

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
December 1, 2011

Present: Member Pedro Reyes, Chairperson
Representative of the Director of the Department of Finance
Member Richard Chivaro, Vice Chairperson
Representative of the State Controller
Member Francisco Lujano
Representative of the State Treasurer
Member Ken Alex
Director of the Office of Planning and Research
Member Sarah Olsen
Public Member

NOTE: The transcript for this hearing is attached. These minutes are designed to be read in conjunction with the transcript.

CALL TO ORDER AND ROLL CALL

Chairperson Reyes called the meeting to order at 9:00 a.m. Acting Executive Director Nancy Patton called the roll. Member Chivaro was absent.

APPROVAL OF MINUTES

Item 1 October 27, 2011

With a motion for approval by Member Olsen and a second by Member Alex, the October 27, 2011 hearing minutes were adopted by a vote of 4-0.

CONSENT CALENDAR

HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, and 17559) (action)

- PROPOSED PARAMETERS AND GUIDELINES

Item 5 Proposed Parameters and Guidelines
Permanent Absent Voters II, 03-TC-11
Elections Code Sections 3201 through 3206
Statutes 2001, Chapter 922; Statutes 2002, Chapter 664;
Statutes 2003, Chapter 347
And
Proposed Amendment to Parameters and Guidelines
Permanent Absent Voters (CSM 4358)
Former Elections Code Sections 1450 through 1456
Statutes 1982, Chapter 1422
County of Sacramento, Claimant

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

• STATEWIDE COST ESTIMATE

- Item 7 *Comprehensive School Safety Plans II, and Amendment*
02-TC-33, 07-TC-11, 98-TC-01, 99-TC-10
Education Code Sections 32281, 32282, 32286, and 32288
Statutes 1997, Chapter 736; Statutes 1999, Chapter 996;
Statutes 2001, Chapter 890; Statutes 2002, Chapter 506;
Statutes 2004, Chapter 895

Bakersfield City School District, Sweetwater Union High School
District, and San Diego Unified School District, Co-Claimants

Member Olsen made a motion to adopt the consent calendar. With a second by Member Lujano, the consent calendar was adopted by a vote of 4-0.

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

- Item 2 Staff Report (if necessary)

There were no appeals to consider.

**HEARINGS AND DECISIONS ON TEST CLAIMS, PARAMETERS AND
GUIDELINES, AND INCORRECT REDUCTION CLAIMS PURSUANT TO
CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV.
CODE, § 17551, 17557, and 17559) (action)**

Acting Executive Director Nancy Patton swore in parties and witnesses participating in the hearing.

A. TEST CLAIMS AND STATEMENTS OF DECISION

- Item 3 *Developer Fees, 02-TC-42*
Education Code Sections 17620, 17621, 17622, 17623, 17624, 17625,
and 17626 as Renumbered or Amended by Statutes 1996, Chapter, 277,
Statutes 1998, Chapter 207, Statutes 1999, Chapter 300 and Statutes
2000, Chapter 135
Government Code Sections 65970, 65971, 65972, 65973, 65974,
65974.5, 65975, 65976, 65977, 65978, 65979, 65980, 65981, 65995,
65995.1, 65995.2, 65995.5, 65995.6, 65995.7, 65996, 65997, 65998,
66002, 66004, 66005, 66006, 66007, 66008, 66016, 66017, 66018,
66018.5, 66020, 66022, 66023, 66024, 66025, 66030, 66031, 66032,
66034, and 66037 as Added, Amended or Renumbered by Statutes 1977,
Chapter 955; Statutes 1979, Chapter 282; Statutes 1980, Chapter 1354;
Statutes 1981, Chapter 201; Statutes 1982, Chapter 923; Statutes 1983,
Chapters 921 and 1254; Statutes 1984, Chapter 1062; Statutes 1985,
Chapter 1498, Statutes 1986, Chapters 136, 685, 887, and 888; Statutes
1987, Chapters 927, 1002, 1037, 1184, and 1346; Statutes 1988,
Chapters 29, 160, 418, 912, and 926; Statutes 1989, Chapters 170, 1209,
and 1217; Statutes 1990, Chapters 633 and 1572; Statutes 1992,
Chapters 169, 231, 487, 605, and 1354; Statutes 1993, Chapters 589 and
1195; Statutes 1994, Chapters 300, 686, 983, and 1228; Statutes 1995,
Chapter 686; Statutes 1996, Chapters 277, 549, 569, and 799; Statutes
1997, Chapter 772; Statutes 1998, Chapters 207, 407, and 689; Statutes

1999, Chapters 300 and 858; Statutes 2000, Chapter 135; and Statutes 2002, Chapters 33 and 1016

Clovis Unified School District, Claimant

This is a test claim filed by Clovis Unified School District that addresses activities required by the School Facilities Act, the AB 2926 program, and the Mitigation Fee Act as a condition of imposing developer fees to help pay for school facilities. This test claim also addresses mediation and settlement proceedings authorized by the Mediation and Resolution of Land Use Disputes Law that assists in settling disputes about developer fees imposed under AB 2926.

Senior Commission Counsel Heather Halsey presented this item and recommended that the Commission partially approve the test claim.

