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FRANCHISE TAX BOARD MEETING
AGENDA OPEN SESSION MEETING MINUTES

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ORIGINAL

TUESDAY, JULY 6, 1999

STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

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Before

Hon. Kathleen Connell, Hon. Johan Klehs and

Hon. B. Timothy Gage

Reported by:
COLLEEN M. BLOMBERG, RPR
CSR No. 7012
Job No. 8858

1 Sacramento, California

2 9:30 a.m.

3 ---oOo---

4 MS. CONNELL: Well, I would just like to
5 point out that I believe we're all here. And after
6 the roll call, I see the presence of three members.
7 So we can call the meeting to order. May I ask for a
8 motion on approval of the amendments of the
9 March 23rd meeting?

10 MR. KLEHS: So moved.

11 MS. CONNELL: Seconded. It passed
12 unanimously. We are going to move now to legislative
13 matters.

14 Johnnie, we would like to see if we can try
15 to deal with these matters in something other than an
16 extended forum today, or we could be here forever
17 just going through your items. And I think that we
18 have one person who wants to speak on an item from
19 the California Credit Union League, Robert Unall, on
20 SB 934.

21 Is there anyone else in the audience who
22 wishes to address the board on legislation? Please
23 come forward. Both of you. And what I'm going to do
24 is let the public address the board first, Johnnie,
25 and then we'll try to rapidly go through your

1 legislative proposals.

2 Gentlemen, for the record, can you identify
3 yourself and indicate which bill you would like to
4 speak?

5 MR. ARNOLD: I'm Bob Arnold with the
6 California Credit Union League in relation to SB 934,
7 Burton, John Burton tax bill on credit unions.

8 Basically, I just want to make myself
9 available to the board in case you have any
10 questions. It's a law change that conforms the
11 franchise tax law for state credit unions so it
12 reflects the same tax laws federal credit unions
13 operate under in the State of California.

14 MS. CONNELL: What was the bill in regards
15 to?

16 MR. ARNOLD: SB 934.

17 MS. CONNELL: The Burton bill. Thank you.
18 We've gotten letters of support from your
19 organization. Thank you.

20 Are there any questions by members of the
21 board in regard to the position? Thank you for
22 clarifying it.

23 Yes.

24 MR. DOERR: Dave Doerr representing Cal-Tax
25 speaking to the proposed staff proposal on deficiency

1 assessments.

2 We have been working with your staff and had
3 one meeting on this proposal. It was our
4 understanding that they were going to come back to us
5 with a draft of their reactions to the comments we
6 made in that meeting.

7 Unfortunately, we saw the draft, is a draft
8 that came here. We thought we would continue to work
9 on it until we had agreement, but apparently that
10 didn't happen.

11 We're pleased to see the amendments in
12 section four. We think that's a step forward. We
13 think section three is too vague and needs
14 substantially more work to tighten up exactly how the
15 board would base its determination.

16 MS. CONNELL: Do you have any response to
17 that, Johnnie?

18 MS. ROSAS: Yes, ma'am. We did meet with
19 Dave Aramedke (phonetic) and Gino Rodriguez some
20 weeks ago. We did provide everyone a copy of this,
21 which is a mailing. I called Dave last week and
22 tried to get feedback from him, and he was out of his
23 office all week.

24 MR. DOERR: Took vacation.

25 MS. ROSAS: Yes. I didn't want to bother him

1 at home. I tried to do follow-up with folks to see
2 what their reactions were.

3 MS. CONNELL: Is there anything -- can you
4 respond on the fact that you haven't gotten his
5 comments back but to the nature of his concerns?

6 MS. ROSAS: We did not realize that that was
7 a particular issue -- you know, we know there was
8 some concern with the fact that this proposal is for
9 open years. We understood that was the big issue.
10 We're trying to do it.

11 MR. DOERR: That, too.

12 MS. ROSAS: Yes. And so I guess we didn't
13 realize this in terms of vagueness of this action.
14 We have tried to write it so that it covered both
15 electronic filing and our current paper filing.

16 MR. DOERR: We agree that it should cover
17 electronic filing as well as paper filing. It should
18 be.

19 MS. CONNELL: Okay. Can we amend this
20 legislation? I mean, we're at a point where we still
21 have an opportunity to amend here, few different
22 measures.

23 MS. ROSAS: Our hope would be to try to get
24 this new bill this year because we really think it
25 has a huge revenue impact if we don't. So we could

1 try to get something worked out.

2 MS. CONNELL: You should be early enough in
3 the legislative calendar to be able to do that.

4 MR. DOERR: We would be willing to continue
5 to work with Cal-Tax and other organizations.

6 MS. CONNELL: I think we should direct you to
7 do that. I don't think we need any action of the
8 board. I think that's obviously where we need to
9 go.

10 MS. ROSAS: Can we get directions to proceed
11 with approval generally on the bill?

12 MS. CONNELL: We're going to go through all
13 the bills now.

14 Are there any other members of the audience
15 that wish to speak, because what we're going to try
16 to do is streamline these bills through and except
17 where there is differences of opinion on the board
18 members, we're going to try to move some of these
19 items on a consent basis, or we will be here well
20 into the afternoon.

21 So I would ask that we pull the ones that may
22 be controversial. I'd like to pull all of the ones
23 on child support so we can talk about them as a
24 group, and we can try to figure out where my concerns
25 might be at least on the timing of that. Not so much

1 the action as the timing. So I can put that on the
2 record, and we can deal with that.

3 So I don't know which exact numbers those are
4 now. I know you've got a Kuehl bill. We've got a
5 Burton bill and I think a Speier bill. SB 240 Speier
6 would be one of them, and the AB 196 Kuehl, and then
7 the Burton bill, I believe, is 542.

8 MS. ROSAS: Is 542.

9 MS. CONNELL: So we need to pull those.

10 Okay. Let's -- I guess we're going to have
11 to start at the very beginning. And I don't think we
12 need to describe all these bills. So if you will
13 avoid doing that, I think that would be good. Let's
14 start with the AB 83 Cardenas bill.

15 MS. ROSAS: That's what we already have a
16 neutral position on.

17 MS. CONNELL: I don't have a problem with
18 anything of a neutral on Cardenas.

19 MR. GAGE: I'm abstaining on all these.

20 MS. CONNELL: All right. That's right.

21 That's correct. I'm sorry.

22 Show finance, please, abstaining on all
23 legislative votes. AB 110. Baugh.

24 MR. GAGE: Neutral.

25 MS. CONNELL: Neutral.

1 AB 196, Kuehl.

2 MR. KLEHS: I'll support.

3 MS. CONNELL: I will be neutral if we can
4 amend it to say exactly what the amendments are.
5 I've had this discussion with you, Jerry. I've had
6 it with the administration and with the author of the
7 bill.

8 So I state it publicly here, I am concerned
9 about our ability to meet a February 2000 date for
10 implementation of this program. I don't think it's
11 doable. I think that's far too aggressive.
12 Particularly if we bring all the counties in, which
13 there has been some discussion doing, I just think
14 it's an impossibility to gear up having been here in
15 '95 when we brought in the six and then moved to
16 15. I think it's much more reasonable,
17 administratively, to do a small pilot program and to
18 give yourself enough time so there are not any
19 mistakes.

20 We're talking for the audience's purposes
21 about child support and a growing role for the FTB
22 and child support. I'm concerned that that only be
23 done if there is a commitment by the administration
24 to start their own organization. I don't know.

