

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 447

Sacramento, California

January 29, 2010

Present: Member Cynthia Bryant, Chairperson
Representative of the Director of the Department of Finance
Member Francisco Lujano, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Cathleen Cox
Acting Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member J. Steven Worthley
County Supervisor
Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Bryant called the meeting to order at 9:36 a.m. Executive Director Paula Higashi called the roll.

ELECTION OF OFFICERS

Item 1 Staff Report

Ms. Higashi stated that the annual election of officers is the first order of business for the first meeting of the year. Ms. Higashi asked for nominations for chairperson.

Member Olsen nominated the Director of the Department of Finance Ana Matosantos. With a second by Member Glaab, Director of Finance Ana Matosantos was elected chairperson by a vote of 7-0.

Chairperson Bryant asked for nominations for vice-chairperson. Member Worthley nominated State Treasurer Bill Lockyer for vice-chairperson. With a second by Member Glaab, State Treasurer Bill Lockyer was elected vice-chairperson by a vote of 7-0.

APPROVAL OF MINUTES

Item 2 October 30, 2009

The October 30, 2009 hearing minutes were adopted by a vote of 7-0.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS AND STATEMENT OF DECISIONS,
PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5,
ARTICLE 7 (GOV. CODE, § 17551) (action)

DISMISSAL OF WITHDRAWN PORTIONS OF TEST CLAIM

- Item 12* *Crime Statistics Reports (K-14)*, 02-TC-12
Penal Code Sections 646.91, 12028, 12028.5, 13012, 13014, 13020,
13021, 13023, 13700, 13701, 13702, 13710, and 13730;
Family Code Sections 6240, 6250, and 6250.5
Statutes 1979, Chapters 255 and 860 (SB 281 and AB 1421);
Statutes 1980, Chapter 1340 (SB 1447); Statutes 1982, Chapters 142 and
147 (SB 561 and Senate Resolution 64); Statutes 1984, Chapter 1609
(SB 1472); Statutes 1989, Chapter 1172 (SB 202); Statutes 1992,
Chapter 1338 (SB 1184); Statutes 1993, Chapter 1230 (AB 2250);
Statutes 1995, Chapters 803 and 965 (AB 488 and SB 132); Statutes
1996, Chapters 872 and 1142 (AB 3472 and SB 1797); Statutes 1998,
Chapter 933 (AB 1999); Statutes 1999, Chapters 561, 659, 661, and 662
(AB 59, SB 355, AB 825, and SB 218); Statutes 2000, Chapters 254,
626, and 1001 (SB 2052, AB 715, and SB 1944); Statutes 2001,
Chapters 468 and 483 (SB 314 and AB 469); Statutes 2002, Chapter 833
(SB 1807)
California Department of Justice, Criminal Statistics Reporting
Requirements, March 2000
Santa Monica Community College District, Claimant

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

A. PROPOSED PARAMETERS AND GUIDELINES

- Item 13* *Cal Grants*, 02-TC-28,
Education Code Section 69432.9, Subdivision (b)(3)(C)
Statutes 2000, Chapter 403 (SB 1644)
California Code of Regulations, Title 5, Sections 30007, 30023,
Subdivisions (a) and (d), and 30026
Long Beach Community College District, Claimant
- Item 14* *Prevailing Wage Rates*, 01-TC-28
Education Code Section 69432.9, Subdivision (b)(3)(C)
Statutes 2000, Chapter 403 (SB 1644)
California Code of Regulations, Title 5, Sections 30007, 30023,
Subdivisions (a) and (d), and 30026
Grossmont Union High School District, Claimant

B. PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES
STATE CONTROLLER'S OFFICE REQUEST TO UPDATE BOILERPLATE
LANGUAGE

Item 16* SCHOOL DISTRICT PROGRAMS

- A. *Habitual Truant*, 05-PGA-51
Education Code Sections 48262 and 48264.2
Statutes 1975, Chapter 1184; Statutes 1994, Chapter 1023
- B. *Juvenile Court Notices II*, 05-PGA-54
Welfare and Institutions Code Section 827
Statutes 1984, Chapter 1423; Statutes 1994, Chapter 1019;
Statutes 1995, Chapter 71
- C. *Health Fee Eliminations*, 05-PGA-69
Statutes 1984, 2nd E.S., Chapter 1
Statutes 1987, Chapter 1118

Item 17* LOCAL AGENCY PROGRAMS

- A. *Search Warrants: AIDS*, 05-PGA-17
Penal Code Section 1524.1; Statutes 1988, Chapter 1088
- B. *Airport Land Use Commissions/Plans*, 05-PGA-23
Public Utilities Code Sections 21670 and 21670.1
Statutes 1994, Chapter 644; Statutes 1995, Chapter 66;
Statutes 995, Chapter 91
- C. *Allocation of Property Tax Revenues*, 05-PGA-24
Revenue and Taxation Code Sections 97, 97.01, 97.02,
97.03, 97.035, 97.5, 98 and 99;
Statutes 1992, Chapters 697, 699, 700, 899 and 1369;
Statutes 1993, Chapters 66, 68, 904, 905 and 1279
- D. *Brendon Maguire Act*, 05-PGA-25
Elections Code Sections 6490.3, 6490.4, 14205.5, and 14005.4
Statutes 1988, Chapter 391
- E. *Countywide Tax Rates*, 05-PGA-27
Revenue and Taxation Code Section 98.9
Statutes 1987, Chapter 921
- F. *Crime Victim's Rights*, 05-PGA-28
Penal Code Section 679.02, Subdivision (a)(12)
Statutes 1995, Chapters 411
- G. *Domestic Violence Treatment Services –
Authorization and Case management*, 05-PGA-30
Penal Code Sections 1000.93, 1000.94 and 1000.95
Penal Code Sections 273.5, subdivisions (e), (f), (g), (h) and (i)
Penal Code Section 1203.097
Statutes 1992, Chapters 183, and 184, Statutes 1994, Chapter 28X,
Statutes 1995, Chapter 641

- H. *Cancer Presumption – Firefighters*, 05-PGA-31
Labor Code Section 3212.1
Statutes 1982, Chapter 1568
Statutes 2006, Chapter 78, Section 8 (AB 1805)
- I. *Health Benefits for Survivors of Peace Officers and Firefighters*, 05-PGA-32
Labor Code Section 4856; Government Code Section 21635;
Statutes 1996, Chapter 1120; Statutes 1997, Chapter 193
- J. *Medi-Cal Beneficiary Probate*, 05-PGA-33
Statutes 1981, Chapters 102 and 1163
And DHS All County Letters
- K. *Mentally Disordered Offenders: Extended Commitment Proceedings*, 05-PGA-34
Penal Code Sections 2970, 2972, and 2972.1 r 658
Statutes 1989, Chapter 228; Statutes 1991, Chapter 435;
Statutes 2000, Chapter 324
- L. *Not Guilty by Reason of Insanity*, 05-PGA-35
Penal Code Sections 1026 and 1026.5
Statutes 1979, Chapter 1114; Statutes 1982, Chapter 650
- M. *Pacific Beach Safety: Water Quality and Closures*, 05-PGA-36
Health and Safety Code Sections 427.12, Subdivision (a), and 427.13
Statutes 1992, Chapter 961
- N. *Cancer Presumptions – Peace Officers*, 05-PGA-37
Labor Code Section 3212.1
Statutes of 1989, Chapter 1171; Statutes 2006, Chapter 78, Section 8
(AB 1805)
- O. *Perinatal Services*, 05-PGA-38
Health and Safety Code Section 10901(a), (b), (c)
Statutes 1990, Chapter 1603
- P. *Pesticide Use Reports*, 05-PGA-39
Food and Agricultural Code Section 12979
Statutes 1989, Chapter 1200
California Code of Regulations, Title 3, Sections 6000,
6393 (c), 6562, 6568, 6619, 6622, 6624, 6626, 6627, 6627.1, 6628;
Register 90, No, 1
- Q. *Prisoner Parental Rights*, 05-PGA-40
Penal Code Section 2625
Statutes 1991, Chapter 820
- R. *Rape Victims Counseling Center Notice*, 05-PGA-41
Penal Code Section 264.2, Subdivisions (b)(1) and (b)(2)
Penal Code Section 13701
Statutes 1991, Chapter 999, Statutes 1992, Chapter 224
- S. *Threats Against Peace Officers*, 05-PGA-44
Penal Code Section 832.9
Statutes 1992, Chapter 1249; Statutes 1995, Chapter 666

- T. *Photographic Record of Evidence*, 05-PGA-59
Penal Code Section 1417.3
Statutes 1985, Chapter 875; Statutes 1986, Chapter 734;
Statutes 1990, Chapter 382
- U. *Stolen Vehicle Notification*, 05-PGA-68
Vehicle Code § 10500
Statutes 1990, Chapter 337

ADOPTION OF PROPOSED RULEMAKING CALENDAR

Item 19* Proposed Rulemaking Calendar, 2010

Member Olsen made a motion to adopt items 12, 13, 14, 16A-16C, 17A-17U and 19 on the consent calendar. With a second by Member Chivaro, the consent calendar was adopted by a vote of 7-0.

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

Item 3 Staff Report (if necessary)

There were no appeals to consider.

HEARING AND DECISIONS ON TEST CLAIMS AND STATEMENTS OF DECISION, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (Gov. Code, §§ 17551 and 17559) (action)

Paula Higashi, Executive Director, swore in parties and witnesses participating in the hearing.

TEST CLAIMS

- Item 4 *Redistricting: Senate and Congressional Districts*, 02-TC-50
Elections Code, Division 21, Chapter 2 (§ 21100 et seq.), and Chapter 5 (§21400 et seq.)
Statutes 2001, Chapter 348 (AB 632)
Senate's Election and Reapportionment Committee Instructions (Dated September 24, 2001)
County of Los Angeles, Claimant

Kenny Louie, Commission Counsel presented this item. Mr. Louie stated that, under Article XXI of the California Constitution, the Legislature is required to adjust the boundary lines of the Senate, Assembly, Board of Equalization, and congressional districts in the year after the national decennial census is taken. The test claim statute pled by the claimant is the Legislature's adjustment to the boundary lines of the Senate and congressional districts for the 2001 redistricting plan as required by Article XXI.

Section 4 of the test claim statute requires county election officials to rely on maps prepared by the Legislature to determine the Senate and congressional boundary lines if a census tract or census block is not listed, listed more than once, or is only partially accounted for, or an ambiguity or a dispute arises.

However, staff finds that there is no evidence in the record of costs mandated by the state. In addition, staff finds that the remainder of the test claim statute does not impose any state-mandated activities on the claimant.

Mr. Louie recommended that the Commission adopt the staff analysis and deny the test claim.

Parties were represented as follows: Leonard Kaye representing the County of Los Angeles; Jeff Carosone, Susan Geanacou and Lorena Romero representing the Department of Finance.

Leonard Kaye, County of Los Angeles stated that the administrative record spans over seven years and is over one thousand pages. He provided the following overview:

- In 1980, California voters approved Proposition 6, adding Article XXI to the California Constitution, which sets forth minimum standards for redistricting and, in particular, these standards require, under subsection B, "A population of all districts of a particular type shall be *reasonably equal*."
- Prior to the 2001 redistricting, an entire census tract standard was required to achieve the "*reasonably equal* population" standard in Proposition 6. It is not the split census tract or census block standard necessary to achieve the more precise strict population standard. Therefore *strict population standard* is a new phrase, new concept and higher standard embodied in the test claim statute.
- The new split census tract standard was not required or necessary prior to the test claim legislation to implement the "*reasonably equal*" population standard in Article XXI of the California Constitution added by Proposition 6 in 1980.
- The population standard in Article XXI was met. It exceeded the prior "*reasonably equal*" population standard in Article XXI, by the test claim legislation and thereby imposed a higher standard of exactitude of population equality among like districts, as well as a new program which Commission staff. The County agrees it is of benefit to the electorate.
- There is case law which supports this. In *Wilson v. Eu*, 1 Cal.4th 707 on page 76, they state the strict population equality standard was not required and necessary to implement Proposition 6, and it requires plans with near-zero population deviations which are based on census blocks instead of tracts.
- This strict population equality standard is not required and necessary to implement Proposition 6, and requires formulating districts on a block basis, which is enormously expensive, as the cost of computer software and experts to deal efficiently with this greater amount of data is exponentially higher than a comparable system in which the bulk of the redistricting work is done by census tract.
- The new mandated duties are imposed on the County under Chapter 348, Statutes of 2001, due to the order of the California Legislature mandating Los Angeles County to redistrict state Senate and U.S. congressional districts using a new split census tract standard.

Mr. Kaye also cited and quoted from the following documents filed by the County:

- Rose Institute of State and Local Government Report entitled "Proposition 6 and Redistricting: A Legal Perspective." (See exhibit to the County's June 18, 2009, filing.)
- Attorney General Opinion, 80-1109, issued on July 21, 1981. (See attachment to the County's August 19, 2009 filing.)

Mr. Kaye added that Los Angeles County agrees with the Commission staff finding that section 4 of the test claim statute, AB 632, Statutes of 2001, Chapter 634(a), requires county election officials to rely on detailed maps prepared by committees of the Legislature pursuant to Election Code Section 21001 to determine the boundary line in the event that a census tract or census block is not listed, listed more than once, or is only partially accounted for, and it results in a dispute regarding the location of a boundary line. But Los Angeles County disagrees with staff on their assertion that as a general rule, counties need not follow these detailed maps in sections 1 and 2.

Lorena Romero stated that the Department of Finance concurs with the staff analysis to deny the test claim.

Member Worthley reiterated Mr. Kaye's point that there is a tremendous amount of work involved in pursuing this new standard.

Mr. Kaye stated that the claimants go beyond that point to show a higher standard. It is not so much the cause or the process or the methodology that was different or required greater expense, rather it is the result. He reiterated that the County achieved a higher standard of population equality as a result of the test claim statute and that they are asking for the incremental cost in meeting this higher standard.

