

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
March 29, 2007

- Present:** Member Michael Genest, Chairperson
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 Cynthia Bryant
Director of the Office of Planning and Research
Member J. Steven Worthley
County Supervisor
Member Sarah Olsen
Public Member
- Absent:** Member Paul Glaab
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Genest called the meeting to order at 9:32 a.m.

APPROVAL OF MINUTES

Item 1 January 25, 2007

Member Worthley made a motion to adopt the January 25, 2007 hearing minutes. With a second by Member Olsen, the motion carried unanimously.

PROPOSED CONSENT CALENDAR

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

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

- Item 9 Amendment to Parameters and Guidelines to Correct Reimbursement Period
Removal of Chemicals, 06-PGA-01
Education Code Section 49411
Statutes 1984, Chapter 1107 (AB 3820)
As Amended by Statutes 1994, Chapter 840 (AB 3562)

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2, DIVISION 2, CHAPTER 2.5 (action)

- Item 10 Adoption of Proposed Regulatory Action – Incorrect Reduction Claim Process
Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Article 5. Incorrect Reduction Claims, Commencing With Section 1185

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING

- Item 11 Parameters and Guidelines: Reasonable Reimbursement Methodologies and Statewide Cost Estimates
Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Article 3, Sections 1183.1 through 1183.3.

Member Chivaro made a motion to adopt items 9, 10, and 11 on the consent calendar. With a second by Member Olsen, the items were unanimously adopted.

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.

HEARINGS AND DECISIONS ON TEST CLAIMS, 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 the parties and witnesses participating in the hearing of items 4, 5, and 6.

REQUEST FOR RECONSIDERATION OF PRIOR FINAL DECISION PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1188.4

- Item 4 Proposed Statement of Decision
Binding Arbitration, 01-TC-07
Code of Civil Procedure, Sections 1281.1, 1299, 1299.2, 1299.3, 1299.4, 1299.5, 1299.6, 1299.7, 1299.8, and 1299.9
Statutes 2000, Chapter 906 (SB 402)
City of Palos Verdes Estates and County of Napa, Claimants
Chair, Commission on State Mandates, Requestor

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the sole issue before the Commission was whether the proposed Statement of Decision, which was updated to reflect the addition of witnesses, vote count, and staff analysis provided at the last hearing, accurately reflects the Commission's decision on the reconsideration of the *Binding Arbitration* test claim heard on January 25, 2007.

Staff recommended that the Commission adopt the proposed Statement of Decision.

Parties were represented as follows: Juliana Gmur, on behalf of the City of Palos Verdes Estates; Jacqueline Gong, on behalf of the County of Napa; and Carla Castaneda, with the Department of Finance.

Ms. Gmur contended that certain items were excluded as reimbursable activities, particularly preparation for the hearing. She noted staff's finding that these activities are not in statute. However, Ms. Gmur argued that the statute requires them to be at the hearing, and in reality, they must come prepared.

Ms. Gong stated her concern regarding the limitation on preparation for the hearing. She argued that an arbitration proceeding is a full-fledged evidentiary hearing and detailed certain activities necessary to prepare for such a hearing. While the plain language of the statute does not say prepare for the hearing, she asserted that preparation is an integral part of any hearing. She asked the Commission to direct staff to amend the proposed Statement of Decision for reconsideration to more clearly allow reasonably related activities.

Ms. Castaneda concurred with the proposed Statement of Decision. She stated that the claimants' request would be more appropriately addressed at the parameters and guidelines phase.

Ms. Gmur argued that the Statement of Decision is the law of the case, and thus, if the door is shut now, she was concerned that it could not be reopened at the parameters and guidelines stage.

Member Worthley asked staff if this had been done in the past. Ms. Borzelleri responded that at the test claim phase, the Commission must make a legal determination as to what the law says. At the parameters and guidelines phase, the Commission has the ability to include activities that are the most reasonable methods of complying with the mandate, as defined in section 1183.1 of the Commission's regulations.

Ms. Gmur asked if the Statement of Decision could reflect that the claimant is not precluded from raising this issue at the parameters and guidelines phase.

Camille Shelton, Chief Legal Counsel, clarified that the Commission already voted on the item and was receiving new testimony today. For the Commission to change the Statement of Decision, she explained that the claimants would have to request a rehearing of the item, and the Commission would have to grant the rehearing before the analysis is changed.

Chairperson Genest noted that he was not present at the last hearing and asked the other members if the proposed Statement of Decision reflected the last hearing.

Member Olsen stated that she had no problem with the item being reheard if needed.

Member Worthley stated that he would like the Commission to move forward with the item if the issue can be resolved at the parameters and guidelines phase. He noted that a record of testimony was created indicating that the claimant would not be precluded from raising the issue at the parameters and guidelines stage.

Ms. Shelton added that the hearing testimony is transcribed into a transcript, which becomes an official part of the administrative record. She maintained that at the parameters and guidelines stage, the Commission has discretion to include activities that are not expressly mandated by statute, but are reasonably necessary to comply with the mandate.

Ms. Higashi pointed out that the statute provides that the successful test claimant has the right to submit the proposed parameters and guidelines, and thus, it would be up to the County of Napa and City of Palos Verdes Estates to submit proposed parameters and guidelines detailing the reimbursable activities.

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

TEST CLAIMS

- Item 5 *Training Requirements for Instructors and Academy Staff*, 02-TC-03
California Code of Regulations, Title 11, Sections 1001, 1052, 1053,
1055, 1070, 1071, and 1082 (Register 2001, No. 29)
County of Sacramento, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training, or POST, which requires classified training for certain POST instructors and key staff of POST training academies. Ms. Borzelleri explained that POST training is provided to law enforcement officers by POST-approved institutions, and POST can certify training courses and curricula developed by other entities as meeting required minimum training standards.

Staff found that the regulations establish requirements that flow from a discretionary decision by the local agency to participate in POST, and a discretionary decision to provide POST-certified training or establish a POST training academy. Staff further found that local agencies have alternatives to providing POST-certified training or establishing a POST training academy. Therefore, staff found that the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

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

Parties were represented as follows: Allan Burdick, on behalf of the California State Association of Counties, SB 90 Service; Leonard Kaye, on behalf of the County of Los Angeles; Cheryl MacCoun, Gail Wilczynski, Nancy Gust, and Christine Hess, representing the County of Sacramento Sheriff's Department; Bryon Gustafson, with the Commission on Peace Officer Standards and Training; and Carla Castaneda, with the Department of Finance.

Mr. Burdick stated that there were two issues: 1) the basic underlying issue of whether or not POST regulations could result in a reimbursable state mandate, and 2) the specifics of the test claim. He asked the Commission how they wanted to proceed.

Ms. Borzelleri noted that no comments were received on the draft staff analysis, so this was all new information.

Member Worthley commented that the issue seemed to be whether there was a strict legal compulsion or practical compulsion.

Mr. Kaye indicated that staff's analysis concludes that local agencies have alternatives to providing POST-certified training or establishing a POST training academy. He stated that the witnesses from local law enforcement agencies could discuss those alternatives.

Ms. Wilczynski outlined two issues. First, she stated that while it was true that the sheriff's department does not have to have a training academy, training has to occur somewhere, so either a law enforcement agency or a community college has to provide the training. Secondly, she argued that there was nothing voluntary about whether or not an officer had to meet the POST standards. She indicated that over her 25 years of law enforcement experience, POST went from setting a minimum, to exact standards, to exact curricula that must be met. She contended that it was a standard of care issue, and that a sheriff's department or city police department could not operate without being POST certified. She provided a personal example to emphasize her argument that meeting POST standards is not voluntary. Ms. Wilczynski concluded that there is a tremendous cost that goes along with meeting the POST standards.

Member Worthley asked what would prevent an agency from creating its own standards that was very much like the POST standards.

Ms. MacCoun responded that as law enforcement providers, participation in POST in its most basic form is mandated by statute. She noted that Penal Code section 832, subdivision (a), states that every peace officer in the state has to satisfactorily complete an introductory course on training prescribed by POST. She asserted that it was more practical to provide the mandated training in-house.

Ms. Shelton mentioned that Penal Code section 832, subdivision (a), dealt with basic training of individuals that want to become peace officers. She agreed that anyone who wanted to become a peace officer had to complete POST-certified training to receive the basic training certificate. However, she noted that this was not true for continuing education.

Chairperson Genest stated his understanding that the issue was not whether participation in POST training is mandatory, but whether the classes beyond the basic training are mandated.

Ms. Borzelleri clarified that the issue is whether training for certain trainers and academy staff beyond the basic training is a reimbursable state mandate.

Ms. MacCoun asserted that in order to operate an academy, new instructors have to use POST's 2001 requirements.

Ms. Wilczynski contended that the bottom line was that POST set the standard of care, and it is the minimum standard by which officers and instructors are able to engage in their profession.

Mr. Gustafson commented that there were examples of police departments in California that do not participate in the POST program, including the City of Isleton and for many years, the City of Los Angeles. He stated that it is very practical for agencies to participate in the POST program because POST reimburses travel and per diem expenses.

Mr. Gustafson noted that 44 of the 58 counties did not have their own training academy. He commented that the City of Sacramento chose to have their own for local control to train their officers and to meet the needs of the community, but he asserted that the city was not compelled to have an academy. In response to Member Worthley's earlier question, he stated that an agency could have its own standards to parallel POST's; however, the downside is that POST will not reimburse the training. Thus, agencies had an incentive to join the POST program.

Ms. MacCoun agreed that POST reimburses travel and per diem; however, she submitted that backfill, tuition, and assistance in maintaining records and documentation are not reimbursed by POST.

Ms. Wilczynski stated that agencies that use some outside source are still measured against POST standards. If the training does not meet POST standards, it does not count as an equivalent course.

Ms. Shelton clarified that the analysis before the Commission focuses only on whether or not the regulations constitute a state-mandated program. In order for the Commission to approve any test claim, the Commission must find that there is a mandate; that the new activities constitute a new program or higher level of service; and that there are increased costs mandated by the state, considering the cost of the training and any reimbursement provided by POST.

Ms. Shelton explained that the Supreme Court provided direction with regard to the finding of a state mandate: 1) it is not an equitable decision, but a question of law; 2) it has to be expressly

mandated by statute; and 3) if it is not expressly mandated by statute, it has to impose certain or severe penalties, such as double-taxation or other types of fiscal financial penalties. She stated that the courts have also discussed a public safety exception, in which the entity has no other choice but to perform the mandate. Ms. Shelton stated that today's testimony is all new evidence that would need to be further analyzed. However, she maintained that the plain language of the statutes do not mandate the training or the costs incurred by the local agency.

Chairperson Genest recommended that the issue be continued to the next meeting.

Ms. Higashi stated that because there was no written evidence in the record on this issue, she suggested that Commission staff reissue the final staff analysis and allow the parties an additional 30 days to submit written briefs and comments and to clearly articulate their objections and positions.

Hearing no objections from the members, Chairperson Genest continued the test claim to the next meeting.

- Item 6 Proposed Statement of Decision
Training Requirements for Instructors and Academy Staff, 02-TC-03
See Above

Item 6 was postponed.

- Item 7 *Re-Districting Senate and Congressional Districts, 02-TC-50*
Statutes 2001, Chapter 348 (AB 632)
Senate Elections and Reapportionment Committee Instructions Issued on
September 24, 2001;
County of Los Angeles, Claimant

Item 7 was postponed.

- Item 8 Proposed Statement of Decision
Re-Districting Senate and Congressional Districts, 02-TC-50
See Above

Item 8 was postponed.

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

PRESENTATION AND DISCUSSION OF MANDATE REFORM PROPOSALS

- Item 12 Department of Finance Proposal
Legislative Analyst's Proposal
Public Comment

Nancy Patton, Assistant Executive Director, presented this item. She noted that since 2003, mandate reform has been a major budget and policy issue. She discussed current problems with the mandate determination and reimbursement process, as well as the Administration and Legislature's attempts to improve the process since 2003. She noted that in 2006, the Commission sought to streamline the existing process using a collaborative process; however, the Legislature elected not to fund the project. This year, she indicated that the Department of Finance and the Legislative Analyst's Office had proposals to improve the process.

Ms. Patton stated that, as a result of being provided with additional staff, the Commission has increased the number of completed test claims and is reducing the test claim backlog. She noted, however, that the Legislative Analyst's Office report contends that the Commission's workload has not been reduced because staff was completing test claims at the same rate as new test claims were being filed. Ms. Patton pointed out that the Legislature directed the Commission to reconsider 13 prior mandate determinations before eliminating the existing backlog. The Commission completed 11 of the 13 reconsiderations in 2004 and will complete the remaining within the next six months. In addition, the Legislature modified or repealed numerous mandates and required the Commission to modify or set-aside 48 sets of parameters and guidelines in 2006. In 2006 and 2007, the Commission made a determination on 22 test claims and staff has drafted analyses on another 23 claims that will be heard in April, May, and July.

Moreover, Ms. Patton stated that the Legislative Analyst's report frequently cited the Commission's failure to eliminate the backlog as the main reason for time delays in the mandates process. She noted that all participating entities contribute to the delays by frequently requesting extensions of time to comment and seeking postponement of hearings. For example, she stated that in 2002, state agencies requested 107 extensions and claimants requested 30 extensions of time on one set of parameters and guidelines.

Ms. Patton stated that in 2004, Assemblyman Laird's Special Committee on State Mandates sponsored, and the Governor enacted, AB 2856 to allow the Commission to adopt a reasonable reimbursement methodology that places a greater emphasis on the use of formulas and unit costs or times to reimburse mandate claims. She explained that AB 2856 required two criteria to be met to adopt a reasonable reimbursement methodology; however, the criteria make it near impossible to adopt a methodology. She noted that prior to the criteria being required, the Commission had adopted unit cost methodologies for several programs.

Staff supports amending the criteria as proposed by the Legislative Analyst's Office. In the meantime, Ms. Patton noted that the Commission had initiated a rulemaking package to amend its regulations to further define the criteria so that methodologies can be adopted.

Ms. Patton introduced Tom Dithridge, Department of Finance, and Marianne O'Malley, Legislative Analyst's Office, who presented their proposals.

Mr. Dithridge stated that the Department of Finance's goal is to create a mandates process that is more timely so that local governments can know what will be reimbursed and the Legislature and Administration can know the cost. He explained that the worst thing for Finance in preparing the budget is having an unknown mounting liability and not be able to plan for the liability. Thus, he asserted that Finance has a great interest in trying to speed up and simplify the process.

Mr. Dithridge indicated that Finance proposed to eliminate the current statute that sets up the reasonable reimbursement methodology because it would be easier to eliminate the requirement and move forward with a new process. The proposed process would allow Finance to work with local government either prior to or immediately after enactment of a potential mandate, together deciding whether there is a reimbursable mandate at issue, and if so, the best approach to estimating a reasonable cost. Within about a year, the parties would take a proposal to the Legislature to decide whether to fund, modify, or repeal the mandate.

Mr. Dithridge noted that Finance would like to come up with a process that works for cities, counties, and special districts, and then take it to the education community to see if it works for them. If not, they would work to create a process that will work.

Because it can be so political at the legislative level, Member Worthley asked if Finance considered, instead of going to the Legislature, to come to the Commission for a stipulated judgment.

Mr. Dithridge responded that they intended to come back to the Commission with a reasonable reimbursement methodology that the Commission could endorse and adopt.

Ms. Higashi commented that the Department of Finance and some local agencies were working together now on some cost surveys that would be proposed as reasonable reimbursement methodologies for the Commission to consider.

