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**COMMISSION ON
STATE MANDATES**

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PUBLIC HEARING

COMMISSION ON STATE MANDATES



TIME: 9:30 a.m.

DATE: Thursday, July 28, 2011

PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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A P P E A R A N C E S

COMMISSIONERS PRESENT

DIANA DUCAY
(Commission Chair)
Representative for ANA MATOSANTOS, Director
State Department of Finance

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

WADE CROWFOOT
Representative for KEN ALEX, Director
Office of Planning & Research

FRANCISCO LUJANO
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

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



COMMISSION STAFF PRESENT

DREW BOHAN
Executive Director
(Items 7 and 19)

NANCY PATTON
Assistant Executive Director
(Item 17)

ERIC FELLER
Staff Counsel
(Items 3 and 4)

CAMILLE SHELTON
Chief Legal Counsel
(Items 9, 10, and 18)

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Items 3 & 4 (Employment of College Faculty
and Administrators)**

For Claimants:

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

For California Community Colleges, Chancellor's Office:

STEVE BRUCKMAN
Chancellor's Office
California Community Colleges
1102 Q Street, Fourth Floor
Sacramento, California 95811

For Department of Finance:

ED HANSON
Education Services Unit
Department of Finance
915 L Street
Sacramento, California 95814

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

Appearing Re Items 7 and 8 (Emergency Procedures)

For San Diego Unified School District:

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

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Items 7 and 8 (Emergency Procedures)

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office
300 Capitol Mall, Suite 725
Sacramento, California 95814

Appearing Re Items 9 & 10 (IRC - Handicapped & Disabled Students):

For State Controller's Office:

JIM L. SPANO
Chief, Mandated Cost Audits Bureau
Division of Audits
State Controller's Office

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1 BE IT REMEMBERED that on Thursday, July 28,
2 2011, commencing at the hour of 9:36 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:

6 *•••••*

7 *(The following proceedings commenced with*
8 *Richard Chivaro absent from the meeting room.)*

9 CHAIR DUCAY: Good morning. The meeting on the
10 Commission on State Mandates will come to order.

11 Drew, will you call the roll, please?

12 MR. BOHAN: Absolutely.

13 Mr. Chivaro?

14 MEMBER CHIVARO: Here.

15 MR. BOHAN: Mr. Crowfoot?

16 MEMBER CROWFOOT: Here.

17 MR. BOHAN: Mr. Glaab?

18 *(No response)*

19 MR. BOHAN: Mr. Lujano?

20 MEMBER LUJANO: Here.

21 MR. BOHAN: Ms. Olsen?

22 MEMBER OLSEN: Here.

23 MR. BOHAN: Mr. Worthley?

24 MEMBER WORTHLEY: Here.

25 MR. BOHAN: And Chair Ducay?

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1 CHAIR DUCAY: Here.

2 Okay, are there any objections to our -- I'm
3 sorry, I've got to do the minutes -- you have to excuse
4 me, this is my first time.

5 We have the first agenda item is the approval
6 of the minutes.

7 MEMBER WORTHLEY: Move approval, Madam Chairman
8 had.

9 MEMBER LUJANO: Second.

10 MEMBER OLSEN: Second.

11 MEMBER CROWFOOT: I'd ask to abstain.

12 CHAIR DUCAY: I do also.

13 Shall we call the roll?

14 MR. BOHAN: To create a quorum, we need four
15 votes.

16 CHAIR DUCAY: Yes, so we have to hold that item
17 over.

18 MR. BOHAN: Do you want to hold this item over?

19 CHAIR DUCAY: Yes. We'll hold that item over.

20 So Item 2, it will be looking at the Consent
21 Calendar.

22 On our Consent Calendar today, we have Item
23 Nos. 5, 6, 11, 12, 13, and 14.

24 *(Mr. Chivaro entered the hearing room.)*

25 CHAIR DUCAY: Are there any objections to the

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1 proposed Consent Calendar?

2 (No response)

3 CHAIR DUCAY: Do I want to wait, and go ahead
4 and call the roll again or go ahead and then we'll vote?

5 MR. BOHAN: Yes.

6 CHAIR DUCAY: Do we just have Mr. Chivaro...

7 MR. BOHAN: Sure. So I'll go ahead and call
8 the roll for this item; is that what you're saying?

9 CHAIR DUCAY: Yes, so then we have a quorum.
10 So he can go ahead and vote on it.

11 MR. BOHAN: Great.

12 MS. OLSEN: Do we have to have a motion for it?

13 MR. BOHAN: Are we still on item --

14 CHAIR DUCAY: We're still on item -- I just
15 thought we would -- if we are going to --

16 MR. BOHAN: Are we going back to the minutes?

17 CHAIR DUCAY: No, I'm just going to have --

18 MS. SHELTON: You can just note for the record
19 that Mr. Chivaro is present.

20 CHAIR DUCAY: Okay, we'll note for the record
21 that Mr. Chivaro is present.

22 MEMBER WORTHLEY: Madam Chair, do you want to
23 take up the matter of the minutes at this time then?

24 CHAIR DUCAY: No, we'll go ahead and finish
25 this item then.

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1 So did I have a motion?

2 MEMBER OLSEN: So moved.

3 CHAIR DUCAY: Second?

4 MEMBER WORTHLEY: Second.

5 CHAIR DUCAY: All in favor?

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

7 CHAIR DUCAY: Any opposed?

8 *(No response)*

9 CHAIR DUCAY: Okay, the motion carries.

10 Do we need to go back then and do the item on

11 the roll?

12 MR. BOHAN: That's probably a good idea.

13 Shall I read the roll?

14 MS. SHELTON: No, she's at the minutes now.

15 MR. BOHAN: We're back to the minutes?

16 CHAIR DUCAY: Just the minutes? Just go back

17 to the minutes?

18 MR. BOHAN: So we have a motion, we have a

19 second. So we'll take a vote on the minutes.

20 CHAIR DUCAY: On the minutes, do we have any --

21 we need your approval on the minutes.

22 MEMBER CHIVARO: *(Nodding head.)*

23 MR. BOHAN: Mr. Chivaro?

24 MEMBER CHIVARO: Aye.

25 MR. BOHAN: Mr. Crowfoot?

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1 MEMBER CROWFOOT: Abstain.

2 MR. BOHAN: Mr. Lujano?

3 MEMBER LUJANO: Aye.

4 MR. BOHAN: Ms. Olsen?

5 MEMBER OLSEN: Aye.

6 MR. BOHAN: Mr. Worthley?

7 MEMBER WORTHLEY: Aye.

8 MR. BOHAN: And Ms. Ducay?

9 CHAIR DUCAY: Abstain.

10 MR. BOHAN: The motion carries.

11 CHAIR DUCAY: We'll move on to Item 3.

12 MR. BOHAN: Okay, the Staff Counsel Eric Feller
13 will present this item. It's on the program *Employment*
14 *of College Faculty and Administrators*. And it's a test
15 claim.

16 MR. FELLER: Good morning.

17 This test claim alleges various activities
18 related to determining the minimum qualifications for
19 academic employees in community colleges as well as for
20 creating hiring procedures, evaluating faculty, and
21 providing tenure grievance procedures and faculty service
22 areas.

23 The main point of dispute is that there is no
24 substantial evidence that claimant has incurred costs
25 mandated by the state.

