to see how they
18 deal with that in connection with the parameters and
19 guidelines.

20 I also have a question that I'd like to put
21 forward which has to do with the requirement in here, as
22 I understand it, that basically it requires -- it
23 requires that the citizen filing the report has to sign
24 this advisory claim. And I -- you know, I understood
25 your comments with regard to, you know, people may not

1 understand the form or may need to have some explanation,
2 whatever. But I guess one of the questions I have is
3 what happens if they don't sign it, period? What does
4 that do, you know, to our recommendation here? I mean,
5 is that -- is the fact that they engaged in a conduct
6 that had -- that did not have the specific outcome, i.e.,
7 a signed, you know, statement, make that not a mandate --
8 a mandated activity? And --

9 MS. TOKARSKI: Well, the statement prior to
10 the -- the advisory language is at page 7 of the
11 analysis. And it says:

12 "Any law enforcement agency accepting an
13 allegation of misconduct against a peace
14 officer shall require the complainant to read
15 and sign the following advisory all in boldface
16 type," meaning that the advisory needs to be
17 printed out in boldface type.

18 There's no reference to what would happen if they
19 refuse to sign it. I would imagine that each department
20 has their own mechanism for dealing with something like
21 that, but it doesn't change the fact that the peace
22 officer agency is required to hand them this advisory,
23 attempt to get them to sign it. And if they don't, they
24 don't. But the activity, the basic activity of giving
25 them a form is still there, regardless of whether the

1 individual chooses to sign it or not.

2 MR. BARNES: So let me just say so your -- I
3 guess the question is that in our listing of two specific
4 activities, we say in accepting an allegation requiring
5 the claimant to read and sign the advisory in Penal Code
6 blah, blah, blah, it's just that they are requiring them
7 to do so, but the fact that they don't does not impact
8 the mandated costs associated with at least attempting to
9 do that.

10 MS. TOKARSKI: That's what I'm getting at.

11 MR. BARNES: Okay. Again, that may be something,
12 advice, you may want to give to the parameters and
13 guideline people to say how you would deal with that
14 situation. I think the concept here is that there is an
15 activity put out. And I would like to try to make sure
16 that the claimants aren't penalized by the fact that
17 somebody decides they just don't want to sign it, don't
18 understand it or whatever, and walks away.

19 MS. SHELTON: Can I just help on the distinction
20 between the --

21 CHAIRPERSON TILTON: Sure.

22 MS. SHELTON: -- test claim and the parameters
23 and guidelines? These activities here that are
24 recommended for approval are those activities that are
25 expressly required by statute. These are legal findings.

1 It's a question of law at this stage.

2 If the Commission does adopt this staff
3 recommendation and it does go on to the parameters and
4 guidelines -- and in the parameters and guidelines these
5 two activities will be listed. But you also there have
6 the discretion to include any other activity in the Ps
7 and Gs that you find to be reasonably necessary to carry
8 out these two activities. So you have wiggle room with
9 respect to how they perform an activity and what is the
10 most reasonable way of doing that. So you can add more
11 activities in the parameters and guidelines than you have
12 here in the proposed decision.

13 CHAIRPERSON TILTON: Would you agree that in
14 those Ps and Gs, the analysis there, that you also would
15 look at savings because of those requirements? Or do we
16 need to --

17 MS. SHELTON: Yeah, I need to clear that up too.
18 If you want to approve this test claim, then you are
19 making a finding that there are increased costs mandated
20 by the state. If you want to look into the question of
21 whether there are real cost savings which result in no
22 increased costs and, in fact, net savings, then you would
23 need to continue this item, recommend to continue this --
24 make a motion to continue the item and have us look into
25 it. Because if this goes to parameters and guidelines,

1 you've already made the finding that there are increased
2 costs.

3 CHAIRPERSON TILTON: Help me then if we have a
4 process where we make those determinations now, you
5 actually go through the process of developing Ps and Gs
6 and the net result is savings. Do you come back and
7 bring back the initial issue back to the Commission or --

8 MS. SHELTON: Well, what may --

9 CHAIRPERSON TILTON: -- what are the results of
10 that?

11 MS. SHELTON: I'm sorry. What may happen is that
12 maybe the State Controller's Office would audit that
13 information and add an incorrect reduction to maybe deny
14 something altogether. But the Commission loses
15 jurisdiction over the issue if you make the decision that
16 there are increased costs mandated by the State today.

