

## MINUTES

### COMMISSION ON STATE MANDATES

State Capitol, Room 126

Sacramento, California

October 26, 2006

Present: Member Anne Sheehan, 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 John Fillmore  
Representative of the Director of the Office of Planning and Research  
Member J. Steven Worthley  
County Supervisor  
Member Paul Glaab  
City Council Member  
Member Sarah Olsen  
Public Member

#### CALL TO ORDER AND ROLL CALL

Chairperson Sheehan called the meeting to order at 9:30 a.m.

#### APPROVAL OF MINUTES

Item 1      October 4, 2006

Item 1 was postponed to the December hearing.

#### PROPOSED CONSENT CALENDAR

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

##### INCORRECT REDUCTION CLAIMS

Item 10    State Controller's Resubmission and Correction to Reevaluation of Reimbursement Claims on *Graduation Requirements*  
Education Code Section 51225.3  
Statutes 1983, Chapter 498  
San Diego Unified School District, Claimant (CSM 4435-I-01 and 4435-I-37)  
San Jose Unified School District, Claimant (CSM 4435-I-04)  
Sweetwater Union High School District, Claimant (CSM 4435-I-05)  
Castro Valley Unified School District, Claimant (CSM 4435-I-13 and 4435-I-39)  
Clovis Unified School District, Claimant (CSM 4435-I-06 and 4435-I-38)

On Remand from the Sacramento County Superior Court,  
*San Diego Unified School District, et al. v. Commission on State  
Mandates et al.*, Case No. 03CS01401 (Consolidated with Nos.  
03CS01568, 03CS01569, 03CS01570, 03CS01702, 04CS00028)

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 Proposed Parameters and Guidelines  
*Domestic Violence Arrests and Victims Assistance*, 98-TC-14  
Penal Code Sections 264.2 and 13701  
Statutes 1998, Chapters 698 (AB 1201) and 702 (AB 2177)  
County of Los Angeles, Claimant
- Item 12 Proposed Parameters and Guidelines  
*Missing Children Reports*, 01-TC-09  
Education Code Sections 38139 (former § 40048), 49068.5, 49068.6, 49370  
and Section 14 of Statutes 1986; Chapter 249 (AB 606),  
Statutes 1986, Chapter 249 (AB 606); Statutes 1994, Chapter 922  
(AB 2587); Statutes 1996, Chapter 277 (SB 1562); Statutes 1999,  
Chapters 832 (AB 646) and 1013 (SB 570)  
San Jose Unified School District, Claimant  
And  
Request to Consolidate *Missing Children Reports with Law Enforcement  
Agency Notifications*, 04-PGA-03 (4505)  
Education Code Section 48902, Subdivision (c)  
Statutes 1989, Chapter 1117 (SB 1275)  
San Jose Unified School District, Requestor
- Item 13 Request to Consolidate Parameters and Guidelines  
*Handicapped and Disabled Students* (04-RL-4282-10);  
*Handicapped and Disabled Students II* (02-TC-40/02-TC-49); and  
*Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental  
Health Services* (97-TC-05)  
Government Code Sections 7570-7588  
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632)  
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)  
Statutes 1994, Chapter 1128 (Assem. Bill No. 1892)  
Statutes 1996, Chapter 654 (Assem. Bill No. 2726)  
  
California Code of Regulations, Title 2, Sections 60000-60610  
(Emergency regulations effective January 1, 1986 [Register 86, No. 1], and  
re-filed June 30, 1986, designated effective July 12, 1986 [Register 86, No.  
28]; and Emergency regulations effective July 1, 1998 [Register 98, No. 26],  
final regulations effective August 9, 1999 [Register 99, No. 33])

- Item 15 Request to Amend Parameters and Guidelines  
*Health Benefits for Survivors of Peace Officers and Firefighters*,  
 05-PGA-06 (97-TC-25)  
 Labor Code Section 4856; Government Code Section 26135  
 Statutes 1996, Chapter 1120 (AB 3478); Statutes 1997, Chapter 193  
 (SB 563)  
 Department of Finance, Requestor
- Item 16 Request to Amend Parameters and Guidelines  
*Sex Offenders: Disclosure by Law Enforcement Officers*,  
 05-PGA-09 (97-TC-15)  
 Penal Code Sections 290 and 290.4  
 Statutes 1996, Chapters 908 (AB 1562) and 909 (SB 1378)  
 Statutes 1997, Chapters 17 (SB 947), 80 (SB 115), 817 (AB 59), 818  
 (AB 1303), 819 (SB 314), 820 (SB 882), 821 (AB 290), and 822  
 (SB 1078)  
 Statutes 1998, Chapters 485 (AB 2803), 550 (AB 2799), 927 (AB 796) 928  
 (AB 1927), 929 (AB 1745), and 930 (AB 1078)  
 Department of Finance, Requestor
- Item 17 Request to Amend Parameters and Guidelines  
*Law Enforcement College Jurisdiction Agreements*,  
 05-PGA-10 (98-TC-20)  
 Education Code 67381  
 Statutes 1998, Chapter 284 (SB 1729)  
 Department of Finance, Requestor

ADOPTION OF COMMISSION ORDER TO INITIATE RULEMAKING

- Item 19 Incorrect Reduction Claims Process  
 Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5,  
 Article 5. Incorrect Reduction Claims, commencing with Section 1185

A motion was made to adopt items 10, 11, 12, 13, 15, 16, 17, and 19 on the consent calendar.  
 With a second by Member Glaab, 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 items 4, 5, 6, and 7.

## TEST CLAIMS

- Item 4     *Racial Profiling: Law Enforcement Training*, 01-TC-01  
            Penal Code Section 13519.4  
            Statutes 2000, Chapter 684 (SB 1102)  
            County of Sacramento, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the test claim legislation prohibits law enforcement officers from engaging in racial profiling and establishes training requirements for law enforcement officers with the curriculum developed by the Commission on Peace Officer Standards and Training, or POST. Ms. Borzelleri explained that the test claim statutes, as interpreted by POST, require a one-time, five-hour initial racial profiling training course and a two-hour refresher course every five years. She noted that POST certifies both courses to allow local agencies to apply the training hours toward their 24-hour continuing professional training courses.

Staff recommended that the Commission partially approve the test claim for the initial five-hour training under the limited circumstances as specified in the analysis, and deny reimbursement for the two-hour refresher course.

Parties were represented as follows: Nancy Gust, on behalf of the Sacramento County Sheriff's Department; and Susan Geanacou, Donna Ferebee, and Carla Castaneda, with the Department of Finance.

Ms. Gust stated no objection to the staff analysis.

Ms. Geanacou concurred with the staff analysis.

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

- Item 5     Proposed Statement of Decision  
            *Racial Profiling: Law Enforcement Training*, 01-TC-01  
            See Above

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the only issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision on the *Racial Profiling: Law Enforcement Training* test claim. She noted that staff would make minor changes in the final Statement of Decision to reflect the hearing testimony and vote count.

Member Olsen made a motion to adopt the proposed Statement of Decision, which was seconded by another member. The motion carried unanimously.

Member Worthley commented that the Commission makes findings that where a mandated activity could be absorbed into an existing program, the activity is not reimbursable. He stated his concern that at some point, it becomes almost ludicrous in terms of trying to actually perform the responsibilities within the allocated time allotments. He noted that he has heard anecdotal information indicating that point in time was approaching.

Chairperson Sheehan stated that it was a point well taken and encouraged those with the same concern to discuss the issue with members of the Legislature.

Item 6     *Racial Profiling, Law Enforcement Training (K-14)*, 02-TC-05  
Penal Code Section 13519.4  
Statutes 1990, Chapter 480 (SB 2680); Statutes 1992, Chapter 1267  
(AB 401); Statutes 2000, Chapter 901 (SB 739); Statutes 2001,  
Chapter 854 (SB 205)  
Santa Monica Community College District, Claimant

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the test claim legislation prohibits law enforcement officers in K-14 school districts from engaging in racial profiling and establishes training curriculum developed by the Commission on Peace Officer Standards and Training, or POST, to include a one-time, five-hour initial racial profiling training course and a two-hour refresher course every five years.

Staff recommended that the Commission deny this test claim because it does not mandate any activities on K-14 school districts. Ms. Borzelleri explained that there was no legal requirement on K-14 school districts to establish police departments and there was no other evidence to support a finding that reimbursement should be allowed for this test claim when the training requirements are triggered by the K-14 school districts' discretionary decision to establish a police department.

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

Nancy Patton, Assistant Executive Director, noted that the claimant's representative, Keith Petersen, was unable to be present but notified staff that it was ok to proceed with the item because his objections were noted in the record. However, Mr. Petersen requested that the item be continued if any new issues were raised.

Ms. Geanacou supported the staff analysis.

Member Glaab asked why the constitutional provision requiring safe schools does not apply to community colleges. Ms. Borzelleri responded that the specific provision only applies to K-12. Camille Shelton, Chief Legal Counsel, added that the provision was an initiative adopted by the voters.

Member Glaab requested clarification as to whether a K-12 school district was required to complete the training requirements if it had a police department. Ms. Borzelleri said yes, noting that it was up to the district to decide what they need or how to carry out what they need to do to provide security. Member Glaab then asked how many school districts have elected to have their own police department. Ms. Shelton stated that staff did not have a number.

Member Worthley commented that many school districts contract with local police departments to get around the problem.

Mr. Palkowitz indicated that while many districts do contract, larger districts in urban areas such as San Diego and Los Angeles have their own police agency. He stated that it was necessary because of the lack of response time from a local agency to deal with problems at school districts. He pointed out that even though the law does not require a school district to have a police agency, various requirements must be followed once one is established. He noted that the Education Code does not require a school district to have a teacher, and thus, the activity in question, rather than the position or job title, should be examined.