Parties were represented as follows: Art Palkowitz, Stutz Artiano Shinoff & Holtz, representing claimant Clovis Unified School District, and Susan Geanacou and Chris Ferguson representing the Department of Finance.

Mr. Palkowitz agreed with staff's recommendation that a portion of the test claim was reimbursable. However, he disagreed with staff on the portions of the test claim that staff recommended be denied.

Mr. Ferguson and Ms. Geanacou stated that Department of Finance disagreed with staff's recommendation for partial approval of the test claim, and recommended that the claim be denied.

[Chairperson Reyes noted that Member Chivaro was now present.]

After further discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation and statement of decision. With a second by Member Lujano, the staff recommendation to partially approve the test claim and adopt the statement of decision was adopted by a vote of 5-0.

Item 4 *Peace Officer Procedural Bill of Rights II*, 03-TC-18
Government Code Sections 3304, 3306.5, 3309, and 3312
Statutes 1976, Chapter 465; Statutes 1994, Chapter 1259; Statutes 1997,
Chapter 148; Statutes 1998, Chapter 786; Statutes 1998, Chapter 263;
Statutes 1998, Chapter 112; Statutes 1999, Chapter 338; Statutes 2000,
Chapter 209; Statutes 2002, Chapter 1156; and Statutes 2002, Chapter
170

City of Newport Beach, Claimant

This test claim addresses statutes that provide a series of rights and procedural protections to peace officers who are facing discipline or investigation by their employers.

Commission Counsel Kenny Louie presented this item and recommended that the Commission partially approve the test claim.

Parties were represented as follows: Juliana Gmur, MAXIMUS, representing claimant City of Newport Beach, and Donna Ferebee and Miranda Jackson, representing Department of Finance.

Ms. Gmur stated that the claimant concurred with the staff analysis. Ms. Ferebee stated that Department of Finance had no significant concerns the staff analysis.

Member Chivaro made a motion to adopt the staff recommendation and statement of decision. With a second by Member Olsen, the staff recommendation to partially approve the test claim and adopt the statement of decision was adopted by a vote of 5-0.

B. REQUEST TO REVIEW CLAIMING INSTRUCTIONS

- Item 6 *Request to Review Claiming Instructions, 09-RCI-01*
Five Amended Parameters and Guidelines Adopted January 29, 2010
Collective Bargaining, 05-PGA-48
Habitual Truant, 05-PGA-51
Intradistrict Attendance, 05-PGA-53
Juvenile Court Notices, 05-PGA-54
Health Fee Elimination, 05-PGA-69
And
Twelve Amended Parameters and Guidelines Adopted March 26, 2010
Caregiver Affidavits, 05-PGA-46
County Office of Education, Fiscal Accountability, 05-PGA-47
Financial Compliance Audits, 05-PGA-49
Graduation Requirements, 05-PGA-50
Law Enforcement Agency Notices, 05-PGA-55
Physical Education Reports, 05-PGA-60
Physical Performance Tests, 05-PGA-61
Pupil Health Screenings, 05-PGA-63
Pupil Residency Verification and Appeal, 05-PGA-64
Removal of Chemicals, 05-PGA-66
School District Fiscal Accountability Reporting, 05-PGA-67
Law Enforcement Jurisdiction Agreements, 05-PGA-70
And
Three Amended Parameters and Guidelines Adopted May 27, 2010
Notification of Truancy, 05-PGA-56
Notification to Teachers: Pupils Subject to Suspension or Expulsion, 05-PGA-57
Pupil Suspensions, Expulsions, and Expulsion Appeals, 05-PGA-65

Castro Valley Unified School District, Grossmont Union High School District, San Jose Unified School District, San Diego County Office of Education, Gavilan Joint Community College District, San Mateo County Community College District, State Center Community College District, Requestors

This is a request to review claiming instructions for parameters and guidelines that were amended by the Commission in 2010 to update boilerplate language to require eligible claimants to retain contemporaneous source documentation to support their reimbursement claims.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed statement of decision to direct the Controller to modify the claiming instructions to conform to the amended parameters and guidelines.

Parties were represented as follows: Keith Petersen, SixTen and Associates, representing the requesting school districts, and Jill Kanemasu, representing the State Controller's Office.

Mr. Petersen stated that the requestors concur with staff's recommendation. Ms. Kanemasu stated that the Controller's Office also agreed with the staff recommendation.

With a motion by Member Alex, and a second by Member Lujano, the staff recommendation and statement of decision were adopted by a vote of 5-0.

HEARINGS ON COUNTY APPLICATIONS FOR FINDINGS OF SIGNIFICANT FINANCIAL DISTRESS PURSUANT TO WELFARE AND INSTITUTIONS CODE SECTION 17000.6 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, ARTICLE 6.5 (info/action)

- Item 8 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 9 Chief Legal Counsel: Recent Decisions, Litigation Calendar

Ms. Shelton presented this item.

- Item 10 Executive Director's Report

Ms. Patton presented this item.