17 MR. BARNES: And I guess just to answer that is
18 that basically, you know, we won't know whether there are
19 savings associated with it until we actually get the
20 claims. And the claims would be filed based upon the
21 parameters and guidelines and our claiming instructions,
22 which is why I think to a certain extent, you know -- are
23 you advising us that instead of giving advice to people
24 in terms of developing the parameters and guidelines
25 about dealing with the issue of potential savings in the

1 parameters and guidelines, we should make some mention of
2 it in here? Or are you agreeing that giving that advice,
3 you know, deals with that?

4 Keep in mind that if there are things that the
5 claimants do not feel -- feel should be in the claim,
6 should be in the Ps and Gs, they certainly will come
7 before us in the Ps and Gs and tell us about it.

8 MS. SHELTON: It's very difficult to respond
9 because we have absolutely no evidence in the record of
10 any costs savings. And we have testimony that we
11 probably have two overlapping programs. One is POBOR,
12 and the other is this. And there hasn't been any type of
13 detailed look or audit into the two possibly connected
14 programs.

15 I can tell you that I tried to make this argument
16 before the California Supreme Court in School Site
17 Councils to say, you know, yes, you have funding, but we
18 don't know today whether that funding is adequate. And
19 the court rejected that and said, oh, they've got enough
20 funding. And they made the legal finding that there were
21 no increased costs mandated by the state. But there the
22 difference was you had evidence in the record, and here
23 we do not have anything.

24 CHAIRPERSON TILTON: Let me ask my question too.
25 Theoretically, if I'm understanding right, we could put

1 the item over and ask to do the assessment of savings and
2 could come back and say, yes, there's savings, but until
3 you get the cost side, even if we agree they're a new
4 workload, you're going to run into the same problem.
5 You're going to have a situation where -- where we would
6 not be able to conclude there are some savings, but I
7 don't know how we could conclude the net number if we
8 recognize, yes, we agree there's some new workload here.

9 MS. SHELTON: It's a very, very difficult
10 situation because you do have, as I said, an overlap of
11 programs. And we have not performed the audit, and we
12 definitely have two new activities that are mandated on
13 the local agency.

14 CHAIRPERSON TILTON: If the results of our action
15 today is to approve that there are increased costs here
16 but ask staff to go look at -- when you calculate how you
17 would estimate the costs of those increased activities
18 and look at savings and then we came back at P and G and
19 there was a net -- or basically you're identifying things
20 that are claimable; right?

21 MS. SHELTON: Well --

22 CHAIRPERSON TILTON: I guess I'm confused.

23 MR. BARNES: I think the hard part is that, you
24 know, as she says, until you actually get a claim, you're
25 not going to know. Because in effect the Ps and Gs will

1 not only list the allowable costs, it will also list the
2 requirements for determining whether or not there are
3 offsetting savings associated with those costs. And so
4 the only way you get to the claim is to have the Ps and
5 Gs. So --

6 MS. SHELTON: Can I --

7 MR. BARNES: -- that's why I think to a certain
8 extent this can be worked out in the Ps and Gs with some
9 direction from us.

10 MS. SHELTON: Can I also say too that you have,
11 you know, like I said, two programs, POBOR, which has
12 already been approved, and we all know there is an audit
13 on the POBOR test claim, and there will be further work
14 to be done on that program. But if it turns out that the
15 intent of this legislation was to reduce the POBOR
16 claims, then you're simply going to just have a reduction
17 of the reimbursement claims that are filed under POBOR,
18 if this is working how it's supposed to.

19 So it's not really -- it would end up to be a
20 cost savings, but you have two separate programs. And if
21 it really works, one of the costs will go down in that
22 program.

23 MR. BARNES: Can you --

24 MS. HIGASHI: Commission Members, could I just --
25 I just want to interject something. I don't want to

1 confuse the proceeding any further, but I think you need
2 to have this information as you make your decision.

3 When the Commission statute was first enacted,
4 there was also another type of proceeding that was part
5 of it, and it was referred to as the cost savings claims.
6 The cost savings claims were a type of action that would
7 be filed only by state agencies, typically by the
8 Department of Finance, and they would be filed when a
9 program that was an existing mandate was amended by state
10 law or executive order and the reimbursable activities
11 either declined or changed or something occurred in which
12 the Department of Finance or the State Controller's
13 Office believed would result in a cost savings.