Mr. Palkowitz noted that with suspension and expulsion cases, the act of suspending or expelling a student was discretionary, but if it was done, downstream related costs such as hearings were required, which is reimbursable. In this case, he argued that the required training should be reimbursable as well.

Member Worthley appreciated Mr. Palkowitz's comments but stated that in Fresno, police officers were stationed at the school so that response time was not an issue. He suggested that districts contract with the local jurisdiction for that type of service to make sure that the costs are reimbursed at the municipality level.

Mr. Palkowitz agreed, but contended that the cost of such service was an issue.

Ms. Shelton explained that in the *San Diego Unified School District* case, the Supreme Court found that certain discretionary expulsions may be considered mandatory but not reimbursable and left the mandate issue unanswered. She stated that in this particular case, the same facts in earlier cases were not present to suggest that it should be a reimbursable state-mandated program.

Mr. Palkowitz commented that very few things say "required" in the Education Code.

Member Worthley made a motion to adopt the staff recommendation, which was seconded by Member Olsen. The motion carried 6-1, with Member Glaab voting "No."

- Item 7 Proposed Statement of Decision  
*Racial Profiling: Law Enforcement Training (K-14)*, 02-TC-05  
See Above

Deborah Borzelleri, Senior Commission Counsel, presented this item. She stated that the only issue before the Commission was whether the proposed Statement of Decision accurately reflected the Commission's decision in the *Racial Profiling: Law Enforcement Training (K-14)* test claim. She noted that staff would make minor changes to the final Statement of Decision, including hearing testimony and vote count.

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

- Item 8 *Pupil Safety Notices*, 02-TC-13  
Education Code Sections 32242, 32243, 32245, 46010.1; 48904, 48904.3, 48987 and Welfare and Institutions Code Section 18285  
Statutes 1983, Chapter 498 (SB 813); Statutes 1984, Chapter 482 (AB 3757); Statutes 1984, Chapter 948 (AB 2549); Statutes 1986, Chapter 196 (AB 1541); Statutes 1986, Chapter 332 (AB 2824); Statutes 1992, Chapter 445 (AB 3257); Statutes 1992, Chapter 1317 (AB 1659); Statutes 1993, Chapter 589 (AB 2211); Statutes 1994, Chapter 1172 (AB 2971); Statutes 1996, Chapter 1023 (SB 1497); Statutes 2002, Chapter 492 (AB 1859)  
Title 5, California Code of Regulations, Section 11523  
San Jose Unified School District, Claimant

- Item 9 Proposed Statement of Decision  
*Pupil Safety Notices*, 02-TC-13  
See Above

Items 8 and 9 were postponed to the December hearing.

**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 14 Request to Amend Parameters and Guidelines  
*Handicapped and Disabled Students*, 00-PGA-03/04 (CSM 4282)  
Government Code Sections 7570-7588  
Statutes 1984, Chapter 1747 (Assem. Bill No. 3632);  
Statutes 1985, Chapter 1274 (Assem. Bill No. 882)  
  
California Code of Regulations, Title 2, Sections 60000-60610  
(Emergency Regulations filed December 31, 1985, designated effective January 1, 1986 (Register 86, No. 1) and re-filed June 30, 1986, designated effective July 12, 1986 (Register 86, No. 28))  
Counties of Los Angeles and Stanislaus, Requestors

Item 14 was postponed to the December hearing.

**PROPOSED STATEWIDE COST ESTIMATE**

- Item 18 *Integrated Waste Management*, 00-TC-07  
Public Resources Code Sections 40148, 40196.3, 42920-42928  
Public Contract Code Sections 12167 and 12167.1  
Statutes 1999, Chapter 764 (AB 75);  
Statutes 1992, Chapter 1116 (AB 3521)  
State Agency Model Integrated Waste Management Plan (February 2000)  
Santa Monica and Lake Tahoe Community College Districts, Claimants

The California Integrated Waste Management Board submitted a late filing at the hearing.<sup>1</sup> Chairperson Sheehan stated that in the future, the members would appreciate receiving filings prior to the hearing.

[A few minutes were taken to review the letter.]

Cathy Cruz Jefferson, Senior Program Analyst, presented this item. She stated that on March 25, 2004, the Commission adopted its Statement of Decision finding that the *Integrated Waste Management* program constituted a higher level of service for community college districts. She indicated that staff reviewed the claims data submitted by the claimants and compiled by the State Controller's Office. The data showed that 27 community college districts filed 142 claims for fiscal years 1999-2000 through 2004-2005 for a total of over \$6 million.

Ms. Jefferson stated that on January 9, 2006, staff issued its draft staff analysis and requested additional information regarding the costs associated with diversion of solid waste and complying with the program that may assist in the development of a more accurate statewide cost estimate. On July 27, 2006, staff conducted a prehearing conference so the parties could assist in identifying offsets and developing a more accurate statewide cost estimate. Ms. Jefferson noted that the California Integrated Waste Management Board and the Department of Finance provided

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<sup>1</sup> The California Integrated Waste Management Board submitted comments to the final staff analysis. The letter was dated October 26, 2006, addressed to Executive Director, Paula Higashi, and signed by Elliott Block, Acting Chief Counsel.

comments; however, they did not provide enough evidence to help staff reduce the proposed estimate by deducting offsets that should have been realized but were not reported in claims.

Ms. Jefferson explained that, in general, the Board's comments focused on its request to amend the parameters and guidelines. She noted that because the reimbursement claims for fiscal years 1999-2000 through 2004-2005 were already submitted, the Board's suggestion to add additional information to the parameters and guidelines regarding offsetting savings would not affect the claims. Thus, staff was unable to improve the proposed estimate for the initial years based on the Board's comments.

Staff recommended that the Commission adopt the proposed estimate, which includes nine fiscal years for a total of \$10,785,532, averaging to almost \$1.2 million annually in costs for the state. If adopted, the estimate will be reported to the Legislature.

Parties were represented as follows: Elliot Block and Trevor O'Shaughnessy, on behalf of the California Integrated Waste Management Board; and Susan Geanacou and Carla Castaneda, with the Department of Finance.

Mr. Block noted that the Board provided information at the prehearing conference and just learned that it was not the kind of information that is useful in adjusting the claims. Thus, in the last few days, he compiled other information that specifically connects to the adopted parameters and guidelines, which allows offsets for revenues generated from the sale of recycled materials. He explained that the dollar amount attributable to the revenues that could be generated from recyclable materials, given the amounts reported by community college districts as being diverted, is about \$22 million for a five-year period. He asserted that this amount essentially wipes out the \$10 million statewide cost estimate.

In addition, Mr. Block stated that additional information on the avoided disposal cost issue was provided as well. He noted that staff's analysis states that avoided disposal costs are not an appropriate offset; however, he asserted that staff took a fairly narrow reading of the parameters and guidelines. He argued that avoided disposal costs occur automatically from the diversion of these materials. Mr. Block requested that the statewide cost estimate be reduced to zero.

Ms. Geanacou stated that at this time, she was not in a position to provide official testimony regarding the assertion of the value of recyclables and how it may or may not completely negate the proposed estimate, but would like the opportunity to comment.

Ms. Shelton stated that it would not be appropriate for the Commission to adopt a statewide cost estimate of zero because it would contradict the Statement of Decision, which found that there are increased costs mandated by the state as a matter of law. She added that a lot of the Board's comments were made before the Commission during the parameters and guidelines phase, and noted that their request to amend the parameters and guidelines is on file but not before the Commission at this time. Thus, anything having to do with the offset issue is a question of law that has to be dealt with at another hearing.

Ms. Shelton explained that the purpose of the statewide cost estimate is to notify the Legislature of the amount currently claimed. Staff questions the amount but does not have solid data to be able to reduce the figure. However, notice must still be provided to the Legislature.

Member Worthley asked if the estimate fixes the cost for future years. Ms. Higashi stated not necessarily, noting that once the report is made to the Legislature, the Legislative Analyst's Office has a duty to evaluate the report. A recommendation is required during the budget



process, and that recommendation may be to: 1) fund it, 2) amend the statute, or 3) request a reconsideration by the Legislature.

Ms. Higashi asked if there was a statutory requirement to use the revenue from recycled material solely for the purpose of paying for this program. She recalled that these issues were addressed in a previous hearing because there was no statutory requirement that the revenues be used exclusively for the cost of the program, and thus, they were not a mandatory offset. She also pointed out that there are 72 community college districts and the proposed estimate only represents about a third of them.

Mr. O'Shaughnessy responded that Assembly Bill 75 states that revenues generated are to be used to enhance the recycling programs. Additionally, he stated that within the Public Contract Code, it states that the revenues generated by the sale of the materials and the keeping of those revenues need to be approved by the Integrated Waste Management Board up to \$2,000. Anything above \$2,000 must also be appropriated by the Legislature. Thus, the funds cannot roll back into an agency's fund of operations – it either needs to go back into the recycling program or to the state's general fund for allocation.

Ms. Shelton clarified that there were two separate issues being discussed. One is about offsetting revenue, which are identified in the parameters and guidelines, and the other is an alleged offsetting savings argument, which was denied before, but is the subject of a request to amend the parameters and guidelines.

Member Worthley commented that Mr. O'Shaughnessy just defeated their argument because if the money that is generated has to go back through the state's general fund, then the community college districts do not benefit.

Mr. O'Shaughnessy responded that the districts benefit because they are allowed to use those funds per the statute. They just need to request that the Legislature allocate the money because it is revenue that they generated.

Member Worthley pointed out that the allocation is a discretionary act of the Legislature. Thus, if the Legislature elects not to appropriate the money, the community college districts lose out.

Member Olsen commented that they needed to discuss the avoided disposal cost issue.

