

Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
January 25, 2013

Present: Member Pedro Reyes, Chairperson
Representative of the Director of the Department of Finance
Member Andre Rivera, Vice Chairperson
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Scott Morgan
Representative of Director of the Office of Planning and Research
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member
Member Don Saylor
County Supervisor

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

CALL TO ORDER AND ROLL CALL

Chairperson Reyes called the meeting to order at 10:00 a.m.

Executive Director Heather Halsey called the roll.

ELECTION OF OFFICERS

Item 1 Staff Report

Chairperson Reyes stated that the annual election of officers is the first order of business.

Member Chivaro nominated the Director of Finance. Member Morgan seconded. Director of Finance Ana Matosantos was elected chairperson by a vote of 7-0.

Chairperson Reyes asked for nominations for vice-chairperson. Member Rivera nominated the State Controller. With a second by Member Morgan, State Controller John Chiang was elected vice-chairperson by a vote of 7-0.

APPROVAL OF MINUTES

Item 2 December 7, 2012

Member Ramirez made a motion to adopt the minutes. With a second by Member Saylor, the December 7, 2012 hearing minutes were adopted by a vote of 5-0, Members Rivera and Morgan abstained from voting.

CONSENT CALENDAR

If there are no objections to any of the following action items designated by an asterisk (*), the Executive Director will include each one on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

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

PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 6* *Uniform Complaint Procedures (K-12), 03-TC-02*

Education Code Sections 250, 251, 262.3
Statutes 1982, Chapter 1117; Statutes 1988,
Chapter 1514; Statutes 1998, Chapter 914
California Code of Regulations, Title 5, Sections 4611, 4621, 4622, 4631,
and 4632 Register 92, Number 3; Register 93, Number 51
Solana Beach School District, Claimant

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

A. STATEWIDE COST ESTIMATE

Item 7* *Pupil Expulsions II, Pupil Suspensions II, and Educational Services Plan for Expelled Pupils, 96-358-03 et al.*

Education Code Sections 48900.8, 48915, 48915.2, 48916, 48916.1,
48918, 48918.5, 48923, 48926
As Amended by Statutes 1995, Chapters 972 and 974;
Statutes 1996, Chapters 915, 937, and 1052; Statutes 1997, Chapter 637;
Statutes 1998, Chapter 489; Statutes 1999, Chapter 332; Statutes 2000,
Chapter 147; Statutes 2001, Chapter 116
San Juan Unified School District, Kern County Superintendent of Schools,
Claimants
Beginning Fiscal Year 2012-2013 Consolidated with
PUPIL SUSPENSIONS FROM SCHOOL (CSM-4456)
Education Code Section 48911, Subdivisions (b) and (e)
Statutes 1977, Chapter 965; Statutes 1978, Chapter 668; Statutes 1980,
Chapter 73;
Statutes 1983, Chapter 498; Statutes 1985, Chapter 856; Statutes 1987,
Chapter 134
PUPIL EXPULSIONS FROM SCHOOL (CSM-4455)
Education Code Sections 48915, Subdivisions (a) and (b),
48915.1, 48915.2, 48916, and 48918
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978,
Chapter 668; Statutes 1982, Chapter 318; Statutes 1983, Chapter 498;
Statutes 1984, Chapter 622; Statutes 1987, Chapter 942; Statutes 1990,
Chapter 1231; Statutes 1992, Chapter 152; Statutes 1993, Chapters 1255,
1256, and 1257; Statutes 1994, Chapter 146
PUPIL EXPULSION APPEALS (CSM-4463)

Education Code Sections 48919, 48921, 48924
Statutes 1975, Chapter 1253; Statutes 1977, Chapter 965; Statutes 1978,
Chapter 668;
Statutes 1983, Chapter 498

Item 8* *Voter Identification Procedures*, 03-TC-23

Elections Code Section 14310
Statutes 2000, Chapter 260 (SB 414)

County of San Bernardino, Claimant

B. ADOPTION OF PROPOSED RULEMAKING CALENDAR

Item 9* Proposed Rulemaking Calendar, 2013

Member Olsen made a motion to adopt the consent calendar. With a second by Member Rivera, the consent calendar was adopted by a vote of 7-0.

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

Item 3 Appeal of Executive Director Decisions

There were no appeals to consider.

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

Executive Director Heather Halsey swore in parties and witnesses participating in the hearing.

A. TEST CLAIMS

Item 4 *Minimum Conditions for State Aid*, 02-TC-25 and 02-TC-31

Education Code Sections 66010.2, 66010.7, 66721.5, 66731, 66732, 66736, 66738, 66740, 66742, 70902, 78015, and 78016

Statutes 1988, Chapter 973; Statutes 1991, Chapter 1188; Statutes 1998, Chapter 365; and Statutes 2000, Chapter 187

California Code of Regulations, Title 5, Sections 53203, 53207, 55001, 55002, 55005, 55006, 55150, 55201, 55202, 55750, 55751, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55759, 55760, 55761, 55764, 55800, 55805, 55805.5, 55806, 58102, 58104, and 58106

Register 91, Number 23; Register 93, Number 25; Register 93, Number 42; Register 94, Number 38; Register 98, Number 7; Register 2000, Number 50; Register 2002, Number 8; and Register 2003, Number 18.

Los Rios Community College District, Santa Monica Community College District, and West Kern Community College District, Co-Claimants

Item 4 was postponed to the April hearing.

Item 5 *Behavioral Intervention Plans (BIPs), CSM 4464*

Title 5, California Code of Regulations,
Sections 3001 and 3052
(Register 93, No. 17; Register 96, No. 8; Register 96, No. 32.)

Butte County Office of Education, San Diego Unified School District,
San Joaquin County Office of Education, Claimants

These parameters and guidelines address the implementing regulations involved in special education services for children with disabilities. The regulations require an Individualized Education Program (IEP) team to develop a behavioral intervention plan whenever an individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the individual's IEP.

Commission Counsel Matt Jones presented this item. He proposed two possible options and recommended that the Commission adopt the proposed statement of decision and the parameters and guidelines approving Option A which included a Reasonable Reimbursement Methodology (RRM) for reimbursement for mandated costs.

Parties were represented as follows: Diana McDonough, representing the claimants; Dr. Sandy Kludt, Mr. Mike Lenahan, and Ms. Mary Bevernick, witnesses for the claimants; Susan Geanacou and Jillian Kisse representing the Department of Finance.

There was considerable discussion among the Commission members, staff, and interested parties. Following that discussion and clarification from Chief Counsel Camille Shelton, Member Saylor made a motion directing staff to bring a modified statement of decision and parameters and guidelines before the Commission on April 19, 2013 that would: 1) include the RRM proposed in Option A but applying only to the initial filing period through the current fiscal year ; and 2) apply parameters and guidelines for claiming actual costs going forward. With a second by Member Olsen, the motion was adopted by a vote of 7-0.

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

- Item 10 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer
Note: This item will only be taken up if an application is filed.

No applications were filed.

STAFF REPORTS

- Item 11 Chief Legal Counsel: Recent Decisions, Litigation Calendar
Chief Legal Counsel Camille Shelton presented this item.

- Item 12 Executive Director's Report

Executive Director Heather Halsey presented this item.

PUBLIC COMMENT

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

A. PENDING LITIGATION

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

1. *State of California, Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court Case No. 34-2010-80000529 [Graduation Requirements, Parameters and Guidelines Amendments, Nov. 2008]
2. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Board, San Diego Region v. Commission on State Mandates and County of San Diego*, et al. (petition and cross-petition), Third District Court of Appeal, Case No. C070357 (Sacramento County Superior Court Case No. 34-2010-80000604) [*Discharge of Stormwater Runoff, Order No. R9-207-000, 07-TC-09 California Regional Water Control Board, San Diego Region Order No. R9-2007-001, NPDES No. CAS0108758, Parts D.1.d.(7)-(8), D.1.g., D.3.a.(3), D.3.a.(5), D.5, E.2.f, E.2.g,F.1, F.2, F.3, I.1, I.2, I.5, J.3.a.(3)(c) iv-vii & x-xv, and L*]
3. *California School Board Association (CSBA) v. State of California* et al., Alameda County Superior Court Case No. RG11554698 [2010-2011 Budget Trailer Bills, Mandates Process for K-12 Schools, Redetermination Process]
4. *State of California Department of Finance, State Water Resources Control Board, and California Regional Water Quality Control Board, Los Angeles Region v. Commission on State Mandates and County of Los Angeles*, et al (petition and cross-petition). Second District Court of Appeal, Case No. B237153 (Los Angeles County Superior Court, Case No. BS130730) [*Municipal Storm Water and Urban Runoff Discharges, 03-TC-04, 03-TC-19, 03-TC-20, and 03-TC-21, Los Angeles Regional Quality Control Board Order No. 01-182, Permit CAS004001, Parts 4C2a., 4C2b, 4E & 4Fc3*]

B. PERSONNEL

To confer on personnel matters pursuant to Government Code section 11126(a)(1):

The Commission adjourned into closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation published in the notice and agenda; to confer and receive advice from legal counsel regarding potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

REPORT FROM CLOSED EXECUTIVE SESSION

At 12:19 a.m., Chairperson Reyes reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e) to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and potential litigation, and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

PERSONNEL (action)

Item 13 Salary Adjustment: Attorney to the Commission/Chief Legal Counsel (CEA IV), pursuant to Government Code Section 17529

Assistant Executive Director Jason Hone presented this item. He explained that Item 13 is a salary adjustment for the Chief Legal Counsel.

Member Olson moved to increase the Chief Legal Counsel's salary by 5 percent effective March 1, 2013. With a second by Member Rivera, the motion passed with a vote of 7-0.

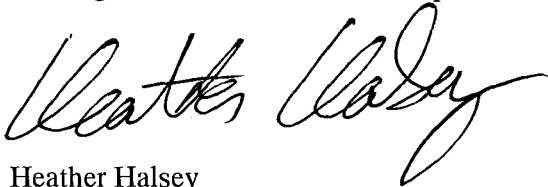
Item 14 Salary Adjustment: Executive Director, pursuant to Government Code Section 17530

Assistant Executive Director Jason Hone presented this item. He explained that Item 14 is a salary adjustment for the Executive Director.

Member Olson moved to increase the Executive Director's salary by 5 percent effective March 23, 2013. With a second by Member Rivera, the motion passed with a vote of 7-0.

ADJOURNMENT

Hearing no further business, Chairperson Reyes adjourned the meeting at 12:21 p.m.



Heather Halsey
Executive Director

PUBLIC HEARING
COMMISSION ON STATE MANDATES



TIME: 10:00 a.m.
DATE: Friday, January 25, 2013
PLACE: State Capitol, Room 447
Sacramento, California



REPORTER'S TRANSCRIPT OF PROCEEDINGS



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

COMMISSIONERS PRESENT

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

SCOTT MORGAN
Representative for KEN ALEX, Director
Office of Planning & Research

RICHARD CHIVARO
Representative for JOHN CHIANG
State Controller

ANDRÉ RIVERA
Representative for BILL LOCKYER
State Treasurer

SARAH OLSEN
Public Member

M. CARMEN RAMIREZ
Oxnard City Council Member

DON SAYLOR
Yolo County Supervisor
Local Agency Member



COMMISSION STAFF PRESENT

HEATHER HALSEY
Executive Director
(Items 3, 10, and 12)

JASON HONE
Assistant Executive Director
(Items 13 and 14)

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

continued

CAMILLE SHELTON
Chief Legal Counsel
(Item 11)

MATT JONES
Commission Counsel
(Item 5)



PUBLIC TESTIMONY

Appearing Re Item 5:

For Claimants San Diego Unified School District,
San Joaquin County Office of Education, Butte County
Office of Education:

DIANA McDONOUGH
Fagen Friedman & Fulfrost LLP
70 Washington Street, Suite 205
Oakland, California 94607

SANDRA KLUDT
Representative for
San Joaquin County Office of Education
Retired SELPA Director and Assistant Superintendant
for Special Education, San Joaquin County Office of
Education

R. MICHAEL LENAHAN
Retired Chief Business Official

MARY BEVERNICK
SELPA Director, Irvine Unified School Director
Chair, Coalition for Adequate Funding for
Special Education

A P P E A R A N C E S

PUBLIC TESTIMONY

Appearing Re Item 5:

For Department of Finance:

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

JILLIAN KISSEE
Education Appeals Audit Panel, Special Education,
State Special Schools
Education Systems
Department of Finance
915 L Street
Sacramento, California 95814

Appearing Re Public Comment:

ALLAN BURDICK
CSAC SB-90 Service
2001 P Street, Suite 200
Sacramento, California 95811



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Commission on State Mandates – January 25, 2013

1 BE IT REMEMBERED that on Friday, January 25,
2 2013, commencing at the hour of 10:00 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 --oOo--

7 CHAIR REYES: We will call the January 25th
8 Commission on State Mandates to order, please.

9 Thank you.

10 Would you please call the roll?

11 MS. HALSEY: Mr. Chivaro?

12 MEMBER CHIVARO: Here.

13 MS. HALSEY: Ms. Olsen?

14 MEMBER OLSEN: Here.

15 MS. HALSEY: Mr. Morgan?

16 MEMBER MORGAN: Here.

17 MS. HALSEY: Ms. Ramirez?

18 MEMBER RAMIREZ: Here.

19 MS. HALSEY: Mr. Reyes?

20 CHAIR REYES: Present.

21 MS. HALSEY: Mr. Rivera?

22 MEMBER RIVERA: Here.

23 MS. HALSEY: Mr. Saylor?

24 MEMBER SAYLOR: Here.

25 CHAIR REYES: Thank you.

Commission on State Mandates – January 25, 2013

1 The first order of business is election of
2 officers.

3 We need to elect a chair.

4 Is there a motion? A nomination?

5 MEMBER CHIVARO: I'll nominate the Director of
6 Finance as chair.

7 MEMBER MORGAN: Second.

8 CHAIR REYES: Any other nominations?

9 *(No response)*

10 CHAIR REYES: Any comments?

11 *(No response)*

12 CHAIR REYES: Seeing none, all in favor, say
13 "aye."

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

15 CHAIR REYES: Opposed?

16 *(No response)*

17 CHAIR REYES: Abstentions?

18 *(No response)*

19 CHAIR REYES: Thank you.

20 Nominations for Vice-Chair?

21 MEMBER RIVERA: I wish to nominate the State
22 Controller's office, John Chiang.

23 MEMBER MORGAN: Second.

24 CHAIR REYES: Motion and a second.

25 MEMBER RAMIREZ: Second.

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1 CHAIR REYES: Any additional nominations?

