

Item 1

Proposed Minutes

COMMISSION ON STATE MANDATES

Location of Meeting: Room 447
State Capitol, Sacramento, California
July 28, 2017

Present: Member Eraina Ortega, Chairperson
Representative of the Director of the Department of Finance
Member Lee Adams
County Supervisor
Member Ken Alex
Director of the Office of Planning and Research
Member Mark Hariri
Representative of the State Treasurer
Member Sarah Olsen
Public Member
Member Carmen Ramirez
City Council Member

Absent: Member Richard Chivaro, Vice Chairperson
Representative of the State Controller

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 10:04 a.m. Executive Director Heather Halsey called the roll.

APPROVAL OF MINUTES

Member Ramirez made a motion to adopt the minutes. With a second by Member Adams, the May 26, 2017 hearing minutes were adopted by a vote of 5-0, with Member Olsen abstaining.

PUBLIC COMMENT FOR MATTERS NOT ON THE AGENDA

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

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 Decisions*

Executive Director Halsey stated that there were no appeals to consider for this hearing.

INCORRECT REDUCTION CLAIM

Item 3 *Health Fee Elimination, 10-4206-I-32*

Former Education Code Section 72246 (Renumbered as 76355)

Statutes 1984, Chapter 1 (1983-1984 2nd Ex. Sess.) (AB2X 1);
and Statutes 1987, Chapter 1118 (AB 2336)

Fiscal Years: 2002-2003, 2003-2004, 2004-2005, 2005-2006, and
2006-2007

State Center Community College District, Claimant

Executive Director Heather Halsey stated that the claimant notified Commission staff that the District did not plan to have a representative present for the hearing and that Jim Spano notified Commission staff that he also would not be attending the hearing.

Chief Legal Counsel Camille Shelton presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate the indirect costs reduced in fiscal years 2005-2006 and 2006-2007.

Parties were represented as follows: Jim Venneman, representing the State Controller's Office.

Mr. Venneman stated that the State Controller's Office supports staff's finding and recommendation. Without further discussion among the Commission members, staff, and parties, Member Olsen made a motion to adopt the staff recommendation. With a second by Member Ramirez, the motion to partially approve this Incorrect Reduction Claim was adopted by a vote of 6-0.

Item 4 *Integrated Waste Management, 13-0007-I-02*

Public Resources Code Sections 40418, 40196.3, 42920-42928; Public
Contract Code Sections 12167 and 12167.1; Statutes 1992, Chapter 1116
(AB 3521); Statutes 1999, Chapter 764 (AB 75); State Agency Model
Integrated Waste Management Plan (February 2000)

Fiscal Years: 1999-2000, 2000-2001, 2003-2004, 2004-2005, 2005-2006,
2006-2007, 2007-2008, 2008-2009, and 2009-2010

Sierra Joint Community College District, Claimant

Executive Director Heather Halsey stated that the claimant notified Commission staff that the District did not plan to attend the hearing.

Senior Commission Counsel Eric Feller presented this item and recommended that the Commission partially approve this Incorrect Reduction Claim and request that the State Controller reinstate \$3,393 to the claimant.

Parties were represented as follows: Lisa Kurokawa, representing the State Controller's Office.

Ms. Kurokawa stated that the State Controller's Office agrees with the staff's conclusion and recommendation. Without further discussion among the Commission members, staff, and parties, Member Ramirez made a motion to adopt the staff recommendation. With a second by Member Olsen, the motion to partially approve this 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 5 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.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLES 7 AND 8 (action)

PUBLIC HEARING ON PROPOSED REGULATION AMENDMENTS

- Item 6 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

Program Analyst Jill Magee presented this item.

The following representatives commented on this item: Andy Nichols, representing Nichols Consulting; Dorothy Johnson, representing the California State Association of Counties; and Dillon Gibbons, representing the California Special Districts Association.

Mr. Nichols, Ms. Johnson, and Mr. Gibbons each presented potential impacts of the changes proposed to Commission regulations and requested additional clarification regarding the necessity and anticipated benefit of some of the changes. Chairperson Ortega stated that the Commission would accept these comments and ask staff to provide a written response for consideration at the September 2017 Commission hearing. She then asked if there were any objections. No objections were made. Member Ramirez thanked the members of the various agencies for coming and talking to the Commission.

