

## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 126  
Sacramento, California  
October 4, 2006

Present: Member Vincent Brown, Chairperson  
Representative of the Director of the Department of Finance  
Member Amy Hair, Vice Chairperson  
Representative of the State Controller  
Member Francisco Lujano  
Representative of the State Treasurer  
Member Sean Walsh  
Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Paul Glaab  
City Council Member

Absent: Member Sarah Olsen  
Public Member

### CALL TO ORDER AND ROLL CALL

Chairperson Brown called the meeting to order at 1:30 p.m.

### APPROVAL OF MINUTES

Item 1 July 28, 2006

Upon motion by Member Walsh and second by Member Worthley, the minutes were unanimously adopted.

### 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 AND PROPOSED PARAMETERS AND GUIDELINES AMENDMENTS

Item 11 *Peace Officers Procedural Bill of Rights, 05-PGA-07*  
Request to Amend Parameters and Guidelines  
Government Code Sections 3300 through 3310  
Statutes of 1976, Chapter 465 (AB 301); Statutes of 1978, Chapters 775 (AB 2916), 1173 (AB 2443), 1174 (AB 2696), and 1178 (SB 1726); Statutes of 1979, Chapter 405 (AB 1807); Statutes of 1980, Chapter 1367 (AB 2977); Statutes of 1982, Chapter 994 (AB 2397); Statutes of 1983, Chapter 964 (AB 1216); Statutes of 1989, Chapter 1165 (SB 353); and Statutes of 1990, Chapter 675 (AB 389)  
Department of Finance, Requestor

- Item 11A *Removal of Chemicals*, 03-PGA-04  
Request to Amend Parameters and Guidelines  
Education Code Section 49411  
Statutes 1984, Chapter 1107 (AB 3820)  
As Amended by Statutes 1994, Chapter 840 (AB 3562)  
Department of Finance, Requestor

#### PROPOSED STATEWIDE COST ESTIMATES

- Item 12 *Crime Victim's Domestic Violence Incident Reports*, 99-TC-08  
County of Los Angeles, Claimant  
Family Code Section 6228  
Statutes 1999, Chapter 1022 (AB 403)  
Los Angeles County, Claimant
- Item 13 *Peace Officer Personnel Records: Unfounded Complaints Against Peace Officers and Discovery of Peace Officer Personnel Records*,  
00-TC-24 and 00-TC-25  
Statutes 1978, Chapter 630 (SB 1436), et al.  
Cities of Hayward San Mateo, Claimants

Member Walsh moved for adoption of items 11, 11A, 12, and 13 on the consent calendar. With a second by Member Hair, 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)

No appeals were filed.

#### 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)

Ms. Higashi swore in the parties and witnesses participating in the hearing of the remaining items.

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

- Item 4 *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, Claimant  
Chair, Commission on State Mandates, Requestor

Deborah Borzelleri, Senior Commission Counsel, presented this item. She noted that the Commission Chairperson requested the reconsideration of the Commission's Statement of Decision adopted on July 28, 2006, regarding the *Binding Arbitration* test claim. Ms. Borzelleri explained that reconsideration of a prior final decision is a two-step process. The first step is procedural, in which the Commission decides whether or not to grant the request. If granted, the

second step is a substantive review of the merits of the prior decision, which would be scheduled for the December hearing in this case.

Ms. Borzelleri stated that the test claim statute deals with labor relations between local agencies and their law enforcement officers and firefighters. The legislation requires that when an impasse in labor negotiations has been reached, parties would be subject to binding arbitration if the employee organization so requests. She indicated that the statute was declared unconstitutional in 2003, so the period in question is between 2001 and 2003.

Ms. Borzelleri noted that at the July 28, 2006 hearing, the Commission found that the test claim statute does not constitute a new program or higher level of service. At this hearing, however, the claimant significantly modified the test claim by withdrawing its request for reimbursement for costs to litigate and costs for increased employee compensation that could result from the binding arbitration process.

Ms. Borzelleri stated that the issue before the Commission is whether it should grant the request for reconsideration and outlined the Commission's options:

1. approve the request, finding that the reconsideration is appropriate to determine whether the prior final decision is contrary to law;
2. deny the request, finding that the requestor has not raised issues that merit reconsideration; or
3. take no action, which has the legal effect of denying the request.

Staff recommended that the Commission approve the request, which requires five affirmative votes.

Parties were represented as follows: Juliana Gmur and James Hendrickson, for the City of Palos Verdes Estates; Allan Burdick, on behalf of the California State Association of Counties SB 90 Service; and Susan Geanacou, with the Department of Finance.

Ms. Gmur supported the staff analysis.

Regarding the withdrawn items, Mr. Burdick commented that they were not able to identify any situations where the binding arbitration process actually went to the point of an arbitrator awarding fees. He noted that if somebody were to incur costs, they may return to the Commission.

Ms. Geanacou supported the request for reconsideration.

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

#### TEST CLAIMS

- Item 5 *Fifteen-Day Close of Voter Registration*, 01-TC-15  
Elections Code Sections 2035, 2102, 2107, 2119, 2154,  
2155, 2187, 9094, 13300, 13303 and 13306  
Statutes 2000, Chapter 899 (AB 1094)  
County of Orange, Claimant

Katherine Tokarski, Commission Counsel, presented this item. She stated that prior law allowed voters to newly register to vote, reregister, or change their address with county elections officials until the 29<sup>th</sup> day before an election. After that date, voter registration was closed until the conclusion of the upcoming election. She explained that Statutes 2000, chapter 899 amended the

Elections Code, allowing new registrations or changes to voter registration through the 15<sup>th</sup> day prior to an election.

Ms. Tokarski indicated that the claimant sought mandate reimbursement for costs incurred to register voters from the 28<sup>th</sup> through the 15<sup>th</sup> day before elections such as for implementation planning meetings, revising training programs, holding an informational media campaign, responding to additional inquiries about the new law, and providing additional personnel to accommodate the increased workload.

Staff found that most of the statutory amendments by Statutes 2000, chapter 899 do not mandate a new program or higher level of service on elections officials within the meaning of article XIII B, section 6. Ms. Tokarski stated that processing and accepting voter registration affidavits and changes of address are not newly required under the Elections Code because elections officials were required to perform these activities long before the enactment of Statutes 2000, chapter 899. Moreover, staff found that the amendment to Elections Code section 13303, subdivision (c), added information to a preexisting polling place notice, which does provide a higher level of service to the public within an existing program.

Ms. Tokarski noted that following release of the final staff analysis, staff received late filings from the claimant and the County of Sacramento. Staff issued a supplemental analysis, which was included in the members' binders. Staff recommended that the Commission adopt the analysis to partially approve the test claim.

Parties were represented as follows: Juliana Gmur and Neal Kelley, on behalf of the County of Orange; Deborah Seiler, on behalf of the County of Solano; Allan Burdick, on behalf of the California State Association of Counties SB 90 Service; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Gmur argued that in this case, the question was neither who receives the service nor what is the service, but rather, when is the service provided. She acknowledged that the election officials are providing a higher level of service based on a very small change in the law; however, she asserted that such a small change is definitely a higher level of service in an area as calendar-driven and timeline-dependent as the elections area.

Ms. Seiler stated that she is the assistant registrar of voters in the County of Solano, and serves as co-chair of the California Association of Clerks and Election Officials legislative committee. She indicated that she was a former assistant to the Secretary of State for elections and political reform, as well as the chief consultant to the Assembly Elections and Reapportionment Committee. Ms. Seiler contended that the change in the close of registration day had a profound effect on her office in the following ways:

- Developing alternate methods for delivering rosters of voters to the polling places; due to the later close of registration, rosters of voters were not compiled in time to get them out to the precinct inspectors at the training class. Thus, alternate methods of delivery were developed, such as personal delivery or roving inspectors.
- Using provisional ballots because of tremendous difficulty in getting names entered in files and rosters when registration levels increased, such as in November 2004; due to the later close of registration, some counties failed to get voters' names on the rosters, resulting in voters having to vote on provisional ballots at the polling place.
- Bringing on extra help and additional staff to process absentee ballots; due to the later close of registration, existing staff could no longer be used to process absentee ballots

because they were still engaged in voter registration activities. Thus, a new set of people, managers, and supervisors had to be brought in.