Mr. Block stated that staff's analysis was based on a clause in their statute that says that offsetting savings must be applied to the program to the extent feasible. He argued that staff viewed this as discretionary. He asserted that in the context of avoided disposal costs, there is no discretion involved because the very fact that the materials are diverted avoids the disposal cost. He acknowledged that the Commission's process is set out a certain way, but he felt an obligation to at least get the information into the record, especially since it will be forwarded to the Legislature. He maintained that in the long run, these programs are revenue-generating for community college districts.

Chairperson Sheehan stated her understanding that this issue will be addressed in the request to amend the parameters and guidelines. Ms. Shelton clarified that the issue was already addressed when the Commission adopted the parameters and guidelines, but it will be revisited with the new information provided when the request to amend comes up in the queue.

Mr. Block requested clarification that any changes to the parameters and guidelines would only be effective from 2005 forward. Ms. Shelton affirmed, noting that Government Code section 17557 governs the timing of a request to amend the parameters and guidelines. Because

the Board's request was filed after the initial claims filing period, it would not impact the initial years' claims. She stated that the State Controller's Office can reduce costs if they find that they are unreasonable or excessive.

Chairperson Sheehan noted that there was a mechanism on the revenue side to address the issue.

Member Worthley asked the purpose of the July prehearing. Ms. Jefferson responded that the Board and affected state agencies and interested parties were invited to provide information to help identify offsets and to help develop a more accurate estimate because inaccuracies were identified in the claims.

Member Worthley wondered if the results would have been different if staff received the Board's new information in July. Ms. Shelton noted that the Board was still making legal arguments that were previously denied. Thus, depending on what facts they would have presented, staff could not answer that question.

Member Olsen requested clarification that a Commission action today would not preclude the Controller's Office from taking into consideration the kind of information that the Board is talking about when reviewing and paying reimbursement claims. Ms. Higashi affirmed.

After further discussion about the two issues, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Worthley, the motion carried unanimously.

#### **STAFF REPORTS**

Item 20 Chief Legal Counsel's Report (info)  
Recent Decisions, Litigation Calendar

Ms. Shelton reported that the hearing in the *CSBA v. State of California* case was changed from December 15<sup>th</sup> to January 5<sup>th</sup>.

Item 21 Executive Director's Report (info/action)  
Workload, Budget, Legislation, and Next Hearing

Ms. Higashi reported the following:

- *Next Hearing.* The December hearing will be on December 4<sup>th</sup> at 1:30 at a location to be determined.
- *Other Meetings.* Ms. Higashi will be attending an annual meeting with various organizations to go over future scheduling issues. Later in November, she will participate in a panel discussion at the California League of Cities Conference for a financial management seminar.

#### **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.

Hearing no further comments, Chairperson Sheehan adjourned into closed executive session pursuant to Government Code sections 11126, subdivision (a), and 17526, to confer on personnel matters listed on the published notice and agenda.

**REPORT FROM CLOSED EXECUTIVE SESSION**

Chairperson Sheehan reported that the Commission met in closed executive session pursuant to Government Code 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 Hair and second by Member Glaab, Chairperson Sheehan adjourned the meeting at 10:54 a.m.

  
PAULA HIGASHI  
Executive Director

**RECEIVED**  
NOV 09 2006  
COMMISSION ON  
STATE MANDATES

**PUBLIC HEARING**

**COMMISSION ON STATE MANDATES**

--oOo--

**TIME:** 9:30 a.m.

**DATE:** Thursday, October 26, 2006

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

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**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

--oOo--

**ORIGINAL**

Reported by:  
Carole W. Browne  
California Certified Shorthand Reporter #7351

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

COMMISSIONERS PRESENT

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

PAUL GLAAB  
City Council Member  
City of Laguna Niguel

FRANCISCO LUJANO  
Representative for PHILIP ANGELIDES  
State Treasurer

AMY HAIR  
Representative for STEVE WESTLY  
State Controller

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

SARAH OLSEN  
Public Member

JOHN FILLMORE  
Representative for SEAN WALSH  
Director, Office of Planning & Research

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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

ERIC FELLER  
Commission Counsel

NANCY PATTON  
Deputy Executive Director

CATHY CRUZ JEFFERSON  
Senior Program Analyst

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PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Sacramento County Sheriff's Department:

NANCY GUEST  
Sacramento County Sheriff's Department

For Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney  
Department of Finance

DONNA FEREBEE, Senior Staff Attorney  
Department of Finance

CARLA CASTAÑEDA, Principal Program Budget Analyst  
Department of Finance

PUBLIC TESTIMONY

**Appearing Re Item 6:**

For San Diego Unified School District:

ARTHUR M. PALKOWITZ  
Director, Resource Development  
San Diego Unified School District  
4100 Normal Street, Room 3209  
San Diego, California 92103-2682

For Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney  
Department of Finance

CARLA CASTAÑEDA, Principal Program Budget Analyst  
Department of Finance

**Appearing Re Item 18:**

For California Integrated Waste Management Board:

ELLIOT BLOCK, Acting Chief Counsel  
California Integrated Waste Management Board

TREVOR O'SHAUGHNESSY, Program Staff  
California Integrated Waste Management Board  
1001 I Street  
Sacramento, California 95812

For Department of Finance:

SUSAN S. GEANACOU, Senior Staff Attorney  
Department of Finance

CARLA CASTAÑEDA, Principal Program Budget Analyst  
Department of Finance

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ERRATA SHEET

<u>Page</u>	<u>Line</u>	<u>Correction</u>
<u>3</u>	<u>19</u>	Correct the name "Naney Guest" to "Nancy Guest"
<u>10</u>	<u>18</u>	The two "Guest" words on this line should be corrected and should say "Guest"
<u>11</u>	<u>1</u>	Correct "Guest" by changing it to "Guest"
<u>11</u>	<u>3</u>	Correct "Guest" by changing it to "Guest"
<u>12</u>	<u>6</u>	Should read "claim" & not "claims"
<u>14</u>	<u>2</u>	Cross off "Geanacou" and replace it with "Patton"
<u>26</u>	<u>10</u>	Cross off <del>and</del> "and" & replace it with "through"
<u>42</u>	<u>4</u>	Cross off "that" and replace it with "what"
<u>48</u>	<u>7</u>	Cross off "setting" & replace it with "offsetting"



Commission on State Mandates – October 26, 2006

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**Commission on State Mandates – October 26, 2006**

1 BE IT REMEMBERED that on Thursday, October 26,  
2 2006, commencing at the hour of 9:30 a.m., thereof, at  
3 the State Capitol, Room 126, Sacramento, California,  
4 before me, CAROLE W. BROWNE, CSR #7351, the following  
5 proceedings were held:

6 ---o0o---

7 CHAIR SHEEHAN: The time of 9:30 having  
8 arrived, I would like to call the October 26th meeting of  
9 the Commission on State Mandates to order.

10 Can the clerk call the roll, please?

11 MS. HIGASHI: Mr. Fillmore?

12 MEMBER FILLMORE: Here.

13 MS. HIGASHI: Mr. Glaab?

14 MEMBER GLAAB: Present.

15 MS. HIGASHI: Ms. Hair?

16 MEMBER HAIR: Present.

17 MS. HIGASHI: Mr. Lujano?

18 MEMBER LUJANO: Present.

19 MS. HIGASHI: Ms. Olsen?

20 MEMBER OLSEN: Present.

21 MS. HIGASHI: Mr. Worthley?

22 MEMBER WORTHLEY: Here.

23 MS. HIGASHI: And Ms. Sheehan?

24 CHAIR SHEEHAN: Here.

25 We have a quorum. We have a full contingent

1 today.

2 First item of business.

3 MS. HIGASHI: First item on the agenda is  
4 approval of the minutes for the October 4th meeting.  
5 We have a late delivery on the transcript -- I should say  
6 it's routine delivery -- and we will be having those  
7 minutes on the next agenda.

8 CHAIR SHEEHAN: Okay. All right. Very good.

9 MS. HIGASHI: Then the next item is the  
10 proposed Consent Calendar. And this should be before  
11 you. It is blue. And I'll read through the items: Item  
12 10, item 11, item 12, item 13, item 15, item 16, item 17,  
13 and item 19.

14 CHAIR SHEEHAN: Very good. And then we have  
15 some postponements, also.

16 MS. HIGASHI: Yes. We have postponement of  
17 items 8, 9 and 14.

18 CHAIR SHEEHAN: Okay. All right. So any  
19 changes to the consent that anyone -- hopefully no one --  
20 there are no issues to be pulled off of consent?

21 *(No audible response.)*

22 UNIDENTIFIED SPEAKER: So move.

23 CHAIR SHEEHAN: All right. So we have a motion  
24 to adopt the Consent Calendar. Do we have a second?

25 MEMBER GLAAB: Second.

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1 CHAIR SHEEHAN: All right. A motion and  
2 second. All those in favor say "aye."

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

4 CHAIR SHEEHAN: Opposed?

5 *(No audible response.)*

6 CHAIR SHEEHAN: That is adopted.

7 MS. HIGASHI: Thank you very much.

8 This brings us to the hearing portion of our  
9 meeting. And I'd like to ask all of the parties and  
10 witnesses who will be involved in items -- hold on -- 4,  
11 5, 6 --

12 CHAIR SHEEHAN: 7.

13 MS. HIGASHI: -- and 7 to please stand.

14 This should be quick.

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

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

20 MS. HIGASHI: Thank you.

21 Item 4 will be presented by Commission Counsel  
22 Deborah Borzelleri.

23 MS. BORZELLERI: Thank you, Paula.

24 This is racial profiling, law enforcement  
25 training. This test claim deals with statutes that

1 prohibit law enforcement officers from engaging in racial  
2 profiling and establishes racial profiling training  
3 requirements for law enforcement officers with the  
4 curriculum developed by the Commission on Peace Officer  
5 Standards and Training, which is POST.