PUBLIC COMMENT

There was no public comment

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

A. PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento, Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et al., Sacramento County Superior Court Case No. 34-2010-80000604 [Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g.F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]
3. Cross Petition Filed: *County of San Diego, and Cities of Carlsbad, Chula Vista, Coronado, Del Mar, El Cajon, Encinitas, Escondido, Imperial Beach, La Mesa, Lemon Grove, National City, Oceanside, Poway, San Diego, San Marcos, Santee, Solano Beach, and Vista v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Control Board San Diego Region*, Sacramento County Superior Court Case No. 34-2010-80000604 [[Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g.,

D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g, F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L]

4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles, et al.*, Los Angeles County Superior Court Case No. BS130730 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]
5. Cross Petition: *County of Los Angeles and Cities of Bellflower, Carson, Commerce, Covina, Downey and Signal Hill v. Commission on State Mandates, State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region*, Los Angeles County Superior Court, Case No. BS130730 [*Municipal Storm Water and Urban Runoff Discharges*, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3]
6. *California School Board Association (CSBA) v. State of California et al.*, Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Redetermination Process]

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a):

Hearing no further comments, Chairperson Reyes adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 10:23 a.m., Chairperson Reyes reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a).

ADJOURNMENT

Hearing no further business, Chairperson Reyes adjourned the meeting at 10:24 a.m.



Nancy Patton
Acting Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 9:00 a.m.
DATE: Thursday, December 1, 2011
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



Reported by:
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A P P E A R A N C E S

COMMISSIONERS PRESENT

PEDRO REYES
(*Commission Chair*)
Representative for ANA MATOSANTOS, Director
State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

KEN ALEX, Director
Office of Planning & Research

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member



COMMISSION STAFF PRESENT

NANCY PATTON
Acting Executive Director
(*Item 10*)

HEATHER HALSEY
Staff Counsel
(*Item 3*)

KENNY LOUIE
Staff Counsel
(*Item 4*)

CAMILLE SHELTON
Chief Legal Counsel
(*Items 6 and 9*)



A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 3 (Developer Fees):

For Clovis Unified School District:

ART PALKOWITZ
Stutz, Artiano, Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, California 92106

For Department of Finance:

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

CHRIS FERGUSON
Education Systems Unit
Department of Finance
915 L Street, 7th Floor
Sacramento, California 95814

Appearing Re Item 4 (Peace Officer Procedural Bill of Rights):

For City of Newport Beach:

JULIANA F. GMUR
MAXIMUS
625 Coolidge Drive, Suite 100
Folsom, California 95630

For Department of Finance:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 4 (Peace Officer Procedural Bill of Rights): *continued*

For Department of Finance:

MIRANDA JACKSON
Department of Finance
915 L Street, 8th Floor
Sacramento, California 95814

Appearing Re Item 6 (Request to Add Boilerplate Language):

For the Requestors:

KEITH B. PETERSEN
President
SixTen and Associates
5252 Balboa Avenue, Suite 900
San Diego, California 92117

For Controller's Office:

JILL KANEMASU
Chief, Bureau of Payments
Division of Accounting and Reporting
State Controller's Office
3301 C Street,
Sacramento, California 95816



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C. Request to Review Claiming Instructions and Statement of Decision

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Notification of Truancy, 05-PGA-56
Notification of Teachers: Pupils Subject to Suspension or Expulsion, 05-PGA-57
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1 BE IT REMEMBERED that on Thursday, December 1,
2 2011, commencing at the hour of 9:30 a.m., thereof, at
3 the State Capitol, Room 447, Sacramento, California,
4 before me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR,
5 the following proceedings were held:



7 CHAIR REYES: I'm going to call this meeting to
8 order, with the hour of 9:30 having arrived.

9 Roll call, please.

10 MS. PATTON: Mr. Alex?

11 MEMBER ALEX: Here.

12 MS. PATTON: Mr. Chivaro is absent.

13 Mr. Lujano?

14 MEMBER LUJANO: Here.

15 MS. PATTON: Ms. Olsen?

16 MEMBER OLSEN: Here.

17 MS. PATTON: Mr. Reyes?

18 CHAIR REYES: Present.

19 Okay, Nancy?

20 MS. PATTON: So Item 1 is the minutes from
21 October 27th, 2011.

22 CHAIR REYES: Is there a motion to approve?

23 MEMBER OLSEN: I have a correction.

24 CHAIR REYES: Okay, or corrections?

25 MEMBER OLSEN: It's a silly correction, but

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1 it's a correction all the same.

2 Under Approval of Minutes, Item 1, July 28th,
3 2011, Member Olsen should be O-L-S-E-N.

4 CHAIR REYES: That's important. That's not
5 silly, that's good.

6 MS. PATTON: We will fix that.

7 CHAIR REYES: Thank you.

8 MEMBER OLSEN: Other than that, with that
9 correction, I'll make a motion to approve.

10 CHAIR REYES: With that correction, it's been
11 moved.

12 MEMBER ALEX: Second.

13 CHAIR REYES: It's been moved and seconded.

14 Without objection, it will be unanimous of
15 those present.

16 *(No response)*

17 CHAIR REYES: Thank you.

18 MS. PATTON: The next item is the consent
19 calendar. And that consists of Item 5, proposed
20 parameters and guidelines for *Permanent Absent Voters II*,
21 and the *Comprehensive School Safety Plans II*, statewide
22 cost estimate.