Ms. O'Malley noted that the Legislative Analyst's Office respected the enormity of the work that the Commission faces. She acknowledged that the process is hampered by the Commission's other workload, as well as the delays caused by requests for extensions, but maintained that this would continue to occur. Therefore, a timelier process is necessary. She stated her other concerns that the claiming process is highly complicated and that there is little incentive for cost containment.

Ms. O'Malley stated the following goals of the Legislative Analyst's Office proposal:

1) to expedite the process; 2) to simplify the claiming process; and 3) to create a process that provides alternatives for local government. She noted that the proposal, which is incorporated into AB 1576, includes school districts. She outlined the proposal, as follows:

1. Amend the reasonable reimbursement methodology statute to require only one of the two existing criteria.
2. Create a clear process and timeline so that parameters and guidelines and statewide cost estimates can be developed through negotiations between local governments and the Department of Finance. This may save about a year from the current process.
3. Establish a "Fast-Track" process so that shortly after the Legislature enacts legislation, local governments and the Department of Finance can get together to determine the mandate, develop a reasonable reimbursement methodology, estimate the cost, and prepare a funding package for the Legislature's consideration. This process bypasses the Commission entirely and would be used for mandates where there is wide agreement.

Moreover, Ms. O'Malley noted that the intention of the Legislative Analyst's Office was to have a broad public policy discussion on the proposal and benefit from feedback from the Commission, state agencies, and local government.

Chairperson Genest requested clarification regarding the key differences between the two proposals, which was provided by Mr. Dithridge and Ms. O'Malley.

Chairperson Genest also asked about the impact of Proposition 1A. After an explanation by Ms. O'Malley, he indicated that he thought the proposals would work well in the context of mandates that are affected by Proposition 1A and urged the Commission to seriously consider whether or not to endorse the proposals.

Noting that the specifics were not that much different for the two proposals, Mr. Dithridge commented that they may soon come together and meld into one proposal.

Member Worthley stated his concern that the Legislature would not act and thought that an agreement reached by the parties would have a greater impact on the Legislature if it were supported by a quasi-judicial determination.

Given that the Commission must conduct public hearings on anything that comes before the Commission, Ms. O'Malley submitted that the "Fast-Track" process was proposed in the interest of time.

After further discussion, Ms. Higashi commented that the concept of legislatively-determined mandates is not new. She also pointed out that the Commission's statewide cost estimates are based on actual claims received by the State Controller's Office, and that the Commission itself does not have the power to initiate reasonable reimbursement methodologies. She was pleased by the change in the environment and culture about how mandates are approached, and the willingness of the Department of Finance to become more engaged in discussing unit costs and expediting the process.

Michael Johnston, on behalf of the Clovis Unified School District, expressed concern about the exclusion of school districts from the process. Even though mandate reform for school districts will be addressed at a later time, he asserted that they would not have the same type of input that local agencies will have in the process.

Edgar Manalo, on behalf of the San Jose Unified School District, also voiced the importance of including school districts in mandate reform discussions. He argued that any deviation from school district participation would result in an unsuccessful reform process.

Art Palkowitz, on behalf of the San Diego Unified School District, applauded the parties' efforts to move forward with this process. He stated that it was important to have an alternative process that gives the parties a way to try to resolve matters promptly when there is wide agreement on reimbursement.

Leonard Kaye, on behalf of the County of Los Angeles, commented that both the proposals had merit and should be discussed.

Allan Burdick, representing the California State Association of Counties, SB 90 Service, stated that local government was encouraged by most of the proposals. He commended the Commission's efforts, as well as the creation of the Mandates unit at the Department of Finance.

STAFF REPORTS

Item 13 Mandate Reform Legislation (info/action)

Nancy Patton, Assistant Executive Director, presented this item. She reviewed the current procedures for submitting bill analyses and Commission positions to the Governor's Office and provided an overview of, as well as staff's recommendation on, the following four bills pending that would affect the Commission and the mandate determination process:

1. AB 281 – Assembly Member Silva
2. AB 1222 – Assembly Member Laird
3. AB 1576 – Assembly Member Silva
4. AB 1170 – Assembly Member Krekorian

Ms. Patton noted that staff would provide analyses of AB 1576 and the Department of Finance proposal for the April hearing.

Item 14 Chief Legal Counsel's Report (info)
Recent Decisions, Litigation Calendar

Ms. Shelton reported that the Department of Finance and the Integrated Waste Management Board filed a lawsuit against the Commission on State Mandates, the Santa Monica Community College District, and the Lake Tahoe Community College District on the *Integrated Waste Management* program. The case was filed in Sacramento County Superior Court.

Ms. Shelton also reported that two new decisions were issued. First, in *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, the Supreme Court denied the petition for review, leaving the Court of Appeal decision valid, which upholds the Commission's decision to deny those claims. Secondly, the Sacramento County Superior Court issued its ruling in the *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller* case, finding that the revisions made by Assembly Bill 138 were unconstitutional.

Item 15 Executive Director's Report (info/action)
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Personnel.* Kerry Ortman, Staff Services Analyst, was introduced.
- *Budget.* Budget hearings are focusing on mandate reform concepts and the Legislative Analyst's Office report. There has been one hearing in the Senate, but no action had been taken. Another hearing is scheduled in April, as well as one in the Assembly.
- *Upcoming Hearings.* After reviewing some of the future agenda items, Ms. Higashi offered claimants for the *Peace Office Instructor Training* test claim an opportunity to submit further briefing in light of today's testimony. The hearing on this matter would be rescheduled.

The County of San Bernardino withdrew its test claim on *Medically Indigent Adults*.

PUBLIC COMMENT

There was no public comment.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526 (action)

PERSONNEL

Report from Personnel Subcommittee and to confer on personnel matters pursuant to Government Code sections 11126, subdivision (a), and 17526.

PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01069, CSM Case No. 03-L-01, consolidated with *County of Los Angeles v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS087959, transferred to Sacramento Superior Court, Case No. 05CS00865, CSM Case No. 03-L-11 [*Animal Adoption*]
2. *State of California, Department of Finance v. Commission on State Mandates, et al.*, Sacramento Superior Court Case No. 03CS01432, CSM Case No. 03-L-02 [*Behavioral Intervention Plans*]
3. *CSAC Excess Insurance Authority v. Commission on State Mandates, et al.*, California Supreme Court, Case No. S149772, on appeal from Second District Court of Appeal; Second District Court of Appeal, Case Number B188169, on appeal from Los Angeles Superior Court Case No. BS092146, CSM Case No. 04-L-01 [*Cancer Presumption for Law Enforcement and Firefighters and Lower Back Injury Presumption for Law Enforcement*], consolidated with *City of Newport Beach v. Commission on State Mandates, et al.*, Los Angeles Superior Court Case No. BS095456, CSM Case No. 04-L-02 [*Skin Cancer Presumption for Lifeguards*]
4. *County of Los Angeles, et al. v. Commission on State Mandates, et al.*, Second District Court of Appeal [Los Angeles] Case Number B183981, CSM Case No. 04-L-03, (Los Angeles Superior Court Nos. BS089769, BS089785) [*Transit Trash Receptacles, et al./Waste Discharge Requirements*]
5. *County of San Bernardino v. Commission on State Mandates, et al.*, Los Angeles County Superior Court, Case No. BS106052; San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]
6. *California School Boards Association, Education Legal Alliance; County of Fresno; City of Newport Beach; Sweetwater Union High School District and County of Los Angeles v. State of California, Commission on State Mandates and Steve Westly, in his capacity as State Controller*, Sacramento County Superior Court, Case No. 06CS01335; [AB 138; *Open Meetings Act, Brown Act Reform, Mandate Reimbursement Process I and II; and School Accountability Report Cards (SARC) I and II*]
7. *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 07CS00079, CSM 06-L-02, [*Peace Officer Procedural Bill of Rights*]

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

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

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

Ms. Higashi announced that the prehearing conference on the parameters and guidelines amendments for the *Graduation Requirements* program will convene immediately after the closed session.

REPORT FROM CLOSED EXECUTIVE SESSION

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

ADJOURNMENT

Hearing no further business, and with a motion by Member Chivaro and second by Member Olsen, Chairperson Genest adjourned the meeting at 11:37 a.m.


PAULA HIGASHI
Executive Director

RECEIVED
APR 13 2007
COMMISSION ON
STATE MANDATES

ORIGINAL

PUBLIC HEARING
COMMISSION ON STATE MANDATES

--oOo--

TIME: 9:32 a.m.

DATE: Thursday, March 29, 2007

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomat Reporter, Certified Realtime Reporter

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A P P E A R A N C E S

COMMISSIONERS PRESENT

MICHAEL GENEST, Chair
Director
State Department of Finance

CYNTHIA BRYANT
Director
State Office of Planning and Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

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

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A P P E A R A N C E S

COMMISSION STAFF PRESENT

PAULA HIGASHI
Executive Director
(Item 15)

NANCY PATTON
Assistant Executive Director
(Items 11 and 13)

CAMILLE SHELTON
Chief Legal Counsel
(Item 14)

DEBORAH BORZELLERI
Senior Commission Counsel
(Items 4 and 5)

KERRY ORTMAN

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PUBLIC TESTIMONY

Appearing Re Item 4:

For Co-Claimant City of Palos Verdes Estates:

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

For Co-Claimant County of Napa:

JACQUELINE M. GONG
Deputy County Counsel
County of Napa
1195 Third Street, Room 301
Napa, California 94559-3035

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4: *continued*

For California Department of Finance:

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

Appearing Re Item 5:

For California State Association of Counties SB-90
Service:

ALLAN BURDICK
MAXIMUS
4320 Auburn Boulevard, Suite 2000
Sacramento, California 95841

JULIANA F. GMUR
Manager, Cost Services
MAXIMUS

For County of Los Angeles:

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

For Commission on Peace Officer Standards and Training:

BRYON G. GUSTAFSON
Commission on POST
1601 Alhambra Boulevard
Sacramento, California 95816-7083

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5: *continued*

For the County of Sacramento:

CHERYL MacCOUN
Deputy
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Appearing Re Item 12:

For California Department of Finance

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A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 12: *continued*

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A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 12: *continued*

For County of Los Angeles:

LEONARD KAYE, ESQ.
Department of Auditor-Controller
County of Los Angeles

For California State Association of Counties SB-90
Service:

ALLAN BURDICK
MAXIMUS

--oOo--

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Commission on State Mandates – March 29, 2007

1 BE IT REMEMBERED that on Thursday, March 29,
2 2007, commencing at the hour of 9:32 a.m., thereof, at
3 the State Capitol, Room 126, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:

6 --oOo--

7 CHAIR GENEST: Good morning. The clock has
8 struck 9:30, so I think we can get started.

9 Paula, can we get a roll call?

10 MS. HIGASHI: Ms. Bryant?

11 MEMBER BRYANT: Here.

12 MS. HIGASHI: Mr. Chivaro?

13 MEMBER CHIVARO: Here.

14 MS. HIGASHI: Mr. Glaab is absent today due to
15 personal illness.

16 Mr. Lujano?

17 MEMBER LUJANO: Here.

18 MS. HIGASHI: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HIGASHI: Mr. Worthley?

21 MEMBER WORTHLEY: Here.

22 MS. HIGASHI: And Mr. Genest?

23 MEMBER GENEST: Here.

24 MS. HIGASHI: We can begin.

25 CHAIR GENEST: Okay, did you want to talk about

1 the minutes from last --

2 MS. HIGASHI: Certainly. Item 1 is adoption of
3 the minutes for the January 25th hearing.

4 CHAIR GENEST: Are there any corrections or
5 objections to those minutes?

6 *(No audible response)*

7 CHAIR GENEST: Hearing none, can we get a motion
8 to adopt those?

9 MEMBER WORTHLEY: Move approval, Mr. Chairman.

10 MS. OLSEN: Second.

11 CHAIR GENEST: All in favor?

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

13 CHAIR GENEST: Okay, those are adopted.

14 MS. HIGASHI: Item 2 is the Proposed Consent
15 Calendar.

16 Before you, you should have a sheet identifying
17 the Proposed Consent Calendar. It's blue. The Consent
18 Calendar consists of Items 9, 10, and 11. Item 4 has
19 come off.

20 CHAIR GENEST: Are there any objections to the
21 proposed Consent Calendar?

22 Any questions?

23 *(No audible response)*

24 CHAIR GENEST: Can we get a motion?

25 MEMBER CHIVARO: Move approval.

1 CHAIR GENEST: Second?

2 MEMBER OLSEN: Second.

3 CHAIR GENEST: All in favor?

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

5 CHAIR GENEST: Okay, the Consent Calendar is
6 approved.

7 MS. HIGASHI: There are no appeals to consider
8 under Item 3.

9 And this brings us to the hearing portion of our
10 meeting.

11 And I'd like to request that all of the parties
12 and witnesses for Items 4, 5, 6, and 12, please stand --
13 or I should say, 4, 5, and 6.

14 Do you solemnly swear or affirm that the
15 testimony which you are about to give is true and
16 correct, based upon your personal knowledge, information
17 or belief?

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

19 MS. HIGASHI: Thank you very much.

20 Item 4 will be presented by Senior Commission
21 Counsel Deborah Borzelleri. It's on the Binding
22 Arbitration test claim.

23 MS. BORZELLERI: Thank you, Paula.

24 This item is the proposed Statement of Decision
25 for the reconsideration of a prior final decision on the

1 *Binding Arbitration* test claim.

2 The Proposed Statement of Decision was updated
3 to reflect the addition of witnesses, vote count and
4 staff analysis provided at the last hearing on
5 January 25th, 2007.

6 The sole issue before the Commission today is
7 whether the proposed Statement of Decision in Item 4
8 accurately reflects the Commission's decision on the
9 reconsideration of the *Binding Arbitration* test claim
10 that was heard at the January 25th, 2007, Commission
11 hearing.

12 Staff recommends the Commission adopt the
13 proposed Statement of Decision as presented.

14 Will the parties please state your name for the
15 record?

16 MS. GMUR: Juliana Gmur on behalf of the City of
17 Palos Verdes Estates.

18 MS. GONG: Jacqueline M. Gong, Napa County
19 Counsel's office, for Napa County.

20 CHAIR GENEST: So who will begin?

21 MS. GMUR: I would like to lead off, if I may.

22 CHAIR GENEST: Could we have our last witness?
23 Finance.

24 MS. GMUR: Just as a little bit of a refresher,
25 when last we were before the Commission on this matter,

1 all parties were supporting the staff analysis, and so we
2 were waiting just to come back for a vote today on the
3 Statement of Decision.

4 Since then, the Statement of Decision has
5 issued; and I find some of the material that's in it to
6 be of concern.

7 Certain things have been excluded as
8 reimbursable activities. One in particular that troubles
9 me most is the preparation for the hearing.

10 In the past, this Commission has found that
11 preparing for hearings, preparing witnesses for hearings,
12 drafting of documents, has been a reasonably related
13 activity, and has been included as part of the claiming.

14 In this case, however, in looking at staff's
15 statements, they have found that these are not included
16 items; and the reasoning is that because they were not
17 specifically listed in the statute. That is to say, the
18 statute does not say you must prepare for the hearing.
19 The statute does not say you must draft a document.

20 The statute does say you must be at the hearing.
21 The statute does say that documents have to be submitted
22 or filed, but there is nothing in statute. And I find
23 this to be rather odd because I'm not familiar with any
24 statute anywhere that says at any time that you need to
25 be prepared for a meeting or a hearing, or that documents

1 need to be drafted.

2 Staff also points to the fact that the arbiter
3 can order particular things. And, of course, if the
4 arbiter orders it, then it becomes part of the mandate.
5 But, indeed, I cannot imagine an arbiter ordering that
6 the parties be prepared for the next hearing.