2 *(No response)*

3 CHAIR REYES: Seeing none, any comments?

4 *(No response)*

5 CHAIR REYES: All in favor, say "aye."

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

7 CHAIR REYES: Opposed?

8 *(No response)*

9 CHAIR REYES: Abstentions?

10 *(No response)*

11 CHAIR REYES: Congratulations.

12 Thank you.

13 Are there any corrections or objections to
14 the minutes of December 7th?

15 *(No response)*

16 CHAIR REYES: Seeing none, any comments from
17 the public on the December 7th minutes?

18 *(No response)*

19 CHAIR REYES: Seeing none, I had the privilege
20 of discussing the minutes with the colleague who
21 represented me, so I will be voting for that.

22 But I understand the Treasurer will be
23 abstaining on that since he was not present.

24 MEMBER RIVERA: Correct.

25 CHAIR REYES: So all in favor -- or is there a

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1 motion to approve the minutes?

2 MEMBER RAMIREZ: I so move.

3 MEMBER SAYLOR: Second.

4 CHAIR REYES: Moved and seconded.

5 Any comments?

6 *(No response)*

7 CHAIR REYES: Seeing none, all in favor, say
8 "aye."

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

10 MEMBER RIVERA: I abstain.

11 MEMBER MORGAN: I abstain.

12 CHAIR REYES: Two abstentions. We still have
13 enough votes. Thank you.

14 MS. HALSEY: The next item is the proposed
15 consent calendar, which consists of Items 6, 7, 8, and 9.

16 Are there any objections to the proposed
17 consent calendar?

18 *(No response)*

19 MS. HALSEY: Is there a motion to adopt the
20 proposed consent calendar?

21 MEMBER OLSEN: So moved.

22 MEMBER RIVERA: Second.

23 CHAIR REYES: So moved and seconded.

24 Any comments from the public?

25 *(No response)*

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1 CHAIR REYES: Seeing none, you guys don't want
2 to add Item 5 to the consent, I see. Okay.

3 All in favor, say "aye."

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

5 CHAIR REYES: Opposed?

6 *(No response)*

7 CHAIR REYES: Abstentions?

8 *(No response)*

9 CHAIR REYES: Thank you.

10 MS. HALSEY: Item 3 is reserved for appeals of
11 the Executive Director's decisions. And there are no
12 appeals to consider under Item 3.

13 CHAIR REYES: Okay.

14 MS. HALSEY: Let's go ahead and move to the
15 Article 7 portion of the hearing.

16 Will the parties and witnesses for Item 5
17 please rise?

18 CHAIR REYES: Those who will be testifying on
19 Item 5 please rise for the swearing in.

20 *(The parties and witnesses stood to
21 be sworn.)*

22 MS. HALSEY: Do you solemnly swear or affirm
23 that the testimony you are about to give is true and
24 correct based on your information, knowledge, or belief?

25 //

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1 *(Parties and witnesses responded*
2 *affirmatively.)*

3 MS. HALSEY: Thank you.

4 CHAIR REYES: Okay, Thank you.

5 MS. HALSEY: Item 4 has been postponed to the
6 April hearing.

7 So moving right into Item 5, Commission Counsel
8 Matt Jones will present Item 5, parameters and guidelines
9 on *Behavioral Intervention Plans*, or "BIPs."

10 MR. JONES: Thank you.

11 These parameters and guidelines pertain to the
12 *Behavioral Intervention Plans* mandate adopted by the
13 Commission on September 28th, 2000.

14 The Commission approved reimbursement for
15 increased costs of implementing regulations promulgated
16 by the California Department of Education, which required
17 schools to assemble a special education local plan areas,
18 or "SELPAs," to provide individual behavioral assessments
19 and planning to address behavioral issues within a
20 special education pupil's individualized education plan.

21 The claimants have requested reimbursement by
22 way of a reasonable reimbursement methodology or RRM,
23 based on a dollar amount, per average daily attendance,
24 ADA, calculated on the basis of survey results from a
25 sample of participating SELPAs.

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1 State agencies have objected to the RRM
2 proposal on the basis of their understanding of the
3 requirements of the statutes authorizing an RRM. State
4 agencies have also raised potentially offsetting revenues
5 included in the annual budget acts which the claimants
6 have disputed.

7 Staff has analyzed the RRM proposal and the
8 offsetting revenues, and has taken the unusual step of
9 offering the members two statements of decision and two
10 parameters and guidelines.

11 Option A, if adopted, would approve the RRM
12 proposal, finding that the statutory and constitutional
13 standards of evidence needed to adopt the RRM have been
14 met and that substantial evidence supports adoption of
15 the RRM, consistent with the constitutional requirement
16 to provide reimbursement for state-mandated increased
17 costs.

18 Option B, if adopted, would deny the RRM, and
19 instead provide for actual cost reimbursement on the
20 ground that although the statutory authority to adopt an
21 RRM is sufficiently broad, and the evidence satisfies the
22 constitutional and statutory standards, the RRM proposal
23 itself does not reasonably represent the costs incurred
24 by the claimants and, therefore, the RRM does not satisfy
25 the constitutional requirement to provide reimbursement

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1 for state-mandated increased costs.

2 Both Option A and Option B include
3 identification of potentially offsetting revenues
4 consistent with the Commission's regulations and with
5 Article XIII B, Section 6.

6 Staff respectfully recommends the Commission
7 adopt the proposed statement of decision, Option A, and
8 the attached parameters and guidelines approving the RRM
9 for reimbursement for mandated costs.

10 Will the parties and their witnesses please
11 state your names for the record?

12 MS. McDONOUGH: Diana McDonough for the
13 claimants San Diego Unified School District, San Joaquin
14 County Office of Education, Butte County Office of
15 Education.

16 MS. GEANACOU: Susan Geanacou for Department of
17 Finance.

18 MS. KISSEE: Jillian Kisse, Department of
19 Finance.

20 MS. McDONOUGH: We are going to have additional
21 witnesses.

22 Do they need to state their names at this
23 point?

24 CHAIR REYES: When they come up, they can
25 identify themselves for the record. I'm assuming that

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1 they did take the oath as well.

2 MS. McDONOUGH: They did.

3 CHAIR REYES: Thank you.

4 All right. This is a hairy one. It's been
5 going on since 1994. And because of the Bagley-Keene
6 Act, I've not had the opportunity to discuss some of my
7 thoughts with fellow board members.

8 There are a lot of pieces to this thing. And
9 rather than having everybody come in and discuss every
10 issue, I was wondering if the rest of the board members,
11 Commission members, were open for me laying out sort of
12 what I see as the, kind of just cleaning out the stuff,
13 the low-hanging fruit and taking care of that, as I see
14 it. And maybe you concur or not concur, and we just go
15 through the full hearing.

16 The Department of Finance has requested that
17 this thing be put over. I disagree. The law is the law.
18 And if they come over with a piece of legislation that
19 changes the law, then we will address parameters and
20 guidelines at that time. But at this point, we need to
21 address what stuff has happened since 1994.

22 The Controller doesn't like the reasonable
23 reimbursement methodology because there are no audits in
24 there to support or substantiate the costs identified.

25 Finance is concerned that some of the costs

1 are -- the ranges are pretty high, so to go forward in
2 such a high range sort of sets it up for unknown costs
3 that will never be verified.

4 The claimants suggest, and staff suggests, that
5 the reasonable reimbursement methodology is a method of
6 getting to a place without all the details to get us
7 there; and, hence, the term reasonable reimbursement
8 methodology. And, in fact, reasonable reimbursement
9 methodology does not have a lot of requirements. It is
10 just, put forward something that appears to be
11 reasonable.

12 Then the burden comes to us: Is it reasonable?
13 Does it make sense?

14 Finance believes that because the sample
15 represents less than 12 percent of what the sample of the
16 ADA is statewide is not reasonable, and the range is not
17 reasonable.

18 Unless we go and have actual costs for what
19 happened since 1994, it's all going to be a best guess.

20 To go with Option B, which requires actual
21 costs, is not reasonable, because some of the folks who
22 will be providing the time limits have since retired or
23 otherwise.

24 If you go back to 1994 to now, some of the kids
25 who were born in that year are actually in college now.

1 I mean, that's almost a generation ago that this thing
2 happened.

3 So I don't think it's reasonable to go with
4 Option B. But I wouldn't think it's reasonable to go
5 with Option A as well.

6 So I would propose an Option C. And the "C"
7 would go in terms of the reasonable reimbursement
8 methodology, would cover the period between 1994 and some
9 period. And that's where I'm going to rely on attorneys
10 to tell me what is reasonable or what makes sense under
11 the law.

12 I mean, the question is, how do you split the
13 baby? What's your legal authority to split the
14 reasonable versus the actual costs? The default is
15 actual costs.

16 I mean, Option B is an option, and that's
17 actual cost. But you have to apply some reasonableness
18 to this, and say, "Well, you're not going to get actual
19 costs for stuff that happened in 1994, 1995, and 1996."

20 There was a study done, and it was used for
21 negotiation by Finance and the claimants at some point;
22 so there was an agreement as to what costs were there and
23 what would be covered. And it seems to me that's a good
24 splitting point for what is reasonable reimbursement
25 methodology for past; and then moving forward from that

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1 point, or some point around there, that does cover actual
2 cost.

3 And so I'm just throwing it out there. I don't
4 know what -- I know this is...

5 And then we can get into the revenue issue as a
6 second issue, but I would like to discuss this option
7 first and see what folks think.

8 MS. SHELTON: Could I just clarify that the
9 beginning period of reimbursement is July 1, 1993, not
10 1994?

11 CHAIR REYES: Thank you. So it is a
12 generation, 20 years. Thank you.

13 Thoughts, comments by board members?

14 Ms. Ramirez?

15 MEMBER RAMIREZ: Well, I still consider myself
16 something of a newbie here, so I really appreciate your
17 comments and your division of the issues.

18 I would like to hear from counsel and the
19 claimants as to what they think about that.

20 CHAIR REYES: Absolutely.

21 But I just want to sort of -- if we use this as
22 a framework, then I'd like folks who come in to testify
23 to use that as a framework.

24 If there is complete disagreement, and there is
25 enough votes to take either Option A or Option B, I can

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1 be overruled, and that's a different conversation.

2 MEMBER SAYLOR: Mr. Chairman, I haven't made a
3 final decision on whether I will support Option A or
4 Option B, pending hearing what the claimants and other
5 witnesses may have to present.

6 CHAIR REYES: Okay. Fair enough.

7 MEMBER SAYLOR: So I'd like to --

8 CHAIR REYES: Proceed with the full hearing?

9 MEMBER SAYLOR: -- proceed with the hearing and
10 hear people out, and then make a judgment based on that
11 evidence.

12 CHAIR REYES: Ms. Olsen?

13 MEMBER OLSEN: I'm sort of with Don --
14 Mr. Saylor.

15 I think, though, I would like Option C to be
16 included in that, because I find it to be an interesting
17 "splitting the baby" sort of option. You know, it may
18 have all of the bad stuff that goes along with splitting
19 the baby, too; but it could solve some problems. So I
20 would like that to be in the mix of the decision.

21 CHAIR REYES: All right. So as you testify,
22 just keep those in mind.

23 MS. GEANACOU: May I ask a question, please?

24 CHAIR REYES: Yes.

25 MS. GEANACOU: Susan Geanacou for Finance.

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1 I want to paraphrase what I think I heard you
2 say on Option C, that it would be something akin to using
3 the RRM proposed in Option A, going from 1993 to about
4 the year the cost study data was based on, 2006-07, if I
5 recall correctly; and then from that year forward on,
6 that would be then actual costs.

7 Is that what you're saying?

8 CHAIR REYES: And part of the conversation I
9 would like to take is, what would be the appropriate
10 year. Because I don't know what the appropriate year is.
11 And I don't know to what date schools would have data
12 that is still validated. I don't know what that would
13 be. And so I don't have a -- I didn't bring the silver
14 bullet with me. So I would like to have that
15 conversation as a frame. But we can go back to -- okay.

16 How's that for confusing the issue? Yes.

17 MS. McDONOUGH: I'm Diana McDonough.

18 Do I have to keep raising this thing, or do you
19 think it's like --

20 CHAIR REYES: I think that should stay in
21 place.

22 Do you want --

23 MS. McDONOUGH: Okay. I want to make sure you
24 hear me.

25 CHAIR REYES: Oh, yes.

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1 MEMBER OLSEN: We're hearing you, loud and
2 clear.

3 MS. McDONOUGH: This is not my prepared
4 remarks, but I need to say this to you.

5 We had an informal conference on April 25th,
6 2011. The purpose of that conference was to get the
7 Department of Finance and the Controller into the room
8 with us to try and see what people thought about our RRM.

9 We have never had any conversations with the
10 Department of Finance. There has never been any
11 follow-up.

12 And I guess what I'm saying is, there were many
13 opportunities to suggest the, quote, "commonsense" idea
14 that you have suggested. None of them were ever put
15 forward.

16 So I would really hesitate to suggest a time
17 date that would be reasonable, cold turkey, bingo, like
18 today.

19 I also would like to say that, to me, since the
20 study was done in 2006-2007, it would certainly make
21 sense that it's valid for five years forward, just as it
22 is for 15 years backward.

23 So I don't see why we would think that
24 suddenly, in 2007-2008, it is not valid. That doesn't
25 make sense to me.

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1 Now, that's just an overview of this.

2 I recognize this is a complicated program, but
3 I also want to point out to you that the LAO found in the
4 January 2013 study of special education, that doing per
5 ADA funding of special ed. services is a sound approach;
6 and that, in fact, generally speaking, the per ADA
7 funding of special ed. -- sorry, I can't see you.

8 CHAIR REYES: We can hear you --

9 MS. McDONOUGH: I know, but I hate to miss
10 Mr. Rivera and -- okay, or Ms. Ramirez.

11 Okay, so --

12 CHAIR REYES: Would you like to take the other
13 seat instead?

14 It's a better spot for you, and have the other
15 folks who testify take that spot since you'll be there
16 longer than most. That's always an option.

17 MS. McDONOUGH: Certainly at the rate I'm going
18 for sure. Sorry about that.

19 Okay, I'll just move on. And you can tell that
20 this has, like, caught me flatfooted, and I need to think
21 about it.

22 I understand where you're coming from, and I
23 very much appreciate that you did not say it should be
24 Option B for all the reasons that we can see why that
25 would be a completely horrible idea, just to be

1 straightforward.