23 CHAIR REYES: Is there a motion to move the
24 consent?

25 MEMBER OLSEN: So moved.

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1 CHAIR REYES: It's moved.

2 Is there a second?

3 MEMBER LUJANO: Second.

4 CHAIR REYES: Second?

5 Any comments from the public?

6 *(No response)*

7 CHAIR REYES: Okay, without objection, it would
8 be unanimous of those present.

9 Thank you.

10 Nancy?

11 MS. PATTON: Next, this is the part to swear in
12 the parties.

13 Will the parties and witnesses for Items 3, 4,
14 and 6 please rise?

15 *(The parties stood to be sworn.)*

16 MS. PATTON: Do you solemnly swear or affirm
17 that the testimony which you are about to give is true
18 and correct based on your personal knowledge,
19 information, or belief?

20 *(The parties responded affirmatively.)*

21 MS. PATTON: Thank you.

22 CHAIR REYES: Thank you.

23 MS. PATTON: Item 3, Senior Staff Counsel
24 Heather Halsey will present Item 3, *Developer Fees* test
25 claim and proposed statement of decision.

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1 MS. HALSEY: Good morning.

2 CHAIR REYES: Good morning.

3 MS. HALSEY: This test claim addresses
4 activities required --

5 CHAIR REYES: Can you get it closer to you?
6 Because we're not picking it up.

7 MS. HALSEY: I'm right in between the two.

8 CHAIR REYES: Yes, thank you.

9 MS. HALSEY: This test claim addresses
10 activities required by the School Facilities Act, the
11 AB 2926 program, and the Mitigation Fee Act as a
12 condition of imposing developer fees to help pay for
13 school facilities.

14 This test claim also addresses mediation and
15 settlement proceedings authorized by the Mediation and
16 Resolution of Land Use Disputes Law that assists in
17 settling disputes about actions taken for developer fees
18 imposed under AB 2926, the Mitigation Fee Act programs.

19 Staff finds that the activities required by
20 most of the test-claim statutes are downstream
21 requirements of a school's discretionary decision to
22 build or modernize school facilities and impose developer
23 fees to raise funds for these projects, or engage in
24 mediation under the Mediation and Resolution of Land Use
25 Disputes Law.

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1 However, staff finds that the School Facilities
2 Act imposes a reimbursable state-mandated program. In
3 particular, staff finds that the School Facilities Act is
4 a program of last resort that requires school districts
5 to notify the city council and county board of
6 supervisors if the school district finds, based on clear
7 and convincing evidence, that conditions of overcrowding
8 exist in one or more of the attendance areas that impairs
9 the normal functioning of educational programs and all
10 reasonable methods of mitigating conditions of
11 overcrowding have been evaluated by the district, and no
12 feasible method exists to reduce the overcrowding
13 conditions.

14 The city council or county board of supervisors
15 may then impose a fee on development for the purpose of
16 providing interim school facilities for students. Staff
17 finds that this notification triggers other
18 state-mandated requirements on school districts specified
19 in the analysis.

20 None of the parties commented on the draft
21 staff analysis for this test claim.

22 Staff recommends that the Commission adopt the
23 proposed statement of decision to partially approve the
24 test claim.

25 Will the parties and witnesses please state

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1 your names for the record?

2 MR. PALKOWITZ: Good morning. Art Palkowitz on
3 behalf of Clovis School District.

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

6 MR. FERGUSON: Chris Ferguson, Department of
7 Finance.

8 CHAIR REYES: Thank you.

9 MR. PALKOWITZ: Thank you.

10 Sir?

11 MR. PALKOWITZ: Thank you.

12 Good morning.

13 CHAIR REYES: Good morning.

14 MR. PALKOWITZ: I would like to thank staff for
15 the analysis regarding these really three potential
16 issues: The School Facilities Act, the Mitigation Fee
17 Act, and then the mediation that flows from those two.

18 Regarding the staff analysis, we concur with
19 their recommendation regarding the School Facilities Act.
20 So I would like to address my comments towards the
21 Mitigation Fee Act.

22 This involves the developer fees that school
23 districts have the authority to collect when there is new
24 construction in the school district. This is a fee that
25 allows a school district to absorb extra resources that

1 are burdened on them due to any new construction.

2 We feel that this type of authorization by the
3 statute puts the school districts in a position where,
4 without adopting the developers' fees, they would be
5 suffering a severe penalty. And under the *Kern Act*, we
6 feel this type of penalty is what is referred to as
7 practical compulsion.

8 And because of that practical compulsion, this
9 should be a mandate where the district gets reimbursed
10 for the activities that are involved.

11 There are a lot of activities involved when a
12 developer builds in a district. You have to establish
13 the rates. There's rates for residential, commercial.

14 I've been personally involved where there's
15 disputes on which rate is used. Once the rates are
16 determined, you need to collect the fees. There's a lot
17 of activities that flow from this.

18 And it's the claimant's contention that because
19 of the practical compulsion, the severe penalty they
20 would have by not exercising the authority that the
21 statute gives them in collecting these fees, that this
22 should be a reimbursable mandate.