7 It has been my experience that if a judge,
8 arbiter or hearing officer orders you to be prepared for
9 the next hearing, that you are in deep trouble with your
10 client, your boss, and perhaps the State Bar.

11 So I don't see that this is quite a reflection
12 of the reality of how the program works. And I cannot
13 speak to that directly. Ms. Gong can.

14 I'm going to allow her now to take over this
15 discussion.

16 MS. GONG: Thank you.

17 Good morning. I appreciate the opportunity to
18 give the Commission some input on this issue.

19 As stated, the County of Napa has a concern with
20 a single issue, primarily with the proposed decision's
21 limitation on what constitutes mandated activities
22 limiting preparation of the hearing itself only as
23 directed by an arbitration panel.

24 Obviously, an arbitration proceeding is a
25 full-pledged evidentiary hearing. To prepare for it,

1 it's very necessary to carry out certain kinds of
2 activities.

3 The arbitration laws require an arbitration
4 panel to select, without modification, the last best
5 offer on each disputed economic issue that's before the
6 arbitration panel. So you look at both the county's
7 proposals and you look at the union's proposals; and then
8 you have to adhere to a series of criteria that are
9 outlined in the arbitration laws. You have to look at
10 what's in the best interest and welfare of the public.
11 In other words, what's the impact of each economic
12 proposal on the county's ability to provide services and
13 to serve the public; and you have to couple that with how
14 competitive are the economic proposals in terms of
15 retaining employees and avoiding high turnover of
16 employees.

17 You could look at the financial condition of the
18 county and its ability to make payment on the proposed
19 arbitration economic packages.

20 You look at what's available in terms of sources
21 of funds from the county to meet the proposals.

22 And most challenging of all is there are issues
23 of comparability. We have to look at the compensation
24 and how does that compare with compensation that's
25 provided to similarly situated employees: Law

1 enforcement staff in other jurisdictions.

2 None of that can be really addressed fully in a
3 hearing without what ultimately resulted for the county
4 of a massive compilation of data to address the financial
5 condition of the county, its ability to pay, how it
6 compared with other jurisdictions. And in addition to
7 just compiling the data, we had to analyze it.

8 None of that can occur. It's like trying to
9 expect the county to show up at a hearing to put on a
10 play without actually doing any dress rehearsal or doing
11 whatever preparation you need to actually put forth the
12 best evidence for the arbitration panel.

13 Given all of this, the fact that we had to pull
14 together so many different kinds of information, looking
15 at past and present years' budget projections, budget
16 updates, looking at wage increase to all of our county
17 employees, pulling all of this together, you know, it
18 would fly in the face of reality as to what binding
19 arbitration laws require.

20 Preparation is an integral part of a hearing.
21 The reason is very simple, that the plain language of the
22 statute doesn't say that you need to prepare for the
23 hearing, and that's a state-mandated activity simply
24 because that is an inherent part of any hearing, is that
25 you would expect this.

1 Given all of that, we think that the county had
2 no choice. It was mandated to participate in this
3 hearing.

4 While it could have challenged this particular
5 proceeding as unconstitutional, it proceeded with this
6 because it believed in the merits of its proposals and
7 they did not want the community or the union to perceive
8 that the county was somehow going to legally manipulate
9 or maneuver by challenging the arbitration on its
10 constitutionality. So we went through the arbitration.

11 Ultimately, the county was upheld in most all of
12 its economic proposals.

13 And I think that in looking at the arbitration
14 laws and what is required, that the plain meaning of the
15 law is what you have to look at, not the plain language
16 as the proposed decision suggests, and that there can't
17 be really any effective hearing -- participation in the
18 hearing without that preparation. And that this is
19 certainly reasonable in prior Commission dealings with
20 reimbursements in the school district collective
21 bargaining arena, in PERB cases. When there's
22 litigation, school districts are entitled to seek
23 litigation costs.

24 Similarly, in the school district arena, when
25 there are disputes, contract disputes and arbitration,

1 those costs to a school district as the employer are
2 reimbursable.

3 And this is no different, there is a very
4 similarly situated hearing process. And for these
5 reasons, I'd ask the Commission to direct staff to amend
6 the proposed Statement of Decision for reconsideration,
7 as we've proposed in our written response to the
8 Commission, to more clearly allow that these are
9 reasonably related activities; and so as a result,
10 necessary to carry out a hearing that's mandated, that
11 this certainly should just be recognized as
12 state-mandated activities without any limitations.

13 CHAIR GENEST: Thank you.

14 Can we hear from Finance?

15 MS. CASTAÑEDA: We concur with the proposed
16 Statement of Decision as it's currently drafted.

17 As to the statement that the claimant is
18 proposing to add, we feel that this addition is more
19 appropriately addressed in the parameters and guidelines
20 as the reimbursable activities necessary to carry out the
21 specifically required items in the statute.

22 CHAIR GENEST: Any questions or comments from
23 members of the Commission?

24 MEMBER WORTHLEY: Mr. Chairman?

25 If I understand correctly then, you're not

1 denying that they should be allowed to seek
2 reimbursement, but it would come through the parameters
3 and guidelines as opposed to the Statement of Decision?

4 MS. CASTAÑEDA: That's the way it should be
5 considered.

6 MEMBER WORTHLEY: So in which case, you would
7 get to the same place, it's just that it is by a
8 different means?

9 MS. CASTAÑEDA: Yes.

10 MEMBER WORTHLEY: I see our counsel is nodding
11 her head, too.

12 MS. GMUR: My thought on this is that -- at
13 first, I agreed, I thought it should be brought up in the
14 P's & G's stage. However, it's been brought up in the
15 Statement of Decision. The Statement of Decision is the
16 law of the case. And so I believe that if the door shuts
17 now, it is a door that cannot be reopened at the
18 P's & G's stage, since the P's & G's come off the
19 Statement of Decision; but it's the Statement of Decision
20 that stands as the law of the case. Thus, you're hearing
21 from us on this issue now.

22 MEMBER WORTHLEY: Mr. Chairman, if that's -- I
23 guess I'm looking to our counsel, because if we've done
24 this in the past in the past, if we've allowed people to
25 recover these costs, are we doing something different in

1 this case than we've done in the past? We've allowed
2 people through the P's & G's to get reimbursed for this,
3 even though it's not stated in the Statement of Decision?

4 MS. BORZELLERI: Yes. But we're not precluding
5 that to be brought forward at the P's & G's stage.

6 MS. GMUR: I'm sorry, but it specifically says
7 in here that these are excluded. I don't understand how
8 they can be excluded in the Statement of Decision and
9 then included in the P's & G's.

10 MS. BORZELLERI: Can I just state something?

11 MS. GMUR: Sure.

12 MS. BORZELLERI: The stage that we're at on this
13 test claim, we have to look at the actual language of the
14 law, the plain language of the statute. That's what
15 happens at the test claim phase. We're making a legal
16 determination as to what the law actually says.

17 At the Parameters and Guidelines stage, it's
18 more a quasi-legislative proceeding that the Commission
19 goes through, where you hear all of this type of
20 testimony. This is very helpful testimony, it's good to
21 have it in the record; and we will be taking that into
22 account at the time we do an analysis on the Parameters
23 and Guidelines. And the Commission has the ability to
24 listen to all of these pieces and put them in. And
25 certainly staff will listen and incorporate what we

1 believe is reasonably necessary under the regulation that
2 allows us to do that.

3 And I'm happy to read that for you, if it's a
4 good clarification.

5 The section -- it's section 1183.1 of the
6 Commission's regulations -- states that -- it defines the
7 most reasonable methods of complying with the mandate as
8 those methods not specified in statute or executive order
9 that are necessary to carry out the mandated program.

10 So in this case, we had to be very careful about
11 what was mandated and what wasn't. And I think we
12 probably went into a little more detail than usual in our
13 analysis. But if it is reasonably necessary, staff will
14 certainly consider that and the Commission will be able
15 to consider that when it comes forward at that stage.

16 MS. GMUR: Then I ask, can that be reflected
17 in the Statement of Decision, that this matter will be
18 reopened, and that we are not precluded from bringing
19 this up at the P's & G's stage? I just don't want that
20 door to close.

21 MS. SHELTON: Let me just mention a couple of
22 things. First, the Commission already took a vote on
23 this item; and you're receiving new testimony today.
24 So for the Commission to change the Statement of
25 Decision, the claimants would have to be asking for a

1 rehearing of this item, and the Commission would have to
2 grant the rehearing before the analysis is changed.

3 This is new testimony today.

4 MS. GMUR: Well, I have to point out also that
5 the Statement of Decision brings up materials that were
6 not discussed at the last hearing.

7 MS. BORZELLERI: Actually, no, we took it
8 precisely from the staff analysis. I did not change that
9 language one bit.

10 CHAIR GENEST: That's my question, since I
11 wasn't at the last hearing. I don't think we're
12 considering the issue; we're considering whether this
13 reflects the last hearing.

14 And do the members of the committee have an
15 opinion on this? Does this, in your opinion, reflect
16 what was discussed at the last hearing?

17 MEMBER WORTHLEY: I don't --

18 MEMBER OLSEN: Well, you know, I think there are
19 two ways of looking at this issue. And, Mike, I agree
20 that that's one way to look at the issue in a very narrow
21 sense; but the other way to look at the issue is in a
22 sense of what's a reasonable standard here. And if this
23 is new testimony and it needs to be reheard -- I have no
24 problems with the idea that it might need to be reheard
25 based on new testimony; but I don't think it's the rule

1 of we Commission members to simply say, "Oh, that's what
2 we said last time, this reflects what we said last time,
3 and so irrespective of hearing something new and hearing
4 a new concern, we cannot look at it again." I mean, I
5 think that's -- why are we commissioners then?

6 CHAIR GENEST: Of course, we can look at it
7 again.

8 My question is, is this accurate? Is the staff
9 report accurately reflective of what was discussed at the
10 last hearing? What was decided?

11 MEMBER WORTHLEY: Well, I frankly don't recall,
12 Mr. Chairman. But what I was going to say is that
13 there's -- we're talking, it seems, almost semantics
14 here, because if we all agree that we're going to get to
15 the same place, likely, through the Parameters and
16 Guidelines, I would like us to move forward with this
17 today. And then in the event that there was a problem
18 with bringing it forward to the Parameters and
19 Guidelines, then it would be allowable for rehearing,
20 if we could do that. So we don't preclude this from
21 being -- the concern here is closing the door to having
22 it taken up in the Parameters and Guidelines. I think
23 we've created a record here today which would indicate
24 that that is not the case and that you would have some
25 kind of equitable relief, if not legal relief. Because

1 based on the representations made by staff, you will have
2 every opportunity to present this information at the
3 Parameters and Guidelines stage.

4 MS. SHELTON: I was just going to mention that
5 the hearing testimony today is transcribed into a
6 transcript, which does become an official part of the
7 administrative record. So it is part of the record.

8 The Parameters and Guidelines expressly give the
9 Commission discretion to include activities that are not
10 expressly mandated by statute, but are reasonably
11 necessary to comply with the mandate. So it's at that
12 stage that the discretion comes in.

13 MS. HIGASHI: And one of the most important
14 considerations, too, is that the statute provides that
15 it is the successful test claimants who has the right to
16 submit the Parameters and Guidelines; and that is a duty
17 as well as a right. So it would then be up to Napa and
18 Palos Verdes to submit the Proposed Parameters and
19 Guidelines that would detail the reimbursable activities.

20 CHAIR GENEST: Okay, well, have we heard enough?
21 Do we have a motion?

22 MEMBER WORTHLEY: Mr. Chairman, I would move
23 approval of the Parameters and Guidelines -- I'm sorry,
24 the Statement of Decision as presented.

25 CHAIR GENEST: Do we have a second?

1 MEMBER LUJANO: Second.

2 CHAIR GENEST: Do we need -- let's just see if
3 we have -- let's have a voice vote.

4 All in favor?

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

6 CHAIR GENEST: Okay, it's adopted.

7 MS. HIGASHI: Okay, thank you.

8 MS. GMUR: Thank you so much.

9 MS. HIGASHI: Our next item is a test claim,
10 Item 5, *Training Requirements for Instructors and Academy*
11 *Staff*. This item will also be presented by
12 Ms. Borzelleri.

13 MS. BORZELLERI: Thank you.

14 This is Item 5, *Training Requirements for*
15 *Instructors and Academy Staff*.

16 We have a cast.

17 This test claim addresses regulations adopted by
18 the Commission on Peace Officers Standards and Training,
19 which we're referring to as POST, that requires
20 classified training for certain POST instructors and key
21 staff of POST-training academies.

22 POST training is provided to law enforcement
23 officers by POST-approved institutions, and POST can
24 certify training courses and curricula developed by other
25 entities as meeting required minimum training standards.

1 Staff finds that the regulations establish
2 requirements that flow from a discretionary decision by
3 the local agency to participate in POST, and a
4 discretionary decision to provide POST-certified
5 training or establish a POST-training academy. Staff
6 further finds that local agencies have alternatives to
7 providing POST-certified training or establishing a
8 POST training academy. Therefore, the test claim
9 regulations do not impose a state-mandated program on
10 local agencies within the meaning of Article XIII B,
11 Section 6, of the California Constitution.

12 Staff recommends the Commission adopt the Staff
13 Analysis to deny the test claim.

14 Will the parties please state your name for the
15 record?

16 MR. BURDICK: Allan Burdick on behalf of the
17 CSAC SB 90 Service.

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

19 MS. MacCOUN: Cheryl MacCoun, Sacramento County
20 Sheriff's office.

21 MS. WILCZYNSKI: Deputy Gail Wilczynski,
22 Sacramento County Sheriff's Department.

23 MS. GUST: Nancy Gust, Sacramento County
24 Sheriff's Department.

25 MR. GUSTAFSON: Bryon Gustafson, Commission on

1 POST.

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

4 MS. HESS: Christine Hess, Sacramento County
5 Sheriff's Department.

6 CHAIR GENEST: Okay, who wants to start? And
7 let's try to be focused on the exact question here.

8 MR. BURDICK: Yes. We'll try to be as specific
9 as we can. Some of these members are here to address
10 issues that may come up; so all of the people are not
11 providing testimony.

12 I would like to indicate that Ms. Juliana Gmur,
13 the attorney that was on the last issue, will also
14 be joining us on this particular issue.

15 Thank you very much for giving us the
16 opportunity to present this test claim today on behalf of
17 the County of Sacramento.

18 Since this issue had surfaced, a number of
19 people and agencies have called and have shown interest
20 in it because this particular test claim deals with two
21 really critical issues:

22 The first issue is the basic underlying issue
23 related to whether or not POST regulations can result in
24 a reimbursable state mandate.

25 And the second issue then is dealing with the

1 specifics of this test claim. Because in order -- it
2 appears in order to get to their position, you first have
3 to deal with a larger issue.

4 Now, we're not sure how the Commission wants to
5 proceed; but I think from a local standpoint, a critical
6 issue is the question of whether or not POST regulations
7 are reimbursable state mandates or not; and is there an
8 alternative to providing POST-certified training, or
9 whether they want to get into the very specifics of the
10 test claim.

11 So I guess that's kind of the issue that we
12 would like to raise initially is, from your standpoint,
13 how would you prefer to proceed?

14 CHAIR GENEST: Well, being a little bit new to
15 this committee, I'm going to ask for the advice of our
16 counsel.

17 MS. BORZELLERI: Well, this is all new
18 information to us. I must say, we did not receive one
19 comment on this draft staff analysis when it went out.

