

## **Item 1**

### **Proposed Minutes**

#### **COMMISSION ON STATE MANDATES**

Location of Meeting: Room 447  
State Capitol, Sacramento, California  
March 25, 2016

Present: Member Eraina Ortega, Chairperson  
Representative of the Director of the Department of Finance  
Member John Chiang, Vice Chairperson  
State Treasurer  
Member Ken Alex  
Director of the Office of Planning and Research  
Member Richard Chivaro  
Representative of the State Controller  
Member Sarah Olsen  
Public Member  
Member Carmen Ramirez  
City Council Member

Absent: 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 Ortega called the meeting to order at 10:00 a.m. Executive Director Heather Halsey called the roll. Member Chivaro and Member Saylor were absent at roll call.

#### **APPROVAL OF MINUTES**

Member Olsen made a motion to adopt the minutes. With a second by Member Alex, the January 22, 2016 hearing minutes were adopted by a vote of 5-0.

#### **PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA**

The Chairperson asked if there was any public comment. There was no response.

#### **CONSENT CALENDAR**

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

## ADOPTION OF ORDER TO INITIATE RULEMAKING

- Item 10\*      General Cleanup Provisions, Proposed Amendments to California Code of Regulations, Title 2, Division 2, Chapter 2.5, Articles 1, 2, 3, 4, 5, 6, 7, 8, and 10

Chairperson Ortega asked if there was any objection to the Consent Calendar and if there were any comments from the public. No objection was made and there was no public comment.

Member Chiang made a motion to adopt the Consent Calendar. With a second by Member Ramirez, the Consent Calendar was adopted by a vote of 5-0.

## **HEARINGS AND DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (GOV. CODE, § 17551, 17557, 17559, and 17570) (action)**

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

## **APPEAL OF EXECUTIVE DIRECTOR DECISIONS PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1181.1(c) (info/action)**

- Item 2      *Appeal of Executive Director Decision, 15-AEDD-01*  
County of San Diego, Appellant

This matter is an appeal by the County of San Diego of the executive director's decision to dismiss an incorrect reduction claim filed by the County of San Diego because it was not filed within the period of limitation.

Chief Legal Counsel Camille Shelton presented the item and recommended that the Commission uphold the executive director's decision to return the incorrect reduction claim filed by the County of San Diego as incomplete, because it was not filed within the period of limitation.

Parties were represented as follows: Kyle Sand and Lisa Macchione, representing the appellant; Jim Spano representing the State Controller's Office.

Member Chivaro joined the meeting.

Following discussion among the Commission members, staff, and parties, Member Olsen made a motion to grant the appeal. With a second by Member Ramirez, the motion to overturn the staff recommendation and grant the appeal resulted in a tie vote of 3-3. Therefore, no action was taken and the matter was continued to the next regularly scheduled hearing.

## **MANDATE REDETERMINATIONS**

- Item 3      *Immunization Records: Hepatitis B (98-TC-05), 14-MR-04*  
Education Code Section 48216 and Health and Safety Code Sections 120325, 120335, 120340, and 120375; as amended by Statutes 1978, Chapter 325; Statutes 1979, Chapter 435; Statutes 1982, Chapter 472; Statutes 1991, Chapter 984; Statutes 1992, Chapter 1300; Statutes 1994, Chapter 1172; Statutes 1995, Chapters 291 and 415; Statutes 1996, Chapter 1023; and Statutes 1997, Chapters 885 and 882  
  
California Code of Regulations, Title 17, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075; as amended by Register 90, No. 35; Register 80, Nos.

16, 34, 40; Register 86, No. 6; Register 96, No. 13; Register 97, Nos. 21, 37, and 39

As Alleged to be Modified by Statutes 2010, Chapter 434 (AB 354)

Department of Finance, Requester

## SECOND HEARING: NEW TEST CLAIM DECISION

The second hearing for this matter is to determine whether the State's liability has been modified by a subsequent change in law and whether the Commission shall adopt a new test claim decision to supersede the previously adopted decision reflecting the State's modified liability.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the decision finding that the state's liability has been modified based on a subsequent change in law that eliminates the condition that pupils be fully immunized against hepatitis B before a school district can admit or advance a pupil to the seventh grade and recommended that the Commission adopt the proposed decision as its new test claim decision.

Parties were represented as follows: Rebecca Hamilton, representing the Department of Finance.

Department of Finance concurred with the staff recommendation and there was no comment from interested parties or the public on this matter. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Chivaro, the motion to adopt the new test claim decision was adopted by a vote of 6-0.

## PARAMETERS AND GUIDELINES AND PARAMETERS AND GUIDELINES AMENDMENTS

Item 4      *California Assessment of Student Performance and Progress (CAASPP), 14-TC-01 and 14-TC-04*

Education Code Section 60640, as amended by Statutes 2013, Chapter 489 (AB484) and Statutes 2014, Chapter 32 (SB 858); California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), and 864, as added or amended by Register 2014, Nos. 6, 30, 35

Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, and Vallejo City Unified School District, Claimants

The parameters and guidelines outline new mandated costs arising from the elimination of the former *Standardized Testing and Reporting* program and its replacement with the computer-based statewide pupil assessment designated *CAASPP*.

Commission Counsel Matt Jones presented this item and recommended that the Commission adopt the proposed decision and parameters and guidelines.

Parties were represented as follows: Arthur Palkowitz, representing the claimant; Keith Bray, General Counsel, California School Boards Association; Amber Alexander and Susan Geanacou, representing the Department of Finance.

Following discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the proposed decision and parameters and guidelines. With a second by

Member Olsen, the motion to adopt the proposed decision and parameters and guidelines was adopted by a vote of 6-0.

Item 5      *Immunization Records: Hepatitis B*, 98-TC-05 (14-MR-04)

Education Code Section 48216 and Health and Safety Code Sections 120325, 120335, 120340, and 120375; as amended by Statutes 1978, Chapter 325; Statutes 1979, Chapter 435; Statutes 1982, Chapter 472; Statutes 1991, Chapter 984; Statutes 1992, Chapter 1300; Statutes 1994, Chapter 1172; Statutes 1995, Chapters 291 and 415; Statutes 1996, Chapter 1023; and Statutes 1997, Chapters 885 and 882

California Code of Regulations, Title 17, Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075; as amended by Register 90, No. 35; Register 80, Nos. 16, 34, 40; Register 86, No. 6; Register 96, No. 13; Register 97, Nos. 21, 37, and 39

As Modified by Statutes 2010, Chapter 434 (AB 354)

Department of Finance, Requester

This proposed parameters and guidelines amendment is consistent with the Commission's new test claim decision adopted as Item 3 on this agenda, finding that the State's liability pursuant to Article XIII B, section 6 has been modified based on a subsequent change in law.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission adopt the proposed decision and amendment to the parameters and guidelines.

Parties were represented as follows: Rebecca Hamilton, representing the Department of Finance.

Department of Finance concurred with the staff recommendation and there was no comment from interested parties or the public on this matter. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to adopt the proposed decision and the amendment to the parameters and guidelines was adopted by a vote of 6-0.

Executive Director Heather Halsey noted the claimant for Items 6, 7, and 8 would not be appearing at the hearing; but stand on their written submission for the record.

### **INCORRECT REDUCTION CLAIMS**

Item 6      *Domestic Violence Treatment Services*, 07-9628101-I-01

Penal Code Sections 273.5(e), (f), (g), (h), and (i); 1000.93, 1000.94, 1000.95, and 1203.097; Statutes 1992, Chapters 183 and 184; Statutes 1994, Chapter 28X; Statutes 1995, Chapter 641

Fiscal Years 1998-1999, 1999-2000, and 2000-2001

County of Santa Clara, Claimant

This incorrect reduction claim addresses the State Controller's reduction of the program between 1998 and 2001.

Senior Commission Counsel Eric Feller presented this item and recommended the Commission adopt the proposed decision to deny the incorrect reduction claim because it was not timely filed

and therefore the Commission has no jurisdiction to hear and decide this incorrect reduction claim.

Parties were represented as follows: Jim Spano and Masha Vorobyova, representing the State Controller's Office.

The State Controller concurred with the staff recommendation and there was no comment from interested parties or the public on this matter. Member Alex made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to deny the incorrect reduction claim was adopted by a vote of 6-0.

- Item 7      *Child Abduction and Recovery Program*, 08-4237-I-02 and 12-4237-I-03  
Family Code Sections 3060-3064, 3130-3134.5, 3408, 3411, and 3421;  
Penal Code Sections 277, 278, and 278.5; Welfare and Institutions Code  
Section 11478.5; Statutes 1976, Chapter 1399; Statutes 1992, Chapter 162;  
Statutes 1996, Chapter 988  
  
Fiscal Years 1999-2000, 2000-2001, 2001-2002, 2003-2004, 2004-2005,  
2005-2006, and 2006-2007  
  
County of Santa Clara, Claimant

These consolidated incorrect reduction claims address the State Controller's reduction of costs claimed for employees' salaries and benefits, for failure to provide documentation supporting the time spent on the mandate, or a documented time study that adequately supported the time claimed.

Senior Commission Counsel Julia Blair presented this item and recommended the Commission adopt the proposed decision to deny these incorrect reduction claims.

Parties were represented as follows: Jim Spano, Chris Ryan, and Masha Vorobyova, representing the State Controller's Office.

The State Controller concurred with the staff recommendation and there was no comment from interested parties or the public on this matter. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to deny the consolidated incorrect reduction claims was adopted by a vote of 6-0.

- Item 8      *Peace Officers Procedural Bill of Rights (POBOR)*, 10-4499-I-01  
Government Code Sections 3301, 3303, 3304, 3305, and 3306  
  
Statutes 1976, Chapter 465; Statutes 1978, Chapters 775, 1173, 1174, and  
1178; Statutes 1979, Chapter 405; Statutes 1980, Chapter 1367; Statutes  
1982, Chapter 994; Statutes 1983, Chapter 964; Statutes 1989,  
Chapter 1165; Statutes 1990, Chapter 675  
  
Fiscal Years 2003-2004, 2004-2005, and 2005-2006  
  
County of Santa Clara, Claimant

This incorrect reduction claim addresses the State Controller's reductions of reimbursement claims based on the finding that claimed costs were beyond the scope of reimbursement outlined in the parameters and guidelines.

Commission Counsel Matt Jones presented this item and recommended the Commission adopt the proposed decision to deny the incorrect reduction claim.

Parties were represented as follows: Jim Spano, Masha Vorobyova, and Chris Ryan, representing the State Controller's Office.

The State Controller concurred with the staff recommendation and there was no comment from interested parties or the public on this matter. Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to deny the incorrect reduction claim was adopted by a vote of 6-0.

**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 9      Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer

No applications were filed.

**STAFF REPORTS**

- Item 11      Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 12      Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 13      Executive Director: Workload Update and Tentative Agenda Items for the May and July 2016 Meetings (info)

Executive Director Heather Halsey presented this item. Ms. Halsey introduced the Commission's new senior commission counsel, Paul Lukacs and new program analyst, Christina Bardasu. Ms. Halsey then reported on the Commission's pending caseload and incorrect reduction claim backlog.

**CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 AND 11126.2 (info/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):

Trial Courts:

1. *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]

2. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*  
Sacramento County Superior Court, Case No. 34-2015-80002016  
[*Water Conservation* (10-TC-12/12-TC-01, adopted December 5, 2014), Water Code Division 6, Part 2.55 [sections 10608-10608.64] and Part 2.8 [sections 10800-10853] as added by Statutes 2009-2010, 7th Extraordinary Session, Chapter 4 California Code of Regulations, Title 23, Division 2, Chapter 5.1, Article 2, Sections 597-597.4; Register 2012, No. 28.]