6 The test claim statutes as interpreted by POST  
7 required a one-time, five-hour initial racial profiling  
8 training course and a two-hour refresher course every  
9 five years.

10 Both courses can be certified by POST to allow  
11 local agencies to apply the training hours towards their  
12 24-hour continuing professional training courses.

13 Staff recommends the Commission partially approve this  
14 test claim for the initial five-hour training under the  
15 limited circumstances as specified in the analysis and  
16 deny reimbursement for the two-hour refresher course.

17 Will the parties please state your name for the record?

18 MS. GUEST: Nancy Guest, Sacramento County  
19 Sheriff's Department.

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

22 MS. FEREBEE: Donna Ferebee, Department of  
23 Finance.

24 MS. GEANACOU: Susan Geanacou, Department of  
25 Finance.

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1 CHAIR SHEEHAN: Okay. Ms. Guest, would you  
2 like to start?

3 MS. GUEST: We have no objection to the staff  
4 analysis.

5 CHAIR SHEEHAN: Okay. Finance? Whichever one?

6 MS. GEANACOU: We also concur with staff  
7 analysis, limiting it to the period before adoption in  
8 POST's basic course.

9 CHAIR SHEEHAN: Okay. Any questions from the  
10 members?

11 *(No audible response.)*

12 CHAIR SHEEHAN: That's amazing. All right.  
13 Then if there's no further discussion, no other comments  
14 from members of the public on this one? All right. Then  
15 we'll entertain a motion.

16 MEMBER GLAAB: So moved.

17 MEMBER WORTHLEY: Second.

18 CHAIR SHEEHAN: All right. We have a motion to  
19 adopt the staff recommendation. All those in favor say  
20 "aye."

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

22 CHAIR SHEEHAN: Any opposed?

23 *(No audible response.)*

24 CHAIR SHEEHAN: That is adopted.

25 Thank you, ladies.

1 Item 5.

2 MS. BORZELLERI: Item 5. The only issue before  
3 the Commission is whether the proposed statement of  
4 decision accurately reflects the Commission's decision on  
5 the racial profiling, law enforcement training test  
6 claims.

7 Staff will make minor changes in the final  
8 statement of decision reflecting the witnesses testifying  
9 and vote count.

10 CHAIR SHEEHAN: Their input that they -- right?

11 MS. BORZELLERI: Yes. Yes.

12 CHAIR SHEEHAN: Okay. Any questions on this?

13 If not, we'll entertain a motion.

14 MEMBER OLSEN: Move it.

15 UNIDENTIFIED SPEAKER: Second.

16 CHAIR SHEEHAN: There's a motion and a second  
17 to adopt the proposed statement of decision. All those  
18 in favor say "aye."

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

20 CHAIR SHEEHAN: Any opposed?

21 MEMBER WORTHLEY: Madam Chairman, I just want  
22 to make one comment.

23 CHAIR SHEEHAN: Mm-hmm.

24 MEMBER WORTHLEY: It's not really before us  
25 today, but it seems relevant to the issue, and that is,

1 we find that where we have a mandated action but it could  
2 be absorbed into an existing program, it does not create  
3 a reimbursement claim, which I fully appreciate.

4 My concern is that at some point we get to the  
5 point where we say, well, these people have to be medical  
6 doctors, don't worry, we'll take care of it in a 24-hour  
7 period. You know, we get to the point where it becomes  
8 almost ludicrous in terms of trying to actually perform  
9 these responsibilities in these allocated time  
10 allotments. And someone's going to come forward and  
11 say --

12 CHAIR SHEEHAN: We've reached our limit.

13 MEMBER WORTHLEY: Yeah. And I think that I've  
14 heard some anecdotal information which might indicate  
15 that we're approaching that now.

16 CHAIR SHEEHAN: Okay.

17 MEMBER WORTHLEY: In other words, in order to  
18 accomplish this, we really aren't teaching people things.  
19 We're just kind of throwing it out there, moving on to  
20 the next subject, because there isn't time to do it  
21 properly.

22 And I just think that, you know, at some point  
23 in time somebody's going to rise up and say the Emperor  
24 has no clothes. And in order to do this job properly, we  
25 don't do that in 24 hours. We have to take 26 hours,



1 28 hours. That's when the claims come before us. I just  
2 think it's a reality that will show its face here at some  
3 point.

4 CHAIR SHEEHAN: Well, and I think it -- I think  
5 you're exactly right in terms of raising it. And I think  
6 some of the people who are affected by this, having this  
7 discussion, this, you know -- possibly not before this  
8 Commission but in a policy forum in terms of, okay, what  
9 is the totality of all this that you're requiring and are  
10 we providing sufficient time to do it.

11 What happens sometimes on these is, you know,  
12 we get stuck as the forum who has to resolve some of this  
13 when really it should be a discussion, you know, upstairs  
14 in terms of looking at the whole totality, bringing some  
15 of the law enforcement groups in and saying, okay, what  
16 are the requirements we're placing on you? Do they make  
17 sense? Do they need to be adjusted? Do we still need so  
18 many hours in this? And maybe we need something on this.

19 So for those who have that concern, I would  
20 encourage them to have some discussions with some of the  
21 folks upstairs so that we can have a thoughtful,  
22 deliberate discussion of those issues.

23 What happens at times, as I know many of you in  
24 the audience know, it gets stuck here after the fact,  
25 when really we need to sort of push it back to where it

1 belongs in terms of that discussion. So I think it's a  
2 point well taken. Okay. Next item. Same issue.

3 MS. HIGASHI: Item 6.

4 MS. BORZELLERI: This is racial profiling, law  
5 enforcement training K-14. This test claim also deals  
6 with statutes that prohibit law enforcement officers from  
7 engaging in racial profiling, establishes the same  
8 training as the previous test claim with the curriculum  
9 established by POST. And we still have a one-time,  
10 five-hour course and a continuing education of a two-hour  
11 refresher every five years.

12 Staff recommends the Commission deny this test  
13 claim because it does not mandate any activities on K-14  
14 school districts.

15 There's no legal requirement on K-14 school  
16 districts to establish police departments and there is no  
17 other evidence to support a finding that reimbursement  
18 should be allowed for this test claim when triggered by  
19 the K-14 school districts' discretionary decision to  
20 establish a police department.

21 So will the parties state your name for the  
22 record?

23 MS. GEANACOU: Susan Geanacou, Department of  
24 Finance.

25 MS. CASTAÑEDA: Carla Castañeda, Department of

1 Finance.

2 MS. GEANACOU: Madam Chair, Mr. Peterson, the  
3 claimant representative, notified us last night that he  
4 is ill, and he apologizes. He asked us to continue with  
5 this -- to go on with this one, but that if anything new  
6 came up, then to continue it. But he said he's noted his  
7 objections in the record.

8 CHAIR SHEEHAN: All right.

9 MS. GEANACOU: I guess I should proceed then.  
10 Susan Geanacou, Finance.

11 We support the final staff analysis in this  
12 matter, specifically because the thought forming of a  
13 police department by K-14 school districts is optional  
14 per statute and they have the discretionary choice to be  
15 able to do so or not. And for that reason this is not a  
16 reimbursable mandate.

17 CHAIR SHEEHAN: Any questions from . . .

18 MEMBER GLAAB: Yes. Madam Chairman and  
19 Members, I just have a couple of questions with regards  
20 to the constitutional provision requiring safe schools do  
21 not apply to community colleges. Why not? Is that in  
22 legislative intent or -- do we know why?

23 MS. GEANACOU: Are you asking me or --

24 MEMBER GLAAB: Yes, I am.

25 MS. GEANACOU: -- the staff?

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1 MEMBER GLAAB: I'm sorry. Excuse me. Let me  
2 redirect the question then. Thank you very much.

3 MS. GEANACOU: Oh, that's okay.

4 CHAIR SHEEHAN: I'm going to let Deborah go  
5 ahead and . . .

6 MS. BORZELLERI: Just -- well, actually, there  
7 is -- the specific constitutional provision only covers  
8 K-12. So it's right in the constitution.

9 MS. SHELTON: It was an initiative adopted by  
10 the voters.

11 MEMBER GLAAB: Okay. Another question in  
12 follow-up, if I may.

13 If a school district K through 14 or K through  
14 12 decides to have a police department, are they required  
15 to do this training if they decide to?

16 MS. BORZELLERI: Yes.

17 MEMBER GLAAB: So having a police department at  
18 the school district is a discretionary item, obviously,  
19 if it would be warranted by need, supposedly?

20 MS. BORZELLERI: Well, yes. That is, it would  
21 be based on the decision of the school district, what  
22 they think they need or how they think they can best  
23 carry out what they need to do to provide police  
24 protection or security.

25 MEMBER GLAAB: How many of these school

1 districts have elected to do so? Do we have a number at  
2 all?

3 MS. SHELTON: We do not.

4 MEMBER GLAAB: Okay. No further questions.

5 Thank you.

6 MEMBER WORTHLEY: Madam Chair, if I might just  
7 follow up on that?

8 I think -- I think many school districts use a  
9 contract with policing agencies. And that really is a  
10 way around this particular problem is, if you contract  
11 for police services with your local jurisdiction, then  
12 you really get around this problem, because, obviously,  
13 you're just hiring them to perform the services rather  
14 than having your own police department.

15 MEMBER GLAAB: Thank you.

16 MR. PALKOWITZ: I'd like to comment.

17 CHAIR SHEEHAN: Absolutely.

18 MR. PALKOWITZ: Hi. Good morning. My name is  
19 Art Palkowitz from San Diego Unified.

20 Though, as correctly stated, there are many  
21 districts that do contract, you will find larger  
22 districts in urban areas -- San Diego, LA are ones that  
23 do have their own police agency. The main reason for  
24 that is, there's just a lack of response time from a  
25 local agency to deal with problems at K through 12,

1 mainly high school level, middle school level.