20 And, you know, I guess it's probably more in the
21 interest of what the Commission's time parameters are.
22 I think we have something time-certain at 10:00. You
23 know, if we want to move on with the business, it may be
24 better to push forward with the test claim.

25 That's your discretion.

1 CHAIR GENEST: Paula?

2 MS. HIGASHI: I think so. We can certainly move
3 forward with the test claim hearing, as the Commissioners
4 wish.

5 The ten o'clock time-certain was set just to
6 give people an estimated time that we would get to the
7 Mandate Reform item.

8 MEMBER WORTHLEY: Mr. Chairman, as I was reading
9 the staff analysis, it strikes me that the issue, as I
10 see it, unless someone can educate me differently, is
11 that we have an issue of whether we have strict legal
12 compulsion or whether we have practical compulsion. And
13 there was a dearth of information that I could find that
14 would indicate -- I mean, I think it was agreed that all
15 the language is precatory, and it's all in "may" and
16 "wish" and "desires" and so forth; and then the issue
17 would come down to, is there a practical compulsion
18 element to this? And I don't have any information that
19 I could see that addresses this.

20 If that's the issue, we could perhaps focus on
21 that, unless some people disagree with my analysis.

22 MR. KAYE: Commissioner Worthley, I would
23 indicate that staff has provided a very nice and
24 specific and focused statement of what you just mentioned
25 in terms of two statements. They say, just before they

1 conclude, "Here, local agencies have alternatives
2 available in that they can, 1, choose not to become
3 members of POST; and 2, elect to present training courses
4 in-house and, instead, send them law enforcement officers
5 to POST-certified training institutions operated by other
6 entities such as community colleges or other law
7 enforcement agencies; or 3, hire only those individuals
8 who are already POST-certified peace officers."

9 And we have people from local law enforcement
10 agencies here today that can talk to the even theoretical
11 possibility of those other alternatives.

12 MEMBER WORTHLEY: So have I properly addressed
13 the big issue here today?

14 MR. KAYE: Yes.

15 MEMBER WORTHLEY: I mean, first and foremost,
16 that's foundational, it seems to me.

17 MR. KAYE: Yes.

18 CHAIR GENEST: Well, let's hear a little of
19 that.

20 MS. WILCZYNSKI: Yes.

21 MR. BURDICK: Let's have -- Gail is from the --
22 actually, the training academy for the County of
23 Sacramento, just as kind of a reminder, since we've
24 overwhelmed you with a number of witnesses.

25 MS. WILCZYNSKI: Thank you very much.

1 It really is a pleasure to be here today. I've
2 worked hand in hand with POST over the past ten years,
3 being a training coordinator for the Sheriff's
4 Department. And I have always appreciated POST and your
5 quality, your standard. And we appreciate this document.

6 The test claim, reading the Final Staff
7 Analysis, it's a very comprehensive document.

8 The two issues that we see as important here
9 today for your review is, number one, regarding the
10 academy instructors, while it's true that the Sheriff's
11 Department does not have to have a training academy,
12 neither does LA County Sheriff's, neither does San Luis
13 Obispo, neither does El Dorado County. But the question
14 I put in front of you is, if everybody said, "Well, not
15 one in my backyard," where would the training occur?
16 Someone has to have a training academy, whether it's a
17 law enforcement agency or a community college. And we're
18 falling under the same POST mandates.

19 It is mandated. Somewhere, someone has to
20 provide this training.

21 Now, looking at it from a citizen's point of
22 view, take Sacramento as a test case here, our citizens
23 are served best by us having an academy. We can provide
24 this training less expensive because we're not shipping
25 our officers off for the travel per diem, et cetera, to

1 go elsewhere to get training. So we help our citizens.

2 We also help our little neighbor citizens.

3 I say "little" only in population.

4 El Dorado County will send their officers to
5 our class, saving them money because we provide the
6 training nearby.

7 So that is the one issue I have for you, the
8 cost savings, and the fact that somebody, somewhere, has
9 to provide POST training to meet your POST mandates.

10 The second piece of that is -- let me just check
11 my notes. I'm sorry, I'm nervous.

12 The second part is whether or not any particular
13 sheriff's officer or peace officer has to meet your
14 standards. There really is nothing that is voluntary
15 about that anymore.

16 When POST started out 25 -- well, I'm sorry,
17 I've been around for 25 years. You were there before
18 I was. It was there to help, to guide, to suggest, to
19 put
20 us on the track. But over the 25 years of my law
21 enforcement experience, POST has stepped up to setting
22 a minimum, to now setting exact standards, to now
23 providing us exact curricula that you will meet. It's a
24 standard-of-care issue.

25 I don't believe that you could run a -- what I

1 would call a Sheriff's department or a City Police
2 Department without being POST-certified. It's just not
3 reasonable anymore. It's a standard-of-care issue, the
4 same way a medical board sets standards for doctors.

5 And it's important that people realize you can't
6 even really become a police officer, no matter what kind
7 of training you've had, without meeting POST standards.

8 And I'd like to take one second to give you a
9 personal example. My husband is an FBI agent, was for
10 25 years. And in his time, he was always assigned to
11 California. He worked in the Los Angeles FBI office and
12 the Sacramento FBI office. He is SWAT-trained, he is a
13 full investigator, he has done a numerous amount of field
14 work. He has been on task force with local law
15 enforcement across California. He is an expert marksman.
16 I'm very proud of him, with a big 10X. You put a fist
17 right through it, he didn't miss a deal. And yet,
18 with all this experience, he's worked on task force with
19 local enforcement in the street on kidnappings, murders,
20 bank robberies, car thefts, Homeland Security issues. He
21 has top-secret clearance, for heavens sakes. He's been
22 to two prison riots, and he does covert entries. And
23 yet, as he retires from the FBI, my chief here cannot
24 pick him up as a sheriff's officer because he is not
25 POST-certified. Not only that, he cannot even take the

1 equivalency. He would have to take a full-blown academy.

2 So here's a guy that can 10X a bullet; but
3 those skills he's picked up in firearms don't count
4 unless they're POST-certified.

5 So that's my example of, is it voluntary or is
6 it mandated?

7 And in conclusion, for me, I would just like to
8 say, we love POST -- I do. I really do. And the idea
9 that we want standards -- we all want those standards.
10 We just need to have everybody understand the tremendous
11 cost that goes with meeting your standards. And it isn't
12 voluntary anymore.

13 And that's my conclusion.

14 MEMBER WORTHLEY: May I ask a question,
15 Mr. Chairman?

16 I appreciate your testimony, because I think
17 you're getting to the issue, which is, is it a practical
18 compulsion as opposed to maybe perhaps a legal
19 compulsion.

20 What prevents Sacramento from having a parallel
21 track? That is, they would create -- because
22 according -- as I understand it, it's by an ordinance
23 process, whereby a county or a city would obligate itself
24 to be POST-certified.

25 MS. WILCZYNSKI: I'm sorry -- a parallel track?

1 What do you mean?

2 MEMBER WORTHLEY: The idea would be, what would
3 prevent you, Sacramento, from creating your own
4 standards -- they might parallel and look very much like
5 POST standards, but they're your own standards; and these
6 are the standards to which you require your police
7 officers to commit; and they have to meet these standards
8 in order to be hired by your agency. But they could be
9 totally separate from POST.

10 MS. MacCOUN: As law enforcement providers,
11 participation in POST in its most basic form is mandated
12 by statute.

13 If you look at 832(a), it says -- in the Penal
14 Code -- it says that every peace officer in the state of
15 California has to satisfactorily complete an introductory
16 course on training prescribed by the Commission on Peace
17 Officer Standards and Training.

18 It's not practical for us to send our people
19 outside for that training because we're a very large
20 agency, as is the City of Los Angeles.

21 It's more practical for us to provide the
22 mandated training that's mandated by statute in-house, to
23 our officers and the smaller agencies that need
24 them.

25 CHAIR GENEST: Are we sort of losing track of

1 the actual issue?

2 MS. SHELTON: Let me just mention that Penal
3 Code section 832(a), I believe is the citation, deals
4 with basic training of individuals that want to become
5 peace officers.

6 MS. WILCZYNSKI: Correct.

7 MS. SHELTON: There is a statute that does
8 mandate -- anybody that does want to become a peace
9 officer does have to go through a POST-certified training
10 to receive their basic training certificate.

11 That's not true for continuing education,
12 however.

13 CHAIR GENEST: And that mandate for being a
14 police officer predates SB 90 and --

15 MS. SHELTON: I'd have to pull the statutes. I
16 don't remember, but I think --

17 CHAIR GENEST: It's my understanding that that
18 mandate is not a reimbursable mandate under the state
19 Constitution.

20 MS. SHELTON: No.

21 MS. WILCZYNSKI: May I add --

22 CHAIR GENEST: So the question is not whether
23 participation in POST training is mandatory -- it is --
24 to become a police officer, but it's the classes beyond
25 the basic qualification that are in question; right?

1 MS. BORZELLERI: Actually, what is at issue in
2 this test claim is training of certain trainers.

3 CHAIR GENEST: Right.

4 MS. BORZELLERI: And certain academy staff and
5 qualifications.

6 CHAIR GENEST: But that's only with regard to
7 sort of extra training. It's not with regard to basic
8 training; correct?

9 MS. BORZELLERI: Correct.

10 MS. MacCOUN: But in order to put on our own
11 academy, our new instructors have to put on the new
12 requirements that POST came up with in 2001.

13 MR. GUSTAFSON: If I could speak to this from
14 the Commission's POST perspective, this is --

15 MR. BURDICK: I don't think -- I mean, aren't we
16 supposed to complete our testimony first or not,
17 Mr. Genest? I'm not sure what the --

18 CHAIR GENEST: Well, I'm trying to find out what
19 exactly we're talking about. We're not talking about
20 POST, in general, every aspect of it. We're talking
21 about a specific part of it. And that's what we're
22 trying to dig into.

23 But if you would like to continue for a moment;
24 we're past our time, so we have to hurry up.

25 MS. WILCZYNSKI: I think this is the core issue.

1 The bottom line is POST sets the standard of
2 care. It's the minimum standard by which officers and
3 instructors are able to engage in their profession.
4 That's it. You can't really anymore engage in your
5 profession without meeting these POST mandates. Call
6 them voluntary, but it's mandates.

7 That's all I want to say.

8 CHAIR GENEST: Well, let's hear from the
9 Commission staff.

10 MR. GUSTAFSON: There are several inaccuracies in
11 the statements that Sac County has made. However, there
12 are examples of police departments in the state of
13 California that do not participate in our program. For
14 example, the City of Isleton has a police department.
15 And for many years, the City of Los Angeles did not
16 participate in the POST program.

17 I think that it is very practical for agencies
18 to do so because we reimburse the training. So when
19 there's discussion about the costs of, for example, the
20 El Dorado County Sheriff to have to travel, those are
21 costs that are reimbursed under a training reimbursement
22 through POST. So I don't think that is actually key to
23 the issue when we're talking about this instructor
24 training. We have a plan for, what we call it, that we
25 reimburse that travel and per diem.

1 There are 44 of the 58 counties in our state
2 that do not have their own academy. So in that sense,
3 Sacramento has chosen to have their own because they can
4 have that local control, they can train their officers to
5 meet the particular needs of their community; but they
6 certainly aren't compelled to have that academy.

7 So I have examples of law enforcement agencies
8 that aren't in our program, many sheriff's departments
9 that don't have their own academy.

10 And it's true that somebody would need to have
11 the training, but those are people who choose to
12 participate in our program.

13 And to speak to Commissioner Worthley's
14 question, you could have your own standard that would
15 parallel POST. The downside of that is that we wouldn't
16 reimburse that. So the incentive, from a POST
17 perspective, is that if you join our program, we'll pay
18 for your training. And so I think there's a catch there
19 that you can't have it both ways. If you want the
20 reimbursement, then you're in the program; but there have
21 been a few that have chosen to have their own program,
22 and we don't reimburse that. And they're still law
23 enforcement agencies and they're still law enforcement
24 trainers.

25 CHAIR GENEST: Yes?

1 MS. MacCOUN: Briefly, POST does reimburse
2 agencies for some programs; but, for example, we're
3 talking about the instructor development programs that in
4 order for us to maintain our business as a law
5 enforcement training advisor -- or provider, we have to
6 send our instructors or provide that training for them.
7 It's a "plan for." Yes, they provide reimbursement for
8 travel and per diem, but they don't provide the
9 reimbursement for backfill, they don't provide the
10 reimbursement for the tuition, they don't provide the
11 reimbursement for the assistance in maintaining the
12 records and the documentation that's now required in
13 order for our instructors to maintain their certification
14 in order to continue to teach in our academies.

15 MS. WILCZYNSKI: And one other piece of that,
16 that he brought up is, yes, there may be agencies who
17 have chosen not to participate in any particular training
18 and use some outside source. That's called an
19 "equivalency." But then who measures the equivalency?
20 It's measured back to the POST standards.

21 MS. MacCOUN: Right.

22 MS. WILCZYNSKI: Does your outside class that
23 you did without any POST money or POST help meet POST
24 standards? You're right back to: Well, that was a great
25 class, but if it doesn't meet the POST standards and

1 mandates, it doesn't count as an equivalency course.

2 MS. MacCOUN: And we have to meet with our
3 consultants to determine whether or not it meets with
4 their equivalency standards.

5 MS. WILCZYNSKI: Right.

6 CHAIR GENEST: Can we see -- do the other
7 members of the committee -- and I'm not sure I do --
8 understand what the question before the Commission is?
9 Can we get that restated?

10 MS. SHELTON: And let me clarify. The analysis
11 before the Commission focuses only on one issue, on
12 whether or not the regulations constitute a
13 state-mandated program.

14 In order for the Commission to approve any test
15 claim, you have to make findings on more than just that
16 element, which has not been analyzed here. You have to
17 first find it out to be a mandate. And I'll get into
18 what the courts have said about that in just a second.

19 You'll also have to find that the new activities
20 constitute a new program or higher level of service.

21 And the third element is whether there are any
22 increased costs mandated by the state. And in that
23 issue, you would have to take into consideration any cost
24 of the training, any reimbursement from POST, and those
25 types of issues.

1 With regard to the state mandate issue, the
2 Supreme Court has given it some direction, namely that
3 either -- one, that it's not an equitable decision, it's
4 a question of law; two, it either has to be expressly
5 mandated by the statute; or, three, the courts have
6 provided exceptions, even if it's not expressly mandated
7 by statute, it has to impose certain or severe penalties,
8 such as double-taxation or other types of fiscal
9 financial penalties.

10 The other exception the courts have discussed
11 have been a public safety exception, when the entity has
12 no other choice but to perform the mandate. And you
13 would need to look at -- you know, we would need to take
14 it back to further analyze that issue. This is new
15 evidence for us here today. So I wouldn't want to give a
16 recommendation on that.

17 But the plain language of these statutes does
18 not mandate the training or the costs incurred by the
19 local agency.

20 CHAIR GENEST: Well, since we've run ten minutes
21 past our time -- and I don't know that the Commission is
22 ready to vote on this -- maybe we should put it off and
23 take up our other issue. And I suppose that means
24 putting it off until the next meeting.

25 MS. HIGASHI: Since we have no written evidence

1 in the record on this issue, as they testified to today,
2 what I would suggest that we do is, we would reissue the
3 draft analysis -- the final staff analysis as it was
4 issued for this hearing, and allow the parties an
5 additional 30 days to submit written briefs and comments,
6 and to clearly articulate what it is that they are
7 objecting to and what their new positions are.

8 CHAIR GENEST: If I don't hear any objection
9 from the other members, let's do that and let's proceed
10 to the next issue on the agenda.