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1 This claim is unique because of a statute that
2 requires the districts to use their allocation to
3 initially reimburse state mandated local program costs
4 for the test-claim provisions. This allocation was built
5 into the district's base budget for subsequent years.

6 The Legislature has approved between
7 \$2.1 billion and \$3.9 billion for local assistance for
8 community colleges each year of the test claim's
9 reimbursement eligibility from 2001, onward.

10 For these reasons, staff found no substantial
11 evidence that claimant has incurred costs mandated by the
12 state.

13 Claimant disagrees with this conclusion as well
14 as others in the analysis. Because of claimant's late
15 filing, a revised staff analysis was prepared, and is
16 before you.

17 Staff recommends that the Commission approve
18 the revised analysis to deny the test claim.

19 Would the witnesses and parties please state
20 your names for the record?

21 MR. PETERSEN: Keith Petersen, representing the
22 test claimant.

23 MR. BRUCKMAN: Steve Bruckman, California
24 Community Colleges, Chancellor's office.

25 MR. HANSON: Ed Hanson, Department of Finance.

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1 MS. FERBEE: Donna Ferebee, Department of
2 Finance.

3 MR. BOHAN: And, Madam Chair, I should at this
4 time swear in the witnesses that are present and everyone
5 here who wishes to testify.

6 CHAIR DUCAY: Okay, thank you.

7 MR. BOHAN: Thank you.

8 Would the parties and witnesses for Items 3, 4,
9 7, 8, 9, and 10, please rise?

10 Do you solemnly swear or affirm that the
11 testimony which you are about to give is true and correct
12 based on your personal knowledge, information, or belief?

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

14 MR. BOHAN: Thank you.

15 CHAIR DUCAY: Mr. Petersen, would you like to
16 begin?

17 MR. PETERSEN: I'm willing and ready to proceed
18 on the written submissions, and I can respond to any
19 questions you may have.

20 CHAIR DUCAY: The Department of Finance?

21 MS. FERBEE: The Department of Finance concurs
22 with the revised final staff analysis.

23 CHAIR DUCAY: Does anyone else wish to speak?

24 *(No response)*

25 CHAIR DUCAY: No one else?

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1 Are there any questions from the members on
2 this item?

3 MEMBER CHIVARO: I'll move staff
4 recommendation.

5 MEMBER OLSEN: Second.

6 CHAIR DUCAY: Okay, I have a motion to move to
7 adopt the staff recommendation.

8 All in favor?

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

10 CHAIR DUCAY: Any opposed?

11 *(No response)*

12 CHAIR DUCAY: So moved.

13 Item 4?

14 MR. FELLER: Unless there is objection, staff
15 recommends that the Commission adopt the revised proposed
16 Statement of Decision that reflects the Commission's
17 decision on Item 3 to deny the test claim.

18 Staff also recommends the Commission allow
19 minor changes to be made to the proposed decision,
20 including the witnesses, hearing testimony, and the vote
21 count that will be included in the final decision.

22 CHAIR DUCAY: Any comments from the parties on
23 this item?

24 MR. PETERSEN: No.

25 MR. FELLER: No.

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1 CHAIR DUCAY: Any questions from the members?

2 MEMBER CHIVARO: I move adoption of the
3 proposed Statement of Decision.

4 MEMBER CROWFOOT: Second.

5 CHAIR DUCAY: Any other further discussion on
6 this item?

7 *(No response)*

8 CHAIR DUCAY: Okay, all in favor?

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

10 CHAIR DUCAY: Moving on to Item 7, the
11 *Emergency Procedures for Earthquake and Disasters.*

12 MR. BOHAN: All right, Madam Chair, this is an
13 incorrect reduction claim. And I'll be doing the
14 presentation.

15 And what I wanted to do, was briefly just
16 outline the four main issues in this matter. It's an
17 incorrect reduction claim over two fiscal years for a
18 total of about \$1.2 million.

19 And there are four issues. And staff's
20 recommendation is that you rule in favor of the
21 Controller on three of those issues and the claimant on
22 one of those.

23 The first issue involves the nature of the
24 program. And the Controller reduced the claim based on
25 the fact that the claimant included costs that didn't

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1 have anything to do with earthquake emergencies. They
2 had other emergencies. But it was the belief of the
3 Controller that the statute only allows for earthquake
4 emergency.

5 Staff agreed, and believes and recommends that
6 you rule in favor of the State Controller on that issue.

7 The second issue involves a reduction of
8 \$175,000, give or take, just below that. And this was
9 reduced based on the fact that the parameters and
10 guidelines explicitly stated that you were not allowed to
11 get reimbursement for in-class instruction. And
12 explicitly on the data submitted by the claimant, was
13 \$175,000, almost, in in-classroom time instruction.
14 So the Controller denied that. Staff agrees.

15 Third, which is a contentious issue and one
16 that staff struggled with and think reasonable minds
17 could disagree on, but we felt we made what we thought
18 was the best recommendation in a difficult environment,
19 and that involves a reduction based on the quality of the
20 data submitted for reimbursement.

21 The Controller felt that it was lacking. Staff
22 agreed that it was lacking, but felt that the parameters
23 and guidelines, which provided the notice to the claimant
24 as to what they were required to do in order to get
25 reimbursed, were similarly vague, ambiguous, and not

1 clear. And so, therefore, we felt that they weren't put
2 on notice -- they, claimant -- that they needed to do
3 anything more than what they did; so we ultimately felt
4 that the Controller was incorrect, and recommend that you
5 so find, and require that the Controller go back and
6 reinstate on that basis.

7 And finally, the fourth issue involved the
8 jurisdiction of the Controller to conduct an audit. The
9 statute provides a time frame within which the audit must
10 begin or be conducted. And there was an argument about
11 what that meant.

12 Staff concluded that the Controller's
13 interpretation was the correct one and that they had a
14 two-year period within which they had to initiate the
15 audit, not complete it. Therefore, the audit was timely,
16 and it could go forward.

17 And those are the four issues.

18 Thank you.

19 CHAIR DUCAY: Okay, do we have any testimony on
20 this issue?

21 MR. PALKOWITZ: Yes.

22 Good morning. My name is Art Palkowitz. I'm
23 here on behalf of San Diego Unified School District.

24 MR. SPANO: And I'm Jim Spano with the State
25 Controller's office, Division of Audits.

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1 CHAIR DUCAY: Okay.

2 MR. PALKOWITZ: Good morning.

3 As pointed out, the issues -- I would like to
4 just quickly address the issues that we agree with and
5 then the ones that we oppose.

6 Regarding the claim, as was mentioned, District
7 staff did include procedures -- or activities, rather --
8 that involved other emergency procedures other than
9 earthquakes at that time.

10 The District wasn't clear that other procedures
11 or activities were not covered. And subsequently, the
12 State Controller asked that the parameters and guidelines
13 be amended. So I think there was some justification in
14 that ambiguity notwithstanding the fact that the District
15 agrees that activities that did not involve earthquakes
16 should not be reimbursable.

17 The District also agrees that the classroom
18 teacher time that was included should not be part of the
19 claim.

20 I think this incorrect reduction claim helps
21 focus in on the challenges that school districts have.
22 In filling out the forms, San Diego Unified has over
23 150 schools, different sites.