Courts of Appeal:

1. *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]
2. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*  
Fourth District Court of Appeal, Division One, Case No. D068657  
San Diego County Superior Court, Case No. 37-2014-00005050-CU-WM-CTL  
[Mandate Redetermination, *Sexually Violent Predators*, (12-MR-01, CSM-4509); Welfare and Institutions Code Sections 6601, 6602, 6603, 6604, 6605, and 6608; Statutes 1995, Chapter 762 (SB 1143); Statutes 1995, Chapter 763 (AB 888); Statutes 1996, Chapter 4 (AB 1496) As modified by Proposition 83, General Election, November 7, 2006]
3. *Coast Community College District, et al. v. Commission on State Mandates*,  
Third District Court of Appeal, Case No. C080349  
Sacramento County Superior Court, Case No. 34-2014-80001842  
[*Minimum Conditions for State Aid*, 02-TC-25/02-TC-31  
(Education Code Sections 66721, 66721.5, 66722, 66722.5, 66731, 66732, 66736, 66737, 66738, 66740, 66741, 66742, 66743, 70901, 70901.5, 70902, 71027, 78015, 78016, 78211.5, 78212, 78213, 78214, 78215, 78216, 87482.6, and 87482.7; Statutes 1975, Chapter 802; Statutes 1976, Chapters 275, 783, 1010, and 1176; Statutes 1977, Chapters 36 and 967; Statutes 1979, Chapters 797 and 977; Statutes 1980, Chapter 910; Statutes 1981, Chapters 470 and 891; Statutes 1982, Chapters 1117 and 1329; Statutes 1983, Chapters 143 and 537; Statutes 1984, Chapter 1371; Statutes 1986, Chapter 1467; Statutes 1988, Chapters 973 and 1514; Statutes 1990, Chapters 1372 and 1667; Statutes 1991, Chapters 1038, 1188, and 1198; Statutes 1995, Chapters 493 and 758; Statutes 1998, Chapter 365, 914, and 1023; Statutes 1999, Chapter 587; Statutes 2000, Chapter 187; and Statutes 2002, Chapter 1169; California Code of Regulations, Title 5, Sections 51000, 51002, 51004, 51006, 51008, 51012, 51014, 51016, 51018, 51020, 51021, 51022, 51023,

51023.5, 51023.7, 51024, 51025, 51027, 51100, 51102, 53200, 53202, 53203, 53204, 53207, 53300, 53301, 53302, 53308, 53309, 53310, 53311, 53312, 53314, 54626, 54805, 55000, 55000.5, 55001, 55002, 55002.5, 55004, 55005, 55006, 55100, 55130, 55150, 55160, 55170, 55182, 55200, 55201, 55202, 55205, 55207, 55209, 55211, 55213, 55215, 55217, 55219, 55300, 55316, 55316.5, 55320, 55321, 55322, 55340, 55350, 55401, 55402, 55403, 55404, 55500, 55502, 55510, 55512, 55514, 55516, 55518, 55520, 55521, 55522, 55523, 55524, 55525, 55526, 55530, 55532, 55534, 55600, 55601, 55602, 55602.5, 55603, 55605, 55607, 55620, 55630, 55750, 55751, 55752, 55753, 55753.5, 55753.7, 55754, 55755, 55756, 55756.5, 55757, 55758, 55758.5, 55759, 55760, 55761, 55762, 55763, 55764, 55765, 55800, 55800.5, 55801, 55805, 55805.5, 55806, 55807, 55808, 55809, 55825, 55827, 55828, 55829, 55830, 55831, 58102, 58104, 58106, 58107, 58108, 59404, and 59410; Handbook of Accreditation and Policy Manual, Accrediting Commission for Community and Junior Colleges (Summer 2002); and “Program and Course Approval Handbook” Chancellor’s Office California Community Colleges (September 2001).]

California Supreme Court:

1. *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)  
California Supreme Court, Case No. S214855  
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]

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126(e)(2):

Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members or staff.

**B. PERSONNEL**

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

The Commission adjourned into closed executive session at 11:17 a.m., 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 published notice and agenda; and to confer with and receive advice from legal counsel regarding potential litigation; and to confer on personnel matters pursuant to Government Code section 11126(a)(1).

**RECOVENE IN PUBLIC SESSION**

**REPORT FROM CLOSED EXECUTIVE SESSION**

At 11:26 a.m., Chairperson Ortega reconvened in open session, and reported that the Commission met in closed executive session pursuant to Government Code section 11126(e)(2)



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 to confer with and receive advice from legal counsel regarding potential litigation, and, pursuant to Government Code section 11126(a)(1) to confer on personnel matters.

**ADJOURNMENT**

Hearing no further business, Chairperson Ortega adjourned the meeting at 11:28 a.m.

Heather Halsey  
Executive Director

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APR 18 2016

**COMMISSION ON  
STATE MANDATES  
PUBLIC MEETING**

**COMMISSION ON STATE MANDATES**

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**TIME: 10:00 a.m.**

**DATE: Friday, March 25, 2016**

**PLACE: State Capitol, Room 447  
Sacramento, California**

•••••

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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Reported by:

Daniel P. Feldhaus

California Certified Shorthand Reporter #6949

Registered Diplomat Reporter, Certified Realtime Reporter

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**Daniel P. Feldhaus, C.S.R., Inc.**

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A P P E A R A N C E S

COMMISSIONERS PRESENT

ERAINA ORTEGA  
Representative for MICHAEL COHEN, Director  
Department of Finance  
(Chair of the Commission)

RICHARD CHIVARO  
Representative for BETTY T. YEE  
State Controller

KEN ALEX  
Director  
Office of Planning & Research

JOHN CHIANG  
State Treasurer

SARAH OLSEN  
Public Member

M. CARMEN RAMIREZ  
Oxnard City Council Member  
Local Agency Member



PARTICIPATING COMMISSION STAFF PRESENT

HEATHER A. HALSEY  
Executive Director  
(Item 13)

HEIDI PALCHIK  
Assistant Executive Director

CAMILLE N. SHELTON  
Chief Legal Counsel  
(Items 2, 3, 5, and 12 )

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF

*continued*

JULIA BLAIR  
Senior Commission Counsel  
(Item 7)

ERIC FELLER  
Senior Commission Counsel  
(Item 6)

MATTHEW B. JONES  
Commission Counsel  
(Items 4 and 8)

KERRY ORTMAN  
Program Analyst  
(Item 11)

CRISTINA BARDASU  
Program Analyst

PAUL LUKACS  
Senior Commission Counsel



PUBLIC TESTIMONY

**Appearing Re Item 2:**

For Claimants:

LISA M. MACCHIONE  
County of San Diego  
1600 Pacific Highway Room 355  
San Diego, California 92101

KYLE E. SAND  
Senior Deputy County Counsel  
County of San Diego  
1600 Pacific Highway Room 355  
San Diego, California 92101

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 2:**

For State Controller's Office:

JIM L. SPANO  
Chief, Mandated Cost Audits Bureau  
Interim Chief, Financial Audits Bureau  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

**Appearing Re Item 3:**

For Department of Finance:

REBECCA HAMILTON  
Department of Finance  
915 L Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

**Appearing Re Item 4:**

For Claimants Santa Ana Unified School District, Plumas  
County of Education, Plumas Unified School District,  
Porterville Unified School District, and Vallejo City  
Unified School District:

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

For California School Boards Association:

KEITH J. BRAY  
General Counsel  
California School Boards Association  
3251 Beacon Blvd  
West Sacramento, California 95691

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 4:**

For Department of Finance:

AMBER ALEXANDER  
Department of Finance  
915 L Street, 7<sup>th</sup> Floor  
Sacramento, California 95814

SUSAN GEANACOU  
Senior Staff Attorney  
Department of Finance  
915 L Street, Suite 1280  
Sacramento, California 95814

**Appearing Re Item 5:**

For Department of Finance:

REBECCA HAMILTON  
Department of Finance

**Appearing Re Item 6:**

For State Controller's Office:

JIM L. SPANO  
Chief, Mandated Cost Audits Bureau  
Interim Chief, Financial Audits Bureau  
State Controller's Office

MASHA VOROBYOVA  
Audit Manager, Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816

A P P E A R A N C E S

PUBLIC TESTIMONY

**Appearing Re Item 7 and Item 8:**

For State Controller's Office:

JIM L. SPANO  
Chief, Mandated Cost Audits Bureau  
Interim Chief, Financial Audits Bureau  
State Controller's Office

MASHA VOROBYOVA  
Audit Manager, Division of Audits  
State Controller's Office

CHRISTOPHER B. RYAN  
Audit Manager, Division of Audits  
State Controller's Office  
3301 C Street, Suite 725  
Sacramento, California 95816



## Commission on State Mandates – March 25, 2016

## ERRATA SHEET

[illegible]



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A. Adoption of Order to Initiate Rulemaking

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**Commission on State Mandates – March 25, 2016**

1 BE IT REMEMBERED that on Friday, March 25,  
2 2016, 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 

7 CHAIR ORTEGA: Let's go ahead and get started.  
8 I assume that Mr. Chivaro will join us shortly.

9 I will call to order the March 25<sup>th</sup> meeting of  
10 the Commission on State Mandates.

11 Please call the roll.

12 MS. HALSEY: Mr. Alex?

13 MEMBER ALEX: Here.

14 MS. HALSEY: Mr. Chivaro?

15 *(No response)*

16 MS. HALSEY: Mr. Chiang?

17 MEMBER CHIANG: Good morning.

18 MS. HALSEY: Ms. Olsen?

19 MEMBER OLSEN: Here.

20 MS. HALSEY: Ms. Ramirez?

21 MEMBER RAMIREZ: Here?

22 MS. HALSEY: Mr. Saylor?

23 *(No response)*

24 MS. HALSEY: And Ms. Ortega?

25 CHAIR ORTEGA: Here.

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1 MS. HALSEY: I'm sorry.

2 CHAIR ORTEGA: That's okay. I was waiting.

3 MS. HALSEY: I'm trying to count if we have a  
4 quorum, and we do.

5 CHAIR ORTEGA: We do, yes.

6 So we have a quorum. We'll go ahead and get  
7 started.

8 The first item of business is the minutes from  
9 the January 22<sup>nd</sup> meeting.

10 Are there any corrections or suggestions on  
11 the minutes?

12 MEMBER OLSEN: I'll move adoption.

13 CHAIR ORTEGA: Okay, moved by Ms. Olsen.

14 MEMBER ALEX: Second.

15 CHAIR ORTEGA: Second by Mr. Alex.

16 All in favor, say "aye."

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

18 CHAIR ORTEGA: Minutes are adopted.

19 MS. HALSEY: And now we will take up public  
20 comment for matters not on the agenda.

21 Please note that the Commission cannot take  
22 action on items not on the agenda. However, it can  
23 schedule issues raised by the public for consideration  
24 at future meetings.

25 CHAIR ORTEGA: Okay, any public comment on

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1 items not on the agenda?

2 (No response)

3 CHAIR ORTEGA: All right, seeing none, we will  
4 move to the Consent Calendar.

5 MS. HALSEY: Item 10 is proposed for consent.

6 CHAIR ORTEGA: Okay, any comments on Item 10  
7 from the commissioners?

8 (No response)

9 CHAIR ORTEGA: Any public comment on the  
10 consent item, Item 10?

11 (No response)

12 CHAIR ORTEGA: All right, is there a motion?

13 MEMBER CHIANG: Move approval.

14 MEMBER RAMIREZ: Second.

15 MEMBER OLSEN: Second.

16 CHAIR ORTEGA: Moved and seconded.

17 All in favor of the Consent Calendar, say  
18 "aye."

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

20 CHAIR ORTEGA: Okay, it passes unanimously.

21 MS. HALSEY: Item 2, Chief Legal counsel will  
22 present Item 2, the appeal of Executive Director  
23 decisions -- wait, sorry. I skipped the swearing-in.  
24 It's slightly important.