14 So then the burden was on the Department of
15 Finance as the moving party to put all the documentation
16 together and say the new statutes of 2000 resulted in
17 cancelling out five activities that are in the POBOR-I
18 test claim or something and to propose this action before
19 the Commission. The same process would have been
20 followed as for a test claim, but it was like a reverse
21 process.

22 When that statute was repealed, 17556 was not
23 changed, so that phrase remains in 17556. And so we've
24 had this difficulty of understanding and explaining how
25 to apply that ever since.

1 MS. SHELTON: And I can say it has never been
2 applied or argued by the Department of Finance with
3 evidence in the record.

4 CHAIRPERSON TILTON: Walter.

5 MR. BARNES: Actually, you bring up an
6 interesting point. And I forget who raised it, but this
7 is actually cutting into POBOR. And I'm wondering if
8 we're missing an opportunity here to basically add this
9 to POBOR.

10 MS. SHELTON: That, you can do at the parameters
11 and guidelines stage, if you want to somehow consolidate
12 or put a connection between the two or maybe even with
13 the claiming instructions. I don't know how you would do
14 that yet. I haven't looked into this in that level of
15 detail yet, but --

16 MR. BARNES: I mean, they were very much linked
17 together. And it's an additional activity.

18 MS. SHELTON: It's sort of linked together. This
19 program comes before POBOR even before it gets kicked
20 into gear.

21 MR. BARNES: Right. But, in fact, if this part
22 of the program, as you pointed out, if it goes right,
23 then essentially it does reduce down potentially POBOR.
24 So potentially is where the activity is, so I guess, you
25 know, again, I'm inclined to go ahead and approve the

1 staff recommendation, but maybe with some direction and
2 recommendation that they look into trying to incorporate
3 this within POBOR or at least make sure that if it's
4 going to be separately, that they -- they see how this
5 thing is supposed to interact with POBOR and with a
6 strong encouragement to try to combine the two together
7 when it comes back.

8 CHAIRPERSON TILTON: Jan, you had a comment.

9 MS. BOEL: It was answered.

10 CHAIRPERSON TILTON: That sounds like that
11 addresses my issue, I think, Walter, in terms of just
12 make sure that we look at that savings side also. You're
13 right. It will reduce the POBOR claims.

14 MR. BARNES: I'll make a recommendation that we
15 approve the staff recommendation with guidance to the
16 staff in developing the Ps and Gs that they take into
17 account how this would affect POBOR and in terms of
18 developing those. Does that give everybody enough
19 guidance?

20 CHAIRPERSON TILTON: I have a motion. Do I have
21 a second?

22 MR. SHERWOOD: Second.

23 CHAIRPERSON TILTON: Any further discussions?

24 (No audible response.)

25 CHAIRPERSON TILTON: Call the roll, Paula.

1 MS. HIGASHI: Mr. Barnes.
2 MR. BARNES: Aye.
3 MS. HIGASHI: Ms. Boel.
4 MS. BOEL: Aye.
5 MS. HIGASHI: Mr. Lazar.
6 MR. LAZAR: Aye.
7 MS. HIGASHI: Mr. Sherwood.
8 MR. SHERWOOD: Aye.
9 MS. HIGASHI: Mr. Tilton.
10 CHAIRPERSON TILTON: No.
11 MS. HIGASHI: Motion is carried.
12 MR. BURDICK: Thank you very much.
13 MS. HIGASHI: With that I'd like to move to
14 item 13.
15 MS. TOKARSKI: This is the proposed statement of
16 decision on the item you just heard. Staff recommends
17 the Commission adopt proposed statement of decision
18 beginning on page 2 which accurately reflects the staff
19 recommendation on the test claim. Changes to reflect the
20 hearing testimony and the direction from the
21 Commissioners regarding the parameters and guidelines and
22 the vote count will be included when issuing the final
23 statement of decision.
24 CHAIRPERSON TILTON: Do I have a motion?
25 MR. BARNES: I move approval consistent with the

1 same guidance that we gave in connection with the test
2 claim.

3 CHAIRPERSON TILTON: Do I have second?

4 MR. SHERWOOD: Second.

5 CHAIRPERSON TILTON: Second. Any discussion?

6 (No audible response.)