24 What they did is they received documentation
25 from many school sites, and then did a statistical

1 analysis of that, came up with an average and a median,
2 and used that as part of their reimbursement claim.

3 The hours, for example, for principals were
4 seven, for an average, and five hours for a median; and
5 yet the District only claimed two, in an effort to be
6 reasonable about what they claim, and understand that
7 they didn't have statistical information from every
8 school, but used that as they felt was reasonable.

9 You know, here we are, a decade later, and I'm
10 trying to reconstruct what happened. Many of the
11 witnesses are retired, enjoying life, and unable to help
12 me respond to this.

13 But I think part of the problem is that we are
14 now ten years later -- lawyers, auditors -- analyzing
15 what the District staff did and trying to recreate. And
16 it really highlights that the problem is that school
17 staff is not hired to fill out forms to meet the
18 standards of lawyers and auditors.

19 And I think this case helps to show, as the
20 Commission recommends, that there is documentation that
21 can be interpreted as being reasonable. And based on
22 that, the entire claim should not have been dismissed.
23 And the part that should be sent back for analysis by the
24 State Controller would deal with the activities that are
25 reimbursable. So we support that conclusion, and

1 hopefully that will work out fine.

2 Then the last issue I'd like to address is the
3 statute that discusses, on page 20, the period of time --
4 that's page 20 in the staff analysis -- the period of
5 time of when an audit should be done.

6 This statute, 17558.5(a) of the Government
7 Code, states: "*The reimbursement claim for actual costs*
8 *filed by the local agency or school district pursuant to*
9 *this chapter is subject to audit by the Controller no*
10 *later than two years.*"

11 In these facts, the Controller started the
12 audit within the two-year period. However, it was not
13 completed until sometime after the two-year period. And
14 that has been interpreted that the two-year period means
15 that it should be initiated during that time and not
16 completed.

17 And I think when we look back at the other
18 issues in this case, we see how difficult it is when a
19 period of time goes by, that the claimant is unable to
20 speak to the witnesses that did the claim.

21 If we interpret that "*subject to audit*" to mean
22 initiate, so hypothetically, it could initiate within two
23 years and it could be going on for another decade. And
24 here is the problem that the schools have, is that
25 they're not able to respond to questions that are brought

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1 forward by the Controller in doing that.

2 We feel "subject to audit" means that's the
3 period of time they're to take place during the audit,
4 not the period of time to initiate the audit. Otherwise,
5 they would have said "initiate the audit."

6 So we would believe that the period of time to
7 conduct the audit for the 1996-97 period had lapsed when
8 the Controller completed the audit. And, therefore,
9 their findings should be stricken as it was not done
10 timely.

11 Thank you.

12 CHAIR DUCAY: State Controller?

13 MR. SPANO: The State Controller's Office,
14 there were four issues addressed by Mr. Bohan, and we
15 support the first issue, non-earthquake activities are
16 not allowable. We also support the position related to
17 classroom teacher time not being allowable.

18 Relating to issue number three, we agree that,
19 take a second look at the documentation as the Commission
20 is recommending that it be remanded back to the
21 Controller to reconsider in light of their analysis. And
22 we agree to do that.

23 Regarding the fourth issue, we actually support
24 the Commission's analysis, that two years is actually to
25 initiate. Otherwise, delays on the part of a claimant is

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1 going to provide us -- will actually result in the
2 statute of limitations expiring and us not being able to
3 complete an audit at all.

4 There is no -- so we think that is a reasonable
5 interpretation; and we support the analysis done by the
6 Commission on State Mandates.

7 CHAIR DUCAY: Okay. Do members have any
8 questions of the witnesses?

9 MEMBER WORTHLEY: Madam Chairman, I do have the
10 concern raised by the claimant that if we say "initiate"
11 and then it takes another two years to do the audit, how
12 does that get resolved? I mean, if it's a matter of
13 commencing it within the two-year frame and then readily
14 completing the audit within a reasonable period of time,
15 then that's one issue. But if it becomes a gaming
16 situation of, "We'll begin the audit, we've met the
17 standard, and now we'll set it aside and deal with the
18 next emergency, and when we get around to it, we'll get
19 around to it." And I think the problems that the
20 claimant have stated are very real. That is, the longer
21 the time goes by, the more difficult it is to really deal
22 with these issues.

23 So I'm just curious how that is handled by our
24 staff, or how we think the law deals with that particular
25 issue, if it does.

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1 MR. BOHAN: We struggled with this one, and it
2 almost became an office joke, the "subject to audit,"
3 what does this mean? We couldn't figure out what it
4 meant, and different folks had different interpretations.

5 I got to be best friends with the folks over at
6 the archives, because I've spent a lot of time over there
7 going through and trying to find the entire history,
8 which I did.

9 And while on the one hand, as the claimant's
10 representative states and as you reiterate, if it just
11 meant initiate, that means you could initiate it within
12 that period and you could spend ten years, twenty years,
13 forever, and never complete the audit. That's true.

14 On the other hand, it already said "initiate"
15 for the second sentence. The first sentence deals with
16 the situation where there's no appropriation. The second
17 situation deals with where there is. So if it was
18 absurd, it was absurd already.

19 Moreover, subsequent to this statute, it was
20 amended to say "initiate." And we found that to be
21 persuasive -- not conclusive, but persuasive -- that that
22 was a clarification absent there was no legislative
23 history, rather than a change in policy, that it was just
24 a clarification.

25 When that was then the law, a couple years went

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1 by, and still, you had this result where they could
2 initiate within the period, and they could take
3 forever -- or never actually complete it.

4 Then it was amended again to say, "In all
5 events" -- and I don't remember -- it's the current
6 law -- that in all events, the audit must be completed
7 within, I think it's four years. So two years to
8 initiate, four years to complete.

9 So while I think it's true that it's ambiguous,
10 and we thought this wasn't an easy call as between you
11 could rule against staff and I think you'd be reasonable,
12 we thought the better argument was the one we put forth.

13 CHAIR DUCAY: Any questions?

14 MR. PALKOWITZ: If I may say, the statute does
15 say "*subject to audit.*" And I understand counsel's
16 arguments. And we're looking at extrinsic evidence to
17 try to interpret that "initiate" is not -- doesn't say
18 that in this statute.

19 And in this case the funds were appropriated.
20 So why are we looking at the "initiate" language that
21 refers to no funds appropriated?

22 And why is an ambiguity interpreted against the
23 claimant?

24 The State, who drafted this, should be the one
25 who is interpreted against versus the -- State Controller

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1 is the "State" that means, and not the school state.

2 MEMBER CROWFOOT: Not to create a
3 back-and-forth, but would you want to respond to either
4 of those comments?

5 MR. BOHAN: Sure.

6 As to the "why not go against the state versus
7 the locals," I would reject that as a lens to view this
8 through it. The "State" isn't the same state that passed
9 the law. I mean, the Legislature does what it does, and
10 it binds various players.

11 I wouldn't look at the "State" as being the
12 Legislature.

13 As far as the ambiguity being resolved, I'm not
14 sure what the first point was.

15 MR. PALKOWITZ: Well, I think what I really
16 want to field the argument is that the language says "is
17 *subject to audit.*" And what you have done, in your due
18 diligence, is looked at the other sentence that it deals
19 with "initiate," where I don't believe that's appropriate
20 to apply that because funds were appropriated in this
21 case. And that sentence deals with "no funds were
22 appropriated."