2 Now, I'm going to start what I planned to say,
3 if I may, and I'll back up in a minute.

4 CHAIR REYES: So let me --

5 MS. McDONOUGH: Oh, the LAO, I didn't quite
6 finish that.

7 CHAIR REYES: Let me -- for a second here.

8 Now, there is no requirement that I know of in
9 the reasonable reimbursement methodology that the Finance
10 or the State Controller join you in any of your meetings.

11 There is a provision in there that allows for
12 a reasonable reimbursement methodology that gets worked
13 on together. That is a section of the law that allows
14 you folks to have this conversation and come up with
15 something. But either party can walk away from that, and
16 then we go to the default.

17 But the reasonable reimbursement methodology --
18 I'm the chair. I'm with the Department of Finance, but
19 I'm not representing Finance at this point.

20 That's Finance, right there (pointing).

21 But my point is that there is no requirement;
22 that, you know, the fact that they chose not to
23 participate in your efforts to come with reasonable
24 reimbursement doesn't really mean anything.

25 In terms of the ADA, in either proposal, I'm

1 not challenging the ADA. I think the ADA is reasonable.

2 And what I'm saying, though, is that to tie --
3 if you have data from -- if you take actual costs for a
4 period of time to the present, or to the near future, and
5 then if we adopt those actual cost expenditures as the
6 methodology for the parameters and guidelines for the
7 reimbursement, then at a future date, somebody can come
8 in or request reasonable reimbursement, and at that
9 point, you will have more information. That's why I
10 wanted to split it.

11 MS. McDONOUGH: We will need to explore this
12 more.

13 CHAIR REYES: Go ahead, go ahead.

14 MS. McDONOUGH: Okay. Let me say that the
15 2006-2007 survey that we did, which was very extensive,
16 was not very different from the claiming instructions
17 that you get from the Controller.

18 In other words, I would say it's quite common
19 that school districts, the year that something is
20 finished, filled out their claim form. That's basically
21 what they did: They filled out a form that said how many
22 hours, what positions, and so on and so forth, in great
23 detail. And we did spreadsheets for each of those
24 returns, and so on.

25 So we feel the 2006-2007 study is virtually the

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1 actual claim forms from that time period.

2 But, again, I bird-walk back to this, okay.

3 I want to start out by saying I'm here
4 representing the claimants, but it's only thanks to the
5 California School Boards Association Education Legal
6 Alliance who paid for our firm's services because this
7 matter is very important to all school districts for
8 obvious reasons that you can see.

9 I also want to thank you Commission members for
10 having paid attention to this, as I can see Mr. Reyes
11 definitely has, and I trust the rest of you have. I know
12 it probably is not completely stimulating reading, and
13 we really appreciate however much you've managed to get
14 through it; we appreciate that. It's important to school
15 districts, and our time before you is important today.

16 I also want to thank the Commission staff who
17 have managed to go through all of this. We have been
18 impressed by their real diligence. I mean, I hope you
19 guys know, this is a fabulous piece of work, whichever
20 option you were to pick. And the staff has to be greatly
21 complimented.

22 Requiring comments from us December 24th,
23 reviewing them and posting a proposed decision on Friday,
24 January 11th at 7:14 p.m. Okay, really impressive.

25 I had shut my computer down at 5:00 p.m.,

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1 confident that no normal civil servant was going to do
2 anything like that. And guess what?

3 CHAIR REYES: They were answering my questions
4 at 10:00 p.m. last night.

5 MS. McDONOUGH: Now to the business at hand.

6 I am going to address a little bit more about
7 Option A and Option B.

8 When I considered this, Option C was not
9 available, but I imagined some correlates will follow
10 from that.

11 I'd like to give you a little bit of background
12 about that choice, and then we'll have three witnesses
13 with some firsthand knowledge about the nature of this
14 mandate.

15 We support the staff recommendation for
16 Option A. Option A allows school districts to be
17 reimbursed based on a per ADA formula for each year that
18 the mandate existed and exists.

19 Speaking broadly, since there are about six
20 million students in California and Option A rests on a
21 formula of a little more than \$10 per regular ed.
22 student, this amounts to approximately \$60 million per
23 fiscal year, adjusted upward or downward based on
24 inflation.

25 Option B requires the claims based on actual

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1 costs for fiscal year 1993-94, and every year thereafter,
2 now 20 years.

3 So, in fact, the kids that got those services
4 in '93 and '94 were born, you know, before that, okay.

5 It doesn't take a rocket scientist to recognize
6 that such a task would be gargantuan and its
7 uncertainties incalculable. Difficult for school
8 agencies to put valid claims together. Harder yet for
9 the Controller to audit, and virtually impossible for
10 Finance to predict and budget for.

11 And I do want to note that in its comments that
12 the Controller filed, the Controller made technical
13 corrections to Option A, parameters and guidelines, and
14 Option B.

15 The Controller's response did not say it
16 opposed Option A. And if I were the Controller, I would
17 stick with that.

18 Before our witnesses explain what this mandate
19 is for and why it's so expensive, I want to address a
20 couple items: A little bit of history and a word on
21 offsets, which Mr. Reyes sort of put aside, but I need to
22 address it for a moment.

23 Special education, public education for
24 students with disabilities, is driven by federal law, as
25 you probably know. Federal law requires that every

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1 student receive -- every student with a qualifying
2 disability receive a free appropriate public education.

3 Are you familiar with that term? F-A-P-E, a
4 "FAPE."

5 General education students, students without
6 disabilities, do not have a right to a FAPE. They have
7 a right to a free public education but not a free
8 appropriate public education.

9 This FAPE-appropriate must be set out in an
10 IEP, an individualized education program, IEP, which is
11 developed at a meeting, including parents and education
12 professionals.

13 Now, the original federal law was a grant
14 program. We all know how these grant programs work,
15 though, don't we? It was not, quote, "required" that
16 every state participate; but if a state wanted the
17 federal money, it needed to meet the law's conditions and
18 submit a state plan.

19 California submitted its California Master Plan
20 for special ed. in or around 1980.

21 Ultimately, all states chose to participate in
22 this voluntary plan.

23 Our state plan included more than the federal
24 law required, and so the mandate question began.

25 As you may know, if a mandate is required by

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1 federal law, the state need not fund it. But if it is in
2 excess of federal law, the state must fund the excess.

3 A California Court of Appeal found that the
4 federal grant program was actually a requirement; but
5 that if the state mandated more of local agencies than
6 federal law demanded, school districts would qualify for
7 reimbursement.

8 This commission considered a number of these
9 issues, and I was present at that time in the late
10 nineteen-nineties, and found many requirements of
11 California special education were in excess of federal
12 law.

13 In 2000, this Commission found that the *BIP*
14 mandate was in excess of federal law, the mandate you're
15 considering today.

16 Now, the other special education mandates the
17 Commission found were addressed in the consolidated
18 special education mandated cost settlement of 2000, which
19 is memorialized in the Ed. Code. \$100 million was added
20 annually to the special education line item as a result
21 of that settlement, and more than \$500 million paid
22 retroactively. In exchange, school agencies agreed to
23 waive all mandated cost claims for those matters.

24 One special education mandate was not included.
25 Guess which one? The *BIP* mandate. It is specifically

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1 named as being excluded in the Education Code. And so it
2 is before you today, the *BIP* mandate.

3 *BIP* was different in 2000. It was the elephant
4 in the room when that settlement developed.

5 The other mandates have been around as part of
6 the Master Plan since approximately 1980; but *BIP*, only
7 since 1993-94.

8 Everyone knew it cost a lot, but nobody knew
9 how much. Everybody knew it was likely to blow up the
10 global special ed. settlement, so the parties agreed to
11 kick the can down the road, which it happened until
12 today.

13 Now, we are seeking a tool whereby school
14 agencies can be reimbursed for implementing this law
15 since 1993-94. End of history.

16 A word on offsets. We continue to disagree
17 with the staff recommendation that there should be
18 revenue -- any revenue which districts must offset
19 against this claim. The special education funding
20 stream, a specific line item in the budget, existed long
21 before *BIP*; and it was never increased in light of *BIP*.

22 It was increased with the special education
23 settlement discussed above and more recently, with the
24 transfer of certain mental health programs; but not
25 because *BIP*.

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1 To require districts to reapportion their
2 preexisting special education funds as of 1993-94 to pay
3 for *BIP* is contrary to the constitutional requirement
4 that agencies should receive new dollars for new
5 programs.

6 However, the most egregious offset language
7 involves AB 1610, which applies only to 2010-11 and
8 forward.

9 AB 1610 requires that special ed. dollars be
10 first used to fund *BIP*.

11 AB 1610 is being challenged in the courts, and
12 we will later petition to amend these parameters and
13 guidelines in light of that, if necessary.

14 So we continue to believe that you should
15 delete the offset language, whether you choose Option A
16 or Option B or Option C.

17 Now, for our witnesses.

18 *(Handout was distributed to Members of the*
19 *Commission.)*

20 CHAIR REYES: Thank you.

21 MS. McDONOUGH: Sorry for this pause. I just
22 wanted to make sure that everybody could follow what is
23 happening to these people and who they are.

24 CHAIR REYES: You're delaying us.

25 I'm kidding. Go ahead.

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1 MS. McDONOUGH: Okay, just don't be mentioning
2 Option C, then I'll make a deal, I'll be real fast.
3 Okay.

4 We have three people who are going to appear.

5 Dr. Sandy Kludt, who is a representative of the
6 BIP claimant for San Joaquin County Office of Education,
7 and she has retired as their SELPA director and assistant
8 superintendent for special ed., and has worked on this
9 claim for many, many years. She is going to talk about
10 basically the nature of this mandate: Why is it so
11 expensive?

12 Mike Lenahan, a retired chief business
13 official, is someone that we retained when we started
14 working on this survey. He'll talk to you briefly about
15 the nature of the survey methodology.

16 And finally, Mary Bevernick who is a SELPA
17 director for Irvine Unified School District and is chair
18 of the Coalition for Adequate Funding for Special
19 Education. She will talk to you a little bit about the
20 claiming process and what that could mean to special
21 educators.

22 So Sandy, would you begin?

23 By the way, I neglected to ask what I meant to
24 earlier, which is, will you be asking questions of the
25 witnesses, or do you want to wait until our whole

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1 presentation is over? How do you want to do that?

2 CHAIR REYES: I will defer to the
3 commissioners.

4 I think as issues come up, I think it's fair
5 to ask the questions so we understand. But we also
6 reserve the right to call them back for clarification if
7 something triggers their memory cells.

8 Is that reasonable?

9 MEMBER OLSEN: So, yes to both.

10 MEMBER SAYLOR: Yes.

11 MS. KLUDT: All right, good morning.

12 CHAIR REYES: And I'm not an attorney and I
13 answer that way.

14 MS. KLUDT: It's one of those, it depends.

15 As Diana indicated, I am Dr. Sandy Kludt, and
16 I serve as the consultant for special education for the
17 San Joaquin County Office of Education, the office from
18 which I retired in 2008. I retired with 36 years of
19 experience in the field of special education, 28 of those
20 years having served as an assistant superintendent of
21 special ed. and SELPA director.

22 In 1994, I moved from the Tri-County Consortium
23 in the Foothills to San Joaquin County to assume the
24 assistant superintendent and SELPA director position.

25 As the previous SELPA director was orienting me

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1 to my new position, she commented: "I'm leaving this job
2 to you with everything pretty much caught up. The only
3 thing currently on your desk to be completed is that,"
4 pointing to the *BIP* Hughes bill mandate claim, and
5 explaining that San Joaquin County office was, indeed,
6 one of the three claimants.

7 That was 20 years ago, and we still have not
8 received any reimbursement for the activities required by
9 the mandate.

10 As the SELPA director, some of my
11 responsibilities were to ensure that the districts in my
12 SELPA and county office special education programs were
13 compliant with all state and federal laws and mandates,
14 and making sure that I was supervising the development of
15 policies, filing of reports, and the organization of
16 training to implement all requirements concerning special
17 education and specifically related legislation, such as
18 the *BIP* Hughes bill mandate.

19 As I supervised the implementation of all of
20 the *BIP* Hughes bill requirements throughout our SELPA, I
21 realized what an extremely complicated mandate it really
22 is. It is truly much more than a simple scoliosis
23 screening mandate.

24 The *BIP* Hughes bill mandate applies to our
25 students with the most serious, dangerous, and assaultive

1 behaviors. They are students who oftentimes physically
2 act out because they have not learned how to control
3 their behavior. And in that process, if not correctly
4 managed, can seriously injure themselves, other students,
5 and/or staff.

6 The requirements apply to students for whom
7 less involved behavioral plans and goals and objectives
8 have not been successful, leaving themselves and others
9 at risk, and requiring a high level of positive
10 intervention.

11 The mandate requires very time-consuming and
12 involved assessments done by very specifically trained
13 personnel.

14 The purpose of these functional analysis
15 assessments is to determine what antecedents caused these
16 potentially serious behaviors, and what consequences are
17 reinforcing these behaviors and causing them to reoccur.

18 Following the special education assessment, a
19 positive behavioral intervention plan is developed,
20 focusing on the behaviors to be addressed which will
21 replace the potentially dangerous behaviors reflected in
22 the assessments.

23 The plans and goals and objectives are
24 developed in lengthy IEP meetings, which include
25 additional team members, such as the assessor, who has

1 had special training in behavioral analysis with an
2 emphasis on positive behavioral interventions, as well as
3 a behavioral intervention case manager, who we call the
4 "BICM," who evaluates the effectiveness of the behavioral
5 intervention plan in accordance with the Hughes bill
6 requirements.

7 An extensive amount of data collection is
8 required to determine whether PBIPs are being successful
9 or not.

10 Subsequent meetings are held to monitor
11 progress being made and to determine if changes in the
12 plan are necessary or, in fact, if additional functional
13 analysis assessments are needed.

14 After all, safety is the major concern
15 regarding our students and staff.

16 The SELPA is also required to adopt a policy
17 and administrative regulations which addresses all
18 components of the Hughes bill; and they must be reviewed
19 and, if necessary, modified whenever applicable
20 legislation is chaptered.

21 The SELPA is also required to adopt acceptable
22 emergency interventions to be utilized to control
23 unpredictable, spontaneous behavior, which poses clear
24 and present danger of serious physical harm to the
25 student or others.

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1 We have had students suddenly throw a desk or
2 chair through the room when extremely upset or
3 frustrated, or suddenly bolt from the classroom. These
4 types of behaviors can sometimes call for an emergency
5 intervention, which may not be addressed in the positive
6 behavioral intervention plan.