25 Okay, let's move to the Article 7.

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1 Will the parties for Items 2, 3, 4, 5, 6, 7,  
2 and 8 please rise?

3 *(Parties/witnesses stood to be sworn*  
4 *or affirmed.)*

5 MS. HALSEY: Do you solemnly swear or affirm  
6 that the testimony which you are about to give is true  
7 and correct, based on your personal knowledge,  
8 information, or belief?

9 *(A chorus of affirmative responses was*  
10 *heard.)*

11 MS. HALSEY: Thank you.

12 Chief Legal Counsel will present Item 2, the  
13 Appeal of Executive Director Decision, for the dismissal  
14 of an incorrect reduction claim filed by the County of  
15 San Diego because it was not filed within the period of  
16 limitation.

17 MS. SHELTON: Good morning.

18 The Commission's regulations require that an  
19 incorrect reduction claim shall be filed no later than  
20 three years following the Controller's written notice  
21 of adjustment, reducing the claim for reimbursement. If  
22 the filing is not timely, the regulations provide that  
23 the filing be deemed incomplete and authorizes the  
24 Executive Director to return the filing for lack of  
25 jurisdiction.



1           In this case, the County of San Diego appeals  
2           the decision of the Executive Director to deem an  
3           incorrect reduction claim that was filed more than three  
4           years after the Controller's first final audit report as  
5           untimely and incomplete.

6           The County asserts that the three-year period  
7           of limitations should instead be measured from the  
8           Controller's second revised audit report and not from the  
9           first final audit report. The second revised audited  
10          report updated reimbursement percentages for offsetting  
11          revenues and had no fiscal effect on total allowable  
12          costs or on the reduction challenged by the County.

13          Staff recommends that the Commission adopt the  
14          proposed decision to uphold the Executive Director's  
15          decision to return the filing as incomplete.

16          Will the parties and witnesses please state  
17          your names for the record?

18               MS. MACCHIONE: I'm Lisa Macchione for the  
19               County of San Diego.

20               MR. SAND: And I'm Kyle Sand, Senior Deputy  
21               County Counsel from the County of San Diego.

22               MR. SPANO: I'm Jim Spano, Audit Bureau Chief  
23               of State Controller's Office, Division of Audits.

24               CHAIR ORTEGA: Okay, thank you.

25               Mr. Sand and Ms. Macchione?

1 MR. SAND: Well, first of all, I thank you  
2 for hearing us out today. This is our -- both of our  
3 first time here at the Commission, so this is a very  
4 interesting experience so far.

5 CHAIR ORTEGA: Welcome.

6 MR. SAND: Well, we'll keep our comments brief.

7 We've briefed the matter fully in our appeal;  
8 and the Commission staff has written a draft opinion.

9 Ultimately, our argument is quite simple: Is  
10 this report I have in my hand, the revised audit report,  
11 dated December 12<sup>th</sup> of 2012, the final determination of  
12 the matter? We argue that it is, based on the wording  
13 of the report, based on the language contained in the  
14 letter, that it is superseding the March report. And,  
15 you know, the plain meaning of the word "*supersede*" is  
16 to repeal and replace; that the March had, you know,  
17 essentially no effect.

18 So in calendaring the time in which to file  
19 our incorrect reduction claim in this matter, we  
20 reasonably relied on this report, that it was the final  
21 determination in the matter.

22 If you can see, it's a bound report. The cover  
23 letter says that it is superseding -- every page on it  
24 states that this is revised findings, revised Schedule 1.

25 Now, it's true that, as the Commission has

1 argued, the fiscal change did not occur between the  
2 March report, which we argue has been repealed by this  
3 report, and by the language that was used by the State  
4 Controller's Office.

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

6 MR. SAND: However, you know, as the -- words  
7 have meaning; and for the State Controller to say that  
8 this report supersedes the prior report, in our opinion,  
9 that means that this is their final determination on the  
10 matter. And, you know, this is the, I think, fourth  
11 matter in the past five or six years before this  
12 Commission regarding statute of limitations. And we  
13 believe, and we argue, and we ask the Commission to  
14 consider the policy of favoring disposition of matters  
15 on the merits rather than kicking out legitimate matters  
16 before this Commission based on procedural grounds.

17 This is consistent with recent decisions in  
18 San Mateo.

19 And with that -- unless, Ms. Macchione, if you  
20 have anything further to add --

21 MS. MACCHIONE: No, none.

22 MR. SAND: -- we'll entertain comments from  
23 staff and Commission Member questions.

24 CHAIR ORTEGA: Thank you.

25 Mr. Spano, do you have anything?

1 MR. SPANO: I'm here just addressing the  
2 factual question relating to the audit report.

3 CHAIR ORTEGA: Okay, are there any questions?  
4 Do you folks want to hear from Camille again?

5 Yes, Ms. Olsen?

6 MEMBER OLSEN: So I'm concerned about this in  
7 relation to our Item 10 that was on consent, in which  
8 it appears that we did want to clarify language related  
9 to this. So that does suggest that this is a gray area  
10 prior to our adoption of Item 10 and going forward to  
11 clarify the language.

12 So I'm kind of sympathetic here.

13 MS. SHELTON: Let me try to address that.

14 It is true that we've been -- as we've been  
15 doing more and more incorrect reduction claims, we've  
16 been noticing that the Controller's Office has issued  
17 many documents after the final audit report. We've  
18 had revised final audit reports. We've had  
19 computer-generated sheets that also discuss either the  
20 amount of the reduction, and sometimes it will state a  
21 reason and sometimes it does not. We've had letters.  
22 We've had situations with the final audit report that  
23 have said, "Well, we invite you to continue to  
24 participate in an informal discussion for a 60-day time  
25 period." And that has only been in a few final audit

1 reports. So it hasn't been clear.

2 And the Commission's regulations are written  
3 the way they are, that list many different types of  
4 written documents that the Controller has issued in the  
5 past, because we don't know what's going to happen on a  
6 case-by-case basis.

7 As we've talked about before, you know, the  
8 Controller's doesn't have regulations. So I don't know  
9 from case-to-case what is the final document.

10 Under the statutes, though, the final document  
11 for an incorrect reduction claim -- or for an audit that  
12 would trigger the time to accrue the filing for an  
13 incorrect reduction claim is any written document that  
14 identifies the reduction and the reason for the  
15 reduction.

16 And under the statutes, in this case, the first  
17 final audit report was issued or dated March 7<sup>th</sup>, 2012.

18 Under the statutes, the County could have  
19 filed an incorrect reduction claim the very next day.  
20 And the Commission's regulations provide for an  
21 additional three-year period of time.

22 So it wouldn't -- and the purpose of a statute  
23 of limitation is to promote finality in pleadings and  
24 in filings, so that claims don't become stale.

25 We can't keep moving the clock every time the

1 Controller issues something, when their very first report  
2 that identifies the reduction and the reason for the  
3 reduction is enough under the statutes to file an  
4 incorrect reduction claim.

5 So the whole purpose of Item 10 is to clarify  
6 that it is your first document, your first written notice  
7 that satisfies the requirements of Government Code  
8 section 17558.5. That triggers the accrual period. And  
9 that hasn't -- there is one decision we have identified  
10 in this proposed decision that was incorrect; and I  
11 agree, that is incorrect, where the Commission did accept  
12 a filing after the three-year period based on a later  
13 issued remittance advice. That's not a correct legal  
14 decision.

15 It is the first -- what is correct and what  
16 the Commission has been finding consistently is the first  
17 report that comes out, written notice to the claimant,  
18 that identifies the reduction and the reason for the  
19 reduction. And that's what starts the clock.

20 MEMBER OLSEN: And the March 7<sup>th</sup> report did say  
21 it was the final report, is that correct, so that should  
22 have triggered in the thinking of the County that -- of  
23 the claimant that our three-year time starts now; is that  
24 it?

25 MS. SHELTON: That is correct. But you can

1 verify with Mr. Spano.

2 MR. SPANO: That is correct.

3 MEMBER OLSEN: Okay.

4 CHAIR ORTEGA: Mr. Alex?

5 MEMBER ALEX: Would it be the same result if  
6 the later-in-time report had changed the reduction  
7 amount?

8 MS. SHELTON: No. We've said that in the  
9 analysis as well.

10 If it takes a new reduction, you know, it  
11 arguably has a completely different reasoning for a  
12 reduction, I think that would trigger a new statute of  
13 limitations.

14 This report changed just offsetting revenues,  
15 a finding that was never challenged by the County; and  
16 it didn't change the overall amount of reduction, and  
17 didn't change the Finding 2, I believe, that was being  
18 challenged in that filing. So there was no change with  
19 respect to the issue being challenged.

20 CHAIR ORTEGA: Ms. Ramirez?

21 MEMBER RAMIREZ: I have a question.

22 Could you review the precedential value of,  
23 should we accept the appeal?

24 MS. SHELTON: Under the law, the Commission's  
25 decisions are not precedential. And there is case law

1 from the California Supreme Court that does state that a  
2 quasi judicial agency is authorized to change their legal  
3 opinions through adjudicative matters as long as it's  
4 based on law, and it's correct as a matter of law. And  
5 that's what we're doing here. They're certainly going  
6 back in history. You're going to go back and find some  
7 decisions that, when you review them again, arguably may  
8 not be correct as a matter of law.

9 If they have not been challenged in court,  
10 they're still final decisions for that particular matter.  
11 But our decisions are not precedential.

12 MEMBER RAMIREZ: Thank you.

13 CHAIR ORTEGA: Okay, any other comments or  
14 questions from the Commission?

15 *(No response)*

16 CHAIR ORTEGA: Seeing none, Mr. Sand, did you  
17 have any...?

18 MR. SAND: Well, I would note that, clearly,  
19 there's a -- the people that are coming before the  
20 Commission are, you know, sophisticated in the sense  
21 that they're members of local government. The State is  
22 a professional entity -- counties, school districts,  
23 cities as well.

24 Now, clearly, there is an issue with the  
25 regulation. Clearly, there is an issue -- something's



1 going on here that we would have so many issues before  
2 this Commission, over the past few years, about whether  
3 a claim was timely.

4 Now, there's an easy solution to this, going  
5 forward. Even if you were to rule against us -- which  
6 I don't think you should today -- is that the regulation  
7 needs to be clarified. You know, a lot of -- you know,  
8 staff -- both local government and state staff are in a  
9 disagreement over what the regulation says.

10 There have been -- this is now the fourth time  
11 that somebody's come before this Commission, arguing  
12 whether or not the statute of limitation is completed  
13 prior to filing.

14 In two of those times previously, you've ruled  
15 in favor of local government. In the *Gallivan* case,  
16 which had a lengthy discussion of the statute of  
17 limitations, I believe -- and correct me if I'm wrong,  
18 Ms. Shelton -- but 13 or 14 years had passed before they  
19 had notice; and they kept arguing a later and later date.

20 Now, the County didn't do that. You had a  
21 final audit report in March of 2012. Six months later,  
22 the State Controller's Office -- and here's another  
23 solution, is don't use language like this if you're the  
24 State Controller's Office. Don't say that it supersedes.  
25 Don't infer that the March had no effect.

1           You know, I could go out and buy Christmas  
2           presents for my kids tomorrow; but I don't have to  
3           because it's not due. And we relied on this date. We  
4           relied on the language that the State Controller used  
5           in its cover letter. We relied on the face page of this  
6           report, which was bound and sent to us, in calendaring  
7           the date.