7 CHAIRPERSON TILTON: Roll call.

8 MS. HIGASHI: Ms. Boel.

9 MS. BOEL: Aye.

10 MS. HIGASHI: Mr. Lazar.

11 MR. LAZAR: Aye.

12 MS. HIGASHI: Mr. Sherwood.

13 MR. SHERWOOD: Aye.

14 MS. HIGASHI: Mr. Barnes.

15 MR. BARNES: Aye.

16 MS. HIGASHI: Mr. Tilton.

17 CHAIRPERSON TILTON: Aye.

18 MS. HIGASHI: This brings us to item 15 in your
19 binders. Item 14 was adopted on the consent.

20 Item 15 is our annual rulemaking calendar that we
21 need to submit to the Office of Administrative Law. It
22 is presented here to include three potential rulemaking
23 actions. One is regarding implementation of Bureau of
24 State Audits recommendations. We expect to see
25 legislation introduced during this session that will

1 address the recommendations made by the Bureau of State
2 Audits in the POBOR and Animal Adoption audits.

3 Therefore we would probably need to initiate rulemaking
4 related to whatever is in those statutory provisions.

5 The second would be a rulemaking action to
6 streamline processes. We are in the midst of making
7 various changes to our procedures internally to
8 effectuate the use of electronic mailings and filings and
9 just moving into the next -- this century, actually. And
10 it's possible that we will have rulemaking actions
11 necessary to move forward.

12 And then the third is regarding a procedure for
13 appeals of executive director decisions. The Commission
14 has never had procedures, and we anticipate developing
15 procedures as we have more experience with this.

16 And so with that, I'd like to recommend adoption
17 of rulemaking calendar as presented. And this would be
18 filed with the Office of Administrative Law.

19 CHAIRPERSON TILTON: Do I have a motion?

20 MR. BARNES: I make a motion to support the
21 rulemaking calendar.

22 CHAIRPERSON TILTON: Do I have a second?

23 MS. BOEL: Second.

24 CHAIRPERSON TILTON: I have a motion and a second
25 to approve the adoption of the 2004 rulemaking calendar.

1 All those in favor say aye.

2 MULTIPLE SPEAKERS: Aye.

3 CHAIRPERSON TILTON: Opposed?

4 (No audible response.)

5 CHAIRPERSON TILTON: Motion carries.

6 MS. HIGASHI: At this time I'd like to ask acting
7 chief legal counsel Camille Shelton just for this hearing
8 today to present item 16.

9 MS. SHELTON: Just real briefly, since the last
10 hearing, we've had several new filings on the Graduation
11 Requirement incorrect reduction claims. Those writs have
12 been filed in the Sacramento County Superior Court.
13 There are now six cases pending there on that.

14 Also, the Second District Court of Appeal did
15 issue their unpublished decision in the County of San
16 Bernardino versus Commission on State Mandates case,
17 upholding the Commission's decision. And that case dealt
18 with test claim decisions concerning property tax
19 administration.

20 Third, the court in the Sacramento County
21 Superior Court did hear the School Bus Safety-II case,
22 which is the Department of Finance versus Commission on
23 State Mandates. The court did grant the writ in part and
24 remanded a portion back to the Commission. The court
25 agreed that school bus transportation for the most part

1 was a discretionary activity on the part of the school
2 districts, but remanded the issue back with respect to
3 special ed students. There may be a federal mandate
4 which requires transportation in those cases. So that
5 issue will be remanded back to the Commission.

6 And finally, in an unpublished decision, the
7 Fourth District Court of Appeal did grant the writ in the
8 County of San Diego versus Commission on State Mandates
9 case, and that case dealt with the medically indigent
10 adult program. And it concerns only the County of San
11 Diego.

12 That's all.

13 CHAIRPERSON TILTON: Any questions of Commission
14 Members?

15 (No audible response.)

16 CHAIRPERSON TILTON: Paula.

17 MS. HIGASHI: This brings us to item 17, which is
18 my report. And included in this is, as has been
19 referenced a couple times, a depiction of what our
20 current workload looks like. And as you can see, we have
21 131 test claims to be heard and determined, and that is a
22 record number.

23 And I've also given you documents regarding our
24 budget update. As you know, we have had our budget
25 reduced by one and a half positions. And as Department

1 of Finance describes it in the budget document, it's for
2 a savings of \$102,000.