2 This, as the gentleman pointed out -- and this  
3 is really one of the tougher issues in mandate law, is  
4 that though you cannot find anything in the Code that  
5 says that a school district has to have an agency, once  
6 they decide to have an agency, there will be various laws  
7 that they have to follow once they have that. And to me  
8 that makes it a challenge when we hear these cases.

9 I mean, really, if you look at the Ed Code, there really  
10 are no requirements other than I think the superintendent  
11 and maybe -- I don't think there's a requirement to have  
12 a teacher in a school district.

13 So I think you need to often look beyond that  
14 specific job title, whether it be teacher or police  
15 officer, and really look at the activity.

16 So if there are numerous activities required,  
17 and in this instance there's some education that's  
18 required or POST training, which seems totally  
19 appropriate since we're going to have all officers  
20 throughout the state have it, it seems logical that that  
21 is something required.

22 If we look at some cases that we had that dealt  
23 with suspension and expulsion, sometimes those were  
24 discretionary, but yet if you did expel or suspend some  
25 students, you were required to have hearings. Well,

1 those hearings turned out to be reimbursable even though  
2 the actual suspension might have been discretionary. And  
3 we refer to those as downstream related costs.

4 So I realize I'm not the claimant in this and  
5 Mr. Peterson isn't here. To me it seems that this should  
6 have been a reimbursable mandate that we are required to  
7 give this training, and the fact that there is no law  
8 requiring us to have a police agency seems to me to be  
9 focusing on not that but really the extra event that we  
10 are required to have.

11 Thank you.

12 MEMBER WORTHLEY: Just real quickly, I  
13 appreciate what you were saying, except that I know that  
14 in Fresno, for instance, there are police officers who  
15 are stationed at the school, so they're not -- it's not,  
16 like, a response time. They're not relying upon police  
17 to show up from the local precinct. They actually hire  
18 people to be on the campus and they're there -- and  
19 really, it's no different than if they had their own  
20 police department. It's just they contract with the city  
21 to provide that service.

22 And I think maybe what the district should do,  
23 if that's a problem for them, some of these costs, they  
24 may want to look at contracting like that, because they  
25 get the same service but they can make sure those costs

1 are reimbursed at the municipality level.

2 MR. PALKOWITZ: In San Diego County many do  
3 that, but I've also heard that some have had to stop that  
4 because of the cost. So I guess that is the issue. Can  
5 you afford the cost? Do you start your own -- basically  
6 your own police force? Obviously, you need a large  
7 district to do that.

8 But yes, if they are contracting out, then it  
9 would be the obligation of the other agency to assure  
10 that they did have that POST training.

11 CHAIR SHEEHAN: Camille, did you want to . . .

12 MS. SHELTON: Unfortunately, this issue is not  
13 going to resolve very easily. I think it does for this  
14 claimant in terms of we're going to still be frustrated  
15 by the whole issue as we continue on because of the way  
16 the Supreme Court took up the issue but did not answer it  
17 and left it questionable, you know, in the San Diego  
18 Unified School District case. In that case they did find  
19 that certain discretionary expulsions were mandatory but  
20 they did not reimburse them because they found that they  
21 were not a problem of higher level service but did not  
22 rule on the mandate issue and left it for another day.  
23 They did question higher case law that did say anytime  
24 you have a discretionary decision, your downstream  
25 requirements were automatically discretionary. So you



1 have dicta in the Supreme Court case, and case law does  
2 say that the Supreme Court dicta is good dicta.  
3 What we've done in the past is look at the reasoning that  
4 the Court -- the Supreme Court used in questioning this  
5 earlier -- or some of the earlier case law decisions and  
6 we've tried to apply that reasoning and it's been  
7 difficult.

8 In this particular case we don't have some of  
9 the same facts that may have been presented in earlier  
10 cases that would suggest that the school districts are  
11 practically compelled to -- for this to create a mandate.  
12 But it is true, I mean, a lot of these statutes are going  
13 to impose a requirement on school districts to have the  
14 training if they have peace officers employed. But  
15 simply because they have a requirement does not  
16 necessarily mean that it's a reimbursable, state-mandated  
17 program.

18 MR. PALKOWITZ: I think we'll have similar  
19 challenges to transportation. I think there's now a new  
20 legislation or already passed requiring certain  
21 seat belts on new buses, so we need to go out and buy a  
22 lot of new buses. Well, transportation is really not  
23 required anywhere in the Code.

24 So, you know, I think that is a similar type of  
25 challenge, where, once again, there's very few things

1 that say "required" in the Education, but here we are  
2 needing to take these steps and then file legislation.

3 CHAIR SHEEHAN: Okay. Thanks.

4 Any other comments on this one? Or questions?

5 If not, we'll entertain a motion on item 6.

6 MEMBER WORTHLEY: Move approval of staff's  
7 recommendation.

8 MEMBER OLSEN: Second.

9 CHAIR SHEEHAN: Okay. We have a motion and a  
10 second to adopt staff recommendation.

11 All those in favor say "aye."

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

13 CHAIR SHEEHAN: Any opposed?

14 MR. GLAAB: No.

15 CHAIR SHEEHAN: All right. Mr. Glaab is  
16 reflected as voting "No" on this one.

17 All right. Item 7.

18 MS. BORZELLERI: The only issue before the  
19 Commission is whether the proposed statement of decision  
20 accurately reflects the Commission's decision on the  
21 racial profiling, law enforcement training K-14 test  
22 claim. Staff will make minor changes to the final  
23 statement of decision.

24 CHAIR SHEEHAN: Okay. Any questions? Do I  
25 have motion on this?

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1 MEMBER OLSEN: So moved.

2 MEMBER WORTHLEY: Second.

3 CHAIR SHEEHAN: All right. We have a motion  
4 and a second to adopt the staff recommendation. All  
5 those in favor say "aye."

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

7 CHAIR SHEEHAN: Opposed?

8 *(No audible response.)*

9 CHAIR SHEEHAN: Motion carries.

10 All right. Now we skip over a lot of stuff.  
11 8 and 9 are postponed and we come to 18?

12 MS. HIGASHI: Yes.

13 MEMBER OLSEN: Madam Chair, I believe that when  
14 we swore the witnesses in we did not ask those who were  
15 related to item 18 to stand. Do we need to do that?

16 CHAIR SHEEHAN: That is correct. We've already  
17 done the swearing-in part of the testimony. This is the  
18 "after" part. Right. And we just got a -- today --

19 MS. HIGASHI: We were just handed a letter. Do  
20 you want to take about five minutes so everybody can read  
21 this?

22 CHAIR SHEEHAN: Yes. We just got a letter  
23 today from the California Integrated Waste Management  
24 Board.

25 Is there someone here from the Board?

1 You know, we've actually posted this item for a while.  
2 I'm sure you're aware that this was going to be on our  
3 agenda today.

4 MR. BLOCK: We received a letter about ten days  
5 ago. We were attempting to postpone this hearing, got  
6 together information as soon as we could, but the final  
7 analysis was different than the draft analysis from a few  
8 months ago, so . . .

9 CHAIR SHEEHAN: All right. Well, it's just --  
10 as my colleagues in the Department of Finance know, I'm  
11 not one to like getting stuff the day of. I just . . .

12 MR. BLOCK: I understand.

13 CHAIR SHEEHAN: Maybe I'm channeling people in  
14 this building when you show up at a hearing as opposed  
15 to -- in the future we would appreciate getting a little  
16 more heads-up.

17 So we'll take a couple minutes to go through  
18 this.

19 *(Pause, 9:54 to 9:58 a.m.)*

20 CHAIR SHEEHAN: Okay. Why don't we go ahead  
21 and get started.

22 MS. HIGASHI: Item 18, program analyst Cathy  
23 Cruz Jefferson will present this item.

24 MS. JEFFERSON: Good morning.

25 On March 25, 2004, the Commission adopted its

1 Statement of Decision finding that the Integrated Waste  
2 Management program constitutes a new program or higher  
3 level of service for community college districts within  
4 the meaning of article XIII B, section 6, of the  
5 California Constitution and imposes costs mandated by the  
6 state pursuant to Government Code section 17514.

7 Staff reviewed the claims data submitted by the claimants  
8 and compiled by the Controller's Office. The data showed  
9 that 27 community college districts filed 142 claims for  
10 fiscal years 1999-2000 and 2004-2005 for a total of over  
11 \$6 million.

12 On January 9th, 2006, staff issued its draft  
13 analysis and requested additional information regarding  
14 the costs associated with diversion of solid waste and  
15 complying with the program that may assist in the  
16 development of a more accurate statewide cost estimate.  
17 The California Integrated Waste Management Board and the  
18 Department of Finance submitted comments.

19 On July 27 staff conducted a prehearing  
20 conference so the parties could assist in identifying  
21 offsets and, again, to assist in developing a more  
22 accurate statewide cost estimate.

23 Staff notes that the additional comments did  
24 not provide enough evidence to help staff reduce the  
25 proposed estimate by deducting offsets that should have

1       been realized but were not reported in claims.

2               In general, the Board's comments focused on its  
3       request to amend the Parameters and Guidelines.  However,  
4       because the reimbursement claims for fiscal years  
5       '99-2000 through '04-05 have already been submitted, the  
6       Board's suggestion to add additional information to the  
7       P's & G's regarding offsetting savings will not affect  
8       these claims.  Staff was unable to improve the proposed  
9       estimate for the initial years based on the Board's  
10      comments.