Mr. Kaye cited an example of firefighter clothing and equipment where a fire-retardant pair of pants is SB-90 reimbursable for the increased cost in meeting the higher standard.

Member Olsen asked to hear staff's response.

Mr. Louie responded that staff and the Commission are limited by what has been pled. Statutes 2001, chapter 348, which lists the block description and tract description of the Senate districts, does not mandate any activities. While there might be duties outside of Statutes 2001, chapter 348, the statutes that require those duties have not been pled.

Member Olsen asked if the claimants could come back with a new filing pleading those statutes.

Mr. Louie stated that most of those activities would be outside of the statute of limitations to plead.

Mr. Kaye stated that in July 2003, the Commission issued a completeness letter. He explained that in order to receive a completeness letter, the claimants had to demonstrate the specific code sections that mandated these new activities or higher level of service. By receipt of the letter, the test claim was complete and the claimant had pled all the statutory provisions that were required to at least get a prima facie case before the Commission. The claimant detrimentally relied on that letter.

Ms. Shelton stated that the completeness review is not a legal review. It is simply an administrative process to determine if the claimants have complied with the requirements of filing a test claim. At no point during the completeness review does staff even look at what has been pled and get into the substance or the merits of the claim. That is done on a legal review when the draft staff analysis is issued.

Mr. Louie noted that Statutes 2001, chapter 348 did not mandate an activity, and that finding has been in the draft staff analysis beginning in 2007. Therefore the claimant was put on notice that this statute does not require those activities.

Mr. Kaye noted that it was four years after the test claim filing. Mr. Louie stated that there was a chance to amend the test claim after the draft staff analysis was issued.

Member Worthley stated that justice delayed is justice denied. Part of the problem that the Commission frequently deals with is statute of limitations for the applicant which is unfortunate but reality.

With a motion by Member Lujano and a second by Member Chivaro, the staff recommendation was adopted by a vote of 5-2 with Members Glaab and Worthley voting no.

- Item 5 Proposed Statement of Decision: *Redistricting: Senate and Congressional Districts*, 02-TC-50
[See Item 4 above.]

Member Chivaro made a motion to adopt the proposed Statement of Decision. With a second by Member Lujano, the Statement of Decision was adopted by a vote of 6-1 with Member Glaab voting no.

- Item 6 *California Environmental Quality Act (CEQA)*, 03-TC-17
Education Code Section 17025 added by Statutes 1996, Chapter 1562
Government Code Sections 66031 and 66034 as amended by
Statutes 1994, Chapter 300 (SB 517), and Statutes 1990, Chapter 1455
(SB 2374)
Public Resources Code Sections 21002.1, 21003, 21003.1, 21080.09,
21080.1, 21080.3, 21080.4, 21081, 21082, 21082.1, 21082.2, 21083,
21083.2, 21091, 21092, 21092.1, 21092.2, 21092.3, 21092.4, 21092.5,
21092.6, 21094, 21100, 21102, 21150, 21151, 21151.2, 21151.8, 21152,
21153, 21154, 21157, 21157.1, 21157.5, 21158, 21161, 21165, 21166,
21167, 21167.6, 21167.6.5, 21167.8, 21168.9 as added or amended by
Statutes 1970, Chapter 1433 (AB 2045); Statutes 1972, Chapter 1154
(AB 899); Statutes 1975, Chapter 222 (AB 335); Statutes 1976, Chapter
1312 (AB 2679); Statutes 1977, Chapter 1200 (AB 884); Statutes 1983,
Chapter 967 (AB 1829); Statutes 1984, Chapter 571 (AB 2527); Statutes
1985, Chapter 85 (AB 841); Statutes 1987, Chapter 1452 (SB 998);
Statutes 1989, Chapter 626 (AB 40); Statutes 1989, Chapter 659
(SB 896); Statutes 1991, Chapter 905 (AB 1642); Statutes 1991,
Chapter 1183 (AB 928); Statutes 1991, Chapter 1212 (SB 948);
Statutes 1993, Chapter 375 (SB 104); Statutes 1993, Chapter 1130
(AB 1888); Statutes 1993, Chapter 1131 (SB 919); Statutes 1994,
Chapter 1230 (SB 749); Statutes 1994, Chapter 1294 (AB 314);
Statutes 1995, Chapter 801 (AB 1860); Statutes 1996, Chapter 444
(SB 2073); Statutes 1996, Chapter 547 (AB 298); Statutes 1997,
Chapter 415 (AB 175); Statutes 2000, Chapter 738 (AB 1807);
Statutes 2001, Chapter 867 (AB 1532); Statutes 2002, Chapter 1052
(AB 3041); Statutes 2002, Chapter 1121 (SB 1393)
California Code of Regulations, Title 5, Sections 14011 and 57121 as
added or amended by Register 77, Nos. 01 & 45; Register 83, No. 18;
Register 91, No. 23; Register 93, No. 46; and, Register 2000, No. 44
California Code of Regulations, Title 14, Sections 15002, 15004, 15020,

15021, 15022, 15025, 15041, 15042, 15043, 15050, 15053, 15060, 15061, 15062, 15063, 15064 15064.5, 15064.5, 15064.7 15070, 15071, 15072, 15073, 15073.5, 15074, 15074.1, 15075, 15081.5, 15082, 15084, 15085, 15086, 15087, 15088, 15088.5, 15089, 15090, 15091, 15092, 15093, 15094, 15095, 15100, 15104, 15122, 15123, 15124, 15125, 15126, 15126.2, 15126.4, 15126.6, 15128, 15129, 15130, 15132, 15140, 15142, 15143, 15145, 15147, 15148, 15149, 15150, 15152, 15153, 15162, 15164, 15165, 15167, 51568, 15176, 15177, 15178, 15179, 15184, 15185, 15186, 15201, 15203, 15205, 15206, 15208, 15223, 15225, 15367 as added or amended by register 75, No. 01; Register 75, Nos. 05, 18 & 22; Register 76, Nos. 02, 14 & 41; Register 77, No. 01; Register 78, No. 05; Register 80, No. 19; Register 83, Nos. 29; Register 86, No. 05; Register 94, No. 33; Register 97, No. 22; Register 98, No. 35; Register 98, No. 44; Register 2001, No. 05; Register 2003, No. 30

California State Clearinghouse Handbook
Governor's Office of Planning and Research (January 2000)
Clovis Unified School District, Claimant

Commission Counsel Heather Halsey presented this item. Ms. Halsey stated that this test claim addresses the activities required of school districts and community college districts pursuant to the California Environmental Quality Act, or CEQA, and related statutes and regulations. She added that the requirement to comply with CEQA is triggered by the district's decision to acquire new school sites or build new school facilities or additions to existing school facilities.

Ms. Halsey stated that staff finds that the decisions to acquire new school sites or build new school facilities or additions to existing schools are discretionary decisions, and that based on the analysis in *Kern*, the downstream requirement to comply with CEQA is not reimbursable. She also noted that Claimant disagrees that school districts are not legally and practically compelled to build new schools, and asserts that they are, thus, mandated to comply with CEQA.

Ms. Halsey recommended that the Commission adopt the staff analysis to deny the test claim.

The parties were represented as follows: Art Palkowitz representing the claimant and Donna Ferebee representing the Department of Finance.

Art Palkowitz stated the position of the claimant, Clovis Unified School District:

- CEQA is a process for evaluating the environmental effects on a project. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report.
- The requirements under CEQA are mandated based on numerous Education Code sections.
- The California Constitution requires that students be housed and educated. Education Code section 15700 clearly states that the education of the student in California is an obligation of the state and therefore classrooms are required to be provided for education. Children are required to attend schools.

- Based on the Education Code sections, there is clearly a requirement that in order to have education; in order for students to attend schools, we must build schools.
- Further, Education Code section 17576 requires sufficient restrooms. It is challenging to have restrooms without schools for students. It also required that a warm and healthful place for children to learn be provided. Clearly, all of the code sections combined indicates that schools are required for children.

Mr. Palkowitz cited the staff analysis which states that there is no mandatory requirement to have schools. He argued that it is difficult, if not impossible, to comply with these sections without having a school. Although one could say there is no legal requirement, as no code section was found, there is practical compliance. The Supreme Court of California has held that practical compliance can constitute a mandate. He further argued that K-12 schools do not have discretion to turn kids away when they live in their geographical area; they are compelled to accept students. The only way to house students that are in the area is to build new schools.

Donna Ferebee stated that the Department of Finance concurs with the final staff analysis.

Member Worthley stated that while he understands the staff analysis, he believes it flies in the face of reality. School buildings are not discretionary in the sense that if we have education, we have school buildings; and that if you have to build a school building, you have to comply today with CEQA. Therefore this is not a traditional type of discretionary act.

The building of school buildings is so fundamentally tied into education that to call it discretionary is beyond reality. School buildings are built to house students so they can be educated.

Member Worthley stated that if this takes judicial determination, it would seem that where something is so fundamentally tied to the mission and purpose of a governmental entity, such as building a school, much like educating a student, that is not a discretionary act; that is something which is mandated at least in a practical sense if not a legal sense; and therefore, it would effectively address the issue of discretionary act. If this was not a discretionary act, this would qualify as an unfunded mandate. As schools receive state funding, they receive funding to pay towards this situation. If there is a cost to CEQA compliance which exceeds that which the state pays, then that would be the unfunded portion that would need to be made up by the state.

Ms. Halsey clarified that the claimant agrees with counsel that there is no legal compulsion but still argues there is practical compulsion. She explained no evidence was submitted in the record about whether there was practical compulsion. Practical compulsion requires evidence to be submitted by districts to show that they are practically compelled for the Commission to make such a finding.

Member Glaab commended staff for doing a tremendous job. However, he agreed that Mr. Worthley's comments reflect reality. Schools have to be built. Children cannot be out in tents or sitting in the fields, so there is a practical compulsion.

Member Glaab stated he disagreed with staff's conclusion and that he will vote accordingly.

Member Olsen asked staff and Mr. Palkowitz to speak to when CEQA was originally put into place and the extent to which the laws that came after it are a substantial modification of CEQA or simply implement CEQA in the contemporaneous environment.

Ms. Halsey stated the history of CEQA is discussed in the analysis. CEQA was enacted before 1975 and many of the provisions and requirements imposed are pre-1975.

Also there is no discussion of a new program or higher level of service since staff found that there were no required activities. If staff were to find required activities under CEQA, staff would need to revisit the analysis to do that new program or higher level of service for each required activity. There have obviously been several amendments to CEQA but there were several preexisting requirements that would predate 1975.

Member Worthley asked if that could be addressed in the parameters and guidelines.

Ms. Halsey said no. This would have to be a fundamental mandates issue in terms of determining what predates 1975 and what would be the higher level of service required since then.

Ms. Shelton stated that the mandate issue, the new program or higher level of service issue and the cost mandated by the state issue all have to be determined at the test claim phase because it is a question of law.

Member Glaab suggested putting this item over and asking the claimant to come back with information on the practical compulsion issue.

Ms. Higashi stated that staff issued the draft at least eight weeks before the hearing and it has been out for comment. Staff has not received any documentary evidence in response to that draft.

Member Worthley asked to clarify a statement by staff, that there are other statutes that are pled from which the implication is that school buildings must exist because of obligations on schools to house students.

Ms. Halsey responded that there is no requirement to establish a school district. However, if a district is established, students need to be housed. Districts can house students in existing schools, they can renovate existing schools, they can do joint projects with parks and recreation and other governmental entities to house students. Districts can have year-round school and other kinds of alternative scheduling, so there are many ways to house students besides building new buildings.

Member Worthley stated that schools have to be replaced because they are old, they do not meet seismic requirements, and they do not meet the needs of the district. Again, people do not build buildings just to be building buildings. They build them in relationship to a need. The need is student housing.

Member Worthley expressed his concern with that type of analysis and wondered about the Commission's ability to have judicial notice of those kinds of issues as a body.

Ms. Halsey stated that the question before the Commission is not whether schools are needed but whether school districts are legally compelled by a state statute or regulation or practically compelled and, thus, mandated by the state to comply with CEQA. Staff could not find anything in the law that required that.

Ms. Halsey clarified that staff is not asserting that schools are not needed or that it would not be good to build schools or that there is not a number of publications expressing the need for schools; but rather that there is nothing in the law requiring it.

Member Worthley agreed that there is not a requirement to build schools. But schools do have to be built. Once they have to be built; now we have to comply with CEQA. That is the mandatory portion of it. If there is a practical compulsion because we have to house students and we have to build buildings to do that, then we get beyond this issue of being a discretionary act.

Ms. Halsey stated that there has been no evidence submitted in the record to show the practical compulsion.

Ms. Shelton clarified that these are issues that staff has been struggling with. It started with *Department of Finance v. Commission on State Mandates POBOR* case. There had been significant evidence of crime in school districts and certainly the Legislature recognized that and gave schools the authority to retain and hire peace officers.

Based on statements made by the U.S. Supreme Court that peace officers hired by a school district are necessary, it was asserted in the *POBOR* case that there was practical compulsion for school districts to retain their own peace officers and then comply with the downstream requirements.

Ms. Shelton explained that this is what the Commission is doing here too; except the Third District Court of Appeal said you cannot do that. When there is an issue of practical compulsion and there is an allegation that we have to build a new school, which the law says it is the school district's decision when and if to do that, you need to have evidence in the record that it was something they were practically compelled to do.

Ms. Shelton stated that staff is not suggesting that they are not required to house the students. Certainly they are. Staff does not have the evidence.

If the case is litigated under Government Code section 17559, the court is going to look if there is substantial evidence in the record. In this case, just like the *POBOR* case, there isn't any. That is the problem.