7 Because of the seriousness of the acting-out
8 behavior, special training on these specific emergency
9 interventions, which can and cannot be used in these
10 emergency situations, must be completed.

11 Because of the turnover of staff throughout the
12 year or from year to year, training is not a one-time
13 activity.

14 When emergency interventions are utilized,
15 parents must be contacted within one school day, and a
16 report must be completed immediately and ultimately sent
17 to the California Department of Education.

18 Again, follow-up IEP meetings are held to
19 determine the necessity for additional training for staff
20 and/or the need for additional functional assessments or
21 possible modifications to the PBIP.

22 Because the positive behavioral intervention
23 plan is a specific part of the IEP, the functional
24 analysis assessments and the PBIPs are sometimes areas of
25 disagreement between the districts and the parents, and

1 due-process proceedings may result.

2 These proceedings are very costly and
3 time-consuming because they entail a great deal of staff
4 preparation and may involve attorneys.

5 The San Joaquin County SELPA supports the
6 reimbursement methodology as proposed under Option A.
7 Our costs, as borne out by the survey, were actually
8 \$25.40 per ADA, as compared to the proposed RRM of \$10.64
9 per ADA. So we would obviously receive less
10 reimbursement.

11 However, not having the burden of filing actual
12 claims, and having the predictability of somewhat of a
13 known reimbursement amount, helps compensate for the
14 loss.

15 And in this day of budgeting, being able to
16 budget at a more known number rather than a guesstimate
17 is huge. It is generally much easier to predict the
18 District's ADA for the following year than it is to
19 predict the types of students or needs which might move
20 into or move out of one of our districts.

21 So on behalf of the San Joaquin County SELPA,
22 I wish to thank you today for not only the opportunity to
23 speak with you, but also for the endless number of hours
24 and for the commitment you have all given to reviewing
25 the information associated with this *BIP* Hughes bill

1 mandate claim.

2 I look forward to a positive resolution.

3 CHAIR REYES: Thank you.

4 Any questions from Board members?

5 MEMBER RAMIREZ: I do have one question. It
6 might be slightly off topic.

7 MS. KLUDT: All right.

8 MEMBER RAMIREZ: Is it, what would be the
9 criteria used to -- is there a specific reference to a
10 criterion that would be used to say a particular student
11 can't be in public school versus the ones who can be,
12 even with all of these challenges?

13 MS. KLUDT: We are governed, of course, by
14 state and federal law regarding our placements for our
15 students, and we are also required to identify what we
16 call the least restrictive environment for each child.
17 And that means that they would not be removed from public
18 education any more than necessary for them to receive
19 their FAPE, their *free appropriate public education*.
20 So, generally, what we look at is to see if they need a
21 more restrictive environment to be basically safe in the
22 classroom. That's one of our highest priorities.

23 So if everything we have planned, including all
24 these functional assessments and analysis assessments and
25 the PBIPs and such, and we're still seeing pretty serious

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1 acting-out behaviors, we would look at a more restrictive
2 setting, possibly a non-public school, for example, so
3 that we can get them into a safer environment for not
4 only themselves, but for all the other children they
5 would be leaving.

6 MEMBER RAMIREZ: Are there uniform rules for
7 the schools in California, as to who or what particular
8 characteristics of a student require them to be in the
9 classroom versus not in a classroom?

10 MS. KLUDT: You know, that is all decided by
11 the individual educational planning team meeting,
12 including the parents.

13 So, you know, they look at, based on the
14 assessments, what the needs are of the students, and how
15 they can meet those needs and what placement is most
16 appropriate for them. And that may be in a public school
17 setting and it may not be.

18 MEMBER RAMIREZ: And the school district would
19 still pay for that placement if it's out of the
20 classroom; is that correct?

21 MS. KLUDT: If the IEP team, including the
22 district, decides that's the most appropriate placement
23 for the child, yes, they would assume costs for that
24 placement.

25 MEMBER RAMIREZ: Thank you.

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1 CHAIR REYES: Thank you.

2 Your next witness, please?

3 MS. McDONOUGH: Mike Lenahan is our next
4 witness.

5 MR. LENAHAN: Good morning.

6 CHAIR REYES: Good morning.

7 MR. LENAHAN: As Diana indicated, I am Mike
8 Lenahan. I am one of the two fiscal consultants that
9 worked on compiling the costs of this mandate.

10 My education includes a BS in accounting and
11 an MBA in finance. I have over 30 years' experience in
12 school district business. My last position before
13 retiring was associate superintendent for Alameda County
14 Office of Education. Before that, I was deputy
15 superintendent for Fairfield-Suisun Unified School
16 District.

17 Since retiring, I have served in several
18 interim school chief business official positions.
19 I was retained by Fagan, Friedman & Fulfrost through
20 Diana McDonough in December 2007 to work on compiling the
21 costs. I have known Diana McDonough professionally for
22 over 30 years.

23 I asked Linda Grundhoffer to assist. She is
24 here today.

25 *(Ms. Grundhoffer raising hand.)*

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1 MR. LENAHAN: She has over 30 years experience
2 in school districts.

3 Recently, for a period of four years, she was
4 the State trustee for West Contra Costa Unified School
5 District, until they paid off their state loan.

6 Currently, she is the chief business official
7 for the South Monterey County Joint Union High School
8 District.

9 I'd like to take this opportunity to compliment
10 the Commission staff in the compilation of their report.
11 It was very well done.

12 I am here to explain our data-gathering
13 process.

14 The survey was developed by Diana McDonough and
15 her staff, with Department of Finance input and
16 concurrence. This occurred from October 2007 through
17 December 2007.

18 Linda Grundhoffer and I gave some input on the
19 survey, towards the end, to help make sure we would
20 receive the data we needed.

21 The survey was broken down into three areas:
22 behavioral intervention case manager, the school district
23 level, and the SELPA level.

24 SELPAs were asked to volunteer in December 2007
25 to fill out the surveys and provide the related salary

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1 and benefit information.

2 This was truly a volunteer effort, which was
3 completed in addition to each person's regular work.

4 The survey was for the services and costs of
5 the 2006-2007 school year, except for the one-time cost
6 to develop the initial procedures in 1993-94.

7 The BICM surveys were completed by the actual
8 person who provided the service, or in some cases, their
9 supervisor who had firsthand knowledge. The SELPA
10 directors completed their survey. We did not use any
11 information that could not be verified. Thus, this
12 survey information is very reliable.

13 The surveys were collected by the Fagan,
14 Friedman & Fulfrost office under the direction of Diana
15 McDonough and Kate Parnes.

16 Ms. Parnes, an educational consultant with the
17 firm, is a retired school administrator of 34 years,
18 holding past positions of Director of Special Education
19 for Santa Clara County Office of Education, Director of
20 Pupil Services for Evergreen School District, and SELPA
21 Director for Southeast SELPA in Santa Clara County.

22 Ms. Parnes is here today also. She reviewed
23 the survey returns for accuracy, thoroughness, and
24 reasonableness. If a question arose regarding the data
25 or if a survey was incomplete, Ms. Parnes followed up by

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1 telephone and e-mail to obtain the correct information.

2 Surveys were either resubmitted at that time or
3 corrected within the permission of the SELPA. Copies of
4 all surveys received were made and sent to the State
5 Department of Finance.

6 Linda Grundhoffer and I developed the
7 spreadsheet to tabulate the survey information and
8 calculate the costs.

9 We have a binder full of the spreadsheets,
10 which is a compilation of all of the surveys.

11 We also compared our calculations with DOF's
12 calculations and reconciled the differences. This
13 included meetings with DOF, as well as telephone calls
14 and e-mails, until we both agreed on the accuracy of the
15 costs.

16 The volume of information was large, and often
17 we needed to call school personnel to obtain
18 clarification or obtain missing information such as
19 district salary schedules. Linda Grundhoffer and I
20 personally compiled the information since, after review,
21 we determined that the information and process was too
22 complex for a clerical person.

23 Based on my experience, the sample SELPAs and
24 districts are representative of the SELPAs and districts
25 in the state. We developed a list for SELPAs to sign

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1 up to participate in the survey. It was divided into
2 subgroups based on ADA to ensure we had an adequate
3 sampling from SELPAs of various sizes. 21 SELPAs
4 participated, making up 197 school districts and
5 11 county offices.

6 The 674,000 ADA included represents
7 approximately 12 percent of the state's ADA, and the
8 197 districts represent approximately 20 percent of the
9 state's school districts.

10 There is no evidence that would suggest that
11 the costs would be, on average, any different between
12 Southern California and Northern California.

13 The RRM is a reasonable method of
14 reimbursement. In special ed., the needs of students
15 vary from year to year, so the need for these additional
16 services will vary from year to year. Thus, it makes
17 sense to fund this on an ADA basis. As a school business
18 official, I would prefer to have a known figure per ADA
19 each year.

20 In addition, as noted in the Legislative
21 Analyst's office's January 3rd, 2013, report on special
22 education, California's special education funding model,
23 which was based on ADA, is based on the implicit
24 assumption that special education students are relatively
25 equally distributed among the general population and

1 across the state. Indeed, the LAO report finds that most
2 SELPAs do report serving proportionately similar numbers
3 and types of students with disabilities.

4 As noted, the settlement agreement with the
5 State was based on a per ADA amount, and was supported by
6 over 95 percent of the school agencies representing
7 99.85 percent of statewide ADA.

8 When the settlement did not get funded by the
9 Legislature, Diana McDonough suggested using the survey
10 as the basis of an RRM. I agreed, and worked on figures
11 to calculate the RRM.

12 As noted in the proposed statement of decision,
13 the State has funded special education on a per-ADA basis
14 since 1997. The recent LAO report also noted that
15 special education funding is based on the overall student
16 population, not the number of disabled students.

17 As noted in the proposed statement of decision,
18 claimants have been providing these mandated services for
19 19 years without any reimbursement from the State. This
20 very extended time frame is certainly not what the
21 California Constitution had in mind.

22 Thank you for the opportunity to speak to you
23 today.

24 CHAIR REYES: I do have a question.

25 Refresh my memory, the 21 SELPAs that

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1 participated, was that a random statistical valid sample
2 or was it just people who opted in to participate?

3 MR. LENAHAN: They were volunteers.

4 CHAIR REYES: So volunteers? So it's not
5 really statistical, you know, back from the statistics
6 classes where you do the random sample, and you take a
7 very small sample, and you could extrapolate.

8 When you were following up on the surveys, what
9 kind of questions did you follow up when you had the
10 range of a \$1.31 in one place, to \$81.91 in another?

11 MR. LENAHAN: The questions that we asked were
12 basically on the data that was provided. So we were
13 asking if they didn't provide the salary information so
14 that we could do a calculation, we'd ask for that.
15 Because the survey, and our compilation, is based on the
16 actual costs. So it wasn't -- we weren't trying to
17 control a range.

18 CHAIR REYES: No, no, no. But, I mean, when
19 somebody comes in at, you know, in this case, one-tenth
20 of the cost, did anybody follow up and ask, "Did you
21 leave this off," or when there was somebody on the high
22 end, did anybody follow up and say, "What did you
23 include? Did you include the car?" or...?

24 I mean, because the range is pretty -- that is
25 my concern, is that the range is pretty broad.

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1 MR. LENAHAN: Well, let me just say, is that
2 the surveys, in our compilation, is the actual costs. So
3 nobody included a car or something like that. This is
4 what the districts really spent.

5 But I think you need to understand, in special
6 education, that the students don't come kind of
7 homogenously throughout the year or throughout the years.

8 So my experience, like, in Fairfield-Suisun is
9 one year, we had six autistic kindergarten students
10 which, you know, was kind of off the chart.

11 So the same sort of thing occurs here, is that
12 these are not, you know, like it happens like clockwork.
13 It depends on what happened.

14 So that district, that had a high cost in
15 2006-07, may have a lower cost in 2007-08.

16 What we were counting on is, what is the actual
17 cost? And I believe, in my opinion, we have a big enough
18 sample that you'll get a good average.

19 And I think, as I indicated in my talk here, is
20 that, you know, the school districts agreed with that,
21 too. I mean, we had 95 percent that said, "Yes, let's go
22 forward with this," when we were negotiating the
23 agreement.

24 CHAIR REYES: And, again, I don't take issue
25 with using ADA. I think that's not unreasonable. I

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1 mean, we have to come up with something, and so I don't
2 have issue with that.

3 Anyway, that's --

4 MR. LENAHAN: Well, let me just also say, if
5 you looked at special ed. costs by SELPA or district and
6 stuff like that, the amount that the district has to --
7 of those costs per the special ed. students varies, too,
8 throughout the state. This is not an unusual sort of
9 thing that they're going to have some varieties. I
10 experienced that in several school districts I've worked
11 for.

12 CHAIR REYES: Right. And so the information
13 was self-reported, though? In other words, nobody went
14 back and confirmed that, in fact, there are receipts for
15 the costs included?

16 MR. LENAHAN: Well, but the costs included were
17 mostly salary costs. And so there isn't kind of like --
18 I mean, there were some consultant, but that was very
19 minor. It was always pretty -- you know, it's about the
20 staff time to implement this mandate.

21 CHAIR REYES: As reported by the district
22 without verification, by anybody other than the district?

23 MR. LENAHAN: Well, that -- yes, the people --
24 you know, the staff, as we said, who actually provide the
25 services, put down how much time they spent. And these

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1 were also re-reviewed by their director. And, as I
2 mentioned, Ms. Parnes also looked at the surveys that
3 came in and looked for reasonableness to see whether or
4 not there was something that was off the charts.

5 And occasionally there was, and Ms. Parnes took
6 care of following up to make sure that we got accurate,
7 verifiable data.

8 CHAIR REYES: Okay, thank you.

9 MR. LENAHAN: Uh-huh.

10 CHAIR REYES: Any questions from the board
11 members?

12 *(No response)*

13 CHAIR REYES: Thank you.

14 And you have a third witness?

15 MS. McDONOUGH: Yes.

16 Could I add one thing to that commentary for a
17 moment?

18 CHAIR REYES: Sure.

19 MS. McDONOUGH: I just wanted to mention that
20 on the survey data, the \$80 ADA figure is from Modoc
21 County, which is a very small county; and so, therefore,
22 weighted very low in the overall, you know, averaging of
23 how it went. And also -- that's the only one that's up
24 crazy like that.

25 And I just want to mention that there's a

1 couple of possibilities.

2 One is, when you're in a small area and you get
3 one expensive kid, it can put you way off the charts for
4 a couple years, then you come back down.

5 Another is that there may be some
6 transportation issues around getting the necessary
7 experts when you are in a place like Modoc County.