- Making sure that absentee voters are not duplicate voters; because the absentee voting period now starts before the close of registration, it is necessary to track absentee voters to ensure that those who register at a later point in time are not duplicate voters.

Mr. Kelley outlined the things that have been done in Orange County since the implementation of the later close of registration:

- notified every voter who registers from the 28<sup>th</sup> day to the 15<sup>th</sup> day before the election that their registration was complete and where they can obtain a sample ballot,
- hired additional staff to process registration forms,
- printed enough sample ballots for those individuals that may register between the 28<sup>th</sup> day to the 15<sup>th</sup> day before the election, and
- incurred a substantial amount of overtime for all the reasons pointed out by Ms. Seiler.

Ms. Castaneda concurred with the staff analysis, stating that all the activities were still the same with the exception of amending the polling place notice.

Ms. Geanacou commented that the manner of the county's adjustment to performing their preexisting pre-election duties is not mandated by the test claim statutes.

Member Worthley stated that he checked with his county's registrar and they had a similar story regarding the need for overtime help. He maintained that the additional costs incurred by the counties were a result of providing an enhanced service that is mandated by the state. He acknowledged that it was not a new program, but argued that when the state mandates something in a fashion that causes an increase in costs to provide an enhanced service, the state should be responsible for paying for the costs incurred.

Chairperson Brown asked if there was any documentation that the number of registrations increased on a trend-line basis due to the change in time frames. Mr. Kelley responded that he did not have any data to provide from Orange County, but noted that registration numbers were decreasing slightly.

Chairperson Brown stated that, from his standpoint, if there is inadequate documentation that the actual registrations have increased, he found it difficult to find that the workload is not the same and has not increased, notwithstanding the shift in time periods.

Ms. Seiler commented that what was being pointed out was the method of the workload. Due to the completely different cycle and additional staff, counties have incurred increased costs.

Camille Shelton, Chief Legal Counsel, noted that the *Long Beach Unified School District v. State of California* was a higher level of service case regarding racial desegregation, where there was existing federal law and the state required additional requirements. The court said this was a higher level of service.

Ms. Shelton explained that in order to find a higher level of service, there has to be a finding that the state is mandating new requirements on the local agencies and school districts. In this case, the Legislature only changed the number 29 to 15; no mandated activities were changed.

Ms. Shelton stated that the activities that are performed by the counties are activities they have decided were necessary to perform in order to comply with the legislation. She acknowledged

that there were increased costs; however, she maintained that the activities were not expressly mandated by the state, which is required for a finding of reimbursement.

Member Worthley asserted that time is money and that the legislation affected the sequencing of events. The result was a need for additional people because those who morphed into other responsibilities in the elections office have to continue the responsibility of processing registrations instead of moving on to a different level of responsibility. He maintained that this was an additional cost because of an enhanced service. He asked what the purpose of changing the law would be if it was not considered an enhanced service.

Mr. Burdick commented that providing people more time to register is a mandated public policy. He contended that elections departments are not the highest-funded departments in a county government; rather, they are General Fund departments that are lucky to get every dime they can to maintain the level of service necessary to comply with requirements.

Mr. Burdick noted that no one was present from the Secretary of State's Office to participate in the discussion. He added that the next step in the process was developing the parameters and guidelines and that the scope of the mandate should be discussed at that point.

Ms. Shelton clarified that a test claim finding is a question of law and that the standard was not whether it is reasonably necessary for counties to perform the activities. Rather, the standard of law is whether or not the state has mandated counties to perform those activities. Here, she stated that there was no evidence in the law that the state has mandated any additional activities, other than changing the dates in the statutes.

Moreover, Ms. Shelton explained that the activities being discussed could not necessarily be discussed during the parameters and guidelines phase because the Commission needed to make a finding on the statute, and the proposed Statement of Decision makes a finding that the activities raised by the counties are not mandated by the state. She noted that the Commission has discretion during the parameters and guidelines phase to determine activities that are reasonably necessary to comply with the mandated activity. Here, the only mandated activity in the proposed decision is the activity to amend the polling place notice, and thus, any additional activities included in the parameters and guidelines must relate to amending this notice.

Ms. Gmur asserted that there was a mandated activity. Though the service itself was the same, she argued that the change of date mandates when the service is to be done.

Member Walsh made a motion to adopt the staff recommendation, which was seconded by Member Hair. The motion carried 5-1, with Member Worthley voting "No."

Item 6 Proposed Statement of Decision  
*Fifteen-Day Close of Voter Registration*, 01-TC-15  
See Above

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission is whether the proposed Statement of Decision accurately reflects the Commission's decision on the *Fifteen-Day Close of Voter Registration* test claim.

Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the staff analysis and recommendation. Ms. Tokarski noted that minor changes, including those that reflect the late filings, hearing testimony, and vote count, will be included when issuing the final Statement of Decision.

Member Walsh made a motion to adopt the proposed Statement of Decision, which was seconded by Member Glaab. The motion carried 5-1, with Member Worthley voting "No."

Item 7     *Voter Identification Procedures*, 03-TC-23  
Elections Code Section 14310  
Statutes 2000, Chapter 260 (SB 414)  
San Bernardino County, Claimant

Katherine Tokarski, Commission Counsel, presented this item. She noted that the test claim addresses an amendment to Elections Code section 14310 regarding counting provisional ballots, which is a regular ballot that has been sealed in a special envelope, signed by the voter, and deposited in the ballot box. Provisional ballots can be required for several reasons to prevent fraud, such as when poll workers cannot immediately verify an individual's name on the official roster or if a voter requests an absentee ballot but instead goes to a polling place without the absentee ballot.

Ms. Tokarski explained that Statutes 2000, chapter 260 amended the Elections Code to add a requirement that elections officials compare the signature on each provisional ballot envelope with the signature on the voter's affidavit of registration. Staff found that performing signature comparison for all provisional ballots cast is a reimbursable state-mandated program. However, in a situation where a local government calls a special election that could otherwise have been legally consolidated with the next local or statewide election, the downstream costs for checking signatures on provisional ballots would not be reimbursable.

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

Parties were represented as follows: Bonnie Ter Keurst, representing the County of San Bernardino; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Ter Keurst supported the staff analysis.

Ms. Castaneda concurred with the staff analysis.

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

Item 8     Proposed Statement of Decision  
*Voter Identification Procedures*, 03-TC-23  
See Above

Katherine Tokarski, Commission Counsel, presented this item. She stated that the sole issue before the Commission is whether the proposed Statement of Decision accurately reflects the Commission's decision on the *Voter Identification Procedures* test claim.

Staff recommended that the Commission adopt the proposed Statement of Decision, which accurately reflects the staff analysis and recommendation. Ms. Tokarski noted that minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

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

Item 9     *Mandate Reimbursement Process II (AB 2856)*, 05-TC-05  
Government Code Section 17553, 17557, and 17564  
Statutes 2004, Chapter 890 (AB 2856);  
California Code of Regulations, Title 2, Sections 1183 and 1183.13  
City of Newport Beach, Claimant

Eric Feller, Senior Commission Counsel, presented this item. He stated that the test claim statutes made various changes to the test claim filing requirements and put the requirements in statute, and the test claim regulations concern the reasonable reimbursement methodology.

Staff found that the test claim statutes do not constitute a reimbursable state mandate because of the prohibition in Government Code section 17556, subdivision (f), which states that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds that “the statute or executive order imposes duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election.” Mr. Feller explained that in this case, the statutes are necessary to implement reasonably within the scope of Proposition 4, enacted in 1979, which added article XIII B, section 6 to the Constitution.

Mr. Feller noted the claimant’s comments that the staff recommendation violates legislative intent and that staff’s application of Government Code section 17556 interferes with constitutionally-guaranteed rights. Regarding the first point, Mr. Feller stated that the supplemental analysis cites statutes to show that the legislative intent was considered in accordance with the recommendation to deny this test claim. As to the second point, Mr. Feller explained that the state Constitution bars an agency, such as the Commission, from declaring a statute unenforceable or unconstitutional, or refusing to enforce a statute on that basis.