8           This was not the County shirking from its  
9           duties or missing a calendar date. It was reliance on  
10          what is said in the regulation, that we have three years  
11          from the date of the final audit report; the date of this  
12          report, which is December 2012; the language in the cover  
13          letter, saying that the March report has been superseded,  
14          and that this is the final audit report; the numerous  
15          references, stating that all the findings are revised.

16          Now, it's true that the amount didn't change;  
17          but if we were to look at the San Mateo case, which was  
18          decided within the past six months, this is fairly  
19          consistent with what happened in that case.

20          The reports, the letters that the State  
21          Controller issued indicated that the first -- the first  
22          report that went out was not the final one. And the only  
23          difference here is, you know, a couple months later, they  
24          said disregard March, and so that's what we relied on.

25               CHAIR ORTEGA: Okay, thank you.

1 Ms. Olsen?

2 MEMBER OLSEN: I'm actually swayed by the  
3 County's argument here. I really think that in a  
4 situation like this where, you know, it was nine months  
5 later that this second final audit report came out --  
6 it's not like it was three years, minus four days later  
7 date, and the County then said, "Oh, the clock starts  
8 over. We can wait another three years." It's well  
9 within a reasonable time for them to have thought, "You  
10 know, this extended our period of time to put in our  
11 claim."

12 I don't quite understand why they waited until  
13 the very end to do it, but that's not really the germane  
14 point here. The point is that they're pleading something  
15 before the Commission; and there is a lot of blame to go  
16 around here, in the sense of clarity. And I think the  
17 Commission has a responsibility, in that sense, to find  
18 in favor of those who are bringing a case in front of  
19 the Commission.

20 So I'll support the County's point of view on  
21 this one.

22 CHAIR ORTEGA: Ms. Ramirez?

23 MEMBER RAMIREZ: Generally, I like to -- not  
24 just generally -- I always like to give a lot of  
25 deference to staff's really great work on this. But

1 saying that this doesn't have precedential value in the  
2 few occasions that we can have a little flexibility, I  
3 would support you, Ms. Olsen.

4 MS. SHELTON: Let me just clarify, too, this  
5 is a jurisdictional matter. So if we don't have  
6 jurisdiction, then any rulings on the substance of the  
7 incorrect reduction claim would be void.

8 So in order to go the direction that you're  
9 going, you're going to have to find, as a matter of law,  
10 that the final report that satisfied Government Code  
11 section 17558.5(c) was the revised final audit report,  
12 and not the first final audit report.

13 MEMBER RAMIREZ: And the consequences would be?

14 MS. SHELTON: It's, to me, a little bit more  
15 gray -- a lot more gray. I mean, it could set it up,  
16 you know, for litigation. It is a jurisdictional issue,  
17 so it has to be "yes" or "no."

18 MEMBER ALEX: So that actually is where my  
19 question goes to. It's staff's finding, as a matter of  
20 law, that the first report has to be the final report.

21 Can you say a little bit more about why?

22 MS. SHELTON: I agree. This part is confusing  
23 because, as I've indicated before, the Controller's  
24 office tends to issue different types of documents. And  
25 different -- each case has been factually different.

1           So when you're just -- forget the Commission's  
2 regulations for a minute and just look at the Government  
3 Code. And the Government Code allows an incorrect  
4 reduction claim to be filed as soon as the Controller  
5 issues some written notice that identifies a reduction  
6 and the reasons for the reduction.

7           Now, I did want to get back to -- I was  
8 recently looking at the Generally Accepted Government  
9 Accounting Principles, and one of those principles says  
10 that if you come across new information that may change  
11 your findings on an audit, then you should go back in  
12 an audit and issue a revised audit report. The problem  
13 is, I mean, that applies generally to every government  
14 audit.

15           These Government Code statutes, though, do  
16 have deadlines in them. You know, there's a deadline to  
17 complete the audit, and there's a deadline to file an  
18 incorrect reduction claim. So even -- you know, in this  
19 particular case, we've seen -- well, in this case, they  
20 did issue a revised audit report with respect to one  
21 finding that was never challenged, and then it also  
22 didn't change the bottom-line reduction.

23           So if it had changed the finding that was being  
24 challenged, most certainly, then that would trigger --  
25 start the clock over again.

1           MEMBER ALEX: But let me explore that just a  
2 bit, because if the final -- the first report, the first  
3 final report had been filed, the County could still have  
4 filed the next day under the statute. But then a few  
5 months later, if the Controller had changed something to  
6 the bottom line, you're saying that would have triggered  
7 a new statute?

8           MS. SHELTON: Well, if they had filed one, they  
9 could amend their IRC to include the subsequent audit  
10 report. I mean, that's how we've done things in the  
11 past.

12           So it still preserves your -- it's just like  
13 filing a complaint, you're preserving your pleading.  
14 Even under the law for civil litigation, you can file a  
15 complaint even if you don't have all the information.  
16 And that's the purpose of discovery rules.

17           So, you know, you're protecting your pleading  
18 by filing it as soon as you have a final audit report  
19 that's issued that identifies the reasons and the  
20 reduction.

21           Again, factually different -- I just want to  
22 make it clear where we've gone before. Factually  
23 different if the Controller, in their letter, invites  
24 additional comment for 60 days, or some other days, like  
25 I guess the *San Mateo* case -- I don't remember them by

1 claimants -- but invites additional discussion or  
2 something, then it's not final if you're inviting  
3 additional discussion. But when you say this is the  
4 final audit report, it's final.

5 MEMBER ALEX: So what do you think about the  
6 issue of it being described as superseded? Because  
7 that -- you know, look, it does strike me, as a lawyer,  
8 looking at that, that that's a new final report.

9 MS. SHELTON: Right. I think it's definitely  
10 a reasonable argument. I'm not suggesting that it's not  
11 a reasonable argument. We just looked at it factually,  
12 and what happened factually. And nothing happened to the  
13 finding at all. It's the same finding. The same amount  
14 reduced, same reason for reduction.

15 MEMBER ALEX: You're looking at me.

16 Go ahead, Sarah.

17 MEMBER OLSEN: You know, I still think that  
18 Mr. Sand's argument is pretty compelling, in that they  
19 got a new report nine months later and it said it  
20 superseded. And in the absence of any clarification from  
21 anybody that that didn't apply, "supersedes" seems pretty  
22 clear to me from looking at it from their perspective.  
23 And so far, I haven't heard anything that would change  
24 my opinion there.

25 MS. SHELTON: It might be a good question for

1 Mr. Spano; but I believe all of their revised audit  
2 reports say they're superseding. So that we've had this  
3 before, it's just never been highlighted by a party in  
4 argument.

5 All of their revised reports say that they're  
6 superseding; is that correct?

7 MR. SPANO: I believe that's correct.

8 MEMBER OLSEN: So, Mr. Spano, can I ask a  
9 question about that?

10 So in your reports, do you say the specific --  
11 just, for instance, I'm just going to make a "for  
12 instance." The 12/12 report would say, "With respect  
13 to the 3/7 report, these particular findings are  
14 superseded," or does it say, "The report is superseded"?

15 MR. SPANO: What we basically say is that the  
16 revised final report supersedes our previous report, so  
17 we do a generic statement. And the reason we do that,  
18 is that it becomes too confusing if we want to issue a  
19 revision to only Finding Number 4. So what we do, we  
20 make the revision in totality right now to clarify.  
21 Because the only thing -- like I said, the only thing  
22 that was actually changed, was just that Finding 4. But  
23 the net impact was zero because of offsetting revenues.

24 MS. HALSEY: I just wanted to say, the trigger  
25 for an incorrect reduction claim and what you're taking



1 jurisdiction over, is a reduction; and what triggers  
2 that, is a notice of that reduction, and the reason for  
3 the reduction is the reduction itself that is what the  
4 cause of action is.

5 MEMBER ALEX: But counsel did say that if the  
6 reasoning changed, even without a change to the  
7 reduction, that would still trigger a new --

8 MS. SHELTON: If it's a completely different  
9 reason. I mean, you'd have to look at the case  
10 factually. But I was going to tag back onto Ms. Olsen's  
11 question. And in this particular audit report, it does  
12 say that it does supersede the prior audit report. But  
13 it also, when you read it, explains exactly what they  
14 did: That it only changed Finding Number 4 with respect  
15 to updated the offsetting revenues.

16 Right?

17 MR. SPANO: That's correct. There was four  
18 findings right now. And we clarified in the report that  
19 the only finding that actually changed was 4 because of  
20 subsequent information provided to us by the Department  
21 of Health. It didn't have an impact on the finding; but  
22 for transparency purposes, we reissued a report to show  
23 the amounts. But there was sufficient offsetting  
24 revenues to not have an impact on the total report  
25 itself, or the total of Finding 4. So Finding 4 did not

1 change in dollars at all.

2 MS. SHELTON: And Finding 2 did not change in  
3 dollars; is that correct?

4 MR. SPANO: Actually, Finding 4 changed the  
5 offsetting revenues, but the -- yes, Finding 2 did not  
6 change at all. There was no impact on Finding 2. The  
7 only thing that changed was Finding 4.

8 MEMBER ALEX: So I have to say that it's  
9 sufficiently confusing that you found it appropriate to  
10 update the regulation, which I think is absolutely  
11 appropriate. I think we're all kind of struggling with  
12 this. And what I would say, in my observation, is while  
13 the claimant had the right to file the day after the  
14 first final report, I'm not sure that created an  
15 obligation to do so when there was this superseding  
16 report. So I think -- I'm trying to think this through,  
17 because clearly what you're saying is right, it's  
18 jurisdictional, so there has to be a legal basis for the  
19 Commission to have jurisdiction.

20 But I think a report that is issued by the  
21 Controller, that says "superseding report," even if it  
22 doesn't specifically change the outcome of the reduction,  
23 I think it's a pretty reasonable thing to assume that  
24 that is a new final report. That's my initial thought  
25 here.

1 MEMBER OLSEN: That's where I am.

2 CHAIR ORTEGA: Do you have any --

3 MS. HALSEY: Well, we would probably also want  
4 to look at that regulation proposal that we have, because  
5 that would be inconsistent with your interpretation,  
6 because it would no longer be the first notice of a  
7 reduction. I guess it would be any notice of a  
8 reduction.

9 MEMBER ALEX: But you can -- I mean, you've  
10 made a determination; and we put it on consent, and we've  
11 consented to it, so that's now, going forward, how we  
12 approach this, and I'm okay with that. We're giving  
13 notice to the world that that's the way we're proceeding.  
14 But we had to clarify that to make sure everybody's aware  
15 of it. And I think we're just looking at this particular  
16 case. And I fully understand -- I do wonder why they  
17 waited until the very end, but that's, again, not  
18 relevant here.

19 I understand why you would think that you have  
20 three years; and I think it's -- at least my current  
21 thought is that that's a reasonable thing to have  
22 decided.

23 CHAIR ORTEGA: I think one other thing that  
24 would be helpful for the Controller's office to think  
25 about, I know a lot of the IRCs we're looking at are from

1 past years, and different practices may have occurred.  
2 But the fact-specific nature of all of the cases that  
3 have come before us, and having to weigh when letters are  
4 received or what kind of document was received, that it  
5 might be helpful going forward if there was a standard  
6 communication plan, so that claimants and the Commission  
7 staff could start to see this kind of report is the final  
8 report. Additional back-and-forth is communicated in a  
9 specific way. If all of the IRCs going forward were  
10 treated the same way, I think it would make it a lot  
11 clearer for the Commission in future issues.