STAFF REPORTS

- Item 7 Legislative Update (info)

Program Analyst Kerry Ortman presented this item.

- Item 8 Chief Legal Counsel: New Filings, Recent Decisions, Litigation Calendar (info)

Chief Legal Counsel Camille Shelton presented this item.

- Item 9 Executive Director: Budget, Workload Update, and Tentative Agenda Items for the September and December 2017 Meetings (info)

Executive Director Heather Halsey presented this item and reported on the Commission's budget and the Commission's pending caseload.

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. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166734
[*Handicapped and Disabled Students IRC*, 13-4282-I-06]
2. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS166735
[*Handicapped and Disabled Students II IRC*, 12-0240-I-01]
3. *County of Los Angeles v. Commission on State Mandates, State Controller's Office*
Los Angeles County Superior Court, Case No. BS167447
[*Seriously Emotionally Disturbed Pupils IRC*, 12-9705-I-04]
4. ***On Remand from California Supreme Court, Case No. S214855, 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)
Los Angeles County Superior Court, Case No. BS130730, Second District Court of Appeal, Case No. B237153 [*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]

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. *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).]

3. *Paradise Irrigation District, et al. v. Commission on State Mandates, Department of Finance, and Department of Water Resources*
Third District Court of Appeal, Case No. C081929
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.]
4. *California School Board Association (CSBA) v. State of California et al.*
First District Court of Appeal, Case No. A148606
Alameda County Superior Court, Case No. RG11554698
[2010-2011 Budget Trailer Bills; Education Code sections 42238.24 and 56523]

California Supreme Court:

1. *Counties of San Diego, Los Angeles, San Bernardino, Orange, and Sacramento v. Commission on State Mandates, et al.*
California Supreme Court, Case No. S239907
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]

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 10:28 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 10:36 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 10:37 a.m.

Heather Halsey
Executive Director

**ORIGINAL
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PUBLIC MEETING

**COMMISSION ON
STATE MANDATES**

COMMISSION ON STATE MANDATES

TIME: 10:00 a.m.

DATE: Friday, July 28, 2017

PLACE: State Capitol, Room 447
Sacramento, California

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Reported by:

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A P P E A R A N C E S

COMMISSIONERS PRESENT

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

LEE ADAMS III
Sierra County Supervisor
Local Agency Member

MARK HARIRI
Representative for 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 9)

HEIDI PALCHIK
Assistant Executive Director

ERIC FELLER
Senior Legal Counsel
(Item 4)

MATTHEW B. JONES
Commission Counsel

A P P E A R A N C E S

PARTICIPATING COMMISSION STAFF PRESENT

(continued)

JILL MAGEE
Program Analyst
(Item 6)

KERRY ORTMAN
Program Analyst
(Item 7)

CAMILLE N. SHELTON
Chief Legal Counsel
(Item 3 and Item 8)



PUBLIC TESTIMONY

Appearing Re Item 3:

For the State Controller's Office:

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

Appearing Re Item 4:

For the State Controller's Office:

LISA KUOKAWA
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 6:

DILLON GIBBONS
California Special Districts Association
1112 I Street, Suite 200
Sacramento, California 95814

DOROTHY JOHNSON
California State Association of Counties
1100 K Street, Suite 101
Sacramento, California 95814

ANDY NICHOLS
Nichols Consulting



Commission on State Mandates – July 28, 2017

ERRATA SHEET

Page	Line	Correction
2		Commissioners Present
		<u>Ken Alex</u>
		<u>Director</u>
		<u>Office of Planning and Research</u>
6		V. Hearings and Decisions on Test Claims and Parameters and Guidelines Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7
7		A. Proposed Adoption of <u>Public Hearing on</u> Proposed Regulation Amendments
7		Item 9 Executive Director: <u>Budget, Workload</u> Update, and Tentative Agenda Items for the <u>September and December 2017 Meetings (info)</u>
17	21	January 1 st , 2015 <u>2018</u> [sic], effective date.