25 Are you doing that as a separate department?

1 How are you handling that?

2 MR. GAGE: That issue, Madam Chair, is under
3 discussion within the administration, but one of the
4 bills, I believe the Sheila Kuehl bill, would move in
5 the direction of a separate department. And as the
6 administration envisions, the Franchise Tax Board's
7 role would be primarily for the purpose of supporting
8 the automation efforts.

9 MS. CONNELL: Fine. I think that that's
10 appropriate, but I don't want to see it premature. I
11 do not want to see us taking on the responsibilities
12 that have been flawed in their execution by the
13 district attorneys and, therefore, end up with a
14 black eye here in this department. I want to make
15 sure that the execution is done well and we give
16 ourselves adequate time.

17 I've mentioned those concerns to the
18 administration and to the authors of the bill, and
19 hopefully they will be willing to look at some
20 discussion of easing that time period from February
21 to maybe even July or further on.

22 Jerry, have you had continuing conversations?

23 MR. GOLDBERG: We have been trying to
24 communicate with the -- with both
25 Assembly Woman Kuehl and Senator Burton with regard

1 to our concerns over timing over what we consider to
2 be our core competency in the area of child support.

3 At this point I feel very confident that they
4 both understand what our concerns are.

5 Certainly we wholly agree with you with
6 regard to a date of February 2000 as being an
7 impossible date for us to meet, and we have
8 communicated that hopefully very clearly in our
9 initial bill analysis and in all subsequent
10 analyses.

11 We will so indicate we feel that a date
12 actually sometime in 2001 is much more realistic.

13 MS. CONNELL: I'm relieved to hear that
14 because that's where I'm going. I see actually to
15 that date in 2001. I'm moving it back a year. This
16 is a very troubled program at the local level, and
17 particularly in L.A. County. And having talked to
18 elected leaders as I have over the weekend in
19 L.A. County, I am very concerned that we do not
20 assume their burden of failure here at the state
21 level.

22 I want to be as proactive as we can in child
23 support, but not to a point where we repeat their
24 mistakes.

25 MR. KLEHS: Mr. Goldberg, could you explain

1 why it will take the Franchise Tax Board to gear up
2 that long?

3 MR. GOLDBERG: In terms of there are several
4 bills. So the Kuehl bill called for a pilot program
5 of six counties, including L.A. County. The pilot
6 program in effect would be taking over the L.A.
7 County's current child support program, which would
8 be a rather massive undertaking in that it would
9 amount to in effect taking over their field
10 operations in addition to all of the other aspects of
11 the program. I think that bill will be amended,
12 probably amended very substantially in very short
13 order.

14 The Burton bill has just recently been
15 amended. It was amended actually last week. Up
16 until last week it really was not a bill of major
17 concern to us. The Burton bill would have to deal
18 with just arrearages. Arrearages is something that
19 we feel is our core competency as opposed to what is
20 in the Kuehl bill, which we feel goes well beyond our
21 core competency.

22 Our expectation is, as Mr. Gage pointed out,
23 that the administration is probably going to want us
24 to move not simply into dealing with arrearages but
25 also in technology. But we have not heard anything

1 with regard to that at this point from any member of
2 the legislature.

3 Our main concern is the Kuehl bill would, as
4 I said, would have us take over by 2-2000 in effect
5 L.A.'s failing child support program.

6 MR. KLEHS: Have each of the authors been
7 open to amending the bill?

8 MR. GOLDBERG: Yes, they have. Yes, they
9 have.

10 MS. CONNELL: I am very concerned that there
11 be major amendments to the Kuehl bill. I mean, I
12 have repeatedly said on the record that I don't think
13 it's the role of this agency to enter into social
14 services programs. I see this being a role of
15 collections for the FTB.

16 I do not want us to take responsibility. I
17 want to state this as clearly as I can today, at
18 least from my viewpoint. I do not wish us to start
19 doing intake activities. I do not wish us to do
20 field investigations. I do not wish us to have to do
21 any confirming kind of investigative work on child
22 support programs, whether it's in L.A. County or
23 anywhere else in the state.

24 Now, either that has to be done at the
25 district attorney level, it has to be done at the

1 Department of Social Services level of the counties,
2 it has to be done by the state child support agency,
3 which the administration may chose to establish. But
4 it should not be done by the FTB.

5 Our role should be to come in at the
6 collection point and aggressively use the skills and
7 the power and leverage that we have at the FTB in the
8 collection, and the collection only components of
9 this program.

10 The Kuehl bill is vacuous on that subject.
11 The Kuehl bill speaks broadly to a much larger role
12 for the FTB, and I am strongly opposed to it. And I
13 think the fact that I will have a majority vote from
14 the elected officials in L.A. to join me on that,
15 because they are equally concerned, that intake
16 cannot occur at a state level for a local program.

17 MR. GOLDBERG: We wholly concur with your
18 comments with regard to intake and all of those
19 elements. I would just repeat my concern is that we
20 may, in fact, not just have collection. We may
21 also -- again, I've not heard anything specifically
22 with regard to this, a role with regard to technology
23 as well, but certainly nothing having to do with
24 intake investigations or any other thing that you
25 mentioned specifically.

1 MR. GAGE: I think it's fair to say that the
2 administration is sensitive to the concerns and
3 issues that Mr. Goldberg has raised and that there
4 really is a sense that we need to do this smartly so
5 that we can ensure that we have a successful
6 program.

7 The past history here has not served us well,
8 and we certainly don't want to repeat those
9 mistakes.

10 By the same token, the issue is one that's of
11 paramount importance, and hopefully we'll all be able
12 to work together to move in a common direction.

13 MS. CONNELL: I guess I would take a neutral
14 position or opposed position on Kuehl without knowing
15 what the amendments are. I think the Burton bill
16 appears to be much more modified.

17 And I feel -- you know, I wouldn't mind
18 having an opposed position on Kuehl and a neutral on
19 Burton, because I think Burton goes more the route,
20 as long as he doesn't make it statewide, of where we
21 need to be initially on this program.

22 So we're not going to get a vote out of this
23 committee, because you're supportive of it.

24 MR. KLEHS: Well, yeah, and as a minimum I
25 don't think we should oppose the Kuehl bill. I think

1 we should be neutral on it. And pointing out clearly
2 some of the implementation problems because echoing
3 the administration, there have been too many problems
4 about this in the past, and we want to maximize our
5 effectiveness in collecting this money because it
6 ultimately goes to the children, it doesn't go to the
7 adults. And there is an 8.7 billion dollar problem
8 in California.

9 It would be kind of interesting to see what
10 problems we could solve if we didn't have to be
11 spending that money on something else.

12 MS. CONNELL: Are we looking at having the
13 Department of Social Services under the Kuehl bill
14 assume responsibility for this program?

15 MS. ROSAS: The new Department of Child
16 Support.

17 MS. CONNELL: In the interim, who assumes the
18 D.A.'s role?

19 MS. ROSAS: It's very unclear to me how that
20 transitions. That's part of the problem.

21 MS. CONNELL: I think we need to clarify
22 that. That needs to be one of the amendments. If
23 we're going to go neutral on this, I'll tell you
24 where my amendments are.

25 My amendments need to be that we clarify the

1 role of the FTB, that the Department of Social
2 Services at the county level is not any more
3 efficient than the district attorney. In fact, they
4 have a history of inefficiency themselves.

5 So moving the district attorney's
6 responsibility to the Department of Social Services,
7 or moving those sample people in mass does not seem
8 to me to be a vast improvement of efficiency in this
9 program, and I think that's shared by the local
10 officials I spoke with.