12 There are always going to be disputes about  
13 whether the reductions are accurate or not. But trying  
14 to kind of figure out what the communication has been and  
15 when different triggers are pulled, I think is getting  
16 complicated. So, something to think about going forward.

17 Okay, is there any additional public comment on  
18 this item?

19 *(No response)*

20 CHAIR ORTEGA: All right, we've heard  
21 everything here.

22 Is there a motion?

23 MEMBER RAMIREZ: Well, I supported Ms. Olsen.

24 So do you want to make a motion?

25 MEMBER OLSEN: I'll move -- I mean, I'm going

1 to vote against it.

2 CHAIR ORTEGA: Yes, I understand.

3 MEMBER OLSEN: But I'll move it -- move the  
4 staff recommendation in order to put this forward.

5 MEMBER RAMIREZ: You're moving to vote against  
6 the staff recommendation?

7 MEMBER OLSEN: Yes.

8 MEMBER RAMIREZ: That is, to grant the appeal?  
9 Or do you want to amend the staff recommendation?

10 CHAIR ORTEGA: Let's clarify. Well, I think  
11 you're welcome to make the motion that you want to make

12 MEMBER RAMIREZ: Grant the appeal?

13 MS. SHELTON: Can I just -- you can make  
14 whatever motion and vote today. If you choose to vote  
15 against the staff recommendation, I need to take it back  
16 and rewrite it.

17 MEMBER OLSEN: Oh, it needs to be taken back,  
18 anyway; right?

19 MS. HALSEY: No, It's an appeal, so you just  
20 vote against staff recommendation and we take  
21 jurisdiction and we go write an analysis for the IRC,  
22 yes. That's it.

23 CHAIR ORTEGA: Well, let's take a moment.

24 Procedurally, Camille, what is your advice to  
25 grant the appeal? I mean, that's the issue before us.

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1 MS. SHELTON: Yes, if you vote against the  
2 decision, we would take it back and deal -- reverse the  
3 findings on what you have here, and then add the findings  
4 for the substantive challenge on the IRC.

5 MEMBER OLSEN: Is the appropriate motion to --

6 MS. SHELTON: The appropriate motion would  
7 be --

8 MEMBER OLSEN: -- to vote against?

9 I mean, if we --

10 MS. SHELTON: It's to grant the appeal.

11 MEMBER OLSEN: To the grant the appeal?

12 MS. SHELTON: To grant the appeal, and find  
13 that the Executive Director did not correctly return the  
14 filing and that there is jurisdiction, has been met.

15 MEMBER OLSEN: That's the motion I'm making.

16 MS. HALSEY: Based on the revised one.

17 MS. SHELTON: Based on the superseding revised  
18 final audit report.

19 MEMBER OLSEN: Right.

20 MEMBER RAMIREZ: Got it.

21 CHAIR ORTEGA: So we have a motion and a second  
22 by Ms. Ramirez.

23 Please call the roll.

24 MS. HALSEY: Mr. Alex?

25 MEMBER ALEX: Aye.

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1 MS. HALSEY: Mr. Chivaro?  
2 MEMBER CHIVARO: No.  
3 MS. HALSEY: Ms. Olsen?  
4 MEMBER OLSEN: Aye.  
5 MS. HALSEY: Ms. Ortega?  
6 CHAIR ORTEGA: No.  
7 MS. HALSEY: Ms. Ramirez?  
8 MEMBER RAMIREZ: Aye.  
9 MS. HALSEY: Mr. Saylor?  
10 *(No response)*  
11 CHAIR ORTEGA: You didn't call Mr. Chiang.  
12 MS. HALSEY: Oh, Mr. Chiang, sorry.  
13 MEMBER CHIANG: No.  
14 MS. HALSEY: No? So two "noes" then.  
15 CHAIR ORTEGA: So the motion fails; right?  
16 MEMBER RAMIREZ: We tied up.  
17 MS. HALSEY: Oh, we have a tie.  
18 MS. SHELTON: Okay, with a tie vote, under the  
19 Commission's regulations, there is no action taken on  
20 this item. The Commission's regulations require that you  
21 can make another motion, if you would like, or set it for  
22 another hearing.  
23 MEMBER CHIANG: Can we take it under submission  
24 and let Don review the record and cast a vote?  
25 MS. HALSEY: At the next hearing, let him vote.

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1 MS. SHELTON: Yes, you absolutely can do that,  
2 sure.

3 CHAIR ORTEGA: All right, let's do that.

4 MEMBER OLSEN: So it will come back to us at  
5 the next hearing?

6 MS. SHELTON: When you have seven members.

7 MEMBER OLSEN: Yes.

8 CHAIR ORTEGA: Okay, do we need to vote on  
9 that, or can we do that as a --

10 MS. SHELTON: Or you can just continue it.

11 CHAIR ORTEGA: So we will continue that item  
12 until we have the necessary members.

13 MEMBER RAMIREZ: This is a first.

14 CHAIR ORTEGA: Thank you.

15 Okay, thank you, Mr. Sand, Ms. Macchione.

16 CHAIR ORTEGA: Item 3.

17 MS. HALSEY: Chief Legal Counsel Camille  
18 Shelton will present Item 3, the new test-claim decision  
19 on *Immunization Records: Hepatitis B*.

20 MS. SHELTON: Item 3. This is the second  
21 hearing on the Department of Finance's request for the  
22 Commission to adopt a new test-claim decision to  
23 supersede the original decision for this program, based  
24 on a 2010 statute that modifies the State's liability by  
25 providing that the full immunization against hepatitis B



1 shall no longer be a condition to admit or advance a  
2 pupil to the seventh grade.

3 Staff finds that, as a result of 2010 statute,  
4 school districts are no longer mandated by the State to  
5 incur increased costs to perform the duties relating to  
6 the hepatitis B immunization for pupils advancing into  
7 the seventh grade, and thus the State's liability for  
8 those activities has been modified. However, no  
9 subsequent changes have been made with respect to the  
10 immunization requirements for mumps, rubella, and  
11 hepatitis B for pupils seeking admission into school for  
12 the first time, and therefore these activities remain  
13 eligible for reimbursement.

14 Staff recommends that the Commission adopt  
15 the proposed decision as its new decision, and in  
16 reimbursement for the activities relating to the  
17 hepatitis B immunization for pupils entering the  
18 seventh grade beginning July 1, 2013.

19 Will the parties and witnesses please state  
20 your name for the record?

21 MS. HAMILTON: Rebecca Hamilton, Department of  
22 Finance. And we agree with the staff comments and  
23 support them.

24 CHAIR ORTEGA: Thank you, Ms. Hamilton.

25 Any other public comment on this item?

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1                   (No response)

2                   CHAIR ORTEGA:   Okay, anything from the  
3   Commission?

4                   (No response)

5                   CHAIR ORTEGA:   If not, is there a motion?

6                   MEMBER OLSEN:   I'll move adoption.

7                   CHAIR ORTEGA:   Moved by Ms. Olsen.

8                   MEMBER CHIVARO:   Second.

9                   CHAIR ORTEGA:   Second by Mr. Chivaro.

10                  MS. HALSEY:   Mr. Alex?

11                  MEMBER ALEX:   Aye.

12                  MS. HALSEY:   Mr. Chivaro?

13                  MEMBER CHIVARO:   Aye.

14                  MS. HALSEY:   Mr. Chiang?

15                  MEMBER CHIANG:   Aye.

16                  MS. HALSEY:   Ms. Olsen?

17                  MEMBER OLSEN:   Aye.

18                  MS. HALSEY:   Ms. Ortega?

19                  CHAIR ORTEGA:   Aye.

20                  MS. HALSEY:   Ms. Ramirez?

21                  MEMBER RAMIREZ:   Aye.

22                  MS. HALSEY:   Thank you.

23                  CHAIR ORTEGA:   Item 4.

24                  MS. HALSEY:   Commission Counsel Matt Jones  
25   will present Item 4, the parameters and guidelines for

1     *California Assessment of Student Performance and*  
2     *Progress, or "CAASPP."*

3             MR. JONES: Good morning.

4             These parameters and guidelines outline new  
5     mandated costs arising from the elimination of the former  
6     *Standardized Testing and Reporting Program* and its  
7     replacement with the computer-based Statewide Pupil  
8     Assessment designated CAASPP. Both the claimants and the  
9     Department of Finance requested amendments and additional  
10    language to be included in the parameters and guidelines.

11            Staff finds that some of the additional  
12    activities requested by claimants were not sufficiently  
13    specific or not defined, and others were not supported  
14    by evidence in the record. However, based on the  
15    evidence in the record of the test-claim decision and the  
16    hearing transcript, staff recommends approval of some of  
17    the requested activities as clarifying of the costs and  
18    activities approved in the test claim.

19            Staff recommends denial of Finance's requested  
20    additional language; but the proposed decision and  
21    proposed parameters and guidelines contain limiting  
22    language isolating the incremental increase in service  
23    required and placing the burden on claimants to establish  
24    the need for additional technology costs incurred.

25            No further substantive changes are recommended.

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1 Will the parties and witnesses please state  
2 your names for the record?

3 MR. PALKOWITZ: Good morning. Art Palkowitz  
4 on behalf of the claimants: Santa Ana Unified School  
5 District, Plumas County of Education, Plumas Unified  
6 School District, Porterville Unified School District, and  
7 Vallejo City Unified School District.

8 CHAIR ORTEGA: Thank you.

9 MR. BRAY: Keith Bray, General Counsel, with  
10 the California School Boards Association.

11 MS. ALEXANDER: Amber Alexander, Department of  
12 Finance.

13 MS. GEANACOU: Susan Geanacou, Department of  
14 Finance.

15 CHAIR ORTEGA: Thank you.

16 Mr. Palkowitz?

17 MR. PALKOWITZ: Yes, thank you. Good morning.

18 As Mr. Jones said, we're here today regarding  
19 the approval of the parameters and guidelines of the  
20 *California Assessment Student Performance and Progress*  
21 mandate, also known as CAASPP.

22 We thank staff for the work they did. We do  
23 have some comments on some of the conclusions of staff.

24 As you recall, this test claim was approved  
25 back in January unanimously by this Commission staff --

1 Commission members, rather. As you recall, it was the  
2 intent of the Legislature that the state system of  
3 public-school accountability be more closely aligned with  
4 both the public's expectations for public education and  
5 the workforce needs of the State's economy.

6 It was therefore determined to broaden this  
7 gap that exists that students be tested using computing  
8 devices at their school sites. In addition, statewide  
9 assessments would be conducted by the schools; and when  
10 those assessments were done, they were to comply with  
11 local diagnostic standards, similar to the standards that  
12 are required in the computing devices.

13 853 of the regulations stated, section D, that  
14 when doing these assessments, the LEAs, the school  
15 districts, shall abide by the consortium, the  
16 contractors, administration use requirements, the same  
17 requirements that are required during the testing period.

18 Their comments have been submitted that are  
19 requesting that boilerplate language be used in the  
20 parameters and guidelines. The boilerplate language in  
21 the parameters and guidelines, under the fixed assets,  
22 are saying that reimbursement should be pro rata for  
23 mandate activities.

24 This type of language is inferring that the  
25 districts would be entitled to reimbursement only when

1 they're using the equipment during the testing period.  
2 What this would mean for districts is a small percentage  
3 of the reimbursement, because the testing period does not  
4 include the entire school year.

5           Such an interpretation of the boilerplate  
6 language doesn't apply to this case and is really  
7 misguided. If we look at how this could play out, a  
8 school district would be placed in a decision outside of  
9 the testing period, whether or not to use their computer  
10 equipment. In effect, if they did not use their computer  
11 equipment outside of the testing period, they would get  
12 a hundred percent reimbursement since the reimbursement  
13 would be limited to the use during the testing period.  
14 Clearly, it was not the Legislature's intent that  
15 devices' technology infrastructure should be so  
16 restrictive. Computing devices already have a very short  
17 life. To put them in storage for most of the school year  
18 doesn't benefit the students at all.