Mr. Palkowitz stated that the code sections show that there would be practical compulsion in order to have restrooms, in order to house students, in order to educate them, in order to provide a healthful, warm place.

Mr. Palkowitz added that he is amiable to the suggestion of putting the matter off to provide additional consequences that would show practical compulsion, that schools could be taken over by the state for not providing for the students and that the governing board has obligations to house students that are in their geographical area.

Ms. Shelton stated that staff has the law in the record and has considered all the law. So what would be required is a showing of factual evidence submitted under penalty of perjury or testimony under penalty of perjury that the district was practically compelled during the period of reimbursement to build a new school building or do substantial remodeling of a building during that time period.

Mr. Palkowitz stated that the claimant would like that opportunity to present that to the Commission.

Donna Ferebee stated that the Department of Finance does not believe that the standard for practical compulsion has been met and urges the Commission to adopt the staff recommendation as it is written.

Ms. Ferebee stated that staff does an excellent job of going through each component and also showing how there are other mechanisms for the schools to use. Finance does not believe that by holding the matter over the Commission would see any additional evidence of practical compulsion that would meet that very difficult threshold standard. Finance urges that the Commission adopt this item.

Chairperson Bryant stated that this is her first day as chair of the Mandates Commission, but she has been sitting in this seat for the last three years. There is a schedule, there are the arguments that the claimants are making. Every time the Commission puts one of these off, it just further delays it. And the Commission gets into the situation where they are considering a redistricting mandate at the same time they are about ready to do the census for the next redistricting ten years later.

Member Bryant stated that she is prepared to support the staff analysis as it is currently drafted. She sensed that other members may not share this view.

When staff goes back and they look, the Commission has to have evidence on the practical mandate issue; and then we would see that CEQA existed prior, and probably is not a mandate. And we get into that argument, and we would probably come back with the same result.

Ms. Shelton stated that it would take a lot longer to do that analysis, because there are over a hundred code sections pled. To do the whole legislative history on each individual section pled would take a lot longer. Staff would not be able to bring this back in March or May. It would be a year from now to do a new program or higher level of service. Staff would be happy to do so if that is the desire of the Commission.

Chairperson Bryant asked if there is any way that we can get some of this off the table today; is the only option in front of us to go all the way back and start at the beginning; or is there any way to divide the question a little bit to create less work, less time.

Mr. Palkowitz stated that the claimant is trying to focus on the issue that deals with new schools, not with the maintenance or emergency repairs or the Items A and B; rather, Item C.

Item C includes statutes subsequent to 1976, and also is the basis of the claimant's "practical compulsion" argument. So that would be the area that the claimant would ask for additional time to submit.

Mr. Palkowitz stated that although he is very cognizant of the long period of time it takes to get here, the law is evolving during those five or six years, too. He finds it reasonable to take a few more months to deal with that one issue.

Ms. Shelton stated that the issue of bifurcation could be a little troublesome because staff does not know how that is going to work out when they do further analysis. If the Commission is going to want to continue it, they need to continue the whole thing. Certainly comments that come in from Mr. Palkowitz and his clients can be limited to that issue, and further analysis can be limited to that issue. Ms. Shelton concluded that she is hesitant to recommend a bifurcation when it is not clear how that would affect the other portions.

Member Worthley stated that the claimant did not actually indicate or say "bifurcation." The idea is that the claimant is going to focus on a particular and limited portion of the claim.

Member Worthley moved to continue this matter to a date uncertain, because it would take some time for this to happen, and give the opportunity for the claimant to amend their pleadings as to the issue of practical compulsion.

Member Glaab conveyed to staff his extreme sensitivity to workload and the backlog of claims. However, he believes that the Commission needs to give the claimant more time to make a practical compulsion argument.

Member Worthley made a motion to continue this item. With a second by Member Glaab, the recommendation to continue this item was adopted by a vote of 6-1 with Chairperson Bryant voting no.

Chairperson Bryant commented that the staff analysis was so well done that one could literally lift the CEQA discussion and place it in a primer on CEQA.

Member Worthley also commented that the staff analysis was a great primer on CEQA and appreciated the review of CEQA as he deals in local government. Mr. Palkowitz echoed Member Worthley's comments.

Item 10 *Mandate Reimbursement Process II*, 05-TC-05
Government Code Sections 17553, 17557, and 17564;
Statutes 2004, Chapter 890 (AB 2856)
California Code of Regulations, Title 2, Sections 1183 and 1183.13
(Register 2005, No. 36, effective September 6, 2005)
On Remand from *California School Boards Assoc. v. State of California*
(2009) 171 Cal.App.4th 1183; Judgment and Peremptory Writ of
Mandate Issued by Sacramento County Superior Court,
Case No. 06CS01335
City of Newport Beach, Claimant

Chief Counsel Camille Shelton presented this item. Ms. Shelton stated that this test claim is on remand from the Court in the *California School Board Association (CSBA) v. State of California* case, and addresses statutes and regulations which amended the test claim process for seeking reimbursement for state-mandated costs under Article XIII B of the California Constitution.

Based on the Court's decision in *CSBA*, staff finds that Government Code Section 17553 and Section 1183 of the Commission's regulations mandate a new program or higher level of service on school districts and local agencies for the new activities required when filing a test claim or a test claim amendment.

Staff further finds that the exception to reimbursement in Government Code section 17556, subdivision (f), does not apply to deny this claim.

Ms. Shelton recommended that the Commission adopt the staff analysis and approve the test claim for the activities listed beginning on page 23.

The parties were represented as follows: Glen Everroad and Juliana Gmur representing the City of Newport Beach; Jeff Carosone, Donna Ferebee and Lorena Romero representing the Department of Finance.

Juliana Gmur complimented staff, specifically Ms. Shelton on a "very elegant analysis."

Ms. Gmur stated that there is a late filing by the California School Boards Association dated January 28, 2010. The City of Newport Beach concurs with the CSBA and joins with them to support the staff analysis and urge its adoption.

Lorena Romero stated the Department of Finance agrees with some portions of the staff analysis, that sections 17557 and 17564 of the Government Code, and sections 1183.13 of the Commission's regulations as amended by the test claim statutes do not constitute a state reimbursable mandate.

However, Finance does not agree with the Commission staff analysis that section 17553, subdivisions (b)(1)(C) through (G) and (b)(2) impose state-mandated reimbursable activities.

Finance believes that the mandate reimbursement process is absolutely necessary to implement the subvention of funds required by the voter approved measure, Proposition 4. Without a process, the state could not identify costs and ensure that the amounts reimbursed to local agencies are accurate.

Finance also does not agree with the staff analysis that the constitutional provision should have to require activities of the local agencies to participate in the process.

Additionally, Finance does not believe that the amendments to Government Code section 17553, subdivision (b)(1)(C) impose new programs or higher level of service. Certain of the items within these sections were previously required under other statutes. The other sections do not impose a higher level of service or a new program and are de minimis.

With a motion by Member Worthley and a second by Member Chivaro, the recommendation to adopt the staff analysis was approved by a vote of 7-0.

- Item 11 Proposed Statement of Decision: *Mandate Reimbursement Process II*, 05-TC-05
[See Item 10 above.]

Member Olsen made a motion to adopt the proposed Statement of Decision. With a second by Member Chivaro, the Statement of Decision was adopted by a vote of 7-0.

PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES STATE CONTROLLER'S OFFICE REQUEST TO UPDATE BOILERPLATE LANGUAGE

- Item 15 SCHOOL DISTRICT PROGRAMS
 - A. *Collective Bargaining and Collective Bargaining Agreement Disclosure*, 05-PGA-48
Statutes 1975, Chapter 961; Statutes 1991, Chapter 1213
 - B. *Intradistrict Attendance*, 05-PGA-53
Education Code Section 35160.5, Subdivision (c)
Statutes 1993, Chapter 161; Statutes 1993, Chapter 915

Assistant Executive Director Nancy Patton presented these items.

- A. *Collective Bargaining and Collective Bargaining Agreement Disclosure* Program.

Ms. Patton explained that this is one of 49 requests filed by the State Controller's Office to amend the parameters and guidelines to add language regarding source documentation and record-retention requirements. She noted that there was no opposition to similar amendments to

the parameters and guidelines that were adopted earlier on the Consent Calendar. However, there is opposition to amending the *Collective Bargaining* parameters and guidelines. She reviewed the background of this request:

- On October 14, 2009, the petitioners in the *Clovis Unified School District v. State Controller* case filed comments objecting to the SCO requested amendments because the proposed language is unrealistic and inconsistent with the day-to-day operations of school and community college districts.
- In the *Clovis* case, school districts and community college districts challenged reductions made by the State Controller's Office to reimbursement claims for several mandated programs. The districts argued that reductions made on the ground that school districts do not have contemporaneous source documents are invalid.
- In 2009, the trial court issued a judgment holding that the Controller has no authority to reduce a claim on the ground that a claimant did not maintain contemporaneous source documents absent statutory or regulatory authority to require contemporaneous source documents or language in the parameters and guidelines requiring it.
- This case is pending in the Third District Court of Appeal.
- Opponents recommend the Commission postpone this matter until the court fully resolves the issue.
- By letter on January 14, 2010, opponents stated that they would not appear at this hearing; and requested that the Commission fully consider their arguments in their October 14, 2009 letter; and that it be made a part of the record.

Ms. Patton stated that staff finds that the parameters and guidelines for the *Collective Bargaining/Collective Bargaining Agreement Disclosure* Program should be amended to insert the requested language because it would conform the parameters and guidelines for this program with the parameters and guidelines adopted for other programs, and is consistent with Section 1183.1 of the Commission's regulations. Therefore, staff included the language requested by the SCO and recommends that the Commission adopt the SCO's proposed amendments to the parameters and guidelines for this program.

The parties were represented as follows: Susan Geanacou representing the Department of Finance and Jim Spano representing the State Controller's Office.

Susan Geanacou stated that the Department of Finance supports the proposed amendments to the parameters and guidelines.

Jim Spano stated that the State Controller's Office supports the final staff analysis and related recommendation. Mr. Spano explained, as follows:

- The proposed language for source documentation and record retention is the same language as in the parameters and guidelines adopted by the Commission since 2003 for other state-mandated cost programs.
- The Commission has properly amended many other parameters and guidelines to include the updated source documentation rule. The *Collective Bargaining* and *Intradistrict Attendance* program should be no different.

- The requirement to maintain contemporaneous source document records to support costs claimed is neither unrealistic nor inconsistent with the day-to-day operation of schools and community colleges.
- Districts are required to support its costs with sufficient competent evidential matter for its many state and federal programs. Such requirement is consistent with the guidance provided by the California Department of Education in its California School Accounting Manual, and principles and standards applicable to federal funds prescribed in a Code of Federal Regulations also known as Office of Management Budget, Circular A87 and A21.
- The State Controller's Office believes the litigation has no impact on the Commission in meeting the parameters and guidelines for the *Collective Bargaining* and *Intradistrict Attendance* program.
- In fact, the Superior Court peremptory writ of mandate dated February 19, 2009, states that many of the parameters and guidelines is one of three options to validate contemporaneous source document rules for the *Collective Bargaining* and *Intradistrict Attendance* program.

With a motion by Member Chivaro and a second by Member Olsen, the staff recommendation to adopt the staff analysis was adopted by a vote of 7-0.

B. *Intradistrict Attendance*

Ms. Patton stated that the petitioners in the *Clovis* case are also opposed to amending this set of parameters and guidelines. Opponents recommend the Commission postpone this matter until the court fully resolves the issue. She added that the January 14, 2009 letter filed by opponents pertains also to this item. Staff recommends adopting the proposed amendments to the parameters and guidelines for the *Intradistrict Attendance* program.

Mr. Spano stated the State Controller's Office response is the same as in Part A.

With a motion by Member Chivaro and a second by Member Cox, the staff recommendation to adopt the staff analysis was adopted by a vote of 7-0.

Chairperson Bryant complimented Ms. Patton on the great work on these items as well as all the amendments that were on the consent calendar.

STAFF REPORTS

Item 21 Legislative Update

Ms. Patton reviewed AB 349, AB 548, and AB 917.

AB 349 would require the Department of Finance to provide the Legislature with all proposed statutory changes necessary to repeal any local agency mandates proposed for suspension in the Governor's budget, and include each affected section of law, effective January 2012.

The author is concerned that there are over two dozen mandates that have been suspended for at least three years, ten of which have been suspended for at least 18 years. AB 349 is supported by local government and peace-officer associations and there is no known opposition. It is pending in Senate budget and fiscal review committee.

AB 548 would lengthen the period in which a reimbursement claim for actual costs would be subject to an initiation of an audit by the State Controller from three to four years after the date that the actual reimbursement claim is filed or amended; and it would eliminate the State Controller's authority to extend the audit period when funds are not appropriated or no payment is made to a claimant.

This bill is sponsored by several school district and local agency associations; supported by the State Controller and opposed by the Department of Finance. It is pending on the Senate floor.

AB 917 would require the state, commencing with the 2009-10 fiscal year, to either fully fund school district mandates or suspend them, and would authorize the state to recommend mandates for years prior to the 2009-10 or over a five year period.

This bill may not be necessary. The Governor's proposed budget for 2010-11 already suspends the school district mandates. There is no known support or opposition at this time, and it is pending in the Assembly Education Committee.

Item 22 Chief Legal Counsel's Report (info)

Ms. Shelton reported that the hearing date for the *Behavioral Intervention Plans* case has been moved to December 2010; briefing is complete on the *Clovis* case; and the California School Boards Association has applied to file an amicus brief on the pending appeal. She explained that if the Court accepts the CSBA brief, there will be further briefing before the court sets a hearing date and that she will continue to keep the members informed on that case.