11 The second concern that I have is that the
12 FTB have no obligation to do the role of the district
13 attorney or the DSS at any point in time even for an
14 interim period.

15 And third, that we carefully look at the
16 timing of when we enter that process to give
17 ourselves sufficient lead time that when we do come
18 on board, we can be fully operational and successful
19 at whatever limited role we are going to play.

20 Those would be the amendments that I think we
21 ought to discuss with the author and if she -- and
22 according to Sheila in my last conversation, she was
23 willing to consider all those because I think she's
24 getting the same feedback locally that I have gotten
25 on this program.

1 So I don't think that she would be opposed to
2 those considerations. I think you've had those
3 conversations with the author as well.

4 MR. KLEHS: I think ultimately the bill going
5 to the governor will be SB 542.

6 MS. CONNELL: Thank you. Okay.

7 MR. KLEHS: So why don't we be neutral. You
8 know, neutral, point out problems on the Kuehl bill,
9 and I think you all know the problems.

10 MS. CONNELL: Okay. The Wright bill is 370.
11 Neutral on that?

12 MR. KLEHS: Neutral.

13 MS. CONNELL: Is everyone okay? Neutral.
14 Okay.

15 Knox. This would allow the FTB to provide
16 taxpayer information to charter cities.

17 MS. ROSAS: We've been neutral in the past.
18 There is opposition to the bill. That's why it's
19 back on here. We had heard from the Screenwriters
20 Guild particularly.

21 MR. KLEHS: They're in support of the bill.

22 MS. ROSAS: No, not at all.

23 MS. CONNELL: They're against it. They're
24 opposed to the bill.

25 MS. ROSAS: They have amendments to cover

1 them. They would be happier if it went away
2 totally.

3 MS. CONNELL: I think this is again an L.A.
4 based concern. I loved going to barbecue parties
5 this weekend. Just a thrill getting all this
6 feedback.

7 MR. KLEHS: Let's go neutral on this.

8 MS. CONNELL: I would go neutral on this as
9 well.

10 Okay. Havice, AB 414. I support that.
11 AB 601, Cedillo. I would support this, or I could be
12 neutral on it. I have some questions on it, but I
13 support the concept. I'm a little concerned about --
14 okay, let's go neutral on it.

15 Calderon, neutral? 780.

16 MR. KLEHS: Neutral.

17 MS. CONNELL: Briggs, AB 1016? I'm neutral.

18 MR. KLEHS: Support. We're neutral by
19 default.

20 MS. CONNELL: Okay. Wright. Okay. 1044.

21 MR. KLEHS: Neutral.

22 MS. CONNELL: 1080, neutral. Shelley, 1099,
23 neutral.

24 MR. KLEHS: Neutral.

25 MS. CONNELL: AB 1208, AR&T, I'm supporting

1 that.

2 MR. KLEHS: Support.

3 MS. CONNELL: AB 1220, Romero. I have a
4 question on this. We were wondering if we shouldn't
5 be opposed to this unless it's amended so the FTB
6 could release the credit-related information on a
7 gross not taxpayer specific basis. I'm totally
8 opposed to releasing anything on a taxpayer basis. I
9 think it's just an abomination. I'm sure Gloria
10 didn't mean to do that. So if we can talk with the
11 author here, and maybe we could do opposed unless
12 amended or neutral unless amended.

13 MR. KLEHS: Why don't we support it if
14 amended? Because I have the same position you do.

15 MS. CONNELL: Okay. Well, all --

16 MR. KLEHS: Let's say it's released generic
17 only.

18 MS. CONNELL: Yeah. I mean, it's just very
19 scary. We certainly don't want to go specific. I
20 would go to neutral unless amended.

21 MS. ROSAS: Neutral if amended?

22 MS. CONNELL: Yeah, if amended. Then we can
23 also talk to legislators about it.

24 AB 1234, Shelley. Neutral.

25 MR. KLEHS: Neutral.

1 MS. CONNELL: Wesson, 1370, neutral.

2 Granlund, 1379, neutral. Hertzberg, I would
3 be supportive of this. This is allowing free payment
4 relief in court in posting a bond. I would support
5 that.

6 MR. KLEHS: Support.

7 MS. CONNELL: AB 1463. I would either oppose
8 or be neutral on this. Now, FTB needs the social
9 security numbers and the DMV records for collection,
10 is that correct, on this one? How do you feel about
11 this bill, Jerry and Johnnie?

12 MS. ROSAS: We would recommend oppose for
13 that reason.

14 MS. CONNELL: Okay. Then let's oppose that
15 one.

16 MR. KLEHS: Ordinarily we don't want social
17 security numbers used for identification, but this is
18 one area where we do catch deadbeats. We do go to
19 driver's licenses.

20 MS. ROSAS: It was added to the driver's
21 license for that purpose.

22 MS. CONNELL: AB 1467 is Scott, and this is
23 an attempt to conform the federal treatment of
24 Puerto Rican affiliates, I believe.

25 I support this concept, but I think there are

1 problems with the bill. It needs to have some
2 significant amendments before I'm comfortable with
3 it. Where are you on it?

4 MR. KLEHS: Neutral.

5 MS. CONNELL: Then let's do neutral as
6 amended. What amendments would you suggest on this,
7 Johnnie?

8 MS. ROSAS: It's not really written in true
9 conformity style. It's very confusing the way it's
10 drafted. We would like to have them draft it into a
11 true conforming method.

12 MS. CONNELL: Well, why don't you -- I spoke
13 to Jack. Why don't you see if you can speak to him.
14 I think he's willing to consider some other
15 amendments.

16 MR. KLEHS: I think we also need to take a
17 look at, you know, there's -- does Puerto Rico have
18 tax laws which allows people to work below minimum
19 wage or any type of child labor where it allows them
20 these tax laws? We certainly don't want to promote
21 that.

22 MS. CONNELL: Havice, 1613, neutral.

23 1671, are you neutral on those?

24 MR. KLEHS: Yes.

25 MS. CONNELL: 1671, it's from the judiciary

1 committee. I would be neutral if amended.

2 MS. ROSAS: There were some concerns with the
3 way the --

4 MS. CONNELL: I'm a little confused. Help me
5 understand this. Is this one where the child support
6 comes ahead of taxes?

7 MS. ROSAS:: It creates an automatic lien,
8 and it's really structured so it's unclear how --
9 when it arises. We talked to the judiciary committee
10 and talked to the sponsors here, DSS. And I think
11 this is a requirement under federal law, but they
12 don't spell it out in this bill.

13 MS. CONNELL: Could you clarify? I think we
14 want to support it. I think both Johan and I would
15 be in support of this, but the language is very
16 confusing.

17 MS. ROSAS: It is. Support if amended to
18 sort of clarify?

19 MS. CONNELL: Yes.

20 AB 1697 is out of the Aging Committee.
21 Neutral. Are you neutral?

22 MR. KLEHS: Yes.

23 MS. CONNELL: SB 240, Speier. Can you go
24 through that with us?

25 MS. ROSAS: This is one that would do a

1 two-year pilot project for Los Angeles County only.
2 It again has the same problems with implementation.
3 We have to start January 1, 2000. We suggested
4 neutral if amended for all the same reasons as the
5 Kuehl bill.

6 MS. CONNELL: At least the neutral if
7 amended. You know, I think you're taking on the bear
8 when you take on L.A. County with this program.
9 Two-thirds of the problems are in L.A. County. And
10 to take on L.A. County as a pilot program, I mean,
11 this is just insane. I mean, the word "pilot" is
12 disingenuous in that circumstance. I mean, the vast
13 majority of the child support cases in the state.