23 And then you've looked at subsequent statutes
24 that try to indicate, or do indicate, that there was an
25 ambiguity, and then the Legislature tried to resolve it.

1 But if we're looking at the sentence that's
2 applicable here, at the time of when this took place, it
3 says "*subject to audit.*"

4 And to look at extrinsic evidence in an attempt
5 to interpret that, I don't feel we -- I think that
6 sentence should stand by itself.

7 MR. BOHAN: Well, the way I would respond to
8 that point is, we agree that "*subject to audit*" isn't
9 clear. And the question is, the general approach in
10 constitutional law -- and my chief counsel will correct
11 me if I'm wrong -- is if the law is clear on its face,
12 you don't look to extrinsic evidence, you just use the
13 law that's there if it's not clear. And so if your
14 judgment is "*subject to audit*" is clear and it could mean
15 nothing else other than complete the audit within that
16 period, then you should rule against staff.

17 And we didn't see it that way.

18 Again, we think reasonable minds can differ;
19 but we thought it was unclear, and it could mean more --
20 you know, one or more things.

21 And so we looked to the second sentence for
22 guidance, and we go through, one could argue, a tortured
23 analysis -- I thought it was thoughtful -- but we tried
24 to get to why we thought the second sentence informed to
25 the first one rather than contrasted with it.

1 And then as I said, we did look at the
2 subsequent history, and the suggestion to us was strong
3 that the change was an intent to clarify. And when that
4 happens, the cases we cited say that that means that's
5 what the law always was. It always meant "intent" when
6 the Legislature is clarifying.

7 Now, you could reject that that's what the
8 change did, because it didn't say in the legislative
9 history "We are hereby clarifying this." And so that's
10 how we got there. We thought when you look at everything,
11 the better argument was that it meant intent.

12 And we also thought, what would be a rational
13 reason for distinguishing between the two? Why would it
14 initiate within a two-year period, on the one hand, and
15 conclude in the two-year period on the other hand? We
16 couldn't see any logical distinction between the two.

17 So for those reasons, that's how we came to
18 where we did.

19 MEMBER WORTHLEY: I guess you made a point,
20 Drew, that I was curious about. Because in your
21 exhaustive analysis and the examination of this issue, it
22 made a change, but it didn't expressly state anywhere in
23 the arguments that it was a clarification. Why would you
24 not, on the other hand, consider that to be a change?

25 In other words, there was revealed to be a

1 problem that, you know, this was -- reasonable minds
2 might think that, as the claimant did, that it meant
3 completion within a two-year period. It says, "subject
4 to audit." An audit's not an audit until the audit is
5 completed; so, therefore, it needs to be done in a
6 two-year time frame.

7 And then they go back and they change it,
8 subject to initiation. Well, that could be seen not as a
9 clarification but as a change of policy -- a major
10 change.

11 And I don't know, why would you throw -- why
12 would you disregard that kind of an argument?

13 MR. BOHAN: Well, as I said, we looked at five
14 or six main data points that we thought informed the
15 conclusion we came up with. And one of them was the one
16 you're speaking to, which was the change in law.

17 And there was no legislative history to suggest
18 whether they intended it to be a change in law or they
19 intended it to be a clarification.

20 And so we had to make a judgment based on all
21 the other data points. Because just like we felt
22 "subject to audit" was reasonably susceptible, meaning
23 initiate or complete, it just said "subject to." It
24 doesn't say -- in our judgment, we thought you add the
25 other ones together, they all mitigate it in favor of the

1 conclusion that it was initiate. So that's why we
2 decided that way.

3 But as I say, yours is not an unreasonable
4 interpretation in our judgment.

5 MS. SHELTON: Can I just add one more point
6 that hasn't been discussed yet?

7 If this were to go to court, a court could look
8 at the agency that is implementing the statute. And
9 that's the State Controller's Office.

10 The State Controller's Office has interpreted
11 that provision the same way that we have in the staff
12 recommendation.

13 The Court could give the Controller's
14 interpretation great weight and rule in that favor.

15 You know, here, we definitely have a balancing
16 situation. There's information on both sides. And it is
17 ambiguous, and it's a tough call. And so those were the
18 factors that we used to weigh this case.

19 MEMBER WORTHLEY: My only comment about that
20 is that we know how the Controller is going to interpret
21 anything under any circumstance. So I don't know what
22 that means.

23 MS. SHELTON: Well, you know, but it's
24 interpreting their duty to audit.

25 MR. PALKOWITZ: I had a -- I'm sorry.

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1 CHAIR DUCAY: Coming from an audit background,
2 this is not a new discussion. It comes up in almost --
3 probably any type of audit situation. And there's a lot
4 of statutes out there worded very similarly.

5 In your analysis, did you look at any other
6 types of statutes out there that are worded similarly,
7 where court cases or challenges have come up where there
8 has been any decision in regards to initiation,
9 completion? Because this is -- this is pretty much
10 standard in a lot of areas where the state is auditing.

11 MR. BOHAN: You know, we did, and we didn't
12 find anything. That may speak more to our research than
13 to the existence of things. But we thought we looked
14 hard. And I think what made this situation unique is the
15 Legislature's, one could argue, dubious choice of that
16 phrase, "*subject to audit*," and it's created all this
17 confusion.

18 And it's quite easy, as you know, in Westlaw to
19 search that phrase. And we did that, and we looked at
20 things. And as I say, we just didn't find anything that
21 was a close-enough parallel to be useful. And we decided
22 the stuff that we thought was useful.

23 MR. PALKOWITZ: If I may add a final comment?

24 And my memory is not accurate to a decade ago,
25 but during this period of time, it might have been

1 before, it might have been after, at least one year the
2 State Controller in December, when audits were to be
3 initiated by the end of December, sent out statewide
4 letters, saying, "We are about to begin an audit. Give
5 us a call." And that was an attempt to initiate an audit
6 within the period of time under the statute.

7 Now, I can't honestly testify that the "*subject*
8 *to audit*" was a result of that and language was changed;
9 but that is part of the challenges, when you use the word
10 "initiate." And, once again, the sentence that applies
11 to this situation is "*subject to audit*."

12 Thank you.

13 MR. SPANO: Just from an audit perspective,
14 I'm not aware of that situation, which we sent out mass
15 letters in December to preserve our statute of
16 limitations.

17 MEMBER OLSEN: I'm troubled by the concept. I
18 mean, often Ms. Shelton quotes to us the idea of the
19 plain language, okay. And what I'm troubled by is in the
20 two sentences right next to each other, there is plain
21 language on the one, "initiate the audit." And the
22 Legislature could certainly have used that same language
23 in the first sentence but chose not to.

24 I mean, we have to assume again, under plain
25 language, that they chose not to. It's not an oversight.

1 They weren't trying to be ambiguous. This was a choice
2 the Legislature made.

3 And given that, it seems to me that there is a
4 difference between those two sentences and they need to
5 be interpreted in different ways.

6 MR. BOHAN: And that's a fair point, and we
7 tried to be evenhanded in this. In fact, we made that
8 point in the analysis, as you may have seen. And we also
9 cited a case that stands for the proposition that, often,
10 there is a presumption in viewing legislative language
11 that when one word is used in one part and another word
12 is used in another part, the intent, when there's a
13 different word, is to convey a different meaning.