11              The proposed estimate includes nine fiscal  
12      years for a total of \$10,785,532.  This averages to  
13      almost \$1.2 million annually in costs for the state.  
14      Staff recommends that the Commission adopt the proposed  
15      estimate.  If adopted, it will be reported to the  
16      legislature.

17              Will the parties and representatives please  
18      state their names for the record?

19              MR. BLOCK:  Elliot Block, acting chief counsel  
20      for the Integrated Waste Management Board.

21              MR. O'SHAUGHNESSY:  Trevor O'Shaughnessy,  
22      program staff.

23              MS. GEANACOU:  Susan Geanacou, Department of  
24      Finance.

25              MS. CASTAÑEDA:  Carla Castañeda, Department of

1 Finance.

2 MR. BLOCK: Well, since you've all actually  
3 taken a few minutes to read the letter, I'm not sure that  
4 it makes much sense for me to make my speech, which was a  
5 summary of the letter, other than to reiterate that --

6 CHAIR SHEEHAN: Well, actually, it would be  
7 helpful, you know, so you can briefly go through --

8 MR. BLOCK: Sure.

9 CHAIR SHEEHAN: -- why you feel that . . .

10 MR. BLOCK: Okay. Well, fairly simply, as was  
11 noted, the draft -- there was a draft analysis quite a  
12 few months ago that was submitted requesting assistance  
13 from the Board based on the Commission staff's note that  
14 the claims appeared, on their face, to be inaccurate.  
15 We did provide some information at that prehearing  
16 conference. As we have now recently found out, that's  
17 not the kind of information apparently that's useful in  
18 adjusting those claims.

19 And so what we have compiled here in the last  
20 few days is some other information that specifically does  
21 connect to the P's & G's that were adopted, which does  
22 allow offsets for revenues generated from the sale of  
23 recycled materials.

24 Again, we have not had -- we don't have the  
25 claims in front of us. In fact, we didn't actually even

1 know the name of all -- the names of all the claimants  
2 until about ten days ago. The original analysis had a  
3 selection of eight that were analyzed.

4 And as noted in the information provided, the  
5 dollar amount attributable to the revenues that could be  
6 generated from recyclable materials, given the amounts  
7 that had been reported by community college districts as  
8 being diverted, is about \$22 million for a five-year  
9 period. And, of course, the claim is for an eight-year  
10 period. And we believe that essentially wipes out that  
11 \$10 million estimate.

12 Alternatively as well we provided some  
13 additional detailed information on the avoided disposal  
14 cost as well. We understand that staff's analysis is  
15 that that's not appropriate as an offset, although for  
16 reasons we've outlined in the letter we believe that's a  
17 fairly narrow reading of the P's & G's since avoided  
18 disposal costs occur automatically from the diversion of  
19 these materials.

20 And again, based on the tonnage amounts that  
21 we're looking at for a five-year period, that's around  
22 \$21, \$22 million in avoided disposal costs. So again,  
23 more than accounts for -- accommodates the claimed  
24 \$10 million in additional cost to implement these  
25 programs.



1           So for that reason, as strange as it sounds, we  
2           are actually requesting that the estimate be zero for the  
3           statewide cost.

4           CHAIR SHEEHAN: Based on the offset. Okay.

5           Finance, did you want to -- I know you just got  
6           the letter, also.

7           MS. GEANACOU: I did. Susan Geanacou,  
8           Department of Finance. In fact, I'm just reading it now.

9           I don't know that I'm in a position to provide  
10          any official testimony regarding the assertion of the  
11          value of recyclables and how it may or may not completely  
12          negate the estimated cost of the claim. I'd like to be  
13          able to do so. I haven't had the opportunity to speak to  
14          what those revenues are, how they can be used, if there's  
15          statutory authority for how they're used and/or  
16          appropriated. I really don't know. I'm sorry.

17          CHAIR SHEEHAN: That's okay.

18          Camille, did you want to address some of the --  
19          before we open it up?

20          MS. SHELTON: Yes. First, it would not be  
21          appropriate for the Commission to adopt a statewide cost  
22          estimate of zero because that would contradict the  
23          statement of decision which found that there are  
24          increased costs mandated by the state as a matter of law.  
25          So you cannot, you know, come up with a statewide cost

1 estimate of zero.

2 A lot of the arguments that the Board is making  
3 were made before the Commission when the Commission  
4 adopted the Parameters and Guidelines. They do have a  
5 request on file to amend the P's & G's which is not  
6 before you today.

7 Anything that has to do with these issues are  
8 questions of law that have to be dealt with at another  
9 hearing and don't reflect the amount claimed for purposes  
10 of the statewide cost estimate.

11 The purpose of the statewide cost estimate is  
12 just to notify the legislature of the amount claimed  
13 currently. We are questioning the amount claimed and it  
14 does appear to be high, but we don't have any solid data  
15 to be able to reduce that figure. But notice still needs  
16 to be provided to the legislature.

17 MEMBER WORTHLEY: I just have a question,  
18 Camille.

19 As I understood it, there's sort of a statute  
20 of limitations issue here, and the older claims are fixed  
21 and cannot be altered, even whatever we do today.

22 And my question really is: Relative -- this is  
23 a notice -- we're talking about notice to the state  
24 legislature. Does that then fix these costs for these  
25 other years after the statute of limitations does not

1 apply?

2 MS. HIGASHI: Not necessarily. And I say that  
3 just based on recent experience with the legislature.  
4 Once our report is made to the legislature, the leg.  
5 analyst has a duty to evaluate our report, look at the  
6 statement of decision and the P's & G's.

7 What may occur at that point is a  
8 recommendation is required to be made during the budget  
9 process, and that recommendation might be: Fund it, it's  
10 fine; two, amend the statute; three, request  
11 reconsideration by the legislature.

12 MEMBER WORTHLEY: So there's an opportunity for  
13 a second shot at this?

14 MS. HIGASHI: There is an opportunity.

15 MEMBER WORTHLEY: This is not the proper forum  
16 to do that.

17 MS. HIGASHI: That's correct. It's not within  
18 our jurisdiction at this time.

19 The other point that I just wanted to make is  
20 that the issue that's raised here has to do with offsets  
21 and offsetting savings.

22 And I want to ask the Board, from their  
23 correspondence it says that the revenues -- the income  
24 derived from the resale "can be" used, but it does not  
25 say it's "required" to be used by the jurisdictions to go

1 right back into the same program. It says "can be" used.  
2 But is there a statutory requirement that says they are  
3 required to use these funds solely for the purpose of  
4 paying for this program?

5 MR. BLOCK: And you're talking about the  
6 revenues generated now or the avoided disposal costs?

7 MEMBER WORTHLEY: Revenues.

8 MS. HIGASHI: I'm just reading from your  
9 letter. Because it was my understanding -- and  
10 Mr. Feller and Ms. Jefferson can correct me -- that some  
11 of these issues were addressed in the previous hearing,  
12 and because there was not a statutory requirement for  
13 these revenues to be used exclusively for the cost of  
14 this program, that it's not what we would term as staff  
15 as a mandatory offset.

16 MEMBER WORTHLEY: In other words, it could go  
17 into their general fund? It could be used to fund other  
18 things?

19 MS. HIGASHI: Right. However, if a program did  
20 use those revenues for the cost of this program, then  
21 they would reduce their claim.

22 Another point just to note is that there's  
23 72 community college districts, and the SCE represents  
24 about a third of them, so the number is low from that  
25 respect as well.

1 CHAIR SHEEHAN: Did you want to address the  
2 issue of whether they -- what they can use those revenues  
3 for? I mean, is it specifically for this or can it just  
4 go into the general fund and . . .

5 MR. O'SHAUGHNESSY: I think, in part, if I may  
6 answer, within the statute of AB 75 it states that the  
7 revenues generated are to be used to enhance the  
8 recycling programs. That's not a direct quote. I  
9 apologize for not having it in front of me.

10 Additionally, within the Public Contract Code  
11 it does state that the revenues generated by the sale of  
12 the materials and the keeping of those revenues need to  
13 be approved by the Integrated Waste Management Board up  
14 to \$2,000. Anything above and beyond \$2,000 must not  
15 only be approved by the Board but also appropriated by  
16 the legislature.

17 So the funds cannot roll back into an agency's  
18 fund of operations. It either needs to go back into the  
19 recycling program and the efforts of that program or it  
20 goes to the state's general fund for then allocation  
21 through that process.

22 But if you -- so if you generated and/or sold a  
23 commodity, the cardboard or anything else listed in our  
24 letter here, those revenues would have to either be --  
25 they have to be recognized. They can't just go back into

1 the general funding for that facility or in this case  
2 campus.

3 CHAIR SHEEHAN: Okay. So it could go back into  
4 the recycling activity?

5 MR. O'SHAUGHNESSY: The program and activities  
6 to offset the cost. Yes, ma'am.

7 CHAIR SHEEHAN: Okay. Oh, did you want to. . .

8 MS. SHELTON: Just a clarification. You're  
9 talking about two separate things. One is offsetting  
10 revenue and -- which are identified in the Parameters and  
11 Guidelines, and the other is an alleged offsetting  
12 savings argument, which has been denied before but is the  
13 subject of a request to amend the P's & G's. So I just  
14 want to make sure that we're not confusing the issues.

15 CHAIR SHEEHAN: Okay.

16 MEMBER WORTHLEY: Well, Madam Chairman, it just  
17 seems to me they just defeated their argument, because if  
18 the money that's generated has to go back to the state  
19 general fund, then there's no benefit to this college --  
20 community college district, so how do they -- how do they  
21 benefit?

22 CHAIR SHEEHAN: I think the --

23 MR. O'SHAUGHNESSY: They do benefit from it  
24 because they're allowed to use those funds per the  
25 statute. And the direction, they just need to go to the

1 legislature and ask for that to be allocated, because  
2 it's revenue that they generated. It's revenue they  
3 generated.