Staff recommended that the Commission adopt the staff analysis, which denies the test claim.

Parties were represented as follows: Juliana Gmur and Glen Everroad, on behalf of the City of Newport Beach; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Ms. Gmur submitted on the written pleadings.

Ms. Castaneda concurred with the staff analysis that no additional requirements were made.

Member Walsh made a motion to adopt the staff recommendation, which was seconded by Member Worthley. The motion carried 4-1, with Member Glaab voting “No.” Member Hair abstained.

Item 10    Proposed Statement of Decision  
*Mandate Reimbursement Process II (AB 2856)*, 05-TC-05  
See Above

Eric Feller, Senior Commission Counsel, presented this item. He stated that unless there were objections, staff recommended that the Commission adopt the proposed Statement of Decision for the *Mandate Reimbursement Process II* test claim, which accurately reflects the Commission’s decision. Staff also recommended that the Commission allow minor changes to be made, such as those to include the supplemental analysis, hearing testimony, and vote count in the final Statement of Decision.



Member Walsh made a motion to adopt the proposed Statement of Decision, which was seconded by Member Worthley. The motion carried 4-1, with Member Glaab voting "No." Member Hair abstained.

## STAFF REPORTS

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

Ms. Shelton had nothing new to report.

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

Ms. Higashi reported the following:

- *Workload.* The workload report was submitted to the Director of the Department of Finance.
- *Legislation.* Assembly 2652 was signed by the Governor.
- *Next Hearing.* The December hearing has been moved to December 4 in the afternoon.

## PUBLIC COMMENT

There was no public comment.

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

### 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.*, 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.*, San Bernardino County Superior Court, Case No. SCVSS 138622 [*Standardized Emergency Management Systems (SEMs)*]

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

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

Chairperson Brown 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 upon motion by Member Walsh and second by Member Worthley, Chairperson Brown adjourned the meeting at 2:31 p.m.

  
PAULA HIGASHI  
Executive Director

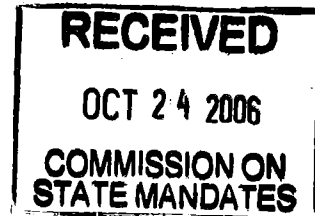
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**ORIGINAL**

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

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**TIME:** 1:30 p.m.

**DATE:** Wednesday, October 4, 2006

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

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**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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

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

COMMISSIONERS PRESENT

VINCENT P. BROWN  
(Commission Chair)  
Representative for MICHAEL GENEST Director  
Department of Finance

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

SEAN WALSH  
Director  
State Office of Planning and Research

AMY HAIR  
Representative for STEVE WESTLY  
State Controller

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

CAMILLE SHELTON  
Chief Legal Counsel

DEBORAH BORZELLERI  
Senior Commission Counsel  
(Item 4)

ERIC FELLER  
Commission Counsel  
(Items 9 and 10)

NANCY PATTON  
Deputy Executive Director

KATHERINE TOKARSKI  
Commission Counsel  
(Items 5, 6, 7, and 8)

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PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Claimant, Palos Verdes Estates:

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

JAMES B. HENDRICKSON  
City Manager  
City of Palos Verdes Estates  
340 Palos Verdes Drive, West  
Palos Verdes Estates, California

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing Re Item 4: *Continued***

For California State Association of Counties SB 90:

ALLAN BURDICK  
Director  
California State Association of Counties SB 90 Service  
4320 Auburn Boulevard, Suite 2000  
Sacramento, California 95841

For Department of Finance:

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

**Appearing Re Items 5 and 6:**

For Claimant, County of Orange:

JULIANA F. GMUR, Esq.  
Manager, Cost Services  
MAXIMUS

NEAL KELLEY  
Orange County Registrar of Voters  
County of Orange  
1300 Building C South Grand Avenue  
Santa Ana, California 92705

For County of Solano:

DEBORAH SEILER  
Assistant Registrar of Voters  
County of Solano  
675 Texas Street, Suite 2600  
Fairfield, California 94533

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing Re Items 5 and 6:** *Continued*

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

CARLA P. CASTAÑEDA  
Finance Budget Analyst  
Department of Finance  
Education Systems Unit  
915 L Street, Seventh Floor  
Sacramento, California 95814

**Appearing Re Items 7 and 8:**

For Claimant, County of San Bernardino:

BONNIE TER KEURST  
Manager, Reimbursable Projects  
County of San Diego  
Auditor/Controller-Recorder  
222 W. Hospitality Lane, Fourth Floor  
San Bernardino, California 92415-0018

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

CARLA P. CASTAÑEDA  
Finance Budget Analyst  
Department of Finance  
Education Systems Unit

A P P E A R A N C E S

PUBLIC TESTIMONY

*continued*

**Appearing re Items 9 and 10:**

For Claimant, City of Newport Beach:

JULIANA F. GMUR, Esq.  
Manager, Cost Services  
MAXIMUS

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

For Department of Finance:

SUSAN S. GEANACOU, Esq.  
Senior Staff Attorney  
Department of Finance

CARLA P. CASTAÑEDA  
Finance Budget Analyst  
Department of Finance

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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>3</u>	<u>11</u>	<u>should say Senior Commission Counsel</u>
<u>3</u>	<u>13</u>	<u>should say Assistant Executive Director</u>
<u>24</u>	<u>17</u>	<u>should read "dates" instead of "steps"</u>
<u>42</u>	<u>5</u>	<u>change "6000" to "2000"</u>
<u>45</u>	<u>5</u>	<u>Add the word "For" at the beginning</u> <u>of the sentence.</u>
<u>45</u>	<u>16</u>	<u>change the word "it" to "or"</u>
<u>45</u>	<u>24</u>	<u>Add the word "to" after the</u> <u>word "As"</u>
<u> </u>	<u> </u>	<u> </u>
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Commission on State Mandates – October 4, 2006

1 BE IT REMEMBERED that on Wednesday, October 4,  
2 2006, commencing at the hour of 1:30 p.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 BROWN: The hour of 1:30 having arrived,  
8 I'd like to call to order the meeting of the Commission  
9 on State Mandates.

10 Paula, would you call the roll?

11 MS. HIGASHI: Mr. Glaab?

12 MEMBER GLAAB: Present.

13 MS. HIGASHI: Ms. Hair?

14 MEMBER HAIR: Present.

15 MS. HIGASHI: Mr. Lujano?

16 MEMBER LUJANO: Present.

17 MS. HIGASHI: Ms. Olsen is absent for today's  
18 meeting.

19 Mr. Walsh?

20 MEMBER WALSH: Present.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: And Mr. Brown?

24 CHAIR BROWN: Present.

25 MS. HIGASHI: Thank you very much.

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1           The first item on today's agenda is the minutes  
2 of our last meeting, Item 1.

3           MEMBER WALSH: Move to approve.

4           MEMBER WORTHLEY: Second.

5           CHAIR BROWN: Do we call roll or just by  
6 acclamation here?

7           All those in favor, say "aye."

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

9           CHAIR BROWN: Opposed?

10          (No audible response)

11          CHAIR BROWN: Abstentions?

12          (No audible response)

13          CHAIR BROWN: The motion passes.

14          MS. HIGASHI: Thank you very much.

15          Item 2 is the proposed Consent Calendar, which  
16 consists of items 11, 11A, 12, and 13.

17          You have a list on a pink sheet of paper that  
18 you should have before you.

19          MEMBER WALSH: Move to approve.

20          CHAIR BROWN: Second? Do I have a second?

21          MEMBER HAIR: Yes.

22          CHAIR BROWN: All those in favor, say "aye."

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

24          CHAIR BROWN: Opposed?

25          No?

1 (No audible response)

2 CHAIR BROWN: Abstentions?

3 (No audible response)

4 CHAIR BROWN: The motion passes.

5 MS. HIGASHI: Thank you very much.

6 Under Item 3, there are no appeals to consider  
7 today.

8 This brings us now to the hearing portion of our  
9 meeting, and we have a couple of test claim issues and  
10 one reconsideration issue.

11 I'd like to ask all of the parties and witnesses  
12 that are here today that plan to testify on any of the  
13 hearing items to please stand.