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VI. 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 2

Item 5 Assignment of County Application to Commission, a Hearing Panel of One or More Members of the Commission, or to a Hearing Officer *(None)* 16

VII. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8 (action)

A. Proposed Hearing on Proposed Regulation Amendments

Item 6 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 16

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Commission on State Mandates – July 28, 2017

BE IT REMEMBERED that on Friday, July 28, 2017,
commencing at the hour of 10:04 a.m., thereof, at the
State Capitol, Room 447, Sacramento, California, before
me, DANIEL P. FELDHAUS, CSR #6949, RDR and CRR, the
following proceedings were held:

--o0o--

CHAIR ORTEGA: Good morning, everyone. I would like to call to order the July 28th meeting of the Commission on State Mandates.

Please call the roll.

MS. HALSEY: Mr. Adams?

MEMBER ADAMS: Here.

MS. HALSEY: Mr. Alex?

MEMBER ALEX: Here.

MS. HALSEY: Mr. Chivaro?

(No response)

MS. HALSEY: Mr. Hariri?

MEMBER HARIRI: Here.

MS. HALSEY: Ms. Olsen?

MEMBER OLSEN: Here.

MS. HALSEY: Ms. Ortega?

CHAIR ORTEGA: Here.

MS. HALSEY: Ms. Ramirez?

MEMBER RAMIREZ: Here.

CHAIR ORTEGA: Okay, we have a quorum.

Commission on State Mandates – July 28, 2017

1 The first item of business is the minutes from
2 May 26th.

3 Any corrections or comments?

4 MEMBER RAMIREZ: Motion to approve.

5 CHAIR ORTEGA: Okay, moved by Ms. Ramirez.

6 MEMBER ADAMS: Second.

7 CHAIR ORTEGA: Second by Mr. Adams.

8 All in favor of approval of the minutes, please say
9 "aye."

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

11 MEMBER OLSEN: And you should have me abstain
12 because I wasn't here.

13 CHAIR ORTEGA: Okay, Ms. Olsen abstains.

14 MS. HALSEY: Now, we will take up public comment for
15 matters not on the agenda.

16 Please note, the Commission cannot take action on
17 items not on the agenda; however, it can schedule issues
18 raised by the public for consideration at future
19 meetings.

20 CHAIR ORTEGA: Okay, any public comment on items not
21 on the agenda?

22 *(No response)*

23 CHAIR ORTEGA: All right, seeing none, we'll move
24 on.

25 MS. HALSEY: There are no items on consent today.

1 So let's move to the Article 7 portion of the
2 hearing.

3 Will the parties and witnesses for Items 3 and 4
4 please rise?

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

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

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

11 MS. HALSEY: Thank you.

12 Item 2 is reserved for appeals of Executive Director
13 decisions.

14 There are no appeals to consider at this hearing.

15 Chief Legal Counsel Camille Shelton will present
16 Item 3, an incorrect reduction claim on *Health Fee*
17 *Elimination*.

18 On Tuesday, claimant representative notified the
19 Commission staff that the District does not plan to have
20 a representative present for the hearing; and this
21 morning, Jim Spano contacted the Commission staff to let
22 us know that he will also not be attending today's
23 hearing.

24 MS. SHELTON: Good morning.

25 This incorrect reduction claim is based on

1 reductions made under the *Health Fee Elimination Program*
2 for fiscal years 2002-2003 through 2006-2007.

3 Staff finds that the Controller timely initiated and
4 timely completed the audit.

5 Staff further finds that the reduction of indirect
6 costs for the first two fiscal years and the reduction
7 of costs based on understated offsetting health-fee
8 revenue authorized to be charged is correct as a matter
9 of law and is not arbitrary, capricious, or entirely
10 lacking in evidentiary support.

11 Staff also finds that the Controller's reduction of
12 indirect costs for fiscal years 2005-2006 and 2006-2007
13 is incorrect as a matter of law.

14 In these years, the claimant used a federally
15 approved rate consistent with the OMB Circular A-21.
16 However, the Controller adjusted costs because the
17 claiming instructions were changed to disallow the use
18 of the federally approved rate.

19 There is no evidence in the record that the claimant
20 had notice or an opportunity to be heard on the change in
21 the rule before the deadline to file reimbursement claims
22 for those fiscal years. Thus, the Controller's change to
23 the indirect cost rule constitutes an invalid underground
24 regulation.