Item 23 Executive Director's Report (info)

Ms. Higashi reviewed the pending workload, stating that the number of test claims continues to be reduced; and that the number of proposed parameters and guidelines amendments was substantially reduced at the January meeting. She acknowledged the work done by Nancy Patton and her team: Heidi Palchik, Jason Rogers, Lorenzo Duran, and Kerry Ortman to pull and scan records, write analyses and amendments, and organize and upload items and exhibits on the Web site; and thanked them for their hard work.

Ms. Higashi introduced Jeff Carosone from the Department of Finance Mandates Unit.

Mr. Carosone stated that he is replacing Carla Castañeda as the principal on the mandates assignment. He took the opportunity to thank Carla for her years on the mandates assignment, and congratulate her and wish her luck on her new assignment within Finance. She has transferred to a different unit in Finance.

Chairperson Bryant stated that Mr. Carosone used to do the OPR budgets.

Ms. Higashi stated that the report includes information excerpted from the Governor's budget. She added that there are additional budget drills pending that may lead to additional reductions.

The Commission has filed its Report to the Legislature on approved mandates; and will soon file the report on denied mandates.

Ms. Higashi described the tentative agendas for the next two meetings, and noted that the *Clean Restrooms* test claim will be added to the March agenda. She added that there are more parameters and guidelines amendments, and a rulemaking workshop will be held with all parties to review staff's first draft of proposed cleanup amendments to our regulations. She also invited Commission Members to identify or propose amendments.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (action).

A. PENDING LITIGATION

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

State of California, Department of Finance v. Commission on State Mandates, et al.,
Sacramento Superior Court Case No. 03CS01432,
[Behavioral Intervention Plans]

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).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a)(1).

- Personnel Subcommittee Report


Hearing no further comments, Chairperson Bryant 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 published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation; and also to confer on personnel matters and a report from the personnel subcommittee pursuant to Government Code section 11125, subdivision (a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 11:14 a.m., Chairperson Bryant reconvened in open session, and 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 public notice and agenda, and potential litigation, and also to confer on personnel matters listed on the published notice and agenda pursuant to Government Code section 11126, subdivision (a)(1).

ADJOURNMENT

Hearing no further business, Chairperson Bryant adjourned the meeting at 11:15 am.


PAULA HIGASHI
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:30 a.m.
DATE: Friday, January 29, 2010
PLACE: State Capitol
Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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

COMMISSIONERS PRESENT

CYNTHIA BRYANT
(Commission Chair)
Representative for ANA MATOSANTOS
Director, State Department of Finance

CATHLEEN COX
Acting Director
Director, Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

PAUL GLAAB
City Council Member
City of Laguna Niguel

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

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



COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 23)

HEATHER HALSEY
Commission Counsel
(Item 6)

A P P E A R A N C E S

COMMISSION STAFF PRESENT

Continued

KENNY LOUIE
Senior Commission Counsel
(Items 4 and 5)

NANCY PATTON
Assistant Executive Director
(Items 15 and 21)

CAMILLE SHELTON
Chief Legal Counsel
(Items, 10, 11, and 22)



PUBLIC TESTIMONY

**Appearing Re Item 4 (Redistricting Senate and
Congressional Districts):**

For County of Los Angeles:

LEONARD KAYE
County of Los Angeles
Department of Auditor-Controller
500 West Temple Street, Suite 603
Los Angeles, California 90012

For Department of Finance:

JEFF CAROSONE
Principal Program Budget Analyst
Department of Finance
915 L Street
Sacramento, California 95814

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4 (Redistricting Senate and Congressional Districts): *continued*

For Department of Finance:

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

LORENA ROMERO
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Item 6 (California Environmental Quality Act):

For Claimant Clovis Unified School District:

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

For Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 10 (Mandate Reimbursement Process II):

For Claimant City of Newport Beach:

GLEN EVERROAD
Revenue Manager
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92658-8915

JULIANA F. GMUR
Manager, Financial Services
MAXIMUS
3130 Kilgore Road, Suite 400
Rancho Cordova, California 95670

For Department of Finance:

JEFF CAROSONE
Principal Program Budget Analyst
Department of Finance

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

LORENA ROMERO
Department of Finance

**Appearing Re Item 15 (Collective Bargaining and
Collective Bargaining Agreement Disclosure and
Intradistrict Attendance):**

For Department of Finance:

SUSAN GEANACOU
Senior Staff Attorney
Department of Finance

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 15 (Collective Bargaining and
Collective Bargaining Agreement Disclosure and
Intradistrict Attendance): *continued*

For State Controller's Office:

JIM SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 518
Sacramento, California 95814



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--o0o--

Commission on State Mandates – January 29, 2010

1 BE IT REMEMBERED that on Friday, January 29,
2 2010, commencing at the hour of 9:36 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 CHAIR BRYANT: The meeting of the Commission
8 on State Mandates will come to order.

9 Paula, can you call the roll and take up
10 Item 1?

11 MS. HIGASHI: Certainly.

12 Mr. Chivaro?

13 MEMBER CHIVARO: Present.

14 MS. HIGASHI: Ms. Cox?

15 MEMBER COX: I'm here.

16 MS. HIGASHI: Mr. Glaab?

17 MEMBER GLAAB: Present.

18 MS. HIGASHI: Mr. Lujano?

19 MEMBER LUJANO: Present.

20 MS. HIGASHI: Ms. Olsen?

21 MEMBER OLSEN: Here.

22 MS. HIGASHI: Mr. Worthley?

23 MEMBER WORTHLEY: Here.

24 MS. HIGASHI: And Ms. Bryant?

25 MEMBER BRYANT: Here.

Commission on State Mandates – January 29, 2010

1 MS. HIGASHI: Since this is the first meeting
2 of the year, the first order of business is the annual
3 election of officers.

4 Are there any nominations for chairperson, or
5 is there a motion for election of a new chairperson?

6 MEMBER OLSEN: I'd like to nominate Cynthia
7 Bryant for chair.

8 MEMBER GLAAB: Second.

9 MS. HIGASHI: Let me just clarify.

10 So you're nominating the Director of the
11 Department of Finance --

12 MEMBER OLSEN: Oh, yes. Yes, thank you.

13 MS. HIGASHI: -- Ana Matosantos?

14 MEMBER OLSEN: Yes, right.

15 MS. HIGASHI: And we have the second?

16 MEMBER GLAAB: *(Indicating affirmatively.)*

17 MS. HIGASHI: Mr. Glaab.

18 All those in favor of electing Ana Matosantos,
19 Director of the Department of Finance, as chairperson of
20 the Commission, please signify by saying "aye."

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

22 MS. HIGASHI: Any opposed?

23 *(No response)*

24 MS. HIGASHI: Congratulations, Ms. Bryant.

25 CHAIR BRYANT: I accept this honor on behalf of

Commission on State Mandates – January 29, 2010

1 Ana Matosantos.

2 Are there other nominations for
3 vice-chairperson, or is there a motion?

4 MEMBER WORTHLEY: Madam Chairman, I would move
5 that the Treasurer, the State Treasurer, as the
6 vice-chair.

7 CHAIR BRYANT: Is there a second?

8 MEMBER GLAAB: I'll second.

9 CHAIR BRYANT: All those in favor?

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

11 CHAIR BRYANT: Congratulations to Treasurer
12 Lockyer. You've been elected vice-chairman.

13 MEMBER LUJANO: And speaking for the Treasurer,
14 in the tradition of the Commission, as we alternate back
15 and forth from the Controller's office, thank you.

16 CHAIR BRYANT: All right, Item 2, are there any
17 objections or corrections to the October 30th minutes?

18 MEMBER CHIVARO: I'll move approval.

19 CHAIR BRYANT: We have a motion.

20 Do we have a second?

21 MEMBER OLSEN: Yes.

22 MEMBER GLAAB: Second.

23 CHAIR BRYANT: A second for adoption of
24 the minutes.

25 All those in favor?

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(A chorus of "ayes" was heard.)

CHAIR BRYANT: All those opposed?

(No response)

CHAIR BRYANT: Any abstentions?

I'm abstaining.

Okay, the next item is the Consent Calendar.

Paula?

MS. HIGASHI: This brings us to the Consent Calendar, which is on green paper. You should all have it before you.

I'll read through this list.

It's Item 12; Item 13; Item 14; Item 16, Parts A, B, and C; and Item 17, Parts A through U; Item 19.

CHAIR BRYANT: Are there any objections to the proposed Consent Calendar?

(No response)

CHAIR BRYANT: Is there a motion to adopt it?

MEMBER OLSEN: So moved.

MEMBER CHIVARO: Second.

CHAIR BRYANT: It's been moved by Sarah Olsen and seconded by -- well, you. I'm sorry, I'm just --

MEMBER CHIVARO: Chivaro.

CHAIR BRYANT: -- Mr. Chivaro.

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

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

2 CHAIR BRYANT: Those opposed?

3 *(No response)*

4 CHAIR BRYANT: Motion carries.

5 MS. HIGASHI: There are no matters to consider
6 under Item 3.

7 And this brings us to the hearing portion of
8 our meeting.

9 Will all of the parties and witnesses for
10 Items 4, 5, 6, 7, 10, and 11 please rise.

11 *(The parties and witnesses stood up.)*

12 MS. HIGASHI: Do you solemnly swear or affirm
13 that the testimony which you are about to give is true
14 and correct, based upon your personal knowledge,
15 information, or belief?

16 *(The parties and witnesses responded*
17 *affirmatively.)*

18 MS. HIGASHI: Thank you very much.

19 This brings us to our first test claim, which
20 is Item 4.

21 Commission Counsel Kenny Louie will present
22 this. It's the *Redistricting Senate and Congressional*
23 *Districts* test claim.

24 MR. LOUIE: Thank you, Paula.

25 Under Article XXI of the California

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1 Constitution, the Legislature is required to adjust the
2 boundary lines of the Senate, Assembly, Board of
3 Equalization, and congressional districts in the year
4 after the national decennial census is taken. The
5 test-claim statute pled by the claimant is the
6 Legislature's adjustment to the boundary lines of the
7 Senate and congressional districts for the 2001
8 redistricting plan as required by Article XXI.

9 Section 4 of the test-claim statute requires
10 county election officials to rely on maps prepared by the
11 Legislature to determine the Senate and congressional
12 boundary lines if a census tract or census block is not
13 listed, listed more than once, or is only partially
14 accounted for, or an ambiguity or a dispute arises.

15 However, staff finds that there is no evidence
16 in the record of costs mandated by the State. In
17 addition, staff finds that the remainder of the
18 test-claim statute does not impose any state-mandated
19 activities on the claimant.

20 Staff recommends that the Commission adopt
21 the staff analysis and deny the test claim.

22 Will the parties and witnesses state their
23 names for the record, please?

24 MR. KAYE: Leonard Kaye, County of Los Angeles.

25 MR. CAROSONE: Jeff Carosone, Department of

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1 Finance.

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

4 MS. ROMERO: Lorena Romero, Department of
5 Finance.

6 CHAIR BRYANT: Mr. Kaye?

7 MR. KAYE: Thank you, and good morning.

8 Where last we left off was sort of an
9 eleventh-hour reprieve on the midnight of our test-claim
10 hearing, and the Commission asked that we do further
11 analysis regarding the proposition.

12 So let me start, briefly.

13 And my remarks today are quite limited; but
14 please understand that, I don't know, the administrative
15 record in this matter spans over, what, seven or eight
16 years and is, I'm sure, well in excess of perhaps a
17 thousand pages.

18 Camille is holding it up there.

19 So I've tried to boil it down to just the
20 salient points for your consideration this morning.
21 But, as you know, in June of 1980, California voters
22 approved Proposition 6, adding Article XXI to the
23 California Constitution. This article sets forth minimum
24 standards for redistricting and, in particular, and in
25 pertinent part, these standards require, under

1 subsection B, "A population of all districts of a
2 particular type shall be reasonably equal." And I ask
3 that you remember the phrase "*reasonably equal*."

4 Prior to the 2001 redistricting, an entire
5 census tract standard was required to achieve the
6 "*reasonably equal population*" standard in Proposition 6,
7 Not the split census tract or census block standard
8 necessary to achieve the more precise strict population
9 standard -- so that's a new phrase, new concept, higher
10 standard, *strict population standard* -- embodied in the
11 test-claim statute.

12 As noted in our previous pleadings, the new
13 split census tract standard was not required or necessary
14 prior to the test-claim legislation to implement the
15 "*reasonably equal population*" standard in Article XXI of
16 the California Constitution added by Prop. 6 in 1980.
17 The population standard in Article XXI was met, and it
18 also exceeded the prior "*reasonably equal population*"
19 standard in Article XXI under the test-claim legislation
20 and thereby imposed a higher standard of exactitude of
21 population equality among like districts, as well as a
22 new program which Commission staff and we agree is of
23 benefit to the electorate.

24 There is case law which supports this. In
25 *Wilson v. Eu*, 1 Cal.4th 707 on page 76, they state the

1 strict population equality standard was not required and
2 necessary to implement Prop. 6, and it requires plans
3 with near-zero population deviations which are based on
4 census blocks instead of tracts.

5 This strict population equality standard is not
6 required and necessary to implement Prop. 6, and requires
7 formulating districts on a block basis, which is
8 enormously expensive, as the cost of computer software
9 and experts to deal efficiently with this greater amount
10 of data is exponentially higher than a comparable system
11 in which the bulk of the redistricting work is done by
12 census tract.

13 The new mandated duties are imposed by the
14 County under Chapter 348, Statutes of 2001, due to the
15 order of the California Legislature mandating Los Angeles
16 County to redistrict state Senate and U.S. congressional
17 districts using a new split-census tract standard.

18 There is also various other case law which
19 supports this.

20 As noted by Justice Blackburn, and quoted on
21 page 10 of the Rose Institute of State and Local
22 Government Report, entitled "Proposition 6 and
23 Redistricting: A Legal Perspective," this report by the
24 Rose Institute was attached as an exhibit to the County's
25 June 18th, 2009, filing.