23 Regarding the mediation process that flows from
24 that, I would agree that's a downstream type of event.
25 However, once the decision is made to collect those fees,

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1 there is case law that says that type of downstream event
2 flows from that, and that should also be reimbursable.

3 CHAIR REYES: Okay. So the first step is, so
4 is the second, and the results from that?

5 MR. PALKOWITZ: Yes, right.

6 CHAIR REYES: Okay. Finance?

7 MR. FERGUSON: I'd like to thank staff for
8 their work on this one. However, we disagree with the
9 staff's analysis regarding the mandated claim about the
10 School Facilities Act. In particular, the requirement
11 that school districts -- there is no requirement that
12 school districts build new facilities, reconstruct
13 facilities, or acquire additional facilities. That's a
14 discretionary activity of the school district. And if
15 the underlying activity is discretionary, anything that
16 results downstream from that, in our view, would be
17 discretionary as well.

18 School districts have multiple options to fund
19 facilities should they choose to acquire, construct, or
20 reconstruct their facilities. These include Mello-Roos
21 funds. These include general-obligation bonds authorized
22 by their local voters. These include developer fees.
23 These include their Proposition 98 funds. They include
24 developer-built schools, lease-leaseback options. School
25 districts may also seek waivers from the State Board of

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1 Education to exceed loading standards -- for classroom
2 loading standards, that is -- in which case we believe
3 that this is not a mandated activity. School districts
4 have options. School districts are not compelled to
5 build new facilities or acquire additional facilities;
6 and we would -- it is our position that we believe that
7 this is not a mandated activity.

8 CHAIR REYES: Do you want to add, or are you...

9 MS. GEANACOU: I just have one point to add, or
10 perhaps more of a question at this point. Perhaps the
11 staff could address this.

12 In the final staff analysis, there's comments
13 or conclusions that if the district makes the findings --
14 the factual findings regarding overcrowding -- and what
15 I don't believe Finance sees in the analysis is, what is
16 the triggering duty or obligation for the District to
17 commence on that fact-finding in the first place.

18 I believe that kind of analysis is missing from
19 the discussion here and -- because we don't see any
20 statutory legal duty to commence in this process in the
21 first place; that, as Mr. Ferguson said, we believe the
22 staff analysis on the School Facilities Act is incorrect.

23 CHAIR REYES: Okay, are there any questions
24 from the members?

25 MEMBER OLSEN: Well, could Ms. Shelton reply to

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1 that?

2 MS. SHELTON: Yes. Just a couple of thoughts.

3 If you look at the plain language of the
4 statute, on page 21 of the proposed statement of
5 decision, the statutory language here is far different
6 than any of the other funding programs that are available
7 to school districts to get funds for facilities.

8 Here, you have language that requires them to
9 seek the authority of the county or the city to get the
10 developer fees only when they've exhausted all other
11 alternatives, including all of the alternatives that the
12 Department of Finance has just testified about.

13 So they have exhausted all of those remedies.
14 This is a last-resort option when they need interim
15 facilities. It is not a permanent program. And the
16 statutory scheme puts the burden on the school district,
17 does not leave them any discretion in this particular
18 instance to request that the county or city seek funds.
19 And that's why this particular program is different than
20 all the other facility-funding programs that we've
21 analyzed in the past.

22 CHAIR REYES: Anything?

23 Mr. Lujano?

24 MEMBER LUJANO: (*Shaking head.*)

25 CHAIR REYES: Okay. Finance, would you like to

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1 answer?

2 MR. FERGUSON: I would like to respond to that.

3 I would also note that it says that "If the
4 governing board makes both of the following findings,"
5 which implies a discretionary duty of the school district
6 to institute those requirements.

7 MS. SHELTON: Can I comment on that?

8 CHAIR REYES: Yes.

9 MS. SHELTON: We've had lots of cases like that
10 in the past, that that does not involve the exercise of
11 their discretion. If those facts exist, they have no
12 other choice. And they don't have the choices on the
13 facts.

14 CHAIR REYES: Okay. So let's leave that first
15 piece, and let's go back to his comment, though.

16 Can somebody respond to his issues?

17 MS. SHELTON: Heather, do you want to start on
18 that?

19 MS. HALSEY: Well, I would start by saying that
20 no evidence has been submitted to the Commission on the
21 issue of practical compulsion, and so there's nothing in
22 the record to make that finding on.

23 And also, it's not clear to me what that severe
24 penalty is for not going under the Mitigation Fee Act.
25 It's the first time we've actually heard it, is today at

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1 this hearing.

2 CHAIR REYES: Mr. Palkowitz?

3 MR. PALKOWITZ: Yes, the severe penalty would
4 be the loss of the income from the developer fees.

5 CHAIR REYES: Camille?

6 MS. SHELTON: The Supreme Court in the
7 *Department of Finance versus Commission on State*
8 *Mandates, Kern High School District's* case, has
9 specifically found that a loss of funds is not a penalty.