8 So I'm not sure all the reasons; but I'm just
9 saying, it's important to note, it's the very -- it's the
10 smallest, you know, ADA people that have that problem
11 more often.

12 If it's a large ADA, it tends to more even out.

13 CHAIR REYES: Right.

14 And then the other, the low end was Inyo, which
15 is also pretty rural, so that made it kind of odd.

16 And so that goes to my point, that when the
17 sample took place, you could have had a very expensive
18 case, and that is now built in as the permanent.

19 So that's my concern with using the reasonable
20 reimbursement methodology on an ongoing basis is that
21 whatever happened at that point in time, it's a good
22 slice of that window of time.

23 And I would like to see another slice of window
24 time before I go into a permanent reimbursement
25 methodology.

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1 That's why the "C" issue for me. Because if
2 you look at what actual expenditures from whatever
3 period, were we to go to Option C, then you could have
4 this wider data that then you can extrapolate a more
5 reasonable reimbursement; because you're not only looking
6 at 21 SELPAs, hopefully, you're looking -- I mean, it
7 would be a deal if you didn't have any SELPAs -- but if
8 you had a larger sample.

9 But that's just where I'm coming from.

10 Yes, Commissioner Saylor?

11 MS. McDONOUGH: Could I say --

12 CHAIR REYES: Go ahead.

13 MEMBER SAYLOR: I think that any slice will
14 have the same kind of anomalies. So it doesn't matter
15 which time it is going to be. The next slice that could
16 be taken would have an anomaly in a different county.

17 MS. McDONOUGH: That's exactly -- basically --
18 in other words, one is low, one is super high; and those
19 are especially those small counties like Inyo, Mono, and
20 Modoc; and then the next time, it will be switched
21 around. But overall, it's basically reasonable.

22 CHAIR REYES: Okay.

23 MEMBER SAYLOR: It washes out in the...

24 MS. McDONOUGH: It washes out.

25 But, anyway -- okay, the next witness.

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1 Mary Bevernick is here to talk a little bit
2 about what would be involved in getting actual claiming
3 data.

4 MS. BEVERNICK: Good morning, Commissioners.

5 CHAIR REYES: Good morning.

6 MS. BEVERNICK: I am Mary Bevernick, SELPA
7 director for Irvine. A single-district SELPA in Southern
8 California, Irvine's ADA is about 28,000, and our special
9 ed. count as of December 1st, 2012, is about 2,600.

10 I've been the SELPA director for Irvine for the
11 past five years, and I have been a special education
12 administrator for the past 15 years.

13 I'm also the chair of the Coalition for
14 Adequate Funding for Special Ed., a California
15 organization of special educators, mainly SELPA
16 directors, whose mission is to promote full funding for
17 special education at both the federal and the state
18 level.

19 I sit before you this morning to urge you to
20 adopt Option A and its reasonable reimbursement
21 methodology to resolve the *BIP* Hughes bill mandate claim
22 that has dragged on for the past 20 years.

23 Let me first say that SELPAs are adamant about
24 being reimbursed. We will make sure that we do what is
25 needed to receive dollars owed to us.

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1 As SELPA directors, we constantly face
2 underfunding of our programs. We are dedicated to
3 pursuing every dollar that it takes to provide the
4 necessary programs for students. The very existence of
5 the Coalition for Adequate Funding for Special Education,
6 the organization I chair, not only speaks to our
7 dedication toward the proposition, but also to situations
8 such as the one we are discussing today.

9 This giant unfunded mandate has existed far too
10 long. We have pursued, and we will continue to pursue
11 a solution until the issue is resolved. And we so
12 appreciate the opportunity to potentially resolve the
13 issue because we do need a resolution after 20 years.

14 Option A offers the best reimbursement option.
15 It relies on samples submitted by 21 SELPAs, based on the
16 2006-2007 data. The data has been examined and reviewed
17 and deemed to be accurate, actual costs by all parties.

18 Although there is cost variation among SELPAs,
19 we are comfortable with that variation due to size
20 variations among SELPAs and frequency variations
21 regarding issues with students.

22 We are subject to specific behaviors of the
23 particular students we serve in any given year. Those
24 variations are mitigated by the size of the SELPA, as was
25 just being discussed.

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1 We are all keenly aware that wide variations
2 occur from year to year and SELPA to SELPA; but that we
3 are all subject to the behaviors of whoever walks in the
4 door in any given school year.

5 In analyzing a variety of funding options for
6 particular programs, the SELPA organizations and the
7 Coalition for Adequate Funding have found that overall
8 per-ADA funding is overtime, the most equitable funding
9 option, in general. Episodic funding is less reliable
10 and requires far more detailed and frequent analysis.

11 In this case, we're considering funds over a
12 long period of time and circumstances. An overall ADA
13 model is preferred.

14 We believe that there is value in simplicity of
15 formula. If you were to adopt a plan to collect data
16 back to 1993, we believe that there would be a host of
17 issues to be addressed.

18 *BIP* information is available through IEP
19 documents.

20 Current data collection systems store IEPs, but
21 not back to 1993. Hardcopy files will be difficult to
22 retrieve. When available, they will need to be searched
23 by hand.

24 Processes that lead to BIPs and follow BIP
25 implementation will need to be captured. This

1 information is not aggregated in any data system. It
2 will need to be gathered by unstructured means.

3 Information to be gathered includes staff time
4 in a multitude of activities such as scheduling and
5 holding IEP meetings to determine the necessity of an FAA
6 that would lead to a BIP, developing a BIP after hours of
7 observation and interviews, monitoring implementation of
8 the BIP across settings.

9 Potential difficulties in gathering the above
10 information that is not already in a database: student
11 mobility, staff mobility, and inconsistent
12 record-keeping. Nonetheless, the data can be collected.

13 If you do not adopt Option A, the data will
14 be collected at great time and expense. It will be
15 submitted to the Controller, who will be required to
16 spend a great deal of time and expense to verify the
17 data.

18 But we already have a snapshot in time from
19 21 SELPAs collected in 2006-07. Why would we not use the
20 verified data to inform the reasonable reimbursement
21 methodology? Would that not be a reasonable method?

22 I can assure you that SELPAs across California
23 would commend you for adopting an actual reasonable
24 reimbursement methodology rather than attempting to
25 impose unreasonable procedures in an attempt to choose a

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1 different definition of equity, which will surely result
2 in further perceptions of inequity.

3 Please carefully consider Option A.

4 Thank you for the opportunity to present on
5 this topic. It is a topic that has plagued SELPAs for
6 many years due to the unfunded status. We would so
7 appreciate its resolution.

8 Again, thank you for this opportunity.

9 CHAIR REYES: Any questions of board members?

10 MEMBER SAYLOR: No.

11 CHAIR REYES: Ms. Olsen?

12 MEMBER OLSEN: This is slightly off topic, but
13 the numbers sort of caught my fancy.

14 So you said you have 28,000 students that are
15 in Irvine, and 2,600 of them are in special education?

16 MS. BEVERNICK: Yes.

17 MEMBER OLSEN: And of that, how many have BIPs?

18 MS. BEVERNICK: Oh, I didn't collect the exact
19 number of BIPs currently.

20 MEMBER OLSEN: That's 9 percent of your student
21 body?

22 MS. BEVERNICK: Yes, it is.

23 MEMBER OLSEN: So that means, that is
24 2,800 students that have IEPs?

25 MS. BEVERNICK: 2,600 students have IEPs.

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1 MEMBER OLSEN: Okay.

2 MS. BEVERNICK: I can't tell you the exact
3 number of students who have BIPs, but it's significant;
4 and I can also tell you that it's growing. Behavior
5 issues seem to be on the rise. And that's the case in
6 every SELPA I know of.

7 MEMBER OLSEN: So would your professional
8 judgment be that 10 percent of all students with IEPs
9 have BIPs, or 2 percent? I mean, I have no sense of
10 this -- it would be nice to have a sense of the world
11 we're talking about.

12 MS. KLUUDT: Let me make a stab at that for
13 San Joaquin County, because as I walked out of the office
14 last night, as she said, we do have a system that at
15 least tells us whether or not there is a PBIP on a
16 student.

17 We have about -- I don't know -- 5,500,
18 6,000 special ed. students in San Joaquin County SELPA,
19 and 66 of those have PBIPs.

20 Now, the interesting piece for me there,
21 though, was --

22 MS. McDONOUGH: That's 10 percent.

23 MS. KLUUDT: That's 10 percent.

24 We, of course, were one of the SELPAs, being a
25 claimant that collected that data back on the survey.

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1 The number of students having PBIPs today has
2 tripled over the number when we completed the survey.

3 MEMBER OLSEN: So, I'm sorry, there were
4 some -- it's 1 percent?

5 MS. McDONOUGH: Yes. I said that wrong.
6 Sorry. 66 of 6,000.

7 MS. KLUDT: Right, right.

8 But, again, I think we had 26 when we were
9 doing the survey, when I looked last night, and there
10 were about 66. So the number has dramatically increased
11 over the last few years.

12 MEMBER OLSEN: Thank you.

13 MS. BEVERNICK: And I can add to that, that
14 although I didn't, last night, count up the number of
15 BIPs that we currently have in Irvine, I have been
16 training more and more staff to be able to provide BIPs
17 and that I've added several positions. So I think I can
18 verify that, in fact, the incidence of students who need
19 BIPs has been on the rise dramatically.

20 CHAIR REYES: Thank you.

21 Questions from Board members?

22 You do?

23 MEMBER SAYLOR: Yes. A question for
24 Ms. Bevernick.

25 So 20 years ago was a long time ago.

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1 MS. BEVERNICK: Yes.

2 MEMBER SAYLOR: So whatever happened back then,
3 so what? I mean, in some respects, the expense that
4 school districts and SELPAs put out, that was a long time
5 ago.

6 Why is there an issue for expenditure now? The
7 impacts, what impacts actually took place as a result of
8 this mandate?

9 MS. BEVERNICK: When programs and needs of
10 students are -- regardless of the need of a special ed.
11 student, the law says we must provide a service in order
12 to service that student. So when funding isn't available
13 through state and federal means, then the funding for
14 whatever the special ed. service is comes from the
15 general fund of a school district.

16 So the general funds of school districts all
17 over the state have been impacted greatly by this
18 unfunded mandate. And the school districts have had to
19 absorb that expense because of the lack of funding for
20 it. So it has been -- school districts have been very
21 heavily hit by this expense.

22 MEMBER SAYLOR: So what happened? What did
23 they do?

24 MS. BEVERNICK: They had to increase class
25 size. A myriad of things. Many general-fund programs

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1 have had to be reduced or eliminated in order to support
2 the special ed. needs in any given district.

3 MEMBER SAYLOR: There are these potentially
4 offsetting revenues that are identified in the write-up
5 that we're looking at here.

6 So weren't those other non-local resources
7 available for school districts all along?

8 MS. BEVERNICK: There are many sources of
9 income available for school districts. But regardless,
10 these services have had to be provided without any
11 particular funding.

12 MEMBER SAYLOR: So at this point in time, what
13 would the school districts -- what would SELPAs do with
14 the money, if it comes, for the past 20 years?

15 MS. BEVERNICK: I can't speak for every SELPA.
16 I have to say that.

17 I could tell you that in Irvine, I suspect that
18 we would use the funding to offset the general fund that
19 we're already using to serve the students.

20 It would mean more money.

21 MS. KLUDT: And as I said, we've also had a
22 tremendous increase in these numbers of students. So,
23 you know, that's -- we're obviously going to be
24 reimbursed -- if this RRM Option A is adopted, we will be
25 reimbursed, you know, less than half of what that cost

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1 was. So we'll get a reimbursement for less than half.
2 And then we've got a number of students that are three
3 times as large with those needs as we had before. So
4 there will be a great use of those dollars, I can assure
5 you.

6 And as the number of students increase,
7 obviously, the number of staff that need to be trained
8 increases. I mean, it just impacts all facets of the
9 mandate that I explained to you.

10 CHAIR REYES: Thank you.

11 Finance, do you have anything to add?

12 MS. KISSEE: I'll go ahead with prepared
13 comments.

14 As you already, Mr. Reyes, laid out, as well
15 as the staff analysis and previous comments submitted by
16 the Department of Finance, we continue to believe that
17 reimbursement of claims should be based on actual costs
18 rather than the proposed RRM's due to our concerns over
19 the data being used.

20 We believe that reimbursing claims based on
21 the actual costs is the most reasonable and accurate
22 methodology in this case, as it is based on substantiated
23 documentation and it represents the true costs of
24 implementing *Behavioral Intervention Plan* mandated
25 activities.

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1 The proposed RRM's do not reasonably reimburse
2 the eligible claimants, as it does not represent costs of
3 the *BIP* program accurately.

4 As already discussed in previous comments,
5 there are wide variations of costs, and also the number
6 of BIPs reported per SELPA ranges widely from zero to 87.

7 Also, implementing RRM's based on this data
8 suggests that some SELPAs will receive reimbursement in
9 excess of their costs, and others will not receive full
10 reimbursement for their costs.

11 We believe this variation in costs renders the
12 proposed RRM's based on ADA inappropriate; and the data
13 used to calculate the proposed unit rate per ADA is not
14 representative of actual costs and, therefore, not
15 reasonable reimbursement methodology.

16 MS. GEANACOU: I have another comment, if I
17 may --

18 CHAIR REYES: Yes, please.

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

21 -- primarily focused on the offsetting revenue
22 aspect of the Commission's staff analysis.

23 First, I'd like to say, Finance supports the
24 Commission's distinction between what is potential or
25 available offsetting revenue, both as to pre-2010 State

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1 special education funding and federal funds, and then
2 post-October 2010 required offsets as to the available
3 State funds that have a first call on -- for this *BIPS*
4 mandate.

5 I also want to point out and emphasize the
6 distinction the Commission staff makes that we think is
7 accurate between revenues being available to be used for
8 a mandate in the P's & G's phase versus a point the
9 claimant tries to make that this money may not have been
10 specifically intended to fully cover the cost of the
11 mandate under 17556 of the Government Code, if we were
12 back at the test-claim phase and trying to decide if this
13 were a mandate or not. And we're well past that, as we
14 know.

15 So we think the Commission got the offsetting
16 revenue analysis correct, and we support that aspect of
17 the analysis as it flows through to both Option A and
18 Option B.

19 CHAIR REYES: Any questions or comments from
20 board members?

21 *(No response)*

22 CHAIR REYES: Any additional testimony from
23 folks in the audience?

24 *(No response)*

25 CHAIR REYES: I see staff of the Controller's

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1 office. I don't know if they want to come up.