11 Thank you.

12 MS. HIGASHI: Thank you very much.

13 MR. BURDICK: Thank you very much.

14 And we do concur with your decision that you
15 made today, and we look forward to discussing this in the
16 future. Thank you very much.

17 MS. HIGASHI: Item 7 and Item 8 have been
18 postponed.

19 Item 9 was adopted on consent.

20 Item 10 was adopted on consent.

21 Item 11 was adopted on consent.

22 And this brings us to Item 12.

23 This item will be introduced by Assistant
24 Executive Director Nancy Patton.

25 MEMBER PATTON: Good morning.

1 Since 2003, mandate reform has been a major
2 budget and policy issue. Problems with the mandates
3 determination and reimbursement process include lack of
4 payments for mandated programs, problems with the
5 claiming system, the need to provide the Legislature with
6 better information and delays in the mandates
7 determination process.

8 The Administration and the Legislature have
9 enacted several changes since 2003 to improve the
10 mandates process, including repealing or modifying many
11 state-mandated programs to provide clarity to the program
12 or to reduce the costs of programs, enacting reforms to
13 the test claim and claiming processes, conducting audits
14 by the Bureau of State Audits on two programs, and
15 enacting changes to those programs based on the BSA's
16 recommendations, providing the Commission, the Department
17 of Finance, and the State Controller with additional
18 staff to reduce the test claim backlog and increase
19 audits of mandated programs.

20 Last year, the Commission sought to streamline
21 and reform the existing process using a collaborative
22 process. The Legislature elected not to fund this
23 process.

24 This year, the Department of Finance is
25 proposing an alternative to the existing process for

1 developing parameters and guidelines and statewide cost
2 estimates and funding mandated programs. In addition,
3 the Legislative Analyst's office, in its analysis for the
4 Governor's proposed 2007-08 budget included a section on
5 improving the mandate process.

6 LAO cited continuing problems with the mandate
7 process and released a mandate reform proposal similar to
8 Finance's proposal.

9 The Commission's executive director invited
10 Staff from the Department of Finance and the Legislative
11 Analyst's Office to present their proposals to the
12 Commission. There will be public testimony regarding the
13 proposals following the presentations.

14 First, Commission staff would like to discuss
15 some of the LAO findings in their report and provide
16 additional information.

17 As I stated previously, the Commission was
18 provided with additional staff to eliminate the current
19 test claim backlog. As a result, the Commission is
20 increasing the number of test claims it completes and is
21 reducing the backlog.

22 The LAO report, however, contends that our data
23 shows that we are not reducing workload because we are
24 completing test claims at the same rate as new test
25 claims are being filed.

1 The LAO report, however, does not recognize that
2 at its request, the Legislature directed the Commission
3 to reconsider 13 prior mandate determinations. The
4 Commission was required to complete this new workload
5 prior to eliminating the existing backlog.

6 In 2004, the Commission completed 11 of the
7 13 reconsiderations. The remaining two reconsiderations
8 will be completed within the next six months.

9 The Legislature also modified or repealed
10 numerous mandates and required the Commission to modify
11 or set aside 48 sets of Parameters and Guidelines in
12 2006.

13 In 2006 and 2007, the Commission has completed
14 22 test claims and drafted analyses on another 23 test
15 claims that will be heard in April, May, and July of this
16 year.

17 The LAO report states that the Commission's
18 failure to eliminate our backlog of claims is frequently
19 cited as the main reason for time delays in the mandates
20 process. Staff points out that all the participating
21 entities contribute to this delay by frequently
22 requesting extensions of time to comment on the test
23 claim filings, and frequently seeking postponement of the
24 hearings. For example, state agencies requested
25 107 extensions of time on the 51 test claims filed in

1 2002; and claimants have requested 30 extensions of time
2 for acting on the P's & G's for one program.

3 In 2004, Assemblyman Laird's Special Committee
4 on State Mandates sponsored, and the Governor enacted,
5 AB 2856 to allow the Commission to adopt a reasonable
6 reimbursement methodology that places a greater emphasis
7 on the use of formulas and unit costs or unit times to
8 reimburse mandate claims.

9 AB 2856 requires two criteria to be met to
10 adopt the reasonable reimbursement methodology. Prior
11 to these criteria being required, the Commission adopted
12 unit-cost methodologies for several programs including
13 *Absentee Ballots, Administrative License Suspension,*
14 *Animal Adoption, Annual Parent Notification, Expulsions*
15 *Hearings, Immunization Hepatitis-B, the Open Meetings*
16 *Act, People Health Screenings, and Scoliosis Screenings.*
17 However, the new criteria that must be met makes it
18 impossible to adopt a methodology.

19 Commission staff supports eliminating or
20 amending the criteria as both Finance and the LAO
21 propose. In the meantime, today, the Commission
22 initiated a rulemaking package to amend its regulations
23 to further define the criteria so that methodologies can
24 be adopted.

25 With us this morning is Tom Deatherage with the

1 Department of Finance's new mandates unit, and Mary Ann
2 O'Malley with the Legislative Analyst's Office to discuss
3 their proposals.

4 Thank you.

5 CHAIR GENEST: Do we want to start with
6 Mr. Deatherage?

7 Okay. Welcome.

8 MR. DEATHERAGE: Thank you, Mr. Chairman,
9 Members of the Commission. My name is Tom Deatherage.
10 I'm the program budget manager in the Department of
11 Finance over the local mandate unit, a new unit that we
12 just created this last summer.

13 And, by the way, the local mandate unit in
14 finance deals with the local agency mandates. It doesn't
15 deal with the school mandates. They're still dealt
16 with by the education unit.

17 But I believe that since the creation of that
18 unit, the Department of Finance has not requested an
19 extension of any issue that's come before the Commission.

20 VOICE: I can't hear you.

21 MR. DEATHERAGE: I believe that since the
22 creation of that unit, the Department of Finance has not
23 requested an extension.

24 Now, to mandate reform. Our goal in trying to
25 create a new process for reviewing and dealing with

1 mandates, is to create a process that is considerably
2 more timely, so that the local governments can know what
3 the reimbursement is going to be, the Legislature and the
4 Administration can know what it's going to cost.

5 The worst thing -- or one of the worst things
6 for the Department of Finance in preparing the budget is
7 to have some unknown liability building up, and not being
8 able to deal with or plan for that liability.

9 So we have a very great interest in trying to
10 speed up this process and simplify it.

11 We have been working with the Commission staff
12 on a reform. One of the first things that we would do
13 is, we are proposing to eliminate the current statute
14 that sets up the reasonable reimbursement methodology.
15 We find that there is a difficulty in the current statute
16 in that it requires everything to go to the median. And
17 determining a median can be problematic. Is the
18 median, the median of all affected entities, those that
19 happen to file claims? You know, how is that going to be
20 defined?

21 We think it's going to be easier if we just
22 eliminate that requirement and move forward with a new
23 process.

24 Our process would allow us to begin working with
25 local governments either prior to or immediately after

1 enactment of a potential mandate.

2 And we would work on deciding whether, indeed,
3 there is a reimbursable mandate at issue. We would then
4 be working with the local governments on how we might
5 best approach estimating the cost.

6 And we would work with associations, we would
7 work with specific local entities, and we would try to
8 come up with a methodology that seemed reasonable to the
9 people involved.

10 And I liken it to the Department of Finance's
11 role in looking at budget-change proposals for other
12 departments. We sit down with the department. We work
13 with them to determine what are the real costs, how can
14 we best approach the work that needs to be done, and how
15 can we implement this in a reasonable manner.

16 It's not going to be a process that is going to
17 necessarily fully reimburse every entity. It may
18 overreimburse some entities.

19 What we're looking for is something that looks
20 Reasonable, and we can say it looks like it would be
21 implemented in an efficient and effective way.

22 We would then take that back to the
23 Legislature -- and hopefully we can do this within about
24 a year - and that would permit the Legislature to
25 determine if, indeed, they intended to spend that amount

1 of money for the local governments to do what they're
2 telling them to do.

3 That issue would be before the Legislature; and
4 they could decide if they want to repeal the mandate or
5 modify the mandate, or what they want to do with it.

6 When money is appropriated, then the money would
7 be paid to the locals.

8 We've been working with so far cities and
9 counties on the process. We're not excluding school
10 districts from the discussions. But we're putting school
11 districts off for the time being, and that's partly my
12 experience I have had. At various times in my career
13 I have dealt with local governments, and the local
14 government unit in Finance. I've spent quite a bit of
15 time in the education unit. And one thing I did find out
16 is that the school districts in local governments often
17 approach things in different ways. So what works for one
18 may or may not work for the other.

19 We want to come up with a process that will work
20 for cities, counties, special districts; and then we're
21 going to take it to the school community and see if it's
22 going to work for them.

23 If it's not going to work for them, then we'll
24 work with the school community on what will work for
25 them because, as I said in the beginning, we want to have

1 a process that is much more timely. We want to know what
2 these things cost. That's our goal.

3 MEMBER WORTHLEY: Mr. Chairman, can I ask a
4 question?

5 I'm curious, have you considered instead of
6 going to the Legislature, that you would come to the
7 Commission?

8 MR. DEATHERAGE: Yes, that is a possibility.

9 MEMBER WORTHLEY: It would seem to me that it's
10 so political at the legislative level, that coming here,
11 where you would bring it -- it would be like a stipulated
12 judgment, essentially, to this board, that this
13 Commission would consider that, we'd have our staff
14 review it, or whether we concur with the analysis, the
15 determination. And then this board would -- I don't want
16 to say rubber-stamp it, but it would probably approve it
17 95 per percent of the time. But the idea is it would be
18 done in a timely fashion.

19 My concern about going to the Legislature is
20 that it could become a hot potato, and it might not get
21 acted upon in this legislative session, in the next
22 legislative session, or -- there's a lot of things that
23 could happen once you go to the Legislature.

24 MR. DEATHERAGE: You're absolutely correct. And
25 I didn't mean to imply we were going to go directly to

1 the Legislature.

2 MEMBER WORTHLEY: That's what you just said.

3 MR. DEATHERAGE: We do intend to. That's a
4 possibility; but I think generally, we would expect to
5 come back to the Commission with a reasonable
6 reimbursement methodology that the Commission could --
7 would endorse and adopt. And, yes, that would be a more
8 timely process than going through the Legislature.

9 CHAIR GENEST: But you've mentioned one of the
10 outcomes might be the repeal of a statute, in which case,
11 the Commission doesn't have that power.

12 MR. DEATHERAGE: No, that would be an issue that
13 the Legislature would have to act on.

14 MS. HIGASHI: I just want to add one point, one
15 comment. The Department of Finance and some local
16 agencies are working together right now on some cost
17 surveys that would then be proposed as reasonable
18 reimbursement methodologies for the Commission to
19 consider.

20 CHAIR GENEST: Other questions for
21 Mr. Deatherage?

22 MR. DEATHERAGE: I just want to clarify that we
23 are going to be dealing with the school districts, so we
24 are not leaving them out. We want to make sure that we
25 have a process that will work for the first section,

1 and then we'll work on the process for the other section.

2 MEMBER WORTHLEY: One bite at a time?

3 MR. DEATHERAGE: One bite at a time.

4 CHAIR GENEST: So are we ready to hear from
5 Ms. O'Malley?

6 MS. O'MALLEY: Good morning.

7 I'm going to be speaking today from this handout
8 that you have called, "Improving the mandate process."
9 And I also brought copies of it, which are back there
10 along with the public agenda for people that may be in
11 the audience who don't have a copy.

12 I just want to start, we don't have nothing --
13 we at the LAO, we have nothing but respect for the
14 enormity of the work that the Commission faces.

15 You wrestled with some very difficult issues of
16 state and local governments. You have to define and
17 measure this peculiar layer of geography in the state and
18 local landscape, this peculiar layer of geography called
19 the state-mandated local program.

20 Our office has watched the Commission's work,
21 both in the audience -- occasionally up here, always
22 on your Web site. And we've reached a number of
23 conclusions regarding the mandate reimbursement process
24 that we'd like to share with you that are outlined in the
25 handout.

1 And your staff is correct, for many, many
2 reasons there is a long process between submission of the
3 mandate test claim and final action by the Commission.
4 It takes about five years; and that process is certainly
5 hampered by all the incorrect reduction of claims that
6 you have to handle, the reconsiderations, and also the
7 delays by many parties' requests for delays in the
8 process.

9 Our only point is those IRCs, those
10 reconsiderations, those request for delays are going to
11 continue to happen. And we need to plan a process that
12 can get us through this mandate-reimbursement process on
13 a quicker basis. It imposes very significant hardships
14 for local government and for the state, it makes it very
15 difficult to have mounting liabilities and not know what
16 the scope of the mandate is for five years.

17 The other concern we've got regarding the
18 Mandate-reimbursement process is the claiming process
19 is highly complicated. Given the definition of a
20 reimbursable mandate, most of your mandates are not
21 entire new programs. They add a marginal increased
22 activity or, frankly, much legislation adds marginal
23 increased activities in 12 different areas.

24 And it's very difficult to quantify what the
25 cost is of carrying out a marginal-increased activity in

1 12 different areas.

2 So we kind of have a choice, we could either
3 hand out stop watches to all of local government and time
4 it, how long did the training take, how long did that
5 phone call take, and take a log for it, and record things
6 like we require them to record in POBOR, which is how
7 does a peace officer bring a tape recording to the
8 hearing; and if so, did the peace officer press the
9 button first, and did you document that?

10 We can either go through this kind of process
11 with stop watches, or we can embrace the imperfect and
12 rely on unit cost. And unit costs are sloppy. They
13 provide too much money to some and too little money to
14 others.

15 But our sense of it is, the staying with the
16 status quo places enormous costs on state government to
17 review and audit these claims, and local governments to
18 prepare them, and places enormous friction between state
19 and local governments regarding this whole mandate-
20 reimbursement process.

21 So our second concern after the time is the
22 claiming process, the complexity of it.

23 And the very last one is the little incentive
24 for cost containment.

25 If you think of it from a local government

1 standpoint, what do they gain if they create the most
2 efficient way of following a mandate? If they do it
3 most efficiently, they get less money.

4 We have no incentives for local government to
5 carry out a mandate in an incredibly efficient fashion.
6 And we think from a governmental standpoint, and as
7 accountability for taxpayer revenues, we ought
8 to create incentives at all levels of government to carry
9 out responsibilities in a cost-effective fashion.

10 So those are our concerns with the proposal.

11 To give you an overview of our proposal, our
12 goal is not to tilt the balance of scales to make it
13 easier for state government or easier for local
14 government to file a mandate claim; but simply to
15 expedite the process, to simplify the claiming process.
16 And we wanted to create a process that provided
17 alternatives for local government.

18 And from our standpoint, we wanted to include
19 schools. But they're all optional alternatives. So if
20 a local government claimant or the Department of Finance
21 didn't want to play on a particular mandate, they didn't
22 have to. But that process would be available to all
23 local governments, including schools.

24 In our proposal, we really wanted to have this
25 have a wide public hearing. And so at the same time we

1 discussed our proposal in the P & I, our perspectives and
2 issues, we gave the Legislature draft language of our
3 proposal, because the devil is in the details and the
4 people need to look at the specifics of it and respond to
5 it. And Assembly Member Silva very graciously
6 incorporated it and introduced it into AB 1576.

7 So our proposals got three different concepts.
8 The first is regarding the reasonable reimbursement
9 methodology. We've all been talking for a long time
10 about the difficulty, almost the impossibility of
11 measuring the marginal frugal cost of carrying out a
12 mandate. And in 2004, the Legislature tried to create a
13 reasonable reimbursement methodology that would highlight
14 and define the kind of unit costs that we were thinking
15 about. For many reasons, it didn't work out.