14 Okay. SB 284, Kelley, neutral.

15 SB 542, Burton.

16 MR. KLEHS: Support.

17 MS. ROSAS: On this one -- Madam Chair, this
18 bill wouldn't put child support ahead of taxes. That
19 is one thing I did need to point out to you.

20 MS. CONNELL: We're going in that direction
21 anyway. If the amendments that we're talking about,
22 I would support the Burton bill.

23 MR. KLEHS: I support.

24 MS. CONNELL: We may actually get a support
25 on that one.

1 SB 680, O'Connell. Neutral.

2 MR. KLEHS: Support.

3 MS. CONNELL: That comes out as a neutral
4 then.

5 SB 887, Ortiz. Neutral. You recommended an
6 opposed. Why?

7 MS. ROSAS: Because of the disclosure issue.
8 We objected to disclosing taxpayer information in
9 this one because it's written in a faction. It's
10 looking for group home fraud, and we would have to
11 disclose if the Department of Social Services has --
12 reasonable suspicion. There is no definition of what
13 reasonable suspicion is. Under current law we have
14 to have probable cause to disclose something to the
15 district attorney, so providing something so
16 little --

17 MS. CONNELL: That does make me nervous.

18 MS. ROSAS: That was our objection.

19 MS. CONNELL: I would oppose it as well, I
20 think. I don't like to disclose any information. I
21 think it really questions our ability to have the
22 statement that we hold this information in confidence
23 unless required by law enforcement.

24 SB 934, Burton.

25 MR. KLEHS: Support.

1 MS. CONNELL: Supportive of that. SB 1016,
2 Bowen. Neutral.

3 Polanco, 1125.

4 MR. KLEHS: Support.

5 MS. CONNELL: I would support that, too. Why
6 were you neutral on that?

7 MS. ROSAS: We've had -- the board has taken
8 support positions in the past. I think way back when
9 staff had recommended a neutral -- we've recommended
10 neutral. Yes, and recommended opposed some years ago
11 on it. Staff has just not thought this was good tax
12 law because you'd be able to get an interest -- you
13 don't pay any taxes on it because you're getting a
14 deduction for something on which you pay no tax.

15 MS. CONNELL: I thought that was a fairly
16 good idea.

17 MR. KLEHS: It's a good bill, good author,
18 good idea.

19 MS. CONNELL: SB 1230.

20 That's Burton's bill. I thought we were
21 going to support this, but now you're telling us it's
22 no longer an FTB bill. What does that mean?

23 MS. ROSAS: They jerked the contents of the
24 bill, put it in one of the other tax committee bills
25 so that our proposal is still going, and they let

1 Burton have it to be used for --

2 MS. CONNELL: Why not just go with whoever is
3 the strongest author?

4 MS. ROSAS: This is when they needed --

5 MS. CONNELL: Am I missing something here? I
6 was delighted when the governor took my language from
7 my bill and included it in his budget trailer bill.
8 I think this is a win. If it's going to get done,
9 you know, we support this. Why not?

10 MS. ROSAS: Burton wasn't the author
11 originally. It was originally a committee bill.

12 MS. CONNELL: Well, let's just support this
13 one. You're in agreement on this?

14 MR. KLEHS: Well, you said there is nothing
15 in the bill right now.

16 MS. ROSAS: No, it's another voluntary
17 contribution. It's another one of the check-offs.

18 MR. KLEHS: Oh.

19 MS. CONNELL: It's for the peace officers.

20 MS. ROSAS: Peace officers.

21 MR. KLEHS: Oh, yeah. I'm for that.

22 MS. ROSAS: Okay.

23 MS. CONNELL: SB 1272, Ortiz. Neutral. Are
24 you neutral?

25 MR. KLEHS: Yes.

1 MS. ROSAS: And before you move on, can I get
2 you to go back and look at the Wertin proposal,
3 LP 9950, the one that Dave spoke to. We asked for
4 support so we can go forward and try to get a bill.

5 Can we -- I know you asked us to work with
6 Dave and try to get it amended. I fear we won't have
7 another board meeting before --

8 MS. CONNELL: Well, certainly. I think that
9 if we're trying to get it amended, we would support
10 it. It's a matter of record.

11 MS. ROSAS: The board has amended it, and
12 we'll run it past you.

13 MS. CONNELL: Right.

14 Okay. Now, where are we? Regulation
15 matters. We're going to have a status report now on
16 regulation matters, and I have two speakers for item
17 3-D. So when we get to 3-D, we will call on them.

18 We're now on 3-A, and, Ben, you're going to
19 present this item?

20 MR. MILLER: Yes, thank you, Madam Chair.
21 Ben Miller of the legal staff. Item A is just a
22 report on six items, two of which you authorized
23 before. Those have been submitted to OAL. The sales
24 factor extractive industry, I call it the business
25 activity. That should be final on July 9th.

1 The combined report mechanics material, you
2 authorized to go forward --

3 MS. CONNELL: Mr. Miller, can we interrupt
4 you?

5 MR. MILLER: Sure.

6 MR. KLEHS: I move to adopt the staff report
7 on 3-A.

8 MR. MILLER: Thank you.

9 MS. CONNELL: You have a restless group
10 coming out of your weekend.

11 3-B. We are now on the recapture of
12 deduction for qualified property previously used, and
13 do I have a motion to approve the regulation?

14 MR. KLEHS: So moved.

15 MS. CONNELL: It has been moved and
16 seconded.

17 Now we're going to move to 3-C, and I would
18 like to ask you gentlemen to join us. Martin, I
19 cannot read your last name.

20 MR. KLEHS: Helmke.

21 MS. CONNELL: Helmke.

22 Would you come up, please.

23 MR. HELMKE: I was on 3-D.

24 MS. CONNELL: Oh, you're on 3-D. Okay. Then
25 we'll wait for that.

1 3-C, can I have a recommendation?

2 MR. MILLER: If I could amend just the
3 statement a little bit, Madam Chair. What we could
4 do is post this on the web site, see if there is any
5 interest in the symposia bond. If there was not, we
6 would like to move directly into the regulatory
7 process.

8 MS. CONNELL: Do you have a problem with
9 that? Motion to approve? Okay. It's been moved.

10 We are now on 3-D. And, Martin, see, you sat
11 down way too soon. If you come forward, please, and
12 Eric Miethke, I believe, wanted to speak to this
13 measure as well.

14 We're now on 3-D for the audience. This is
15 proposed regulation 25106.5, combined report on Joyce
16 application tax credits and capital loss carryovers.

17 And, Martin, would you identify yourself for
18 the record and offer your testimony.

19 MR. HELMKE: Oh, Martin Helmke, Senate
20 Revenue and Taxation Committee. I just wanted to
21 offer the view that the credit sharing probably
22 requires legislation and can't be done by
23 regulation.

24 MS. CONNELL: Eric?

25 MR. MIETHKE: Well, I'll tell you what, would

1 you like to hear from Mr. Brownell and let me respond
2 to Mr. Brownell and Mr. Helmke at the same time?

3 MS. CONNELL: Okay, fine.

4 MR. BROWNELL: I'm Mike Brownell, Franchise
5 Tax legal. If you like, we can jump to the credit
6 issue. The original version of the credit regulation
7 E-3 provided that the -- reflected the department's
8 existing litigation.

9 MS. CONNELL: You can't just make a statement
10 and leave. This is just beginning. This is a tennis
11 match, you know. You hit the ball over the net. The
12 next person has a chance to return the volley, and
13 then you have a turn.