14 So I think your point is a valid one. And we
15 thought that was a point that cut in favor of the
16 interpretation offered by the claimant.

17 On balance, we thought the other points that
18 I've raised cut the other way.

19 I would also suggest, as the Chair asked about
20 looking for other things, we did find in the legislative
21 history, and we quote this in a long footnote, stuff that
22 could kind of go either way. And there was something
23 that -- there was a suggestion that this approach was to
24 be considered similar to the way in which the IRS -- or
25 is it BOE, the state's IRS -- conducts reviews of tax

1 returns.

2 And if that comparison is apt -- and this was
3 a sliver of something in an off-comment, so this is not
4 entitled to very much weight -- if you did make the
5 comparison, though, in those instances, generally it is
6 required that the review of your taxes, in that case, is
7 completed within that time frame.

8 So it does cut in favor of -- the other way.
9 But we thought those were not very much because they
10 didn't really indicate that was the intent.

11 MR. SPANO: Also, as Drew said earlier, that
12 during their audit process, there was concerns that it
13 was open-ended; that there was no time period for us to
14 complete the audit. And the following year, the statute
15 was changed that says we must complete an audit within
16 two years. So that he mentioned from the time that we --
17 the following year, it says, that we must initiate an
18 audit within two years and complete it by two years from
19 the time we initiate it.

20 So there was concerns about us not being able
21 to have open-ended audit authority and not able to
22 complete it. And that second part of it gave us closure
23 on a particular audit that's initiated.

24 CHAIR DUCAY: Anything else on this issue?

25 *(No response)*

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1 CHAIR DUCAY: My issue I want to discuss was
2 surrounding the documentation and what should be adequate
3 documentation, or at least some documentation.

4 While I agree with the analysis that the
5 guidelines weren't clear regarding documentation, I think
6 that some documentation, albeit, you know, maybe even a
7 piece of paper, should have been provided in order to
8 justify claims. In this particular case, there was only
9 about half of the claims that had any documentation,
10 albeit good or bad. And I have a concern with providing
11 funding for something that doesn't have any
12 documentation.

13 And whether or not even what was provided, I
14 wasn't clear on the statistical validity of extrapolating
15 something that really wasn't very detailed or could or
16 could not have been deemed adequate for extrapolation.

17 So if you could kind of maybe spend a little
18 bit of time talking about why it kind of went down that
19 path versus providing some documentation, albeit minimal,
20 at best, for the other half of the claims.

21 MR. BOHAN: Sure. I think there were two
22 points that were the main ones that drove us in the other
23 direction. The first was -- and we repeated it a number
24 of times in the analysis -- is -- I want to find the
25 language here.

1 I'm going to go to the second one first and ask
2 Camille to find the language -- that that's really what
3 we hung our hat on in the P's & G's.

4 The second point that I'll address first is --
5 and the Controller is here, and maybe they can clarify
6 this -- we took a quote out of a 2010 appellate court
7 case in California called *Clovis*, and it suggested, and
8 we quoted it, that this was not uncommon, that the
9 Controller's office would allow no documentation, and
10 allow the quote -- the quote is, I'll read it to you, it
11 says: The State Controller's office allowed
12 reimbursement for employees' salary and benefits costs
13 based on" -- this is the quote -- "an annual accounting
14 of time determined by the number of mandated activities
15 and the average time for each activity."

16 That suggests that they weren't holding
17 claimants to a rigid standard of, "You need a document
18 to support each claim if there's a cluster of them
19 together."

20 And similarly, the Controller argued in their
21 papers, that they allow for time studies and statistical
22 analyses to be performed, but this one wasn't sufficient.

23 But they didn't say exactly what they needed to
24 be sufficient, but that certainly implied that there are
25 cases, and maybe it's even routine, where they allow lack

1 of or no documentation to be okay as long as you've got
2 some basis upon which to say, "All right, this is what in
3 this case half the schools did. We can extrapolate from
4 that point."

5 They didn't allow it here, but we thought:
6 Well, then you're saying it's okay, Controller, to do
7 that. You just don't like the methodology here.

8 So we thought that it was something the
9 Controller allowed. And given their very poor -- given
10 that language of the P's & G's -- no, that's not it --
11 the P's & G's basically said, you have to produce some
12 documents that -- first of all, it said "may," it didn't
13 even say "shall." The P's & G's said "You may produce
14 documents that show evidence that you performed these
15 activities." And they could be work sheets and other
16 things.

17 Well, they submitted work sheets. They were
18 evidence. We spent a lot of time talking about the
19 validity, because we think it's questionable. But we
20 thought -- we concluded; we thought it was good enough to
21 meet a very weak standard. So we struggled the way you
22 did, but that's how we came down.

23 CHAIR DUCAY: Controller, can you elaborate on
24 that?

25 MR. SPANO: Sure.

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1 During the audit process right now, the
2 District did try to initiate a time study from individual
3 school sites. I think for one year, there was 169 school
4 sites. They asked the school sites to complete some type
5 of time survey to be submitted. And what they did is
6 they went out and used whatever one was submitted.

7 There was a methodical process in which they're
8 saying that we're going to sample 10 percent of the
9 school sites randomly and we're going to apply the
10 results right now.

11 So it was whatever school sites came in, that's
12 what we're going to go ahead and use and project into the
13 population.

14 But then when the District claimed the costs,
15 they ignored that because they felt that the information,
16 I think, was somewhat weak right now because there was a
17 lot of variation between -- like, in some cases, the time
18 varied -- in some cases, the time varied from .5 hours to
19 20 hours for activities. The time studies that came in,
20 it was uncertain whether there was the total time spent
21 for the entire fiscal years or per individual. So what
22 the District did is end up using one hour or two hours
23 per individual classification. So the time study wasn't
24 even an issue.

25 But I think what the Commission argued in its

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1 analysis is that because of the vagueness of the
2 statutory provision that says it may be supported by
3 source documents, and also the fact that they felt that
4 some work was done, that it's inappropriate for the
5 Controller to say zero right now.

6 So we're amenable to going back to -- but the
7 big challenge in our mind is, how do we go back and
8 reevaluate it? Do we go back and take a look at the
9 time-study documents?

10 In the time-study documents, which was clear --
11 that was clear and understandable, we take those
12 information and we apply it -- those that didn't submit
13 any documentation, do we say, no, we're not going to
14 allow any costs because we don't know what the time is
15 spent to do these activities.

16 So that's going to be a challenge that we're
17 going to sit down.

18 It looks like we're going to sit down with the
19 District and try to come up with a way of resolving this.
20 And if we don't, I guess we'll be back at the Commission
21 to resolve it.

22 But we're going to do our best to take a look
23 at the activities and what they can support for the time
24 they spend and reinstate those costs.

25 CHAIR DUCAY: So for this particular item, you

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1 are still working on it; is that what I'm understanding?
2 Or is this for another year?

3 MR. SPANO: At this point right now, the
4 Commission is asking -- the Commission has requested that
5 it gets remanded back to the Controller to reconsider the
6 cost, considering that the District incurred some costs
7 during the audit period.