16 Now, the choice is, we could either repeal it,
17 or maybe we could take a look at that reasonable
18 reimbursement methodology and say, why didn't it work out
19 and how do we fix it?

20 And our two proposals is this: We suggest that
21 there are two different criteria. One is that
22 100 percent of the cost equals 100 percent of the state
23 reimbursement; and the other one is 50 percent of the
24 local agencies get fully reimbursed.

25 We suggest make it one of those two criteria,

1 and also clearly specify in legislation what was always
2 the legislative staff's standpoint, which is, we expected
3 this to be based on estimates of local government cost.
4 Use representative samples, use reverse engineering, use
5 a variety of ways of trying to estimate the cost.

6 So our first proposal is to highlight the
7 reasonable reimbursement methodology. Amend it, not end
8 it.

9 MEMBER WORTHLEY: Mr. Chairman, if I may ask a
10 question.

11 Have you thought about something of a hybrid
12 there? My thought was this: You could offer to the
13 claimant what you just referred to as standardized costs
14 and so forth, but California is an extremely diverse
15 state. So if I'm in Imperial County and I have to hire
16 somebody that has to come from Los Angeles to fulfill a
17 responsibility, my costs might be, let's say, four times
18 what somebody else could have it done for in an urban
19 setting. So that you would allow for that kind of
20 extenuating circumstance, a person to make a
21 significant -- make a claim based upon actual cost versus
22 unit cost.

23 And the idea would be probably that most people
24 would want to take advantage of a unit cost. From a
25 simplicity standpoint, it would be more burdensome to do

1 the other. But allowing for the discrepancies that we
2 have in this county, and the diversity that would allow
3 people to be able to make such a claim.

4 MS. O'MALLEY: It's not completely inconsistent
5 with our proposal. But what we would prefer to see is
6 having your \$10.50 a widget or \$11.50 in rural areas, you
7 know, define it as categories, as opposed to giving all
8 the local government stop watches.

9 MEMBER WORTHLEY: Well, I agree with the
10 concept.

11 MS. O'MALLEY: If you read over the audits by
12 the State Controller's Office -- and no disrespect to the
13 very high quality staff work they're doing -- they're
14 measuring to each one of your Parameters and Guidelines
15 and saying, "Where's your documentation? Where's your
16 log? Where's your" -- and this is what they need to be
17 doing. And I would suggest that for the good of the
18 state and for the good of state and Imperial County
19 relations, let's move to unit costs wherever possible.

20 Certainly, there are going to be cases where
21 it's impossible. But to the maximum extent, we think
22 it would be a good direction to go.

23 The second alternative -- so the first one was
24 modifying the reasonable reimbursement methodology.

25 The second one is, we call it, allowing

1 reimbursement methodologies or Parameters and Guidelines,
2 any statewide cost estimate to be developed through
3 negotiations.

4 Now, some people say, "You know, you can do that
5 right now." But the reality is, it never is. And the
6 reason is because there are no clear benefits, and
7 there's no clear process, and no real clear timeline for
8 local governments and Department of Finance to go off and
9 do that work in a negotiated fashion.

10 We're proposing something different. So after
11 you adopt a Statement of Decision, a local government
12 claimant and the Department of Finance may come back and
13 propose to you a negotiations work plan. They say,
14 "We're going to work on developing the Parameters and
15 Guidelines. Here's our plan. We promise to consult with
16 a large sample of local governments; and to develop this,
17 we're going to assess local support before we bring
18 it back. And by the time we bring it back, we're going
19 to have some kind of unit cost to be able to estimate the
20 statewide cost."

21 So they'll come on back, and they'll say, "This
22 was our process. Here's our reasonable reimbursement
23 methodology. Here's indication of broad local acceptance
24 of our reasonable reimbursement methodology, and here is
25 the statewide cost estimate at once." All right, your

1 review of that process would be largely procedural.

2 Is it reasonable reimbursement methodology that
3 squares with that SOD? Yes.

4 Did they, indeed, go out and check with a
5 representative sample of local governments? Yes.

6 Okay, then that's all right. And then you would
7 adopt the statewide cost estimate.

8 Pulling that whole process together through the
9 adoption of the P's & G's and the statewide cost estimate
10 shaves a year from the process. Okay, that alone shaves
11 a year. And if we go to unit cost, and we don't have to
12 actually send everything on out, we can say to you -- and
13 the statewide cost estimate will be a whole lot better.
14 I don't know if you realize, but the statewide cost
15 estimates over the last -- frankly, from the beginning of
16 the statewide cost estimating process are incredibly
17 inaccurate. And that's true even for the most recent
18 statewide cost estimates. And that's because you sent
19 out the claiming instructions, and you get feedback from
20 only a small selection of the local agency claimants that
21 actually have the data.

22 Within another year or two or three, the local
23 agencies learn how to collect the data, and they're
24 submitting claims.

25 So the difference between the statewide cost

1 estimate and the actual costs that the state faces is
2 enormous. And so you would give the Legislature
3 information a year faster and much better quality data.

4 The third alternative is a process very similar
5 to what the Department of Finance has suggested. Our
6 concern, and maybe because we work for the Legislature
7 is we want to have a very clear legislative process
8 and options for the Legislature.

9 And so our proposal -- we call it our fast-track
10 process. Shortly after the Legislature enacts
11 legislation, where regulation has passed, a local agency
12 can go to the Department of Finance and say, "We think
13 there's a mandate," and they can say, "You know what? We
14 think so, too."

15 They can go on off and define what they think is
16 a mandate, develop a reasonable reimbursement
17 methodology, estimate the cost, and prepare a funding
18 package for the Legislature.

19 It would be introduced to the Legislature, for
20 the Legislature to consider it.

21 If the Legislature adopted it, they would do
22 this: They would say, "We declare" -- the Legislature
23 declares that these five elements of SB-whatever
24 constitute a legislatively determined mandate. And here
25 is the reimbursement methodology that we will follow in

1 reimbursing this mandate.

2 The local agencies then, when the money is
3 appropriated, can look at it and say, "Do I wish to
4 accept this?" If they don't wish to accept it, they can
5 come here and file a test claim. But I think in many
6 cases, they would much rather go through the simplicity
7 of going to the Legislature and just taking the money.

8 If so, if the local agency accepts the money,
9 they signify for the Legislature and to the
10 Administration that they accept this as a reasonable
11 reimbursement methodology, and they will continue with
12 this process for five years. During that time, they will
13 not file a test claim, and they will accept this as a
14 reimbursement.

15 If a local agency doesn't agree, they can come
16 here.

17 What if the Legislature, after two years, runs
18 into fiscal difficulties and doesn't fund the thing that
19 they promised to fund? Well, then all bets are off. The
20 local agency didn't get the dough that they were
21 promised, or didn't get the full amount of dough that
22 they were promised, and they can come in here and file a
23 test claim.

24 The notion is to create something particularly
25 for widely agreed mandates, where they can come through

1 this legislatively determined process and bypass the
2 Commission entirely.

3 This wouldn't work for your most complicated
4 Claims. You guys would still be here, resolving those.
5 But it would shed a lot of the workload for your simpler
6 claims and free up your time to do the harder work.

7 Let me just tell you that since we've issued our
8 report and put out the draft legislation, we've gotten
9 very positive feedback. However, it's been very
10 preliminary positive feedback. And we're really
11 hoping -- our intention in providing this in legislation
12 was to have a broad public debate. We really know that
13 we, alone, won't be able to get it a hundred percent
14 right. We would benefit from the input from the
15 Commission, from state agencies, from the Department of
16 Finance, from local governments. And we really welcome
17 that process. Because our intention of it was to have a
18 broad public policy discussion, and that was the purpose
19 of putting our legislation out.

20 And with that, I'd be happy to take any of your
21 questions.

22 CHAIR GENEST: Any questions from the Committee?

23 *(No audible response)*

24 CHAIR GENEST: No?

25 I actually have a couple of questions, probably

1 for both of you.

2 I'm not sure I understand precisely what the
3 differences are between the two bills, the Legislative
4 Analyst's-sponsored bill and the Department of Finance
5 bill.

6 What are those key differences?

7 MR. DEATHERAGE: I believe the key differences
8 are, one, the Legislative Analyst specifies in the
9 statute the process by which something would be taken
10 directly to the Legislature. We leave that to be done
11 on an individual basis because you're going to go to the
12 Legislature, anyway.

13 The other key difference that I recall is that
14 we called for eliminating the current reasonable
15 reimbursement methodology provision, and the Legislative
16 Analyst's proposal leaves that provision in the statute.

17 MS. O'MALLEY: Philosophically, they're
18 remarkably similar, perhaps just with different hats.
19 Ours has be a little bit more of a detailed process in
20 terms of the Legislature.

21 CHAIR GENEST: What about the impact of
22 Proposition 1A, especially under your expedited proposal
23 in which individual local governments would be able to
24 come back and challenge the determination?

25 Proposition 1A says that, for those mandates

1 that are affected by it, if the Budget Act of a given
2 year fails to fully fund the legally determined cost of
3 a mandate in the most recent year in which it was legally
4 determined, then the mandate is suspended.

5 If you went through your expedited process and
6 thereby established, since it's a statutory process, a
7 legal determination of what the mandate costs, and then
8 it wasn't funded in the Budget Act, then the mandate
9 would be suspended.

10 What would be the recourse of a local government
11 who didn't agree with that determination of what it cost?

12 MS. O'MALLEY: I want to make sure that I
13 understand your question.

14 Let me just say, in terms of the Legislatively
15 determined mandate, or alternative 3, by the Legislature
16 declaring something to be a mandate, the provisions of 1A
17 apply. In other words, local governments expect to
18 receive funding on an annual basis, or the Legislature
19 should be suspending that mandate. It also authorizes
20 the Legislature to carry out the Government Code's
21 authority of suspending the mandate.

22 So the Legislature may suspend. Local
23 governments are entitled to reimbursement if the
24 Legislature does not suspend or repeal.

25 In terms of your question, if a local agency

1 doesn't agree with the amount of money provided in the
2 legislatively determined mandate, a local agency,
3 provided it doesn't accept the money one year, can come
4 to the Commission and file a test claim, which is part of
5 the reason why the Legislature -- when the Department of
6 Finance brings to the Legislature a funding package and
7 says, "We have an agreement with a local agency regarding
8 something that we want you to call a legislatively
9 determined mandate," in our process, the Legislature will
10 look to the Department of Finance and local agencies and
11 say, "Show us broad information suggesting wide local
12 support for your proposal."

13 If you don't have a lot of local agencies saying
14 that this is a reasonable reimbursement methodology, why
15 is it worth the Legislature's time to go ahead and
16 declare something a mandate and provide funding?

17 So when the Department of Finance comes with a
18 package, saying, "Declare something to be a mandate," the
19 Legislature is going to say, "Do you have pretty
20 widespread local government support? Because if you
21 don't, don't come here, just send the local agencies to
22 the Commission on State Mandates."

23 CHAIR GENEST: Let me answer my own question a
24 little bit, because I actually think your proposal works
25 very well in the context of the mandates that are

1 affected by 1A; because you will establish some price,
2 some cost. And then if the Legislature chooses not to
3 put it in the budget, or if it gets put in the budget and
4 the Governor chooses to veto it, in either event, it's no
5 longer in the Budget Act at that price, then it's
6 suspended.

7 Now, with respect to any activity that occurred
8 before the suspension, there's obviously a chance to get
9 reimbursed at some point. Nobody's going to change that.
10 That's a constitutional guarantee.

11 However, the local government that didn't agree
12 with the price, if it thought the price was much higher,
13 it would be sort of a moot point at that point. If
14 there's no longer a mandate, why would you appeal to get
15 a higher-priced determination?

16 If it thought the price was lower, I think it's
17 an unlikely scenario that a local government would want a
18 mandate to continue and in order to get it to continue,
19 they would come appeal for a lower unit price.

20 So I think for those mandates, your process
21 would absolutely get us to where we need to be. And
22 where we need to be is a matter of not just legislative
23 determination, but the people agree with Proposition
24 1A.

25 The Legislature put it on the ballot and the

1 people agreed with it. It's in the Constitution.

2 And the underlying idea there is: Let's not
3 build up these massive overdue payments on mandates.
4 Let's quickly get a decision to either pay for it or get
5 rid of it, suspend it.

6 At one point it was going to be repealed, but
7 it ended up coming out of the legislative process as
8 suspension. It has the same effect. It just isn't
9 permanent, necessarily.

10 So I think your proposal really answers -- and
11 so does the Department of Finance's -- really answers the
12 question, how should this Commission and how should the
13 mandate-reimbursement process accommodate the new thing
14 that Proposition 1A has put into the Constitution? And
15 the urgency of getting a decision one way or another --
16 fund it or get rid of it -- is addressed by your
17 proposal. And that's why I'm very attracted to it.

18 I think it's less clear how that would work out
19 in mandates such as POBOR and others which are not
20 subject to Proposition 1A, or all of the education
21 mandates which are not subject to Proposition 1A.

22 I wish we could have applied Proposition 1A to
23 all mandates, but we didn't do it that way. Maybe
24 someday in the future it will be done.

25 But at least with respect to Proposition 1A, I

1 think both proposals are, in Chairman Mao's words, a
2 great leap forward. And I think the Commission should
3 seriously consider whether or not to endorse those.

4 I think we could wait until our next meeting to
5 do that because both proposals come up before the
6 Legislature after our -- is it April 16th, the next
7 meeting?

8 MS. HIGASHI: Yes.

9 CHAIR GENEST: So I would like us to urge the
10 members of the Committee to take a serious look at this
11 between now and then, and contemplate whether the
12 Commission should endorse one or both of these proposals.

13 And I suppose it sounds like we could almost
14 pick one and flip a coin between the two; they're not
15 that different, obviously.

16 With my other hat on, I would naturally lean
17 towards the Finance version, but I don't think the
18 Department of Finance is particularly opposed to the
19 Legislative Analyst's version.

20 MR. DEATHERAGE: Mr. Chairman, as I said,
21 we're in discussion with local governments.

22 My guess is that the two proposals will come
23 together and meld into one here in the next several
24 weeks.

25 And hopefully, that could happen even before

1 your next meeting. I don't know that it will happen that
2 quickly; but I think endorsing in concept, at least, puts
3 the message out there that the Commission supports the
4 idea. The specifics really aren't that much different
5 for the two proposals.

6 MEMBER WORTHLEY: Mr. Chairman, the one thing --
7 I'm from local government, so it's my job to be skeptical
8 about considering things in the State Legislature. So
9 I kind of like ones with the Department of Finance. I
10 would think it might be advantageous to have the
11 negotiations, have what would be in a sense a stipulated
12 agreement, come before this Commission, which is a
13 quasi-judicial body, which will be reviewed by our staff,
14 approved by the quasi-judicial body, and then they would
15 put a little more pressure on this Legislature to act on
16 it.

17 I'm concerned that the Legislature will not act.
18 Even though they ought to act, that doesn't mean they
19 will act. They could delay it, they could disagree with
20 the agreement. I just think all kinds of things could
21 happen when it gets there.

22 I would rather -- I would feel more comfortable
23 if you had a quasi-judicial determination supporting the
24 agreement reached by the parties, and then it go to the
25 Legislature. I would think it would have a greater

1 impact on the Legislature, or hopefully so.

2 MS. O'MALLEY: If I may -- and I'm sure I'm
3 going to butcher some of the legal language on this
4 one -- the reason our third alternative bypasses the
5 Commission process entirely and goes to the Legislature
6 is in the interest of time. It would take about a year
7 to do this alternative third process.