14 MR. BROWNELL: Industry objected to the
15 regulation that was proposed in December and directed
16 staff to work with industry representatives to
17 develop an alternative regulation which would allow
18 credits to be spread amongst members of a unitary
19 group.

20 Staff has met with industry representatives
21 on two occasions, on January 25th and June 15th, to
22 iron out technical issues with respect to the
23 industry's proposal. After the June 15th meeting a
24 few technical issues still remained outstanding.
25 Staff received a written industry response to the

1 outstanding issues on June 29th, 1999.

2 However, because that was just a week in
3 advance of this board meeting, we did not have enough
4 time to work out the draft regulatory language. Thus
5 this is, in essence, a work in process.

6 Staff still, however, continues to believe
7 that the concept of spreading tax credits between
8 unitary members is one which should be addressed at
9 the legislature. We have addressed those issues in
10 your submission to the board book. And if the board
11 members would care to discuss those, I would be happy
12 to do so.

13 However, if the board directs, we will
14 continue to work with industry representatives on
15 their alternative regulation, if you wish.

16 MS. CONNELL: Okay. Eric? We are speaking
17 to part two, applications of credits.

18 MR. MIETHKE: Sure.

19 MS. CONNELL: Members of combined group.

20 MR. MIETHKE: Let me state my name for the
21 record. Eric Miethke, M-I-E-T-H-K-E. And I'm with
22 Nielsen Merksamer, but today representing
23 Cisco Systems and which has been the lead company
24 which has pulled together a coalition of companies to
25 work on this issue of the proper treatment of

1 credits, tax credits.

2 You know, at the outset I feel a little
3 bit -- like this is a little bit of bait and
4 switch. The original direction of the board was to
5 meet with staff to work towards language to put
6 before the board. We thought as part of that process
7 there would also be, of course, some form of an issue
8 paper setting out what the staff's position is that
9 we could respond to. Apparently from Mr. Brownell's
10 comments, that was made part of the board packet. We
11 have seen nothing to that degree that we can respond
12 to along those lines.

13 So I was going to start out, though, by
14 complimenting the staff because the process is a work
15 in progress, but also we have been making significant
16 progress not only on the credit issue but on the loss
17 issue.

18 As a matter of fact, that's resulted in
19 perhaps two legislative proposals that will make the
20 loss issue completely disappear.

21 So I want to stress that the work, although
22 going at a slower pace than I think either staff or
23 us would like, it's still happening, and it is
24 bearing fruit and is resulting in I think that both
25 can be proud of.

1 Speaking both to Mr. Brownell and Mr. Helmke
2 about the legislative authorization issue, first of
3 all, any regulation that you would do would be a
4 general regulation that would only be applied when
5 the legislature has not spoken specifically.

6 In other words, if there are specific credits
7 and specific treatments of those credits within the
8 legislation, that would control over anything you
9 were to do on a regulatory basis. So certainly we
10 would not be in derogation of anything that the --
11 when the legislature has spoken clearly.

12 Now, with regard to do you have the authority
13 to do a regulation, in fact, there are two specific
14 yet related legislative or statutory provisions, both
15 25106.5 of the Revenue Tax Code, which gives the
16 board regulatory authority to not only deal with
17 income, income issues, but also tax liability issues
18 which is broad enough to include tax credits.

19 Also legislation carried by Mr. Klehs, which
20 we presented the legislative history to I think all
21 of you now, 23036(g) says that tax credits should be
22 apportioned on the basis of cost.

23 Now, cost in a unitary concept could mean a
24 whole number of things. But at the very least, if
25 you don't come up with some regulation in the area of

1 perhaps intrastate apportionment, just the existing
2 statutory language could be far worse because --
3 although people haven't focused on it to date -- it
4 does allow the president to be manipulated by people
5 between a unitary group manipulating the concept of
6 cost.

7 So far away from not having the authority to
8 do it, you may be wise to do so, because in the
9 absence of so doing, tax manipulation by taxpayers
10 could occur.

11 But I think rather than get into all this
12 now, we were under the impression, of course, that
13 this was not right to have this discussion now. What
14 we'd like to see is if indeed Mr. Helmke and
15 Mr. Brownell and this staff believe that there are
16 specific issues and problems that need to be
17 addressed, we'd like to see them and like to have an
18 opportunity to respond to them.

19 So from industry's perspective, what we would
20 like to ask the board to direct staff to do is, one,
21 continue the process in which we're engaged. Two,
22 draft language or get to the point where we have
23 draft language with as few technical disputes as
24 possible. Then have the staff develop an issue paper
25 on both the policy which they'd like to set before

1 you, and we can have an honest disagreement about
2 that. And then any remaining technical issues that
3 you would have to resolve in the interim. And then
4 just give us 30 days prior to the next meeting to
5 respond to that so that you have in essence those
6 fully flushed out before you so you can make a
7 decision with the fullest amount of possible
8 information.

9 That's what we'd ask. That's what we think
10 is consistent with the process.

11 MS. CONNELL: I don't have a problem with
12 deferring this to the next meeting.

13 MR. KLEHS: Oh, there's no reason to defer
14 it. Let's just take an action today.

15 MS. CONNELL: Well, I don't know that we have
16 language that we can adopt today, do we?

17 MR. GAGE: Madam Chair, maybe we can have
18 staff respond to both of the issues that Mr. Miethke
19 has raised in terms of first the issue of legislation
20 and the second issue in terms of the status of the
21 language.

22 MR. BROWNELL: Thank you, sir. The
23 legislature has responded on the notion of whether or
24 not credits should be spread amongst entities on we
25 think pretty much a credit-by-credit basis. There

1 are a number of occasions, for example, where credits
2 were specifically provided that credits would be
3 applied amongst the taxpayers of the unitary group as
4 if they were one taxpayer. Two of them was the prior
5 solar energy credit as well as the agricultural
6 irrigation credit.

7 On other occasions the legislature has
8 allowed credits to be spread amongst affiliated
9 entities not in regard to their unitary status.

10 In fact, on many occasions the legislature
11 has rejected taxpayers seeking legislation
12 specifically applying credits across unitary
13 members.

14 So instead of taking the perspective that
15 Mr. Miethke does, that the default position is the
16 board allowing the department to spread credits to
17 unitary members, we think the default position is
18 that the appropriated treatment of taxes, of credits,
19 is that unless the legislature specifically provides
20 tax credits or isolated to a specific legal entity
21 which incur the costs from which the credit was
22 applicable.

23 So we think the legislative history actually
24 points as a direction of legislative policy as
25 opposed to statutory authority, points toward

1 isolated credits and specific legal entity.

2 MS. CONNELL: We have no language today under
3 any case, do we?

4 MR. BROWNELL: Yes, we do. The language that
5 has been submitted to your board is the same language
6 that was offered by staff back in September. That
7 language would follow existing departmental
8 practice.

9 MR. GAGE: What's the status of any
10 legislation on this issue?

11 MR. BROWNELL: To my knowledge, there is none
12 on this issue.

13 MR. GAGE: I think my concern, Madam Chair,
14 is that I would not be -- I'd be very reluctant to
15 vote for regulation in this area for two reasons.

16 One is given the legislative history, is a
17 broad matter, and then more significantly the fiscal
18 effect that's been identified associated with the
19 proposal.

20 I think given that magnitude of the dollars
21 involved, that's really a matter that the legislature
22 more appropriately should be involved in in terms of
23 establishing as a priority for the expenditure of
24 funds, whether it's a direct expenditure or income
25 tax expenditure.