8 So right now, I believe, unless I'm mistaken --

9 CHAIR DUCAY: Isn't that item number one --

10 MR. BOHAN: Let me clarify, that's not our
11 recommendation.

12 Just so you can respond to it clearly, our
13 recommendation is that you reject the Controller's
14 reduction outright and withdraw the ability of the
15 Controller to say, "We don't like the documentation."
16 That's our recommendation.

17 And then go back and parse out the activities
18 to determine which ones were earthquake-related and which
19 ones weren't, and then deny, based on that, as the
20 claimants stipulated to.

21 CHAIR DUCAY: And that's item number one?

22 MR. BOHAN: That's one of the four, right.

23 CHAIR DUCAY: Right.

24 MR. BOHAN: And the one that we're talking
25 about is three. And if I could --

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1 CHAIR DUCAY: Three. And that one, your
2 recommendation is deny it outright, that piece of it,
3 correct?

4 MR. BOHAN: Right, right, to deny the
5 claimant's position outright.

6 If I could just respond to the Controller's
7 point on that.

8 At the outset of Mr. Spano's comments, he
9 described why the documentation and the statistical
10 methodology was lacking. And I would make two points.

11 One, we felt this is what they wake up every
12 day and do for a living, and we felt it wasn't fair to
13 impose that level of skill on the claimant. So they
14 tried a statistical methodology, and it wasn't good
15 enough. But there was no guidance as to what it needed
16 to be.

17 And then finally, I just thought I would read
18 for the record, since I've referred to it a couple times,
19 the exact sentence from the parameters and guidelines
20 that really, for us, was the touchstone.

21 And it states, quote, "For auditing purposes,
22 all costs claimed may be traceable to source documents
23 and/or work sheets that show evidence of the validity of
24 such costs," end quote.

25 And that was really the only guidance they got.

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1 MR. SPANO: And I don't necessarily support
2 that -- I mean, school districts have two functions:
3 They're providing education to students, and also they
4 have a responsibility to support -- you know, maintain
5 accounting of activities they incur right now. And the
6 California Department of Education puts out the school
7 accounting manual that provides guidance in documenting
8 activities incurred right now.

9 So, you know, the reason that we're where we
10 are right now is that we felt that there is a reasonable
11 expectation that reasonable support be provided in
12 support of costs being claimed. The argument being --
13 I mean, the discussion in the analysis is that because of
14 the vagueness of that statutory provision relating to
15 source documents, that actual costs may be traceable to
16 source documents, I think that there is a -- the
17 Commission believes that we should be a little bit more
18 flexible in allowing costs that may not be
19 well-documented back in those older years.

20 Now, since that time, the standards have -- the
21 documentation has improved in the parameters and
22 guidelines, and provides tracing of source documents that
23 were prepared contemporaneously right now.

24 So that's why we were going to -- all right,
25 but in order to go back and determine what part is

1 earthquake preparedness versus non-earthquake
2 preparedness, that's not an easy task for us from an
3 audit perspective.

4 So our objective is once this commission -- I
5 mean once a decision is made here, we would meet back
6 with the claimant and see what we can come up with to
7 determine the earthquake portion of the claim that was
8 actually filed.

9 But in some of the documentation, it's pretty
10 weak; and it's going to be a challenge to try and
11 decipher what that documentation was intended.

12 MEMBER WORTHLEY: I'm just ready to make a
13 motion, if you want to continue this conversation, I
14 don't want to stop you.

15 MR. PALKOWITZ: I have just one final. Maybe
16 I said that before, but I have another comment.

17 MEMBER WORTHLEY: Final-final.

18 MR. PALKOWITZ: I don't know if there has been
19 done an analysis by the State Controller over the years
20 of the activities and the average or a reasonable time
21 spent on it, and whether that could be used in
22 reconstructing what would be a reasonable amount.

23 I mean, I think all parties, through the last
24 years, are trying to work towards a unit-cost rate,
25 whether it be this mandate or another one, where the

1 parties don't have to go through this process to try to
2 determine what's reasonable; rather, a unit rate is
3 determined; and I don't know if there's a way to look at
4 other audits that are done in this mandate and try to use
5 that as a barometer to figure out what's reasonable in
6 this case.

7 MR. SPANO: I think it's a good suggestion, but
8 I don't think it's practical. I think it's something for
9 a going-forward basis.

10 But to go back and try to determine that back
11 in '97-98. And we only looked at a couple claims back
12 then, so I don't know what the nature or quality of the
13 other claims that were actually filed right now.

14 But what I was saying is that we're willing to
15 take a look at the -- even though the cost was claimed
16 based on one hour per person or two hours per individual,
17 there was some time-study documentation that was
18 submitted by the District. And we can actually take a
19 look at that and try to decipher that portion which
20 relates to, you know, the earthquake portion.

21 CHAIR DUCAY: It sounds like they're willing to
22 chat about it.

23 So do you want to make a motion?

24 MEMBER WORTHLEY: Are you ready for a motion?

25 CHAIR DUCAY: Yes.

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1 MEMBER WORTHLEY: I would move staff
2 recommendation, except I would make the finding that the
3 "subject to audit" requirement require the audit be
4 completed within a two-year time frame.

5 CHAIR DUCAY: Do we have any discussion on that
6 motion?

7 (No response)

8 CHAIR DUCAY: Do I have a second on it?

9 MEMBER OLSEN: I'd just like him to restate it.

10 MEMBER WORTHLEY: I'm moving the staff
11 recommendation with the exception as to the finding that
12 "subject to audit" is interpreted to mean initiated
13 within a two-year time frame, to mean it had to be
14 completed within the two-year time frame.

15 CHAIR DUCAY: But then if we go with that
16 particular motion, that would pretty much -- if I'm
17 understanding correctly, if we went with that, that it
18 was not, in fact --

19 MR. SPANO: It would, basically, invalidate
20 most of our --

21 CHAIR DUCAY: It would invalidate the entire
22 audit --

23 MR. SPANO: -- most of the audits that we've
24 done in the earlier years.

25 MR. BOHAN: Well, you're talking specifically

1 to this claim?

2 CHAIR DUCAY: Correct.

3 MR. BOHAN: The claim made by the claimant was
4 that the audit wasn't timely for one of the two fiscal
5 years.

6 So it would have the effect of removing the
7 Controller's jurisdiction for that fiscal year, and
8 requiring they reimburse for, I think it's \$600,000, in
9 that neighborhood; and the other one was \$500,000. But
10 it wouldn't affect the second fiscal year.

11 CHAIR DUCAY: Okay.

12 MS. SHELTON: So in the fiscal year that it
13 affects, that would entitle them to full reimbursement
14 for that fiscal year.

15 MR. BOHAN: And that's \$588,819. Year '97-98,
16 was \$612,000. So it wouldn't impact that second chunk.

17 CHAIR DUCAY: '97-98.

18 MEMBER OLSEN: Madam Chair?

19 CHAIR DUCAY: Yes?

20 MEMBER OLSEN: What impact does this have going
21 forward? If we do what Mr. Worthley wants us to do, what
22 happens prospectively?

23 MR. BOHAN: Well, there were a couple years --
24 I don't have the exact dates in front of me -- and if you
25 were to put this over, we'd, obviously, get that all in

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1 front of you. But the statute in question that we've
2 been talking about was in place during this time, and
3 then it was amended to say "initiate."