10 CHAIR REYES: Okay. Were you going to add
11 something to that?

12 MS. GEANACOU: Well, not on the second point.
13 Back on the first one.

14 CHAIR REYES: Back to the first?

15 MS. GEANACOU: So I'll leave this one alone.

16 CHAIR REYES: All right. So we'll leave the
17 second point alone then, unless anybody has any
18 questions.

19 MEMBER ALEX: *(Shaking head.)*

20 CHAIR REYES: Let's go back to your first, the
21 first point then.

22 MS. GEANACOU: Yes, I heard the Commission
23 staff address Finance's concerns. And I think part of
24 the concern I continue to have on behalf of Finance, is
25 that this appears to be a fact-driven situation that, in

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1 any given district situation, whether or not this might
2 be a mandate as to a particular district, is driven by
3 their facts, their conclusions, their findings,
4 whatever -- however we want to call it.

5 And I think I have some concern that perhaps
6 the staff could address, that the existence of a mandate
7 or not as to any given district, would be driven by
8 their findings about the existence of overcrowding and
9 their review or evaluation of other alternatives for
10 alleviating the overcrowding.

11 And so my concern is, to what degree does that
12 become part of their ability to claim or not claim? Is
13 that part of their claim? Is that finding reviewed?
14 It suggests that the findings are reviewed by the city
15 council and/or county board of supervisors to whom they
16 posit their request for an ordinance. But I'm just
17 concerned about whether we have a situation where the
18 mandate switch is off or on, dependent on the particular
19 findings in the district, as opposed to what the law
20 requires ostensibly or not, on its face.

21 CHAIR REYES: So are you concerned that what
22 is defined as overcrowding and whether or not all the
23 activities that lead to going back to the legislative
24 body is subjective by the district, and there is no real
25 threshold to determine, "Yes, my schools are overcrowded,

1 therefore I need -- and I've exhausted all options"? Or
2 are you saying that that is a subjective call?

3 I want to make sure I understand. I don't want
4 to put words in your mouth. I just want to understand
5 what --

6 MS. GEANACOU: I don't know that I'd say that
7 it's subjective. I think the statute provides an
8 objective standard that the district can hold itself up
9 against factually.

10 But as to any given district's ability to file
11 a reimbursement claim, that district would have had to
12 make the positive findings that the statute requires.
13 So there isn't automatically a mandate to do anything.

14 MS. HALSEY: Well, just like any other mandate,
15 you're only entitled to reimbursement if you had to
16 engage in the activities, and you can show that you have
17 done so. So similarly here, there will be findings based
18 on clear and convincing evidence that will have to be
19 made. And that is definitely an issue to be addressed in
20 the P's & G's, I would think, of what would be submitted
21 for a claim.

22 MS. SHELTON: Can I just comment on that? That
23 is raising a good discussion.

24 The mandate, though, based on a statutory
25 scheme, starts with notifying the city council.

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1 *(Mr. Chivaro entered the meeting room.)*

2 MS. SHELTON: So the start of the mandate is to
3 notify the city council based on the plain language of
4 the statute.

5 This discussion does not authorize
6 reimbursement for making those findings. It's only if a
7 school district has made those findings and has clear and
8 convincing evidence that those findings exist and they've
9 exhausted all potential funding streams, and they have no
10 other resort to deal with the situation, and it affects
11 their educational ability to provide services to those
12 students, then at that point the mandate is triggered
13 when they notify the school district because that's when
14 they're required to do so by statute.

15 CHAIR REYES: Thank you.

16 Let the record show that Mr. Chivaro has joined
17 us.

18 MS. GEANACOU: I think I still -- Susan
19 Geanacou for Finance.

20 I think I still have some concern that maybe
21 staff has already addressed that, typically, we see
22 mandates where there's a legal requirement to do
23 something, triggered by something affirmative that the
24 Legislature has directed a school district or a local
25 agency to do from the get-go.

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1 And I think that appears to be missing here --
2 or I'm missing it, perhaps. And if staff could -- I
3 don't see the trigger -- the affirmative duty to commence
4 this process here in the analysis in a statute that's
5 called out or identified by staff. In other words,
6 whatever initiates this process on which the district
7 embarks to do this analysis or fact-finding, it seems to
8 be within the control or the discretion, whatever word
9 we choose to affix, of the district, which is atypical
10 from situations where the Commission in the past has
11 found a legal duty to do something or a mandate -- a
12 state-reimbursable mandate.

13 CHAIR REYES: Camille?

14 MS. SHELTON: I just would respectfully
15 disagree with that interpretation, I mean, as an
16 argument.

17 We have seen this very differently here.
18 Because here, you have the statutory language that is
19 very different. And it's not triggered by discretion.
20 It's triggered by facts that they find based on clear and
21 convincing evidence. It's a very different situation
22 than any of the other funding programs, where truly,
23 they have lots of options for getting money. You know,
24 there's grant programs, there are Mello-Roos developer
25 fees, there's bonds -- there's all kinds of things they

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1 can do.

2 Here, all of those options have been fully
3 exhausted. And they are in sort of an emergency
4 situation where they need interim facilities. So it's
5 not triggered based on their discretion; it's triggered
6 based on facts. It's different.