1 MR. KLEHS: I hope this doesn't give
2 Mr. Miethke a relapse of his flu, but I would also
3 support the position that each of these should be
4 done on a case-by-case basis in the legislation. I'm
5 prepared to vote today on the regulation.

6 MS. CONNELL: On a case-by-case basis?

7 MR. KLEHS: Yeah.

8 MS. CONNELL: So each industry will bring to
9 its own --

10 MR. KLEHS: On a bill-by-bill basis. I think
11 they have done that in the past.

12 MR. MIETHKE: Well, I don't think the issue
13 is whether the -- again, when the legislature does
14 speak, as it often does on a case-by-case basis,
15 that's not the issue. Those are resolved. But the
16 issue -- and there is an honest disagreement about
17 what, of course -- you're trying to ascribe action
18 to the legislature when no action has taken place.

19 So in other words, when the legislature is
20 silent, what does that mean? And that's what this
21 dispute is about. It is not when the legislature
22 acts on a case-by-case basis.

23 And again, you can make the equal argument
24 that the legislature in passing these tax credits is
25 trying to encourage people to engage in an activity.

1 If you want to further that activity, what you want
2 to do is make sure that the financial benefit of that
3 is realized or else you're frustrating the
4 legislature's intent in encouraging this activity in
5 the first place.

6 Other states, similar laws have had no
7 problem on an administrative basis coming to the
8 conclusion that intrastate apportionment of tax
9 credits is not only -- not only good policy, but in
10 some sense is fair treatment of taxpayers because
11 you're reaching beyond the individual company to
12 bring their income in.

13 So why not do the same with tax credits. And
14 you do the same thing with other types of costs.
15 Their operating costs, deductible costs, those are
16 determined on a group basis, too.

17 So there is a legitimate argument here. And
18 the fiscal argument is one that I think is something
19 I don't think it's been sufficiently flushed out
20 either. So all we're asking for is more time to
21 address these things.

22 MS. CONNELL: What is the status of the
23 Atkinson case?

24 MR. BROWNELL: It is currently in a
25 briefing. We have just received the appellant's

1 brief. As you recall, we won that case at trial
2 court level. We received the appellant's brief, and
3 we're preparing our response brief at this time.

4 MS. CONNELL: What's the relationship of that
5 decision to this matter today?

6 MR. BROWNELL: It depends on the scope of
7 this regulation if the board were to so act. If the
8 board were to allow credits to be spread amongst
9 unitary members, it would have to decide whether it
10 did so prospectively or retroactively. If it did so
11 retroactively, the effect would be to unplug the
12 results of the Atkinson case.

13 MR. MIETHKE: Well, one point, doesn't the
14 solar energy tax credit at issue in the Atkinson
15 case, is that not one of those statutes that has
16 specific language on how to deal with the -- isn't
17 that one of your arguments?

18 MR. BROWNELL: Yes, but it is also --

19 MR. MIETHKE: It would affect us.

20 MR. BROWNELL: If the -- depending on the
21 terms of the regulation. If the regulation were
22 broadly permissive of tax credits to be spread
23 amongst unitary entities, the language itself could
24 be resulting in unplugging the Atkinson case.

25 Of course we also argued -- the taxpayer also

1 argues that Atkinson spreads the credit as a matter
2 of law and, of course, affects the general principle
3 as a matter of law, then this regulation would also
4 affirm it. So it would have the effect of unplugging
5 the Atkinson case.

6 MR. MIETHKE: Not to the degree that there is
7 a specific statute that says it's to be treated
8 otherwise. I don't think you reached that
9 conclusion.

10 MR. BROWNELL: The statute in question in
11 Atkinson does not specifically provide otherwise.
12 The issue with respect to the treatment of a group of
13 corporations as if they were one taxpayer is in the
14 earlier version of a solar energy credit. For the
15 years at issue there was no specific mention. In
16 fact, all that happened in the years at issue was
17 that language was stricken from the earlier bill --
18 from the earlier statute.

19 So the taxpayers arguing on Atkinson,
20 therefore, they're not limited by their prior
21 legislative history.

22 MR. GAGE: Eric, the other states that have
23 established a policy in this area, they acted by
24 statute or regulation?

25 MR. MIETHKE: It's a mixture, honestly, but

1 most of them, it's administrative. I won't say most,
2 many of them.

3 MR. BROWNELL: We looked at one of those on
4 the list that Mr. Miethke described before, and it
5 was Illinois. Illinois specifically now has a joint
6 and several liability with respect to their
7 calculations now. Their methodology would not have
8 been as it is currently under current law. So
9 Illinois has changed their substantive law behind
10 it.

11 MS. CONNELL: Okay. Can I have a motion from
12 the board here unless there's more?

13 MR. KLEHS: I'll try this. I'll make a
14 motion we adopt the Joyce version of the combined
15 report, mechanics regulations as previously published
16 by the California Notice Register. It's a regulation
17 25106.5(c) through (e) except for 25106.5(e)(3).

18 MR. BROWNELL: Well, E-3 is the issue before
19 you now.

20 MR. KLEHS: Right. I don't want to adopt
21 that.

22 MR. BROWNELL: So you wish to carry that
23 issue over?

24 MR. KLEHS: No, I don't. My motion is not to
25 adopt that.

1 MR. BROWNELL: Do you wish to -- the motion
2 is, therefore, to reserve that issue on a
3 regulation?

4 MR. KLEHS: I don't have to say that in a
5 motion. I can just leave it like this. I mean, I'll
6 amend the motion, and we don't take it up again to
7 clarify.

8 MS. CONNELL: So your motion now is to --
9 why don't we take it in segmented portions. Why
10 don't we take it in A, B and C then. The first one
11 is the Joyce Finnegan motion. Why don't you just
12 take a motion and adopting the Joyce version of the
13 combined report, the mechanics regulation. Why don't
14 we take that separately. Is that okay?

15 MR. BROWNELL: Sure.

16 MS. CONNELL: That's the motion. And you
17 move to second that?

18 MR. BROWNELL: Yes.

19 MS. CONNELL: And the move is seconded, and I
20 think we have a unanimous vote for that.

21 So we're now on Joyce Finnegan. That has
22 been adopted.

23 Now we're on the application of credits
24 between members of combined group, which is the item
25 that we've been discussing at the table here.

1 Do we have a motion on that?

2 MR. KLEHS: I'll make a motion we do not
3 adopt 25106.5(e)(3) and end the discussion.

4 MR. GAGE: Second.

5 MS. CONNELL: It's been moved and seconded.
6 All in favor?

7 MR. KLEHS: Aye.

8 MS. CONNELL: I'll oppose that. I think we
9 should defer that issue to another meeting. Capital
10 loss carryover.

11 MR. KLEHS: Wait a second. Did you vote for
12 that?

13 MS. CONNELL: Yes.

14 MR. KLEHS: So my motion is not to carry it
15 over to another meeting.

16 MS. CONNELL: Right. I voted against your
17 motion. So we have two. Now we're on capital loss
18 carryovers and a combined report. Do we have
19 anyone -- no. Does anyone else need to speak to
20 this issue? I don't think so. Do we have a motion
21 on this?

22 MR. GAGE: Yeah, I'll make a motion.

23 MR. KLEHS: Seconded.

24 MS. CONNELL: That's been moved and --

25 MR. BROWNELL: What verification, Mr. Klehs?

1 This is in a different regulation two rather than the
2 main regulations where the Joyce Finnegan issue is.
3 So that issue would be to adopt -- the motion before
4 you would be to adopt -2G as it currently stands.