3 And I'd also like to indicate that we have -- we
4 are not carrying a local government claims bill, which I
5 think everyone understands. This will be the third year
6 in a row that we will not be bringing such legislation.
7 The costs for the mandates that have been approved by the
8 Commission just continue to accrue, and reimbursable
9 claims continue to be filed unless the mandates are
10 suspended in the Budget Act.

11 In the documents that are enclosed here included
12 in the binder, you can see copies of the informational
13 displays which lists the mandates that are included in
14 the budget. And through these tables, you can see if a
15 mandate is deferred or suspended. If there is a zero
16 amount, that means that it was -- it would be proposed to
17 be deferred -- I mean suspended. And if there is a one,
18 that represents just a token appropriation, and the local
19 agencies and school districts would still be performing
20 the mandates with hope for future reimbursement.

21 During the last couple of weeks, the Laird
22 (phonetic) Committee has started to reconvene. This is
23 the committee that's chaired by Assembly Member Laird,
24 the Assembly Special Committee on State Mandates. They
25 meet almost every Monday. They will be sponsoring

1 legislation to actually repeal some of the old mandates
2 that have been suspended for many years. And also they
3 will be taking on some recommendations to direct some of
4 the Commission's prior decisions back to the Commission
5 for reconsideration. And so when those bills are finally
6 introduced, we will certainly notify you of them so you
7 will be aware of them.

8 We also expect that there will be some type of
9 special committee or task force created in the state
10 Senate. We don't know yet exactly how that is going to
11 shape up, but in the Senate Budget Committee hearing, the
12 committee members had a discussion about creating such a
13 task force, and the matter was referred to the pro tem
14 for determination and appointment of a group.

15 We filed our report to the legislature in
16 January. That is the one that details the denied
17 mandates, and all of you should have received copies of
18 it. We will be sending a report on the approved mandates
19 once we have actually adopted statewide cost estimates
20 here at the Commission in the spring. And those matters
21 will start coming before you at the next hearing.

22 For -- also for your information, we have
23 included copies of the Leg. Analyst's recent report,
24 which reviews the mandates that the Commission has
25 approved in the past, and also a copy of the State

1 Controller's Office report on what the backlog of unpaid
2 claims looks like at the State Controller's Office. And
3 all of these are included in your binders as exhibits.

4 Do you have any questions on these?

5 CHAIRPERSON TILTON: Thank you for the
6 information.

7 With that, is there any other public testimony?
8 I want to thank witnesses for bringing issues to our
9 attention.

10 MR. BURDICK: Just a -- excuse me. Allan Burdick
11 on behalf of California State Associations. Just a quick
12 comment. Maybe it's really a question on Paula's report,
13 indication that a claims bill will not be filed again
14 this year for the third straight year. And I know
15 statute requires the Commission file an annual claims
16 bill, and I was just wondering if there's any more
17 information as to why the Commission is not going to at
18 least submit a claims bill to the legislature for their
19 consideration.

20 MS. HIGASHI: Actually, the statutory requirement
21 is that the Commission report statewide cost estimates to
22 the legislature, and then the language in statute says
23 that the legislature shall introduce the claims bill.

24 MR. BURDICK: So I'm assuming at this point the
25 response of the legislature -- the information will be

1 provided to the legislature. The legislature is not
2 planning to introduce a claims bill.

3 MS. HIGASHI: The legislature has received the
4 information, and the Legislative Analyst's report that
5 was prepared for the first time pursuant to AB 3000
6 provides recommendations to the legislature on all of the
7 mandates that are unfunded.

8 MR. BURDICK: I noticed in that report of the
9 Legislative Analyst there was one comment about paying
10 back some back claims over a six-year period of time that
11 would be in the claims bill. So they were kind of
12 referencing a claims bill, so it was a little confusing
13 to figure out what was going on in the claims bill arena.
14 And apparently at this point, I guess, it is apparently
15 the Commission's decision that it is now for the
16 legislature to decide what to do at this point.

17 CHAIRPERSON TILTON: That makes sense. And we
18 don't have the ability to issue a bill anyway.

19 MS. HIGASHI: We -- it's --

20 CHAIRPERSON TILTON: We are processing the
21 information to the legislature.

22 MS. HIGASHI: We have reported the information to
23 the legislature, and when there is a claims bill, we do
24 assist them in putting it together by reviewing the
25 numbers and the appropriations that are being proposed.