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 Our first item, 4, will be presented by our  
21 Commission Counsel Deborah Borzelleri.

22 MS. BORZELLERI: Good afternoon. This item is a  
23 request for reconsideration made by the chairperson to  
24 reconsider the Commission's Statement of Decision adopted  
25 on July 28th, 2006, regarding the *Binding Arbitration*

1 test claim.

2 Reconsideration of prior decisions is a two-step  
3 process. The first step is procedural -- that's what  
4 we're doing today -- where the Commission decides whether  
5 or not to grant the actual request.

6 If the request is granted, the second step is a  
7 substantive review of the merits of the prior decision,  
8 which would be scheduled for the December hearing. So  
9 we're not discussing the merits today.

10 The *Binding Arbitration* test claim statute deals  
11 with labor relations between local agencies and their law  
12 enforcement officers and firefighters, and provides that  
13 where an impasse in labor negotiations has been reached,  
14 and if the employee organization so requests, the parties  
15 would be subject to binding arbitration.

16 The statute was declared unconstitutional in  
17 2003. So we were looking at the period between 2001 and  
18 2003.

19 The Commission adopted a Statement of Decision  
20 at the July 28th hearing, denying reimbursement for  
21 activities because the test claim statute does not  
22 constitute a new program or higher level of service.  
23 At the hearing, however, the claimant significantly  
24 modified the test claim by withdrawing its request for  
25 reimbursement for costs to litigate the test claim



1 statute and costs for increased employee compensation  
2 that could result from the binding arbitration process.  
3 At this stage, the only issue before the Commission is  
4 whether it should grant the request for reconsideration.

5 The Commission has the following options:

6 One, approve the request, finding that the  
7 reconsideration is appropriate to determine whether the  
8 prior final decision is contrary to law.

9 Two, deny the request, finding that the  
10 requester has not raised issues that merit  
11 reconsideration, or

12 Three, take no action, which has the legal  
13 effect of denying the request.

14 Staff is recommending that the Commission  
15 approve the request, finding that the reconsideration is  
16 appropriate to determine at a subsequent hearing on the  
17 merits if the prior final decision is contrary to law;  
18 and if so, to correct that error of law, five affirmative  
19 votes of the Commission are required to approve the  
20 request.

21 Would the parties please state your name for the  
22 record?

23 MS. GMUR: Juliana Gmur on behalf of Palos  
24 Verdes Estates.

25 MR. HENDRICKSON: James B. Hendrickson, City

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1 Manager of the City of Palos Verdes Estates.

2 MR. BURDICK: Allan Burdick on behalf of the  
3 CSAC SB 90 Service.

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

6 CHAIR BROWN: Who is going to speak first?

7 MS. GMUR: Well, I'll take the opportunity to  
8 say that we do support the draft of the staff analysis in  
9 this case. I'd like to see a reconsideration of this  
10 matter.

11 CHAIR BROWN: Thank you.

12 MR. BURDICK: May I add something?

13 Chairman Brown, first, I'd like to welcome you  
14 back to the mandate business.

15 CHAIR BROWN: No comment.

16 MR. BURDICK: A few years away and the process  
17 hasn't changed a whole lot.

18 Members, the only comment I would like to make  
19 is the fact that withdrawn was the cost of binding  
20 arbitration to the members, and that was done  
21 particularly since we weren't able to identify any  
22 situations where the binding arbitration process actually  
23 went to the point of an arbitrator awarding fees. So  
24 this would not preclude, I'm assuming, somebody in the  
25 past, if that should happen and there should be a change

1 in the court decision which would determine that it is  
2 constitutional, and since the statute allows for people  
3 to file within one year after incurring costs, that if  
4 somebody did incur costs, they may be returning to the  
5 Commission for that particular point. But at this time,  
6 there were no agencies that we know of that incurred any  
7 costs that were awarded by an arbitrator.

8 Thank you.

9 CHAIR BROWN: No comments?

10 MR. HENDRICKSON: No. They have said everything  
11 that needs to be said on our behalf.

12 Thank you.

13 CHAIR BROWN: The Department of Finance?

14 MS. GEANACOU: Yes. Susan Geanacou, Department  
15 of Finance.

16 The Department supports the request for  
17 reconsideration so that the issues raised in the request  
18 can be fully addressed by the staff.

19 CHAIR BROWN: Are there any questions of any  
20 members?

21 (No audible response)

22 CHAIR BROWN: If not, I'd certainly entertain a  
23 motion.

24 MEMBER WALSH: Move to reconsider.

25 CHAIR BROWN: Second?

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1 MEMBER WORTHLEY: Second.

2 CHAIR BROWN: All those in favor, say "aye."  
3 (A chorus of "ayes" was heard.)

4 CHAIR BROWN: Opposed?  
5 (No audible response)

6 CHAIR BROWN: No?  
7 Abstentions?  
8 (No audible response)

9 CHAIR BROWN: The motion passes.

10 MR. BURDICK: Thank you very much.

11 MS. GMUR: Thank you.

12 MS. HIGASHI: This brings us to the first test  
13 claim on today's agenda, Item 5. This item will be  
14 presented by Commission Counsel Katherine Tokarski.

15 MS. TOKARSKI: Good afternoon. This item is  
16 *Fifteen-Day Close of Voter Registration*.

17 Prior law allowed voters to newly register to  
18 vote, reregister, or change their address with county  
19 elections officials until the twenty-ninth day before  
20 an election. After that date, voter registration closed  
21 until the conclusion of the upcoming election.

22 Statutes 2000, Chapter 899, amended the Elections Code,  
23 allowing new registrations or changes to voter  
24 registrations through the fifteenth day prior to  
25 an election.

1           The claimant seeks mandate reimbursement for  
2 costs incurred to register voters from the twenty-eighth  
3 through the fifteenth day before elections such as for  
4 implementation planning meetings, revising training  
5 programs, holding an informational media campaign,  
6 responding to additional inquiries about the new law, and  
7 providing additional personnel to accommodate the  
8 increased workload.

9           Staff finds that most of the statutory  
10 amendments by Statutes 2000, Chapter 899, do not mandate  
11 a new program or higher level of service on elections  
12 officials within the meaning of Article XIII B,  
13 Section 6. Processing and accepting voter registration  
14 affidavits and changes of address are not newly required  
15 under the elections code. Elections officials have been  
16 required to perform these activities long before the  
17 enactment of Statutes of 2000, Chapter 899.

18 Staff finds that the amendment to Elections Code  
19 section 13303, subdivision (c), added information to a  
20 preexisting polling place notice, which does provide a  
21 higher level of service to the public within an existing  
22 program.

23           Following the release of the final staff  
24 analysis, staff received late filings from the claimant  
25 and from the County of Sacramento. Those documents,

1 along with the supplemental staff analysis, are in your  
2 binders.

3 Staff recommends that the Commission adopt this  
4 analysis and partially approve the test claim as  
5 described in the conclusion at page 16 of the final staff  
6 analysis.

7 Will the parties and representatives please  
8 state your names for the record?

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

11 MS. SEILER: Deborah Seiler on behalf of Solano  
12 County.

13 MR. KELLEY: Neal Kelley, Registrar of Voters  
14 for Orange County.

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

17 MS. CASTAÑEDA: Carla Castañeda, Department of  
18 Finance.

19 MS. GMUR: Commissioners --

20 CHAIR BROWN: Okay, proceed.

21 MS. GMUR: Thank you so much.

22 All right, generally, when we come before you,  
23 there are always two things we're looking for: Either  
24 a new program or a higher level of service under an  
25 existing program.

1           In this case, staff is saying that it's not a  
2 higher level of service; it's higher costs. It's the  
3 same program, the same services, higher costs. And they  
4 cite case law. And the case law talks about the fact  
5 that higher costs by themselves are not reimbursable.  
6 But those higher costs in those two cases were regarding  
7 general workers' compensation benefits and death  
8 benefits.

9           Now, the registrars of voters, they're not in  
10 the business of handing out benefits. They are in the  
11 business of handling elections. And so the staff points  
12 to that and says, "There's nothing new here. Registrar  
13 of voters, this is what you do. You're just doing more  
14 of what you normally do. Nothing new."