7 CHAIR REYES: Okay. Any other comments from
8 Board members?

9 *(No response)*

10 CHAIR REYES: Do I have a motion?

11 MEMBER OLSEN: I'll move the staff
12 recommendation and adoption of the statement of decision.

13 MEMBER LUJANO: Second.

14 CHAIR REYES: It's been moved and seconded.

15 Without objection, it will be unanimous of
16 those present.

17 *(No response)*

18 CHAIR REYES: Thank you.

19 And so that will be for the staff
20 recommendation and then for the statement of decision.

21 Thank you.

22 MS. PATTON: So Item 4, Staff Counsel Kenny
23 Louie will present Item 4, *Peace Officer Procedural Bill*
24 *of Rights II* test claim and proposed statement of
25 decision.

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1 MR. LOUIE: This test claim alleges activity
2 associated with the Peace Officers' Procedural Bill of
3 Rights Act, commonly referred to as "POBOR."

4 POBOR provides a series of rights and
5 procedural protections to peace officers who are facing
6 discipline or investigation by their employers. Such
7 rights and protections include notice to officers that
8 they may face discipline, the right of an officer to
9 inspect his or her personnel file, and procedural
10 rights -- or procedural requirements in order to search
11 an officer's locker.

12 Some of the rights and procedural safeguards
13 pled in this test claim were pled in a prior test claim
14 in which the Commission has already made a mandates
15 determination on it. As a result, there are no findings
16 made on those activities in this test claim.

17 Staff finds that some of the rights and the
18 safeguards imposed by POBOR are mandated by federal
19 constitutional law or required by preexisting law,
20 depending on the type of discipline an officer faced or
21 whether the officer's employer is a city, county, or
22 special police-protection district.

23 However, staff finds some of the rights and
24 procedural safeguards pled in this test claim impose
25 state-mandated programs that exceed federal law for

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1 new -- and are new as compared to preexisting law.

2 Neither the claimants or Finance raised any
3 specific concerns regarding this staff analysis.

4 As a result, staff recommends the Commission
5 adopt the proposed statement of decision to partially
6 approve the test claim.

7 Will the witnesses and parties state their name
8 for the record, please?

9 MS. GMUR: Juliana Gmur on behalf of the City
10 of Newport Beach.

11 MS. FEREBEE: Donna Ferebee, Department of
12 Finance.

13 MS. JACKSON: Miranda Jackson, Department of
14 Finance.

15 MS. GMUR: Good morning, Commissioners.

16 CHAIR REYES: Good morning.

17 MS. GMUR: We'd like to thank staff for this
18 very sound analysis that they've provided to us. We
19 concur with the analysis, and we ask you all to pass it
20 today.

21 Thank you.

22 CHAIR REYES: Thank you.
23 Finance?

24 MS. FEREBEE: Thank you.

25 Donna Ferebee, Department of Finance.

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1 Finance did a thorough review of the draft
2 staff analysis and I believe commented that there were no
3 significant concerns.

4 It appears the final staff analysis reflects
5 the same determinations as the draft. And we don't have
6 any objections to your adoption of it.

7 Thank you.

8 CHAIR REYES: Okay, so why was this not on
9 consent?

10 MEMBER CHIVARO: I will move the staff
11 recommendation.

12 MEMBER OLSEN: Second.

13 CHAIR REYES: It's been moved and seconded.

14 Without objection, it will be unanimous of
15 those present.

16 *(No response)*

17 CHAIR REYES: Thank you.

18 MS. PATTON: Item 5 was on the consent
19 calendar.

20 So that brings us to Item 6.

21 Chief Legal Counsel Camille Shelton will
22 present Item 6, which is a request to review claiming
23 instructions.

24 MS. SHELTON: Good morning.

25 This is a request to review claiming

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1 instructions for parameters and guidelines that were
2 amended by the Commission in 2010 to update boilerplate
3 language to require eligible claimants to retain
4 contemporaneous source documentation to support their
5 reimbursement claims.

6 Following the adoption of the amended
7 parameters and guidelines, the Commission submitted the
8 amended P's & G's to the State Controller's office as
9 required by the Government Code so that revised claiming
10 instructions could be issued.

11 The Government Code then requires the State
12 Controller's Office to issue revised claiming
13 instructions that are consistent with the parameters and
14 guidelines within 60 days after receiving the amended
15 P's & G's to put local agencies and school districts on
16 notice of their rights and responsibilities for filing
17 reimbursement claims.

18 The Controller's office has not issued the
19 revised claiming instructions; and the existing claiming
20 instructions for these programs, which do not contain
21 the requirement to retain contemporaneous source
22 documentation, do not conform to the amended parameters
23 and guidelines that were adopted by the Commission.

24 Thus, pursuant to Government Code section
25 17571, staff recommends that the Commission adopt the

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1 proposed statement of decision and direct the Controller
2 to modify the claiming instructions to conform to the
3 amended parameters and guidelines for the programs listed
4 in the decision.

5 Will the parties please state your names for
6 the record?

7 MR. PETERSEN: Keith Petersen, representing the
8 requestors.

9 MS. KANEMASU: Jill Kanemasu, State
10 Controller's Office.

11 CHAIR REYES: Thank you.

12 MR. PETERSEN: I guess I'll start.

13 CHAIR REYES: Yes, please.

14 MR. PETERSEN: It appears that the requestors
15 and the Commission staff agree on what the law requires.
16 Write this day down.