8 Our understanding of if we were to -- say, the
9 Department of Finance and local governments were to come
10 together and draft a Statement of Decision and Parameters
11 and Guidelines and a statewide cost estimate and bring
12 it to you, our understanding -- and you've got a lot of
13 lawyers in this room who can correct me -- is you would
14 need to do full public hearings on it and review the
15 whole merits of this proposal being brought to you. And
16 so that would slow down the process.

17 And so in the interest of time, we were
18 suggesting having a process where the Legislature could
19 declare something to be a mandate.

20 But certainly if it got bogged down in the
21 Legislature, people do not get satisfaction, they could
22 come here, and they would already have the work product
23 that hopefully would expedite the process coming through
24 the Commission.

25 CHAIR GENEST: I see a problem with that almost

1 philosophically, because the entire mandate-reimbursement
2 portion of the Constitution is actually a limitation on
3 the Legislature. It is, on its face, suspicious of the
4 Legislature, and anxious to keep the Legislature from
5 imposing costs on local governments that are never
6 reimbursed.

7 But I don't think your proposal actually raises
8 that problem, because it wouldn't affect the underlying
9 constitutional requirement that mandates be reimbursed;
10 it would just be a way of expediting the determination of
11 how to do that.

12 MS. O'MALLEY: Our proposal, if I may, is very
13 similar to if the Legislature were to pass a bill and
14 say, "Gee, we understand that there's some local cost.
15 Let's put an appropriation in the bill," okay, which
16 doesn't happen all that often. But this is sort of the
17 division by about a year. The Legislature would pass a
18 law where there would be a regulation, and a year later,
19 with information provided by the Administration and local
20 government, there would be some information regarding the
21 cost of the legislation and the amount that would need to
22 be provided.

23 It's essentially like putting that funding in
24 the bill, which ideally it would have been in the first
25 place.

1 CHAIR GENEST: I think it's important for me,
2 anyway, that the Commission think about the implications
3 of Proposition 1A. And, to my knowledge, the
4 Commission hasn't really dealt with that explicitly.

5 And I think it's urgent that we do so, because
6 that has been the law of the land now for two years. It
7 fundamentally changes a large number or a big category
8 of mandates -- not all.

9 And I think any proposals that affect mandates
10 not affected by Proposition 1A may be experimental, in
11 the sense that we may adopt something and then decide
12 it's not quite what we had in mind; and we may find that
13 all of this comedy of people getting together and
14 agreeing on things is blown up every time by some
15 outlier, single, local government saying, "Well, I don't
16 agree," and blowing up the whole thing.

17 That, I don't believe, is a problem with respect
18 to 1A, for the reasons I stated before, because
19 essentially the action moots it out.

20 It would be a problem if we agreed on a cost,
21 put the cost in the budget, and then somebody said, "But
22 wait, that's not enough." That would still be an issue.
23 But I think they would be fighting an uphill battle if
24 the process by which that amount was made was reasonable,
25 public, and endorsed by this Commission.

1 So while my enthusiasm for the proposal is
2 tempered when it comes to the non-Proposition 1A
3 mandates, since it's not that clear to me how that would
4 work, when it comes to the 1A mandates, this Commission
5 needs to do something, and I think both of these
6 proposals are a step in the right direction. The goal
7 being to get to that point where the Legislature either
8 funds or suspends the mandate as quickly as possible.

9 The worst-case scenario is the one that
10 Prop. 1A was designed to avoid, which is that you go on
11 almost indefinitely incurring the costs with no -- and
12 then that's bad for both sides because you're not being
13 reimbursed at the local level and we, at the state
14 level, have built up this huge debt that we somehow have
15 to pay, which is what we're actually doing right now,
16 every -- for the next, what, 13 years left to get it paid
17 off -- or something like that.

18 MS. HIGASHI: 14.

19 CHAIR GENEST: So I think we have to take some
20 action about Prop. 1A, and I think these proposals do
21 that.

22 MEMBER WORTHLEY: Just one last thing.
23 As you discussed the problem before the Commission, I
24 could see we might adopt different rules. In other
25 words, if you're talking about something coming before

1 the Commission that's not contested, we're talking coming
2 before the Commission with an approval, you've got
3 parties agreeing, the Department of Finance and an
4 applicant or the affected local government coming
5 together requesting approval of that agreement before
6 this Commission, I'm not sure we'd have to have the same
7 kind of -- because it's really designed now to be a
8 contested matter. But if you're bringing it before the
9 board not as a contest but as an agreement for approval,
10 I'm not sure we'd have to have the same kind of due
11 process requirements. Because the parties in front of
12 you are agreeing that this is what they agreed to do.
13 Therefore, you don't have to go out to the world,
14 necessarily.

15 Just a thought. There may be a way of
16 addressing that way, to expedite it.

17 I just would feel more comfortable if this
18 Commission ruled in favor of the agreement and then it
19 went before the Legislature because I think it gives
20 more impetus for the Legislature, to fulfill it. But I
21 could be wrong.

22 MS. HIGASHI: I just wanted to add just a couple
23 of comments.

24 First, the concept of legislatively determined
25 mandates is certainly not new. We still actually have a

1 few in the budget that they're designated by the letter
2 "L" before a number. And we couldn't find them, we had
3 no records of decisions, and then discovered from the
4 original statutes that they were actually bills that,
5 back in the olden days, language was added directing the
6 State Controller's office to issue claiming instructions
7 with a specific formula, and an appropriation was made.
8 And there are only a handful of those still in the
9 budget.

10 The other point I wanted to make is that there
11 were some comments made earlier by LAO about the
12 inaccuracy of the Commission's statewide cost estimates.
13 And I just wanted to point out that the Commission is
14 basing those statewide cost estimates on the claiming
15 data that is received by the State Controller's Office.
16 And it's on the actual cost claims.

17 The Commission itself does not have the power to
18 initiate reasonable reimbursement methodologies or unique
19 costs. Even though we have encouraged the proposals --
20 and this has happened even before the definition was
21 added to statute -- unless there was virtually agreement
22 by the parties, it was very rare that the Commission
23 actually did approve them when they were proposed, if it
24 was just a claimant proposal without some agreement by
25 the Department of Finance.

1 And so this is a new day today. Certainly the
2 new Mandates unit is working very hard, very closely with
3 both Commission staff and with claimants in trying to
4 develop cost surveys and actually undertaking activities
5 without having the benefit of audited data, which used
6 to be the mantra that unless the data that the statewide
7 cost estimate -- or I should say, the reasonable
8 reimbursement methodology or unit was based on audited
9 data or it should never be considered by the Commission,
10 or never come before the Commission.

11 So we really are pleased by the change in
12 environment and culture about how mandates are
13 approached, and the willingness of especially the
14 Department of Finance to really become more engaged in
15 discussing unit costs, unit reimbursements, and
16 expediting the process.

17 CHAIR GENEST: Are there any other comments from
18 the Commission?

19 Well, I would like to suggest that we ask
20 probably the Department of Finance to come back to the
21 next meeting with a proposal for the Commission to
22 endorse -- or not, depending on the will of the
23 Commission - its legislation. By that time, that may be
24 somewhat revised.

25 It sounds like in the interest of getting more

1 votes, it might be a good idea if it could somehow
2 involve getting that process back through the Commission
3 rather than straight to the Legislature. But I think the
4 Commission, at least, should have an opportunity to vote
5 on whether or not to endorse mandate reform in some form
6 next time.

7 MEMBER WORTHLEY: Mr. Chairman, I agree. I
8 appreciate that our staff is very familiar with the
9 process that we will probably deal with it, so I
10 appreciate their comments and recommendations back to us
11 as well.

12 MS. HIGASHI: Our next -- what we'd like to do
13 at this point is allow members of the public to come
14 forward to comment on the proposals.

15 And I don't know if any members of the public
16 did --

17 CHAIR GENEST: Let's do that.

18 Thank you both for your time and effort.

19 How do we want to do this? Should we start that
20 way or -- why don't we start here?

21 Please introduce yourself.

22 MR. JOHNSTON: My name is Michael Johnston from
23 Clovis Unified School District.

24 And I would just like to address the proposal
25 that was submitted. We haven't had a lot of time to

1 review them. I appreciate the Commission's understanding
2 that, you know, mandate reform is a big issue for
3 agencies, and especially school districts, looking at how
4 we can reform mandates and the process that we have, as
5 we know there's some concerns with the process, we've
6 been dealing with it for some time now, looking at how we
7 can reform that.

8 But I'm also concerned that, when we look at the
9 issue and we look at the proposals, that we're not
10 including school districts. School districts are being
11 excluded. We're not going to be included in the process.

12 Yes, later on, maybe we will be included, look
13 at how we can implement that, or phase that approach we
14 use with local agencies. But I'm concerned that we'll
15 try to use the same cookie-cutter approach to those local
16 agencies to the school districts, and not have -- we
17 won't have the same type of input that local agencies
18 will have in that process.

19 So that's a big concern for us as we look at the
20 process and looking at the proposals. Obviously, we need
21 more time to review those proposals. We're concerned
22 also that, you know, it's not a reform effort, total
23 reform effort. And it's looking at applying a unit rate,
24 and if there's an issue coming back for a test claim.
25 So the processing is still there for test claims. And

1 coming back through that process, we'd like to see
2 something that's a total implementation and reform
3 effort, including all agencies, including public school
4 districts.

5 So I appreciate your time.

6 CHAIR GENEST: Thank you.

7 If the Commission were to endorse the proposal
8 which, at this point, as I understand it, does not
9 involve mandates that affect school districts, with the
10 idea that at some point that would be a model with which
11 to work with the school community to figure out what
12 would work in that arena, would that be something that
13 schools, you think, would be opposed to? Or would that
14 be seen as a step -- it doesn't affect you immediately,
15 but a step in the right direction, that gives you an
16 opportunity to have a reform that addresses your issues?

17 MR. JOHNSTON: I think we look forward to
18 reform. But, obviously, we don't, like I said, don't
19 want that cookie-cutter approach. We want to have input
20 into what that will be when we look forward and when we
21 move forward.

22 And also one of the things that came up was
23 audited records, audited mandate claims, basing unit
24 rates on that would be a concern for school districts on
25 the basis of the audits and where they have been and

1 where we're at with audits right now. How can we base
2 it on audits if we don't have a good audit process in
3 place and school districts cannot submit claims and know
4 when to submit claims and know what the proper
5 documentation is for those claims?

6 You know, looking at all those processes and not
7 trying to come down with a lower unit rate because of
8 reduced audit claims?

9 CHAIR GENEST: Thank you.

10 Next?

11 MR. MANALO: Good morning. And thank you for
12 the opportunity to speak. My name is Edgar Manalo, and
13 I work for San José Unified School District.

14 In the capacity of the mandated costs analyst,
15 I'm in charge for claims for reimbursable mandates for
16 the district.

17 On behalf of the school districts across the
18 state of California and San José Unified, I'm here today
19 to voice the importance of including school districts in
20 the process of reforming the mandates system.

21 This morning we all heard the proposals made by
22 the Department of Finance and the Legislative Analyst's
23 Office on mandate form. Even though it's promising
24 to witness movement in any type of reform, I cannot
25 emphasize enough how vital it is to include all

1 stakeholders in the successful streamlining of the
2 process, in successfully streamlining the process. This
3 includes school district participation at the
4 negotiations table.

5 It has been exactly one year to this date,
6 March 29, 2006, when the Commission staff did a special
7 report assessing the work of the San Rafael Collaborative
8 Policy on reforming the mandate-reimbursement process.

9 And the staff had several recommendations to
10 the Commission for mandate reform. In one item, it
11 specifies, and I quote, "To work with the Department of
12 Finance, the Legislature and other stakeholders to
13 encourage participation."

14 It was made clear then, and it remains clear
15 today that for reforms to be successful, all stakeholders
16 must participate in the process. The idea of making
17 proposals without school district input deviates from any
18 type of reform being successful.

19 At San José Unified, in developing a process to
20 document reimbursable activities at the school sites, my
21 department meets with principals and secretaries on a
22 continuous basis to develop an efficient way to have
23 staff fill out mandated cost forms.

24 It is the input from the school sites that drive
25 increased participation and success in filing for

1 mandated-cost reimbursement.

2 And in closing, I would like to reiterate again
3 the collaborative approach in reforming mandates.

4 San José Unified District, along with the other
5 California school districts, is growing and ready to
6 participate in a reform, if allowed to do so. Again, any
7 deviation from school district participation will result
8 in an unsuccessful process, reform process.

9 Thank you again for the opportunity to be heard.

10 CHAIR GENEST: Thank you.

11 MR. PALKOWITZ: Good morning. My name is Art
12 Palkowitz and I'm here on behalf of San Diego Unified
13 School District.

14 I applaud everyone's efforts to move forward on
15 this matter. It has been really challenging for all
16 school districts involved. For example, the *STAR* test
17 claim was approved in 2001 after going through the test
18 claim process, and there still has not been any payment
19 made on that test claim.

20 As you can imagine, just like the Department of
21 Finance commented, it's difficult for them to go through
22 their budget, while the school districts have similar
23 challenges, trying to establish a budget, where five
24 years you don't get paid, and then you get a lump-sum
25 payment. And who knows when the next payment will be?

1 So that causes a real challenge for the school districts.

2 I think you've commented and analyzed the
3 Prop. 1A impact, which, for a school district, it's
4 disheartening that in the Constitution, we are supposed
5 to be a reimbursement for the mandate, but it doesn't
6 seem like there's much impact, unless you have a
7 Prop. 1A proposition with it that says we'll suspend
8 it, otherwise in an attempt to force payment. Maybe
9 that's why the Department of Finance is starting out with
10 the local agencies in trying to work that out, and then
11 come to the school districts, where there, the challenge
12 is a little more immediate.

13 You know, this is not sounding like mandate
14 reform, this is sounding like mandate reform for state
15 and local agencies other than school districts. And to
16 me, that doesn't seem like the way we're going to resolve
17 the mandate reform.

18 Based on the proposals that I heard, I think
19 that it's important to have some alternative process in
20 there, whether it be mediation or something else, that
21 gives the parties a way to try to resolve this in a
22 prompt manner when they can agree on a unit rate or
23 whether this is or is not a mandate that should be
24 reimbursed.

25 So to me, that should be an important element

1 of this process.

2 Thank you very much.

3 CHAIR GENEST: Thank you.

4 MR. KAYE: Good morning. Leonard Kaye, County
5 of Los Angeles.

6 I'm here also to echo what Art and many others
7 have thought, that this is a lot of constructive forward
8 motion. I've met and conferred with Marianne in her
9 approach, and also with Finance's approach and so forth.
10 And I think they're both productive.

11 And I think there's some fundamental things that
12 need to perhaps be said in the beginning, and that is, as
13 you're aware, the Legislature every year passes hundreds
14 of potential test claims and state agencies have issued
15 many, many executive orders which are all subject,
16 possibly, to SB 90 reimbursement. And so it's not so
17 much how do we handle the current backlog, because we
18 filed perhaps one out of ten or 20 possible test claims
19 on the local agency side; but how do you deal with the
20 vast majority of test claims that never see the light of
21 day?

22 And I think Finance's proposal and LAO's
23 proposal have great merit, and I think they should be
24 discussed.

25 I think the big issue regarding the mechanics of

1 how this comes about, and the thing that I thought was
2 interesting is that POST, we heard earlier, sets the
3 standards for training and so forth.