19           The students need this technology equipment  
20 throughout the school year as part of their education, as  
21 part -- as the opportunity to prepare for the testing.  
22 Many students have no opportunity to use computing  
23 devices other than in the school environment. If a  
24 student is limited to that opportunity only in a testing  
25 period, they are at a great disadvantage when the test

1 period is there.

2 Furthermore, this would have a dramatic impact  
3 on the lower socioeconomic students. Those students have  
4 far less opportunities to use equipment; and, therefore,  
5 their limited ability to access that before the testing  
6 period places them in an unfair position.

7 As was discussed during the test claim, as you  
8 may recall, three superintendents and a CFO testified  
9 that, but for -- that meaning without this mandate, they  
10 would not have incurred the expense to have  
11 infrastructure and computer devices at their school.

12 For now, for a determination that that  
13 reimbursement would be limited to just the testing period  
14 is really unfair, unreasonable; and it would result in a  
15 detrimental and a consequence that would be in direct  
16 conflict with the mandate law.

17 In the California Supreme Court case, *San Diego*  
18 *Unified versus the Commission on State Mandates* -- the  
19 cite is 33 Cal 4<sup>th</sup> 859 -- the Court, when looking at  
20 another type of reimbursement, said, such a result would  
21 produce impractical and detrimental consequences. That's  
22 what we would have here. We would have a waste of public  
23 funds by placing equipment for non-use in order for the  
24 District to receive the hundred percent reimbursement  
25 that they would be entitled to. I don't think that is

1     what the Legislature meant, I don't think that makes good  
2     common sense, and it's clearly not in the best interest  
3     for the students of California.

4             Gearing up for this mandate required the  
5     districts to be able to handle, throughout the state,  
6     nearly 3 million people -- students, testing at a similar  
7     time. This is quite a burden. Someone analogizes it to  
8     the subscribers of Netflix all going on at the same time  
9     and watching a movie.

10            It took a lot of manpower for the districts to  
11     get to this level, to make sure that they could handle  
12     the load. And the fact that they are unable to rent the  
13     equipment just for the testing period, there is no option  
14     for districts but for to buy this equipment. As a  
15     result, it would be appropriate for this boilerplate  
16     language to be omitted for this mandate.

17            The Government Code section 1755- -- I'll get  
18     that cite for you in a minute -- I think it's -556 --  
19     allows language in the P's and G's to be amended.

20            The other section I wanted to address in the  
21     proposed parameters and guidelines deals with the request  
22     that districts maintain a list of their inventory, that  
23     being, when they are replacing equipment because it  
24     doesn't meet the specifications of the contractor  
25     providing the services, they went out and bought



1 replacement equipment to meet those standards as is  
2 required by the statute.

3 The comments were submitted that the districts  
4 should maintain a list to show that the equipment didn't  
5 meet those standards. This, in itself, is a mandate to  
6 require such a list. It's not supported by any other  
7 P's and G's or any other regulations or the statute.  
8 In effect, it might violate the Administrative Procedure  
9 Act, similar to the way the Contemporaneous Document Rule  
10 was.

11 So we would request that that language be kept  
12 out. Rather, it's fully reasonable to allow or require  
13 districts that the purchase of the equipment, that they  
14 are able to prove that it does meet the minimum standard  
15 requirements of the consortium. And to require the  
16 districts to maintain that list, and have a third-party  
17 come in and review their decision process is really  
18 taking much control out of the local level.

19 The local level is responsible educators that  
20 are required to educate the kids all year-round. And  
21 as a result, this type of list would really be quite  
22 burdensome and is unreasonable.

23 Also, back to the pro rata period: Training  
24 has been approved as a reimbursable activity; and  
25 training is done outside the non-testing period. So

1     it's not that only the testing period would provide for  
2     a reimbursable mandate. In effect, what the students are  
3     using the computing devices for outside the non-testing  
4     period, is their training; training to be successful on  
5     the test.

6             And finally -- I don't usually like to say  
7     *"finally"* -- but another comment is that there was  
8     language or comments requesting that section 1 include  
9     the phrase *"to support the administration of*  
10    *computer-based assessments."* We feel that, more  
11    appropriately, the decision, on page 20, that states  
12    *"The expenditures should include necessary to support the*  
13    *administration of computer-based assessments and provide*  
14    *high-speed, high-bandwidth Internet connectivity for the*  
15    *purpose of administration of computer-based assessments."*

16            I mean, what will happen with these parameters  
17    and guidelines, they will be used by various government  
18    agencies and the districts to fill out their  
19    reimbursement claims. That language from the decision  
20    accurately reflects what has been approved, and we feel  
21    that should be included in the guidelines.

22            Thank you.

23            CHAIR ORTEGA: Thank you.

24            Mr. Bray?

25            MR. BRAY: No comment.

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1 CHAIR ORTEGA: Okay. Ms. Alexander?

2 MS. ALEXANDER: Good morning. Amber Alexander  
3 with the Department of Finance.

4 Finance agrees with the revisions that have  
5 been made thus far to the parameters and guidelines to  
6 ensure that they're consistent with the Commission's  
7 decision on this matter. However, we note several areas  
8 where we believe further clarification is needed; and  
9 those comments are reflected in our March 21<sup>st</sup> comments  
10 that were provided to the Commission.

11 To start, we believe that the parameters and  
12 guidelines should be amended to clarify that if districts  
13 choose to exceed the recommended Smarter Balanced  
14 Technical Standards when making new purchases, that only  
15 the costs associated with meeting the standards are  
16 reimbursable.

17 Additionally, we note that the consortium does  
18 not differentiate between current computers and new  
19 purchases when it comes to establishing the minimum  
20 technology requirements for a number of devices,  
21 including screen size. And we believe that in the  
22 absence of a separate standard, the standard outline for  
23 current computers should apply.

24 We also believe that the phrase "at least"  
25 should be deleted from the activity of providing

1 broadband Internet service of at least 20 kilobytes per  
2 second per pupil to be tested simultaneously.

3 As correctly noted by Commission staff, the  
4 minimum standards established by Smarter Balanced require  
5 10 to 20 kilobytes per second per student or less; and  
6 we believe that as currently drafted, this section could  
7 be misinterpreted to require reimbursement for speeds  
8 greater than minimum established by the consortium.

9 We'd also like to emphasize that while we  
10 believe it will be necessary to carefully evaluate all  
11 claims submitted with regard to this mandate, it will  
12 be particularly important to look at claims where  
13 districts are arguing that they needed to purchase  
14 additional devices to administer the assessments to all  
15 eligible students within the testing window.

16 Before these new purchases and upgrades can be  
17 found to be justifiable and, in turn, reimbursable, we  
18 believe that a consideration of a number of factors,  
19 including, but not limited, to the number of eligible  
20 test-taking students, whether the school used the entire  
21 available testing window, the length of time required  
22 for the test administration, and the number of existing  
23 devices will need to occur. Such an evaluation is  
24 necessary, in our opinion, to determine if schools could  
25 have structured their test administration in a different

1 way in order to be able to administer the assessments  
2 using existing public devices.

3 Finally, we believe it's important to point out  
4 that the minimum technology requirements established by  
5 SBAC were developed in collaboration with all consortium  
6 member states, including California. Schools and  
7 districts within these states were asked to utilize the  
8 Smarter Balanced Technology Readiness tool to submit  
9 information on key indicators, including, but not limited  
10 to, number and type of computers and devices, the ratio  
11 of devices to test-takers, local network and bandwidth  
12 infrastructure, and local staff resources.

13 This data was used as the baseline for purposes  
14 of determining the minimum system requirements for this  
15 system.

16 In response to some of the comments made by the  
17 claimants today at the hearing, particularly regarding  
18 the device inventory requirement, Finance agrees with  
19 the staff that claimants have the burden to show the  
20 increased costs to fulfill this mandate.

21 Specifically, we believe that staff  
22 appropriately points out that the *CAASPP* assessments  
23 were deliberately designed to work on a variety of older  
24 hardware and operating-system configurations. As a  
25 result, we believe that this device-inventory requirement

1 is necessary in order to determine if districts were  
2 compelled to purchase the new devices or if they had  
3 devices in place that could have been used to administer  
4 the assessments.

5 With regards to their comments regarding  
6 prorating, the devices -- particularly computers --  
7 claimants are stating that but for the mandated  
8 activities, they would not have incurred expenses to  
9 acquire the devices, equipment, infrastructure,  
10 et cetera. However, we would note that in their  
11 February 3<sup>rd</sup> comments, they pointed out that these fixed  
12 assets were purchased to benefit other organizational  
13 goals, including student access to technology and digital  
14 learning resources.

15 We agree with the Commission staff's finding  
16 on this matter, that it's unreasonable to expect the  
17 State to reimburse the full costs of assets that are  
18 utilized for a number of different functions outside of  
19 the state-mandated program. As such, we believe  
20 providing for the pro rata attribution as a matter of  
21 course is appropriate in this matter.

22 With that, we're happy to answer any questions.

23 CHAIR ORTEGA: Okay, thank you.

24 Mr. Jones, could I ask you to address one issue  
25 first? And that's the appropriateness of the requirement

1       that there be an inventory.

2               Mr. Palkowitz raised some issues about it being  
3       appropriate, so if you could address that issue.

4               MR. JONES:   Of course, yes.

5               So the recommendation you have in front of you  
6       essentially is to add the device-inventory language that  
7       Finance recommends; and that's based solely on the need  
8       to identify what the incremental increase in service is  
9       for this program.

10              As the decision that you have -- the proposed  
11       decision that you have in front of you discusses at  
12       length, Smarter Balanced and their subcontractor, which  
13       is, for the moment, a company called AIR, they went out  
14       of their way to try to make this test workable on  
15       existing operating systems, older, what they call "legacy  
16       machines," "legacy systems"; and to use as little  
17       bandwidth as possible, I suppose, although I don't have  
18       a frame of reference for what 10 kilobytes per second  
19       looks like, obviously.

20              But they're definitely -- we had testimony at  
21       the hearing, at the test-claim hearing, that there were  
22       definitely districts that had virtually no legacy systems  
23       at all, and virtually no Internet connectivity, and  
24       certainly weren't capable of administering this test with  
25       what they had on hand at the time.   So this device

1 inventory is a way of recognizing that this mandate is  
2 going to create widely disparate needs across school  
3 districts and across the state. And where some districts  
4 are going to have everything they need already, and have  
5 had it for years, and won't have a problem at least in  
6 the first few years of implementation here and certainly  
7 didn't have a problem with the field test, there are  
8 going to be other districts that have to gear up  
9 completely from absolute zero.

10 And so the device inventory is a way of  
11 recognizing that, and essentially just getting the  
12 claimants to establish, on a case-by-case basis and maybe  
13 even on a school-by-school basis within districts, what  
14 exactly it was that they needed to be able to make this  
15 happen.

16 And so based on the Smarter Balanced technology  
17 requirements for existing computers, based on the  
18 bandwidth-speed recommendations for a school's network  
19 and connectivity requirements and so forth, each district  
20 is essentially just going to have to prove up exactly  
21 what it was they needed to buy and to procure to make  
22 this happen. And the device-inventory requirement that  
23 Finance recommended is essentially a mechanism for doing  
24 that.