15           But if you extend that, you could say that peace  
16 officers, they do nothing new. They investigate, they  
17 take reports. Mental health clinicians, mental health  
18 departments, they do nothing new. They provide mental  
19 health services. School districts, education services,  
20 administer records, tests. Cities, counties, they  
21 provide services. So there's nothing new under the sun.

22           But I feel for the staff on this because this  
23 one is really hard to conceptualize. A test claimant  
24 comes before you. It's usually pretty clear: They're  
25 looking for the "who" -- Who gets the service? Who is

1 providing the service? -- or the "what" -- What form are  
2 we filling out? What form or process must we follow? In  
3 this case, it's neither the "who" nor the "what," it's  
4 the "when."

5 Now, it's kind of like somebody running to catch  
6 an airplane. If they came up with a new rule that said  
7 you don't have to board at the gate; you can wait until  
8 the plane has been taxied out. They're on the runway.  
9 We'll wheel some stairs out there, and you can jump on  
10 board.

11 Now, in that case, the Department of Finance  
12 would say, "Where are the new passengers? It's the same  
13 list of passengers. It's just spread over a longer  
14 period of time." Because that's kind of what they've  
15 said in this case: Where are the new voters?  
16 But that's concentrating on the "who" again and not the  
17 "when."

18 For those people on board that airplane, that  
19 crew, they've got certain things they have to do before  
20 takeoff. And for them, the big issue is not that there  
21 are passengers on board, but when the passengers come on  
22 board.

23 And so, too, for our election folks here, they  
24 are providing a higher level of service based on, yes, a  
25 very small change in the law. But if you work in an area



1 that is as calendar-driven and timeline-dependent as  
2 their world is, then that small change is definitely a  
3 higher level of service.

4 I'm going to introduce to you some folks now who  
5 can actually speak on that more than I can.

6 Mr. Neal Kelley, he is our test claimant from  
7 the county; but we're going to lead off with Deborah  
8 Seiler. She is here and she is from the County of  
9 Solano, and she will tell you about that higher level of  
10 service that she has had to provide.

11 MS. SEILER: Thank you, Mr. Chairman, Members of  
12 the Commission. I'm Deborah Seiler. I'm the assistant  
13 registrar of voters in the County of Solano; and I also  
14 serve as co-chair of our California Association of Clerks  
15 and Election Officials legislative committee.

16 Actually, my background, I have a substantial  
17 background with the State. I was the assistant to the  
18 Secretary of State for elections and political reform  
19 for -- I was in the Secretary of State's office for  
20 eleven years and served as the chief elections person in  
21 that office.

22 I was also the chief consultant to the Assembly  
23 Elections and Reapportionment Committee, and served as  
24 one of the commissioners to the State's Fair Political  
25 Practices Commission. I was appointed by former

1 Secretary of State, March Fong Eu.

2 I've also been the editor and publisher of a  
3 monthly newsletter on election issues for about ten  
4 years. I no longer do the newsletter.

5 So I do have a substantial background and, in  
6 addition, have served on many international election  
7 observation missions throughout the world.

8 So I have been with Solano County now for two  
9 years. And I'd like to speak to this issue of the higher  
10 level of service.

11 I guess I would liken it to a stream running  
12 into the ocean. If you all of a sudden put a dam in the  
13 stream, the stream is still going to the ocean, but it's  
14 going to the ocean in a significantly different fashion.

15 And the effect of this close of registration being set  
16 to what we call "E-minus" -- we work in "E-minus"  
17 states -- being set at E-minus-15, or 15 days before the  
18 election, has a profound effect on our offices in a  
19 number of very specific areas.

20 First of all, one of the things that we're doing  
21 at the time that we would ordinarily be finished with  
22 voter registration, when it was formerly at 29 days  
23 before the election, after that time period, what we were  
24 doing is we were putting together the rosters of voters  
25 that go out to the polling places. Those rosters we were

1 putting together in time to give to our precinct  
2 inspectors to go out to the polling places.

3 Now, because of the late registrations, we're  
4 not able to compile the rosters at the time that we need  
5 to get them out to the precinct inspectors. So we've had  
6 to come up with alternate methods of delivering those  
7 rosters rather than just when the inspectors come in for  
8 the training class. So we now have either personal  
9 delivery or other mechanisms where staff is delivering it  
10 or we have roving inspectors that we have to hire to send  
11 out those rosters.

12 The other issue with the rosters is that  
13 particularly in very busy elections -- and a number of  
14 counties experienced this in the November of 2004  
15 election, very hotly contested election -- the  
16 registration levels were off the charts for all of us.  
17 And we had tremendous difficulty getting -- due to the  
18 later close of registration, we had tremendous difficulty  
19 even getting those names entered into our files and  
20 getting those names on the rosters.

21 In some cases, we did not. In some cases, the  
22 counties failed to get the names on the rosters.  
23 The consequence of that was that voters came into the  
24 polling place and had to vote provisional ballots, which  
25 is the requirement under the law for a person whose name

1 is not on the roster.

2 So that provisional voting process then actually  
3 contributed to the amount of time that it took us to  
4 perform the canvass and the amount of staff that we had  
5 to have.

6 One of the big effects of this later close of  
7 registration, too, is on the absentee ballot processing.

8 Ordinarily, our supervisors and lead people in  
9 the absentee processing area -- in the voter registration  
10 area, excuse me -- would sort of morph into the absentee  
11 processing area. So the curtain would fall at 29 days  
12 before the election, and then that 29 days before the  
13 election is also the commencement of the absentee voting  
14 period. And so then that staff would finish up with the  
15 voter registration and then go in and start processing,  
16 getting the absentees out in the mail and processing  
17 those that had returned.

18 No longer can the same staff be used for the  
19 absentee voting process. We have to have a whole new set  
20 of people, managers, supervisors, and expertise now to  
21 come in and do the absentee processing because our voter  
22 registration people who had done it in the past are busy.  
23 They're still engaged in voter registration activities.  
24 So that's had a huge influence on our whole staffing  
25 process.

1           One of the biggest impacts also with respect to  
2 the absentee process is that now we have a setup -- as a  
3 result of this new law, we have a situation where the  
4 absentee voting period starts before the close of  
5 registration.

6           What does that mean for voter registration? It  
7 means that a person who is, for example, a permanent  
8 absentee voter -- and we have many more permanent  
9 absentee voters now than we used to. In Solano County,  
10 it's up to almost 40 percent of our electorate who votes  
11 absentee. So you've got all of these people to whom we  
12 send at 29 days, because that's the beginning of the  
13 absentee period, we send them their permanent absentee  
14 ballot.

15           At E-minus-15, between 29 days and 15 days,  
16 those same people can move and reregister to vote; and  
17 they do.

18           So, now, we send them their first ballot. Then  
19 they reregister to vote at the fifteen-day close. Any we  
20 have to send them a second ballot -- a second absentee  
21 ballot. So we have to go back -- and, obviously, we  
22 can't let them vote twice.

23           So now we're going into this huge retrieval,  
24 storage, tracking process, to make sure that these  
25 absentee voters who are being able to register at a later

1 point in time are not duplicate voters.

2 So this is a major impact on our whole process.

3 And in addition, this is just one more thing that  
4 carries over into our canvass process, because these are  
5 all things that we have to account for in the canvass  
6 process.

7 So those are a few examples of the profound  
8 impact that this change has really had on our operation.

9 MR. KELLEY: Good afternoon, Mr. Chair and  
10 fellow Commission Members. Thank you for the opportunity  
11 to speak today.

12 Ms. Seiler and counsel have made some persuasive  
13 arguments. I'm afraid I don't have any of the great  
14 analogies that they had for you, but it's kind of a  
15 little bit dry for you.

16 I wanted to go over just a few things that we  
17 have done since the implementation of this fifteen-day  
18 change.

19 We notify every voter who registers, as Deborah  
20 pointed out, from E-28 to E-15, via a postcard, where  
21 they can obtain a sample ballot, and that their  
22 registration was completed.

23 We also have hired additional staff to process  
24 those registration forms. And Deborah touched on that  
25 just a little bit.

1           In the presidential vote for Orange County, we  
2 processed 46,000 registration forms from E-28 to E-15.  
3 And that was significant because we had to bring on a  
4 tremendous amount of extra help and additional staff to  
5 cover that increase in registration.