2 I don't see anybody else coming up.

3 So what is the pleasure of the --

4 MS. McDONOUGH: May I have a closing --

5 CHAIR REYES: Yes.

6 MS. McDONOUGH: -- pardon me, a closing recap

7 for just a minute?

8 CHAIR REYES: Sure.

9 MS. McDONOUGH: So this is a very -- this is a
10 tough issue, and you can see that schools have been
11 working with this very expensive mandate for a long
12 period of time without reimbursement.

13 CHAIR REYES: Yes, I blame Dr. Kludt for that.
14 When she took the assignment, that was the only thing on
15 her table.

16 She has clearly failed at that. So I don't
17 know that...

18 MS. McDONOUGH: I'm glad we have someone to
19 blame. That's always so helpful, isn't it?

20 MS. KLUDET: And, actually, I had said over the
21 years I wasn't going to retire until this was settled.
22 Now, I'm partially retired; but, you know, I can't fully
23 retire until it's done.

24 CHAIR REYES: I'm sorry, I interrupted you.

25 MS. McDONOUGH: No problem.

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1 The core reason to decide for Option A is that
2 it better implements the intent of the law. This is the
3 basic reason why you're paying. It's not what we are
4 going to do with the money. That the State reimburse
5 local agencies for new programs or higher levels of
6 service that it requires.

7 In 2004, the Legislature placed the RRM in
8 statute to better implement reimbursement.

9 In 2007, the Legislature streamlined RRM
10 requirements in answer to an LAO recommendation urging
11 it to expand the use of simple claiming methodologies.

12 The resulting 2007 statute requires that RRMs
13 balance accuracy with simplicity.

14 I love that phrase. It's hard to believe our
15 Legislature came up with something like that. "Accuracy
16 with simplicity." Is that beautiful?

17 So think about that, and don't forget
18 simplicity. It is a word that is rarely heard in
19 government, and one that we believe deserves attention
20 here.

21 That language also states, "Whenever
22 possible -- whenever possible -- a reasonable
23 reimbursement methodology shall be based on general
24 allocation formulas, uniform cost allowances, and other
25 approximations of local costs, rather than detailed

1 documentation of actual costs.”

2 We believe a commonsense review of the proposed
3 RRM, not to mention a careful review, such as staff has
4 done, shows that it balances accuracy with simplicity,
5 and considers variation to implement the mandate in a
6 cost-efficient manner.

7 So Option A meets the statutory requirements.

8 When asking whether Option A or Option B is
9 more likely to carry out the intent of the law that local
10 agencies are actually reimbursed reasonably for
11 additional state-imposed costs, Option A is the clear
12 answer.

13 The California Supreme Court stated that the
14 reimbursement obligation was, quote, “Enshrined in the
15 Constitution to provide local entities with the assurance
16 that state mandates would not place additional burdens on
17 their increasingly limited revenue resources.”

18 Option A provides that assurance. Option B
19 does not.

20 Option A will also help restore local agencies’
21 faith that this is not just a game; that the State does
22 live under and inside the law, and given its limits,
23 attempts to implement it, just as it expected schools to
24 do when the Legislature passed the *BIP* legislation and
25 the Department of Education promulgated its regulations.

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1 Schools have lived up to their side of the
2 bargain for 20 years. Option A will help the State live
3 up to its side.

4 So we respectfully ask the Commission to adopt
5 the Option A statement of decision.

6 Thank you.

7 CHAIR REYES: Members, when we started this,
8 I believe that in Option B -- I respectfully disagree
9 with you. Option B does provide for that reimbursement.
10 It's provided for other mandates that we provide for
11 other local entities. And so the fact is that you'd get
12 paid perhaps in arrears instead of moving forward; but
13 the fact is, if Option B were adopted, you would have the
14 reimbursement required under the Constitution. You would
15 not have it prospectively in terms of your calculations.
16 But whatever costs you incur, that would be provided.

17 The reasonable reimbursement methodology is not
18 a requirement. It's an option. It's a tool available,
19 as you point out, and the statute points out, trying to
20 expedite and streamline the process.

21 I know a little bit about that when it was
22 drafted, since I was staffing the committee who
23 ultimately came up with that legislation. And it has
24 been amended since.

25 Originally, the goal was to get parties at a

1 table and work out the options. It did not happen, so
2 we came up with other venues for those reasonable
3 reimbursement methodologies. But the word still is
4 "reasonable."

5 And so we as the Commission then have to decide
6 what is reasonable to make that determination. There is
7 nothing that -- you know, reasonable minds can disagree.
8 And so that's the task that we have before us.

9 And as I indicated earlier, I thank you for
10 your comments. I actually did read this thing three
11 times, and I ultimately made copies of it instead of
12 keeping it electronic, because I wanted to be able to
13 move back and forth between options and sections.

14 And I'm still struggling with Option A.

15 I'm willing to go with Option A because
16 Finance -- I don't believe that they can come up with the
17 actual costs for stuff that happened in 1993 and 1994.
18 I couldn't come up with costs of things that happened in
19 my office or my home back in 1993-94.

20 So to expect that they would have this
21 information, you know, to do time studies or to -- I
22 mean, folks aren't even around to sign the affidavits
23 that, yes, in fact, they were employed.

24 So I have a difficult time with Option B across
25 the board; although Option B, to me, is an option that we

1 apply to other mandates.

2 The problem is that this mandate is 20 years
3 old. I mean, the issue is 20 years old.

4 There's no doubt that we have a reimbursable
5 mandate here. We can get to it in terms of the
6 offsetting revenue separately. But I'm looking to my
7 commissioners in terms of what -- I laid out what I
8 thought was a reasonable approach to recognize that the
9 costs from 1993 to some period of time yet to be
10 determined, the reasonable reimbursement methodology is
11 not unreasonable; but I'm also not comfortable with
12 accepting such a wide range as, you know, going -- as
13 going as the permanent formula.

14 And I get it, this is the point in time. But
15 I also think that if we go with Option A for the early
16 stage, and Option B for the second stage, then Option B
17 would give us lots of data that at some point in the
18 future, somebody can come in and say, "Okay, now, you
19 have a lot of data. You can come up with a reasonable
20 reimbursement methodology."

21 I don't object to the ADA. My problem is
22 the dollars to the ADA. I think using the ADA, Finance
23 would disagree. But I think using the ADA is reasonable;
24 that's where I am.

25 MEMBER SAYLOR: What time period, and why --

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1 what's your thinking about what would be the appropriate
2 criteria for determining that time period?

3 CHAIR REYES: Well, the question I posed
4 earlier, and I never got an answer, is what data -- what
5 time period do you have actual data for?

6 I mean, you've been -- you've been paying
7 bills, you've been paying folks, and you did the study
8 back in 2006.

9 MS. McDONOUGH: Mr. Reyes, are you suggesting
10 that you basically think, per ADA, RRM is a good idea;
11 you just aren't completely convinced that over time,
12 \$10.64 is the right amount?

13 CHAIR REYES: That is it essentially, yes.

14 MS. McDONOUGH: Okay, because I do want to say
15 that if that's your concern, I can virtually guarantee
16 that you will not get a lower amount than that.

17 And if what you wanted to collect data
18 truthfully, in a fair-minded way, you would need to start
19 prospectively -- or this year, in other words -- and
20 say -- because now we're doing it, right. People haven't
21 been sitting around, tallying down their hours for how
22 much time they spent for an FAA or a BIP. Up to now,
23 there's been no parameters and guidelines, no claiming
24 instructions, nobody's given them any guidance on how to
25 do that. And they haven't been doing that.

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1 If that's what you wanted, you say, going
2 forward, let's check that out and, you know, maybe that
3 \$10.64 is the wrong amount.

4 As the staff noted in the decision, you know,
5 if we had a requirement, for instance, that you have to
6 do three years' worth of time-cost study, and then
7 average it and put it in, that would be one interesting
8 idea.

9 But financing that and seeing it through, it's
10 a whole different matter in something of this scope. And
11 clearly, it would take even longer to get this type of
12 thing done.

13 CHAIR REYES: So my goal is not to shortchange
14 you or to give you more money.

15 MS. McDONOUGH: Uh-huh. You want it accurate.

16 CHAIR REYES: I want to know what it is that it
17 is costing us so everybody knows what it is. And we have
18 other provisions. And there are other provisions -- I
19 mean, the Governor is proposing to do something with this
20 mandate.

21 MS. McDONOUGH: Yes.

22 CHAIR REYES: But I mean, quite frankly, the
23 numbers you folks use, the Controller has never seen.
24 And so I would like to be able to say -- you know, have
25 comfort that whatever it is that we were reimbursing on

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1 a permanent basis, it is something that the Controller
2 has had the opportunity to audit and say, "Yes, there was
3 Joe Schmoe who spent X number of hours on Kenny," or
4 whatever it is.

5 MS. McDONOUGH: We did file these -- I mean,
6 I'm not saying the Controller's office is sitting around,
7 reading the Commission on State Mandates files; but we
8 did --

9 CHAIR REYES: Oh, yes, they do.

10 MS. McDONOUGH: Mr. Chivaro is not commenting
11 on that. Okay.

12 But I'm just saying that they could have looked
13 at those if they wished to do so.

14 CHAIR REYES: But it was not subject to audit
15 at the time.

16 MS. McDONOUGH: True.

17 CHAIR REYES: And so now, if we do --

18 MS. McDONOUGH: No, true.

19 CHAIR REYES: -- and I'm not speaking -- I
20 apologize, I'm not trying to speak for you.

21 MEMBER CHIVARO: No, that's all right.

22 CHAIR REYES: I'm just looking globally here,
23 because, you know, I'm looking at this in terms of what
24 the Commission can do as a quasi judiciary body that will
25 stand. And I'm just saying flat out, I'm not comfortable

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1 with Option A. And Option B, to me, is not practical.

2 But other folks have comments.

3 So why don't we start with Ms. Olsen and then
4 Mr. Saylor, and then Council Member Ramirez.

5 Go ahead.

6 MEMBER OLSEN: Well, I'd like to have a little
7 bit of a discussion between the parties here about this
8 idea of this Option C versus the use of the
9 reconsideration process we now have.

10 Is it your contention that because, under the
11 RRM, if we adopted Option A, then school districts would
12 no longer be required to collect data that could then be
13 used for reconsideration?

14 CHAIR REYES: Yes.

15 MEMBER OLSEN: Is that what forces us towards
16 Option C?

17 MS. HALSEY: I just want to clarify.

18 Sarah, I think you're meaning redetermination.

19 MEMBER OLSEN: Redetermination.

20 CHAIR REYES: Redetermination, yes.

21 MEMBER OLSEN: Yes.

22 CHAIR REYES: So we now accept this number, and
23 that's it, that's the law of the land. And you can never
24 go back and audit that number because they're not
25 required to, because that is in lieu of actual receipts.

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1 Now, we say, we're going to pay X dollars,
2 period, whether it's higher or lower or non-existent, we
3 would still commit to that dollar.

4 And I find that problematic, with only having
5 21 entities participating.

6 So from my perspective, if we have Option B
7 applied over a period of time, it may be high, it may be
8 lower, but it's going to be closer to the truth, and it
9 is going to be for a longer period of time, and more
10 entities will have participated by default. More
11 entities. The data will be greater.

12 And then from there, if you want to come up
13 with a dollar figure, at that point, the auditors would
14 have seen, the Controller folks would have seen the
15 numbers. And if at that point then somebody comes in and
16 says, "Hey, you know, given this data, we now know enough
17 to make a case for redetermination that we ought to have
18 the reasonable reimbursement -- or Ms. Shelton, what am
19 I looking for?

20 MS. SHELTON: Well, a redetermination is
21 really not --

22 CHAIR REYES: It's not a redetermination.

23 MS. SHELTON: It's not relevant to the cost
24 issue.

25 CHAIR REYES: No, no.

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1 MS. SHELTON: Those are going to be legal
2 issues, and there has to be a subsequent statute or some
3 other thing that is enacted that changes the State's
4 liability. So it's really not going to be based on the
5 cost issue.

6 MS. McDONOUGH: It's a motion to amend the
7 P's & G's, I presume.

8 CHAIR REYES: Exactly, yes.

9 MS. SHELTON: Is that what you're --

10 CHAIR REYES: Yes, yes.

11 MS. SHELTON: Yes, that's --

12 CHAIR REYES: So at that point, somebody could
13 come in and say we would like to amend the P's -- it
14 could be Finance, it could be the interested party, it
15 could be the school district -- and then, say, "We now
16 have three years of data," "five years of data." And, in
17 fact, if we make this Plan B for -- I'm just throwing out
18 a number, okay, this is not a number for the record --
19 this is not the number. If we throw out for the last
20 five years, you take Plan B, now you have five years of
21 data for these entities, and then you can then say, an
22 amendment to P's & G's, to make a reasonable
23 reimbursement methodology effective whenever we're done
24 with that --

25 MS. SHELTON: Yes, there is nothing prohibiting

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1 any party from filing a request to amend the P's & G's at
2 any time. So they could do that every year.

3 CHAIR REYES: Right. And at that point, you
4 have a lot of data, and the Controller would have audited
5 that information.

6 MS. SHELTON: No matter what option you pick.

7 MEMBER OLSEN: Well, but I think the issue here
8 is that if we choose Option A today, then the ability to
9 collect, or the likelihood -- the likelihood that ongoing
10 data will be collected, that's actual cost data, pretty
11 much disappears.

12 MS. SHELTON: Correct.

13 MEMBER OLSEN: In which case, we don't get the
14 kind of audited data that the Controller and Finance
15 would be interested in.

16 MS. SHELTON: Right.

17 MEMBER OLSEN: So, I mean, I think that's
18 really the issue.

19 Now, I sort of feel, thinking about this, that
20 we should probably adopt Option A up until this point in
21 time.

22 And then there is a discussion about, is there
23 something that should be happening for 2013 and beyond.

24 CHAIR REYES: So the question then is, how far
25 back do you have data that's available? And you're

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1 saying that you are gathering data now.

2 But, Ms. Shelton, what, legally -- how far
3 back, or retroactively..?

4 MS. SHELTON: These are kind of a lot --
5 there's a lot of mixed issues in your question to me.

6 CHAIR REYES: Yes. That's the way I usually
7 think.

8 MS. SHELTON: And --

9 MS. McDONOUGH: Thank you for thinking about
10 it, though. I do want to say, we really appreciate
11 you've actually read all this stuff, which is like
12 formidable and impressive.