25 The Controller has filed comments agreeing with the

1 proposed decision.

2 Staff recommends that the Commission adopt the
3 proposed decision to partially approve the incorrect
4 reduction claim; and requests that the Controller
5 reinstate the indirect costs reduced in fiscal years
6 2005-06 and 2006-07.

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

9 MR. VENNEMAN: Jim Venneman, State Controller's
10 Office.

11 CHAIR ORTEGA: Okay.

12 MR. VENNEMAN: State Controller's Office supports
13 staff's finding and recommendation.

14 CHAIR ORTEGA: Thank you.

15 Any questions for Mr. Venneman or Camille?

16 *(No response)*

17 CHAIR ORTEGA: All right, any other public comment
18 on this one?

19 *(No response)*

20 CHAIR ORTEGA: Okay, seeing none, is there a motion?

21 MEMBER OLSEN: I'll move.

22 MEMBER RAMIREZ: So moved.

23 CHAIR ORTEGA: Okay. Moved by Ms. Olsen.

24 MEMBER RAMIREZ: Okay, I'll second.

25 CHAIR ORTEGA: Second by Ms. Ramirez.

1 All in favor of approval of the staff
2 recommendation, please say "aye."

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

4 CHAIR ORTEGA: Okay, that's approved unanimously.

5 We'll move on to Item 4.

6 MS. HALSEY: Senior Legal Counsel Eric Feller will
7 present Item 4, an incorrect reduction claim on
8 *Integrated Waste Management*.

9 On Thursday, the claimant notified Commission staff
10 that the District does not plan to attend the hearing.

11 MR. FELLER: Good morning.

12 The Controller's reduction to this program were
13 because the claimant did not deduct offsetting savings
14 from its diversion of solid waste and the associated
15 reduction of disposal costs, in accordance with the
16 test-claim statutes.

17 Staff finds that the Controller's reduction of costs
18 for most of the reimbursement claims in the audit period
19 is correct as a matter of law and not arbitrary,
20 capricious, or entirely lacking in evidentiary support.

21 Staff also finds the Controller's audit reduction
22 for the first half of fiscal year 2003-04 is incorrect
23 as a matter of law because the Controller based the cost
24 savings calculation on a 50 percent required diversion
25 rate, when the law required only 25 percent diversion.

1 And the 2003-04 calculation of offsetting cost
2 savings is arbitrary, capricious, and entirely lacking
3 in evidentiary support because the Controller used
4 100 percent of the claimant's diversion to calculate the
5 offsetting costs, instead of allocating the diversion
6 rate consistent with the other years when the claimant
7 exceeded the mandate. So the audit decision increased
8 the offset.

9 Staff recommends that the Commission partially
10 approve this IRC, and requests the Controller reinstate
11 \$3,393 to the claimant and authorize staff to make any
12 technical, non-substantive changes to the proposed
13 decision following the hearing.

14 Will the parties and witnesses please state your
15 name for the record?

16 MS. KUROKAWA: My name is Lisa Kurokawa, State
17 Controller's Office, Division of Audits.

18 We agree with the staff's conclusion and
19 recommendation on this issue.

20 CHAIR ORTEGA: Thank you.

21 Any questions from the Commission?

22 *(No response)*

23 CHAIR ORTEGA: Any other public comment on this one?

24 *(No response)*

25 CHAIR ORTEGA: All right. Seeing none, is there a

1 motion?

2 MEMBER RAMIREZ: I'll make the motion.

3 CHAIR ORTEGA: Moved by Ms. Ramirez.

4 MEMBER OLSEN: I'll second.

5 CHAIR ORTEGA: Second by Ms. Olsen.

6 All in favor approving the staff recommendation,

7 please say "aye."

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

9 CHAIR ORTEGA: It's approved unanimously.

10 We'll move on to Item 5.

11 MS. HALSEY: Item 5 is reserved for county
12 applications for a finding of significant financial
13 distress, or SB 1033 applications.