6           Now, you could probably make the argument that  
7 perhaps those individuals would have registered before  
8 E-28, but I think a lot of them now wait until that time  
9 period just before E-15 to register. So that's been a  
10 significant impact.

11           Also, the printing of sample ballots. Because  
12 we must provide sample ballots for all of those who  
13 register late, we have to essentially make a guess as to  
14 how many individuals are going to register so that we can  
15 print the sample ballot. So that's an increased cost to  
16 provide enough sample ballots for those individuals we  
17 think will register during that time period.

18           In addition to all of that, we've incurred a  
19 substantial amount of overtime for all the reasons  
20 Ms. Seiler pointed out, not just inputting that data in  
21 those registration forms, but making sure during the  
22 canvass period that we're covering all the issues she  
23 brought up. In addition to those individuals who change  
24 their registration and want a different type of ballot,  
25 that's significant, and that happens quite a bit in

1 Orange County.

2 So with that, I want to thank you for the time.

3 CHAIR BROWN: Okay, thank you very much.

4 The Department of Finance?

5 MS. CASTAÑEDA: Carla Castañeda, the Department  
6 of Finance.

7 We concur with the staff analysis. We  
8 understand that the crunch timeline of changing the  
9 deadline from the 29th to the 15th; but we do believe  
10 that all the activities are still the same with the  
11 exception of amending that notice to let voters know  
12 where they're going and where they can get sample  
13 ballots.

14 MS. GEANACOU: If I may, Chair?

15 Susan Geanacou, Department of Finance.

16 Just one comment I wish to add, is that the  
17 manner of the county's adjustment to performing their  
18 preexisting preelection duties are not mandated by the  
19 test claim statutes. That's, I think, something that  
20 needs to be emphasized for the Commission members today.  
21 They did point out some examples of adjustments they'd  
22 made, but those adjustments are not mandated by the test  
23 claim statutes.

24 CHAIR BROWN: Thank you.

25 Questions of the Members?



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1           MEMBER WORTHLEY: I checked with our registrar,  
2 and she had a similar story from what we've heard here  
3 this morning about the need for overtime help.

4           To me, this is a very simple issue. If I hired  
5 somebody whose one and only job was to take in voter  
6 registration applications, and I hired them the day after  
7 an election, and their job ran from then until the 28th  
8 day prior to the election, I would pay that person a  
9 certain sum of money for providing those services.

10           The State comes along and mandates that they  
11 have to work two additional weeks. Therefore, my costs  
12 go up. Why? Because of the enhanced service which is  
13 provided: I'm giving two more weeks of service. Two  
14 weeks I didn't have to give before, I now have to give  
15 because it was mandated by the state.

16           The argument was made that this additional cost  
17 is only a cost. But this is a cost that comes about  
18 because of one reason: Enhanced service. That's the  
19 reason why banks increase their hours. That's the reason  
20 why grocery stores increase their hours. The more hours  
21 they're open, the more business they have. And that's  
22 considered enhanced service.

23           To me, this is very simply an enhanced service  
24 that's been mandated by the state. I don't see how you  
25 can call it anything else but enhanced service.

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1           It's not a new program. Agreed. We've always  
2           been in this responsibility; we will continue to be in  
3           this responsibility. But when the State mandates that  
4           we have to do it in a fashion that causes us to increase  
5           our costs to provide this enhanced service, the State  
6           should be responsible for paying. It's very simple, in  
7           my mind.

8           CHAIR BROWN: Questions from other Members?

9           (No audible response)

10          CHAIR BROWN: I just have one question. And it  
11          goes to the points that the Department of Finance raise.

12                 During the change in time period from 30 to  
13                 15 days, is there any documentation that the number of  
14                 registrations has increased on a trend-line basis due to  
15                 the change in the time frames?

16                 MR. KELLEY: I don't have any data to provide  
17                 you from Orange County at this point; but I can tell  
18                 you that during the presidential, that period of  
19                 registration during that two-week period was  
20                 significantly higher than the previous presidential.  
21                 But in terms of increased registration, our registration  
22                 numbers are actually decreasing slightly in Orange  
23                 County.

24                 CHAIR BROWN: And that goes to a point. It  
25                 could be an anomaly based on whatever the election cycle

1 might be.

2 From my standpoint, if there's not adequate  
3 documentation that the actual registrations have  
4 increased, I find it very difficult, notwithstanding the  
5 shift in time periods, that the workload is the same and  
6 has not increased.

7 MS. SEILER: I think it's the method of the  
8 workload that we're trying to point out to you. That is,  
9 that due to the method of having to put this at a  
10 completely different cycle, with different staff, with  
11 additional staff, that it has been an increased cost for  
12 us.

13 MS. SHELTON: If I can, just to add a couple  
14 of things from case law. There aren't too many  
15 higher-level-of-service cases that have been decided by  
16 the courts. One of them, though, is Long Beach Unified  
17 School District v. The State of California. And that  
18 case was a higher level of service regarding racial  
19 desegregation, where you had existing federal law, and  
20 the state came and required additional requirements  
21 imposed. And the court said that was a higher level of  
22 service.

23 In the process, to find a higher level of  
24 service is requiring a finding that the State is  
25 mandating new requirements on the local agencies and

1 school districts.

2 Here, if you just take a look at the  
3 legislation, I think there is an example on page 8, all  
4 the Legislature did was change the number "29" to the  
5 number "15." The Legislature did not change any of the  
6 mandated activities.

7 The activities that are performed by the  
8 counties, are activities they've decided to perform or  
9 felt necessary to perform in order to comply with the  
10 legislation.

11 And, yes, I'm sure there are increased costs.  
12 But those activities have not been expressly mandated by  
13 the state which is required for a reimbursement finding.

14 MEMBER WORTHLEY: Well, time is money. I mean,  
15 that's a very -- that's axiomatic. We're requiring  
16 additional time. It requires additional money.  
17 Even if there was a representation made by the increase  
18 in Orange County today. Even if you only had a few  
19 people come in, it still affects the sequencing of  
20 events. You still have to have people available to  
21 receive and process these applications, if it was only  
22 ten.

23 The point is, before, you had a point in time  
24 where you could say, "This is when it ends." And as was  
25 stated before -- and I've seen this happen in our own

1 elections office -- if you were to graph the activity  
2 level in an elections office, as you get closer to the  
3 election, it goes like this (indicating).

4 We are now taking a responsibility, just at the  
5 time when it's getting extremely busy in elections  
6 offices, and adding additional responsibilities to the  
7 elections office. Now, it's that much more difficult to  
8 try to deal with these additional responsibilities. It  
9 does result in the need for additional people, as was  
10 pointed out. People who morphed into other  
11 responsibilities in the elections office have to be,  
12 again, left to this particular role and responsibility  
13 of accepting these applications; whereas before, they  
14 would move on to a different responsibility level.

15 It's an additional cost -- it's an enhanced  
16 service. And if it's not an enhanced service, you might  
17 ask yourself, then why did the Legislature change the  
18 law? What was the purpose of changing the law if it  
19 wasn't considered an enhanced service? There certainly  
20 would be no reason for it.

21 CHAIR BROWN: Mr. Burdick?

22 MR. BURDICK: Chairman Brown and Members, again,  
23 Allan Burdick representing CSAC SB 90 service. It seems  
24 like there's a couple of points here that maybe have been  
25 missed or maybe you haven't discussed. One of the things

1 that we've got into defining was what is a reimbursable  
2 state mandate, and does it implement a public policy.  
3 And, boy, it sure seems to me that that providing people  
4 more time to register is a public policy. What they're  
5 doing is they're implementing a public policy that is  
6 mandated on.

7 The second thing is this discussion about what  
8 are they required to do? Were these things that have  
9 been explained by these two professionals in this  
10 business? You know, are these things which essentially  
11 are optional?

12 Now, let me tell you, first of all, election  
13 departments are not the highest-funded department in a  
14 county government. They're General Fund departments; and  
15 very often, you know, they're lucky to get every dime  
16 they can to maintain whatever level of service they can  
17 do to meet their requirements.