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1 They state that -- Judge Blackburn states that
2 population equality appears to be the preeminent, if not
3 the sole criteria on which to adjudge constitutionality.

4 I'd like to go on to briefly mention that the
5 Attorney General has also weighed in on this. In his
6 opinion, 80-1109, issued on July 21st, 1981, which it was
7 attached to the County's August 19th, 2009, filing, he
8 states on page 12 of that exhibit, that "The term
9 '*reasonably equal*' in the context of state legislative
10 districting refers to substantial equality of population
11 of districts, of particular type, in light of legitimate
12 considerations incident to the effectuation of a rational
13 state policy, consideration of other relevant factors and
14 interest important to and acceptable representation and
15 apportionment arrangement; and this should not result in
16 the deviation from ideal numerical equality except in
17 unusual circumstances by more than 1 percent, and in no
18 event, by more than 2 percent."

19 The Attorney General goes on to note on page 18
20 of our exhibit: "We have, nevertheless, expressed the
21 view that none of the California Constitution criteria
22 are inherently inconsistent with either the state or
23 federal parity standards we reiterate, particularly with
24 respect to legislative districting that mathematical
25 exactness in terms of population is not required."

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1 So it's not required under prior law, it's not
2 required under the voter proposition, and it is new to
3 the test-claim legislation imposing a new program.

4 We'd like to also add, finally, that we agree
5 with Commission staff finding that section 4 of the
6 test-claim statute, that's AB 632, Statutes of 2001,
7 Chapter 634(a), requires county election officials to
8 rely on detailed maps prepared by committees of the
9 Legislature pursuant to Election Code Section 21000.001
10 to determine the boundary line in the event that a census
11 tract or census block is not listed, listed more than
12 once, or is only partially accounted for, and it results
13 in -- a dispute arises regarding the location of a
14 boundary line.

15 But we disagree with staff -- and this is our
16 final point for you to consider this morning. We do
17 disagree with staff on their assertion that as a general
18 rule, counties need not follow these detailed maps on
19 sections 1 and 2.

20 We simply ask, why mandate the exception and
21 not the rule?

22 Thank you.

23 CHAIR BRYANT: Department of Finance, do you
24 have anything?

25 MR. ROMERO: Lorena Romero, for the Department

1 of Finance.

2 The Department of Finance concurs with the
3 Commission staff draft analysis to deny the test claim.

4 CHAIR BRYANT: Are there any questions or
5 comments from the members?

6 *(No response)*

7 CHAIR BRYANT: Is there a motion?

8 MEMBER WORTHLEY: Ms. Chairman, it seems that,
9 in reading the staff analysis, there was quite a lot of
10 weight put on the fact that there was no finding of those
11 incidents where you had a block that was partially there,
12 or something of that nature, and they had a series of
13 things that they talked about, and in going back and
14 finding that there was actually nothing hit that.

15 But your point, I guess, is that
16 notwithstanding that, there is a tremendous amount of
17 work involved in pursuing this new standard, regardless
18 of that particular issue.

19 Is that the point?

20 MR. KAYE: Commissioner Worthley, that is
21 exactly the point. But we go beyond that and say that --
22 if I may give you some other examples, where you have a
23 higher standard. It's not so much the cause or the
24 process or the methodology that was different or required
25 greater expense, it's the result.

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1 We achieved a higher standard of population
2 equality as a result of the test-claim statute than
3 previously before. It's this higher standard and just
4 the incremental cost in meeting this higher standard that
5 that we're asking for.

6 And so I think that when you're dealing with
7 this, there are other -- many other examples of where
8 this thing comes to mind. Firefighter clothing and
9 equipment. You know, a pair of pants is a pair of pants.
10 But a fire-retardant pair of pants is SB-90 reimbursable
11 but only for the increased cost in meeting the higher
12 standard. So I think there's many, many examples of
13 where a higher standard is a valid SB-90 test claim.

14 Thank you.

15 MEMBER WORTHLEY: Thank you.

16 CHAIR BRYANT: Ms. Olsen?

17 MEMBER OLSEN: Well, I'd just like to hear
18 staff's response.

19 MR. LOUIE: I think it's necessary to kind of
20 reframe what we're talking about here. Staff and the
21 Commission itself is limited by what has been pled.
22 And what has been pled is Statutes 2001, Chapter 348.

23 And Statutes 2001, Chapter 348, the first few
24 sections which lists the block description and tract
25 description of the Senate districts does not mandate any

1 activities. While there might be duties outside of
2 statutes 2001, chapter 348, the statutes that require
3 those duties have not been pled. So we cannot make
4 findings on those duties. They're outside of the statute,
5 and we can only make findings on the statute that has
6 been pled.

7 So it's been said in the analysis that we
8 haven't made any findings that claimants are not required
9 to do these activities, it's just that this statute does
10 not require these activities.

11 MEMBER OLSEN: So are you saying that the
12 claimants could come back with a new filing pleading
13 those? Or...

14 MR. LOUIE: At this point, I believe most of
15 those activities would be outside of the statute of
16 limitations to plead.

17 MR. KAYE: Okay, could I comment on that?

18 In July of 2003, the Commission issued us a
19 completeness letter. Now, in order to issue a
20 completeness letter, we had to demonstrate the specific
21 code sections that mandated -- purportedly mandated these
22 new activities or higher level of service.

23 And so in receiving that letter, that it was
24 complete, that we did plead all the statutory provisions
25 that were required to at least get a prima facie case

1 before you, we detrimentally relied on that letter. And
2 it wasn't until subsequent that we found out that, well,
3 maybe you didn't submit a complete claim.

4 CHAIR BRYANT: Ms. Shelton?

5 MS. SHELTON: The completeness review is not a
6 legal review. It's simply an administrative process to
7 determine if they've complied with the requirements of
8 filing a test claim.

9 At no point during the completeness review does
10 staff even look at what has been pled and get into the
11 substance or the merits of the claim. That's done on a
12 legal review when the draft staff analysis is issued.

13 CHAIR BRYANT: Any -- Mr. Louie?

14 MR. LOUIE: I'd also like to note that the
15 statement in regards to the fact that Statutes 2001 and
16 Chapter 348, and only Statutes 2001, 348, did not mandate
17 an activity, has been in our draft analysis beginning in
18 '07. So it's been put on notice that this statute does
19 not require those activities.

20 MR. KAYE: Right, four years later.

21 MR. LOUIE: Yes, yes. But even with that,
22 there was a chance to amend after the draft staff
23 analysis, so...

24 CHAIR BRYANT: Mr. Worthley?

25 MEMBER WORTHLEY: I was just going to say,

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1 justice delayed is justice denied. I mean, that's just
2 part of the problems we deal with here frequently, is
3 that our claims are so late when they come to us, that
4 we have a lot of statute-of-limitations problems for the
5 applicants which are, I think, unfortunate, but it's a
6 reality.

7 CHAIR BRYANT: Okay, is there a motion on this?
8 Any other questions or comments?

9 MEMBER LUJANO: Move approval.

10 CHAIR BRYANT: Is there a second?

11 MEMBER CHIVARO: Second.

12 CHAIR BRYANT: It's been moved and seconded.

13 Paula, can you call the roll?

14 MS. HIGASHI: Mr. Chivaro?

15 MEMBER CHIVARO: Aye.

16 MS. HIGASHI: Ms. Cox?

17 MEMBER COX: Aye.

18 MS. HIGASHI: Mr. Glaab?

19 MEMBER GLAAB: No.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: No.

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1 MS. HIGASHI: Ms. Bryant?

2 MEMBER BRYANT: Aye.

3 MS. HIGASHI: The motion carries.

4 MR. KAYE: Thank you.

5 MS. HIGASHI: Mr. Louie will present Item 5,
6 Proposed Statement of Decision.

7 MR. LOUIE: The only issue before the
8 Commission is whether the Proposed Statement of Decision
9 accurately reflects the Commission's decision on the
10 *Redistricting Senate and Congressional Districts* test
11 claim.

12 Staff will update the Final Statement of
13 Decision, reflecting the witnesses testifying and vote
14 count.

15 CHAIR BRYANT: Are there any comments from the
16 parties?

17 *(No response)*

18 CHAIR BRYANT: Is there a motion?

19 MEMBER CHIVARO: Move approval.

20 MEMBER LUJANO: Second.

21 CHAIR BRYANT: It's been moved and seconded.

22 Paula, can you call the roll?

23 MS. HIGASHI: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HIGASHI: Ms. Cox?

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1 MEMBER COX: Aye.

2 MS. HIGASHI: Mr. Glaab?

3 MEMBER GLAAB: No.

4 MS. HIGASHI: Mr. Lujano?

5 MEMBER LUJANO: Aye.

6 MS. HIGASHI: Ms. Olsen?

7 MEMBER OLSEN: Aye.

8 MS. HIGASHI: Mr. Worthley?

9 MEMBER WORTHLEY: Aye.

10 MS. HIGASHI: Ms. Bryant?

11 MEMBER BRYANT: Aye.

12 MS. HIGASHI: The motion is carried.

13 MR. KAYE: Thank you.

14 MS. HIGASHI: This brings us to Item 6, the
15 test claim on *California Environmental Quality Act*.

16 This item will be presented by Commission
17 Counsel Heather Halsey.

18 MS. HALSEY: Good morning.

19 This test claim addresses the activities
20 required of school districts and community-college
21 districts pursuant to the California Environmental
22 Quality Act, or CEQA, and related statutes and
23 regulations. The requirement to comply with CEQA is
24 triggered by the district's decision to acquire new
25 school sites or build new school facilities or addition

1 to new existing school facilities.

2 What is primarily at issue in this claim is the
3 following: Staff finds that the decisions to acquire
4 new school sites or build new school facilities or
5 additions to existing schools are discretionary
6 decisions, and that based on the analysis in *Kern*, the
7 downstream requirement to comply with CEQA is not
8 reimbursable.

9 Claimant disagrees that school districts are
10 not legally and practically compelled to build new
11 schools, and asserts that they are, thus, mandated to
12 comply with CEQA.

13 Staff recommends that the Commission adopt the
14 staff analysis to deny the test claim.

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

17 MR. PALKOWITZ: Good morning. Art Palkowitz on
18 behalf of the claimant.

19 MS. FEREBEE: Donna Ferebee, Department of
20 Finance.

21 CHAIR BRYANT: Mr. Palkowitz?

22 MR. PALKOWITZ: Thank you.

23 The test claim before you today, the *California*
24 *Environmental Quality Act*, often referred to CEQA, is a
25 process for evaluating the environmental effects on a

1 project.

2 If the initial study shows that the project may
3 have a significant effect on the environment, the lead
4 agency must prepare an environmental impact report.
5 This report would include significant environmental
6 impacts, which CEQA would then impose a substantial
7 requirement to adopt feasible alternatives or feasible
8 mitigation measures.

9 It's the Claimant's position that these type of
10 requirements under CEQA are mandated. They are mandated
11 based on numerous code sections in the Ed. Code.

12 First of all, the California Constitution
13 requires that students be housed and educated. Ed. Code
14 15700 clearly states that the education of the students
15 in California is an obligation of the state and,
16 therefore, classrooms are required to be provided for
17 education. Children are required to attend schools.

18 Based on these Ed. Code sections, there is
19 clearly a requirement that in order to have education,
20 in order for students to attend schools, we must build
21 schools.

22 Further, Ed. Code section 17576 requires
23 sufficient restrooms. It is challenging to have
24 restrooms without schools for students. It's also
25 required that they be provided a warm and healthful place

1 for children to learn.

2 Clearly, all of these code sections combined
3 indicate that schools are required for children.

4 The Commission staff has indicated in their
5 staff analysis that there is no mandatory requirement to
6 have schools.

7 It is difficult, if not impossible, to comply
8 with these sections without having a school. Although
9 one could say there is no legal requirement, as I'm not
10 able to find a code section that says that, there is a
11 practical compliance. And the Supreme Court of
12 California has held that practical compliance can
13 constitute a mandate.

14 K-12 schools do not have discretion to turn
15 kids away when they live in their geographical area.
16 They are compelled to accept schools. The only way we
17 can house the students that are in our area, is to build
18 new schools.

19 I would like to reserve some time for any
20 questions you might have.

21 CHAIR BRYANT: Ms. Ferebee?

22 MS. FEREBEE: Thank you.

23 The Department of Finance concurs with the
24 final staff analysis.

25 CHAIR BRYANT: Are there any questions or

1 comments from the Commission members?

2 Mr. Worthley?

3 MEMBER WORTHLEY: Madam Chairman, I recognize
4 and understand the staff analysis. I just think it flies
5 in the face of reality. And I know we are not a court of
6 equity, but I do think that the point has been well made,
7 school buildings are not discretionary in the sense that
8 if we have education, we have school buildings; and that
9 if you have to build a school building, you have to
10 comply today with CEQA. And so in my mind, this is not a
11 traditional type of discretionary act.

12 We had a case earlier where we were talking
13 about going after additional funding; so a school could
14 decide to elect to receive funding or not elect to
15 receive funding. If they did, they did to comply with
16 certain conditions. To me, that was a clearly
17 discretionary act.

18 The building of school buildings is so
19 fundamentally tied in to education that to call it
20 "discretionary," in my mind is beyond reality. It's
21 like -- it's a different kind of reality. It's not the
22 world. The world is, we build school buildings -- and
23 we don't build school buildings because we just want to
24 build them; we build them because we need to build them,
25 to house students so they can be educated.

1 So in this instance, I cannot agree with the
2 staff analysis on the issue of discretion. And if
3 there's not a rule to that end, and perhaps it takes
4 judicial determination, it would seem that where
5 something is so fundamentally tied to the mission and
6 purpose of a governmental entity, such as building a
7 school, much like educating a student, that is not a
8 discretionary act; that is something which is mandated,
9 at least in a practical sense, if not a legal sense; and,
10 therefore, that it would effectively address the issue
11 of discretionary act. And I think we all agree, if this
12 was not a discretionary act, this would qualify as an
13 unfunded mandate.