4 So I think that was a couple years after that,
5 we would be talking about a window from this time period
6 to when the law changed, that any audit where there was
7 an allegation that it was not timely, we treat each one
8 individually. But it would essentially send the message
9 that the Commission's belief is that the Controller
10 didn't have jurisdiction.

11 CHAIR DUCAY: Then that leaves it open, since
12 the State Controller was not operating under those --
13 that there could be a number of audits out there with
14 this particular issue --

15 MR. BOHAN: It could be.

16 CHAIR DUCAY: -- that would then come forward
17 and put them under scrutiny for this particular issue as
18 well?

19 MR. BOHAN: That's right. I don't have any
20 idea of the numbers, maybe the Controller does. But it's
21 a couple of years, at least.

22 MR. SPANO: We actually interpret it to be
23 initiated from day one. So there would be a lot of
24 audits that we did.

25 I think the statutory provision was changed --

1 I think it was around 2003 or 2005.

2 So many of the audits we did from 2000, all the
3 way up until 2007, probably, you know, could be subject
4 to reconsideration if that decision is made by the
5 Commission.

6 MS. SHELTON: And I'll just note that there are
7 a number of incorrect reduction claims that are pending
8 that raise the same issue.

9 MR. BOHAN: Let me just say -- I found it
10 here -- it was in 2002 that initiation was put in. So
11 that would be the outside date.

12 And how far back that goes would depend.

13 MR. SPANO: Well, it's twofold: One is,
14 there's other incorrect reduction claims in the hopper
15 right now. And also, is that I guess it wouldn't affect
16 any current audits we're doing, that goes back to the
17 older years. I'm assuming it would only affect the older
18 audits that we issued.

19 MR. PALKOWITZ: If I may say something?

20 I mean, whether this issue affects none or a
21 hundred, I don't know why that would matter in the
22 decision process.

23 MEMBER WORTHLEY: I agree.

24 CHAIR DUCAY: I think that -- well, I just
25 think that it's a very broad issue. It doesn't just

1 affect this particular -- and I personally would like to
2 see additional analysis on this issue before we make a
3 decision -- at least from my standpoint -- of, you know,
4 "Was it initiated" or "Did it need to be completed," I
5 think is a big question that goes just beyond. It
6 doesn't just affect this particular audit, but it's all
7 of the audits that are being done by the Controller.

8 And they were -- as the School District was,
9 you know, thinking things should be one way, the
10 Controller was thinking that -- and they were operating
11 under a different interpretation.

12 MEMBER WORTHLEY: Madam Chair, I appreciate
13 your comment; but I do believe that that really is not
14 part of our -- I mean, I feel like staff did an
15 exhaustive analysis of this particular issue.

16 I believe they have presented it fairly, in the
17 sense that they have provided information that says it
18 could be interpreted one way or the other.

19 I, for one, believe that when it says "*subject*
20 *to*" something, it means, subject to completion.

21 I mean, if I were to apply that to anything
22 else in my life, I wouldn't have to pay income taxes
23 because I could just -- I start initiating my filing.
24 You know, I have to file. I have to complete something
25 by a certain time frame unless it says differently.

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1 It does say something differently subsequent to
2 this. In my mind, that was not a clarification; it was a
3 policy change. Therefore, I think it's appropriate to
4 take the stand I'm taking.

5 Now, I would rather we just go ahead and act on
6 it. I could lose. I normally do. But I think we ought
7 to just act on it today and move forward.

8 MEMBER OLSEN: Well, I'll second your motion.

9 CHAIR DUCAY: Okay, so we'll go ahead, and I'll
10 see if I can repeat the motion -- or do you want to give
11 it a try, Camille?

12 MS. SHELTON: The motion is to adopt the staff
13 recommendations with the exception of the last issue on
14 the statute of limitations with respect to the finding
15 that the audit for the first fiscal year in question
16 needed to be completed within the two-year period of
17 time. The result of that would be to grant the incorrect
18 reduction claim for that fiscal year.

19 CHAIR DUCAY: Okay, we have a motion and a
20 second.

21 Do we have any discussion on that?

22 Do you want to --

23 MEMBER CROWFOOT: Well, I would just say that
24 I'm actually going to oppose the motion, not because
25 I'm not sympathetic of the claimant's position or the

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1 arguments presented by my colleagues here, but I do think
2 that the staff, you know, in a circumstance in which
3 there is a real troubling lack of clarity, did exhaustive
4 research to try to make a reasonable interpretation, and
5 ended up doing so.

6 So I'll respectfully dissent from the motion.

7 CHAIR DUCAY: Okay.

8 MEMBER WORTHLEY: Call for the question.

9 CHAIR DUCAY: Roll call.

10 MR. BOHAN: Mr. Chivaro?

11 MEMBER CHIVARO: No.

12 MR. BOHAN: Mr. Crowfoot?

13 MEMBER CROWFOOT: No.

14 MR. BOHAN: Mr. Lujano?

15 MEMBER LUJANO: No.

16 MR. BOHAN: Ms. Olsen?

17 MEMBER OLSEN: Yes.

18 MR. BOHAN: Mr. Worthley?

19 MEMBER WORTHLEY: Yes.

20 MR. BOHAN: Ms. Ducay?

21 CHAIR DUCAY: No.

22 MR. BOHAN: The motion doesn't carry.

23 MEMBER CHIVARO: I'll move staff recommendation
24 for adoption.

25 MEMBER CROWFOOT: Second.

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1 MR. BOHAN: Shall I read the roll?
2 Mr. Chivaro?
3 MEMBER CHIVARO: Yes.
4 MR. BOHAN: Mr. Crowfoot?
5 MEMBER CROWFOOT: Yes.
6 MR. BOHAN: Mr. Lujano?
7 MEMBER LUJANO: Yes.
8 MR. BOHAN: Ms. Olsen?
9 MEMBER OLSEN: Yes.
10 MR. BOHAN: Mr. Worthley?
11 MEMBER WORTHLEY: Yes.
12 MR. BOHAN: Ms. Ducay?
13 CHAIR DUCAY: Yes.
14 MR. BOHAN: The motion carries.
15 Item 8, Madam Chair, is simply the Statement of
16 Decision that accompanies this item.
17 CHAIR DUCAY: Any comments from the parties on
18 this particular issue?
19 MEMBER CHIVARO: Move adoption of the Statement
20 of Decision.
21 MEMBER CROWFOOT: Second.
22 CHAIR DUCAY: Any discussion?
23 *(No response)*
24 CHAIR DUCAY: Should we go ahead and call the
25 roll?

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1 MR. BOHAN: Mr. Chivaro?

2 MEMBER CHIVARO: Yes.

3 MR. BOHAN: Mr. Crowfoot?

4 MEMBER CROWFOOT: Yes.

5 MR. BOHAN: Mr. Lujano?

6 MEMBER LUJANO: Yes.

7 MR. BOHAN: Ms. Olsen?

8 MEMBER OLSEN: Yes.

9 MR. BOHAN: Mr. Worthley?

10 MEMBER WORTHLEY: Yes.

11 MR. BOHAN: And Chair Ducay?

12 CHAIR DUCAY: Yes.

13 MR. BOHAN: Thank you. The motion carries.

14 CHAIR DUCAY: Item No. 9?

15 MR. BOHAN: Chief Counsel Camille Shelton will
16 present this.

17 MS. SHELTON: Item 9 is a little bit easier.
18 This is an incorrect reduction claim filed by the County
19 of Orange on the *Handicapped and Disabled Students*
20 Program.