14 No SB 1033 applications have been filed.

15 Program Analyst Jill Magee will present Item 6, the
16 public hearing on Proposed Regulation Amendments.

17 MS. MAGEE: Good morning.

18 The purpose of this public hearing on the proposed
19 regulations is to take public comment. The written
20 comment period for this rulemaking closed July 24th,
21 2017.

22 The Commission received written comments from the
23 California Special Districts Association, California
24 State Association of Counties, and League of Cities on
25 July 24th, 2017. However, the Commission did receive a

1 timely request for a public hearing on this matter; and
2 that is what brings us here today.

3 A public hearing for a rulemaking is intended to
4 provide the public an opportunity to voice opinions on
5 the rulemaking. Agencies, however, are not required to
6 provide a response to comments at the public hearing.
7 Instead, all comments will be included in the rulemaking
8 record; and Commission staff will prepare written
9 responses to the comments as part of the final statement
10 of reasons.

11 If changes to the proposed regulatory text are
12 proposed by the commenters, Commission staff will prepare
13 an analysis and recommendation on such changes for the
14 Commission's consideration.

15 Procedurally, if staff recommends no changes to the
16 proposed regulatory text, the matter, including written
17 responses to all comments received, will be set for final
18 adoption at the September 22nd, 2017, Commission hearing;
19 and if the Commission adopts the regulations without
20 additional changes at that time, it will retain its
21 January 1st, 2015 [sic], effective date.

22 If changes to the proposed regulatory text are
23 proposed and are recommended by staff, Commission staff
24 will prepare the revised text analysis and recommendation
25 for the Commission's consideration and approval at the

1 September 22nd, 2017, hearing.

2 If the Commission approves any substantive changes
3 to the text, Commission staff will provide notice of an
4 additional 15-day public-comment period and set the
5 rulemaking package for adoption at the next regularly
6 scheduled hearing, with an effective date of April 1st,
7 2018.

8 Will those who wish to comment on this item please
9 come forward and state your name for the record?

10 MR. NICHOLS: Andy Nichols, state mandated cost
11 consultant for local government.

12 MS. JOHNSON: Dorothy Johnson, California State
13 Association of Counties.

14 Mr. GIBBONS: Dillon Gibbons, with the California
15 Special Districts Association.

16 CHAIR ORTEGA: Thank you.

17 Please, go ahead.

18 MR. NICHOLS: I am here this morning to just chat
19 about the item regarding the test-claim period for filing
20 based on a test-claim statute, whether it's the date of
21 enactment or the cost-first-incurred date. And as CSDA
22 and CSAC and the League identified in their letter, the
23 proposed regulation, although I understand the
24 Commission's motivation for trying to get a uniformity
25 regarding the changes in the regulations, the concern

1 from local government, and consultants as well, is the
2 effect it will have on the test-claim filing window.

3 And as a result, once again, as described in the letter,
4 with the change occurring, it will reduce -- to use the
5 two examples from that letter -- if there is a
6 January 1 effective or first-cost date, this will reduce
7 the eligible time period to file a test claim by
8 181 days, or 33 percent of what it will become.

9 If the effective date, or cost-incurred date, is
10 July 1 -- and these are the two most common examples
11 whenever legislation is passed -- it will reduce it
12 basically by 50 percent, or 364 days.

13 So the concern for locals in this matter is looking
14 at the Commission, asserting that the necessity and
15 anticipated benefit of making this change to a precise,
16 clear, predictable one-year period of limits, a
17 limitation to the filing of all test claims, right now,
18 the existing regulation is very clear and concise and
19 predictable: All test claims must be filed by June 30th,
20 following the year that the costs are either first
21 incurred or enacted. So in that respect, local
22 government already knows when they have to get the test
23 claim here to the Commission for its review.

24 The other issues that were mentioned in the letter,
25 and I just wanted to expand upon, AB 3000 of 2002 reduced

1 what was a pretty wide-open window, down to three years.
2 And follow-up legislation also described in that letter,
3 back in 2005, reduced it to the current state that we
4 have, with regard to this regulation.

5 Reducing this, as was noted in the Bureau of
6 State Audits' report from -- I believe it was 2009 -- I
7 apologize, I don't have that particular report in front
8 of me -- but they identified both instances, that there
9 was a dramatic decrease in the amount of test claims
10 filed. And that is of concern to local government.