13 CHAIR REYES: Not the 3,500 pages of exhibits,
14 though, I'll admit.

15 MS. McDONOUGH: Oh, for Pete's sake.

16 MS. SHELTON: One of the issues for supporting
17 the adoption of the RRM, up until a certain point, is
18 that that probably is the best evidence that exists in
19 the state to identify what the costs are, right. And so
20 at some point in time, if you're looking into ideas of
21 making them file based on an actual claim reimbursement,
22 that's not going to be based on ADA. It's going to be
23 driven by the actual special ed. students and the actual
24 time taken to do all the activities they have to do under
25 this program.

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1 So if you're wanting to do that, then it should
2 be based on when they kept their documentation to support
3 that. Otherwise -- I mean, I don't know, we still
4 haven't really received any information in the record.

5 CHAIR REYES: Let me ask you this: If we did
6 Option B --

7 MS. SHELTON: Right.

8 CHAIR REYES: Let's say that we did Option B,
9 and we said, "No, no reasonable reimbursement. We don't
10 know what it is," what would they then do to submit those
11 claims?

12 MS. SHELTON: Well, that would be pretty
13 interesting. They would have to come up with something
14 and work with the State Controller's office.

15 CHAIR REYES: Right.

16 MS. SHELTON: Because they are required to
17 support their claim with documentation.

18 CHAIR REYES: So let me ask the counsel: What
19 would you guys do if we went with Option B?

20 MS. McDONOUGH: Cry.

21 I mean, truth -- let's try to be truthful here
22 now.

23 CHAIR REYES: Well, you took an oath that you
24 were going to.

25 MS. McDONOUGH: You mean, you're going to hold

1 me to it?

2 CHAIR REYES: I have to. I've paid attention
3 to that oath.

4 MS. McDONOUGH: No, no.

5 Yes, let's just talk about this claim.

6 CHAIR REYES: I took it when I took office.
7 Defend the Constitution of the State of California, and
8 that's a requirement.

9 So, go ahead.

10 MS. McDONOUGH: Nobody's -- when a person's in
11 an IEP meeting; and they say, "Oh, I spent blank number
12 of hours on that," I guess I'm saying, all claiming is
13 based a little bit on people's actual self-reporting.
14 Because how else do you get these figures, okay?

15 Now, we think that in 2006-2007, for that year,
16 when we wrote those numbers down in January of 2008, and
17 February, we did a doggone good job for those people of
18 putting those claims together. And you wouldn't get any
19 better data from actual claiming Option B from those
20 21 SELPAs than that, okay.

21 Now, I don't believe that you can get any
22 decent data if you want, if you want to plunge into the
23 data world again unless you do it as of this year.
24 Because people are not now -- they haven't been keeping
25 track of this, as we said.

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1 So I just am restating what Ms. Olsen was
2 saying. I don't see how it could be done.

3 CHAIR REYES: But why haven't you been
4 keeping -- I mean, in order to be reimbursed for this,
5 since reasonable reimbursement has not been adopted, if
6 you want to get paid back by the State -- because, I
7 mean, this thing has been going on for 20 years.

8 MS. McDONOUGH: Yes. But if your goal is
9 accuracy, which you said.

10 CHAIR REYES: Right.

11 MS. McDONOUGH: Okay, if your goal is accuracy,
12 then you don't want to be saying, "Maybe some of you did
13 it for the last five years, maybe you didn't."

14 CHAIR REYES: And that's my point, is that I
15 don't know what that year, where you would have.

16 MS. McDONOUGH: We just said: This year.

17 CHAIR REYES: Okay, but --

18 MS. McDONOUGH: I mean, if accuracy is your
19 goal.

20 If accuracy is your goal, you've got 2006-07,
21 which we're ready to stand on with those 21 SELPAs, and
22 then you have the collection that you would do
23 prospectively.

24 CHAIR REYES: I guess the question -- I get it,
25 moving forward, I will do what I need to do, moving

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1 forward. I get that.

2 But for my income taxes, I needed to do stuff
3 from last year, and I kept that. For my 700 forms, I
4 needed to do that, I keep that. Because I knew
5 eventually I would have to use it to do something.

6 You submitted a claim, and you know the
7 process -- I mean, I'm looking at folks here that I see
8 often, and you know this process that you are required to
9 have something to support your claim, since we don't have
10 the reasonable reimbursement methodology in place yet.

11 That's the question I'm posing, but
12 Commissioner Saylor had a question and so did
13 Ms. Ramirez. I apologize -- and then Ms. Olsen.

14 MEMBER SAYLOR: I'll wait.

15 CHAIR REYES: You'll wait? Okay.

16 Ms. Ramirez?

17 MEMBER RAMIREZ: I'm leaning towards Option A
18 to a certain point because I do think accuracy is
19 important going forward. I have the suspicion it's going
20 to be -- if you want to be accurate, it's going to be
21 more because of all of the things you said. And I've
22 actually done some special ed. work in my career. So
23 I know that it is burgeoning. And I think that we
24 shortchange ourselves if we don't really get an accurate
25 account for everybody's sake, including the State budget.

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So I'd like to know, though, just a review from staff about this proposed Option C, how that could work. If someone could give me some background.

MR. JONES: Well, staff didn't suggest Option C, first of all.

MEMBER RAMIREZ: I know.

AUDIENCE MEMBER: They should have.

MR. JONES: Staff certainly could have written a third proposed statement of decision, but we didn't.

I would -- well, it's my opinion that the witnesses have expressed that they do not, in fact, have any evidence going backward of what their costs would be. And that's as much as we know that we're not practicing equity here in the Commission, that the Members are not trying to weigh equitable concerns as much as trying to find what's legally correct. You know, perhaps that's a consideration for, as you said, what is practical.

And if you're asking for just an opinion off the top of my head, I would probably lean towards what Ms. Olsen has suggested.

CHAIR REYES: Okay.

MS. SHELTON: Could I follow up on that real quick?

CHAIR REYES: Yes.

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1 MS. SHELTON: If you were trying to adopt an
2 Option C, a couple of procedural matters first.

3 One, we don't have it before you. So you could
4 take a vote today on that, but we would have to bring
5 back a proposed statement of decision at the next
6 hearing.

7 CHAIR REYES: Yes.

8 MS. SHELTON: That would be one issue.

9 Two, it would be, you know, a motion could be
10 made that you would adopt Option A with the proposed RRM
11 approved for the one-time cost, the proposed RRM approved
12 for the ongoing cost, up until whatever date, and then
13 cap it; and then adopt Option B for whatever future
14 claiming that would occur.

15 And you could -- you know, going forward with
16 the RRM up until a certain date would be based on
17 substantial evidence in the record, because nobody has
18 objected or put any contradictory evidence in for
19 challenging the times identified in the surveys and those
20 costs.

21 And it would be the best evidence of those
22 costs during those years.

23 You could also say, during the -- to require
24 actual costs claiming, that this is a program that simply
25 doesn't count widgets, which makes it really easy for an

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1 RRM, but is really cost-driven by individual students and
2 their needs, which makes it more difficult to come up
3 with a more precise or accurate number. So in that
4 sense, that could be a finding.

5 The difficulty in everyone's mind, obviously,
6 would be choosing that date when to go forward.

7 It is true for every mandates case, not just
8 this one, that for schools, that they have not kept the
9 data. We hear that all the time, in a way, because they
10 don't know what ultimately the Commission is going to
11 approve. And a lot of times, it's a higher level of
12 service so it's very difficult to just keep the data for
13 those activities that are approved. It's difficult for
14 everybody.

15 The Controller has auditing options. They have
16 in the past, and they have a time-study guideline, which
17 is sort of like an RRM; but based on each individual
18 claimant, it's very, I would imagine, time-consuming.
19 It's a lot of back and forth between the individual
20 claimant and the Controller. And it really depends on
21 the Controller's policies on how they want to conduct
22 their audits.

23 CHAIR REYES: So in the parameters and
24 guidelines, we could authorize the Controller to adopt
25 some sort of time study, and make it okay to do that.

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1 MS. SHELTON: And we've done that before.

2 It's my legal opinion that we don't have to do
3 that. They have the authority to do that on their own.
4 It's an auditing tool.

5 CHAIR REYES: It's probably better just to
6 provide for that authority as a commission; and that way,
7 they have that to rely on.

8 Commissioner Saylor?

9 MEMBER SAYLOR: Yes, first of all, I appreciate
10 the Chair's insights and very careful thought process in
11 presenting the options that you did at the outset and the
12 discussion that we've had so far.

13 I think reasonable reimbursement method is kind
14 of interesting because it doesn't require that it be
15 perfect. It's just something that's reasonable and makes
16 sense, that all parties can -- that it's one that we can
17 live with.

18 I think the one before us and that's presented
19 in Option A makes sense. I think it is reasonable.

20 And I'm pretty sure that school districts and
21 SELPAs don't have data that goes even yesterday, they
22 didn't -- they don't -- the reason they don't is, guess
23 what? They've been spending money on student support.
24 And they don't have the money to have the staff sitting
25 around to imagine what data somebody might ask for in the

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1 future. So that's just a reality. It's a practicality.
2 Some methodology going forward is a sensible
3 thing to present, I think, from -- so I would say, do
4 something that -- approve Option A up to this point, and
5 then set in motion whatever we choose for the future, so
6 that we can have actual costs, with actual times and
7 actual instructions for how to make claims for the
8 future. And --

9 MS. McDONOUGH: Could I --

10 MEMBER SAYLOR: May I just make another
11 comment?

12 MS. McDONOUGH: Yes, sorry.

13 MEMBER SAYLOR: And that is the reason that --
14 this case is the reason that this commission exists. We
15 have identified, through all processes and all the
16 appropriate legal steps, an actual mandate that needs to
17 be addressed. And here we are, 20 years later. And many
18 of us have been around these places all that time and
19 trying to find ways to make this thing, these kinds of
20 things come out fairly.

21 So it's an amazing opportunity for all of us
22 here in this room to arrive at a reasonable decision
23 today -- not sometime in the future, not delay it again,
24 not set up some new -- some longer-term activity that is
25 going to result in something that may be 11 cents higher

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1 or 40 cents lower. This is a reasonable strategy that
2 we've got before us.

3 And I really appreciate the degree of fairness
4 and balance that's been exhibited in the conversation
5 that the Commission has had so far. And I really would
6 like us to act today to support Option A for the time
7 from the beginning of this mandate in July 1st, 1993, to
8 the present time, or make it June 30th of 2013, and then
9 go forward in the next fiscal year with whatever
10 appropriate instructions and parameters and guidelines
11 that we choose to. But let's move forward.

12 CHAIR REYES: Go ahead, Ms. Shelton.

13 MS. SHELTON: I was just going to say, too --
14 Rick, correct me if I'm wrong -- that their initial claim
15 would go from July 1, 1993, and then actually go to
16 2011-12, right?

17 MEMBER CHIVARO: Yes.

18 MS. SHELTON: And then annual claims would
19 start 2012-13.

20 MEMBER SAYLOR: Okay, perfect.

21 MS. McDONOUGH: I don't know if I understand
22 what you just said.

23 MS. SHELTON: It's in the code, in 17561,
24 you're going to have one huge, gigantic initial
25 reimbursement claim, for the initial period of

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1 reimbursement that goes back to when you had to file your
2 actual reimbursement claim.

3 So it goes from the beginning until last fiscal
4 year, right?

5 And then next year, you're going to be filing
6 claims for 2012-13. So you file them one year behind.

7 MS. McDONOUGH: Okay, but let me just, if I
8 may, note that the Department of Finance previously said
9 they anticipate this mandate may be changed, they'd like
10 to add it to the block grant -- there are all these
11 different things going around that might happen, which
12 seems possible. This year, maybe. We don't know.

13 But with that in mind, we would -- we think I
14 would definitely -- if there's going to be a cutoff time,
15 let's make it June 30, 2013, the RRM applies through that
16 date.

17 There's a reasonable possibility that the law
18 might change as of July 1, 2013.

19 MEMBER SAYLOR: Ms. Shelton, how does that jibe
20 with your comment a minute ago?

21 MS. SHELTON: You can do that. I mean, there
22 is nothing preventing you from doing that. There's just
23 a lot of factors. If --

24 CHAIR REYES: I think my concern is that -- the
25 law is the law now, and so the attempts have been made in

1 the past to do laws that didn't go anywhere. And, you
2 know, hopefully Finance and the Administration will be
3 more successful in this. But, you know, it is what it
4 is.

5 Also, you folks also have a claim on 1610 and
6 its constitutionality, so that may change things as well.
7 So there is a lot of stuff out there that may change or
8 may not change. I'd rather just go with what it is, and
9 go -- you know, since we're not going back to 2006,
10 2011-12 seems to be a reasonable year.

11 And then what I suggest is that we do, I guess,
12 is my Plan C but a different year, it would be the year
13 we land on, 2011-12. And then moving forward from there
14 is actual cost. And so we actually can vote. And my
15 goal was not to delay the vote. My goal is to move
16 forward on this vote.

17 The mandate decision, the Commission already
18 took a vote that it is, in fact, a mandate. So now the
19 question is, how do we -- what is the tool to reimburse?

20 And as I suggested at the beginning, for the
21 stuff in the past, we do Option A; and from, you said,
22 2011-12 forward --

23 MS. SHELTON: Yes. And so under that proposal,
24 the entire initial reimbursement claim would be based on
25 an RRM.

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1 And then for future annual claiming, it would
2 be actual.

3 MEMBER SAYLOR: Yes, I make a motion to go that
4 way.

5 MEMBER OLSEN: I'll second that.

6 CHAIR REYES: Okay. Any additional -- any
7 questions or comments from board members?

8 *(No response)*

9 CHAIR REYES: Okay, and then you'll tell us --

10 MS. SHELTON: Can I just --

11 CHAIR REYES: -- exactly what the motion will
12 be in a minute.

13 MS. SHELTON: Okay. And then let me just also
14 say that you can take the vote today, but a proposed
15 statement of decision does not come back until April.
16 You would not take any more substantive --

17 CHAIR REYES: We don't take new testimony at
18 that time. At that time, it's just voting up, to be sure
19 that it captured everything that we said.

20 MS. SHELTON: The only issue -- right. The
21 only issue in the regs is whether the statement of
22 decision accurately reflects your vote count.

23 CHAIR REYES: Okay, So that's the only thing
24 we'll do.

25 So go ahead.

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1 MS. McDONOUGH: Okay. Thank you, sir.

2 CHAIR REYES: I apologize. I just want to make
3 sure we're all in the same -- and we're all looking at
4 the same page before we move forward.