14 And it's not the end of the world because to
15 the extent that schools receive state funding, as I
16 understand the analysis, they receive funding to pay
17 towards this situation. And so we'd only begin talking
18 about the difference. If there's a cost of CEQA
19 compliance which exceeds that which the state pays, then
20 that would be the unfunded portion of that would need to
21 be made up by the state.

22 So I disagree with the analysis. I understand
23 it. I just think it doesn't apply to this set of facts.

24 CHAIR BRYANT: Ms. Halsey?

25 MS. HALSEY: Just to clarify, I think that

1 claimant is agreeing with counsel that there is no legal
2 compulsion, but that there is -- but still argues there's
3 practical compulsion; is that right?

4 MR. PALKOWITZ: Yes.

5 MS. HALSEY: And that may or may not be so.

6 There wasn't any evidence submitted in the
7 record about whether there was practical compulsion.
8 Practical compulsion requires evidence to be submitted by
9 districts to show that there are practical compulsions.
10 We have nothing in the record on that. And so that would
11 need to be submitted for the Commission to even make such
12 a finding.

13 CHAIR BRYANT: Any other questions, Mr. Glaab?

14 MEMBER GLAAB: Yes. Thank you, Madam Chair and
15 Members.

16 First of all, I want to commend staff for doing
17 such a tremendous job. This represents a lot of work.
18 I know it's very complete. I had an opportunity to read
19 it a few times. So you are to be commended.

20 But I think the testimony that is before us
21 today certainly resonated with me. And I think
22 Mr. Worthley's comments certainly are, in fact, a
23 reflection of the reality. We have to build these
24 schools. We can't have them out in tents, and they can't
25 be sitting out in the fields and other sorts of things.

1 So there is a practical compulsion here.

2 And so as well-written as the information here
3 is by staff, I do disagree with the conclusion that was
4 made here. And I will be voting accordingly.

5 Thank you.

6 MEMBER OLSEN: Madam Chair?

7 CHAIR BRYANT: Ms. Olsen?

8 MEMBER OLSEN: It seems to me that one thing
9 we're missing in the discussion, is this issue of when --
10 the dates: When CEQA was originally put into place and
11 the extent to which the laws that come after it are a
12 substantial modification of CEQA or simply implement CEQA
13 in the contemporaneous environment.

14 And I'd like staff and Mr. Palkowitz to speak
15 to that because I think that's a very telling point here.

16 MS. HALSEY: If I could, just briefly.

17 In the analysis, I do discuss the history of
18 CEQA, and that CEQA was enacted before 1975. And many of
19 the provisions pled and many of the requirements imposed
20 by CEQA would be pre-1975.

21 In the analysis, I don't really get into the
22 discussion of new program/higher level of service, since
23 we found that there were no required activities. So
24 if we found that there were required activities under
25 CEQA, we would then go on -- we would actually need to

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1 revisit the analysis to do that new-program/higher-level-
2 of-service for each required activity. And there have
3 obviously been several amendments to CEQA, but there were
4 several preexisting requirements that would predate 1975.

5 MEMBER WORTHLEY: Madam Chairman?

6 CHAIR BRYANT: Yes.

7 MEMBER WORTHLEY: Could that not be addressed
8 in the parameters and guidelines, however?

9 No? This would have to be a fundamental issue
10 in terms of determining what was the -- what predates
11 1975 and what would be the higher level of standard
12 that's required since then?

13 MS. SHELTON: Yes, the mandate issue, the
14 new-program/higher-level-of-service issue and the cost
15 mandated by the state issue all have to be determined at
16 the test claim phase because it's a question of law.

17 CHAIR BRYANT: Any other questions or comments?
18 Mr. Glaab?

19 MEMBER GLAAB: Thank you, Madam Chair and
20 Members.

21 Might it be a thought, Members, that we
22 consider putting this item over, asking the claimant to
23 come back with information on the practical-compulsion
24 issue at some point in time?

25 I just think that the information that was

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1 provided us certainly resonated with me. But I certainly
2 understand staff is hesitant in this regard; but maybe
3 we could review that and come back at a later time with
4 some of those practical items. That's just my thinking.

5 Thank you.

6 CHAIR BRYANT: Ms. Higashi, do you have any
7 thoughts on that?

8 MS. HIGASHI: We issued the draft at least
9 eight weeks before the hearing, and it has been out for
10 comment.

11 Actually, if you look at the chronology, it
12 will give you the exact date. It's been out for quite a
13 while.

14 CHAIR BRYANT: It's been out since
15 October 23rd.

16 MS. HIGASHI: The 23rd. And we have not
17 received any documentary evidence in response to that
18 draft. So that finding has not changed since the draft.

19 MEMBER WORTHLEY: Madam Chairman, to me, there
20 was also pleadings that -- and I refer to the statements
21 by counsel -- that there are other statutes that are pled
22 from which the implication is that school buildings must
23 exist because of obligations on schools -- to house
24 students, I believe.

25 Was that not the case?

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1 MS. HALSEY: No. No, there's no requirement to
2 establish a school district that I know of. But if there
3 is one established, you need to house the students in the
4 district, it's true. But you can house them in existing
5 schools, you can renovate existing schools, you can do
6 joint projects with parks and rec and other governmental
7 entities to house students. There's some other -- you
8 can have year-round school and other kinds of alternative
9 scheduling, so there's many ways to house schools besides
10 building new buildings.

11 MEMBER WORTHLEY: It sounds like we can
12 conserve our way out of our water problem.

13 MS. HALSEY: Let me just --

14 MEMBER WORTHLEY: The fact of the matter is
15 that, oftentimes, schools have to be replaced because
16 they are old, they don't meet seismic requirements, they
17 don't meet the needs of the District. And again, people
18 don't build buildings just to be building buildings, they
19 build them in relationship to a need. The need is
20 housing. When I need new housing, I need to build a new
21 school. And so I struggle with that type of an analysis
22 because, again, facts are sort of staring us in the face.
23 And I'm wondering about our ability to have judicial
24 notice of those kinds of things as a body.

25 MS. HALSEY: Well, there's one more point I

1 wanted to make -- and this is the hard one, really --
2 and it's that the question before the Commission is not
3 whether schools are needed, but it's really whether
4 school districts are legally compelled by a state statute
5 or regulation or practically compelled and, thus,
6 mandated by the state to comply with CEQA. In other
7 words, to build those new schools and comply with CEQA.
8 And we couldn't find anything in the law, really,
9 requiring that.

10 So we're not asserting that we don't need
11 schools or that it wouldn't be good to build schools or
12 that there isn't a number of publications out there
13 talking about the need for schools; but, rather, that
14 there's nothing in the law requiring it.

15 MEMBER WORTHLEY: I think we agreed upon the
16 fact that there is not a requirement to build schools.
17 The thing is, schools do have to be built. And once they
18 have to be built, now we have to comply with CEQA.
19 That's the mandatory portion of it.

20 And the issue is, if there is a practical
21 compulsion because we have to house students and we have
22 to build buildings to do that, then we get beyond this
23 issue of being a discretionary act.

24 I understand there are all kinds of options
25 available to people. But one -- sometimes you get to the

1 point, you don't have an option.

2 MS. HALSEY: Right. And that's what we're
3 saying, there's been no evidence submitted in the record
4 regarding that, to show the practical compulsion.

5 CHAIR BRYANT: Ms. Shelton?

6 MS. SHELTON: Let me just clarify a couple of
7 things. These are issues obviously that we've been
8 struggling with in the office. It really started with
9 that *Department of Finance v Commission on State Mandates*
10 POBOR case recently that came out, where we were taking
11 along the same line. Just, obviously, there's been tons
12 of evidence of crime on school districts, and certainly
13 the Legislature recognized them and gave them the
14 authority to retain and hire peace officers.

15 And so certainly -- and then based on
16 statements made by the U.S. Supreme Court that, you know,
17 peace officers hired by a school district are necessary,
18 and used those facts to assert that there was a practical
19 compulsion for them to retain their own peace officers
20 and then comply with the downstream requirements.

21 That is what you're doing here, too; except the
22 Court said you can't do that.

23 When you're having an issue of practical
24 compulsion and there's an allegation that we have to
25 build a new school -- which the law says is the school

1 district's decision of when to do that, when and if to do
2 that. If you have that allegation, you need to have
3 evidence in the record that that was something that they
4 were practically compelled to do.

5 And we're not suggesting that they're not
6 required to house the students. Certainly they are. We
7 don't have the evidence.

8 If this case is litigated under Government
9 Code section 17559, the Court is going to look to see if
10 there's substantial evidence in the record. And here,
11 just like the POBOR case, there isn't any. And that's
12 the problem.

13 CHAIR BRYANT: Mr. Palkowitz, do you have
14 any --

15 MR. PALKOWITZ: I guess, first of all, we
16 submitted comments on November 12th. The claimant did.
17 I don't see that in the list. But I just wanted to
18 comment, there has been comments issued since their
19 analysis.

20 MS. HALSEY: It's in there.

21 MS. SHELTON: It's the last one.

22 CHAIR BRYANT: November 12th, claimant
23 submitted comments on the staff draft analysis.

24 MR. PALKOWITZ: I guess I don't see that in the
25 chronology.

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1 MS. HALSEY: It should be there. We discussed
2 the comments on page 5.

3 MS. HIGASHI: Page 5.

4 MEMBER OLSEN: It's on page 5. It's the very
5 last one.

6 MS. SHELTON: It's right here. 11/12.

7 MS. HALSEY: Yes, 11/12 on page 5.

8 MR. PALKOWITZ: What page --

9 MS. SHELTON: You might be looking at the draft
10 rather than the final.

11 MR. PALKOWITZ: Oh, okay. Very good.

12 I apologize.

13 Okay, the other point of the practical
14 compulsion and evidence of what that would be, first of
15 all, I think the code sections that I commented are there
16 to show that there would be practical compulsion in order
17 to have restrooms, in order to house students, in order
18 to educate them, in order to provide a healthful, warm
19 place for that.

20 I am very amiable to the suggestion of putting
21 off that matter, and we will provide additional
22 consequences that would show that I believe practical.
23 We would show that schools could be taken over by the
24 state for not providing for the students, that the
25 governing board has obligations to house students that

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1 are in their geographical area.

2 So I would like to respond and get you the
3 opportunity to respond and provide additional information
4 that I believe will show that there is practical
5 compulsion.

6 CHAIR BRYANT: Ms. Shelton?

7 MS. SHELTON: We have all the law in the
8 record, and we've considered all the law. So what would
9 be required, would be a showing of factual evidence
10 submitted under penalty of perjury or testimony under
11 penalty of perjury that the District was practically
12 compelled during the period of reimbursement to build a
13 new school building or do substantial remodeling of a
14 building during that time period. That would be
15 required.

16 MR. PALKOWITZ: We would like that opportunity
17 to present that to the Commission.

18 CHAIR BRYANT: Commissioner Lujano, did you
19 have any --

20 MEMBER LUJANO: No. It's a good idea.

21 CHAIR BRYANT: Ms. Ferebee?

22 MS. FEREBEE: Yes. Thank you.

23 I would just like to say that Finance doesn't
24 believe that the standard for practical compulsion has
25 been met, and that we would urge you to adopt the staff

1 recommendation as it's written. And I think it does an
2 excellent job of going through each component and also
3 showing how there are a number of other mechanisms for
4 the schools to use.

5 And I don't believe that if you hold it over,
6 that you would see any additional evidence of practical
7 compulsion.

8 Certainly if it hasn't been submitted yet, I
9 don't think that you would see anything more that would
10 meet that very difficult threshold standard to meet. And
11 so we would urge that you adopt this.

12 CHAIR BRYANT: I think that's what bothers me
13 about all this is because, you know, obviously, this is
14 my first day as chair of the Mandates Commission, but I
15 have been sitting in this seat for the last three years.
16 And, you know, there's a schedule, there's the arguments
17 that the claimants are making. And every time we put
18 one of these off, it just further delays it. And we
19 get into the situation where we're considering a
20 redistricting mandate at the same time we're about ready
21 to do the census for the next redistricting ten years,
22 11 years later. So I'm prepared to support the staff
23 analysis as it's currently drafted.

24 I'm sensing I may not have that much shared
25 view on that on this panel.

1 And I think that when staff goes back and they
2 look, we have to have evidence on the practical mandate
3 issue; and then I think we'd see that CEQA existed prior,
4 and probably isn't a mandate. And we get into that
5 argument, and we'd probably come back with the same
6 result.

7 I don't know how you feel about that,
8 Ms. Halsey, where you think we land.

9 MS. SHELTON: It would just take a lot longer
10 to do that analysis, because we're talking about over a
11 hundred code sections and regulations. And to do
12 the whole leg. history on each individual section and
13 would take a lot longer. We wouldn't be able to bring
14 this back in March or May. It would be a year from now
15 to do a new-program/higher-level-of-service, which we'd
16 be happy to do if that's the desire of the Commission.

17 CHAIR BRYANT: And one thing, too, is I was --
18 there's the question, the OPR guidelines, and whether or
19 not that's alive. So I'm assuming, is there any way that
20 we can get some of this off the table today? Or is the
21 only option in front of us to go all the way back and
22 start at the beginning? Is there any way to divide the
23 question a little bit to create less work, less time?

24 Yes?

25 MR. PALKOWITZ: If I may respond to that.

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1 So staff under -- there's several issues before
2 this Commission on this.

3 What the claimant is trying to focus on, would
4 be the issue that deals with new schools, not with the
5 maintenance or emergency repairs or the Items A and B;
6 rather, Item C.