25 CHAIR ORTEGA: Okay, thank you.



1 Any questions from commissioners?

2 (No response)

3 CHAIR ORTEGA: Is there any additional public  
4 comment on this item?

5 (No response)

6 CHAIR ORTEGA: All right.

7 MR. PALKOWITZ: If I may?

8 CHAIR ORTEGA: Yes.

9 MR. PALKOWITZ: Thank you.

10 Just to follow up on Mr. Jones.

11 In the exhibits is 155 pages of SBAC, the  
12 provider for the technology. And as they say, it's a  
13 living document. It changes. And it's not specific to  
14 California. So I do want to point out that that is a  
15 survey of many school districts, inside and outside  
16 California; and to have a blanket statement that if a  
17 district has legacy, they are now equipped to handle it,  
18 I don't think is accurate on what is out there as far as  
19 systems.

20 So as Mr. Jones pointed out, there's a wide gap  
21 on what each district will require. And I think that's  
22 consistent with what the testimony was from the claimants  
23 back in January.

24 And so the history list, to me, is in an effort  
25 to second-guess districts' decisions by people who may

1 be less technology-savvy than the one who made the  
2 decisions. Clearly, all the equipment must meet the  
3 standards when they buy it. The equipment is constantly  
4 changing, as far as the standards, too.

5 So, you know, there's some districts that are  
6 saying, okay, in 2015, they want 20 megabytes; but I've  
7 been told they're going to want 40 megabytes in 2016.  
8 So they go out and get the 60, or the extra megabytes;  
9 and now, there will be a criticism for buying something  
10 in addition you really don't need because you already  
11 have what's needed right now.

12 And, once again, you know, is this the best way  
13 to manage how the system is to work?

14 So I understand the need for there to be a  
15 check-and-balance; but a list is -- I don't believe it  
16 complies with the Administrative Procedure Act.

17 We're now creating new standards similar to  
18 what happened in the *Clovis* case regarding  
19 Contemporaneous Document Rule.

20 CHAIR ORTEGA: I think, before you address the  
21 APA issue, which I do want you to do, I think the point  
22 here is that the Controller is going to be receiving  
23 claims from districts in very different positions. And  
24 it's not unreasonable to ask that the claim be  
25 accompanied by some information that will allow them to

1 evaluate it. And that's what's being proposed here.

2 And I think that the decision, the parameters and  
3 guidelines are trying to balance what is going to be a  
4 very complex accounting at the local level.

5 And the issue of -- I think it's not an issue  
6 about judging what past purchases have been made, but  
7 about ensuring that the State is not held responsible  
8 for every additional purchase that a district makes if  
9 a district is making a choice to purchase something that  
10 is not tied directly to the needs of the mandate but goes  
11 beyond that. And without the document, without the  
12 inventory, I'm seeing a hard time of how that's going to  
13 be resolved.

14 So before you respond, I do want Camille to  
15 address the APA question.

16 MS. SHELTON: Well, first of all, the language  
17 in the proposed parameters and guidelines just requires  
18 that they keep supporting documentation that shows their  
19 increased costs mandated by the State. That supporting  
20 documentation language is in every single P's and G's  
21 that we have out there, number one.

22 Number two, if you read the *Clovis Unified*  
23 case, the reason why the Contemporaneous Source Document  
24 language was considered an underground reg, was because  
25 it wasn't included in the Commission's parameters and

1 guidelines. It was only included in the Controller's  
2 claiming instructions, which did not go through the APA.  
3 The Court held that the Commission's parameters and  
4 guidelines are regulatory in nature, comply with the APA;  
5 and nothing in the P's and G's would be considered  
6 underground reg.

7 CHAIR ORTEGA: Thank you.

8 Is there anything else from commissioners?

9 Ms. Ramirez?

10 MEMBER RAMIREZ: So just to clarify what staff  
11 is recommending, is that there be -- just cutting to the  
12 chase here -- an inventory included in the requirement?

13 MR. JONES: It doesn't necessarily have to  
14 take the form of an inventory. Sorry -- it doesn't  
15 necessarily have to take the form of an inventory. It  
16 could be just simply a declaration, explaining this is  
17 how many machines we had, they didn't meet this standard  
18 or that standard; and so we purchased these additional  
19 number of machines that have the capabilities that are  
20 required to -- you know, that Smarter Balanced has  
21 outlined. So it could take a lot of different forms;  
22 there just has to be supporting documentation.

23 MEMBER RAMIREZ: Do you anticipate that there  
24 would be some, let's just say, punishment for purchasing  
25 top of the line versus the minimum?

1 MR. JONES: I don't know how --

2 MEMBER RAMIREZ: You can't anticipate that?

3 MR. JONES: -- the Controller will audit this  
4 program.

5 MEMBER RAMIREZ: Yes. Because we do know  
6 things get out of date pretty quick.

7 MS. SHELTON: On that point, I think we need  
8 to explain a little bit more the staff recommendation  
9 here on the purchases of computer equipment and those  
10 types of things.

11 The recommendation allows for discretion in  
12 what they purchase; but it is if they have to make new  
13 purchases. So if they have an existing system that  
14 complies, no purchase would be required and there's no  
15 increased costs mandated by the State. But when they do  
16 have to make a new purchase, it's any computing device  
17 that meets the secure browser --

18 MR. JONES: Why don't I speak to that a little  
19 bit?

20 MS. SHELTON: Yes, thank you.

21 MR. JONES: So, Finance is recommending sort of  
22 a little bit more restrictive reading than what we're  
23 recommending to you, which is, this whole program --  
24 well, not the program, excuse me.

25 The device acquisitions here are all driven

1 by the existence of support from the contractor and the  
2 consortium for particular operating systems. And by  
3 "support," we're talking about the existence of a secure  
4 browser that can be downloaded and installed on each  
5 individual machine that will lock out basically  
6 everything but the test, right.

7 So the secure browser is developed by the  
8 subcontractor that I mentioned, AIR. And on page 180 of  
9 your exhibits -- that's the PDF page, if you jump to  
10 that, if you'd like to see it -- there's a chart that  
11 outlines the anticipated end-of-support date for various  
12 different operating systems. And that's what we're  
13 referring to when we talk about this being a living  
14 document and the technology requirements being a moving  
15 target.

16 The whole thing is driven by the existence of  
17 a secure browser. And so in any given year, the minimum  
18 technology requirement for the school districts is going  
19 to be something that for which there is a secure browser.  
20 And that is the way it's phrased in these proposed  
21 P's and G's: It's a computing device for which the  
22 contractor or consortium provides a secure browser in  
23 the given school year.

24 And so if you have computing devices and there  
25 is a secure browser in the school year, you don't need to

1 make new purchases. However, if you don't have secure --  
2 if there is not a secure browser for the operating system  
3 or the devices that you're currently working with, that's  
4 when you are going to be required to make new purchases.

5 And our recommendation is to leave that fairly  
6 open-ended, because there doesn't appear to be any  
7 limitation in the law for what could be purchased.

8 And you can see from this chart on page 180 of  
9 the exhibits, that, currently, Mac OS 10.10 and 10.11,  
10 which came out in October of 2014 and October of 2015,  
11 respectively, are supported. So it would seem to me  
12 that that's within the technology recommendations of  
13 the consortium and the contractor. And even though  
14 Mac OS 10.6, for example, will be supported for a couple  
15 of more years under this chart, a district that's going  
16 out and buying new machines, it would seem open-ended  
17 and they'd have the freedom to choose between anywhere in  
18 that range. And that part Finance finds objectionable,  
19 of course, because it may end up meaning spending more  
20 money. But staff really couldn't figure out another way  
21 to cabin this, other than to point out that it's driven  
22 by the secure browser.

23 I mean, what does "*minimum*" mean if it doesn't  
24 mean within the recommendations? Does it mean the least  
25 expensive operating system that you can possibly acquire?

1 Does it mean the oldest and most obsolete operating  
2 system?

3 So driving this whole thing by the secure  
4 browser is our recommendation at this time, based on the  
5 information that we have.

6 MEMBER RAMIREZ: Just a question for you,  
7 Mr. Jones.

8 Did you have to get some technical advice to  
9 prepare this? Or did you already have it --

10 MR. JONES: We did not. We relied exclusively  
11 on these publicly available documents, and tried to  
12 understand them to the best of our ability.

13 MEMBER RAMIREZ: As am I.

14 MS. SHELTON: I was going to say, I needed  
15 help, though.

16 CHAIR ORTEGA: All right, quickly,  
17 Mr. Palkowitz.

18 MR. PALKOWITZ: Yes, thank you.

19 I mentioned before the pro rata and the  
20 computing devices. It's a little more challenging  
21 regarding the technology infrastructure -- broadband,  
22 other things that you just can't put away and not use.

23 And so, once again, any type of pro rata  
24 attempt to limit that is really, I think, unworkable, and  
25 clearly unreasonable and not in the best interests of the



1 students.

2 And like the computing device, it's really a  
3 waste of public funds. I mean, if a district would take  
4 a similar stance and have to bring in new broadband while  
5 the other one's shut down, is really not the most optimum  
6 way to use the equipment.

7 Thank you very much.

8 CHAIR ORTEGA: Thank you.

9 Anything else?

10 *(No response)*

11 CHAIR ORTEGA: Okay, I've called for public  
12 comment. There is no additional comments.

13 So do we have a motion?

14 MEMBER RAMIREZ: I'll move the staff's  
15 recommendation.

16 CHAIR ORTEGA: Okay.

17 MEMBER OLSEN: I'll second it.

18 CHAIR ORTEGA: All right, motion and a second.

19 Please call the roll.

20 MS. HALSEY: Mr. Alex?

21 MEMBER ALEX: Aye.

22 MS. HALSEY: Mr. Chivaro?

23 MEMBER CHIVARO: Aye.

24 MS. HALSEY: Mr. Chiang?

25 MEMBER CHIANG: Aye.

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1 MS. HALSEY: Ms. Olsen?

2 MEMBER OLSEN: Aye.

3 MS. HALSEY: Ms. Ortega?

4 CHAIR ORTEGA: Aye.

5 MS. HALSEY: Ms. Ramirez?

6 MEMBER RAMIREZ: Aye.

7 MS. HALSEY: Chief Legal Counsel Camille  
8 Shelton will present Item 5, the parameters-and-  
9 guidelines amendment for *Immunization Records: Mumps,*  
10 *Rubella, and Hepatitis B.*

11 MS. SHELTON: The proposed amendment to the  
12 parameters and guidelines is consistent with the  
13 Commission's new test-claim decision adopted as Item 3  
14 today, finding that the State's liability pursuant to  
15 Article XIII B, section 6 has been modified based on  
16 a subsequent change in law.

17 Staff recommends that the Commission adopt the  
18 proposed decision and the amendments to the parameters  
19 and guidelines.

20 Will the parties and witnesses please state  
21 your names for the record?

22 MS. HAMILTON: Rebecca Hamilton, Department of  
23 Finance.

24 And we support the proposed parameters and  
25 guidelines.

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1 CHAIR ORTEGA: Okay, is there any additional  
2 public comment on this item?

3 *(No response)*

4 CHAIR ORTEGA: Anything from the Commissioners?

5 *(No response)*

6 CHAIR ORTEGA: If not, is there a motion?

7 MEMBER OLSEN: Move the staff recommendation.

8 CHAIR ORTEGA: Moved by Ms. Olsen.

9 MEMBER RAMIREZ: Second.

10 CHAIR ORTEGA: Second by Ms. Ramirez.

11 All in favor?

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

13 CHAIR ORTEGA: The recommendation is adopted.

14 Item 6?

15 MS. HALSEY: Items 6, 7, and 8 were brought by  
16 the County of Santa Clara. And they have contacted the  
17 Commission staff to let us know they will not be  
18 appearing at the hearing; but they do stand on their  
19 written submission for the record.