4 MEMBER WORTHLEY: Okay. But isn't that a  
5 discretionary act on the legislature? They don't have to  
6 do that.

7 MR. O'SHAUGHNESSY: In part, yes.

8 MEMBER WORTHLEY: So if they didn't -- if they  
9 elected not to, to put it back into the community  
10 colleges, then they're out the money.

11 MEMBER OLSEN: I think that what we really need  
12 to talk about is the avoided cost part of this, the  
13 savings part rather than the revenue part, because it  
14 seems to me that the fact that the legislature has to  
15 approve the use of the revenues means that it's not --  
16 the linkage is not complete for the local. So can you  
17 speak to the savings issue in your letter?

18 MR. BLOCK: Certainly. Although, I mean, in  
19 all fairness, as has been noted, it -- certainly that was  
20 an argument we did make previously and was rejected.  
21 But just to keep this as short and sweet as possible, I  
22 think that analysis, as indicated in the final analysis,  
23 is based on a clause in our statute that says the  
24 offsetting savings, it must be applied to the program to  
25 the extent feasible. And that language Claude just

1 reviewed in the abstract is viewed as making that  
2 discretionary.

3 The argument that we are making is, in the  
4 context of avoided disposal costs there's no discretion  
5 involved. The very fact that those materials are  
6 diverted avoids the disposal cost. There's no decision  
7 that needs to be made to move that money around, to  
8 request permission. It happens automatically. That's  
9 the substance.

10 Obviously, as has been mentioned, you know,  
11 this is something that you've looked at before, but --  
12 and we understand that your process is set out a certain  
13 way.

14 We felt an obligation to at the very least get  
15 this information into the record because, again, this  
16 information is then getting forwarded to the legislature  
17 to decide what to do about this.

18 Certainly, the Waste Board's feeling is that  
19 these programs not only don't in the long run cost  
20 community colleges, they, in fact, result in -- they're  
21 revenue-generating for community colleges.

22 CHAIR SHEEHAN: Did that address your --  
23 because that issue -- as I understand, that is the issue  
24 that you have filed to amend the P's & G's, and that will  
25 be discussed as part of that process.



1 Am I correct, Camille?

2 MS. SHELTON: Yes. It was already discussed  
3 and the Commission already adopted the Parameters and  
4 Guidelines.

5 CHAIR SHEEHAN: Right.

6 MS. HIGASHI: They've renewed it.

7 MS. SHELTON: They're bringing it up again.

8 CHAIR SHEEHAN: And you have that filed,  
9 bringing it up again, if there's information that, you  
10 know, we can go back with new information.

11 MEMBER OLSEN: So this Board will get a chance  
12 to discuss it?

13 CHAIR SHEEHAN: Well, they -- yes. Well, go  
14 ahead.

15 MS. SHELTON: Yes. They have filed a request  
16 to amend the P's & G's. That request goes in line behind  
17 all the other Parameters and Guidelines amendments. So  
18 when we get to it, it will definitely be noticed for  
19 hearing.

20 CHAIR SHEEHAN: So that issue on the one that  
21 you had discussed, there is a forum to discuss that if  
22 they feel they have new, compelling arguments, evidence,  
23 whatever, to do that. So then the issue -- go ahead.

24 MR. BLOCK: Well, I was just going to say, just  
25 for clarification, but my understanding is that any

1 change to the P's & G's would only be effective from 2005  
2 forward. They would not change the ones that have  
3 already been claimed.

4 MS. SHELTON: That is correct. 17557 governs  
5 the timing of a request to amend P's & G's. If they had  
6 filed it earlier, within the claim -- the initial claims  
7 filing, then it would have impacted possibly the entire  
8 population of claims, but they filed it after that date,  
9 so they get it back to the previous fiscal year.

10 So we do have -- you know, we're still bound by  
11 the Parameters and Guidelines that have been adopted, and  
12 that's what this statewide cost estimate and the claims  
13 that have been filed under this set of Parameters and  
14 Guidelines reflect.

15 CHAIR SHEEHAN: Any other -- and with regard to  
16 the -- on the revenue issue, that is, they go through the  
17 claiming and the Controller's Office can recognize  
18 offsets as part of the claims if they use those.

19 MS. SHELTON: Yes. The Controller can deny if  
20 they find -- or reduce costs if they find that it's  
21 unreasonable or excessive.

22 CHAIR SHEEHAN: So there is a mechanism on the  
23 revenue side to address the issue, because we do have two  
24 separate issues here. And there is a mechanism, even if  
25 we adopt this, to recognize those revenues and reduce the

1 cost of the claimed amount from that. Okay.

2 MS. HIGASHI: And essentially what's in the  
3 staff analysis is what ends up being reported to the  
4 legislature.

5 CHAIR SHEEHAN: Mm-hmm. Okay. Any other  
6 questions or . . .

7 MEMBER WORTHLEY: Well, I guess I did have one  
8 question for staff. Given the fact that this is a  
9 reporting requirement only and the opportunity to  
10 actually review the -- when you had this hearing before  
11 and you invited Waste Management, what was the purpose of  
12 that hearing? Was that for the consideration of the  
13 modification of the Parameters and Guidelines separate  
14 and apart from this or . . .

15 MS. SHELTON: That was for the adoption of the  
16 Parameters and Guidelines. Are you talking about the  
17 hearing before the Commission, the last hearing that  
18 we're referring to?

19 MEMBER WORTHLEY: No. You said that you had a  
20 meeting, I believe --

21 MS. HIGASHI: We had a prehearing.

22 CHAIR SHEEHAN: It was a prehearing.

23 MEMBER WORTHLEY: Right.

24 MS. HIGASHI: Perhaps Ms. Jefferson can  
25 respond.

1 MS. JEFFERSON: Yes, we did have a prehearing  
2 in July where the Waste Board was invited as well as  
3 other state agencies and interested parties, and we had  
4 asked specifically for information for -- to help us  
5 identify what offsets could be used and just information  
6 to help us develop a more accurate estimate, because we  
7 did, in the draft, identify some inaccuracies that we  
8 found in looking at the claims, but we didn't get enough  
9 information to help us reduce the claims.

10 MEMBER WORTHLEY: Well, if you had gotten the  
11 right information from them, would we be having different  
12 results here today or would we have the same result?

13 MS. HIGASHI: We don't know.

14 MS. SHELTON: Other than it can't be zero. And  
15 it has to fall within the decisions and findings that the  
16 Commission has already made. You have to keep in mind  
17 that the Board is still making legal arguments that have  
18 been previously denied. So depending on what facts they  
19 would have presented had there been another situation, we  
20 really can't answer.

21 MEMBER WORTHLEY: Well, because it seemed like  
22 one option would be for us to continue this matter to  
23 give the opportunity for this information to be properly  
24 considered by staff, and then you would come back with a  
25 different -- perhaps a different recommendation.

1 MS. HIGASHI: The danger in that is that we are  
2 not auditors and we are not -- it's not our duty to  
3 review the reimbursement claims. That is the duty of the  
4 State Controller's Office. And that's that you would, in  
5 fact, have us doing.

6 CHAIR SHEEHAN: And that's why I brought up the  
7 other issue that there is a mechanism to address or  
8 recognize those offsets and what could be used through  
9 that claiming process.

10 I think it could be a burden on the staff to  
11 have to go through and see this -- you know, go through  
12 the numbers and see, okay, could we come up with a  
13 different conclusion in terms of that.

14 MS. GEANACOU: May I ask a question here? Is  
15 there -- for the Commission staff -- is part of the focus  
16 of the concern or confusion or disagreement on offsetting  
17 savings the issue of whether or not the savings are in  
18 a -- the offsetting savings are in a program that was  
19 previously mandated or part of the mandate?

20 I note in the final staff analysis of the  
21 statewide cost estimate on pages 8 and 9 there's the  
22 issue of -- the boilerplate language says that "Any  
23 offsetting savings the claimant experiences in the same  
24 program as a result of the same statutes or executive  
25 orders found to contain the mandate shall be deducted

1 from the cost claimed." Is that perhaps something that  
2 we're not focusing appropriately on or enough on?

3 MS. SHELTON: As I recall the arguments -- and,  
4 you know, Eric can correct me if I'm wrong -- that when  
5 the Parameters and Guidelines were discussed, they were  
6 wanting a requirement for identification of cost savings,  
7 you know, recycling fees that they are saving from not  
8 having -- or I guess not having to go through certain  
9 activities.

10 There was no requirement in law that they keep  
11 that data. And it becomes very similar to arguments made  
12 in the graduation requirements case where you had the  
13 argument of offsetting savings.

14 And so since there's no requirement for those  
15 entities to take those savings by law, we couldn't  
16 provide specific language in that the Board has requested  
17 previously. I believe there's boilerplate language and  
18 that's all there is.

19 MS. HIGASHI: Actually, the P's & G's section  
20 is on offsetting revenues and reimbursements.

21 MS. SHELTON: Which that language is consistent  
22 with the Commission's regulations as they currently  
23 state.

24 There was just no legal requirement for them to  
25 keep data on offsetting savings or cost savings when the

1 Commission found that the activities were -- constituted  
2 a new program or higher level of service.

3 MS. HIGASHI: I was going to say, if you want  
4 to see this, it's the last exhibit. It's in the  
5 Parameters and Guidelines. It's page 164. And it's  
6 where the Parameters and Guidelines identify all of the  
7 types of fees or revenues that -- the kinds of revenues  
8 we've been talking about here.

9 MEMBER WORTHLEY: So the language is in there  
10 that was just referred to --

11 MS. HIGASHI: Exactly.

12 MEMBER WORTHLEY: -- as far as the \$2,000 is  
13 already accounted for and it's only the other part, which  
14 is appropriate, which goes back to state legislature, so  
15 there's really no argument about that, I wouldn't think.