18 And the way the law is intended to be is, is it  
19 reasonably necessary for these people to do that in order  
20 to be able to carry it out? And they've made the  
21 decision that it's reasonably necessary to do it.

22 I think they will tell you they didn't do this  
23 because, you know, they thought it would be fun -- a  
24 nice, extra frill or something. They looked at it, they  
25 looked at the law, they're professionals; and they said,

1 you know, put together a plan to implement that  
2 legislation.

3 And I think finally is the fact that this is the  
4 first time we've had this really kind of serious  
5 discussion about what is being done and the implications  
6 and so forth. And, obviously, there's nobody here from  
7 the Secretary of State's office who could participate in  
8 the discussion to provide state advice to you. But as  
9 you know, the next step in the process is parameters and  
10 guidelines, in which you then sit down and try to work  
11 out what is eligible and what is not eligible. That  
12 does then come back to the Commission for its  
13 consideration.

14 So it seems to me I would hope the Commission  
15 would look at this and say, "This is a perfect example  
16 of something we should send to the  
17 parameters-and-guidelines stage. We should not limit  
18 them by the decision we made today," because I think  
19 there's agreement that there is some level of mandate  
20 there. The question is the scope of it. To send it back  
21 to parameters and guidelines, have it come back to you,  
22 after you've had the Secretary of State participate,  
23 after you've had the Department of Finance have the  
24 benefit of that discussion and make its decision, I think  
25 that you'd have a much more sound decision than trying to

1 grapple with this today when you're getting this -- a lot  
2 of this stuff is relatively new information for you.

3 Thank you very much.

4 CHAIR BROWN: Thank you, Mr. Burdick.

5 MS. SHELTON: I'd like to clarify that a test  
6 claim finding is a question of law. The standard is not  
7 whether or not it's reasonably necessary for counties to  
8 perform those activities. We wouldn't dispute those  
9 factual determinations made by each county.

10 The standard is whether or not the state has  
11 mandated the counties to perform those activities. And  
12 here, there is no evidence in the law at all that the  
13 State has mandated any additional activities, other than  
14 changing the dates in the statutes.

15 The activities that they're discussing here  
16 cannot necessarily be discussed during the  
17 parameters-and-guidelines phase because we're making a  
18 finding. And this proposed decision makes a finding that  
19 they are not mandated by the State.

20 During parameters and guidelines, the Commission  
21 does have discretion to determine activities that are  
22 reasonably necessary to comply with the mandated  
23 activity.

24 But the only mandated activity in the proposed  
25 decision is the activity to amend the polling place



1 notice.

2 So any additional activities that the Commission  
3 includes in parameters and guidelines has to relate to  
4 amending the polling place notice. And that would be  
5 listed to that activity.

6 CHAIR BROWN: Thank you, Counsel.

7 Mr. Walsh?

8 MEMBER WALSH: Are there any other people who  
9 want to testify in this dispute or --

10 MS. GMUR: Yes, as a matter of fact. No  
11 surprise there. There is mandated activity. Again, I  
12 said, it's really hard to conceptualize. I had to go  
13 around this several times before I could see it myself.  
14 It's not what you're doing; it's when you're doing it.  
15 Just like Mr. Worthley stated, he said it's like a  
16 business. If you're going to stay open on Saturday, your  
17 employer is requiring you to do the same thing you do  
18 every other day of the week, you just have to do it now  
19 on Saturday. The same, too, for our election folks. The  
20 service itself is the same, but the change of the date is  
21 mandated as to when it is to be done.

22 CHAIR BROWN: Any further follow-ups or  
23 questions?

24 Do we have a motion for the staff  
25 recommendation?

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1 MEMBER WALSH: Move to approve the staff  
2 recommendation.

3 CHAIR BROWN: Do we have a second?

4 MEMBER HAIR: I'll second.

5 All those in favor, say "aye."

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

7 CHAIR BROWN: Opposed?

8 MEMBER WORTHLEY: Nay.

9 Any abstentions?

10 (No audible response)

11 CHAIR BROWN: The ayes have it.

12 The staff recommendation is approved.

13 MS. HIGASHI: Item 6 will be presented by  
14 Ms. Tokarski.

15 MS. TOKARSKI: Item 6 is the proposed Statement  
16 of Decision for the item you just heard. The sole issue  
17 is whether the proposed Statement of Decision accurately  
18 reflects the Commission's decision on the *Fifteen-Day*  
19 *Close of Voter Registration* test claim.

20 Staff recommends that the Commission adopt the  
21 proposed Statement of Decision beginning on page 3, which  
22 accurately reflects the staff analysis and recommendation  
23 on this test claim. Minor changes, including those that  
24 reflect the late filings, hearing testimony, and vote  
25 count will be included when issuing the final Statement

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1 of Decision.

2 CHAIR BROWN: Do we have a motion on that  
3 recommendation?

4 MEMBER WALSH: So moved.

5 MEMBER GLAAB: Second.

6 CHAIR BROWN: All those in favor, say "aye."

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

8 CHAIR BROWN: Opposed?

9 MEMBER WORTHLEY: No.

10 CHAIR BROWN: Abstentions?

11 (No audible response)

12 CHAIR BROWN: The ayes have it. The staff  
13 recommendation approved.

14 MR. BURDICK: Thank you very much.

15 MS. GMUR: Thank you.

16 MS. HIGASHI: Item 7 is the claim on *Voter*  
17 *Identification Procedures*. This item will also be  
18 presented by Commission Counsel Katherine Tokarski.

19 MS. TOKARSKI: This test claim addresses an  
20 amendment to Elections Code section 14310 regarding  
21 counting provisional ballots. A provisional ballot is a  
22 regular ballot that has been sealed in a special  
23 envelope, signed by the voter, and then deposited in the  
24 ballot box. Provisional ballots can be required for  
25 several reasons to prevent fraud. For example, when poll

1 workers cannot immediately verify an individual's name on  
2 the official roster or if a voter requested an absentee  
3 ballot but instead comes to the polling place without  
4 bringing the absentee ballot.

5 Statutes of 6000, Chapter 260, amended Elections  
6 Code section 14310, subdivision (c)(1), to add a  
7 requirement that elections officials compare the  
8 signature on each provisional ballot envelope with the  
9 signature on the voter's affidavit of registration.  
10 Staff finds that performing signature comparison for all  
11 provisional ballots cast is a reimbursable state-mandated  
12 program.

13 However, in a situation where a local government  
14 calls a special election that could otherwise have been  
15 legally consolidated with the next local or statewide  
16 election, the downstream costs for checking signatures on  
17 provisional ballots for that voluntarily-held election  
18 would not be reimbursable.

19 Staff recommends that the Commission adopt this  
20 analysis and partially approve the test claim as  
21 described in the conclusion at page 12 of the final staff  
22 analysis.

23 Will the parties please state their names?

24 MS. TER KEURST: Hi, I'm Bonnie Ter Keurst. I'm  
25 representing the County of San Bernardino.

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

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

5 CHAIR BROWN: Okay.

6 MS. TER KEURST: I'm just here to support the  
7 staff analysis. We're fine with it.

8 CHAIR BROWN: Finance?

9 MS. CASTENADA: We also agree with the staff  
10 analysis.

11 CHAIR BROWN: Thank you.

12 Do we have a motion?

13 MEMBER WALSH: Move approval.

14 CHAIR BROWN: Second?

15 MEMBER GLAAB: Second.

16 CHAIR BROWN: All those in favor, say "aye."

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

18 CHAIR BROWN: Opposed, say "nay."

19 (No audible response)

20 CHAIR BROWN: Any abstentions?

21 (No audible response)

22 CHAIR BROWN: The ayes have it.

23 MS. HIGASHI: While you're still on this,  
24 Item 8, the proposed Statement of Decision.

25 Ms. Tokarski?

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1 MS. TOKARSKI: The sole issue before the  
2 Commission is whether the proposed Statement of Decision  
3 accurately reflects the Commission's vote on the *Voter*  
4 *Identification Procedures* test claim.

5 Staff recommends that the staff adopt the  
6 proposed Statement of Decision beginning on page 3, which  
7 accurately reflects the staff analysis and recommendation  
8 on this test claim. Minor changes, including those that  
9 reflect the hearing testimony and vote count will be  
10 included when issuing the final Statement of Decision.