11 At the same time, I recognize AB 3000, there were
12 some other moving parts that did result a large number
13 of filings at one time; but since 2005, the test claims
14 have dramatically dropped.

15 And I would even point to Item Number 9 in today's
16 agenda, the Executive Director report. If you look to
17 Roman numeral II, Item B, if I'm reading it correctly --
18 I may be misinterpreting it -- it appears that dating
19 back to last July of 2016, there have been two test
20 claims filed by local government agencies. And if you
21 look -- I decided to look at last July's Executive
22 Director report. Under that same item, there appears to
23 only have been one test claim filed. So we're talking
24 over 4,000 local government agencies in the last
25 24 months -- maybe I'm misinterpreting these numbers --

1 there have been three test claims?

2 Now, I don't believe it's the intent of the
3 Commission; but if these changes are made to, once again,
4 in every single example, reduce the time period that
5 local government can file a test claim, we are starting
6 to work that number towards zero. And that's the
7 concern, is Article XIII B, Section 6. It's very
8 difficult.

9 I know, for the Commission, it's very painstaking
10 to go through and look back and find out what is and
11 isn't preexisting and what is new and unique to local
12 government. Local government has that same challenge;
13 and they have one year to get it from the first date of
14 cost incurment or enactment. And that is why there is a
15 dramatic decrease since 2005, and as you've seen in the
16 last two years -- once again, assuming I've got my
17 numbers properly interpreted.

18 Thank you.

19 CHAIR ORTEGA: Thank you, Mr. Nichols.

20 Ms. Johnson?

21 MS. JOHNSON: Good morning.

22 Dorothy Johnson with the California State
23 Association of Counties. We appreciate the opportunity
24 to address the Commission on this issue. And we do hope
25 that these comments will prove helpful in clarifying the

1 regulations and assist with expediting decision-making
2 before this body.

3 I won't reiterate the comments made by Mr. Nichols;
4 but I do want to stress that we do think that under the
5 test-claim filing period requirement for section 1183.1,
6 the more precise hard deadline of June 30th is
7 appropriate and should be retained. This also aligns
8 very well with the local budgeting process, which we
9 think is helpful in ensuring the actual costs incurred
10 will be more accurately reflected when it comes to
11 reviewing the new programs or higher levels of services
12 that are put upon counties and other local agencies.

13 The other item I wish to address -- and then I'll
14 turn it over to my colleague from the special
15 districts -- and this is reflected as well in our
16 letter -- but it deals with the single-representative
17 requirement proposal. And here, we're asking for further
18 clarification.

19 CSAC, the League of California Cities, and the
20 Special Districts Association, it's unclear to us why
21 the opportunity for a single claimant to serve as a
22 communication channel, but then also have to serve as the
23 only representative for the body would be a service and
24 create greater decision-making efficiency for the body.
25 We do believe that there are often broad, common themes

1 for test claimants representing numerous agencies.
2 However, those individual agencies may have further
3 unique aspects that they wish to bring to the table; and
4 we feel that opportunity would be severely limited with
5 the proposed changes.

6 So what we've put in our letter as Item Number 2,
7 we would like to see more information as to why having a
8 single representative from multiple claimants is the
9 appropriate solution forward, when using that single
10 representative as a channel to communicate with the
11 Commission, which is currently in place, seems to be an
12 appropriate way to create efficiency in the
13 decision-making process.

14 Thank you.

15 CHAIR ORTEGA: Thank you.

16 Mr. Gibbons?

17 Mr. GIBBONS: Ms. Chair, Members of the Commission,
18 Dillon Gibbons with the California Special Districts
19 Association.

20 I'd like to echo the comments of my colleagues and
21 add a few more regarding some of the other proposed
22 changes.

23 First, with regard to the proposed changes to the
24 filing service of all documents and the conduct of the
25 Commission hearings in section 1182.10(b), the proposed

1 regulation regarding the conduct hearing, strikes out
2 existing language that provides that the hearing will not
3 be conducted according to technical rules related to
4 evidence and witnesses and permitting hearsay evidence in
5 certain circumstances. Unfortunately, no information is
6 provided regarding the necessity or anticipated benefit
7 of the proposed change.