7 Now, Item C includes statutes subsequent to
8 1976, and also is what the basis of our "practical
9 compulsion" argument is. So that would be the area we
10 would want, and ask for additional time to submit this.

11 Although I am very cognizant of the long period
12 of time it takes to get here; however, the law is
13 evolving during those five, six years, too. And I think
14 for us to take a few more months to deal with that one
15 issue would be reasonable.

16 CHAIR BRYANT: Any thoughts from the
17 Commission?

18 *(No response)*

19 CHAIR BRYANT: Is there a motion?

20 MS. SHELTON: Can I?

21 CHAIR BRYANT: Yes.

22 MS. SHELTON: On the issue of bifurcation, I
23 think that could be a little troublesome because we don't
24 know how that's going to work out when we do further
25 analysis. I think if you're going to want to continue

1 it, you need to continue the whole thing.

2 Certainly comments that come in from
3 Mr. Palkowitz and his clients can be limited to that
4 issue, and further analysis can be limited to that issue.
5 But I hesitate to recommend a bifurcation when I don't
6 really know how that would affect the other portions.

7 MEMBER WORTHLEY: I don't think he actually
8 indicated or said "bifurcation." I didn't hear him say
9 that, but I think the idea that he is going to focus on a
10 particular part of the -- a limited portion of the claim.

11 MS. SHELTON: Right.

12 MEMBER WORTHLEY: Obviously, our staff can
13 respond to that only, and not necessarily have to do an
14 exhaustive study of all the various statutes.

15 MS. SHELTON: Right.

16 MEMBER WORTHLEY: I would move that we continue
17 this matter to a date uncertain, because it would take
18 some time for this to happen, and give the opportunity
19 for the claimant to amend their pleadings as to the issue
20 of practical compulsion.

21 And then I suppose the staff would have to
22 analyze the issue in terms of if we assume that they've
23 got to the practical-compulsion claim, they would have to
24 look at CEQA to determine to what extent the CEQA law has
25 been amended or require a higher level of service, which

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1 would be the portion that would be subject to the
2 reimbursement.

3 MS. SHELTON: Correct.

4 MEMBER GLAAB: And I'd like to second that.

5 And I would just also want to convey to staff
6 that I'm extremely sensitive to workload and the fact
7 that we have kind of drug these out for such a long
8 period of time. So I am very sensitive to that. But
9 on the issue, I just believe that we need to give the
10 claimant just a little more time to make a
11 practical-compulsion argument. So I'll be seconding
12 that motion.

13 CHAIR BRYANT: We have a motion and a second.

14 Is there -- Paula, can you call the roll?

15 MS. HIGASHI: Certainly.

16 Ms. Cox?

17 MEMBER COX: Aye.

18 MS. HIGASHI: Mr. Glaab?

19 MEMBER GLAAB: Aye.

20 MS. HIGASHI: Mr. Lujano?

21 MEMBER LUJANO: Aye.

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

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1 MS. HIGASHI: Mr. Chivaro?

2 MEMBER CHIVARO: Aye.

3 MS. HIGASHI: Ms. Bryant?

4 MEMBER BRYANT: No.

5 MS. HIGASHI: The motion is --

6 CHAIR BRYANT: Me voting, it seems to happen to
7 me a lot here --

8 MS. HIGASHI: The motion is carried.

9 MEMBER WORTHLEY: Mr. Sheehy would be proud.

10 CHAIR BRYANT: I just want to make one quick
11 comment on that since chances are strong that I will not
12 get to hear this matter again.

13 I thought the staff analysis was so well done,
14 I think that you could literally lift your CEQA
15 discussion and put it in a primer on CEQA. I thought it
16 was really, really well done.

17 MEMBER WORTHLEY: I was going to make the same
18 comment. It was like a great primer on CEQA analysis.
19 And I'm dealing with CEQA all the time in local
20 government. It was a great review for me. I appreciate
21 it. Thank you.

22 MR. PALKOWITZ: I would echo that. It will
23 help me when I speak to the people in my district who
24 know this inside-out, to have a good understanding, so...

25 MS. SHELTON: Let me just say that Heather had

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1 firsthand experience with CEQA in private practice before
2 coming to the Commission. So, thankfully, we have her on
3 staff.

4 MS. HIGASHI: I'd like to ask the parties to
5 this case to meet with us after the hearing so we can
6 talk about submittal times.

7 MR. PALKOWITZ: Thank you.

8 CHAIR BRYANT: Okay, Paula, we skip Item 7, I
9 guess.

10 MS. HIGASHI: So we skip 7.

11 Items 8 and 9 are postponed at the request of
12 the claimant.

13 And this brings us to Item 10, which is the
14 test claim on the *Mandate Reimbursement Process II*. And
15 this item will be presented by Chief Legal Counsel
16 Camille Shelton.

17 MS. SHELTON: This test claim is on remand
18 from the Court in the *California School Board Association*
19 *v. State of California* case, and addresses statutes and
20 regulations which amended the test-claim process for
21 seeking reimbursement for state-mandated costs under
22 Article XIII B of the California Constitution.

23 Based on the Court's decision in *CSBA*, staff
24 finds that Government Code Section 17553 and Section 1183
25 of the Commission's regulations mandate a new program or

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1 higher level of service on school districts and local
2 agencies for the new activities required when filing a
3 test claim or a test-claim amendment.

4 Staff further finds that the exception to
5 reimbursement in Government Code section 17556,
6 subdivision (f), does not apply to deny this claim.

7 Staff recommends that the Commission adopt the
8 staff analysis and approve the test claim for the
9 activities listed beginning on page 23 of the executive
10 summary.

11 Will the parties and their witnesses please
12 state their names?

13 MR. EVERROAD: Glen Everroad, City of Newport
14 Beach.

15 MS. GMUR: Juliana Gmur on behalf of the City
16 of Newport Beach.

17 MR. CAROSONE: Jeff Carosone, Department of
18 Finance.

19 MS. FEREBEE: Donna Ferebee, Department of
20 Finance.

21 MS. ROMERO: Lorena Romero, Department of
22 Finance.

23 CHAIR BRYANT: Ms. Gmur, Mr. Everroad?

24 MS. GMUR: Thank you. Good morning,
25 Commissioners.

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1 Before I launch into what is going to be an
2 extremely brief comment on the issue pending, I'd like
3 to compliment staff on their work. Specifically,
4 Ms. Shelton has put together a very elegant analysis that
5 you have before you today.

6 Also before you today is comments that were a
7 late filing by the California School Boards Association
8 dated January 28th, 2010.

9 The City of Newport Beach concurs with the CSBA
10 and joins with them to support staff analysis. And we
11 urge its adoption today.

12 Thank you.

13 CHAIR BRYANT: The Department of Finance?

14 MS. ROMERO: The Department of Finance agrees
15 with some portions of the staff analysis, that
16 sections 17557 and 17564 of the Government Code, and
17 sections 1183.13 of the Commission's regulations as
18 amended by the test-claim statutes do not constitute a
19 state reimbursable mandate.

20 However, we do not agree with the Commission
21 staff analysis that section 17553, subdivisions (b)(1)(C)
22 through (G) and (b)(2) impose state-mandated
23 reimbursable activities.

24 We believe that the mandate reimbursement
25 process is absolutely necessary to implement the

1 subvention of funds required by the voter-approved
2 measure, Proposition 4. Without a process, the State
3 could not identify costs and ensure that the amounts
4 reimbursed to local agencies is accurate.

5 That being said, we also do not agree with the
6 staff analysis that the constitutional provision should
7 have to require activities of the local agencies to
8 participate in the process.

9 Additionally, Finance does not believe that the
10 amendments to Government Code section 17553, subdivision
11 (b)(1)(C) impose new programs or higher level of service.
12 Certain of the items within these sections were
13 previously required under other statutes.

14 The regulations -- previous regulations had
15 some of the requirements. Specific requirements of those
16 were the increased cost which must be identified in the
17 written narratives. Those were previously in the
18 regulations and also actuary estimated annual costs which
19 were incurred.

20 The other sections, we think, do not impose a
21 higher level of service or a new program and are
22 de minimis if solely the information as provided.

23 CHAIR BRYANT: Okay, thank you.

24 Does anybody else have any comments at the
25 table?

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1 Did you have a question?

2 MEMBER CHIVARO: No.

3 CHAIR BRYANT: Any other questions or comments
4 from the panel?

5 MEMBER WORTHLEY: I move the staff analysis
6 recommendation.

7 MEMBER CHIVARO: I'll second.

8 CHAIR BRYANT: There's been a motion and a
9 second.

10 Paula, can you call the roll?

11 MS. HIGASHI: Mr. Glaab?

12 MEMBER GLAAB: Aye.

13 MS. HIGASHI: Mr. Lujano?

14 MEMBER LUJANO: Aye.

15 MS. HIGASHI: Ms. Olsen?

16 MEMBER OLSEN: Aye.

17 MS. HIGASHI: Mr. Worthley?

18 MEMBER WORTHLEY: Aye.

19 MS. HIGASHI: Mr. Chivaro?

20 MEMBER CHIVARO: Aye.

21 MS. HIGASHI: Ms. Cox?

22 MEMBER COX: Aye.

23 MS. HIGASHI: Ms. Bryant?

24 MEMBER BRYANT: Aye.

25 MS. HIGASHI: The motion is carried.

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1 Item 11 is the Proposed Statement of Decision.
2 Ms. Shelton will present this.

3 MS. SHELTON: Staff recommends that the
4 Commission adopt the Proposed Statement of Decision that
5 reflects the staff recommendation on this test claim.
6 The Proposed Statement of Decision begins on page 3.

7 CHAIR BRYANT: Are there any --

8 MEMBER OLSEN: I'll make the motion.

9 CHAIR BRYANT: We have a motion.

10 Is there a second?

11 MEMBER CHIVARO: Second

12 CHAIR BRYANT: Paula, can you call the roll.

13 MS. HIGASHI: Who made the motion? I didn't --

14 MEMBER OLSEN: (*Indicating.*)

15 CHAIR BRYANT: Ms. Olsen.

16 MS. HIGASHI: Ms. Olsen? Okay.

17 Mr. Lujano?

18 MEMBER LUJANO: Aye.

19 MS. HIGASHI: Ms. Olsen?

20 MEMBER OLSEN: Aye.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Yes.

23 MS. HIGASHI: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MS. HIGASHI: Mr. Cox -- Ms. Cox?

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1 MEMBER COX: My dad's not here.

2 MS. HIGASHI: I'm sorry. I'm going to do this
3 for a while. I'm sorry.

4 MEMBER COX: That's all right.

5 MS. HIGASHI: Ms. Cox and Mr. Glaab?

6 MEMBER COX: Aye.

7 MEMBER GLAAB: Aye.

8 MS. HIGASHI: And Ms. Bryant?

9 CHAIR BRYANT: Aye.

10 MS. HIGASHI: I guess I owe you lunch.

11 MEMBER WORTHLEY: You can call me "Mrs." if you
12 buy lunch.

13 MS. FEREBEE: Thank you, Commissioners. Thank
14 you very much.

15 MS. HIGASHI: This brings us to Item 15.

16 This item will be presented by Assistant
17 Executive Director Nancy Patton.

18 There are Part A and Part B, two different
19 programs.

20 MS. PATTON: Good morning.

21 Part A involves the parameters and guidelines
22 for the *Collective Bargaining and Collective Bargaining*
23 *Agreement Disclosure Program*.

24 This is one of 49 requests filed by the State
25 Controller's Office to amend the parameters and

1 guidelines to add language regarding source documentation
2 and record-retention requirements.

3 There was no opposition to including similar
4 amendments to the parameters and guidelines that were
5 adopted earlier on the Consent Calendar. However, there
6 is opposition to amending the *Collective Bargaining*
7 parameters and guidelines.

8 On October 14th, 2009, the petitioners in the
9 *Clovis Unified School District v State Controller* case
10 filed comments objecting to the SCO-requested amendments
11 because the proposed language is unrealistic and
12 inconsistent with the day-to-day operations of school and
13 community-college districts.

14 The *Clovis* case involves a challenge by school
15 districts and community-college districts on reductions
16 made by the State Controller's Office to reimbursement
17 claims for several mandated programs. The districts
18 argue that reductions made on the ground that school
19 districts do not have contemporaneous source documents
20 are invalid.

21 In 2009, the trial court issued a judgment
22 holding that the Controller has no authority to reduce
23 a claim on the ground that a claimant did not maintain
24 contemporaneous source documents absent statutory or
25 regulatory authority to require contemporaneous source

1 documents or language in the parameters and guidelines
2 requiring it.

3 This case is pending in the Third District
4 Court of Appeal.

5 Opponents recommend the Commission postpone
6 this matter until the Court fully resolves the issue.

7 The opponents submitted a letter on
8 January 14th, stating that they would not be appearing at
9 this hearing; and requested that the Commission fully
10 consider their arguments in their October 14th letter;
11 and that it be made a part of the record.

12 Staff finds that the parameters and guidelines
13 for the *Collective Bargaining/Collective Bargaining*
14 *Agreement Disclosure Program* should be amended to insert
15 the requested language because it would conform the
16 parameters and guidelines for this program with the
17 parameters and guidelines adopted for other programs, and
18 is consistent with Section 1183.1 of the Commission's
19 regulations. Therefore, staff included the language
20 requested by the SCO.

21 Staff recommends that the Commission adopt the
22 SCO's proposed amendments to the parameters and
23 guidelines for this program.

24 Will the parties please state your names for
25 the record?

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

3 MR. SPANO: Jim Spano, State Controller's
4 Office.

5 CHAIR BRYANT: Mr. Spano, Ms. Geanacou, who
6 would like to speak?

7 MS. GEANACOU: Susan Geanacou for Finance.

8 I just wish to echo our written comments filed,
9 I believe, earlier this month, that we support the
10 proposed amendments to the P's & G's.