5 MR. KLEHS: Right. The Joyce version.

6 MR. BROWNELL: That specific aspect is not
7 part of Joyce. It's a separate issue. It's a
8 separate --

9 MS. CONNELL: Why don't you just approve the
10 staff recommendation.

11 MR. KLEHS: Yeah.

12 MS. CONNELL: Which modifies the pending LP,
13 as I understand. Isn't that right? Okay.

14 Do we have a motion on that?

15 MR. GAGE: So moved.

16 MS. CONNELL: We're modifying our motion so
17 the unanimous vote, it's going to be a modified
18 motion which approves the staff recommendation,
19 modifies the pending LP; isn't that right? So we can
20 clarify that there.

21 Okay. We're now on proposed regulation 2334,
22 tax clearance, authorization to proceed.

23 Ben, do you want to present this? I don't
24 believe there is anyone opposed to this issue, is
25 there?

1 MR. MILLER: I believe this is very
2 noncontroversial.

3 MS. CONNELL: Good. May I have a motion?

4 MR. GAGE: Motion.

5 MR. KLEHS: Seconded.

6 MS. CONNELL: All right. It's been moved and
7 seconded. It's a unanimous vote.

8 We're now on administrative matters. Item
9 four. We're on budget status of the fiscal year
10 1999-2000 budget. And we have a report?

11 MR. GOLDBERG: I'm sure I'll ask Titus to
12 speak to this. This is essentially under 4-A. It's
13 a report on the action that the legislature took most
14 recently with regard to our budget.

15 MR. TOYAMA: Titus Toyama, FTB chief
16 financial officer.

17 This is an exhibit that gives you a status of
18 where we are with respect to the current year 1999-00
19 budget. We have approved an operating budget of
20 369.2 million dollars for '99-00.

21 On this summary here, we talk about and
22 identify the major increases and decreases to our
23 budget. For example, we did get funding for a number
24 of technology projects being handled, et cetera. But
25 there were also a number of reductions to our

1 budget. This board approved a 1.4 million dollars in
2 performance audit savings. Those were taken out. We
3 did receive a reduction for audit program
4 positions, and merit salary adjustments were not
5 funded, et cetera.

6 So based on all these pluses and minuses, we
7 have a 369.2 million dollar budget for current fiscal
8 year.

9 MS. CONNELL: I have a question. Now, let me
10 understand this. The performance audit savings, was
11 it recognized -- were the savings recognized or were
12 they not?

13 MR. TOYAMA: The 1.4 million dollars was
14 actually reduced from our budget.

15 MS. CONNELL: What a glorified day this is.
16 This is such a wonderful day. Okay. I just wanted
17 to clarify that.

18 Do we have to take any action on this?
19 Obviously not, the governor has taken action. So
20 we're just asking for clarification here at this
21 point, is that it?

22 MR. TOYAMA: Yes.

23 MS. CONNELL: Is there anything else that you
24 need to share with us this morning, Titus?

25 MR. TOYAMA: Under tab two we have a listing

1 of the budget change concepts that staff is working
2 on right now. Towards the end of August we'll come
3 back to this board for your formal approval of the
4 BCPs.

5 At this point we want to just let you know
6 the different kinds of issues and items that we're
7 working on in terms of conceptals for the year
8 2000-2001 budget.

9 In general, they're in three categories. We
10 have our basic program maintenance workload growth
11 issues. We also have a number of BCPs that will
12 address the out year funding for projects or programs
13 that are currently approved.

14 There also are a number of things that we are
15 bringing forward as new items for your
16 consideration. You will have a chance to review and
17 approve all these.

18 MS. CONNELL: And Tim will have a second
19 chance. I think we have to move this forward. My
20 vote today does not reflect necessarily support for
21 any of these. It's just a support for the BCPs
22 moving toward. I think you have to have
23 authorization to begin preparing this. Am I
24 correct?

25 MR. TOYAMA: Yes.

1 MS. CONNELL: So our vote today simply gives
2 them authorization. We'll discuss them all in detail
3 as I assure you we have in the past. Our vote today
4 is really --

5 MR. TOYAMA: We have your concurrence for
6 staff to move forward in developing this proposal?

7 MS. CONNELL: Right. Now, let's move to B.
8 Facility action requests. Can we approve these
9 requests?

10 MR. GAGE: I move approval.

11 MR. KLEHS: I second it.

12 MS. CONNELL: It's unanimous. Annual network
13 wiring contract. Can you move --

14 MR. GAGE: I move approval.

15 MR. KLEHS: Second.

16 MS. CONNELL: That's unanimous.

17 We are now on an item that we have deferred,
18 the consideration of the state office building
19 adjacent to the FTB headquarters. This is phase
20 three. I think we have a number of people here today
21 who want to address this issue, although none of them
22 have checked in. It's a violation of our format
23 here, but I shall recognize them nevertheless.

24 MR. GAGE: Mystery guest.

25 MR. GOLDBERG: Let me, Madam Chair, if I

1 might, make introductions. We have two
2 representatives from the Department of General
3 Services. Lee Willabee and Crystal Waters, and
4 sitting in between them is Allen Hunter of my staff
5 who is subbing for Rich Draffin, who is on vacation.

6 MS. CONNELL: This is unfortunate you
7 introduced them. We were about to play what's my
8 line, trying to guess who our guests were before us.
9 Taking the fun out of the meeting here, Jerry.

10 MR. GOLDBERG: I'm sorry.

11 MS. CONNELL: Go ahead. I don't know which
12 one of you wants to begin, but you need to introduce
13 yourself for the record prior to speaking.

14 MR. WILLABEE: My name is Lee Willabee with
15 the Department of General Services. With me is
16 Crystal Waters, project director with -- also with
17 the Department of General Services.

18 MR. HUNTER: And Allen Hunter, assistant
19 executive officer Franchise Tax Board.

20 MS. CONNELL: We have the materials presented
21 before us, and you have been gracious enough to brief
22 all of us, I think, individually. There are a number
23 of scenarios, scenarios one through four.

24 I would like to have a motion as to which
25 scenario will be --

1 MR. GAGE: I'd like to divide the question on
2 scenario four, if I might. I'd like to make a motion
3 to authorize the staff to proceed with a lease for
4 the building, phase three, at the 58 percent level.
5 But I would like to separate that from the issue of
6 in effect implying that we're approving the
7 performance audit recommendations. I'd like to set
8 those aside for a moment.

9 What we want to do is have staff go ahead and
10 move forward with General Services for the purpose of
11 getting the building going on the performance audit
12 reductions if I might. I'm not comfortable at this
13 point with simply endorsing as a blanket motion the
14 action to reduce some 600 positions that the
15 Deloitte-Touche audit proposed last year.

16 We've looked at those. We're going to
17 continue to look at those. I've asked my staff to
18 take a look at particularly some concerns that we've
19 got with respect to staff that have been transferred
20 from audit positions to other positions within the
21 board. We'll be in the process of doing that audit
22 as we move through the fall. And I think that will
23 provide us with a better sense of what the potential
24 is for staffing reductions as a result of or in
25 concert with the performance audit recommendation.

1 In effect setting that aside as a future
2 endeavor, if you will, I'd make a motion that we
3 direct the staff to authorize the staff to work with
4 General Services to move forward on the 58 percent
5 space level at the phase three building.

6 MR. KLEHS: Second.

7 MS. CONNELL: I think we need two points of
8 clarification, which I think will be helpful for the
9 record. The 58 percent, is my understanding -- and
10 please confirm if I'm incorrect on this. It's my
11 understanding that the 58 percent represents the
12 consolidation of the FTB space as existing today in
13 all of its various locations plus increasing it to
14 whatever the requirement is under state clause, under
15 the SAM requirements; is that correct?