8 The Commission is a quasi-judicial body, and
9 therefore should not be required to act in accordance
10 with traditional courtroom rules. However, by striking
11 out section 1182.10(b), it's unclear whether or not the
12 Commission will be required to act as such and continue
13 as that quasi-judicial body.

14 Moreover, the proposed regulation conflicts with
15 other regulations governing the conduct of hearings
16 before the Commission.

17 So section 1187.5, regarding evidence submitted to
18 the Commission in a quasi-judicial hearing, will continue
19 to contain the same language as it relates to hearsay
20 evidence being submitted. But that is being stricken
21 in the changes in 1182.10(b). So we have a proposed
22 alternative, and that would be to, at this time, retain
23 the existing language in 1182.10(b).

24 If the Commission still wishes to make changes to
25 that section, we ask that you hold off on the changes

1 until the Commission staff is able to provide the public
2 with information regarding the necessity or anticipated
3 benefit of the proposed regulation and we have an
4 opportunity to respond to those comments.

5 Now -- and I think I made a misstatement that there
6 is no information provided regarding the necessity.
7 There is some information, but it's not specific to that
8 section. So I think that I want to be clear on that.

9 And for the impacts that that would have on our
10 special districts and our local governments, the changes
11 that are proposed would be significant cost increases
12 regarding bringing a claim as far as our attorneys' fees.

13 If we're eliminating hearsay testimony, it will
14 require tremendous investment of time and resources for
15 agency staff to be preparing witnesses. Instead of
16 having a GM be able to come in and say, "You know, I got
17 this information from our auditor, I got this information
18 from these folks; and here's what they said," we would
19 have to be bringing in each one of them, is the
20 understanding -- the way we read that proposed change.

21 And as it's currently written, there is confusion on
22 how those regulations would be enforced or which ones we
23 should follow. At least I'm confused.

24 So the second part -- this is a much shorter part --
25 I'd like to comment on the proposed changes to the filing

1 and service documents. And this is various sections:
2 There's section 1182.2(d), 1182.7(b), and 1182.10(d).
3 The numerous proposed regulations contain amendments
4 where language has been inserted into -- to require that
5 all representations of facts shall be supported by
6 documentary or testimonial evidence. And although
7 there's common-law definitions of "documentary evidence"
8 and "testimonial evidence," we would like to see
9 clarification to be put into the proposed language that
10 has the definitions as they would apply to this
11 Commission for the documentary and testimonial evidence.
12 And it just adds clarity for our districts and for our
13 local governments.

14 That's it. Thank you.

15 CHAIR ORTEGA: Thank you, Mr. Gibbons.

16 Any other public comment on this item?

17 *(No response)*

18 CHAIR ORTEGA: Okay, so I think at this point, the
19 plan would be to accept these comments, and then ask the
20 staff to provide a written response. Then we could
21 consider the issue in September.

22 Is there any objection to that?

23 Ms. Ramirez?

24 MEMBER RAMIREZ: No objection. I would just like to
25 thank the members of the various agencies for coming and

1 talking to us.

2 Thank you.

3 CHAIR ORTEGA: Anything else?

4 *(No response)*

5 CHAIR ORTEGA: Okay. With that, that will be the
6 direction.

7 And then we'll move on to Item 7.

8 MS. HALSEY: Program Analyst Kerry Ortman will
9 present Item 7, the Legislative Update.

10 MS. ORTMAN: Good morning.

11 On June 27th, 2017, the Governor signed the 2017-18
12 Budget Act, AB 97, which includes \$601 million in
13 additional Proposition 98 related funding, of which
14 \$287 million would be used to pay down the K-12 mandates
15 backlog.

16 The Budget Act adds \$8 million and two mandates
17 to the K-12 mandate block grant. Those would be the
18 *California Assessment of Student Performance and*
19 *Progress*, or "CAASPP," and *Training for School Employee*
20 *Mandated Reporters*.

21 The Budget Act makes no changes to the list of
22 suspended K-12 mandates or to funded or suspended
23 community college and local government mandates as
24 compared to the 2016-17 budget year.