1 MR. BURDICK: Thank you for the clarification.

2 MS. HIGASHI: I have a couple other matters I
3 just wanted to note for the record, that is our first
4 hearing in which Nancy Patton, seated so my right, is
5 here. She is now the act -- the assistant executive
6 director. She's not left my side for the whole month.
7 And she has taken me to more meetings and scheduled more
8 meetings than I think I've ever had to go to during the
9 month of January. It's just a very busy time. And I
10 really welcome her in this position and just want to let
11 everybody here know that she is now in that capacity, and
12 if you can't find me, always call for Nancy.

13 (Applause.)

14 MS. HIGASHI: I'd also like to note that we have
15 three law clerks here today, and just for the new members
16 I'd like to introduce them as well as some of our
17 continuing members. We have a senior law clerk now,
18 Sigrid Asmundson. Sigrid started last summer, and she's
19 still here. Shela Barker. She just started. And Micah
20 Martin. Thank you so much for being here.

21 CHAIRPERSON TILTON: With that, if there's no
22 other public testimony -- again I want to thank the
23 public members for coming and providing information to
24 the Commission. With that, we're going to adjourn into
25 closed executive session.

1 We'll be in closed executive session pursuant to
2 Government Code section 11126, subdivision (e), to confer
3 with and receive advice from legal counsel for
4 consideration and action as necessary and appropriate
5 upon the pending litigation that was published in the
6 notice and agenda and confer with and receive advice from
7 legal counsel regarding potential litigation. And
8 pursuant to Government Code section 11126, subdivision
9 (a) and 17526 the Commission will also conclude -- confer
10 on personnel matters listed on the published notice and
11 agenda. We'll reconvene in opening session in
12 approximately 15 minutes.

13 (Commission met in closed executive session.)

14 CHAIRPERSON TILTON: We've now reconvened in the
15 full session after the closed executive session. It's
16 now 11:22. The Commission will now convene -- the
17 Commission met in closed session pursuant to Government
18 Code section 11126, subdivision (e), to confer with and
19 receive advice from legal counsel for consideration and
20 action as necessary and appropriate upon pending
21 litigation listed on the published notice and agenda and
22 potential litigation and Government Code section 11126,
23 subdivision (a) and 17526 to confer on personnel matters
24 listed on the published notice and agenda.

25 All required reports from the closed session

1 having been made and with no further business to discuss,
2 I will entertain a motion to adjourn the Commission on
3 State Mandates.

4 Let's back up. Walt had a question.

5 MR. BARNES: Yeah, I had a question about the
6 next agenda. And first of all, have you heard of
7 anything that might change this agenda?

8 MS. HIGASHI: We are moving on the test claims
9 that are listed. We are moving tenure grievance
10 arbitration to the following agenda, and we are also
11 adding in the integrated waste management in its place,
12 because that's the one that was postponed.

13 MR. BARNES: Okay. And I also had a question
14 about the appeals of executive direct decisions. Can you
15 give me just a little bit of --

16 MS. HIGASHI: A very quick snapshot.

17 MR. BARNES: Sure.

18 MS. HIGASHI: These are four test claims that
19 were received. Each of the claims has pled Water Board
20 Regulations -- I should say executive orders issued by
21 the Regional Water Quality Board. The statute that
22 defines executive order excludes Water Board executive
23 orders from consideration by the Commission.

24 MR. BARNES: Okay.

25 MS. HIGASHI: So I returned them.

1 MR. BARNES: Okay. I just don't normally see a
2 lot of those, so whenever they come up, they're also
3 interesting.

4 MS. HIGASHI: And these are.

5 MR. BARNES: Okay.

6 CHAIRPERSON TILTON: But we have enough workload.
7 Any other comments from the Members?

8 (No audible response.)

9 CHAIRPERSON TILTON: With that, I'll accept a
10 motion to adjourn.

11 MR. BARNES: So move.

12 MR. SHERWOOD: Second.

13 CHAIRPERSON TILTON: All in favor say aye.

14 MULTIPLE SPEAKERS: Aye.

15 CHAIRPERSON TILTON: Opposed?

16 (No audible response.)

17 CHAIRPERSON TILTON: No? So be it.

18 (Whereupon the hearing concluded at 11:25 a.m.)
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REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 19th day of February, 2004.



Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909