4 And in my experience, over 18 years practicing
5 before the Commission, I can tell you that I think there
6 should be no other body that is better-suited to setting
7 the legal standards for what constitutes a mandate or not
8 than the Commission. I mean, obviously, we disagree at
9 times; but they are the repository of a vast amount of
10 expertise, if you will, in this area.

11 That's not to say that jurisdiction for the more
12 garden variety, the smaller SB 90 matters shouldn't be
13 surrendered perhaps to other things. So like POST,
14 perhaps they could serve and set some standards for how
15 that is to occur and so forth.

16 But I think in all my experience, this is the
17 first time since 1985, I believe, when it was the old
18 Board of Control and you dealt with test claims on a
19 very individual basis, the decisions were just a page or
20 two long. And we've come a long way.

21 It's not all bad.

22 Thank you.

23 CHAIR GENEST: Thank you.

24 MR. BURDICK: I'll try to be brief.

25 Again, my name is Allan Burdick. I'm with the

1 CSAC SB 90 Service, but I serve as an advisor to CSAC on
2 the technical issues, and I represent them before the
3 Commission on State Mandates.

4 I'd like to point out that in addition, I'm the
5 chief of staff, for we have a joint CSAC, League of
6 California Cities' Advisory Committee on State Mandates.
7 And to let you know that at this point there is totally
8 uniformity between schools and counties on this
9 particular issue. And so in that regard, it's very
10 fortunate, if we're dealing with local government.

11 Also, the special districts very often are
12 involved, they don't have as many mandates. And when
13 there are, we bring them -- you know, the special
14 districts are also involved in that. So just to kind
15 of let them know, coming from a local government
16 standpoint.

17 Now, today, this is going to be a legislative
18 issue, obviously, as we move down. And in this regard,
19 Steve Keil would be here today, and I would be supporting
20 him. He is the legislative representative for CSAC on
21 this particular issue and their director of legislative
22 Services. CSAC is having its board of directors meeting
23 today, and Steve has to be over at the board of
24 directors. Otherwise, he would be here today on this
25 particular matter.

1 I think just generally from a local government
2 standpoint, I think they're very encouraged by most of
3 the proposals by the Governor's office, as well as by the
4 Legislative Analyst's, and believe that there is -- I
5 guess there's two things I want to say.

6 One is the movement. You know, there's no
7 dearth of issues this year before the Legislature and the
8 Administration. But to be able to indicate their
9 interest in that, as well as the Legislative Analyst,
10 that has, including this in their issues report, which
11 identifies where are the key issues before the state.

12 I think one of the issues that I'd like to raise
13 is -- I think it was raised by the school community --
14 and that is, we have the whole Commission process that
15 everybody has to deal with, whether this alternative or
16 alternatives are developed for local agencies, we still
17 have the Commission process in place, which would be the
18 same for cities, counties, districts, and school
19 districts. And last year -- and I think we need to
20 echo -- I think everybody will -- the leadership provided
21 by this Commission last year, when it engaged an outside
22 agency to come in and to do an analysis of the problem,
23 and included that. And we were looking forward to moving
24 kind of with a collaborative process, with an outside and
25 neutral mediator at that time. And then that process

1 ended.

2 And so I think the Commission needs to be
3 commended.

4 I think the other comments that were made by the
5 Commissioners, in terms of getting their involvement and
6 input in this process, important however that may be,
7 because you're the people that have expertise in this
8 knowledge of how this process works and can deal with it,
9 I know that both Finance and the Analyst will be working
10 closely with your staff, and have over the past years.

11 The fortunate thing is we have people who have
12 been involved in this a number of years.

13 While Mr. Genest today is his first meeting,
14 and this is the first director of Finance we have seen
15 since Jeff Huff arrived in 1985 and was made chair at the
16 motion of Jesse Unruh, and the Department of Finance has
17 been the director since, we're very pleased to see him
18 here. But we know he has been involved in this issue for
19 a number of years. While this may be his first
20 Commission meeting, this is not his first involvement
21 in the mandate issue. And we know and we appreciate his
22 past involvement.

23 I think the issue out there at this point is
24 where does the leadership come? How do we coordinate it?
25 We have some proposals.

1 Last year, the coordination was clear, it was
2 going to be by an outside collaborator. The Legislature
3 concluded that we should use a regular legislative
4 process.

5 I think as we all know, one of the key players
6 in this process happens to be Assemblyman John Laird, the
7 chairman of the Assembly Budget Committee, the kind of
8 designated "Mr. Mandates" by the Speaker, and also a
9 long-time former county employee as well as mayor
10 of the City of Santa Cruz. So somebody that local
11 government has a great deal of confidence in. And I
12 guess more of it is, how do we pull all of this together?
13 We have the Commission and everything, and the
14 process and the timing and the schedule and, you know,
15 can we get this done this year.

16 We have probably until the end of August, I'm
17 assuming, to get this job done.

18 So I kind of would like to leave with that.

19 Although the last comment I would like to make
20 is that I think the creation of the Mandate Unit in the
21 Department of Finance and the staff that have been
22 assigned to that are extremely positive. And I think
23 that I'd like to commend the Department of Finance for
24 taking the effort to create that, and also with the
25 assignment and the selection of the staff in that

1 particular thing.

2 We have had -- I'm surprised, I look back, we
3 have been working with those people for a year now -- I'd
4 have to ask Carla for sure. It seems like only a few
5 months, but I was looking back at an e-mail I sent to her
6 in April of '06, and I said, "Oh, my god," and she's
7 probably been there since July of '05, I'm not
8 sure.

9 But what I would like to do is take the
10 opportunity, since the director of Finance is here today
11 as chairman, to commend them for the creation of that and
12 for the staff of that unit and their working
13 relationships they have established with local
14 government.

15 I'm not sure, I think it might be a good idea
16 to have something more similar. I know it's a little
17 different structure on the education side, but I would
18 like to close with that particular comment.

19 Thank you very much.

20 CHAIR GENEST: Well, thank you.

21 I think we need to move on to the next issue.

22 Thanks very much.

23 MR. BURDICK: Thank you.

24 MS. HIGASHI: This is a nice segue into Item 12,
25 which is our staff report on mandate reform legislation.

1 And Ms. Patton will also present this issue.

2 MS. PATTON: This is Item 13. It's a discussion
3 of our current procedures for submitting bill analysis
4 and Commission positions to the Governor's office, and
5 then a quick recap to let you know what the 2007 bills
6 are out there right now.

7 The Governor's office requests that boards and
8 commissions prepare a bill analysis and recommend
9 positions on pending legislation. And because the
10 deadline for submitting these analysis is short, usually
11 three to five days, the Commission has authorized the
12 Executive Director to submit bill analysis on bills that
13 impact the Commission. And with those, we include staff
14 positions, staff recommendations. Each bill analysis
15 includes a statement that the analysis was prepared by
16 Commission staff and does not reflect the position of any
17 individual member or the Commission itself. However,
18 this process, of course, does not preclude the Commission
19 from voting to take formal positions on legislation. So
20 we will update you at each hearing about pending
21 legislation.

22 For 2007, there are four bills pending that
23 would affect the Commission in the mandates determination
24 process. AB 281 by Assembly Member Silva is a spot bill.
25 The author is interested in eliminating unfunded

1 mandates, according to his staff. And they use this bill
2 to revise the mandates process. It is pending committee
3 assignment in the Assembly.

4 AB 1222 by Assembly Member Laird would require
5 claimants, when they are pleading executive orders or
6 regulations in their test claims, to include the
7 effective date and reference numbers of those executive
8 orders or regs in their test claim filing.

9 Assembly Member Laird continues to meet with
10 local agency reps and state agencies on mandate reform;
11 and he may use this bill for further reform to the
12 mandates process.

13 This bill is also pending committee assignment
14 in the Assembly.

15 AB 1576, as you heard earlier, is the bill from
16 Assembly Member Silva that included LAO's mandate reform
17 proposal. It is scheduled for hearing in Assembly local
18 government on April 25th.

19 And on Tuesday, Assembly Member Krekorian
20 introduced AB 1170. It is sponsored by the Five Star
21 Education Coalition. And it would require the Commission
22 to issue its statements of decision on the test claim no
23 later than 24 months after the test claim is filed. And
24 if we do not issue the Statement of Decision within that
25 time, the test claim filing would automatically become a

1 reimbursable mandate.

2 AUDIENCE MEMBER: Hurrah.

3 MS. PATTON: Are you with the Five Star
4 Education Coalition?

5 AUDIENCE MEMBER: No.

6 MS. PATTON: It also includes some revisions to
7 the audit deadlines that the State Controller has for
8 auditing reimbursement claims. That bill is scheduled
9 for hearing in Assembly Local Government Committee on
10 April 18th.

11 The Commission staff continues to provide
12 technical information to the authors of the bills,
13 Department of Finance, the Legislative Analyst's Office,
14 and the claimants, and to work with them on the mandate
15 reform proposals. And we make the following
16 recommendations on these bills:

17 We don't believe the Commission should take a
18 position on 281 at this time. It's still a spot bill.
19 It doesn't have any substantive language in it.

20 Staff recommends that we think the Commission
21 should consider supporting Assembly Member Laird's 1222.
22 It would assist the Commission staff in determining which
23 regulations are being pled in test claims; thus,
24 shortening the time it requires us to draft staff
25 analyses.

1 And the Commission should consider supporting
2 Assembly Member Silva's 1576, which is the LAO's reform
3 proposal, and the Department of Finance's proposal. But
4 we are continuing to talk to them about some technical
5 amendments to those proposals.

6 Because together with those two proposals and
7 the rulemaking package that the Commission approved
8 earlier today, we think they will streamline the process,
9 notify the Legislature sooner of the cost of programs,
10 and enable all parties to develop simpler and more
11 efficient reimbursement formulas. So we will provide
12 analyses of each of these proposals for the April
13 hearing.

14 CHAIR GENEST: Thank you.

15 Are we to your spot?

16 MS. HIGASHI: As long as you're fine with that.

17 CHAIR GENEST: Well, unless someone has a
18 question.

19 MS. HIGASHI: Next is our Chief Legal Counsel's
20 report.

21 MS. SHELTON: I do have some updates. There has
22 been one lawsuit filed since I issued this Chief
23 Counsel's report. The Department of Finance and the
24 Integrated Waste Board have sued the Commission, the
25 Santa Monica Community College District, and the Lake

1 Tahoe County Community College District on the Integrated
2 Waste Management program. That case was filed in
3 Sacramento County Superior Court.

4 Two decisions have been issued since last week.
5 One, CSAC EIA and the City of Newport Beach versus the
6 Commission on State Mandates and the Department of
7 Finance. The Supreme Court denied the petition for
8 review which has left the Court of Appeal decision valid;
9 and it upholds the Commission's decision to deny those
10 claims.

11 And secondly, the Sacramento County Superior
12 Court did issue its ruling in the CSBA et al., versus
13 Commission and State defendants in the case dealing with
14 the constitutionality of AB 138 and certain statutes that
15 directed reconsideration of the mandate reimbursement
16 process, School Accountability Report Cards and the Open
17 Meetings Act programs. And the Court found that the
18 revisions made by AB 138 were unconstitutional.

19 And that's all I've got.

20 CHAIR GENEST: Okay, Paula?

21 MS. HIGASHI: Item 15 for my report.

22 First off, I'd like to introduce a new member of
23 our staff, Kerry Ortman.

24 Kerry, could you please stand?

25 Kerry has come on board to help us with many of

1 our admin functions, as well as to help Cathy on
2 Parameters and Guidelines and on statewide cost
3 estimates.

4 Are there any questions about the Commission's
5 workload? We offered some clarifications during the
6 course of the hearing. We didn't make much progress
7 today, but we're hoping for April and we're hoping for
8 May.

9 CHAIR GENEST: When Anne gets back, we'll do
10 much better.

11 MS. HIGASHI: One step forward, one step back;
12 okay.

13 I have an update on the budget issues. We have
14 talked about some of these issues, mainly the budget
15 hearings are focusing in on mandate reform concepts and
16 LAO's report. We have had one hearing in the Senate. No
17 action was taken at that time in the subcommittee.
18 Another hearing is scheduled, as well as a hearing in the
19 Assembly. And those hearings will actually take place
20 after our April hearing. So if anything new happens,
21 I'll report that to you.

22 The proposed agenda for April 16th, our next
23 meeting, is in my report. And there are a couple of
24 changes I just wanted to note.

25 The third item on here, *California Youth*

1 Authority Sliding Scale for Charges, that item will move
2 to the next agenda.

3 And I think that's pretty much it. Everything
4 else is still there.

5 And Item 5, *Peace Officer Instructor Training*,
6 since that is relating to the same statute, the same
7 regulations from POST, what I would do with that one as
8 well, is offer the claimants an opportunity to submit
9 further briefing in light of today's testimony, and then
10 we'll reschedule both of them at the same hearing.

11 CHAIR GENEST: Plus, more discussion on the LAO
12 and Finance?

13 MS. HIGASHI: Right, exactly.

14 We have a proposed statewide cost estimate
15 coming forward on the Stull Act.

16 And then on the very last page, I have test
17 claims identified for the May hearing. And what we'll be
18 doing is updating you on these as we get closer. Thus
19 far, though, *Medically Indigent Adults* was a test claim
20 under consideration for May. And that test claim was
21 withdrawn yesterday by the County of San Bernardino. So
22 what we'll be doing is notifying all of the parties that
23 it was withdrawn. And if any other county wishes to step
24 forward and take the place of San Bernardino, they may do
25 so. And then we would proceed on that as a test claim.

1 If no party comes forward, then we would set the
2 test claim for dismissal.

3 And there are just some Parameters and
4 Guidelines that we're working on and more statewide cost
5 estimates that we'll be working on for May.

6 CHAIR GENEST: Okay, before we go to --

7 MS. HIGASHI: Are there any questions?

8 *(No audible response)*

9 CHAIR GENEST: Before we go to closed session,
10 are there any comments from the public?

11 *(No audible response)*

12 CHAIR GENEST: All right, I believe I need to
13 read this entire --

14 MS. HIGASHI: Yes.

15 CHAIR GENEST: I don't do well with reading.

16 The Commission will meet in closed executive
17 session pursuant to Government Code section 11126,
18 subdivision (e), to confer with and receive advice from
19 legal counsel for consideration and action, as necessary
20 and appropriate, upon the pending litigation listed on
21 the published notice and agenda, and to confer with and
22 receive advice from legal counsel regarding potential
23 litigation, and pursuant to Government Code sections
24 11126, subdivision (a), and 17526, the Commission will
25 also confer on personnel matters.

1 MS. HIGASHI: I'd just like to make one
2 announcement. The prehearing conference on the
3 Parameters and Guidelines amendment for *Graduation*
4 *Requirements* will convene here after the closed session,
5 probably in about 20 minutes.

6 (The Commission met in executive closed
7 session from 11:23 a.m. to 11:37 a.m.)

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

17 All required reports from the closed session
18 having been made and with no further business to discuss,
19 I will entertain a motion to adjourn.

20 All those in favor?

21 Do I have to get a motion first? Motion to
22 adjourn?

23 MEMBER CHIVARO: Motion to adjourn.

24 MEMBER OLSEN: Second.

25 CHAIR GENEST: All in favor, say "aye."

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(A chorus of "ayes" was heard.)

CHAIR GENEST: The meeting is adjourned. Thank
you.

(Proceedings concluded at 11:37 a.m.)

--oOo--

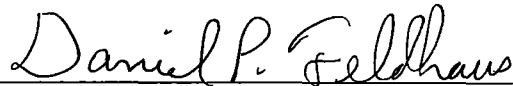
REPORTER'S CERTIFICATE

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

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

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

In witness whereof, I have hereunto set my hand on April 12, 2007.



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