16 MS. WATERS: No, not the 58 percent.

17 MR. WILLABEE: The 58 percent consolidates
18 all the lease spaces.

19 MS. CONNELL: Right.

20 MS. WATERS: And implements the performance
21 of -- the recommendations of the performance audit
22 recommendations.

23 MR. CONNELL: Well, let me restate it. I
24 think that Mr. Gage and I are of the similar
25 assumptions that it is consolidating all of the

1 office space that the FTB has today and bringing it
2 up to the SAM requirements. The SAM is the
3 requirements as to the amount of square footage of
4 space that you have to have for employees at verified
5 classified levels.

6 Is that your understanding?

7 MS. WATERS: That part is correct.

8 MR. WILLABEE: Yes. That is correct.

9 Second, that we are not going to be the
10 signature on the bonds. We are a signature on the
11 lease that FTB is not standing behind the bonds but
12 standing behind a signature to the lease.

13 MR. WILLABEE: That is correct. The
14 Department of General Services.

15 MS. CONNELL: Right. So the Department of
16 General Services will actually be the name on the
17 issuance of the bonds at some point.

18 MR. WILLABEE: Yes.

19 MS. CONNELL: With that clarification, I'm
20 willing to vote for that motion. Is there a second?

21 MR. GAGE: Second.

22 MS. CONNELL: Now, he's taken that motion as
23 a unanimous motion to move ahead with leasing 58
24 percent of the building. Do we need to take any
25 other action?

1 MR. GAGE: No.

2 MR. WILLABEE: If I may clarify, so the staff
3 will be authorized to sign any interim document that
4 may be required by the Public Works Board to go to
5 the PMIB?

6 MR. GAGE: Maybe you could explain.

7 MS. CONNELL: What are the interim documents
8 that you expect to --

9 MR. WILLABEE: It's what's called a
10 construction agreement. This is what the Public
11 Works Board requires in order to pass a resolution to
12 go to the PMIB board to get an interim loan.

13 MR. GAGE: That certainly would be part of my
14 motion. That's what enables us to move forward with
15 the building.

16 MS. CONNELL: Well, I don't know how you
17 would expect us not to sign that. What I would want
18 is to just clarify that we are a tenant in this
19 building.

20 MR. WILLABEE: That's correct.

21 MS. CONNELL: That we are not guaranteeing
22 the loan of DGS nor are we guaranteeing the bonds. I
23 want to be absolutely clear on that. If you were
24 going to be taking all of your leases from various
25 tenants as a basis for securing a loan or a bond,

1 that is the decision of DGS. But I do not wish to
2 see the FTB's name on any loan or bond document.

3 MR. GAGE: I guess the only clarification I
4 would offer, Madam Chair, is that the 58 percent
5 level makes the Franchise Tax Board really the anchor
6 tenant for the building. So that the expectation is
7 that the lease payments will be made over a period of
8 years to retire the debt even though General Services
9 will actually be the signatory to the bond.

10 MS. CONNELL: I do not wish to be in support
11 of any method that ties us to a bond for a building.
12 So I need to have the motion clarified in such a way
13 that we are signing off as a board on the lease. And
14 that was our understanding, and that's what I want to
15 have written as the motion today.

16 MR. GAGE: Does that make sense?

17 MR. WILLABEE: Yes, it does.

18 MR. GAGE: Good.

19 MS. CONNELL: So the motion today is that we
20 are moving the FTB to take 58 percent of the
21 building, and so stated, and I think that is a
22 unanimous vote.

23 We will continue to debate the performance
24 audit. As one of the sponsors of the performance
25 audit, I feel we should move forward aggressively on

1 implementing the performance audit, so I will
2 continue to debate with my colleagues how fast and
3 how efficiently we can move that performance audit
4 along.

5 I don't feel that any action has been taken
6 today that in any way changes the nature of the
7 performance audit that we did last year. We'll just
8 have to decide how we're going to implement it as a
9 separate matter in the future.

10 MR. GAGE: I look forward, Madam Chair, to
11 having that continuing conversation.

12 MS. CONNELL: May take a period of years as
13 we move through.

14 MR. GAGE: I think our action today on the
15 building gives us the flexibility to accommodate
16 whatever implementation of the performance audit
17 recommendations or alternatives.

18 MS. CONNELL: It may be in other areas.

19 MR. GAGE: Witness our conversation on child
20 support.

21 MS. CONNELL: That's right. Jerry's a very
22 popular agency.

23 Thank you for your time.

24 MR. WILLABEE: Thank you.

25 MS. CONNELL: Executive author's response.

1 Jerry, would you answer that?

2 MR. GOLDBERG: I have but one item. I'm
3 going to let Mr. Toman report on it. It's with
4 regard to the Bureau of State Audit, audit of our
5 settlement bureau.

6 MR. TOMAN: For the record, Brian Toman,
7 T-O-M-A-N. Legal staff. The Bureau of State Audits
8 has completed its audit of the department's
9 administrative settlement program over the period
10 July '93 through June of '98.

11 The conclusion of the audit was that the
12 settlement program remains an important alternative
13 dispute resolution method. The program specifically
14 provides long-term benefits while resolving tax
15 disputes quickly, tax sustained rates comparable to
16 other dispute resolution methods, and it contributes
17 to the better working relationship between the
18 Franchise Tax Board and taxpayers. That's all.

19 MR. KLEHS: Perfect.

20 MR. GAGE: And I congratulate the staff on
21 the audit report. Makes for some very interesting
22 reading. My only regret with respect to some of
23 these cases is because of confidentiality, I can't
24 share them.

25 MS. CONNELL: It's always nice to know that

1 the audit agency is getting a clean audit. My
2 congratulations as well.

3 Board members time, we have some employee
4 recognition and resolutions, I believe.

5 Jerry, how would you like to handle those?

6 MR. GOLDBERG: With deference to the way
7 we've handled them in the past, I will read very
8 quickly the names of the members publicly.
9 Melody Aasletten, Clark Allen, Vadonna Carlson,
10 William Caul, Eileen Cartwright, Mark Cole,
11 Sheryl Ellis, Kent H. Evans, Frank Franco,
12 Kathy Gipson, Janet Hammond, Barbara Hanson,
13 Betty Kellogg, Emlio Martinez, Karl Munz,
14 Lyle Nicholas, Irma Oliver, Douglas Patrick,
15 Kerry Schultz, Cheryl Shaw, Kay Smith, Ina Tuck,
16 Joan Weber, Josephine Willey, Meredith Wyatt.

17 MS. CONNELL: Do we have a motion to approve
18 the employee --

19 MR. GAGE: So moved.

20 MR. KLEHS: Seconded.

21 MS. CONNELL: That is unanimous. We are now
22 going to move to closed session. I am required to
23 read the closed agenda in open session before closing
24 the session.

25 Our attendance today in closed session is the

1 settlement of administrative tax disputes which will
2 be item A. Item B is litigation matters before the
3 board, and item C will be personnel matters. Thank
4 you. The session has been closed.

5 (The proceedings adjourned at 10:38 a.m.)

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REPORTER'S CERTIFICATE

I certify that the foregoing proceedings in the within-entitled cause were reported at the time and place therein named; that said proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California, and were thereafter transcribed into typewriting.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 16 day of July, 1999.

Colleen M Blomberg
COLLEEN M. BLOMBERG, CSR No. 7012
Certified Shorthand Reporter
Certificate No. 7012