20 Senior Commission Counsel Eric Feller will  
21 represent Item 6, an incorrect reduction claim on  
22 *Domestic Violence Treatment Services*.

23 MR. FELLER: Good morning.

24 This IRC addresses the Controller's reduction  
25 of the program between 1998 and 2001. Staff finds the

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1 IRC was not timely filed within the three-year period  
2 of limitation; and therefore the Commission has no  
3 jurisdiction to hear and decide the IRC.

4 Staff recommends the Commission adopt the  
5 proposed decision to deny the IRC.

6 Will the parties and witnesses please state  
7 your names for the record?

8 MR. SPANO: Jim Spano, State Controller's  
9 Office, Division of Audits and Bureau Chief.

10 MS. VOROBYOVA: Masha Vorobyova, Audit Manager,  
11 Division of Audits, State Controller's Office.

12 CHAIR ORTEGA: Thank you.

13 Any additional comments?

14 MS. VOROBYOVA: The State Controller's Office  
15 supports the proposed conclusion recommendation.

16 CHAIR ORTEGA: Okay, any other public comment  
17 on this item?

18 *(No response)*

19 CHAIR ORTEGA: Any commissioner comments?

20 *(No response)*

21 CHAIR ORTEGA: Seeing none, is there a motion?

22 MEMBER ALEX: Move the staff recommendation.

23 MEMBER OLSEN: Second.

24 CHAIR ORTEGA: Okay, moved by Mr. Alex and  
25 second by Ms. Olsen.

1 All in favor?

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

3 CHAIR ORTEGA: Okay, it passes unanimously.

4 Item 7?

5 MS. HALSEY: Senior Commission Counsel Julia  
6 Blair will present Item 7, an incorrect reduction claim  
7 on *Child Abduction and Recovery*.

8 MS. BLAIR: Good morning.

9 These consolidated incorrect reduction claims  
10 address the Controller's reduction of costs for fiscal  
11 years 1999-2000 through 2001-2002, and 2003-2004 through  
12 2006-2007 for the *Child Abduction and Recovery Program*.

13 Staff finds that the Controller's reduction of  
14 costs claimed for employees' salaries and benefits is  
15 correct as a matter of law and not arbitrary, capricious,  
16 or entirely lacking in evidentiary support.

17 The claimant did not provide documentation  
18 supporting the time spent on the mandate as required by  
19 the parameters and guidelines or a documented time study  
20 that adequately supported the time claimed.

21 Staff recommends the Commission adopt the  
22 proposed decision to deny these IRCs.

23 Will the parties and witnesses please state  
24 your names for the record?

25 MR. SPANO: Jim Spano, State Controller's

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1 Office, Division of Audits.

2 MR. RYAN: Chris Ryan, Audit Manager, State  
3 Controller's Office.

4 MS. VOROBYOVA: Masha Vorobyova, Audit Manager,  
5 State Controller's Office.

6 CHAIR ORTEGA: Any additional comments from the  
7 Controller's office?

8 MR. RYAN: We agree with the staff's conclusion  
9 and recommendation.

10 CHAIR ORTEGA: Okay, any other public comment  
11 on this item?

12 *(No response)*

13 CHAIR ORTEGA: Seeing none, any commissioner  
14 comments?

15 *(No response)*

16 CHAIR ORTEGA: Is there a motion?

17 MEMBER OLSEN: I'll move the staff  
18 recommendation.

19 CHAIR ORTEGA: Moved by Ms. Olsen.

20 MEMBER RAMIREZ: Second.

21 CHAIR ORTEGA: Second by Ms. Ramirez.

22 All in favor?

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

24 CHAIR ORTEGA: It passes unanimously.

25 Item 7?

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1 MS. HALSEY: Commissioner Counsel Matt Jones  
2 will present Item 8, an incorrect reduction claim on  
3 *Peace Officers Procedural Bill of Rights*, or "POBOR."

4 MR. JONES: This claim filed by Santa Clara  
5 addresses reductions made by the State Controller's  
6 Office to reimbursement claims for costs incurred during  
7 fiscal years 2003-2004 through 2005-2006 under the *Peace*  
8 *Officers Procedural Bill of Rights* Program.

9 The reductions in dispute pertain to the  
10 Controller's finding that claimed costs were beyond the  
11 scope of reimbursement outlined in the parameters and  
12 guidelines. Staff finds that the Controller's reductions  
13 of costs claimed were correct as a matter of law and  
14 therefore staff recommends denial of the IRC.

15 Will the parties and witnesses please state  
16 your names for the record?

17 MR. SPANO: Jim Spano, State Controller's  
18 Office, Division of Audits.

19 MR. RYAN: Chris Ryan, Audit Manager, State  
20 Controller's Office.

21 MS. VOROBYOVA: Masha Vorobyova, Audit Manager,  
22 State Controller's Office.

23 The State Controller supports the proposed  
24 conclusion and recommendation.

25 CHAIR ORTEGA: Thank you.

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1 Any additional public comment?

2 *(No response)*

3 CHAIR ORTEGA: Any commissioner comments or  
4 questions?

5 *(No response)*

6 CHAIR ORTEGA: Seeing none, is there a motion?

7 MEMBER OLSEN: Move staff recommendation.

8 CHAIR ORTEGA: Moved by Ms. Olsen.

9 MEMBER RAMIREZ: Second.

10 CHAIR ORTEGA: Second by Ms. Ramirez.

11 All in favor?

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

13 CHAIR ORTEGA: It passes unanimously.

14 Item 9?

15 MS. HALSEY: Item 9 is reserved for County  
16 applications for a finding of significant financial  
17 distress or SB 1033 applications.

18 No SB 1033 applications have been filed.

19 Kerry Ortman will present Item 11, the  
20 Legislative Update.

21 MS. ORTMAN: Good morning.

22 We are monitoring three bills this legislative  
23 session.

24 The Education Omnibus Trailer bill proposes  
25 to add the following language which would affect the



1 mandates process; specifically, the reasonable  
2 reimbursement methodology. A reasonable reimbursement  
3 methodology that is based on, in whole or in part, costs  
4 that have been included in claims submitted to the  
5 Controller for reimbursement shall use only costs that  
6 have been audited by the Controller.

7 The next bill, AB 2851, State Mandates, was  
8 introduced by Assembly Member Maienschein on February 19.  
9 This bill appears to be a spot bill, and currently  
10 proposes one technical nonsubstantive change to  
11 Government Code section 17560(b), addressing  
12 reimbursement claims. On March 23<sup>rd</sup>, the author's office  
13 confirmed that the bill is dead and that they do not  
14 intend to pursue it.

15 Additionally, Commission staff continues to  
16 monitor AB 575, *Teacher: Best Practices Teacher*  
17 *Evaluation Systems*, from last year's session. As you  
18 may recall, this bill, which was referred to the Senate  
19 Committee on Education on June 18<sup>th</sup> of 2015, proposes to  
20 amend Government Code 17581, adding sections to the  
21 Education Code relating to teacher evaluation.

22 Thank you.

23 CHAIR ORTEGA: Thank you.

24 MS. HALSEY: Thank you, Kerry.

25 Chief Legal Counsel Camille Shelton will

1 present Item 12, the Chief Legal Counsel Report.

2 MS. SHELTON: Since the Commission's last  
3 hearing, two cases have experienced some orders and  
4 judgments from the court.

5 The first one is in *Paradise Irrigation*  
6 *District*, where the court has denied the petition for  
7 writ of mandate in that case; and that was dealing with  
8 a *Water Conservation* decision of the Commission.

9 The second case is the *California School Board*  
10 *Association versus the State of California*. And there,  
11 the Court has denied the first and second causes of  
12 action, and has dismissed the third and fourth causes of  
13 action. And the judgment is pending in that matter.

14 CHAIR ORTEGA: Okay.

15 MS. HALSEY: Item 13 is the Executive  
16 Director's report.

17 And before I present my report, I would like  
18 to introduce two of our new Commission's employees.

19 New Senior Commission Counsel Paul Lukacs.  
20 He's here.

21 MR. LUKACS: Hello.

22 MS. HALSEY: He has earned his bachelor of arts  
23 in U.S. history from the University of Maryland,  
24 University College. And he went on to earn his juris  
25 doctorate from the University of California at Berkeley

1 Law School, after which he served at Boalt Hall as law  
2 and technology fellow for a year. And while at Berkeley,  
3 he was a member of the technology journal. And Paul  
4 comes to us with an entertainment and intellectual law  
5 background. And he's worked on numerous complex matters  
6 over the course of his career, so I think he's a great  
7 addition to Commission staff.

8 Also, we have Cristina Bardasu here. And she  
9 is our new program analyst. She is working on budgeting,  
10 procurement and accounting for the Commission. And she  
11 works in FI\$CAL daily, has an excellent attention to  
12 detail, and has already proven to be an invaluable asset  
13 to the Commission.

14 So please join me in welcoming them.

15 CHAIR ORTEGA: Welcome.

16 Thank you.

17 MS. HALSEY: After this hearing, we now have  
18 13 test claims and one parameters and guidelines pending,  
19 all of which are regarding *Stormwater Permits* and are on  
20 inactive status pending the resolution of litigation in  
21 the Supreme Court.

22 Last week, the California Supreme Court made  
23 a technical change to the title of the case currently  
24 pending there, which indicates they're looking at it and  
25 that it may be set for hearing in the near future.

1           And I also did note that for the month of May,  
2           the California Supreme Court has set two weeks of oral  
3           argument. So we think that it could possibly be heard as  
4           early as May.

5           In addition, we have three parameters-and-  
6           guidelines amendments, three statewide cost estimates,  
7           and 36 incorrect reduction claims pending.

8           Actually, that's 37, because we just had a new  
9           filing.

10           Currently, the Commission staff expects to  
11           complete the IRC backlog, including the IRCs filed to  
12           date by approximately January 2017 or 2018, depending on  
13           staffing and other workload.

14           Other than that, please check the tentative  
15           agenda items on the Executive Director's report to see  
16           if your item is coming up for hearing over the course  
17           of the next few hearings, and expect to receive draft  
18           proposed decisions for your review and comment at least  
19           eight weeks prior to the hearing date, and a proposed  
20           decision approximately two weeks prior to the hearing.

21           And that's all I have.

22           CHAIR ORTEGA: Okay, thank you.

23           We will now recess to closed executive session.

24           The Commission will meet in closed executive  
25           session pursuant to Government Code section 11126(e) to

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1 confer with and receive advice from legal counsel for  
2 consideration and action as necessary and appropriate  
3 upon the pending litigation listed on the published  
4 notice and agenda, and to confer with and receive advice  
5 from legal counsel regarding potential litigation. The  
6 Commission will also confer on personnel matters pursuant  
7 to Government Code section 11126(a)(1).

8 We will reconvene in open session in  
9 approximately 15 minutes.

10 Thank you, everyone.

11 *(The Commission met in closed executive*  
12 *session from 11:17 a.m. to 11:26 a.m.)*

13 CHAIR ORTEGA: Thank you. We're going to  
14 convene to open session.

15 The Commission met in closed executive session  
16 pursuant to Government Code section 11126(e)(2), to  
17 confer with and receive advice from legal counsel, for  
18 consideration and action, as necessary and appropriate,  
19 upon the pending litigation listed on the published  
20 notice and agenda; and to confer with and receive advice  
21 from legal counsel regarding potential litigation, and  
22 pursuant to Government Code section 11126(a)(1) to confer  
23 on personnel matters.

24 And with no further business to come before the  
25 Commission, we'll be adjourned.

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1           Thank you.

2           *(The Commission meeting concluded*  
3           *at 11:28 a.m.)*

4                               --oOo--

**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 15<sup>th</sup> day of April 2016.



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