11 CHAIR BRYANT: Mr. Spano?

12 MR. SPANO: The State Controller's Office
13 supports the Commission's final staff analysis and
14 related recommendation.

15 As noted by the Commission, the proposed
16 language for source documentation and record retention
17 is the same language as in the parameters and guidelines
18 adopted by the Commission since 2003 for other
19 state-mandated cost programs.

20 The Commission has properly amended many other
21 parameters and guidelines to include the updated source
22 documentation rule. The *Collective Bargaining* and
23 *Intradistrict Attendance* program should be no different.

24 The requirement to maintain contemporaneous
25 source document records to support costs claimed we

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1 believe is neither unrealistic nor inconsistent with
2 day-to-day operation of schools and community colleges.

3 Districts are required to support its costs
4 with sufficient competent evidential matter for its many
5 state and federal programs. Such requirement is
6 consistent with the guidance provided by the California
7 Department of Education in its California School
8 Accounting Manual, and principles and standards
9 applicable to federal funds prescribed in a Code of
10 Federal Regulations also known as Office of Management
11 Budget, Circular A87 and A21.

12 And finally, we believe the litigation has
13 no impact on the Commission in meeting the parameters
14 and guidelines for the *Collective Bargaining* and
15 *Intradistrict Attendance* program.

16 In fact, the Superior Court peremptory writ of
17 mandate dated February 19th, 2009, states that many of
18 the parameters and guidelines is one of three options to
19 validate contemporaneous source document rules for the
20 *Collective Bargaining* and *Intradistrict Attendance*
21 program.

22 CHAIR BRYANT: Thank you.

23 Are there any questions or comments from the
24 Commission?

25 MEMBER CHIVARO: Move approval of staff

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1 recommendation.

2 MEMBER OLSEN: Second.

3 CHAIR BRYANT: It's been moved and seconded.

4 Paula, can you call the roll?

5 MS. HIGASHI: Mr. Lujano?

6 MEMBER LUJANO: Aye.

7 MS. HIGASHI: Ms. Olsen?

8 MEMBER OLSEN: Aye.

9 MS. HIGASHI: Mr. Worthley?

10 MEMBER WORTHLEY: Aye.

11 MS. HIGASHI: Mr. Chivaro?

12 MEMBER CHIVARO: Aye.

13 MS. HIGASHI: Ms. Cox?

14 MEMBER COX: Aye.

15 MS. HIGASHI: Mr. Lujano?

16 MEMBER LUJANO: Aye.

17 MS. HIGASHI: Mr. Glaab?

18 MEMBER GLAAB: Aye.

19 MS. HIGASHI: Ms. Bryant?

20 CHAIR BRYANT: Aye.

21 MS. HIGASHI: Thank you.

22 CHAIR BRYANT: The motion carries.

23 MS. HIGASHI: And then we have B.

24 MS. PATTON: The issue here is identical to the
25 previous item on *Collective Bargaining*. This is one of

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1 49 requests filed by the State Controller's Office, in
2 this case, to amend the parameters and guidelines for the
3 *Intradistrict Attendance* program.

4 The petitioners in the *Clovis* case are also
5 opposed to amending this set of parameters and
6 guidelines. Opponents recommend the Commission postpone
7 this matter until the Court fully resolves the issue.

8 The January 14th letter filed by opponents
9 pertains also to this item. And staff is recommending
10 that we amend the parameters and guidelines for the
11 *Intradistrict Attendance* program.

12 CHAIR BRYANT: Do you have anything to add or
13 can we assume your previous comments all flow here?

14 MR. SPANO: It would be the same response as
15 the first one.

16 MEMBER CHIVARO: I move the staff
17 recommendation.

18 MEMBER COX: Second.

19 CHAIR BRYANT: Okay, it's been moved and
20 seconded.

21 Paula, can you call the roll?

22 MS. HIGASHI: Ms. Olsen?

23 MEMBER OLSEN: Aye.

24 MS. HIGASHI: Mr. Worthley?

25 MEMBER WORTHLEY: Aye.

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1 MS. HIGASHI: Mr. Chivaro?

2 MEMBER CHIVARO: Aye.

3 MS. HIGASHI: Ms. Cox?

4 MEMBER COX: Aye.

5 MS. HIGASHI: Mr. Glaab?

6 MEMBER GLAAB: Aye.

7 MS. HIGASHI: Mr. Lujano?

8 MEMBER LUJANO: Aye.

9 MS. HIGASHI: And Ms. Bryant?

10 CHAIR BRYANT: Aye.

11 MS. HIGASHI: The motion is carried.

12 CHAIR BRYANT: And, again, on this item to
13 Ms. Patton, great work on all these and all the
14 amendments that were in the Consent Calendar.

15 MS. PATTON: Thank you.

16 CHAIR BRYANT: I know your staff worked really
17 hard to get that done, so thank you.

18 MS. HIGASHI: Item 18 is postponed.

19 Item 20, we have no County applications to
20 consider.

21 And Item 21, Ms. Patton will give a leg update.

22 MS. PATTON: We have three bills so far this
23 year. Two were introduced last year. One is new. It
24 was introduced in January, I believe.

25 AB 349 would require the Department of Finance

1 to provide the Legislature with all proposed statutory
2 changes necessary to repeal any local agency mandates
3 proposed for suspension in the Governor's budget, and
4 include each affected section of law. The bill would not
5 go into effect until January 2012.

6 The author introduced the bill because he is
7 concerned that there are over two dozen mandates that
8 have been suspended for at least three years, ten of
9 which have been suspended for at least 18 years. The
10 bill is supported by local government and peace-officer
11 associations.

12 There is no known opposition to the bill.
13 However, last year, the Legislature rejected a budget
14 trailer bill that would have repealed numerous suspended
15 mandates because they believe that repeal of mandates
16 should be decided in policy committee. So this bill
17 could face the same opposition from the Legislature.
18 It's pending in Senate budget and fiscal review
19 committee. It's had no hearings yet.

20 The second bill is AB 548. This bill would
21 lengthen the period in which a reimbursement claim for
22 actual costs would be subject to an initiation of an
23 audit by the State Controller from three to four years
24 after the date that the actual reimbursement claim is
25 filed or amended; and it would eliminate the State

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1 Controller's authority to extend the audit period when
2 funds are not appropriated or no payment is made to a
3 claimant.

4 This bill is sponsored by several school
5 district and local agency associations and the State
6 Controller -- or it's supported by the State Controller
7 and it is opposed by the Department of Finance. It's
8 pending on the Senate floor. It has been there for a
9 while.

10 AB 917 is the new bill just introduced. The
11 Administration and Legislature have deferred payment for
12 school-district mandates by funding each mandate with
13 \$1,000. And this is different than when they suspend the
14 local government mandates.

15 School officials challenged this practice in
16 Court, and the Court found that the California
17 Constitution requires the State to budget full
18 reimbursement of local governments for the cost of state
19 mandates, and ordered the State to fully fund mandates
20 in the future. The State has appealed this decision, and
21 it is pending in the Fourth District Court of Appeal.

22 This bill would require the State, commencing
23 with the '09-10 fiscal year, to either fully fund
24 school-district mandates or suspend them, and would
25 authorize the State to recommend mandates for years prior

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1 to the 2009-10 or over a five-year period.

2 This bill attempts to address the recent court
3 decision. It may not be necessary. The Governor's
4 proposed budget for 2010-11 already suspends the school
5 district mandates. So I'm not sure that it's necessary.

6 There's no known support or opposition at this
7 time, and it's pending in the Assembly education
8 committee.

9 I will keep you briefed as they move along.

10 CHAIR BRYANT: Thank you.

11 MS. HIGASHI: Item 22, Chief Legal Counsel's
12 report.

13 MS. SHELTON: As you can see, there's really
14 nothing new to report. The only change here has been the
15 hearing date for the *Behavior Intervention Plan* case has
16 been moved to December 2010.

17 We have been putting on our cases of interest,
18 the *Clovis* case. The briefing has been complete on that.

19 We did just get word this week from the Court that the
20 California School Boards Association has applied to file
21 an amicus brief. So if the Court accepts that, then
22 there will be some further briefing before they set a
23 hearing date. And we'll continue to keep you informed on
24 that case.

25 CHAIR BRYANT: Thank you.

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1 MS. HIGASHI: Item 23, my report.

2 I just wanted to call attention to our pending
3 workload, what it looks like. And we continue to reduce
4 the number of test claims. And we hope to see our
5 reduction continue very actively through this year.

6 Also note that today you've made a substantial
7 dent in the Proposed Parameters and Guidelines
8 amendments.

9 And I'd also like to acknowledge the work done
10 by Nancy Patton and her team, namely Heidi Palchik, Jason
11 Rogers, Lorenzo Duran, and Kerry Ortman. All the work
12 that they did in pulling records, scanning records,
13 writing amendments, and putting together everything that
14 had to be done, as well as uploading all these items on
15 the Web site. And so I think we need to thank all of
16 them very much for their hard work.

17 CHAIR BRYANT: Thank you, again.

18 MS. HIGASHI: I'd also just like to introduce
19 Jeff Carosone. He is, as some of us have said, he is the
20 "new Carla" from the Department of Finance. He is now
21 working on the Mandates program.

22 Jeff, would you like to --

23 MR. CAROSONE: Sure.

24 Hi, my name is Jeff Carosone; and I'm replacing
25 Carla Castañeda as the principal on the Mandates

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1 assignment. I'd like to take this opportunity to thank
2 Carla for her years on the Mandates assignment, and
3 congratulate her and wish her luck on her new assignment
4 within Finance. She has transferred to a different unit
5 in Finance. And I realize I have big shoes to fill, but
6 I'm up for the challenge, so it's nice to meet all of
7 you.

8 MS. HIGASHI: Thank you.

9 CHAIR BRYANT: Thank you.

10 Jeff used to do the OPR budgets, so we have a
11 long relationship. Anyway, so we can learn this
12 together. Thank you.

13 MS. SHELTON: We promise we won't call you the
14 "new Carla" very long.

15 MR. CAROSONE: Thank you.

16 CHAIR BRYANT: And I don't want to be called
17 the "new Tom," either.

18 MS. HIGASHI: We never called you that.

19 I have only a couple things I just wanted to
20 note. There is information from the Governor's budget
21 that's been excerpted here. I have nothing to add to
22 this other than to say that we continue to watch our
23 e-mails as we receive e-mails from the Department of
24 Finance, new budget letters. We're sorting through the
25 meaning of all of these different budget drills and how

1 they will effect the Commission's budget because of
2 different cuts and proposed cuts that will need to be
3 made.

4 The Commission has filed its report to the
5 Legislature for approved mandates. We will soon be
6 filing one on the denied mandates from last year.

7 The tentative agendas for our next two meetings
8 are listed on the following pages of the agenda -- I
9 should say, on pages 3, 4, and 5.

10 As you can see, it's, again, a very ambitious
11 agenda with a lot of items. And we'll be moving the
12 *Clean Restrooms* test claim to the March agenda. So don't
13 forget what you've read.

14 CHAIR BRYANT: Okay.

15 MS. HIGASHI: And we have more P's & G's
16 amendments.

17 And also, I'd like to note that since you've
18 approved the rulemaking calendar for this year, that in
19 March we will be scheduling a workshop to meet with all
20 the parties to go over staff's first draft of proposed
21 cleanup amendments to our regulations. And we'll work
22 with the various parties and their associations to
23 schedule a time and place that will be compatible with
24 their meeting schedules. But that will be happening for
25 us in March also.

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1 If commissioners have amendments they would
2 like to identify for us or propose to us, we're certainly
3 open to getting those thoughts from you now.

4 CHAIR BRYANT: Okay.

5 MS. HIGASHI: Are there any questions about
6 anything?

7 CHAIR BRYANT: Thank you.

8 Is there any public comment on anything?

9 *(No response)*

10 CHAIR BRYANT: Okay, then we're going to
11 adjourn to closed executive session.

12 The Commission will meet in closed executive
13 session pursuant to Government Code section 11126,
14 subdivision (e), to confer with and receive advice from
15 legal counsel for consideration and action, as necessary
16 and appropriate, upon the pending litigation listed on
17 the published notice and agenda; and to confer with and
18 receive advice from legal counsel regarding potential
19 litigation.

20 The Commission will also confer on personnel
21 matters and a report from the personnel subcommittee
22 pursuant to Government Code sections 11126,
23 subdivision (a).

24 We will reconvene in open session in
25 approximately 15 minutes.

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1 *(The Commission met in closed executive*
2 *session from 10:42 a.m. to 11:14 a.m.)*

3 CHAIR BRYANT: Okay, the Commission met in
4 closed executive session pursuant to Government Code
5 section 11126, subdivision (e), to confer with and
6 receive advice from legal counsel for consideration and
7 action, as necessary and appropriate, upon the pending
8 litigation listed on the published notice and agenda and
9 potential litigation; and to confer on personnel matters
10 and report from the Personnel Subcommittee published on
11 the published notice and agenda pursuant to Government
12 Code section 11126, subdivision (a)(1).

13 The Commission will reconvene in open session.

14 So we have no further business to discuss. I
15 will entertain a motion to adjourn.

16 MEMBER CHIVARO: So moved.

17 MEMBER COX: Second.

18 CHAIR BRYANT: All those in favor?

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

20 CHAIR BRYANT: The meeting is adjourned.

21 *(Gavel sounded.)*

22 *(The meeting concluded at 11:15 a.m.)*

23 --oOo--

24

25

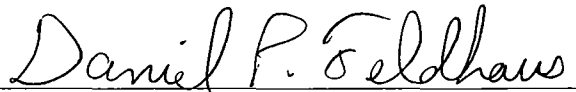
REPORTER'S CERTIFICATE

I hereby certify:

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

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

In witness whereof, I have hereunto set my hand on February 16th, 2010.



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