16 MS. HIGASHI: And so these are included as part  
17 of the claiming instructions.

18 CHAIR SHEEHAN: I don't think the Waste Board  
19 sees it that way.

20 I don't want to put words in your mouth.

21 MR. BLOCK: Well, again -- and I'm sorry,  
22 because I don't mean to belabor this. I mean, it's  
23 fairly obvious what staff's recommendation is going to  
24 be, and we understand how your process is set up, but  
25 just to again clarify that, remember, we're talking about

1 two different issues. One is avoided disposal costs, one  
2 is revenue generating. So the \$2,000 is related to the  
3 revenue generating.

4 In terms of that issue, we've got fairly  
5 partial information that we've gotten, but the  
6 information in the analysis we've gotten is the claimants  
7 don't report that. But based on the numbers that we  
8 have, there is, you know, over \$20 million worth of  
9 potential revenues there.

10 Again, the prehearing conference that we had  
11 two to three months ago, I mean, the request in the draft  
12 analysis was requesting assistance from us in helping to  
13 figure out how the offset -- how to find offsets.

14 It's difficult to provide that information if  
15 we don't have any information given to us nor are we  
16 asked any particular questions as to what information is  
17 necessary.

18 We have a lot of information that all these  
19 community college districts submit to us on tonnages and  
20 dollar amounts and the like.

21 The avoided disposal costs, again, there is not  
22 specifically in the statute the words that say "Thou  
23 shalt report the avoided disposal costs." There are  
24 words in the statute that say "Thou shalt report the  
25 reduced disposal tonnage." And you can fairly easily



1 figure out how much that cost is.

2 It's not a -- again, it's virtually automatic.

3 I mean, you can see that we pulled this together just on  
4 what's been submitted to us. So both of those issues are  
5 floating around.

6 Again, as has been stated a couple of times,  
7 the Commission has already said "No" to the avoided  
8 disposal costs. We understand that. But we felt some  
9 obligation to provide that information again because it  
10 has continued to be fairly mysterious to us as to what  
11 information is or isn't relevant to this process.

12 And then in terms of the revenue generating, as  
13 has been stated, none of those were even reported to us,  
14 which is a little bit mind-boggling.

15 So in the context of this hearing, which is  
16 about coming up with a statewide cost estimate, so it's  
17 not specific to each claims, seems to me that there's  
18 some value in your having that information to try to  
19 adjust that overall statewide claim which to us seems  
20 fairly outrageous in terms of dollar amounts.

21 CHAIR SHEEHAN: Camille.

22 MS. SHELTON: Can I just mention that if the  
23 Commission adopts the statewide cost estimate this  
24 analysis goes to the legislature, and the analysis does  
25 say that three out of the eight community college

1 districts reviewed did not report any offsetting  
2 revenues. So the legislature is going to be aware that  
3 no offsetting revenue was reported to the Controller's  
4 Office. They'll have that information.

5 MS. HIGASHI: But ultimately it's the  
6 responsibility of the Controller's Office reviewing the  
7 claims to determine if they're excessive or unreasonable.

8 CHAIR SHEEHAN: And, you know, the -- oh, go  
9 ahead.

10 MEMBER OLSEN: So our action today does not  
11 preclude the Controller's Office from taking -- wait, let  
12 me get the statement out there, because I want to make  
13 sure I'm getting the answer to what I'm asking -- does  
14 not preclude the Controller's Office from taking into  
15 consideration the kind of information that the Waste  
16 Management Board is talking about now when it decides  
17 what size check to cut for which community college  
18 district. They retain that ability to do that at the  
19 Controller's Office.

20 MS. HIGASHI: That is correct.

21 MEMBER WORTHLEY: And if they happen to  
22 disagree with it, they would come back and say that that  
23 was an inappropriate reduction of claims.

24 MS. HIGASHI: Right. Then it would be an  
25 incorrect reduction claim, which you've had a few of

1 those.

2 MEMBER OLSEN: Okay. Thank you.

3 MEMBER WORTHLEY: That deals, I believe, with  
4 the issue of --

5 CHAIR SHEEHAN: The revenue.

6 MEMBER WORTHLEY: -- revenue.

7 CHAIR SHEEHAN: Setting revenue.

8 MEMBER WORTHLEY: On the avoided cost issue,  
9 we're just basing that on the law, the legal reading of  
10 that? Is that our argument there?

11 MS. SHELTON: Well, the Commission already made  
12 that finding, and I don't want the Commission to make any  
13 findings on a statewide cost estimate hearing, because  
14 those are still the subject of another hearing that was  
15 not noticed today, first of all.

16 CHAIR SHEEHAN: That will come back before us.

17 I recognize it's in the queue, and the timing  
18 in terms of all that, I understand that. But  
19 differentiating between the two issues that were raised,  
20 one, the offsetting revenue, and I guess, at least for  
21 this member, there is a mechanism for the Controller's  
22 Office to query the districts, to adjust those claims  
23 depending on that. The other issue will come before us  
24 in the -- in the claim to, you know, amend the P's & G's  
25 on that one.

1 MR. BLOCK: I understand.

2 CHAIR SHEEHAN: Any other questions? What is  
3 the will of the Commission then on this one?

4 MEMBER OLSEN: Sort of grudgingly I will move  
5 the staff recommendation.

6 CHAIR SHEEHAN: And do I have a grudging  
7 second?

8 MEMBER WORTHLEY: Second.

9 CHAIR SHEEHAN: All right. So the motion is to  
10 approve the staff recommendation. All those in favor?

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

12 CHAIR SHEEHAN: Opposed?

13 *(No audible response.)*

14 CHAIR SHEEHAN: Motion carries. Thank you.  
15 And the minutes will reflect it was grudgingly.

16 MEMBER OLSEN: Thank you.

17 MEMBER WORTHLEY: Curmudgeonly.

18 MEMBER OLSEN: The cranky public member.

19 CHAIR SHEEHAN: Okay.

20 MS. HIGASHI: We're up to item 20.

21 MS. SHELTON: One minor note, that the hearing  
22 that is reflected on the report has been changed from  
23 December 15th to January 5th.

24 CHAIR SHEEHAN: Oh, okay. All right. Nothing  
25 else?

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1 MS. SHELTON: Nothing else is new.

2 CHAIR SHEEHAN: All right. Paula.

3 MS. HIGASHI: The last item is my report,  
4 updated workload. We have a proposed hearing agenda  
5 listed here. We have some changes that we expect to be  
6 made because we know we have requests for postponements  
7 coming in.

8 CHAIR SHEEHAN: Oh, okay.

9 MS. HIGASHI: But I just wanted to remind the  
10 Commission members that our next hearing will be  
11 December 4th at 1:30, and I also wanted to note that  
12 later today I'll be meeting with various organizations to  
13 go over future scheduling issues and just to do my annual  
14 meetings with them.

15 CHAIR SHEEHAN: Okay. So December 4th.

16 MEMBER WORTHLEY: 1:30, you said?

17 MS. HIGASHI: 1:30. It's the first day of the  
18 new legislative session and because of that we expect  
19 that we will not be in this room, so we will remind all  
20 of you about a changed location.

21 CHAIR SHEEHAN: That's usually me that has to  
22 be reminded.

23 MS. HIGASHI: And I'd also like to note that  
24 later in November I'll be going to a California League of  
25 Cities Conference and participating in a panel discussion

1 that is for a financial management seminar.

2 CHAIR SHEEHAN: Right. Okay.

3 MS. HIGASHI: Are there any other questions?

4 CHAIR SHEEHAN: Any questions?

5 MEMBER WORTHLEY: Be sure to look up avoided  
6 costs.

7 MS. HIGASHI: I'm not sure what they'll ask.

8 CHAIR SHEEHAN: All right. Are there any  
9 members of the public who would like to address the  
10 Commission on an item that was not on the agenda? Or any  
11 other issues? No? Okay.

12 Then we will be recessing in closed session. I  
13 guess I have to read this statement for you.

14 The Commission will meet in closed executive session  
15 pursuant to Government Code sections 11126, subdivision  
16 (a), and 17526 to confer on personnel matters listed on  
17 the published notice and agenda. We will convene in open  
18 session at this location in approximately ten minutes.

19 *(Recess taken, 10:29 to 10:53 a.m.)*

20 CHAIR SHEEHAN: All right. The Commission met  
21 in closed executive session pursuant to Government Code  
22 section 11126, subdivision (a), and 17526 to confer on  
23 personnel matters listed on the published notice and  
24 agenda. All required reports from the closed session  
25 having been made and with no further business to discuss

1 I will entertain a motion to adjourn.

2 MEMBER HAIR: So move.

3 MEMBER GLAAB: Second.

4 CHAIR SHEEHAN: All those in favor of  
5 adjourning?

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

7 CHAIR SHEEHAN: We are adjourned. Thank you.  
8 Until December 4th.

9 *(Proceedings concluded at 10:54 a.m.)*

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1 **REPORTER'S CERTIFICATE**

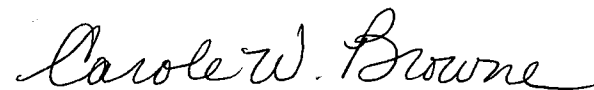
2 ---o0o---

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

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

9 I further certify that I am not of counsel or  
10 attorney for either or any of the parties to said  
11 proceedings, nor in any way interested in the outcome of  
12 the cause named herein.

13 IN WITNESS WHEREOF, I subscribe my name on this  
14 7th day of November, 2006.

15 

16 Carole W. Browne, RPR, CSR  
17 Certificate No. 7351

18 ---o0o---