17 So I guess we can go ahead and proceed.

18 CHAIR REYES: Please.

19 MS. KANEMASU: The State Controller's Office
20 concurs with the Commission's recommendation, and will
21 issue the claiming instructions.

22 CHAIR REYES: We will write the date down, yes.
23 Yes?

24 MR. PETERSEN: I do have a question.

25 There were actually 49 parameters and

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1 guidelines; but only 20 were the subject of this request.
2 Can I direct a question to the Controller and
3 ask them to release the claiming instructions for the
4 other 29?
5 CHAIR REYES: Well, it's not in the item now.
6 So I prefer not to bring up stuff that's not on the
7 agenda. Unless --
8 MS. SHELTON: I was going to say, there has
9 been no request filed with the Commission to review
10 claiming instructions on the other 29 programs.
11 MR. PETERSEN: I said that.
12 CHAIR REYES: All right, thank you.
13 MR. PETERSEN: So it will be a surprise.
14 CHAIR REYES: Okay, so is there a motion?
15 MEMBER ALEX: Move the staff recommendation.
16 CHAIR REYES: Staff recommendation moved.
17 MEMBER LUJANO: Second.
18 CHAIR REYES: We have a second.
19 Without objection, it will be unanimous of
20 those present.
21 *(No response)*
22 CHAIR REYES: Thank you.
23 Great. Nancy?
24 MS. PATTON: Item 7 was on the Consent
25 Calendar.

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1 Item 8, there are no SB 1033 applications.

2 So that brings us to the Chief Legal Counsel's
3 report.

4 MS. SHELTON: Just a couple of things new to
5 report.

6 The *LA County Water* case dealing with trash
7 receptacles has been appealed to the Second District
8 Court of Appeals, so that will proceed up to the courts.

9 The *San Diego Water* case, we'll still waiting
10 for a decision from the judge on that. So that remains
11 pending.

12 As we've indicated, the *Department of Finance*
13 *versus Commission on State Mandates* case dealing with
14 the P's and G's amendment on the reasonable reimbursement
15 methodology, that hearing date I have marked as
16 March 9th. The Court has notified the parties that they
17 need to move it up. So it will either be in April or
18 June.

19 And that's all I have to report.

20 CHAIR REYES: Thank you.

21 Is there any public comment on any of the items
22 or any future items?

23 *(No response)*

24 CHAIR REYES: Thank you.

25 MS. PATTON: I just wanted to let you know that

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1 to give you the totals of the items that we completed in
2 2011 -- and that includes what was voted on today --
3 18 test claims, 29 incorrect reduction claims, seven sets
4 of parameters and guidelines, and 11 statewide cost
5 estimates.

6 We are still on track at this point to complete
7 the 2002 claims by March, hopefully, and the 2003 claims
8 by this summer.

9 CHAIR REYES: Okay.

10 MS. PATTON: And I also wanted to let you know,
11 the Legislature is having a joint oversight hearing on
12 education mandates this afternoon. It's being conducted
13 by both Senate and Assembly Budget and Education
14 committees. And I'll be there to give them a
15 presentation on our backlog and an overview of our
16 process.

17 CHAIR REYES: Great. Thank you.

18 Anything else before we go to closed session?

19 *(No response)*

20 CHAIR REYES: No?

21 MS. PATTON: That's it.

22 CHAIR REYES: Okay, so we will break and go to
23 closed session.

24 And we will then -- the Commission will meet
25 in closed executive session pursuant to Government Code

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1 section 11126, subdivision (e), to confer and receive
2 advice from legal counsel for consideration and action,
3 as necessary and appropriate, upon the pending litigation
4 listed on the published notice and agenda; and to confer
5 with and receive advice from legal counsel regarding
6 potential litigation.

7 The Commission will also confer on personnel
8 matters pursuant to Government Code section 11126,
9 subdivision (a)(1).

10 We will reconvene in open session in
11 approximately 30 minutes.

12 Thank you.

13 *(The Commission met in closed executive*
14 *session from 9:57 a.m. to 10:23 a.m.)*

15 CHAIR REYES: Okay, we're back in from closed
16 session.

17 The Commission met in closed executive session
18 pursuant to Government Code section 11126(e)(2), to
19 confer and receive advice from legal counsel for
20 consideration and action, as necessary and appropriate,
21 upon the pending litigation listed on the published
22 notice and agenda; and to confer with and receive advice
23 from legal counsel regarding potential litigation.

24 The Commission also met in closed session
25 pursuant to Government Code section 11126, subdivision

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1 (a), to confer on personnel matters.

2 With no further business to discuss, I'll
3 entertain a motion to adjourn.

4 MEMBER CHIVARO: So moved.

5 MEMBER LUJANO: Second.

6 CHAIR REYES: Moved and seconded, without
7 objection, it's unanimous.

8 Thank you.

9 *(The meeting concluded at 10:24 a.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; and

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

In witness whereof, I have hereunto set my hand on the 14th of December 2011.

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