5 MS. McDONOUGH: Right. So I'm not still
6 looking at that page. So let's -- I'm not clear that I
7 understand it, let me put it that way.

8 The claiming time-line is not the same as
9 asking us what data can we produce, realtime data, to
10 support our claims. In other words, just because you
11 claim backwards, that is not going to help us create data
12 if we don't have it.

13 So if we make a backwards claim for 2011-12,
14 like now, but we don't have data for 2011-12, we want
15 2011-12 to be subject to the RRM.

16 Do you follow what I'm saying? Am I saying it
17 right?

18 CHAIR REYES: No, I get it. And you would like
19 1920 to also be subject to RRM. I get that. That is
20 Plan A. So now we're talking --

21 MS. McDONOUGH: No, no, no.

22 CHAIR REYES: Okay.

23 MS. McDONOUGH: Because I was -- I think we
24 were --

25 MEMBER SAYLOR: '11-12 is, but '12-13 is not.

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1 MS. McDONOUGH: Exactly. That's where I was
2 going.

3 CHAIR REYES: But staff suggests 2011-12 for
4 RRM.

5 MS. McDONOUGH: But that's because she is
6 talking about this claiming time-line as opposed to data.

7 CHAIR REYES: So I'm seeking clarification from
8 staff because they are the experts on the process. I
9 just vote.

10 MS. SHELTON: Well, hopefully Mr. Chivaro will
11 speak up if I get this wrong, because they are the
12 Controller's office.

13 So when you file your first reimbursement claim
14 after the parameters and guidelines are adopted and the
15 Controller's office issues claiming instructions, it is
16 for your entire initial period of reimbursement. And for
17 this case, counting the timing, it would go to fiscal
18 year 2011-12.

19 You don't file your annual reimbursement claim
20 for 2012-13 until next February 2014.

21 MS. McDONOUGH: Oh, so you're saying, it would
22 include 2011-12?

23 MS. SHELTON: It would include 2011-12, but not
24 2012-13.

25 MS. McDONOUGH: Right, 2012-13 being the year

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1 we are now in.

2 CHAIR REYES: Yes.

3 MS. McDONOUGH: Okay.

4 MS. SHELTON: Is that right?

5 MS. McDONOUGH: Let me check the date.

6 Okay, I think I'm understanding it. Yes, we
7 would like it to be June 2013; but, okay, we understand
8 what you're talking about.

9 CHAIR REYES: All right.

10 So with that, there's been a motion and a
11 second.

12 Any additional comments, Finance?

13 *(No response)*

14 CHAIR REYES: Controller's office?

15 *(No response)*

16 CHAIR REYES: LAO?

17 *(No response)*

18 CHAIR REYES: Elevator operator?

19 Okay. All in favor, say "aye."

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

21 CHAIR REYES: Opposed?

22 *(No response)*

23 CHAIR REYES: Abstentions?

24 *(No response)*

25 CHAIR REYES: The "ayes" have it. Thank you.

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1 The second issue --

2 (Applause)

3 CHAIR REYES: The second issue is the
4 revenue -- the offsetting revenue issue.

5 Staff made a recommendation on that.

6 Yes?

7 MS. HALSEY: Well, we thought you just adopted
8 it.

9 MS. SHELTON: We thought your motion included
10 the proposed --

11 MS. HALSEY: We thought you were done.

12 CHAIR REYES: I purposely asked that it would
13 be bifurcated. So I think I would not be fair to include
14 it without specifically pinpointing it out.

15 MS. HALSEY: Okay.

16 CHAIR REYES: Comments were made on both sides.
17 Finance supports staff. Claimants do not
18 support staff.

19 MS. McDONOUGH: But I did understand
20 Mr. Saylor's motion to include Option A.

21 CHAIR REYES: To include?

22 MEMBER SAYLOR: Yes.

23 CHAIR REYES: Well, we can clarify that.

24 MS. McDONOUGH: And the offsets as proposed.

25 CHAIR REYES: It does? Okay.

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1 Is everybody in agreement with that?

2 MEMBER RIVERA: Yes, that's fine.

3 CHAIR REYES: So I apologize, the motion
4 included that.

5 MS. SHELTON: So that proposed statement of
6 decision coming back in April will have an RRM, just like
7 Option A, up until June 30, 2012.

8 Beginning July 1, 2012, it's for actuals.

9 CHAIR REYES: Right.

10 MS. SHELTON: Okay, and during all times, it
11 has the potential and required offsetting revenues
12 identified.

13 CHAIR REYES: Correct.

14 MS. SHELTON: Okay.

15 CHAIR REYES: And then in the future, if
16 somebody wants to submit a request to amend parameters
17 and guidelines, at that point we'll have better data, and
18 we'd be happy to consider that as any other request that
19 comes to the board.

20 Thank you.

21 All right, moving on to the next item.

22 MS. KLUDET: Thank you very much on behalf of
23 San Joaquin County SELPA.

24 MEMBER OLSEN: Happy retirement.

25 CHAIR REYES: It's about time.

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1 MS. KLUDT: Thank you.

2 CHAIR REYES: No, not quite yet. We still have
3 the year. All right.

4 MS. HALSEY: Item 10 is reserved for county
5 applications for a finding of significant financial
6 distress or SB 1033 applications.

7 No SB 1033 applications have been filed.

8 Item 11, Chief Legal Counsel Camille Shelton
9 will present the Chief Legal Counsel's report.

10 MS. SHELTON: The only thing to report at this
11 time is the hearing set on the petition for writ of
12 mandate filed by the Department of Finance on the
13 *Graduation Requirements P's & G's* amendment, set for
14 February 15th.

15 CHAIR REYES: Okay, thank you.

16 The next item.

17 MS. HALSEY: Item 12 is the Executive Director
18 Report.

19 If you take a look at my report, I have the
20 update of our completed workload thus far this year and
21 an update on what we have pending. And I also have a
22 budget update.

23 The Governor on January 10th, 2013, released
24 the proposed State budget and it includes appropriation
25 of \$1.873 to fund the Commission. And that includes a

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1 budget change proposal for an addition of \$245,000 in
2 order to hire a staff counsel III and a senior legal
3 analyst.

4 The additional staffing will enable the
5 Commission to better comply with statutory time frames
6 and accelerate the reduction of our backlog.

7 CHAIR REYES: Thank you, Finance.

8 MS. HALSEY: Yes, thank you, Finance.

9 CHAIR REYES: They left.

10 MS. HALSEY: And they left.

11 Also, on mandate funding, the Administration
12 proposed some changes in education, an increase of
13 \$100 million to the K-12 mandates block grant in support
14 of *Graduation Requirements* and *BIPs*. They're also saying
15 that they intend to restructure *BIPs*, which would
16 eliminate most of the reimbursable costs.

17 Also, the proposed budget suspends nine new
18 local agency mandates: *Modified Primary Elections*,
19 *Domestic Violence Background Checks*, *Permanent Absentee*
20 *Voters*, *Identity Theft*, *California Public Records Act*,
21 *Local Agency Ethics*, *TB Control*, and *ICAN and Voter ID*
22 *Procedures*.

23 We have detail attached here, if you're
24 interested, to my report on all of the programs and on
25 the funding proposed.

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1 CHAIR REYES: Okay.

2 MS. HALSEY: And then I have listed our
3 tentative agenda items for the upcoming hearings.

4 If you are a party generally that comes before
5 us, please take a look and see if one of your items is
6 coming up shortly.

7 And that's all I have today, unless you have
8 any questions for me.

9 CHAIR REYES: No.

10 Most of the folks here are aware that they're
11 subject to the 700 form, so just kind of a reminder.

12 Ms. Olsen, since you're not in a standing
13 office -- you're in this office, you're required to do
14 the 700. And everybody else, I think, by virtue of the
15 position they hold, they have it. But that would be good
16 to remind folks.

17 Thank you.

18 MS. HALSEY: Oh, I did forget one thing. I
19 didn't have it in my report because it happened since
20 I prepared the involvement.

21 We did get our first mandate redetermination
22 request submitted to us by the Department of Finance.
23 And that's on *Sexually Violent Predators*.

24 CHAIR REYES: Okay.

25 MS. HALSEY: So I just wanted to let you know

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1 that.

2 CHAIR REYES: All right, are we done?

3 MS. HALSEY: Yes, thank you.

4 CHAIR REYES: Any comments or questions from
5 board members?

6 *(No response)*

7 CHAIR REYES: Are there any public comments?

8 MR. BURDICK: Chairman Reyes and Members,
9 Allan Burdick on behalf of CSAC and League of Cities
10 Advisory Committee on State Mandates.

11 My only point is that you just dealt with and
12 set a lot of groundwork for RRM's. I would hope, when
13 you adopt your April statement, that these not all be
14 precedent-setting; that part of this be somewhat unique
15 to the particular case and situation.

16 Some of the stuff that went on there, I think
17 as we look at it from a city and county standpoint, would
18 have some of the issues with that. We didn't want to get
19 involved with that particular mandate. But it did seem
20 to be somewhat unique in some of the decisions, and the
21 processes and things I think were specific to that.

22 So I'm just more concerned about staff having
23 to rely on everything that was done on there for the now
24 six reasonable reimbursement methodologies that local
25 agencies have before you.

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1 And I'd also like to just comment that our
2 December meeting with the Commission, they approved and
3 said it was clearly legal to do your Option C, which we
4 plan to propose for the *Public Records Act* later this
5 year.

6 Thank you very much.

7 CHAIR REYES: Thank you.

8 Anybody else?

9 *(No response)*

10 CHAIR REYES: Seeing none, the Commission will
11 meet in closed executive session pursuant to Government
12 Code section 11126, subdivision (e), to confer and
13 receive advice from legal counsel for consideration and
14 action, as necessary and appropriate, upon the pending
15 litigation listed in the published notice and agenda, and
16 to confer with and receive advice from legal counsel
17 regarding potential litigation.

18 The Commission will also confer on personnel
19 matters pursuant to Government Code sections 11126,
20 subdivision (a), paragraph (1).

21 We will reconvene in open session in
22 approximately 30 minutes.

23 And we will have a five-minute break before we
24 go there.

25 Thank you.

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1 *(Brief break from 11:57 a.m. to 12:03 p.m.)*
2 *(The Commission met in closed executive*
3 *session from 12:03 p.m. to 12:19 p.m.)*
4 *(At 12:19 p.m. the Commission reconvened*
5 *in open session after having met in closed*
6 *executive session pursuant to Government*
7 *Code section 11126(e)(2) to confer with*
8 *and receive advice from legal counsel, for*
9 *consideration and action, as necessary and*
10 *appropriate, upon the pending litigation*
11 *listed on the published notice and agenda;*
12 *and to confer with and receive advice from*
13 *legal counsel regarding potential*
14 *litigation; and pursuant to Government*
15 *Code section 11126, subdivision (a)(1), to*
16 *confer on personnel matters.)*

17 CHAIR REYES: We're coming back from closed
18 session where we were advised by counsel, and we did take
19 some personnel actions.

20 Mr. Hone, would you please tell us what the
21 motion looked like?

22 MR. HONE: Certainly.

23 Regarding Item 13, the Chief Legal Counsel's
24 position --

25 CHAIR REYES: Is your mike on?

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1 Thank you.

2 MR. HONE: For Item 13, the Chief Legal Counsel
3 position is established at a CA4 Level. Ms. Shelton was
4 appointed on December 9th, 2005. She last received a
5 salary adjustment in January 2008. It should be noted
6 that the Commission approved a salary adjustment in
7 March 2010. However, the adjustment required approval of
8 the Governor's office and the Department Personnel
9 Administration, and approval was not granted at that
10 time.

11 The Commission may take action to adjust the
12 Chief Legal Counsel's salary by designating an adjustment
13 amount and effective date.

14 So if the Commission decides to adjust the
15 Chief Legal Counsel's salary, the following motion action
16 should be taken: "I move to adjust the Chief Legal
17 Counsel's salary by X percent, effective...," and you would
18 insert the date.

19 MEMBER OLSEN: Mr. Chairman?

20 CHAIR REYES: Ms. Olsen?

21 MEMBER OLSEN: I move to adjust the Chief Legal
22 Counsel's salary by 5 percent effective March 1st.

23 MEMBER RIVERA: I second.

24 CHAIR REYES: Thank you.

25 MEMBER OLSEN: And that would be of 2013. I

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1 should probably specify the year.

2 MR. HONE: Yes.

3 CHAIR REYES: And so we would ask Mr. Hone to
4 take all the necessary administrative actions to make
5 that happen.

6 Thank you.

7 MEMBER RAMIREZ: Do we need to vote?

8 CHAIR REYES: So there's a motion and a second.

9 All in favor, say "aye."

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

11 CHAIR REYES: Opposed?

12 *(No response)*

13 CHAIR REYES: Abstentions?

14 *(No response)*

15 CHAIR REYES: Thank you.

16 The "ayes" have it.

17 The next item, please.

18 The Executive Director position is established
19 at level D of the exempt-salary schedule. Ms. Halsey was
20 appointed on March 23rd, 2012.

21 At its current level, Ms. Halsey's salary will
22 be less than the maximum salary of an Attorney 3 as of
23 July 1st, 2013.

24 There are currently two Attorney 3 positions on
25 Commission staff, one of which was held by Ms. Halsey

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1 prior to her appointment as Executive Director.

2 The Commission may take action to adjust the
3 Executive Director's salary by designating an adjustment
4 amount and effective date similar to the last item.

5 CHAIR REYES: Is there a motion?

6 MEMBER OLSEN: Do you want me to do it?

7 Mr. Chairman, I move to adjust the Executive
8 Director's salary by 5 percent effective on her
9 anniversary date of March 23rd, 2013.

10 CHAIR REYES: Thank you.

11 Is there a second?

12 MEMBER RIVERA: Second.

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

14 Any questions? Comments?

15 *(No response)*

16 CHAIR REYES: Seeing none -- Ms. Shelton?

17 MS. SHELTON: Did you read your script coming
18 out of closed session?

19 CHAIR REYES: Yes.

20 MS. SHELTON: You did?

21 CHAIR REYES: All in favor, say "aye."

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

23 CHAIR REYES: Opposed?

24 *(No response)*

25 CHAIR REYES: Abstentions?

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(No response)

CHAIR REYES: Thank you.

All right, we are adjourned.

(The meeting concluded at 12:21 p.m.)



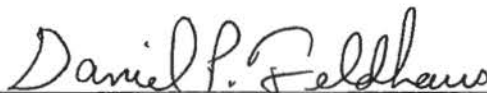
REPORTER'S CERTIFICATE

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 12th of February 2012.



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