11 CHAIR BROWN: Do we have a motion on that?

12 MEMBER WALSH: So moved.

13 MEMBER HAIR: Second.

14 CHAIR BROWN: All those in favor, say "aye."

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

16 CHAIR BROWN: Opposed, say "nay."

17 (No audible response)

18 CHAIR BROWN: Any abstentions?

19 (No audible response)

20 CHAIR BROWN: The staff recommendation is  
21 approved.

22 MS. HIGASHI: Item 9, this is a test claim on  
23 *Mandate Reimbursement Process II*. This item will be  
24 presented by Eric Feller, Commission Counsel.

25 MR. FELLER: Good afternoon. The test claim

1 statutes make various changes to the test claim filing  
2 requirements and put the requirements in statute. Test  
3 claim regulations concern the reasonable reimbursement  
4 methodology.

5 The reasons explained in the analysis, staff  
6 finds that the test claim statutes do not constitute a  
7 reimbursable state mandate because of the prohibition in  
8 Government Code section 17556, subdivision (f), which  
9 states the Commission shall not find costs mandated by  
10 the state if after a hearing, the Commission finds that,  
11 quote, the statute or executive order imposes duties that  
12 are necessary to implement, reasonably within the scope of,  
13 or expressly included in a ballot measure approved by the  
14 voters in a statewide or local election.

15 In this case, the statutes are necessary to  
16 implement it reasonably within the scope of Proposition  
17 4, enacted in 1979, that added Article XIII B, Section 6,  
18 to the Constitution. The claimant's comments -- those  
19 are the goldenrod pages in your binder - state, first,  
20 the staff recommendation violates legislative intent; and  
21 second, the staff's application of Government Code  
22 section 17556 interferes with constitutionally-guaranteed  
23 rights.

24 As the claimant's first point, the supplemental  
25 analysis cites statutes to show that the legislative

1 intent has been considered in accordance with the  
2 recommendation to deny this test claim.

3 As to claimant's arguments that staff's  
4 application of 17556 violates claimant's constitutional  
5 rights, the State Constitution bars an agency, such as  
6 the Commission, from declaring a statute unenforceable or  
7 unconstitutional, or refusing to enforce a statute on  
8 that basis.

9 No other parties commented on the draft staff  
10 analysis.

11 Staff recommends the Commission adopt the  
12 analysis which denies the test claim.

13 Would the parties and witnesses please state  
14 your names for the record?

15 MS. GMUR: I'm Juliana Gmur on behalf of City of  
16 Newport Beach.

17 MR. EVERROAD: Glen Everroad, City of Newport  
18 Beach.

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

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

23 MS. GMUR: Commissioners, if I may?

24 CHAIR BROWN: Proceed.

25 MS. GMUR: Thank you.



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1           You know, I'd like to thank you all for your  
2 kind attention earlier today. We're going to make this  
3 short and sweet. We have nothing more to add. We submit  
4 on the pleadings.

5           CHAIR BROWN: Thank you very much.  
6 Finance?

7           MS. CASTAÑEDA: Carla Castañeda, Department of  
8 Finance.

9           We agree with the staff analysis that no  
10 additional requirements were made.

11          MS. GEANACOU: No further comment.

12          CHAIR BROWN: Counsel, do you have anything to  
13 add to this?

14          (No audible response)

15          CHAIR BROWN: I'd like to entertain a motion for  
16 staff recommendation.

17          MEMBER WALSH: So moved.

18          CHAIR BROWN: Second?

19          MEMBER WORTHLEY: Second.

20          CHAIR BROWN: All those in favor, say "aye."

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

22          CHAIR BROWN: Opposed, say "no."

23          MEMBER GLAAB: No.

24          CHAIR BROWN: Abstain?

25          MEMBER HAIR: I'm abstaining.

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1 CHAIR BROWN: Could you give me a count on that?

2 MS. HIGASHI: It's four to one, with one  
3 abstention.

4 CHAIR BROWN: Okay, the motion is approved.  
5 Item 10. And this is --

6 MS. HIGASHI: Mr. Feller.

7 MR. FELLER: Unless there are objections, staff  
8 recommends the Commission adopt the proposed Statement of  
9 Decision for the *Mandate Reimbursement II* test claim  
10 which accurately reflects the Commission's decision.

11 Staff also recommends the Commission allow minor  
12 changes to be made to the Statement of Decision,  
13 including reflecting the witness's testimony and the vote  
14 count that will be included in the final Statement of  
15 Decision. And also the supplemental analysis in response  
16 to the claimant's comments would be incorporated in the  
17 Statement of Decision as well.

18 CHAIR BROWN: Okay, do we have a motion?

19 MEMBER WALSH: So moved.

20 CHAIR BROWN: A second?

21 MEMBER WORTHLEY: Second.

22 CHAIR BROWN: All those in favor, say "aye."

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

24 CHAIR BROWN: Opposed, say no.

25 MEMBER GLAAB: No.

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1 CHAIR BROWN: Abstentions?

2 (No audible response)

3 CHAIR BROWN: And I think the vote is the same,  
4 and the motion is approved.

5 MS. HIGASHI: It's exactly the same vote.

6 MR. EVERROAD: Thank you.

7 MS. GMUR: Thank you very much.

8 MS. HIGASHI: Item 11 was adopted on Consent  
9 Calendar.

10 Item 11A was adopted.

11 Item 12 and item 13 were all adopted on Consent  
12 Calendar.

13 Our chief counsel has a very brief update.

14 MS. SHELTON: Actually, I have nothing new to  
15 report.

16 CHAIR BROWN: Okay.

17 MS. HIGASHI: And then my report is at the end  
18 of the binder, and it's a current depiction of our  
19 pending caseload.

20 Also, just for the record, we did submit our  
21 workload report to the Director of the Department of  
22 Finance; and copies of it should have been sent to all  
23 of you. But it's also available on the Commission's Web  
24 site for anybody who wants to take a look at it. And  
25 it's a much more detailed depiction of our workload than

1 just these numbers.

2 We have our report on final legislation. And  
3 the bill that we sponsored, as we had reported, I think,  
4 before, was signed by the Governor. And the other  
5 mandate bills that we had been following did not make it  
6 through the process.

7 Our tentative agenda, we're still working  
8 through for the October 26th hearing.

9 There is one correction I wanted to make in  
10 terms of some of the items that we had listed. There is  
11 no pending item regarding Grossmont that will be taken up  
12 at the next meeting.

13 And also I wanted to note that instead of  
14 meeting on December 7th, we are changing our  
15 December hearing to December 4th, and it will be in the  
16 afternoon at 1:00 or 1:30. But details on that will be  
17 forthcoming.

18 Thank you.

19 CHAIR BROWN: That concludes your report?

20 MS. HIGASHI: That concludes my report.

21 CHAIR BROWN: Are there any additional public  
22 comments before the Commission?

23 MR. BURDICK: Did you say December 4?

24 CHAIR BROWN: December 4th.

25 If there are no additional public comments, I

1 assume I should read into the record.

2 MS. HIGASHI: Yes.

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

14 And if we could clear the room for the closed  
15 session.

16 Thank you very much.

17 (The Commission met in closed executive  
18 session from 2:15 p.m. to 2:30 p.m.)

19 CHAIR BROWN: We're back in open session.

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

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1 litigation, and Government Code section 11126,  
2 subdivision (a), and 17526, to confer on personnel  
3 matters listed on the published notice and agenda.

4 All required reports from the closed session  
5 have having been made and with no further business, do  
6 I have a motion to adjourn?

7 MEMBER WALSH: So moved.

8 CHAIR BROWN: And a second?

9 MEMBER WORTHLEY: Second.

10 CHAIR BROWN: All in favor?

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

12 CHAIR BROWN: Thank you very much.

13 (Proceedings concluded at 2:31 p.m.)

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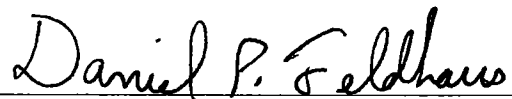
**REPORTER'S CERTIFICATE**

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 October 23, 2006.



---

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