21 In these reimbursement claims, the claimant
22 sought reimbursement for providing medication-monitoring
23 services for fiscal years 1997-98, 1998-99, and the year
24 2000-2001.

25 The claimant's argument is that the P's & G's

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1 don't expressly exclude the reimbursement for medication
2 monitoring.

3 The staff recommends that the Commission deny
4 this incorrect reduction claim because it has already
5 issued three final decisions on this very issue, finding
6 that medication-monitoring services are reimbursable
7 beginning in fiscal year 2001.

8 The claimant is not present today due to budget
9 reductions, but does request that the Commission -- and
10 it submits its argument on the record, and requests that
11 the Commission consider those issues.

12 Will the parties please state your names for
13 the record?

14 CHAIR DUCAY: State Controller?

15 MR. SPANO: Jim Spano, State Controller's
16 Office, Division of Audits.

17 And we support the staff's recommendation.

18 CHAIR DUCAY: Okay, thank you.

19 Any other testimony on this issue?

20 *(No response)*

21 CHAIR DUCAY: Any questions from members on
22 this issue?

23 MEMBER OLSEN: I will move the staff
24 recommendation.

25 MEMBER CHIVARO: Second.

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1 CHAIR DUCAY: All in favor?

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

3 CHAIR DUCAY: Opposed?

4 *(No response)*

5 CHAIR DUCAY: Okay, so moved.

6 MS. SHELTON: Item 10 is the proposed Statement
7 of Decision which reflects the decision made by the
8 Commission on the last item.

9 MEMBER WORTHLEY: Motion to approve.

10 MEMBER CHIVARO: Second.

11 CHAIR DUCAY: All in favor?

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

13 CHAIR DUCAY: Opposed?

14 *(No response)*

15 CHAIR DUCAY: The motion carries.

16 Okay, now, we're going to move on to -- Item 15
17 was moved up to September -- so we're on Item 16.

18 MR. BOHAN: And no applications have been filed
19 there.

20 CHAIR DUCAY: Okay. Item 17?

21 MR. BOHAN: Okay, and Assistant Executive
22 Director Nancy Patton is going to present our leg.
23 update.

24 MS. PATTON: Good morning.

25 Just to update my staff report, AB 202, which

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1 is the bill that would require the Department of Finance
2 and claimants to go to binding arbitration if they can't
3 come to agreement on a joint reasonable reimbursement
4 methodology, it has not changed. It remains in the
5 Senate Appropriations Committee.

6 And on SB 112, which would revise the process
7 for issuing claiming instructions and the effective date
8 of amendments to parameters and guidelines only when
9 technical non-fiscal amendments are being made to the
10 P's & G's, that bill has moved off the Assembly floor and
11 is now pending on the Governor's desk.

12 Those are the only two bills we have left this
13 year.

14 Thank you.

15 CHAIR DUCAY: Any questions?

16 *(No response)*

17 CHAIR DUCAY: Okay, let's move on to Item 18.

18 MS. SHELTON: Item 18 is just the litigation
19 update.

20 As you can see, there are two pending court
21 hearing dates in the trial courts on the water-permit
22 cases. These are dealing with permits issued by the
23 regional water quality control boards. And those have
24 interesting issues dealing with whether something is a
25 federal mandate versus a state mandate.

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1 The other cases of interest, these cases have
2 not challenged any actions taken by the Commission, but
3 they do affect some of our processes.

4 The first one, I've reported on in the past
5 ,deals with reductions made by the Controller's Office on
6 reimbursement claims filed by charter schools.

7 The argument there was that charter schools
8 are not eligible claimants. The claimants have filed a
9 lawsuit, but they filed it in a law and motion
10 department. And the State has opposed those motions.
11 But the Court did not rule on the merits; instead,
12 directed the plaintiff to file in a writ department, and
13 nothing further has happened. So I'm not really sure how
14 that's going to end up.

15 The second two cases reported deal with the
16 Governor's blue pencil of the appropriation for
17 *Handicapped and Disabled Students* and whether or not that
18 was properly suspended. The first case found that,
19 indeed, it was properly suspended; and the case has been
20 completed.

21 The second case is the challenge of that action
22 on the constitutional grounds that went up to the Supreme
23 Court. The Supreme Court has denied the petition for
24 review. So that decision is now final.

25 And I'll take cases off the report.

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1 CHAIR DUCAY: Okay, any questions on this?

2 (No response)

3 CHAIR DUCAY: Okay. Item 19?

4 MR. BOHAN: Madam Chair, my report this meeting
5 is very short in writing. It speaks for itself.

6 I just wanted to alert the Commission members
7 to the fact that we had an informal hearing yesterday.
8 We frequently do these before this meeting, so folks
9 coming from out of town can package their vaca- -- their
10 trip up here into two days. I almost said "vacation."

11 And what we talked about is the reasonable
12 reimbursement methodology process. And it was very
13 enlightening for staff, and I worked on the *Habitual*
14 *Truant* parameters and guidelines, where the claimant has
15 proposed a reasonable reimbursement methodology. We put
16 a draft staff recommendation out. We basically took
17 comments on the specifics involved in that yesterday.
18 But we also asked for input on the larger question of
19 under what circumstances RRM's are appropriate.

20 And inadvertently, I've been assigning myself
21 the more interesting or complicated matters because this
22 one involves another subject, an audit situation. But
23 here the phrase is "cost efficient." One of the
24 requirements of an RRM is that it be, quote, unquote,
25 "cost efficient." And, again, we haven't been burdened

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1 with any description of what exactly that means. So
2 we're left to try and figure that out by looking at other
3 things. And I just wanted to alert the Commission that
4 we're looking at it closely. We will be putting out
5 another draft, and inviting more specific comments and
6 some of the features of what we think "cost efficient"
7 means. But that will be coming before you again. So I
8 just wanted to let you know.

9 This is an important issue for a lot of the
10 claimants.

11 Thank you.

12 CHAIR DUCAY: Thank you.

13 Any questions?

14 *(No response)*

15 CHAIR DUCAY: No?

16 Any public comment before we go into closed
17 session?

18 *(No response)*

19 CHAIR DUCAY: Seeing none, we'll recess to
20 closed executive session.

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

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1 notice and agenda; and to confer and receive advice from
2 legal counsel regarding potential litigation.

3 We will reconvene in open session in
4 approximately 15 minutes.

5 Thank you.

6 *(The Commission met in closed executive*
7 *session from 10:32 a.m. to 10:41 a.m.)*

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

16 With no further business to discuss, I will
17 entertain a motion to adjourn.

18 MEMBER OLSEN: So moved.

19 MEMBER WORTHLEY: Second.

20 CHAIR DUCAY: All in favor?

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

22 CHAIR DUCAY: Opposed?

23 *(No response)*

24 CHAIR DUCAY: The meeting is adjourned.

25 *(The meeting concluded at 10:42 a.m.)*

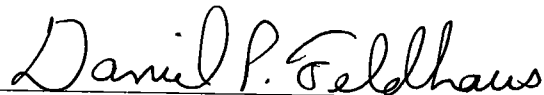
REPORTER'S CERTIFICATE

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 19th of August 2011.



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