25 We continue to monitor AB 268, which was introduced

1 by Assembly Member Walderon on February 1st, 2017. This
2 bill proposes a technical non-substantive change to
3 Government Code section 17552, which currently addresses
4 the process by which local agencies or school districts
5 may claim reimbursement for state-mandated costs. AB 268
6 continues to be a spot bill.

7 CHAIR ORTEGA: Thank you.

8 Any questions?

9 *(No response)*

10 CHAIR ORTEGA: All right, Camille?

11 MS. HALSEY: Chief Legal Counsel Camille Shelton
12 will present Item 8, the Chief Legal Counsel report.

13 MS. SHELTON: We have had no new litigation filings
14 and no recent decisions; but the courts have established
15 dates of hearings in three cases.

16 The first is the *County of Los Angeles versus*
17 *Commission on State Mandates*, dealing with the
18 *Handicapped and Disabled Students* incorrect reduction
19 claims.

20 The second one is the remand of the *Municipal*
21 *Stormwater and Urban Runoff Discharge* claim, which is now
22 set for hearing before the Los Angeles County Superior
23 Court on January 31st, 2018.

24 And the third is a County of Los Angeles case,
25 challenging the Commission's decision on the *Seriously*

1 *Emotionally Disturbed Pupil* IRC; and that matter is set
2 for April 3rd, 2018.

3 CHAIR ORTEGA: Okay, any questions?

4 *(No response)*

5 MS. HALSEY: Item 9 is the Executive Director
6 Report.

7 As Kerry mentioned, the Governor signed the budget
8 bill on June 27th, 2017; and the Commission's operating
9 budget and budget for local assistance for reimbursement
10 were enacted as they were proposed.

11 For workload update, we have 15 pending test claims,
12 all but one of which is regarding the *National Pollutant*
13 *Discharge Elimination System*, or *NPDES*, *Permits*.

14 We also do have two test claims that are not yet
15 completed, that are going through the filing process and
16 that are being found to be complete or incomplete right
17 now. So we may have two more here for next time.

18 Also, we still have the one parameters and
19 guidelines and one statewide cost estimate regarding
20 *NPDES Permits*; and those are on inactive status pending
21 outcome of litigation. That is back in the superior
22 court down in LA.

23 In addition, we have one parameters-and-guidelines
24 amendment on inactive status pending the outcome of
25 litigation in the *CSBA* case, which is now in the First

1 District Court of Appeal.

2 And we have 12 IRCs remaining.

3 As of today, Commission staff expects to complete
4 all currently pending test claims and IRCs by
5 approximately the December 2018 Commission meeting,
6 depending on staffing and other workload.

7 That is all I have.

8 CHAIR ORTEGA: Okay. Any questions for Heather?

9 *(No response)*

10 CHAIR ORTEGA: No? Okay.

11 Thank you, everyone, for coming.

12 We will now meet in closed executive session
13 pursuant to Government Code section 11126(e) to confer
14 with and receive advice from legal counsel for
15 consideration and action, as necessary and appropriate,
16 upon the pending litigation listed on the published
17 notice and agenda, and to confer with and receive advice
18 from legal counsel regarding potential litigation.

19 The Commission will also confer on personnel matters
20 pursuant to Government Code section 11126(a)(1).

21 We will reconvene in open session in approximately
22 15 minutes.

23 Thank you.

24 *(The Commission met in closed executive session*
25 *from 10:28 a.m. to 10:36 a.m.)*

Commission on State Mandates – July 28, 2017

1 CHAIR ORTEGA: Okay, the Commission met in closed
2 session pursuant to Government Code section 11126(e)(2),
3 to confer with and receive advice from legal counsel for
4 consideration and action, as necessary and appropriate,
5 upon the pending litigation listed on the published
6 notice and agenda; and to confer with and receive advice
7 from legal counsel regarding potential litigation; and
8 pursuant to Government Code section 11126(a)(1), to
9 confer on personnel matters.

10 With no public comment and no other comments from
11 the Board, we will be adjourned.

12 Thank you.

13 *(The Commission meeting concluded at 10:37 a.m.)*

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REPORTER'S CERTIFICATE

I hereby certify:

That the foregoing proceedings were duly reported by me at the time and place herein specified; and

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

In witness whereof, I have hereunto set my hand on the 1st day of August 2017.



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